**Table summarising conclusions of “Costs Protection in Environmental Claims The government response to the consultation on proposals to revise the costs capping scheme for eligible environmental challenges” (November 2016)**

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| **Proposed amendment** | **Reason for proposal** | **Government conclusion** |
| (1) extending scope of Aarhus costs rules to cover to statutory reviews (not just judicial reviews) albeit only if fall within Art. 9(2) (challenges to decisions, acts, or omissions concerning the permitting of activities covered by Art. 6 of the Convention - effectively EIA cases) and not Art. 9(3)) cases (challenges to other acts or omissions “by private persons *and public authorities which contravene provisions of its national law relating to the environment*”)  | Seeking to deal with the issue arising from ***Venn v Secretary of State for Communities and Local Government***[2015] 1 W.L.R. 2328 | Will extend to Article 9(2) as proposed.Will not extend protection to:(a) statutory reviews within Art 9(3)(b) private nuisance cases not *“to cases covering legislation affecting the environment more generally”.* (c) appeals to Court of Appeal and Supreme Court. |
| (2) limiting costs protection to “members of the public”, e.g. excluding public authorities | Seeking to deal with the issue arising from ***R. (HS2 Action Alliance Ltd) v Secretary of State for Transport*** [2015] P.T.S.R. 1025 | Will take forward this proposal. |
| (3) limiting costs protection to where permission granted |  | Will not take forward this proposal. |
| (4) instead of fixed caps, having default caps which parties could apply to vary and Court could vary of own motion |  | *“the government proposes to introduce a power to vary the costs caps, both upward and downward.”*So fixed-costs-cap model replaced with hybrid model.Government accept it is more complex.*“the draft rules include provision that it should be exceptional for the court to vary the caps to give a claimant more costs protection: the court would have to be satisfied that, without the variation, the costs of the case would be prohibitively expensive for the claimant.”* |
| (5) Amend the CPR to require Courts to apply the ***Edwards*** principles in deciding whether to vary a costs cap. |  | Will take this forward “*with an adjustment to make express reference to the need for courts which are considering varying a costs cap to take account of court fees payable by the claimant.”* |
| (6) whether default caps should be higher than current fixed caps e.g. £10k for individuals and £20k for others |  | Setting new default caps at same level as current fixed caps. May review again later. |
| (7) claimants required to disclose financial resources, suggests claimants be required to serve a schedule of their financial resources |  | Will be taken forward “*with clarification about the type of financial information which will be required.”* |
| (8) making clear that where multiple claimants or defendants – a separate costs cap applied to each individual party. | Seeking to deal with the issue arising from ***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). | To be taken forward |
| (9) Removing rule on indemnity costs where defendant challenges if claim is an Aarhus claim and loses |  | Will take forward*“The government is of the view that this has created an uneven playing field, and now considers it necessary to equalise the position. It proposes replacing the existing provision with one which would mean unsuccessful defendants could still expect to be ordered to pay costs, but normally on the lower, ‘standard’ basis.”* |
| (10) Introduce specific costs rules for applications to vary costs caps |  | Not to be taken forward |
| (11) Cross-undertakings in damages – amend PD so that Court applies ***Edwards*** principles in deciding of such an undertaking would result in prohibitive expense |  | Will be taken forward *“subject to clarifying what is meant by the term ‘member of the public”* |