

**EXPLANATORY MEMORANDUM TO  
THE COSTS PROTECTION (AARHUS CONVENTION) REGULATIONS  
(NORTHERN IRELAND) 2013**

**SR 2013 No. 81**

**1. Introduction**

- 1.1. This Explanatory Memorandum has been prepared by the Department of Justice to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.
- 1.2. The Statutory Rule is made under section 2(2) of the European Communities Act 1972 and is subject to the negative resolution procedure.

**2. Purpose**

- 2.1. These Regulations provide for costs protection in judicial reviews and statutory reviews to the High Court of decisions subject to the UN Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (“the Aarhus Convention”) which has largely been given effect in EU law by Directive 2003/35/EC (“the Public Participation Directive”). The Aarhus Convention and the Public Participation Directive require that the public has access to a court procedure to challenge decisions in environmental matters which is ‘not prohibitively expensive’.
- 2.2. The Regulations provide for protected costs orders in these environmental challenges limiting the costs recoverable from an applicant to £5,000 if the applicant is an individual and to £10,000 in all other cases. Costs recoverable from a respondent are limited to £35,000. In addition, the Regulations also empower the court to make costs orders for payment to a charity promoting pro bono legal representation when the applicant is represented pro bono. They also clarify when a cross-undertaking in damages is required when an injunction is sought in these challenges.

**3. Background**

- 3.1. The United Kingdom and the European Union are parties to the Aarhus Convention which is largely given effect in EU law by the Public Participation Directive. The European Commission has referred the United Kingdom to the Court of Justice of the EU for its alleged failure to comply with the obligation to provide a court procedure which is ‘not prohibitively expensive’. The Regulations are designed to provide certainty and affordability.

**4. Consultation**

- 4.1. The Department issued a public consultation on outline proposals to provide costs protection for litigants in environmental judicial review applications under the Aarhus Convention in December 2011. A summary of the consultation responses is available at [www.dojni.gov.uk](http://www.dojni.gov.uk).

## **5. Equality Impact**

- 5.1. The Regulations have been screened in compliance with section 75 of the Northern Ireland Act 1998. No equality issues were identified and an equality impact assessment is not considered necessary.

## **6. Regulatory Impact**

- 6.1. There is no adverse impact on business, charities, social economy enterprises or voluntary bodies and no Regulatory Impact Assessment has been carried out. (An Initial Integrated Impact Assessment was conducted on the outline proposals which were the subject of the public consultation).

## **7. Financial Implications**

- 7.1. There may be some financial implications for those public bodies which make decisions subject to the Aarhus Convention. These are difficult to quantify but are expected to be small.

## **8. Section 24 of the Northern Ireland Act 1998**

- 8.1. The proposed Regulations are considered to be compliant with section 24 of the Northern Ireland Act 1998, including EU Law and Convention Rights as defined in the Human Rights Act 1998.

## **9. EU Implications**

- 9.1. Under the Public Participation Directive (which amended existing Directives in relation to pollution control and requirements for environmental impact assessments) Member States are required to ensure that a system for challenging decisions in environmental matters is open to members of the public and is among other things not “prohibitively expensive”.

## **10. Parity or Replicatory Measure**

- 10.1. Equivalent legislation has been made in England and Wales and Scotland.

## **11. Additional Information**

- 11.1. Not applicable.