



Office for
**Environmental
Protection**

Draft Strategy and Enforcement Policy

Consultation Document

January 2022

Version 2.

2 March 2022

Northern Ireland section (page 4) updated to reflect confirmed OEP remit in Northern Ireland



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This publication is available to download at <https://consult.theoep.org.uk/oep/the-oep-strategy-and-enforcement-policy/>

Any enquiries regarding this publication, including requests for alternative accessible formats should be sent to us at

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Overview

The Office for Environmental Protection (OEP) is a new public body, established by the Environment Act 2021. We are independent, with powers and duties to advise ministers and government departments and to hold them and other public authorities to account against their environmental responsibilities and the law.

Documents we are seeking views on

We are seeking views on two documents:

1. **Our draft strategy**, which explains how we will work in our first period of operation to make the most difference we can. We expect to review it in around 18 months' time.
2. **Our draft enforcement policy**, which explains more specifically how we will approach our enforcement role.

Northern Ireland

Our strategy and enforcement policy explain how we will exercise our functions in relation to England, Northern Ireland and UK-wide 'reserved' matters. The Northern Ireland Assembly confirmed our remit in Northern Ireland on 22 February 2022, and our relevant functions commenced on 28 February. This is after our consultation on the draft strategy and enforcement policy commenced (25 January).

Given the conditional nature of our Northern Ireland remit at the time of publication, Northern Ireland-specific content is indicated in the draft strategy and enforcement policy by using square brackets. It is our intention that the final strategy and enforcement policy will fully integrate England, UK-wide and Northern Ireland remits.

Why your views matter

Listening to the views of those we work with and those affected by our work will be fundamental to making sure we get it right.

Our draft strategy and enforcement policy have been shaped by the views of a broad range of stakeholders with whom we engaged in the months leading up to this consultation. These stakeholders have included environmental organisations, government departments, arm's-length bodies and other public authorities, and business and industry groups.

This consultation seeks feedback from all on the approaches we have developed.

How to respond to this consultation

We encourage you to answer the questions that are relevant to you. You do not need to answer all questions to submit a response.

There is no word limit for responses.

Please give us your views using our online survey.

Alternatively, you may send responses to the consultation questions by email to consultations@theoep.org.uk or by post to:

Office for Environmental Protection
County Hall
Spetchley Road
Worcester
WR5 2NP

The deadline for postal responses to be received by the OEP is 26 March 2022.

The consultation will run for 8 weeks from 25 January 2022 to 22 March 2022. The consultation document, draft strategy and enforcement policy can be found at <https://consult.theoep.org.uk/oep/the-oep-strategy-and-enforcement-policy/>. This consultation document is available in both editable word format and non-editable pdf.

Next steps

We will analyse and consider responses to this consultation. Once the consultation is closed, we will publish a summary of responses alongside our final strategy and enforcement policy, which we are aiming to do in spring 2022.

Introduction

These questions are optional, please refer to our **privacy notice** on page 17 for details of how we will use any information you provide.

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Are you responding as an individual or on behalf of an organisation?

- individual
- organisation

If responding on behalf of an organisation, what is its name?

ADEPT (Association of Directors of Environment, Economy, Planning & Transport)

Do you consent to your response being published? Please note we will not publish your name or the name of your organisation without first getting your consent.

- yes
- no

Delivering our strategic objectives

These questions relate to **part 2 of our strategy (Delivering our strategic objectives)**.

Our principal objective, set out in the Environment Act, is to contribute to environmental protection and the improvement of the natural environment. In part 2 of our strategy, we explain that in light of this principal objective, our mission is to protect and improve the environment by holding government and other public authorities to account. We also set out our four strategic objectives for how we aim to achieve this.

Question 1. Do you have any comments on Section 2.2 of our strategy (Sustained environmental improvement)?

ADEPT welcomed and supported the Government's ambition set out in the 25 Year Environment Plan for this to be the first generation to leave the environment in a better state than that in which we inherited it. We welcomed the proposal to create a statutory independent watchdog to hold Government and public authorities to account, and we are pleased to have built a constructive relationship with the OEP in its formative stages.

We support the strategic statutory objective that Government is held to account for the delivery of environmental goals and targets, and its plans for environmental improvement. It is right that the OEP's first EIP monitoring report in 2022 should focus on pressing for ambitious environmental targets, more robust delivery plans, and better governance and monitoring.

This should include reviewing the environmental principles published in 2018, and the draft policy statement published in 2021. These were extremely disappointing – the principles themselves were inadequate, their applicability too narrow, and there was no mechanism for holding Ministers to account to ensure that the principles are applied across all of Government. The guidance that Ministers should balance social, economic and environmental considerations in policy-making and decision-taking fails to prioritise environmental protection and improvement. As the Dasgupta Review (not mentioned in the draft policy statement) highlighted, market forces and conventional economics systematically undervalue the environment and natural assets. Environmental principles are not given sufficient weight.

The Government has consulted recently on various aspects of implementing the Environment Act 2021, including local nature recovery strategies, biodiversity net gain, and resources and waste. In March 2022 it launched further consultations on statutory environmental targets and the Nature Recovery Green Paper. As part of its work to hold Government to account, the OEP should review these proposals and responses to them in order to ensure that plans and targets are ambitious and robust.

Many of the objectives of the EIP and the Environment Act depend on local leadership, integration, partnership and delivery by councils and other public bodies. It is essential that councils are adequately resourced to deliver these new burdens. Our experience to date does not give grounds for optimism: Whitehall does not readily recognise the scale of the tasks, the lack of resources, practical challenges on the ground (including skills and capacity), and the importance of long-term funding provision to ensure effective monitoring and enforcement. Councils recognise the importance of investing in green skills and jobs to build a workforce that can deliver environmental objectives, this is a strategic and long-term requirement that we cannot deliver using existing powers and funding streams. We suggest that this issue merits early analysis and recommendations by the OEP.

Question 2. Do you have any comments on Section 2.3 of our strategy (Better environmental law, better implemented)?

We support the strategic objective to have better environmental law, better implemented. It is right that 'environmental law' is seen in a wide sense that includes protecting and improving people's health and wellbeing in the environment.

The OEP recognises that to be effective, environmental law must be designed and implemented well. This requires policy alignment across government departments and other agencies. For example, the Climate Change Committee advises and reports on climate mitigation and adaptation matters that have a direct influence on environmental outcomes, and we are pleased to see that the OEP is developing a close working relationship with the CCC.

There are other areas where we are concerned that other key parts of Government policy do not align with environmental principles and targets. For example, the White Paper on planning reform was focussed largely on the streamlining of the planning system to make it easier for developers to get permission to build private housing at scale, with little regard to the environmental impact of development (although we welcome the moves towards mandatory biodiversity net gain under the Environment Act). Similarly, the recent Levelling Up White Paper made little mention of natural capital and the need to improve the local environment in those places where it has been most degraded. While we recognise the limits to the definition of environmental law, we feel that there is a role for the OEP in advising on policy alignment and reporting to Government where there are gaps or inconsistencies with environmental principles, objectives and targets.

Question 3. Do you have any comments on section 2.4 of our strategy (Improved compliance with environmental law)?

We support the objective and the actions proposed. It is right that private companies such as utilities suppliers should be within scope where they are providing public services. We understand that the OEP will not investigate all complaints received but will assess them and prioritise those that are serious or where the OEP can make the most difference.

Question 4. Do you have any comments on section 2.5 of our strategy (Organisational excellence and influence)?

This section is very clear and comprehensive. We particularly welcome the commitment to active engagement through a range of forums and approaches. As mentioned above, we are pleased to have built a constructive relationship with the OEP in its formative stages and we look forward to developing this. Councils are experienced in assessment, regulation and enforcement across a wide range of functions, and we can make a positive contribution on practical issues such as achieving a balance between transparency and confidentiality when investigating complaints.

Question 5. Do you have any comments on whether our four strategic objectives will lead us to pursue our principal objective and achieve our mission?

The strategic objectives align with the OEP's mission and principal objective.

We might have expected more recognition in the draft strategy of the scale of the challenge and the pace of the actions needed to protect and improve the environment: it says that "there has never been a more crucial time" to do this but the strategy does not describe the extent of the environmental degradation we have witnessed in the last 50 years or so. While the OEP can be successful in investigating important individual complaints, it is much more of a challenge to use its reporting and advisory functions to deliver systems change at the scale and pace required.

How we will prioritise

This question relates to **section 3.2 of our strategy (How we will prioritise)** and **section 4.3 of our enforcement policy (Step 3 - prioritisation)**.

As a small organisation we must target our capability and resources to have the most impact against our mission and objectives. Our strategy sets out our approach to prioritising. In addition, specific considerations which apply to the prioritisation of our enforcement activities are highlighted in our enforcement policy.

Question 6. Do you have any comments on our approach to prioritisation?

We support this approach. It follows from our comments above (question 5) that the OEP should prioritise based on how big an impact it can have and how effective it can be in delivering that impact.

Enforcement

These questions relate to **section 3.4 of our strategy (Enforcement)** and **section 4.2 of our enforcement policy (Step 2 - serious failure)**.

Our enforcement policy sets out how we will determine whether a suspected failure to comply with environmental law by a public authority is serious. We have also set out how we will determine whether any harm to people or the environment that might be associated with such a failure could amount to serious damage. We explain that these are both important tests we must consider when we use our enforcement powers.

Question 7. Do you have any comments on our approach to determining whether a failure is serious?

We support the approach outlined here.

Question 8. Do you have any comments on our approach to determining whether damage is serious?

We support the approach outlined here.

Question 9. Do you have any other comments on our approach to enforcement?

No.

Scrutinising Environmental Improvement Plans (EIPs) and targets

These questions relate to **section 3.5 of our strategy (Scrutinising Environmental Improvement Plans and targets)**.

Our strategy sets out our approach to monitor progress in improving the natural environment in accordance with the UK and Northern Ireland governments' EIPs, and

environmental targets set by the UK government. In addition to the specific matters addressed through the EIPs and targets, we will consider the natural environment as a whole and wider aspects of society that interact with it.

Alongside monitoring progress spanning the environment, each year we will also produce insights into selected areas of the environment in more depth. We believe we will make the most difference by having a scheduled programme of detailed assessments to complement monitoring of overall changes in the environment.

Question 10. Do you have any comments on our approach to balancing our activities between monitoring overall progress and monitoring selected areas in more detail?

Please see comments above (question 1) about the importance of local delivery, and the resources needed for this.

Question 11. Do you have any other comments on our approach to scrutinising EIPs and targets?

Please see comments above (question 1) about the importance of local delivery, and the resources needed for this.

Scrutinising environmental law

These questions relate to section **3.6 of our strategy (Scrutinising environmental law)**.

The scope of our function to monitor the implementation of environmental law depends on what is meant by 'implementation'. We have interpreted it to mean that we will look beyond just questions of legal compliance to cover the wider context and framework of implementation. Our approach will consider 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.

Question 12. To what extent do you agree with our interpretation of how we will scrutinise the implementation of environmental law?

Please see comments above (questions 1 and 2) about the importance of reviewing environmental principles and ensuring policy alignment across Government.

Question 13. Are there any other approaches to scrutinising the implementation of environmental law you think we should consider?

Please see comments above (questions 1 and 2) about the importance of reviewing environmental principles and ensuring policy alignment across Government.

Question 14. Do you have any other comments on our approach to scrutinising environmental law?

No.

Advice

This question relates to **section 3.7 of our strategy (Advice: How we will advise government on proposed changes to the law and other environmental matters)**.

Where we have discretion, we will carefully select where we provide advice to ensure we are addressing subjects of strategic importance. We may also respond to consultations relevant to our remit, where doing so supports our objectives. We will apply the process of prioritisation set out in section 3.2 of our strategy.

We believe we can make a significant difference if we provide advice not only to environmental ministers and officials, but also to those in other government departments. We will aim to identify synergies across government, as well as areas where there could be better join-up across policy areas.

Question 15. Do you have any comments on our approach to advice?

Please see comments above (questions 1 and 2) about the importance of reviewing environmental principles and ensuring policy alignment across Government.

How we will work with others

This question relates to **section 3.8 of our strategy (How we will work with others)**.

This section describes how we will work with others. This includes other public authorities, the Climate Change Committee, the ombudsman services, devolved environmental governance bodies, Parliament and the Northern Ireland Assembly and their committees,

ministers and government departments, public authorities in the Republic of Ireland and the European Union.

Question 16. Do you have any comments on how we will work with others?

We would welcome a section on how the OEP will work with local government. We have commented on how ADEPT values its relationship with the OEP, and on the experience of councils in assessment, regulation and enforcement across a wide range of functions which could make a valuable contribution.

Objectivity, impartiality, proportionality and transparency

These questions relate to **section 3.9 of our strategy (Objectivity, impartiality, proportionality and transparency)**.

This section describes how we will act objectively and impartially and have regard to the need to act proportionately and transparently in delivering our functions.

Question 17. Do you have any comments on our approach to objectivity?

We support this approach.

Question 18. Do you have any comments on our approach to impartiality?

We support this approach.

Question 19. Do you have any comments on our approach to proportionality?

We support this approach.

Question 20. Do you have any comments on our approach to transparency?

We support this approach.

General comments

Question 21. Do you have any other comments on our draft strategy?

No.

Question 22. Do you have any other comments on our draft enforcement policy?

No.

Question 23. Overall how satisfied are you that the draft strategy and enforcement policy provide a sound basis for the OEP to fulfil its remit?

- Very satisfied
- Satisfied
- Neither satisfied nor dissatisfied
- Dissatisfied
- Very dissatisfied

Consultee Feedback

Thank you for taking your time to participate in this consultation. It would be appreciated if you could provide us with some feedback on your experience to help us improve.

Overall, how satisfied are you with the process of completing this consultation?

- Very satisfied
- Satisfied
- Neither satisfied nor dissatisfied
- Dissatisfied
- Very dissatisfied

Please give us any comments you have on your experience in completing this consultation, including any suggestions on how we could improve it.

Privacy Notice

Who is collecting my personal data?

The data controller is the Office for Environmental Protection (the OEP). The OEP has been established by the Environment Act 2021 as a public body, with the principal objective of contributing to environmental protection and improving the natural environment. The OEP has a duty to use the public funds it administers effectively and efficiently, and will consult with a range of stakeholders to help inform its work.

You can contact the OEP's Data Protection officer by email at: dataprotection@theoep.org.uk. The Data Protection Officer is responsible for monitoring whether the OEP is meeting the requirements of the legislation.

Any questions about how the OEP is using your personal data and your associated rights should be sent to the above contact.

The OEP uses [Citizen Space](#) to run its consultation exercises. Citizen Space is provided by [Delib Ltd \(Delib\)](#). For information about Delib, including how they will use personal data, please click on the following hyperlink: www.delib.net/about_delib and click on the links to their Privacy Notice at the foot of the page.

Why is the OEP using my personal data?

The OEP uses your personal data when it consults you and receives your comments and views on its proposed strategy and enforcement policy, that you have indicated is of interest to you. The OEP may contact you and invite you to give further information about your comments and views in reply to the consultation exercise, or to request that we may publish your name or the name of your organisation (if you have indicated that you consent to your response being published).

If you reply to the consultation exercise, your personal data will likely consist of your name and contact details and the comments and views that you give in your reply. The OEP will use your personal data to record your comments and views and take your reply into account – as far as possible with all other replies – when decisions are being made as a result of the consultation.

Will you disclose my personal data in response to information requests from third parties?

The OEP may also disclose your personal data when replying to requests under freedom of information laws. The reason for this is that information in responses to this consultation may be subject to release to the public or other parties in accordance with the access to information law (these are primarily the Environmental Information Regulations 2004 (EIRs), the Freedom of Information Act 2000 (FOIA) and the Data Protection Act 2018 (DPA)).

If you wish anything in your response to be kept confidential, please contact the OEP at consultations@theoep.org.uk stating clearly what information you would like to be kept as confidential and explaining your reasons for confidentiality. Alternatively, you can write to the OEP at:

Office for Environmental Protection
Worcestershire County Hall
Spetchley Road
Worcester
WR5 2NP

We have obligations, mainly under the EIRs, FOIA and DPA, to disclose information to particular recipients or to the public in certain circumstances. In view of this, your explanation of your reasons for requesting confidentiality for all or part of your response would help us balance these obligations for disclosure against any obligation of confidentiality.

If we receive a request for the information that you have provided in your response to this consultation, we will take full account of your reasons for requesting confidentiality of your response, but we cannot guarantee that confidentiality can be maintained in all circumstances.

If you don't tell us to keep your information confidential, we will be able to release the content of your response to the public, but we won't make your personal name and private contact details publicly available without your prior consent.

What is the legal basis in data protection law for the OEP's use of my personal data?

There are two legal bases in data protection law that apply to the OEP's use of your personal data for consultation exercises:

- (1) your consent; and
- (2) the use (or processing) of your personal data is necessary for the performance of a task carried out in the public interest.

Your consent is the initial legal basis for the use of your personal data for the purpose of consultation exercises. If the OEP has contacted you directly to inform you of this consultation exercise, it's because you have previously informed the OEP that you would like to receive communications in relation to the subject matter of the consultation. Whether you received a consultation exercise directly from the OEP or any other way, if you reply to a consultation exercise, you do so freely and voluntarily after having the opportunity to be fully informed by the consultation documents.

If you reply to the consultation exercise, the legal basis for the OEP's use of your personal data in your reply is that the use is necessary for the performance of a task carried out in the public interest. The relevant task in the public interest is that people and organisations, especially those likely to be affected by proposed legislation or policy, are consulted on the proposals and have the opportunity to give their views and comments. The OEP will consider views and comments received in response to a consultation before making final decisions.

If the OEP discloses personal data when replying to a request under freedom of information laws, the legal basis is that the OEP's use of your personal data is necessary for the performance of a task carried out in the public interest. The relevant task in the public interest is that the OEP must comply with its obligations under the freedom of information laws.

Who will my personal data be shared with?

The OEP will publish a summary of responses; this will not include any personal data unless you have explicitly consented to this.

Within the OEP, your personal and identifying data will be available to teams working on the consultation. The OEP will engage outside contractors for analysis. Any outside contractor will be subject to the OEP's data protection policy.

As the providers of Citizen Space, Delib will also have access to your personal data. For details of Delib's use of your personal data please see their [Privacy Notice](#).

Will my personal data go outside the UK?

Yes, if you send or receive emails by the Citizen Space website, including when you use the 'Help/feedback' form, they will be processed in the EU. Any personal data in these emails will be subject to the UK and EU GDPR, which protect your rights in relation to your personal data.

Responses to questions in consultation exercises are kept in the UK. Therefore, if you respond to a consultation exercise, any personal data that you provide in that response will not be used by the OEP or Delib outside the UK.

If you are relying on my consent to use my personal data, can I withdraw my consent?

You have the right to withdraw your consent at any time by using the OEP contact details given in the documents for the consultation exercise. If you withdraw your consent, the OEP may be able to continue to use any personal data it has already received up to that time for the purpose of consultations you have replied to, particularly if your reply has already been included in the consideration of the proposals that are the subject of the consultation.

If I reply to a consultation exercise, how long will my personal data be held for?

The OEP will hold your personal data for up to two years after the end of the consultation period.

What are the consequences for me if I don't provide my personal data or allow it to be used for the purpose of consultations?

Your participation in consultation exercises is voluntary and there will be no repercussions for you if you choose not to reply to a consultation or if you withdraw your reply at any time.

What are my rights?

A list of your rights under data protection law is accessible at:

<https://ico.org.uk/for-organisations/guide-to-the-general-data-protection-regulation-gdpr/individual-rights/>

How do I complain?

You have the right to lodge a complaint about the use of your personal data at any time with the Information Commissioner's Office (ICO – the data protection supervisory authority). If you wish to exercise that right, full details are available at:

<https://ico.org.uk/make-a-complaint/>

The OEP's Personal Information Charter

Please also see the OEP's Personal Information Charter, accessible by the following hyperlink, which broadly sets out details of The OEP's processing of personal data:

www.theoep.org.uk/report/personal-information-charter