

Date

5 July 2023

Title

Report of the Chief Executive

Report by

Natalie Prosser, Chief Executive

Paper for information and decision**Open in part**

Summary

1. This report sets out key developments in the short time since the Board last met, notably in defining our ways of working for our new Worcester office, as well as in delivering our objectives.

Recommendation

2. The Board is recommended to note the progress in delivery of our strategic objectives.

Strategic Objective 1 - Sustained environmental improvement

Monitoring Environmental Improvement in Northern Ireland

3. Following the Board strategy day of 17 May we are scoping a potential report to examine and evaluate the drivers and pressures causing the decline in the state of the natural environment in Northern Ireland. Our emerging thinking is that this may focus on soil, air, water, and biodiversity as the components of the natural environment where the anthropogenic impacts are most evident. These are also cross cutting, underpinning the six Strategic Environmental Outcomes (SEOs) set out in the draft Environment Strategy. The report, which we would aim to publish early in 2024, would inform our assessment of the EIP annual progress report in 2025 and provide a firmer evidence based for where we focus our efforts to maximise impact on environmental improvement. The proposition, including any implication for resource, will be brought to the Board to consider.
4. *This section has been redacted as its publication would be prejudicial to the effective conduct of public affairs.*

5. At its strategy day on 17 May, the Board discussed some of the risks and opportunities for the environment in Northern Ireland – in particular, the recently enacted Climate Change Act (NI) 2022 and the broad topic of Northern Ireland’s ‘grassland economy and ecology’. Briefings on these topics at annexes A and B are provided for the Board’s information, though we also expect to take them into account as we consider priorities for future work in respect of Northern Ireland (whether in-year or, perhaps more likely, in future years).

Monitoring Environmental Improvement in England

6. We requested information from Defra on its detailed delivery plans in some goal areas of the Environmental Improvement Plan (EIP) in March 2023 to support our scrutiny of environmental progress, and our report. *This section has been redacted as its publication would be prejudicial to the effective conduct of public affairs.*
7. We have evaluated the implications of not receiving the information and are confident that our progress report will still provide an appropriate assessment of progress, though will be necessarily less rich than would otherwise be the case. Our call for evidence is open and we now propose to make an information request of some of Defra’s delivery bodies. Defra is also to provide some information when its outcome delivery plans are published.
8. Defra confirmed that its annual progress report is on track for publication in July. From 2024 onwards Defra aim to publish in May bringing forward the deadline for our progress reports to November. We are considering the implications of this and developing a plan for what may be two reports in 2024 so that they are sufficiently distinctive.

Research and evidence development

9. We have awarded four research contracts under the evidence programme that the Board considered in April. Two awards will support the analysis of the focus area “Improving Nature” in our England EIP monitoring report this year. One project is a critical appraisal of the monitoring and delivery plans concerning the species abundance targets. We have also set-up a separate review panel for this work to manage potential conflicts of interest through the use of the supplier. The second project will provide a policy focussed analysis and mapping of the policy and governance landscape of the Improving Nature goal area.
10. To support the development of our foresights capability, we have commissioned a review of methods used across the public sector and wider to monitor and assess future trends and trajectories, to assess their suitability to meet our needs. We have brought in a seconded expert from Natural England to support the work.
11. Our fourth commissioned project focuses on waste management in Northern Ireland. Recent engagement suggests that this may receive significant political attention.

Comparison of UK and EU targets

12. The Board has previously sought a comparison of targets between the EU and post-EU regimes. Annex C sets out our analysis, for the Board’s information.

Strategic Objective 2 - Better environmental law, better implemented

Intervention in *Finch v Surrey County Council*

13. The Supreme Court hearing took place on 21 and 22 June. The OEP's intervention was in writing only, but most of the parties referenced our submissions. The Appellants expressly endorsed our submissions and referred to them to support several arguments. The lead judge explicitly confirmed that the Court would further review the OEP's submissions in its deliberations. Our submissions were the only intervention submissions that were drawn to the judges' attention, which indicates that the OEP was considered to be distinct from the other interveners. We anticipate judgement could be in around six months.
14. Prior to the hearing we received several press enquiries about our intervention; we spoke to BBC News and provided statements to eight national or specialist media and press organisations. This allowed us to explain our intent to seek clarity in the law to improve the quality of environmental decision-making, thereby enhancing environmental protection.

Improving Nature Work Programme: Environmental Outcome Reports (EOR) Consultation

15. We submitted [our response](#) to the EOR consultation following the last Board meeting, with our contribution receiving attention in the specialist press. We have had sight of Natural England's response. While the detail is generally aligned, our focus on the EIP is a significant differentiator, reflecting our intent and particular role.

Retained EU Law (Revocation and Reform) Act

16. The REUL Bill received Royal Assent on the 29 June. It did not include a clause relating to environmental safeguards. We had recommended such a clause in our earlier evidence, and our evidence was referenced by those arguing in favour of this in Parliament.
17. In line with the Board's discussion in June, we have written to the Defra Secretary of State to set out our views on the risks of environmental regression in respect of the revocation of regulations 9 and 10 of the National Emissions Ceiling Regulations 2018. We also highlight concerns because of the revocation of directly effective rights and general principles of EU law (including the precautionary principle) and changes to the status of retained case law. We will publish this correspondence.
18. With the Bill having been enacted, we will also now be turning our attention to Government's wider plans for what they will be considering under the powers of the Act, in relation to further revocations and reform of environmental law.

Environmental principles

19. We are preparing the advice that DAERA has requested on their draft Environmental Principles Policy Statement for the Board to consider in August. DAERA sought advice on specific questions, as well as the policy statement as a whole.

20. We propose to offer advice that will restate the intention behind the principles and outline what good implementation would look like, as well as addressing their specific questions. Julie Hill is acting as our critical friend on this piece of work. At her suggestion, we are also engaging with Richard Macrory and Malcolm Beatty in view of the specific legal and Northern Ireland aspects of the advice.
21. To support our monitoring of the implementation of the principles in England and Northern Ireland, we have convened an advisory group of five experts in the field, who will provide technical expertise and experience relevant to the consideration and implementation of environmental principles in policymaking. We have now had sight of Defra's toolkit to support implementation, have let our contract to support our monitoring and evaluation and will present to the cross-government group set up to implement the principles on the OEP's role before the Board meets.

Upcoming Government Consultations

22. Annex E to this report outlines a summary of our work screening consultations issued by government departments, including a forward look of upcoming consultations.

Strategic Objective 3 - Improved compliance with environmental law

Complaints and enquiries

23. Since January 2021 we have received a total of 755 enquires and 88 complaints.
24. Since my last report to the Board on 12 June, we have received 2 new complaints and handled 64 enquiries. During this period, we have judged 1 complaint to be eligible and this is therefore now in the assessment phase. We have closed 1 case with no further action. In total we have 9 open complaints in the assessment phase.
25. *This section has been redacted as it relates to information recorded for the purposes of OEP's functions relating to investigations and enforcement.*

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26. We received advice from Counsel on 26 June. *This section has been redacted as it contains legally privileged advice.* We will seek to meet with the Board in an extraordinary meeting by the end of July where we will request a strategic steer on how to proceed.

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27. Since the launch of *this section has been redacted as it relates to information recorded for the purposes of OEP's functions relating to investigations and enforcement* on 18 May we have met with the Northern Ireland Environment Agency team responsible for meeting our

information request. *This section has been redacted as it relates to information recorded for the purposes of OEP's functions relating to investigations and enforcement.*

Post implementation reviews

28. Government laid its response before Parliament to our report on Post Implementation Review (PIR) of Environmental Law on the 27 June. We welcome the response to our report but note that it does not respond directly to any of our recommendations, nor does it cover information relating to the PIRs highlighted for other government departments.
29. We are following up with Defra to better understand how our recommendations have been considered, and how we might be kept informed as to their progress. We also continue to engage with the Regulatory Policy Committee to support their work in driving improved regulatory compliance, and to understand any interrelationships between our work moving forward.
30. Defra also provided us with the updates it is providing to the EFRA Committee on progress to address the backlog of PIRs. *This section has been redacted as its publication would be prejudicial to the effective conduct of public affairs and it contains information provided in confidence.*

Statutory Deadlines

31. We have identified 3 upcoming statutory deadlines in Northern Ireland that we judge to be of strategic significance.
- a. The EIP for Northern Ireland is required to be laid before the Assembly by 25 July 2023 under the Environment Act.
 - b. A climate action plan must be published under the Climate Change Act (Northern Ireland). The plan must have been subject to public consultation lasting not less than 16 weeks and be laid before the Assembly by the end of 2023. We understand that DAERA is working to a date of June 2024, which is 24 months from the date of royal assent, as referenced in different sections of the Act.
 - c. A new Nutrient Action Plan is required by 11 October 2023 under the relevant regulations.
32. Alongside our engagement with the Executive Office and DAERA, we intend to write to the Permanent Secretary enquiring of progress on each of these, with the intention to publish this letter and any response. This will enable us to publicly signal our interest in the matters and improve transparency of progress.
33. We have completed our analysis of our schedule of statutory deadlines. There are none new of strategic significance beyond those identified above. We will actively maintain our internal tracker of deadlines to inform any future activity, but do not propose to produce a public product given an expected narrow audience, and the burden of maintenance.

Strategic Objective 4 - Organisational excellence and influence

Finance report

34. The agenda for this meeting includes a dedicated finance report, providing more information.
35. We submitted an in-year bid to DAERA for an additional £350,000 of funding in May, to supplement the £1,000,000 we received in relation to our Northern Ireland functions for the current year. An additional £100,000 has been confirmed.
36. Whilst this is welcome, notably given the constrained Northern Ireland budget and limited discretion for DAERA at this stage, it does not meet all the needs we have set out. We may receive more funding later in the year.
37. We understand we will receive additional funding from Defra to support the increased flexibility in the public sector pay remit for the coming year. This allows departments to award up to a 4.5% pay rise, compared to the 2% which Defra used in its budget allocations. We understand we will receive an additional £230,000 to meet this and any one-off payment the Board will consider separately on its agenda. This is unexpected, but welcome. As we had adjusted our pay modelling already, this will reduce our forecast in year overspend.

Corporate Plan

38. We published our corporate plan on 6 July. The business plan the Board agreed forecast an overspend of £950k in our revenue budget, to mitigate risks of underspend this year and ensure we maximise our opportunity to have impact. We set out then how we would manage this underspend, through careful tracking of any movement in pay and non-pay budget through delivery and recruitment progress, seeking additional resources, and taking active decisions to stop, slow-down or rescope work if the overspend forecast did not reduce.
39. At the end of June we held our first review of our delivery against plan, and in year re-forecast. In the month since the Board's agreement, *this section has been redacted as its publication would be prejudicial to the effective conduct of public affairs.*
40. Executive Directors are actively considering scope to mitigate expenditure, and the early decisions needed to commit sums to maintain delivery of our plan. We have decided to bring forward our next re-forecast to enable early decisions to be taken, including whether any decisions to stop, or pause, work is needed now pending greater confidence in the trajectory of our forecast, and to take any decisions that can be taken now on those elements of our Northern Ireland work programme the Board agreed would commence only if we secured additional resource . Any decisions to amend the plan will be notified to the Board.
41. At present, 70% of our work is on track or complete against the Corporate Plan Commitments with 26% off track. This reflects some active prioritisation required. The impact of external delays in the receipt of information, and some poor supplier performance accounts for the remaining 4% remaining activity, each is considered recoverable in year.
42. We held a staff event in June which focussed on the corporate and business plans for each team and individual, and reinforcing the 'golden thread' to our mission our objectives. We also revisited our strategic approach, showing how the plan is designed to deliver the strategy, and focussed on how we concisely communicate it to others with impact.

Recruitment

43. Progress in recruiting the 31 posts we have planned is as follows (this includes 27 new posts, and backfill recruitment). 20% of posts recruited to date have been filled internally.

	Regulatory	Insights	Chief of Staff	Legal	Total
In post	4	1	2	2	9
Offer made			2	4	6
Of which internal	2	0	0	1	3
Interview					
Sift	1				1
Advert live		3	2		5
Draft advert	1		3	2	6
Not started		1	3		4

Working with our sponsor departments

44. We held a second workshop with Defra on our ways of working. This focussed on some of the challenges experienced in recent months – *this section has been redacted as its publication would be prejudicial to the effective conduct of public affairs*. We were able to agree operational principles for our early engagement, and an overall process map for information requests. We now aim to document all aspects of the operational ways of working.
45. In the interim, we are working in accordance with these. There are positive signs, but equal or more significant challenges. *This section has been redacted as its publication would be prejudicial to the effective conduct of public affairs*.
46. Our working with DAERA remains generally more constructive. *This section has been redacted as its publication would be prejudicial to the effective conduct of public affairs*. It had always been understood that our approach in England would be adopted in Northern Ireland in due course.

Wildwood and hybrid working

47. Construction is ahead of plan. We have renewed confidence in the critical path to occupation at the end of September. We judge the most significant risk to timely completion to be the fibre-cabling work, though this is progressing.
48. We have developed a benefits case and managers' toolkit to support the return to more frequent office attendance, and confirmed key principles for how we plan to use the office space. We expect England based staff to attend the office (or another location for work purposes, such as a supplier premises) for a minimum of two days each week, and additionally in line with business need. We will monitor attendance – on average across a month – in a light-touch way in the first instance. Teams and project teams are to develop specific arrangements, in accordance with their needs.

Selected stakeholder engagement

49. In Northern Ireland we have now met the environmental spokespeople of the five main parties. These meetings have provided opportunity to increase awareness of the OEP, and to start building links with the Assembly. Further meetings are to be held with the smaller parties over the Summer.
50. In England, we ran a workshop with around 25 parliamentary staff – committee clerks, specialist staff and researchers in the Parliamentary library – working on environment and climate issues. This was to introduce the OEP, explain our forthcoming work and to discuss how we can best support Parliament and parliamentarians in holding government to account through our scrutiny. The Head of Parliament’s Climate and Environment Hub presented to our staff in turn. We have agreed a series of future activities, intended to support Parliament interact with our work.
51. Publication of the Corporate Plan will be followed by a number of online engagement opportunities for a broad range of stakeholders including the NGO community over the summer. These will include a presentation our priorities as set out in the plan, with opportunities for them to ask questions of the OEP. We will also take this opportunity to discuss further engagement opportunities with them.
52. Dame Glenys and I gave evidence to a hearing of the Senedd Climate Change, Environment and Infrastructure Committee alongside the Chief Executive of Environmental Standards Scotland. The session focussed on learning from new environmental governance arrangements, and any lessons for Wales.

Information security

53. We have worked with Defra Cyber Security to implement the National Cyber Security Centre’s recommendations for improving email security, aligning our security with a newer, more secure standard for communication between email servers. This will help prevent one of the most common types of cyber-attacks, whereby an attacker is able to intercept and alter email communication between two unaware parties (known as a man-in-the-middle attack).

Impact Assessments

Risk Assessment

54. The Board considered the strategic risk register in its last meeting, and will review it again in September, after scrutiny by the Audit and Risk Assurance committee.
55. *This section has been redacted as its publication would be prejudicial to the effective conduct of public affairs.*

Equality Analysis

56. No material equality implications arise from the issues for decision in this paper.

Environmental Analysis

57. This report gives an overview of strategic organisational developments which support the OEP’s principal objective. Consideration has been given in each case to how the activity

contributes towards environmental protection and enhancement, and to ensuring the OEP meets relevant duties in environmental law. No specific proposal in this paper has a direct bearing on those duties.

Paper to be published	In part
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).	<p>FOIA/EIR exemptions for which we propose not to publish this paper in full are:</p> <ul style="list-style-type: none"> • publication would harm relations between UK and NI governments (s.28) • publication would harm the effective conduct of public affairs, including the Board's ability to receive candid advice and engage in free and frank discussion (s.36) • publication would harm the OEP's commercial interests (s.43)

ANNEXES LIST

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

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

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

Annex D - This section has been redacted as it contains information for future publication.

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