

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(a) in relation to the environment(b), makes the following Regulations in exercise of the powers under section 2(2) of the European Communities Act 1972.

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

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

“court” means the High Court;

“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;

(a) 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).

(b) The European Communities (Designation) Order 2008 (S.I. 2008/301).

(c) 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).

“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(a) shall apply to these Regulations as it applies to an Act of the Northern Ireland Assembly.

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.

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

(4) 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 to the Northern Ireland Lawyers Pro Bono Unit (registered charity number XR35688) in respect of such part of the recoverable costs as the court considers just.

(5) The amount payable under paragraph (4) shall not exceed the amount which an applicant would have recovered under paragraph (2) had the representation of the applicant not been provided free of charge.

(6) Where the court makes an order under paragraph (4) the applicant shall send a copy of the order to the Northern Ireland Pro Bono Unit within 7 days of receipt of the order.

(7) Upon any appeal of a decision in an Aarhus Convention case, the court hearing the appeal may make an order that the recoverable costs of the appeal will be limited to the extent which the court specifies having regard to—

- (a) the means of both parties;
- (b) all the circumstances of the case; and
- (c) the need to facilitate access to justice.

(8) The court hearing the appeal shall have the same powers as those of the High Court under paragraph (4).

(9) The amounts specified in paragraphs (2) and (3) do not include value added tax.

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.

(a) 1954 c.33 (NI).

(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, and those costs shall be payable notwithstanding that this would increase the costs payable by the respondent beyond those specified in regulation 3.

(4) An appeal of a decision on whether the case is an Aarhus Convention case shall lie to the Court of Appeal and the notice of appeal shall be served within 21 days from the date the decision was filed.

Injunctions

5. If in an Aarhus Convention case the court is satisfied that an injunction is necessary to prevent significant environmental damage and to preserve the factual basis of the proceedings, the court shall, in considering both whether to require an undertaking by the applicant to pay any damages which the respondent or any other person may sustain as a result and the terms of any such undertaking—

- (a) have particular regard to the need for the terms of the order overall not to be such as would make continuing with the case prohibitively expensive for the applicant; and
- (b) make such directions as are necessary to ensure that the case is heard at the earliest opportunity.

Sealed with the Official Seal of the Department of Justice on 25th March 2013



David Ford
Minister of Justice

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision to provide costs protection for judicial reviews and statutory reviews to the High Court of a decision, act or omission all or part of which is subject to the provisions of the United Nations Economic Commission for Europe Convention on Access to Information, Public Participation in decision-making and Access to Justice in Environmental Matters done at Aarhus on 25 June 1998.

© Crown copyright 2013

Printed in the UK by The Stationery Office Limited under the authority and superintendence of Carol Tullo, Controller of Her Majesty's Stationery Office being the Government Printer for Northern Ireland and the Officer appointed to print Acts of the Northern Ireland Assembly.

£4.00

N5777 04/2013 435777T 19585

ISBN 978-0-337-99079-3



9 780337 990793