

Terms of Reference for an Interim Office for Environmental Protection (the "Interim OEP")

Dated

24th June 2021

1. Background

- 1.1 The Environment Bill provides for a new Office for Environmental Protection ("**the OEP**") to undertake certain environmental governance functions.
- 1.2 In advance of the Environment Bill receiving Royal Assent, the Secretary of State wishes to put in place interim arrangements as described in these Terms of Reference. The Secretary of State also recognises that the Department of Agriculture, Environment and Rural Affairs (DAERA) wishes to support these interim arrangements so that they can facilitate the OEP's remit extending to Northern Ireland should the Northern Ireland Assembly approve such an extension.
- 1.3 Consequently, the objectives in putting in place these interim arrangements are to:
 - (a) allow for the delivery of certain environmental governance functions during the interim period which are independent of the Department for Environment, Food and Rural Affairs (Defra) and DAERA, as far as practical
 - (b) allow those appointed in a designate capacity to serve on the OEP Board to contribute to decisions which will have a bearing on the future running of the OEP - for example its role, responsibilities and management
 - (c) facilitate the seamless transfer, in due course, of staff, assets and functions from the interim arrangements to the OEP.
- 1.4 The interim arrangements are intended to operate until the OEP is established as a body corporate. The OEP is expected to begin exercising its functions by 1 December 2021. In the event of any further delay to the Environment Bill, these Terms of Reference will be reviewed accordingly.

2. Establishing the Interim OEP

- 2.1 A shadow body ("**Interim OEP**") is established with effect from 1 July 2021.
- 2.2 The Interim OEP will be overseen by a board ("**the Board**") comprising those individuals the Secretary of State may from time to time appoint as the OEP Chair-designate ("**the Chair**") and other non-executive directors-designate ("**the NEDs**"). Should DAERA designate a Northern Ireland non-executive director, they may also be treated as a NED and member of the Board. In that case, and in accordance with section 7 below, consideration would be given at the relevant time as to whether DAERA should have a more formal role in these interim arrangements alongside Defra.
- 2.3 As further detailed in paragraph 2.5, the Board shall also include an Interim CEO-designate ("**the CEO**") plus any individuals (to a maximum of three) in the Interim OEP Staff who are appointed by the Chair (in consultation with the CEO) as executive directors.
- 2.4 The Chair (Dame Glenys Stacey) will chair the Board. The Board shall determine its own internal rules of procedure.
- 2.5 Defra will make available to the Interim OEP the services of Natalie Prosser as the CEO and, under her line-management, an initial staff in Defra plus additional staff from

loans, secondments and contractors as needed and within the budget (the "**Interim OEP Staff**"). The CEO and the Interim OEP Staff will assist the Board to deliver the functions set out in section 6 below (the "**Interim Functions**"). The Interim OEP Staff will comprise those individuals who, as at the date of these Terms of Reference, work under the CEO's line management and direction. As and when Defra recruits further staff to perform the Interim Functions, they will also form part of the Interim OEP Staff.

- 2.6 Defra may also provide to the Interim OEP certain administrative services (for example in respect of finance, HR or programme management) from within Defra where this is agreed as the most efficient and appropriate way of delivering such services in lieu of expansion of the Interim OEP Staff.
- 2.7 Whilst undertaking work for the Interim OEP, the CEO and Interim OEP Staff will remain Defra civil servants or employees of their respective parent organisations who are seconded, contracted or loaned into Defra (as appropriate). Notwithstanding this, in relation to the substantive delivery of their responsibilities they will work under the leadership, and to the direction, of the Board (either directly or via the CEO, as appropriate).
- 2.8 It is recognised that DAERA staff may assist with the performance of the Interim Functions as they relate to complaints concerning Northern Ireland (paragraphs 5.4(c) to 5.4(e) below). The Interim OEP Staff should work with DAERA to facilitate this.

3 Governance arrangements

- 3.1 The Chair and the Defra Director General for Environment, Rural and Marine, David Hill, will maintain regular dialogue on matters relating to the Interim Functions. Communications between the Board and the Director General should normally be through the Chair.
- 3.2 The Board will oversee delivery of the Interim Functions by the CEO and Interim OEP Staff.
- 3.3 The Defra Director for Natural Environment, Trees and Landscapes (NETL), Edward Barker (the "**NETL Director**"), will be the Senior Responsible Officer (SRO) for those matters concerning the OEP that rest with Defra until establishment of the OEP.
- 3.4 In advance of each NETL Monthly Portfolio Performance Meeting, the CEO will provide to the NETL Director management information on progress in delivering project outcomes and benefits to time, cost and quality, including identifying and monitoring risks, dependencies and opportunities, in the format and to the timing requested by his Portfolio Office.
- 3.5 The OEP establishment project falls under the Defra Major Projects Portfolio (DMPP) and as such will, via the NETL Director, also report into Defra's Executive Committee on a monthly basis. The CEO will provide such reporting information, in addition to that set out in paragraph 3.4, as may be necessary for the NETL Director to fulfil his SRO functions and report into the DMPP on the project.
- 3.6 The NETL Director will provide functional line management for the CEO in respect of her role in establishing the OEP (as set out in paragraph 5.1(a)) and will discuss and agree with the Chair on setting and reviewing the CEO's objectives in relation to this aspect of her role. He will also monitor her performance in respect of the exercise of her delegated authority on financial matters. On day to day activity and on matters relating to the OEP's governance work (as set out in paragraph 5.1(b) of this document), the CEO will report to, and work to the steer of, the Chair. The Chair will

be responsible for monitoring the CEO's performance against her objectives and providing assessments to the NETL Director.

- 3.7 The CEO will chair a Senior Leadership Team within the Interim OEP to support her oversight of the work carried out by the Interim OEP Staff and her delegated authority.
- 3.8 The Chair and CEO will also meet regularly (approximately every two months) with the Secretary of State and the Parliamentary Under Secretary of State (Rebecca Pow MP) for the purposes set out below (see paragraph 6.1). It is recognised that the Chair and CEO may also meet with the DAERA ministers so that the Interim OEP can take account of the position in Northern Ireland as it fulfils the Interim Functions.
- 3.9 Recognising paragraph 6.1 below, the governance arrangements between Defra and the Interim OEP shall not encompass Defra overseeing the substance of tasks undertaken independently by the Interim OEP, for example the content or publication of documents such as its draft strategy, advice to ministers or its report on progress with the 25 Year Environment Plan for England.
- 3.10 Defra and the Interim OEP jointly commit that as far as practicable there should be a 'no surprises' approach in their dealings with each other. Subject to any necessary constraints based on confidentiality or legal privilege, they shall endeavour to keep each other informed at the first opportunity of matters arising which are of mutual interest.

4 Financial arrangements

- 4.1 Defra will provide funding for the Interim OEP to the extent of £8,000,000 for the period of 1 April 2021 to 31 March 2022. Spending from this allocation before Royal Assent of the Environment Bill must be in accordance with the terms of the Contingencies Fund Advance set out in the Written Ministerial Statement of 12 May 2021. Defra will also provide the Interim OEP with financial and budget management support until the OEP is established.
- 4.2 The Permanent Secretary will remain responsible as Accounting Officer for the financial management and control of resources used by the Interim OEP.
- 4.3 The NETL Director will issue a delegation letter and associated budget allocation to the CEO, delegating authority for the financial management and control of resources used in connection with the Interim OEP's exercise of the Interim Functions. The CEO must exercise her role in line with her scheme of delegation letter.
- 4.4 The Board will not be able to make financial commitments on behalf of Defra. The CEO will be able to do so as a Defra member of staff and delegated budget holder. Following Royal Assent of the Bill and commencement of the OEP as a legal entity, the OEP Board will have authority to make binding decisions for the OEP.

5. Interim OEP remit

- 5.1 The Interim OEP's purpose (the "**Purpose**") is to:
 - (a) undertake all necessary preparations for the OEP to be operationally ready to meet its objectives and fulfil its functions by the time the Environment Bill provisions relevant to the OEP are commenced; and

- (b) deliver certain independent environmental governance functions during the interim period.

5.2 In pursuit of this Purpose, the Interim OEP should undertake the Interim Functions, as set out in paragraphs 5.3 to 5.6 below.

5.3 The Interim OEP should take such steps as appear to it to be expedient in preparation for establishing the OEP as a body corporate and preparing for the OEP to undertake its functions.

5.4 In particular, and subject to paragraph 5.7 below, steps the Interim OEP may take include:

Corporate functions

- (a) developing (including, as appropriate, undertaking preliminary pre-consultation engagement on) drafts of the OEP's strategy, enforcement policy, complaints procedure, delegation policy and any other policies, procedures or documents that the OEP may require, including its draft corporate and business plan
- (b) preparing for the OEP to deliver its corporate functions, including in relation to contracts, memoranda of understanding, estates, human resources, information and communications technology, communications, media and stakeholder engagement, and corporate governance

Complaints functions

- (c) receiving complaints about public authorities' alleged failures to comply with environmental law, undertaking initial assessments of those complaints and taking such steps as the Interim OEP considers appropriate to gather information in connection with them, for example through dialogue with complainants, public authorities and third parties
- (d) publishing summary information on the number and type of complaints received
- (e) drawing to the Secretary of State's or DAERA's attention (as appropriate) any complaints or other information the Interim OEP receives which it believes require the Secretary of State's or DAERA's urgent consideration, for example because they raise serious concerns of a possible failure to comply with environmental law that risks imminent or irreversible harm to the environment or human health

Scrutiny and advice functions

- (f) publishing a report in response to the UK government's 25 Year Environment Plan annual report for 2020-21, following as far as practicable on a non-statutory basis the provisions for statutory reports set out in clause 27 of the Environment Bill
- (g) providing ministers with written advice on matters within the Interim OEP's expertise
- (h) where considered appropriate to do so, responding to consultations relevant to the Interim OEP's expertise or the OEP's proposed remit and functions

Ancillary functions

- (i) taking such further steps considered appropriate for the purposes of, or in connection with, (a) to (h) above.

5.5 In undertaking the Interim Functions, the Interim OEP should have regard to the possibility that, subject to Assembly approval, the OEP's statutory functions may extend to include Northern Ireland.

- 5.6 As a specific aspect of activity under paragraph 5.4(b) above, within any specified constraints around budget availability, staff structure and size, the Interim OEP may recruit staff into Defra with the intention in principle of those individuals later becoming substantive employees of the OEP following its establishment. Defra will pursue a staff transfer scheme to facilitate this. Defra will also work to support the effective transfer of assets to the OEP.
- 5.7 The Interim Functions exclude:
- (a) taking any steps which, once the OEP is vested with its statutory functions, it would be beyond the OEP's powers or contrary to its duties to take
 - (b) making final decisions on the adoption of any reports, strategies, policies, procedures or other documents, which the OEP must, by law, adopt for itself
 - (c) making final decisions as to whether any suspected failures to comply with environmental law should be formally investigated pursuant to the OEP's intended functions under clause 32 or Schedule 3, paragraph 7 of the Environment Bill
 - (d) taking enforcement action against public authorities suspected of failing to comply with environmental law.
- 5.8 In considering whether certain steps would or would not be within the Interim Functions, and in undertaking those Interim Functions, the Interim OEP should have particular regard to the OEP's intended powers and duties set out in the Environment Bill.

6. Role of Defra

- 6.1 Defra will maintain a degree of oversight over the Interim OEP's activities consistent with the fact that Interim OEP actions are treated in law as those of the Secretary of State. This will be facilitated by the governance arrangements, including ministerial meetings, set out in section 3 above. However, in its dealings with the Interim OEP, Defra will have particular regard to the Secretary of State's intended powers and duties set out in the Environment Bill, including the requirement to have regard to the need to protect the OEP's independence.
- 6.2 Defra wishes to see the seamless transfer of the Interim Functions to the OEP. To that end, Defra:
- (a) recognises and respects, within the legal constraints which apply and as set out in these Terms of Reference, that the Interim OEP shall have a particularly high degree of operational independence from the rest of Defra;
 - (b) shall act at all times in good faith towards the Interim OEP; and
 - (c) shall recruit further individuals to the Interim OEP Staff to the timescales, grades and job specifications determined from time to time by the Interim OEP.

7 Duration and review

- 7.1 It is anticipated that the arrangements described in these Terms of Reference will remain in place until the coming into force of the Environment Bill provisions establishing the OEP. If, for whatever reason, these provisions are not enacted or not brought into force, or are further delayed, then consideration would be given at the relevant time as to whether the arrangements should be extended or other arrangements should continue in their place and, if so, what form they should take.

- 7.2 The signatories will keep under review the operation of the Interim OEP in accordance with these Terms of Reference. This will be facilitated through their regular meetings referred to in section 3 above. The signatories will also keep under review with DAERA whether these Terms of Reference should be amended at any point to include DAERA having a more formal role in respect of the Interim OEP.
- 7.3 Any amendments shall be agreed by the signatories in writing.
- 7.4 In the case that the operation of the Interim OEP cannot be maintained in accordance with these Terms of Reference, and an appropriate amendment to these Terms of Reference cannot be agreed by the signatories, or in the case that there is disagreement among the signatories as to whether the operation of the Interim OEP is in accordance with these Terms of Reference, the Defra Permanent Secretary, or her nominated representative, shall act as final arbiter.

Signed by



David Hill

Director General Environment, Rural and
Marine (for and on behalf of the Secretary
of State)



Dame Glenys Stacey

Chair (for and on behalf of the Board)