

Civil Procedure Rules referred to in the UK's 2nd VI/8k progress report, by paragraph

Paragraph 8

1) *CPR 45.44(5)*

- (5) Subject to paragraph (6), an application to vary must—
 - 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.

2) *CPR 45.44(6)*

- (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.

Paragraph 13

1) *CPR 52.19A*

- (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—
 - 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.

Paragraphs 14 and 28

1) *CPR 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—

- £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.

2) CPR 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 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.)

2) CPR 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.

Paragraph 15

1) CPR 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 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 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.

Paragraph 17

1) CPR 39.2

- (1) The general rule is that a hearing is to be in public. A hearing may not be held in private, irrespective of the parties' consent, unless and to the extent that the court decides that it must be held in private, applying the provisions of paragraph (3).
- (2) In deciding whether to hold a hearing in private, the court must consider any duty to protect or have regard to a right to freedom of expression which may be affected.
- (2A) The court shall take reasonable steps to ensure that all hearings are of an open and public character, save when a hearing is held in private.
- (3) A hearing, or any part of it, must be held in private if, and only to the extent that, the court is satisfied of one or more of the matters set out in subparagraphs (a) to (g) and that it is necessary to sit in private to secure the proper administration of justice –
 - (a) publicity would defeat the object of the hearing;
 - (b) it involves matters relating to national security;
 - (c) it involves confidential information (including information relating to personal financial matters) and publicity would damage that confidentiality;
 - (d) a private hearing is necessary to protect the interests of any child or protected party;
 - (e) it is a hearing of an application made without notice and it would be unjust to any respondent for there to be a public hearing;
 - (f) it involves uncontested matters arising in the administration of trusts or in the administration of a deceased person's estate; or
 - (g) the court for any other reason considers this to be necessary to secure the proper administration of justice.
- (4) The court must order that the identity of any party or witness shall not be disclosed if, and only if, it considers non-disclosure necessary to secure the proper administration of justice and in order to protect the interests of that party or witness.
- (5) Unless and to the extent that the court otherwise directs, where the court acts under paragraph (3) or (4), a copy of the court's order shall be published on the website of the Judiciary of England and Wales (which may be found at www.judiciary.uk). Any person who is not a party to the proceedings may

apply to attend the hearing and make submissions, or apply to set aside or vary the order.

Paragraphs 20 and 21

1) CPR 44.2

- (1) The court has discretion as to –
 - (a) whether costs are payable by one party to another;
 - (b) the amount of those costs; and
 - (c) when they are to be paid.
- (2) If the court decides to make an order about costs –
 - (a) the general rule is that the unsuccessful party will be ordered to pay the costs of the successful party; but
 - (b) the court may make a different order.
- (3) The general rule does not apply to the following proceedings –
 - (a) proceedings in the Court of Appeal on an application or appeal made in connection with proceedings in the Family Division; or
 - (b) proceedings in the Court of Appeal from a judgment, direction, decision or order given or made in probate proceedings or family proceedings.
- (4) In deciding what order (if any) to make about costs, the court will have regard to all the circumstances, including –
 - (a) the conduct of all the parties;
 - (b) whether a party has succeeded on part of its case, even if that party has not been wholly successful; and
 - (c) any admissible offer to settle made by a party which is drawn to the court's attention, and which is not an offer to which costs consequences under Part 36 apply.
- (5) The conduct of the parties includes –
 - (a) conduct before, as well as during, the proceedings and in particular the extent to which the parties followed the Practice Direction – Pre-Action Conduct or any relevant pre-action protocol;
 - (b) whether it was reasonable for a party to raise, pursue or contest a particular allegation or issue;
 - (c) the manner in which a party has pursued or defended its case or a particular allegation or issue; and
 - (d) whether a claimant who has succeeded in the claim, in whole or in part, exaggerated its claim.
- (6) The orders which the court may make under this rule include an order that a party must pay –
 - (a) a proportion of another party's costs;
 - (b) a stated amount in respect of another party's costs;
 - (c) costs from or until a certain date only;
 - (d) costs incurred before proceedings have begun;
 - (e) costs relating to particular steps taken in the proceedings;
 - (f) costs relating only to a distinct part of the proceedings; and
 - (g) interest on costs from or until a certain date, including a date before judgment.

- (7) Before the court considers making an order under paragraph (6)(f), it will consider whether it is practicable to make an order under paragraph (6)(a) or (c) instead.
- (8) Where the court orders a party to pay costs subject to detailed assessment, it will order that party to pay a reasonable sum on account of costs, unless there is good reason not to do so.

Paragraph 25

1) CPR PD 25A 5.3 (1)

- If in an Aarhus Convention claim to which rules 45.43 to 45.45 apply the court is satisfied that an injunction is necessary to prevent significant environmental damage and to preserve the factual basis of the proceedings, the court will, in considering whether to require an undertaking by the applicant to pay any damages which the respondent or any other person may sustain as a result, and the terms of any such undertaking–
 - (a) have particular regard to the need for the terms of the order overall not to be such as would make continuing with the claim prohibitively expensive for the applicant; and
 - (b) make such directions as are necessary to ensure that the case is heard promptly.
- (2) In this paragraph
 - (a) ‘Aarhus Convention claim’ has the same meaning as in rule 45.41(2)(a); and
 - (b) ‘member of the public’ is to be construed in accordance with rule 45.41(2)(b).
- (3) Proceedings are ‘prohibitively expensive’ if their likely costs, including any court fees payable by the applicant and the amount of any cross-undertaking in damages, and having regard to any limit under Part 45 on a party’s maximum costs liability, either –
 - (a) exceed the financial resources of the applicant; or
 - (b) are objectively unreasonable having regard to the factors set out in rule 45.44(3)(b).
- (4) When a court considers the financial resources of the applicant, it will have regard to any financial support which any person has provided or is likely to provide to the applicant.

Paragraph 30

1) CPR 46.15

- (1) In this rule the terms “intervener” and “relevant party” have the same meaning as in section 87 of the Criminal Justice and Courts Act 2015 (“the 2015 Act”).
- (2) A relevant party may apply to the court for an order for an intervener to pay costs in accordance with section 87 of the 2015 Act.

(Section 87 of the 2015 Act applies to judicial review proceedings in the High Court and Court of Appeal.)

(Rule 54.17 makes provision for any person to be able to apply for permission to file evidence or make representations at the hearing of a judicial review.)

Paragraph 59

1) CPR 54.5(1)

- (1) The claim form must be filed –
 - (a) promptly; and
 - (b) in any event not later than 3 months after the grounds to make the claim first arose.

Every effort has been made to include all references to the relevant sections of the Civil Procedure Rules. If any references are considered not complete or further information would be considered helpful this can be found at:

<https://www.justice.gov.uk/courts/procedure-rules/civil/rules>