

Date

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Title

Vesting and Establishment of the OEP

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Paper for decision

Open in part

Issue

1. The OEP will be legally created (vested), become operationally independent of Defra (operationally go-live) and be provided with its substantive legal powers (functions commenced) during the two months following Royal Assent of the Environment Bill.
2. Transitional arrangements are needed for the period between OEP vesting in mid-November, and completion of operational go-live activities in early January. This is to ensure continuity in governance, leadership and financial management arrangements where the Board and Interim CEO are appointed to the OEP, yet staff and resources remain in Defra pending their scheduled transition date.
3. This paper summarises the implementation timetable, and the approach proposed for managing and taking decisions about safe implementation. It outlines the approach to transitional arrangements and seeks the delegation of certain decisions in this period to the Interim CEO.

Recommendation

4. The Board is recommended to:
 - a. note the key decision points in the transition to the OEP, and the readiness criteria against which readiness for each decision will be judged

- b. agree to delegate the decision at each point to the Interim CEO in consultation with the Chair, alongside those decision-makers in Defra where responsibilities are joint
- c. note the arrangements to be in place to manage transitional risks arising on vesting and agree to delegate agreement of a transitional governance and services agreement, and an asset transfer agreement to the Interim CEO in consultation with the Chair
- d. note that it will be asked to ratify decisions it has taken as an interim board by electronic business on legal creation of the OEP to enable continued governance of its own arrangements, and for important steps in the operational establishment programme to take place
- e. consider and comment on the communications plan at Annex A and note the intention for a launch event for the OEP on 24 January at the Royal Society, London.

Background

5. The Board has been updated on progress in establishing the OEP as a legal body, with operational functions. The OEP has been planned to become functionally established in three stages:
 - a. Vesting – when the OEP will be legally created as a body corporate, and the Board and Interim CEO will be appointed. The Secretary of State has committed that this will be in the days following Royal Assent of the Environment Bill.
 - b. Operational go-live – when the OEP becomes functionally independent of Defra, with its own finance, IT and HR infrastructure, press function and other matters. There will be a transfer to the OEP of its staff recruited initially into Defra. This had been planned for 1 December but, for the reasons given below, is now planned to take place in two phases before 1 January 2022.
 - c. Commencement of functions – when the functions of the OEP under the Environment Bill are legally enabled by Parliament. The Minister has committed that this will be within three months of Royal Assent and is planned for 24 January.
6. In its last meeting, the Board was made aware of risks to the ability of the OEP to operationally go live on 1 December. These risks resulted from delayed passage of the Bill, certain operational risks in the delivery of data necessary for HR and staff transfer purposes, and the expected timing of end-user computing equipment delivery.
7. A comprehensive review of the implementation approach was then in course with a view that as much activity as possible is completed on 1 December, with all activities completing by no later than 1 January 2022. The date for commencement of functions was not impacted by this replan.
8. The legal creation of the OEP sees its Chair, and non-executive Board members appointed. The Secretary of State has indicated his intention to appoint an Interim CEO at that time, to act as accounting officer for the organisation and join the Board. There is an unavoidable period of time between this, and the operational go live of the OEP. During that period Defra will support the OEP through the provision of services, including staff resources, and use of assets until such time as these transfer to the OEP.

9. The Board has taken a range of decisions as an interim Board. These are not decisions of the OEP Board. In order for the OEP to be able to take decisions in governance, and for certain operational steps to complete (such as the opening of a bank account), some of these decisions must be ratified as decisions of the OEP Board after that Board has been constituted.

Analysis

Operational go-live implementation approach

10. Following a full review of the approach, it is now proposed that the operational go-live implementation be separated into two phases.
 - a. Phase a – to complete on 1 December – will include all implementation except for staff transfer scheme, asset transfer, payroll transfer and transfer from the support of the Defra press office. This will include, for example, adoption of the finance system, end-user computing, HR system data transfer.
 - b. Phase b – to complete on 1 January – will be limited to solely staff transfer scheme, asset transfer, payroll transfer, and the transition to an independent press office.
11. Completion of the staff transfer scheme and payroll transfer must be simultaneous. Payroll transfer can only complete on the first of any month. The staff transfer scheme must complete at least 21 days after legal creation of the OEP to allow the necessary statutory instruments to be laid in Parliament. This combination puts a 1 December transfer at risk, mitigated by the extra month now proposed. A delay of these stages to 1 January also mitigates risks in transfer of data from the current Defra shared service provider, where challenges remain.
12. The press office functions could be operationally ready for 1 December, staffed by an interim communications lead. Our first permanent communications staff member joins on 13 December, however. To avoid a double transition, it is proposed that press office transition be deferred until 1 January. Our interim resources are in close dialogue with the Defra press function, and all statements and activities are agreed by the Interim CEO and/or Chair.
13. Subject to having the necessary legal agreement in place, assets could transfer from Defra to the OEP on 1 December. However, there could then be additional complications in non-transferred (i.e. Defra) staff making use of OEP assets. Consequently, it is proposed to delay asset transfer, so it coincides with staff transfer. A transitional services agreement will provide for the OEP to use and have the benefit of these assets in the interim.
14. Implementation on 1 January creates new risk, given the likely absence of many staff in Interim OEP, Defra and suppliers in the Christmas period. To mitigate, only activity which must be completed on 1 January is replanned. It is expected that the substance of operational activities can be completed in readiness before the Christmas break, and on return in early January.
15. While all activities in phase a are planned to complete on 1 December, plans have been adjusted so that they need not do so. Each aspect of implementation can be separated should there be delay to any individual element, provided that all complete before 1 January.

16. Overall the approach mitigates known delivery risks and provides a more flexible approach to implementation of the go-live phase to allow for slippage of any individual element of the programme without a need to replan the whole. The approach sees operational go-live begin on 1 December, and end on 1 January. Planned dates for vesting and commencement of functions are unaffected

Vesting

17. The creation of the legal entity, the OEP, has implications for the current arrangements for Interim OEP, its Board, staff and finances. Complexities to be managed include:
 - a. Ensuring the OEP has an accounting officer from day 1 of operation
 - b. Ensuring the interim staff continue to work to the leadership and direction of the Interim CEO and OEP Board
 - c. How and when assets, liabilities, contracts and services acquired or provided by Defra for the future benefit of the OEP are transferred to it
 - d. Ensuring Defra is able to continue to provide these on behalf of the OEP in the period between vesting and the completion of operational go-live
 - e. How this arrangement will be accounted for in the OEP and Defra's financial accounts
18. The resolution of these interrelated aspects has been challenging to determine, given the rarity of a shadow ALB being created within a government department then separated from it.
19. An overall approach has been agreed as follows:
 - a. An Interim CEO will be appointed by the Secretary of State (agreement awaited but expected) to act as the OEP's accounting officer from (approximately) its first day of existence
 - b. A transitional governance and services agreement shall be in place, substantially mirroring the principles of the Interim OEP terms of reference and providing that:
 - i. the staff recruited by Defra to transfer to the OEP (whether permanently or on a seconded basis during establishment) shall work to the leadership and direction of the OEP Board. Practical oversight of the staff will remain with the Interim CEO
 - ii. These staff shall continue the work of establishing the OEP. Defra shall also continue providing certain administrative services, such as HR and financial management services, for the OEP's benefit
 - iii. OEP shall be liable for the costs of those services, including staff, which shall be recharged to it by Defra until such time as their transfer takes effect (or long-term arrangements are put in place for OEP to secure certain corporate services from Defra)
 - iv. Defra shall make transactional payments as are necessary for those services through the interim OEP budget. That budget will be controlled by the Defra Deputy Director of Environmental Governance. Regular information will be

provided between the Interim CEO and DD EGT to ensure proper operation of this arrangement

v. A reckoning of those costs incurred by Defra on this basis shall be completed, with the residual of the OEP's budget transferred to it for the balance of the business year.

c. An asset transfer agreement shall be agreed, to transfer the assets acquired by Defra for the OEP's benefit, together with associated liabilities. Such assets/liabilities are likely to include, contracts, lease(s), data and intellectual property (including the OEP brand).

20. The arrangements at para 19a and b above are short-term, estimated to be between two to seven weeks between vesting and phase a and b of operational go-live. There are imperfections, but the arrangements are judged pragmatic in the specific context and their short-term nature.

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21. Given this, and the Secretary of State's commitment to the legal creation of the OEP within days of Royal Assent, there is some risk that necessary arrangements won't be in place at the time required. We are actively managing the risk, through Defra.

22. In order to facilitate swift sign-off, the Board is recommended to agree that approval of the transitional governance and services agreement and the asset transfer agreement be delegated to the Interim CEO, in consultation with the Chair.

Assuring readiness for implementation

23. A comprehensive plan has been in place for the establishment of the OEP. This has been tested and revised in light of the proposed change to the implementation approach noted above. The intensity and frequency of management of the plan has been increased since 1 September, as implementation approaches. The plan is reviewed weekly by workstream leads and in the delivery working group. A full-time project management resource is dedicated to enabling this.

24. Clear decisions that the OEP is ready to implement each stage of the implementation plan must be taken, including of any risks and mitigation plans still existing. Accountability for the establishment of OEP is held by both the Defra Director of Natural Environment, Trees and Resources and the Interim CEO and OEP Board. A decision to implement therefore needs to be agreed by both the OEP and Defra.

25. Four decision points are proposed, in line with the implementation approach set out above:

Decision Point 1 - To lay the commencement orders which establish the OEP (immediately after Royal Assent)

Decision point 2 - To begin operational go-live (1 December)

Decision point 3 - To complete the staff transfer scheme and payroll transfer (for 1 January)

Decision point 4 - To commence OEP functions (January)

26. Decisions to proceed with each implementation will be made with reference to readiness criteria for each stage. These will be those activities from the plan critical to safe implementation. Readiness criteria are presented at Annex B.
27. Readiness criteria will be tracked weekly by the delivery working group, and in a meeting between OEP and its sponsorship team. They will be reviewed at least fortnightly by SLT. They will be presented to approvers at the requisite decision point.
28. The Board is recommended to agree that decisions for the OEP be delegated to the Interim CEO, in consultation as necessary with the Chair. The Board will be notified at each decision point, including of any risks under management.

Ratifying the Board's decisions as an interim Board

29. The Board has made a number of decisions as an interim Board. These are not decisions of the OEP Board.
30. It is proposed that the Board be asked by electronic business to confirm certain decisions it has taken, shortly after the OEP's legal creation when the OEP Board is to be constituted. Including:
 - a. The Board's governance framework, code of conduct, and its decisions to establish a steering group for the 25-year environment plan monitoring report, and audit and risk assurance committee (should the Board take that decision in its meeting)
 - b. The Board's approval of the financial scheme of delegation (should the Board take that decision in its meeting).

Both of these are important to enabling the opening of the OEP bank accounts and conduct of steering group business. Other decisions will be ratified in due course.

Communication plan

31. Annex A sets out a communications plan for the period to January.
32. The communications proposals focus primarily on commencement of functions as the primary point of communication and launch of the OEP. Our strategy will be launched for consultation at the same time. Our report monitoring the progress of the 25-YEP is planned to be published shortly afterwards.
33. A hybrid event is planned to be held in person at the Royal Society, with additional access online. Professional event management is to be procured to support. Provisional arrangements are made for the morning of the 24 January. It is intended that a wide range of senior stakeholders, Ministers and media attend. The attendance and support of the Board would be welcomed.
34. Activity is proposed for vesting, to mark legal creation and certainty of our role. Our primary objective at this point is to ensure clarity in understanding of the stages through which OEP will become fully established.

Finance and Resource

35. There are a range of costs related to the establishment of the OEP. Specific costs of this proposal are:

This section has been redacted as its publication would be prejudicial to commercial interests

Impact Assessments

Risk Assessment

36. Risks under management in respect of the arrangements for vesting include:

- a. The risk that necessary legal arrangements will not be in place at legal creation of the OEP, given delays in scoping and securing necessary approvals. This is mitigated by the escalations made and is exacerbated by a swifter than anticipated passage of the Environment Bill.

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37. The highest rated risks under management in respect of the arrangements for operational go-live include:

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- a. The risk of resource gaps in interim OEP, in specific skill sets, impacting delivery of the implementation plan. This is mitigated by active resourcing, transfer of staff within the division and efforts to secure contingent labour in key skills gaps – such as IT.
- b. The risk that extended delay to Royal Assent compromises planned delivery dates, most notably in effecting the staff transfer arrangements. This is mitigated, as far as possible, by dialogue with the relevant Defra teams and active replanning. The ultimate mitigation is by delay of the scheme until 1 February.

Implementation Timescale

38. As set out in the body of the paper:

- a. Vesting – at or around early-mid November
- b. Operational go-live beginning on 1 December and ending on 1 January
- c. Commencement of functions – currently planned for 24 January

Communications

39. As set out at Annex A

External Stakeholders

40. We have discussed the overall timetable for establishment of the OEP, its key milestones with stakeholders in our stakeholder forum.

Internal Stakeholders

41. These proposals have been considered by colleagues across the division, and by its senior leadership team

ANNEXES LIST

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