

# SCHEDULES

## SCHEDULE 7

### COSTS IN CRIMINAL CASES

#### PART 1

#### PROSECUTION OF OFFENCES ACT 1985

##### *Introduction*

1 The Prosecution of Offences Act 1985 is amended as follows.

##### *Defence costs*

2 (1) Section 16 (defence costs) is amended as follows.

(2) After subsection (6) insert—

“(6A) Where the court considers that there are circumstances that make it inappropriate for the accused to recover the full amount mentioned in subsection (6), a defendant’s costs order must be for the payment out of central funds of such lesser amount as the court considers just and reasonable.

(6B) Subsections (6) and (6A) have effect subject to—

- (a) section 16A, and
- (b) regulations under section 20(1A)(d).

(6C) When making a defendant’s costs order, the court must fix the amount to be paid out of central funds in the order if it considers it appropriate to do so and—

- (a) the accused agrees the amount, or
- (b) subsection (6A) applies.

(6D) Where the court does not fix the amount to be paid out of central funds in the order—

- (a) it must describe in the order any reduction required under subsection (6A), and
- (b) the amount must be fixed by means of a determination made by or on behalf of the court in accordance with procedures specified in regulations made by the Lord Chancellor.”

(3) Omit subsections (7) and (9).

*Legal costs*

3 After section 16 insert—

**“16A Legal costs**

- (1) A defendant’s costs order may not require the payment out of central funds of an amount that includes an amount in respect of the accused’s legal costs, subject to the following provisions of this section.
- (2) Subsection (1) does not apply where condition A, B or C is met.
- (3) Condition A is that the accused is an individual and the order is made under—
  - (a) section 16(1),
  - (b) section 16(3), or
  - (c) section 16(4)(a)(ii) or (iii) or (d).
- (4) Condition B is that the accused is an individual and the legal costs were incurred in proceedings in a court below which were—
  - (a) proceedings in a magistrates’ court, or
  - (b) proceedings on an appeal to the Crown Court under section 108 of the Magistrates’ Courts Act 1980 (right of appeal against conviction or sentence).
- (5) Condition C is that the legal costs were incurred in proceedings in the Supreme Court.
- (6) The Lord Chancellor may by regulations make provision about exceptions from the prohibition in subsection (1), including—
  - (a) provision amending this section by adding, modifying or removing an exception, and
  - (b) provision for an exception to arise where a determination has been made by a person specified in the regulations.
- (7) Regulations under subsection (6) may not remove or limit the exception provided by condition C.
- (8) Where a court makes a defendant’s costs order requiring the payment out of central funds of an amount that includes an amount in respect of legal costs, the order must include a statement to that effect.
- (9) Where, in a defendant’s costs order, a court fixes an amount to be paid out of central funds that includes an amount in respect of legal costs incurred in proceedings in a court other than the Supreme Court, the latter amount must not exceed an amount specified by regulations made by the Lord Chancellor.
- (10) In this section—
  - “legal costs” means fees, charges, disbursements and other amounts payable in respect of advocacy services or litigation services including, in particular, expert witness costs;
  - “advocacy services” means any services which it would be reasonable to expect a person who is exercising, or contemplating exercising, a right of audience in relation to any proceedings, or contemplated proceedings, to provide;

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“expert witness costs” means amounts payable in respect of the services of an expert witness, including amounts payable in connection with attendance by the witness at court or elsewhere;

“litigation services” means any services which it would be reasonable to expect a person who is exercising, or contemplating exercising, a right to conduct litigation in relation to proceedings, or contemplated proceedings, to provide.”

#### *Prosecution costs*

- 4 (1) Section 17 (prosecution costs) is amended as follows.
- (2) In subsection (1) for “subsection (2)” substitute “subsections (2) and (2A)”.
- (3) After subsection (2) insert—
- “(2A) Where the court considers that there are circumstances that make it inappropriate for the prosecution to recover the full amount mentioned in subsection (1), an order under this section must be for the payment out of central funds of such lesser amount as the court considers just and reasonable.
- (2B) When making an order under this section, the court must fix the amount to be paid out of central funds in the order if it considers it appropriate to do so and—
- (a) the prosecutor agrees the amount, or
- (b) subsection (2A) applies.
- (2C) Where the court does not fix the amount to be paid out of central funds in the order—
- (a) it must describe in the order any reduction required under subsection (2A), and
- (b) the amount must be fixed by means of a determination made by or on behalf of the court in accordance with procedures specified in regulations made by the Lord Chancellor.”
- (4) Omit subsections (3) and (4).

#### *Costs of witnesses and appellants not in custody*

- 5 (1) Section 19 (provision for orders as to costs in other circumstances) is amended as follows.
- (2) After subsection (3) insert—
- “(3ZA) In relation to a sum that may be required by a court other than the Supreme Court to be paid out of central funds under regulations under subsection (3) —
- (a) the requirement under that subsection for the sum to be such sum as the court considers reasonably necessary to cover or compensate for expenses, fees, costs, trouble or losses is subject to regulations made under section 20(1A)(d), and
- (b) regulations under subsection (3) may make provision accordingly.”

(3) After subsection (3C) insert—

“(3D) Regulations under subsection (3) may make provision generally or only in relation to particular descriptions of persons, expenses, fees, costs, trouble or losses.”

(4) After subsection (4) insert—

“(4A) Subsection (4) has effect subject to regulations under section 20(1A)(d).

(4B) An order under subsection (4) may not require the payment out of central funds of a sum that includes a sum in respect of legal costs (as defined in section 16A), except where regulations made by the Lord Chancellor provide otherwise.

(4C) Regulations under subsection (4B) may, in particular, include—

- (a) provision for an exception to arise where a determination has been made by a person specified in the regulations,
- (b) provision requiring the court, when it orders the payment of a sum that includes a sum in respect of legal costs, to include a statement to that effect in the order, and
- (c) provision that the court may not order the payment of a sum in respect of legal costs exceeding an amount specified in the regulations.”

### *Regulations*

6 (1) Section 20 (regulations) is amended as follows.

(2) In subsection (1) omit the words from “and the regulations” to the end.

(3) After that subsection insert—

“(1A) The Lord Chancellor may by regulations—

- (a) make provision as to the amounts that may be ordered to be paid out of central funds in pursuance of a costs order, whether by specifying rates or scales or by making other provision as to the calculation of the amounts,
- (b) make provision as to the circumstances in which and conditions under which such amounts may be paid or ordered to be paid,
- (c) make provision requiring amounts required to be paid out of central funds by a costs order to be calculated having regard to regulations under paragraphs (a) and (b),
- (d) make provision requiring amounts required to be paid to a person out of central funds by a relevant costs order to be calculated in accordance with such regulations (whether or not that results in the fixing of an amount that the court considers reasonably sufficient or necessary to compensate the person), and
- (e) make provision as to the review of determinations of amounts required to be paid out of central funds by costs orders.

(1B) In subsection (1A)(d) “relevant costs order” means a costs order other than—

- (a) an order made by any court under section 17, and

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- (b) so much of a costs order made by the Supreme Court as relates to expenses, fees, costs, trouble or losses incurred in proceedings in that court.
- (1C) Regulations under subsection (1A) may, in particular—
- (a) make different provision in relation to amounts to be paid in respect of different expenses, fees, costs, trouble and losses,
  - (b) make different provision in relation to different costs orders and different areas, and
  - (c) make different provision in relation to the fixing of an amount in a costs order and the fixing of an amount by means of a determination.”
- (4) In subsection (3)—
- (a) for “subsection (1)” substitute “subsection (1A)”,
  - (b) for “rates or scales of allowances” substitute “provision as to the calculation of amounts”, and
  - (c) after “order” insert “(whether in the form of rates or scales or other provision)”.

### *Interpretation*

- 7 (1) Section 21 (interpretation) is amended as follows.
- (2) In subsection (4) after “16” insert “, 16A”.
  - (3) In subsection (4A)(a) after “16” insert “, 16A”.

### *Supplementary*

- 8 (1) Section 29 (regulations) is amended as follows.
- (2) For subsection (1) substitute—
    - “(1) A power to make regulations under this Act is exercisable by statutory instrument.
    - (1A) A statutory instrument containing regulations under this Act is subject to annulment in pursuance of a resolution of either House of Parliament, subject to subsection (1B).
    - (1B) A statutory instrument containing (whether alone or with other provision) regulations under section 16A(6) or 19(4B) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.”
  - (3) In subsection (2) for “Any such regulations” substitute “Regulations under this Act”.