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STATUTORY INSTRUMENTS

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**2004 No. 2408**

**CRIMINAL LAW, ENGLAND AND WALES**

**The Costs in Criminal Cases (General)  
(Amendment) Regulations 2004**

*Made* - - - - *7th September 2004*  
*Laid before Parliament* *15th September 2004*  
*Coming into force* - - *18th October 2004*

The Lord Chancellor, in exercise of the powers conferred upon him by sections 19, 19A, 19B and 20 of the Prosecution of Offences Act 1985(1), and having consulted the Crown Court Rule Committee and the Magistrates' Courts Rule Committee, hereby makes the following Regulations:

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Costs in Criminal Cases (General)(Amendment) Regulations 2004 and shall come into force on 18th October 2004.

(2) In these Regulations “the Regulations” means the Costs in Criminal Cases (General) Regulations 1986(2) and any reference to a regulation by number alone means the regulation so numbered in the Regulations.

**Transitional provisions**

2.—(1) A third party costs order may not be made in respect of any misconduct which occurred before 18th October 2004.

(2) Where a court makes a third party costs order in respect of misconduct which occurred on or after 18th October 2004, it shall disregard any misconduct which occurred before that date.

(3) Until section 37(1) of the Courts Act 2003 comes into force, the reference in regulation 3G(2)(a)(3) shall be read as a reference to a justices' chief executive.

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(1) 1985 c. 23. Section 19 was amended by the Legal Aid Act 1988 (c. 34) Schedule 6, the Access to Justice Act 1999 (c. 22) Schedule 4 paragraphs 27 and 28 and by other provisions not relevant to this instrument. Section 19A was inserted by the Courts and Legal Services Act 1990 (c. 41) section 111. Section 19B was inserted by the Courts Act 2003 (c. 39), section 93. Section 20 was amended by the Legal Aid Act 1988 Schedule 5 paragraph 13, the Courts and Legal Services Act 1990 Schedule 18 paragraph 53, the Justices of the Peace Act 1997 (c. 25) Schedule 5 paragraph 21, the Access to Justice Act 1999 Schedule 4 paragraphs 27 and 29, and the Courts Act 2003 Schedule 8 paragraphs 287 and 288.

(2) S.I. 1986/1335; amended by S.I. 1991/789 and 1999/2096.

(3) Inserted by regulation 7 of these Regulations.

### **Amendments to Costs in Criminal Cases (General) Regulations 1986**

3. In regulation 3A, in the definition of “interested party”—
  - (a) for “legally aided” substitute “was receiving services funded for him as part of the Criminal Defence Service”;
  - (b) for “legal aid order” substitute “representation order”.
4. In regulation 3B(3), after “may take the wasted costs” insert “order”.
5. In regulation 3C(4)(b), after “or Court of Appeal” insert “, or by the Registrar of Criminal Appeals”.
6. In regulation 3D, for “legally aided” substitute “receiving services funded for him as part of the Criminal Defence Service”.
7. After regulation 3D insert—

## **“PART IIB**

### **Third party costs orders**

#### **Application and definitions**

**3E.**—(1) This Part of these Regulations applies where there are, or have been criminal proceedings in a magistrates' court, the Crown Court or the Court of Appeal.

(2) In this Part of these Regulations—

“court” means the court in which the criminal proceedings are taking, or took, place;  
“interested party” means the party benefiting from the third party costs order and, where he was receiving services funded for him as part of the Criminal Defence Service, shall include the authority responsible for determining costs payable in respect of work done under the representation order or out of central funds as the case may be;

“party” means a party to the criminal proceedings;

“third party” means a person who is not a party;

“third party costs order” means an order as to the payment, by a third party, of costs incurred by a party in accordance with regulation 3F.

#### **General**

**3F.**—(1) If —

- (a) there has been serious misconduct (whether or not constituting a contempt of court) by a third party; and
- (b) the court considers it appropriate, having regard to that misconduct, to make a third party costs order against him

the court may order the third party to pay all or part of the costs incurred or wasted by any party as a result of the misconduct.

(2) The court may make a third party costs order—

- (a) subject to paragraph (3), at any time during or after the criminal proceedings; and
- (b) on the application of any party or of its own initiative (but not otherwise).

(3) The court shall make a third party costs order during the proceedings only if it decides that there are good reasons to do so, rather than making the order after the proceedings, and it shall notify the parties and the third party of those reasons and allow any of them to make representations.

(4) Before making a third party costs order the court shall allow the third party and any party to make representations and may hear evidence.

(5) When making a third party costs order the court may vary or take into account any other order as to costs in respect of the criminal proceedings and may take the third party costs order into account when making any other order as to costs in respect of the criminal proceedings.

(6) A third party costs order shall specify the amount of costs to be paid in pursuance of the order.

(7) When a third party costs order has been made the court shall notify the third party and any interested party of the order and the amount ordered to be paid.

#### **Procedure for third party costs orders**

**3G.**—(1) This regulation applies where a party (“the applicant”) applies to the court for a third party costs order or the court decides that it might make a third party costs order of its own initiative.

(2) In this regulation—

“appropriate officer” means—

- (a) in relation to a magistrates' court, a designated officer (as defined in section 37(1) of the Courts Act 2003);
- (b) in relation to the Crown Court, an officer appointed by the Lord Chancellor; and
- (c) in relation to the Court of Appeal, the Registrar of Criminal Appeals;

“serve” means serve in accordance with rules of court.

(3) An application for a third party costs order shall be in writing and shall contain—

- (a) the name and address of the applicant;
- (b) the names and addresses of the other parties;
- (c) the name and address of the third party against whom the order is sought;
- (d) the date of the end of the criminal proceedings;
- (e) a summary of the facts upon which the applicant intends to rely in making the application, including details of the alleged misconduct of the third party.

(4) The application shall be sent to the appropriate officer and, upon receiving it, the appropriate officer shall serve copies of it on the third party and to the other parties.

(5) Where the court decides that it might make a third party costs order of its own initiative the appropriate officer shall serve notice in writing accordingly on the third party and the parties.

(6) At the same time as serving notice under paragraph (5) the appropriate officer shall serve a summary of the reasons why the court might make a third party costs order, including details of the alleged misconduct of the third party.

(7) When the appropriate officer serves copies of an application under paragraph (4) or serves notice under paragraph (5) he shall at the same time serve notice on the parties and the third party of the time and place fixed for the hearing.

(8) At the time notified the court may proceed in the absence of the third party and of any party if it is satisfied that they have been duly served with the notice given under paragraph (7) and the copy of the application or (as the case may be) the notices given under paragraphs (5) and (6), but the court may set aside any third party costs order if it is later shown that the third party did not receive them.

### **Appeals**

**3H.—**(1) A third party against whom a third party costs order is made may appeal—

- (a) in the case of an order made by a magistrates' court, to the Crown Court; and
- (b) in the case of an order made at first instance by the Crown Court, to the Court of Appeal.

(2) Subject to paragraph (4), an appeal shall be instituted within 21 days of the third party costs order being made by the appellant giving notice in writing to the court which made the order, stating the grounds of appeal.

(3) The appellant shall serve a copy of the notice of appeal and grounds, including any application for extension of time in which to appeal, on any interested party.

(4) The time limit within which an appeal may be instituted may, for good reason, be extended before or after it expires—

- (a) in the case of an appeal to the Crown Court, by a judge of that court;
- (b) in the case of an appeal to the Court of Appeal, by a judge of the High Court or Court of Appeal, or by the Registrar of Criminal Appeals,

and in each case the court to which the appeal is made (“the appeal court”) shall give notice of the extension to the appellant, the court which made the third party costs order and any interested party.

(5) The appeal court shall give notice of the hearing date to the appellant, the court which made the third party costs order and any interested party and shall allow the interested party to make representations which may be made orally or in writing.

(6) The appeal court may affirm, vary or revoke the order as it thinks fit and shall notify its decision to the appellant, any interested party and the court which made the order.

### **Recovery of sums due under a third party costs order**

**3I.** Where the person required to make a payment in respect of sums due under a third party costs order fails to do so, the payment may be recovered summarily as a sum adjudged to be paid as a civil debt by order of a magistrates' court by the party benefiting from the order, save that where he was receiving services funded for him as part of the Criminal Defence Service or an order for the payment of costs out of central funds was made in his favour, the power to recover shall be exercisable by the Lord Chancellor.”.

**8.—**(1) In regulation 26(1)—

- (a) for “of the legal aid fund” substitute “as part of the Criminal Defence Service”;
- (b) in sub-paragraph (a), for “legally assisted person” substitute “person receiving services funded for him as part of the Criminal Defence Service”.

(2) In regulation 26(3)—

- (a) after “this regulation” insert “and regulation 27”
- (b) after “regulation 3A” insert “, or a third party costs order as defined by regulation 3E, ”.

Signed

Date 7th September 2004

*David Lammy*  
Parliamentary Under Secretary of State  
Department for Constitutional Affairs

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations insert a new Part IIB into the Costs in Criminal Cases (General) Regulations 1986 (S.I.1986/1335), relating to third party costs orders, as defined in section 19B of the Prosecution of Offences Act 1985 (inserted by section 93 of the Courts Act 2003).

The new regulations confer power on a magistrates' court, the Crown Court or Court of Appeal to make an order against a third party to pay costs incurred by a party to criminal proceedings if there has been serious misconduct by the third party and the court considers it appropriate, having regard to the misconduct, to make such an order against him.

A third party costs order may be made at any time after the criminal proceedings. An order may also be made during the proceedings, but only if the court decides that there are good reasons to do so.

The Regulations provide, among other things:

- that the court must allow the third party and parties to make representations;
- that the court may take into account any other costs order in making a third party costs order, and may take a third party costs order into account either in making another costs order, or by varying an existing costs order;
- that a third party costs order must specify the amount of the costs ordered to be paid;
- for the procedure in relation to third party costs orders;
- for appeals against a third party costs order, from a magistrates' court to the Crown Court and from the Crown Court to the Court of Appeal;
- for the recovery of sums due under a third party costs order.