

STATUTORY INSTRUMENTS

2013 No. 262

The Civil Procedure (Amendment) Rules 2013

Amendments to the Civil Procedure Rules 1998

5. In Part 3—

- (a) in the heading to the Part, after “CASE” insert “AND COSTS”;
- (b) in the Table of Contents of the Part—
 - (i) before the entry for rule 3.1, insert the Section heading—

“SECTION I – CASE MANAGEMENT”

- (ii) after the entry for rule 3.10, insert the following entry—

“Power of the court to make civil restraint orders	Rule 3.11”
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; and

- (iii) after the entry for rule 3.11, insert the following Section headings and rules—

“SECTION II – COSTS MANAGEMENT	
Application of this Section and the purpose of costs management	Rule 3.12
Filing and exchanging budgets	Rule 3.13
Failure to file a budget	Rule 3.14
Costs management orders	Rule 3.15
Costs management conferences	Rule 3.16
Court to have regard to budgets and to take account of costs	Rule 3.17
Assessing costs on the standard basis where a costs management order has been made	Rule 3.18
SECTION III – COSTS CAPPING	
Costs capping orders - General	Rule 3.19
Application for a costs capping order	Rule 3.20
Application to vary a costs capping order	Rule 3.21”

- (c) before the heading for rule 3.1, insert the Section heading—
“SECTION I

Case Management”;

- (d) after rule 3.1(7), insert—
 - “(8) The court may contact the parties from time to time in order to monitor compliance with directions. The parties must respond promptly to any such enquiries from the court.”;
- (e) in—
 - (i) rule 3.7(1) and the words in the first set of parentheses that follow it; and
 - (ii) rule 3.7A(1)(b),for “an allocation”, in each place that those words occur, substitute “a directions”;
- (f) in rule 3.8, in the parentheses that follow paragraph (1), for “may” substitute “will”;
- (g) for rule 3.9(1), substitute—
 - “(1) On an application for relief from any sanction imposed for a failure to comply with any rule, practice direction or court order, the court will consider all the circumstances of the case, so as to enable it to deal justly with the application, including the need—
 - (a) for litigation to be conducted efficiently and at proportionate cost; and
 - (b) to enforce compliance with rules, practice directions and orders.”; and
- (h) after rule 3.11, insert—

“SECTION II

Costs Management

Application of this Section and the purpose of costs management

3.12.—(1) This Section and Practice Direction 3E apply to all multi-track cases commenced on or after 1st April 2013 in—

- (a) a county court; or
- (b) the Chancery Division or Queen’s Bench Division of the High Court (except the Admiralty and Commercial Courts),

unless the proceedings are the subject of fixed costs or scale costs or the court otherwise orders. This Section and Practice Direction 3E shall apply to any other proceedings (including applications) where the court so orders.

(2) The purpose of costs management is that the court should manage both the steps to be taken and the costs to be incurred by the parties to any proceedings so as to further the overriding objective.

Filing and exchanging budgets

3.13. Unless the court otherwise orders, all parties except litigants in person must file and exchange budgets as required by the rules or as the court otherwise directs. Each party must do so by the date specified in the notice served under rule 26.3(1) or, if no such date is specified, seven days before the first case management conference.

Failure to file a budget

3.14. Unless the court otherwise orders, any party which fails to file a budget despite being required to do so will be treated as having filed a budget comprising only the applicable court fees.

Costs management orders

3.15.—(1) In addition to exercising its other powers, the court may manage the costs to be incurred by any party in any proceedings.

(2) The court may at any time make a “costs management order”. By such order the court will—

- (a) record the extent to which the budgets are agreed between the parties;
- (b) in respect of budgets or parts of budgets which are not agreed, record the court’s approval after making appropriate revisions.

(3) If a costs management order has been made, the court will thereafter control the parties’ budgets in respect of recoverable costs.

Costs management conferences

3.16.—(1) Any hearing which is convened solely for the purpose of costs management (for example, to approve a revised budget) is referred to as a “costs management conference”.

(2) Where practicable, costs management conferences should be conducted by telephone or in writing.

Court to have regard to budgets and to take account of costs

3.17.—(1) When making any case management decision, the court will have regard to any available budgets of the parties and will take into account the costs involved in each procedural step.

(2) Paragraph (1) applies whether or not the court has made a costs management order.

Assessing costs on the standard basis where a costs management order has been made

3.18. In any case where a costs management order has been made, when assessing costs on the standard basis, the court will—

- (a) have regard to the receiving party’s last approved or agreed budget for each phase of the proceedings; and
- (b) not depart from such approved or agreed budget unless satisfied that there is good reason to do so.

(Attention is drawn to rule 44.3(2)(a) and rule 44.3(5), which concern proportionality of costs.)

SECTION III

Costs Capping

Costs capping orders – General

3.19.—(1) A costs capping order is an order limiting the amount of future costs (including disbursements) which a party may recover pursuant to an order for costs subsequently made.

- (2) In this rule, “future costs” means costs incurred in respect of work done after the date of the costs capping order but excluding the amount of any additional liability.
- (3) This rule does not apply to protective costs orders.
- (4) A costs capping order may be in respect of –
 - (a) the whole litigation; or
 - (b) any issues which are ordered to be tried separately.
- (5) The court may at any stage of proceedings make a costs capping order against all or any of the parties, if—
 - (a) it is in the interests of justice to do so;
 - (b) there is a substantial risk that without such an order costs will be disproportionately incurred; and
 - (c) it is not satisfied that the risk in subparagraph (b) can be adequately controlled by—
 - (i) case management directions or orders made under this Part; and
 - (ii) detailed assessment of costs.
- (6) In considering whether to exercise its discretion under this rule, the court will consider all the circumstances of the case, including—
 - (a) whether there is a substantial imbalance between the financial position of the parties;
 - (b) whether the costs of determining the amount of the cap are likely to be proportionate to the overall costs of the litigation;
 - (c) the stage which the proceedings have reached; and
 - (d) the costs which have been incurred to date and the future costs.
- (7) A costs capping order, once made, will limit the costs recoverable by the party subject to the order unless a party successfully applies to vary the order. No such variation will be made unless—
 - (a) there has been a material and substantial change of circumstances since the date when the order was made; or
 - (b) there is some other compelling reason why a variation should be made.

Application for a costs capping order

- 3.20.—**(1) An application for a costs capping order must be made on notice in accordance with Part 23.
- (2) The application notice must –
 - (a) set out –
 - (i) whether the costs capping order is in respect of the whole of the litigation or a particular issue which is ordered to be tried separately; and
 - (ii) why a costs capping order should be made; and
 - (b) be accompanied by a budget setting out –
 - (i) the costs (and disbursements) incurred by the applicant to date; and
 - (ii) the costs (and disbursements) which the applicant is likely to incur in the future conduct of the proceedings.

- (3) The court may give directions for the determination of the application and such directions may –
- (a) direct any party to the proceedings –
 - (i) to file a schedule of costs in the form set out in paragraph 3 of Practice Direction 3F – Costs capping;
 - (ii) to file written submissions on all or any part of the issues arising;
 - (b) fix the date and time estimate of the hearing of the application;
 - (c) indicate whether the judge hearing the application will sit with an assessor at the hearing of the application; and
 - (d) include any further directions as the court sees fit.

Application to vary a costs capping order

3.21. An application to vary a costs capping order must be made by application notice pursuant to Part 23.”.