

Office for Environmental Protection: draft strategy and enforcement policy

March 2022

Summary

This response is on behalf of the environmental coalitions [Greener UK](#) and [Wildlife and Countryside Link](#).

We welcome the opportunity to respond to the consultation on the OEP's draft strategy and enforcement policy and appreciate the engagement and dialogue that has already taken place on the development of these important documents. We hope that the following additional points are helpful to the OEP team.

1. **Emphasising independence** – the documents contain a welcome focus on independence, and a recognition of some of the challenges still to be faced. It will be essential that the OEP retains this level of independence, and not only acts, but is seen to act, objectively and independently from government. We would expect similar statements on independence to be included in the Framework Document that the OEP will agree with Defra and in the OEP's first corporate plan.
2. **Taking a proactive approach** – the OEP should proactively assess and engage with proposed policies and legislative changes, highlighting and commenting on any potential weakening of environmental protections and on opportunities to strengthen and improve the implementation of environmental law. A proactive approach will enable the OEP to be as effective as possible in defending and enforcing environmental law and in holding the government to account on its environmental duties and commitments. The OEP should also engage proactively with government policy making processes outside Defra, especially at formative stages.
3. **Demonstrating impact** – the OEP will need to exhibit both soft and hard forms of power to achieve real impact. We hope the OEP uses its first year of operation, and early enforcement action, to demonstrate how that power can be wielded robustly and sensitively, to support improved implementation of environmental law, environmental justice and a cycle of learning across public authorities, civil society and government.
4. **Establishing a clear approach to working with other public authorities** – the OEP will need to co-operate with other public authorities when delivering its statutory functions, especially the Climate Change Committee and other arm's length bodies which also provide advice to government. The strategy should set out how the OEP intends to engage with such bodies to ensure that duplication is avoided, and important issues do not fall down a gap. The enforcement policy should clarify how the OEP will work with devolved environmental governance bodies to manage enforcement situations where an activity that takes place in one jurisdiction has impacts on another.

5. **A holistic approach to Northern Ireland** – the OEP’s approach to Northern Ireland issues must be firmly and holistically embedded in the final strategy and enforcement policy, now that the Northern Ireland Assembly has agreed to commence the relevant parts of the Environment Act 2022.
6. **Looking beyond domestic borders** – the strategy makes no mention of international environmental law, which seems an oversight. Taking account of international law developments and innovations should be part of the OEP’s approach and evidence base, which will help inform its assessment of the government’s implementation of Section 21 of the Environment Act. The strategy should indicate how the OEP will contribute to monitoring the EU-UK Trade and Cooperation Agreement. The enforcement policy should clarify how the OEP will engage with cases which are or have recently been subject to investigation by the European Commission or enforcement by the CJEU.
7. **The importance of transparency and accessibility** – as Dame Glenys Stacey [said in her pre-appointment hearing](#), the OEP will need to be unusually transparent to maintain credibility. Transparency will also be important in raising awareness about the OEP’s work and priorities. Achieving the objectives outlined in the strategy will require public authorities and civil society to be aware of and engage with the OEP. For example, the OEP’s enforcement function will rely on public understanding of when and how to complain, while long term improvements in policy development and implementation will require government policy makers to listen to and learn from the OEP’s expertise and advice. The draft strategy should include a commitment to promote and facilitate an improved understanding of environmental law and policy to enable members of the public to participate more effectively in the OEP’s work. For example, this could be through guidance notes and the development of other accessible resources on environmental law.
8. **The heart of the new environmental governance system** – the centrality of environmental improvement plans, principles and targets in the strategy is welcome. The OEP is at the heart of the new governance system and will be pivotal in bringing it to life through its monitoring, advisory and scrutiny functions. The OEP is especially well placed to interrogate the government’s progress on legally binding targets and the delivery of the Environmental Improvement Plan, including in relation to gaps in environmental law and inadequate implementation or enforcement of existing environmental law.
9. **Capacity and capability** – we note that the OEP is envisaged to be a relatively small organisation, operating in a context of long term underinvestment of environmental enforcement. The continued lack of clarity on the five year indicative budget is of concern given the imminence of the start of the financial year. Adequate resourcing will be vital, and we hope the OEP will continue to make a strong case for investment.
10. **Monitoring the implementation of environmental law** – it would be helpful for the strategy to provide additional clarity on the process for engaging with the OEP in scrutinising environmental law. For example, how should stakeholders raise issues about the functioning of environmental law and identifying gaps in legislation and how will the OEP formulate activity under this function? A two way dialogue which allows stakeholders to raise concerns about the functioning of environmental law and make suggestions for its improvement on their own initiative would be helpful.

This process could be facilitated by a portal or even just an email address on the OEP's website inviting stakeholders to raise concerns about the functioning of environmental law. Early priorities should include the proposed changes to the Habitats Regulations Assessment and other aspects of the nature recovery green paper, the quinquennial review of the Wildlife and Countryside Act and the review of retained EU law.

For more information, please contact:

Ruth Chambers, senior fellow, Greener UK
e: rchambers@green-alliance.org.uk
t: 020 7630 4524

GREENER UK

