

IEMA response to the Department for Environment, Food & Rural Affairs consultation - amending the Civil Procedure Rules to establish environmental review

About IEMA

IEMA is the professional body for those people working in environmental management, impact assessment and corporate sustainability roles. IEMA's growing membership of over 17,000 professionals work at the interface between organisations, the environment and society in a range of critical roles (for example from Sustainability Directors through to Climate Change leads and in consultancy and advisory roles). We also work with a range of corporate partners (over 200). Our professional members are active across all sectors of the economy, for example from construction and manufacturing through to logistics, facilities, and across financial, retail, food, consultancy and the wider service and public sector.

Responding to this consultation

Question 1: Would you like your response to be confidential?

No

About you

Question 2. What is your name?

Ben Goodwin

Question 3. Are you responding (a) as an individual, or (b) on behalf of an organisation?

Organisation

Question 4. Are you a practising lawyer?

No

About your organisation

Question 5. Please provide your organisation's name.

Institute for Environmental Management and Assessment

Question 6. What type of organisation are you responding on behalf of?

Professional body

Interested parties

Question 7: What provision should be made in the rules regarding the role of interested parties in environmental review?

There should be adequate provision in the rules for interested parties to have a role in environmental review. However, this provision should not enable environmental review to be brought forward on an issue in circumstances whereby existing judicial review proceedings are already underway or a court decision has already been made.

Interested parties (and interveners – see Q8) need to be given sufficient notice to be able to play an appropriate role in proceedings. This is important as the Office for Environmental Protection has the right in the Bill s38(2) not to make public statements prior to environmental review being instigated. This should be addressed in the Civil Procedure Rules, and potentially through the Office for Environmental Protection’s enforcement policy.

Interveners

Question 8: What provision should be made in the rules regarding the role of interveners in environmental review?

There should be appropriate provision and mechanisms in place for interveners to have a role in environmental review. However, this will need to be structured in such a way so as to prevent the circumvention of the role of interveners in the process; given that there is provision in the Environment Bill for the Office for Environmental Protection not to issue public statements of action that it is taking.

Question 9: If you consider there should be a role for interveners, should the application procedures differ in any way from those for judicial review?

We believe that application procedures should follow that of judicial review.

Costs

Question 10: What provision should be made in the CPR regarding the awarding of costs in environmental review?

There is scope for the same provision on costs that is applied in judicial review to be replicated in environmental review, so that winning parties are awarded costs. This could help to ensure that the Office for Environmental Protection more effectively considers the merits of pursuing environmental review. It is also likely to act as an incentive for public authorities to get their initial decisions correct.

Question 11: Should provision be made in the CPR regarding the costs of interested parties and interveners in environmental review?

Again, the existing general rule of interested parties not receiving costs should apply, but with the discretion of the court to award costs, for example, if the interested party deals with a key issue not covered by the Office for Environmental Protection, which the interested party has unique knowledge of. This approach reflects that environmental review is primarily for the Office for Environmental Protection.

Whether cases may be decided without a hearing

Question 12: Should provision be made in the CPR to allow claims to be decided without a hearing, replicating CPR 54.18?

There should be provision made in the CPR for claims to be decided without a hearing in cases whereby the parties agree that there is no need for oral evidence sessions. However, this is not withstanding the likelihood that if the environmental review stage is reached then the chances are that one or more of the parties will want to appear before the court.

General approach and other matters of procedure

Question 13: Are there any further areas where you consider the procedure for environmental review should differ from that for judicial review?

In its response to this consultation, the Office for Environmental Protection,¹ set out how environmental review could differ from judicial review in the context of pre-action protocols and case management. We would support the further exploration of the issues raised in their response.

Question 14: Do you have any further comments on the approach that should be taken to amending the CPR to establish environmental review?

It will be important that in amending the CPR this doesn't unintentionally undermine the UK's implementation of the Aarhus Convention, given that the UN's Aarhus Convention Compliance Committee has already highlighted shortcomings in the UK's approach.

Currently there appears to be no time limit in the Environment Bill for environmental review to be brought. This will cause concern for developers and government bodies either promoting infrastructure projects or related policy as once a standard judicial review time limit has passed, then proposals will continue to be at risk from environmental review.

Whilst the Environment Bill provides that the quashing remedy should only be used if there won't be substantial prejudice, this will nevertheless cause uncertainty for an indefinite period for many 'good' major projects and policies.

¹ Office for Environmental Protection (2021) [Interim OEP consultation response on amending the Civil Procedure Rules to establish environmental review](#)

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