

Civil Procedure Rule Committee

CPR 3.12 – note of clarification

1. The current version of CPR 3.12(1) applies Section 2 of CPR Part 3 and Practice Direction 3E to all multi-track cases commenced on or after 1 April 2013, except (a) cases in the Admiralty and Commercial Courts, (b) such cases in the Chancery Division as the Chancellor of the High Court may direct and (c) such cases in the Technology and Construction Court and the Mercantile Court as the President of the Queen’s Bench Division may direct, unless the proceedings are the subject of fixed costs or the court otherwise orders. Directions given under (b) and (c) have the effect of excluding cases in the relevant courts where the sums in dispute exceed £2 million. The rule provides further that Section 2 and Practice Direction 3E shall apply to any proceedings where the court so orders.
2. Rule 4 of the Civil Procedure (Amendment No.4) Rules 2014 amends CPR 3.12(1) with effect from 22 April 2014. The amended version applies Section 2 and Practice Direction 3E to all Part 7 multi-track cases, subject to exceptions that include, in summary, claims with a value of £10 million or more commenced on or after 22 April 2014.
3. The transitional provisions contained in Amendment No.4 provide by rule 25(1) that “Rule 3.12(1) shall continue to have effect as if it had not been amended by these Rules in respect of any proceedings *to which that rule applied* and which were commenced before the date on which these Rules come into force”. The words “to which that rule applied” are italicised because they are the basis of the concern explained below.
4. The plain intention of the transitional provisions is that the current version of CPR 3.12(1) should continue to govern proceedings commenced before 22 April 2014 whilst the amended version should govern proceedings commenced on or after 22 April 2014.
5. A concern has been raised with the CPRC, however, that the provisions may not have the intended effect. The argument advanced is that the transitional provisions will preserve the current regime only in respect of proceedings to which the current version of CPR 3.12(1) *applied*; but the current version of the rule *does not apply* to cases in the Admiralty and Commercial Courts, etc.; such cases will therefore be governed by the amended version of the rule; but if they were commenced before 22 April 2014 they will not benefit from the exceptions in that rule because the exceptions are expressed to apply only to proceedings commenced on or after 22 April 2014.
6. That concern is considered to be misplaced. The current version of CPR 3.12(1), on its proper construction, applies to *all* proceedings. It lays down a *prima facie* code that certain proceedings are to be subject to the costs budgeting regime whilst other proceedings are not, but it gives the court the power to bring within the regime a case that is *prima facie* excluded and to take out of the regime a case that is *prima facie* included. Thus, the fact that the rule provides that Section 2

and Practice Direction 3E do not apply to certain proceedings unless the court otherwise orders does not mean that the rule itself does not apply to those proceedings: it is because the rule applies to them that the court has the power to order that they should be subject to costs budgeting. The effect of the transitional provisions is therefore as intended, namely that the current version of CPR 3.12(1) will continue to govern all proceedings commenced before 22 April 2014.

7. The CPRC accepts, however, that on this analysis the words “to which that rule applied and” in rule 25(1) of Amendment No.4 are unnecessary and potentially misleading. It will therefore make provision for their deletion at the next legislative opportunity for the avoidance of doubt.

4th April 2014