



FFBRA NEWSLETTER NUMBER THIRTY EIGHT

NEWS AND INFORMATION FOR OUR MEMBERS

The last newsletter of the year and a time to reflect on 2015.

This is a successful year for FFBRA as Cuadrilla has not returned to Balcombe. Awareness is growing in the UK about the dangers in onshore oil and gas drilling and more and more anti-fracking community groups are springing up throughout UK. Oil prices remain at an all-time low.

The government continues to make changes to the UK legislation and regulatory systems in order to position our country as friendly to shale gas investment. These changes include:

- Allowing oil and gas companies to drill under peoples' homes and land without their permission
- Restricting the legal use of the term "fracking" to only apply when 2.2 million gallons of water are used per well (helpfully allowing oil companies to avoid complying with promises to share their revenues with the local area which were promised when they used fracking.)
- Allowing oil and gas companies to drill under areas of outstanding beauty, national parks and sites of special scientific interest)
- Interfering with local democratically made planning decisions.

The government is currently running a consultation on ways to make it harder for communities to apply for judicial reviews in cases that impact the environment.

If you would like to submit your response, go to

<https://consult.justice.gov.uk/digital-communications/costs-protection-in-environmental-claims>

Although this might seem a chore, it does really help.

FFBRA has responded to the consultation as follows:

1. *Do you agree with the revised definition proposed for an 'Aarhus Convention claim'? If not how do you think it should be defined? Please give your reasons.*

Answer No – the current definition should continue

Under the Aarhus convention the public has the right to judicial or administrative recourse procedures, at reasonable cost, in case some body violates or fails to adhere to environmental law and the convention's principles.

2. Do you agree with the proposed changes to the wording of the rules and Practice Directions regarding eligibility for costs protection? If not, please give your reasons.

Answer No – it is important that groups of individuals can be eligible for cost protection. In respect of environmental cases it is important that groups of residents (such as residents associations and parish councils) should be able to afford to apply for judicial reviews.

3. Should claimants only be granted costs protection under the Environmental Costs Protection Regime once permission to apply for judicial review or statutory review (where relevant) has been given? If not, then please give your reasons

Answer No – it is important that cost protection should be extended from the moment that the claim is lodged. To change this so that cost protection is only given once permission has been given would mean that claimants would be frightened to start the process in case they are liable for large costs in the case of their claim for a judicial review not being accepted.

4. Do you agree with the proposal to introduce a 'hybrid' approach to govern the level of the costs caps? If not, please give your reasons

Answer No - this would be confusing and is unnecessary. The current default costs for claimants for individuals of £5,000 and £10,000 for others should be maintained.

5. Do you agree that the criteria set out at proposed rule 45.44(4) at Annex A properly reflect the principles from the Edwards cases? If not, please give your reasons.

Answer No – the changes suggested would not comply with the requirement that costs should be clear, and reasonable.

6. Do you agree that it is appropriate for the courts to apply the Edwards principles (proposed rule 45.44 at Annex A) to decide whether to vary costs caps? If not, please give your reasons

Answer No – the changes suggested would not comply with the requirement that costs should be clear, and reasonable.

7. Should all claimants be required to file at court and serve on the defendant a schedule of their financial resources at the commencement of proceedings? If not, please give your reasons.

Answer No – this requirement, if implemented, would be impracticable. Also it is difficult to understand the reason for this.

8. Do you agree with the proposed approach to the application of costs caps in claims involving multiple claimants or defendants? If not please give your reasons.

Answer No – if the separate costs caps were applied to multiple claimants this could make costs very high

9. At what level should the default costs caps be set? Please give your reasons.

Answer Caps should be fixed for claimants at the current levels (£5,000 for individuals and £10,000 for others)

10. What are your views on the introduction of a range of default costs caps in the future?

Answer No – this would make costs uncertain

11. Do you agree that where a defendant unsuccessfully challenges whether a claim is an Aarhus Convention claim, costs of that challenge should normally be ordered on the standard basis? If not please give your reasons

Answer No - Currently, if a defendant unsuccessfully challenges the status of an Aarhus claim, the court will ask the defendant to pay extra heavy costs. This deters such challenges and reduces litigation.

12. Do you think the Environmental Costs Protection Regime should make specific provision for how the courts should normally deal with the costs of applications to vary costs caps? If so, what approach should the rules take?

Answer No - cost caps should not be varied. It is important that costs caps are consistent and known upfront.

13. Do you have any comments on the proposed revisions to Practice Direction 25A?

Answer No

14. Are there other types of challenge to which the Environmental Costs Protection Regime should be extended and if so what are they and why?

Answer All environmental cases should be included

15. From your experience are there any groups of individuals with protected characteristics who maybe particularly affected, either positively or negatively, by the proposals to revise the Environmental Costs Protection Regime?

Answer Residents associations, and parish councils, and individuals who are not rich.

The government is trying to use the argument that there are too many environmentally based requests for judicial review as justification for these changes. But they give no evidence to support this argument. And in fact it is only a small percentage of judicial review cases that are of this type. This consultation appears to be yet more government cheerleading for the onshore oil and gas industry.

“These proposals are entirely disproportionate in light of the Government’s failure to adduce any evidence, or even a credible narrative, to suggest environmental cases frustrate economic recovery or clog up the courts. In fact, evidence obtained from the MOJ in 2015 confirms that while environmental JRs represent less than 1% of the total number lodged of cases lodged annually, they demonstrate high success rates (approximately 24%) when compared with cases as a whole (2%). Such cases therefore play an essential role in protecting the environment, checking the abuse of power and upholding the rule of law.” (Wildlife and Countryside Link)

Also it is already harder because of the incredible short time frame that is allowed for lodging a claim for a judicial review. Six weeks is a very short term to find and instruct a legal team and to raise the funds to embark on a judicial review so the idea that changes need to be made to make it harder for communities to bring claims for a judicial review because it is too easy is ludicrous.

Now for some seasons' cheer!

Uruguay has shifted to getting 95% of its electricity from renewables in less than 10 years. This is a really important story (only reported so far in the Guardian and Independent plus the scientific press). <http://www.sciencealert.com/uruguay-has-shifted-to-getting-95-of-its-electricity-from-clean-energy-sources-in-less-than-10-years>

Uruguay now gets 94.5 percent of its electricity from renewable energy sources, such as wind and solar - without government subsidies or raising the price for consumers. Electricity prices are now cheaper than they've ever been for the 3.4 million people living in Uruguay. Their director of energy, Ramón Méndez, said in Paris at the climate summit that their success was a result of: "clear decision-making, a supportive regulatory environment and a strong partnership between the public and private sector".

The UK will struggle economically while there is a disconnection between government energy policy, regulation, industry and what people want (or are prepared to put up with).

The hope for Balcombe and the Weald is that oil prices stay low long enough for there to be a change in government behaviour. Currently the government allows UK energy policy to be determined by the current incumbent energy producers. Let's hope that 2017 will be the year when this starts to change and that we can look forward to a brighter future and a long term sustainable energy policy.

What's On

Tea and a Chat, Balcombe Club, Thursday afternoons 2.30 to 4.00

Climate Change Cycle Ride to Paris: The Time to Cycle Organisation is cycling as a group from London to Paris for the Climate Talks. They plan to travel on **Sunday 6th December** on their first leg from London to Brighton. They will be stopping at Lower Stumble for a break and photos between **12.00 noon and 1.30 pm** and are hoping to meet Balcombe residents.

FFBRA Annual Party, Café Elvira, Borde Hill 29th January 2016

Put this date in your diary. More details later.

