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STATUTORY INSTRUMENTS

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**2016 No. 707 (L. 9)**

**SENIOR COURTS OF ENGLAND AND WALES  
COUNTY COURT, ENGLAND AND WALES**

**The Civil Procedure (Amendment No. 2) Rules 2016**

*Made* - - - - *6th July 2016*  
*Laid before Parliament* *7th July 2016*  
*Coming into force in accordance with rule 2*

The Civil Procedure Rule Committee, having power under section 2 of the Civil Procedure Act 1997(1) to make rules of court under section 1 of that Act, after consulting in accordance with section 2(6)(a) of that Act, and having power under section 88(5) of the Criminal Justice and Courts Act 2015(2), makes the following Rules.

**Citation, commencement and interpretation**

1. These Rules may be cited as the Civil Procedure (Amendment No. 2) Rules 2016.
2. These Rules come into force on the day on which, and immediately after, sections 88 to 90 of the Criminal Justice and Courts Act 2015 come into force.
3. In these Rules, a reference to a Part or rule by number alone means the Part or rule so numbered in the Civil Procedure Rules 1998(3).

**Amendments to Part 3**

4. In rule 3.19—
  - (a) for paragraphs (1) and (2), substitute—
    - “(1) For the purposes of this Section—
      - (a) ‘costs capping order’ means an order limiting the amount of future costs (including disbursements) which a party may recover pursuant to an order for costs subsequently made; and

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(1) 1997 c. 12. Section 2(1) was substituted by the Constitutional Reform Act 2005 (c.4), section 15 and Schedule 4, Part 1. Section 1(3) was substituted by section 82(1) of the Courts Act 2003 (c. 39) and further amended by the Constitutional Reform Act 2005, sections 15 and 146 and Schedule 4, Part 1, paragraphs 261 and 262 and Schedule 18, paragraph 2. Section 1(1) was amended by the Crime and Courts Act 2013 (c. 22), section 17(5) and Schedule 9, Part 3, paragraph 67(a).

(2) 2015 c. 2.

(3) S.I. 1998/3132, to which there are relevant amendments in S.I. 2013/262 and S.I. 2015/670.

(b) ‘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.

(2) This Section does not apply to judicial review costs capping orders under Part 4 of the Criminal Justice and Courts Act 2015 or to protective costs orders.

(Rules 46.16 to 46.19 make provision for judicial review costs capping orders under Part 4 of the Criminal Justice and Courts Act 2015.); and

(b) omit paragraph (3).

## **Amendments to Part 46**

5. In Part 46—

(a) in the Table of Contents of the Part, after the entry for rule 46.14 insert—

<b>“SECTION V – COSTS IN CLAIMS FOR JUDICIAL REVIEW</b>	
Claims for judicial review: costs against interveners	Rule 46.15
<b>SECTION VI – JUDICIAL REVIEW COSTS CAPPING ORDERS UNDER PART 4 OF THE CRIMINAL JUSTICE AND COURTS ACT 2015</b>	
Judicial review costs capping orders – general	Rule 46.16
Applications for judicial review costs capping orders	Rule 46.17
Court to consider making directions	Rule 46.18
Applications to vary judicial review costs capping orders	Rule 46.19”

(b) after rule 46.15, insert—

### *“SECTION VI*

#### *Judicial Review Costs Capping Orders under Part 4 of the Criminal Justice and Courts Act 2015*

#### **Judicial review costs capping orders – general**

**46.16.**—(1) For the purposes of this Section—

(a) “judicial review costs capping order” means a costs capping order made by the High Court or the Court of Appeal in accordance with sections 88, 89 and 90 of the 2015 Act; and

(b) “the 2015 Act” means the Criminal Justice and Courts Act 2015.

(2) This Section does not apply to a costs capping order under rule 3.19.

(Rule 3.19 makes provision for orders limiting the amount of future costs (including disbursements) which a party may recover pursuant to an order for costs subsequently made.)

#### **Applications for judicial review costs capping orders**

**46.17.**—(1) An application for a judicial review costs capping order must—

(a) be made on notice and, subject to paragraphs (2) and (3), in accordance with Part 23; and

(b) be supported by evidence setting out—

- (i) why a judicial review costs capping order should be made, having regard, in particular, to the matters at subsections (6) to (8) of section 88 of the 2015 Act and subsection (1) of section 89 of that Act;
  - (ii) a summary of the applicant's financial resources;
  - (iii) the costs (and disbursements) which the applicant considers the parties are likely to incur in the future conduct of the proceedings; and
  - (iv) if the applicant is a body corporate, whether it is able to demonstrate that it is likely to have financial resources available to meet liabilities arising in connection with the proceedings.
- (2) Subject to paragraph (3), the applicant must serve a copy of the application notice and copies of the supporting documents on every other party.
- (3) On application by the applicant, the court may dispense with the need for the applicant to serve the evidence setting out a summary of the applicant's financial resources on one or more of the parties.
- (4) The court may direct the applicant to provide additional information or evidence to support its application.

#### **Court to consider making directions**

**46.18.** If the applicant is a body corporate, and the evidence supporting its application in accordance with rule 46.17(1)(b)(iv) sets out that it is unable to demonstrate that it is likely to have financial resources available to meet liabilities arising in connection with the proceedings, the court must consider giving directions for the provision of information about the applicant's members and their ability to provide financial support for the purposes of the proceedings.

#### **Applications to vary judicial review costs capping orders**

- 46.19.—**(1) An application to vary a judicial review costs capping order must be made on notice and, subject to paragraphs (2) and (3), in accordance with Part 23.
- (2) Subject to paragraph (3), the applicant must serve a copy of the application notice and copies of any supporting documents on every other party.
- (3) If the application is supported by evidence setting out a summary of the applicant's financial resources, the court may, on application by the applicant, dispense with the need for the applicant to serve such evidence on one or more of the parties."

#### **Transitional provision**

**6.** The changes made by rules 4 and 5 of these Rules do not apply to an application for judicial review where the claim form was filed before the day on which sections 88 to 90 of the Criminal Justice and Courts Act 2015 come into force.

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

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*The Right Honourable Lord Dyson, MR  
Michael Briggs, LJ  
Mr Justice Birss  
Master Richard Roberts  
His Honour Judge Martin McKenna  
District Judge Christopher Lethem  
Andrew Underwood  
Brett Dixon*

I allow these Rules  
Signed by authority of the Lord Chancellor

6th July 2016

*Shailesh Vara*  
Parliamentary Under Secretary of State  
Ministry of Justice

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## EXPLANATORY NOTE

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

These Rules amend the Civil Procedure Rules 1998 (“CPR”) (SI 1998/3132), by making provision for the purpose of implementing sections 88 and 89 of the Criminal Justice and Courts Act 2015 (c. 2) (“the 2015 Act”).

Sections 88 to 90 of the 2015 Act create a new type of order called a “costs capping order” (this is separate from costs capping orders in Section 3 of Part 3 of the CPR) to replace protective costs orders in judicial reviews. These orders will limit or remove an applicant’s liability to pay another party’s costs in the High Court or the Court of Appeal, and may only be made if permission for judicial review has been granted.

Rule 5 of these Rules amends the CPR to make provision in respect of the coming into force of sections 88 and 89 of the 2015 Act by inserting new Section VI on judicial review costs capping orders in Part 46. In particular—

- new rule 46.17 makes provision for applications for judicial review costs capping orders and lists the evidence which must be provided in support of an application;
- new rule 46.18 provides that, where the applicant is a body corporate, the court must consider making directions for the provision of information about its members and their ability to provide support for the purposes of proceedings in the circumstances specified; and
- new rule 46.19 makes provision for applications to vary judicial review costs capping orders.

Rule 4 of these Rules makes amendments to rule 3.19 (costs capping orders – general) of the CPR which are consequential on the amendments to Part 46 of the CPR.

Rule 6 of these Rules contains a transitional provision so that the changes made by rules 4 and 5 do not apply to a judicial review application where the claim form was filed before the day on which these Rules come into force.