Office for Environmental Protection

Our Strategy

June 2022

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Presented to Parliament and the Northern Ireland Assembly pursuant to section 24(1)(a) of the Environment Act 2021

June 2022

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Foreword by the Chair

The natural environment holds an increasingly prominent place in public life and debate. This reflects its fundamental role in the health, prosperity and wellbeing of the nation, and the critical and pressing threats it faces. Climate change, biodiversity decline, urban air quality, and the state of our freshwater and marine environments can each claim the need for urgent action, alongside other pressing matters.

It is in this context that the Office for Environmental Protection (OEP) was created, at the end of 2021. Our mission is to protect and improve the environment, holding government and other public authorities to account.

I am delighted to present our first strategy, setting out how we aim to fulfil the role Parliament and the Northern Ireland Assembly have given us. We have listened carefully to a wide range of views as we have developed our thinking and are grateful to all who have spoken to us and who responded to our consultation. We have considered each response carefully and explain the changes we have made in the consultation analysis report which accompanies this strategy. This strategy covers our work in England and Northern Ireland and reserved matters across the UK, including in the marine environment.

We have new and important functions. In fulfilling them, we will act independently, strategically, responsibly and without fear or favour. Our aim will always be to make the best possible difference to the natural environment and to best protect people from the effects of environmental harm.

We are to hold government and other public authorities to account for their obligations under environmental law. In doing so, we will look for early and satisfactory resolution in any matter, yet take firm action without hesitation when required. History shows us the need for a credible and purposeful oversight body, so that the law can deliver all the benefits government, Parliament and the Northern Ireland Assembly intended.

We will support the good design and implementation of environmental law. We see real opportunities here. Our monitoring, reports and advice will bring independent and expert insight across all stages of the law's creation and implementation.

The UK government's environmental improvement plan is now on a statutory footing, with statutory targets and Northern Ireland's environmental improvement plan to follow. Our independent scrutiny and reporting of progress against environmental goals and targets should support the delivery of national ambitions and indeed influence the shaping of them.

The OEP has a clear mandate and meaningful new powers. We are ambitious for the natural environment, and the role we will play in protecting and improving it. We appreciate the confidence government, Parliament, and the Northern Ireland Assembly have shown in creating the OEP. Now we aim to deliver.

Dame Glenys Stacey, Chair

Foreword by the CEO

We are a new public body with a critical role to play. I commend the work of all those stakeholders in our community, Parliament, the Northern Ireland Assembly and government who have championed and enabled the creation of the OEP.

Our strategy outlines our proposed approach and fleshes out our ambition to make a significant contribution to protecting and improving the environment. We aim to focus on those areas where our actions will have the greatest positive impact.

Our confirmed funding allows us to grow to be an organisation of 70 this year, and 50 to 60 in future years[1]. We must prioritise carefully, as we identify the issues on which we will act, as well as the approaches we take. We will focus our resources on those matters where we think we can make the most difference and will pursue those purposefully and with vigour. We set out in this strategy how we intend to make those choices and the factors that we will take into account.

Purposeful prioritisation will ensure that we make effective use of public money. We look forward to a review of our resourcing later in 2022, when the evidence from our first months can support a good understanding of our resourcing needs for the future. The Environment Act requires us to report to Parliament and the Northern Ireland Assembly on the sufficiency of our resources. We will be clear on the difference our resources allow us to make.

Key to many of the approaches in this strategy is the development of appropriate and productive relationships with other organisations, including those we oversee. We are committed to being a learning and listening organisation, consciously working to bring diversity of perspective, thought and challenge to our work.

We recognise the value to us of the technical expertise, insight and on the ground experience of others. We aim to earn our authority, so that our voice is heard, respected and can therefore influence better outcomes for the environment and people's health and wellbeing. We aim to be a trusted voice, with a commitment to evidence.

It is a privilege to lead the OEP into its first operational year. I am delighted with the support we have had from a wide range of stakeholders and with the calibre and expertise of our Board members and staff. Together we are committed to developing the OEP to be the best it can be. I look forward to working with them all to deliver this strategy, for the lasting benefit of people and the environment.

Natalie Prosser, CEO

1 Pending a review of our resourcing for future years in 2022/23.

Part 1. Introduction

Part 1. Introduction

1.1 Facing the challenge

There has never been a more crucial time to protect and improve the environment. The world faces many significant challenges: biodiversity loss; degradation of land, air and marine and freshwater environments; unsustainable levels of resource consumption and waste generation; as well as climate change.

These challenges threaten the complex environmental systems which underpin how people live, work and thrive, and their health and wellbeing.

The OEP has been established with unique tools to hold government and other public authorities to account as they work to address these challenges.

1.2 The OEP's mission, objectives, and functions

We are established with the principal objective to contribute to environmental protection and the improvement of the natural environment. This includes the protection of people from the effects of human activity on the environment. We will achieve our principal objective through our mission.

Our mission

Our mission is to protect and improve the environment by holding government and other public authorities to account.

We will act with purpose to pursue our mission, and make the best use of our resources, remit and functions to secure the greatest contribution to environmental protection and improvement of the natural environment.

Our four strategic objectives set out how we aim to pursue our principal objective and achieve our mission. These objectives are inter-related and of equal importance. We will strive for:

1. **Sustained environmental improvement**

Government is held to account for delivery of environmental goals and targets, and its plans for environmental improvement.

2. **Better environmental law, better implemented**

The environment is protected and improved, and people are protected from the effects of human activity on the natural environment, through better design and implementation of environmental laws.

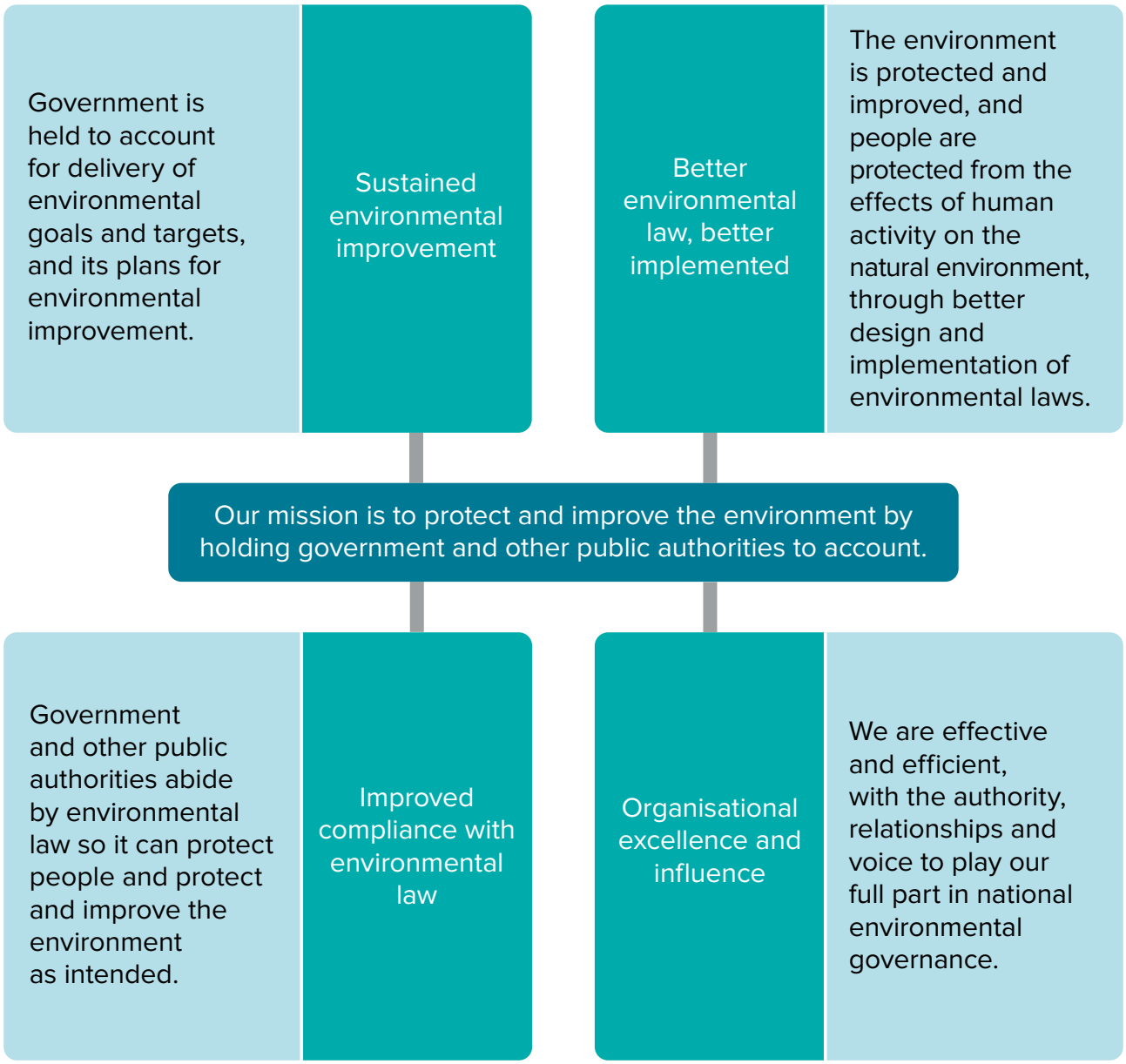
3. **Improved compliance with environmental law**

Government and other public authorities abide by environmental law so it can protect people and protect and improve the environment as intended.

4. **Organisational excellence and influence**

We are effective and efficient, with the authority, relationships, expertise, and voice to play our full part in national environmental governance.

Figure 1. Our strategic objectives



We have four main functions that will contribute to these objectives:

1. **Scrutinising Environmental Improvement Plans and targets**

We review and report on progress in delivering environmental improvement plans (EIPs), goals, and targets.

2. **Scrutinising environmental law**

We monitor and report on the implementation of environmental law.

3. **Advice**

We advise government on proposed changes to environmental law and other matters related to the natural environment.

4. **Enforcement**

We investigate suspected serious failures to comply with environmental law by public authorities and enforce compliance where needed.

Figure 2. Our four main functions

1.3 Our independent role and resources

The OEP was established by the Environment Act 2021. We are an independent public body, with powers to advise ministers and government departments and to hold them and other public authorities to account against their environmental responsibilities and the law. Our independence is protected in law.

Our work covers England and Northern Ireland, and environmental matters reserved to the UK government. This includes matters in the marine environment where these are dealt with in environmental law or government targets and EIPs.

Like the environment, our work is of importance to many government departments. We are funded by the Department for Environment, Food and Rural Affairs (Defra) in England and the Department of Agriculture, Environment and Rural Affairs (DAERA) in Northern Ireland, who oversee our use of public money. Defra and DAERA ministers are accountable

in Parliament and the Northern Ireland Assembly for this, along with our work. However, we pursue our objectives and implement our functions independently and impartially, separately from government. Our judgements are our own, formed independently.

We will publish a corporate plan each business year, setting out the resources we have available, and how we plan to make the best use of them through our activities and programmes. We are newly established and small. We will act strategically and make hard choices about how we will make the most difference.

Our financial resources will be reviewed in our first year, with the benefit of our early experience in delivering this strategy and our first corporate plan.

In our annual report we will demonstrate how we have used our resources, and what we have achieved. This will include our assessment of whether we have been provided with sufficient sums to carry out our functions effectively.

1.4 About this strategy

This strategy sets out how our work will contribute to improvement in the natural environment and environmental protection, including the protection of people from the effects of human activity on the environment. This is our first strategy. We expect to review it within the first 18 months of its adoption.

In this first part, we have explained who we are, and introduced our mission, objectives and functions.

Part two describes how we will pursue our strategic objectives, our ambitions, and the approaches we will take to achieve them.

Part three gives information about the way we will work. We explain how we will deliver each of our four main functions, prioritise our activities, and work with others. We also set out our approach towards acting objectively, impartially, proportionately, and transparently.

Part four sets out how we intend to measure our success and review this strategy.

Annex A sets out our enforcement policy and provides detailed information about the way we will exercise this function, expanding on the summary provided in part three.

In this strategy, we give specific meaning to some of the words we use. This includes important expressions defined in the Environment Act 2021.

Figure 3. Key terms in this strategy

The natural environment

This means living things like plants and wild animals, the habitats in which they live, land, air and water, and the natural systems, cycles, and processes through which they interact.

Environmental protection

This means protecting the natural environment and people from the harmful effects of human activity on the natural environment. It also includes maintaining, restoring or enhancing the natural environment, and monitoring, assessing, considering, advising or reporting on any of these.

Environmental law

This means any legislative provision (such as an Act of Parliament or Regulations) that is mainly concerned with environmental protection, unless it deals with certain excluded subjects such as national security or those devolved to the Scottish or Welsh governments.

To the extent that they are mainly concerned with environmental protection, this includes provisions in laws dealing with other subjects, such as those related to planning and development – for example, legislation about environmental impact assessment.

Environmental law generally means both UK and Northern Ireland environmental law, unless we refer to either individually.

Public authority

This means any person or organisation carrying out any function of a public nature. It includes government, agencies of government, local authorities and similar organisations. In some circumstances it includes others, for example private companies, when they are carrying out public functions. These could be water companies, harbour authorities or other similar bodies.

Authorities carrying out devolved functions in Scotland and Wales, and certain specific authorities such as the courts, Parliament and the Northern Ireland Assembly, are excluded.

Government

Where we refer to government, we mean the UK government and its departments acting on matters for England or where they are reserved and the Northern Ireland executive and its departments acting on matters for Northern Ireland, unless we refer to either individually.

Environmental improvement plan

An environmental improvement plan (EIP) is a plan for significantly improving the natural environment that government is required to prepare under the Environment Act 2021. EIPs must include the steps government intends to take to improve the natural environment and can include other matters.

Environment Act targets

Environment Act targets are those relating to the natural environment, or people's enjoyment of it, that are to be set by the UK government in England under the Environment Act 2021.

The UK government may set any target in these areas. It must however set these targets in some specific areas – a long-term target for each of air quality, water, biodiversity, and resource efficiency and waste reduction, and targets for fine particulate matter in the air and the abundance of species. The targets must set an objectively measurable standard, and a date by which it is to be met.

The Environment Act 2021 does not provide for such targets to be set in Northern Ireland.

Reserved matters

Reserved matters are those where the ability to create legislation rests with the UK Parliament in Westminster and has not been devolved to the parliaments and assemblies in Scotland, Wales or Northern Ireland.

Devolution legislation sets out which matters are reserved and devolved. The environment is largely a devolved matter with few areas reserved. There is no single, exhaustive list of reserved legislation.

Part 2. Delivering our strategic objectives

Part 2. Delivering our strategic objectives

2.1 Introduction

This part describes our four strategic objectives in more detail. For each we set out what we aim to achieve and how. We describe our approach to each of our functions in greater depth in part three.

2.2 Sustained environmental improvement

Strategic Objective 1: Government is held to account for delivery of environmental goals and targets, and its plans for environmental improvement

Government is uniquely placed to protect and improve the environment, through its own activities and ability to influence others. Our aim is that government sets ambitious national environmental plans, goals and targets and makes sure they are delivered.

The UK government set out a long-term approach to environmental protection and improvement in its 25-year environment plan (25 YEP) in 2018. This is its first EIP and covers 10 goals relating to the natural environment. The UK government will review the 25 YEP in 2023 and every five years thereafter. The UK government consulted on its approach to Environment Act targets in March 2022.

Similarly, DAERA on behalf of the Northern Ireland executive consulted on its environment strategy in January 2022, as the basis for its first EIP. This will set out goals relating to the natural environment in Northern Ireland. The Northern Ireland executive will also review its plan every five years.

What we aim to achieve

Ambitious and clear national plans, goals and targets are fundamental to environmental protection and improvement. We will critically assess, report, and advise on the development and delivery of these national measures, holding government to account for its ambition, progress and delivery. In this way, we aim for sustained improvement in the natural environment through governments progress delivery of its plans and goals, and compliance with targets.

How we aim to achieve this objective

We will independently assess governments' progress towards environmental improvement, the state of the natural environment and the trajectory of environmental change. Where relevant, the benefits nature provides to wider society and people's enjoyment of nature will form part of our assessment. We will pursue this objective mainly by scrutinising the EIPs and targets, as described in section 3.5.

We will assess the EIPs holistically, consider wider plans, initiatives and delivery and scrutinise the contribution of other public authorities that support government's progress. Where appropriate, this will include scrutinising a wider range of targets and commitments than the Environment Act targets. This will particularly be the case in Northern Ireland where no environmental targets are required by the Act.

Through independent analyses we will critically assess and report on what is being achieved, what is working and the issues that need addressing. We will publish our findings for government, Parliament, the Northern Ireland Assembly and others to see and act upon. We will make recommendations for improving progress where policies or action fall short or where there are gaps.

We recognise that the accessibility and clarity of these plans to a wide audience, including businesses and the general public, will be important so everybody can play their part in improving the environment.

We will identify and report on gaps in monitoring and press government to fill them. We will prioritise some matters and consider them in greater depth. We will conduct selected research on how gaps might be filled to encourage and stimulate improvement.

Through our advice and scrutiny of environmental law functions (sections 3.7 and 3.6 respectively) we will recommend how changes to the law, its implementation or other actions could help deliver government's plans for environmental improvement. Under our enforcement functions (section 3.4), we will challenge and remedy serious failures to comply with the law that undermine environmental improvement, where we prioritise those failures in our enforcement activities.

2.3 Better environmental law, better implemented

Strategic Objective 2: The environment is protected and improved, and people are protected from the effects of human activity on the natural environment, through better design and implementation of environmental laws

Environmental law is developed to achieve environmental outcomes or benefits. These include outcomes for the natural environment, for example by protecting wildlife, and for people's health and wellbeing, such as achieving safe air quality standards.

Environmental law comes in different forms. Some laws aim to tackle specific environmental concerns. Others address how environmental issues are to be considered in decision-making, for example through assessment or regulation of activities that may affect the environment. Some apply local controls, and others national standards and requirements such as those concerning environmental principles, plans and targets.

To be effective, environmental law must be designed well to require or incentivise behaviours that can deliver the intended outcomes.

Law that is badly designed will not deliver the desired outcome and may have unintended consequences. Different laws can pull in different directions. To be most effective, laws should work together coherently, for all outcomes to be achieved. Environmental law also needs to be implemented well to achieve these outcomes in practice. Even well-designed law may fail to achieve its outcomes or have harmful effects if implementation plans are not well thought through or executed.

What we aim to achieve

Our objective is for environmental law and its implementation to be well designed and delivered, so that positive outcomes for the environment and people's health and wellbeing are achieved. We aim to increase the effectiveness of existing environmental laws and support the good design and implementation of new ones.

How we aim to achieve this objective

The design and implementation of environmental law are matters for government, Parliament, the Northern Ireland Assembly and public authorities. We will pursue this objective mainly by scrutinising environmental law (section 3.6) and giving advice (section 3.7). We will work strategically and on the basis of carefully selected priorities, rather than aiming to review all environmental law in detail (sections 3.2 and 3.3). Our approach will be built on engagement and influence and providing independent advice and evidence-based recommendations to those who design and implement environmental law.

The implementation of law goes beyond its introduction and compliance to the wider context and framework in which it is applied in practice. Resourcing, other laws and incentives, and the choices made in administering and enforcing the law can all work against outcomes being delivered effectively.

We will independently scrutinise the implementation of selected environmental laws to determine if they are achieving their intended outcomes and make recommendations for improvements. We will engage with and seek to influence public authorities locally and nationally where they inform the effective implementation of good environmental law.

We will make recommendations in areas where the design of current laws could be improved and where our findings about existing laws can be used to inform new ones. We may also make recommendations where legislative, policy or other gaps or barriers limit the effectiveness of environmental law.

We will critically assess and advise on changes to environmental law proposed by government, for example in response to consultation documents, green papers and draft legislation, with the aim of ensuring high standards of protection and improvement, and an effective basis for implementation. We will give independent advice on other environmental matters when government requests it.

We will also contribute to this objective through our enforcement functions (section 3.4), where we will identify non-compliance and assess its root cause. By drawing wider conclusions from individual or groups of cases, we will aim to inform effective changes in the law and its implementation.

Where we present reports and advice to ministers, it will be for government to decide whether to accept them. Ministers answer to Parliament and the Northern Ireland Assembly, who will be able to hold them to account for how they have considered and acted on our advice. We will publish our reports and advice.

2.4 Improved compliance with environmental law

Strategic Objective 3: Government and other public authorities abide by environmental law so it can protect people and protect and improve the environment as intended

Environmental law exists to achieve environmental outcomes and benefits. Government and other public authorities must comply with their obligations under environmental law so that the intended outcomes are realised.

Effective implementation of the law often depends on the actions of public authorities. Public authorities should meet all their obligations in environmental law. This does not always happen, however. Failure to comply can have significant implications for the environment and people's health and wellbeing. It can also undermine public confidence in the delivery of environmental policy.

What we aim to achieve

Our objective is to hold government and other public authorities to account for their compliance with environmental law, and to challenge and remedy serious failings. This will enable the law to protect and improve the environment and protect people as intended.

How we aim to achieve this objective

We will pursue this objective mainly through our enforcement function (section 3.4). We will receive and assess complaints, conduct investigations, and use the full range of our enforcement powers to identify, address and resolve serious failures in public authorities' compliance with environmental law in the cases that we prioritise. In challenging and remedying serious failures in these cases, we will aim to give full effect to the law.

We aim to increase compliance with environmental law overall, rather than just in relation to individual cases. For each case we resolve, we will aim to achieve wider benefits through the lessons and precedents our work creates. We will make careful choices to target our resources to where we will have most effect.

Our scrutiny of environmental law (section 3.6) may also identify systemic issues of non-compliance and their root cause, and we will take enforcement action where appropriate. We may also contribute to compliance by supporting better design and implementation of environmental law (section 3.6 and 3.7).

Complaints

Receiving and assessing complaints about potential breaches of environmental law by public authorities is important to our work and provides us with information that can inform all our functions.

Our service is free to use. Our complaints procedure is published on our website www.theoep.org.uk. It sets out what people can complain to us about, how they can complain, what they can expect of us, and the information they should provide.

The OEP is not an ombudsman, although we will work with those organisations (see section 3.8). We will consider and respond to every complaint we receive. However, our role is not to investigate or act in every case, nor to provide compensation to or seek individual redress for those who complain to us.

Rather, we must assess the issues concerned and analyse the evidence to ensure we focus on serious breaches and cases where we can make the most difference. Where we investigate a serious case, this is to determine if a public authority has complied with the law, and if it has not, to establish what it should do to correct the failure.

We will also use the information we receive from complaints to inform our wider enforcement work and other functions. For example, a complaint may help identify a systemic issue or broader concern about environmental law or its implementation that leads us to take steps through any of our functions.

2.5 Organisational excellence and influence

Strategic Objective 4: We are effective and efficient, with the authority, relationships, expertise, and voice to play our full part in national environmental governance

We are a new organisation, with a broad remit and powerful tools. The environment and people's health and wellbeing will be best served when we use these to their greatest effect – strategically, purposefully, expertly, and independently.

What we aim to achieve

Our objective is to operate as efficiently, effectively and influentially as we can, to deliver the most for environmental protection and improvement.

How we aim to achieve this objective

We have designed our organisation to be efficient, responsive and flexible. We will work hard to ensure we use public money and our resources wisely to make the most difference.

We operate as a single organisation covering England and Northern Ireland. We are located in Worcester. Our staff in Northern Ireland, will be home-based, with working and meeting space available locally in Northern Ireland for all our staff when needed.

We have our own corporate services to be responsive to our needs. We will be independent in our approach and judgements. We will draw on specialist support and economies of scale from across government where these are most effective and efficient, in a way appropriate to our independent role.

We will attract and retain a high-quality workforce, creating a collaborative working culture in which our staff can thrive. We will provide them with access to the systems, training and tools they need to work effectively.

We recognise that our reputation is to be earned. We will establish our authority so that our actions have the widest impact. We will develop the power of our voice and use it wisely so that people understand our work, listen to what we say, and act to protect and improve the

environment. When we speak, we will speak with purpose and say things as they need to be said. We will evaluate whether our work has influence.

We will act strategically, and with full independence of judgement. Our most important judgements will be made by the Board using its expertise. We will develop and continually improve our access to the best available science, knowledge and expertise, for example through short-term secondments, expert panels and evidence commissions.

Staff across our organisation are responsible for engaging and listening to others. We will consciously and consistently seek out the views and perspectives of those with whom we work. This will include the public authorities we oversee, those who influence others, and those affected by failures in environmental law or by failures to improve the environment. We will engage to add insight, diversity of experience and challenge to our work, and to augment and amplify our recommendations and insight. We set out the ways we will listen and work with others in section 3.8.

We know our ability to succeed will depend on how we work as much as what we do. We aim for the OEP to be an enviable place to work. We will uphold and develop a culture based on our values that we are independent, act with purpose, are evidence-led, and trust one another. We will evaluate our culture regularly with all those who work for us, and those with whom we work.

Our approach to this objective in Northern Ireland

Our functions in Northern Ireland and England will be fully integrated so all our work benefits from our full capabilities.

We will grow our capacity to deliver our Northern Ireland functions, and our expertise, knowledge and experience in Northern Ireland environmental law, issues and science. These colleagues will be home-based where resident in Northern Ireland and have access to local working and meeting space.

A member of our Board is appointed to bring specific experience in Northern Ireland to our strategic decisions. A lead executive director is responsible for bringing additional focus and coordination to our delivery in Northern Ireland. All our staff will support our impact in protecting and improving the Northern Ireland environment.

While operating as one OEP, we recognise that environmental law and its administration are different in Northern Ireland. We will maintain distinct approaches where needed to be effective. For example, we will have a specific approach to stakeholder engagement and communication to ensure we are visible and present, and that we establish our local voice. We will also ensure our approach to access relevant expertise is tailored through recruitment, secondments, expert panels and evidence commissions.

Part 3. Our approach to delivering our functions

Part 3. Our approach to delivering our functions

3.1 Introduction

Here we provide information about the way we will work, how we will prioritise and allocate resources and how we will decide which function or combination of functions to apply to specific issues or opportunities. We explain how we will exercise each of our four main functions, how we will work with others, and our approach towards acting objectively, impartially, proportionately, and transparently.

3.2 How we will prioritise

Why we will prioritise

We have important new functions and a wide remit. Through our actions we will make a meaningful difference to protecting and improving the environment, but we cannot address every issue. Where we act, we will act strategically and with purpose.

There are important things that, by law, we must do each year or must always do when needed. Beyond this, we will prioritise to act selectively and strategically, and to target our capability and resources to have the most impact.

Our approach to prioritisation

Our prioritisation approach is founded on four principles:

1. We will prioritise by outcome and across our functions so that our work makes the most difference
2. We will prioritise by judgement, supported by the evidence available at the time
3. Our judgements on what we prioritise, and when, will be guided by four main questions:
    a. how large an effect could our action have?
    b. how likely is our ability to have that effect?
    c. what is the strategic fit?
    d. what is our capacity and capability to deliver?
4. We will be transparent about the matters we prioritise.

Our Board and senior leaders will make our judgements on prioritisation. These will be set out in our corporate plan at the start of each business year.

We will gather and maintain information about issues, including those we do not prioritise, and regularly reassess our choices to take account of emerging trends, events and new evidence, such as from complaints. In this way we aim to be responsive, and for our effort

to be always targeted to where we can make the most difference and provide value for the public money that funds us

We will also be transparent about our prioritisation judgements in our annual reports and accounts.

Prioritisation underpinned by analysis

We will analyse relevant available information to reach our judgements on prioritisation, based on a range of factors outlined below, seeking consistency in our judgements.

We recognise that good judgements are both evidence-based and timely. As such, our judgements will be based on the information that is reasonably available to us at the time we decide. We will not normally conduct our own detailed technical assessments to generate new evidence as the basis for prioritisation but may do so where the available evidence is particularly limited or divided.

A. How large an effect could our action have?

To make this judgement, we will assess the seriousness of harm, or the extent of the opportunity for improvement, in relation to the natural environment or protecting people.

We will make this assessment by considering a range of factors as set out in our enforcement policy at annex A. These include the systemic or singular nature of harm to the environment or people, or the opportunity for improvement, and its likelihood, degree, and duration. We will take account of the significance of issues relative to the populations and geographies in which they apply. In this way, we will take care to ensure that issues in England, Northern Ireland or UK-wide are considered on their own merits. We will then assess the extent to which these conditions could change, following our intervention.

Where appropriate, we will also consider the context in which the public and others view the matter, as well as the attitude, approach and response of public authorities as factors when deciding its gravity or relative importance.

We recognise that issues of harm and opportunities for improvement will not always be single or isolated events. We will take a broad and strategic view and take account of common, cumulative and related issues or opportunities which are more significant when added together.

B. How likely is our ability to have that effect?

The environment is a complex system, and the effect of our actions will not always be certain. Our programme of work will therefore balance where we judge we might have greatest effect, and where we can be most confident of a positive impact. In this way, we will aim to achieve the most difference overall.

We will make judgements about the likelihood of our actions being successful by understanding how they may lead to environmental protection or improvement and assessing the likelihood that will happen. We will consider the broader context, including other influences and actors, as we do this.

We cannot be certain about the effect of our actions, so, where appropriate, we will take a risk-based approach. For example, the greater the significance of the environmental feature potentially impacted or the potential impact on human health, or the potential effect of our actions, the greater the case there will be to act, even in the face of uncertainty.

C. What is the strategic fit?

Sometimes we will be the only organisation able to act or be best placed to make a difference. At other times others may be better placed to have effect. There will also be times when our work could complement or add to that of others. We will prioritise where our action has most effect.

Our judgement about the strategic fit will also consider the risk of acting or not acting, the extent to which our actions add to other work we are doing, and the balance of all our activities across our remit, for example across issues in the environment. We will take account of how our actions contribute to our objectives in Northern Ireland, England or both, so that, in the long-term, our activity broadly aligns with the resources provided by each government.

D. What is our capacity and capability to deliver?

Our prioritisation will take account of the resources and capabilities needed for our work to make a difference, and the time and scale of the activity involved. This will be especially important in our first period of operation as we build our experience.

We will ensure we retain capacity and flexibility to respond to external or emerging events, enabling us to be influential and take opportunities when they arise.

3.3 Deciding how to act: an issue-based approach

Many environmental issues fall within the OEP's remit. Each issue of harm and each opportunity for improvement will be different and the specific contribution we can make will vary.

When deciding how to act, we will consider which of our functions can contribute to an improvement for any issue that we identify. This will mean that the balance of what we do will change over time. For example, in some years, we may produce more reports scrutinising environmental law (see section 3.6); in others we may undertake more investigations (section 3.4).

Our functions complement each other and may have more effect together. We will identify how what we do under one function can support and reinforce our other activities to lead to better outcomes. For example, we may scrutinise progress against an area of the EIPs or targets, and implementation of associated environmental law, in concert. We may also decide to prioritise issues in that same area in our advice and enforcement functions.

In other situations, we may use our functions sequentially. For example, our reports scrutinising environmental targets may indicate that government is making insufficient progress, requiring corrective action to be taken to meet the targets by the relevant dates set in law. If targets were then missed, we might initiate an investigation.

As a result, a proportion of our work will be within connected, issue-based programmes.

We will not work in narrow, functional siloes. We recognise that information from one area of activity could provide insight into related issues and opportunities in another. For example, we will review complaints from the public for evidence of areas of environmental law that can be improved. Similarly, we will consider whether our scrutiny of EIPs provides intelligence that suggests environmental law is not being properly implemented or delivering its intended outcomes, and act accordingly.

Our functions in England and those we have in Northern Ireland are very similar, although the contribution the OEP could make to environmental improvement in each may differ.

We will consider the different environmental issues, and any other particular circumstances, in determining where and how to act in each of England and Northern Ireland. We might sometimes scrutinise or take enforcement action on the same issues in England and Northern Ireland, but only where we judge this to make the most difference overall.

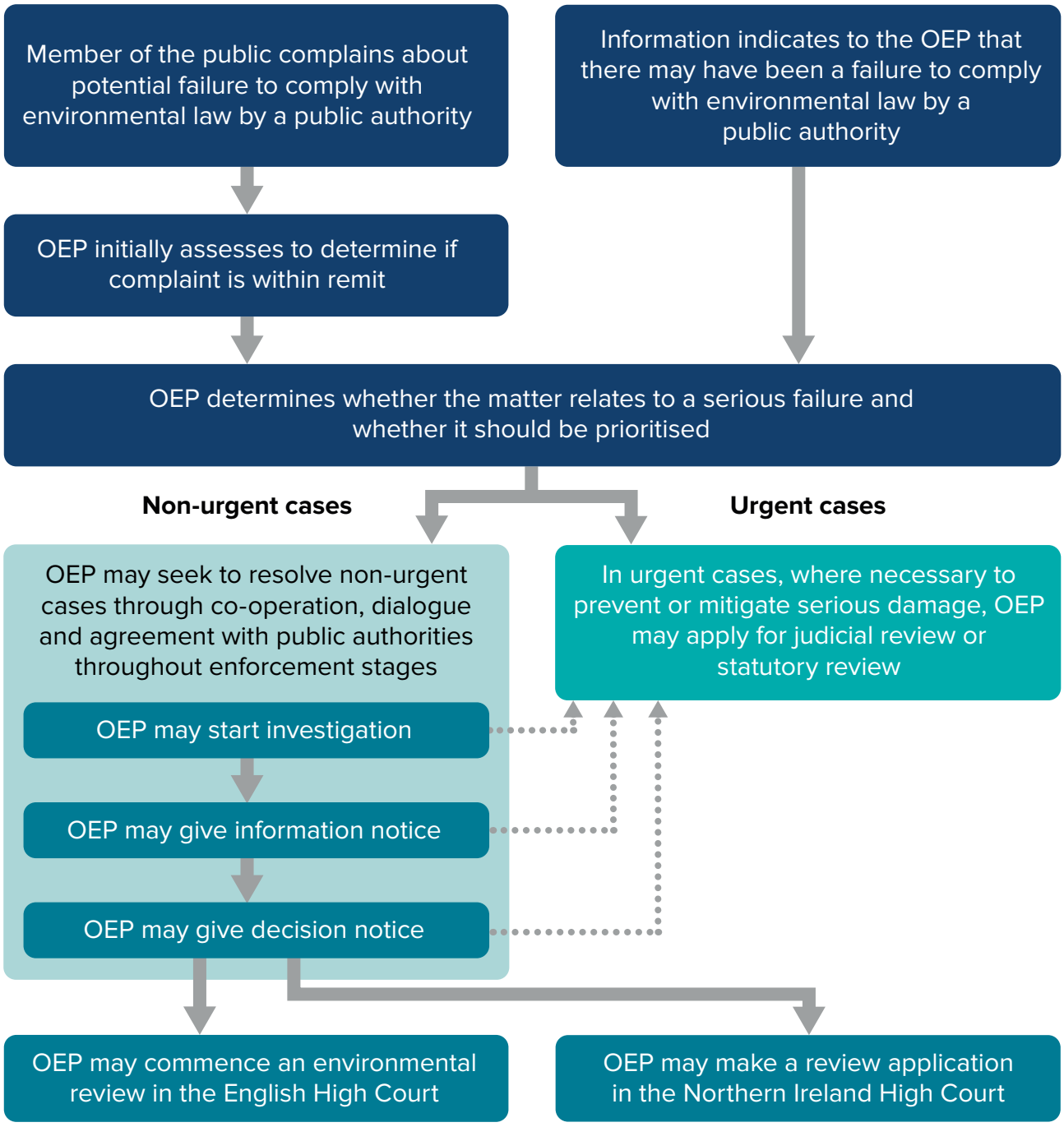
3.4 Enforcement: How we will investigate suspected serious failures to comply with environmental law by government and other public authorities and enforce compliance where needed

Our enforcement functions encompass a range of powers and duties including receiving and assessing complaints, conducting investigations and commencing legal proceedings. We can only use these functions to identify and respond to serious failures to comply with environmental law by government and other public authorities.

We are not able to take enforcement action against private entities such as businesses or individual people in relation to their private functions. That responsibility remains with primary regulators such as the Environment Agency, Natural England and the Northern Ireland Environment Agency.

Where private businesses undertake public functions, we may have a remit in relation to those functions and we will work with primary regulators to understand and identify potential overlaps and prioritise accordingly (see section 3.8 on how we will work with others). Our enforcement functions do not therefore duplicate those of others.

Figure 4. Summary of our enforcement function



Our approach

Our approach is set out in detail in our enforcement policy in annex A.

We will consider and prioritise between cases where information, from complaints or other sources, indicates there may have been a serious failure to comply. If a particular case involves transboundary issues, we will seek to co-operate with the relevant public authorities in those countries in appropriate circumstances. Section 3.8 sets out further detail on how we will do this.

We will focus strategically and on the most significant matters, such as failures to comply with environmental law that are systemic, recurrent or may cause serious harm. As part of this, we can consider individual but related matters which, when taken together, indicate the

possibility of a serious issue. We will be intelligent in our choices, knowing that sometimes the law may not be designed well or conflict with other laws (as discussed in section 2.3). We will take this into account in determining how best to respond, and which of our functions to use.

Where we respond through our enforcement functions, our approach will be to challenge and resolve failures where we can without taking cases to court. We will normally try to resolve the issue at an early stage through dialogue and agreement. Where we regard the matter as serious, this may include an investigation and seeking information from the public authority. Where a resolution is reached, we will normally publish the results.

We will be ready to turn to our further enforcement powers, including court proceedings, to remedy serious failures and to enable environmental law to have its full intended effect. We can take proceedings in the English High Court through a process called environmental review, and in the Northern Ireland High Court through a review application.

We can take cases to court using judicial review if urgent action is needed to prevent or mitigate serious damage to the natural environment or to human health. We can also apply to intervene in a judicial review or statutory review brought by someone else. We will seek to do this when we consider that our intervention would assist the court and contribute to our principal objective, and it is a matter we prioritise. It will be for the court to determine whether our intervention is permitted.

To take each step of our enforcement functions, we must judge that a case meets certain legal tests – including whether a public authority's conduct, if it occurred, would amount to a serious failure to comply with environmental law. We set out how we will judge this in our enforcement policy (annex A). In making our assessments, there may be situations of uncertainty. In such cases, we will take a risk-based approach. The greater the importance of the natural environment feature at risk, the more significant the potential human health impact, or the greater the potential effect of our actions, the greater the scope for adopting a proactive approach that addresses the risk of harm through proportionate investigation and enforcement action.

To bring public authorities into compliance we will work to identify the causes of serious breaches, and the actions needed to correct them, prevent their recurrence, and remedy or mitigate their consequences. Where we make recommendations, we will monitor that they are taken up.

We will expect the wider community of public authorities to learn from the matters we progress to better protect and improve the environment through their own compliance with the law. We will work to ensure our findings are heard and understood so this happens.

Prioritising our enforcement activity

Our approach to prioritising all our work is considered in section 3.2. This applies to enforcement as it does to other functions.

There are specific factors to which we must have regard in prioritising enforcement cases. The Environment Act 2021 requires us to have regard to the particular importance of prioritising cases that have or may have national implications. We must also have regard to the importance of prioritising cases that relate to ongoing or recurrent conduct, that we consider may cause or have caused serious damage, or that raise points of environmental

law of general public importance. These factors are reflected in our enforcement policy in annex A.

3.5 Scrutinising EIPs and targets: How we will review and report on government's progress in meeting environmental goals and targets

We will monitor, critically assess, and report on government's progress in improving the natural environment in accordance with the EIPs, goals and targets.

Government must report its own assessment of progress annually and review its plans periodically. We will hold government to account against these obligations and for its delivery of the EIPs, goals and targets. Government must respond to our report and specifically address our recommendations. This cycle of assessment and scrutiny underpins in law delivery of the EIPs.

Our approach

We will respond to government assessments in our own, independent monitoring reports within six months of government's reports. We will plan our reporting across years to ensure our insights are timely and have maximum impact.

Through these reports and our work that informs them, we will develop insights that we will deploy when analysing government's assessments of progress. We will make recommendations on how outcomes could be improved across the goals, targets and plans, and the adequacy of the published data. We will also monitor government's progress in addressing our previous recommendations.

To inform our independent government's progress, we will aim to take a system-wide approach to examine the full range of drivers and pressures that act on the environment. We will therefore aim to assess progress against goals and targets holistically by considering the wider environment, as well as those aspects of society that interact with the natural environment.

We will be strategic in where and how we scrutinise progress, considering policy, delivery plans and environmental datasets, as well as governance and accountability for these matters. We will take different geographies, transboundary settings and periods of time into account. Our holistic approach includes gathering insights beyond the EIPs, assessing wider plans, commitments, and stakeholder intelligence, where appropriate. The targets we scrutinise will include Environment Act targets and other environmental targets and commitments underpinning the EIPs as appropriate.

We will adopt a transparent approach to monitoring progress against goals and targets, focusing on the use of existing data and information, and making our insights available to others. Where monitoring progress is constrained by the accessibility or quality of data and information we will say so, and work with others to improve it. We expect that identifying the gaps in each will be just as important as analysing what is available for scrutiny.

We will assess the potential future trajectories of environmental improvements. We will make recommendations for government to adapt monitoring, targets, milestones, delivery

plans and policies to fulfil their ambitions more effectively, sustain progress and further improve the environment.

Alongside comprehensive monitoring of progress across the areas covered by the EIPs, we will also monitor selected areas of the environment in greater depth each year. Where there is merit in monitoring progress of common issues in England and Northern Ireland together, we will. We believe we will make the most difference by having a scheduled programme of detailed assessments and maintain capacity to respond to external events where our findings can be influential. This will allow us to increase our insights in priority areas, encouraging and informing government action where environmental improvements are needed most.

We will develop a research programme to identify critical gaps in evidence and understanding of the natural environment, policy, and delivery plans, which will inform our progress monitoring. We will work with others to stimulate activity to fill these gaps by those best placed to do this. We will develop expert and independent panels to support our work.

3.6 Scrutinising environmental law: How we will monitor and report on the implementation of environmental law

The OEP must monitor the implementation of environmental law and we can report on any matter, at any time.

We must publish our reports and arrange for them to be laid before Parliament or the Northern Ireland Assembly. Government must respond to our reports within three months and publish and lay their responses before Parliament or the Assembly.

Our approach

Through our stakeholder engagement and management of intelligence, we will maintain an overview of the implementation of environmental law. Each year, we will also target in depth monitoring on a smaller number of environmental laws in selected areas, chosen as part of our approach to prioritisation (section 3.2). This will allow us to get to the root of how these laws are implemented, their effectiveness, and to recommend improvements.

Through our in-depth monitoring, we will assess and report on how existing environmental laws work in practice. This will help to establish if these laws work well and produce the desired benefits. It will enable us to hold government and other public authorities to account on their current environmental obligations and build expertise on ways in which environmental law and its application can be improved.

We will look beyond questions of legal compliance to cover the wider context and framework of implementation. Our approach will consider other relevant matters such as: design of the law and how different laws interact; the set-up of responsible institutions and their resourcing, skills, and capacity; coordination of delivery actions among different bodies; the role and use of guidance in implementing the law; identification of good practice; and approaches to enforcement and sanctioning by regulators.

We will focus primarily on issues associated with the implementation of laws by government and other public authorities, both national and local. This will allow the greatest synergy with our other work. However, we will also look at implementation by other parties, if

necessary, to inform our assessment of how well the public administration of environmental law is working overall.

We will also consider the design of environmental law. For example, we will examine whether the law is fit for purpose, still relevant and delivering the policy intention, and where laws may exist in tension with each other or where there are gaps or inconsistencies. Where we identify such inconsistencies or tensions between laws, we will seek to consider whether these may stem from different environmental laws having been developed in a piecemeal, fragmented way. We will also consider the causes of this, which might be linked to wider societal or other issues that generated the need for them in the first place.

We will seek information from those who design, implement and are affected by environmental law so we can objectively assess and report on where it is working well and where improvements could be made. Whilst our reports are primarily addressed to government, Parliament and the Northern Ireland Assembly, we will also direct recommendations to others, including to other public authorities, where appropriate. In this manner, we will aim to drive a more consistent and effective implementation of environmental law.

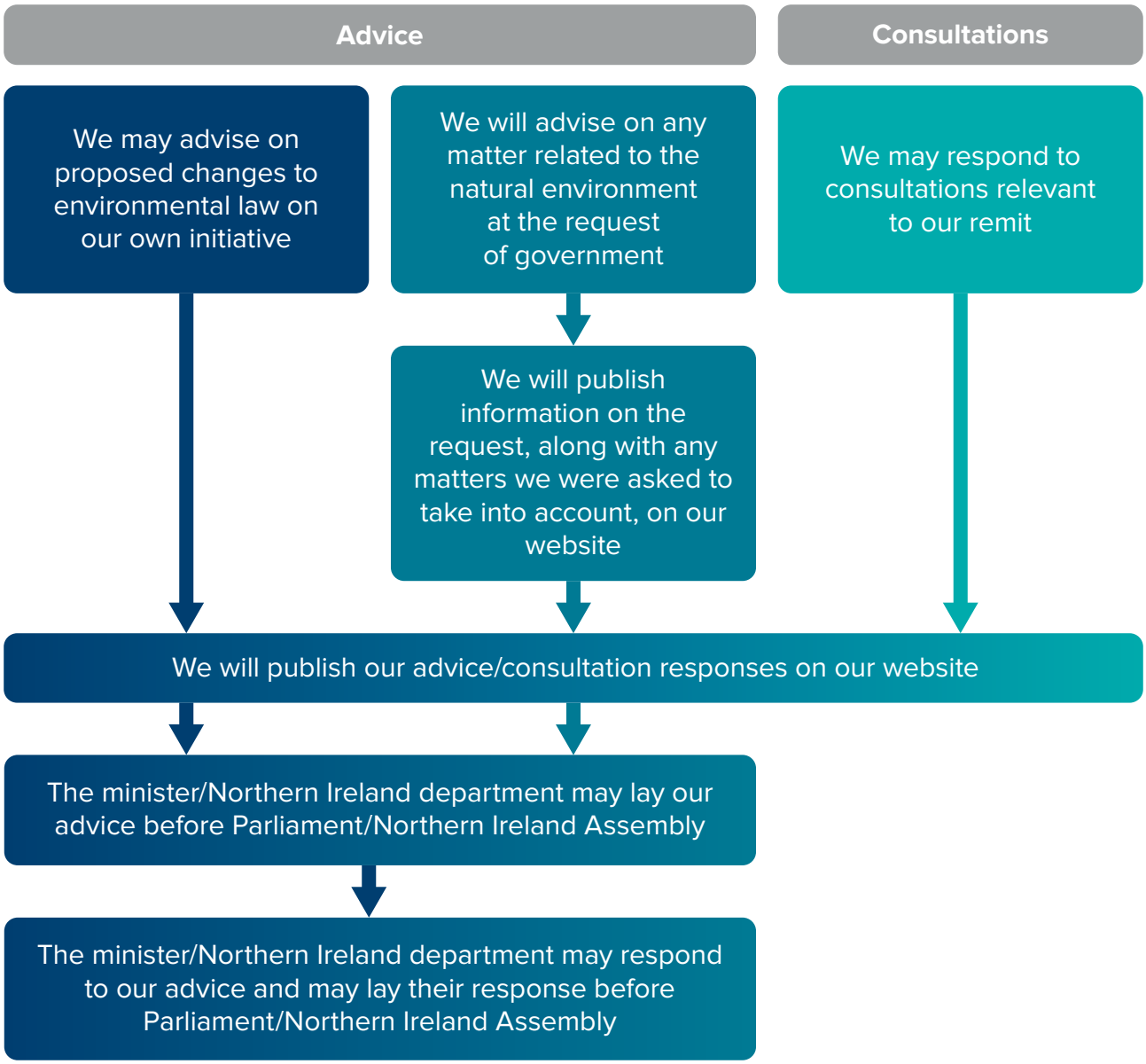
Building on the priorities and activities in the corporate plan, we will set out a planned programme for our work scrutinising environmental law to keep stakeholders informed and enable them to plan to provide evidence or seek to input. We may also ask public authorities to provide information to us on a cyclical basis or in response to specific, in-depth studies. This will enable us to identify where there may be practical difficulties in the implementation of certain laws, or where things are working well, why this is so and whether there are lessons that can apply elsewhere.

We will use complaints received under our enforcement functions (see section 3.4) as a source of information. We will also monitor other sources including reports from government and delivery bodies, Parliament and the Northern Ireland Assembly, academia, the media and information and enquiries from members of the public (see section 3.8). We will seek broad views on the implementation of environmental law in areas beyond those we have chosen to focus on in most depth.

3.7 Advice: How we will advise government on proposed changes to the law and other environmental matters

The OEP can give advice on any changes to environmental law proposed by government. This could be in response to draft legislation, a white or green paper or other consultation about proposals for future law. Additionally, we must give advice about such changes or any other matter relating to the natural environment if government asks us to.

Figure 5. Summary of our advice function



Our approach

Where we have discretion, we will select carefully where we provide advice to ensure we are addressing subjects of strategic importance. We will apply the process of prioritisation set out in section 3.2.

We must respond to government requests for advice. To support transparency, we expect most requests for our advice to be set out in writing.

Our advice will always be objective, impartial and evidence-based, regardless of whether it is provided at the request of ministers or on our own initiative. We will work with ministers and government departments on a 'no surprises' basis, when providing any advice, so that it can effectively inform and influence the delivery of environmental protection and improvement.

We believe we can make a significant difference by providing advice not only to environmental ministers and officials, but also to those in other government departments.

We will aim to identify synergies across government, and opportunities for better join-up across policy areas. Where appropriate, we will also take account of any relevant transboundary issues working with others as we set out in section 3.8.

We will respond to those consultations relevant to our remit, where doing so supports our objectives and priorities. Given our strategic nature, our input is normally likely to be most appropriate and effective as advice under our specific statutory functions. This will allow us to take a broader view in line with our remit.

We will work with officials to scope requests for our advice.

We must publish the advice that we produce, alongside information associated with a request from government, which we will do on our website theoep.org.uk. We will periodically review the action taken in response to the advice we have given.

3.8 How we will work with others

The natural environment is complex and diverse. Many organisations within and outside government play a role in its protection and improvement, including public authorities, businesses, the scientific community, academics, and the voluntary sector.

We cannot act effectively or make the most difference without the evidence and perspectives of others. Many have a rich and deep understanding of the environment in their areas of expertise, and insight into the world on the ground. We will engage, listen, and learn from these stakeholders, drawing on and respecting the deep technical expertise of specialist bodies, including those in government.

We will take a wide view of the evidence we seek and use in reaching our judgements. We will not always generate our own evidence but instead will work with technical, scientific, and legal experts from a range of disciplines to properly inform our approach, work, and decisions.

The different geographies and contexts of our work will inform how we will work with others. For example, there may be instances where our work is concerned with activities in England or Northern Ireland which have environmental effects elsewhere, or where the environment in England or Northern Ireland is affected by matters outside our borders. We will engage with others elsewhere, including in Scotland, Wales and the Republic of Ireland as we discuss below, to address these issues, or highlight the need for others to do so.

We will seek to earn the trust and respect of all organisations we work with through being independent, objective, impartial and reliable. Establishing and maintaining appropriate relationships with other organisations will also help us to exchange relevant information securely and minimise duplication of efforts.

Our approach to engagement with our stakeholders

We will understand who our stakeholders are, their interests and requirements to establish effective two-way communication. We will keep our stakeholders informed about our work and make good use of the information and comment we receive from them. For example, in section 3.6 we commit to setting out a planned programme of our monitoring work.

All staff will be responsible for actively listening to and engaging with our stakeholders, at the levels relevant to their work. We will coordinate our engagement to ensure it is purposeful, well-organised, and to minimise the burden on those with whom we are working. For example, we will develop a regular programme of events and forums to engage with stakeholders generally about our work, and a planned programme of specific activities to support projects and outcomes with those stakeholders with specific insight to bring.

We will value, record and make use of information and insight from our interactions with stakeholders. Through these interactions, stakeholders will be able to raise issues of concerns or matters they wish us to consider or look into further. Outside of these engagement activities, formal complaints about potential breaches of environmental law can be raised with us online or in writing, and we can be contacted more generally about any issues that people wish to draw to our attention via telephone or email.

We recognise the importance of transparency in working with others. We will communicate openly wherever this is appropriate. At the same time, we will guard our independence of judgement and action and be cautious where there are risks of conflict of interest. We will apply this broad approach to engagement in England and Northern Ireland. At times we will engage on issues in both England and Northern Ireland together; at others we will engage differently. We will do what is most purposeful to the issue at hand.

How we will work with other public authorities

We will work with public authorities in different ways, as we undertake our different functions.

We have an important role in overseeing the actions of public authorities, including government, and holding them to account. Where we believe public authorities are failing to meet their responsibilities for implementing environmental law we can investigate and may take strategic enforcement action against them (as we set out in section 3.4). We will approach this objectively and impartially in accordance with our strategy and enforcement policy.

More broadly, we will seek to develop and maintain positive, productive relationships with public authorities. Public authorities have on-the-ground experience of dealing with environmental and operational challenges. They also have data and established networks that will provide intelligence on issues we may prioritise, as well as evidence to support solutions, or comprehensive technical expertise and appropriate. Where relevant, we will seek to draw on this expertise in undertaking our work.

There are some organisations with which our functions may overlap. We set out below how we will work with those organisations, in the interests of pursuing our objectives and good value for public money.

We will aim to understand the priorities and plans of others so that we act where we are more likely to be effective. We will not normally duplicate or pre-empt where other public authorities are acting but hold them to account for what they do.

Written agreements such as Memoranda of Understanding (MoUs) can be valuable in ensuring transparency, clarity, and consistency. Where appropriate, we will seek to set out in

writing the nature of our relationships with those with whom we will work most closely and publish these.

The duty of co-operation

The Environment Act creates a duty on public authorities to co-operate with us and give us any reasonable assistance that we request as we fulfil our role to protect and improve the environment.

This duty is cast widely and requires public authorities to provide us with a high level of co-operation and assistance as we undertake each of our functions, including our enforcement activities. We therefore expect public authorities to work with us co-operatively, in a spirit of partnership and in pursuit of the wider public interest. We will apply the same approach.

Where they do not co-operate with us, we will raise the matter with them in the expectation that they should swiftly rectify the issue. If necessary, however, we may also take non-cooperation into account in determining how and when to exercise our enforcement functions (see our enforcement policy at annex A).

Working with the Climate Change Committee (CCC)

The Environment Act recognises the particular importance of avoiding any overlap between the exercise of our functions and those of the CCC.

The CCC has a similar function to us in monitoring and reporting on progress within a specific area of environmental law – the Climate Change Act 2008. Under that Act, the CCC is required to provide advice, including on the setting of UK greenhouse gas emissions targets and risks to the UK from climate change. The CCC also fulfils a similar set of duties under devolved climate legislation in Scotland and Wales.

We have already begun to work closely with the CCC. It is essential that we maintain a close, collaborative relationship.

We will agree an MoU with the CCC to provide an effective framework for this relationship This will set out our roles and responsibilities relative to one another, areas of common interest and principles for joint working. Under the MoU, we will work to develop common and consistent terminology, indicators, and datasets for use by both bodies. We will also seek to agree consistent reporting processes that allow each organisation's analysis to feed into the other's work, and we will share relevant data and information where we can.

Our relationship will support us to avoid overlap. For example, we will not monitor the implementation of, or report on, certain matters within the CCC's remit.

The CCC does not have an enforcement role, whereas we can enforce against legislation concerning climate change that falls within our remit as environmental law. For example, where we intend to issue an information notice concerned with greenhouse gas emissions under our enforcement functions (section 3.4), we will notify the CCC and provide appropriate details. This will ensure that the CCC is aware of cases of suspected non-compliance within its areas of interest.

The CCC may also wish to bring to our attention any matters relevant to our remit. For example, where it considers it may be appropriate for us to monitor the implementation of an area of environmental law or investigate an issue under our enforcement functions.

We will work to establish similar relationships with the Northern Ireland Climate Commissioner when appointed under the terms of the Climate Change Act (Northern Ireland) 2022.

Working with the ombudsman services

Our work with the relevant ombudsman services – the Parliamentary and Health Service Ombudsman and the Local Government and Social Care Ombudsman in England, and the Northern Ireland Public Services Ombudsman in Northern Ireland – will take different forms depending on the context. To support clarity and transparency, we will seek to agree MoUs with the relevant ombudsman services that set out our mutual objectives and intentions in working together.

The Environment Act recognises the particular importance of avoiding any overlap between our complaints and investigation functions and those of the relevant ombudsman services. We and the ombudsman services each have a role in handling complaints from members of the public. The ombudsman services receive and consider complaints about maladministration that can include, for example, poor service or miscommunication. Maladministration can also cover failures to comply with the law. Whilst the ombudsman services do have statutory investigation powers, they do not have the same enforcement role as the OEP. We have a distinct role to consider allegations of failures of public authorities to comply with environmental law, with powers to investigate and enforce in serious cases (section 3.4).

We will work with the ombudsman services to develop arrangements that help complainants approach the right organisation in the first place. We have made information to complainants clearly available on our website. We will direct complainants to, and share information with, one another where this is needed and permissible. We will also work to ensure that information we each hold can inform the other's investigations, where it should.

As a public authority ourselves, the OEP is within the jurisdiction of the Parliamentary and Health Service Ombudsman in respect of any complaints about our services.

Working with environmental governance bodies in Scotland and Wales

We will build and maintain strong working relationships with the devolved environmental governance bodies in Scotland and Wales. Although there are differences between our specific remit and those of Environmental Standards Scotland (ESS) and the Interim Environmental Protection Assessor for Wales (the Wales Interim Assessor) we have common cause and interest.

We meet regularly with ESS and the Wales Interim Assessor and have established relationships at official, executive and Board level.

We will co-operate on specific subjects where appropriate. For instance, we may jointly consider thematic matters arising across our shared functions or subjects resulting from specific public complaints or issues in law. Through such co-operation, we can agree the appropriate next steps and who is best placed to progress them. Where we consider that a

particular exercise of our functions may be relevant to those of a devolved environmental governance body, we will consult them.

We will exchange certain information with ESS and the Wales Interim Assessor, for example in respect of the details of complaints that provide a basis for co-operation or to inform one another's functions. We will put in place a robust framework to support this co-operation and sharing of information and do so with the consent of complainants. As part of this, we have agreed a regular programme of engagement and to develop an MoU that will set out how all three organisations work together.

Working with Parliament, the Northern Ireland Assembly, and committees

We will work with others, such as select committees and special interest groups in Parliament and the Northern Ireland Assembly, to inform their assessments, amplify our messages, share lessons learned and feed into other initiatives.

Many of our reports will be laid before Parliament or the Northern Ireland Assembly. We will welcome the opportunity to present our reports and give evidence to their select committees.

We will be attentive to the timetabling of new legislation in Parliament and the Northern Ireland Assembly, and the inquiries and other activities of their committees. These may create opportunities for our work to add to that of others and deliver better effect. We will listen to the concerns and views of Parliament and the Northern Ireland Assembly in relation to environmental issues, as part of our wider assessment of priorities and approaches to our work.

Working with ministers and government departments

Our advice, and our scrutiny of EIPs, targets and environmental law, can support policy development across government departments. We will therefore direct our recommendations to those departments of the UK government and Northern Ireland executive best placed to effect change. We will work with established governance and delivery structures where these exist. We will develop our relationships with officials and delivery teams across government, where appropriate for our work and objectives.

We will work closely with Defra and DAERA, reflecting their roles explained at section 1.3 above, and our functions of oversight and scrutiny in holding Defra, DAERA and their ministers and agencies to account. The arrangements for this working relationship will be set out in a framework document, which we will develop and agree between us.

We meet regularly with senior officials in Defra and DAERA and their ministers to discuss progress in our work and key areas of concern. We have begun to establish effective relationships with officials and delivery teams in relevant policy areas. We will continue to develop and sustain these in a way that supports effective delivery while maintaining our independence.

Working in Northern Ireland in relation to transboundary issues with the Republic of Ireland and with the European Union

Northern Ireland and the Republic of Ireland are part of a single biogeographic unit, and share a land boundary, water bodies and other important environmental features. We will

be attentive to and take account of this wider perspective when exercising our functions in Northern Ireland.

This may include considering instances where activities in Northern Ireland raise environmental concerns in the Republic of Ireland or vice versa, or where the state of the environment in Northern Ireland is attributable to activities on both sides of the border.

The same is true in relation to transboundary issues between Northern Ireland and other parts of the UK or beyond. However, we recognise the particular importance of such issues within the island of Ireland.

Where environmental law in Northern Ireland covers transboundary issues or impacts, this law will fall within our remit. We do not have any authority in the Republic of Ireland. We can consider a complaint from a party in the Republic of Ireland about a suspected failure to comply with environmental law by a public authority in Northern Ireland or England.

We will work to further establish the most effective ways to consider any transboundary issues as we implement our functions in Northern Ireland. We will aim to work co-operatively with relevant public authorities and others in Northern Ireland and the Republic of Ireland, where appropriate, to ensure our judgements take account of this wider context. Where we publish reports or advice in Northern Ireland that deal with transboundary issues, we may also draw them to the attention of interested parties in the Republic of Ireland or the European Commission.

All environmental law in Northern Ireland falls within the remit of our functions. Under the Northern Ireland Protocol, certain EU environmental legislation concerned with trade, product standards and the movement of goods continues to apply in Northern Ireland. The European Commission could take an interest in, or enforcement action against, the implementation of this EU legislation. Although the potential for duplication is limited, we will engage with the European Commission as appropriate in areas where there could be overlap.

In this context, we will make our own decisions in accordance with our legal framework independently of any action the Commission may take. However, we will liaise with the Commission further in the event of any specific situations where our actions and those of the Commission could address the same matters in practice. More generally, we will consider the relevance of any issues under the Protocol or any action taken by the Commission as one factor in deciding how to prioritise our activity in Northern Ireland.

We will also take account of transboundary issues, areas of common interest or the Protocol more generally (including in the recommendations we make for DAERA in scrutinising progress against its EIP), or any changes to Northern Ireland environmental law, or how it is implemented or complied with.

3.9 Objectivity, impartiality, proportionality, and transparency

The Environment Act 2021 requires us to act objectively and impartially, and to have regard to the need to act proportionately and transparently in the exercise of our functions and delivery of our objectives.

Objectivity

Objectivity is about making decisions on the observable facts without bias.

We will base our decisions on our analysis of the relevant circumstances, including the science, knowledge and evidence available at the time we decide. We will consider the availability, exhaustiveness, quality and reliability of the information we receive. If information is scarce, ambiguous, or otherwise imperfect, we may need to make reasoned judgements on the best information available or develop the evidence where we can. We will also remain alert to new information or circumstances that may mean we should reassess previous conclusions.

We recognise the important role played by the public in identifying issues of relevance. We will consider public concerns as one factor within our wider judgement about where and how to act (see section 3.2), while not being unduly driven by these concerns. We wish to avoid those matters with particularly vocal supporters inappropriately taking precedence over matters that the broader facts and evidence suggest are more important when viewed objectively.

Impartiality

Impartiality is about being independent and fairly giving equal consideration to the evidence on all sides of a debate in reaching our objective view or deciding how to proceed.

Our decisions will be our own, made without prejudgment or bias. We will protect the independence of our thinking and action, careful to avoid undue influence from any individual or organisation, including the government of the day. Our views on specific matters may be the same as others' where our assessment of the facts and evidence leads to that outcome. We may agree with a particular organisation in some areas and differ in others.

We will consider the views of government where appropriate, alongside those of others. We are legally separate from departments of government and will act independently in exercising our functions. We will not act to the direction or guidance of government except as the law requires.

Proportionality

Proportionality is about action being in proper balance in size, quantity, degree, and severity against its consequences.

We must have regard to the need to act proportionately when exercising our functions. Our principal objective in law is to contribute to protection of the environment, including human health, and to improving the natural environment. This is therefore our main concern.

This means that we will aim to ensure that the impact of our actions is justified by the anticipated benefits to environmental protection or improvement, particularly where our activity affects others. It also means that any impact or burden should not be excessive or unreasonable in the context of what is necessary in pursuit of our principal objective.

The opposite is also true. Proportionality involves properly valuing the natural environment and human health and making decisions that reflect those values. For example, if a serious failure of a public authority to comply with environmental law requires correction, we will

pursue resolution that is proportionate to the nature of the failure and its consequences. We will not be satisfied, therefore, with only confirming that there has been a failure, or with partial remedies, where such outcomes are inadequate relative to the scale and impacts of the failure.

More broadly, we will have regard to the need to be proportionate in all our work. We will do this through our approach to prioritisation as discussed in section 3.2, in choosing the issues where we believe we can make the most difference and in determining how we approach them.

Transparency

Transparency is about explaining actions to citizens and stakeholders and providing them with information.

We must have regard to the need to act transparently. We will act as transparently as we reasonably can. This means that we will seek to be clear and open about what we are doing and why.

We will comply readily with our duties under the law, including the provisions of the Environmental Information Regulations 2004 and the Freedom of Information Act 2000. We will regularly publish information about our work, including how we prioritise it and the evidence we use. This will include providing key information in a range of formats to make it easy to navigate and understand. We will seek and act on feedback to improve how we provide information.

As part of this and where the law allows us:

- we will make the evidence we use available to others, by publishing material and reports on our website
- we will explain the basis of our significant decisions, by publishing agendas, minutes and papers of our Board meetings promptly, subject to removal of sensitive material (for example relating to staff issues or enforcement cases)
- we will explain the significant prioritisation choices we have made and what we plan to do, by publishing our corporate plan and in the records of the decisions we take
- we will publish summary information on the complaints we have received and what we have done about them
- we will explain our work and the impact we have had by publishing an annual report, and appearing before the relevant committees in Parliament and the Northern Ireland Assembly
- we will publish information on our funding and resourcing as part of our annual report and statement of accounts
- we will meet regularly with others to discuss our work

There are some occasions when we will need to limit the information we make available. These include where the confidentiality provisions in the Environment Act 2021 prevent disclosure of information relating to our enforcement activity. In respect of enforcement,

we will aim to be as open and transparent with all relevant parties as we reasonably can, within the limits of what is permitted under the law. We give more detail on our approach to transparency of our enforcement functions in our enforcement policy.

Part 4. How we will measure success

Part 4. How we will measure success

This, our first strategy, sets out how we intend to deliver our role. We expect to review it within the first 18 months of its adoption.

We will develop a structured approach to assessing our impact, so that review of our strategy, and its impact and effectiveness, is underpinned by understanding. We will complete our review in an outward-facing way so that it is informed by engagement with those who contribute to, and are affected by, our work.

We have developed an initial performance framework to monitor and strengthen our work. This includes measures of our activity, and indicators of the outcomes and impact we have had, where this is possible. We recognise the environment is a complex system and do not seek to oversimplify it through this framework. We will improve this framework, over time based on our experience. We report under this framework in our yearly corporate plan, and annual reports.

Annex A: Enforcement Policy

June 2022

Contents

Part 1. Introduction and aims

Our enforcement policy explains how we approach our enforcement role and exercise our enforcement functions. These enforcement functions provide us with a range of powers and duties, give us discretion in exercising them and require us to use our judgement in determining where, when and how we choose to act.

This policy sets out:

- the nature of our enforcement powers
- how we will use our enforcement powers to further our principal objective, and
- a clear decision-making framework that will support a consistent approach to how we use our enforcement powers

In addition, this policy is intended to meet the requirements in the Environment Act 2021 to set out how we intend to:

- determine whether failures to comply with environmental law are serious
- determine whether damage to the natural environment or to human health is serious
- exercise enforcement functions in a way that respects the integrity of other statutory regimes (including existing ongoing legal proceedings)
- avoid any overlap between how we exercise our complaints functions and similar functions undertaken by the relevant ombudsman services (covered in further detail in section 3.8 of our strategy), and;
- prioritise cases

Part 2. Our approach to exercising our enforcement functions

Our enforcement functions encompass a range of investigatory and enforcement powers and duties. These enable us to act in relation to suspected failures by public authorities to comply with certain laws intended to protect people and the environment. We can, amongst other things, receive complaints from members of the public, conduct investigations and launch court proceedings regarding serious failures.

In this section, we provide an overview of the enforcement powers we have, how we will determine what enforcement action to take and our focus on seeking meaningful resolution to issues of non-compliance. This section also sets out three general principles which underpin our enforcement activities.

We set out further details of the scope and nature of our enforcement functions in section 3 below.

2.1 Powers and prioritisation

Our principal objective in exercising all our functions, including our enforcement functions, is to contribute to environmental protection and the improvement of the natural environment. As set out in figure 3 of our strategy, the term 'environmental protection' includes the protection of people from the effects of human activity on the natural environment, as well as protecting the natural environment itself.

Use of many of our powers is subject to meeting legal thresholds, principally that a suspected failure to comply with environmental law is, or would be, 'serious' (see section 4 below). Where we are satisfied relevant thresholds are met, we have discretion in whether and how to use our powers.

In accordance with our principal objective, we will seek to target enforcement action where we can most contribute to environmental protection (which includes protection of people) and the improvement of the natural environment. In doing so, we may take steps designed to remedy, mitigate or prevent recurrence of a failure to comply with environmental law. We will focus on the most significant areas of non-compliance, including recurrent issues, systemic matters, and those which are associated with serious damage to the natural environment or to people's health.

However, just because we can exercise our powers does not mean that we necessarily will. We will have to make choices about the matters to prioritise to make the most effective use of our finite resources. We will do this in accordance with the broader prioritisation approach set out in section 3.2 of our strategy. That approach incorporates the factors set out in section 4.3 below, as well as consideration of where we can make the most difference and whether and when enforcement action is most appropriate.

2.2 Resolution and respect

For environmental laws to be effective in protecting people and the environment, they must be properly understood, implemented and complied with. Our objective in using our enforcement functions is to achieve environmental outcomes by improving government's and other public authorities' compliance with these laws. We will identify, address and, importantly, resolve issues by holding government and other public authorities to account for serious failures in compliance where they arise.

We will adopt a proportionate approach to our enforcement activities. This means we will normally aim to resolve non-compliance through co-operation, dialogue and agreement with public authorities. Where we reach resolution by agreement with public authorities, we will normally make this public unless there are good reasons not to. However, where a satisfactory outcome cannot be reached through these means, we will not hold back from exercising our stricter enforcement powers including, if necessary, through court proceedings. Exceptionally, where urgency requires it, we may take a matter to court outside of our bespoke enforcement functions (see part 5 below).

In carrying out our enforcement functions, we will seek to respect the integrity of other relevant statutory regimes, including any existing legal challenges that might be ongoing. We will also seek to avoid overlap with other relevant authorities (see part 6 below).

2.3 Independence

We are legally separate from government and will act independently. We will consider the views of government alongside those of others, but government has no powers to give us legally binding directions as to how we exercise our enforcement powers. The Environment Act provides that the Secretary of State for the Environment, Food and Rural Affairs and the Northern Ireland Department for Agriculture, Environment and Rural Affairs (DAERA) may issue guidance on certain matters covered in this enforcement policy, although such guidance cannot preclude us from investigating individual cases or subject areas. Should the Secretary of State or DAERA issue guidance, we must have regard to it when exercising our enforcement functions and when revising this policy.

2.4 General principles

Three general principles will underpin our enforcement approach, helping to provide consistency. Whilst these principles will work in conjunction with one another, they each reflect a different but equally important aspect of our approach to enforcement.

Principle 1 – public authorities must comply with the law

Public bodies must comply with the law and give due weight to their obligations. Non-compliance can undermine public confidence in environmental governance, good administration and the rule of law. Failures to comply with environmental law can also jeopardise ambitions for environmental protection and improvement (including as this relates to people's health and wellbeing). We can exercise our enforcement functions only where a public authority may have failed to comply with environmental law. As such, any failure by a public authority is potentially within the scope of our enforcement functions.

Principle 2 – enforcement activity should be targeted to where it is most needed

Targeting our enforcement activity to where it is most needed enables us to maximise our contribution to environmental protection and the improvement of the natural environment. This means we will focus on more significant failures to comply with environmental law. This could include tackling individual failures which indicate systemic issues or which, when considered alongside other matters, together represent serious failures or that cumulatively give rise to serious damage. This principle reflects the importance of prioritising our work (considered in section 4.3 below).

Principle 3 – our enforcement activity should take account of all the relevant circumstances

We will consider all the relevant and known circumstances of suspected failures to comply with environmental law. The relevant circumstances are likely to vary from case to case, but this principle reflects the need to make decisions on when and how to act on the basis of available evidence and exercising judgement within our decision-making framework.

2.5 Our other functions

We have other functions beyond enforcement, such as monitoring and reporting on the implementation of environmental law. These are set out in the main body of our strategy. These and our enforcement functions are mutually reinforcing. As such, and as reflected in the strategy, we will consider all our available functions to determine what approach would make the most difference to protecting people and the environment. Use of our enforcement powers may not always be the most effective approach.

Part 3. Scope and content of our enforcement functions

We can use our enforcement functions in response to alleged failures of public authorities to comply with environmental law. We discuss the meaning of this in section 3.1 below.

We have enforcement functions which are unique to us and which we can use to secure compliance with environmental law in non-urgent cases. These functions are described in section 3.2 below.

In addition, we have powers which are not unique to us. In urgent cases, we may bypass our bespoke enforcement functions. We may, instead, immediately bring more conventional court proceedings (judicial review or statutory review). We can also apply to intervene in court proceedings brought by others. These powers are set out in section 3.3 below.

3.1 Scope of our enforcement functions

Our enforcement powers apply to alleged or suspected failures of public authorities to comply with environmental law. In general, 'public authorities' encompass any person carrying out any function of a public nature, subject to some exclusions set out in the Environment Act (see figure 3 of our strategy).

Our enforcement functions, which can be exercised in relation to England, Northern Ireland, and UK-wide matters, relate to what the Environment Act defines as 'environmental law'. As described in figure 3 of our strategy, this means any legislative provision to the extent that it is mainly concerned with environmental protection. In considering whether law is environmental, we will assess whether the relevant individual provision in question is mainly concerned with environmental protection.

'Environmental protection' has a specific meaning in this context and includes both protection of the natural environment from the effects of human activity and protection of people from the effects of human activity on the natural environment. Laws concerned with disclosure of or access to information, the armed forces or national security, and taxation, spending or the allocation of resources within government are excluded.

In relation to devolved matters in Northern Ireland, our enforcement functions relate to what the Act defines as 'relevant environmental law'. This encompasses both 'Northern Ireland environmental law' and 'UK environmental law' (each as defined in the Act). In brief, this extends to both Northern Ireland and UK legislative provisions that are mainly concerned with environmental protection and are not concerned with any of the excluded matters set out above.

Where we refer to environmental law in this document, this is intended to encompass both 'environmental law' and 'relevant environmental law'.

Our remit extends to failures to comply with environmental law by public authorities in England, Northern Ireland and, in the context of UK-wide matters, across the whole of the UK. This means where a public authority unlawfully fails to take proper account of environmental law when exercising its functions or where it unlawfully exercises or fails to exercise a function it has under environmental law. Failures to comply with environmental law can include omissions as well as actions.

3.2 Our powers: bespoke enforcement functions

We have specific and unique functions to deal with suspected failures to comply with environmental law. The framework in which these functions sit is designed to encourage resolution at the earliest possible stage. We will use our functions accordingly, and we will expect public bodies to approach our enforcement activity in the same way. However, where there are unsatisfactory responses, we will not hesitate to use the formal enforcement mechanisms available to us, including by taking court action.

Where we consider that exercising our bespoke enforcement functions is the most appropriate course of action, we may make use of the steps set out below, generally starting with gathering information. These steps are broadly escalating in nature. If a matter remains unresolved, we may progress it further through our bespoke enforcement functions.

Gathering information

When we become aware of a public authority potentially failing to comply with environmental law, we may undertake preliminary information-gathering, though this will not always be necessary. Where we undertake such preliminary activity, this would be before we formally launch an investigation. This may include gathering views, evidence and other relevant materials from public authorities or others so that we can assess whether we can and should pursue an investigation.

By law, public authorities must co-operate with us and we expect them to do so, including by promptly volunteering such information and assistance as we may reasonably request. This duty to co-operate applies in relation to all our functions, including enforcement. Such information gathering may be light-touch or it may be more substantive. We will be clear about the status of our interactions with public authorities, including whether we are undertaking preliminary information-gathering or whether we have decided to open an investigation.

Investigations

We have the power to carry out **investigations** concerning a public authority's alleged or suspected failure to comply with environmental law. We may commence investigations because of someone complaining to us or on our own initiative. We may do so where we have information that indicates that a public authority may have failed to comply with environmental law and, if it has, the failure would be serious.

The primary purpose of an investigation is to establish whether a public authority has complied with environmental law. Where they have not, we can use our enforcement functions to secure actions that can remedy, mitigate or prevent reoccurrence of the failure, including through making recommendations (see below).

We can serve an **information notice** requiring that public authorities provide certain information if we have reasonable grounds for suspecting that the authority has failed to comply with environmental law (and where we consider that the failure, if it occurred, would be serious). Public authorities must respond in writing to such notices and must provide the information requested so far as it is reasonably practicable to do so. We expect that we would normally only serve information notices in the context of an investigation.

We can use our powers for gathering information and investigation to try to agree the factual background to an issue with the relevant public authority, even where disagreements remain about, for instance, whether those agreed facts amount to a breach of the law. In such cases, we will need to determine whether it would be appropriate to take further action under our other enforcement powers.

Reporting and recommendations

Following all investigations (save those where we take the matter to court) we must prepare a report which we will usually publish. These reports will set out our conclusions on whether a public authority has failed to comply with environmental law.

We may also make recommendations, both specifically for the public authority concerned and more generally. We will determine what, if any, recommendations are appropriate for each case we investigate. Recommendations might include steps to rectify the environmental or human health effects of the non-compliance, prevent recurrence of the failure, or a recommendation to revisit the decision in question. We will only issue recommendations to a public authority that are within the authority's powers to follow.

We will expect public authorities to comply with any recommendations we make. We will take steps to monitor public authorities' implementation of our recommendations and may take further enforcement action where needed.

We will also aim to ensure that any remedies we recommend are proportionate as well as effective. We will therefore normally provide draft recommendations to the public authority concerned. This will afford them an opportunity to comment and potentially take action before we finalise our reports. However, what recommendations we finally make, and the content we include in our final reports, will remain our decision; we need not adopt any comments we may receive back on our drafts.

Decision notices

In appropriate cases, where we have previously issued an information notice, we may issue a **decision notice**. A decision notice is a formal document which sets out our conclusions on a public authority's failure to comply with environmental law, why we think that failure is serious, and the steps we consider the public authority should take in relation to that failure. These steps may include, amongst other things, action to remedy, mitigate or prevent reoccurrence of the failure. We will not specify steps that the authority concerned does not have the legal powers to implement.

Public authorities must respond in writing to decision notices, including to confirm whether they will take the steps we require. We may only issue a decision notice where we are satisfied, on the balance of probabilities (that is, that it is more likely than not), that the public authority has failed to comply with environmental law, and where we consider that the failure is serious. Consequently, decision notices represent a significant step that public authorities should take seriously and comply with. We may take further action if a public authority does not comply.

Taking public authorities to court

We expect public authorities to rectify any non-compliance promptly when brought to their attention. Where appropriate, we will set out to public authorities the timescales within which we expect such rectification to happen. We also expect public authorities to comply with any of the enforcement steps we may take as discussed above. Consequently, court action should only be necessary as a last resort.

However, we recognise that court action may sometimes be required. In England, we may commence proceedings in the English High Court via an **environmental review** enabling the court to determine the matter in law. In Northern Ireland, we may apply to commence proceedings in the Northern Ireland High Court via a **review application**. We may be required to take such court action in circumstances where, for example, a public authority:

- contests our conclusion that they failed to comply with environmental law
- does not implement our recommendations from a decision notice, or does not do so in a timely manner
- cannot revisit its decision in the absence of a court quashing order, or
- accepts its breach but disputes the remedial steps we suggest

We can launch proceedings for an environmental review or a review application if we are satisfied, on the balance of probabilities, that the authority in question has failed to comply with environmental law and we consider that the failure is serious. This is the same as the threshold for issuing a decision notice. We can only commence an environmental review or make a review application where we have previously served an information notice and a decision notice in relation to the case.

If, on an environmental review, the court agrees that a public authority has failed to comply with environmental law, it will publish a statement of non-compliance (SONC). Subject to certain conditions specified in the Environment Act, the court may also grant any remedy available via a judicial review. This might include a quashing order that has the effect of overturning or setting aside an unlawful decision, or a mandatory order that requires the public authority to take certain steps. The court will not be able to award damages on an environmental review.

A public authority must publish a response to a SONC within two months of the conclusion of the proceedings including any appeal. That response must set out the steps it intends to take in light of the SONC. In the context of a review application, although the court is not required to publish a SONC, the public authority must still publish a statement setting out the steps it intends to take in the light of a court finding that it has failed to comply with environmental law.

Where the court has found a public authority not to have complied with environmental law, we will expect the public authority's response to present a meaningful and substantive approach to tackling the findings. This should generally set out the details and timing of the steps they will take to correct the failure or address its consequences, including to meet the requirements of any specific remedies granted by the court. We generally expect the public authority may want to confirm the response with us before publishing it. We may make our own observations on the adequacy of their response.

We will also expect the public authority to implement fully any actions they present in their response and will monitor their progress accordingly. We may take further action to enforce compliance with court judgments where needed.

Informing and involving government in enforcement action

UK government departments may be subject to our enforcement action. In addition, the Environment Act provides for us to inform or involve the relevant government minister where certain action is taken against other public authorities. In particular, in applying for an environmental review, we must state whether we consider a minister should join the proceedings we bring against another party. Similar requirements apply in relation to informing the relevant Northern Ireland department about review applications we make concerning other Northern Ireland public authorities.

Transparency and confidentiality

We have a duty to have regard to the need to act transparently. This applies across our functions including enforcement. With this in mind, we will routinely make public information regarding our enforcement activities.

We publish on our website a quarterly complaints report which sets out the number of complaints we have received to date, the topics to which the complaints relate and their current status.

In addition, we will keep complainants updated about the progress of their complaint at various stages.

We will publish our investigation reports in full unless there are good reasons to only publish extracts or to withhold publication. The published version will also be directly disclosed to the complainant.

In addition to directly informing complainants about the progress of their complaints, we will normally publish a statement whenever we give an information notice or a decision notice and when we apply for an environmental review, a review application, a judicial review or a statutory review. We will use these to explain to everybody that we have taken the relevant step. We will describe the failure (or alleged failure) to comply in relation to which the step was taken and set out any further information that we consider appropriate.

Our ability to publish enforcement-related information is limited in some ways by relevant legal obligations. In complying with these, we will only withhold from publication the minimum information that we consider necessary.

For instance, the Environment Act requires that we must not normally disclose certain information supplied to us by public authorities. In addition, we must not normally disclose information notices, decision notices, or associated correspondence apart from in specific circumstances set out in the Act.

The Act establishes that 'environmental information' supplied to us by public authorities is presumed to be held in connection with confidential proceedings. Consequently, such information can be protected from disclosure where the disclosure would adversely affect the confidentiality of those proceedings, unless the public interest in disclosing the information outweighs the public interest in maintaining confidentiality.

Where we have decided not to take any further steps and a matter is concluded, we may give consent for the disclosure of an information notice or a decision notice. Once proceedings are over, we will normally publish information notices and decision notices in full on our website, unless there are good reasons why confidentiality should be maintained over all or parts of them. We will usually consult with the public authority concerned before publishing.

3.3 Our powers: additional enforcement actions

In addition to our bespoke enforcement functions, we have the following powers to take more conventional enforcement actions.

Urgent court proceedings

We may apply for **judicial review** or a **statutory review** in appropriate cases, where we consider there is or may be a failure to comply with environmental law which is serious. We can do this only in cases where the 'urgency condition' established in the Environment Act is met. This condition requires that the judicial review or statutory review is necessary to prevent, or mitigate, serious damage to the natural environment or to human health (see part 5 below).

If the court finds that a public authority has failed to comply with environmental law, the authority must publish a statement setting out the steps it intends to take in the light of that finding within two months of the end of the proceedings. We will monitor the public authority's progress against this statement. As discussed above in relation to environmental review and review applications, we may take further action to enforce compliance with court judgments where needed, including, where appropriate, by returning to the court.

The court may also grant any remedies available through judicial review or statutory review.

If we apply for an urgent judicial review or statutory review in which the relevant UK government minister or Northern Ireland department is not a party, we must consider whether they should be joined to the proceedings.

Intervention in other parties' court cases

We may apply to **intervene** in judicial reviews or statutory reviews brought by others that relate to an alleged failure by a public authority to comply with environmental law.

We would generally consider interventions when our assessment of seriousness and our usual prioritisation criteria point towards it as a suitable course of action. Any applications we make to intervene would be on the basis of contributing towards our principal objective by providing assistance to the court. This assistance might be, for example, by enabling the court to consider wider contextual information which, without our intervention, would not be available. As with all interventions, it will be for the court to determine whether our application to intervene is permitted.

We will consider any requests we receive for us to apply to intervene in existing proceedings. We will approach decisions as to whether to intervene impartially.

If we have previously considered a matter and decided not to investigate or progress it beyond a certain stage of our enforcement process, we would not normally expect to apply to intervene in a subsequent case brought on the same matter by a third party. However, we would determine this on a case-by-case basis. As part of this we would consider whether the case brought by the third party would involve any wider significant factors that were not part of our earlier consideration of the matter.

We can apply to intervene whether or not we consider that the public authority has failed to comply with environmental law. However, we may only do so where we consider that the alleged failure (as framed in those proceedings), if it occurred, would be serious. We would not normally expect to intervene in a case where we consider that the public authority has complied with environmental law. We may do so though if this is considered appropriate, for example because the case deals with important points of law or has other wider implications.

Other enforcement actions

Further to the specific enforcement powers outlined above, we may also take complementary steps to maximise the effectiveness of our enforcement activity and its outcomes. As part of this, we will keep a record of the information we obtain and the complaints we receive, even where we do not take enforcement action in relation to the matter. This will enable us to track topics, allowing us to identify repeated problems and systemic issues, on which we may later decide to act.

Part 4. Our decision-making framework

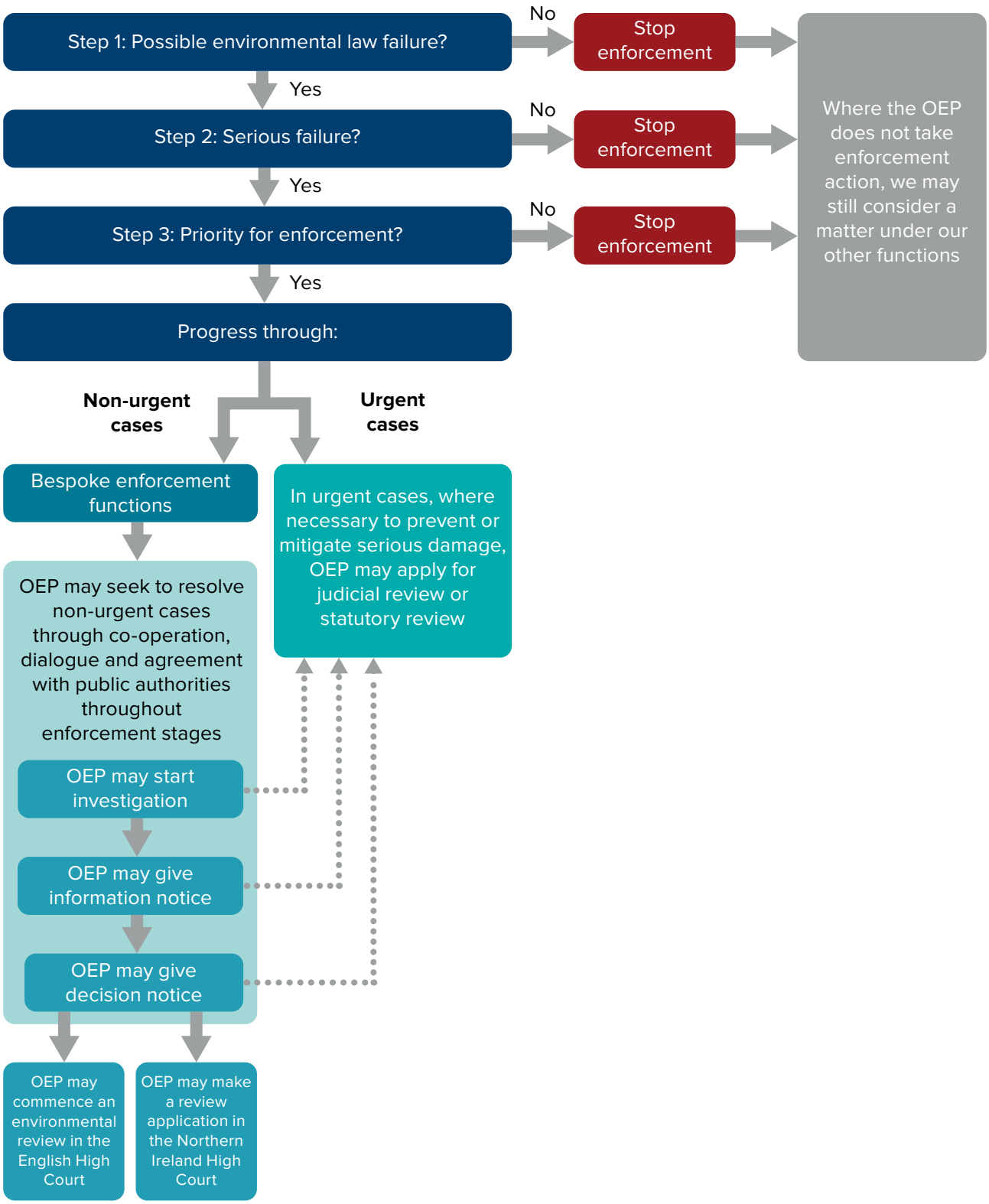
When we receive a complaint or consider other information with a view to possible investigation, we must first determine if the matter falls within our remit.

We have published a complaints procedure, which is available on our website at www.theoep.org.uk/can-i-complain. This procedure is complementary to this enforcement policy but does not form a part of it. People must follow our complaints procedure when making a complaint to us. We may amend the procedure from time to time and will publish any revisions on our website.

Where we are satisfied that a matter falls within our remit, we will apply the decision-making framework set out in figure 1 below to determine whether and how to exercise our enforcement functions – either our bespoke enforcement functions (section 3.2 above) or our powers to take additional enforcement actions (section 3.3 above).

Where we cannot pursue enforcement activity we may still act through our other functions (such as reporting on the implementation of environmental law or advising ministers). We may also do this where we could take enforcement action but judge that the exercise of other functions would be more effective.

Figure 1. Decision-making framework



As set out in figure 1 above, our decision-making framework involves 3 steps. In **step 1**, we will consider whether the information we have indicates that there may have been a failure to comply with environmental law by a public authority. This will involve considering the basis for any action.

In **step 2**, we will consider whether a potential failure is or would be a serious failure. This determines whether we can exercise our powers to investigate, serve an information notice or decision notice, or go to court. Section 4.2 below sets out our approach to this assessment.

As an integral part of step 2, we will assess whether the conduct could give, or has given, rise to harm to the natural environment or human health that amounts to 'serious damage'. Where this is the case, we will also assess whether the urgency condition noted above (section 3.3) is met, such that we are able to apply for an urgent judicial review or statutory review. Section 5 below sets out our approach to assessment of the urgency condition.

Step 3 applies to all those cases which we have determined fall under our remit, and which we consider may represent serious failures. Where this is the case, we can exercise our enforcement powers. However, we will not be able to act on all possible cases and, in some cases, functions other than our enforcement powers may be more appropriate. We will need to consider the best use of our resources and determine where we can make the most difference. Step 3 therefore involves determining if a case that we can act upon is a priority to pursue through enforcement. If we determine it is not an enforcement priority, this would not preclude us from pursuing the matter under a different function. Our approach to prioritisation is discussed in section 4.3 below.

Procedural stages when we must consider whether a failure is serious

When using our bespoke enforcement functions, we must assess whether a failure is serious when:

- initiating an investigation, whether on the basis of a complaint or some other information
- issuing an information notice
- issuing a decision notice
- applying for an environmental review or making a review application

We must also assess whether a failure is serious when considering the following additional enforcement actions:

- applying for an urgent judicial review or statutory review
- applying to intervene in a judicial review or statutory review brought by a third party

When, following our assessment, we decide to take one of the actions listed above, we will normally publish a statement setting out why we determined that the matter is serious.

Procedural stages when we must consider 'serious damage'

We must consider the seriousness of harm or potential harm associated with the failure to comply with environmental law when considering applying for an urgent judicial review or statutory review (the 'serious damage' test). If serious damage has been, or might be, caused, we will assess whether the urgency condition is met such that we can consider applying for a judicial review or statutory review (see section 5 below).

The serious damage test does not apply to any of the stages within our bespoke enforcement functions. However, where harm to human health or the environment could be serious, we would necessarily view the conduct as a serious failure.

Given this, and the need to make decisions on urgent action swiftly, we will consider the possibility that harm might amount to 'serious damage' in parallel with our assessment of the seriousness of a potential failure as part of step 2.

4.1 Step 1 – assessing the basis for enforcement action

Whenever we take enforcement action, we will ensure we have a reasonable basis to act based on the information available. The Environment Act establishes the relevant threshold we must satisfy to exercise each of our enforcement powers. This is outlined in section 3 above.

4.2 Step 2 – serious failure

Through step 2, we will assess whether a suspected failure by a public authority to comply with environmental law would be a serious failure. This section sets out certain factors that may be relevant in determining (a) whether a suspected failure to comply amounts to a serious failure and, as part of that, (b) whether any associated harm or potential harm amounts to serious damage.

These factors are intended to be flexible. Where a factor is relevant to the assessment of a potential failure to comply or the seriousness of associated harm, consideration of that factor may involve evaluating compounding (indicating a greater degree of seriousness) and / or mitigating (indicating less seriousness) elements. This will contribute to our overall determination of whether a suspected failure is serious or whether associated harm amounts to serious damage.

As well as considering matters individually, we may also assess them collectively. The factors listed below should be read with this in mind. For example, we may receive a complaint about a specific aspect of a public authority's conduct and judge that this conduct on its own does not amount to a serious failure or occasion serious damage. However, if we receive more complaints or have other information about similar or related matters occurring more widely, whether in relation to the same authority or others, we may determine that cumulatively this indicates a serious failure or serious damage.

Relevant factors for assessing seriousness

In accordance with Principle 3 set out above, we will consider all relevant factors when determining if a failure to comply with environmental law is or may be serious. Factors that we may take into account when assessing the seriousness of a failure include:

a. whether the conduct raises any **points of law of general public importance**. This may be, for example, by setting a precedent with wider potential implications (beyond those of the case) or addressing an important area of law where clarification would be valuable or important

b. the **frequency of the conduct** over time (including historically and whether by the same public authority or others), including cumulative impacts. For example, whether the conduct is a one-off event, occasional, frequent, recurrent or ongoing and the potential impact of multiple instances of the conduct taken together

c. the **behaviour** of the public authority or authorities. For example, whether the public authority has a high degree of responsibility for the failure, for example by acting deliberately, recklessly, or negligently; or, on the other hand, whether the authority was responding with reasonable care to an emergency or other exceptional circumstances not of its making

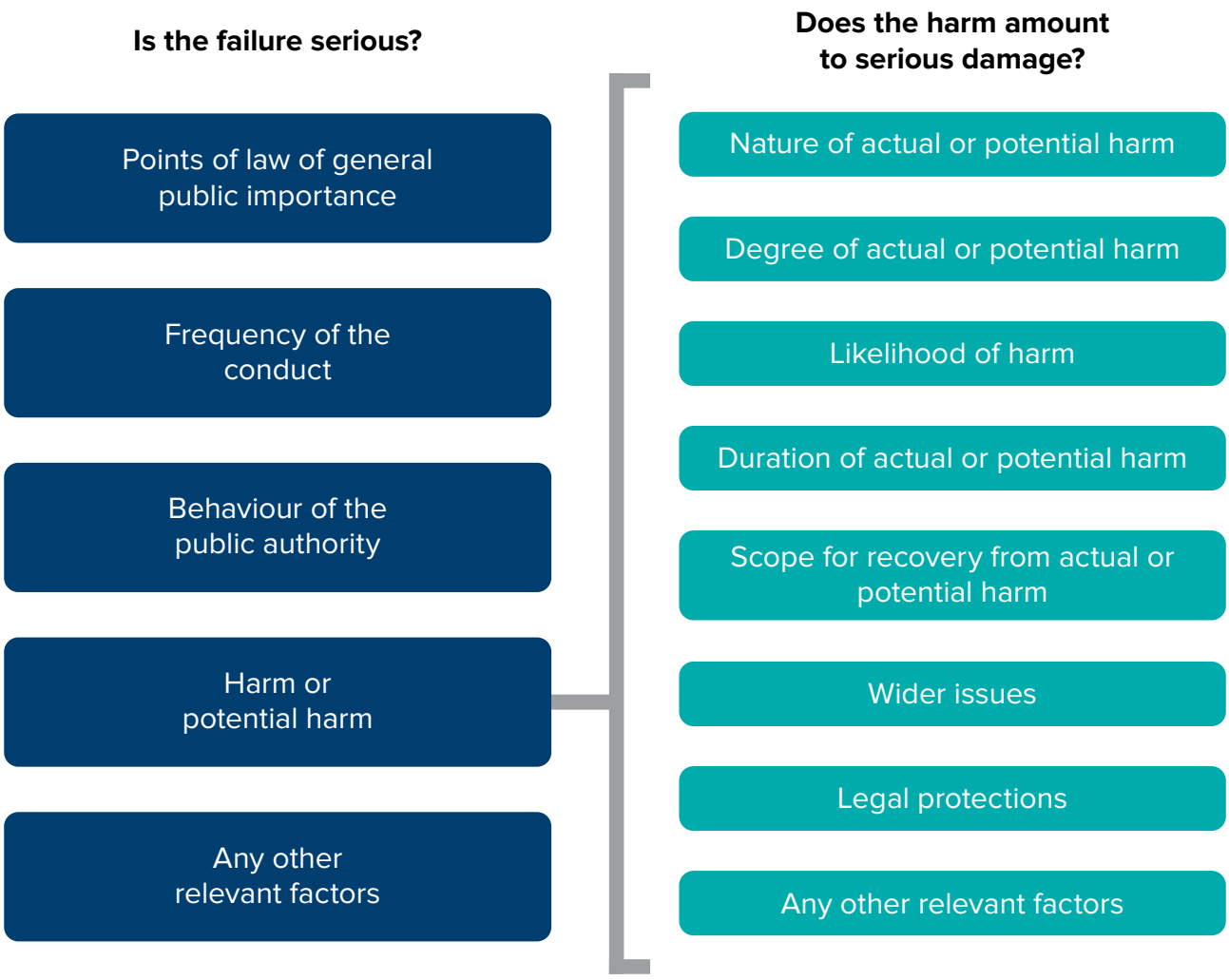
d. the **harm or potential harm** to the natural environment or to human health associated with the issue

e. any **other** relevant factors

The harm or potential harm referred to above relates to the actual or potential harm to the environment or to human health associated with the failure to comply (referred to in the Environment Act as 'damage'). Harm is assessed as part of our consideration of the seriousness of a failure to comply; that a public authority's conduct did or could result in harm may indicate that the failure itself could be serious.

Factors we may consider when assessing harm and, for the purpose of identifying urgent cases, whether it amounts to serious damage are set out in the list below, entitled 'Relevant factors for assessing seriousness of harm'. However, harm is just one factor that we may consider when assessing whether a failure is serious. Figure 2 below illustrates this.

Figure 2. Spotlight on harm



Relevant factors in assessing seriousness of harm (including the 'serious damage' test)

Our assessment as to whether a failure would be serious will normally involve taking account of **harm or potential harm to the natural environment or to human health** associated with the failure, and whether this amounts to serious damage.

Factors that we may take into account when considering whether harm amounts to serious damage include:

a. the **nature of the actual or potential harm**. For example, we may consider what is being or might be harmed, including consideration of the characteristics and context of the people or environmental features concerned. For people, this may include considering any particular sensitivities of those put at risk. For environmental features, this might include considering their rarity and role in wider environmental systems at the relevant level (for example, local, national or global). This could also include consideration of the particular type of harm that has arisen or might arise

b. the **degree of actual or potential harm**. This could include consideration of the severity of the harm or the extent of the harm (for example, the sizes of the areas or the communities affected)

c. the **likelihood of harm**. For example, has it already occurred, or is it inevitable, likely, possible or speculative

d. the **duration of the actual or potential harm**, that is how long it will or may last

e. the **scope for recovery from the actual or potential harm**. Here we might consider the scope for the people or environmental features at risk to recover from harm, anything which impedes recovery or would need to be in place to allow it to occur, the anticipated time period for any recovery, and the likelihood of some other form of satisfactory remediation or compensatory action being taken

f. **wider issues**, including any indication of a more widespread or systemic problem meaning that the harm should be considered at this wider level

g. the application of any **legal protections** to the relevant environmental features

h. any **other** relevant factors

The factors included in the lists above are not exhaustive. Nor will each factor always be relevant. In addition, these factors are not necessarily discrete. We will consider all relevant factors in the round, recognising the potential for inter-relationships between them.

Finally, the ordering of the factors we refer to above is immaterial – there is no hierarchy between them.

Approach to assessing seriousness

In carrying out our assessments of seriousness, we will exercise professional, impartial and evidence-based judgements. In considering relevant circumstances, we may be faced with situations in which uncertainty is a factor. The greater the importance of the feature of the natural environment that is or may be affected, or the more significant the human health impact, the greater the scope for adopting a proactive approach that addresses the risk of harm through proportionate enforcement action.

We will have regard to the need to act proportionately and would not normally expect to conduct detailed technical assessments (for example, scientific studies or primary data collection or analyses) to assess the level of actual or possible harm to the natural environment or human health associated with a suspected failure. Rather, we will exercise judgement in our assessments of harm and the possibility of serious damage. Our judgements will be based on the information that is reasonably available to us, ensuring that they are undertaken objectively and consistently.

Once we have looked at relevant factors, we will make an overall appraisal of the seriousness of the failure.

Some high level, illustrative examples of conduct that, based on a broad assessment, would normally be considered as clear serious failures to comply with environmental law include:

- recurrent, frequent or ongoing conduct that is reckless, negligent, wilful or deliberate and which raises fundamental points of law

- cases which raise multiple instances of similar conduct which, when considered together, indicate a systemic issue potentially leading to significant local, regional, national or wider-scale damage
- conduct by a public authority which has failed to act on previous warnings or advice, or has been uncooperative or sought to conceal or mislead

4.3 Step 3 – prioritisation

Our overall approach to prioritisation is set out in section 3.2 of our strategy and applies to all of our functions. This section of our policy sets out specific considerations that apply to prioritisation of enforcement cases, within that broader context. It should be read alongside section 3.2 of our strategy.

In accordance with our principal objective, we will target enforcement action to where we can most benefit environmental protection and the improvement of the natural environment. The Environment Act also requires that, in considering our enforcement policy, we must have regard to the particular importance of prioritising cases that we consider have or may have national implications.

We must also have regard to the importance of prioritising cases:

- that relate to ongoing or recurrent conduct
- that relate to conduct that we consider may cause (or has caused) serious damage to the natural environment or to human health, or
- that raise a point of environmental law of general public importance

National implications

A case with national implications is one that has implications that extend beyond the immediate local area. This might mean implications that extend to England, to Northern Ireland or are UK-wide. This does not mean that direct physical impacts must be felt nationally. For instance, the Grenfell Tower fire tragedy happened at a single location but had much wider implications in terms of loss of life and public concern, leading to a public inquiry and national review of the fire safety of high-rise buildings.

When we receive individual complaints or other inputs that raise a concern at a particular site or sites, we will consider if the matter may have broader, and potentially national, implications, based on any information that suggests a wider problem.

We may, conversely, receive complaints about a failure within the context of a nationally significant project or initiative. Such a failure need not have nation-wide implications simply because it relates to a high-profile or national project. Rather than focusing on the significance of the underlying project, our assessment of the potential for national implications will be based on the broader significance of the alleged failure and its consequences. This might include consideration of whether the failure indicates the existence of wider-spread systemic issues across the country or the cumulative impact of multiple, isolated failures which individually affect different areas.

The above statutory prioritisation criteria are built into our approach for assessing the seriousness of failures to comply with environmental law. As a result, we will consider them as an integral part of our seriousness assessments.

We will then prioritise our enforcement activity, guided by the four questions set out in section 3.2 of our strategy:

- how large an effect could our action have?
- how likely is our ability to have that effect?
- what is the strategic fit?
- what is our capacity and capability to deliver?

Part 5. Urgent cases

Where a potential failure to comply with environmental law has given or could give rise to harm to the natural environment or to human health, we will consider whether this harm amounts to serious damage. Where we consider this to be the case, we will also assess whether the urgency condition is met.

Meeting the urgency condition has two elements. The first is that the failure could give rise to serious damage. This is considered in section 4.2 above. The second involves deciding whether it is necessary to prevent or mitigate serious damage by applying for a judicial review or statutory review, rather than starting or continuing to use our bespoke enforcement functions towards environmental review or a review application. This requires us to compare the two approaches. In making this comparison, we will consider **the opportunity for prevention or mitigation of the serious damage**. As part of this, we may take into account the **different timescales**, as well as the **limits on the scope for remedies** associated with environmental reviews and review applications, in contrast with judicial review or statutory review.

Assessment of the **opportunity to prevent or mitigate the serious damage** will involve considering all of the circumstances of the case, including the extent, nature and duration of the harm being caused, or likely to be caused, as well as the previous actions of the public authority in question.

We may compare the **timescale element** of the different routes by considering whether the serious damage would occur, or become unavoidable or worse, if we commenced or continued action pursuant to our bespoke enforcement functions to resolve matters, rather than progressing through a judicial review or statutory review. The likely period to progress any specific case to an environmental review or a review application will depend on the facts of that case.

Another important element relates to the **limits on the scope for remedies** in environmental reviews and review applications as compared to judicial review and statutory review. Generally, in an environmental review or a review application, the court may not grant a remedy (other than, in an environmental review, a SONC) unless satisfied that doing so would not be likely to cause substantial hardship or substantial prejudice to a third party or be detrimental to good administration. This condition does not apply where the court is satisfied that granting the remedy is necessary to prevent or mitigate serious damage to

the natural environment or to human health, and that there is an exceptional public interest reason for granting it.

In considering the urgency condition, we will make our own assessment of the relevant conditions that a court would have to consider granting a remedy. We will do so proportionately, having regard to the need to act urgently and having to assess matters quickly, potentially with limited information.

In determining whether to progress a case through the urgent procedure, we will also proportionately assess the matter according to our prioritisation criteria as discussed in section 4.3 above.

Part 6. Avoiding overlap with others

As we recognise in section 3.8 of our strategy, working well with others will be critical to our success. As part of this, our enforcement functions should be complementary to other relevant statutory regimes (including existing ongoing legal proceedings) and to the work of other bodies charged with overseeing public authorities in relation to environmental matters. Such regimes include public authorities' complaints procedures, appeals mechanisms and legal challenges as well as the functions of the relevant ombudsman services.

To avoid conflict and duplication when prioritising cases, we will take into account the existence of such regimes and any information we have concerning whether they are being applied to a particular allegation of non-compliance.

We will not normally commence enforcement action where we judge another regime or authority is better suited to hold a public authority to account.

We also will not normally act where a public authority's decision remains subject to further statutory regimes before becoming final, or where there are related ongoing legal proceedings which have not yet reached a final decision. Some decisions normally made by one authority can be scrutinised by another before being finally confirmed; many Environment Agency permitting decisions can be appealed to the Secretary of State, for example. In such cases we will not usually take action before that appeal has concluded or relevant time limits have expired without the appeals procedure being commenced. We may, however, act if we consider that other regimes are unlikely to be as effective at securing environmental protection and improvement (including as related to people's health) as our own intervention would be. In such cases, we would usually communicate with those responsible for other regimes to get their views, before deciding whether or not we should act.

We endeavour to avoid overlap between the exercise of our functions – in particular those associated with the receipt and handling of complaints – and the exercise by the relevant ombudsman services of their functions. How we will do this, and further detail on how we will work with other bodies, is set out at section 3.8 of our strategy.

Part 7. Monitoring and review

We will monitor our implementation of this enforcement policy. In particular, we will develop approaches to measure and evaluate:

- when and how we use our enforcement powers
- the improvements in public authority compliance with environmental law to which our enforcement action has contributed
- the contribution to environmental protection and the improvement of the natural environment (including in relation to people's health) made by that action

We will periodically assess the outcomes of our enforcement decisions and consider the lessons learned.

We expect to review this enforcement policy in the light of our experience and, in any event, within the first 18 months of its adoption as part of our broader review of our strategy.

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