STATUTORY RULES OF NORTHERN IRELAND

2017 No. 27

EUROPEAN COMMUNITIES

COURTS

The Costs Protection (Aarhus Convention) (Amendment) Regulations (Northern Ireland) 2017

Made - - - -	*23rd January 2017*
Coming into operation	*14th February 2017*

The Department of Justice, in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(**1**) (being a Department designated for the purposes of that section in relation to the environment(**2**)), makes the following Regulations.

Citation and commencement

1. These Regulations may be cited as the Costs Protection (Aarhus Convention) (Amendment) Regulations (Northern Ireland) 2017 and shall come into operation on 14th February 2017.

Application and transitional provision

2.—(1) These Regulations apply to proceedings commenced on or after 14th February 2017.

(2) The Costs Protection (Aarhus Convention) Regulations (Northern Ireland) 2013(**3**) as they applied immediately before these Regulations came into operation continue to apply to proceedings commenced prior to 14th February 2017.

Amendment of the Costs Protection (Aarhus Convention) Regulations (Northern Ireland) 2013

3.—(1) The Costs Protection (Aarhus Convention) Regulations (Northern Ireland) 2013 are amended as follows.

(2) In regulation 2—

(a) in the definition of "an Aarhus Convention case"—

(**1**) 1972 c.68, section 2 was amended by section 27(1)(a) and (b) of the Legislative and Regulatory Reform Act 2006 (c.51) and by section 3(3) of and Part I of the Schedule to the European Union (Amendment) Act 2008 (c.7).
(**2**) S.I. 2008/30.
(**3**) S.R. 2013 No.81.

(i) after "application", insert "by a member of the public (as defined by Article 2 of the Aarhus Convention)";

(ii) in paragraph (b), for "High Court" substitute "court"; and

(iii) at the end, insert "and "applicant" shall be construed accordingly;"; and

(b) in the definition of "court", after "High Court" insert "unless otherwise specified".

(3) For regulation 3(2) to (9), substitute—

"(2) Subject to paragraphs (3) and (7), in an Aarhus Convention case, the court shall order that any costs recoverable from an applicant shall not exceed £5,000 where the applicant is an individual and £10,000 where the applicant is a legal person or an individual applying in the name of a legal entity or unincorporated association.

(3) The court may decrease the amount specified in paragraph (2) if it is satisfied that not doing so would make the costs of the proceedings prohibitively expensive for the applicant.

(4) Subject to paragraph (5) and regulation 4(3), in an Aarhus Convention case, the court shall order that the costs recoverable from a respondent shall not exceed £35,000.

(5) The court may increase the amount specified in paragraph (4) if it is satisfied that not doing so would make the costs of the proceedings prohibitively expensive for the applicant.

(6) The court may exercise its powers under paragraphs (3) and (5) on an application brought by an applicant.

(7) Where the applicant is or was represented by a legal representative and this representation is or was provided free of charge, in whole or in part, even if the applicant is or was also represented by a legal representative not acting free of charge, the court shall order the respondent to make a payment in respect of such part of the recoverable costs as it considers just to the Law Society of Northern Ireland, the Bar of Northern Ireland or both, as the court considers appropriate, to support the provision of free legal services.

(8) The amount payable under paragraph (7) shall not exceed the amount which an applicant would have recovered under paragraph (4) or an order made under paragraph (5) had the representation of the applicant not been provided free of charge.

(9) Where the court makes an order under paragraph (7) the applicant shall send a copy of the order to the Law Society of Northern Ireland and, or the Bar of Northern Ireland as is appropriate within 7 days of receipt of the order.

(10) The amounts specified in paragraphs (2) and (4) do not include value added tax.".

(4) After regulation 3, insert the following new regulation—

"**Costs in appeals**

3A.—(1) Upon any appeal of a decision in an Aarhus Convention case, the court shall, subject to paragraph (2), order that the costs in respect of the appeal recoverable from an applicant or a respondent shall not exceed the amounts specified in regulation 3(2) and (4).

(2) The court shall have the same powers as those of the original court under regulation 3(3), (5) and (7).

(3) Nothing in this regulation shall affect the power of the court to make an order as to the costs of the proceedings in the original court but those costs shall not exceed the amounts specified in regulation 3(2), (4) or in any order of that court made under regulation 3(3) or (5).

(4) In this regulation—

(a) "applicant" means the applicant in the original court;

(b) "respondent" means the respondent in the original court; and