

IEMA reponse to Office for Environmental Protection's Draft Strategy and Enforcement Policy Consultation

About IEMA

IEMA is the professional body for those people working in environmental management, impact assessment and corporate sustainability roles. IEMA's growing membership of over 18,000 professionals work at the interface between organisations, the environment and society in a range of critical roles (for example from sustainability directors through to climate change leads and in consultancy and advisory roles). We also work with a range of corporate partners. Our professional members are active across all sectors of the economy, for example from construction and manufacturing through to logistics, facilities, and across financial, retail, food, consultancy and the wider service and public sector.

Executive summary

The role of the Office for Environmental Protection (OEP) is a central part of the new governance architecture that is emerging in relation to the natural environment in England (and Northern Ireland).

The OEP through its various functions can help to ensure that Environmental Improvement Plans (EIPs), forthcoming long-term targets and cross-departmental principles can deliver the best possible outcomes for the environment and for society.

But in order to do this both the OEP's Strategy and Enforcement Policy must be as robust as possible. In this context, and having consulted with IEMA members and other expert stakeholders, the Institute recommends the following:

- The Strategy's stated intention to prioritise by outcome is welcome. However, alongside this the OEP's four strategic objectives need to be factored into its prioritisation processes to ensure that everything that it does is aligned to those core aims.
- To enable the OEP to deliver its enforcement function effectively it would be useful for a framework to be developed that sets out how potential public authority failures are assessed. This would also be a useful aid to those organisations that may have action brought against them, whilst providing transparency too.
- In addition to successfully delivering its enforcement function, the OEP should also focus its efforts on fostering a drive towards continuous improvement among public authorities that enhances the natural environment and public health.
- The OEP should incorporate delivery into its scrutiny function, so as to ensure that beyond assessing outcomes it also considers whether or not government implementation plans on EIPs and the targets framework are themselves credible.

- The strategy describes how the OEP can provide advice on any changes to environmental law proposed by the government, but it isn't clear what is in and out of scope within this context. A definition of what constitutes environmental law, as set out in the Environment Act, should be included to remove any perceived ambiguity.
- With respect to working with other UK government departments (in addition to Defra) it would be prudent for the Strategy to refer to the Environmental Principles Policy Statement that is being developed in order to aid environmental policymaking across government.
- Contingency must be put in place for the OEP to make the case for additional resourcing if it so feels that it is unable to fulfil its role with those resources that have initially been made available.
- The Strategy does cover how the OEP will work with others, but a clearer explanation on the delineation of duties and how each of these different stakeholder organisations (e.g. the Environment Agency) will work together would aid the practical application of the Strategy.
- To develop both its approach to providing advice and its scrutiny function, the OEP should implement learnings from other organisations with comparable regulatory remits.

Delivering our strategic objectives

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

This section of the strategy (and later sections) is light in terms of the methodologies that will be used to achieve this objective. To develop its approaches to delivering advice to government the OEP should look to learn from other organisations with a long-standing and similar statutory remit e.g. the Committee on Climate Change (CCC). Likewise, in terms of its scrutiny function it would make sense to study the approaches taken by other independent regulatory bodies that have a long history of undertaking a comparable role e.g. the Health and Safety Executive.

The decision for the OEP's first EIP monitoring report to focus on ensuring that the Government's own review is effective and that the long-term environmental targets (due to be set by October) are ambitious is welcome. The lessons from doing this should be captured and fed into developing the OEP's advisory function as detailed above.

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

To achieve this objective it will be useful for the OEP to benchmark what good environmental law looks like by studying cases that have delivered better outcomes. This will enable the OEP to develop an understanding of how elements of existing good environmental law can be applied in the future.

It is paramount that the OEP has access to the legal expertise that is required to deliver this objective. It is not clear that it does from the strategy alone.

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

There are question marks over resourcing in terms of the OEP's ability to use its enforcement powers and to operate a process that can handle a potentially large volume of complaints. On the face of it, the OEP currently lacks the resources to achieve its ambition.

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

The OEP's staff numbers, standing at a total of 53, are potentially restrictive again in the context of having an outwardly facing branch of the organisation that is capable of playing a significant role in developing and nurturing the relationships that will be necessary for it to play a *'full part in national environmental governance'*.

Locating the OEP in Worcester is a positive step within the context of efforts to concentrate centrally funded organisations and posts away from London. At the same time, there is a risk that this location impacts negatively on the ability of the OEP to deliver its stakeholder engagement activities and to attract top talent to locate there (particularly if a return to pre-pandemic working patterns materialises).

IEMA is well placed to support the OEP with access to expert insights and knowledge covering the full breadth of the organisation's remit. The Institute has a number of member groups specialising in all aspects of impact assessment, environmental management and circular economy approaches. With resources potentially stretched, at least initially, we would encourage the OEP to draw on our support in instances where we can clearly add value.

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?

No.

How we will prioritise

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

The stated intention to prioritise by outcome is welcome. However, alongside this we would expect the OEP's four strategic objectives to be factored into its prioritisation processes to ensure that everything that it does is aligned to those core aims.

Regarding the strategic context, a clearer explanation of the process for determining whether other organisations (e.g. the Environment Agency) will be better placed to act in specific situations is required. A process for determining this should be included in the Strategy.

Enforcement

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

The Strategy sets out that the OEP will *'focus strategically on the most significant matters, such as failures to comply with environmental law that are systemic, recurrent or may cause serious harm'*. To enable the OEP to do this effectively it would be useful for a framework to be developed that sets out how failures are

assessed. This would also be a useful aid to those organisations that may have action brought against them, whilst providing transparency too.

This section of the strategy explains how the OEP will ensure the dissemination of lessons learnt from matters that it takes forward to a '*wider community of public authorities.*' To create a full feedback loop, the OEP should put in place the provision for public authorities to provide their own insights on the effectiveness of the OEP's approach in the matters that it acts on.

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

Environmental review is covered in this section of the strategy. IEMA has previously provided thoughts¹ to the Department for Environment, Food & Rural Affairs (Defra) during its consultation last year on this. A key aspect of our response to that consultation was that there should be adequate provision in the rules for interested parties to have a role in environmental review. However, this provision should not enable environmental review to be brought forward on an issue in circumstances whereby existing judicial review proceedings are already underway or a court decision has already been made.

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

The availability of reliable data over a period of time to identify systemic issues will be important for the OEP to fulfil its enforcement role effectively. At present both the Strategy and Enforcement Policy documents lack detail in relation to the collection and use of data.

Stakeholders that IEMA engaged with in order to develop this response highlighted uncertainty around the geographic scope of the OEP's enforcement function. Specifically, there was some concern that environmental failures or damage that may arise within the supply chains of government departments and public authorities would not be picked up by the OEP – even though they could be construed as systemic issues associated with the activities of those organisations.

There is a distinction between legal limits and what constitutes action to protect the natural environment and public health. In addition to successfully delivering its enforcement function, the OEP should also focus its efforts on fostering a drive towards continuous improvement among public authorities that enhances the natural environment and public health.

Scrutinising Environmental Improvement Plans (EIPs) and targets

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?

In view of the relatively limited resources that the OEP will have at its disposal it will be important that it targets (as the Strategy document states that it will) the really strategic areas through its monitoring function, so as to afford itself the best chance of having an effective impact.

Primarily this should be EIPs and the long-term environmental targets framework covering air quality, biodiversity, water, and resource efficiency and waste reduction, as well as a target for fine particulate matter (PM_{2.5}).

¹ IEMA (2021) [IEMA response to the Department for Environment, Food & Rural Affairs Draft Environmental Principles Policy Statement](#)

If the OEP grows, which it will likely need to, its monitoring function should then become more extensive to encompass a wider range of policy development and implementation that is undertaken across government i.e. not simply those departments and arms-length bodies that are ultimately accountable for EIPs and the targets framework.

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

With the current EIP due to be reviewed by government by January 2023 and the long-term targets framework having not yet been established, it is difficult for the OEP to set in place a definitive and therefore credible approach to scrutiny.

However, with regards to the targets framework it does afford the OEP the opportunity to engage with the process of establishing this through Defra's consultation and, by extension, to influence its shape in a way that enables it to set down a preferred long-term approach to scrutiny.

As part of this the OEP should incorporate delivery into its scrutiny function, so as to ensure that beyond assessing outcomes it also considers whether or not government implementation plans on EIPs and the targets framework are themselves credible.

This section of the strategy outlines how the OEP *'will develop a research programme to identify critical gaps in evidence and understanding of the natural environment, policy, and delivery plans, which will inform our progress monitoring.'* Through the activities of our thematic steering groups and wider membership, IEMA is well placed to provide relevant insights and the OEP should consider the Institute as a useful resource within this context.

Scrutinising Environmental law

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

There is a risk that the approach to scrutinising environmental law put forward in this section of the strategy is too ambitious, especially within the context of the resources that the OEP will have available. For example, the third paragraph in this section sets out how the OEP will consider *'the set-up of responsible institutions and their resourcing, skills, and capacity'*. This seems unrealistic without further resources being made available to the OEP.

Scrutiny of environmental laws should also, at least in part, be considered through the lens of the long-term targets framework and therefore be well integrated with the OEP's wider approach to scrutiny.

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

Stakeholder engagement is always key in this context. As documented elsewhere in this response IEMA and other organisations like the Broadway Initiative² have the provision and systems in place to be able to tap into the knowledge of members and partners. Leaning on these resources will be a quick and easy way to get good quality information and feedback.

² Broadway Initiative (2022) [Making sustainability mainstream](#)

More widely, engaging with insurers to understand key risk areas for businesses would be a sensible approach. Large insurers will have access to data relating to claim levels and incidents that might help to inform the OEP's own approach.

The UK's departure from the European Union (EU) is a potentially important consideration here too. The impact of the transition period and what the UK needs or should do to comply with EU controls that came into effect towards the end of the UK's EU membership and during the transition period might deserve special focus. A lot of Brexit legislation was delivered at speed and so the quick fixes implemented as part of the withdrawal process may not provide a strong foundation for the future.

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

Overall, the OEP must remain strategic in the way in which carries out its role in this context. If the OEP takes on too much initially (without the requisite resources) it will be far less effective, whereas taking on the strategic piece and doing this well will be more effective.

Advice

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

This section of the strategy describes how the OEP can provide advice on any changes to environmental law proposed by the government, but it isn't clear what is in and out of scope within this context. A definition of what constitutes environmental law, as set out in the Environment Act, should be included to remove any perceived ambiguity.

With regards the OEP's advisory function to government, it is outlined that the OEP will only provide advice on matters related to the natural environment if requested to do so. This seems narrow and as a consequence there is a danger that the OEP is circumvented and therefore unable to provide advice on a range of important environmental matters.

How we will work with others

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

The strategy identifies a number of organisations that the OEP will seek to work with:

- Other public authorities
- CCC
- Ombudsman services
- Devolved bodies
- Parliament
- UK and Northern Ireland governments
- European Union

However, the strategy falls short in setting out what the mechanism for this collaboration will be. To work with these other organisations effectively appropriate fora and working groups should be established.

With respect to working with other UK government departments (in addition to Defra) it would be prudent for the strategy to refer to the Environmental Principles Policy Statement that is being developed in order to aid environmental policymaking across government. The statement will be a mechanism through which the OEP can assess the progress that individual departments are making in relation to developing and

delivering good environmental policy. IEMA responded³ to the consultation that Defra held on the statement last year.

Objectivity, impartiality, proportionality and transparency

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

As per the response to question 9, it is integral that the OEP has access to good data and is able to use that data in an effective way to discharge its responsibilities in relation to its advisory, monitoring and enforcement activities. The use of data in this way will go a long way to ensuring that the OEP operates objectively, with its decisions based increasingly on intelligence rather than pre-disposition.

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

To ensure impartiality in its work the OEP should use robust auditing processes to evidence how and why key decisions are made. Where the OEP is able and where it is relevant to do so, it should publish audit trails as part of its work to ensure transparency.

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

The logic put forward in this section of the Strategy for the OEP to act proportionately is understood, but this should not become conflated with any future inability to act on potentially important matters because the OEP does not have the resources to do so. Contingency must be put in place for the OEP to make the case for additional resourcing if it so feels that it is unable to fulfil its role with those resources that have initially been made available.

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

The approach set out to transparency is welcome and IEMA will be able to use its communications channels to help disseminate materials related to the work that the OEP will be engaged in.

General comments

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

In order to succeed in the short-term the OEP must position itself as a trusted partner, engaging with stakeholders effectively so that organisations understand how its Strategy will be delivered in practice.

In addition, it was clear from the stakeholders that IEMA engaged with to develop this response that there is confusion over the role of the OEP versus the Environment Agency, Defra and the various economic regulators working across different sectors of the economy. The Strategy does cover how the OEP will work with others, but a clearer explanation on the delineation of duties and how each of these different stakeholder organisations will work together would aid the practical application of the Strategy.

In terms of how the OEP will measure its success, there are useful resources available from the National Audit Office covering measurement logic.⁴ Making use of these resources and those that other regulators have developed will help the OEP in understanding its own performance.

³ IEMA (2021) [IEMA response to the Department for Environment, Food & Rural Affairs Draft Environmental Principles Policy Statement](#)

⁴ NAO (2017) [A Short Guide to Regulation](#)

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

Ben Goodwin – policy@iema.net

Head of Policy

IEMA – Institute of Environmental Management and Assessment www.iema.net
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