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STATUTORY INSTRUMENTS

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**2008 No. 3327**

**The Civil Procedure (Amendment No.3) Rules 2008**

**Amendments to the Civil Procedure Rules 1998**

**9. In Part 44—**

- (a) in the table of contents, after the entry “Application of costs rules” insert—

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“Costs capping orders – General	Rule 44.18
Application for costs capping order	Rule 44.19
Application to vary a costs capping order	Rule 44.20”;

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- (b) in rule 44.3(5)(a), after “the parties followed” insert “the Practice Direction (Pre-Action Conduct) or”; and
- (c) after rule 44.17, insert—

**“Costs capping orders – General**

**44.18.—**(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 sub-paragraph (b) can be adequately controlled by—
- (i) case management directions or orders made under Part 3; 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**

**44.19.**—(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 an estimate of costs 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 the Practice Direction supplementing this rule;
  - (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**

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