

# CRIMINAL JUSTICE AND COURTS ACT 2015

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### Part 3 – Courts and Tribunals

##### Costs of criminal courts

##### *Section 54: Criminal courts charge*

468. *Section 54* makes provision about the imposition on persons convicted of offences of a charge in respect of the costs of the criminal courts.
469. *Subsection (1)* inserts a new Part 2A into the Prosecution of Offences Act 1985 consisting of sections 21A-21F. New section 21A(1) requires a court to order someone who is convicted of an offence to pay a charge in respect of relevant court costs (defined in *subsection (5)*). The amount of the charge is to be prescribed by the Lord Chancellor (new section 21C). The charge must be imposed by a court listed in new section 21B at a time listed in that section.
470. *Subsection (4)* of section 21A requires the court to disregard the criminal courts charge when otherwise dealing with a person for an offence. This means that the court must not take into account the charge when, for example, sentencing or ordering the payment of prosecution costs. So, if the court is considering an offender's means for the purpose of deciding the amount of a fine that is to be imposed, the court is not permitted to take into account the fact that the offender will be obliged to pay the criminal courts charge.
471. Section 21B lists the courts that are required to order the criminal courts charge, and the times at which the charge must be ordered.
472. Subsection (1) of section 21B requires a magistrates' court to order an offender to pay the charge when dealing with a person for an offence, for breach of a community order, for breach of the community requirements of a suspended sentence order, or for breach of the supervision requirements imposed under section 256AA of the Criminal Justice Act 2003 (inserted by the Offender Rehabilitation Act 2014).
473. Subsection (2) of section 21B requires the Crown Court to order an offender to pay the charge when dealing with a person for an offence, for breach of a community order, for breach of the community requirements of a suspended sentence order or when dismissing an appeal by the person against conviction or sentence.
474. Subsection (3) of section 21B requires the Court of Appeal to order an offender to pay the charge when dismissing an appeal against conviction or sentence, or when dismissing an application for leave to bring an appeal.
475. Section 21C provides that the Lord Chancellor will have the power to set the amount of criminal courts charge in regulations (subject to the negative procedure). Subsection (2) requires the Lord Chancellor to set the charge at a level that does not exceed the relevant court costs (defined in new section 21A(5)) reasonably attributable to a case of the particular class. This means that in exercising the power, the Lord Chancellor will

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be required to identify classes of case and attribute reasonably the amount of relevant court costs in relation to that class and specify a charge for that class of case which reflects the relevant court costs reasonably attributable to that class of case. An offender will not be charged more than that amount.

476. Section 21D provides the Lord Chancellor with the power by regulations (subject to the negative procedure) to require offenders to pay interest on the criminal courts charge where it has not been paid (subsection (1)). Subsection (2) sets out that those regulations may, in particular, deal with the rate of interest and set out periods in which interest is not payable. The regulations may make provision by reference to a measure or document. So, for example, it would be possible for the Lord Chancellor to specify a measure like the consumer price index (as it exists from time to time) as the rate of interest.
477. Subsection (3) of section 21D restricts the rate of interest that the Lord Chancellor can charge to a value that is not higher than a rate that the Lord Chancellor considers would maintain the real terms value of the unpaid debt. Subsection (4) provides that the interest added to the criminal courts charge will be treated in the same way as if it were part of the charge itself. This means that the interest can be collected and enforced in the same way as the rest of the criminal courts charge.
478. Section 21E provides magistrates' courts with the power to cancel either all or part of the amount of the charge still owing. Subsection (2) provides that the court will not be able to cancel the charge unless it believes that the offender has taken all reasonable steps to repay the amount they owe, taking into account their personal financial circumstances. The court will also be able to cancel the charge where it believes that it is not practicable to collect or enforce it.
479. Subsection (3) of section 21E provides that a court may not remit the charge at a time when the person is in prison.
480. In addition, subsection (4) provides that the court may only remit the charge after certain periods of time have elapsed, the length of which is to be specified in regulations (subject to the negative procedure). The periods of time start at the point the most recent criminal courts charge was imposed for that offender, on the day on which the offender was last convicted of an offence and on the day on which the offender was last released from prison. "Prison" is defined in subsection (7) to include a place of detention (such as a young offender institution).
481. New section 21F provides that regulations made by the Lord Chancellor under Part 2A can include transitional, transitory or saving provision.
482. *Subsection (2)* of section 54 adds the criminal courts charge to the list of payments which are enforceable as a sum adjudged to be payable on conviction by a magistrates' court. This means that payment of the criminal courts charge would be enforced in the same way as other such sums, including compensation orders, the victim surcharge, prosecution costs and fines. Subsection (2) also corrects a numbering error in Part 1 of Schedule 9 to the Administration of Justice Act 1970.
483. *Subsection (3)* gives effect to Schedule 12 which makes further provision about the criminal courts charge. *Subsection (4)* provides that the charge will only be ordered in relation to offences committed after section 54 comes into force.

***Schedule 12: Further provisions about criminal courts charge***

484. **Schedule 12** makes further provision about the criminal courts charge including consequential amendments relating to the provisions in section 54.
485. **Paragraph 1** provides that an order to pay a criminal courts charge is not treated as a sentence under the Rehabilitation of Offenders Act 1974. This means that the criminal courts charge results in no rehabilitation period in relation to that order under that Act.

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486. Section 82(1A) of the Magistrates' Courts Act 1980 was inserted by the Anti-social Behaviour, Crime and Policing Act 2014 to ensure that the victim surcharge may not be discharged as extra days added to an immediate sentence of imprisonment. *Paragraph 3* substitutes a new subsection (1A) into section 82 of the Magistrates' Courts Act 1980, which provides for this approach to extend to the criminal courts charge.
487. *Paragraph 4* clarifies that those ordered by a magistrates' court to pay the criminal courts charge will have a right of appeal to the Crown Court under the Magistrates' Courts Act 1980 (which brings the criminal courts charge into line with the position on the victim surcharge for the purposes of appeals from a magistrates' court).
488. *Paragraph 5* amends the heading of Part 2 of the Prosecution of Offences Act 1985 (presently "Costs in Criminal Cases") to distinguish the costs in that Part from the costs dealt with in new Part 2A inserted into that Act by section 54 of this Act.
489. *Paragraph 6* clarifies that the criminal courts charge is to be treated as a fine imposed for an offence for the purpose of the Insolvency Act 1986, which means that bankruptcy does not release the bankrupt from liability in respect of the criminal courts charge.
490. *Paragraph 7* enables regulations to be made under section 24 of the Criminal Justice Act 1991 to allow payment of the criminal courts charge to be secured by deduction from social security benefits. The power already exists in relation to fines and compensation orders.
491. *Paragraph 9* makes clear that the criminal courts charge can be ordered when an offender is discharged absolutely or conditionally.
492. *Paragraph 10* adds the criminal courts charge to the disposals in consequence of which the Crown Court can order that an offender before it be searched and any money found applied towards sums payable by the offender.
493. *Paragraph 11* amends sections 13(3)(a) of the Proceeds of Crime Act 2002 to make clear that the imposition of a confiscation order under that Act should not be taken into account when imposing the criminal courts charge.
494. *Paragraph 13* amends section 151 of the Criminal Justice Act 2003 to provide that the criminal courts charge is not to be taken into account for the purpose of identifying whether someone is a persistent offender previously fined.
495. *Paragraphs 14, 15 and 16* provide that where there are rights of appeal against orders made when the court is dealing with an offender for breach of supervision requirements, a community order or suspended sentence order, those rights of appeal can be exercised in relation to the criminal courts charge ordered in respect of those breach proceedings.

***Section 55: Duty to review criminal courts charge***

496. *Section 55* requires the Lord Chancellor to carry out a review of the operation of the criminal courts charge after the end of an initial period. *Subsection (2)* specifies that the initial period is three years after the criminal courts charge provisions come into force. *Subsection (3)* requires the Lord Chancellor to repeal the criminal courts charge provisions should he consider it appropriate to do so having regard to the conclusions reached on the review. *Subsection (4)* enables the Lord Chancellor to make consequential and transitional provisions in regulations providing for the criminal courts charge provisions to be repealed. *Subsections (5) and (6)* require the regulations to be made by statutory instrument, subject to the affirmative procedure.