STATUTORY RULES OF NORTHERN IRELAND

2013 No. 81

EUROPEAN COMMUNITIES

COURTS

The Costs Protection (Aarhus Convention) Regulations (Northern Ireland) 2013

Made - - - -	*25th March 2013*
Coming into operation	*15th April 2013*

The Department of Justice, being a Northern Ireland department designated for the purposes of section 2(2) of the European Communities Act 1972 [F1] in relation to the environment [F2], makes the following Regulations in exercise of the powers under section 2(2) of the European Communities Act 1972.

F1 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 the Schedule to the European Union (Amendment) Act 2008 (c.7).
F2 The European Communities (Designation) Order 2008 (S.I. 2008/301).

Citation and commencement

1.—(1) These Regulations may be cited as the Costs Protection (Aarhus Convention) Regulations (Northern Ireland) 2013 and shall come into operation on 15th April 2013.

(2) These Regulations only apply to proceedings commenced on or after 15th April 2013.

Interpretation

2.—(1) In these Regulations—

"the Aarhus Convention" means the United Nations Economic Commission for Europe Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environment Matters done at Aarhus on 25 June 1998;

"an Aarhus Convention case" means an application **[**[F3]by a member of the public (as defined by Article 2 of the Aarhus Convention)**]**

(a) for judicial review under section 18 of the Judicature (Northern Ireland) Act 1978 [F4] of a decision, act or omission all or part of which is subject to the provisions of the Aarhus Convention; or

(b) for review under the provisions of any statutory provision to the **[**F5court**]** of a decision, act or omission all or part of which is subject to the provisions of the Aarhus Convention; **[**F6and "applicant" shall be construed accordingly;**]**

"court" means the High Court **[**F7unless otherwise specified**]** ;

"free of charge" means otherwise than for or in expectation of fee, gain or reward;

"indemnity basis" has the meaning assigned to it by rules of court;

"legal representative" means a person exercising a right of audience or conducting litigation in an Aarhus Convention case.

(2) The Interpretation Act (Northern Ireland) 1954 F8 shall apply to these Regulations as it applies to an Act of the Northern Ireland Assembly.

F3 Words in reg. 2 inserted (14.2.2017) by The Costs Protection (Aarhus Convention) (Amendment) Regulations (Northern Ireland) 2017 (S.R. 2017/27), regs. 1, **3(2)(a)(i)**
F4 1978 c.23. Section 18 was amended by Article 170(2) of and the Schedule to the Magistrates' Courts (Northern Ireland) Order 1981 (S.I. 1981/1675) (NI 26).
F5 Word in reg. 2 substituted (14.2.2017) by The Costs Protection (Aarhus Convention) (Amendment) Regulations (Northern Ireland) 2017 (S.R. 2017/27), regs. 1, **3(2)(a)(ii)**
F6 Words in reg. 2 inserted (14.2.2017) by The Costs Protection (Aarhus Convention) (Amendment) Regulations (Northern Ireland) 2017 (S.R. 2017/27), regs. 1, **3(2)(a)(iii)**
F7 Words in reg. 2 inserted (14.2.2017) by The Costs Protection (Aarhus Convention) (Amendment) Regulations (Northern Ireland) 2017 (S.R. 2017/27), regs. 1, **3(2)(b)**
F8 1954 c.33 (NI).

Costs in Aarhus Convention cases

3. (1) These Regulations shall not apply where the applicant—

(a) has not stated in the application that it is an Aarhus Convention case; or

(b) has stated in the application that the applicant does not wish these Regulations to apply.

[F9(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.**]**

F9 Reg. 3(2)-(10) substituted for reg. 3(2)-(9) (14.2.2017) by The Costs Protection (Aarhus Convention) (Amendment) Regulations (Northern Ireland) 2017 (S.R. 2017/27), regs. 1, **3(3)**

[F10Costs 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

(c) "the court" means the Court of Appeal.**]**

F10 Reg. 3A inserted (14.2.2017) by The Costs Protection (Aarhus Convention) (Amendment) Regulations (Northern Ireland) 2017 (S.R. 2017/27), regs. 1, **3(4)**

Challenging whether the case is an Aarhus Convention case

4.—(1) If the applicant has stated in the application that it is an Aarhus Convention case, regulation 3 applies unless—

(a) the respondent has:

(i) stated that the case is not an Aarhus Convention case; and

(ii) set out the respondent's grounds for arguing that the case is not an Aarhus Convention case; and

(b) the court is satisfied that the case is not an Aarhus Convention case.

(2) Where the respondent argues that the case is not an Aarhus Convention case, the court shall determine that issue at the earliest opportunity.

(3) In any proceedings, including any appeal, in relation to the question whether the case is an Aarhus Convention case—

(a) if the court is satisfied that the case is not an Aarhus Convention case, it shall normally make no order for costs in relation to those proceedings;

(b) if the court is satisfied that the case is an Aarhus Convention case, it shall normally order the respondent to pay the applicant's costs of those proceedings on the indemnity basis,