

# PARLIAMENTARY DEBATES

HOUSE OF COMMONS  
OFFICIAL REPORT

Fifth Delegated Legislation Committee

DRAFT JUSTICES OF THE PEACE  
AND AUTHORISED COURT AND TRIBUNAL  
STAFF (COSTS) REGULATIONS 2020

*Monday 9 March 2020*

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**Friday 13 March 2020**

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**The Committee consisted of the following Members:**

*Chair:* JAMES GRAY

- |                                                            |                                                                                          |
|------------------------------------------------------------|------------------------------------------------------------------------------------------|
| † Anderson, Lee ( <i>Ashfield</i> ) (Con)                  | † Hollern, Kate ( <i>Blackburn</i> ) (Lab)                                               |
| † Baillie, Siobhan ( <i>Stroud</i> ) (Con)                 | † Howarth, Sir George ( <i>Knowsley</i> ) (Lab)                                          |
| † Baker, Mr Steve ( <i>Wycombe</i> ) (Con)                 | Kendall, Liz ( <i>Leicester West</i> ) (Lab)                                             |
| † Begum, Apsana ( <i>Poplar and Limehouse</i> ) (Lab)      | † Philp, Chris ( <i>Parliamentary Under-Secretary of State for the Home Department</i> ) |
| Betts, Mr Clive ( <i>Sheffield South East</i> ) (Lab)      | † Pursglove, Tom ( <i>Corby</i> ) (Con)                                                  |
| † Blunt, Crispin ( <i>Reigate</i> ) (Con)                  | † Qureshi, Yasmin ( <i>Bolton South East</i> ) (Lab)                                     |
| † Buchan, Felicity ( <i>Kensington</i> ) (Con)             |                                                                                          |
| † Charalambous, Bambos ( <i>Enfield, Southgate</i> ) (Lab) | Kevin Candy, <i>Committee Clerk</i>                                                      |
| † Clarke-Smith, Brendan ( <i>Bassetlaw</i> ) (Con)         |                                                                                          |
| † Davison, Dehenna ( <i>Bishop Auckland</i> ) (Con)        | † <b>attended the Committee</b>                                                          |
| † Everitt, Ben ( <i>Milton Keynes North</i> ) (Con)        |                                                                                          |

## Fifth Delegated Legislation Committee

Monday 9 March 2020

[JAMES GRAY *in the Chair*]

### Draft Justices of the Peace and Authorised Court and Tribunal Staff (Costs) Regulations 2020

6 pm

**The Parliamentary Under-Secretary of State for the Home Department (Chris Philp):** I beg to move,

That the Committee has considered the draft Justices of the Peace and Authorised Court and Tribunal Staff (Costs) Regulations 2020.

Mr Gray, it is, as always, a great pleasure to serve under your chairmanship. I intend to be extremely brief, because these are technical regulations, which form part of the Government's implementation of the Courts and Tribunals (Judiciary and Functions of Staff) Act 2018. I can confirm that, in accordance with the requirements of that Act, the Lord Chief Justice and the Senior President of Tribunals, Sir Ernest Ryder, have been consulted, and both have indicated their approval of the regulations.

The regulations are rather technical, but they have the important purpose of underpinning the protection the Act gives authorised court and tribunal officers. It gives them an indemnity against liability for actions they carry out in good faith in the performance of their judicial duties. The regulations specifically outline the procedure to be followed when an order for costs is sought against one of these authorised officers. It is worth mentioning that the Act provides for court officers authorised by the Lord Chief Justice to perform functions that were previously undertaken by a justices' clerk or an assistant justices' clerk.

The regulations specify the procedure to be followed when an order for costs is sought against a justices' clerk. They specify the circumstances in which those costs may be sought and that it is not the justices' clerk but the Lord Chancellor who will pay those costs—I do not, of course, mean the Lord Chancellor personally, but the Ministry of Justice, although we say it is the Lord Chancellor. The regulations also specify when such a cost order can be made and how the amount to be paid shall be determined. The answer to that latter question is that it is determined by a costs judge—formerly known as a taxing master.

Very simply, therefore, the regulations make provision for the Lord Chancellor to pick up the costs if any cost order is made against a justices' clerk—now called a court officer—in the discharge of their duties.

**Sir George Howarth (Knowsley) (Lab):** The Minister has made clear what this measure does, but it would be interesting to know what prompted its introduction.

**Chris Philp:** Very simply, this measure was first introduced in this form in the Courts Act 2003—of course, the practice predated that, but it was most recently legislated for in 2003, when it applied to justices' clerks and assistant

justices' clerks. However, in the 2018 Act, those positions were replaced by court-authorised officers, who perform essentially the same function but under a different name. When we say "court-authorised", it is ultimately the Lord Chief Justice who authorises those officers. This is really a technical change that continues a practice that has been going on for many years. It is really a change of nomenclature more than anything.

**Sir George Howarth:** The Minister is being admirably clear, but I do not think he has completely answered my question. What prompted me to ask was that I am not clear why these provisions were not incorporated in the 2018 Act.

**Chris Philp:** Often when we legislate in this House, some of the more technical matters are not put on the face of the Bill. The Government are given regulation-making power to activate or implement powers at a subsequent time—otherwise the Bill would be enormously long. This is one of the many examples where the technical implication of a measure is done via a statutory instrument—in this case, an affirmative statutory instrument—rather than on the face of the Bill. In fact, we were in this very room just a few days ago implementing a similar measure in relation to alcohol abstinence and monitoring requirements. This is just one of those measures that are activated by an SI, rather than being on the face of the Bill, to keep the Bill a little smaller.

I hope I have outlined the substance of the matter before us. If colleagues have questions, I would be delighted to answer them—

**Mr Steve Baker (Wycombe) (Con):** In that case, will the Minister allow me before he sits down?

**Chris Philp:** I cannot possibly resist my hon. Friend.

**Mr Baker:** I am grateful to my hon. Friend. These are obviously necessary procedural regulations, but I draw his attention to paragraph 7.2 of the explanatory memorandum, which refers to

"provisions in relation to costs in (the very rare) proceedings against justices' clerks and justices of the peace."

Could he give us some indication of how frequently these very rare proceedings have taken place, and what the cost to the taxpayer has been?

**Chris Philp:** Yes. Saying "very rare" may be a masterstroke of understatement. We have been unable to find any examples of legal action against justices' clerks as individuals since 2003. However, each year there have been, on average, about 100 court cases where a decision by justices' clerks has been challenged, although the justices' clerk himself has not been named in the action. In those 100 cases a year, as far as we can find, there has not been a single example where a costs order has been made against a justices' clerk that the Lord Chancellor has had to pick up the tab for. As far as we can tell, the answer is that, since 2003, the cost to the Exchequer has been nothing, but it is important to have the procedures in place, in case the need ever arises.

6.6 pm

**Yasmin Qureshi** (Bolton South East) (Lab): As always, it is a pleasure to serve under your chairmanship, Mr Gray. I thank the Minister for his explanation of the statutory instrument. He will be pleased to know that we are not seeking to divide the Committee on this matter.

I will just touch on a couple of matters that colleagues have raised. First, to answer the question by the hon. Member for Wycombe, I must say that not once in all the years I have practised law did we have a wasted costs order against a justices' clerk, so I agree with the Minister that it is rare, but it is necessary to have these provisions, just in case errors do occur.

Secondly, the Minister is correct that part of this statutory instrument is just about changing the terminology. Two years ago, the 2018 Act, which I led on for the Opposition, abolished justices' clerks and replaced them with what are called authorised court officers. That new breed of people was created by the Ministry of Justice to deal with some simple, straightforward, semi-judicial functions.

We objected to the qualification requirements for authorised court officers, but we lost on every single amendment we tabled regarding who these people should be and what their qualifications should be. However,

the legislation exists, and to answer the question from my right hon. Friend the Member for Knowsley about why we need this statutory instrument, it is because authorised court officers were created two years ago and now need to be covered.

The discussion on wasted costs orders was never had at that point, but it is now being addressed in this statutory instrument, and it makes sense to do that so that these people, and any other person operating in the court system, are given cover. We do not object, and we understand the necessity for this statutory instrument.

6.8 pm

**Chris Philp:** I am grateful for the hon. Lady's support in the matter before us. Very briefly, on the question of qualifications—I am sure that this assurance was given two years ago, but I will repeat it—before anyone can be a court officer, the Lord Chief Justice has to give authorisation and must be satisfied that the person is appropriately qualified for the task given to them. I am grateful for the support of the Opposition this evening.

*Question put and agreed to.*

6.8 pm

*Committee rose.*





