
STATUTORY INSTRUMENTS

2023 No. 572

The Civil Procedure (Amendment No. 2) Rules 2023

Amendment of Part 46

16.—(1) In the table of contents to this Part, after the entry for rule 46.23 insert—

“SECTION IX COSTS LIMITS IN AARHUS CONVENTION CLAIMS

Scope and interpretation rule 46.24

Opting out, and other cases where rules 46.26 to 46.28 do not apply to a claimant rule 46.25

Limit on costs recoverable from a party in an Aarhus Convention claim rule 46.26

Varying the limit on costs recoverable from a party in an Aarhus Convention claim rule 46.27

Challenging whether the claim is an Aarhus Convention claim rule 46.28”.

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- (2) In rule 46.4(2)(b)(ii), for “Section II or Section III”, substitute “Section IV”.
- (3) Omit rule 46.11.
- (4) Omit rule 46.12.
- (5) In rule 46.13, omit paragraph (2).
- (6) After rule 46.23, insert—

“SECTION IX

Costs Limits in Aarhus Convention Claims

Scope and interpretation

46.24.—(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 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), 9(2) or 9(3) 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”);
- (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(1) or section 65(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990(2), 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 46.26 to 46.28 do not apply to a claimant

46.25.—(1) Subject to paragraph (2), rules 46.26 to 46.28 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 is verified by a statement of truth and provides details of—
 - (i) the claimant’s significant assets, liabilities, income and expenditure; and
 - (ii) in relation to any financial support which any person has provided or is likely to provide to the claimant, the aggregate amount which has been provided and which is likely to be provided.

(2) Subject to paragraph (3), rules 46.26 to 46.28 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 46.26 to 46.28 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

46.26.—(1) Subject to rules 46.25 and 46.28, 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 46.27.

(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 46.27) 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

46.27.—(1) The court may vary the amounts in rule 46.26 or may remove altogether the limits on the maximum costs liability of any party in an Aarhus Convention claim.

(1) 1990 c. 8.
(2) 1990 c. 9.

- (2) The court may vary such an amount or remove such a limit only on an application made in accordance with paragraphs (5) to (7) (“an application to vary”) and 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.
- (5) Subject to paragraph (6), an application to vary must—
- (a) if made by the claimant, be made in the claim form and provide the claimant’s reasons why, if the variation were not made, the costs of the proceedings would be prohibitively expensive for the claimant;
 - (b) if made by the defendant, be made in the acknowledgment of service and provide the defendant’s reasons why, if the variation were made, the costs of the proceedings would not be prohibitively expensive for the claimant; and
 - (c) be determined by the court at the earliest opportunity.
- (6) An application to vary may be made at a later stage if there has been a significant change in circumstances (including evidence that the schedule of the claimant’s financial resources contained false or misleading information) which means that the proceedings would now—
- (a) be prohibitively expensive for the claimant if the variation were not made; or
 - (b) not be prohibitively expensive for the claimant if the variation were made.
- (7) An application under paragraph (6) must—
- (a) if made by the claimant—
 - (i) be accompanied by a revised schedule of the claimant’s financial resources or confirmation that the claimant’s financial resources have not changed; and
 - (ii) provide reasons why the proceedings would now be prohibitively expensive for the claimant if the variation were not made; and
 - (b) if made by the defendant, provide reasons why the proceedings would now not be prohibitively expensive for the claimant if the variation were made.

(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

46.28.—(1) Where a claimant has complied with rule 46.25(1), and subject to rule 46.25(2) and (3), rule 46.26 applies 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 shall, except for good reason, make no order for costs in relation to those proceedings;
 - (b) if the court holds that the claim is an Aarhus Convention claim, it shall, except for good reason, 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 46.26(3) or any variation of that amount.”.