



**Law
Commission**
Reforming the law

Sentencing law in England and Wales
Legislation currently in force
Part 3.5 – Financial ancillary orders

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3.5 Financial ancillary orders

3.5.1. Victim-oriented

3.5.1.1. Compensation orders

3.5.1.1.1 General

Offenders are not able to buy shorter sentences

R. v Copley (1979) 1 Cr. App. R. (S.) 55

It is not open to offenders to buy their way out of prison, or to buy shorter sentences, by offering money in the way of compensation.

A compensation order is not a punishment

R. v Dorton (1987) 9 Cr. App. R. (S.) 514

...it is not right, certainly not right in every case and certainly not right in this case, to regard the imposition of a compensation order as being by way of additional punishment. (French J, at p.514)

3.5.1.1.2 Availability and power to order

When can an order be imposed?

PCC(S)A 2000 s.130¹²⁸⁸: Compensation order against convicted persons

- s.130(1) - a court by or before which a person is convicted of an offence, instead of or in addition to dealing with him in any other way, may, on application or otherwise, make an order (in this Act referred to as a “*compensation order*”) requiring him—
- (a) to pay compensation for any personal injury, loss or damage resulting from that offence or any other offence which is taken into consideration by the court in determining sentence; or
 - (b) to make payments for funeral expenses or bereavement in respect of a death resulting from any such offence, other than a death due to an accident arising out of the presence of a motor vehicle on a road;

but this is subject to the following provisions of this section and to section 131 below.

Mandatory or required sentences

PCC(S)A 2000 s.130¹²⁸⁹: Compensation order against convicted persons

- s.130(2) - where the person is convicted of an offence the sentence for which is fixed by law or falls to be imposed under a provision mentioned in subsection (2ZA), subsection (1) above shall have effect as if the words “instead of or” were omitted.

s.130(2ZA) - the provisions referred to in subsection (2) are—

- (a) section 1(2B) or 1A(5) of the Prevention of Crime Act 1953;
- (b) section 51A(2) of the Firearms Act 1968;

¹²⁸⁸ Commencement: 25 August 2000, PCC(S) 2000 s.168(1).

¹²⁸⁹ Commencement: 25 August 2000, PCC(S) 2000 s.168(1).

- (c) section 139(6B), 139A(5B) or 139AA(7) of the Criminal Justice Act 1988;
- (d) section 110(2) or 111(2) of this Act;
- (e) section 224A, 225(2) or 226(2) of the Criminal Justice Act 2003;
- (f) section 29(4) or (6) of the Violent Crime Reduction Act 2006.

s.130(2A) - a court must consider making a compensation order in any case where this section empowers it to do so.

Theft/Fraud where damage occurred out of owner's possession

PCC(S)A 2000 s.130¹²⁹⁰: Compensation order against convicted persons

s.130(5) - in the case of an offence under the Theft Act 1968 or Fraud Act 2006, where the property in question is recovered, any damage to the property occurring while it was out of the owner's possession shall be treated for the purposes of subsection (1) above as having resulted from the offence, however and by whomever the damage was caused.

Funeral expenses

PCC(S)A 2000 s.130¹²⁹¹: Compensation order against convicted persons

s.130(9) - a compensation order in respect of funeral expenses may be made for the benefit of any one who incurred the expenses.

Bereavement

PCC(S)A 2000 s.130¹²⁹²: Compensation order against convicted persons

s.130(10) - a compensation order in respect of bereavement may be made only for the benefit of a person for whose benefit a claim for damages for bereavement could be made under section 1A of the Fatal Accidents Act 1976; and the amount of compensation in respect of bereavement shall not exceed the amount for the time being specified in section 1A(3) of that Act.

Duty to give reasons where compensation order not made

PCC(S)A 2000 s.130¹²⁹³: Compensation order against convicted persons

s.130(3) - a court shall give reasons, on passing sentence, if it does not make a compensation order in a case where this section empowers it to do so.

¹²⁹⁰ Commencement: 25 August 2000, PCC(S) 2000 s.168(1).

¹²⁹¹ Commencement: 25 August 2000, PCC(S) 2000 s.168(1).

¹²⁹² Commencement: 25 August 2000, PCC(S) 2000 s.168(1).

¹²⁹³ Commencement: 25 August 2000, PCC(S) 2000 s.168(1).

3.5.1.1.3 Motor-vehicle exception

Power to make the order

PCC(S)A 2000 s.130¹²⁹⁴: Compensation order against convicted persons

- s.130(6) - a compensation order may only be made in respect of injury, loss or damage (other than loss suffered by a person's dependants in consequence of his death) which was due to an accident arising out of the presence of a motor vehicle on a road, if—
- (a) it is in respect of damage which is treated by subsection (5) above as resulting from an offence under the Theft Act 1968 or Fraud Act 2006; or
 - (b) it is in respect of injury, loss or damage as respects which—
 - (i) the offender is uninsured in relation to the use of the vehicle; and
 - (ii) compensation is not payable under any arrangements to which the Secretary of State is a party.

Setting the amount

PCC(S)A 2000 s.130¹²⁹⁵: Compensation order against convicted persons

- s.130(7) - where a compensation order is made in respect of injury, loss or damage due to an accident arising out of the presence of a motor vehicle on a road, the amount to be paid may include an amount representing the whole or part of any loss of or reduction in preferential rates of insurance attributable to the accident.

Interpretation etc.

PCC(S)A 2000 s.130¹²⁹⁶: Compensation order against convicted persons

- s.130(8) - a vehicle the use of which is exempted from insurance by section 144 of the Road Traffic Act 1988 is not uninsured for the purposes of subsection (6) above.

3.5.1.1.4 Deciding whether or not to make an order

Must prove a loss/injury

Note: There are several cases which establish the principle that the loss must be proved and that where the loss is disputed an order should not be made until proven, as an example, see R. v Kneeshaw (1974) 58 Cr. App. R. 439.

Magistrates' Courts Sentencing Guidelines, Sentencing Guidelines Council

- p.165 [7] In cases where it is difficult to ascertain the full amount of the loss suffered by the victim, consideration should be given to making a compensation order for an amount representing the agreed or likely loss. Where relevant information is not immediately available, it may be appropriate to grant an adjournment for it to be obtained.

¹²⁹⁴ Commencement: 25 August 2000, PCC(S) 2000 s.168(1).

¹²⁹⁵ Commencement: 25 August 2000, PCC(S) 2000 s.168(1).

¹²⁹⁶ Commencement: 25 August 2000, PCC(S) 2000 s.168(1).

R. v Cooper (1982) 4 Cr. App. R. (S.) 55

An award of compensation is not appropriate where matters such as full details of the injury and matters which may reduce the amount of compensation are not ascertained and cannot be ascertained. In such circumstances proceedings in the County Court would be more appropriate.

Complex cases

R. v James [2003] EWCA Crim 811; [2003] 2 Cr. App. R. (S.) 97 (p.574)

It is wrong to make a compensation order where there are difficult and complex issues of liability and the sum claimed is neither agreed nor proved.

Order should be attributed to relevant offence

TICs and Totality Guideline, Sentencing Council

p.12 Where compensation is being ordered, that will need to be attributed to the relevant offence as will any necessary ancillary orders.

3.5.1.1.5 Fixing the amount

General

PCC(S)A 2000 s.130¹²⁹⁷: Compensation order against convicted persons

s.130(4) - compensation under subsection (1) above shall be of such amount as the court considers appropriate, having regard to any evidence and to any representations that are made by or on behalf of the accused or the prosecutor.

s.130(11) - in determining whether to make a compensation order against any person, and in determining the amount to be paid by any person under such an order, the court shall have regard to his means so far as they appear or are known to the court.

R. v Amey (1982) 4 Cr. App. R. (S) 410

Care must be taken to ensure that the evidence is sufficient before making an order. The amount of loss should be established by evidence, not inference or guesswork.

Magistrates' Courts Sentencing Guidelines, Sentencing Guidelines Council

Note: Pages 165 and 166 of the guidelines specify suggested amounts for physical injury. They are taken from the CICS (2001). The CICS table was updated in 2012.

Global orders

TICs and Totality Guideline, Sentencing Council p.16

The court should not fix a global compensation figure unless the offences were committed against the same victim (*R v Warton* [1976] Crim LR 520). Where there are competing claims for limited funds, the total compensation available should normally be apportioned on a pro rata basis (*R v Miller* [1976] Crim LR 694).

¹²⁹⁷ Commencement: 25 August 2000, PCC(S) 2000 s.168(1).

Offenders aged under 18

PCC(S)A 2000 s.131¹²⁹⁸: Limit on amount payable under compensation order of magistrates' court in case of young offender

- s.131(A1) - this section applies if (but only if) a magistrates' court has convicted a person aged under 18 ("the offender") of an offence or offences.
- s.131(1) - the compensation to be paid under a compensation order made by the court in respect of the offence, or any one of the offences, shall not exceed £5,000.
- s.131(2) - the compensation or total compensation to be paid under a compensation order or compensation orders made by the court in respect of any offence or offence taken into consideration in determining sentence shall not exceed the difference (if any) between—
- (a) the amount or total amount which under subsection (1) above is the maximum for the offence or offences of which the offender has been convicted; and
 - (b) the amount or total amounts (if any) which are in fact ordered to be paid in respect of that offence or those offences.

Payment by instalments

Magistrates' Courts Sentencing Guidelines, Sentencing Guidelines Council, p.167

Where the offender has little money, the order may have to be scaled down or additional time allowed to pay; the court may allow compensation to be paid over a period of up to three years in appropriate cases.

3.5.1.1.6 Effect of compensation order on damages awarded in civil proceedings

PCC(S)A 2000 s.134¹²⁹⁹: Effect of compensation order on subsequent award of damages in civil proceedings

- s.134(1) - this section shall have effect where a compensation order, or a service compensation order, has been made in favour of any person in respect of any injury, loss or damage and a claim by him in civil proceedings for damages in respect of the injury, loss or damage subsequently falls to be determined.
- s.134(2) - the damages in the civil proceedings shall be assessed without regard to the order, but the plaintiff may only recover an amount equal to the aggregate of the following—
- (a) any amount by which they exceed the compensation; and
 - (b) a sum equal to any portion of the compensation which he fails to recover, and may not enforce the judgment, so far as it relates to a sum such as is mentioned in paragraph (b) above, without the leave of the court.
- s.134(3) - in this section "*service compensation order*" means a service compensation order under the Armed Forces Act 2006.

¹²⁹⁸ Commencement: 25 August 2000, PCC(S) 2000 s.168(1).

¹²⁹⁹ Commencement: 25 August 2000, PCC(S) 2000 s.168(1).

3.5.1.1.7 Interaction with other sentencing orders

Community orders

TICs and Totality Guideline, Sentencing Council, p.16

A compensation order can be combined with a community order.

Confiscation orders

TICs and Totality Guideline, Sentencing Council, p.16

A compensation order can be combined with a confiscation order where the amount that may be realised is sufficient. If such an order is made, priority should be given to compensation (*R v Mitchell* [2001] Crim LR 239).

POCA 2002 s.13¹³⁰⁰: Effect of order on court's other powers

- s.13(1) - if the court makes a confiscation order it must proceed as mentioned in subsections (2) and (4) in respect of the offence or offences concerned.
- s.13(2) - the court must take account of the confiscation order before—
 - (a) it imposes a fine on the defendant, or
 - (b) it makes an order falling within subsection (3).
- s.13(3) - these orders fall within this subsection—
 - (a) an order involving payment by the defendant, other than [an order under section 21A of the Prosecution of Offences Act 1985 (criminal courts charge) or a priority order;
 - (b) an order under section 27 of the Misuse of Drugs Act 1971 (c. 38) (forfeiture orders);
 - (c) an order under section 143 of the Sentencing Act (deprivation orders);
 - (d) an order under section 23 or 23A of the Terrorism Act 2000 (c. 11) (forfeiture orders).
- s.13(3A) - in this section “*priority order*” means any of the following—
 - (a) a compensation order under section 130 of the Sentencing Act;
 - (b) an order requiring payment of a surcharge under section 161A of the Criminal Justice Act 2003;
 - (c) an unlawful profit order under section 4 of the Prevention of Social Housing Fraud Act 2013.

¹³⁰⁰ Commencement: 24 March 2003, SI 2003/333 art.2 and Sch.1, as amended by SCA 2015 s.6 on 1 June 2015.

Discharges

PCC(S)A 2000 s.12¹³⁰¹: Absolute and conditional discharge

s.12(7) - nothing prevents a court from imposing in addition to a discharge: a compensation order

Disqualification from being a company director

R. v Holmes (1992) 13 Cr. App. R. (S.) 29

A sentencer who imposes a compensation order should be careful not to reduce or inhibit the offender's means to pay the order. When a compensation order is made, it is generally wrong in principle to inhibit offenders from freely engaging in business activities which must have been contemplated as necessary for the purposes of fulfilling their obligations under the compensation order, by disqualifying them from acting as directors of companies.

Fines

PCC(S)A 2000 s.130¹³⁰²: Compensation order against convicted persons

s.130(12) - where the court considers—

- (a) that it would be appropriate both to impose a fine and to make a compensation order, but
- (b) that the offender has insufficient means to pay both an appropriate fine and appropriate compensation,

the court shall give preference to compensation (though it may impose a fine as well).

TICs and Totality Guideline, Sentencing Council, p.16

Priority is given to the imposition of a compensation order over a fine. This does not affect sentences other than fines. This means that the fine should be reduced or, if necessary, dispensed with altogether, to enable the compensation to be paid.

Imprisonment (immediate)

TICs and Totality Guideline, Sentencing Council, p 16

A compensation order can be combined with a sentence of immediate custody where the offender is clearly able to pay or has good prospects of employment on his release from custody.

Suspended sentence orders

TICs and Totality Guideline, Sentencing Council, p 16

A compensation order can be combined with a suspended sentence order.

Note: The guideline cites PCC(S)A 2000 s.118(5) as its authority for this proposition; a suspended sentence order is an order under the CJA 2003. The order under the 2000 Act to which s.118 applies is a suspended sentence. This provision has been repealed subject to certain savings. There is no provision dealing with SSOs under the 2003 Act.

¹³⁰¹ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

¹³⁰² Commencement: 25 August 2000, PCC(S) 2000 s.168(1).

Surcharge

CJA 2003 s.161A¹³⁰³: Court's duty to order payment of surcharge

s.161A(3) - where a court dealing with an offender considers—

- (a) that it would be appropriate to make one or more of a compensation order, an unlawful profit order and a slavery and trafficking reparation order, but
 - (b) that he has insufficient means to pay both the surcharge and appropriate amounts under such of those orders as it would be appropriate to make,
- the court must reduce the surcharge accordingly (if necessary to nil).

Surcharge where order made/varied on appeal

PCC(S)A 2000 s.132¹³⁰⁴: Compensation orders: appeals etc.

s.132(4A) - where an order is made in respect of a person under subsection (3) or (4) above, the Court of Appeal or the Supreme Court shall make such order for the payment of a surcharge under section 161A of the Criminal Justice Act 2003, or such variation of the order of the Crown Court under that section, as is necessary to secure that the person's liability under that section is the same as it would be if he were being dealt with by the Crown Court.

3.5.1.1.8 Review of compensation orders

Power

PCC(S)A 2000 s.133¹³⁰⁵: Review of compensation orders

s.133(1) - the magistrates' court for the time being having functions in relation to the enforcement of a compensation order (in this section referred to as "*the appropriate court*") may, on the application of the person against whom the compensation order was made, discharge the order or reduce the amount which remains to be paid; but this is subject to subsections (2) to (4) below.

When can the power be exercised?

PCC(S)A 2000 s.133¹³⁰⁶: Review of compensation orders

s.133(2) - the appropriate court may exercise a power conferred by subsection (1) above only—

- (a) at a time when (disregarding any power of a court to grant leave to appeal out of time) there is no further possibility of an appeal on which the compensation order could be varied or set aside; and
- (b) at a time before the person against whom the compensation order was made has paid into court the whole of the compensation which the order requires him to pay.

¹³⁰³ Commencement: 1 April 2007, as inserted by DVCVA 2004 s.14(1), SI 2007/602 art.2(a).

¹³⁰⁴ Commencement: 25 August 2000, PCC(S) 2000 s.168(1).

¹³⁰⁵ Commencement: 25 August 2000, PCC(S) 2000 s.168(1).

¹³⁰⁶ Commencement: 25 August 2000, PCC(S) 2000 s.168(1).

- s.133(3) - the appropriate court may exercise a power conferred by subsection (1) above only if it appears to the court—
- (a) that the injury, loss or damage in respect of which the compensation order was made has been held in civil proceedings to be less than it was taken to be for the purposes of the order; or
 - (b) in the case of a compensation order in respect of the loss of any property, that the property has been recovered by the person in whose favour the order was made; or
 - (c) that the means of the person against whom the compensation order was made are insufficient to satisfy in full both the order and any or all of the following made against him in the same proceedings—
 - (i) a confiscation order under Part 6 of the Criminal Justice Act 1988 or Part 2 of the Proceeds of Crime Act 2002;
 - (ii) an unlawful profit order under section 4 of the Prevention of Social Housing Fraud Act 2013;
 - (iii) a slavery and trafficking reparation order under section 8 of the Modern Slavery Act 2015; or
 - (d) that the person against whom the compensation order was made has suffered a substantial reduction in his means which was unexpected at the time when the order was made, and that his means seem unlikely to increase for a considerable period.

Must get consent of Crown Court

PCC(S)A 2000 s.133¹³⁰⁷: Review of compensation orders

- s.133(4) - where the compensation order was made by the Crown Court, the appropriate court shall not exercise any power conferred by subsection (1) above in a case where it is satisfied as mentioned in paragraph (c) or (d) of subsection (3) above unless it has first obtained the consent of the Crown Court.

Orders made on appeal

PCC(S)A 2000 s.133¹³⁰⁸: Review of compensation orders

- s.133(5) - where the compensation order has been made on appeal, for the purposes of subsection (4) above it shall be deemed—
- (a) if it was made on an appeal brought from a magistrates' court, to have been made by that magistrates' court;
 - (b) if it was made on an appeal brought from the Crown Court or from the criminal division of the Court of Appeal, to have been made by the Crown Court.

¹³⁰⁷ Commencement: 25 August 2000, PCC(S) 2000 s.168(1).

¹³⁰⁸ Commencement: 25 August 2000, PCC(S) 2000 s.168(1).

3.5.1.1.9 Appeals

Compensation not payable until time limit to appeal conviction or sentence or vary sentence has expired

PCC(S)A 2000 s.132¹³⁰⁹: Compensation orders: appeals etc.

- s.32(1) - a person in whose favour a compensation order is made shall not be entitled to receive the amount due to him until (disregarding any power of a court to grant leave to appeal out of time) there is no further possibility of an appeal on which the order could be varied or set aside.
- s.132(2) - the Criminal Procedure Rules may make provision regarding the way in which the magistrates' court for the time being having functions (by virtue of section 41(1) of the Administration of Justice Act 1970) in relation to the enforcement of a compensation order is to deal with money paid in satisfaction of the order where the entitlement of the person in whose favour it was made is suspended.

Court of Appeal: Power to annul or vary order

PCC(S)A 2000 s.132¹³¹⁰: Compensation orders: appeals etc.

- s.132(3) - the Court of Appeal may by order annul or vary any compensation order made by the court of trial, although the conviction is not quashed; and the order, if annulled, shall not take effect and, if varied, shall take effect as varied.

Order made/varied on appeal: Surcharge

PCC(S)A 2000 s.132¹³¹¹: Compensation orders: appeals etc.

- s.132(4A) - where an order is made in respect of a person under subsection (3) or (4) above, the Court of Appeal or the Supreme Court shall make such order for the payment of a surcharge under section 161A of the Criminal Justice Act 2003, or such variation of the order of the Crown Court under that section, as is necessary to secure that the person's liability under that section is the same as it would be if he were being dealt with by the Crown Court.

TICs

PCC(S)A 2000 s.132¹³¹²: Compensation orders: appeals etc.

- s.132(5) - where a compensation order has been made against any person in respect of an offence taken into consideration in determining his sentence—
- (a) the order shall cease to have effect if he successfully appeals against his conviction of the offence or, if more than one, all the offences, of which he was convicted in the proceedings in which the order was made;

¹³⁰⁹ Commencement: 25 August 2000, PCC(S) 2000 s.168(1).

¹³¹⁰ Commencement: 25 August 2000, PCC(S) 2000 s.168(1).

¹³¹¹ Commencement: 25 August 2000, PCC(S) 2000 s.168(1).

¹³¹² Commencement: 25 August 2000, PCC(S) 2000 s.168(1).

- (b) he may appeal against the order as if it were part of the sentence imposed in respect of the offence or, if more than one, any of the offences, of which he was so convicted.

Supreme Court: Power to order

PCC(S)A 2000 s.132¹³¹³: Compensation orders: appeals etc.

- s.132(4) - where the Supreme Court restores a conviction, it may make any compensation order which the court of trial could have made.

3.5.1.2. Restitution Orders

3.5.1.2.1 Making the order

Availability

PCC(S)A 2000 s.148¹³¹⁴: Restitution orders

- s.148(1) - this section applies where goods have been stolen, and either—
 - (a) a person is convicted of any offence with reference to the theft (whether or not the stealing is the gist of his offence); or
 - (b) a person is convicted of any other offence, but such an offence as is mentioned in paragraph (a) above is taken into consideration in determining his sentence.
- s.148(5) - the court shall not exercise the powers conferred by this section unless in the opinion of the court the relevant facts sufficiently appear from evidence given at the trial or the available documents, together with admissions made by or on behalf of any person in connection with any proposed exercise of the powers.
- s.148(6) - in subsection (5) above “*the available documents*” means—
 - (a) any written statements or admissions which were made for use, and would have been admissible, as evidence at the trial; and
 - (b) such documents as were served on the offender in pursuance of regulations made under paragraph 1 of Schedule 3 to the Crime and Disorder Act 1998.

Application not necessary

PCC(S)A 2000 s.149¹³¹⁵: Restitution orders: supplementary

- s.149(1) - the following provisions of this section shall have effect with respect to section 148 above.
- s.149(2) - the powers conferred by subsections (2)(c) and (4) of that section shall be exercisable without any application being made in that behalf or on the application of any person appearing to the court to be interested in the property concerned.

¹³¹³ Commencement: 25 August 2000, PCC(S) 2000 s.168(1).

¹³¹⁴ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

¹³¹⁵ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

Power to order

PCC(S)A 2000 s.148¹³¹⁶: Restitution orders

s.148(2) - where this section applies, the court by or before which the offender is convicted may on the conviction (whether or not the passing of sentence is in other respects deferred) exercise any of the following powers—

- (a) the court may order anyone having possession or control of the stolen goods to restore them to any person entitled to recover them from him; or
- (b) on the application of a person entitled to recover from the person convicted any other goods directly or indirectly representing the stolen goods (as being the proceeds of any disposal or realisation of the whole or part of them or of goods so representing them), the court may order those other goods to be delivered or transferred to the applicant; or
- (c) the court may order that a sum not exceeding the value of the stolen goods shall be paid, out of any money of the person convicted which was taken out of his possession on his apprehension, to any person who, if those goods were in the possession of the person convicted, would be entitled to recover them from him;

and in this subsection “*the stolen goods*” means the goods referred to in subsection (1) above.

R. v Church (1971) 55 Cr. App. R. 65

The court has no power to receive evidence after the conclusion of the trial to establish the basis for making a restitution order. Restitution orders should only be made in the plainest cases.

Crown money

PCC(S)A 2000 s.148¹³¹⁷: Restitution orders

s.148(11) - an order may be made under this section in respect of money owed by the Crown.

Recovery limited to value of goods

PCC(S)A 2000 s.148¹³¹⁸: Restitution orders

s.148(3) - where the court has power on a person’s conviction to make an order against him both under paragraph (b) and under paragraph (c) of subsection (2) above with reference to the stealing of the same goods, the court may make orders under both paragraphs provided that the person in whose favour the orders are made does not thereby recover more than the value of those goods.

¹³¹⁶ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

¹³¹⁷ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

¹³¹⁸ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

Consequential victims

PCC(S)A 2000 s.148¹³¹⁹: Restitution orders

- s.148(4) - where the court on a person's conviction makes an order under subsection (2)(a) above for the restoration of any goods, and it appears to the court that the person convicted—
- (a) has sold the goods to a person acting in good faith, or
 - (b) has borrowed money on the security of them from a person so acting,
- the court may order that there shall be paid to the purchaser or lender, out of any money of the person convicted which was taken out of his possession on his apprehension, a sum not exceeding the amount paid for the purchase by the purchaser or, as the case may be, the amount owed to the lender in respect of the loan.

Effect of order

PCC(S)A 2000 s.148¹³²⁰: Restitution orders

- s.148(7) - any order under this section shall be treated as an order for the restitution of property within the meaning of section 30 of the Criminal Appeal Act 1968 (which relates to the effect on such orders of appeals).

Definitions

PCC(S)A 2000 s.148¹³²¹: Restitution orders

- s.148(8) - subject to subsection (9) below, references in this section to stealing shall be construed in accordance with section 1(1) of the Theft Act 1968 (read with the provisions of that Act relating to the construction of section 1(1)).
- s.148(9) - Subsections (1) and (4) of section 24 of that Act (interpretation of certain provisions) shall also apply in relation to this section as they apply in relation to the provisions of that Act relating to goods which have been stolen.
- s.148(10) - in this section and section 149 below, “goods”, except in so far as the context otherwise requires, includes money and every other description of property (within the meaning of the Theft Act 1968) except land, and includes things severed from the land by stealing.

3.5.1.2.2 Appeals

CAA 1968 s.30¹³²²: Restitution of property

- s.30(1) - the operation of an order for the restitution of property to a person made by the Crown Court shall, unless the Court direct to the contrary in any case in which, in their opinion, the title to the property is not in dispute, be suspended until (disregarding any power of a court to grant leave to appeal out of time) there is no further possibility of an appeal

¹³¹⁹ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

¹³²⁰ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

¹³²¹ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

¹³²² Commencement: 1 September 1968, CAA 1968 s.55(2) and SI 1968/325 art.1.

on which the order could be varied or set aside, and provision may be made by rules of court for the custody of any property in the meantime.

s.30(2) - the Court of Appeal may by order annul or vary any order made by the court of trial for the restitution of property to any person, although the conviction is not quashed; and the order, if annulled, shall not take effect and, if varied, shall take effect as so varied.

s.30(3) - where the Supreme Court restores a conviction, it may make any order for the restitution of property which the court of trial could have made.

PCC(S)A 2000 s.149¹³²³: Restitution orders: supplementary

Order is suspended until time period to appeal has expired

s.149(1) - the following provisions of this section shall have effect with respect to section 148 above.

s.149(4) - any order under that section made by a magistrates' court shall be suspended—

- (a) in any case until the end of the period for the time being prescribed by law for the giving of notice of appeal against a decision of a magistrates' court;
- (b) where notice of appeal is given within the period so prescribed, until the determination of the appeal;

but this subsection shall not apply where the order is made under section 148(2)(a) or (b) and the court so directs, being of the opinion that the title to the goods to be restored or, as the case may be, delivered or transferred under the order is not in dispute.

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PCC(S)A 2000 s.149¹³²⁴: Restitution orders: supplementary

s.149(1) - the following provisions of this section shall have effect with respect to section 148 above.

s.149(3) - where an order is made under that section against any person in respect of an offence taken into consideration in determining his sentence—

- (a) the order shall cease to have effect if he successfully appeals against his conviction of the offence or, if more than one, all the offences, of which he was convicted in the proceedings in which the order was made;
- (b) he may appeal against the order as if it were part of the sentence imposed in respect of the offence or, if more than one, any of the offences, of which he was so convicted.

¹³²³ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

¹³²⁴ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

3.5.2. Slavery and trafficking reparation orders

3.5.2.1. General

What is a slavery and trafficking reparation order?

MSA 2015 s.9¹³²⁵: Effect of slavery and trafficking reparation orders

- s.9(1) - a slavery and trafficking reparation order is an order requiring the person against whom it is made to pay compensation to the victim of a relevant offence for any harm resulting from that offence.
- s.9(2) - “*Relevant offence*” means—
- (a) the offence under section 1, 2 or 4 of which the person is convicted;
 - (b) any other offence under section 1, 2 or 4 which is taken into consideration in determining the person’s sentence.

Interpretation

MSA 2015 s.8¹³²⁶: Power to make slavery and trafficking reparation orders

- s.8(8) - in this section—
- (a) “*the court*” means—
 - (i) the Crown Court, or
 - (ii) any magistrates’ court that has power to make a confiscation order by virtue of an order under section 97 of the Serious Organised Crime and Police Act 2005 (confiscation orders by magistrates’ courts);
 - (b) “*confiscation order*” means a confiscation order under section 6 of the Proceeds of Crime Act 2002;
 - (c) a confiscation order is made in respect of an offence if the offence is the offence (or one of the offences) concerned for the purposes of Part 2 of that Act.

MSA 2015 s.13¹³²⁷: Interpretation of Part 1

- s.13(1) - in this Part—
- “*captain*” means master (of a ship) or commander (of an aircraft);
- “*confiscation order*” has the meaning given by section 8(8);
- “*the Human Rights Convention*” means the Convention for the Protection of Human Rights and Fundamental Freedoms agreed by the Council of Europe at Rome on 4th November 1950;
- “*land vehicle*” means any vehicle other than a ship or aircraft;
- “*ship*” includes every description of vessel (including a hovercraft) used in navigation;
- “*slavery and trafficking reparation order*” means an order made under section 8;

¹³²⁵ Commencement: 31 July 2015, SI 2015/1476 reg.2(a).

¹³²⁶ Commencement: 31 July 2015, SI 2015/1476 reg.2(a).

¹³²⁷ Commencement: 31 July 2015, SI 2015/1476 reg.2(a).

“*UK national*” means—

- (a) a British citizen,
- (b) a person who is a British subject by virtue of Part 4 of the British Nationality Act 1981 and who has a right of abode in the United Kingdom, or
- (c) a person who is a British overseas territories citizen by virtue of a connection with Gibraltar.

- s.13(2) - in sections 8 and 10, references to provisions of the Proceeds of Crime Act 2002 include references to those provisions as amended or otherwise modified by virtue of an order (whenever made) under section 97 of the Serious Organised Crime and Police Act 2005 (confiscation orders by magistrates’ courts).
- s.13(3) - in sections 11 and 12, a reference to being an owner of a vehicle, ship or aircraft includes a reference to being any of a number of persons who jointly own it.

3.5.2.2. Making the order

Availability

MSA 2015 s.8¹³²⁸: Power to make slavery and trafficking reparation orders

- s.8(1) - the court may make a slavery and trafficking reparation order against a person if—
 - (a) the person has been convicted of an offence under section 1, 2 or 4, and
 - (b) a confiscation order is made against the person in respect of the offence.
- s.8(2) - the court may also make a slavery and trafficking reparation order against a person if—
 - (a) by virtue of section 28 of the Proceeds of Crime Act 2002 (defendants who abscond during proceedings) a confiscation order has been made against a person in respect of an offence under section 1, 2 or 4, and
 - (b) the person is later convicted of the offence.
- s.8(3) - the court may make a slavery and trafficking reparation order against the person in addition to dealing with the person in any other way (subject to section 10(1)).
- s.8(4) - in a case within subsection (1) the court may make a slavery and trafficking reparation order against the person even if the person has been sentenced for the offence before the confiscation order is made.

Application of compensation order provisions to slavery and trafficking reparation orders

MSA 2015 s.10¹³²⁹: Slavery and trafficking reparation orders: supplementary provision

- s.10(2) - where the court makes a slavery and trafficking reparation order as mentioned in section 8(4), for the purposes of the following provisions the person’s sentence is to be regarded as imposed or made on the day on which the order is made—
 - (a) section 18(2) of the Criminal Appeal Act 1968 (time limit for notice of appeal or application for leave to appeal);

¹³²⁸ Commencement: 31 July 2015, SI 2015/1476 reg.2(a).

¹³²⁹ Commencement: 31 July 2015, SI 2015/1476 reg.2(a).

- (b) paragraph 1 of Schedule 3 to the Criminal Justice Act 1988 (time limit for notice of application for leave to refer a case under section 36 of that Act).
- s.10(3) - sections 132 to 132 of the Powers of Criminal Courts (Sentencing) Act 2000 (appeals, review etc of compensation orders) apply to slavery and trafficking reparation orders as if—
- (a) references to a compensation order were references to a slavery and trafficking reparation order;
 - (b) references to the court of trial were references to the court (within the meaning of section 8 above);
 - (c) references to injury, loss or damage were references to harm;
 - (d) the reference in section 133(3)(c)(iii) to a slavery and trafficking reparation order under section 8 above were to a compensation order under section 130 of that Act;
 - (e) in section 134 the references to service compensation orders were omitted.

Determining whether or not to make an order

MSA 2015 s.8¹³³⁰: Power to make slavery and trafficking reparation orders

- s.8(5) - in determining whether to make a slavery and trafficking reparation order against the person the court must have regard to the person's means.

Determining the amount

MSA 2015 s.9¹³³¹: Effect of slavery and trafficking reparation orders

- s.9(3) - the amount of the compensation is to be such amount as the court considers appropriate having regard to any evidence and to any representations made by or on behalf of the person or the prosecutor, but subject to subsection (4).
- s.9(4) - the amount of the compensation payable under the slavery and trafficking reparation order (or if more than one order is made in the same proceedings, the total amount of the compensation payable under those orders) must not exceed the amount the person is required to pay under the confiscation order.
- s.9(5) - in determining the amount to be paid by the person under a slavery and trafficking reparation order the court must have regard to the person's means.
- s.9(6) - in subsection (4) "*the confiscation order*" means the confiscation order within section 8(1)(b) or (2)(a) (as the case may be).

¹³³⁰ Commencement: 31 July 2015, SI 2015/1476 reg.2(a).

¹³³¹ Commencement: 31 July 2015, SI 2015/1476 reg.2(a).

Reparation orders take preference over fines

MSA 2015 s.8¹³³²: Power to make slavery and trafficking reparation orders

- s.8(6) - if the court considers that—
- (a) it would be appropriate both to impose a fine and to make a slavery and trafficking reparation order, but
 - (b) the person has insufficient means to pay both an appropriate fine and appropriate compensation under such an order,
- the court must give preference to compensation (although it may impose a fine as well).

Duty of court to give reasons when not making an order

MSA 2015 s.8¹³³³: Power to make slavery and trafficking reparation orders

- s.8(7) - in any case in which the court has power to make a slavery and trafficking reparation order it must—
- (a) consider whether to make such an order (whether or not an application for such an order is made), and
 - (b) if it does not make an order, give reasons.

3.5.2.3. Interaction with other sentencing orders

Compensation orders

MSA 2015 s.10¹³³⁴: Slavery and trafficking reparation orders: supplementary provision

- s.10(1) - a slavery and trafficking reparation order and a compensation order under section 130 of the Powers of Criminal Courts (Sentencing) Act 2000 may not both be made in respect of the same offence.

Confiscation orders

MSA 2015 s.10¹³³⁵: Slavery and trafficking reparation orders: supplementary provision

- s.10(4) - if under section 21 or 22 of the Proceeds of Crime Act 2002 the court varies a confiscation order so as to increase the amount required to be paid under that order, it may also vary any slavery and trafficking reparation order made by virtue of the confiscation order so as to increase the amount required to be paid under the slavery and trafficking reparation order.
- s.10(5) - if under section 23 or 29 of that Act the court varies a confiscation order so as to reduce the amount required to be paid under that order, it may also—
- (a) vary any relevant slavery and trafficking reparation order so as to reduce the amount which remains to be paid under that order;

¹³³² Commencement: 31 July 2015, SI 2015/1476 reg.2(a).

¹³³³ Commencement: 31 July 2015, SI 2015/1476 reg.2(a).

¹³³⁴ Commencement: 31 July 2015, SI 2015/1476 reg.2(a).

¹³³⁵ Commencement: 31 July 2015, SI 2015/1476 reg.2(a).

- (b) discharge any relevant slavery and trafficking reparation order.
- s.10(6) - if under section 24 of that Act the court discharges a confiscation order, it may also discharge any relevant slavery and trafficking reparation order.
- s.10(7) - for the purposes of subsections (5) and (6) a slavery and trafficking reparation order is relevant if it is made by virtue of the confiscation order and some or all of the amount required to be paid under it has not been paid.
- s.10(8) - if on an appeal under section 31 of the Proceeds of Crime Act 2002 the Court of Appeal—
 - (a) quashes a confiscation order, it must also quash any slavery and trafficking reparation order made by virtue of the confiscation order;
 - (b) varies a confiscation order, it may also vary any slavery and trafficking reparation order made by virtue of the confiscation order;
 - (c) makes a confiscation order, it may make any slavery and trafficking reparation order that could have been made under section 8 above by virtue of the confiscation order.
- s.10(9) - if on an appeal under section 33 of that Act the Supreme Court—
 - (a) quashes a confiscation order, it must also quash any slavery and trafficking reparation order made by virtue of the confiscation order;
 - (b) varies a confiscation order, it may also vary any slavery and trafficking reparation order made by virtue of the confiscation order.
- s.10(10) - for the purposes of this section—
 - (a) a slavery and trafficking reparation order made under section 8(1) is made by virtue of the confiscation order within section 8(1)(b);
 - (b) a slavery and trafficking reparation order made under section 8(2) is made by virtue of the confiscation order within section 8(2)(a).

3.5.3. Surcharge

3.5.3.1. Duty to impose a surcharge

CJA 2003 s.161A¹³³⁶: Court's duty to order payment of surcharge

Duty to impose surcharge

s.161A(1) - a court when dealing with a person for one or more offences must also (subject to subsections (2) and (3)) order him to pay a surcharge.

Exceptions

s.161A(2) - subsection (1) does not apply in such cases as may be prescribed by an order made by the Secretary of State.

s.161A(4) - for the purposes of this section a court does not “deal with” a person if it–

- (a) discharges him absolutely, or
- (b) makes an order under the Mental Health Act 1983 in respect of him.

Insufficient means to pay both surcharge and compensation/unlawful profit order

s.161A(3) - where a court dealing with an offender considers–

- (a) that it would be appropriate to make one or more of a compensation order, an unlawful profit order and a slavery and trafficking reparation order, but
 - (b) that he has insufficient means to pay both the surcharge and appropriate amounts under such of those orders as it would be appropriate to make,
- the court must reduce the surcharge accordingly (if necessary to nil).

s.161A(5) - in this section —

“*slavery and trafficking reparation order*” means an order under section 8 of the Modern Slavery Act 2015, and “*unlawful profit order*” means an unlawful profit order under section 4 of the Prevention of Social Housing Fraud Act 2013.

3.5.3.2. Secretary of State's power to set the amount of the surcharge

CJA 2003 s.161B¹³³⁷: Amount of surcharge

s.161B(1) - the surcharge payable under section 161A is such amount as the Secretary of State may specify by order.

s.161B(2) - an order under this section may provide for the amount to depend on:

- (a) the offence or offences committed,
- (b) how the offender is otherwise dealt with (including, where the offender is fined, the amount of the fine),
- (c) the age of the offender.

¹³³⁶ Commencement: 1 April 2007, as inserted by DVCVA 2004 s.14(1), SI 2007/602 art.2(a).

¹³³⁷ Commencement: 1 April 2007, as inserted by DVCVA 2004 s.14(1), SI 2007/602 art.2(a).

This is not to be read as limiting section 330(3) (power to make different provision for different purposes etc).

3.5.3.3. The amounts

3.5.3.3.1 Offence (or one of multiple offences) committed between 1 April 2007 and 1 October 2012

Citation, commencement and interpretation

Criminal Justice Act 2003 (Surcharge) (No 2) Order 2007 (SI 2007/1079)

art.1(1) - this Order may be cited as the Criminal Justice Act 2003 (Surcharge)(No 2) Order 2007 and shall come into force on 1st April 2007.

art.1(2) - in this Order “the 2003 Act” means the Criminal Justice Act 2003.

Revocation

Criminal Justice Act 2003 (Surcharge) (No 2) Order 2007 (SI 2007/1079)

art.2 - the Criminal Justice Act 2003 (Surcharge) Order 2007 is revoked.

Cases in which the duty to order payment of the surcharge does not apply

Criminal Justice Act 2003 (Surcharge) (No 2) Order 2007 (SI 2007/1079)

art.3(1) - Section 161A(1) of the 2003 Act (court’s duty to order payment of surcharge) does not apply in the cases prescribed in paragraph (2).

art.3(2) - the cases referred to in paragraph (1) are those in which a court deals with a person for one or more offences and does not impose a fine.

Amount of surcharge

Criminal Justice Act 2003 (Surcharge) (No 2) Order 2007 (SI 2007/1079)

art.4 - the amount specified for the purposes of section 161B(1) of the 2003 Act as the surcharge payable under section 161A of that Act is £15.

3.5.3.3.2 Offence (or one of multiple offences) committed between 1 October 2012 and 31 August 2014

Citation, commencement and interpretation

Criminal Justice Act 2003 (Surcharge) Order 2012 (SI 2012/1696)¹³³⁸

art.1(1) - this Order may be cited as the Criminal Justice Act 2003 (Surcharge) Order 2012 and comes into force on 1st October 2012.

art.1(2) - in this Order “the 2003 Act” means the Criminal Justice Act 2003.

para.1(3) - a reference in this Order to a table is a reference to a table in the Schedule.

¹³³⁸ Commencement: 1 October 2012, SI 2012/1696 art.1(1).

Cases in which the duty to order payment of the surcharge does not apply

***Criminal Justice Act 2003 (Surcharge) Order 2012 (SI 2012/1696)*¹³³⁹**

art.2 - Section 161A(1) of the 2003 Act (court's duty to order payment of surcharge) does not apply in cases in which a court deals with a person for one or more offences and does not impose any disposal described in the Schedule.

Amount of surcharge: offences committed by an individual aged under 18

***Criminal Justice Act 2003 (Surcharge) Order 2012 (SI 2012/1696)*¹³⁴⁰**

art.3(1) - Where a court deals with an individual for one or more offences by way of a single disposal described in column 1 of table 1, and every one of those offences was committed when that individual was aged under 18, the surcharge payable under section 161A of the 2003 Act is the amount specified in the corresponding entry in column 2 of that table.

art.3(2) - where a court deals with an individual for one or more offences by way of more than one disposal described in column 1 of table 1, and every one of those offences was committed when that individual was aged under 18, the surcharge payable under section 161A of the 2003 Act is—

- (a) where the amount in column 2 of that table corresponding to each of those disposals is the same, that amount;
- (b) where the amount in column 2 of that table corresponding to each of those disposals is not the same, the highest such amount.

Amount of surcharge: offences committed by an individual aged 18 or over

***Criminal Justice Act 2003 (Surcharge) Order 2012 (SI 2012/1696)*¹³⁴¹**

art.4(1) - where a court deals with an individual for one or more offences by way of a single disposal described in column 1 of table 2, and every one of those offences was committed when that individual was aged over 18, the surcharge payable under section 161A of the 2003 Act is the amount specified in the corresponding entry in column 2 of that table.

art.4(2) - where a court deals with an individual for one or more offences by way of more than one disposal described in column 1 of table 2, and every one of those offences was committed when that individual was aged over 18, the surcharge payable under section 161A of the 2003 Act is—

- (a) where the amount in column 2 of that table corresponding to each of those disposals is the same, that amount;
- (b) where the amount in column 2 of that table corresponding to each of those disposals is not the same, the highest such amount.

¹³³⁹ Commencement: 1 October 2012, SI 2012/1696 art.1(1).

¹³⁴⁰ Commencement: 1 October 2012, SI 2012/1696 art.1(1).

¹³⁴¹ Commencement: 1 October 2012, SI 2012/1696 art.1(1).

Amount of surcharge: other cases involving offences committed by an individual

***Criminal Justice Act 2003 (Surcharge) Order 2012 (SI 2012/1696)*¹³⁴²**

- art.5(1) - where a court deals with an individual for more than one offence by way of a single disposal described in column 1 of table 1, and the condition in paragraph (3) is satisfied in relation to those offences, the surcharge payable under section 161A of the 2003 Act is the amount specified in the corresponding entry in column 2 of that table.
- art.5(2) - where a court deals with an individual for more than one offence by way of more than one disposal described in column 1 of table 1, and the condition in paragraph (3) is satisfied in relation to those offences, the surcharge payable under section 161A of the 2003 Act is—
- (a) where the amount in column 2 of that table corresponding to each of those disposals is the same, that amount;
 - (b) where the amount in column 2 of that table corresponding to each of those disposals is not the same, the highest such amount.
- art.5(3) - the condition in this paragraph is satisfied in relation to the offences for which a court is dealing with an individual if at least one of those offences was committed when the individual was under 18 and at least one of those offences was committed when the individual was aged 18 or over.

Amount of Surcharge: offences committed by a person who is not an individual

***Criminal Justice Act 2003 (Surcharge) Order 2012 (SI 2012/1696)*¹³⁴³**

- art.6(1) - where a court deals with a person who is not an individual for one or more offences by way of a single disposal described in column 1 of table 3, the surcharge payable under section 161A of the 2003 Act is the amount in column 2 of that table corresponding to that disposal.
- art.6(2) - where a court deals with a person who is not an individual for one or more offences by way of more than one disposal described in column 1 of table 3, the surcharge payable under section 161A of the 2003 Act is the highest amount in column 2 of that table corresponding to each of those disposals.

Revocation and transitional and saving provision

- art.7(1) The Criminal Justice Act 2003 (Surcharge) (No. 2) Order 2007 (“the 2007 Order”) is revoked.
- art.7(2) - notwithstanding its revocation by paragraph (1), the 2007 Order continues to apply, and Articles 2 to 6 of this Order do not apply, where after the coming into force of this Order a court deals with a person for—
- (a) a single offence committed before 1st October 2012; or
 - (b) more than one offence, at least one of which was committed before 1st October 2012.

¹³⁴² Commencement: 1 October 2012, SI 2012/1696 art.1(1).

¹³⁴³ Commencement: 1 October 2012, SI 2012/1696 art.1(1).

Schedule 1**Table 1 - Offences committed by those under 18**

Column 1	Column 2
An order under section 12(1)(b) of the Powers of Criminal Courts (Sentencing) Act 2000 (conditional discharge)	£10
A fine	£15
An order under section 1 of the Criminal Justice and Immigration Act 2008 (youth rehabilitation orders)	£15
An order under section 16(2) or 16(3) of the Powers of Criminal Courts (Sentencing) Act 2000 (referral orders)	£15
An order under section 177(1) of the Criminal Justice Act 2003 (community orders)	£15
An order under section 189(1) of the Criminal Justice Act 2003 (suspended sentences of imprisonment)	£20
A sentence specified in section 76 of the Powers of Criminal Courts (Sentencing) Act 2000 (meaning of custodial sentence) where imposed by the Crown Court	£20

Table 2 - Offences committed by those aged 18 or over

Column 1	Column 2
An order under section 12(1)(b) of the Powers of Criminal Courts (Sentencing) Act 2000 (conditional discharge)	£15
A fine	10 per cent of the value of the fine, rounded up or down to the nearest pound, which must be no less than £20 and no more than £120.
An order under section 177(1) of the Criminal Justice Act 2003 (community orders)	£60
An order under section 189(1) of the Criminal Justice Act 2003 (suspended sentences of imprisonment) where the sentence of imprisonment or detention in a young offender institution is for a period of 6 months or less	£80
An order under section 189(1) of the Criminal Justice Act 2003 (suspended sentences of imprisonment) where the sentence of imprisonment or detention in a young offender institution is for a determinate period of more than 6 months	£100
A sentence of imprisonment or detention in a young offender institution imposed by the Crown Court for a determinate period of up to and including 6 months	£80
A sentence of imprisonment or detention in a young offender institution imposed by the Crown Court for a determinate period of more than 6 months and up to and including 24 months	£100

Column 1	Column 2
A sentence of imprisonment or detention in a young offender institution for a determinate period exceeding 24 months	£120
A sentence of imprisonment or custody for life	£120

Table 3 - Offences committed by those who are not individuals

Column 1	Column 2
An order under section 12(1)(b) of the Powers of Criminal Courts (Sentencing) Act 2000 (conditional discharge)	£15
A fine	10 per cent of the value of the fine, rounded up or down to the nearest pound, which must be no less than £20 and no more than £120.

3.5.3.3.3 Offence (or one of multiple offences) committed before 1 September 2014

Citation and commencement

Criminal Justice Act 2003 (Surcharge) (Amendment) Order 2014 (SI 2014/2120)

art.1 - This Order may be cited as the Criminal Justice Act 2003 (Surcharge) (Amendment) Order 2014 and comes into force on 1st September 2014.

Amendments to the Criminal Justice Act 2003 (Surcharge) Order 2012

Criminal Justice Act 2003 (Surcharge) (Amendment) Order 2014 (SI 2014/2120)

art.2(1) - the Schedule to the Criminal Justice Act 2003 (Surcharge) Order 2012 is amended as follows.

para.2(2) - in Column 1 of Table 1, in the entry relating to section 76 of the Powers of Criminal Courts (Sentencing) Act 2000, omit “where imposed by the Crown Court”.

art.2(3) - in Column 1 of Table 2, in the entry relating to a sentence of imprisonment or detention in a young offender institution for a determinate period of up to and including 6 months, omit “imposed by the Crown Court”.

art.2(4) - in Column 1 of Table 2, in the entry relating to a sentence of imprisonment or detention in a young offender institution for a determinate period of more than 6 months and up to and including 24 months, omit “imposed by the Crown Court”.

Transitional provision

Criminal Justice Act 2003 (Surcharge) (Amendment) Order 2014 (SI 2014/2120)

art.3 - the amendments made by article 2 do not apply where, after the coming into force of this Order, a magistrates’ court deals with a person for—

- (a) a single offence committed before the coming into force of this Order; or
- (b) more than one offence, at least one of which was committed before the coming into force of this Order.

The tables, as amended**Table 1 - Offences committed by those under 18**

Column 1	Column 2
An order under section 12(1)(b) of the Powers of Criminal Courts (Sentencing) Act 2000 (conditional discharge)	£10
A fine	£15
An order under section 1 of the Criminal Justice and Immigration Act 2008 (youth rehabilitation orders)	£15
An order under section 16(2) or 16(3) of the Powers of Criminal Courts (Sentencing) Act 2000 (referral orders)	£15
An order under section 177(1) of the Criminal Justice Act 2003 (community orders)	£15
An order under section 189(1) of the Criminal Justice Act 2003 (suspended sentences of imprisonment)	£20
A sentence specified in section 76 of the Powers of Criminal Courts (Sentencing) Act 2000 (meaning of custodial sentence)	£20

Table 2 - Offences committed by those aged 18 or over

Column 1	Column 2
An order under section 12(1)(b) of the Powers of Criminal Courts (Sentencing) Act 2000 (conditional discharge)	£15
A fine	10 per cent of the value of the fine, rounded up or down to the nearest pound, which must be no less than £20 and no more than £120.
An order under section 177(1) of the Criminal Justice Act 2003 (community orders)	£60
An order under section 189(1) of the Criminal Justice Act 2003 (suspended sentences of imprisonment) where the sentence of imprisonment or detention in a young offender institution is for a period of 6 months or less	£80
An order under section 189(1) of the Criminal Justice Act 2003 (suspended sentences of imprisonment) where the sentence of imprisonment or detention in a young offender institution is for a determinate period of more than 6 months	£100
A sentence of imprisonment or detention in a young offender institution for a determinate period of up to and including 6 months	£80
A sentence of imprisonment or detention in a young offender institution for a determinate period of more than 6 months and up to and including 24 months	£100

Column 1	Column 2
A sentence of imprisonment or detention in a young offender institution for a determinate period exceeding 24 months	£120
A sentence of imprisonment or custody for life	£120

Table 3 - Offences committed by those who are not individuals

Column 1	Column 2
An order under section 12(1)(b) of the Powers of Criminal Courts (Sentencing) Act 2000 (conditional discharge)	£15
A fine	10 per cent of the value of the fine, rounded up or down to the nearest pound, which must be no less than £20 and no more than £120.

3.5.4. Costs

3.5.4.1. Introduction

Criminal Procedure Rules 2015 (SI2015/1490)

rule.45.1(1) - This Part applies where the court can make an order about costs under—

- (a) Part II of the Prosecution of Offences Act 1985(a) and Part II, IIA or IIB of The Costs in Criminal Cases (General) Regulations 1986(b);
- (b) section 109 of the Magistrates' Courts Act 1980(c);
- (c) section 52 of the Senior Courts Act 1981(d) and rule 76.6 or rule 76.7;
- (d) section 8 of the Bankers Books Evidence Act 1879(e);
- (e) section 2C(8) of the Criminal Procedure (Attendance of Witnesses) Act 1965(f);
- (f) section 36(5) of the Criminal Justice Act 1972(g);
- (g) section 159(5) and Schedule 3, paragraph 11, of the Criminal Justice Act 1988(h);
- (h) section 14H(5) of the Football Spectators Act 1989(i);
- (i) section 4(7) of the Dangerous Dogs Act 1991(j);
- (j) Part 3 of the Serious Crime Act 2007 (Appeals under Section 24) Order 2008(k); or
- (k) Part 1 or 2 of the Extradition Act 2003(l).

rule45.1(2) - In this Part, 'costs' means—

- (a) the fees payable to a legal representative;
- (b) the disbursements paid by a legal representative; and
- (c) any other expenses incurred in connection with the case.

*Note.*¹³⁴⁴ A costs order can be made under—

- (a) section 16 of the Prosecution of Offences Act 1985(m) (defence costs), for the payment out of central funds of a defendant's costs (see rule 45.4);
- (b) section 17 of the Prosecution of Offences Act 1985(a) (prosecution costs), for the payment out of central funds of a private prosecutor's costs (see rule 45.4);
- (c) section 18 of the Prosecution of Offences Act 1985(b) (award of costs against accused), for the payment by a defendant of another person's costs (see rules 45.5 and 45.6);
- (d) section 19(1) of the Prosecution of Offences Act 1985(c) and regulation 3 of the Costs in Criminal Cases (General) Regulations 1986, for the payment by a party of another party's costs incurred as a result of an unnecessary or improper act or omission by or on behalf of the first party (see rule 45.8);
- (e) section 19A of the Prosecution of Offences Act 1985(d) (costs against legal representatives, etc.)—

¹³⁴⁴ This note is contained within the CPR.

- (i) *for the payment by a legal representative of a party's costs incurred as a result of an improper, unreasonable or negligent act or omission by or on behalf of the representative, or*
 - (ii) *disallowing the payment to that representative of such costs*

(see rule 45.9);
- (f) *section 19B of the Prosecution of Offences Act 1985(e) (provision for award of costs against third parties) and regulation 3F of the Costs in Criminal Cases (General) Regulations 1986(f), for the payment by a person who is not a party of a party's costs where there has been serious misconduct by the non-party (see rule 45.10);*
- (g) *section 109 of the Magistrates' Courts Act 1980, section 52 of the Senior Courts Act 1981 and rule 45.6, for the payment by an appellant of a respondent's costs on abandoning an appeal to the Crown Court (see rule 45.6);*
- (h) *section 52 of the Senior Courts Act 1981 and—*
 - (i) *rule 45.6, for the payment by a party of another party's costs on an appeal to the Crown Court in any case not covered by (c) or (g),*
 - (ii) *rule 45.7, for the payment by a party of another party's costs on an application to the Crown Court about the breach or variation of a deferred prosecution agreement, or on an application to lift the suspension of a prosecution after breach of such an agreement;*
- (i) *section 8 of the Bankers Books Evidence Act 1879, for the payment of costs by a party or by the bank against which an application for an order is made (see rule 45.7);*
- (j) *section 2C(8) of the Criminal Procedure (Attendance of Witnesses) Act 1965, for the payment by the applicant for a witness summons of the costs of a party who applies successfully under rule 17.7 to have it withdrawn (see rule 45.7);*
- (k) *section 36(5) of the Criminal Justice Act 1972 or Schedule 3, paragraph 11, of the Criminal Justice Act 1988, for the payment out of central funds of a defendant's costs on a reference by the Attorney General of—*
 - (i) *a point of law, or*
 - (ii) *an unduly lenient sentence*

(see rule 45.4);
- (l) *section 159(5) of the Criminal Justice Act 1988, for the payment by a person of another person's costs on an appeal about a reporting or public access restriction (see rule 45.6);*
- (m) *section 14H(5) of the Football Spectators Act 1989, for the payment by a defendant of another person's costs on an application to terminate a football banning order (see rule 45.7);*
- (n) *section 4(7) of the Dangerous Dogs Act 1991, for the payment by a defendant of another person's costs on an application to terminate a disqualification for having custody of a dog (see rule 45.7);*
- (o) *article 14 of the Serious Crime Act 2007 (Appeals under Section 24) Order 2008(a), corresponding with section 16 of the Prosecution of Offences Act 1985 (see rule 45.4);*
- (p) *article 15 of the Serious Crime Act 2007 (Appeals under Section 24) Order 2008, corresponding with section 18 of the Prosecution of Offences Act 1985 (see rule 45.6);*
- (q) *article 16 of the Serious Crime Act 2007 (Appeals under Section 24) Order 2008, corresponding with an order under section 19(1) of the 1985 Act (see rule 45.8);*
- (r) *article 17 of the Serious Crime Act 2007 (Appeals under Section 24) Order 2008, corresponding with an order under section 19A of the 1985 Act (see rule 45.9);*

- (s) *article 18 of the Serious Crime Act 2007 (Appeals under Section 24) Order 2008, corresponding with an order under section 19B of the 1985 Act (see rule 45.10);*
- (t) *section 60 or 133 of the Extradition Act 2003 (costs where extradition ordered) for the payment by a defendant of another person's costs (see rule 45.4); or*
- (u) *section 61 or 134 of the Extradition Act 2003(b) (costs where discharge ordered) for the payment out of central funds of a defendant's costs (see rule 45.4).*

Note: This document included only costs orders under POA 1985 ss.16, 17 and 18, and costs in relation to Attorney General's references as these are the main orders made in relation to sentence. Provisions dealing with costs in relation to specific sentencing orders, e.g. under the Serious Crime Act 2007 (Appeals under Section 24) Order 2008, are included within the relevant section. Costs orders under the Extradition Act 2003 are not included.

3.5.4.2. Criminal procedure rules

Criminal Procedure Rules 2015 (SI 2015/1490)

When this Part applies

45.1.—(1) This Part applies where the court can make an order about costs under—

- (a) Part II of the Prosecution of Offences Act 1985(a) and Part II, IIA or IIB of The Costs in Criminal Cases (General) Regulations 1986(b);
- (b) section 109 of the Magistrates' Courts Act 1980(c);
- (c) section 52 of the Senior Courts Act 1981(d) and rule 76.6 or rule 76.7;
- (d) section 8 of the Bankers Books Evidence Act 1879(e);
- (e) section 2C(8) of the Criminal Procedure (Attendance of Witnesses) Act 1965(f);
- (f) section 36(5) of the Criminal Justice Act 1972(g);
- (g) section 159(5) and Schedule 3, paragraph 11, of the Criminal Justice Act 1988(h);
- (h) section 14H(5) of the Football Spectators Act 1989(i);
- (i) section 4(7) of the Dangerous Dogs Act 1991(j);
- (j) Part 3 of the Serious Crime Act 2007 (Appeals under Section 24) Order 2008(k);
or
- (k) Part 1 or 2 of the Extradition Act 2003(l).

(2) In this Part, 'costs' means—

- (a) the fees payable to a legal representative;
- (b) the disbursements paid by a legal representative; and
- (c) any other expenses incurred in connection with the case.

Costs orders: general rules

45.2.—(1) The court must not make an order about costs unless each party and any other person directly affected—

- (a) is present; or
- (b) has had an opportunity—
 - (i) to attend, or
 - (ii) to make representations.

- (2) The court may make an order about costs—
 - (a) at a hearing in public or in private; or
 - (b) without a hearing.
- (3) In deciding what order, if any, to make about costs, the court must have regard to all the circumstances, including—
 - (a) the conduct of all the parties; and
 - (b) any costs order already made.
- (4) If the court makes an order about costs, it must—
 - (a) specify who must, or must not, pay what, to whom; and
 - (b) identify the legislation under which the order is made, where there is a choice of powers.
- (5) The court must give reasons if it—
 - (a) refuses an application for a costs order; or
 - (b) rejects representations opposing a costs order.
- (6) If the court makes an order for the payment of costs—
 - (a) the general rule is that it must be for an amount that is sufficient reasonably to compensate the recipient for costs—
 - (i) actually, reasonably and properly incurred, and
 - (ii) reasonable in amount; but
 - (b) the court may order the payment of—
 - (i) a proportion of that amount,
 - (ii) a stated amount less than that amount,
 - (iii) costs from or until a certain date only,
 - (iv) costs relating only to particular steps taken, or
 - (v) costs relating only to a distinct part of the case.
- (7) On an assessment of the amount of costs, relevant factors include—
 - (a) the conduct of all the parties;
 - (b) the particular complexity of the matter or the difficulty or novelty of the questions raised;
 - (c) the skill, effort, specialised knowledge and responsibility involved;
 - (d) the time spent on the case;
 - (e) the place where and the circumstances in which work or any part of it was done; and
 - (f) any direction or observations by the court that made the costs order.
- (8) If the court orders a party to pay costs to be assessed under rule 45.11, it may order that party to pay an amount on account.
- (9) An order for the payment of costs takes effect when the amount is assessed, unless the court exercises any power it has to order otherwise.

Court's power to vary requirements

45.3.—(1) The court may—

- (a) extend a time limit for serving an application or representations under rules 45.4 to 45.10, even after it has expired; and
 - (b) consider an application or representations—
 - (i) made in a different form to one set out in the Practice Direction, or
 - (ii) made orally instead of in writing.
- (2) A person who wants an extension of time must—
- (a) apply when serving the application or representations for which it is needed; and
 - (b) explain the delay.

Costs out of central funds

45.4.—(1) This rule applies where the court can order the payment of costs out of central funds.

(2) In this rule, costs—

- (a) include—
 - (i) on an appeal, costs incurred in the court that made the decision under appeal, and
 - (ii) at a retrial, costs incurred at the initial trial and on any appeal; but
- (b) do not include 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) Where a person wants the court to make an order that person must—

- (a) apply as soon as practicable; and
- (b) outline the type of costs and the amount claimed, if that person wants the court to direct an assessment; or
- (c) specify the amount claimed, if that person wants the court to assess the amount itself.

(5) The general rule is that the court must make an order, but—

- (a) the court may decline to make a defendant's costs order if, for example—
 - (i) the defendant is convicted of at least one offence, or
 - (ii) the defendant's conduct led the prosecutor reasonably to think the prosecution case stronger than it was; and
- (b) the court may decline to make a prosecutor's costs order if, for example, the prosecution was started or continued unreasonably.

(6) If the court makes an order—

- (a) the court may direct an assessment under, as applicable—
 - (i) Part III of the Costs in Criminal Cases (General) Regulations 1986(a), or

- (ii) Part 3 of the Serious Crime Act 2007 (Appeals under Section 24) Order 2008(b);
 - (b) the court may assess the amount itself in a case in which either—
 - (i) the recipient agrees the amount, or
 - (ii) the court decides to allow a lesser sum than that which is reasonably sufficient to compensate the recipient for expenses properly incurred in the proceedings;
 - (c) an order for the payment of a defendant's costs which includes an amount in respect of fees payable to a legal representative, or disbursements paid by a legal representative, must include a statement to that effect.
- (7) If the court directs an assessment, the order must specify any restriction on the amount to be paid that the court considers appropriate.
- (8) If the court assesses the amount itself, it must do so subject to any restriction on the amount to be paid that is imposed by regulations made by the Lord Chancellor.

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.

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;
- (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(a), or
 - (ii) section 45 of the Mental Health Act 1983(b).

(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—
 - (i) apply in writing not more than 14 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 written representations on the applicant, and on the Crown Court officer, not more than 7 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.

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);
- (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.

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;
 - (b) serve the application on—
 - (i) the court officer (or, in the Court of Appeal, the Registrar), and
 - (ii) each other party;
 - (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 written representations on the applicant and on the court officer (or Registrar) not more than 7 days after it was served.
- (7) If the court makes an order, it must assess the amount itself.

Costs against a legal representative

45.9.—(1) This rule applies where—

- (a) a party has incurred costs—
 - (i) as a result of an improper, unreasonable or negligent act or omission by a legal or other representative or representative's employee, or
 - (ii) which it has become unreasonable for that party to have to pay because of such an act or omission occurring after those costs were incurred; and
 - (b) the court can—
 - (i) order the representative responsible to pay such costs, or
 - (ii) prohibit the payment of costs to that representative.
- (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;
 - (b) serve the application on—
 - (i) the court officer (or, in the Court of Appeal, the Registrar),
 - (ii) the representative responsible,
 - (iii) each other party, and
 - (iv) any other person directly affected; in that application specify—
 - (i) the representative responsible,
 - (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 representative against whom it proposes making that 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 representative who wants to oppose an order must—
 - (a) make representations as soon as practicable; and
 - (b) in reply to an application, serve written representations on the applicant and on the court officer (or Registrar) not more than 7 days after it was served.
- (7) If the court makes an order—
 - (a) the general rule is that it must do so without waiting until the end of the case, but it may postpone making the order; and
 - (b) it must assess the amount itself.
- (8) Instead of making an order, the court may make adverse observations about the representative's conduct for use in an assessment where—
 - (a) a party's costs are—
 - (i) to be met by legal aid, or
 - (ii) to be paid out of central funds; or
 - (b) there is to be an assessment under rule 45.11.

Costs against a third party

45.10.–(1) This rule applies where—

- (a) there has been serious misconduct by a person who is not a party; and
 - (b) the court can order that person to pay a party's costs.
- (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 the 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;
 - (b) serve the application on—
 - (i) the court officer (or, in the Court of Appeal, the Registrar),
 - (ii) the person responsible,
 - (iii) each other party, and
 - (iv) any other person directly affected;
 - (c) in that application specify—
 - (i) the person responsible,
 - (ii) the relevant misconduct,
 - (iii) the reasons why the criteria for making an order are met,
 - (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 person against whom it proposes making that order; and
 - (b) specify—
 - (i) the relevant misconduct,
 - (ii) the reasons why the criteria for making an order are met, and
 - (iii) with the assistance of the party who incurred the costs, the amount involved.
- (6) A person who wants to oppose an order must—
- (a) make representations as soon as practicable; and
 - (b) in reply to an application, serve written representations on the applicant and on the court officer (or Registrar) not more than 7 days after it was served.
- (7) If the court makes an order—
- (a) the general rule is that it must do so at the end of the case, but it may do so earlier; and
 - (b) it must assess the amount itself.

Assessment and re-assessment

- 45.11.–(1) This rule applies where the court directs an assessment under—
- (a) rule 33.48 (Confiscation and related proceedings – restraint and receivership proceedings: rules that apply generally – assessment of costs);
 - (b) rule 45.6 (Costs on appeal); or
 - (c) rule 45.7 (Costs on an application).
- (2) The assessment must be carried out by the relevant assessing authority, namely—
- (a) the Lord Chancellor, where the direction was given by a magistrates' court or by the Crown Court; or
 - (b) the Registrar, where the direction was given by the Court of Appeal.
- (3) The party in whose favour the court made the costs order ('the applicant') must—
- (a) apply for an assessment—
 - (i) in writing, in any form required by the assessing authority, and
 - (ii) not more than 3 months after the costs order; and
 - (b) serve the application on—
 - (i) the assessing authority, and
 - (ii) the party against whom the court made the costs order ('the respondent').
- (4) The applicant must—
- (a) summarise the work done;
 - (b) specify—
 - (i) each item of work done, giving the date, time taken and amount claimed,
 - (ii) any disbursements or expenses, including the fees of any advocate, and
 - (iii) any circumstances of which the applicant wants the assessing authority to take particular account; and
 - (c) supply—
 - (i) receipts or other evidence of the amount claimed, and
 - (ii) any other information or document for which the assessing authority asks, within such period as that authority may require.
- (5) A respondent who wants to make representations about the amount claimed must—
- (a) do so in writing; and
 - (b) serve the representations on the assessing authority, and on the applicant, not more than 21 days after service of the application.
- (6) The assessing authority must—
- (a) if it seems likely to help with the assessment, obtain any other information or document;
 - (b) resolve in favour of the respondent any doubt about what should be allowed; and
 - (c) serve the assessment on the parties.
- (7) Where either party wants the amount allowed re-assessed—
- (a) that party must—

- (i) apply to the assessing authority, in writing and in any form required by that authority,
 - (ii) serve the application on the assessing authority, and on the other party, not more than 21 days after service of the assessment,
 - (iii) explain the objections to the assessment,
 - (iv) supply any additional supporting information or document, and
 - (v) ask for a hearing, if that party wants one; and
- (b) a party who wants to make representations about an application for re-assessment must—
- (i) do so in writing,
 - (ii) serve the representations on the assessing authority, and on the other party, not more than 21 days after service of the application, and
 - (iii) ask for a hearing, if that party wants one;
- (c) the assessing authority—
- (i) must arrange a hearing, in public or in private, if either party asks for one,
 - (ii) subject to that, may re-assess the amount allowed with or without a hearing,
 - (iii) must re-assess the amount allowed on the initial assessment, taking into account the reasons for disagreement with that amount and any other representations,
 - (iv) may maintain, increase or decrease the amount allowed on the assessment,
 - (v) must serve the re-assessment on the parties, and
 - (vi) must serve written reasons on the parties, if not more than 21 days later either party asks for such reasons.
- (8) A time limit under this rule may be extended even after it has expired—
- (a) by the assessing authority, or
 - (b) by the Senior Costs Judge, if the assessing authority declines to do so.

Appeal to a costs judge

45.12.–(1) This rule applies where—

- (a) the assessing authority has re-assessed the amount allowed under rule 45.11; and
 - (b) either party wants to appeal against that amount.
- (2) That party must—
- (a) serve an appeal notice on—
 - (i) the Senior Costs Judge,
 - (ii) the other party, and
 - (iii) the assessing authoritynot more than 21 days after service of the written reasons for the re-assessment;
 - (b) explain the objections to the re-assessment;
 - (c) serve on the Senior Costs Judge with the appeal notice—

- (i) the applications for assessment and re-assessment,
 - (ii) any other information or document considered by the assessing authority,
 - (iii) the assessing authority's written reasons for the re-assessment, and
 - (iv) any other information or document for which a costs judge asks, within such period as the judge may require; and
- (d) ask for a hearing if that party wants one.
- (3) A party who wants to make representations about an appeal must—
- (a) serve representations in writing on—
 - (i) the Senior Costs Judge, and
 - (ii) the applicantnot more than 21 days after service of the appeal notice; and
 - (b) ask for a hearing, if that party wants one.
- (4) Unless a costs judge otherwise directs, the parties may rely only on—
- (a) the objections to the amount allowed on the initial assessment; and
 - (b) any other representations and material considered by the assessing authority.
- (5) A costs judge—
- (a) must arrange a hearing, in public or in private, if either party asks for one;
 - (b) subject to that, may determine an appeal with or without a hearing;
 - (c) may—
 - (i) consult the assessing authority,
 - (ii) consult the court which made the costs order, and
 - (iii) obtain any other information or document;
 - (d) must reconsider the amount allowed by the assessing authority, taking into account the objections to the re-assessment and any other representations;
 - (e) may maintain, increase or decrease the amount allowed on the re-assessment;
 - (f) may provide for the costs incurred by either party to the appeal; and
 - (g) must serve reasons for the decision on—
 - (i) the parties, and
 - (ii) the assessing authority.
- (6) A costs judge may extend a time limit under this rule, even after it has expired.

Appeal to a High Court judge

45.13.—(1) This rule applies where—

- (a) a costs judge has determined an appeal under rule 45.12; and
 - (b) either party wants to appeal against the amount allowed.
- (2) A party who wants to appeal—
- (a) may do so only if a costs judge certifies that a point of principle of general importance was involved in the decision on the review; and
 - (b) must apply in writing for such a certificate and serve the application on—

- (i) the costs judge,
 - (ii) the other party
- not more than 21 days after service of the decision on the review.

- (3) That party must—
 - (a) appeal to a judge of the High Court attached to the Queen’s Bench Division as if it were an appeal from the decision of a master under Part 52 of the Civil Procedure Rules 1998(a); and
 - (b) serve the appeal not more than 21 days after service of the costs judge’s certificate under paragraph (2).
- (4) A High Court judge—
 - (a) may extend a time limit under this rule even after it has expired;
 - (b) has the same powers and duties as a costs judge under rule 45.12; and
 - (c) may hear the appeal with one or more assessors.

Application for an extension of time

- 45.14. A party who wants an extension of time under rule 45.11, 45.12 or 45.13 must—
- (a) apply in writing;
 - (b) explain the delay; and
 - (c) attach the application, representations or appeal for which the extension of time is needed.

Parts 34 (Appeal to the Crown Court) and 39 (Appeal to the Court of Appeal about conviction or sentence) also contain rules about appeals against costs orders.

3.5.4.3. Interaction with other sentencing orders

Confiscation

POCA 2002 s.13¹³⁴⁵: Effect of order on court’s other powers

- s.13(1) - if the court makes a confiscation order it must proceed as mentioned in subsections (2) and (4) in respect of the offence or offences concerned.
- s.13(2) - the court must take account of the confiscation order before—
 - (a) it imposes a fine on the defendant, or
 - (b) it makes an order falling within subsection (3).
- s.13(3) - these orders fall within this subsection—
 - (a) an order involving payment by the defendant, other than [an order under section 21A of the Prosecution of Offences Act 1985 (criminal courts charge) or a priority order;

¹³⁴⁵ Commencement: 24 March 2003, SI 2003/333 art.2 and Sch.1, as amended by SCA 2015 s.6 on 1 June 2015.

- (b) an order under section 27 of the Misuse of Drugs Act 1971 (c. 38) (forfeiture orders);
- (c) an order under section 143 of the Sentencing Act (deprivation orders);
- (d) an order under section 23 or 23A of the Terrorism Act 2000 (c. 11) (forfeiture orders).

s.13(3A) - in this section “*priority order*” means any of the following—

- (a) a compensation order under section 130 of the Sentencing Act;
- (b) an order requiring payment of a surcharge under section 161A of the Criminal Justice Act 2003;
- (c) an unlawful profit order under section 4 of the Prevention of Social Housing Fraud Act 2013.

Discharges

PCC(S)A 2000 s.12¹³⁴⁶: Absolute and conditional discharge

s.12(7) - nothing in this section shall be construed as preventing a court, on discharging an offender absolutely or conditionally in respect of any offence, from making an order for costs against the offender [...]

Fines

R. v Northallerton Magistrates’ Court [2000] 1 Cr. App. R. (S.) 136

While there is no requirement that any sum ordered by justices to be paid to a prosecutor by way of costs should stand in any arithmetical relationship to any fine imposed, the costs ordered to be paid should not in the ordinary way be grossly disproportionate to the fine. (Lord Bingham CJ, p. 142)

POA 1985 s.18¹³⁴⁷: Award of costs against accused

s.18(5) - where any person under the age of eighteen is convicted of an offence before a magistrates’ court, the amount of any costs ordered to be paid by the accused under this section shall not exceed the amount of any fine imposed on him.

3.5.4.4. Defendant’s costs (Central funds)

3.5.4.4.1 General

Note: The Practice Direction (Costs in Criminal Proceedings) 2015 sets out the approach to take and the considerations a court should have in mind when considering a defendant’s costs order.

¹³⁴⁶ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

¹³⁴⁷ Commencement: 1 October 1986, SI 1986/1334 art.3(1) and Sch.1 para.1.

Criminal Procedure Rules 2015 (SI 2015/1490)

Costs out of central funds

- 45.4.—(1) This rule applies where the court can order the payment of costs out of central funds.
- (2) In this rule, costs—
- (a) include—
 - (i) on an appeal, costs incurred in the court that made the decision under appeal, and
 - (ii) at a retrial, costs incurred at the initial trial and on any appeal; but
 - (b) do not include 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) Where a person wants the court to make an order that person must—
- (a) apply as soon as practicable; and
 - (b) outline the type of costs and the amount claimed, if that person wants the court to direct an assessment; or
 - (c) specify the amount claimed, if that person wants the court to assess the amount itself.
- (5) The general rule is that the court must make an order, but—
- (a) the court may decline to make a defendant’s costs order if, for example—
 - (i) the defendant is convicted of at least one offence, or
 - (ii) the defendant’s conduct led the prosecutor reasonably to think the prosecution case stronger than it was; and
 - (b) the court may decline to make a prosecutor’s costs order if, for example, the prosecution was started or continued unreasonably.
- (6) If the court makes an order—
- (a) the court may direct an assessment under, as applicable—
 - (i) Part III of the Costs in Criminal Cases (General) Regulations 1986(a), or
 - (ii) Part 3 of the Serious Crime Act 2007 (Appeals under Section 24) Order 2008(b);
 - (b) the court may assess the amount itself in a case in which either—
 - (i) the recipient agrees the amount, or
 - (ii) the court decides to allow a lesser sum than that which is reasonably sufficient to compensate the recipient for expenses properly incurred in the proceedings;
 - (c) an order for the payment of a defendant’s costs which includes an amount in respect of fees payable to a legal representative, or disbursements paid by a legal representative, must include a statement to that effect.
- (7) If the court directs an assessment, the order must specify any restriction on the amount to be paid that the court considers appropriate.

- (8) If the court assesses the amount itself, it must do so subject to any restriction on the amount to be paid that is imposed by regulations made by the Lord Chancellor.

Note.¹³⁴⁸ See also rule 45.2.

An order for the payment of costs out of central funds can be made—

- (a) for a defendant—
- (i) on acquittal,
 - (ii) where a prosecution does not proceed,
 - (iii) where the Crown Court allows any part of a defendant's appeal from a magistrates' court,
 - (iv) where the Court of Appeal allows any part of a defendant's appeal from the Crown Court,
 - (v) where the Court of Appeal decides a prosecutor's appeal under Part 37 (Appeal to the Court of Appeal against ruling at preparatory hearing) or Part 38 (Appeal to the Court of Appeal against ruling adverse to prosecution),
 - (vi) where the Court of Appeal decides a reference by the Attorney General under Part 41 (Reference to the Court of Appeal of point of law or unduly lenient sentence),
 - (vii) where the Court of Appeal decides an appeal by someone other than the defendant about a serious crime prevention order, or
 - (viii) where the defendant is discharged under Part 1 or 2 of the Extradition Act 2003; (See section 16 of the Prosecution of Offences Act 1985 and regulation 14 of the Costs in Criminal Cases (General) Regulations 1986; section 36(5) of the Criminal Justice Act 1972 and paragraph 11 of Schedule 3 to the Criminal Justice Act 1988; article 14 of the Serious Crime Act 2007 (Appeals under Section 24) Order 2008; and sections 61 and 134 of the Extradition Act 2003.)
- (b) for a private prosecutor, in proceedings in respect of an offence that must or may be tried in the Crown Court; (See section 17 of the Prosecution of Offences Act 1985 and regulation 14 of the Costs in Criminal Cases (General) Regulations 1986.)
- (c) for a person adversely affected by a serious crime prevention order, where the Court of Appeal—
- (i) allows an appeal by that person about that order, or
 - (ii) decides an appeal about that order by someone else.
- (See article 14 of the Serious Crime Act 2007 (Appeals under Section 24) Order 2008.)

Where the court makes an order for the payment of a defendant's costs out of central funds—

- (a) the general rule is that the order may not require the payment of any amount in respect of fees payable to a legal representative, or disbursements paid by a legal representative (including expert witness costs), but if the defendant is an individual then an order may require payment of such an amount in a case—
- (i) in a magistrates' court, including in an extradition case,

¹³⁴⁸ This note is contained within the procedure rules.

- (ii) *in the Crown Court, on appeal from a magistrates' court,*
 - (iii) *in the Crown Court, where the defendant has been sent for trial, the High Court gives permission to serve a draft indictment or the Court of Appeal orders a retrial and the defendant has been found financially ineligible for legal aid, or*
 - (iv) *in the Court of Appeal, on an appeal against a verdict of not guilty by reason of insanity, or against a finding under the Criminal Procedure (Insanity) Act 1964, or on an appeal under section 16A of the Criminal Appeal Act 1968 (appeal against order made in cases of insanity or unfitness to plead); and*
- (b) *any such amount may not exceed an amount specified by regulations made by the Lord Chancellor.*
- (See section 16A of the Prosecution of Offences Act 1985, sections 62A, 62B, 135A and 135B of the Extradition Act 2003 and regulations 4A and 7 of the Costs in Criminal Cases (General) Regulations 1986.*

3.5.4.4.2 Costs in Criminal Cases (General) Regulations 1986 (SI 1986/1335)

Note: The Costs in Criminal Cases (General) Regulations 1986 (SI 1986/1335) regs.4-13 provide for the procedure, determination of applications and appeals arising out of costs paid out of central funds.

3.5.4.4.3 Power to order

Magistrates' Court: bind over breaches

Costs in Criminal Cases (General) Regulations 1986 (SI 1986/1335) reg.14¹³⁴⁹: Costs fixed by the court

reg.14(4) - section 16 of the Act shall apply to proceedings in a magistrates' court or the Crown Court in which it is alleged that an offender required to enter into a recognisance to keep the peace or be of good behaviour has failed to comply with a condition of that recognisance, as if that failure were an indictable offence.

Appeal to Crown Court

POA 1985 s.16¹³⁵⁰: Defence costs

s.16(3) - where a person convicted of an offence by a magistrates' court appeals to the Crown Court under section 108 of the Magistrates' Courts Act 1980 (right of appeal against conviction or sentence) and, in consequence of the decision on appeal—

[...]

(b) a less severe punishment is awarded;

the Crown Court may make a defendant's costs order in favour of the accused.

¹³⁴⁹ Commencement: 1 October 1986

¹³⁵⁰ Commencement: 1 October 1986, SI 1986/1334 art.3(1) and Sch.1 para.1

Court of Appeal

POA 1985 s.16¹³⁵¹: Defence costs

s.16(4) - where the Court of Appeal—

(a) allows an appeal under Part I of the Criminal Appeal Act 1968 against—

[...]

(c) on an appeal under that Part against sentence, exercises its powers under section 11(3) of that Act (powers where the court considers that the appellant should be sentenced differently for an offence for which he was dealt with by the court below); or

(d) allows, to any extent, an appeal under section 16A of that Act (appeal against order made in cases of insanity or unfitness to plead);

the court may make a defendant's costs order in favour of the accused.

Attorney General's references

CJA 1988 Sch.3 para.11¹³⁵²:

para.11(1) - where on a reference to the Court of Appeal under section 36 above or a reference to the Supreme Court under subsection (5) of that section the person whose sentencing is the subject of the reference appears by counsel for the purpose of presenting any argument to the Court of Appeal or the Supreme Court, he shall be entitled to the payment out of central funds of such funds as are reasonably sufficient to compensate him for expenses properly incurred by him for the purpose of being represented on the reference; and any amount recoverable under this paragraph shall be ascertained, as soon as practicable, by the registrar of criminal appeals or, as the case may be, under Supreme Court Rules.

para.11(2) - sub-paragraph (1) has effect subject to—

(a) sub-paragraph (3), and

(b) regulations under section 20(1A)(d) of the Prosecution of Offences Act 1985 (as applied by this paragraph).

para.11(3) - a person is not entitled under sub-paragraph (1) to the payment of sums in respect of legal costs (as defined in section 16A of the Prosecution of Offences Act 1985) incurred in proceedings in the Court of Appeal.

para.11(4) - Subsections (1A) to (1C) and (3) of section 20 of the Prosecution of Offences Act 1985 (regulations as to amounts ordered to be paid out of central funds) apply in relation to funds payable out of central funds under sub-paragraph (1) as they apply in relation to amounts payable out of central funds in pursuance of costs orders made under section 16 of that Act.

¹³⁵¹ Commencement: 1 October 1986, SI 1986/1334 art.3(1) and Sch.1 para.1

¹³⁵² Commencement: 1 February 1989, SI 1989/1 art. 2(b)

3.5.4.5. Divisional Court, Supreme Court

POA 1985 s.16¹³⁵³: Defence costs

s.16(5) - where—

- (a) any proceedings in a criminal cause or matter are determined before a Divisional Court of the Queen’s Bench Division;
- (b) the Supreme Court determines an appeal, or application for leave to appeal, from such a Divisional Court in a criminal cause or matter;
- (c) the Court of Appeal determines an application for leave to appeal to the Supreme Court under Part II of the Criminal Appeal Act 1968; or
- (d) the Supreme Court determines an appeal, or application for leave to appeal, under Part II of that Act;

the court may make a defendant’s costs order in favour of the accused.

Test to apply

POA 1985 s.16¹³⁵⁴: Defence costs

s.16(6) - a defendant’s costs order shall, subject to the following provisions of this section, be for the payment out of central funds, to the person in whose favour the order is made, of such amount as the court considers reasonably sufficient to compensate him for any expenses properly incurred by him in the proceedings.

Power to order part-payment

POA 1985 s.16¹³⁵⁵: Defence costs

s.16(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.

s.16(6B) - subsections (6) and (6A) have effect subject to—

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

Legal costs: Requisite conditions

POA 1985 s.16A¹³⁵⁶: Legal costs

s.16A(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.

¹³⁵³ Commencement: 1 October 1986, SI 1986/1334 art.3(1) and Sch.1 para.1

¹³⁵⁴ Commencement: 1 October 1986, SI 1986/1334 art.3(1) and Sch.1 para.1

¹³⁵⁵ Commencement: 1 October 1986, SI 1986/1334 art.3(1) and Sch.1 para.1

¹³⁵⁶ Commencement: 1 October 2012, as inserted by LASPOA 2012 Sch.7 para.3. The insertion does not have effect in relation to costs orders made by a court in proceedings which commenced before the relevant day, LASPOA 2012 Sch.7 para.20.

- s.16A(2) - subsection (1) does not apply where condition A, B, C or D is met.
- s.16A(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).
- s.16A(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).
- s.16A(5) - condition C is that the legal costs were incurred in proceedings in the Supreme Court.
- s.16A(5A) - condition D is that—
- (a) the accused is an individual,
 - (b) the order is made under section 16(2),
 - (c) the legal costs were incurred in relevant Crown Court proceedings, and
 - (d) the Director of Legal Aid Casework has made a determination of financial ineligibility in relation to the accused and those proceedings
- (and condition D continues to be met if the determination is withdrawn).
- s.16A(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.
- s.16A(7) - regulations under subsection (6) may not remove or limit the exception provided by condition C.
- s.16A(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.
- s.16A(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.
- s.16A(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;

“*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.

s.16A(11) - in subsection (5A)—

“*determination of financial ineligibility*”, in relation to an individual and proceedings, means a determination under section 21 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 that the individual’s financial resources are such that the individual is not eligible for representation under section 16 of that Act for the purposes of the proceedings;

“*Director of Legal Aid Casework*” means the civil servant designated under section 4(1) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012;

“*relevant Crown Court proceedings*” means any of the following—

- (a) proceedings in the Crown Court in respect of an offence for which the accused has been sent by a magistrates’ court to the Crown Court for trial;
- (b) proceedings in the Crown Court relating to an offence in respect of which a bill of indictment has been preferred by virtue of section 2(2)(b) of the Administration of Justice (Miscellaneous Provisions) Act 1933;
- (c) proceedings in the Crown Court following an order by the Court of Appeal or the Supreme Court for a retrial.

Fixing the amount

POA 1985 s.16¹³⁵⁷: Defence costs

s.16(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.

s.16(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.

Costs in Criminal Cases (General) Regulations 1986 (SI 1986/1335) reg.4A¹³⁵⁸: Costs fixed by the court

reg.4A - where the court fixes an amount to be paid to the accused out of central funds in accordance with section 16(6C) of the Act or sections 62A(4) or 135A(4) of the Extradition Act 2003, it must, in relation to any amounts payable in respect of legal

¹³⁵⁷ Commencement: 1 October 1986, SI 1986/1334 art.3(1) and Sch.1 para.1

¹³⁵⁸ Commencement: 1 October 2012, as inserted by SI 2012/1804 reg.5. Transitional arrangements etc. are set out in reg.3.

costs, calculate such amounts in accordance with the rates or scales or other provision made by the Lord Chancellor pursuant to regulation 7(7), whether or not that results in the fixing of an amount that the court considers reasonably sufficient or necessary to compensate the accused.

3.5.4.6. Private prosecutor's costs (Central funds)

Costs in Criminal Cases (General) Regulations 1986 (SI 1986/1335)

Note: The Costs in Criminal Cases (General) Regulations 1986 (SI 1986/1335) regs.4-13 provide for the procedure, determination of applications and appeals arising out of costs paid out of central funds.

Power to order

POA 1986 s.17¹³⁵⁹: Prosecution costs

s.17(1) - subject to subsections (2) and (2A) below, the court may—

- (a) in any proceedings in respect of an indictable offence; and
- (b) in any proceedings before a Divisional Court of the Queen's Bench Division or the Supreme Court in respect of a summary offence;

order the payment out of central funds of such amount as the court considers reasonably sufficient to compensate the prosecutor for any expenses properly incurred by him in the proceedings.

No costs for public authority etc.

POA 1986 s.17¹³⁶⁰: Prosecution costs

s.17(2) - no order under this section may be made in favour of—

- (a) a public authority; or
- (b) a person acting—
 - (i) on behalf of a public authority; or
 - (ii) in his capacity as an official appointed by such an authority.

s.17(6) - in this section "*public authority*" means —

- (a) a police force within the meaning of section 3 of this Act;
- (b) the Crown Prosecution Service or any other government department;
- (c) a local authority or other authority or body constituted for purposes of—
 - (i) the public service or of local government; or
 - (ii) carrying on under national ownership any industry or undertaking or part of an industry or undertaking; or
- (d) any other authority or body whose members are appointed by Her Majesty or by any Minister of the Crown or government department or whose revenues consist wholly or mainly of money provided by Parliament.

¹³⁵⁹ Commencement: 1 October 1986, SI 1986/1334 art.3(1) and Sch.1 para.1.

¹³⁶⁰ Commencement: 1 October 1986, SI 1986/1334 art.3(1) and Sch.1 para.1.

Power to award partial costs

POA 1986 s.17¹³⁶¹: Prosecution costs

s.17(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.

Fixing the amount

POA 1986 s.17¹³⁶²: Prosecution costs

s.17(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.

s.17(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

Proceedings taken over by the CPS

POA 1986 s.17¹³⁶³: Prosecution costs

s.17(5) - where the conduct of proceedings to which subsection (1) above applies is taken over by the Crown Prosecution Service, that subsection shall have effect as if it referred to the prosecutor who had the conduct of the proceedings before the intervention of the Service and to expenses incurred by him up to the time of intervention.

Persons committed to Crown Court for sentence etc.

Costs in Criminal Cases (General) Regulations 1986 (SI 1986/1335) reg.14¹³⁶⁴: Costs fixed by the court

reg.14(1) - Sections 17 and 18 of the Act shall apply to proceedings in the Crown Court in respect of a person committed by a magistrates' court to that Court—

- (a) with a view to his being sentenced for an indictable offence in accordance with section 42 of the Powers of Criminal Courts Act 1973; or
- (b) with a view to his being sentenced by the Crown Court under section 6(6) or 9(3) of the Bail Act 1976 or
- (c) with a view to the making of a hospital order with an order restricting his discharge under Part III of the Mental Health Act 1983,

¹³⁶¹ Commencement: 1 October 1986, SI 1986/1334 art.3(1) and Sch.1 para.1.

¹³⁶² Commencement: 1 October 1986, SI 1986/1334 art.3(1) and Sch.1 para.1.

¹³⁶³ Commencement: 1 October 1986, SI 1986/1334 art.3(1) and Sch.1 para.1.

¹³⁶⁴ Commencement: 1 October 1986

as they apply where a person is convicted in proceedings before the Crown Court.

3.5.4.7. Prosecution costs (paid by defendant)

General

Practice Direction (Costs in Criminal Proceedings) 2015

- 3.4 An order should be made where the court is satisfied that the defendant or appellant has the means and the ability to pay. The order is not intended to be in the nature of a penalty which can only be satisfied on the defendant's release from prison. An order should not be made on the assumption that a third party might pay. Whilst the court should take into account any debt of the appellant or defendant, where the greater part of those debts relates to the offence itself, the court may still make an order for costs.
- 3.5 Where co-defendants are husband and wife, the couple's means should not be taken together. Where there are multiple defendants the court may make joint and several orders, but the costs ordered to be paid by an individual should be related to the costs in or about the prosecution of that individual. In a multi handed case where some defendants have insufficient means to pay their share of the costs, it is not right for that share to be divided among the other defenders.
- 3.6 The prosecution should serve upon the defence, at the earliest time, full details of its costs so as to give the defendant a proper opportunity to make representations upon them if appropriate. If a defendant wishes to dispute all or any of the prosecution's claim for costs, the defendant should, if possible, give proper notice to the prosecution of the objections proposed to be made or at least make it plain to the court precisely what those objections are. There is no provision for assessment of prosecution costs in a criminal case, such disputes have to be resolved by the court, which must specify the amount to be paid.¹³⁶⁵

Criminal Procedure Rules 2015 (SI 2015/1490)

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.

¹³⁶⁵ See *R v Associated Octel Ltd* [1996] EWCA Crim 1327; [1997] Crim LR 144.

- (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.*¹³⁶⁶ See—

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

Power to order: Magistrates' Court and Crown Court

POA 1985 s.18¹³⁶⁷: ***Award of costs against accused***

s.18(1) - where—

- (a) any person is convicted of an offence before a magistrates' court;
 - (b) the Crown Court dismisses an appeal against such a conviction or against the sentence imposed on that conviction; or
 - (c) any person is convicted of an offence before the Crown Court;
- the court may make such order as to the costs to be paid by the accused to the prosecutor as it considers just and reasonable.

¹³⁶⁶ The note is contained within the procedure rules.

¹³⁶⁷ Commencement: 1 October 1986, SI 1986/1334 art.3(1) and Sch.1 para.1.

Power to order: Court of Appeal

POA 1985 s.18¹³⁶⁸: Award of costs against accused

s.18(2) - where the Court of Appeal dismisses—

- (a) an appeal or application for leave to appeal under Part I of the Criminal Appeal Act 1968 ;
- (b) an application by the accused for leave to appeal to the Supreme Court under Part II of that Act;
- (c) an appeal or application for leave under section 9(11) of the Criminal Justice Act 1987; or
- (d) an appeal or application for leave to appeal under section 35(1) of the Criminal Procedure and Investigations Act 1996,

it may make such order as to the costs to be paid by the accused, to such person as may be named in the order, as it considers just and reasonable.

High Court

Practice Direction (Costs in Criminal Proceedings) 2015

3.8 The High Court is not covered by section 18 of the Act but it has complete discretion over all costs between the parties in relation to proceedings before it.¹³⁶⁹

Amount must be specified

POA 1985 s.18¹³⁷⁰: Award of costs against accused

s.18(3) - the amount to be paid by the accused in pursuance of an order under this section shall be specified in the order.

Restriction on costs in magistrates' courts where nominal fine imposed

POA 1985 s.18¹³⁷¹: Award of costs against accused

s.18(4) - where any person is convicted of an offence before a magistrates' court and—

- (a) under the conviction the court orders payment of any sum as a fine, penalty, forfeiture or compensation; and
- (b) the sum so ordered to be paid does not exceed £5;

the court shall not order the accused to pay any costs under this section unless in the particular circumstances of the case it considers it right to do so.

¹³⁶⁸ Commencement: 1 October 1986, SI 1986/1334 art.3(1) and Sch.1 para.1.

¹³⁶⁹ s.51 Supreme Court Act 1981

¹³⁷⁰ Commencement: 1 October 1986, SI 1986/1334 art.3(1) and Sch.1 para.1.

¹³⁷¹ Commencement: 1 October 1986, SI 1986/1334 art.3(1) and Sch.1 para.1.

Those under 18

POA 1985 s.18¹³⁷²: Award of costs against accused

s.18(5) - where any person under the age of eighteen is convicted of an offence before a magistrates' court, the amount of any costs ordered to be paid by the accused under this section shall not exceed the amount of any fine imposed on him.

Costs of transcripts

POA 1985 s.18¹³⁷³: Award of costs against accused

s.18(6) - costs ordered to be paid under subsection (2) or (2A) above may include the reasonable cost of any transcript of a record of proceedings made in accordance with rules of court made for the purposes of section 32 of the Act of 1968.

Persons committed to Crown Court for sentence etc.

Costs in Criminal Cases (General) Regulations 1986 (SI 1986/1335) reg.14¹³⁷⁴: Costs fixed by the court

reg.14(1) - Sections 17 and 18 of the Act shall apply to proceedings in the Crown Court in respect of a person committed by a magistrates' court to that Court—

- (a) with a view to his being sentenced for an indictable offence in accordance with section 42 of the Powers of Criminal Courts Act 1973; or
- (b) with a view to his being sentenced by the Crown Court under section 6(6) or 9(3) of the Bail Act 1976 or
- (c) with a view to the making of a hospital order with an order restricting his discharge under Part III of the Mental Health Act 1983,

as they apply where a person is convicted in proceedings before the Crown Court.

Appeals

MCA 1980 s.108¹³⁷⁵: Right of appeal to the Crown Court

s.108(1) - a person convicted by a magistrates' court may appeal to the Crown Court—

- (a) if he pleaded guilty, against his sentence;
- (b) if he did not, against the conviction or sentence.

s.108(3) - in this section "*sentence*" includes any order made on conviction by a magistrates' court, not being—

- (b) an order for the payment of costs [...]

¹³⁷² Commencement: 1 October 1986, SI 1986/1334 art.3(1) and Sch.1 para.1.

¹³⁷³ Commencement: 1 October 1986, SI 1986/1334 art.3(1) and Sch.1 para.1.

¹³⁷⁴ Commencement: 1 October 1986

¹³⁷⁵ Commencement: 6 July 1981, SI 1981/457 art.2.

MCA 1980 s.109¹³⁷⁶: Abandonment of appeal

- s.109(1) - where notice to abandon an appeal has been duly given by the appellant—
- (a) the court against whose decision the appeal was brought may issue process for enforcing that decision, subject to anything already suffered or done under it by the appellant; and
 - (b) the said court may, on the application of the other party to the appeal, order the appellant to pay to that party such costs as appear to the court to be just and reasonable in respect of expenses properly incurred by that party in connection with the appeal before notice of the abandonment was given to that party.
- s.109(2) - in this section “*appeal*” means an appeal from a magistrates’ court to the Crown Court, and the reference to a notice to abandon an appeal is a reference to a notice shown to the satisfaction of the magistrates’ court to have been given in accordance with rules of court.

POA 1985 s.18¹³⁷⁷: Award of costs against accused

- s.18(6) - costs ordered to be paid under subsection (2) or (2A) above may include the reasonable cost of any transcript of a record of proceedings made in accordance with rules of court made for the purposes of section 32 of the Act of 1968.

Criminal Procedure Rules 2014 [2014] EWCA Crim 1610 rule 76.6¹³⁷⁸: Costs on appeal

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;
 - (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, or
 - (ii) section 45 of the Mental Health Act 1983.
- (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.

¹³⁷⁶ Commencement: 6 July 1981, SI 1981/457 art.2.

¹³⁷⁷ Commencement: 1 October 1986, SI 1986/1334 art.3(1) and Sch.1 para.1.

¹³⁷⁸ Commencement: 6 October 2014

- (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—
 - (i) apply in writing not more than 14 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 written representations on the applicant, and on the Crown Court officer, not more than 7 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.*¹³⁷⁹ 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*

¹³⁷⁹ The note is contained within the procedure rules.

- (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; section 52 of the Senior Courts Act 1981 (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; and article 15 of the Serious Crime Act 2007 (Appeals under Section 24) Order 2008

3.5.4.8. Solicitors paying costs: The inherent jurisdiction of the senior courts

Practice Direction (Costs in Criminal Proceedings) 2015

- 1.2.3 The Senior Courts also have the power under their inherent jurisdiction over officers of the court to order a solicitor personally to pay costs thrown away. The inherent jurisdiction of the court should be invoked only to avoid a clear injustice.¹³⁸⁰ Where the legislature has stepped in with particular legislation in a particular area (eg, the wasted costs provisions) then, within that particular area, the existing inherent jurisdiction will be ousted or curtailed, at any rate in so far as the particular legislation is negative in character.¹³⁸¹ Given the present provisions relating to costs, the exercise of the inherent jurisdiction will occur only in the rarest of circumstances.

4.6 Awards of Costs against Solicitors under the Court's Inherent Jurisdiction

- 4.6.1 In addition to the power under regulation 3 of the General Regulations to order that costs improperly incurred be paid by a party to the proceedings and the power to make wasted costs orders under section 19A of the Act, the Senior Courts (which includes the Crown Court) may, in the exercise of its inherent jurisdiction over officers of the court, order a solicitor personally to pay costs thrown away by reason of a serious breach on the part of the solicitor of his duty to the court.
- 4.6.2 No such order may be made unless reasonable notice has been given to the solicitor of the matter alleged against him and he is given a reasonable opportunity of being heard in reply.
- 4.6.3 This power should be used only in exceptional circumstances not covered by the statutory powers: see para 1.2.3.

¹³⁸⁰ *Symbol Park Lane Ltd v Steggles Palmer* [1985] 1 WLR 668 CA

¹³⁸¹ *Shiloh Spinners Ltd v Harding* [1973] AC 691; *Harrison v Tew* [1989] QB 307 HL

3.5.4.9. Criminal Courts Charge

3.5.4.9.1 When does it apply?

Availability

POA 1985 s.21A¹³⁸²: Criminal courts charge

s.21A(1) - a court mentioned in section 21B must, at the times listed there, order a person convicted of an offence to pay a charge in respect of relevant court costs, subject to—

- (a) subsections (2) and (3), and
- (b) section 21C.

s.21A(2) - an order must not be made if the person was under 18 when the offence was committed.

s.21A(3) - an order must not be made in a case or class of case prescribed by the Lord Chancellor by regulations.

Prosecution of Offences Act 1985 (Criminal Courts Charge) Regulations 2015 (SI 2015/796) reg.2¹³⁸³: Cases in which the duty to order payment of the criminal courts charge does not apply

reg.2(1) - an order under section 21A(1) of the POA 1985 (criminal courts charge) must not be made against a person (“P”) convicted of an offence in the following cases—

- (a) where a court deals with P for the offence by making an order discharging P absolutely under section 12 of the Powers of Criminal Courts (Sentencing) Act 2000 (absolute discharge);
- (b) where a court deals with P for the offence by making in respect of P an order under section 37(1) of the MHA 1983 (power of courts to order hospital admission or guardianship) or a direction under section 45A(3) of the MHA 1983 (power of higher courts to order hospital admission);
- (c) where the Crown Court dismisses an appeal against conviction or sentence for the offence following a reference by the Criminal Cases Review Commission under section 11(1) of the CAA 1995 (cases dealt with summarily in England and Wales);
- (d) where the Court of Appeal dismisses an appeal for the offence under Part 1 of the CAA 1968 following a reference by the Criminal Cases Review Commission under section 9(1) of the CAA 1995 (cases dealt with on indictment in England and Wales).

reg.2(2) - paragraph (3) applies where a court deals with a person in the same proceedings—

- (a) for an offence; and
- (b) for a failure to comply with a requirement mentioned in section 21B of the POA 1985 (criminal courts charge: courts and times).

¹³⁸² Commencement: 13 April 2015, as inserted by Criminal Justice and Courts Act 2015 s.54(1), SI 2015/778 art.3 and Sch.1 para.44. Section 21A of the Prosecution of Offences Act 1985 applies only in relation to a person convicted of an offence committed after that section comes into force, CJA 2015 s.54(4).

¹³⁸³ Commencement: 13 April 2015, SI 2015/796 art.1(1).

- reg.2(3) - an order under section 21A(1) of the POA 1985 must not be made in respect of a failure to comply with a requirement mentioned in section 21B of the POA 1985.
- reg.2(4) - paragraph (5) applies where a court deals with a person in the same proceedings for a failure to comply with more than one of the requirements mentioned in section 21B of the POA 1985 and paragraph (3) does not apply.
- reg.2(5) - an order under section 21A(1) of the POA 1985 must not be made—
- (a) where the court deals with the person for a failure to comply with requirements mentioned in section 21B(1)(b), (c) and (d) of the POA 1985, in respect of the failure to comply with requirements mentioned in section 21B(1)(c) or (d);
 - (b) where the court deals with the person for a failure to comply with requirements mentioned in section 21B(1)(b) and (c) of the POA 1985, in respect of the failure to comply with requirements mentioned in section 21B(1)(c);
 - (c) where the court deals with the person for a failure to comply with requirements mentioned in section 21B(1)(b) and (d) of the POA 1985, in respect of the failure to comply with requirements mentioned in section 21B(1)(d);
 - (d) where the court deals with the person for a failure to comply with requirements mentioned in section 21B(1)(c) and (d) of the POA 1985, in respect of the failure to comply with requirements mentioned in section 21B(1)(d);
 - (e) where the court deals with the person for a failure to comply with requirements mentioned in section 21B(2)(b) and (c) of the POA 1985, in respect of the failure to comply with requirements mentioned in section 21B(2)(c).

Exception

POA 1985 s.21A¹³⁸⁴: Criminal courts charge

- s.21A(4) - a court must not take into account the duty under subsection (1) or any order under this section when dealing with a person (other than under this section) for an offence or for a failure to comply with a requirement mentioned in section 21B.

Interpretation

POA 1985 s.21A¹³⁸⁵: Criminal courts charge

- s.21A(5) - in this section—

“court costs” means costs of providing the judiciary and the rest of the system of courts, but does not include defence or prosecution costs;

“relevant court costs” means court costs incurred in connection with criminal proceedings or proceedings for a failure to comply with a requirement mentioned in

¹³⁸⁴ Commencement: 13 April 2015, as inserted by Criminal Justice and Courts Act 2015 s.54(1), SI 2015/778 art.3 and Sch.1 para.44. Section 21A of the Prosecution of Offences Act 1985 applies only in relation to a person convicted of an offence committed after that section comes into force, CJCA 2015 s.54(4).

¹³⁸⁵ Commencement: 13 April 2015, as inserted by Criminal Justice and Courts Act 2015 s.54(1), SI 2015/778 art.3 and Sch.1 para.44. Section 21A of the Prosecution of Offences Act 1985 applies only in relation to a person convicted of an offence committed after that section comes into force, CJCA 2015 s.54(4).

section 21B, but does not include costs of providing the Supreme Court or judges of that Court.

3.5.4.9.2 When must the order be made?

Magistrates' Court

POA 1985 s.21B¹³⁸⁶: Criminal courts charge: courts and times

s.21B(1) - a magistrates' court must make an order under section 21A at the following times—

- (a) when dealing with the person for the offence;
- (b) when dealing with the person under Schedule 8 to the Criminal Justice Act 2003 for failure to comply with any of the requirements of a community order;
- (c) when dealing with the person under Schedule 12 to the Criminal Justice Act 2003 for failure to comply with any of the community requirements of a suspended sentence order;
- (d) when dealing with the person under section 256AC of the Criminal Justice Act 2003 for failure to comply with a supervision requirement imposed under section 256AA of that Act.

Crown Court

POA 1985 s.21B¹³⁸⁷: Criminal courts charge: courts and times

s.21B(2) - the Crown Court must make an order under section 21A at the following times—

- (a) when dealing with the person for the offence;
- (b) when dealing with the person under Schedule 8 to the Criminal Justice Act 2003 for failure to comply with any of the requirements of a community order;
- (c) when dealing with the person under Schedule 12 to the Criminal Justice Act 2003 for failure to comply with any of the community requirements of a suspended sentence order;
- (d) when dismissing an appeal by the person against conviction or sentence for the offence.

¹³⁸⁶ Commencement: 13 April 2015, as inserted by Criminal Justice and Courts Act 2015 s.54(1), SI 2015/778 art.3 and Sch.1 para.44. Section 21A of the Prosecution of Offences Act 1985 applies only in relation to a person convicted of an offence committed after that section comes into force, CJA 2015 s.54(4).

¹³⁸⁷ Commencement: 13 April 2015, as inserted by Criminal Justice and Courts Act 2015 s.54(1), SI 2015/778 art.3 and Sch.1 para.44. Section 21A of the Prosecution of Offences Act 1985 applies only in relation to a person convicted of an offence committed after that section comes into force, CJA 2015 s.54(4).

Court of Appeal

POA 1985 s.21B¹³⁸⁸: Criminal courts charge: courts and times

- s.21B(3) - the Court of Appeal must make an order under section 21A at the following times—
- (a) when dismissing an appeal under Part 1 of the Criminal Appeal Act 1968 against the person's conviction or sentence for the offence;
 - (b) when dismissing an application for leave to bring such an appeal.

3.5.4.9.3 How much is the charge?

POA 1985 s.21C¹³⁸⁹: Amount of criminal courts charge

- s.21C(1) - a charge ordered to be paid under section 21A must be of an amount specified by the Lord Chancellor by regulations.
- s.21C(2) - when specifying amounts under this section, the Lord Chancellor must seek to secure that an amount specified in respect of a class of case does not exceed the relevant court costs reasonably attributable to a case of that class.
- s.21C(3) - in this section "*relevant court costs*" has the same meaning as in section 21A.

Prosecution of Offences Act 1985 (Criminal Courts Charge) Regulations 2015 (SI 2015/796) reg.3¹³⁹⁰: Cases in which the duty to order payment of the criminal courts charge does not apply Amount of the criminal courts charge

- reg.3(1) - the table in the Schedule, read with the provisions of this regulation, sets out the charge that must be ordered to be paid under section 21A(1) of the POA 1985 by class of case.
- reg.3(2) - paragraph (3) applies where, following the summary conviction of a person ("P") for an offence, a magistrates' court commits P to the Crown Court for sentence and the Crown Court accordingly deals with P for the offence.
- reg.3(3) - the charge the Crown Court must order to be paid is the amount in column 2 of the table which corresponds to the amount the magistrates' court would have had to order had P not been committed to the Crown Court for sentence.
- reg.3(4) - paragraph (5) applies where more than one entry in column 1 of the table applies.
- reg.3(5) - the charge the court must order to be paid is the amount in column 2 which corresponds to the entry mentioned in paragraph (4) which results in the highest amount.

¹³⁸⁸ Commencement: 13 April 2015, as inserted by Criminal Justice and Courts Act 2015 s.54(1), SI 2015/778 art.3 and Sch.1 para.44. Section 21A of the Prosecution of Offences Act 1985 applies only in relation to a person convicted of an offence committed after that section comes into force, CJA 2015 s.54(4).

¹³⁸⁹ Commencement: 13 April 2015, as inserted by Criminal Justice and Courts Act 2015 s.54(1), SI 2015/778 art.3 and Sch.1 para.44. Section 21A of the Prosecution of Offences Act 1985 applies only in relation to a person convicted of an offence committed after that section comes into force, CJA 2015 s.54(4).

¹³⁹⁰ Commencement: 13 April 2015, SI 2015/796 art.1(1).

reg.3(6) - where a person (“P”) changes P’s plea from not guilty to guilty after the start of a summary or Crown Court trial the charge the court must order to be paid is the amount that would have applied if P had not changed the plea.

reg.3(7) - for the purposes of paragraph (6)—

- (a) the start of a summary trial is the time when the prosecution opens its case;
- (b) the start of a Crown Court trial is—
 - (i) the time when a jury is sworn; or
 - (ii) where a trial takes place without a jury, the time when the prosecution opens its case.

The amounts

Prosecution of Offences Act 1985 (Criminal Courts Charge) Regulations 2015 (SI 2015/796) Sch.1¹³⁹¹

Column 1	Column 2
Conviction by a magistrates’ court in proceedings conducted in accordance with section 16A of the Magistrates’ Courts Act 1980 (trial by single justice on the papers)	£150
Conviction by a magistrates’ court for a summary offence on a guilty plea	£150
Conviction by a magistrates’ court at a trial of a summary offence where (a) the defendant did not enter a plea, (b) the trial proceeded in the absence of the defendant, and (c) the court dealt with the case on the papers without reliance on any oral evidence	£150
Conviction by a magistrates’ court for an offence triable either-way on a guilty plea	£180
Conviction by a magistrates’ court at a trial of a summary offence	£520
Conviction by a magistrates’ court at a trial of an offence triable either way	£1,000
Conviction by the Crown Court on a guilty plea	£900
Conviction by the Crown Court at a trial on indictment	£1,200
Magistrates’ court when dealing with a person under section 21B(1)(b), (c) or (d) of the POA 1985	£100
Crown Court when dealing with a person under section 21B(2)(b) or (c) of the POA 1985	£150
Crown Court dismissing an appeal by a person against conviction or sentence	£150
Court of Appeal dismissing an application for leave to bring an appeal under Part 1 of the CAA 1968 against a person’s conviction or sentence	£150
Court of Appeal dismissing an appeal under Part 1 of the CAA 1968 against a person’s conviction or sentence	£200

¹³⁹¹ Commencement: 13 April 2015, SI 2015/796 art.1(1).

3.5.4.9.4 Interest on the charge

POA 1985 s.21D¹³⁹²: Interest on criminal courts charge

- s.21D(1) - the Lord Chancellor may by regulations provide that a person who is ordered to pay a charge under section 21A must pay interest on the charge if or to the extent that it remains unpaid.
- s.21D(2) - the regulations may, in particular—
- (a) make provision about the rate of interest,
 - (b) make provision about periods when interest is or is not payable, and
 - (c) make provision by reference to a measure or document as amended from time to time.
- s.21D(3) - the regulations may not make provision for a rate of interest that is higher than the rate that the Lord Chancellor considers would maintain the value in real terms of amounts that remain unpaid.
- s.21D(4) - an amount of interest payable under the regulations is to be treated as part of the charge ordered to be paid under section 21A.

3.5.4.9.5 Power to remit the charge

Power to remit

POA 1985 s.21E¹³⁹³: Power to remit criminal courts charge

- s.21E(1) - a magistrates' court may remit the whole or part of a charge ordered to be paid by a person under section 21A, subject to the restrictions in subsections (2) to (4).

Prosecution of Offences Act 1985 (Criminal Courts Charge) Regulations 2015 (SI 2015/796) reg.4¹³⁹⁴: Remittal of the criminal courts charge

- reg.4 - the period specified for the purposes of section 21E(4) of the POA 1985 (power to remit criminal courts charge) is—
- (a) where the person liable to pay the charge has made the application to a magistrates' court to remit the charge, two years;
 - (b) in any other case, 12 months.

¹³⁹² Commencement: 13 April 2015, as inserted by Criminal Justice and Courts Act 2015 s.54(1), SI 2015/778 art.3 and Sch.1 para.44. Section 21A of the Prosecution of Offences Act 1985 applies only in relation to a person convicted of an offence committed after that section comes into force, CJA 2015 s.54(4).

¹³⁹³ Commencement: 13 April 2015, as inserted by Criminal Justice and Courts Act 2015 s.54(1), SI 2015/778 art.3 and Sch.1 para.44. Section 21A of the Prosecution of Offences Act 1985 applies only in relation to a person convicted of an offence committed after that section comes into force, CJA 2015 s.54(4).

¹³⁹⁴ Commencement: 13 April 2015, SI 2015/796 art.1(1).

Restrictions

POA 1985 s.21E¹³⁹⁵: Power to remit criminal courts charge

s.21E(2) - it may remit the charge only if—

- (a) it is satisfied that the person has taken all reasonable steps to pay it, having regard to the person's personal circumstances, or
- (b) it is satisfied that collection and enforcement of the charge is impracticable.

s.21E(3) - it may not remit the charge at a time when the person is detained in prison.

s.21E(4) - it may not remit the charge unless each of following has expired—

- (a) a specified period beginning with the day on which an order under section 21A was last made in respect of the person;
- (b) a specified period beginning with the day on which the person was last convicted of an offence;
- (c) where relevant, a specified period beginning with the day on which the person was last released from prison.

Charge remitted: Unpaid work imposed for default

POA 1985 s.21E¹³⁹⁶: Power to remit criminal courts charge

s.21E(5) - where a court remits a charge under section 21A after an order has been made under section 300(2) of the Criminal Justice Act 2003 (power to impose unpaid work requirement etc on fine defaulter) for default in paying the charge (or the charge and other amounts), the court must—

- (a) reduce the total number of hours or days to which the order relates by the same proportion as the amount remitted bears to the total amount in respect of which the order was made, or
- (b) if the total number of hours or days would be reduced to nil under paragraph (a), revoke the order.

s.21E(6) - in calculating a reduction required by subsection (5), any fraction of an hour or day is to be rounded down to the nearest hour or day.

¹³⁹⁵ Commencement: 13 April 2015, as inserted by Criminal Justice and Courts Act 2015 s.54(1), SI 2015/778 art.3 and Sch.1 para.44. Section 21A of the Prosecution of Offences Act 1985 applies only in relation to a person convicted of an offence committed after that section comes into force, CJCA 2015 s.54(4).

¹³⁹⁶ Commencement: 13 April 2015, as inserted by Criminal Justice and Courts Act 2015 s.54(1), SI 2015/778 art.3 and Sch.1 para.44. Section 21A of the Prosecution of Offences Act 1985 applies only in relation to a person convicted of an offence committed after that section comes into force, CJCA 2015 s.54(4).

Interpretation

POA 1985 s.21E¹³⁹⁷: Power to remit criminal courts charge

s.21E(7) - in this section—

“*prison*” includes any place where a person serving a sentence of detention for an offence is liable to be detained;

“*specified period*” means a period of a length specified by the Lord Chancellor by regulations.

3.5.4.9.6 Secretary of State’s power to make regulations

POA 1985 s.21F¹³⁹⁸: Regulations under this Part

s.21F - regulations under this Part may include transitional, transitory and saving provision.

3.5.4.9.7 Secretary of State’s power to make regulations: General

POA 1985 s.20¹³⁹⁹: Regulations

s.20(1) - the Lord Chancellor may make regulations for carrying this Part into effect

s.20(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.

s.20(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

¹³⁹⁷ Commencement: 13 April 2015, as inserted by Criminal Justice and Courts Act 2015 s.54(1), SI 2015/778 art.3 and Sch.1 para.44. Section 21A of the Prosecution of Offences Act 1985 applies only in relation to a person convicted of an offence committed after that section comes into force, CJA 2015 s.54(4).

¹³⁹⁸ Commencement: 13 April 2015, as inserted by Criminal Justice and Courts Act 2015 s.54(1), SI 2015/778 art.3 and Sch.1 para.44. Section 21A of the Prosecution of Offences Act 1985 applies only in relation to a person convicted of an offence committed after that section comes into force, CJA 2015 s.54(4).

¹³⁹⁹ Commencement: 1 October 1986, SI 1986/1334 art.3(1) and Sch.1 para.1.

- (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.
- s.20(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.
- s.20(2) - the Lord Chancellor may by regulations make provision for the recovery of sums paid by the Lord Chancellor under arrangements made for the purposes of Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 or out of central funds in accordance with a costs order in cases where—
 - (a) a costs order has been made against a party to proceedings; and
 - (b) the person in whose favour the order was made is a legally assisted person or a person in whose favour a defendant’s costs order or, as the case may be, an order under section 17 of this Act has been made.
- s.20(3) - regulations made under subsection (1A) above may provide that provision as to the calculation of amounts payable out of central funds under a costs order (whether in the form of rates or scales or other provision) shall be determined by the Lord Chancellor with the consent of the Treasury.
- s.20(4) - regulations made under subsection (2) above may, in particular—
 - (a) require the person mentioned in paragraph (a) of that subsection to pay sums due under the costs order in accordance with directions given by the Lord Chancellor (either generally or in respect of the particular case); and
 - (b) enable the Lord Chancellor to enforce those directions in cases to which they apply.
- s.20(6) - any regulations under this Part may contain such incidental, supplemental and transitional provisions as the Lord Chancellor considers appropriate.
- s.20(7) - before making any regulations under section 19(1), 19A or 19B of this Act which affect the procedure of any court, the Lord Chancellor shall so far as is reasonably practicable consult any rule committee by whom, or on whose advice, rules of procedure for the court may be made or whose concurrence is required to any such rules.
- s.20(8) - in this section “costs order” means —
 - (a) an order made under or by virtue of this Part for payment to be made—
 - (i) out of central funds; or
 - (ii) by any person; or
 - (b) an order made in a criminal case by the Supreme Court for the payment of costs by a party to proceedings.

3.5.5. Preventive orders (financial reporting orders)

The power to make a financial reporting order was repealed on 3 May 2015 by the Serious Crime Act 2015 s.50(1)(a), as commenced by SI 2015/820 reg.2(i). The repeal coincided with the insertion of Serious Crime Act 2007 s.5A. An explanatory memorandum to the Serious Crime Act 2015 stated that the effect was to consolidate the financial reporting order into the serious crime order.

3.5.6. Confiscatory in nature

Note: There is also a power to make an unlawful profit order in civil proceedings. For more details, see section 5 of the Act.

3.5.6.1. Unlawful profit orders

3.5.6.1.1 General

What is an unlawful profit order?

Prevention of Social Housing Fraud Act 2013 s.4¹⁴⁰⁰: Unlawful profit orders: criminal proceedings

s.4(3) - an “*unlawful profit order*” is an order requiring the offender to pay the landlord an amount representing the profit made by the offender as a result of the conduct constituting the offence.

Interpretation

Prevention of Social Housing Fraud Act 2013 s.4¹⁴⁰¹: Unlawful profit orders: criminal proceedings

s.4(13) - in this section “*the landlord*” means the landlord under the tenancy in respect of which the offence was committed.

Note: Section 11 of the Act also provides definitions.

3.5.6.1.2 Making the order

Availability

Prevention of Social Housing Fraud Act 2013 s.4¹⁴⁰²: Unlawful profit orders: criminal proceedings

s.4(1) - this section applies if a person (“the offender”) is convicted of—

- (a) an offence under section 1 or 2 (Unlawful sub-letting: secure tenancies and Unlawful sub-letting: assured tenancies) or
- (b) an associated offence in relation to an offence under section 1 or 2.

¹⁴⁰⁰ Commencement: England, in force 15 October 2013, SI 2013/2622 art.2. Wales, in force 5 November 2013, SI 2013/2861 art.2.

¹⁴⁰¹ Commencement: England, in force 15 October 2013, SI 2013/2622 art.2. Wales, in force 5 November 2013, SI 2013/2861 art.2.

¹⁴⁰² Commencement: England, in force 15 October 2013, SI 2013/2622 art.2. Wales, in force 5 November 2013, SI 2013/2861 art.2.

Power/duty of the court to consider whether or not to impose an order

Prevention of Social Housing Fraud Act 2013 s.4¹⁴⁰³: Unlawful profit orders: criminal proceedings

- s.4(2) - the court by or before which the offender is convicted—
- (a) must, on application or otherwise, decide whether to make an unlawful profit order, and
 - (b) may, if it considers it appropriate to do so, make such an order, instead of or in addition to dealing with the offender in any other way.

Must give reasons if not making an order

Prevention of Social Housing Fraud Act 2013 s.4¹⁴⁰⁴: Unlawful profit orders: criminal proceedings

- s.4(4) - if the court decides not to make an unlawful profit order, it must give reasons for that decision on passing sentence on the offender.

Determining the amount

Prevention of Social Housing Fraud Act 2013 s.4¹⁴⁰⁵: Unlawful profit orders: criminal proceedings

- s.4(5) - the amount payable under an unlawful profit order must be such amount as the court considers appropriate, having regard to any evidence and to any representations that are made by or on behalf of the offender or the prosecutor, but subject to subsections (6) and (7).

Calculating the maximum amount

Prevention of Social Housing Fraud Act 2013 s.4¹⁴⁰⁶: Unlawful profit orders: criminal proceedings

- s.4(6) - the maximum amount payable under an unlawful profit order is calculated as follows—
- Step 1*
- Determine the total amount the offender received as a result of the conduct constituting the offence (or the best estimate of that amount).
- Step 2*
- Deduct from the amount determined under step 1 the total amount, if any, paid by the offender as rent to the landlord (including service charges) over the period during which the offence was committed.

¹⁴⁰³ Commencement: England, in force 15 October 2013, SI 2013/2622 art.2. Wales, in force 5 November 2013, SI 2013/2861 art.2.

¹⁴⁰⁴ Commencement: England, in force 15 October 2013, SI 2013/2622 art.2. Wales, in force 5 November 2013, SI 2013/2861 art.2.

¹⁴⁰⁵ Commencement: England, in force 15 October 2013, SI 2013/2622 art.2. Wales, in force 5 November 2013, SI 2013/2861 art.2.

¹⁴⁰⁶ Commencement: England, in force 15 October 2013, SI 2013/2622 art.2. Wales, in force 5 November 2013, SI 2013/2861 art.2.

3.5.6.1.3 Unpaid orders

Prevention of Social Housing Fraud Act 2013 s.4¹⁴⁰⁷: Unlawful profit orders: criminal proceedings

- s.4(10) - if the amount required to be paid by a person under an unlawful profit order is not paid when it is required to be paid, that person must pay interest on the amount for the period for which it remains unpaid.
- s.4(11) - the rate of interest is the same rate as that for the time being specified in section 17 of the Judgments Act 1838 (interest on civil judgment debts).

3.5.6.1.4 Offenders aged under 18

Prevention of Social Housing Fraud Act 2013 s.4¹⁴⁰⁸: Unlawful profit orders: criminal proceedings

- s.4(12) - sections 131 to 133 of the Powers of Criminal Courts (Sentencing) Act 2000 (supplementary provisions about compensation orders) apply to unlawful profit orders as if—
- references to a compensation order were to an unlawful profit order (subject to paragraph (d)),
 - references to the compensation to be paid under a compensation order were to the amount to be paid under an unlawful profit order,
 - section 133(3)(a) and (b) were omitted, and
 - the reference in 133(3)(c)(ii) to an unlawful profit order under section 4 were to a compensation order under section 130 of the Powers of Criminal Courts (Sentencing) Act 2000.

PCC(S)A 2000 s.131¹⁴⁰⁹: Limit on amount payable under compensation order of magistrates' court in case of young offender

- s.131(A1) - this section applies if (but only if) a magistrates' court has convicted a person aged under 18 ("the offender") of an offence or offences.
- s.131(1) - the compensation to be paid under a compensation order made by the court in respect of the offence, or any one of the offences, shall not exceed £5,000.
- s.131(2) - the compensation or total compensation to be paid under a compensation order or compensation orders made by the court in respect of any offence or offence taken into consideration in determining sentence shall not exceed the difference (if any) between—
- the amount or total amount which under subsection (1) above is the maximum for the offence or offences of which the offender has been convicted; and
 - the amount or total amounts (if any) which are in fact ordered to be paid in respect of that offence or those offences.

¹⁴⁰⁷ Commencement: England, in force 15 October 2013, SI 2013/2622 art.2. Wales, in force 5 November 2013, SI 2013/2861 art.2.

¹⁴⁰⁸ Commencement: England, in force 15 October 2013, SI 2013/2622 art.2. Wales, in force 5 November 2013, SI 2013/2861 art.2.

¹⁴⁰⁹ Commencement: 25 August 2000, PCC(S) 2000 s.168(1).

3.5.6.1.5 Interaction with other sentencing orders

Civil unlawful profit order

Prevention of Social Housing Fraud Act 2013 s.4¹⁴¹⁰: Unlawful profit orders: criminal proceedings

- s.4(7) - where an unlawful profit order has been made against the offender under section 5, an order under this section may only provide for the landlord to recover an amount equal to the aggregate of the following—
- (a) any amount by which the amount of the offender's profit found under this section exceeds the amount payable under the order made under section 5, and
 - (b) a sum equal to any portion of the amount payable under the order made under section 5 that the landlord fails to recover,
- and the landlord may not enforce the order under this section, so far as it relates to a sum mentioned in paragraph (b), without the leave of the court.

Fines

Prevention of Social Housing Fraud Act 2013 s.4¹⁴¹¹: Unlawful profit orders: criminal proceedings

- s.4(8) - subsection (9) applies where the court considers—
- (a) that, as well as being appropriate to make an unlawful profit order, it would be appropriate to impose a fine, and
 - (b) that the offender has insufficient means to pay both—
 - (i) an appropriate sum under an unlawful profit order, and
 - (ii) an appropriate sum under a fine.
- s.4(9) - the court must give preference to making an unlawful profit order (though it may impose a fine as well).

¹⁴¹⁰ Commencement: England, in force 15 October 2013, SI 2013/2622 art.2. Wales, in force 5 November 2013, SI 2013/2861 art.2.

¹⁴¹¹ Commencement: England, in force 15 October 2013, SI 2013/2622 art.2. Wales, in force 5 November 2013, SI 2013/2861 art.2.

3.5.6.1.6 Review of orders

Prevention of Social Housing Fraud Act 2013 s.4¹⁴¹²: Unlawful profit orders: criminal proceedings

- s.4(12) - Sections 131 to 133 of the Powers of Criminal Courts (Sentencing) Act 2000 (supplementary provisions about compensation orders) apply to unlawful profit orders as if—
- (a) references to a compensation order were to an unlawful profit order (subject to paragraph (d)),
 - (b) references to the compensation to be paid under a compensation order were to the amount to be paid under an unlawful profit order,
 - (c) section 133(3)(a) and (b) were omitted, and
 - (d) the reference in section 133(3)(c) to a confiscation order under Part 6 of the Criminal Justice Act 1988 or Part 2 of the Proceeds of Crime Act 2002 or an unlawful profit order (or both) were to such a confiscation order or a compensation order under section 130 of the Powers of Criminal Courts (Sentencing) Act 2000 (or both).

Power

PCC(S)A 2000 s.133¹⁴¹³: Review of compensation orders

- s.133(1) - the magistrates' court for the time being having functions in relation to the enforcement of a compensation order (in this section referred to as "*the appropriate court*") may, on the application of the person against whom the compensation order was made, discharge the order or reduce the amount which remains to be paid; but this is subject to subsections (2) to (4) below.

When can the power be exercised?

PCC(S)A 2000 s.133¹⁴¹⁴: Review of compensation orders

- s.133(2) - the appropriate court may exercise a power conferred by subsection (1) above only—
- (a) at a time when (disregarding any power of a court to grant leave to appeal out of time) there is no further possibility of an appeal on which the compensation order could be varied or set aside; and
 - (b) at a time before the person against whom the compensation order was made has paid into court the whole of the compensation which the order requires him to pay.
- s.133(3) - the appropriate court may exercise a power conferred by subsection (1) above only if it appears to the court—
- (a) that the injury, loss or damage in respect of which the compensation order was made has been held in civil proceedings to be less than it was taken to be for the purposes of the order; or

¹⁴¹² Commencement: England, in force 15 October 2013, SI 2013/2622 art.2. Wales, in force 5 November 2013, SI 2013/2861 art.2.

¹⁴¹³ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

¹⁴¹⁴ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

- (b) in the case of a compensation order in respect of the loss of any property, that the property has been recovered by the person in whose favour the order was made; or
- (c) that the means of the person against whom the compensation order was made are insufficient to satisfy in full both the order and a confiscation order under Part VI of the Criminal Justice Act 1988, or Part 2 of the Proceeds of Crime Act 2002 or an unlawful profit order under section 4 of the Prevention of Social Housing Fraud Act 2013 (or both), made against him in the same proceedings; or
- (d) that the person against whom the compensation order was made has suffered a substantial reduction in his means which was unexpected at the time when the order was made, and that his means seem unlikely to increase for a considerable period.

Must get consent of Crown Court

PCC(S)A 2000 s.133¹⁴¹⁵: Review of compensation orders

s.133(4) - where the compensation order was made by the Crown Court, the appropriate court shall not exercise any power conferred by subsection (1) above in a case where it is satisfied as mentioned in paragraph (c) or (d) of subsection (3) above unless it has first obtained the consent of the Crown Court.

Orders made on appeal

PCC(S)A 2000 s.133¹⁴¹⁶: Review of compensation orders

- s.133(5) - where the compensation order has been made on appeal, for the purposes of subsection (4) above it shall be deemed—
- (a) if it was made on an appeal brought from a magistrates' court, to have been made by that magistrates' court;
 - (b) if it was made on an appeal brought from the Crown Court or from the criminal division of the Court of Appeal, to have been made by the Crown Court.

3.5.6.1.7 Appeals

Prevention of Social Housing Fraud Act 2013 s.4¹⁴¹⁷: Unlawful profit orders: criminal proceedings

- s.4(12) - Sections 131 to 133 of the Powers of Criminal Courts (Sentencing) Act 2000 (supplementary provisions about compensation orders) apply to unlawful profit orders as if—
- (a) references to a compensation order were to an unlawful profit order (subject to paragraph (d)),
 - (b) references to the compensation to be paid under a compensation order were to the amount to be paid under an unlawful profit order,
 - (c) section 133(3)(a) and (b) were omitted, and

¹⁴¹⁵ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

¹⁴¹⁶ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

¹⁴¹⁷ Commencement: England, in force 15 October 2013, SI 2013/2622 art.2. Wales, in force 5 November 2013, SI 2013/2861 art.2.

- (d) the reference in section 133(3)(c) to a confiscation order under Part 6 of the Criminal Justice Act 1988 or Part 2 of the Proceeds of Crime Act 2002 or an unlawful profit order (or both) were to such a confiscation order or a compensation order under section 130 of the Powers of Criminal Courts (Sentencing) Act 2000 (or both).

Compensation not payable until time limit to appeal conviction or sentence or vary sentence has expired

PCC(S)A 2000 s.132¹⁴¹⁸: Compensation orders: appeals etc.

- s.32(1) - a person in whose favour a compensation order is made shall not be entitled to receive the amount due to him until (disregarding any power of a court to grant leave to appeal out of time) there is no further possibility of an appeal on which the order could be varied or set aside.
- s.132(2) - the Criminal Procedure Rules may make provision regarding the way in which the magistrates' court for the time being having functions (by virtue of section 41(1) of the Administration of Justice Act 1970) in relation to the enforcement of a compensation order is to deal with money paid in satisfaction of the order where the entitlement of the person in whose favour it was made is suspended.

Court of Appeal: Power to annul or vary order

PCC(S)A 2000 s.132¹⁴¹⁹: Compensation orders: appeals etc.

- s.132(3) - the Court of Appeal may by order annul or vary any compensation order made by the court of trial, although the conviction is not quashed; and the order, if annulled, shall not take effect and, if varied, shall take effect as varied.

Order made/varied on appeal: Surcharge

PCC(S)A 2000 s.132¹⁴²⁰: Compensation orders: appeals etc.

- s.132(4A) - where an order is made in respect of a person under subsection (3) or (4) above, the Court of Appeal or the Supreme Court shall make such order for the payment of a surcharge under section 161A of the Criminal Justice Act 2003, or such variation of the order of the Crown Court under that section, as is necessary to secure that the person's liability under that section is the same as it would be if he were being dealt with by the Crown Court.

¹⁴¹⁸ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

¹⁴¹⁹ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

¹⁴²⁰ Commencement: 25 August 2000, PCC(S) 2000 s.168(1).

TICs

PCC(S)A 2000 s.132¹⁴²¹: Compensation orders: appeals etc.

- s.132(5) - where a compensation order has been made against any person in respect of an offence taken into consideration in determining his sentence—
- (a) the order shall cease to have effect if he successfully appeals against his conviction of the offence or, if more than one, all the offences, of which he was convicted in the proceedings in which the order was made;
 - (b) he may appeal against the order as if it were part of the sentence imposed in respect of the offence or, if more than one, any of the offences, of which he was so convicted.

Supreme Court: Power to order

PCC(S)A 2000 s.132¹⁴²²: Compensation orders: appeals etc.

- s.132(4) - where the Supreme Court restores a conviction, it may make any compensation order which the court of trial could have made.

¹⁴²¹ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

¹⁴²² Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).