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STATUTORY INSTRUMENTS

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**2017 No. 95**

**The Civil Procedure (Amendment) Rules 2017**

**Amendment of Part 45**

**8.—(1)** In rule 45.29B, after “45.29J,” insert “, and for as long as the case is not allocated to the multi-track.”.

(2) In rule 45.29C, in Table 6B—

- (a) in the fourth column of the first row in Part A, omit “, but not more than £25,000”; and
- (b) in the fourth column of the first row in Part B, after “prior” insert “to”.

(3) In rule 45.29D, after “45.29J,” insert “, and for as long as the case is not allocated to the multi-track.”.

(4) In rule 45.29E—

(a) in Table 6C—

- (i) in the fourth column of the first row in Part A, omit “, but not more than £25,000”; and
- (ii) in the fourth column of the first row in Part B, after “prior” insert “to”; and

(b) in Table 6D—

- (i) in the fourth column of the first row in Part A, omit “, but not more than £25,000”; and
- (ii) in the fourth column of the first row in Part B, after “prior” insert “to”.

(5) For Section VII of Part 45, substitute—

*“SECTION VII*

*Costs limits in Aarhus Convention claims*

**Scope and interpretation**

**45.41.—(1)** This section provides for the costs which are to be recoverable between the parties in Aarhus Convention claims.

(2) In this Section—

- (a) “Aarhus Convention claim” means a claim brought by one or more members of the public—
  - (i) by judicial review or review under statute which challenges the legality of any decision, act or omission of a body exercising public functions, and which is within the scope of Article 9(1) or 9(2) of the UNECE Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters done at Aarhus, Denmark on 25 June 1998 (“the Aarhus Convention”); or

(ii) by judicial review which challenges the legality of any such decision, act or omission and which is within the scope of Article 9(3) of the Aarhus Convention;

(b) references to a member or members of the public are to be construed in accordance with the Aarhus Convention.

(3) This Section does not apply to appeals other than appeals brought under section 289(1) of the Town and Country Planning Act 1990 or section 65(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, which are for the purposes of this Section to be treated as reviews under statute.

(Rule 52.19A makes provision in relation to costs of an appeal.)

The Aarhus Convention is available on the UNECE website at <https://www.unece.org/env/pp/welcome.html>.)

### **Opting out, and other cases where rules 45.43 to 45.45 do not apply to a claimant**

**45.42.**—(1) Subject to paragraph (2), rules 45.43 to 45.45 apply where a claimant who is a member of the public has—

- (a) stated in the claim form that the claim is an Aarhus Convention claim; and
- (b) filed and served with the claim form a schedule of the claimant’s financial resources which takes into account any financial support which any person has provided or is likely to provide to the claimant and which is verified by a statement of truth.

(2) Subject to paragraph (3), rules 45.43 to 45.45 do not apply where the claimant has stated in the claim form that although the claim is an Aarhus Convention claim, the claimant does not wish those rules to apply.

(3) If there is more than one claimant, rules 45.43 to 45.45 do not apply in relation to the costs payable by or to any claimant who has not acted as set out in paragraph (1), or who has acted as set out in paragraph (2), or who is not a member of the public.

### **Limit on costs recoverable from a party in an Aarhus Convention claim**

**45.43.**—(1) Subject to rules 45.42 and 45.45, a claimant or defendant in an Aarhus Convention claim may not be ordered to pay costs exceeding the amounts in paragraph (2) or (3) or as varied in accordance with rule 45.44.

(2) For a claimant the amount is—

- (a) £5,000 where the claimant is claiming only as an individual and not as, or on behalf of, a business or other legal person;
- (b) £10,000 in all other cases.

(3) For a defendant the amount is £35,000.

(4) In an Aarhus Convention claim with multiple claimants or multiple defendants, the amounts in paragraphs (2) and (3) (subject to any direction of the court under rule 45.44) apply in relation to each such claimant or defendant individually and may not be exceeded, irrespective of the number of receiving parties.

### **Varying the limit on costs recoverable from a party in an Aarhus Convention claim**

**45.44.**—(1) The court may vary the amounts in rule 45.43 or may remove altogether the limits on the maximum costs liability of any party in an Aarhus Convention claim.

(2) The court may vary such an amount or remove such a limit only if satisfied that—

- (a) to do so would not make the costs of the proceedings prohibitively expensive for the claimant; and
  - (b) in the case of a variation which would reduce a claimant’s maximum costs liability or increase that of a defendant, without the variation the costs of the proceedings would be prohibitively expensive for the claimant.
- (3) Proceedings are to be considered prohibitively expensive for the purpose of this rule if their likely costs (including any court fees which are payable by the claimant) either—
- (a) exceed the financial resources of the claimant; or
  - (b) are objectively unreasonable having regard to—
    - (i) the situation of the parties;
    - (ii) whether the claimant has a reasonable prospect of success;
    - (iii) the importance of what is at stake for the claimant;
    - (iv) the importance of what is at stake for the environment;
    - (v) the complexity of the relevant law and procedure; and
    - (vi) whether the claim is frivolous.
- (4) When the court considers the financial resources of the claimant for the purposes of this rule, it must have regard to any financial support which any person has provided or is likely to provide to the claimant.

(Rule 39.2(3)(c) makes provision for a hearing (or any part of it) to be in private if it involves confidential information (including information relating to personal financial matters) and publicity would damage that confidentiality.)

**Challenging whether the claim is an Aarhus Convention claim**

**45.45.**—(1) Where a claimant has complied with rule 45.42(1), and subject to rule 45.42(2) and (3), rule 45.43 will apply unless—

- (a) the defendant has in the acknowledgment of service—
  - (i) denied that the claim is an Aarhus Convention claim; and
  - (ii) set out the defendant’s grounds for such denial; and
- (b) the court has determined that the claim is not an Aarhus Convention claim.

(2) Where the defendant denies that the claim is an Aarhus Convention claim, the court must determine that issue at the earliest opportunity.

- (3) In any proceedings to determine whether the claim is an Aarhus Convention claim—
- (a) if the court holds that the claim is not an Aarhus Convention claim, it will normally make no order for costs in relation to those proceedings;
  - (b) if the court holds that the claim is an Aarhus Convention claim, it will normally order the defendant to pay the claimant’s costs of those proceedings to be assessed on the standard basis, and that order may be enforced even if this would increase the costs payable by the defendant beyond the amount stated in rule 45.43(3) or any variation of that amount.”