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STATUTORY INSTRUMENTS

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**2020 No. 759**

**The Criminal Procedure Rules 2020**

**PART 45**

**COSTS**

*PAYMENT OF COSTS BY ONE PARTY TO ANOTHER*

**Costs on conviction and sentence, etc.**

**45.5.**—(1) This rule applies where the court can order a defendant to pay the prosecutor's costs if the defendant is—

- (a) convicted or found guilty;
  - (b) dealt with in the Crown Court after committal for sentence there;
  - (c) dealt with for breach of a sentence; or
  - (d) in an extradition case—
    - (i) ordered to be extradited, under Part 1 of the Extradition Act 2003,
    - (ii) sent for extradition to the Secretary of State, under Part 2 of that Act, or
    - (iii) unsuccessful on an appeal by the defendant to the High Court, or on an application by the defendant for permission to appeal from the High Court to the Supreme Court.
- (2) The court may make an order—
- (a) on application by the prosecutor; or
  - (b) on its own initiative.
- (3) Where the prosecutor wants the court to make an order—
- (a) the prosecutor must—
    - (i) apply as soon as practicable, and
    - (ii) specify the amount claimed; and
  - (b) the general rule is that the court must make an order if it is satisfied that the defendant can pay.
- (4) A defendant who wants to oppose an order must make representations as soon as practicable.
- (5) If the court makes an order, it must assess the amount itself.

[Note. See—

- (a) *rule 45.2;*
- (b) *section 18 of the Prosecution of Offences Act 1985(1) and regulation 14 of the Costs in Criminal Cases (General) Regulations 1986; and*

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(1) 1985 c. 23; section 18 was amended by section 15 of, and paragraph 16 of Schedule 2 to, the Criminal Justice Act 1987 (c. 38), section 168 of, and paragraph 26 of Schedule 9 to, the Criminal Justice and Public Order Act 1994 (c. 33), sections

(c) *sections 60 and 133 of the Extradition Act 2003.*

*Under section 18(4) and (5) of the 1985 Act, if a magistrates' court—*

- (a) *imposes a fine, a penalty, forfeiture or compensation that does not exceed £5—*
  - (i) *the general rule is that the court will not make a costs order against the defendant, but*
  - (ii) *the court may do so;*
- (b) *fines a defendant under 18, no costs order against the defendant may be for more than the fine.*

*Part 39 (Appeal to the Court of Appeal about conviction or sentence) contains rules about appeal against a Crown Court costs order to which this rule applies.]*

### **Costs on appeal**

**45.6.—**(1) This rule—

- (a) applies where a magistrates' court, the Crown Court or the Court of Appeal can order a party to pay another person's costs on an appeal, or an application for permission to appeal; and
  - (b) authorises the Crown Court, in addition to its other powers, to order a party to pay another party's costs on an appeal to that court, except on an appeal under—
    - (i) section 108 of the Magistrates' Courts Act 1980(2), or
    - (ii) section 45 of the Mental Health Act 1983(3).
- (2) In this rule, costs include—
- (a) costs incurred in the court that made the decision under appeal; and
  - (b) 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) A person who wants the court to make an order must—
- (a) apply as soon as practicable;
  - (b) notify each other party;
  - (c) specify—
    - (i) the amount claimed, and
    - (ii) against whom; and
  - (d) where an appellant abandons an appeal to the Crown Court by serving a notice of abandonment—

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69 and 312 of the Criminal Justice Act 2003 (c. 44) and section 40 of, and paragraph 41 of Schedule 9 to, the Constitutional Reform Act 2005 (c. 4).

- (2) 1980 c. 43; section 108 was amended by sections 66(2) and 78 of, and Schedule 16 to, the Criminal Justice Act 1982 (c. 48), section 23(3) of the Football Spectators Act 1989 (c. 37), section 101(2) of, and Schedule 13 to, the Criminal Justice Act 1991 (c. 53), sections 119 and 120(2) of, and paragraph 43 of Schedule 8 and Schedule 10 to, the Crime and Disorder Act 1998 (c. 37), section 7(2) of the Football (Offences and Disorder) Act 1999 (c. 21), section 165(1) of, and paragraph 71 of Schedule 9 to, the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), section 1 of, and Schedule 3 to, the Football (Disorder) Act 2000 (c. 25), section 58(1) of, and paragraph 10 of Schedule 10 to, the Domestic Violence, Crime and Victims Act 2004 (c. 28), section 52(2) of, and paragraph 14 of Schedule 3 to, the Violent Crime Reduction Act 2006 (c. 38) and section 64 of, and paragraph 10 of Schedule 3 to, the Animal Welfare Act 2006 (c. 45).
- (3) 1983 c. 20.

- (i) apply in writing not more than 10 business days later, and
  - (ii) serve the application on the appellant and on the Crown Court officer.
- (5) A party who wants to oppose an order must—
- (a) make representations as soon as practicable; and
  - (b) where the application was under paragraph (4)(d), serve representations on the applicant, and on the Crown Court officer, not more than 5 business days after it was served.
- (6) Where the application was under paragraph (4)(d), the Crown Court officer may—
- (a) submit it to the Crown Court; or
  - (b) serve it on the magistrates' court officer, for submission to the magistrates' court.
- (7) If the court makes an order, it may direct an assessment under rule 45.11, or assess the amount itself where—
- (a) the appellant abandons an appeal to the Crown Court;
  - (b) the Crown Court decides an appeal, except an appeal under—
    - (i) section 108 of the Magistrates' Courts Act 1980, or
    - (ii) section 45 of the Mental Health Act 1983; or
  - (c) the Court of Appeal decides an appeal to which Part 40 applies (Appeal to the Court of Appeal about reporting or public access restriction).
- (8) If the court makes an order in any other case, it must assess the amount itself.

*[Note. See also rule 45.2.*

*A magistrates' court can order an appellant to pay a respondent's costs on abandoning an appeal to the Crown Court.*

*The Crown Court can order—*

- (a) *the defendant to pay the prosecutor's costs on dismissing a defendant's appeal—*
  - (i) *against conviction or sentence, under section 108 of the Magistrates' Courts Act 1980, or*
  - (ii) *where the magistrates' court makes a hospital order or guardianship order without convicting the defendant, under section 45 of the Mental Health Act 1983; and*
- (b) *one party to pay another party's costs on deciding any other appeal to which Part 34 (Appeal to the Crown Court) applies.*

*The Court of Appeal can order—*

- (a) *the defendant to pay another person's costs on dismissing a defendant's appeal or application to which Part 37 (Appeal to the Court of Appeal against ruling at preparatory hearing), Part 39 (Appeal to the Court of Appeal about conviction or sentence) or Part 43 (Appeal or reference to the Supreme Court) applies;*
- (b) *the defendant to pay another person's costs on allowing a prosecutor's appeal to which Part 38 (Appeal to the Court of Appeal against ruling adverse to the prosecution) applies;*
- (c) *the appellant to pay another person's costs on dismissing an appeal or application by a person affected by a serious crime prevention order;*
- (d) *one party to pay another party's costs on deciding an appeal to which Part 40 (Appeal to the Court of Appeal about reporting or public access restriction) applies.*

*See section 109 of the Magistrates' Courts Act 1980(4); section 52 of the Senior Courts Act 1981(5) (which allows rules of court to authorise the Crown Court to order costs); section 18 of the Prosecution of Offences Act 1985; section 159(5) of the Criminal Justice Act 1988(6); and article 15 of the Serious Crime Act 2007 (Appeals under Section 24) Order 2008(7).]*

### **Costs on an application**

**45.7.**—(1) This rule—

- (a) applies where the court can order a party to pay another person's costs in a case in which—
  - (i) the court decides an application for the production in evidence of a copy of a bank record,
  - (ii) a magistrates' court or the Crown Court decides an application to terminate a football banning order,
  - (iii) a magistrates' court or the Crown Court decides an application to terminate a disqualification for having custody of a dog,
  - (iv) the Crown Court allows an application to withdraw a witness summons, or
  - (v) the Crown Court decides an application relating to a deferred prosecution agreement under rule 11.5 (breach), rule 11.6 (variation) or rule 11.7 (lifting suspension of prosecution); and
- (b) authorises the Crown Court, in addition to its other powers, to order a party to pay another party's costs on an application to that court under rule 11.5, 11.6 or 11.7.

(2) The court may make an order—

- (a) on application by the person who incurred the costs; or
- (b) on its own initiative.

(3) A person who wants the court to make an order must—

- (a) apply as soon as practicable;
- (b) notify each other party; and
- (c) specify—
  - (i) the amount claimed, and
  - (ii) against whom.

(4) A party who wants to oppose an order must make representations as soon as practicable.

(5) If the court makes an order, it may direct an assessment under rule 45.11, or assess the amount itself.

*[Note. See—*

- (a) *rule 45.2;*
- (b) *section 8 of the Bankers Books Evidence Act 1879(8);*
- (c) *section 14H(5) of the Football Spectators Act 1989(9);*

(4) 1980 c. 43; section 109(2) was amended by section 109 of, and paragraph 234 of Schedule 8 to, the Courts Act 2003 (c. 39).

(5) 1981 c. 54. The Act's title was amended by section 59(5) of, and paragraph 1 of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4).

(6) 1988 c. 33.

(7) S.I. 2008/1863.

(8) 1879 c. 11.

(9) 1989 c. 37; section 14H was substituted, together with sections 14, 14A-14G and 14J, for existing sections 14-17, by section 1 of, and paragraphs 1 and 2 of Schedule 1 to, the Football (Disorder) Act 2000 (c. 25).

- (d) *section 2C(8) of the Criminal Procedure (Attendance of Witnesses) Act 1965*(10); and
- (e) *section 4(7) of the Dangerous Dogs Act 1991*(11).

*Section 52 of the Senior Courts Act 1981 allows rules of court to authorise the Crown Court to order costs.]*

### **Costs resulting from unnecessary or improper act, etc.**

**45.8.**—(1) This rule applies where the court can order a party to pay another party's costs incurred as a result of an unnecessary or improper act or omission by or on behalf of the first party.

- (2) In this rule, costs include costs met by legal aid.
- (3) The court may make an order—
  - (a) on application by the party who incurred such costs; or
  - (b) on its own initiative.
- (4) A party who wants the court to make an order must—
  - (a) apply in writing as soon as practicable after becoming aware of the grounds for doing so, and in any event no later than the end of the case;
  - (b) serve the application on—
    - (i) the court officer (or, in the Court of Appeal, the Registrar), and
    - (ii) each other party; and
  - (c) in that application specify—
    - (i) the party by whom costs should be paid,
    - (ii) the relevant act or omission,
    - (iii) the reasons why that act or omission meets the criteria for making an order,
    - (iv) the amount claimed, and
    - (v) those on whom the application has been served.
- (5) Where the court considers making an order on its own initiative, it must—
  - (a) identify the party against whom it proposes making the order; and
  - (b) specify—
    - (i) the relevant act or omission,
    - (ii) the reasons why that act or omission meets the criteria for making an order, and
    - (iii) with the assistance of the party who incurred the costs, the amount involved.
- (6) A party who wants to oppose an order must—
  - (a) make representations as soon as practicable; and
  - (b) in reply to an application, serve representations on the applicant and on the court officer (or Registrar) not more than 5 business days after it was served.
- (7) If the court makes an order, it must assess the amount itself.
- (8) To help assess the amount, the court may direct an enquiry by—
  - (a) the Lord Chancellor, where the assessment is by a magistrates' court or by the Crown Court; or

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(10) 1965 c. 69; section 2C was substituted with section 2, 2A, 2B, 2D and 2E, for the existing section 2 by section 66(1) and (2) of the Criminal Procedure and Investigations Act 1996 (c. 25).

(11) 1991 c. 65.

(b) the Registrar, where the assessment is by the Court of Appeal.

(9) In deciding whether to direct such an enquiry, the court must have regard to all the circumstances including—

- (a) any agreement between the parties about the amount to be paid;
- (b) the amount likely to be allowed;
- (c) the delay and expense that may be incurred in the conduct of the enquiry; and
- (d) the particular complexity of the assessment, or the difficulty or novelty of any aspect of the assessment.

(10) If the court directs such an enquiry—

- (a) paragraphs (3) to (8) inclusive of rule 45.11 (Assessment and re-assessment) apply as if that enquiry were an assessment under that rule (but rules 45.12 (Appeal to a costs judge) and 45.13 (Appeal to a High Court judge) do not apply);
- (b) the authority that carries out the enquiry must serve its conclusions on the court officer as soon as reasonably practicable after following that procedure; and
- (c) the court must then assess the amount to be paid.

[*Note. See—*

- (a) *rule 45.2;*
- (b) *section 19(1) of the Prosecution of Offences Act 1985(12) and regulation 3 of the Costs in Criminal Cases (General) Regulations 1986(13); and*
- (c) *article 16 of the Serious Crime Act 2007 (Appeals under Section 24) Order 2008(14).*

*Under section 19(1), (2) of the 1985 Act and regulation 3(1) of the 1986 Regulations, the court's power to make a costs order to which this rule applies can only be exercised during the proceedings.*

*Under regulation 3(5) of the 1986 Regulations, if a magistrates' court fines a defendant under 17, no costs order to which this rule applies may be for more than the fine.*

*The Criminal Costs Practice Direction sets out a form of application for use in connection with this rule.]*

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(12) 1985 c. 23.

(13) S.I. 1986/1335; regulation 3 was amended by regulations 2 and 3 of S.I. 2008/2448.

(14) S.I. 2008/1863.