



# Strategy and Enforcement Policy

Consultation

July 2024



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## Overview

The Office for Environmental Protection (The OEP) was established by the Environment Act 2021 to protect and improve the environment. We do this by holding government and other public authorities to account against their environmental responsibilities and the law.

In June 2022 we published our first strategy, which set out how we intended to go about delivering our mission. Two years into our operation we are reviewing our strategy, to ensure we continue to effectively play our role in protecting and improving the environment as Parliament and the Northern Ireland Assembly intended.

We consider that much of our earlier strategy holds true and remains an effective basis on which to operate. However, we are proposing some changes to how we describe this, and changes to specific sections. We are consulting to seek the views of others on these proposed changes and the strategy overall.

## Reviewing our strategy

In reviewing our strategy we have considered the effectiveness of the approaches we set out in our first strategy in 2022, drawing on our own analysis and the views of others.

We remain a young organisation and are yet to use all of the powers provided to us in the Environment Act. In places, we have limited information to be able to draw conclusions about our impact. Evidence of the effectiveness of our approach will take time and become more apparent the longer we operate.

For example, we have begun investigations into potential non-compliance with environmental law by public authorities and resolved a number of matters through agreement, but we have not yet concluded our first investigations, and not yet used all the powers we have to take public authorities to court where there is serious non-compliance that is not resolved.

Similarly, the Northern Ireland Environmental Improvement Plan is not yet adopted by the Assembly, and we are therefore yet to fully implement our intended approach to monitor and report on environmental progress in Northern Ireland, as we have in England.

Where we have more information, it is recent. For example, we published our first report on the effective implementation of environmental law only in 2023.

For these reasons, we have reviewed certain areas of our strategic approach in greater depth, and others less so. We have focussed on areas where we have received most feedback, where the context is not now as we expected, or where we have judged there are areas for potential improvement.

## The draft strategy for consultation

The strategy we set out for consultation refreshes our earlier approach. Overall, it remains substantially the same as the approach we set out in 2022. We have concluded that this has

served us broadly as we intended and supported us to make our contribution to protect and improve the environment, holding government and public authorities to account.

In reviewing our strategy, we have considered opportunities to make our strategy clearer for those with whom we engage as we pursue our mission. Here we explain the key changes we propose to our strategy, with reference to the sections of the strategy document.

Our draft strategy sets out our mission – to protect and improve the environment, holding government and other public authorities to account – and the four strategic objectives we pursue to achieve that mission. No changes to our mission and objectives are proposed. They received support in our 2022 consultation, and we judge that they continue to set out the contribution we make to environmental protection and improvement.

In section 2, we have made changes to explain more clearly how our objectives together show the contribution we make. We have also set out what success looks like. We include outcomes that arise as a result of our work, such as whether public authorities change their behaviour as a result of our decisions or advice, and outcomes to which our work contributes, such as improvements to the natural environment. This approach also informs how we measure success, which we set out in greater depth than before in section 5.

In section 3, we have developed how we work in an issue-based way, so that we can make the most difference. In doing so, we explain how we source, value and manage information to identify those issues where we can and should prioritise a response, and how we make our decisions on what to prioritise. We aim for it to be clearer how valuable complaints and information received from others is to our work. We also set out how we can use this information in different ways.

In section 3 of the draft strategy, we also newly set out our organisational values. We explain how being independent, purposeful, evidence-led and acting with integrity underpins all our work, including how we work with others, and enables us to act proportionately, transparently, impartially and objectively.

Section 4 is the least changed from our 2022 strategy. This section sets out in detail our approach to each of our key statutory functions.

We have made changes to explain the importance we place on our analysis of the prospects of meeting environmental goals and targets to support sustained environmental improvement in the long-term. In our enforcement functions, we have made changes to explain how we use information from any source to identify potential non-compliance with environmental law, and to emphasise the importance we place on seeking resolution with public authorities at the earliest opportunity, so that environmental improvement can happen. Similar changes are made to our enforcement policy. We include a new section on our complaints function, to more clearly explain how we work with those who complain to us.

The areas of change have informed the questions we are asking in this consultation document.

## **Documents we are seeking views on**

We are seeking views on two documents:

- **Our draft strategy** - which explains how we will work over the next three years to make the most difference we can. This is based on a review and revision of our first strategy.
- **Our draft enforcement policy** - which explains more specifically how we will approach our enforcement role. Again, this is based on a review and revision of our first enforcement policy.

## Why your views matter

Listening to the views of those we work with and those affected by our work is 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 people with whom we engaged in the months leading up to this consultation. This has included environmental organisations, government departments, arm's-length bodies and other public authorities, and business and industry groups.

This consultation seeks feedback on specific areas of our strategy, where we are proposing changes, and on the strategy overall.

## 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 by completing and returning this response form by email to [consultations@theoep.org.uk](mailto:consultations@theoep.org.uk) or by post to:

Office for Environmental Protection  
Wildwood  
Wildwood Drive  
Worcester  
WR5 2QT

The consultation will run for 10 weeks from 18 July 2024 to 26 September 2024. The consultation document, draft strategy and enforcement policy can be found on our website:

[www.theoep.org.uk](http://www.theoep.org.uk).

## Next steps

We will analyse and consider each response 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 by the end of 2024.

# OEP Strategy Consultation - Response Form

These questions are optional, please refer to our **privacy notice** on page 11 for details of how we will use any information you provide.

Full name:

Marj Powner

Email address:

Marj.powner@gmail.com

Telephone number:

07801917375

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?

Community Planning Alliance (I am Vice Chair)

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

## What we aim to achieve: our strategic objectives

These questions relate to Part 2 of our strategy, which sets out our four strategic objectives. These, taken together, show how we will make a meaningful contribution to environmental protection and improvement.

In addition to setting out what we aim to achieve, and how we will achieve the objective, we have described what we think success should look like against each of our objectives.

### 1. Do you have any comments on how we have described what success looks like for each of our objectives?

You make no mention of ensuring that the Government complies with the Environmental Principles Policy Statement. The recent NPPF consultation, for example, does not appear to have taken these principles into account.

**2. Do you have any further comments on our objectives and how we aim to achieve them?**

We would like to see more reference to engagement with the public as key stakeholders and to the open and transparent publication of data relating to your work, the monitoring you do and the outcomes you achieve.

## **How we aim to achieve: our overall approach to deliver our mission and objectives**

These questions relate to part 3 of our strategy, which sets out the overall approach we will take to delivering our mission and objectives.

In our revised strategy we have built on our ‘issue-based’ approach to how we work. We are investing in how we gather, manage and use information about the natural environment, so we can respond more purposefully, and achieve more.

**3. Do you have any comments on our issues-based approach?**

We like your issues-based approach but would welcome more community engagement in the early stages. A simple solution, such as a regular newsletter, for example, could result in more evidence coming forward on a specific issue, which could change your perception about how widespread a risk or problem that specific issue actually is.

We hold ourselves accountable for how we work. We aim to be independent, purposeful, evidence-led and to act with integrity. Section 3.5 of our revised strategy sets this out as our values and describes what this means for us and how we work. In describing our values, we set out how we act objectively and impartially, and have regard to the need to act proportionately and transparently.

**4. Do you have any comments on our values? Are these the values you would expect from the OEP? Do you recognise these values from your interactions with us?**

We like your values (particularly that you are evidence-led). We would welcome more emphasis on community engagement in your values.

**5. Do you have any further comments on our overall approach to how we deliver our mission and objectives covered in Part 3?**

We recognise your resources will be limited but would like to ensure that communities (as the investors in all public services) have a key role to play. Communities are a largely untapped talent pool who do not want to just be ‘complainers’.

# How we will work: our approach to exercise our key statutory functions

These questions relate to part 4 of our strategy, which sets out the approach we will take to exercising our key statutory functions.

At section 4.3 we describe how we will develop our assessment of the prospects of meeting future goals and targets, so that we can focus ever sharper on the key risks to success, and the steps that could be taken now to address them.

## 6. Do you have any comments about how we assess and report on government's progress in meeting environmental goals and targets?

## 7. Do you have any comments about our approach to analysing both past trends, and the prospects of meeting future goals and targets in our reporting?

## 8. Do you have any further comments about our approach to exercising our key statutory functions covered in Part 4? Note – section 4.2 covers our approach to enforcement, which is covered in more detail in our Enforcement Policy – see questions 10 and 11)

It is sometimes difficult for 'gaps' in legislation to be articulated as a complaint, that previously goes through the complaints process for a specific organisation. It should, therefore, be possible to identify specific issues for your consideration, that may lead to your recommendation for action.

As an example, it appears that the legislation relating to the new PM<sub>2.5</sub> targets is being interpreted as only applying at relevant PM<sub>2.5</sub> monitoring stations that existed immediately before the targets came into force. This is being used as reasoning for not applying PM<sub>2.5</sub> targets to an area that currently supports 90,000 motor vehicles per day.

This is selective interpretation of the legislation<sup>1</sup>, which provides for the Secretary of State to (12.3.a) "*establish new monitoring stations to measure PM<sub>2.5</sub> levels for the purposes of these Regulations*". Clearly, organisations such as National Highways and relevant Local Authorities should be required to take action to address the shortfall in monitoring equipment, rather than abdicate responsibility for ensuring their initiative does not exacerbate health challenges for local populations (humans, wildlife and plants).

The 'gap', however, is in the legislation that allows such an interpretation to be considered appropriate for new road schemes and it is unclear where a complaint would first be made in advance of complaining to the OEP.

There could also be proposals made by others, such as the Climate Change Committee (CCC) that should be implemented by government and Local Authorities. The CCC has recently called for, among other things, restoring peatland and attaining significant modal shift, which are critical to the achievement of the government's emissions target. The CCC reported (2023)<sup>2</sup> that meeting the legally prescribed sixth national carbon budget (2033–2037) "*can only be achieved if Government, regional agencies and local authorities work seamlessly together*". We assume that the OEP is one of the agencies that supports these objectives, but we are unsure how this will be

<sup>1</sup> <https://www.legislation.gov.uk/ukdsi/2022/9780348242959>

<sup>2</sup> <https://www.theccc.org.uk/publication/local-authorities-and-the-sixth-carbon-budget/>



reflected in your priorities (especially given that construction is still being approved on peatland and sustainable passenger and freight transport are not being prioritised by the government).

Finally, will the OEP have any role in influencing the government's budget priorities? We believe environmental improvements should be given more urgency and that the government should make an increased financial commitment to nature-based solutions to restore and protect our ecosystems.

## How we will measure success

These questions relate to part 5 of our strategy, which sets out how we will measure success.

We aim to be purposeful, and evidence-led. We aim to embed a focus on the impact and outcomes of our work throughout our activity, and to develop continually our understanding of where we have impact. This is embedded in our issues-based and prioritisation approaches.

In this iteration of our strategy we describe, in more detail, what success will look like if we are to achieve our objectives. At section 5.2 we describe the balanced scorecard and indicators we will use to assess our performance and success.

### 9. Do you have any further comments about our approach to measuring success covered in Part 5?

The Outcome Indicator Framework in the EIP does not appear to cover the impact of pollutants (air and water) on the health and wellbeing of humans and wildlife, although it is partially considered (H4) for exposure to chemicals and pesticides.

You recognise in the EIP that "*monitoring the success of actions taken for climate change adaptation is a major gap*" (p207). The relevant indicators for mitigating and adapting to climate change could be expanded to include the amount of peatland and natural flood defences that have been lost to construction.

There would also be value in monitoring/auditing the status and maintenance of formally designated local, regional and national environmental assets as part of the relevant indicators for thriving plants and wildlife.

The relevant indicators for using resources from nature more sustainably and efficiently could be expanded to include the amount of best and most versatile agricultural land that has been repurposed for other uses, the amount of peatland that has been restored, the number of sites designated for climate mitigation, nature's recovery or future food security, pointing at data from other sources, where appropriate.

Some of this additional monitoring could be done via annual returns from Local Authorities and would further emphasise your role in the protection and enhancement of our environmental assets.

## Enforcement policy

These questions relate to section 4.2 of our strategy and our revised Enforcement Policy, which set out our overall approach to enforcement.

In this policy we have sought to clarify the role that complaints play in our enforcement work, but also in informing the wider work of our functions across the OEP. We also set out our approach to using a wide range of information sources to inform our enforcement work.

We have sought to be clearer about how our investigations intend to establish the facts of whether there has been a serious failure to comply with the law, and how we aim to work with public authorities to resolve issues of compliance – so that the full effect of the law can take effect as soon as possible.

**10. Are our strategy and enforcement policy clear in setting out our approach to using a wide range of information to inform our enforcement work? And that information contained in complaints may be used by other functions in the OEP?**

**11. Do you have any further comments on our revised enforcement policy?**

For environmental laws to be effective in protecting people and the environment they need to be robust enough to be considered by Barristers as having the potential for success when making a judicial claim. That is currently not the case as it seems that all environmental law is assessed on the basis of whether the decision taken by the public body was irrational (Wednesbury) rather than on whether the law itself was followed.

## General comments

**12. Do you have any other comments on our strategy?**

Thank you for the opportunity to contribute to this consultation. Is there a mailing list we can be added to so we can ensure we are notified when you issue a new consultation, report or other information?

**13. Overall how satisfied are you that the 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.

It would be helpful to indicate and provide links to other necessary reading material, such as the EIP, either in the consultation or on the website page advertising 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](mailto:dataprotection@theoep.org.uk) The Data Protection Officer 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.

### ***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, that you have indicated is of interest to you. The OEP may use your details to contact you directly inviting 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](mailto: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  
Wildwood  
Wildwood Drive  
Worcester  
WR5 2QT

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.

### ***Will my personal data go outside the UK?***

No. 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 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:

<https://www.theoep.org.uk/report/personal-information-charter>