

## Board Paper

### Date

1 December 2023

### Title

Sustainability Policy and Biodiversity Duty

### Report Author

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### Responsible Executive Director

Richard Greenhous, Chief of Staff

### Paper for decision

Open paper

## Issue

1. The OEP does not have a sustainability policy. We committed to do so in our corporate plan.
2. By 1 January 2024, the OEP must consider what action it can properly take to further the conservation and enhancement of biodiversity in England, under the revised biodiversity duty set out in the Natural Environment and Rural Communities Act 2006 (NERC Act). Having done so, and as soon as practicable, the OEP should adopt policies and specific objectives for taking appropriate action and then should act.

## Recommendation

3. The Board is recommended to:
  - a. Note the factors which are most consequential to our environmental impact
  - b. Agree the Sustainability Policy and Action Plan and the commitment to sustainability within it
4. The Board is recommended to:
  - a. Consider what action we can take to further the conservation and enhancement of biodiversity in England, through the proper exercise of our functions
  - b. Agree that:

- i. There is action we can take
  - ii. We adopt the policy to take biodiversity conservation and enhancement into account appropriately as part of our strategic and operational decision-making
  - iii. We adopt the specific objectives to:
    1. scrutinise delivery of the steps governments in England and Northern Ireland intend to take to achieve, respectively, the 2030 and 2042 species abundance targets and the nearest NI equivalent (once adopted), and to hold each government to account for delivering those steps and for ensuring that doing so can achieve the relevant target.
    2. ensure that biodiversity conservation and enhancement are effectively taken into account in our strategic and operational decision-making, as well as all other relevant duties under environmental law.
  - iv. as soon as practicable, we take action to implement this, including by taking the steps set out in this paper
- c. Consider and comment on the Biodiversity Statement at Annex C, and agree to publish it for the reasons set out below.

## Background

### Sustainability Policy

5. We have no policy for how we manage our impact on the environment, and no action plan to mitigate our impact. This includes adherence to and reporting against government's greening commitments.
6. We secured external support from a specialist consultancy to develop our approach. They undertook a materiality assessment to identify the most important aspects to focus on in our work – including through engagement with internal and external stakeholders and supported us to develop the policy and actions proposed and implement the early stages.
7. Defra revised its sustainability strategy in 2023. We are subject to this strategy. This includes a range of funded activities to improve Defra Group's sustainability – such as routine carbon foot printing, and specific actions to mitigate the Group's impact. This year these include improving scope 3 emission reporting<sup>1</sup>, developing plans to tackle Defra's emissions 'hotspots', good practice for sustainable procurement, and improving Defra's approach to mitigating risks of modern slavery.

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<sup>1</sup> Scope 3 emissions are indirect emissions (other than those for purchase of energy and heating) that occur in the upstream and downstream activities of an organisation. For the OEP, these include emissions from purchased goods and services, business travel, employee commuting, waste disposal, and leased assets.

## Biodiversity Duty

8. The Environment Act 2021 revised the existing NERC Act biodiversity duty to which we, like all English public authorities, are subject. From 1 January 2023 we must:
  - a. from time to time (and by 1 January 2024) consider what action we can properly take to further the conservation and enhancement of biodiversity in England
  - b. if there are actions to take, as soon as practicable determine policies and specific objectives for taking appropriate action, then take that action.
9. Government produced guidance '[complying with the biodiversity duty](#)'. This encourages all public authorities to consider how they can manage land to improve biodiversity; to educate, advise and raise awareness of biodiversity; and to review internal policies and processes (for operational impacts). There is very little guidance on how to consider the actions that can be taken through the exercise of our functions, nor how policies and specific objectives should be developed.
10. The duty is relied on in EIP23 as a step for delivering the UK Government's goals and targets for nature's recovery. Hence, public bodies' implementation of, and compliance with, the revised biodiversity duty is likely to come under OEP scrutiny.

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

11. This is one of a range of similar duties under environmental law with which we must comply. An assessment of how we have complied with these duties (and others such as the public sector equality duty) is required within papers proposing each decision we make. There is scope to improve these assessments.

## Strategic Intent

12. The agreed strategic intent of this work is set out below.
  - a. the OEP is beyond reasonable reproach for our own environmental stewardship, and our compliance with environmental law.
  - b. over time, the OEP is an example to others of compliance, and the good management of environmental impact for an organisation of our scale and nature.

## **Analysis**

### Sustainability policy and action plan

13. Our direct environmental impacts are modest, but of course meaningful. The materiality assessment completed identified priority areas for us to address. The factors prioritised were mitigating our greenhouse gas emissions; reducing our waste and water; and creating a sustainable supply chain.
14. The proposed policy is developed to be in line with ISO14001 (environmental management). We have not proposed adopting ISO14001, largely because the burdens of sustainable

testing and then demonstrating compliance to an ISO standard are disproportionate to the benefits given our scale, and the scale of our environmental impact.

15. Our policy includes a specific statement of intent by the Board, and principles by which that intent is to be achieved. These are pragmatic given the stage of our maturity, the resources we have available to invest in sustainability, and the benefits to be achieved for working alongside others in the Defra Group.
16. The actions proposed are aligned with this. They cover the largest drivers of our direct environmental impacts, and the most significant discretionary choices available to us:
  - a. Our procurement, and specifically
    - i. Our IT procurement – our single largest procurement, and one of the most consequential for our environmental impact. Here good decisions are already taken in design and procurement as the policy sets out. The next opportunity is as these are revisited.
    - ii. The expectations we place on our suppliers, and the extent to which we should take sustainability into account in procurement decisions – as reflected in our procurement policies. This is to be revisited in 2024.
  - b. Our estate, and specifically:
    - i. The sustainability of our office buildings. Good sustainable decisions were taken at the time our offices were chosen. Other choices – such as procuring new furniture, rather than replacement – are not the most sustainable, but cannot be unmade.
    - ii. How we manage waste and water well in our office estate, where again we have been set up to succeed. Actions now focus on the ‘small things we can all do’ to be sustainable – these are already embedded into our Wildwood working guide.
    - iii. How we support sustainable travel to and from our offices. The most decisive factor in this is the expectation we place on staff for attendance – where commuting emissions are directly proportionate to how often staff commute. The business need to attend 2-3 days each week was decided in knowledge of this impact. We have already made wide ranging information available on public transport, walking and cycling and are trialling structured car sharing.
  - c. Our travel, and specifically how our travel policy supports sustainable choices. There are discretionary impacts from the frequency with which we encourage travel between our Northern Ireland and Worcester offices, and for what purpose. We will monitor and review this over time.
17. We have already acted to improve our measurement and reporting of our sustainability, so that targets can be set with the right understanding of our impact, and ability to have effect. We are measuring our impact this business year, with the challenge to grow the richness and ease of access to information over time.

18. The policy and plan does not include any specific targets of our own now. Instead, we aim to take steps to contribute to Defra's targets until such time as we can quantify our impact sufficiently to form targets of our own. We aim to set interim targets in a year's time (therefore with around 12 months data to consider) and a net zero target in two years' time. There is a risk that this is considered to be not sufficiently ambitious. We aim to mitigate by adopting Defra's interim targets now.

The revised biodiversity duty - considering how we further the conservation and enhancement of biodiversity

19. We have considered the extent to which there are actions we could properly take to further the conservation and enhancement of biodiversity in England via relevant statutory functions (Annex B). Our assessment is that there is action we could properly take. These distil into the following categories:
- a. The priorities we choose for our corporate and business plans, and the extent to which we target the exercise of our functions on issues likely to further the conservation of enhancement of biodiversity in England
  - b. The specific analyses and recommendations we make in doing so within our EIP progress reports, environmental law reports, advice and all other functions
  - c. The general approaches we take to the exercise of our functions, from our strategy and enforcement policy, to our subsidiary approaches as set out in formal and informal statements of our approach – such as our investigations procedure.
20. In light of this conclusion, the revised biodiversity duty requires that as soon as practicable we determine policies and specific objectives that are appropriate, then take action in line with those policies and specific objectives.

Policy

21. We have considered the policy we should adopt, in light of our above consideration. We recommend that we adopt the policy to take biodiversity conservation and enhancement into account as part of all relevant strategic and operational decision-making.
22. This is a broad policy statement; deliberately so. The extent to which it is appropriate to take the outcomes intended by the biodiversity duty into account within specific decisions, will depend on the nature of the decision, and context. We have a wide range of decision-making settings including:
- a. Decisions taken by the Board
  - b. Decisions taken by the Chief Executive, with the advice of ExCo
  - c. Decisions delegated to specific role holders in line with our Delegation Policy.
23. Each of these decisions is governed (to different extents) by terms of reference, guidance, templates and procedures. Adopting this broad statement of policy allows us to then undertake the actions relevant to the context of each, to implement the policy, and work towards the specific objectives we decide.

Specific Objectives

24. We judge the specific objectives of this policy to be twofold:

- a. First, to ensure that proper consideration of biodiversity conservation and enhancement is actually taken into account in decision-making. However, the revised duty is not the only duty we have in environmental law. There is opportunity to take advantage of the actions proposed to meet the revised duty, to also improve our consideration of these wider duties.

We therefore propose a specific objective to ensure that other relevant duties under environmental law are similarly taken into account.

- b. Second, to make our appropriate contribution to the conservation of enhancement of biodiversity in England. Our 'nature' programme has the long-term strategic intent, developed with the revised biodiversity duty in mind, to: scrutinise delivery of the steps governments in England and Northern Ireland intend to take to achieve, respectively, the 2030 and 2042 species abundance targets and the nearest NI equivalent (once adopted), and to hold each government to account for delivering those steps and for ensuring that doing so can achieve the relevant target. We judge this an appropriate specific objective in this regard.

Actions

25. Many of the actions we should take to implement this policy, and meet this objective, are in our existing plans. These include:

- a. To review our strategy and enforcement policy (by autumn 2024)
- b. To develop and implement a programme of work through our functions to meet the strategic intent of our 'nature' programme (develop by April 2024)
- c. To develop and implement our sustainability policy (by December 2023)

26. It also requires us to take actions beyond our existing plans. These are:

- a. To communicate the new policy (by March 2024)
- b. To review our decision-making templates, procedures and other supporting collateral (by March 2024)
- c. To develop guidance on how the new policy, and all other relevant duties under environmental law, should be appropriately taken into account in decision making, and communicate that guidance (by March 2024)

27. This suite of actions will allow us to make decisions in our ordinary governance and business, in a way which, where appropriate, aligns with the objectives of the revised duty to further the conservation and enhancement of biodiversity in England.

28. We are not required to make a public statement of the considerations we have made. But we judge there may be value in doing so, in order to achieve our intent to be an example to others. A draft of such a statement is set out at Annex C.

## Northern Ireland

29. Our sustainability policy and action plan is for all our operations, in England and Northern Ireland. Actions proposed are relevant to each, but the importance of each in each jurisdiction will differ. For example, we are unable to collate data on the environmental impact of our office estate in Northern Ireland, as our space is not separately metered for water and power, does not have its own waste collection and other similar constraints.
30. The revised biodiversity duty applies to the exercise of our functions in relation to England only. However, a similar duty applies in relation to Northern Ireland – a duty to further the conservation of biodiversity so far as is consistent with the proper exercise of our (NI) functions.<sup>2</sup> The revised biodiversity duty is wider than this duty for NI as it encompasses both conservation and enhancement of biodiversity. Hence, by seeking to comply with the English duty on an organisation-wide basis, we seek to also comply with the equivalent NI duty.

## Finance and Resource

31. Our sustainability policy and action plan was supported by external consultants, who delivered the materiality assessment, advised on critical gaps and steps we could take and provided consultancy support to review of a range of policies and our approach to measurement and data gathering. The total cost of this consultancy was £38k.
32. There is limited people resource to support the development and implementation of the policy. Measurement reporting and most actions under the sustainability policy and action plan are undertaken by the Executive Assistant to the CEO and Chair, this includes the role of sustainability champion. The Head of Business Strategy and Planning provides oversight of policy implementation and broader development, including of targets. Given the environmental impacts being managed, it is unlikely to be appropriate to invest any additional resource – the marginal gain is unlikely to be material.
33. Implementation of the activity to comply with the revised biodiversity duty is either resourced within existing programmes of activity, or is resourced within Legal's business plan line for delivering a legally compliant organisation.

## Impact Assessments

### Risk Assessment

34. There is a risk that we fail to identify the most significant of our environmental impacts, and therefore fail to take appropriate steps to mitigate them. We mitigate through the input of our external consultant support identifying appropriate industry good practice, and our alignment with appropriate government and industry standards.

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<sup>2</sup> s.1 Wildlife and Natural Environment Act (NI) 2011.

35. There is a risk that the absence of targets in the proposed action plan undermines its credibility. Targets would be required to be set now in the absence of sufficient evidence of our environmental impacts, and would therefore not be evidence-led. We aim to mitigate by aligning to delivery of Defra's targets pending sufficient data to inform our own.
36. There is a risk that the actions proposed in the sustainability policy and action plan are not sufficiently resourced to be delivered and have the intended effect. The actions proposed are considered deliverable within resource constraint, albeit with limited flexibility.
37. There is a risk that our approach to implementation of the revised biodiversity duty is not sufficient to meet our intent to be an example to others. We mitigate by taking a broader view than outlined in government guidance, and can mitigate further by publishing a statement setting out our approach.

## **Equality Analysis**

38. No material equalities impacts have been identified.

## **Environmental Analysis**

39. The revised biodiversity duty is a new duty on the OEP, and the steps set out in this paper and the annexes intend to be the means by which the OEP complies with the duty, and meets our strategic intent of being an example to others of such compliance.
40. More generally, we have a number of duties in environmental law. Our approach aims to improve the structures by which we assure compliance with these laws.

## **Implementation Timescale**

41. We will take the steps set out in the sustainability policy and action plan in the timescale set out in the plan. We will review the plan in autumn, and also report on it at that time through our annual report and accounts.
42. The specific actions following consideration of the biodiversity duty will be implemented in the timelines set out above.

## **Communications**

43. We intend to communicate the sustainability policy to all colleagues through the cascade in January. This will include launch of the champion role, and highlighting the small steps all colleagues can take for sustainability.
44. We intend to publish the sustainability policy and action plan and the biodiversity statement on our website, alongside other policies. There would be no intent to publicise the publication. This Board paper will be published in our ordinary course of business.



## External Stakeholders

45. External stakeholders informed the development of the materiality assessment which underpinned the development of our sustainability policy and action plan.

## ANNEXES LIST

*This section has been redacted as it contains information available elsewhere.*

[Sustainability Policy and Action Plan | Office for Environmental Protection \(theoep.org.uk\)](#)

[Sustainability Policy and Action Plan | Office for Environmental Protection \(theoep.org.uk\)](#)

[Statement in relation to the revised biodiversity duty | Office for Environmental Protection \(theoep.org.uk\)](#)

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) or Environmental Information Regulations (EIR). Please include references to specific paragraphs in your paper	•