

Date

12 August 2021

Title

Procedure rules for environmental review

Report by

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Paper for decision

Open paper

Issue

1. The Environment Bill provides for a new court process of 'environmental review'. Separate court rules will be required to govern the detailed procedure for environmental review. Defra proposes amending the existing Civil Procedure Rules (CPR) to achieve this. Between 26 July and 6 September Defra is consulting on how to go about amending the CPR (see **Annex 1**). We propose responding to that consultation.

Recommendation

2. We recommend that the Board:
 - (a) resolves to approve the consultation response contained at **Annex 2** and that we submit it to Defra
 - (b) notes the intention that we publish the consultation response on the OEP's website and the communications strategy to support this.

Background

3. Defra is currently consulting on proposed changes to the Civil Procedure Rules (CPR) to set out the detailed procedures parties must follow in environmental review. Defra proposes modelling additional rules on those already contained in the CPR for judicial review. This would be subject to some key differences, for example there will be no requirement for the OEP to obtain the court's permission to bring a case, nor must the OEP bring an environmental review within the strict time limits that apply to judicial review. Other than this,

at this stage Defra is consulting on points of principle and topics it ought to consider, rather than detailed proposals.

4. Separate court rules apply in Northern Ireland. However, we do not currently know what progress DAERA have made in considering how those existing court rules would accommodate a 'review application' under Sch 3 to the Bill.

Analysis

This section is redacted as its publication would be prejudicial to the effective conduct of public affairs, or contains legally privileged advice

Finance and Resource

5. There are no immediate, material resource implications from adopting the recommendations proposed.
6. The outcome to Defra's consultation could have significant implications for the OEP's resources. This is for the reasons discussed in the Analysis section.

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Impact Assessments

Risk Assessment

7. There are no material risks identified in adopting the recommendations proposed. If our recommendations are not adopted, this may increase the risk of Defra putting forward procedural rules which do not align as well with the OEP's interests.

Equality Analysis

8. No equalities impacts identified.

Implementation Timescale

9. We propose submitting our consultation response by 19 August. This early response is partially for practical reasons due to staff leave. However, it may also be tactically advantageous as it will allow other interested stakeholders to see the OEP's preferences before themselves responding to the consultation.

Communications

10. We propose publishing the consultation response on the OEP's website. Due to its niche and largely technical content, we do not anticipate wide interest in this response. We therefore propose a light touch communications strategy, comprising reactive lines to take should stakeholders raise any queries.

External Stakeholders

11. We have engaged at a high level with the Defra policy team running the consultation and with members of our stakeholder group. The policy team are keen to receive the OEP's views and recognise its unique interest in the procedure for environmental review. Other stakeholders will have their own interests to pursue (for example, around the topic of 'interveners') but we believe they generally wish to see a process which aligns with the OEP's interests.

ANNEXES LIST

This section is redacted as it is already in the public domain