
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Costs Protection (Aarhus Convention) Regulations (Northern Ireland) 2013 (the 2013 Regulations) which 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. The Public Participation Directive ([Directive 2003/35/EC](#) on public participation in respect of the drawing up of certain plans and programmes relating to the environment) implemented the Convention requirement that the review procedures for certain environmental decisions must not be prohibitively expensive.

Regulation 2 sets out the proceedings to which the amended Regulations apply and makes transitional provision. Regulation 3 makes substantive amendments to the 2013 Regulations. The amendments provide that the limit (or cap) on the amount of costs that can be recovered from the applicant in a Convention case can be lowered to avoid prohibitive expense to the applicant. They allow the limit on the amount of costs that can be recovered from the respondent in these cases to be increased to prevent prohibitive expense to the applicant. The amendments introduce a limit on the costs that can be recovered in the relevant appeal cases and allow it to be varied on the same basis as applies in the first instance proceedings. They set out factors that the court must consider when deciding whether or not to vary the caps or require an undertaking in an application for an interim injunction. They also clarify the types of applicant entitled to costs protection or to avail of the safeguards afforded by the 2013 Regulations for interim injunctions.

A copy of the Regulatory Impact Assessment which has been conducted in respect of these Regulations forms part of the Department of Justice's summary of responses to the relevant public consultation and is available on the Department of Justice website (<https://www.justice-ni.gov.uk/publications/costs-protection-environmental-cases-summary-responses>).