Office for Environmental Protection

Strategy and Enforcement Policy

November 2024

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Presented to Parliament and the Northern Ireland Assembly
pursuant to section 24(1)(a) of the Environment Act 2021

November 2024

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Foreword

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The natural environment has a fundamental role in the health, prosperity and wellbeing of England and Northern Ireland.

And yet we see long-term and deeply rooted adverse trends in many environmental domains: in the abundance of species, the environmental quality of lakes, rivers, and seas, how resources are consumed, the prevalence of nutrient pollution, and progress in mitigation of and adaptation to climate change for example. Together these present a deeply concerning picture where progress fails to live up to the expectations the public has, and the ambitions for improvement government, Parliament and the Assembly have set.

In this context, government in England and Northern Ireland established the Office for Environmental Protection in 2021 to underpin and oversee a new system of national environmental governance designed to turn this tide. We scrutinise, report, advise and can enforce in the ways this strategy explains to play our part to support the significant improvement in the environment the law now requires is delivered.

In this strategy, we set out how we pursue this role and protect and improve the environment, by holding government and other public authorities to account. It is our second strategy. We reviewed our approach after our first two years of operations, so that we could learn from our experience, and the feedback of those we work with, oversee and who have an interest in our mission.

We are grateful to the feedback of all those who contributed to our review. We considered all contributions carefully and have explained the changes we have made in light of feedback in the consultation analysis report which accompanies this strategy.

Overall, our review found the strategy we set in 2022 to be broadly sound. Stakeholders agreed. We have made some changes to simplify the strategy and make our approach and ambitions easier to understand. We've improved our approach to how we work in some specific areas including how we describe and measure success, the importance we place on our analysis of the prospects of meeting environmental goals and targets, and how we how we use information from any source to identify potential non-compliance with environmental law.

This strategy intends to give us the best opportunity to make the most difference we can for environmental protection and improvement. That remains our aim. We are fully committed to delivering.

Dame Glenys Stacey, Chair

Natalie Prosser, CEO

1. Who we are

1. Who we are

1.1 Our mission

We are established with the principal objective to contribute to environmental protection and the improvement of the natural environment. This includes the protection of people from the effects of human activity on the environment. We achieve our principal objective through our mission.

Our mission

Our mission is to protect and improve the environment by holding government and other public authorities to account.

1.2 Our independent role

The OEP was established by the Environment Act 2021, as part of a new approach to national environmental governance in England and Northern Ireland.

The cornerstones of this system are: Environmental Improvement Plans (EIPs) in which governments must set the steps they will take to significantly improve the natural environment; in England, long-term statutory targets to be achieved; a requirement for ministers to take the environment into account in making policy through an Environmental Principles Policy Statement, and; the OEP.

We are a public body with powers to advise ministers and government departments and to hold them and other public authorities to account for this national governance, and against their environmental responsibilities and the law. Our work covers England and Northern Ireland, and environmental matters reserved to the UK Parliament to decide.

Our independence is protected in law. We pursue our objectives and implement our functions independently and impartially, separately from government. Our judgements are our own.

Like the environment, our work is of importance to many government departments. We are funded by the Department for Environment, Food and Rural Affairs (Defra) in England and the Department of Agriculture, Environment and Rural Affairs (DAERA) in Northern Ireland, who oversee our use of public money. Defra and DAERA ministers are accountable in Parliament and the Assembly for this, along with our work.

2. What we aim to achieve

2. What we aim to achieve

2.1 Our strategic objectives

Our strategic objectives explain the contribution we make to environmental protection and improvement.

1. Sustained environmental improvement

Government is held to account for delivery of environmental goals and targets, and its plans for environmental improvement.

2. Better environmental law, better implemented

The environment is protected and improved, and people are protected from the effects of human activity on the natural environment, through better design and implementation of environmental laws.

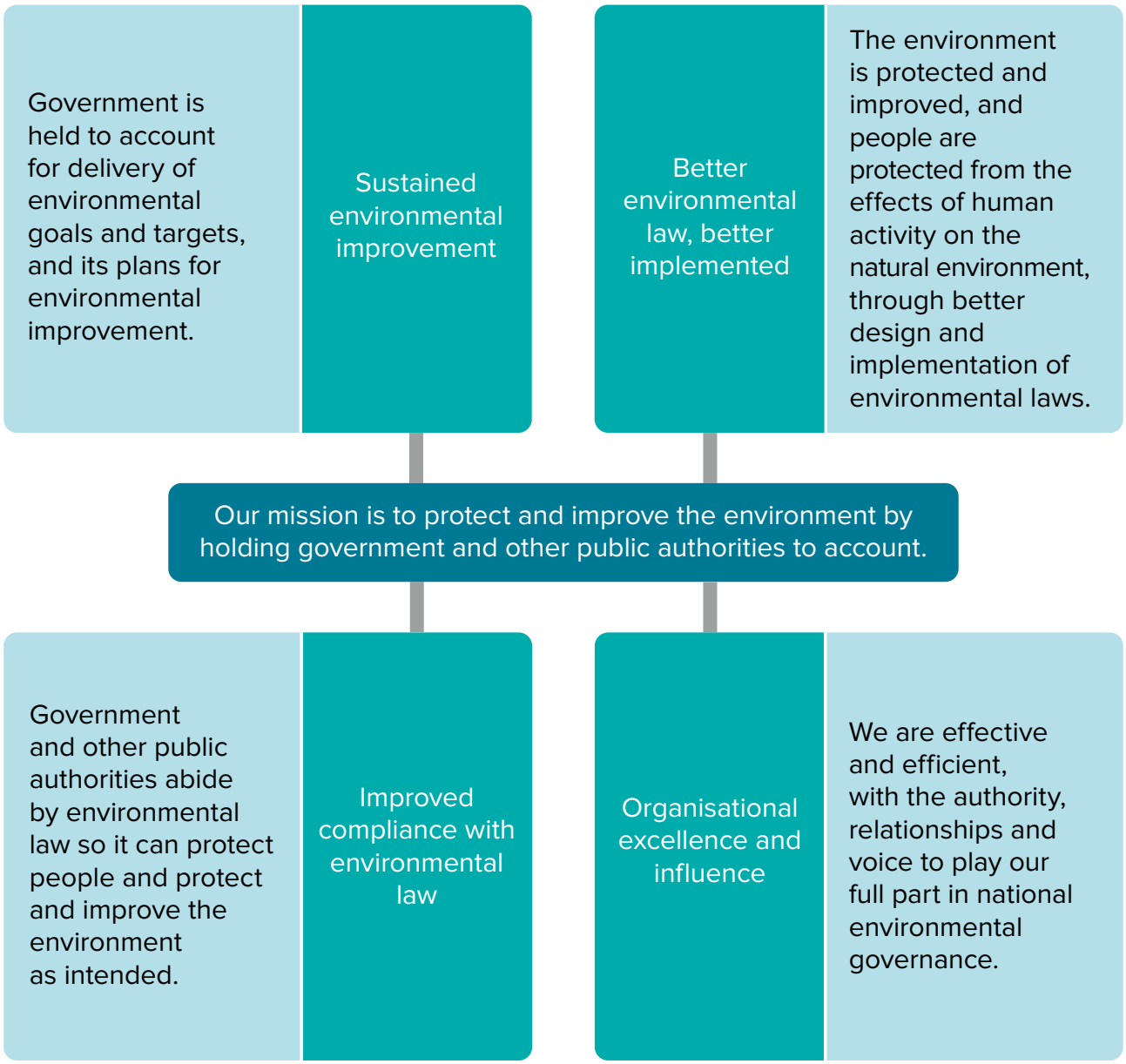
3. Improved compliance with environmental law

Government and other public authorities abide by environmental law so it can protect people and protect and improve the environment as intended.

4. Organisational excellence and influence

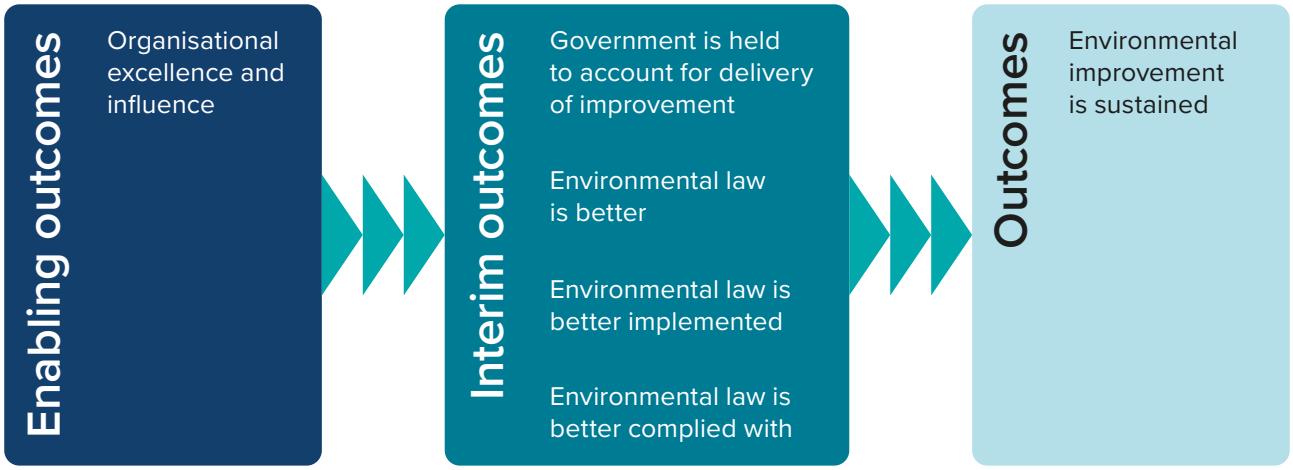
We are effective and efficient, with the authority, relationships, expertise, and voice to play our full part in national environmental governance.

Figure 1. Our strategic objectives



Together, our objectives show how we contribute to environmental protection and improvement. We strive to be excellent and have influence, so we can play our full part: to hold government to account for its long-term goals and targets for the environment, contribute to better environmental law, which is better implemented, and improve compliance with environmental law by public authorities. In doing so, we contribute to environmental protection and to improvement in the natural environment which can be sustained.

Figure 2. How our four strategic objectives lead to the impact we intend



2.2 Sustained environmental improvement

Strategic objective 1: Government is held to account for delivery of environmental goals and targets, and its plans for environmental improvement

Government is uniquely placed to protect and improve the environment, through its own activities and ability to influence others. Under the Environment Act, government in England and in Northern Ireland must prepare an Environmental Improvement Plan (EIP) to set out how it intends to significantly improve the natural environment.

In January 2023, the UK Government set out its EIP and long-term statutory targets for England. As we publish this strategy, this EIP is being reviewed by the UK Government following the general election in July 2024. In September 2024 the Northern Ireland Executive published its first EIP.

What we aim to achieve

Our aim is that government in England and in Northern Ireland ensures that EIPs, goals and targets are delivered, so that the natural environment significantly improves.

How we aim to achieve this objective

It is for government to decide its EIP, and for Parliament or the Assembly to set targets in law. We pursue this objective mainly by scrutinising government's progress towards the EIPs and targets (part 4.3) set.

For everybody to play their part in protecting, restoring and enhancing the environment, government's plans and the progress being made towards them must be clear and accessible. We make the progress being made and the prospects of goals being achieved more transparent through our scrutiny.

Through independent analyses we critically assess and report on what is being achieved and the prospects of government's intentions being met. We report on what is working, what is holding back progress and on issues that need addressing. We make recommendations for how prospects can be improved.

Our scrutiny of progress and prospects is based on available knowledge, evidence and analysis and underpinned by a programme of monitoring and evidence. We identify and report on gaps in monitoring, evaluation and learning and press government to fill them. We publish our evidence for government, Parliament, the Assembly and others to see and act upon.

Government can seek our advice when it reviews its EIP and other plans, and we can advise when changes to environmental targets in law are proposed for Parliament or the Assembly to agree. We aim that government sets suitably ambitious, coherent and comprehensive goals and targets, and put in place the plans necessary to deliver them, so that the significant improvement in the environment that the law intends can be achieved.

All our work aims to contribute to environmental protection and improvement. For example, our work to improve environmental law and its implementation (part 2.3) and compliance (part 2.4) can contribute to environmental improvements which are sustained.

What success looks like

- Environmental trends related to EIP goals and targets will improve
- The prospects of achieving EIP goals and targets will increase
- Our annual reports will be recognised as definitive assessments of progress by Parliament, the Assembly and others

2.3 Better environmental law, better implemented

Strategic objective 2: The environment is protected and improved, and people are protected from the effects of human activity on the natural environment, through better design and implementation of environmental laws

Environmental law is intended to achieve environmental outcomes or benefits. To be effective, it must be designed well to require or incentivise behaviours that can deliver the intended outcomes. Different laws must also work together coherently, if all outcomes are to be achieved.

Environmental law also needs to be implemented well to achieve outcomes in practice. The implementation of law goes beyond its introduction and compliance to the wider framework in which it is applied in practice. Resourcing, other laws and incentives, and the choices made in administering and enforcing the law can all work for or against outcomes being delivered effectively.

What we aim to achieve

Our aim is that environmental law and its implementation are well designed and delivered, so that positive outcomes for the environment and people's health and wellbeing are achieved. Through our work, we aim to improve the effectiveness of existing environmental laws and support the good design and implementation of new ones.

How we aim to achieve this objective

The design and implementation of environmental law are matters for government, Parliament, the Assembly and public authorities. We contribute through engagement and influence and providing independent advice and evidence-led analysis and recommendations to those who design and implement environmental law.

We independently scrutinise the implementation of selected environmental laws to determine if they are achieving their intended outcomes (part 4.4). We make evidence-led recommendations for improvements identified through our scrutiny, and give advice when changes to the law are proposed (part 4.5). Our aim is to ensure high standards of environmental protection and improvement, and an effective basis for implementation.

Where we present reports and advice to ministers, it will be for government to decide whether to accept them. Ministers answer to Parliament and the Assembly, who can hold them to account for how they have considered and acted on our advice. We publish our reports and advice to enable them and others to do so.

We also contribute to this objective through our enforcement functions (part 4.2), where we challenge non-compliance and assess its root cause. Our activity can lead to clarity in the law and how it is to be interpreted for those responsible for its implementation. We draw wider conclusions from individual or groups of cases about how the law and its implementation can be improved.

What success looks like

- There will be improvements to the design of environmental law as a result of our scrutiny and advice
- Public authorities will act to improve the implementation of environmental law, where we identify weaknesses or opportunities to do so
- Significant risks to environmental protection and improvement identified in our work will be recognised by Parliament and the Assembly when making law

2.4 Improved compliance with environmental law

Strategic objective 3: Government and other public authorities abide by environmental law so it can protect people and protect and improve the environment as intended

Government and public authorities should always meet all their obligations in environmental law, so that the intended outcomes of the law can be achieved.

Yet this does not always happen. Failure to comply can have significant implications for the environment and people's health and wellbeing and undermine public confidence in the delivery of environmental policy.

What we aim to achieve

Our aim is to improve compliance with environmental law, by holding government and other public authorities to account, and challenging and correcting serious failings. This enables the law to protect and improve the environment and protect people as intended.

How we aim to achieve this objective

We pursue this objective mainly through our enforcement function (part 4.2). We use a wide range of information sources including complaints (part 4.1), our scrutiny of EIPs and targets (part 4.3) and scrutiny of environmental law (part 4.4) to identify potential serious failures to comply with the law.

Where we identify serious failures, we work with public authorities to remedy them. We conduct investigations to determine whether a serious failure has occurred and stand ready to use the full range of our enforcement powers if needed. In challenging serious failures, we aim to give full effect to the law.

We aim to increase compliance with environmental law overall, rather than just in relation to individual cases. For each case we resolve, or intervene in, we aim to achieve wider benefits through the lessons and precedents our work creates. We make careful choices to target our resources to where we will have most effect.

We also contribute to improved compliance by supporting better design and implementation of environmental law (part 2.3).

What success looks like

- Public authorities' compliance with environmental law overall will improve as we undertake our role
- Where we identify failures to comply with environmental law, public authorities will take the necessary steps to remedy them
- Stakeholders will have confidence in our enforcement functions as an effective route to secure compliance with environmental law

2.5 Organisational excellence and influence

Strategic objective 4: We are effective and efficient, with the authority, relationships, expertise, and voice to play our full part in national environmental governance

Our ability to succeed depends on how we work as much as what we do.

The environment and people's health and wellbeing are best served when we use our broad remit and powerful tools to their greatest effect – strategically, purposefully, expertly, and independently.

What we aim to achieve

Our aim is to operate as effectively, efficiently, and influentially as we can, to deliver the most for environmental protection and improvement.

How we aim to achieve this objective

We act strategically, and with full independence of judgement. All our judgments are based on accessing the right evidence from a wide range of relevant sources. We continually improve our access to science, knowledge and expertise, for example through short-term secondments, our College of Experts, evidence commissions, calls for evidence and legal advice. Our most important decisions are made by our board.

We recognise that respect is to be earned. We consciously and consistently seek out the views and perspectives of all those with whom we work. We engage widely and at all levels of our organisation to add insight, diversity of experience and challenge to our work, and so that others can augment and amplify our recommendations (part 3.6).

We use the power of our voice wisely so that people understand our work, listen to what we say, and act on it to better protect and improve the environment. We regularly evaluate whether we have the influence we intend (part 5).

We aspire to be an employer of choice, so we can attract, engage and retain a high-quality workforce. We provide our staff with the systems, training, tools and support they need to work effectively and efficiently, in line with our inclusive and collaborative culture.

We work as one organisation across England and Northern Ireland (part 3.6). Our corporate and enabling services are independent, to be responsive to our needs. We draw on specialist support and economies of scale from across government where these are most effective and efficient.

What success looks like

- Those who work for environmental protection and improvement will respect our work and value the role we play in each of England and Northern Ireland
- When we speak, those we are speaking to will hear, understand and act on what we say
- Our staff will be engaged and motivated to deliver our mission

3. Our approach to achieve our mission and objectives

3. Our approach to achieve our mission and objectives

3.1 Our functions

We have a number of specific functions which contribute to our mission and objectives. Our functions include duties to monitor and gather information, and powers to respond to that information to seek environmental protection and improvement.

To gather information and evidence about the natural environment, we have duties to:

- Monitor environmental improvement
- Monitor the implementation of environmental law
- Receive complaints from members of the public about potential failures to comply with environmental law by public authorities

We also have powers and duties to:

- Report to Parliament and the Assembly on progress in delivering EIP goals and targets
- Report to Parliament and the Assembly on the implementation of environmental law
- Advise government on proposed changes to environmental law, and other matters related to the natural environment
- Investigate suspected serious failures to comply with environmental law by public authorities and enforce compliance where needed

We provide more information on how we exercise each of these functions in part 4.

Figure 3. Our main functions

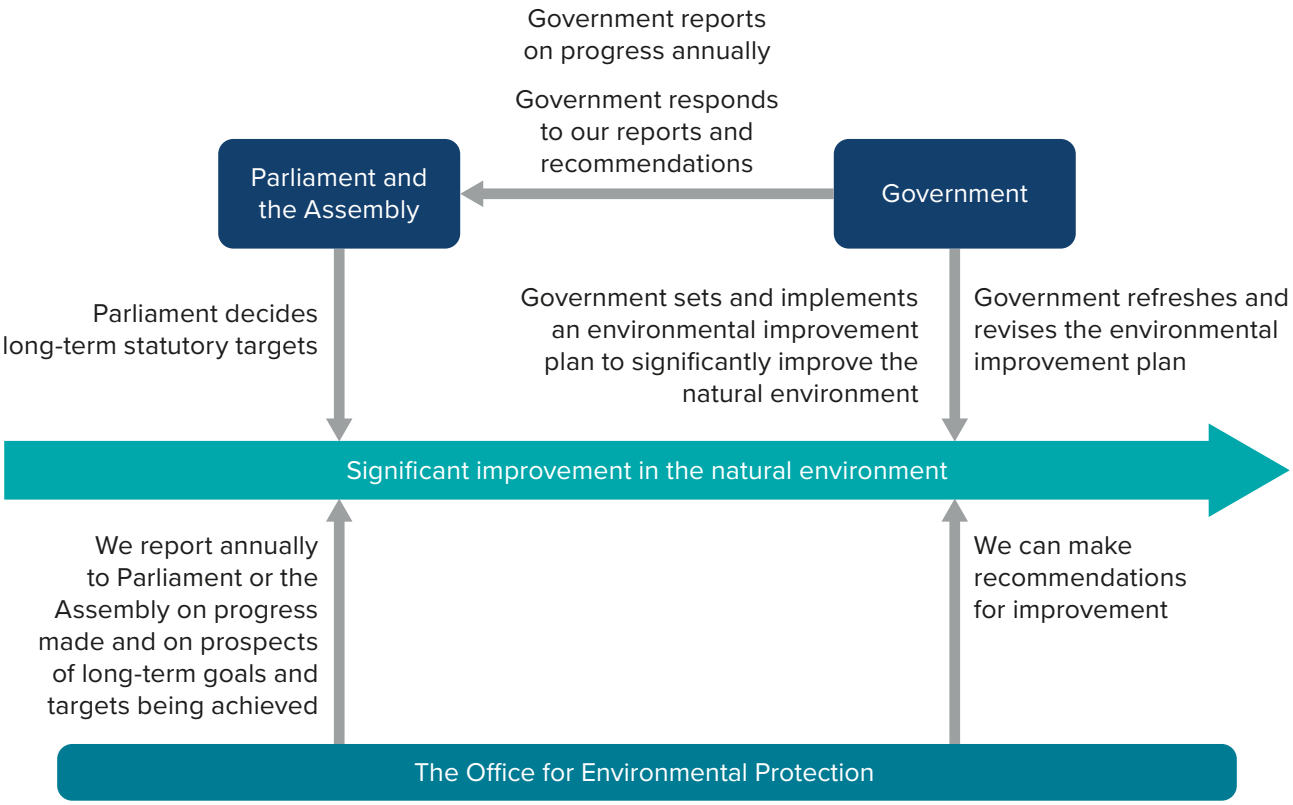
3.2 Our role in context

The Environment Act 2021 creates a series or statutory relationships between us, Parliament and the Assembly, government, public authorities and the public.

EIPs and statutory targets

The Act requires government to prepare a long-term plan to significantly improve the natural environment, and in England to set related statutory targets. We monitor and report annually to Parliament and the Assembly in this regard in this regard – to hold government to account for environmental improvement in the long-term, and across political cycles.

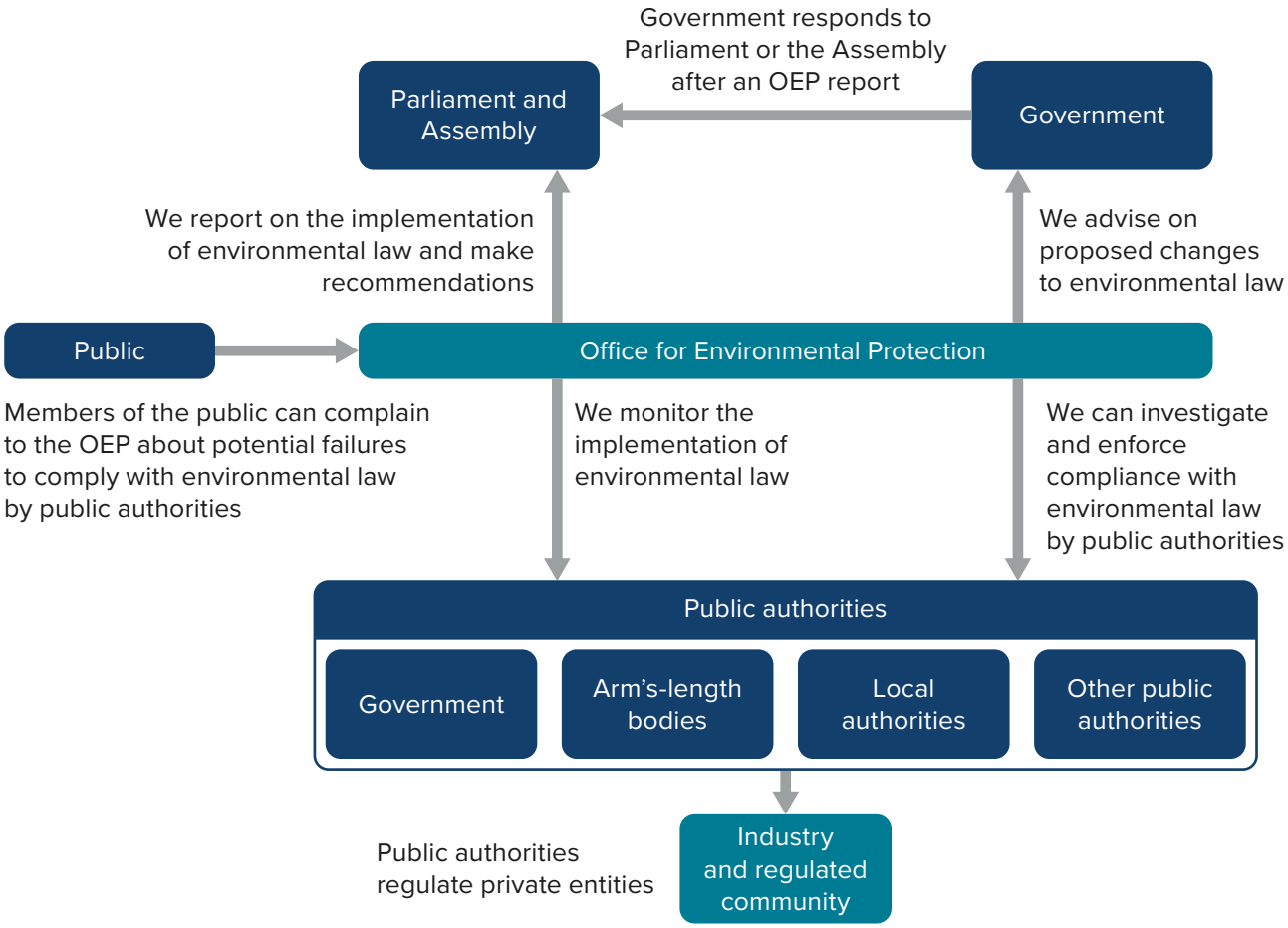
Figure 4. Our role in the national governance for improving the natural environment



Environmental law

We have a range of functions in respect of environmental law. We can advise government when it proposes to change the law. We can report to Parliament or the Assembly on the implementation of environmental law, and how it might be improved. We monitor the implementation of environmental law, and can investigate and enforce compliance with environmental law by public authorities. The public can complain to the OEP about potential failures to comply with environmental law by public authorities.

Figure 5. Our role in relation to environmental law



3.3 How we act: our issue-based approach

We take an issue-based approach to our work. This involves three main stages.

Figure 6. Our issue-based approach

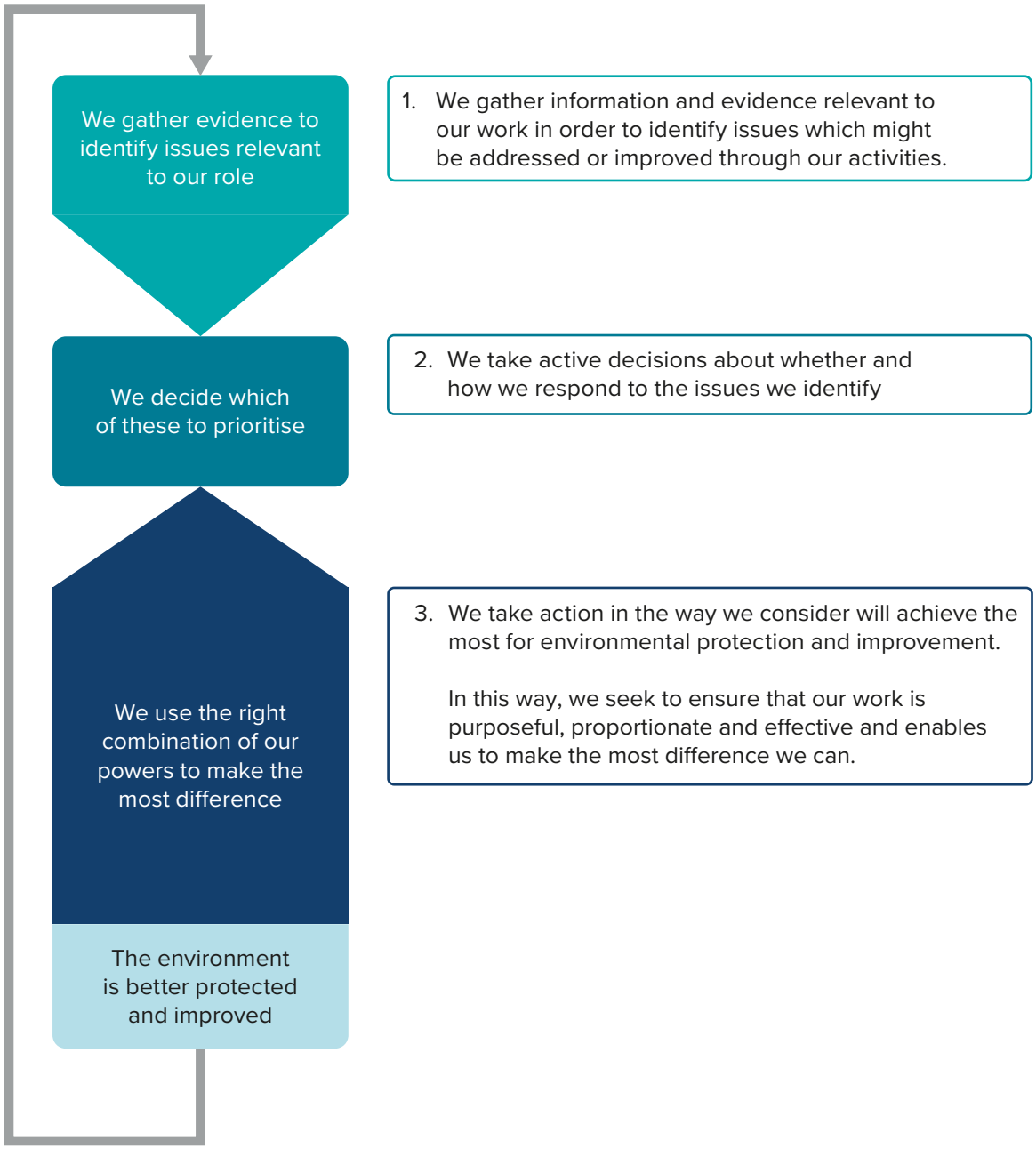
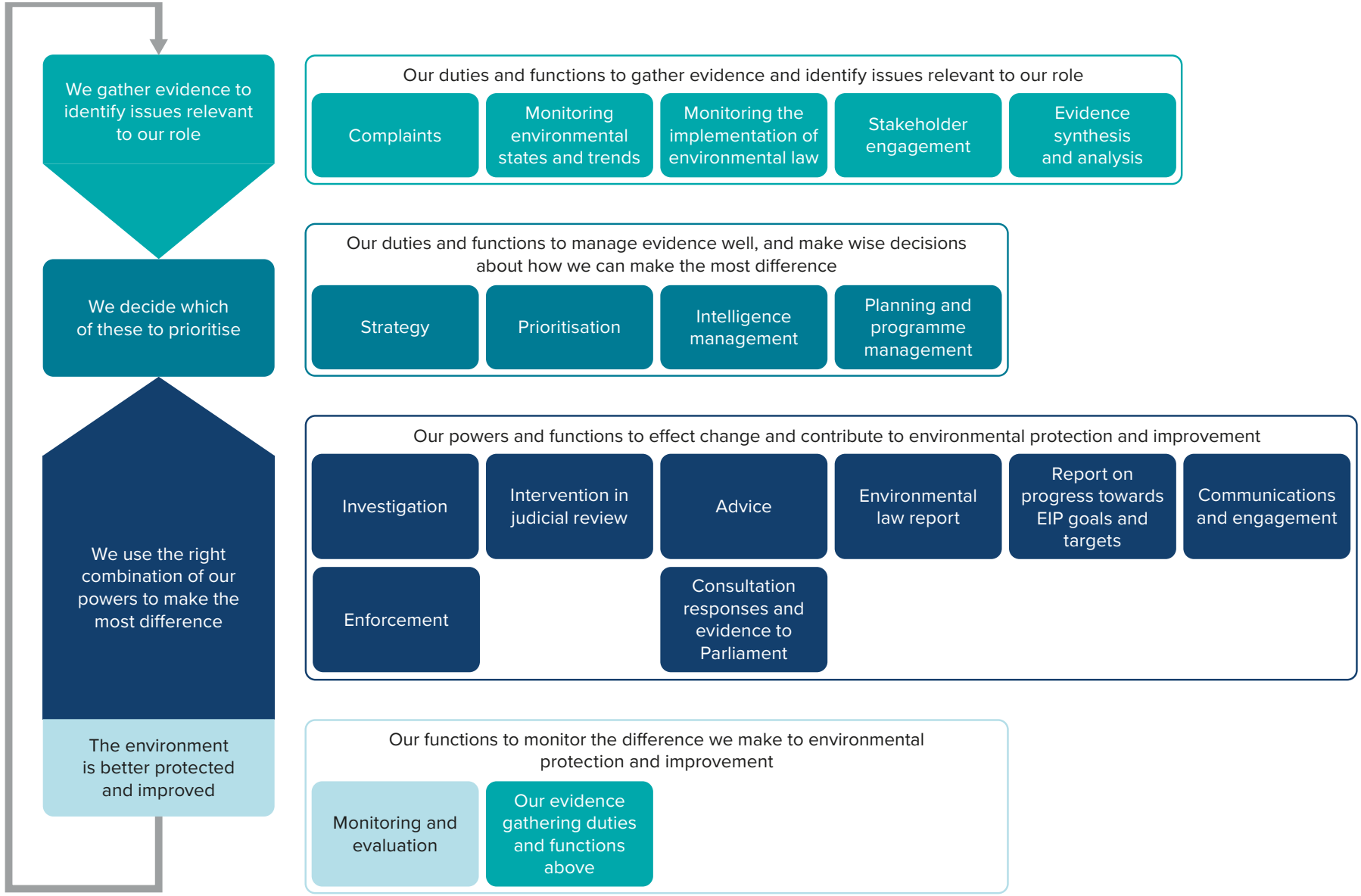


Figure 7. How the things we do support our issue-based approach



We gather information and evidence from a wide range of sources on the state of and trends in the natural environment, on how effectively environmental law is being implemented, and on potential non-compliance with environmental law by public authorities. Complaints we receive from the public and stakeholders are critical sources of information for us and support all our work. We engage widely with stakeholders (part 3.7) to identify and understand issues relevant to our role. Where we identify gaps in evidence, we may work with others to fill them (part 4.3).

We manage this intelligence carefully so we can identify common, cumulative and related issues from different sources and over time. This includes intelligence on issues we do not immediately prioritise.

We consider and actively decide whether we can and should respond to the issues we identify in accordance with our prioritisation approach (part 3.4), and which of the responses we can make through our functions will make the most positive difference to environment protection and improvement.

Information we gather from any source can lead to action through any of our functions. For example, we may consider enforcement action based on information we gather from monitoring environmental law, or environmental states and trends. Similarly, information in a complaint we receive may support us to report to Parliament or the Assembly on how the law or its implementation may be improved. It will depend on our assessment of the root cause of the issue, and the difference we judge we can make.

Our functions complement each other and may have more effect together. As a result, a proportion of our work is within connected, issue-based programmes in which we respond to related issues or to issues which together support a common outcome in the environment. These programmes often relate to goals or targets government has decided in its EIP. For example, we may scrutinise key parts of government's plans to deliver long-term targets together, or in sequence, to play our part in improving the prospects of those targets being achieved. We set out these key themes of our work in our corporate plan. These will change over time.

All our work contributes to environmental protection and improvement. We monitor the extent to which our actions lead to the impacts we intend. We do this in relation to our individual work programmes, how we measure success overall (part 5) and through the information and evidence we gather in relation to the natural environment and environmental law.

3.4 How we prioritise

There are important things that we must do each year or must always do when needed. Beyond this, we prioritise to act selectively and strategically, and to target our capability and resources to have the most impact.

We prioritise by outcome and across our functions so that our work makes the most difference. We set out our priorities in our corporate plan, and annual report and accounts.

We regularly reassess our choices to take account of emerging information and evidence, such as from complaints, within our issue-based approach (part 3.3). In this way, we aim to be responsive and for our effort to be always targeted to where we can make the most difference and provide value for the public money that funds us.

We consider four questions to make our prioritisation judgments. These ensure we focus on the potential impact of our work, and how we plan to achieve it.

A. How large an effect could our action have?

We assess the seriousness of harm, or the extent of the opportunity for improvement in relation to the natural environment or protecting people and the extent to which this could change following our intervention. We take a strategic view and so take account of related issues which are more significant when added together.

We make this assessment by considering a range of factors as set out in our enforcement policy at annex A. These include the nature of harm to the environment or people, or the opportunity for improvement, and its likelihood, degree, and duration. In considering the scale of effect our actions may have, we take care to ensure that issues in England, Northern Ireland or UK-wide are considered on their own merits.

Where appropriate, we consider the context in which the public and others view the matter, as well as the attitude, approach and response of public authorities. We also take account of our duties under environmental law, and so, for example, consider how large an effect our action could have on protecting and enhancing biodiversity.

B. How likely is our ability to have that effect?

The environment is a complex system, and the effect of our actions is not always certain and may not be short-term. We make judgements about the likelihood of our actions being successful by setting out for decision makers how we expect they may lead to environmental protection or improvement and assessing the likelihood that will happen.

We cannot be certain about the effect of our actions, so, where appropriate, we take a risk-based approach. For example, the greater the significance of the issue, the greater the case there will be to act, even in the face of uncertainty.

C. What is the strategic fit?

Sometimes we are the only organisation able to act or be best placed to make a difference. At other times others may be better placed to have effect. We prioritise where our action has most effect. There will also be times when or our work could complement or add to that of others.

We also consider the risk of acting or not acting, the extent to which our actions add to other work we are doing, the timeliness and timing of our work, and the balance of all our activities across our remit, for example across issues in the environment.

D. What is our capacity and capability to deliver?

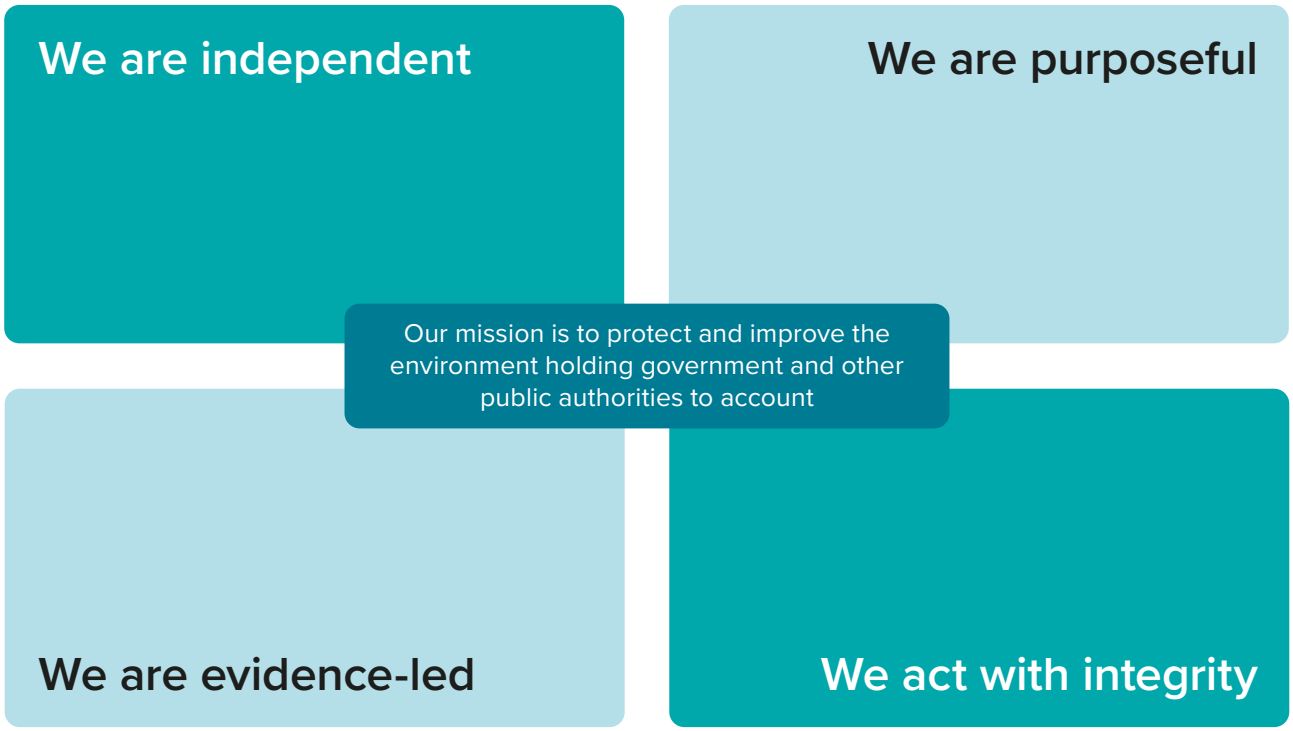
We take account of the resources and capabilities needed for our work to make a difference, and the time and scale of the activity involved. We ensure our work aligns with the resources provided to us in each of England and Northern Ireland.

3.5 Our values

The Environment Act 2021 requires us to act objectively and impartially, and to have regard to the need to act proportionately and transparently. Our values reflect this and describe

how we approach all our work and interactions. They also reflect the seven principles of public life. We strive to be independent, purposeful, evidence-led and to act with integrity in all we do to support us to deliver our mission.

Figure 8. Our values



We are independent

We protect the independence of our thinking and action, careful to avoid undue influence from any individual or organisation, including the government of the day. We consider the views of government where appropriate alongside those of others, but do not act to the direction or guidance of government, except as the law requires.

We are confident to challenge where that is needed. We say things as they need to be said, when they need to be said, to whom they need to be said, to further our mission.

We give fair consideration to the evidence on different sides of a debate in reaching our objective view and deciding how to proceed. This requires us to remain curious and seek out the root cause of issues. We explain why we have arrived at our decisions.

We act impartially and form our own judgments on the evidence. This does not mean we are detached or remote, but listen carefully in forming our own view. Our independent view may or may not be the same as others'.

We are purposeful

Our principal objective in law is to contribute to the protection of the environment and to improving the natural environment. This is our main concern. We are determined, confident and resolute in this pursuit and so link all our actions to the difference we can make to our objectives and mission.

We focus on the particular way we can have most influence and impact and prioritise to make the most difference, and so our efforts are best targeted (part 3.4). This includes understanding the priorities and plans of others. We use all our resources flexibly, to enable us to deliver the most we can.

We have regard to the need to act proportionately in all our work. Proportionality means action being in proper balance with its consequences.

We properly value the natural environment and human health and make decisions that reflect that. For example, if a serious failure of a public authority to comply with environmental law requires correction, we pursue resolution that is proportionate to the nature of the failure and its consequences.

We aim to ensure that the impact of our actions is justified by the anticipated benefits to environmental protection or improvement, particularly where our activity affects others. The impact or burden should not be excessive or unreasonable in the context of what is necessary in the pursuit of our mission.

We are evidence-led

We act objectively and rely on the right evidence from relevant sources to inform our decisions. We work hard to ensure our work meets high quality standards, is assured by experts and deserves to be trusted.

We consider the quality and reliability of the information we receive. If information is scarce or ambiguous, we remain alert to new information or circumstances that may mean we should reassess our position as required.

We actively listen to and learn from the world around us to inform our analysis of the relevant circumstances at the time we decide. We invest time in seeking diversity of thought, drawing on others' experience and expertise, and valuing, recording and using it.

We recognise the important role played by the public in identifying issues. We consider public concerns as one factor within our wider judgement about where and how to act.

We act with integrity

We aim to be reliable, clear about what we are doing and why, and do what we say we will.

We understand the importance of transparency in maintaining the confidence of others. We are committed to act as transparently as we reasonably can.

This means explaining our actions and providing regular information about us, and our work. Sometimes we must limit the information we make available, such as where we must by law keep information relating to our enforcement activity confidential. In respect of enforcement, we aim to be as open and transparent with all relevant parties as we reasonably can, within the limits of the law.

To be reliable, we set clear expectations of ourselves and others and hold ourselves and others accountable to them. We regularly seek and listen to feedback, acknowledge and learn from our failures, and expect this of others. We always respect confidentiality and take care not to divulge information or experiences that are not ours to share.

We are fair. We do not pre-judge evidence, or the actions of others and listen to others' perspectives. Our efforts are always focused on our mission and objectives.

3.6 How we work across Northern Ireland and England

We work as one organisation across both England and Northern Ireland. Our functions in Northern Ireland and England are fully integrated so all our work benefits from our full capabilities.

We are sensitive to the differences between the two jurisdictions and adjust our approach so we make the most difference we can in each. We have locally based staff in each of England and Northern Ireland across all our functions and so local expertise and experience in environmental law, regulation and policy, environmental issues and science. Our staff work flexibly across our functions and work programmes with the aim that all of our work benefits from the right combination of skills and local expertise. Our college of experts includes those with expertise and experience in each jurisdiction. Our board members are appointed to have specific expertise relevant to our work in each of England and Northern Ireland.

Our board meets in Northern Ireland at least annually. A lead executive director is responsible for bringing additional focus and coordination to our delivery in Northern Ireland. All our staff access an office space in Belfast to meet and work.

Our staff in England work from our office in Worcester or remotely. Our staff and board travel across the country to meet with others and see the implementation of environmental law, and environmental protection and improvement in action.

We engage actively across a wide range of stakeholders in England and Northern Ireland and have a specific approach to stakeholder engagement and communication to ensure that we are sufficiently visible and to establish our local voice in each.

We prioritise our resources in Northern Ireland and England to make the most difference we can in each of Northern Ireland or England. Sometimes this means our work is focused on issues in one jurisdiction, sometimes on a common issue in England and Northern Ireland. Where appropriate we make comparisons and apply learning across both countries, or other jurisdictions.

We recognise that the island of Ireland is a single biogeographic unit, and that there are particular environmental protection issues that arise as a result of the land border. We consider cross-border issues wherever relevant to our work. We connect with stakeholders and public authorities in the Republic of Ireland, and European Commission, Scotland and Wales to enable this. We draw our conclusions to the attention of interested parties outside of England and Northern Ireland where appropriate.

The suspension of the Assembly until February 2024 delayed the implementation by DAERA of the environmental governance intended by the Environment Act and impacted how we work in Northern Ireland where our work is to scrutinise and report to the Assembly on progress and the law. DAERA published an EIP in September 2024. We will now play our full role to monitor and report on improvements in Northern Ireland's natural environment, in line with this EIP.

3.7 How we work with others

Our approach to engagement with our stakeholders

To deliver our mission we engage and work with a broad range of organisations and individuals.

These span the national and local governments and public bodies whom we hold to account, those who submit complaints to us, Parliament and the Assembly who receive our reports, and the many in non-governmental organisations, businesses, the legal and scientific communities, academics, the voluntary sector, and more, who inform and take interest in what we do. It also includes those who hold us to account for our performance and management of public funds in Parliament, the Assembly, Defra and DAERA.

It is essential that we understand the priorities, evidence and different perspectives others have. Through effective two-way dialogue, we gain richer understanding of the natural environment, gathering valuable expertise and insights into the issues on the ground. By being curious, listening to, learning from and working with others, we can navigate the complex issues we seek to address, and ensure our approach, work, and decisions are transparent, accessible, impartial and evidence-led, as well as independent. Ultimately, this helps us have the positive influence we intend, on protecting and improving the environment.

The different geographies and contexts of our work inform how we work with others. We always engage across England and Northern Ireland, as well as with others elsewhere, including in Scotland, Wales, the Republic of Ireland and European Union as required.

We seek to earn the trust and respect of all those we work with, through our values. Establishing and maintaining appropriate professional relationships with others helps us to exchange relevant information efficiently, impartially and securely.

We coordinate our engagement to ensure it is purposeful, well-organised, efficient and proportionate, so places no unnecessary burden on those with whom we work. For example, we have a regular programme of engagement with stakeholders on our work; and dedicated engagements focussed on projects and outcomes specifically, with those stakeholders with particular insight to bring.

Through these interactions, stakeholders can raise issues of concern or other matters they wish us to consider or address. Outside of these engagement activities, complaints about specific potential failures to comply with environmental law can be raised with us, and we can be contacted about any issues that people wish to draw to our attention.

How we work with other public authorities

We work with public authorities in different ways, as we undertake our various functions.

We seek to develop and maintain professional and productive relationships with public authorities, and engage actively and regularly at leadership and operational levels with those public authorities most impacted by and able to support our work.

Public authorities have on-the-ground experience of dealing with environmental and operational challenges. They also have data and established networks that provide

intelligence on issues we may prioritise, as well as evidence to support solutions, or comprehensive technical expertise. Wherever relevant, we seek to draw on this expertise in undertaking our work.

We also have an important role in overseeing the actions of public authorities, including government, and holding them to account. The Environment Act 2021 requires public authorities to co-operate with us and give us any reasonable assistance that we request as we fulfil our role to protect and improve the environment, including through the provision of information. This co-operation is essential to the accountability structure the Act intends.

The duty of co-operation

This duty in law is cast widely and requires public authorities to provide us with a high level of co-operation and assistance as we undertake each of our functions, including our enforcement activities.

We recognise that this co-operation can place demands on public authorities. We aim for it to be straightforward for public authorities to co-operate with us. For example, we aim to provide advanced notice of the co-operation we may require wherever this is possible. We explain why co-operation is required, and the specific co-operation we require, so each is understood. We make ourselves available to discuss our requests if this supports public authorities to co-operate with us. We aim to agree protocols for the ways we seek information from public authorities, where this supports efficient use of public resources, and aim to work with public authorities to continually improve co-operation and understanding of the duty to co-operate over time.

We expect public authorities to work with us co-operatively, in a spirit of partnership and in pursuit of the wider public interest. If public authorities do not co-operate with us, we raise the matter with them in the expectation that they should swiftly rectify the issue. If necessary, however, we may take this into account in determining how and when to exercise our enforcement functions (see our enforcement policy at annex A).

Collaborating and avoiding overlap with other public authorities

There are some organisations with which our functions may partially overlap, or where our interests closely align. We aim to understand the priorities and plans of others to be open to collaboration as appropriate, share information and intelligence where this is necessary and permitted and so we collectively provide good value for public money and the best outcome for the environment.

We have agreed Memorandums of Understanding with those bodies with whom the risk of overlap and opportunities for collaboration are greatest. These include the Climate Change Committee, Parliamentary and Health Service Ombudsman and the Local Government and Social Care Ombudsman in England, and the Northern Ireland Public Services Ombudsman in Northern Ireland, Environmental Standards Scotland and the Interim Environmental Protection Assessor for Wales. These are available on our website. We will aim to agree similar Memorandums of Understanding with Northern Ireland Climate Commissioner, and any environmental governance body established in Wales when appropriate to do so.

4. How we exercise our key functions

4. How we exercise our key functions

4.1 Complaints: How we work with those who complain to us

We receive complaints about potential breaches of environmental law by public authorities. These are important to our work, and provide us with information that can inform and lead to activity in any of our functions (part 3.3).

Our service is free to use and our complaints procedure is published on our website. It sets out what people can complain to us about, how they can complain, what they can expect of us and the information they should provide. We aim to be responsive to all those who contact us, and provide information on alternatives if the issue is not eligible to be brought to us as a complaint. We aim to continually improve our complaints processes and ensure that our website provides relevant information to allow complainants to understand our approach and procedures.

We are not an ombudsman. We consider and respond to every complaint we receive. However, our role is not to investigate nor act in every case, nor to seek individual redress for those who complain to us or to provide compensation.

Individuals working for public authorities may have information about wrongdoing or malpractice relevant to our work. We operate a whistleblowing facility for concerned individuals to make disclosures to the OEP rather than their employer. We handle this information sensitively. Our whistleblowing policy is available on our website.

We assess the matters raised and analyse the evidence to identify how we can make a difference to the issues identified. This may be through our work scrutinising the implementation of environmental law (part 4.4), or on progress in environmental improvement (part 4.3). We retain information on all complaints and other contacts we receive and regularly review it alongside other intelligence and evidence we gather, to identify connected issues, including over time.

Where we consider matters through our enforcement functions, we focus on serious failures and cases where we can make the most difference (part 4.2). Where we take steps in respect of a serious case, this is to determine if a public authority has complied with the law, and if it has not, to establish what it should do to correct the failure.

We provide information about the complaints and enquiries we receive on our website.

4.2 Enforcement: How we address suspected serious failures to comply with environmental law by government and other public authorities and enforce compliance where needed

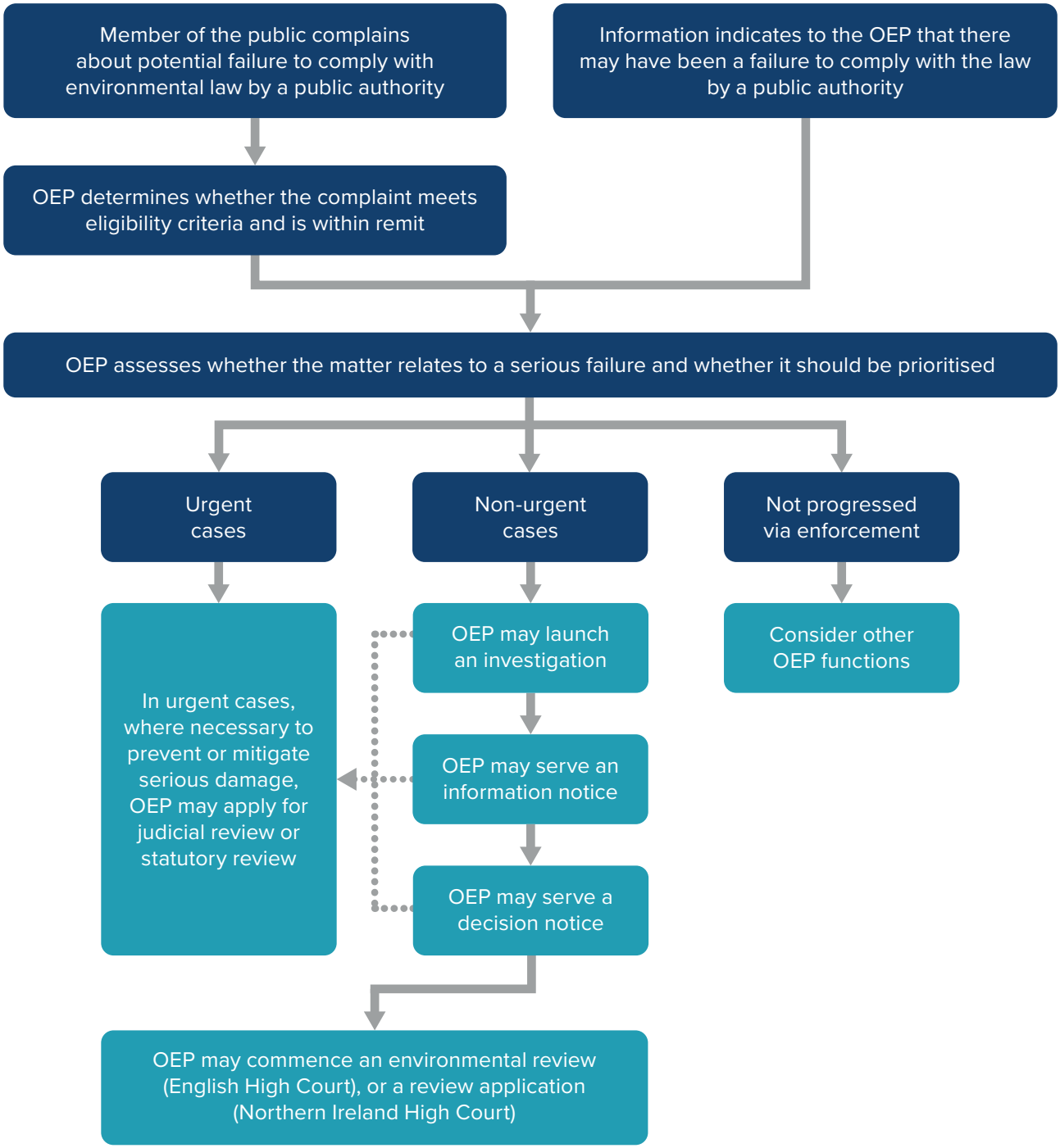
We have a range of powers and duties relating to enforcement, including conducting investigations and commencing legal proceedings. We use these to identify and respond to serious failures to comply with environmental law by government and other public authorities.

We cannot take enforcement action against private entities such as businesses or individual people in relation to their private functions. That responsibility remains with regulators such

as local authorities, the Environment Agency, Natural England and the Northern Ireland Environment Agency.

Sometimes private businesses undertake public functions and we may be able to take action in relation to those functions. We work with regulators to understand and identify potential overlaps and prioritise accordingly. Our enforcement functions do not therefore duplicate those of others.

Figure 9. Summary of our enforcement function



Our approach

Our approach is set out in detail in our enforcement policy in annex A.

We consider and prioritise between cases where information, from complaints or any other source, indicates there may have been a serious failure to comply.

We focus strategically and on the most significant matters, such as failures to comply with environmental law that are systemic, recurrent or may cause serious harm. As part of this, we consider individual but related matters which, when taken together, indicate the possibility of a serious issue. We aim to be intelligent in our choices, knowing that sometimes the law may not be designed well or conflict with other laws. We take this into account in determining how best to respond, and which of our functions to use.

If a particular case involves trans-boundary issues, for example between Northern Ireland and the Republic of Ireland, we seek to co-operate with the relevant public authorities in those countries in appropriate circumstances.

Where we respond through our enforcement functions, our approach is to challenge and resolve failures as early as we can. We aim to do so without taking cases to court where this is possible. We may resolve an issue through early engagement with public authorities as we seek to determine whether there may be an indication of a failure and assess whether it would be serious. For example, public authorities may agree to put right the issues of potential non-compliance we raise promptly. We publish information about issues that are resolved on our website.

Where the relevant legal tests have been met and early resolution is not possible or appropriate, we can investigate whether there has been a serious failure to comply with environmental law. The purpose of an investigation is to establish the relevant facts, when we judge a public authority may have failed to comply with the law. We report on our findings if we conclude there are no further steps we should take, and so make our conclusions transparent.

To bring public authorities into compliance where needed we work to identify the causes of serious breaches, and the actions needed to correct them, prevent their recurrence, and remedy or mitigate their consequences. Where we make recommendations, we monitor that they are taken up.

We are ready to turn to our further enforcement powers, including court proceedings, to remedy serious failures and to enable environmental law to have its full intended effect. We can take proceedings in the English High Court through a process called environmental review, and in the Northern Ireland High Court through a review application.

We can take cases to court using judicial review if urgent action is needed to prevent or mitigate serious damage to the natural environment or to human health. We can also apply to intervene in a judicial review or statutory review brought by someone else. We seek to do this when we consider that our intervention would assist the court and contribute to our principal objective, and it is a matter we prioritise. It will be for the court to determine whether our intervention is permitted.

We expect the wider community of public authorities to learn from the matters we progress to better protect and improve the environment through their own compliance with the law. We work to ensure our findings are heard and understood so this happens.

4.3 Scrutinising EIPs and targets: How we assess and report on government's progress in meeting environmental goals and targets

We monitor, critically assess, and report annually on government's progress in improving the natural environment in accordance with the EIPs, goals and targets.

Government must report its own assessment of progress annually and review its plans periodically. We hold government to account against these obligations and for its delivery of the EIPs, goals and targets in our annual progress report. Government must respond to our annual report and specifically address our recommendations. This cycle of assessment and scrutiny underpins in law delivery of the EIPs.

Our approach

To inform our independent assessments of progress, we aim to take a system-wide approach and examine the full range of drivers and pressures that influence environmental outcomes.

We assess delivery of the EIPs holistically, and so consider related plans, initiatives and scrutinise the contribution of other public authorities that support government's progress. Where appropriate, this includes scrutinising a wider range of targets and commitments than the Environment Act targets. This will particularly be the case in Northern Ireland where no environmental targets are required by the Act.

We provide an assessment within and across environmental themes and consider different spatial and temporal scales. We assess progress against goals and targets with a specific focus on the reporting year and in an integrated way by considering the environment and its interactions with the economy and society, including interlinkages, synergies and trade-offs.

We also assess prospects of achieving goals and targets by analysing the potential future trajectories of environmental improvements. Through these assessments and our analyses, we develop insights on what is working well and what is holding back progress. This supports us to make recommendations for government to adapt monitoring, targets, milestones, delivery plans and policies to fulfil their ambitions more effectively, sustain progress and further improve the environment. We will emphasise this prospective element of our assessment more, over time.

To support our assessments, we use government's annual progress report, existing data, information and stakeholder intelligence wherever appropriate. Where our assessments are constrained by the accessibility, timeliness or quality of data and information we say so, and work with others to improve it. Our evidence and research programme aims to identify critical gaps in evidence, including understanding of the natural environment, policy, and delivery plans. We aim to be as transparent as we reasonably can and so make our methodological approach, evidence base and insights available for others to scrutinise and use.

Alongside comprehensive monitoring of progress across the areas covered by the EIPs, we also analyse selected areas in greater depth each year. We act strategically in prioritising where and how we scrutinise progress, considering policy, delivery plans and available evidence, as well as governance and accountability for these matters.

4.4 Scrutinising environmental law: How we monitor and report on the implementation of environmental law

We must monitor the implementation of environmental law and we can report on any matter concerned with its implementation, at any time.

We publish our reports and arrange for them to be laid before Parliament or the Assembly. Government must respond to our reports within three months and publish and lay their responses before Parliament or the Assembly.

Our approach

We monitor the implementation of environmental law through activities such as ongoing and targeted stakeholder engagement, our analysis of complaints and enquiries and other information we gather on the natural environment and environmental protection.

We conduct in-depth reviews to assess and report on how environmental laws work in practice. These reviews may vary in scale and depth depending on the issues and laws being examined or to influence in specific targeted ways. We aim to establish if environmental laws work well and produce the desired benefits. We aim to get to the root of how laws are implemented, their effectiveness, and make recommendations for improvements.

We look beyond questions of legal compliance to cover the wider context and framework of implementation. Our approach considers other relevant matters such as: design of the law and how different laws interact; the set-up of responsible institutions and their resourcing, skills, and capacity; co-ordination of delivery actions among different bodies; the role and use of guidance in implementing the law; identification of good practice; and approaches to enforcement and sanctioning by regulators.

We focus primarily on issues associated with the implementation of laws by government and other public authorities, both national and local. This allows the greatest synergy with our other work. However, we also look at implementation by other parties, if necessary, to inform our assessment of how well the public administration of environmental law is working overall.

We also consider the design of environmental law. For example, we examine whether the law is fit for purpose, still relevant and delivering the policy intention, and where laws may exist in tension with each other or where there are inconsistencies.

Whilst our reports are primarily addressed to government, Parliament and the Assembly, we also direct recommendations to others, including to other public authorities, where appropriate. In this manner, we aim to encourage a more consistent and effective implementation of environmental law.

4.5 Advice: How we will advise government on proposed changes to the law and other environmental matters

We can give advice on any changes to environmental law proposed by government. This could be in response to draft legislation, a white or green paper or other consultation

setting out proposals for future law. Additionally, we must give advice about such changes or any other matter relating to the natural environment if government asks us to.

Our approach

Governments, the Assembly and Parliament regularly consider changes to environmental law. We select carefully when we provide advice to these proposed changes to ensure we are addressing subjects of strategic importance, and where we have an important contribution to make (part 3.4).

Our advice is objective, impartial and evidence-led. We are transparent in our work, and so will work with ministers and government departments on a 'no surprises' basis, so that it can effectively influence the delivery of environmental protection and improvement.

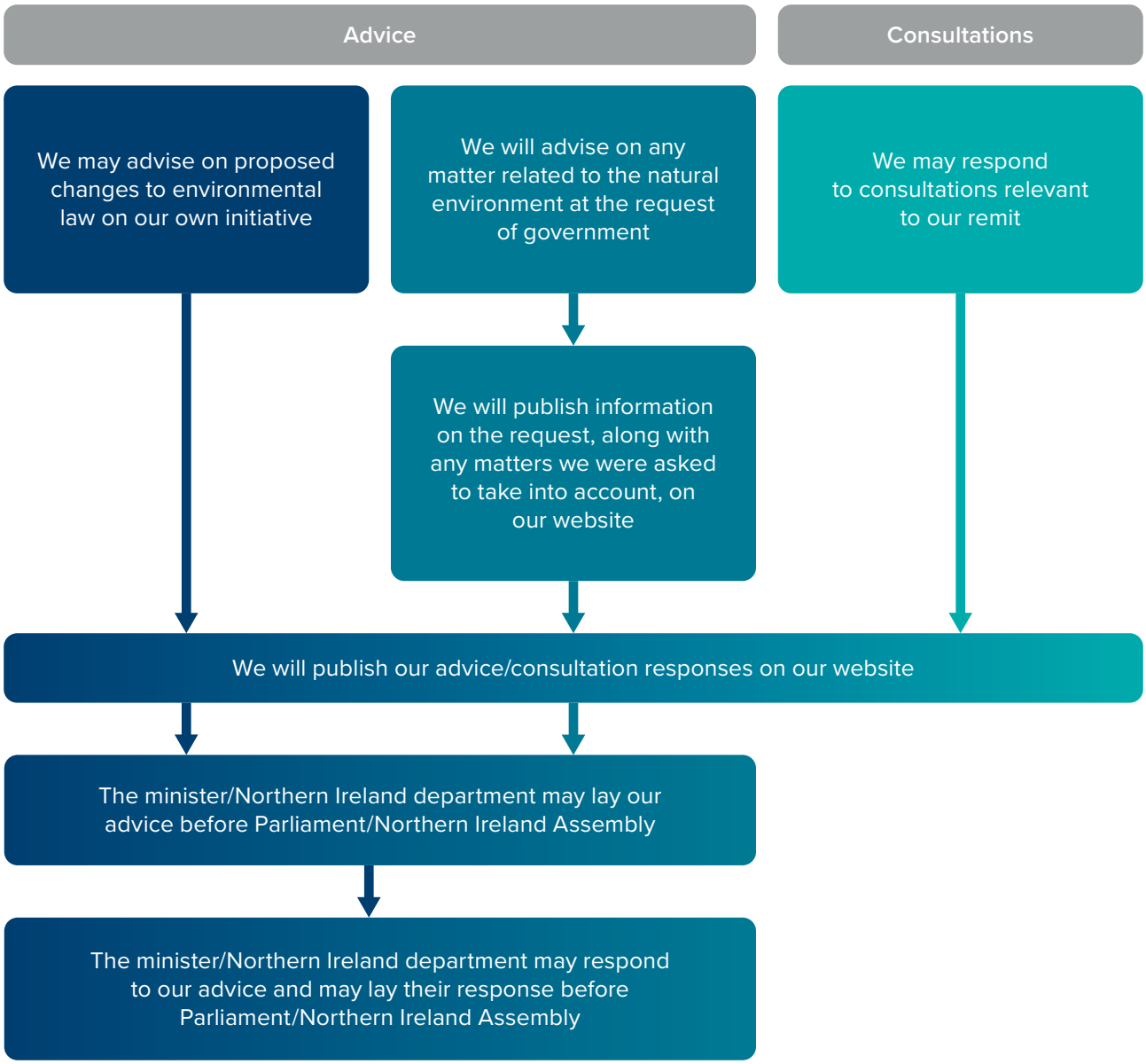
Environmental law can be created or amended by different departments of government, and so our advice can be valuable for and directed to any government department. We will aim to identify synergies across government, and opportunities for better join-up across policy areas. Where appropriate, we will also take account of any relevant transboundary issues, for example between Northern Ireland and the Republic of Ireland.

Where we believe our evidence can inform good decision-making by government, Parliament or the Assembly, we may respond to a government consultation or a request for evidence from a parliamentary committee. Our aim is to support environmental protection and improvement.

We must respond to government requests for our advice. To support transparency, we expect requests for our advice to be set out in writing. We work with officials to scope requests for our advice.

We must publish the advice that we produce, alongside information associated with a request from government, which we do on our website. We also publish our responses to consultations or wider requests for evidence. We periodically review the action taken in response to the advice we have given.

Figure 10. Summary of our advice function



5. How we will measure our success

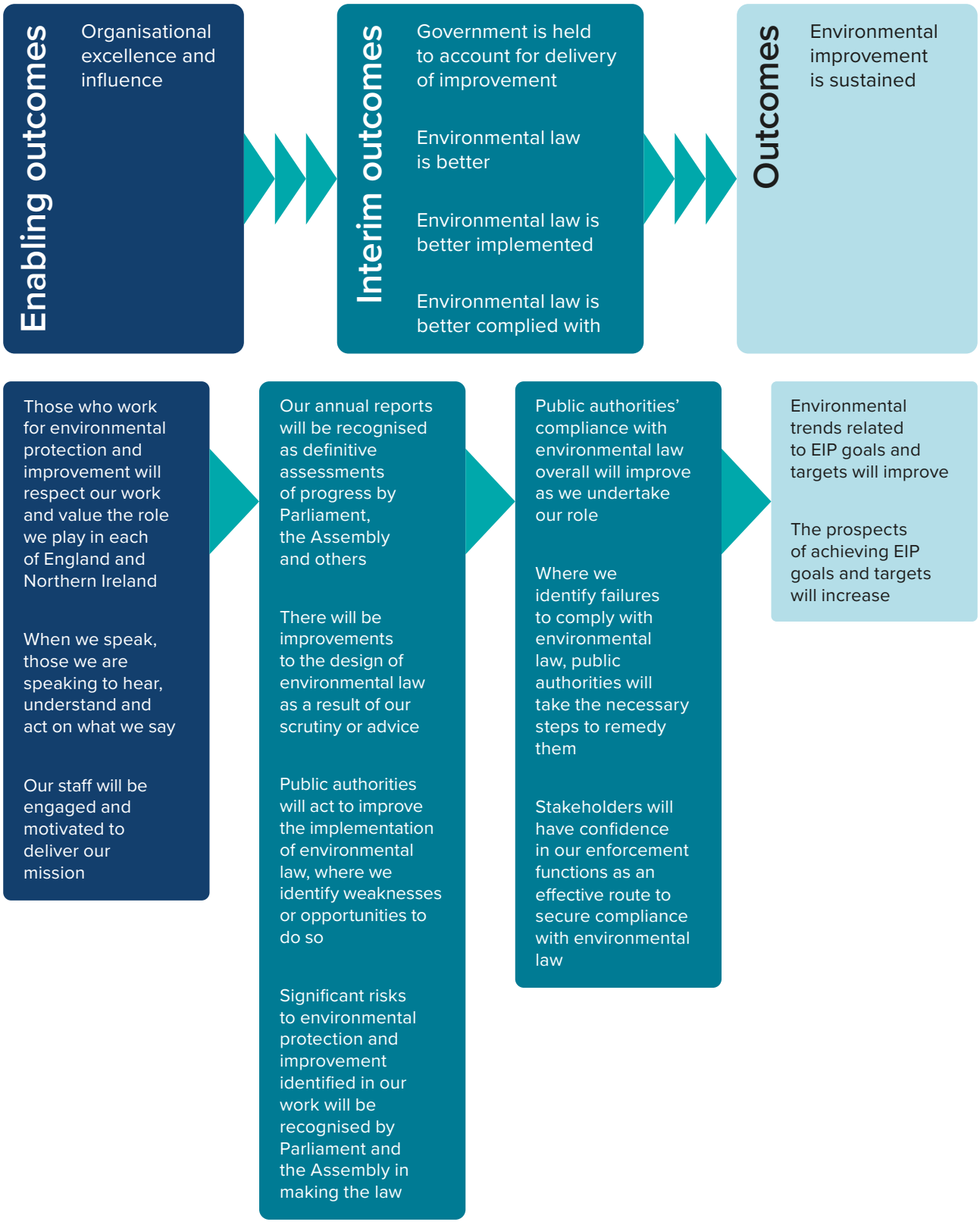
5. How we will measure our success

5.1 Our approach

Our strategic objectives set out the contribution we expect to make towards environmental protection and improvement. They provide a framework which shows how our work improves environmental law, the implementation of that law by public authorities and the delivery in the long-term of government's plans for environmental improvement.

In this strategy, we also set out the outcomes we expect to see if this is true in practice. Together these underpin our approach to measuring our success.

Figure 11. What success looks like, aligned to the framework of how we have impact



Like most oversight bodies and regulators, it is not simple to measure the outcomes which result from our work. These are often realised in the long-term, largely delivered by others, and influenced by many external factors.

We are purposeful, and evidence-led. We embed a focus on the impact and outcomes of our work throughout our activity, and monitor whether these are achieved in practice. We aim to develop continually our understanding of where we have impact.

Our issue-based (part 3.3) and prioritisation approaches (part 3.4) aim to identify when and how we can make the most difference overall, and in each matter we prioritise. Our prioritisation approach requires our board and senior leaders to assess both what we intend to achieve and how we intend to do so when deciding our priorities, and allocating resources. This means we define the intent of each of our activities at initiation, and expose this to challenge and scrutiny.

We will develop regular structured, qualitative evaluations of our performance. Each year we will either survey stakeholder perceptions of our performance, the contribution we have made and how that might be improved, or commission an independent evaluation of the impact of an aspect of our work programme. Over time, we expect these evaluations to consider all of our functions. We will make the findings public. We will also gather case studies which are indicative of where we have and have not had the impact we intend.

We gather monitoring information to indicate whether we are performing as we intend. We will develop a consistent method of reporting this in our annual report and accounts. We will also publish a mid-year update of our performance to provide more regular information.

Our board and senior leaders regularly review whether we have achieved the outcomes we intend overall, and in our key work programmes, and whether we did so in the manner we expected.

5.2 Indicators of our performance

We recognise the environment is a complex system, and do not seek to oversimplify it. Monitoring information can only be indicative of the contribution we aim to make. We monitor indicators of our performance, where we succeed, and where we may not.

We structure our monitoring information around key performance questions which map to the framework we set out in figure 11. For example, indicators of the change that has happened in light of our decisions help us to understand whether improvements to the design and implementation of environmental law have or have not resulted from our action, and therefore the contribution we have made to our objective of better environmental law, which is better implemented.

We will detail the methodology and source data supporting each indicator alongside the outcomes in our annual report and accounts and other performance reports.

Segment	Key questions and indicators
Environmental	**Is the natural environment improving?** - Proportion of EIP goal and strategic outcome areas where progress is good - Proportion of EIP goal and strategic outcome areas where prospects are largely on track - Change per full-time equivalent employee in our carbon emissions, water consumption and waste generation*
Delivery	**Have we delivered our plans?** - Proportion of our corporate plan commitments delivered - Number of statutory reports laid before Parliament or the Assembly - Number of advisory activities undertaken - Number of investigations started - Number of investigations closed - Number of environmental reviews, review applications urgent judicial reviews or interventions in judicial reviews
Influence	**Has our delivery influenced change as we intended?** - Whether our recommendations are adopted* - Number and net sentiment of OEP citations in Parliament or the Assembly* - Number and net sentiment of OEP citations in monitored media*
Efficiency	**Are we efficient in using our resources?** - Expenditure compared to delegated budget#
Capability	**Are we developing our capabilities?** - Staff engagement score - Proportion of staff reporting they have the equipment and resources they need to do their work - Number of engagements with our College of Experts*
Valued by others	**How do others value our contribution?** - Result of biannual perceptions survey*

* indicates where the indicator is to be trialled

we will continue to seek further efficiency indicators during the course of the consultation

6. Glossary

6. Glossary

The natural environment

This means living things like plants and wild animals, the habitats in which they live, land, air and water, and the natural systems, cycles, and processes through which they interact.

Environmental protection

This means protecting the natural environment and people from the harmful effects of human activity on the natural environment. It also includes maintaining, restoring or enhancing the natural environment, and monitoring, assessing, considering, advising or reporting on any of these.

Environmental law

This means any legislative provision (such as an Act of Parliament or Regulations) that is mainly concerned with environmental protection, unless it deals with certain excluded subjects such as national security or those devolved to the Scottish or Welsh governments.

To the extent that they are mainly concerned with environmental protection, this includes provisions in laws dealing with other subjects, such as those related to planning and development – for example, legislation about environmental impact assessment.

Environmental law generally means both UK and Northern Ireland environmental law, unless we refer to either individually.

Public authority

This means any person or organisation carrying out any function of a public nature. It includes government, agencies of government, local authorities and similar organisations. In some circumstances it includes others, for example private companies, when they are carrying out public functions.

Authorities carrying out devolved functions in Scotland and Wales, and certain specific authorities such as the courts, Parliament and the Northern Ireland Assembly, are excluded.

Government

Where we refer to government, we mean the UK government and its departments acting on matters for England or where they are reserved and the Northern Ireland executive and its departments acting on matters for Northern Ireland, unless we refer to either individually.

Environmental improvement plan

An environmental improvement plan (EIP) is a plan for significantly improving the natural environment that government is required to prepare under the Environment Act 2021. EIPs must include the steps government intends to take to improve the natural environment and can include other matters.

Environment Act targets

Environment Act targets are the legally-binding and objectively measurable targets the UK government must set in England under the Environment Act 2021.

The UK government set a number of Environment Act targets in January 2023 and may set others in the future. The Environment Act 2021 does not provide for such targets to be set in Northern Ireland.

Reserved matters

Reserved matters are those where the ability to create legislation rests with the UK Parliament in Westminster and has not been devolved to the parliaments and assemblies in Scotland, Wales or Northern Ireland.

Devolution legislation sets out which matters are reserved and devolved. The environment is largely a devolved matter with few areas reserved. There is no single, exhaustive list of reserved legislation.

Parliament

The UK Parliament in Westminster.

The Assembly

The Northern Ireland Assembly in Stormont.

Annex A: Enforcement Policy

Part 1. Introduction and aims

Our enforcement policy explains how we approach our enforcement role and exercise our enforcement functions. These enforcement functions provide us with a range of powers and duties, give us discretion in exercising them and require us to use our judgement in determining where, when and how we choose to act.

This policy sets out:

- the nature of our enforcement powers
- how we will use our enforcement powers to further our principal objective, and
- a clear decision-making framework that will support a consistent approach to how we use our enforcement powers

In addition, this policy is intended to meet the requirements in the Environment Act 2021 to set out how we intend to:

- determine whether failures to comply with environmental law are serious
- determine whether damage to the natural environment or to human health is serious
- exercise enforcement functions in a way that respects the integrity of other statutory regimes (including existing ongoing legal proceedings)
- avoid any overlap between how we exercise our complaints functions and similar functions undertaken by the relevant ombudsman services, and;
- prioritise cases

Part 2. Our approach to exercising our enforcement functions

Our enforcement functions encompass a range of investigatory and enforcement powers and duties. These enable us to act in relation to suspected failures by public authorities to comply with certain laws intended to protect people and the environment. We can, amongst other things, receive complaints from members of the public, conduct investigations and launch court proceedings regarding serious failures.

In this section, we provide an overview of the enforcement powers we have, how we will determine what enforcement action to take and our focus on seeking meaningful resolution to issues of non-compliance. This section also sets out three general principles which underpin our enforcement activities.

We set out further details of the scope and nature of our enforcement functions in part 3.

2.1 Powers and prioritisation

Our principal objective in exercising all our functions, including our enforcement functions, is to contribute to environmental protection and the improvement of the natural

environment. As set out in the glossary of our strategy (part 6), the term 'environmental protection' includes the protection of people from the effects of human activity on the natural environment, as well as protecting the natural environment itself.

Use of many of our powers is subject to meeting legal thresholds, principally that a suspected failure to comply with environmental law is, or would be, 'serious' (part 4). Where we are satisfied relevant thresholds are met, we have discretion in whether and how to use our powers.

In accordance with our principal objective, we will seek to target enforcement action where we can most contribute to environmental protection (which includes protection of people) and the improvement of the natural environment. In doing so, we may take steps designed to remedy, mitigate or prevent recurrence of a failure to comply with environmental law.

We will focus on the most significant areas of non-compliance, including recurrent and systemic issues, those which are associated with serious damage to the natural environment or to people's health, and those with national implications.

However, just because we can exercise our powers does not mean that we necessarily will.

We will have to make choices about the matters to prioritise to make the most effective use of our finite resources. We will do this in accordance with the broader prioritisation approach set out in part 3.4 of our strategy. That approach incorporates the factors set out in part 4.3 below, as well as consideration of where we can make the most difference and whether and when enforcement action is most appropriate.

2.2 Resolution and respect

For environmental laws to be effective in protecting people and the environment, they must be properly understood, implemented and complied with. Our objective in using our enforcement functions is to achieve environmental outcomes by improving government's and other public authorities' compliance with these laws. We will identify, address and, importantly, resolve issues by holding government and other public authorities to account for serious failures in compliance where they arise.

We will adopt a proportionate approach to our enforcement activities. This means we will aim to resolve non-compliance at the earliest opportunity, and where possible through co-operation, dialogue and agreement with public authorities. Early resolution may be achieved during our initial assessment of alleged failures to comply with environmental law, when we will normally engage with public authorities to understand their position and gather additional information. Where we are successful in reaching resolution in this way, we will normally publicise this activity on our website.

The process of seeking early resolution is not a substitute for investigation, where our aim is to establish whether a public authority has failed to comply with environmental law. Therefore, where early resolution is not possible or appropriate, we may decide to exercise our enforcement functions including, if necessary, through court proceedings. However, we will consider opportunities to resolve non-compliance through agreement at every stage of the enforcement process. Exceptionally, where urgency requires it, we may take a matter to court outside of our bespoke enforcement functions (part 5).

In carrying out our enforcement functions, we will seek to respect the integrity of other relevant statutory regimes, including any existing legal challenges that might be ongoing. We will also seek to avoid overlap with other relevant authorities (part 6).

2.3 Independence

We are legally separate from government and will act independently. We will consider the views of government alongside those of others, but government has no powers to give us legally binding directions as to how we exercise our enforcement powers. The Environment Act provides that the Secretary of State for Environment, Food and Rural Affairs and the Northern Ireland Department for Agriculture, Environment and Rural Affairs (DAERA) may issue guidance on certain matters covered in this enforcement policy, although such guidance cannot preclude us from investigating individual cases or subject areas. Should the Secretary of State or DAERA issue guidance, we must have regard to it when exercising our enforcement functions and when revising this policy.

2.4 General principles

Three general principles will underpin our enforcement approach, helping to provide consistency. Whilst these principles will work in conjunction with one another, they each reflect a different but equally important aspect of our approach to enforcement.

Principle 1 – public authorities must comply with the law

Public bodies must comply with the law and give due weight to their obligations. Non-compliance can undermine public confidence in environmental governance, good administration and the rule of law. Failures to comply with environmental law can also jeopardise ambitions for environmental protection and improvement (including as this relates to people's health and wellbeing). We can exercise our enforcement functions only where a public authority may have failed to comply with environmental law. As such, any failure by a public authority is potentially within the scope of our enforcement functions.

Principle 2 – enforcement activity should be targeted to where it is most needed

Targeting our enforcement activity to where it is most needed enables us to maximise our contribution to environmental protection and the improvement of the natural environment. This means we will focus on more significant failures to comply with environmental law. This could include tackling individual failures which indicate systemic issues or which, when considered alongside other matters, together represent serious failures or that cumulatively give rise to serious damage. This principle reflects the importance of prioritising our work (part 4.3).

Principle 3 – our enforcement activity should take account of all the relevant circumstances

We will consider all the relevant and known circumstances of suspected failures to comply with environmental law. The relevant circumstances are likely to vary from case to case, but this principle reflects the need to make decisions on when and how to act on the basis of available evidence and exercising judgement within our decision-making framework.

2.5 Our other functions

We have other functions beyond enforcement, such as monitoring and reporting on the implementation of environmental law. These are set out in the main body of our strategy. These and our enforcement functions are mutually reinforcing. In line with our issue-based approach reflected in the strategy (part 3.3), we will consider all our available functions to determine what approach would make the most difference to protecting people and the environment. Use of our enforcement powers may not always be the most effective approach.

Part 3. Scope and content of our enforcement functions

We can use our enforcement functions in response to alleged failures of public authorities to comply with environmental law. We discuss the meaning of this in part 3.1 below.

We have enforcement functions which are unique to us and which we can use to secure compliance with environmental law in non-urgent cases. These functions are described in part 3.2 below.

In addition, we have powers which are not unique to us. In urgent cases, we may bypass our bespoke enforcement functions. We may, instead, immediately bring more conventional court proceedings (judicial review or statutory review). We can also apply to intervene in court proceedings brought by others. These powers are set out in part 3.3 below.

3.1 Scope of our enforcement functions

Our enforcement powers apply to alleged or suspected failures of public authorities to comply with environmental law. In general, 'public authorities' encompass any person carrying out any function of a public nature, subject to some exclusions set out in the Environment Act (see the glossary of our strategy, part 6).

Our enforcement functions relate to what the Environment Act defines as 'environmental law' and can be exercised in relation to England, Northern Ireland, and 'reserved matters'. Reserved matters are those where the ability to create legislation is retained exclusively by the UK Parliament and has not been devolved to Scotland, Wales or Northern Ireland.

As described in the glossary to our strategy (part 6), 'environmental law' means any legislative provision to the extent that it is mainly concerned with environmental protection. In considering whether law is environmental, we will assess whether the relevant individual provision in question is mainly concerned with environmental protection.

'Environmental protection' has a specific meaning in this context and includes both protection of the natural environment from the effects of human activity and protection of people from the effects of human activity on the natural environment. Laws concerned with disclosure of or access to information, the armed forces or national security, and taxation, spending or the allocation of resources within government are excluded.

In relation to devolved matters in Northern Ireland, our enforcement functions relate to what the Act defines as 'relevant environmental law'. This encompasses both 'Northern Ireland

environmental law' and 'UK environmental law' (each as defined in the Act). In brief, this extends to both Northern Ireland and UK legislative provisions that are mainly concerned with environmental protection and are not concerned with any of the excluded matters set out above.

Where we refer to environmental law in this document, this is intended to encompass both 'environmental law' and 'relevant environmental law'.

Our remit extends to failures to comply with environmental law by public authorities in England, Northern Ireland and, in the context of reserved matters, across the whole of the UK. This means where a public authority unlawfully fails to take proper account of environmental law when exercising its functions or where it unlawfully exercises or fails to exercise a function it has under environmental law. Failures to comply with environmental law can include omissions as well as actions.

3.2 Our powers: bespoke enforcement functions

We have specific and unique functions to deal with suspected failures to comply with environmental law. The framework in which these functions sit is designed to encourage resolution at the earliest possible stage. We will use our functions accordingly, and we will expect public bodies to approach our enforcement activity in the same way. However, where there are unsatisfactory responses, we will not hesitate to use the formal enforcement mechanisms available to us, including by taking court action.

Where we consider that exercising our bespoke enforcement functions is the most appropriate course of action, we may make use of the steps set out below, generally starting with gathering information. These steps are broadly escalatory in nature. If a matter remains unresolved, we may progress it further through our bespoke enforcement functions.

As set out in the Environment Act and further explained in our strategy, public authorities have a duty to cooperate with us and give us reasonable assistance, including through the provision of information. In the context of our enforcement functions, we will be clear about the status of our interactions with public authorities, including whether we are undertaking preliminary information-gathering or whether we have decided to open an investigation. We work with public authorities to continually improve engagement and understanding of the duty to cooperate.

Further to the specific enforcement powers outlined in this part, we will also take complementary steps to maximise the effectiveness of our activity and outcomes. We will keep a record of information we obtain and the complaints we receive even where we do not take further action. This enables us to track topics and themes, on which we may later decide to act.

Gathering information and early resolution

When we become aware of a public authority potentially failing to comply with environmental law, we may undertake preliminary information-gathering, though this will not always be necessary. This may include gathering views, evidence and other relevant materials from public authorities or others. Preliminary information-gathering is intended to help us assess whether we can and should pursue an investigation. Therefore, where

we undertake such preliminary activity, this would be before we formally launch an investigation.

Whilst the primary aim of this information-gathering is to help us determine whether we can and should investigate, it is also an opportunity for public authorities to engage with us. They may use that opportunity to acknowledge the existence of failures and explain how they intend to return to compliance, or to explain how they are already complying with the relevant law. In such cases, we may request assurances or further information to be satisfied that the suggested actions will resolve the identified issues in a timely manner. We may then conclude the issue without commencing an investigation. We will continue to monitor progress of these cases and publish our activity on our website.

This approach reflects our aim to resolve compliance issues at the earliest opportunity, and where possible through dialogue, co-operation and agreement with public authorities. Where it is not possible or appropriate to resolve instances of non-compliance in a timely way through such early engagement, we may launch an investigation.

Investigations

We have the power to carry out **investigations** where we have information that indicates that a public authority may have failed to comply with environmental law and, if it has, the failure would be serious. In line with our issue-based approach (part 3.3 of our strategy), investigations can be launched as a result of complaints, intelligence, or information flowing from wider OEP activity such as compliance issues highlighted through monitoring the implementation of environmental law. The primary purpose of an investigation is to establish whether a public authority has complied with environmental law. Where they have not, we can use our enforcement functions to secure actions that can remedy, mitigate or prevent reoccurrence of the failure, including through making recommendations (see below).

We can use our powers for gathering information and investigation to try to agree the factual background to an issue with the relevant public authority, even where disagreements remain about, for instance, whether those agreed facts amount to a breach of the law. In such cases, we will need to determine whether it would be appropriate to take further action under our other enforcement powers.

Information notices

We can serve an **information notice** where we have reasonable grounds for suspecting a serious failure to comply with environmental law by a public authority. Public authorities must respond in writing to such notices and must provide the information requested so far as it is reasonably practicable to do so. We expect that we would normally only serve information notices in the context of an investigation.

Decision notices

In appropriate cases, where we have previously issued an information notice, we may issue a **decision notice**. A decision notice is a formal document which sets out our conclusions on a public authority's failure to comply with environmental law, why we think that failure is serious, and the steps we consider the public authority should take in relation to that failure. These steps may include, amongst other things, action to remedy, mitigate or prevent

reoccurrence of the failure. We will not specify steps that the authority concerned does not have the legal powers to implement.

Public authorities must respond in writing to decision notices, including to confirm whether they will take the steps we require. We may only issue a decision notice where we are satisfied, on the balance of probabilities (that is, that it is more likely than not), that the public authority has failed to comply with environmental law, and where we consider that the failure is serious. Consequently, decision notices represent a significant step that public authorities should take seriously and comply with. We may take further action if a public authority does not comply.

Reporting and recommendations

Following all investigations (save those where we take the matter to court) we must prepare a report which we will usually publish. These reports will set out our conclusions on whether a public authority has failed to comply with environmental law.

We may also make recommendations, both specifically for the public authority concerned and more generally. We will determine what, if any, recommendations are appropriate for each case we investigate. Recommendations might include steps to rectify the environmental or human health effects of the non-compliance, prevent recurrence of the failure, or a recommendation to revisit the decision in question. We will only issue recommendations to a public authority that are within the authority's powers to follow.

We will expect public authorities to comply with any recommendations we make. We will take steps to monitor public authorities' implementation of our recommendations and may take further enforcement action where needed.

We will also aim to ensure that any remedies we recommend are proportionate as well as effective. We will therefore normally provide draft recommendations to the public authority concerned. This will afford them an opportunity to comment and potentially take action before we finalise our reports. However, what recommendations we finally make, and the content we include in our final reports, will remain our decision; we need not adopt any comments we may receive back on our drafts.

Taking public authorities to court

We expect public authorities to rectify any non-compliance promptly when brought to their attention. Where appropriate, we will set out to public authorities the timescales within which we expect such rectification to happen. We also expect public authorities to comply with any of the enforcement steps we may take as discussed above. Consequently, court action should only be necessary as a last resort.

However, we recognise that court action may sometimes be required. In England, we may commence proceedings in the English High Court via an **environmental review** enabling the court to determine the matter in law. In Northern Ireland, we may apply to commence proceedings in the Northern Ireland High Court via a **review application**. We may be required to take such court action in circumstances where, for example, a public authority:

- contests our conclusion that they failed to comply with environmental law

- does not implement our recommendations from a decision notice, or does not do so in a timely manner
- cannot revisit its decision in the absence of a court quashing order, or
- accepts its breach but disputes the remedial steps we suggest

We can launch proceedings for an environmental review or a review application if we are satisfied, on the balance of probabilities, that the authority in question has failed to comply with environmental law and we consider that the failure is serious. This is the same as the threshold for issuing a decision notice. We can only commence an environmental review or make a review application where we have previously served an information notice and a decision notice in relation to the case.

If, on an environmental review, the court agrees that a public authority has failed to comply with environmental law, it will publish a statement of non-compliance (SONC). Subject to certain conditions specified in the Environment Act, the court may also grant any remedy available via a judicial review. This might include a quashing order that has the effect of overturning or setting aside an unlawful decision, or a mandatory order that requires the public authority to take certain steps. The court will not be able to award damages on an environmental review.

A public authority must publish a response to a SONC within two months of the conclusion of the proceedings including any appeal. That response must set out the steps it intends to take in light of the SONC. In the context of a review application, although the court is not required to publish a SONC, the public authority must still publish a statement setting out the steps it intends to take in the light of a court finding that it has failed to comply with environmental law.

Where the court has found a public authority not to have complied with environmental law, we will expect the public authority's response to present a meaningful and substantive approach to tackling the findings. This should generally set out the details and timing of the steps they will take to correct the failure or address its consequences, including to meet the requirements of any specific remedies granted by the court. We generally expect the public authority may want to confirm the response with us before publishing it. We may make our own observations on the adequacy of their response.

We will also expect the public authority to implement fully any actions they present in their response and will monitor their progress accordingly. We may take further action to enforce compliance with court judgments where needed.

Informing and involving government in enforcement action

UK government departments may be subject to our enforcement action. In addition, the Environment Act provides for us to inform or involve the relevant government minister where certain action is taken against other public authorities. In particular, in applying for an environmental review, we must state whether we consider a minister should join the proceedings we bring against another party. Similar requirements apply in relation to informing the relevant Northern Ireland department about review applications we make concerning other Northern Ireland public authorities.

Transparency and confidentiality

We have a duty to have regard to the need to act transparently. This applies across our functions including enforcement. With this in mind, we will routinely make public information regarding our enforcement activities.

Our website includes details of open investigations, matters we have resolved through our enforcement activities, and copies of our quarterly complaints reports.

In addition, we will keep complainants updated about the progress of their complaint at various stages.

We will publish our investigation reports in full unless there are good reasons to only publish extracts or to withhold publication. The published version will also be directly disclosed to the complainant.

In addition to directly informing complainants about the progress of their complaints, we will normally publish a statement whenever we give an information notice or a decision notice and when we apply for an environmental review, a review application, a judicial review or a statutory review. We will use these to explain to everybody that we have taken the relevant step. We will describe the failure (or alleged failure) to comply in relation to which the step was taken and set out any further information that we consider appropriate.

Our ability to publish enforcement-related information is limited in some ways by relevant legal obligations. In complying with these, we will only withhold from publication the minimum information that we consider necessary.

For instance, the Environment Act requires that we must not normally disclose certain information supplied to us by public authorities. In addition, we must not normally disclose information notices, decision notices, or associated correspondence apart from in specific circumstances set out in the Act.

The Act establishes that 'environmental information' supplied to us by public authorities is presumed to be held in connection with confidential proceedings. Consequently, such information can be protected from disclosure where the disclosure would adversely affect the confidentiality of those proceedings, unless the public interest in disclosing the information outweighs the public interest in maintaining confidentiality.

Where we have decided not to take any further steps and a matter is concluded, we may give consent for the disclosure of an information notice or a decision notice. Once proceedings are over, we will normally publish information notices and decision notices in full on our website, unless there are good reasons why confidentiality should be maintained over all or parts of them. We will usually consult with the public authority concerned before publishing.

3.3 Our powers: additional enforcement actions

In addition to our bespoke enforcement functions, we have the following powers to take more conventional enforcement actions.

Urgent court proceedings

We may apply for **judicial review** or a **statutory review** in appropriate cases, where we consider there is or may be a failure to comply with environmental law which is serious. We can do this only in cases where the 'urgency condition' established in the Environment Act is met. This condition requires that the judicial review or statutory review is necessary to prevent, or mitigate, serious damage to the natural environment or to human health (see part 5 below).

If the court finds that a public authority has failed to comply with environmental law, the authority must publish a statement setting out the steps it intends to take in the light of that finding within two months of the end of the proceedings. We will monitor the public authority's progress against this statement. As discussed above in relation to environmental review and review applications, we may take further action to enforce compliance with court judgments where needed, including, where appropriate, by returning to the court.

The court may also grant any remedies available through judicial review or statutory review.

If we apply for an urgent judicial review or statutory review in which the relevant UK government minister or Northern Ireland department is not a party, we must consider whether they should be joined to the proceedings.

Intervention in other parties' court cases

We may apply to **intervene** in judicial reviews or statutory reviews brought by others that relate to an alleged failure by a public authority to comply with environmental law.

We would generally consider interventions when our assessment of seriousness and our usual prioritisation criteria point towards it as a suitable course of action. Any applications we make to intervene would be on the basis of contributing towards our principal objective by providing assistance to the court. This assistance might be, for example, by enabling the court to consider wider contextual information which, without our intervention, would not be available. As with all interventions, it will be for the court to determine whether our application to intervene is permitted.

We will consider any requests we receive for us to apply to intervene in existing proceedings. We will approach decisions as to whether to intervene impartially.

If we have previously considered a matter and decided not to investigate or progress it beyond a certain stage of our enforcement process, we would not normally expect to apply to intervene in a subsequent case brought on the same matter by a third party. However, we would determine this on a case-by-case basis. As part of this we would consider whether the case brought by the third party would involve any wider significant factors that were not part of our earlier consideration of the matter.

We can apply to intervene whether or not we consider that the public authority has failed to comply with environmental law. However, we may only do so where we consider that the alleged failure (as framed in those proceedings), if it occurred, would be serious.

We would not normally expect to intervene in a case where we consider that the public authority has complied with environmental law. We may do so though if this is considered appropriate, for example because the case deals with important points of law or has other wider implications.

Further information about how we will decide whether to apply to intervene in any particular case can be found on our website.

Part 4. Our decision-making framework

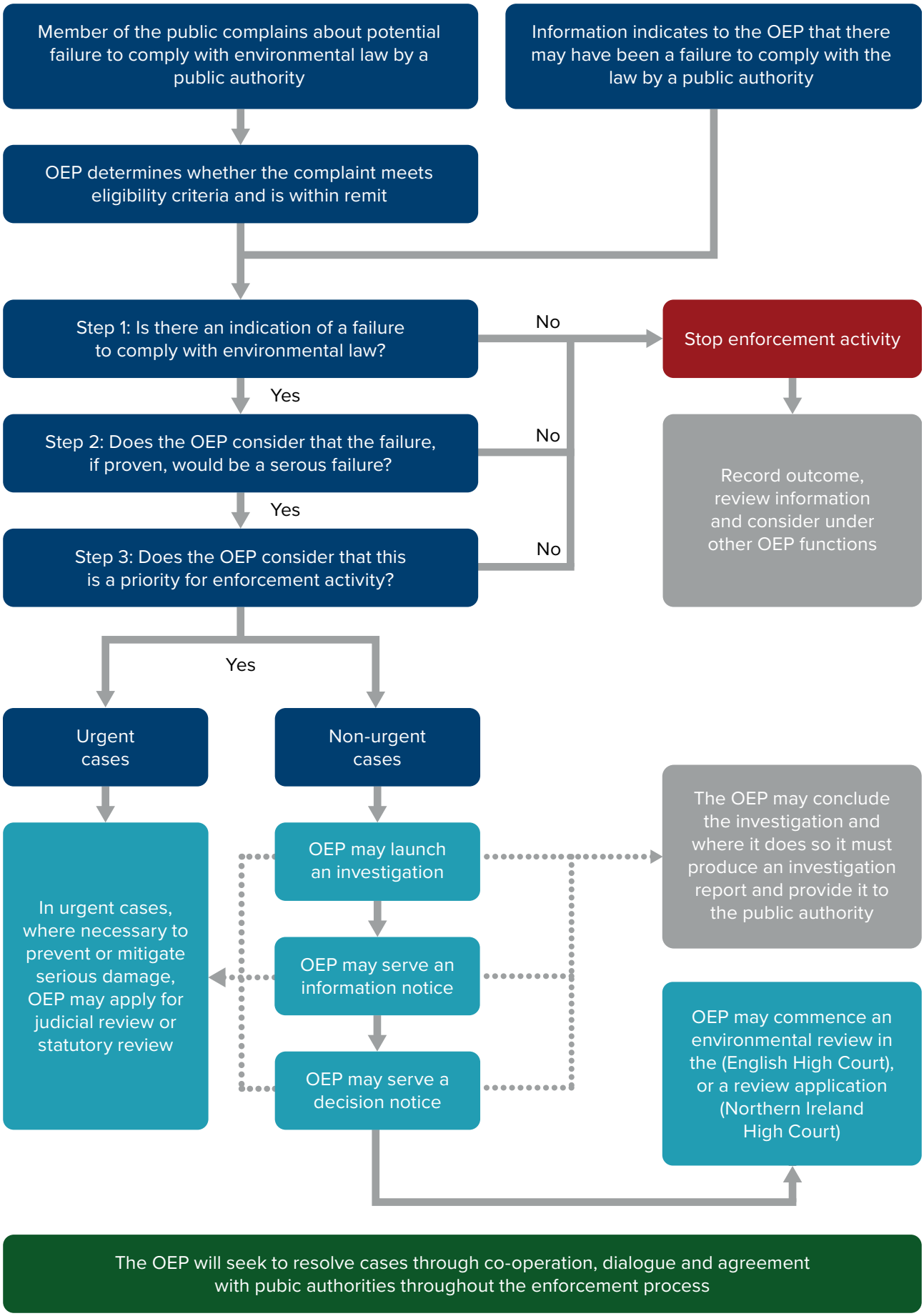
When we receive a complaint or consider other information with a view to possible investigation, we must first determine if the matter falls within our remit.

We have published a complaints procedure, which is available on our website at www.theoep.org.uk/can-i-complain. This procedure is complementary to this enforcement policy but does not form a part of it. People must follow our complaints procedure when making a complaint to us. We may amend the procedure from time to time and will publish any revisions on our website. Where an issue does not meet the eligibility criteria for a complaint, we may still consider information for possible enforcement activity through our decision-making framework if the issue identified is serious and a priority.

Where we are satisfied that a matter falls within our remit, we will apply the decision-making framework set out in figure 1 below to determine whether and how to exercise our enforcement functions – either our bespoke enforcement functions (part 3.2 above) or our powers to take additional enforcement actions (part 3.3 above)

Where we cannot pursue enforcement activity we may still act through our other functions (such as reporting on the implementation of environmental law or advising ministers). We may also do this where we could take enforcement action but judge that the exercise of other functions would be more effective.

Figure 1. Our decision making framework



As set out in figure 1 above, our decision-making framework involves 3 steps. In **step 1**, we will consider whether the information we have indicates that there may have been a failure to comply with environmental law by a public authority. This will involve considering the basis for any action.

In **step 2**, we will consider whether a potential failure is or would be a serious failure. This determines whether we can exercise our powers to investigate, serve an information notice or decision notice, or go to court. Part 4.2 below sets out our approach to this assessment.

As an integral part of step 2, we will assess whether the conduct could give, or has given, rise to harm to the natural environment or human health that amounts to 'serious damage'. Where this is the case, we will also assess whether the urgency condition noted above (part 3.3) is met, such that we are able to apply for an urgent judicial review or statutory review. Part 5 below sets out our approach to assessment of the urgency condition.

Step 3 applies when we have determined that a compliance issue falls under our remit, and we consider it may represent a serious failure(s). At this stage, we can exercise our enforcement powers. However, we will not be able to act on all possible cases and, in some cases, functions other than our enforcement powers may be more appropriate. In all cases, we must consider the best use of our resources and determine where we can make the most difference. Step 3 therefore involves determining if a case that we can act upon is a priority to pursue through enforcement. If we determine it is not an enforcement priority, this would not preclude us from pursuing the matter under a different function. Our approach to prioritisation is discussed in part 4.3 below.

Procedural stages when we must consider whether a failure is serious

When using our bespoke enforcement functions, we must assess whether a failure is serious when:

- assessing a complaint or other information indicating non-compliance
- initiating an investigation, whether on the basis of a complaint or some other information
- issuing an information notice
- issuing a decision notice
- applying for an environmental review or making a review application

We must also assess whether a failure is serious when considering the following additional enforcement actions:

- applying for an urgent judicial review or statutory review
- applying to intervene in a judicial review or statutory review brought by a third party

When, following our assessment, we decide to take one of the actions listed above, we will normally publish a statement setting out why we determined that the matter is serious.

Procedural stages when we must consider 'serious damage'

We must consider the seriousness of harm or potential harm associated with the failure to comply with environmental law when considering applying for an urgent judicial review or statutory review (the 'serious damage' test). If serious damage has been, or might be, caused, we will assess whether the urgency condition is met such that we can consider applying for a judicial review or statutory review (see part 5 below).

The serious damage test does not apply to any of the stages within our bespoke enforcement functions. However, where harm to human health or the environment could be serious, we would necessarily view the conduct as a serious failure.

Given this, and the need to make decisions on urgent action swiftly, we will consider the possibility that harm might amount to 'serious damage' in parallel with our assessment of the seriousness of a potential failure as part of step 2.

4.1 Step 1 – assessing the basis for enforcement action

Whenever we take enforcement action, we will ensure we have a reasonable basis to act based on the information available. The Environment Act establishes the relevant threshold we must satisfy to exercise each of our enforcement powers. This is outlined in part 3 above.

4.2 Step 2 – serious failure

Through step 2, we will assess whether a suspected failure by a public authority to comply with environmental law would be a serious failure. This part sets out certain factors that may be relevant in determining (a) whether a suspected failure to comply amounts to a serious failure and, as part of that, (b) whether any associated harm or potential harm amounts to serious damage.

These factors are intended to be flexible. Where a factor is relevant to the assessment of a potential failure to comply or the seriousness of associated harm, consideration of that factor may involve evaluating compounding (indicating a greater degree of seriousness) and / or mitigating (indicating less seriousness) elements. This will contribute to our overall determination of whether a suspected failure is serious or whether associated harm amounts to serious damage.

As well as considering matters individually, we may also assess them collectively. The factors listed below should be read with this in mind. For example, we may receive a complaint about a specific aspect of a public authority's conduct and judge that this conduct on its own does not amount to a serious failure or occasion serious damage. However, if we receive more complaints or have other information about similar or related matters occurring more widely, whether in relation to the same authority or others, we may determine that cumulatively this indicates a serious failure or serious damage.

Relevant factors for assessing seriousness

In accordance with Principle 3 set out above, we will consider all relevant factors when determining if a failure to comply with environmental law is or may be serious. Factors that we may take into account when assessing the seriousness of a failure include:

a. whether the conduct raises any **points of law of general public importance**. This may be, for example, by setting a precedent with wider potential implications (beyond those of the case) or addressing an important area of law where clarification would be valuable or important

b. the **frequency of the conduct** over time (including historically and whether by the same public authority or others), including cumulative impacts. For example, whether the conduct is a one-off event, occasional, frequent, recurrent or ongoing and the potential impact of multiple instances of the conduct taken together

c. the **behaviour** of the public authority or authorities. For example, whether the public authority has a high degree of responsibility for the failure, for example by acting deliberately, recklessly, or negligently; or, on the other hand, whether the authority was responding with reasonable care to an emergency or other exceptional circumstances not of its making

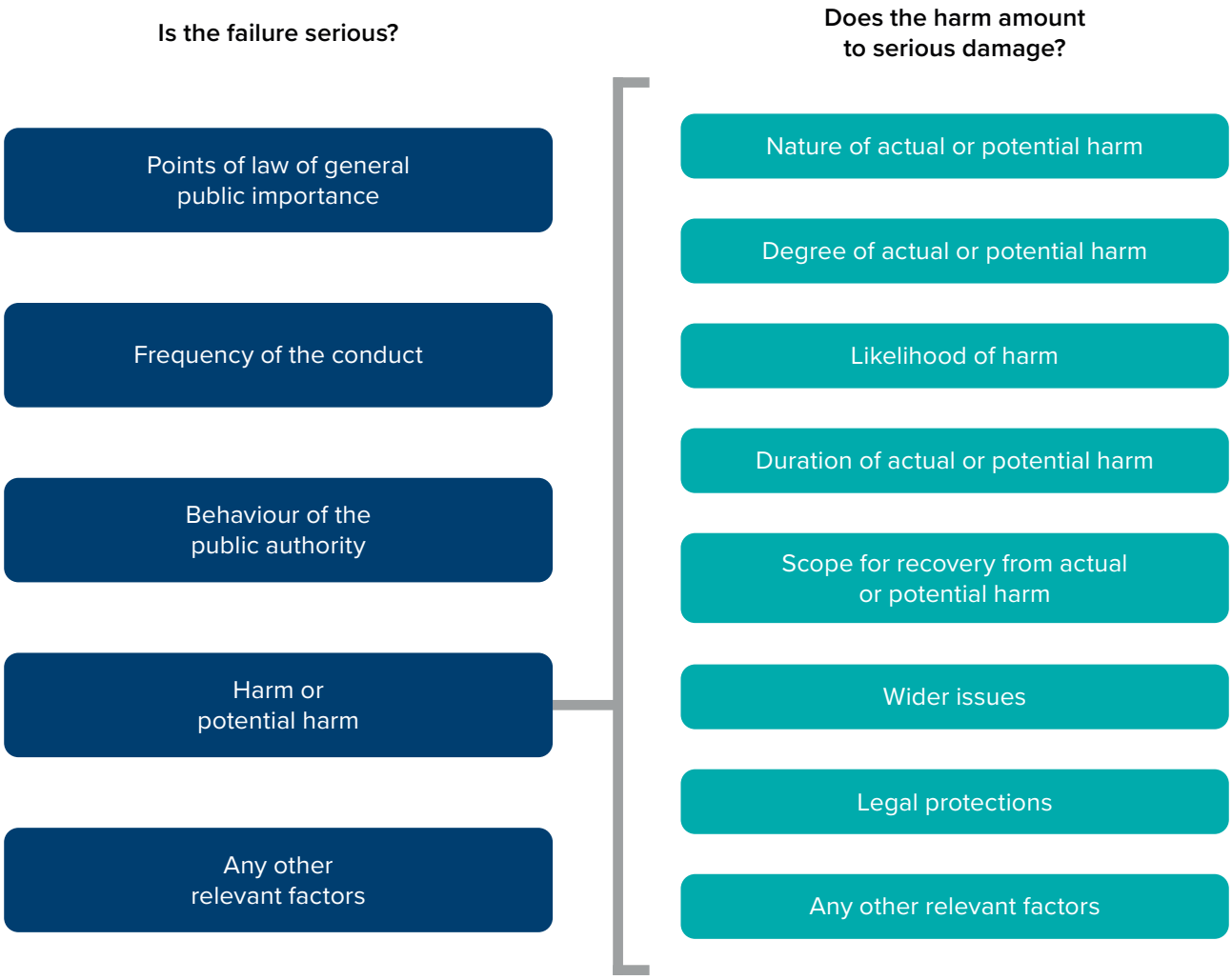
d. the **harm or potential harm** to the natural environment or to human health associated with the issue

e. any **other** relevant factors

The harm or potential harm referred to above relates to the actual or potential harm to the environment or to human health associated with the failure to comply (referred to in the Environment Act as 'damage'). Harm is assessed as part of our consideration of the seriousness of a failure to comply; that a public authority's conduct did or could result in harm may indicate that the failure itself could be serious.

Factors we may consider when assessing harm and, for the purpose of identifying urgent cases, whether it amounts to serious damage are set out in the list below, entitled 'Relevant factors for assessing seriousness of harm'. However, harm is just one factor that we may consider when assessing whether a failure is serious. Figure 2 below illustrates this.

Figure 2. Spotlight on harm



Relevant factors in assessing seriousness of harm (including the 'serious damage' test)

Our assessment as to whether a failure would be serious will normally involve taking account of **harm or potential harm to the natural environment or to human health** associated with the failure, and whether this amounts to serious damage.

Factors that we may take into account when considering whether harm amounts to serious damage include:

a. the **nature of the actual or potential harm**. For example, we may consider what is being or might be harmed, including consideration of the characteristics and context of the people or environmental features concerned. For people, this may include considering any particular sensitivities of those put at risk. For environmental features, this might include considering their rarity and role in wider environmental systems at the relevant level (for example, local, national or global). This could also include consideration of the particular type of harm that has arisen or might arise

b. the **degree of actual or potential harm**. This could include consideration of the severity of the harm or the extent of the harm (for example, the sizes of the areas or the communities affected)

c. the **likelihood of harm**. For example, has it already occurred, or is it inevitable, likely, possible or speculative

d. the **duration of the actual or potential harm**, that is how long it will or may last

e. the **scope for recovery from the actual or potential harm**. Here we might consider the scope for the people or environmental features at risk to recover from harm, anything which impedes recovery or would need to be in place to allow it to occur, the anticipated time period for any recovery, and the likelihood of some other form of satisfactory remediation or compensatory action being taken

f. **wider issues**, including any indication of a more widespread or systemic problem meaning that the harm should be considered at this wider level

g. the application of any **legal protections** to the relevant environmental features

h. any **other** relevant factors

The factors included in the lists above are not exhaustive. Nor will each factor always be relevant. In addition, these factors are not necessarily discrete. We will consider all relevant factors in the round, recognising the potential for inter-relationships between them.

Finally, the ordering of the factors we refer to above is immaterial – there is no hierarchy between them.

Approach to assessing seriousness

In carrying out our assessments of seriousness, we will exercise professional, impartial and evidence-based judgements. In considering relevant circumstances, we may be faced with situations in which uncertainty is a factor. The greater the importance of the feature of the natural environment that is or may be affected, or the more significant the human health impact, the greater the scope for adopting a proactive approach that addresses the risk of harm through proportionate enforcement action.

We will have regard to the need to act proportionately and would not normally expect to conduct detailed technical assessments (for example, scientific studies or primary data collection or analyses) to assess the level of actual or possible harm to the natural environment or human health associated with a suspected failure. Rather, we will exercise judgement in our assessments of harm and the possibility of serious damage. Our judgements will be based on the information that is reasonably available to us, ensuring that they are undertaken objectively and consistently.

Once we have looked at relevant factors, we will make an overall appraisal of the seriousness of the failure.

Some high level, illustrative examples of conduct that, based on a broad assessment, would normally be considered as clear serious failures to comply with environmental law include:

- recurrent, frequent or ongoing conduct that is reckless, negligent, wilful or deliberate and which raises fundamental points of law

- cases which raise multiple instances of similar conduct which, when considered together, indicate a systemic issue potentially leading to significant local, regional, national or wider-scale damage

- conduct by a public authority which has failed to act on previous warnings or advice, or has been uncooperative or sought to conceal or mislead

4.3 Step 3 – prioritisation

Our overall approach to prioritisation is set out in part 3.4 of our strategy and applies to all of our functions. This part of our policy sets out specific considerations that apply to prioritisation of enforcement cases, within that broader context. It should be read alongside part 3.4 of our strategy.

In accordance with our principal objective, we will target enforcement action to where we can most benefit environmental protection and the improvement of the natural environment. The Environment Act also requires that, in considering our enforcement policy, we must have regard to the particular importance of prioritising cases that we consider have or may have national implications.

We must also have regard to the importance of prioritising cases:

- that relate to ongoing or recurrent conduct

- that relate to conduct that we consider may cause (or has caused) serious damage to the natural environment or to human health, or

- that raise a point of environmental law of general public importance

National implications

A case with national implications is one that has implications that extend beyond the immediate local area. This might mean implications that extend to England, to Northern Ireland or are UK-wide. This does not mean that direct physical impacts must be felt nationally.

When we receive individual complaints or other inputs that raise a concern at a particular site or sites, we will consider if the matter may have broader, and potentially national, implications, based on any information that suggests a wider problem.

We may, conversely, receive complaints about a failure within the context of a nationally significant project or initiative. Such a failure need not have nation-wide implications simply because it relates to a high-profile or national project. Rather than focusing on the significance of the underlying project, our assessment of the potential for national implications will be based on the broader significance of the alleged failure and its consequences. This might include consideration of whether the failure indicates the existence of wider-spread systemic issues across the country or the cumulative impact of multiple, isolated failures which individually affect different areas.

The above statutory prioritisation criteria are built into our approach for assessing the seriousness of failures to comply with environmental law. As a result, we will consider them as an integral part of our seriousness assessments.

We will then prioritise our enforcement activity, guided by the four questions set out in part 3.4 of our strategy:

- how large an effect could our action have?
- how likely is our ability to have that effect?
- what is the strategic fit?
- what is our capacity and capability to deliver?

Part 5. Urgent cases

Where a potential failure to comply with environmental law has given or could give rise to harm to the natural environment or to human health, we will consider whether this harm amounts to serious damage. Where we consider this to be the case, we will also assess whether the urgency condition is met.

Meeting the urgency condition has two elements. The first is that the failure could give rise to serious damage. This is considered in part 4.2 above. The second involves deciding whether it is necessary to prevent or mitigate serious damage by applying for a judicial review or statutory review, rather than starting or continuing to use our bespoke enforcement functions towards environmental review or a review application. This requires us to compare the two approaches. In making this comparison, we will consider **the opportunity for prevention or mitigation of the serious damage**. As part of this, we may take into account the **different timescales**, as well as the **limits on the scope for remedies** associated with environmental reviews and review applications, in contrast with judicial review or statutory review.

Assessment of the **opportunity to prevent or mitigate the serious damage** will involve considering all of the circumstances of the case, including the extent, nature and duration of the harm being caused, or likely to be caused, as well as the previous actions of the public authority in question.

We may compare the **timescale element** of the different routes by considering whether the serious damage would occur, or become unavoidable or worse, if we commenced or continued action pursuant to our bespoke enforcement functions to resolve matters, rather than progressing through a judicial review or statutory review. The likely period to progress any specific case to an environmental review or a review application will depend on the facts of that case.

Another important element relates to the **limits on the scope for remedies** in environmental reviews and review applications as compared to judicial review and statutory review. Generally, in an environmental review or a review application, the court may not grant a remedy (other than, in an environmental review, a SONC) unless satisfied that doing so would not be likely to cause substantial hardship or substantial prejudice to a third party or be detrimental to good administration. This condition does not apply where the court is satisfied that granting the remedy is necessary to prevent or mitigate serious damage to

the natural environment or to human health, and that there is an exceptional public interest reason for granting it.

In considering the urgency condition, we will make our own assessment of the relevant conditions that a court would have to consider granting a remedy. We will do so proportionately, having regard to the need to act urgently and having to assess matters quickly, potentially with limited information.

In determining whether to progress a case through the urgent procedure, we will also proportionately assess the matter according to our prioritisation criteria as discussed in part 4.3 above.

Part 6. Avoiding overlap with others

As we recognise in part 3.7 of our strategy, working well with others will be critical to our success. As part of this, our enforcement functions should be complementary to other relevant statutory regimes (including existing ongoing legal proceedings) and to the work of other bodies charged with overseeing public authorities in relation to environmental matters. Such regimes include public authorities' complaints procedures, appeals mechanisms and legal challenges as well as the functions of the relevant ombudsman services.

To avoid conflict and duplication when prioritising cases, we will take into account the existence of such regimes and any information we have concerning whether they are being applied to a particular allegation of non-compliance.

We will not normally commence enforcement action where we judge another regime or authority is better suited to hold a public authority to account.

We also will not normally act where a public authority's decision remains subject to further statutory regimes before becoming final, or where there are related ongoing legal proceedings, including criminal investigations, which have not yet reached a final decision. Some decisions normally made by one authority can be scrutinised by another before being finally confirmed; many Environment Agency permitting decisions can be appealed to the Secretary of State, for example. In such cases we will not usually take action before that appeal has concluded or relevant time limits have expired without the appeals procedure being commenced.

We may, however, act if we consider that other regimes are unlikely to be as effective at securing environmental protection and improvement (including as related to people's health) as our own intervention would be. In such cases, we would usually communicate with those responsible for other regimes to get their views, before deciding whether or not we should act.

We endeavour to avoid overlap between the exercise of our functions – in particular those associated with the receipt and handling of complaints – and the exercise by the relevant ombudsman services of their functions. Further detail on how we will work with others is set out at part 3.7 of our strategy.

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