



Office for  
**Environmental  
Protection**

# Strategy and Enforcement Policy Consultation Report

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# Contents

Executive summary .....	4
Introduction .....	6
1. Part 1. Our approach.....	7
1.1 Consultation approach.....	7
1.2 Stakeholder engagement.....	7
1.3 Consultation response .....	8
1.4 Satisfaction with the consultation process .....	8
1.5 Approach to analysis and reporting of responses.....	9
1.6 Approach to public engagement.....	9
2. Part 2. Your feedback: how we have listened .....	9
2.1 Satisfaction with the strategy and enforcement policy overall .....	10
2.2 Delivering our strategic objectives .....	10
2.3 How we will prioritise .....	20
2.4 Enforcement .....	23
2.5 Scrutinising Environmental Improvement Plans (EIPs) and targets .....	28
2.6 Scrutinising environmental law .....	30
2.7 Advice.....	33
2.8 How we will work with others .....	35
2.9 Objectivity, impartiality, proportionality and transparency .....	36
2.10 General comments .....	39
3. Part 3. Conclusion and next steps.....	40
Annex A Consultation documents:.....	40
Annex B Consultation respondent List.....	41

# Executive summary

This report summarises the responses to our draft strategy and enforcement policy consultation, which ran from 25 January to 22 March 2022. In total, we received 68 responses. Here we also summarise the views of 5,151 members of the public from England and Northern Ireland who provided valuable feedback via a survey and focus groups run between 29 March and 10 April 2022.

In general, the approach we proposed for consultation was supported. Respondents provided suggestions and feedback that have helped us to strengthen our strategy and enforcement policy and will inform our wider strategic approach. This report summarises what we heard and how we acted upon this feedback.

## Our Northern Ireland remit

During the consultation period the Northern Ireland Assembly confirmed our role. In anticipation of this, we had included our Northern Ireland functions within our draft strategy and enforcement policy set out for consultation. Respondents told us that more detail was needed to explain our approach in Northern Ireland, and to reflect specific issues. We agree.

We have set out more clearly our approach to working with organisations in Northern Ireland, the Republic of Ireland and with the European Commission in specific areas. Our strategy now explains how we will consider transboundary issues and how we will work to balance our priorities across our remit. We have provided more detail on our operating model in Northern Ireland, including our approach to recruiting local and expert staff and our commitment to being visible and present. We have also explained more about how we will seek to grow our capabilities over time.

## Our approach to working with others

In response to feedback, we have changed section 3.8 of our strategy (How we will work with others) to give further details about our approach to working with others. We have strengthened our commitment to and explained how we will engage with a wide range of stakeholders.

## Our role in the regulatory system

We have clarified our role within the broader regulatory system by explaining how our role differs from that of environmental regulators and other public authorities. We have also clarified how we will work with devolved environmental governance bodies in some areas. For example, we have made clearer that it is not our role 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. Our role is to

hold government and other public authorities to account for their environmental commitments in environmental law.

## **Taking account of systemic issues and cumulative impacts**

Respondents expressed concern that our draft strategy and enforcement policy did not sufficiently explain how we would consider the cumulative impact of related issues. We have sought to provide greater clarity. We will take into account the cumulative impact of related issues when making judgements about the seriousness of any matter and in how we prioritise.

## **Environmental targets**

Following feedback, we have clarified that we will monitor and report on a wider set of targets that fall under the definition of environmental law, rather than just those that come under the Environment Act, to pursue our objective of sustained environmental improvement. We have also confirmed that we will look at the landscape of international environmental targets, assess progress towards these and use this evidence to flag any potential gaps in government's targets as part of our monitoring and reporting on environmental improvement plans and the implementation of environmental law.

## **Gathering and using information**

Stakeholders expressed concern about how we would manage information about matters we do not prioritise and be vigilant for circumstances changing. We have explained that we will monitor and gather information, and reassess our priorities as needed. We have emphasised that we will be a listening organisation, our commitment to engagement, and explained how environmental issues can be raised with us, other than through our complaints function. We have also tried to better illustrate how our functions work together. For example, we show how a complaint could lead not only to an investigation, but also to wider recommendations for improvements in implementation or changes in the law.

## **Definitions**

Stakeholders gave suggestions about how broad our interpretation of environmental law should be. The definition of environmental law is set out in the Environment Act and we must interpret and apply it objectively. We have sought to further explain our interpretation including, for example, how aspects of planning law may fall within our remit.

## **Transparency and confidentiality**

We heard that transparency is of particular importance to our stakeholder organisations and the wider public. We have sought to clarify how we approach transparency and confidentiality in the context of our enforcement activities by setting out that we will keep

complainants updated, and when we will make certain enforcement-related information public.

## Corporate Plan

There were several suggestions that our strategy should include more detail, including information about what we will do. This is included in our annual corporate plan, the first of which we publish alongside this report and our strategy. To create the right balance between these publications, we have removed the sections called 'our first actions to achieve this objective' from the strategy and include these in our corporate plan. This will ensure that our strategy guides how we approach our work, and our plan details what that work will be.

## Resourcing

Many stakeholders expressed concern about the sufficiency of our resourcing in terms of staffing, funding, expertise and knowledge to fulfil our remit. We recognise the strength of the view underlying these responses. This was not the subject of our consultation. We are pleased that Defra has committed to undertake a review of our long-term resourcing needs within our first year.

## Introduction

The OEP was established by the Environment Act at the end of 2021. We are an independent public body, with powers to advise ministers, and to hold them and other public authorities to account against their environmental responsibilities and environmental law. Our remit covers England and Northern Ireland.

We published our first draft strategy and enforcement policy for consultation on 25 January 2022 (documents in Annex A). The consultation ran for eight weeks, closing on 22 March.

The purpose of our consultation was to gain meaningful insight and gather broad and diverse perspectives to inform our strategic thinking. We are committed to being a listening and learning organisation and have used the responses to support the development of our final strategy and enforcement policy, which we publish alongside this report, and inform our strategic thinking more broadly.

Our strategy sets out how our work will contribute to the protection and improvement of the natural environment. It details our mission, strategic objectives and our four main functions, and provides information about how we will deliver these, prioritise our activities and work with others. Our enforcement policy explains in detail how we exercise our enforcement functions.

In addition to our formal consultation, we spoke to over 140 stakeholders through a series of workshops and conversations. We also ran a public research project to test aspects of our approach with over 5,000 members of the public.

The response to our draft strategy and enforcement policy was broadly positive and supportive. Responses generally highlighted areas for clarification and gave valuable insights, rather than exposing fundamental issues with our approach.

This report summarises the response to both our consultation and public engagement and describes how we have considered the feedback in the development of our final strategy and enforcement policy.

We recognise we are a new organisation and that we have much to learn in our first period of operation. We are grateful to stakeholders and members of the public for their views on our strategy and enforcement policy and their wider observations, which will help to inform our strategic thinking. We will test and evaluate the approaches in our strategy and enforcement policy and expect to review them in 12 to 24 months' time.

## **Part 1. Our approach**

Part 1 explains how we gathered feedback on our draft strategy and enforcement policy from stakeholder organisations and the wider public.

### **Consultation approach**

We invited stakeholder organisations and the public to respond to the consultation by completing an online questionnaire with 25 questions, or by submitting a free-form response via email or post. The consultation ran for eight weeks from 25 January to 22 March 2022. The consultation was publicised on our website and open to all for its entirety. Our full remit was confirmed part way through our consultation, on 22 February. There were therefore eight weeks for consultees to respond, including four weeks following confirmation of our functions in Northern Ireland.

### **Stakeholder engagement**

We held an online consultation launch event, attended by representatives from 66 stakeholder organisations. During the consultation period we engaged directly with over 140 stakeholders to listen to their views and encourage them to respond. We ran seven workshops with stakeholders in England and Northern Ireland, including representative membership bodies, environmental charities, local authorities, government arm's-length bodies, the business community, and other government departments. We ran two further workshops with a wider range of our stakeholders, to raise awareness of the OEP and answer questions. Alongside our broader engagement and publicity, we held a

stakeholder event in Northern Ireland once our remit was confirmed to answer questions and encourage participation.

## Consultation response

We received 68 responses to the consultation: 28 through the online questionnaire, and 40 by email. Eight responses came from individuals, and 60 responses were submitted on behalf of organisations. Eight of the responses received were from organisations with a sole focus in Northern Ireland, whilst other organisations that responded cover our entire geographic remit. Annex B provides a full list of all respondents.

Respondent category	Number of responses	Percentage of responses
Academia	2	3%
Law firms	2	3%
Campaign / action group	4	6%
Local government	4	6%
Statutory agency or government department	7	10%
Environmental non-governmental organisation (eNGO) / charity	8	12%
Individual	8	12%
Business/ Industry	10	15%
Representative / membership bodies	23	33%
<b>Total</b>	<b>68</b>	<b>100%</b>

**Table 1.** The number of responses received by respondent category.

## Satisfaction with the consultation process

The 28 respondents who used the online questionnaire were asked to rate their satisfaction with the consultation process. Eighty-nine percent (25 respondents) were either very satisfied or satisfied. We received one comment expressing dissatisfaction with



the online consultation, stating that it was too long. The remainder of respondents were neither satisfied nor dissatisfied. This feedback will inform our approach in future.

## **Approach to analysis and reporting of responses**

We commissioned a company specialising in consultation analysis to analyse the responses we received. Their analysts read every response and captured each sentiment or idea to help ensure we considered every point objectively.

Several OEP staff members also read all consultation responses, considered them in full and quality assured this report as a fair and representative summary of the responses received. This report was considered by our executive committee and Board in reaching decisions about our final strategy and enforcement policy.

In part 2 we explain the key themes where we considered we could make a meaningful improvement to our strategy and enforcement policy, based on the consultation and public engagement feedback, and where we did not.

## **Approach to public engagement**

We commissioned a social research company, YouGov, to provide a wider perspective of the general public's understanding of the OEP and their views on our objectives, enforcement approach and priorities.

We surveyed 5,151 people from England and Northern Ireland through online research methods.

The proportion of respondents in Northern Ireland was boosted to provide a large enough sub-group for analysis. The survey involved 4,646 respondents from England and 505 from Northern Ireland. The responses were weighted to be proportionately representative of the England and Northern Ireland populations.

Following the survey, YouGov conducted six focus groups with the public about attitudes towards environmental protection, before asking participants to evaluate the OEP's strategic aims and aspects of our proposed approach. These took place between 29 March and 10 April 2022.

Four groups were held in England, and two groups in Northern Ireland, with both being split according to age.

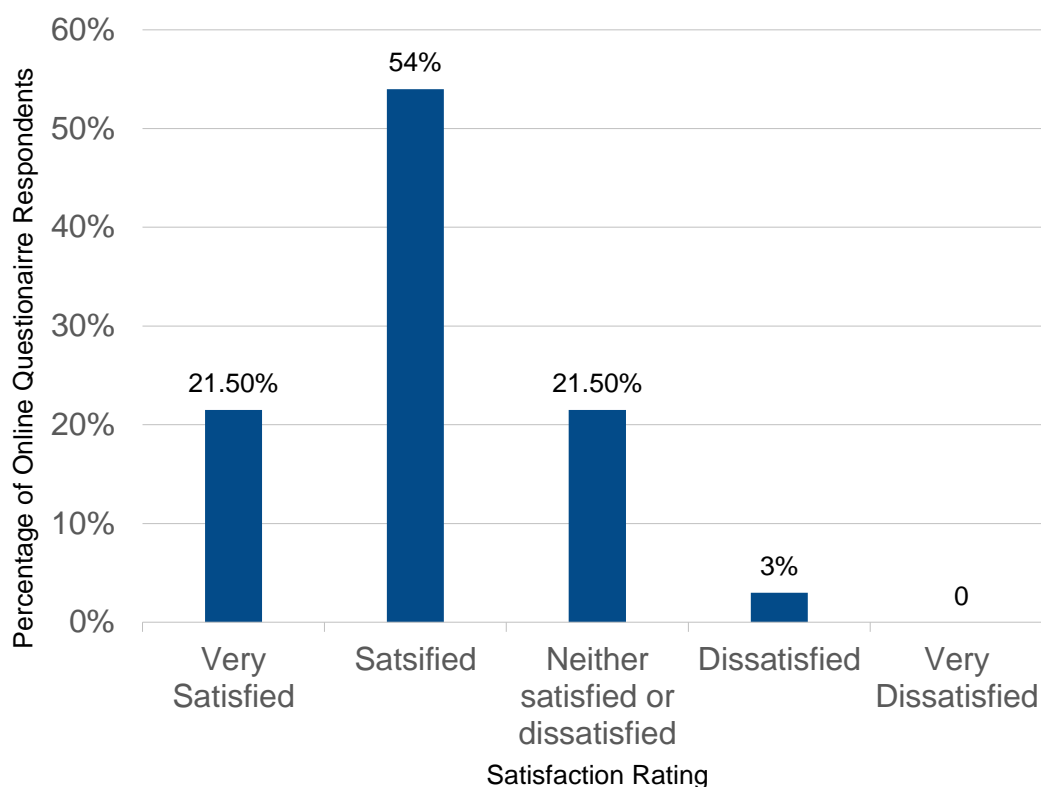
## **Part 2. Your feedback: how we have listened**

The key themes that emerged from the feedback are summarised under the headings of our strategy below, along with our response to the feedback we received.

## 2.1 Satisfaction with the strategy and enforcement policy overall

Respondents to the consultation questionnaire were asked to rate how satisfied they were that the draft strategy and enforcement policy provide a good foundation for us to fulfil our remit. Three quarters (76%) of respondents to the consultation questionnaire were very satisfied or satisfied. Only one individual indicated dissatisfaction.

**Figure 1.** Respondent satisfaction with the draft OEP strategy and enforcement policy based on online questionnaire responses.



Respondents welcomed our approach to consultation, notably the round-table events and workshops, and supported the OEP's intention to report publicly. They suggested that we should extend this approach to all future activities.

Stakeholders reflected that greater attention to our role in Northern Ireland was needed, along with expertise, to help us understand and attend to the nuances of the issues, laws, stakeholders and transboundary matters in Northern Ireland. We address this feedback in the specific sections that follow.

## 2.2 Delivering our strategic objectives

This section summarises responses to consultation questions 1 to 4, on delivering our strategic objectives, and relate to sections 2.2 to 2.5 of the draft strategy.

## 2.1 Comments on section 2.2 of the draft strategy: sustained environmental improvement

We received 54 responses to this section. Together they contained 111 individual comments.

Most of these comments were general in nature and expressed positive support overall for the approach set out to our first strategic objective. Respondents encouraged us to be vocal, influential and powerful. Many of the comments related to improving communication between government, public bodies and the public. A small number of comments highlighted wider challenges in the state of the environment and delivery landscape.

“We welcome the UK government’s environmental improvement plan now being on a statutory footing and that it will be subject to independent scrutiny and reporting of progress.”

**Local authority**

“The OEP should ensure that it is vocal in its scrutiny of progress and advice on environmental law and other matters related to the natural environment. For example, should the Government’s ambition not meet the level of urgency or be too limited in scope, the OEP should be able to quickly and loudly make its position clear in order to incentivise further progress.”

**Representative/membership body**

There were several suggestions to strengthen or provide further clarity. Many of these related to the scope of our approach, in particular to scrutinising targets, and some commented on the targets themselves.

“It is also important for the Strategy and Enforcement Policy to be clear that the OEP’s remit and scope covers all targets, plans, goals and environmental law and policy in England and Northern Ireland not only those in force and to be developed under EA [the Environment Act] 2021”

**Representative/membership body**

“The OEP should incorporate delivery into its scrutiny function, so as to ensure that beyond assessing outcomes it also considers whether or not government implementation plans on EIPs and the targets framework are themselves credible.”

**Representative/ membership body**

In our public engagement, four out of five people (82%) thought it important that government’s progress on environmental improvement plans (EIPs) is checked independently by the OEP. Over half (56%) of the public engagement respondents told us that challenging government to do better, where necessary, was the most important thing to focus on. Members of the public explained that transparency is important to them, especially in making the results of progress reviews public. They wanted failures and

successes explained, to help them understand government's goals, and the consequences of not meeting them.

## OEP Response

In general, respondents supported the holistic approach to scrutinising government's progress with EIPs we proposed. We have further strengthened the explanation of our approach based on the feedback received.

We have clarified that we will consider not only EIPs, and those targets set under the Environment Act 2021 to pursue this objective, but also wider plans, commitments and targets where these support the goals and objectives of the EIPs. We will assess the contribution of other public authorities where it is needed to support our scrutiny of government's progress. We have also explained that our holistic approach will consider the benefits the environment provides to people, such as goods, services, natural processes, and cultural benefits.

We have reviewed the way we describe our approach to re-affirm that we will include a focus on outcomes and delivery when we scrutinise the EIPs. We heard, and agree, that it is important our messages are accessible to improve general understanding of what is needed to improve the natural environment and to help everybody play their part.

### **2.2.2 Comments on section 2.3 of our strategy: better environmental law, better implemented**

We received 48 responses to this section. Together they contained 123 individual comments.

The majority supported the overall approach and desired outcome described in this objective. Respondents noted the importance of good law that is well implemented to achieve environmental and health benefits. They also noted our role in achieving this, and the opportunities for us to work with or build on the work of others to deliver it.

"We do think that making all recommendations of the OEP publicly accessible is essential to ensuring that Government feels public pressure to implement OEP recommendations; the OEP must make up for its lack of teeth by engaging with others who can build pressure on Government to follow through on its recommendations."

**eNGO/charity**

"In analysing the implementation of laws, the OEP could support the implementation of previous reviews, such as the recommendations of the Law Commission's Review of Wildlife Law."

**eNGO/charity**

Fifteen comments raised concerns about the strategy or our remit relating to this objective, including the definition of environmental law. Around one in three were concerned with our action towards this objective, rather than with the strategic objective itself. In particular, these comments queried whether we have the remit, powers and influence to achieve it. A further one in three of the concerns were about the scope of the wider strategy, including the process of prioritisation, and how specific the draft strategy is. We took those comments into account under the relevant questions below.

Sixty-three comments included suggestions about the draft strategy, our remit or activities in relation to this strategic objective. Most commonly these detailed specific environmental issues or sectors for us to focus our functions on. Responses reflected the challenge of achieving a balance between a broad approach across all environmental law, versus a more targeted approach on specific areas.

“The Environment Act’s definition of environmental law is unfortunately narrow and should be interpreted as broadly as is lawfully possible.”

**Individual**

“There is an obvious potential tension between the aim of achieving an overall improvement in the standard and implementation of environmental law; and the need to prioritise or offer ‘targeted advice’. We would welcome acknowledgement of this issue within section 2.3 and particularly in relation to any initial actions the OEP might propose to mitigate against this potential.”

**eNGO/charity**

To measure perceptions of our second objective – better environmental law, better implemented – we asked the public about their views on how existing environmental law could be made better. Half of respondents said they thought it most important we identify and challenge non-compliance with environmental laws (50%) closely followed by the importance of identifying gaps or failings in current environmental laws (47%), and checking that current laws are achieving their intended outcomes (46%). We were interested to hear respondents’ practical suggestions on how we should seek to improve environmental law. For example, respondents suggested making comparisons with other countries, being transparent about our findings, delivering cross organisational working and providing clarity on responsibilities.

Whilst the members of the public we surveyed welcomed our aims here, we were challenged to be clearer about what we mean by better.

“The idea that environmental law should be better is a good one. However, the devil [will] be [in] defining ‘better’”

**Focus Group – England, Age Group 41+**

## OEP Response

Respondents generally supported the approach we outlined to our second strategic objective and recognised the value of better environmental law that is better implemented, and our role in achieving it.

We have updated section 2.3 of our strategy to address several points from the consultation. For example, we have said more about how we will seek to achieve influence while implementing functions which, in support of this objective, are essentially advisory. We have also more closely linked our presentation of this strategic objective to our explanation of our functions and approach to prioritisation.

Several stakeholders identified specific areas of law or environmental topics which they suggested we should focus on. We have not highlighted specific priority areas in the strategy itself, as this will be given in our corporate plan, and will stem from our approach to prioritisation, which the strategy describes. However, we have set out a more general description of the breadth of environmental law on which we may act, highlighting some examples to reflect feedback.

### **2.2.3 Comments on section 2.4 of our strategy: improved compliance with environmental law**

Overall, respondents welcomed our third strategic objective – improved compliance with environmental law. Several respondents highlighted the value of being transparent and publishing information about our work, and enforcement activities, to improve compliance with environmental law.

“We welcome the proposals to hold government and other public authorities to account for their compliance with environmental law, and to challenge and remedy serious failings. [...] We encourage the OEP to ensure that these steps are transparent. The proposals would benefit from a commitment to produce an annual report summarising complaints received and action taken.”

**eNGO/charity**

“While we believe sincerely that enforcement is a necessary deterrent ... it is absolutely essential to have a major communications and promotions aspect if you are to achieve compliance.”

**eNGO/charity**

Respondents emphasised the need for consistency between our commentary on this strategic objective and what we say about our enforcement activities in section 3.4 of the strategy. One respondent helpfully pointed out where this could be improved.

“Section 3.4 of the draft strategy states that the OEP will normally first try and resolve failure to comply with environmental law “at an early stage through dialogue and agreement”. However, this is not mentioned in Section 2.4. For consistency, it would be useful to refer to the use of dialogue and agreement in the description of the OEP’s approach to enforcement in Section 2.4...”

eNGO/charity

Some respondents commented favourably on our focus on serious issues, regardless of whether they are one-off breaches or repeated, or related, issues that indicate broader, systemic failures to comply. Others judged that the approach we will take to repeated, or related issues could be clearer.

“We also really welcome the recognition that environmental harm can be caused by both big problems and small but cumulative issues, and really support that the OEP plan to respond to both of these.”

eNGO/charity

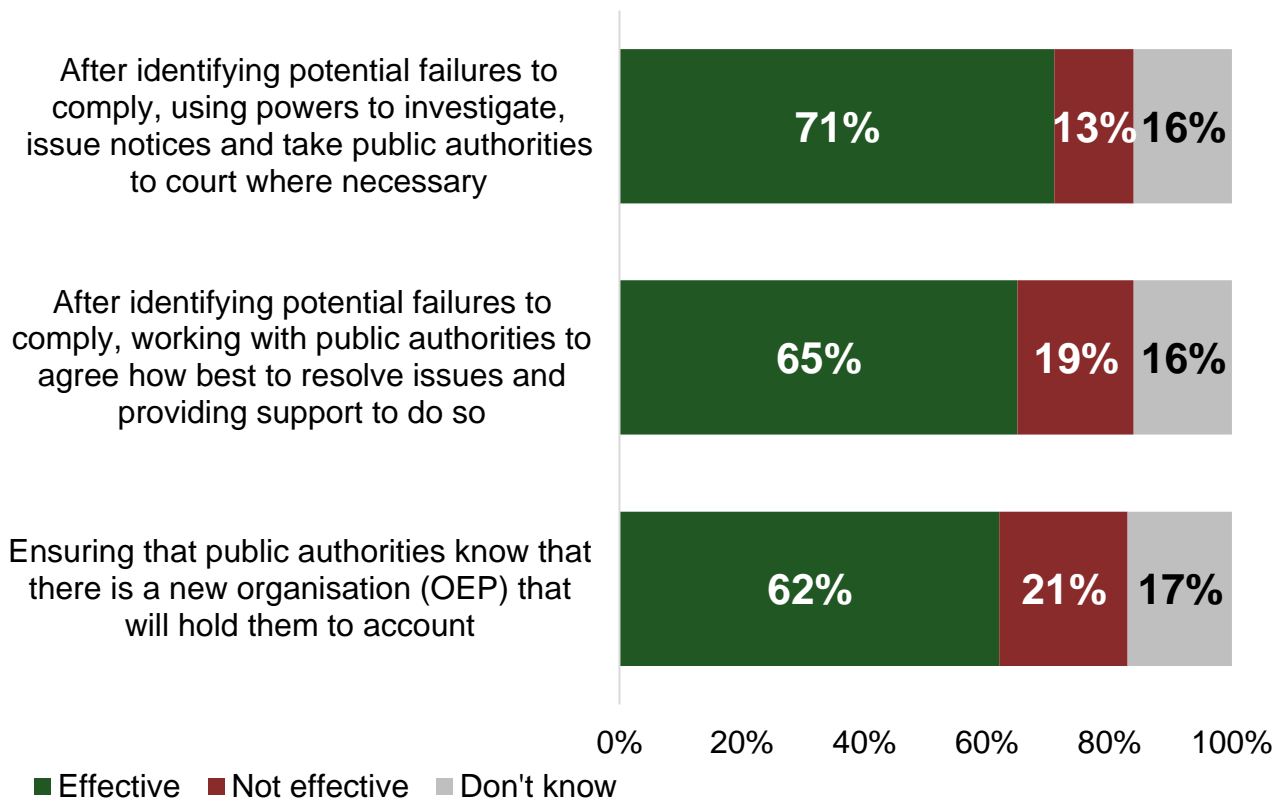
“Priority should be on enforcement of serious breaches of Environmental Law.”

Local authority

Forty percent of the public we surveyed agreed that both one off and cumulative breaches are very important. When prompted to choose between the two, there was a moderate preference for cumulative issues – where many public authorities fail to comply on what may be regarded as less serious matters, that cumulatively add up to serious ones.

When asked about the effectiveness of different approaches to increasing compliance with environmental law, most respondents thought different approaches could be effective.

**Figure 2.** How effective or not do you think each of the following approaches would be as the OEP aims to increase compliance with environmental law? (5,151 respondents).



Respondents made practical suggestions, which focused on using the full force of the law, raising awareness of non-compliance and publicising deterrents whilst not duplicating the role of other public authorities. Some of the suggestions in our public engagement, such as acting against private companies (other than those carrying out functions of a public nature) and issuing fines are outside of our powers and highlight where we could make improvements in public perceptions of our role and remit.

### OEP Response

Most respondents supported our approach to our third strategic objective and acknowledged its potential value in delivery of our principal objective and mission.

Given feedback, and to be as clear as we can about the scope and nature of our enforcement role, we have included further detail about the public authorities against whom we can take enforcement action in section 3.4 of our strategy, clarifying that our enforcement functions do not duplicate those of other public authorities.

Along with respondents, we recognise the importance of the OEP being a transparent organisation, including in the context of our enforcement activities. With this in mind, we have already started to publish quarterly complaints reports, which set out details of the complaints we have received and the stage they are at in our process. As we start to launch investigations and use complaints as part of our wider intelligence gathering, we will develop and publish further information on our enforcement functions, including in our annual report and accounts.

It is important to us to have constructive discussions with public authorities at the outset and throughout the enforcement process, so that we can seek to resolve issues at the



earliest stage. We have updated the diagrams in our strategy and enforcement policy to show how the process of co-operation, dialogue and agreement with public authorities fits into our overall enforcement approach.

Respondents recognised the value in the OEP responding to issues of compliance with environmental law which are individually small but systemically important, as well as significant one-off breaches. As we outline in section 2.4 below, we have taken steps to make clear our ability and intention to consider cumulative failures.

#### 2.2.4 Comments on section 2.5 of our strategy (Organisational excellence and influence)

We received 40 responses to this section, including 92 comments. All comments were positive and the majority in praise of the overall approach we set out.

“The strategy sets out a really welcome tone on its work and ways of working internally and with stakeholders. The OEP should rightly be efficient, responsive, and flexible as possible, and we are keen to see the OEP establish its independent voice as it continues to evolve following Royal Assent. Placing the priority on independent judgment and using the best available science, knowledge and expertise are good areas to prioritise.”

**Business/industry**

One in ten respondents queried how well the strategy explained our approach to delivering this objective in Northern Ireland, or suggested amendments to make it clearer.

Respondents requested greater clarity on our resourcing for Northern Ireland, suggesting that staff recruited to cover this brief must be locally based, and that we needed to ensure access to the right expertise to fulfil our full geographic remit.

“We feel that some form of local presence is required for proper understanding and appreciation of the role of the OEP. We also think that having a local, knowledgeable and responsive presence is important for giving local people a way to deal with the OEP and provide input to the OEP on local issues, which may vary in degree and type from those in England but with equal or even greater environmental consequences.”

**eNGO/charity**

Overall, eleven comments related to the adequacy of our resources to deliver our remit and strategy, and six to whether we are sufficiently independent of government departments and ministers. Some respondents expressed concern about whether the objective was sufficiently measurable, and whether our approach to influence was sufficiently explained.

We received a number of comments which focussed on our relationship with stakeholders, including other agencies, Parliament and the Northern Ireland Assembly. Greater clarity on our role compared to other public bodies was requested. Respondents also suggested that we ought to learn lessons from both the UK and overseas.

“It is vital that the OEP can undertake its activities without fear or favour, as advanced by the Chair. This commitment should not be constrained by lack of resources”

**Representative/membership body**

“It [the strategy] is somewhat lacking in consideration of how this leads to measurable influence. It will be important for the OEP to be heard by government, and its advice and recommendations acted on. It would be helpful if influence was better reflected in the ‘what we aim to achieve’ section, and unpacked in the ‘how we aim to achieve’ section – to recognise the ways in which the aim of efficient and effective operation might deliver influence, and establish how success on this objective might be measured.”

**eNGO/charity**

## OEP response

Overall, there was strong support for the approach we consulted on, and a consensus that it is appropriate to our role and remit and will support us to achieve our objective.

We listened carefully to feedback on this section and others that our approach in Northern Ireland must be better defined. We have further developed our approach to exercising our functions in Northern Ireland and explained this in more detail. We have added information on the staff, location, and access to expertise we will have, and how our whole organisation will work to deliver our Northern Ireland functions as effectively as possible.

To clarify our role in relation to other public bodies, we have added more detail in section 3.8 of the strategy. This particularly aims to clarify the difference in roles between primary environmental regulators, such as the Environment Agency or the Northern Ireland Environment Agency, and the OEP. While we appreciate concerns about resourcing, we have not amended the strategy in this regard. This is because our corporate plan explains how our long-term resourcing needs will be reviewed this year, whereas our strategy explains how we will exercise our functions within the broad level of resources made available to us.

### 2.2.5 Comments on whether our four strategic objectives will lead us to pursue our principal objective and achieve our mission

Question five of our consultation sought views on whether our four strategic objectives will lead to us achieving our principal objective and mission: to protect and improve the environment by holding government and other public authorities to account. We received 41 responses to this question, containing 85 comments.

Thirty-three comments expressed support for the objectives. Respondents stated they believed the objectives link well together, will hold government to account and help us achieve our principal objective and mission.

“We are very supportive of the OEP’s strategic objectives as set out in the consultation. We think the OEP has identified the right initial objectives so that it is able to achieve its mission to protect and improve the environment by holding government and other public authorities to account and its principle objective to contribute to environmental protection and the improvement of the natural environment.”

**Business/industry**

Thirteen comments expressed concerns about the scope of our functions in law; others sought greater reflection of the impact on people from environmental harms in our objectives.

A number of respondents highlighted particular environmental issues which they felt should be given specific prominence, such as climate change or nature degradation. Others suggested the objectives could express greater urgency, for example by emphasising the need for prevention or proactive action; or include the need to act proportionately. Six emphasised the role stakeholders can and must play for us to succeed.

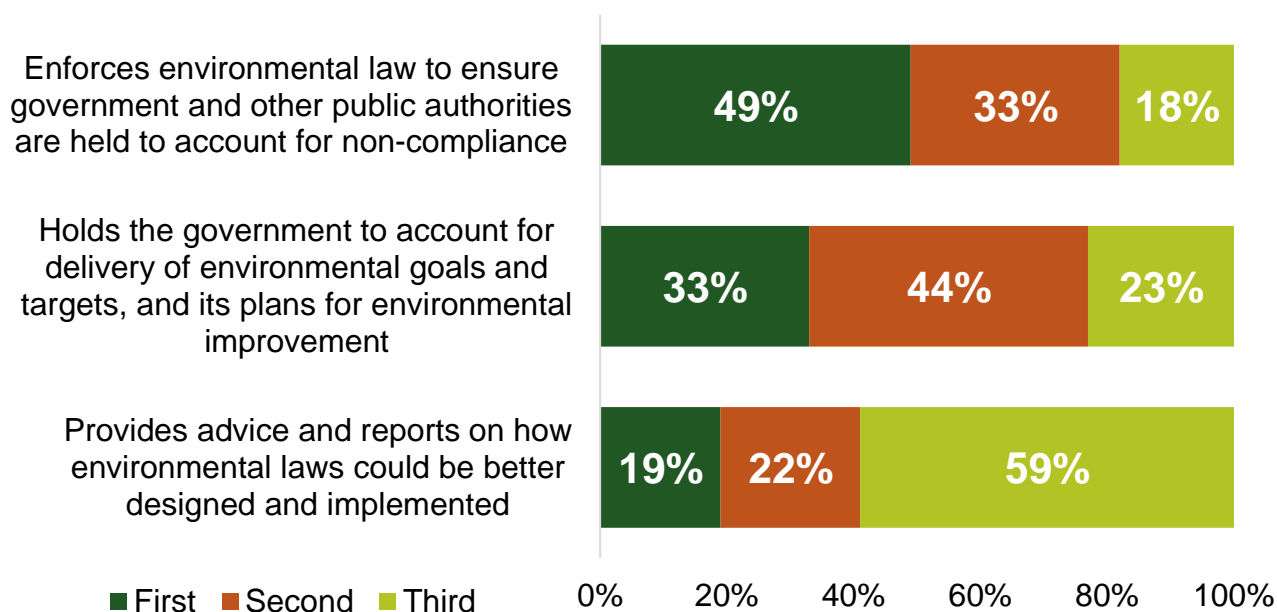
“We might have expected more recognition in the draft strategy of the scale of the challenge and the pace of the actions needed to protect and improve the environment [...]. While the OEP can be successful in investigating important individual complaints, it is much more of a challenge to use its reporting and advisory functions to deliver systems change at the scale and pace required.”

**Representative/Membership Body**

In our public engagement, over 80% of respondents viewed all four of our strategic objectives as important or very important.

We asked respondents to rank the objectives, except for operational efficiency and effectiveness. Enforcing environmental law (improved compliance) was ranked first by nearly half of respondents (49%), a third (33%) opted for holding the government to account for delivery and 19% for advice and reports on environmental law. Respondents emphasised the importance of acting strategically, where intervention can have the greatest effect, and had high expectations of what we can achieve.

**Figure 3.** How important or not is it to you that the OEP does each of the following?



## OEP response

There was a high level of agreement that our objectives will lead us to achieve our mission. Our public engagement was positive.

We have carefully considered the concerns and suggestions received. A number relate to other sections of the strategy, and we have considered them in our review of the related consultation questions as appropriate.

We have considered whether our objectives should reference specific environmental concerns, express a more proactive approach, or make further specific reference to proportionality or the protection of people from the effects of human activity on the environment. We note that protecting people features in our second and third strategic objectives, and in how we define our role.

Taking account of views overall, we judge that the objectives properly reflect a proactive use of our functions to secure our principal objective, and that our approach to proportionality is given appropriate prominence elsewhere in our strategy. Given the extent of support overall, we have confirmed the objectives that we proposed at consultation.

## 2.3 How we will prioritise

### 2.3.1 Comments on our approach to prioritisation

We received 45 responses to this section. Together they contained 135 individual comments.

Overall comments were positive or neutral. Thirteen respondents considered the approach to prioritisation appropriate, and five said that it would support delivery of the best environmental outcome. One respondent welcomed the principles but considered the setting out of factors unhelpful and overly prescriptive.

“The OEP’s approach to prioritisation is clear and well-presented. Section 3.2 of the draft strategy explains how the OEP will act selectively and strategically to ensure its resources have the most impact. We welcome the OEP’s stated aim in principle.”

**Representative/membership body**

Twenty comments included suggestions for specific improvements to wording. Others highlighted concerns. Of these, the issue most frequently raised was that serious issues or significant areas of law may not be prioritised. This was most often cited in the context of our enforcement functions. Four respondents put the case forward for more resources, to mitigate this risk. Respondents also expressed concern that the approach would result in our remit in Northern Ireland receiving insufficient attention, given the scale of the effect there could be considered smaller, and thus not prioritised.

“The absolute dismissal of even serious environmental law failures in enforcement if they are not in priority areas is alarming. These should be monitored, and a case made for additional resources, if the OEP is unable to address all serious failures.”

**Representative/membership body**

“Using these principles of prioritisation and considering the relative sizes of England and Northern Ireland could very easily lead to an exclusion of any work in Northern Ireland. [...] Obviously, in some/many cases the problems facing the Northern Irish and English environments are similar and there may be impacts here of work there, but it will be difficult to allocate your scarce resources to work primarily of relevance to our legal and environmental situation. Again, we think that there needs to be some requirement/funding allocation/strategic priority to address Northern Ireland specific issues if it is going to be at all possible for the OEP to fulfil its role here.”

**eNGO/charity**

“As part of its prioritisation approach the OEP should consider whether actions are being taken under any other legislation/provisions (e.g. where public authorities are aware that there is a particular issue/concern and are already actively committed to addressing that issue).”

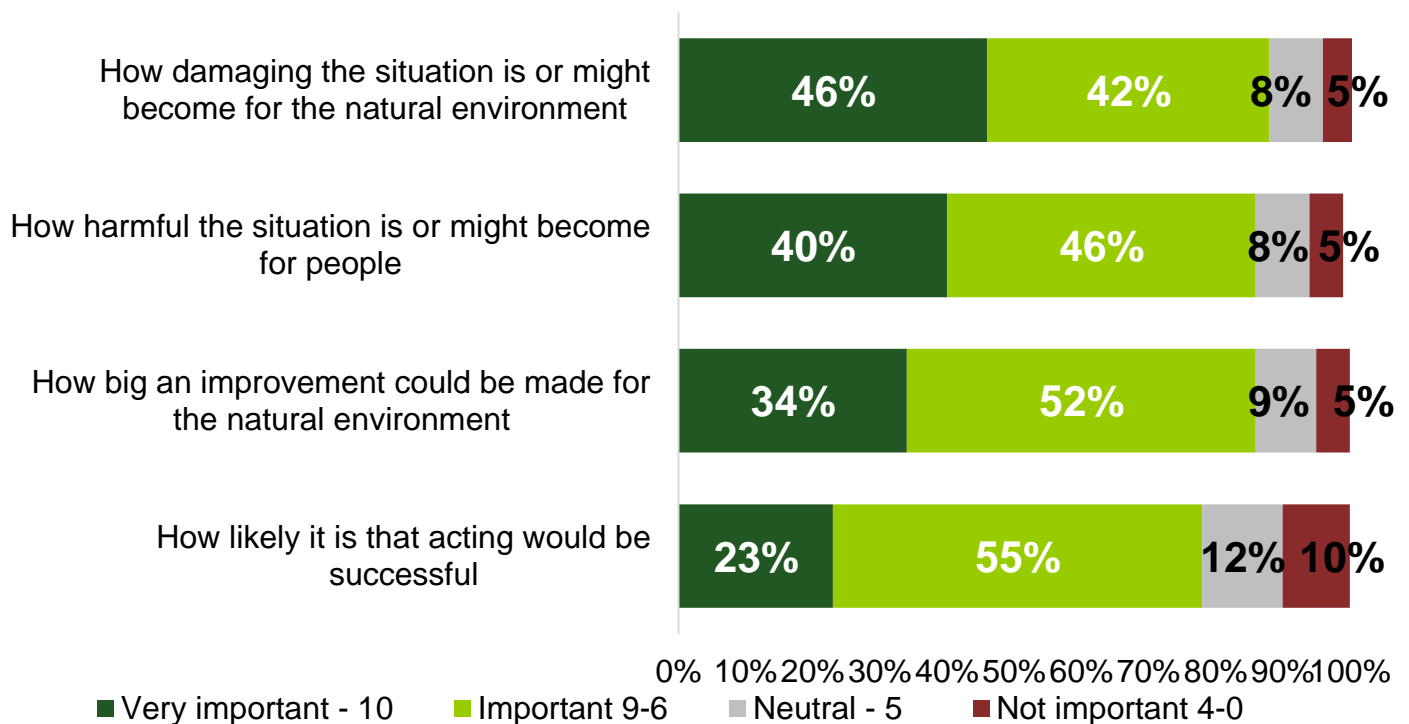
**Business/industry**

Seventy-six of the individual comments, were suggestions on a wide range of aspects of the approach to prioritisation and broader issues in the strategy, though there was little correlation between the suggestions. Three respondents judged that socio-economic factors, and the need to be proportionate, should feature explicitly in the prioritisation approach. Seven made suggestions about the nature of the evidence we should consider

when prioritising. A small number of respondents sought greater clarity on when and how we would take account of, and work with, others when prioritising.

We asked the public questions about some of the factors underpinning our prioritisation approach. Respondents ranked these in order of importance (see figure 3).

**Figure 4. When deciding what issues to act on, how important or not do you think the following are for the OEP to consider?**



Respondents agreed that prioritisation should lead us to protect the natural environment. Views ranged on prioritising short-term, visible fixes over longer-term systemic change. Whilst damage was a key priority for us to focus on, respondents debated whether preventing or reacting to damage should be our greater priority.

“I think reducing harm to people and the environment has to be a priority. Likelihood of success should not be prioritised because it could lead to only ever picking low hanging fruit and letting the biggest offenders get away with more.”

**Focus group Northern Ireland**

## OEP Response

In general, the responses supported the approach we set out at consultation. We have therefore adopted the approach broadly as outlined. However, the question about this section generated a range of specific suggestions and proposals. We considered each when developing our final proposals and made some amendments accordingly.

We note the concern that prioritisation will result in some issues not being progressed. We have added an explanation about what we will do where issues are not prioritised to respond to changes in circumstances and new information that arises. We have also explained when we will prioritise, given concerns that our approach may be prescriptive, and insufficiently responsive to emerging concerns.

We have expanded and clarified the section on strategic fit. This emphasises the importance of our unique ability to act in this judgement. In the light of the consultation, we have explained how our judgement of strategic fit includes a judgement of the balance of our activities across England and Northern Ireland overall, to ensure it is appropriate for the resources Defra and DAERA each provide. We have also clarified that our judgements about the scale of issues, and opportunities for improvement, will be made in an England or Northern Ireland context, where relevant. In this way, we aim to ensure that we cater appropriately for issues in Northern Ireland in our prioritisation approach.

## 2.4 Enforcement

### 2.4.1 Comments on our approach to determining whether a failure is serious

Overall, respondents welcomed our approach to assessing whether a potential failure to comply with environmental law is or may be serious.

“Excellent approach to assessing seriousness.”

**Individual**

“This is logical and well described [...] A risk-based approach to assessing failure is what we would expect and would support.”

**Business/industry**

Several respondents raised concerns that the proposed approach does not provide sufficient scope to identify cumulative issues or individual matters that when taken together reach the seriousness threshold. However, other respondents valued the approach we intend to take – including the importance of prioritising systemic issues.



Some respondents made comments about whether and how issues around public authority resourcing and underfunding would be factored into our assessments of seriousness.

“The serious failure test appears very focussed on individual instances, and there needs to be reference to cumulative harm and wider issues and commentary about looking at complaints collectively which is important as more than merely incidental to the main thrust of the test”

**Representative/membership body**

“This approach has been designed for an incident or event, so it is more difficult to see how it might be applied to a low level, diffuse or compounding problem, such as air pollution or litter.”

**Business/industry**

“We support the indications [...] that the OEP recognises the need to prioritise its attention on areas of environmental law where there is evidence of systemic failures of implementation and enforcement. “

**Business/industry**

“It would be useful if Section 4.2 of the enforcement policy could confirm how, where a public authority fails to comply with environmental law due to the misallocation of resources, any governmental failure to provide adequate funding would impact upon the OEP’s assessment of seriousness and what action the OEP would be able to take to address the issue.”

**eNGO/charity**

We asked the public which of the factors in our draft enforcement policy were most important for deciding whether a failure to comply with environmental law was serious. The most important factor was whether any harm has been, or may be, done to the natural environment (65%), followed by whether any harm has been or may be done to people (56%). Matters of legal precedent (42%), frequency (36%) and public authority behaviour (32%) were also considered important. Respondents also offered other factors to consider, including the amount or extent of damage, impact, intent, and reversibility.

## OEP response

Overall, respondents welcomed our proposed approach to assessing the seriousness of a potential failure to comply with environmental law.

We intend that the approach will allow us to account for all the relevant circumstances of any case. With this in mind, we have made changes in the enforcement policy to clarify our approach to assessing any relevant mitigating or compounding elements.

We recognise that we will need to be intelligent and strategic in our enforcement action. As part of this, consideration of the cumulative impact of issues identified through complaints and other intelligence gathering will be vital to successfully meeting our strategic



objectives. Following consultation feedback, we have made it clearer in the strategy and enforcement policy that cumulative issues can be captured and assessed in line with the factors set out; both in terms of the seriousness of systemic failures and the collective impact of multiple individual harms to the natural environment or to people.

Having reflected carefully on consultation responses, we do not consider the resourcing of public authorities is a factor in whether a suspected failure to comply with environmental law is serious. We explain in our approach to enforcement that it will be relevant to our overall assessment of how we progress any matter. If we find that the availability or management of resources is a factor, then we will highlight and comment on this as part of our root cause analysis and set this out in investigation and other reports we publish.

## 2.4.2 Comments on our approach to determining whether damage is serious

Overall, respondents agreed with our proposals for determining whether damage is serious.

“Overall, we support the approach to considering whether damage is serious”

eNGO/charity

Some respondents raised concerns about the extent to which cumulative harm can be identified and assessed as serious through the approach set out in the enforcement policy. Comments suggested an appetite for us to prioritise and respond to multiple, smaller issues which may not individually be considered serious but do, when considered collectively, indicate an area in need of attention. Some respondents raised concerns about our ability to recognise as priorities issues in Northern Ireland, if assessed against competing matters at a UK-wide level.

“It is unclear whether the Enforcement Policy really captures the risk of cumulative harm fully. For instance, a one-off event with a small impact may not satisfy the test at p. 17 of the Policy but such an incident could be serious if the event is repeated in both time or space or both. Incidents that are minor in themselves can be serious either where they combine with others to lead cumulatively to significant consequences (as with so many forms of diffuse pollution) or where they evidence a larger pattern of non-compliance.”

**Representative/membership body**

“Whilst the geographic scale of damage is important and can facilitate targeting efforts (i.e. across a whole water-basin or a single river), comparison must not be made on such matters between England and Northern Ireland in relation to scale. A proportionate approach to use of size of effect – i.e. direct comparison of hectares between countries would be inappropriate – must be utilised so as to ensure failures in England are not frequently prioritised over Northern Ireland.”

**Representative/membership body**

We asked members of the public to consider the factors to determine seriousness, as set out in our draft enforcement policy. Respondents ranked the severity of damage (52%) as most important, followed by whether people or the environment will be able to recover (46%) and whether the matter has broader significance (39%). Other factors were suggested including the amount or extent of damage; short and long-term impacts to the natural environment and human health; reversibility; and the costs (financial and otherwise) of the remedy.

## OEP response

We intend to take account of cumulative harm, and identify systemic issues, using the factors listed in the enforcement policy, as we come to a judgement on overall seriousness. We have updated our enforcement policy to make this clearer.

We noted concerns that the geographic scale of Northern Ireland, relative to the wider UK, may affect prioritisation of issues there. We have updated the enforcement policy to clarify that ‘national implications’ is a flexible term, that we will apply to national issues affecting Northern Ireland, England, or the whole of the UK, depending on the issue at hand.

The assessment of the seriousness of damage in any specific case will be undertaken based on the particular facts and merits of the issue in question; the relative size of the area where damage is being caused is only part of one factor that we will consider. At the prioritisation stage, we may take into account the relative seriousness of damage as compared with other issues, but we now make clearer that we will keep in mind the differences in geographic size between England and Northern Ireland to avoid inappropriate reliance on the size of the area affected.

We have made it clearer that, when assessing the seriousness of a potential failure to comply with environmental and any associated harm, we are able to consider the mitigating (indicating less seriousness) and compounding (indicating greater degree of seriousness) elements of each individual factor we take into account. We have explained this further on page [18] of the enforcement policy.

### 2.4.3 Comments on our approach to enforcement

Respondents provided considerable positive feedback on our overall proposed approach to enforcement.

“We agree that the OEP’s resources are best spent focusing on when failures to comply with environmental law are systemic, recurrent or may cause serious harm. “

**Industry/business**

“We agree that breaches should be resolved through dialogue and agreement and that formal court proceedings should be used only as a last resort.”

**Local authority**

A small number of respondents noted the draft enforcement policy’s focus on the documents and materials we are not allowed to disclose as part of enforcement activities. There was concern about how we will work to ensure our enforcement processes are sufficiently transparent. Some respondents sought clarification on our proposals and abilities to monitor public authorities’ actions in response to recommendations we make. A small number of respondents queried our approach to determining when it would be appropriate and helpful to apply to intervene in an ongoing judicial review challenge.

“There is concern about the confidentiality provisions and keeping the public informed.”

**Representative/membership body**

“We note that following all investigations the OEP will prepare a report setting out recommendations, with expectation that public authorities will comply with any recommendations you make. We would welcome further details of how this will operate, including any monitoring requirements.

**Statutory agency**

## OEP response

Taking account of views from consultation responses, we have updated the enforcement policy to more clearly describe our approach to both transparency and confidentiality. It will be important for us to record and use information gathered to track topics and identify repeat problems and systemic issues. We will keep a record of the information we obtain and complaints we receive, even where we do not take action. We have updated the enforcement policy to expressly include this point.

The enforcement policy sets out that we will monitor public authorities’ implementation of our recommendations and may take further enforcement action where necessary. We will develop our approach to monitoring in light of our experience. We expect that this will be an area we expand when we review the enforcement policy, as part of our broader review of our strategy in 12 to 24 months’ time.

We have updated the enforcement policy to explain more clearly our approach to intervening in cases brought by third parties. We will be guided by consideration of whether our intervention contributes towards our principal objective through providing assistance to the court.

We acknowledge the comments about our need to have access to sufficiently robust enforcement tools. The scope of our broad enforcement powers is set by the Environment Act. We cannot issue penalties or fines in response to non-compliance with environmental law. However, we have been established with bespoke enforcement tools which we will use to hold government and other public authorities to account.

## 2.5 Scrutinising Environmental Improvement Plans (EIPs) and targets

### 2.5.1 Comments on our approach to balancing our activities between monitoring overall progress and monitoring selected areas in more detail

We received 39 responses to this section. Together they contained 87 individual comments. The feedback was largely supportive of the approach.

A small number of responses requested further detail on the exact balance and scope of the detailed activities, and in particular the relationship between deep dive activities in England and Northern Ireland.

“The OEP’s strategy establishes that it will rightly take a system-wide approach to monitoring progress, which is something we support. In so doing, it will help the OEP to have the widest possible approach in monitoring overall progress. The research programme mentioned in the strategy will also play a significant role in ensuring the OEP can, if needed, carry out this function on specific areas in greater detail. Being able to do both – overall progress as well as selected areas – will be important and will support the development of a clear picture of overall environmental progress.”

**Representative/membership body**

“With finite resources it seems to be a sensible compromise to monitor specific areas of environmental concern in greater depth each year. This will enable the OEP to develop greater insights and address particular issues or shortcomings in design or delivery of environmental law

**Statutory agency**

“Having both approaches is very important. Again, we strongly urge you to have both general reviews of the Northern Ireland EIP targets and specific local aspects for in detail investigation; these may well differ from those selected for England given our different status with regard to specific problem areas and different legislative and environmental priorities and challenges.”

**eNGO/charity**

We asked the public for their view on how we should balance monitoring of overall progress towards environmental improvement plans and monitoring selected areas in more detail. The responses were closely balanced across both. When asked to choose, 58% of respondents thought we should deliver in depth assessments on particular issues, compared with 42% who chose an overview.

#### OEP response

Respondents supported our approach to balancing scrutiny of the EIPs and targets, with comprehensive monitoring and deep dive activities. We have clarified that these activities

could be done across both England and Northern Ireland, where there are common issues and merit in a combined approach. This would avoid duplication of efforts and allow us to maximise our resource for greatest impact. We have not provided further clarity on the exact balance or scope of the activities in the strategy, as this will be outlined further in our corporate plan and future monitoring reports.

## 2.5.2 Comments on our approach to scrutinising EIPs and targets

We received 35 responses to this section. Together they contained 97 individual comments. The comments were largely supportive of the approach.

Several specific recommendations were made to re-affirm and clarify our approach, including how we plan and look back on activities, and whether they have been achieved. Others asked us to consider the wider context and socio-economic implications of our actions.

“In carrying out its scrutiny function in relation to the EIPs and targets, the [REDACTED] warmly welcomes the broad approach the organisation has taken in this regard. We would encourage the OEP to consider the whole framework underpinning targets, so that it includes long-term as well as interim targets...Other existing targets and commitments, either via international agreements or emanating from carried over EU legislation, must also be covered as part of the EIPs and the OEP’s scrutiny of them. Otherwise we run the risk of having gaps in our environmental regulatory and legislative landscape develop over time, as previous commitments run out or transposed legislation is reformed or expires. To maintain momentum and ensure continuous progress, it will be important that the OEP proactively monitors the landscape of existing targets and commitments so that any potential gaps are identified and flagged early on.”

**Representative/membership body**

“The OEP must fully consider the wider social and economic impacts of any of its recommendations and not focus solely on environmental outcomes. Unintended consequences must also be considered as part of this process as well as exceptional circumstances e.g. Covid-19, Russian-Ukrainian situation.”

**Representative/membership body**

### OEP response

Respondents supported the approach overall. We have adjusted our strategy to address comments suggesting a need to provide further clarity on the scope of our scrutiny of targets.

We have also confirmed that our approach will plan ahead over the EIP cycle, as well as track back to check on implementation.

While we have not added specific consideration of socio-economic factors, we agree these are important factors, alongside many others. Though we have not listed the full range of

factors we will consider, we have been clear that we will examine all the drivers and pressures that act on the environment, as well as any interconnected societal aspects.

## **2.6 Scrutinising environmental law**

### **2.6.1 Our interpretation of how we will monitor and report on the implementation of environmental law**

We received 34 responses. They were largely supportive of our approach. Respondents' views differed on how widely we should interpret this function. Some respondents asked us to comment on any law we consider detrimental to the environment. Several responses suggested looking at resourcing as a factor in implementation and proposed taking a holistic approach to looking at environmental law alongside other matters. Others asked us to scrutinise guidance and codes of practice. The importance of data and using baselines was also raised.

Some responses asked us to consider the impact of environmental law on businesses. Others reminded us that disadvantaged communities may suffer the worst environmental harm. There was widespread support for stakeholder engagement, and for sharing our work programme so that others can input. We were asked to clarify how stakeholders will be able to raise issues about how environmental law works in practice.

#### **OEP response**

In response to feedback, we have considered our definition of environmental law included in the strategy. It is based on that in the Environment Act- the legal basis of our functions. We do not consider this legal definition to be wide enough to cover any law detrimental to the environment, as some respondents had requested. We have, however, updated our definition to explain that environmental law can include laws which deal with other subjects, where the relevant provision is mainly concerned with environmental protection.

In common with respondents, we recognise that resourcing may be a significant factor in the effective implementation of the law and we reflect this in section 2.3 of the strategy. We agree fully with respondents that we will need to engage with a wide range of stakeholders, including those affected by environmental harms. We have adjusted the explanation of environmental harm to make it clear that we will take a broad and strategic view. We have also made changes to be clearer about our intention to set out a programme of work so that stakeholders can plan to provide evidence or seek to provide input on environmental law. Environmental concerns can be raised with us through our website, by telephone or in writing.



## 2.6.2 Other approaches to scrutinising the implementation of environmental law that we should consider

We received 25 responses to this section. They were largely supportive of the approach we outlined. Respondents suggested topics and issues for us to scrutinise including gaps in legislation, overlap of legal regimes, environmental impact assessment and lack of enforcement of environmental law.

As a specific example, it was suggested we consider how we will work with any future Northern Ireland Climate Commissioner to scrutinise the wider environmental implications of the Northern Ireland Climate Change (No.2) Bill, if it receives Royal Assent, and any impacts of its implementation on air, soil or biodiversity targets.

Respondents proposed a flexible approach to our implementation of this function. We were asked to include regulated businesses and practitioners in our stakeholder engagement related to scrutiny of the implementation of environmental law. It was suggested that we should report on implementation of law that government is likely to amend (for example, retained EU law). It was further suggested that we should learn from the experience of other countries and should work closely with the devolved governance bodies in Scotland and Wales.

“We have a unique opportunity in the UK to compare and learn from approach of three new regulators – discussions with counterparts in Wales and Scotland on their approach to scrutiny to ascertain best practice would be welcome.”

**Individual**

“It may be helpful to provide a ‘Lessons Learned Aid’, highlighting examples of areas where agencies/authorities have been investigated and where improvements have been identified. This resource could be used by other agencies/authorities to identify if similar issues exist so that they can take appropriate and timely action.”

**Statutory body**

### OEP response

We welcome the feedback about taking a flexible approach and agree with respondents that successful scrutiny will require working with and learning from others. We acknowledge the topics and issues that respondents suggested we might focus scrutiny upon and have made it clearer in sections 3.2 and 3.3 how we will prioritise and take an issues-based approach in delivering this function. We take on board feedback that our approach to scrutiny will need to be attentive to the timing of new legislation and the opportunities that this provides to achieve influence.

## 2.6.3 Comments on our approach to scrutinising environmental law

Responses to this section included some overlap with previous sections about monitoring the implementation of environmental law, and aspects of our other functions. We were

encouraged to be proactive in our scrutiny of environmental law, for example considering laws laid out in the Northern Ireland Protocol to ensure that aspects of environmental law do not go unscrutinised. We were also encouraged to be proportionate. One response queried whether we were proposing to go beyond our remit in the Environment Act. Another suggested that possible problems with inconsistencies in the implementation in different environmental laws may originate not in those laws themselves, but rather in wider societal or other issues that generated the need for them.

Stakeholders were pleased to see reference in our approach to keeping them informed and involved and expressed hope that we could facilitate cooperation across policy areas. Stakeholders reiterated the importance of data and monitoring and of seeking involvement in policy development at an early stage, noting the importance of planning law on the environment, and asking public authorities to identify law which is not working well in practice.

“The draft strategy outlines that the OEP intends “to look beyond questions of legal compliance to cover the wider context and framework of implementation of environmental law” ... (pg. 27). In short, we are concerned that the areas of responsibility outlined represent a significantly wider remit than that envisaged for the OEP under the Environment Act and indeed go much further than the previous role undertaken by the EU.

**Representative/membership body**

“Our concern is that environmental law is often a response to a problem, so undue focus on environmental law risks prioritising end of pipe solutions too heavily (Page 15). This is also relevant where the OEP will be looking at consistency between different environmental laws. The source of inconsistencies may be generated not by the environmental laws themselves, but by the societal or other policy decisions that gave rise to those environmental laws in the first place (page 27-28).”

**Representative/membership body**

## OEP response

We recognise the need to work with others in our approach to scrutiny and we reference this in our strategy. We have updated the sections of our strategy which explain how we will work with others. We have expanded the explanation of how we will consider transboundary issues and work as necessary with institutions in the Republic of Ireland and the European Union.

On the question of proportionality, we have not discussed this specifically in this section of the strategy. Rather, we present our approach to proportionality in section 3.9 of the strategy, which applies to all of our functions.

We are confident that we are not straying beyond the remit envisaged for the OEP under the Environment Act. We draw a distinction, in particular, between our enforcement



functions discussed in section 3.4 of the strategy, and our function of scrutinising environmental law discussed in section 3.6. Our monitoring and reporting is intended to provide advice and insights to Government, Parliament and the Northern Ireland Assembly. In this context, we believe it is necessary and appropriate to look beyond questions of legal compliance in scrutinising the implementation of environmental law.

In this context, we note the observation quoted above which suggests that inconsistencies in different environmental laws could in some cases stem from wider societal or other issues, rather than simply problems in the laws themselves. We have made reference to this issue in the strategy as a point for consideration if we identify such conflicts or tensions.

## 2.7 Advice

### 2.7.1 Comments on our approach to advice

We received 31 responses on our approach to advice. These were largely supportive. Respondents asked us to base our advice on data and several comments asked how we would ensure our advice was followed.

“We are broadly supportive of the outlined approach to advice. [...] we are very concerned that the OEP has limited mechanisms to ensure their advice is actioned, so public pressure is going to be an essential tool in holding Government to account. As such, we believe all advice issued to Government should be public to ensure that the eNGO sector and the public more widely can apply pressure to deliver against the OEP’s advice.”

eNGO/charity

The importance of our independence, particularly in Northern Ireland, was mentioned in several responses. We were asked how we will advise effectively in Northern Ireland. We were also asked to explain how our advice function would take account of environmental aspects of the Northern Ireland Protocol and transboundary issues with the Republic of Ireland.

In other areas, respondents asked about our approach to advice on international law. We were also asked to consider carefully when choosing which consultations to respond to, to avoid duplication with the work of other bodies

“There is a huge number of consultations on environmental law and policy. The OEP should carefully select those that it will respond to. It should also ensure that it does not duplicate the work of others, such as parliamentary advisory or scrutiny committees.”

**eNGO/charity**

“Advice must take into account any cross-border issues between NI and ROI.”

**Representative/membership body**

## OEP response

While it is our objective to be influential, we cannot insist that our advice is followed. We have described in section 2.3 the means through which we will seek to achieve influence while acting in an advisory capacity.

Given feedback, we have emphasised the transparent approach we will take in publishing our advice and added clarity that we will evaluate whether our work has influence and be transparent about the result. Parliament and the Northern Ireland Assembly can also hold government to account on their decisions on what to do with our advice.

We agree that in developing advice we should consider the relevant data and evidence. Section 2.5 of the strategy also sets out that we will develop and continually improve our access to the best available science, knowledge and expertise. Our advice will be based on this.

We have made changes to the strategy to make it clear that our independence is legally protected. We have also amended section 3.7 and other parts of the strategy to cover transboundary issues and other matters in Northern Ireland, including the Northern Ireland Protocol (section 3.8). Our advice in Northern Ireland is to a department, which means it can be given in the absence of an Assembly or Executive.

We do not have a specific role in monitoring or enforcing international law. Where commitments under international law are incorporated into UK or Northern Ireland environment law, however, they fall within our advice and other functions.

We will act strategically in responding to consultations as set out in section 3.7 of the strategy, applying the approach to prioritisation which we set out in section 3.2, including in cases where we have not been asked for advice and choose to act on our own initiative. Section 3.8 of the strategy sets out how we will avoid duplication with others, which we also discuss in our approach to prioritisation in section 3.2.

## 2.8 How we will work with others

### 2.8.1 Comments on how we will work with others

We received fifty responses to the section on how we will work with others. Respondents were welcoming of our ambition to work with stakeholders collaboratively. Others observed the links between the OEP and existing regulatory bodies or roles, both locally and internationally.

“The OEP’s ability to succeed will depend on how well it can work as part of a wider ecosystem of organisations and experts, so it is positive that the Strategy identifies the importance of working with others.”

**Representative/membership body**

“It might be useful to add a new heading to section 3.8 which explains how the OEP will work with international environmental bodies as well as environmental governance bodies in the EU and the Republic of Ireland as this is not currently included in this section of the strategy.”

**eNGO/charity**

Some respondents highlighted concerns about timescales and potential for delays; others with the potential overlap of roles between the OEP and other bodies, most specifically related to transboundary issues between Northern Ireland and the Republic of Ireland.

Most of the comments made on our approach to working with others included suggestions. These included specific sectors, groups or organisations who stakeholders thought we should consult, or areas where the working relationship needed greater clarity, such as the business sector and eNGOs. It was pointed out that we should explain how we will work with international environmental bodies. Some respondents highlighted a need for more detail on what stakeholders’ roles will be, recognising the time and cost burden of engagement to both the OEP and stakeholders themselves. Other comments included specific suggestions on the method of our engagement such as setting up working groups or panels to build up expertise.

#### OEP response

We have updated our strategy, adding information about our overall approach to stakeholder engagement, to address comments about stakeholders’ roles, potential burdens, resourcing and capacity. We acknowledge that this will develop over time as we fulfil our role and exercise our functions.

We will consider specific suggestions about sectors, groups or organisations with which we should engage, and the different approaches to use, as we implement our stakeholder engagement approach.

We have added detail about how we will engage with institutions in the Republic of Ireland and the European Commission to section 3.8 of the strategy. We also consolidate our approach to transboundary issues and matters connected with the Northern Ireland Protocol in this section. This responds to comments made in this section, and elsewhere, seeking greater clarity on our approach in this regard.

## 2.9 Objectivity, impartiality, proportionality and transparency

We must undertake our work objectively and impartially, and have regard to the need to act proportionately, and transparently. We received consultation feedback that we should explicitly describe how we will do this in each of our strategic objectives.

We asked the public for their views on how we should behave. Respondents agreed that they would most like to see us work transparently (51%) and independently (45%). Further comments on objectivity, impartiality, proportionality and transparency from the consultation and the public forums are captured below.

### 2.9.1 Comments on our approach to objectivity

Most of the comments about our approach to objectivity were positive. Many respondents commended our evidenced-based approach, as well as our commitment to avoiding undue influence. Most respondents were supportive of the view expressed in our strategy that, whilst we will consider public concerns as one factor within our wider judgement, we should not be unduly influenced by these concerns.

Further responses, whilst generally supportive of the OEP's approach, suggested that the strategy could go further in explaining how "public concern" is assessed in the context of evidence and our wider prioritisation approach.

"It is important that the OEP's primary focus is on the environmental consequences of acting/not acting, and that public interest should be given limited weight as it is not necessarily an indicator of the environmental implications of a situation".

**Representative/membership body**

"While your desire to avoid 'popular public concerns' is acceptable where these are driven by individual interests, using the public to identify important local issues, provide information on (for example, pollution hotspots or illegal waste sites), and in general be the 'eyes and ears' of the OEP must be maintained".

**eNGO/charity**

Respondents also raised a concern that the precautionary principle had not been explicitly referenced within the strategy.

Whilst respondents agreed it is critical that we act objectively, some voiced scepticism about achieving it. Some respondents proposed our staff adhere to strict guidelines, be

evidence-based and use peer review with other organisations as a tool to assure objectivity.

## OEP Response

We have updated our strategy to recognise the important role the public has in bringing concerns to our attention. Having considered the responses carefully, we have, on reflection, decided against using this section of the strategy to elaborate further on this issue. Our prioritisation section and enforcement policy explain how we will consider a range of factors as we make judgements about our priorities, including public concerns.

### 2.9.2 Comments on our approach to impartiality

We received 60 comments on our approach to impartiality. Most were general and supportive of our approach. Respondents were keen that impartiality be reflected in all aspects of our operations, especially as stakeholder trust depends upon it. A few responses expanded upon this to reflect that a conflict of interest could arise given we receive our funding from central government. One respondent expressed concern that our approach could lead us to giving undue weight to views not substantiated by evidence.

“The claim that impartiality “is about being independent and fairly giving all sides equal consideration without bias” has the potential to create situations where scientific evidence is erroneously considered to warrant equivalent examination to unjustified or subjective claims, jeopardising the OEP’s goal of objectivity. It is also likely to lead to inefficiencies and poor prioritisation of limited OEP capacity if significant time is given to the consideration of perspectives or “sides” which lack evidentiary merit.

**Representative/membership body**

Our public survey respondents agreed that we should act impartially but questioned how we would do so. They stated they would like us to deliver our aims and be able to show the rationale for actions or decisions not to act. One focus group participant described impartiality in the OEP as:

“Telling truth to power. Not allowing their reports to be redacted. Not allowing the government to appoint their head. Being prepared to enforce whenever required regardless of which company or government department.”

**Focus Group England, Age Group 41+**

## OEP response

Given this feedback, we have updated our definition of impartiality to reflect that we will give equal consideration of the evidence on all sides of a debate in reaching our view on a matter or deciding how to proceed. This is to clarify that while we are open to all

submissions and evidence, our final decision will be our own, made without prejudice or bias and made objectively on assessment of the facts and evidence.

### 2.9.3 Comments on our approach to proportionality

We received 62 comments on our approach to proportionality. Most were supportive of our approach, indicating that it was appropriate and balanced. Individual respondents made specific suggestions. One respondent indicated concern that proportionality could be used to justify inaction, and that cumulative impact and unintended consequences should form part of our assessment as to whether to act. Another indicated it was not clear how we would assess whether the impacts of our actions were justified by the anticipated benefits to environmental protection or improvement.

A further respondent indicated that they would welcome explicit recognition of the need to be proportionate to social and economic considerations.

Respondents to our public survey recognised the importance of us acting proportionately but were explicit that it should not be used as an excuse to not act. Participants were particularly clear about proportionality in relation to enforcement activity.

“Clearly set out what decisions they are taking, and why, and show that they are in line with their rules of enforcement, so public bodies etc know what the enforcement will be if they fail to comply with rules.”

**Focus Group - Northern Ireland, Age Group 18-40**

### OEP response

Given the overall positive feedback, we have not made specific changes to this section of the strategy. We have updated the approach to prioritisation set out in our strategy and our assessment of seriousness set out in enforcement policy to reflect the comments on cumulative impact, unintended consequences and the role of other regulators.

### 2.9.4 Comments on our approach to transparency

Responses were largely supportive of the transparency section of the strategy. Respondents made several suggestions to help us be transparent. These included: making all information publicly available (not redacted); publishing minutes of meetings; and listing evidence gathered, decisions made and the result of each case without the need for a Freedom of Information request.

The feedback did contain some more detailed recommendations. For example, it was suggested that the Environmental Audit Committee conduct annual reviews of our reports. It was also proposed that we promote and facilitate an improved understanding of

environmental law and policy. A further suggestion was to include a more detailed list of the things that would or could not be published.

The public noted that it is key we are transparent, especially for building our reputation and trust with the public and stakeholders. Whilst considering transparency to be critical, there was some cynicism amongst respondents about whether we will be able to deliver it.

## OEP response

We agree that transparency will be important to our success. While noting the intent behind detailed suggestions, we consider that they are not generally appropriate for inclusion in the strategy given the level of detail we set out. We will consider these suggestions as we exercise our functions. However, we have amended this section to include recommendations to specifically mention the Freedom of Information Act 2000 and to include publishing information on resourcing and funding. We have already stated our intention to be as transparent as we reasonably can.

## 2.10 General comments

Our final consultation question captured any further comments about our strategy and enforcement policy. Many contributions identified or repeated points about specific sections considered above. We have included these in our assessment of those questions.

Respondents also used this final question to express hope that we will achieve our ambitious mission and objectives. They expressed gratitude for the robust engagement across a breadth of stakeholders and welcomed the inclusion of the marine environment from the outset. Respondents reiterated feedback that there is more to do to embed Northern Ireland firmly and holistically in the strategy and enforcement policy.

Respondents used the final question on our enforcement policy to raise issues about our proposed approach to enforcement which were not already captured. This included the importance of clarifying the distinctions between court review procedures in England and Northern Ireland.

We also received some comments about the precise meaning of environmental law and the need for the strategy and enforcement policy to be as clear as possible in this regard.

“Distinction between Environmental Review and Review Application: whilst we appreciate that the precise details e.g. court rules are still being considered, the enforcement policy should clearly identify the nuances between the two systems so as to ensure there is a better awareness of the processes through which the OEP will utilise its enforcement function.”

**Representative/membership body**



## OEP Response

Taking account of views from consultation responses, we have reviewed the enforcement policy and made changes where we feel that we can be clearer and to improve the overall accessibility of the document.

The way in which OEP can take public authorities to court differs in England and in Northern Ireland. In England, the statutory process is 'environmental review,' which is a bespoke process available to the OEP, the detail of which is set out in the Environment Act. In Northern Ireland, the OEP can take public authorities to court through making a 'review application,' which is a challenge by way of judicial review. We have reviewed the enforcement policy to ensure that the differences between these two procedures are highlighted in the appropriate places.

The OEP is only able to take enforcement action in situations where public authorities are alleged to have failed to comply with environmental law. Environmental law 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. We have updated the enforcement policy to further explain the meaning of environmental law in this context.

## Part 3. Conclusion and next steps

We are grateful to all those who took the time to respond to our consultation and took part in our public focus groups across England and Northern Ireland.

We are delighted with the overall positive and supportive response to the approaches we set out in our strategy and enforcement policy and look forward to working with others to put them, and our corporate plan, into practice. As the constructive feedback and suggestions in response to this consultation illustrate, this will not be without challenge.

Reflecting this, we aim to conduct a formal review of our strategy and enforcement policy in eighteen months' time, to hold ourselves accountable for their delivery. Our success will depend on our ability to continue to listen and learn, and we encourage our stakeholders to further engage with us, to help us achieve our mission.

## Annex A Consultation documents:

[OEP Draft Strategy and Enforcement Policy Consultation Document](#)

[OEP Draft Strategy.pdf](#)

[Annex A OEP Draft Enforcement Policy.pdf](#)



## Annex B Consultation respondents

The 60 organisations that responded to the draft strategy and enforcement policy consultation, either via the online consultation or in writing.

### Statutory agency (7)

Department for Agriculture Environment  
and Rural Affairs  
Environment Agency  
Local Government and Social Care  
Ombudsman  
Natural England  
Nuclear Decommissioning Authority  
REDACTED  
Northern Ireland Public Services  
Ombudsman

### Local government (4)

North Yorkshire County Council  
Hampshire County Council  
Devon County Council  
Mid and East Antrim Borough Council

### eNGO/charity (8)

ClientEarth  
Friends of the Earth  
National Trust  
Marine Conservation Society  
Plan B

### Campaign/action groups (4)

REDACTED  
Stop Portland Waste Incinerator  
National Flood Prevention Party  
Thames Crossing Action Group

### Law firms (2)

Harrison Grant  
Irwin Mitchell

### Academia (2)

University of Oxford Sustainable Law  
Programme  
University College London

### Business/ Industry (10)

Électricité de France (EDF) Energy  
Suez recycling and recovery UK

National Grid  
REDACTED  
Allwood Recycling Solutions Ltd  
Anglian Water  
REDACTED  
Thames Water  
Northumbrian Water  
Northern Ireland Water

### Representative/membership bodies (23)

British Retail Consortium  
Energy UK  
Law Reform Committee at the Bar Council  
Chartered Institution of Waste Management  
National Parks England  
National Farmers Union  
Aldersgate Group  
Broadway Initiative  
British Marine  
The Association of Directors of  
Environment, Economy, Planning  
and Transport (ADEPT)  
REDACTED  
Institution of Environmental  
Sciences  
Local Government Association  
UK Environmental Law  
Association  
Ulster Angling Federation  
Ulster Farmers' Union  
Mineral Products Association  
TechUK  
British Association for Shooting and  
Conservation  
Greener UK  
Northern Ireland Environment Link  
REDACTED  
Institute for Environmental  
Management and Assessment.