

**2000 No. 1317 (L. 11)**

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

**The Civil Procedure (Amendment No. 3) Rules 2000**

<i>Made</i> - - - -	<i>12th May 2000</i>
<i>Laid before Parliament</i>	<i>15th May 2000</i>
<i>Coming into force</i>	<i>3rd July 2000</i>

The Civil Procedure Rule Committee, having power under section 2 of the Civil Procedure Act 1997(a) to make rules of court under section 1 of that Act, after consulting in accordance with section 2(6)(a) of that Act, make the following Rules:—

**Citation, commencement and interpretation**

1. These Rules may be cited as the Civil Procedure (Amendment No. 3) Rules 2000 and shall come into force on 3rd July 2000.

2. In these Rules a reference to a Part, rule or Schedule by number alone means the Part, rule or Schedule so numbered in the Civil Procedure Rules 1998(b).

**Amendments to Civil Procedure Rules 1998**

3. In rule 6.20, after paragraph (3) insert—

“(3A) a claim is a Part 20 claim and the person to be served is a necessary or proper party to the claim against the Part 20 claimant;”.

4. In rule 7.2, after the second cross-reference, insert—

“(The costs practice direction sets out the information about a funding arrangement to be provided with the claim form where the claimant intends to seek to recover an additional liability)

“(Funding arrangement” and “additional liability” are defined in rule 43.2)”.

5. In rule 8.2, after the second cross-reference, insert—

“(The costs practice direction sets out the information about a funding arrangement to be provided with the claim form where the claimant intends to seek to recover an additional liability)

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(a) 1997 c. 12.

(b) S.I. 1998/3132 as amended by S.I. 1999/1008, S.I. 2000/221, and S.I. 2000/940.

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“(Funding arrangement” and “additional liability” are defined in rule 43.2)”.

6. After rule 8.3, insert—

“(The costs practice direction sets out the information about a funding arrangement to be provided with the acknowledgment of service where the defendant intends to seek to recover an additional liability)

“(Funding arrangement” and “additional liability” are defined in rule 43.2)”.

7. In rule 15.6, after the cross-reference, insert—

“(The costs practice direction sets out the information about a funding arrangement to be provided with the defence where the defendant intends to seek to recover an additional liability)

“(Funding arrangement” and “additional liability” are defined in rule 43.2)”.

8. In rule 16.2, after the cross-reference, insert—

“(The costs practice direction sets out the information about a funding arrangement to be provided with the statement of case where the defendant intends to seek to recover an additional liability)

“(Funding arrangement” and “additional liability” are defined in rule 43.2)”.

9. In rule 24.2, in paragraph (b), after “other” insert “compelling”.

10. In rule 38.8, in sub-paragraph (c) of paragraph (1), for “21” substitute “14”.

11. In rule 42.2, for paragraph (6), substitute—

“(6) Where the certificate of a LSC funded client or an assisted person is revoked or discharged—

(a) the solicitor who acted for that person will cease to be the solicitor acting in the case as soon as his retainer is determined—

(i) under regulation 4 of the Community Legal Service (Costs) Regulations 2000(a); or

(ii) under regulation 83 of the Civil Legal Aid (General) Regulations 1989(b); and

(b) if that person wishes to continue—

(i) where he appoints a solicitor to act on his behalf, paragraph (2) will apply as if he had previously conducted the claim in person; and

(ii) where he wants to act in person, he must give an address for service.

(Rule 6.5 deals with a party’s address for service)

“(LSC funded client” and “assisted person” are defined in rule 43.2)

(7) “Certificate” in paragraph (6) means—

(a) in the case of a LSC funded client, a certificate issued under the Funding Code (approved under section 9 of the Access to Justice Act 1999(c)), or

(b) in the case of an assisted person, a certificate within the meaning of the Civil Legal Aid (General) Regulations 1989.”.

12. In rule 43.2, in paragraph (1)—

(a) in sub-paragraph (a), after “rule 48.6”, insert “, any additional liability incurred under a funding arrangement”;

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(a) S.I. 2000/441.

(b) S.I. 1989/339 to which there are amendments not relevant to these Rules.

(c) 1999 c. 22.

- (b) at the end of sub-paragraph (h), omit “and”;
- (c) sub-paragraph (i) stands as sub-paragraph (j);
- (d) after sub-paragraph (h), insert—
  - “(i) “LSC funded client” means an individual who receives services funded by the Legal Services Commission as part of the Community Legal Service within the meaning of Part I of the Access to Justice Act 1999;”;
- (e) after sub-paragraph (j), insert—
  - “(k) “funding arrangement” means an arrangement where a person has—
    - (i) entered into a conditional fee agreement which provides for a success fee within the meaning of section 58(2) of the Courts and Legal Services Act 1990(a);
    - (ii) taken out an insurance policy to which section 29 of the Access to Justice Act 1999 (recovery of insurance premiums by way of costs) applies; or
    - (iii) made an agreement with a membership organisation to meet his legal costs;
  - (l) “percentage increase” means the percentage by which the amount of a legal representative’s fee can be increased in accordance with a conditional fee agreement which provides for a success fee;
  - (m) “insurance premium” means a sum of money paid or payable for insurance against the risk of incurring a costs liability in the proceedings, taken out after the event that is the subject matter of the claim;
  - (n) “membership organisation” means a body prescribed for the purposes of section 30 of the Access to Justice Act 1999 (recovery where body undertakes to meet costs liabilities); and
  - (o) “additional liability” means the percentage increase, the insurance premium, or the additional amount in respect of provision made by a membership organisation, as the case may be.

(The Conditional Fee Agreements Regulations 2000(b) and the Access to Justice (Membership Organisations) Regulations 2000(c) contain further provisions about conditional fee agreements and arrangements to meet costs liabilities respectively).’

**13.** In Part 44, in the list of contents—

- (a) after “Rule 44.3”, insert—
 

“Costs orders relating to funding arrangements	Rule 44.3A
Limits on recovery under funding arrangements	Rule 44.3B”;
- (b) after “Rule 44.12”, insert—
 

“Costs-only proceedings	Rule 44.12A”;
and	
- (c) after “Rule 44.14” insert—
 

“Providing information about funding arrangements	Rule 44.15
Adjournment where legal representative seeks to challenge	
disallowance of any amount of percentage increase	Rule 44.16
Application of costs rules	Rule 44.17”.

**14.** After rule 44.3, insert—

**“Costs orders relating to funding arrangements**

44.3A—(1) The court will not assess any additional liability until the conclusion of the proceedings, or the part of the proceedings, to which the funding arrangement relates.

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(a) 1990 c. 41. Section 58 was substituted by section 27 of the Access to Justice Act 1999 with effect from 1st April 2000 (the Access to Justice Act 1999 (Commencement No. 3, Transitional Provisions and Savings) Order 2000, S.I. 2000/774 and the Access to Justice Act 1999 (Transitional Provisions) Order 2000, S.I. 2000/900).

(b) S.I. 2000/692.

(c) S.I. 2000/693.

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(“Funding arrangement” and “additional liability” are defined in rule 43.2)

(2) At the conclusion of the proceedings, or the part of the proceedings, to which the funding arrangement relates the court may—

- (a) make a summary assessment of all the costs, including any additional liability;
- (b) make an order for detailed assessment of the additional liability but make a summary assessment of the other costs; or
- (c) make an order for detailed assessment of all the costs.

(Part 47 sets out the procedure for the detailed assessment of costs)

#### **Limits on recovery under funding arrangements**

44.3B—(1) A party may not recover as an additional liability—

- (a) any proportion of the percentage increase relating to the cost to the legal representative of the postponement of the payment of his fees and expenses;
- (b) any provision made by a membership organisation which exceeds the likely cost to that party of the premium of an insurance policy against the risk of incurring a liability to pay the costs of other parties to the proceedings;
- (c) any additional liability for any period in the proceedings during which he failed to provide information about a funding arrangement in accordance with a rule, practice direction or court order;
- (d) any percentage increase where a party has failed to comply with—
  - (i) a requirement in the costs practice direction; or
  - (ii) a court order,

to disclose in any assessment proceedings the reasons for setting the percentage increase at the level stated in the conditional fee agreement.

(2) This rule does not apply in an assessment under rule 48.9 (assessment of a solicitor’s bill to his client).

(Rule 3.9 sets out the circumstances the court will consider on an application for relief from a sanction for failure to comply with any rule, practice direction or court order”).

15. In rule 44.4, paragraph (5) is revoked.

16. In rule 44.8—

- (a) at the end of paragraph (a), omit “or”;
- (b) at the end of paragraph (b), insert “; or”;
- (c) after paragraph (b), insert—

“(c) in either case, such later date as the court may specify.”.

17. After rule 44.12, insert—

#### **“Costs-only proceedings**

44.12A—(1) This rule sets out a procedure which may be followed where—

- (a) the parties to a dispute have reached an agreement on all issues (including which party is to pay the costs) which is made or confirmed in writing; but
- (b) they have failed to agree the amount of those costs; and
- (c) no proceedings have been started.

(2) Either party to the agreement may start proceedings under this rule by issuing a claim form in accordance with Part 8.

(3) The claim form must contain or be accompanied by the agreement or confirmation.

(4) In proceedings to which this rule applies the court—

(a) may

(i) make an order for costs; or

(ii) dismiss the claim;

and

(b) must dismiss the claim if it is opposed.

(5) Rule 48.3 (amount of costs where costs are payable pursuant to a contract) does not apply to claims started under the procedure in this rule.

(Rule 7.2 provides that proceedings are started when the court issues a claim form at the request of the claimant)

(Rule 8.1(6) provides that a practice direction may modify the Part 8 procedure)”.

18. In rule 44.14, for sub-paragraph (a) of paragraph (1), substitute—

“(a) a party or his legal representative, in connection with a summary or detailed assessment, fails to comply with a rule, practice direction or court order; or”.

19. After rule 44.14, insert—

**“Providing information about funding arrangements**

44.15—(1) A party who seeks to recover an additional liability must provide information about the funding arrangement to the court and to other parties as required by a rule, practice direction or court order.

(2) Where the funding arrangement has changed, and the information a party has previously provided in accordance with paragraph (1) is no longer accurate, that party must file notice of the change and serve it on all other parties within 7 days.

(3) Where paragraph (2) applies, and a party has already filed—

(a) an allocation questionnaire; or

(b) a listing questionnaire,

he must file and serve a new estimate of costs with the notice.

(The costs practice direction sets out—

- the information to be provided when a party issues or responds to a claim form, files an allocation questionnaire, a listing questionnaire, and a claim for costs;

- the meaning of estimate of costs and the information required in it)

(Rule 44.3B sets out situations where a party will not recover a sum representing any additional liability)

**Adjournment where legal representative seeks to challenge disallowance of any amount of percentage increase**

44.16 Where—

(a) the court disallows any amount of a legal representative’s percentage increase in summary or detailed assessment proceedings; and

(b) the legal representative applies for an order that the disallowed amount should continue to be payable by his client,

the court may adjourn the hearing to allow the legally represented party to be notified of the order sought.

(Regulation 3(2)(b) of the Conditional Fee Agreements Regulations 2000 provides that a conditional fee agreement which provides for a success fee must state that any amount of a percentage increase disallowed on assessment ceases to be payable unless the court is satisfied that it should continue to be so payable)

**Application of costs rules**

44.17 This Part and Part 45 (fixed costs), Part 46 (fast track trial costs), Part 47 (procedure for detailed assessment of costs and default provisions) and Part 48 (special cases), do not apply to the assessment of costs in proceedings to the extent that—

- (a) section 11 of the Access to Justice Act 1999, and provisions made under that Act, or
- (b) regulations made under the Legal Aid Act 1988<sup>(a)</sup>,

make different provision.

(The costs practice direction sets out the procedure to be followed where a party was wholly or partially funded by the Legal Services Commission)

**20.** In rule 45.1—

- (a) omit paragraph (3); and
- (b) paragraph (4) stands as paragraph (3).

**21.** In rule 46.3, before paragraph (3), insert—

“(2A) The court may in addition award a sum representing an additional liability.  
(The requirements to provide information about a funding arrangement where a party wishes to recover any additional liability under a funding arrangement are set out in the costs practice direction)  
 (“Additional liability” is defined in rule 43.2)”.

**22.** In Part 47, in the list of contents,

- (a) for the words “VI DETAILED ASSESSMENT PROCEDURE FOR COSTS OF AN ASSISTED PERSON WHERE COSTS ARE PAYABLE OUT OF THE LEGAL AID FUND”, substitute “VI DETAILED ASSESSMENT PROCEDURE FOR COSTS OF A LSC FUNDED CLIENT OR AN ASSISTED PERSON WHERE COSTS ARE PAYABLE OUT OF THE COMMUNITY LEGAL SERVICE FUND”; and
- (b) after “Rule 47.17” insert—

“Detailed assessment procedure where costs are payable out of a fund other than the Community Legal Service Fund                      Rule 47.17A”.

**23.** In rule 47.8, paragraph (4)—

- (a) for “Legal Aid Fund”, substitute “Community Legal Service Fund”; and
- (b) for “Legal Aid Board”, substitute “Legal Services Commission”.

**24.** In rule 47.10, for paragraph (2) substitute—

“(2) An application for a certificate under paragraph (1) must be made to the court which would be the venue for detailed assessment proceedings under rule 47.4.”.

**25.** After rule 47.13, insert—

“(The costs practice direction sets out the meaning of reply)”.

**26.** In Part 47, for the section heading “SECTION VI—DETAILED ASSESSMENT PROCEDURE FOR COSTS OF AN ASSISTED PERSON WHERE COSTS ARE PAYABLE OUT OF THE LEGAL AID FUND”, substitute “SECTION VI—DETAILED ASSESSMENT PROCEDURE FOR COSTS OF A LSC FUNDED CLIENT OR AN ASSISTED PERSON WHERE COSTS ARE PAYABLE OUT OF THE COMMUNITY LEGAL SERVICE FUND”.

**27.** In rule 47.17 (including the title)—

- (a) wherever—
  - (i) “legal aid fund” appears, substitute “Community Legal Service Fund”; and
  - (ii) “the assisted person’s” appears, substitute “that person’s”;
- (b) in the title, after “for costs of”, insert “a LSC funded client or”;
- (c) in paragraph (1), after “costs of”, insert “a LSC funded client or”;
- (d) in paragraph (3), after “assessment on”, insert “the LSC funded client or”; and
- (e) in paragraph (4), after “certified that”, insert “the LSC funded client or”.

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<sup>(a)</sup> 1988 c. 34.

28. After rule 47.17, insert—

**“Detailed assessment procedure where costs are payable out of a fund other than the Community Legal Service Fund**

47.17A—(1) Where the court is to assess costs which are payable out of a fund other than the Community Legal Service Fund, the receiving party may commence detailed assessment proceedings by filing a request in the relevant practice form.

(2) A request under paragraph (1) must be filed within 3 months after the date when the right to detailed assessment arose.

(3) The court may direct that the party seeking assessment serve a copy of the request on any person who has a financial interest in the outcome of the assessment.

(4) The court will, on receipt of the request for assessment, provisionally assess the costs without the attendance of the receiving party, unless it considers that a hearing is necessary.

(5) After the court has provisionally assessed the bill, it will return the bill to the receiving party.

(6) The court will fix a date for an assessment hearing if the party informs the court, within 14 days after he receives the provisionally assessed bill, that he wants the court to hold such a hearing.”.

29. In rule 47.19, in the cross-reference, after “receiving party is”, insert “a LSC funded client or”.

30. In rule 47.20—

(a) the text, excluding the cross-reference, stands as paragraph (1), and

(b) after paragraph (1) insert—

“(2) For the purposes of this Section, a LSC funded client or an assisted person is not a party to detailed assessment proceedings.”.

31. In rule 47.22, in sub-paragraph (b) of paragraph (2), after “appeal”, insert “hearing”.

32. In Part 48, in the list of contents, after “48.6” insert—

“Costs where the court has made a Group Litigation Order 48.6A”.

33. In rule 48.2, in sub-paragraph (a)(i) of paragraph (2), for “Legal Aid Board” substitute “Legal Services Commission”.

34. After rule 48.6, insert—

**“Costs where the court has made a Group Litigation Order**

48.6A—(1) This rule applies where the court has made a Group Litigation Order (“GLO”).

(2) In this rule—

(a) “individual costs” means costs incurred in relation to an individual claim on the group register;

(b) “common costs” means—

(i) costs incurred in relation to the GLO issues;

(ii) individual costs incurred in a claim while it is proceeding as a test claim, and

(iii) costs incurred by the lead solicitor in administering the group litigation; and

(c) “group litigant” means a claimant or defendant, as the case may be, whose claim is entered on the group register.

(3) Unless the court orders otherwise, any order for common costs against group litigants imposes on each group litigant several liability<sup>(GL)</sup> for an equal proportion of those common costs.

(4) The general rule is that where a group litigant is the paying party, he will, in addition to any costs he is liable to pay to the receiving party, be liable for—

(a) the individual costs of his claim; and

(b) an equal proportion, together with all the other group litigants, of the common costs.

(5) Where the court makes an order about costs in relation to any application or hearing which involved—

(a) one or more GLO issues; and

(b) issues relevant only to individual claims,  
the court will direct the proportion of the costs that is to relate to common costs and the proportion that is to relate to individual costs.

(6) Where common costs have been incurred before a claim is entered on the group register, the court may order the group litigant to be liable for a proportion of those costs.

(7) Where a claim is removed from the group register, the court may make an order for costs in that claim which includes a proportion of the common costs incurred up to the date on which the claim is removed from the group register.  
(Part 19 sets out rules about group litigation)".

**35.** In rule 48.7, paragraph (3) is revoked.

**36.** In rule 48.8,

(a) in sub-paragraph (a) of paragraph (1)—

(i) for “legal aid fund”, substitute “Community Legal Service Fund”; and

(ii) after “Legal Aid Act 1988”, insert “or the Access to Justice Act 1999”;

(b) in sub-paragraph (b) of paragraph (1) after “1990”, insert “whenever it was made”.

**37.** In rule 48.9, paragraph (1) after “1990”, insert “as it was in force before 1st April 2000”.

**38.** In Schedule 2, CCR Order 49 rule 17—

(a) for the title, substitute “Sex Discrimination Act 1975(a), Race Relations Act 1976(b), Disability Discrimination Act 1995(c) and Disability Rights Commission Act 1999(d)”;

(b) for sub-paragraph (a) of paragraph (1), substitute—

“(a) “the Act of 1975”, “the Act of 1976”, “the Act of 1995” and “the Act of 1999” mean respectively the Sex Discrimination Act 1975, the Race Relations Act 1976, the Disability Discrimination Act 1995 and the Disability Rights Commission Act 1999;”;

(c) in paragraph (2)—

(i) for “1975 or” substitute “1975,”; and

(ii) after “1976” insert “or section 25 of the Act of 1995”;

(d) in paragraph (4)—

(i) for “1975 or” substitute “1975,”; and

(ii) after “1976” insert “, section 25 of the Act of 1995 or section 6 of the Act of 1999”;

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(a) 1975 c. 65.

(b) 1976 c. 74.

(c) 1995 c. 50.

(d) 1999 c. 17.



- (e) in paragraph (5)—
  - (i) for “1975 or” substitute “1975,”; and
  - (ii) after “1976” insert “or paragraph 10 of Schedule 3 to the Act of 1999”;
- (f) in paragraph (7)—
  - (i) for “1975 or” substitute “1975,”; and
  - (ii) after “1976” insert “or section 7 of the Act of 1999”; and
- (g) in paragraph (8)—
  - (i) for “1975 or” substitute “1975,”; and
  - (ii) after “1976” insert “or section 26 of the Act of 1995”.

### **Transitional provisions**

- 39.**—(1) This rule applies where a person has—
- (a) entered into a funding arrangement, and
  - (b) started proceedings in respect of a claim the subject of that funding arrangement, before the date on which these Rules come into force.
- (2) Any requirement imposed—
- (a) by any provision of the Civil Procedure Rules 1998 amended by these Rules, or
  - (b) by a practice direction
- in respect of that funding arrangement may be complied with within 28 days of the coming into force of these Rules, and that compliance shall be treated as compliance with the relevant rule or practice direction.
- (3) For the purpose of this rule, “funding arrangement” means an arrangement where a person has—
- (a) entered into a conditional fee agreement which provides for a success fee within the meaning of section 58(2) of the Courts and Legal Services Act 1990;
  - (b) taken out an insurance policy to which section 29 of the Access to Justice Act 1999 (recovery of insurance premiums by way of costs) applies; or
  - (c) made an agreement with a membership organisation prescribed for the purpose of section 30 of the Access to Justice Act 1999 (recovery where body undertakes to meet cost liabilities) to meet his legal costs.

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I allow these Rules.  
Dated 12th May 2000

*Irvine of Lairg, C.*

## EXPLANATORY NOTE

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

New funding arrangements for legal proceedings became possible when sections 27, 29 and 30 of the Access to Justice Act 1999 were brought into force on 1st April 2000. These Rules amend the Civil Procedure Rules 1998 so as to regulate proceedings where the new funding arrangements apply, and to provide for the assessment of costs in such proceedings.

Rule 17 sets out a new procedure which may be followed when only the amount of costs is in dispute. Rule 34 sets out the procedure for the assessment of costs where the court has made a Group Litigation Order under Section III of Part 19 of the Civil Procedure Rules.

There are provisions consequential on the replacement of the Legal Aid Fund by the Community Legal Service Fund. The opportunity has also been taken to make a number of further amendments to the rules currently in force.

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