

## Board Paper

**Date** 25 October 2024

**Title**

Strategy and Enforcement Policy

**Report Author**

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**Paper for decision**

### Issue

1. We have consulted on our strategy and enforcement policy and aim to lay a revised strategy before Parliament and the Assembly at the end of November.

### Recommendation

2. The Board is recommended to consider and comment on:
  - a. the consultation analysis report at Annex A.
  - b. the updated strategy and enforcement policy at Annex B.
  - c. the communications proposals outlined below.
3. The Board is recommended to agree to:
  - a. adopt a strategy and enforcement policy in substantially the form set out at Annex B, subject only to non-material amendments required in light of its discussion.
  - b. delegate approval of non-material amendments (including those arising from the design for publication) to the Chief Executive in consultation with the Chair.
  - c. publish and lay the strategy and enforcement policy in both Parliament and the Northern Ireland Assembly.

## Background

4. The Environment Act requires the OEP to prepare and consult on a strategy which sets out:
  - a. how we intend to exercise our functions and further our principal objective.
  - b. how we will act objectively and impartially, and have regard to the need to act proportionately and transparently.
  - c. how we intend to avoid any overlap with the Committee on Climate Change and co-operate with devolved environmental governance bodies.
  - d. an enforcement policy that sets out how we determine whether a failure to comply with environmental law, and damage to the natural environment, is serious, how we intend to avoid overlap with other statutory regimes and relevant ombudsman services and how we intend to prioritise cases.
5. In October 2023, the Board agreed objectives for the review of our strategy, that our refreshed strategy:
  - a. optimises the protection and improvement of the environment
  - b. is widely supported by stakeholders within and beyond government
  - c. contributes to our independence and reputation in the near and long-term
  - d. identifies how we will work to maximise our impact in the next 3-5 years
  - e. is more accessible than its predecessor
  - f. is more distinctly different in England and Northern Ireland where it should be
  - g. is settled around Easter 2024, and final by September 2024
6. Alongside these objectives, the Board considered a detailed diagnosis of our context and strategic progress. It agreed that we should revise our strategy and enforcement policy, and not re-write it nor simply restate it, and agreed the priority areas we would consider within the scope of the review. In January 2024 it considered a draft guiding policy to shape and provide coherence to these areas.
7. In stages between January and May, the Board considered and where necessary agreed our intended approach to: what success looks like, prospective analyses towards environmental goals and targets, priorities for our communications and engagement approaches, a revised approach to monitoring environmental law, a review of our complaints, investigations and enforcement approach, a review of our values, a stocktake of the implementation of our issue-based approach and how we can measure success. The principles and decisions taken through these detailed reviews underpinned development of our strategy.
8. In May, the Board agreed a draft strategy and enforcement policy for consultation, alongside a consultation approach. The consultation was open from 18 July to 26 September, having

been delayed because of the UK general election. The Board agreed objectives for consultation to:

- a. Test our strategy, particularly where we are proposing change or anticipate challenge, to ensure it is robust, defensible and future-proof.
  - b. Maintain and strengthen engagement with existing stakeholders by showing we are a listening organisation.
  - c. Provide an opportunity to engage with new or harder to reach stakeholders.
9. In January 2024, the Board also agreed an approach to our strategy document, in line with the approach adopted by the [Office for Students](#). We intend to have a short, visually appealing summary of our strategy, with a longer strategy document providing the substance. This was felt to best balance the needs of different audiences. The draft strategy appended to this paper is the second of these two products.

## Analysis

### Consultation

10. The consultation analysis report at annex A summarises the approach taken to consultation in line with the decisions of the Board in May. It also summarises the views of the 57 people who attended a consultation discussion event and 14 respondents to our consultation.
11. We judge the consultation met its objectives. Our consultation questions and agenda for discussions held were focused on areas of change, and greatest stakeholder interest – for example our descriptions of success, our prospective approach to monitoring environmental progress, and our enforcement policy.
12. The number of responses was broadly as expected. Formal and anecdotal feedback on our approach to consultation has been positive. Our engaged existing stakeholders in particular seem to have valued the extent to which their views have been sought during and before the consultation. We had some limited success in engaging with new and harder to reach stakeholders, notably in Northern Ireland.
13. In aggregate, the feedback received broadly supports the propositions we set out for consultation. Stakeholders also took opportunity to welcome our approach and work to date. A number of stakeholders attending discussion groups voiced their endorsement of the approaches set out, and that this would mean they would not respond to the consultation further. The most important areas of feedback are highlighted below.
14. For information, we are in the process of securing consent from all organisations named in annex A. If consent is not forthcoming, organisation names will be redacted, and, if needed, substitute quotes will be incorporated, reflecting the same point highlighted.
15. Throughout the period of the review, and during the consultation period, we engaged with officials in Defra and DAERA to explain our proposals. We have received some informal observations, which officials did not wish to be treated as a consultation response, and mainly relate to drafting. We also understand the Defra Secretary of State may respond to the consultation, and that response (if it is provided) is likely principally to welcome our role

and strategy. If not able to be provided by the time of the Board's meeting, we understand it will not be provided.

### Strategy

16. The Board agreed a draft strategy for consultation in May. Changes to that draft are indicated in the strategy and enforcement policy presented for approval at annex B. Comments are included to provide a brief explanation for the change, mirroring the content of the consultation analysis report at annex A.
17. Most changes proposed are for clarity or emphasis in drafting, given the nature and extent of the feedback received. The following aspects are brought particularly to the Board's attention.
18. In Section 2.2: Sustained Environmental Improvement, we have sought to better explain how and when we may advocate for greater ambition in environmental plans and targets. Several stakeholders suggested this ought to feature more prominently in our strategy. In informal feedback, Defra queried the statutory provisions we have to make recommendations in respect of environmental targets (which was already in the text). We judge it helpful to make our position clear, with the additional drafting intended to capture the Board's prior discussions in this regard.
19. In section 3.5: Our values, we have not made changes to our description of how we are purposeful and have regard to the need to be proportionate. One stakeholder wished for greater clarity on how social and economic factors are taken into account in our work. We have not proposed changes in this regard, where we think our approach to proportionality is already effectively described. The Board decided in October that it did not wish to prioritise development of a systematic approach to cost benefit analyses in this review, which may have been relevant to such a change.
20. In section 3.7: How we work with others, we have not made significant changes to reflect consultees' views that we should prioritise and give greater prominence to public and community engagement in our strategy. This reflects the Board's decisions and discussions in this regard in its February meeting. The likely views of stakeholders in this regard were known and debated by the Board in reaching this decision – the responses provided align with the considerations the Board made at that time.
21. We received a range of feedback relating to the pace of progress, and transparency of our complaints and enforcement processes. Minor changes to the enforcement policy and section 4.2 have been updated to reflect this feedback. In general, however, we judge that we clearly state the principles that consultees ask us to adhere to – such as our readiness to use all our enforcement powers where that is needed, and our desire to resolve issues as early as we can.

### Product

22. Paragraph 9 sets out the Board's prior agreement that we should prepare a visually appealing summary of the strategy and enforcement policy, alongside the fuller document at annex B. This is not yet prepared.

23. In outcome, we succeeded in substantially reducing the length of our strategy from 2022 and simplifying it. We have engaged extensively with key stakeholders, and have plans for further communications and engagement as set out in Communications below. In the interim, the Board confirmed the public as not a key audience for our work. We have also prepared a range of introductory materials about the OEP to communicate to new ministers, and Parliamentarians.
24. In this light, we are minded not to pursue this approach at this time, and instead progress as outlined below. The Board's views are sought. If this were to be prioritised, we would propose as an action post publication of annex B, rather than make publication contingent on this.

## Northern Ireland

25. The strategy and enforcement policy apply equally to our work in England and Northern Ireland.

## Finance and Resource

26. The Chief Executive agreed a project initiation document in September which agreed an allocation of resourcing to the strategy review – equivalent to c0.8 FTE in each of 2023/24 and 2024/25 across the delivery of the review, consultation and the development of the strategy.
27. £10k external expenditure in production costs is included in the budget for 2024/25.

## Impact Assessments

### Risk Assessment

28. There is a risk that our strategy does not set out the approach most likely to lead to the greatest impact on environmental protection and improvement. This is mitigated by the detailed analysis which underpinned the diagnosis of areas of focus for our review, and the constituent parts of the review completed. The strategy document is a summary of deeper thinking.
29. There are risks that arise from any changes to the composition of the Board in terms of ownership and sponsorship of our approach from the Board in the medium term. We took account of these in developing our timeline, with the intention that our refreshed strategy would be settled ahead of the period of key risk.
30. There is a risk that we are not funded to fully implement the approach we intend, and must make prioritisation choices between the approaches we wish to take. Our strategy is designed to be sufficiently flexible to accommodate these choices, given the uncertainties we have experienced and may continue to experience in our resourcing from Defra and DAERA. The timeline for the review was designed to complete in time for us to bid within a long-term spending review process with certainty of strategy.
31. There are risks that we do not implement the strategy well, and therefore fail to work in the way we consider most likely to lead to environmental improvement. These are mitigated in the ways set out in the implementation section of this paper.

## Equality Analysis

32. No material equalities impacts have been identified.

## Environmental Analysis

33. In reviewing our strategy, we have taken account of environmental law appropriately in reaching the specific decisions we make which underpin our approach, such as our general approach to monitoring environmental law, and in the review of our approach to investigations and enforcement.
34. Our approach to the biodiversity duty the Board agreed in December also requires us to consider whether our strategic objectives are the right ones for us to contribute to biodiversity in the way the duty requires and to consider how we take conservation of biodiversity appropriately into account in our strategic approach. The Board took this into account in confirming our objectives in April.
35. Our strategy sets out how we have regard to the various duties we have under environmental law, and take these into account in our prioritisation and decision-making.

## Implementation Timescale

36. The strategy and enforcement policy summarises and brings together the key choices and decisions the Board has made in the last year. Many of these are progressing to implementation, we are working to mobilise others.
37. For example, we will shortly begin the pilot approach to monitoring environmental law the Board agreed; we intend and have started work to refresh our stakeholder engagement, media and social media strategies in light of the strategic discussions the Board had; we will shortly tender the review of stakeholder perceptions of the OEP in line with the agreed approach to measuring success; we will consider how to take the appropriate next steps in our approach to prospective analyses in the next cycle of our progress report.
38. Some actions are long-term, and cultural – such as fully embedding our issue-based approach across our ways of working. Others are quicker wins.
39. Like most strategies, the effectiveness of ours is likely to depend most on minimising the gap between what we intend and what we do. We are scoping how we can proportionately act to minimise that gap, including through our ongoing evaluation of our performance and success. In the first instance, we will create a schedule of the key decisions and steps needed in light of the review, to underpin internal communications in relation to the strategy, and support integrating these steps into our next business plan and reflecting them in our bid to the multi-year phase two of the current spending review beyond 2025/26. We will reflect on how progress in implementing the strategy can be made transparent to the Executive and Board for assurance, and within our evaluation of our performance and impact.
40. We intend to lay the strategy before Parliament and the Assembly on 28 November. This is later than we expected in October 2023 (see paragraph 8.g. above) – the delay resulting from the delay to the consultation launch as a result of the general election.

## Communications

### External communications

41. The stakeholders engaged during the consultation are our key external audience. We have engaged with 57 people from 44 organisations in consulting on our strategy, and therefore had the opportunity to discuss in detail our proposition and proposals. This followed earlier engagement on a number of points with some of our most engaged stakeholder groups.
42. We will publish the strategy on our website, communicate to stakeholders through our established distribution lists and specifically to all those who contributed to the consultation. We will highlight the publication on our social media.
43. We intend to develop a short video, animation or similar product for our website as a different means of communicating our mission, objectives, values and what we do. This is a lower communications priority than communications around our pipeline of key reports and decisions through the autumn and winter, but we would aim to complete as soon as possible.

### Internal communications

44. We have kept staff up to date in the process of strategy development, at an organisational level through our regular staff cascade. All teams within the OEP have participated in the review, through the detailed development of approaches undertaken. In this way, teams have been engaged in development of the parts of our approach most pertinent to their roles.
45. We will communicate with all staff through our staff cascade before the strategy is published.
46. We will develop briefings to be used in team discussions through December and January, to explain the wider context and provide opportunities for staff to discuss what the changes will mean for them. These will be supported by staff from those teams involved in the development of the strategy, to support translation of our approach to each of our functions. This will align with the key window for business planning, supporting effective implementation.
47. We expect to have an all staff event in the spring, to allow consolidation of these messages as a whole. The activities around implementation noted above will support longer-term communications.

## External Stakeholders

48. We set out the focus of our strategic review to Defra, DAERA, ALBs and a selection of NGOs in January, and held further discussions on our thinking and approach as these developed and were steered by the Board in the spring.
49. Individual teams consulted with relevant stakeholders in the development of the propositions that the Board considered and agreed to underpin the approaches this strategy sets out.
50. We consulted with stakeholders in accordance with the approach set out in annex A and elsewhere in this paper.

## ANNEXES LIST

This section has been redacted as it contains information available elsewhere.