

The New Aarhus Costs Rules: “Miscellaneous”

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- 1. Transitional provision**
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1. Transitional provision

Transitional provision

- In short: the amendments apply in relation to “*Aarhus Convention claims*” commenced on or after 28 February 2017
- See r. 13(3) of the Civil Procedure (Amendment) Rules 2017 (“**the 2017 Rules**”), which addresses rr. 8(5) and 9
 - R. 8(5) substitutes Section VII of Part 45
 - R. 9 introduces r. 52.19A (appeals)

2. Multiple parties

Multiple parties



r. 45.43.— Limit on costs recoverable from a party in an Aarhus Convention claim

(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.**

Multiple parties

Following the approach taken by the High Court in:

- ***R (Botley Parish Action Group) v Eastleigh Borough Council*** [2014] EWHC 4388 (Admin)
- ***R (Harris) v Broads Authority*** [2016] EWHC 799 (Admin)
- ***R (Birchall Garden Suburb) v Hertfordshire CC*** [2016] EWHC 2794 (Admin)

Multiple parties

Note also:

r. 45.42.— Opting out, and other cases where rules 45.43 to 45.45 do not apply to a claimant

(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...

Multiple parties



...

(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.

3. Costs when Aarhus Convention protection is challenged

Costs when Aarhus Convention protection is challenged



- r. 45.45.— Challenging whether the claim is an Aarhus Convention claim
- (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.

Costs when Aarhus Convention protection is challenged



- (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.

4. Appeals

Appeals



r. 52.19A.— Orders to limit the recoverable costs of an appeal – appeals in Aarhus Convention claims

(1) In this rule, “*Aarhus Convention claim*” and “*prohibitively expensive*” have the same meanings as in Section VII of Part 45, and “*claimant*” means a claimant to whom rules 45.43 to 45.45 apply.

(2) In an appeal against a decision made in an Aarhus Convention claim to which rules 45.43 to 45.45 apply, the court **must**—

(a) consider whether the costs of the proceedings will be prohibitively expensive for a party who was a claimant; and

(b) if they will be, make an order limiting the recoverable costs to the extent necessary to prevent this.

(3) When the court considers the financial resources of a party 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 that party.



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