

Date

12 November 2021

Title

Ratification of Decisions Made by Interim OEP Board

Report by

REDACTED, Principal Business Officer

[Paper for decision](#)

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Issue

1. The Office for Environmental Protection (OEP) is to be legally created on 17 November 2021 following the passing of the Environment Act on Tuesday 9 November 2021. At that time its Board will be constituted.
2. The Interim Office for Environmental Protection (IOEP) Board established on 1 July 2021 has taken decisions in line with our published Governance Framework in four meetings held this year (1 July, 12 August, 6 October, and 4 November).
3. As outlined at its meeting of 4 November, these decisions require ratification from the OEP Board to be decisions of the OEP.

Recommendation

4. The Board is recommended to agree to
 - a. ratify decisions of the Interim OEP Board set out in Annex A as decisions of the OEP Board.
 - b. ratify the execution on behalf of the OEP of a Partnership Agreement between Defra Group Human Resources and OEP for the provision of HR services, dated 17 August 2021.

5. The Board is recommended to note that the Secretary of State has appointed Natalie Prosser as the OEP Interim CEO and the Chair has signed a secondment agreement with Defra for the services of Natalie in line with the intentions set out to the Board on 4 November.

Background

6. The Interim OEP Board has taken a number of decisions since its establishment in July 2021, however those decisions need to be ratified by the OEP Board on commencement of the OEP on 17 November 2021 so that they are decisions of the OEP.
7. The Secretary of State has appointed Natalie Prosser as Interim CEO. Defra is to second Natalie to the OEP to fulfil this role.
8. Defra Group Human Resources is to supply OEP with certain complex HR services, notably for specialist pay and pensions services. The Board was informed of this in its papers on HR Strategy and Policies of 12 August. *This section has been redacted as its publication would be prejudicial to commercial interests.* An agreement was entered into between OEP and Defra Group Human Resources on 17 August.

Analysis

9. Following the passing of the Environment Bill by Royal Assent and commencement of the OEP as a legal entity on 17 November 2021, the OEP Board will have authority to make decisions as the OEP.
10. The decisions applicable to the OEP that require ratification by the OEP Board are detailed in the table at Annex A for the Board to agree. This is all decisions the Board has taken, save for those which are superseded or relate to matters only relevant to the business of the Interim OEP.
11. The decisions are those the Board has already taken. To support the Board consider these in context, the minutes the Board has approved for its meetings of 1 July, 12 August and 6 October are also appended.
12. The OEP needs to enter into a secondment agreement with Defra and Natalie Prosser for her secondment as Interim CEO, after her appointment by the Secretary of State. This has been signed by the Chair on behalf of the OEP.
13. The Partnership Agreement entered into with Defra Group Human Resources is in the name of the OEP. The value of the contract is within the Board's delegation to the Interim CEO in the financial scheme of delegation it considered in its meeting of 4 November. It was notified to the Board on 12 August. The Board is asked to ratify the execution of this agreement on behalf of the OEP, by the Interim CEO.

Finance and Resource

14. None applicable to this proposal.

Impact Assessments

Risk Assessment

15. The key risk to the proposition is the risk that the Board does not agree ratification on or around 17 November 2021. This is mitigated by the early circulation of papers. The Board is asked to confirm its decisions on or after it is formally constituted at 00.01 on 17 November 2021.

Equality Analysis

16. N/A

Implementation Timescale

17. The Board is requested to ratify the 47 Decisions Made by the Interim OEP Board and confirm their agreement on, or as close as possible to 17 November 2021.

Communications

18. The communication of this report and the outcome of the recommendations made to Board will follow the Rules of Procedure for Electronic Business as part of the OEP's Governance Framework. The agreements of the Board and any decisions ratified will be published with the OEP's future minutes of its next Board meeting scheduled to take place in December 2021.

External Stakeholders

19. External stakeholders have not been involved in the recommendations for ratification for Decisions Made as these decisions are prior agreements of the Interim OEP Board.

Internal Stakeholders

20. In preparation for these recommendations to Board have been:
 - a) The Interim OEP Board
 - b) The Interim OEP CEO
 - c) The Interim OEP Head of Business Strategy and Planning
 - d) Other Interim OEP Officers who have presented past reports and recommendations to the Interim OEP Board.

ANNEXES LIST

Annex A – Decisions Log

Annex B – Minutes of Meeting of 1 July

Annex C – Minutes of Meeting of 12 August

Annex D – Minutes of Meeting of 6 October

Decision No.	Date of Board Meeting	Agenda Item No.	Item Description	Interim OEP Board Decision
1	1 July 2021	21.04	Interim OEP Governance	The Board AGREED to establish a 25-year environment plan monitoring report steering group as a Committee of the Board under the terms of reference proposed and noted that Paul Leinster and Julie Hill had been nominated and agreed to serve as members.
2	1 July 2021	21.04	Interim OEP Governance	The Board AGREED to meet in accordance with the schedule of meetings subject to: - An alternative date being sought for September - Consideration being given to meeting in person more frequently in this formative stage of the Board and organisation - Consideration being given to further discursive sessions for the Board, ahead of its main meetings in this initial phase of its establishment.
3	1 July 2021	21.07	OEP Mission, Diagnosis and Guiding Policy	Subject to consideration of its comments in the meeting, the Board AGREED the mission statement presented in the paper.
4	1 July 2021	21.07	OEP Mission, Diagnosis and Guiding Policy	Subject to consideration of its comments in the meeting, the Board AGREED the diagnosis and guiding policy presented in the paper.
5	1 July 2021	21.10	Provision of advice by the Interim OEP	The Board AGREED to respond to any consultation on the civil procedure rules, to provide advice on the proposed amendments to the Habitats Regulations and respond to the Green Paper consultation as had been requested.
6	1 July 2021	21.10	Provision of advice by the Interim OEP	The Board AGREED to commence work to develop a proposed response to the environment strategy consultation in Northern Ireland, and to continue to influence within Defra with the objective of providing advice prior to the public consultation on environmental target proposals early in 2022, subject to consideration of an appropriately governed structure.

7	1 July 2021	21.10	Provision of advice by the Interim OEP	The Board AGREED that the Interim OEP will not proactively respond to matters beyond those identified in the paper, unless the decision tool strongly indicates we should, and that requests from ministers should be prioritised.
8	1 July 2021	21.10	Provision of advice by the Interim OEP	The Board AGREED that new proposals for advice would be brought to the Board for agreement, that the Board would agree Interim OEP's response and that it would review the approach in early autumn in light of capacity at that point.
9	12 August 2021	21.12	Minutes and matters arising	The Board AGREED the minutes of the meeting held on 1 July 2021 and noted that a copy of the minutes is to be published on the OEP's website.
10	12 August 2021	21.14	Developing the OEP Strategy	Subject to consideration of its comments in the meeting, the Board AGREED the success criteria proposed in the paper.
11	12 August 2021	21.14	Developing the OEP Strategy	The Board AGREED to approach strategy development in Northern Ireland on the basis of the paper presented.
12	12 August 2021	21.14	Developing the OEP Strategy	The Board considered and AGREED the elements that should and should not form part of the strategy as presented and discussed in the meeting.
13	12 August 2021	21.15	OEP Enforcement policy: concepts of seriousness, prioritisation and urgency	The Board AGREED that the OEP should develop a workable "day one" enforcement policy by the end of 2021 primarily focused on the mandatory content of the policy specified by the Environment Bill.
14	12 August 2021	21.15	OEP Enforcement policy: concepts of seriousness, prioritisation and urgency	The Board AGREED that the policy should not be unduly fettering and allow the exercise of fairly broad discretion so the OEP can be reactive to our early cases.
15	12 August 2021	21.15	OEP Enforcement policy: concepts of seriousness, prioritisation and urgency	The Board AGREED that judgements of 'serious failure' and 'serious damage' should be made via a subjective, multifactorial approach to assessment based around a set of standard factors.
16	12 August 2021	21.15	OEP Enforcement policy: concepts of seriousness, prioritisation and urgency	The Board AGREED that where it is determined that there may be 'serious damage', the OEP should assess 'urgency' by considering the longer timescale and the more limited scope for remedies of environmental review compared to judicial review.

17	12 August 2021	21.15	OEP Enforcement policy: concepts of seriousness, prioritisation and urgency	The Board AGREED that strategically significant decisions to formally investigate, will be referred for the Board to decide in the first year of operation.
18	12 August 2021	21.16	HR strategy and policies	The Board AGREED the approach to the development of the HR policies and underpinning principles, and to delegate the approval of individual policies to the Interim CEO.
19	12 August 2021	21.16	HR strategy and policies	The Board AGREED to enter into a partnership agreement with one trade union.
20	12 August 2021	21.17	Strategic Approach for the 25YEP Monitoring Report	The Board AGREED the strategic objectives and strategic issues for the 25YEP Monitoring Report.
21	12 August 2021	21.19	Publication of Papers and AOB	The Board AGREED that papers be published as indicated on each paper presented in the meeting of 12 August 2021.
22	6 October 2021	21.21	Minutes and matters arising	The Board AGREED the minutes of the meeting of 12 August 2021
23	6 October 2021	21.23	Developing the OEP Strategy	The Board AGREED to a consultation of between six to eight weeks, provided that it receives assurance that sufficient pre-consultation activity has been completed and sufficient concurrent activity is planned for while the consultation is open.
24	6 October 2021	21.26	Developing the OEP enforcement policy	The Board AGREED that the decision-making framework should not promote a mindset whereby 'damage' that may be associated with the particular failure under consideration is the primary issue, with other factors secondary or supplemental.
25	6 October 2021	21.26	Developing the OEP enforcement policy	The Board AGREED that the OEP should take an approach to assessing 'serious damage' that does not unduly fetter our discretion through imposing on ourselves the need to conduct very technical assessments (e.g., collation of primary data) that fall outside the OEP's capabilities.
26	6 October 2021	21.26	Developing the OEP enforcement policy	The Board AGREED that our approach to enforcement should complement our specific powers by developing the OEP's general power to 'do anything it thinks appropriate for the purposes of, or in connection with its functions'. This is with a view to maximising our ability to achieve rapid resolution of cases.
27	6 October 2021	21.26	Developing the OEP enforcement policy	The Board AGREED that our approach to applying to intervene in court cases brought by third parties should be flexible and purpose driven. The OEP should only apply to intervene when our assessment of seriousness and prioritisation criteria point towards intervention as the best course of action and on the basis of assisting the court, by presenting information and analysis that would not otherwise be available to it.

28	6 October 2021	21.27	Stakeholder engagement	The Board AGREED the proposed objectives for engagement on the OEP's strategy as presented in the paper.
29	6 October 2021	21.28	Strategic objectives for the OEP	The Board AGREED that the OEP should define strategic objectives.
30	6 October 2021	21.28	Strategic objectives for the OEP	The Board AGREED that there should be four or five objectives covering all of the OEP's work.
31	6 October 2021	21.28	Strategic objectives for the OEP	The Board AGREED that the strategic objectives should be objectives of outcome, not activity.
32	6 October 2021	21.28	Strategic objectives for the OEP	The Board AGREED that the strategic objectives should build from, and collectively say, something more than our mission about the OEP's intent.
33	6 October 2021	21.28	Strategic objectives for the OEP	The Board AGREED that the strategic objectives will form the basis of how we tell our story through our strategy, corporate and business plans, and be useful in doing so.
34	6 October 2021	21.28	Strategic objectives for the OEP	The Board AGREED that strategic objectives should intend to endure in the medium-term.
35	6 October 2021	21.28	Strategic objectives for the OEP	The Board AGREED that objectives should be set out for consultation, and anticipated consultation outcomes could help refine and improve the objectives suggested.
36	6 October 2021	21.29	Publication of Papers and AOB	The Board AGREED that papers be published as indicated on each paper presented at the meeting of the 6 October 2021.
37	4 November 2021	21.31	Minutes and Matters Arising	The Board AGREED the minutes of the meeting of 6 October 2021
38	4 November 2021	21.32	Report of the Interim CEO-Designate	The Board AGREED to develop a response to the consultation set out in paragraph 16(a) of the paper regarding the UK Marine Strategy Regulations, with the recommended form and content of the response to return to the Board for consideration and agreement.
39	4 November 2021	21.32	Report of the Interim CEO-Designate	The Board AGREED to not respond to the consultation set out in paragraph 16(b) of the paper.
40	4 November 2021	21.32	Report of the Interim CEO-Designate	The Board AGREED the amendments to its governance framework required on legal creation of the OEP, presented in Annex B to the paper.

41	4 November 2021	21.32	Report of the Interim CEO-Designate	The Board AGREED to establish an Audit and Risk Assurance Committee (ARAC) under the terms of reference at Annex D of the framework presented in the paper and note that Dr Paul Leinster and Professor Dan Laffoley have agreed to serve as members of ARAC, at the request of the Chair. Dr Paul Leinster has agreed to serve as ARAC's Chair.
42	4 November 2021	21.32	Report of the Interim CEO-Designate	The Board AGREED to extend the Steering Group of the monitoring report of the 25-year environment plan to the end of February 2022, in line with the revised expectations for the timing of publication.
43	4 November 2021	21.33	Finance report	The Board AGREED and approved the Financial Scheme of Delegation, noting that the more detailed Standing Financial Instructions will be further developed and tabled in due course as discussed in the meeting.
44	4 November 2021	21.33	Finance report	The Board AGREED and approved the bank mandate for opening the bank account on behalf of the OEP, and delegate authority to Natalie Prosser (Interim CEO) and Alexis Edward (Head of Finance and Corporate Services) to open the bank account on OEP's behalf, noting change to Annex A wording in the presented paper to be 'The Office for Environmental Protection'.
45	4 November 2021	21.34	Vesting and establishment of the OEP	The Board AGREED to delegate the decision at each point of vesting and establishment of the OEP to the Interim CEO in consultation with the Chair, alongside those decision-makers in Defra where responsibilities are joint.
46	4 November 2021	21.34	Vesting and establishment of the OEP	The Board AGREED to delegate approval of the transitional governance and services agreement and the asset transfer agreement to the Interim CEO, in consultation with the Chair.
47	4 November 2021	21.39	Publication of papers and AOB	The Board AGREED that papers be published as indicated on each paper presented at the meeting on 4 November 2021.