

2009 No. 2720

CRIMINAL LAW, ENGLAND AND WALES

**The Costs in Criminal Cases (General) (Amendment)
Regulations 2009**

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| <i>Made</i> - - - - | <i>8th October 2009</i> |
| <i>Laid before Parliament</i> | <i>8th October 2009</i> |
| <i>Coming into force</i> - - | <i>31st October 2009</i> |

The Lord Chancellor makes the following Regulations in exercise of the powers conferred by sections 19(3), 19A(1), 19B(1), 20(1) and 20(3) of the Prosecution of Offences Act 1985(a):

Citation, commencement and application

1.—(1) These Regulations may be cited as the Costs in Criminal Cases (General) (Amendment) Regulations and come into force on 31st October 2009.

(2) Regulation 7 of the Costs in Criminal Cases (General) Regulations 1986(b) (as substituted by regulation 8 of these Regulations) applies—

- (a) in respect of all cases committed, transferred or sent to the Crown Court on or after 31st October 2009,
- (b) in respect of all appeals and references to the Court of Appeal where the application for leave to appeal, notice of appeal or reference was made on or after 31st October 2009 and,
- (c) in all other cases, in respect of proceedings commenced on or after 31st October 2009.

Amendments to the Costs in Criminal Cases (General) Regulations 1986

2. The Costs in Criminal Cases (General) Regulations 1986 are amended as follows.

3. Omit paragraphs (2) and (4) of regulation 3B.

4.—(1) Omit paragraphs (2), (3), (4) and (5) of regulation 3C.

(2) In regulation 3C(6)—

- (a) for “The court may” substitute “The appeal court may”,
- (b) omit “and shall notify its decision to the appellant, any interested party and the court which made the order”.

5. Omit paragraphs (2), (3), (4) and (5) of regulation 3F.

6. Omit regulation 3G.

(a) 1985 c. 23. Relevant amendments were made to section 19(3) by section 166 of the Criminal Justice Act 1998 (c. 33). Section 19A was inserted by section 111 of the Courts Act 2003 (c. 39) and section 19B was inserted by section 93.

(b) S.I. 1986/1335. Relevant amending instruments are S.I. 1991/789, 1999/2096, 2004/2408, 2005/617 and 2008/2448.

7.—(1) Omit paragraphs (2), (3), (4) and (5) of regulation 3H.

(2) In regulation 3H(6) omit “and shall notify its decision to the appellant, any interested party and the court which made the order”.

8. For regulation 7 and substitute—

“Determination of rates and scales of costs payable out of central funds

7.—(1) The appropriate authority shall consider the claim, any further particulars, information or documents submitted by the applicant under regulation 6 and shall allow costs in respect of—

- (a) such work as appears to it to have been actually and reasonably done; and
- (b) such disbursements as appear to it to have been actually and reasonably incurred.

(2) Any doubts which the appropriate authority may have as to whether the costs were reasonably incurred or were reasonable in amount shall be resolved against the applicant.

(3) The costs awarded shall not exceed the costs actually incurred.

(4) The Lord Chancellor shall, with the consent of the Treasury and for the purposes of this regulation, determine the rates and scales of costs in respect of work and disbursements payable out of central funds.”

9.—(1) For the heading to regulation 13 for “**House of Lords**” substitute “**Supreme Court**”.

(2) In regulations 13(1), (2) and 16(1), in each instance, for “House of Lords” substitute “Supreme Court”.

10. In regulation 25(1) for “section 32(2) of the Criminal Justice Act 1967”(a) substitute “section 19(3B) of the Act”(b).

Signed by authority of the Lord Chancellor

Bach
Parliamentary Under Secretary of State
Ministry of Justice

8th October 2009

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Costs in Criminal Cases (General) Regulations 1986 (S.I. 1986/1335) (the 1986 Regulations) which detail the procedure for making certain costs orders in criminal and related proceedings, the determination of costs payable out of central funds and allowances to persons such as witnesses. Regulations 3 to 7 remove from the 1986 Regulations the procedural elements that are contained in the new Criminal Procedure Rules (S.I. 2009/2087) about costs.

Regulation 8 substitutes regulation 7 of the 1986 Regulations. The new regulation 7 provides that the Lord Chancellor, in agreement with the Treasury, shall set the rates and scales at which payment for legal costs and disbursements may be made out of central funds.

Regulation 9 makes consequential amendments to the 1986 Regulations replacing references to the House of Lords with references to the Supreme Court.

(a) Amendments to section 32(2) were made by section 21 of the Costs in Criminal Cases Act 1973 (c. 14); sections 31(5) and 31(6) of the Prosecution of Offences Act 1985; section 51(2) of the Courts Act 1971 (c. 23) and section 304 of the Criminal Justice Act 2003 (c. 44). There are other amendments to section 32 none of which are relevant.

(b) Section 19(3B) of the Prosecution of Offences Act 1985 was inserted by section 378(1) of the Armed Forces Act 2006 (c. 52). Section 19(3B)(b)(i) was amended by sections 6(2) and 148(2) of the Criminal Justice and Immigration Act 2008 (c. 4).

The Armed Forces Act 2006 (c. 52) repeals section 32 of the Criminal Justice Act 1967 (c. 80) and inserts section 19(3B) into the Prosecution of Offences Act 1985 (c. 23) (which contains similar provisions for payment to a medical practitioner for a medical report provided to the court). Regulation 10 makes consequential amendments to the 1986 Regulations, which provide for the Lord Chancellor to make payment to a medical practitioner for a report.

An impact assessment was prepared for the consultation preceding these Regulations and can be found at <http://www.justice.gov.uk/consultations/award-costs-central-funds.htm>

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