

Date

24 June 2021

Title

Interim OEP Governance

Report by

REDACTED, Chief of Staff

Paper for decision

Open

Issue

1. As a result of the carry over of the passage of the Environment Bill, the Secretary of State (the “SoS”) has established the OEP in shadow form (the “Interim OEP”) with effect from 1st July 2021. The Interim OEP is to be overseen by a board of Members-designate of the OEP board appointed by SoS. The Interim OEP will exercise its responsibilities as set out in its Terms of Reference, as agreed between the Interim OEP and the SoS.
2. The Interim OEP board (the “Board”) must have clear operating procedures in place in order for it to govern how the Interim OEP makes and records its decisions, so that the Board can properly exercise its oversight role. It is also to make sure that as far as possible while in interim form, we operate in line with Cabinet Office guidelines on good governance for boards of public bodies.
3. In addition, it is proposed that a steering group is established to provide advice to the Board on the Interim OEP’s proposed non-statutory report in response to the UK government’s 25 Year Environment Plan annual report for 2020-21.
4. This paper sets out a proposal for governance arrangements for the Interim OEP. The proposed framework will need be developed further, ahead of OEP legally vesting. These further proposals will be presented for approval by the Board, ahead of that date.

Recommendation

5. The Board is recommended to note the Terms of Reference for the Interim OEP, set out at Annex A of the Governance Framework at Annex 1.
6. The Board is recommended to agree:
 - a. to adopt the Governance Framework at Annex 1
 - b. to establish a 25-year environment plan monitoring report steering group under the terms of reference set out at Annex E of the Governance Framework

c. that it shall meet in accordance with the schedule of meetings at Annex 2

7. The Board is recommended to further note:

a. That the Chair-designate has nominated Dr Paul Leinster and Julie Hill as members of the 25-year environment plan monitoring report steering group, and that they are willing to do so

b. the forward plan of its business set out at Annex 3.

Background

8. The Terms of Reference for the Interim OEP (at Annex A of the Governance Framework at Annex 1) set out the purpose and interim functions of the Interim OEP. These have been agreed between the Chair-Designate and senior Defra officials on behalf of the SoS.
9. The Terms of Reference set out the Interim OEP is to be overseen by the Board. The staff of the Interim OEP will work to the leadership and direction of the Board in relation to the substantive delivery of their responsibilities. The Board must exercise its role with propriety and in line with an agreed governance framework.
10. There is a range of Cabinet Office guidance on good governance for boards of public bodies, and expectations of conduct for their members. This guidance provides underpinning points of principle which assist in supporting the development of a robust governance framework but it is not prescriptive. Public bodies retain substantial discretion on the development of their own rules of procedure.
11. The Environment Bill sets out that the OEP is to determine its own procedure subject to specific provisions. For example the Bill specifies the constitution of the board, rules for quoracy, and restrictions on the OEP board's ability to delegate certain decisions. The Terms of Reference for the Interim OEP set out that it should have particular regard to the OEP's intended powers and duties set out in the Environment Bill in exercising its functions.
12. The National Audit Office has reported on relevant aspects of governance of arm's-length and central government bodies. In particular it has reported on the management of conflicts of interest, and gifts and hospitality.
13. There is substantial precedent for the development of rules of procedure and codes of conduct in other arm's-length bodies, and a relatively high degree of consistency between the core provisions. We have reviewed good practice examples of governance frameworks to inform the development of the proposed Governance Framework set out in this paper (including Ofqual, The Gambling Commission and Ofwat), and insight has been gathered from those responsible for managing these frameworks in practice.

Analysis

Terms of Reference (Annex A of the Governance Framework at Annex 1)

14. The Terms of Reference set out the objectives of the Interim OEP. These are to:
 - a. allow for the delivery of certain environmental governance functions during the interim period which are independent of Defra as far as practical.
 - b. allow those appointed in a designate capacity to serve on the OEP board to contribute to decisions which will have a bearing on the future running of the OEP.
 - c. facilitate the seamless transfer, in due course, of staff, assets and functions from the interim arrangements to the OEP.
15. It specifies the functions the Interim OEP is to exercise at paragraph 5.4, and the limitations to those functions at paragraph 5.7. In undertaking these functions, the Interim OEP is to

have particular regard to the OEP's intended powers and duties set out in the Environment Bill.

16. In summary, in delivering environment governance functions, the Interim OEP is to:
 - a. receive complaints, undertake initial assessments of them and gather information about them, but not make final decisions on compliance, or whether an investigation should be initiated. In the interim, matters will be raised with the SoS which require urgent consideration
 - b. publish a report in response to the UK government's 25 Year Environment Plan annual report for 2020-21
 - c. provide ministers with written advice and respond to consultations in areas of the Interim OEP's expertise.

The Interim OEP is not to take enforcement action as this requires the statutory powers set out in the Environment Bill.

17. The interim environmental functions therefore foretell functions the OEP will have on vesting, though necessarily without the powers that are provided for the OEP within the Environment Bill. The limitations are those necessary to reflect that the Environment Bill is not yet settled or passed.
18. The Terms of Reference specify governance arrangements for the Interim OEP at paragraphs 3 and 4. The structure provides for the Board to be the decision-making body of the Interim OEP in respect of its substantive functions, and for the Interim OEP staff to work to the direction of the Board.
19. The terms also provides for the CEO to report through the management structure of Defra while the Interim OEP remains a division of Defra – principally in respect of delivery and financial management – to enable the Permanent Secretary of Defra to discharge her responsibilities as accounting officer. Decisions in respect of the substantive functions of the Interim OEP are for the Board.

Governance Framework (Annex A)

20. The proposed Governance Framework at Annex A is not the complete suite of governance arrangements that will support the OEP and intended to be ready for vesting. This initial documentation suite includes:
 - a. Rules of procedure for the operation of the Board
 - b. Code of conduct for Board members including declarations of interest, and gift and hospitality arrangements
 - c. Clarity on those matters by policy intent reserved for the Board in the Environment Bill.
21. Notable among those matters which are to be developed, and will be brought to the Board for approval before vesting include:
 - a. A full scheme of delegation, whose development is dependent on continuing work on strategy and operations in the exercise of the OEP's functions, and further work on its financial management practices
 - b. Policies on transparency and publications
 - c. Terms of reference for the Audit and Risk Assurance Committee of the Board.
22. The intent is for the appended framework to provide the basis for the Board to operate effectively, in good governance, and with clarity on procedure and expectations for all Board members, and members of Interim OEP staff.

23. The framework developed is for the Interim OEP and its Board, but with a view that it will substantially form the basis of the framework for the OEP. For example, all relevant provisions of the Environment Bill have been considered, and reflected in the framework developed. Certain aspects of the framework are included in square brackets to reflect powers and provisions that are not yet in full effect.
24. The framework covers a wide range of administrative and procedural processes, along with important protections and principles. The key provisions of note and/or debate are highlighted below.

Protection of access for certain role holders

25. The Governance Framework provides protections in governance for certain members of OEP staff, and certain interim OEP staff until such time as the relevant permanent OEP staff are appointed. Roles protected are those with responsibility to provide legal, financial and governance advice to the Board. In each case, the arrangements protect the ability of that role holder to independently advise the Board and put beyond doubt both their power and duty to do that.

This section has been redacted as its publication would be prejudicial to the effective conduct of public affairs.

Delegation provisions

26. The Governance Framework proposes matters to be reserved for the Board, based on those statutorily reserved to the Board under the Environment Bill. It proposes delegation of all other decisions to the CEO, save for any decisions that the Board may determine to receive through receipt of its business.
27. The Interim OEP will manage the Board's business through a forward plan identifying significant decisions. As a matter of course, these matters will be considered in advance by the senior leadership team, which the CEO has established as the principal decision making forum within the Interim OEP. The forward plan will be regularly reviewed by the CEO and the Chair and provided to the Board. This arrangement will secure that in this interim period, any discretion is exercised appropriately and that decisions that should properly fall to the Board to be made are brought forward.
28. Financial and non-financial schemes of delegation will be developed for approval by the Board before the OEP vests. These are likely to include significantly greater specificity in terms of matters reserved to the Board, and matters delegated to specific grades and staff members within OEP. Further development of the strategy, prioritisation principles and operational strategy will underpin their development.

Rules of procedure

29. The rules of procedure set out the administrative provisions for the conduct of the Board's business, including the dissemination of papers, the procedures under which decisions are taken, and the means by which those decisions are recorded. Notable for the Board is that:
 - a. the Board must meet as a minimum four times each year and at least once every quarter. For the current year its is proposed that the Board meet every six weeks (Annex 2) and arrangements will alternate between virtual and in person meetings
 - b. papers will be circulated, by secure email, usually with 5 business days' notice
 - c. decisions are to be taken by consensus, and only by exception through a formal vote – the Chair will have a casting vote in the event of a tie
 - d. decisions (other than reserved decisions) can be taken by the Chair, in consultation with the CEO, in cases of urgency, after taking all reasonable steps to consult with Members

- e. decisions can be taken by electronic business, provided the rules for quoracy are achieved
- f. minutes are to be taken, and shall be published (after appropriate redactions have been made).

Code of conduct

- 30. The code of conduct for Board members is founded on the Nolan principles of public life and Cabinet Office guidance on conduct for members of public bodies.
- 31. It highlights the collective responsibility of the Board, to speak with one voice on matters related to the Interim OEP, including to Ministers, parliament, Defra and the media. It notes that the organisation will ordinarily be represented externally through the Chair-designate and the Interim CEO-designate, and that press approaches, and conference invitations should be referred to the Interim CEO-designate. Members are advised to be cautious not to inadvertently express views which could be attributed to Interim OEP in public forums, and will, where relevant, be supported with information on the Interim OEP's position.
- 32. Also emphasised is the importance of information security, and the use of designated devices and email accounts for the conduct of OEP business. Interim OEP staff will actively support members to achieve this, by ensuring business is properly routed to Defra group email addresses.
- 33. The provisions for propriety in gifts and hospitality and conflicts of interest are drawn from good practice identified by the Cabinet Office, and NAO. Notable are:
 - a. that all offered gifts or hospitality of any value are to be recorded, whether or not accepted
 - b. the importance of up to date provision of information on declarations of interest, including at the start of any meeting.

25-Year Environment Plan Monitoring Report Steering Group

- 34. The Terms of Reference set out that the OEP may publish a report in response to the UK government's 25 Year Environment Plan annual report for 2020-21, following as far as practicable the provisions set out in the Environment Bill. The SoS has undertaken to respond to that report, as similarly provided for in the Bill. This is a significant deliverable for the Interim OEP.
- 35. It is proposed that a steering group be established to advise the Board on issues related to the report. Decisions in respect of the report will be for the Board, and the first such decisions are scheduled for the Board's August meeting.
- 36. Dr Paul Leinster and Julie Hill are proposed as members of the steering group, with Dame Glenys Stacey as Chair. The steering group is being established specifically to provide advice on the 2021 report, and will be wound up automatically on 31 December 2021. Consideration is being given to a permanent technical advisory committee to the Board and proposals will be brought in due course.
- 37. Provision is made to allow independent members to be appointed to the steering group. Independent members are identified as those bringing particular expertise relevant to the role of the group. It is not presently proposed that independent members be appointed; any such members are to be proposed by the Chair for the Board to agree. A verbal update will be provided to the Board. A stakeholder reference group is to be established to consult and seek views of key stakeholders.
- 38. The steering group is one aspect of the governance established for the report. The CEO has established a project board, which she chairs, within the Interim OEP. This will make recommendations to the steering group and subsequently to the Board. The project board

will be supported by a technical working group, drawing on external technical expertise. A stakeholder reference group for the report is also being established.

Finance and Resource

- 39. Resources to manage the Governance Framework are within the organisational design of the OEP. Interim resources are identified, subject to recruitment of the Board secretariat role.
- 40. Modest remuneration for any independent members of the steering group may be required, if any independent members are identified. The Board will be asked to agree such remuneration alongside any proposed membership.

Impact Assessments

RISK ASSESSMENT

This section has been redacted as its publication would be prejudicial to the effective conduct of public affairs.

EQUALITY ANALYSIS

- 41. No equalities issues identified.

Implementation Timescale

- 42. The Terms of Reference come into effect on 1 July 2021.
- 43. The Governance Framework is to be adopted immediately. An update to the Governance Framework, including those elements identified as to be developed above will be presented to the Board in November.
- 44. The steering group is to adopt its terms of reference at its next meeting.

Communications

- 45. It is proposed that the Governance Framework will be included on the website of the Interim OEP. It is anticipated this shall be in the week of 11 July.

External Stakeholders

- 46. None engaged.

Internal Stakeholders

- 47. These proposals have been informed by the Senior Lawyer, Head of Insight and Analysis and the senior leadership team of Interim OEP.

Paper to be published	YES
Publication date (if relevant)	With meeting minutes
If it is proposed not to publish the paper or to not publish in full please outline the reasons why with reference to the exemptions available under the Freedom of Information Act (FOIA), please include references to specific paragraphs	

ANNEXES LIST

This section has been redacted as it is already available in the public domain, or as its publication would be prejudicial to the effective conduct of public affairs.