

Date

2 February 2022

Title

Appointment of executive members to the Board

Report by

Dame Glenys Stacey, Chair

Paper for decision

Open paper

Issue

1. The Environment Act requires the OEP to appoint between one and three executive members to the Board. These appointments are to be decided by the Board.

Recommendation

2. The Board is recommended to agree that:
 - a. one executive member is appointed to the Board
 - b. that member is appointed for a six-month term on rotation between the Executive Directors, with the exception of the General Counsel
 - c. the first member appointed is the Chief of Staff, Richard Greenhous, followed by the Chief Regulatory Officer and then Chief Insights Officer in a repeated cycle
 - d. in the event that any post is temporarily vacant at the relevant time, the next in this sequence shall be appointed in their stead.

Background

3. The Environment Act provides that the OEP is to consist of:
 - a. a non-executive Chair

- b. at least two, but not more than five, other non-executive Board members
 - c. the Chief Executive, and
 - d. at least one, but not more than three, other Executive members.
4. The Executive members are to be appointed by the OEP.
 5. It is established good governance that non-executive members are in a majority on any Board. The Environment Act sets out that a meeting of the OEP is only quorate when a majority of members present are non-executive.
 6. The OEP's governance framework sets out that all Executive Directors will be expected to attend each Board meeting. Executive Directors have been recruited to job descriptions that set out that they will either be a member or report regularly to the Board.

Analysis

7. Public bodies have a range of arrangements for executive membership of their Boards. Some have a number of executive members, others reserve membership to the CEO. The arrangements for the OEP Board are set out in its enabling legislation.
8. All Executive Directors will be present at all meetings of the Board. They will each be expected to actively participate in discussion, and play their full part in supporting the Board reach its decisions. An appointment as a member of the Board will not affect access to, or participation in, the Board's discussions.
9. Decisions of the Board are ordinarily made by consensus. In the event of a vote, only members of the Board will participate.
10. There may be some personal advantage to status as a member of the Board.
11. In proposing an approach for the OEP, the following are important:
 - a. The General Counsel is an Executive Director of the OEP, but also has a particular role as the senior legal advisor to the Board. The OEP is legally constituted as its Board. To preserve the General Counsel's ability to act as an independent advisor to the Board, in line with their regulatory responsibilities as legal professional, it is not recommended that they become a member.
 - b. Outside of this proposal, and assuming a Northern Ireland Board member is appointed the Board is to be constituted with a chair and five other non-executive members, and one executive member. There should remain an appropriate balance between executive and non-executive membership following the appointment of executive members. This argues for appointment of fewer executive members within the range permitted by law.
 - c. While the practical impact on the Board's decision-making may be limited, it is recognised that Board membership may confer status on the executive appointed. It would not support the effectiveness of the executive team as a whole to have one or more singled out for preference. A distribution of Board membership within the eligible Executive is preferred.

12. The National Audit Office operates a rotational appointment of its executives to its Board. Discussions with the NAO report this works well. A similar rotational appointment provides a basis for the OEP to appoint its executive Board member.
13. It is proposed that rotation be for six months, providing a meaningful period of appointment, and that all eligible executive directors are appointed within the first two years. An order for that rotation is proposed above.

Finance and Resource

14. There are no additional finance and resource implications.

Impact Assessments

Risk Assessment

15. Absent this appointment, the OEP will not meet its obligations for membership in the Environment Act. Given the Executive Directors are now appointed to post, early appointment to the Board is needed.
16. There is a risk that the Executive Director appointed to the Board will perceive, or be perceived to have, different status to their peers. There is sound reason for the General Counsel not being a Board member. Management, and the rotation proposed, mitigate other risks.

Equality Analysis

17. The rotation proposed is by role. No equalities impacts are identified.

Implementation Timescale

18. The proposal will be implemented without delay, following the Board's decision.

Communications

19. It is not proposed that the OEP will communicate the appointment. The Executive leadership team of the OEP will comprise of its Executive Directors and the CEO, whether or not they are members of the Board.

External Stakeholders

20. None.

Internal Stakeholders

21. None.