

**Version  
as at 28 October 2021**



## **Costs in Criminal Cases Act 1967**

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Date of assent	24 November 1967
Commencement	1 April 1968

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#### **Note**

The Parliamentary Counsel Office has made editorial and format changes to this version using the powers under subpart 2 of Part 3 of the Legislation Act 2019.

Note 4 at the end of this version provides a list of the amendments included in it.

**This Act is administered by the Ministry of Justice.**

## Schedule Enactments repealed

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### An Act to amend the law relating to the payment of costs in criminal cases

#### 1 Short Title and commencement

- (1) This Act may be cited as the Costs in Criminal Cases Act 1967.
- (2) This Act shall come into force on 1 April 1968.

#### 2 Interpretation

In this Act, unless the context otherwise requires,—

**costs** means any expenses properly incurred by a party in carrying out a prosecution, carrying on a defence, or in making or defending an appeal

**court** means any court exercising any jurisdiction in criminal cases

**Crown organisation** has the same meaning as in section 4 of the Crown Organisations (Criminal Liability) Act 2002

**defendant** means any person charged with an offence.

Section 2 **Crown organisation**: inserted, on 18 October 2002, by section 19 of the Crown Organisations (Criminal Liability) Act 2002 (2002 No 37).

#### 3 Act to bind the Crown

This Act shall bind the Crown.

#### 4 Costs of the prosecutor

- (1) Where any defendant is convicted by any court of any offence, the court may, subject to any regulations made under this Act, order him to pay such sum as it thinks just and reasonable towards the costs of the prosecution.
- (2) Where on the arrest of that person any money was taken from him the court may in its discretion order the whole or any part of the money to be applied to any such payment.
- (3) Where the court convicts any person and the prosecutor has not prepaid any fees of court, the court may order the person convicted to pay the fees of court.
- (4) Any costs allowed under this section shall be specified in the conviction and may be recovered in the same manner as a fine.
- (5) If subsection (1) or subsection (3) applies and the defendant or person convicted is a Crown organisation convicted of an offence against the Building Act 1991, the Building Act 2004, the Health and Safety at Work Act 2015, or the Resource Management Act 1991, any costs and fees awarded must be paid from the funds of that organisation.

Compare: 1957 No 87 s 72(1), (4), (6); 1961 No 43 s 402(1), (4)

Section 4(3): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 4(5): inserted, on 18 October 2002, by section 20 of the Crown Organisations (Criminal Liability) Act 2002 (2002 No 37).

Section 4(5): amended, on 4 April 2016, by section 232 of the Health and Safety at Work Act 2015 (2015 No 70).

Section 4(5): amended, on 1 October 2009, by section 162(2) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 4(5): amended, on 31 March 2005, by section 414 of the Building Act 2004 (2004 No 72).

## **5 Costs of successful defendant**

- (1) Where any defendant is acquitted of an offence or where the charge is dismissed or withdrawn, whether upon the merits or otherwise, the court may, subject to any regulations made under this Act, order that he be paid such sum as it thinks just and reasonable towards the costs of his defence.
- (2) Without limiting or affecting the court's discretion under subsection (1), it is hereby declared that the court, in deciding whether to grant costs and the amount of any costs granted, shall have regard to all relevant circumstances and in particular (where appropriate) to—
  - (a) whether the prosecution acted in good faith in bringing and continuing the proceedings:
  - (b) whether at the commencement of the proceedings the prosecution had sufficient evidence to support the conviction of the defendant in the absence of contrary evidence:
  - (c) whether the prosecution took proper steps to investigate any matter coming into its hands which suggested that the defendant might not be guilty:
  - (d) whether generally the investigation into the offence was conducted in a reasonable and proper manner:
  - (e) whether the evidence as a whole would support a finding of guilt but the charge was dismissed on a technical point:
  - (f) whether the charge was dismissed because the defendant established (either by the evidence of witnesses called by him or by the cross-examination of witnesses for the prosecution or otherwise) that he was not guilty:
  - (g) whether the behaviour of the defendant in relation to the acts or omissions on which the charge was based and to the investigation and proceedings was such that a sum should be paid towards the costs of his defence.
- (3) There shall be no presumption for or against the granting of costs in any case.

- (4) No defendant shall be granted costs under this section by reason only of the fact that he has been acquitted or that any charge has been dismissed or withdrawn.
- (5) No defendant shall be refused costs under this section by reason only of the fact that the proceedings were properly brought and continued.

Compare: 1957 No 87 s 72(2); 1961 No 43 s 402(3)

Section 5(1): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 5(1): amended, on 29 June 2009, by section 18 of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

Section 5(2)(e): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 5(2)(f): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 5(4): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

## **6 Costs of convicted defendant**

Where any defendant is convicted but the court is of the opinion that the prosecution involved a difficult or important point of law and that in the special circumstances of the case it is proper that he should receive costs in respect of the arguing of that point of law, the court may, subject to any regulations made under this Act, order that he be paid such sum as it considers just and reasonable towards those costs.

## **7 Payment of defendant's costs**

- (1) Subject to subsection (2), where any order is made under section 5 or section 6 the amount ordered to be paid to the defendant shall—
  - (a) if the prosecution was conducted by or on behalf of the Crown, be paid by the chief executive of the Ministry of Justice out of money appropriated by Parliament for the purpose and may be recovered as a debt due by the Crown:
  - (b) if the prosecution was not conducted by or on behalf of the Crown, be paid by the person who commenced the proceedings and may be recovered from him as a debt, and any such order made by the District Court shall be enforceable as if it were a fine.
- (2) Notwithstanding the provisions of subsection (1) where a court is of the opinion that any person has acted negligently or in bad faith in bringing, continuing, or conducting a prosecution it may, in any order made under section 5, direct that the defendant's costs shall be paid by—
  - (a) the government department, officer of the Crown, local authority, or public body on whose behalf that person was acting; or
  - (b) if he was not so acting, by that person personally,—

and in any such case costs shall not be paid under subsection (1) but shall be paid by, and may be recovered as a debt from, the government department, officer of the Crown, local authority, public body, or person specified in the order.

- (3) If an order under section 5 or section 6 relating to the payment of costs is made in favour of a Crown organisation that was prosecuted for an offence against the Building Act 1991, the Building Act 2004, the Health and Safety at Work Act 2015, or the Resource Management Act 1991, those costs must be paid to that Crown organisation.

Section 7(1)(a): amended, on 1 October 2003, pursuant to section 14(2) of the State Sector Amendment Act 2003 (2003 No 41).

Section 7(1)(a): amended, on 1 July 1995, by section 10(1) of the Department of Justice (Restructuring) Act 1995 (1995 No 39).

Section 7(1)(b): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 7(1)(b): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 7(3): inserted, on 18 October 2002, by section 21 of the Crown Organisations (Criminal Liability) Act 2002 (2002 No 37).

Section 7(3): amended, on 4 April 2016, by section 232 of the Health and Safety at Work Act 2015 (2015 No 70).

Section 7(3): amended, on 1 October 2009, by section 162(3) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 7(3): amended, on 31 March 2005, by section 414 of the Building Act 2004 (2004 No 72).

## **8 Costs on appeals**

- (1) Where any appeal is made pursuant to any provision of Part 6 of the Criminal Procedure Act 2011 the court which determines the appeal may, subject to any regulations made under this Act, make such order as to costs as it thinks fit.
- (2) No defendant or convicted defendant shall be granted costs under this section by reason only of the fact that his appeal has been successful.
- (3) No defendant or convicted defendant shall be refused costs under this section by reason only of the fact that the appeal was reasonably brought and continued by another party to the proceedings.
- (4) No Judge, Justice, or Community Magistrate is liable to costs just because an appeal is filed against a determination by that judicial officer.
- (5) If the court which determines an appeal is of opinion that the appeal includes any frivolous or vexatious matter, it may, if it thinks fit, irrespective of the result of the appeal, order that the whole or any part of the costs of any party to the proceedings in disputing the frivolous or vexatious matter shall be paid by the party who raised the frivolous or vexatious matter.
- (6) If the court which determines an appeal is of opinion that the appeal involves a difficult or important point of law it may order that the costs of any party to the