



**RESPONSE BY UKELA (UK ENVIRONMENTAL LAW ASSOCIATION) TO
THE CONSULTATION ON AMENDING THE CIVIL PROCEDURE RULES TO
ESTABLISH ENVIRONMENTAL REVIEW (Defra, July 2021)**

INTRODUCTION

1. UKELA (UK Environmental Law Association) comprises over 1,500 academics, barristers, solicitors and consultants, in both the public and private sectors, involved in the practice, study and formulation of environmental law. Its primary purpose is to make better law for the environment.
2. UKELA prepares advice to government with the help of its specialist working parties, covering a range of environmental law topics. This response to the consultation on amending the Civil Procedure Rules to establish environmental review has been prepared with the assistance of convenors from UKELA's specialist working parties and its Governance and Devolution Group, which aims to inform the debate on the development of post-Brexit environmental law and policy. This response does not necessarily, and is not intended to, represent the views and opinions of all UKELA members but has been drawn together from a range of its members.

Preliminary

3. As a preliminary point, UKELA welcomes the proposals to incorporate the concept of environmental review to help the Office for Environmental Protection (OEP) deliver its aims and objectives. As previously stated in earlier consultation responses to government, UKELA regards the incorporation of good environmental governance as being critical to the development of UK

environmental policy and law., enabling the UK to make genuine progress towards being a world environment leader: see e.g. the report by Professor Sir Partha Dasgupta: *The Economics of Biodiversity: The Dasgupta Review* (HM Treasury, February 2021) which notes in its Headline Messages that:

“Governments almost everywhere exacerbate the problem [i.e. the failure to properly value nature] by paying people more to exploit Nature than to protect it, and to prioritise unsustainable economic activities.”

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4. UKELA considers that unless meaningful and effective environmental governance is adopted and applied across government in the UK, including England, the essential goals of helping to secure enhanced biodiversity, achieving net zero carbon targets, and meeting critical environmental targets (including those within the 25 Year Environment Plan) will be missed.

Q1. Would you like your response to be confidential? (If you answered Yes to this question please give your reason)

5. No.

Q2. What is your name?

6. Dr Paul Stookes

Q3. Are you responding: As an individual, as an academic, on behalf of an organisation?

7. On behalf of an organisation.

Q4. Are you a practising lawyer?

8. Yes, although this response is prepared in the capacity of a Law and Policy Advisor.

Q5. Please provide your organisation's name

9. UKELA (UK Environmental Law Association).

Q6. What type of organisation are you responding on behalf of?

10. UKELA is a registered charity. Its primary purpose is to make better law for the environment.

Q7. What provision should be made in the rules regarding the role of interested parties in environmental review?

11. In order to provide a reasonably straightforward approach to environmental review, the claimant/applicant (i.e. the OEP) in an environmental review should seek to identify what it considers may be interested parties (taking a proportionate approach to the proceedings). Similarly, the defendant/respondent in the environmental review should also have the opportunity to identify relevant interested parties. The examples provided in page 9 of the consultation paper of who may be relevant interested parties appear sensible.

Q8. What provision should be made in the rules regarding the role of interveners in environmental review?

12. The rules relating to possible interveners in an environmental review should be similar to those for judicial review. It is quite possible, given the nature of concerns likely to be raised in an environmental review, that they will give rise to

matters of general public importance and ones in which specialist bodies could provide informed intervention to assist the court.

Q9. If you consider there should be a role for interveners, should the application procedures differ in any way from those for judicial review?

13. No, at least at the outset of the introduction of environmental review. If it appears from early experience that the rules for environmental review do need to be distinct from judicial review then that is a matter that may be brought before the Civil Rules Procedure Committee (CRPC).

Q10. What provision should be made in the CPR regarding the awarding of costs in environmental review?

14. UKELA notes the comment at page 10 of the consultation paper that the default position in judicial review is the 'loser pays' rule. However, the general position in environmental judicial review is found in CPR 45.41-44 and that the Aarhus Convention applies to these types of cases. It is almost certainly going to be the case that the Aarhus Convention applies to environmental review given that the Convention has wide scope and broad purpose. In the circumstances, either the approach taken in the Tribunal Procedures may be appropriate (i.e. each party bears their own costs and subject to an application for unreasonableness on behalf of any particular party) or an approach analogous to CPR 45.41-44 should be adopted to ensure that the OEP is not deterred from bringing environmental review proceedings due to the question of prohibitive expense.

Q11: Should provision be made in the CPR regarding the costs of interested parties and interveners in environmental review??

15. As the consultation document appears to indicate at page 10, UKELA considers that the approach to interested party and intervener's costs taken in judicial review should be broadly followed. UKELA agrees that the overall discretion on costs remains with the court.

Q12: Should provision be made in the CPR to allow claims to be decided without a hearing, replicating CPR 54.18?

16. UKELA considers that if all parties (including any interested parties) agree that the matter can be considered without a hearing, then the court can decide this. However, we tend to agree that the agreement of all the parties is probably unlikely given the more extensive pre-litigation procedures and correspondence that is likely.

Q13. Are there any further areas where you consider the procedure for environmental review should differ from that for judicial review?

17. No. Given the current, limited scope of environmental review provided for in clause 38 of the Environment Bill, UKELA views lean towards following the judicial review procedures in CPR 54 along with the provisions of CPR 45.41-44 on Aarhus Convention costs.

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

18. No.

UKELA
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Contact:
Paul Stookes, Law & Policy Advisor
UKELA
paul@ukela.org

UK Environmental Law Association: better law for the environment
Registered charity 299498, company limited by guarantee in England 2133283.
Regd office: c/o Norose Company Sec. Services Ltd: 3 More London Riverside, London SE1 2AQ, UK
www.ukela.org

President: Rt Hon Lord Carnwath CVO of Notting Hill