
STATUTORY INSTRUMENTS

2020 No. 759

The Criminal Procedure Rules 2020

PART 45

COSTS

COSTS OUT OF CENTRAL FUNDS

Costs out of central funds

- 45.4.**—(1) This rule applies where the court can order the payment of costs out of central funds.
- (2) In this rule, costs—
- (a) include—
 - (i) on an appeal, costs incurred in the court that made the decision under appeal, and
 - (ii) at a retrial, costs incurred at the initial trial and on any appeal; but
 - (b) do not include costs met by legal aid.
- (3) The court may make an order—
- (a) on application by the person who incurred the costs; or
 - (b) on its own initiative.
- (4) Where a person wants the court to make an order that person must apply as soon as practicable and—
- (a) outline the type of costs and the amount claimed, if that person wants the court to direct an assessment; or
 - (b) specify the amount claimed, if that person wants the court to assess the amount itself.
- (5) The general rule is that the court must make an order, but—
- (a) the court may decline to make a defendant’s costs order if, for example—
 - (i) the defendant is convicted of at least one offence, or
 - (ii) the defendant’s conduct led the prosecutor reasonably to think the prosecution case stronger than it was; and
 - (b) the court may decline to make a prosecutor’s costs order if, for example, the prosecution was started or continued unreasonably.
- (6) If the court makes an order—
- (a) the court may direct an assessment under, as applicable—
 - (i) Part III of the Costs in Criminal Cases (General) Regulations 1986⁽¹⁾, or
 - (ii) Part 3 of the Serious Crime Act 2007 (Appeals under Section 24) Order 2008⁽²⁾;

(1) S.I. 1986/1335; relevant amending instruments are S.I. 1999/2096 and S.I. 2008/2448.

(2) S.I. 2008/1863.

- (b) the court may assess the amount itself in a case in which either—
 - (i) the recipient agrees the amount, or
 - (ii) the court decides to allow a lesser sum than that which is reasonably sufficient to compensate the recipient for expenses properly incurred in the proceedings; and
- (c) an order for the payment of a defendant's costs which includes an amount in respect of fees payable to a legal representative, or disbursements paid by a legal representative, must include a statement to that effect.

(7) If the court directs an assessment, the order must specify any restriction on the amount to be paid that the court considers appropriate.

(8) If the court assesses the amount itself, it must do so subject to any restriction on the amount to be paid that is imposed by regulations made by the Lord Chancellor.

[Note. See also rule 45.2.

An order for the payment of costs out of central funds can be made—

- (a) *for a defendant—*
 - (i) *on acquittal,*
 - (ii) *where a prosecution does not proceed,*
 - (iii) *where the Crown Court allows any part of a defendant's appeal from a magistrates' court,*
 - (iv) *where the Court of Appeal allows any part of a defendant's appeal from the Crown Court,*
 - (v) *where the Court of Appeal decides a prosecutor's appeal under Part 37 (Appeal to the Court of Appeal against ruling at preparatory hearing) or Part 38 (Appeal to the Court of Appeal against ruling adverse to prosecution),*
 - (vi) *where the Court of Appeal decides a reference by the Attorney General under Part 41 (Reference to the Court of Appeal of point of law or unduly lenient sentence),*
 - (vii) *where the Court of Appeal decides an appeal by someone other than the defendant about a serious crime prevention order; or*
 - (viii) *where the defendant is discharged under Part 1 or 2 of the Extradition Act 2003;*
(See section 16 of the Prosecution of Offences Act 1985 and regulation 14 of the Costs in Criminal Cases (General) Regulations 1986(3); section 36(5) of the Criminal Justice Act 1972 and paragraph 11 of Schedule 3 to the Criminal Justice Act 1988; article 14 of the Serious Crime Act 2007 (Appeals under Section 24) Order 2008; and sections 61 and 134 of the Extradition Act 2003.)
- (b) *for a private prosecutor; in proceedings in respect of an offence that must or may be tried in the Crown Court;*
(See section 17 of the Prosecution of Offences Act 1985 and regulation 14 of the Costs in Criminal Cases (General) Regulations 1986.)
- (c) *for a person adversely affected by a serious crime prevention order, where the Court of Appeal—*
 - (i) *allows an appeal by that person about that order; or*
 - (ii) *decides an appeal about that order by someone else.**(See article 14 of the Serious Crime Act 2007 (Appeals under Section 24) Order 2008.)*

(3) [S.I. 1986/1335](#); regulation 14 was amended by regulations 2 and 11 of [S.I. 2008/2448](#).

Where the court makes an order for the payment of a defendant's costs out of central funds—

- (a) *the general rule is that the order may not require the payment of any amount in respect of fees payable to a legal representative, or disbursements paid by a legal representative (including expert witness costs), but if the defendant is an individual then an order may require payment of such an amount in a case—*
- (i) *in a magistrates' court, including in an extradition case,*
 - (ii) *in the Crown Court, on appeal from a magistrates' court,*
 - (iii) *in the Crown Court, where the defendant has been sent for trial, the High Court gives permission to serve a draft indictment or the Court of Appeal orders a retrial and the defendant has been found financially ineligible for legal aid, or*
 - (iv) *in the Court of Appeal, on an appeal against a verdict of not guilty by reason of insanity, or against a finding under the Criminal Procedure (Insanity) Act 1964(4), or on an appeal under section 16A of the Criminal Appeal Act 1968(5) (appeal against order made in cases of insanity or unfitness to plead); and*
- (b) *any such amount may not exceed an amount specified by regulations made by the Lord Chancellor.*

(See section 16A of the Prosecution of Offences Act 1985(6), sections 62A, 62B, 135A and 135B of the Extradition Act 2003(7) and regulations 4A and 7 of the Costs in Criminal Cases (General) Regulations 1986(8).)]

(4) 1964 c. 84.

(5) 1968 c. 19; section 16A was inserted by section 25 of the Domestic Violence, Crime and Victims Act 2004 (c. 28).

(6) 1985 c. 23; section 16A was inserted by paragraphs 1 and 3 and Part 4 of Schedule 7 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).

(7) 2003 c. 41; sections 62A and 62B were inserted by paragraphs 12 and 15 and Part 4 of Schedule 7 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10) and sections 135A and 135B were inserted by paragraphs 12 and 18 and Part 4 of that Schedule.

(8) S.I. 1986/1335; regulation 4A was inserted by regulations 4 and 5 of S.I. 2012/1804. Regulation 7 was substituted by regulations 4 and 6 of S.I. 2012/1804 and amended by S.I. 2013/2830.