



Department  
for Environment  
Food & Rural Affairs

# **Set up and initial operation of the Office for Environmental Protection (OEP)**

## **Business Case : Summary**

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# **1 Executive Summary**

## **1.1 Business Case Overview**

This business case was developed using HM Treasury's Better Business Case methodology, and submitted to the CO and HMT for approval in March 2021. The approach provides a framework for considering spending proposals and a structured process for appraising, developing and planning to deliver best social value for money. It provides better outcomes through the collection of strong evidence to develop realistic options and inform good decisions. However, ministers are not bound by business case recommendations and may decide to consider other factors outside the business case when making final decisions.

This business case has been rigorously assured throughout the three key development stages of initial outline business case, outline business case, and full business case. For each stage, approvals were required from the programme board, an independent group of assessors from elsewhere in the Department for the Environment, Food and Rural Affairs (Defra), Defra's investment committee, HM Treasury (HMT), and Cabinet Office.

## **1.2 OEP Business Case**

The summary of the OEP business case provides an overview of the contents of each of HMT's five business cases (strategic, economic, finance, commercial and management). It also includes a detailed look at the strategic case (to show why the OEP is necessary) and the economic case (to show the analysis undertaken to support the recommended model).

## **1.3 Strategic Case: The Case for Change**

Good environmental governance is necessary to ensure that environmental law is being implemented and abided by, and that the long-term goal of environmental improvement is being delivered. The OEP will be the cornerstone of the government's ambitious new domestic framework for environmental governance.

As an independent watchdog, the OEP will hold this government and future governments to account on their environmental ambitions and obligations. This will contribute to the improvement of the natural environment and environmental protection. The OEP will achieve this by scrutinising government's progress towards improving the natural environment, as well as monitoring and providing advice on environmental law. The OEP will also receive and investigate complaints. If necessary, and as a last resort, it will enforce serious breaches of environmental law by government and public authorities, in a strategic and proportionate manner.

Provisions for the creation of the OEP are included in the Bill. It will be established as an independent non-departmental public body (NDPB), sponsored by Defra. It will be provided with a number of legislative safeguards to protect its independence. The Bill legally requires ministers to have regard to the need to protect the OEP's independence and also requires the OEP to act objectively, impartially, and have regard to the need to act transparently.

Once established, the OEP will help ensure that there is an effective domestic environmental governance system in place to meet the government's environmental ambitions. It will provide independent assurance of government's delivery of environmental law, its Environmental Improvement Plans (EIPs) and targets. The OEP will bolster and complement the existing domestic governance framework. It will do this through monitoring environment law; investigating complaints; and taking proportionate enforcement action, where necessary, to address serious breaches of environmental law. The successful delivery of a suitably funded and fully operational OEP will demonstrate and reassure citizens, businesses, and international partners that this government is committed to protecting and restoring our natural environment. Ultimately, it supports the ambition for this to become the first generation to leave the environment in a better state than that in which we inherited it.

The OEP will initially only cover environmental matters primarily in England and not within devolved competence. The Bill includes an option to extend the OEP to Northern Ireland, but that is subject to a commencement order in the Northern Ireland Assembly. Scotland is setting up an equivalent body, Environmental Standards Scotland, through the Scottish Continuity Bill. The Welsh Government is assessing options for their own body.

#### **1.4 Economic Case: Determining Public Value**

The decision to create the OEP as a NDPB was agreed by ministers in December 2018 following approval of the Initial Outline Business Case.

In this business case, four operational models (including 'do-nothing' and 'do-minimum') were short-listed for economic appraisal. This assessed which option is likely to provide best value to society during the initial operational period up to 31 March 2023. These models were evaluated against critical success factors including the ability to provide statutory obligations, independence from government, value for money, and deliverability.

Capability to assess how well each option can deliver statutory functions was assessed against the Target Operating Model (TOM). The TOM was developed by Defra with external advisors and tested with key internal and external stakeholders throughout development. Workload estimates were based on the best available information from the EU, Ombudsman services and other regulators. Although the analysis was as robust as possible, none of these other organisations provide the full range of functions provided by the OEP and so are not directly comparable. Therefore, it is not possible to predict work effort, volumes and staffing requirements with any certainty. In addition, the OEP will be an independent body and priorities will be set by its board.

A qualitative approach was used to determine best value. The nature of the OEP, as a regulatory body, and the type of environmental benefits that it will contribute towards means that benefits are not easily quantifiable. However, it is known that the rewards can be substantial. To realise even a small proportion of the UK's estimated £921 billion natural capital assets (UK Natural Capital Accounts – 2018) would significantly outweigh the OEP's expected costs.

The government approved starting the OEP with 50 full time equivalent (FTE) staff. This represents an increase compared with the model of 40FTE, which was assessed in the economic business case as being sufficient for initial operations only. The 50FTE model supports an incremental approach to the establishment of the OEP. It is proposed on the premise that the OEP will review actual work volumes and staffing within the first 18 months of operation to provide an evidence base to inform the allocation of future resources.

Resource requirements will be discussed between the OEP and the Secretary of State as part of their regular performance reviews. Under Schedule 1 of the Bill, the Secretary of State is obliged to pay to the OEP such sums as the Secretary of State considers are reasonably sufficient to enable the OEP to carry out its functions. The OEP will provide an assessment of whether it has received sufficient funds in its statement of accounts for each financial year.

## 1.5 Finance Case: Affordability

The Finance Case demonstrates the affordability of the OEP and outlines the estimated cost for the Defra set-up team and recommended model.

The operational costs of the three models (options 2 to 4) assessed in the economic business case are set out in the table. Also included are the costs of the approved model with 50FTE. Option 1, the 'do nothing' option, is not included as it could not meet the critical success factor requirements of the economic case.

	20/21 (£m)	21/22 (£m)	22/23 (£m)
Option 2 – 114 FTE	2.02	15.06	14.96
Option 3 – 80 FTE	1.81	11.64	11.35
Option 4 – 40 FTE	1.56	7.98	7.38
Approved – 50FTE	<b>1.62</b>	<b>8.99</b>	<b>8.42</b>

The key cost difference between the options in the table above is the pay cost. Other significant costs are accommodation and IT. It has been announced that the OEP will be based in Worcester.

Defra will set the OEP an indicative five-year budget that will be protected within each spending review period, giving the OEP greater certainty over its finances.

## 1.6 Commercial Case: Procuring the solution

The Commercial Case sets out the procurement approach, ensuring the following requirements are accounted for in all elements of procurement:

- **Functional independence:** The OEP needs to be operationally independent from government and departments such as Defra. This needs to be visible to third parties in order to engender trust in the new organisation.
- **Deliverability:** The procurement process adopted needs to ensure that the goods and services are procured in the timescales required.
- **Flexibility:** To meet long delivery timescales, some fundamental goods and services, such as HR and finance systems, need to be procured prior to the formal establishment of the OEP. Defra will procure these services on behalf of the OEP and novate the contracts to the OEP after vesting. In addition, it is anticipated that the staff numbers in the OEP may vary over time, to take into account actual work volumes and requirements.
- **Value for money:** The procurement process should be effective and efficient in delivering return on public funds.

## 1.7 Management Case: Deliverability

The Management Case sets out the management methods that are required to ensure successful delivery of the OEP set-up project. It includes the project's approach to planning, reporting and risk management, as well as descriptions of the meetings and products in place to enable delivery.

The OEP set-up project sits within the Environmental Governance Programme, which was established in April 2018. The programme was established to meet new domestic environmental governance and targets requirements specified in the Bill.

In line with Defra's 'Business Case Assurance and Approvals Process Guidance', the Environmental Governance Programme was classified as a Tier 1 project as it was seen as 'high risk, high complexity, novel or contentious' and 'requires primary legislation'. Assurance best practice states that projects and programmes of a certain size or complexity should prepare and implement an Integrated Assurance and Approval Plan (IAAP). An IAAP was developed for this project to ensure that appropriate assurance activities were effectively planned, scheduled and delivered at appropriate points in the project lifecycle.

## 2 Detailed Strategic Case

### 2.1 Strategic Context

This government was elected on a manifesto that committed to setting up a new independent OEP and to have the “*most ambitious environmental programme of any country on earth*”. This followed the government’s publication of its flagship 25 Year Environment Plan (25YEP). This plan sets out a blueprint to fulfil the government’s commitment for this to be the first generation to leave the environment in a better state than that in which we inherited it.

Defra’s priority is to create a cleaner and healthier environment, benefiting people and the economy, and reinforcing the government’s ambitions in these areas. Defra’s Internal Delivery Plan for 2020/21 has a specific strategic objective to tackle climate change and pass on to the next generation a natural environment protected and enhanced for the future.

The Department of Business, Energy and Industrial Strategy (BEIS) has complementary environmental objectives. It seeks to develop a greener economy with specific objectives around reducing greenhouse gas emissions while growing the economy and developing world-leading sectors to drive clean growth.

Enhancing the state of our natural environment is therefore a key objective across government, and leaving the European Union (EU) has provided the UK with a unique opportunity to set its own future environmental protections. The UK now has the autonomy and ability to replace the environmental governance, information and advisory functions provided under the EU governance regime with bespoke national arrangements designed to meet our specific needs and constitutional framework.

The establishment of the OEP is central to the Environment Bill, ensuring our domestic environmental ambitions can be realised.

### 2.2 Strategic Objectives of the OEP

The principal objective of the OEP, as defined in the Environment Bill, is to contribute to environmental protection and the improvement of the natural environment. Environmental protection is defined in the Bill as:

- the protection of the natural environment from the effects of human activity;
- the protection of people from the effects of human activity on the natural the environment;
- the maintenance, restoration or enhancement of the natural environment; and
- the monitoring, assessing, considering or reporting on any of the above.

In addition to meeting this principal statutory objective, the OEP will be established to meet a number of other key strategic objectives:

- Uphold and improve domestic environmental governance arrangements to protect and restore our natural environment after leaving the EU;



- Provide independent assurance to the public, business and trading partners that the UK is delivering on its environmental commitments;
- Scrutinise the government's effectiveness in delivering Environmental Improvement Plans (including the 25YEP) and environmental targets;
- Support government in developing environmental legislation and policy that will help it to achieve its environmental commitments;
- Improve oversight and rectify breaches of environmental law by public authorities and government; and
- Ensure environmental legislation is effectively applied, taking proportionate enforcement action where necessary to address serious breaches of environmental law.

### **2.3 The Case for a New OEP**

Environmental governance in the UK has until recently been administered through the EU, the Natural Capital Committee (NCC) and a framework of other domestic institutions:

- The European Commission (EC) oversees the implementation of EU environmental law for all Member States, (including the UK up to the end of the transition period on 31 December 2020). The EC uses information in submissions and reports from Member States, its own assessments, and those of other EU bodies including the European Environment Agency (EEA). The EEA's information provision role includes producing and publishing independent assessments of progress in the implementation of the EU's Environmental Action Programmes, which are the guiding frameworks for long-term EU environmental policy.

The EC also maintains a service through its website whereby individuals and organisations can lodge complaints, free of charge, about alleged breaches of EU law. The EC can take action if it considers that EU law is not being properly implemented in a Member State. If necessary, it can refer the case to the Court of Justice of the European Union (CJEU). It can also ask the CJEU to order interim measures before judgment is given.

- Amongst other functions, the NCC, which was disbanded in November 2020, advised ministers on progress of the 25YEP. It had a non-statutory responsibility for independently monitoring and reporting on government's progress in meeting the goals of the 25YEP.
- There is a framework of other domestic institutions that deliver environmental functions and can, in limited circumstances, hold government and other bodies to account on environmental matters. These organisations include Parliamentary bodies and committees such as the National Audit Office (NAO) and Environmental Audit Committee (EAC); executive non-departmental public bodies such as Natural England, the Environment Agency, the Joint Nature Conservation Committee

(JNCC) and Committee on Climate Change (CCC); expert and voluntary groups, Ombudsman, and local authorities.

- Established legal frameworks for environmental protections can be used to enforce existing domestic environmental legislation through our court system. However, recourse to the legal system for environmental enforcement purposes can be lengthy, time consuming and expensive as illustrated in the Judicial Review costings in the economic business case.

## 2.4 The Case for Change

None of these existing bodies are equivalent to the OEP in terms of all of its functions, and, left as is, the system would most likely result in fragmented environmental governance. Furthermore, existing bodies with responsibilities for implementing environmental law could not credibly continue with their delivery functions while also scrutinising their implementation of environmental law, receiving complaints, and undertaking enforcement action against themselves. It would be impossible for them to bring legal proceedings against their own suspected breaches of environmental law. Leaving the EU has provided the opportunity to design new bespoke national arrangements to meet the UK's specific needs and constitutional framework. The government's election manifesto states that we should be stewards of our environment, that "we will protect and restore our natural environment after leaving the EU" and "we will set-up a new independent OEP and introduce our own legal targets, including for air quality".<sup>1</sup>

The OEP will add value to existing environmental governance mechanisms to ensure we have the full range of specialist knowledge, powers and independence needed to deliver the functions as set out in the Bill. The OEP will bolster and complement our domestic governance framework, enabling the law to deliver its intended benefits. It will ensure standards and environmental protection are upheld while:

- *Improving credibility, public engagement and accountability.* The OEP will be a credible body able to effectively address complaints from the public relating to a failure of a public authority to comply with environmental law. It will also be able to monitor compliance of environmental law itself. Where deficiencies in delivery or enforcement are highlighted, the OEP will be able to open an investigation and use enforcement mechanisms where appropriate to ensure that environmental laws are complied with.
- *Considering long-term effects on the environment.* By providing scrutiny and advice on environmental law, the EIP and targets over the long term, the OEP will be able to act as an independent adviser that is empowered to take a long-term perspective.

## 2.5 Rationale for Establishing the OEP

The case for establishing the OEP was made after a careful evaluation of other options. This included consideration of doing nothing, creating new functions in existing bodies, creating new functions in a new body (the OEP) and creating new functions in a

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<sup>1</sup> [https://assets-global.website-files.com/5da42e2cae7ebd3f8bde353c/5dda924905da587992a064ba\\_Conservative%202019%20Manifesto.pdf](https://assets-global.website-files.com/5da42e2cae7ebd3f8bde353c/5dda924905da587992a064ba_Conservative%202019%20Manifesto.pdf)

parliamentary accountable entity. These were fully considered in the Initial Outline Business Case economic case. The option of doing nothing was not considered viable. This was because none of the existing bodies had sufficient breadth and depth of coverage to fully administer the proposed OEP scrutiny and advice, complaints and enforcement functions in a focused and systematic way.

A new bespoke system of environmental governance is therefore needed. Creating the OEP will help ensure environmental legislation is effectively implemented, and will support the government in meeting its environmental commitments and targets.

In order for the OEP to be able to carry out its functions effectively it will need to:

- act as an authoritative, objective, impartial and well-evidenced voice for environmental protection and enhancement;
- be functionally independent of government and capable of holding it to account (ministers can offer guidance, but cannot set its programme of activity or improperly influence its decision making, and must have due regard to the need to protect the OEP's independence);
- operate in a clear, proportionate and transparent way in the public interest, recognising that it may be necessary to balance environmental protection against other priorities; and
- be adequately funded to achieve its objectives (such funding must be provided in a way that it is protected from accusations of being influenced by Defra, the funding department).

These functions cannot be delivered on a statutory basis by a private or voluntary entity, meaning public funds will be needed to deliver these functions. As outlined above, no existing body has the full range of specialist knowledge, powers and independence required to deliver the functions to be executed by the OEP as set out in the Bill. Therefore, the OEP needs to be established as a new statutory public body.

This follows Cabinet Office guidance regarding the approvals process for the creation of new arm's length bodies. This is because the OEP needs to provide a technical function, requiring external expertise to deliver, and also because it needs to be, and be seen to be, delivered with political impartiality.

A number of different types of bodies were considered and outlined in the Initial Outline Business Case. In 2018, it was concluded, and agreed by ministers, that a NDPB is the most appropriate model to enable the OEP to carry out its functions whilst ensuring adequate transparency, accountability and oversight of public spending.

## **2.6 Establishing the OEP as a NDPB**

NDPBs are established by government to maintain a role in the process of national government. However, they are not part of government, and instead operate at arm's length from a sponsoring department to deliver a range of functions. The NDPB model offers opportunities for varying degrees of independence and ministerial control dependent on their remit and function.

The decision to create the OEP as a NDPB followed the process described in the Classification of Public Bodies: Guidance for Departments and was approved by Chloe Smith MP (then Minister for the Constitution) and Rt Hon Michael Gove MP (then Secretary of State, Defra) in December 2018.

## **2.7 Independence and Funding**

In order to ensure that the OEP has sufficient independence to be able to hold government to account, it will be established with a number of safeguards. These relate to defined public appointment and recruitment processes, provision of sufficient funding ringfenced within spending review periods, requirement to produce its own strategy, and operational powers to administer its own functions. There will also be a duty on the Secretary of State to have regard to the need to protect the independence of the OEP when exercising relevant functions.

These safeguards reflect a balance of powers and duties between the OEP and ministers; the role of Parliament in scrutinising the OEP's appointments, funding and reporting; and a strong emphasis on independence (both real and perceived) in the operational establishment of the OEP.

This business case recommends that the OEP should be established with 50FTE staff initially, which will be sufficient to commence its statutory operations. This staffing complement is above the 40FTE 'do minimum' option assessed in the economic case.

Once the OEP is operational, it will be able to review its actual work volumes and its resource requirements will be discussed between the OEP and the Secretary of State as part of their regular performance reviews. If the OEP considers it necessary, it will be able to make a case to the Secretary of State for a funding adjustment via two main routes. Firstly, the OEP will be required under the Bill to provide an assessment in its annual accounts of whether it received sufficient funding from government. This will allow Parliament to scrutinise the OEP's financial situation and hold ministers to account if this is considered insufficient. Secondly, the OEP also has the right to submit to a select committee any evidence it believes makes a case for additional funding. However, these funding discussions will take place directly with Defra as parent department. Although the select committee cannot decide the OEP's budget allocation, this is an additional avenue in which Parliament can scrutinise the adequacy of the OEP's funding.

## **2.8 Sponsoring Department and Location**

Defra is responsible for establishing the OEP on behalf of government and is its sponsor department. As the sponsoring department, Defra will ensure the OEP delivers value for money and is effective in its operations. Defra has established an arm's length body relationship management team within the department, which will support the relationship between the OEP and Defra. The team will be responsible for ensuring that the relationship between Defra and the OEP is in line with the content of the framework document.

It has been announced that the OEP will be based in Worcester.

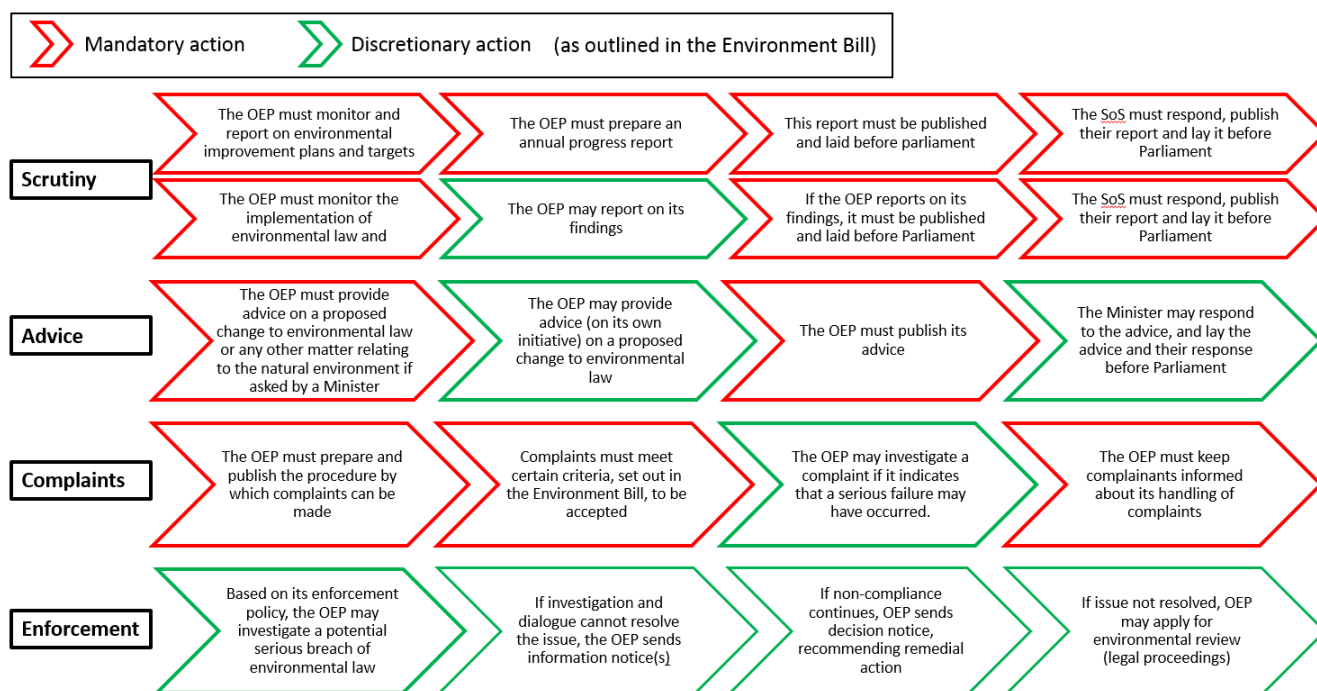
## 2.9 Relationship with Other Public Bodies

The structure for the OEP was designed with the intent to work alongside the UK’s current domestic environmental regulators and other public bodies with advisory or delivery functions, such as Natural England and the Environment Agency. The OEP has been given a clear remit that specifically avoids overlap with these existing bodies. Provision is made in the Bill for the OEP to set out in its strategy how it will avoid any overlap of its functions with the CCC and any relevant ombudsman responsible for complaints functions.

## 2.10 Functions of the OEP

The OEP will be provided with a number of functions. These are summarised in the diagram and text below.

Figure 1: Functions of the OEP



## 2.11 Scrutiny and Advice

### Monitoring and Reporting on EIPs and Targets

The OEP will scrutinise government’s progress in meeting its targets and in improving the natural environment as set out in the EIP, currently the 25YEP. It will achieve this by scrutinising the annual report on the 25YEP that Defra produces on behalf of the government. The OEP will assess the accuracy and completeness of the report published by Defra and will provide government with an independent report. This will be published and laid before Parliament, outlining areas where the government is making good progress on environmental issues and highlighting where better progress could be made in the future.

### **Monitoring and Reporting on Environmental Law**

The OEP will scrutinise the implementation of environmental law. It will be able to proactively assess how existing environmental legislation works in practice, and whether this is efficient and effective in delivering the desired benefits.

### **Advising on Changes to Environmental Law etc**

Over time, the OEP will build up independent expertise through its role monitoring the EIP, targets and implementation of environmental law, as well as from its investigations and any enforcement cases it pursues. It will be able to use this expertise to provide advice to ministers on any proposed changes to environmental law or, at the request of a minister, any other matter relating to the natural environment.

## **2.12 Complaints and Enforcement Functions**

### **Complaints**

The OEP will have the power to receive complaints where a person or voluntary or private organisation believes that a public authority has failed to comply with environmental law. It will provide a clear single forum for individuals to express their concerns. This will support democracy, transparency and citizen engagement on environmental issues, and lead to greater oversight of the implementation of environmental legislation.

### **Prioritising cases**

The OEP's strategy must contain an enforcement policy which sets out how the OEP intends to determine the seriousness of a case and its approach to prioritising cases. Its focus should be on broader issues of national significance such as serious environmental or health damage, systemic failures, recurring problems and cases which raise points of law of general public importance.

### **Investigations**

The OEP will have the power to investigate complaints that indicate a potentially serious breach of environmental law. It will also have the power to initiate its own investigations on the basis of information arising from other sources. The OEP will be able to engage in constructive dialogue and advise on remedial measures. It is expected that in most cases the investigation process will allow issues of non-compliance to be resolved without the need for further formal enforcement action.

### **Environmental Review**

If necessary, the OEP can take legal action as a last resort. This can be in the form of a mechanism in the High Court called an environmental review or, in specific and exceptional circumstances, a judicial review.

### **Judicial Review**

The OEP has powers to apply for judicial review, or a statutory review, in relation to the conduct of a public authority. The OEP can use this power if it considers that the conduct constitutes a serious failure to comply with environmental law, and if it is necessary to make such an application to prevent or mitigate serious damage to the natural environment or human health.

### **2.13 Strategic Benefits**

In delivering its strategic goal and objectives, the OEP will help realise a number of key strategic benefits as explored in sections 2.15 – 2.17 and illustrated in the accompanying benefits map in section 2.18.

### **2.14 Environmental Benefits**

The opportunity for the OEP to contribute towards the realisation of environmental benefits is enormous. These are considered in depth in section 3.2 of the economic business case and Appendix A.

### **2.15 Benefits of the Establishment of the OEP**

#### **Increased public confidence that government will deliver on its environmental commitments**

In its manifesto, this government committed to establish the OEP and to protect and restore our natural environment. The establishment of the OEP will ensure that effective domestic arrangements for environmental governance exist. It will also ensure that this government and future governments are held to account on the implementation of environmental law and statutory EIPs and targets. This will provide independent reassurance to the public that the government will deliver both on its legal environmental requirements, and its manifesto commitment. This will ensure that environmental protections are maintained or improved.

#### **Improved conditions for UK businesses**

Well-enforced environmental regulations help to provide the stability and certainty that businesses require in order to plan and have the confidence to innovate and invest for the longer term. This includes the green economy but also wider sectors such as infrastructure that need to take account of environmental legislation and objectives.

#### **Trade opportunities by demonstrating UK commitment to environmental protections in trade deals**

Many global trade deals, particularly between developed nations, now include environmental protections. Setting up the OEP (in addition to the other governance measures in the Bill) will help the government to lead on environmental governance and may support other trade negotiations by ensuring fair competition with regards to environmental standards.

### **2.16 Benefits of the Scrutiny and Advice Functions**

#### **Increased environmental improvements from achieving the goals of the EIP and meeting targets**

The OEP will scrutinise government's progress in improving the natural environment as set out in the EIP and targets. It will provide government with independent information outlining areas where they are making good progress on environmental issues and highlighting where better progress could be made in the future. This will reduce the risk of government policy not being delivered and ensure government is better placed to

achieve the goals of the EIP and targets, helping to increase environmental improvements and protections as a result.

### **Environmental legislation has a greater potential to protect and improve the environment**

The OEP will scrutinise the implementation of environmental law by public authorities and government. This will enable the OEP to proactively assess how our existing environmental legislation works in practice. The OEP will also provide advice on any proposed changes to environmental law or, at the request of a minister, any other matter relating to the natural environment. These functions will enable the OEP to use its expertise to engage in constructive solutions and dialogue with government to improve the design and interpretation of environmental laws. This will enable future laws to be more effective in protecting and improving the environment, and reduce the risk of breaches of environmental legislation by identifying and resolving issues early on.

## **2.17 Benefits of the Complaints and Enforcement Function**

### **Increased access to environmental justice, supporting the UK's Aarhus commitments**

Under the Aarhus Convention, the UK government is committed to ensuring that effective mechanisms exist to facilitate access to justice in environmental matters. Current domestic mechanisms for holding government to account include through Parliament and the system of judicial review. The OEP will provide an additional platform for citizens to make a complaint about potential breaches of environmental law by public authorities. This will improve accessibility to environmental justice as, unlike existing domestic mechanisms where citizens may be subject to costs, the OEP will allow individuals to make complaints free of charge.

### **Reduced impact on the justice system**

After the end of the transition period, with no change to existing domestic arrangements, judicial review would represent the only legal route to challenge an alleged breach of environmental law by a public authority. Relying solely on the existing judicial review mechanism would likely lead to a substantial increase in third party judicial reviews against the government for potential breaches of environmental law. This is because there would be no official body to investigate and, if necessary, take enforcement action against public bodies that are in serious breach of environmental regulation. The OEP will help to reduce the number of judicial reviews by providing an alternative platform to investigate and resolve breaches of environmental law.

### **Reduced cost to government and wider society**

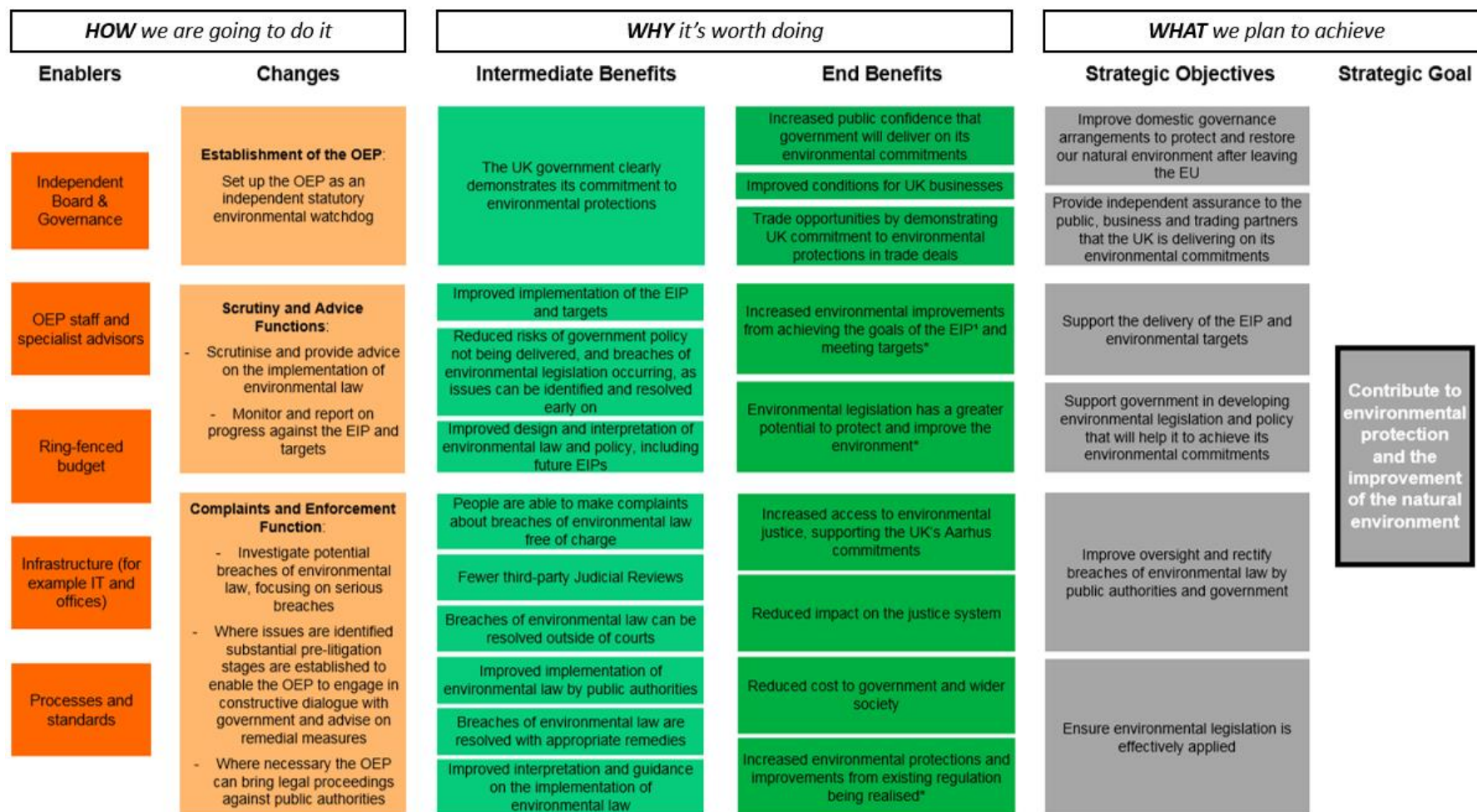
The enforcement function sets out a robust but flexible notice-based procedure. This will enable the OEP to work with public authorities in a deliberative manner, to resolve issues and achieve the necessary solutions without the need for litigation where possible. This, along with the anticipated decrease in judicial reviews outlined above, will help to reduce the associated litigation costs to government, citizens, businesses and non-governmental organisations (NGOs).



**Increased environmental protection and improvements from existing regulation being realised**

If necessary, the OEP can take legal action to bring about compliance and remedy breaches of environmental law. It will also allow for the courts to clarify the law where necessary, as a result of the OEP initiating legal proceedings in a proportionate manner. This will in turn reduce ambiguities and uncertainties in its interpretation and application. This function will therefore provide an incentive for government and public authorities to implement the law properly and fully, ensuring that the legislation delivers its intended environmental benefits.

## 2.18 OEP Benefits Map



<sup>1</sup>The 25 Year Environment Plan is the first Environmental Improvement Plan (EIP)

\*These end benefits are expected to contribute to the many benefits of the ecosystem services that arise from improved natural assets including a stronger, more resilient economy, health/wellbeing benefits, and the subjective value people place on environmental outcomes

## 3 Detailed Economic Case

### 3.1 Introduction

In the economic case, we evaluate the shortlisted operational models for the OEP to show how the recommended option will deliver best value to society, including wider social and environmental effects, during its initial operation. The appraisal illustrates how well each option meets the spending objectives and critical success factors for an effective OEP.

As required by HMT, the shortlist includes a business as usual option ('do nothing'), a realistic and achievable option that meets essential requirements ('do minimum'), and other realistic options.

### 3.2 Social, Economic and Environmental Benefits

Sections 2.15 -2.18 of the strategic case map out how the OEP will contribute towards the protection and improvement of the natural environment, and deliver key benefits such as:

- Increased public confidence that government will deliver on its environmental commitments.
- Improved conditions for UK businesses.
- Trade opportunities, by demonstrating the UK's commitment to environmental protections in trade deals.
- Increased environmental improvements, from achieving the goals of the EIP and meeting targets.
- Environmental legislation having a greater potential to protect and improve the environment.
- Increased access to environmental justice, supporting the UK's Aarhus commitments.
- Reduced impact on the justice system.
- Reduced cost to government and wider society.
- Increased environmental protection and improvements from existing regulation being realised.

Appendix A provides examples from various studies which have monetised the potential value of key environmental benefits that the OEP is likely to affect. It also includes case studies to demonstrate how the OEP will be able to use its powers and influence to contribute towards the realisation of these benefits. Section 3.3 explains how environmental benefits have been evaluated in this business case.

### 3.3 Evaluation Approach

#### Shortlisted Options

Four options were shortlisted for economic appraisal in relation to the set up and initial operation of the OEP:

- **Option 1: Do Nothing.** This model assumes that environmental governance can be provided through existing domestic bodies.
- **Option 2: 114FTE.** This model was developed by Defra in collaboration with external advisors, and internal and external stakeholders in order to deliver the TOM.

- **Option 3: 80FTE.** This model is estimated to have enough resources to deliver all OEP functions to an acceptable degree. It mitigates against the risks of over and under staffing associated with the other FTE options in the early years of operation.
- **Option 4: 40FTE (Do Minimum).** This is the minimum viable model with limited capacity to deliver the required functions for initial functioning only. It supports an incremental approach to the establishment of a new organisation where there is uncertainty about future workload.

Each of the above models includes an estimated budget to source external expertise for short-focused commissions. It is expected that these specialists would supplement internal knowledge and experience and provide greater organisational resilience.

Following approval of the earlier initial outline business case, ministers agreed that the new body should be set up as a NDPB (see section 2.6). The TOM and Options 2 to 4 are based on this classification of public body.

### Critical Success Factors

It was important to ensure that all shortlisted options met the critical success factors for the OEP. Critical success factors are the attributes essential for successful operation, against which the options will be appraised, alongside the spending objectives.

<b>Statutory Obligations</b>	The option must have sufficient resources at least to meet the statutory obligations, as set out in the Bill.
<b>Sufficient Independence</b>	The OEP must be sufficiently independent from government as to permit robust scrutiny and effective enforcement.
<b>Expertise</b>	The OEP must contain, or at least be able to access, sufficient legal, environmental and analytical expertise.
<b>Deliverability</b>	The Interim OEP will be established from 1 July 2021 and the OEP will be established after the Bill receives Royal Assent.
<b>Value-for-money</b>	The costs of the option must be (as a minimum) commensurate to the expected benefits. Any option with clearly disproportionate costs would have been rejected.
<b>Flexibility</b>	The ability for the OEP model to scale up or scale down FTE size to meet workload demands.

### Target Operating Model

Defra worked with external advisors to develop a Target Operating Model (TOM) for the OEP. It was designed around the statutory functions stated in the Bill, the business capabilities required to deliver those functions, and workload estimates based on the best available information available from the EU, Ombudsman services and other regulators.

Although the analysis was as robust as possible, none of the other organisations provide the full range of functions provided by the OEP and are therefore not directly comparable.

Therefore, it is not possible to predict work effort, volumes and staffing requirements with any certainty. The OEP will also be an independent body and will set its own priorities.

The TOM guided the development of option 2 (114FTE) and the overall organisational development process. Various methodologies were used to validate the organisation size required to deliver the full TOM. Top-down and bottom-up methodologies were used, benchmarking where possible against similar functions in other organisations to estimate the staffing resource necessary to perform OEP functions effectively and efficiently.

The TOM was also used as a comparative benchmark to assess the potential implications of delivering OEP capabilities with the lower staffing numbers in option 3 (80FTE) and option 4 (40FTE).

### **Benefits Evaluation**

A qualitative approach has been used to evaluate environmental benefits. This method was necessary because it is not realistic to produce a quantitative assessment of the net present values of the shortlisted options since:

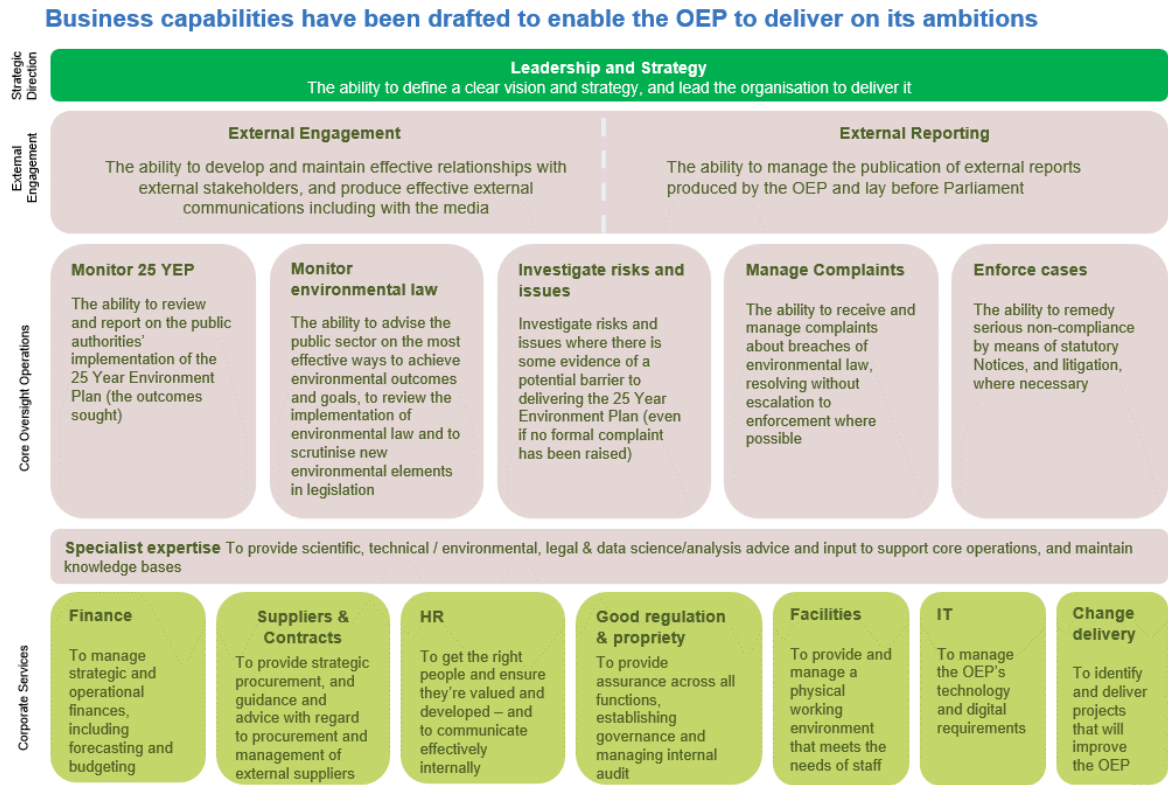
- i. **The OEP's expected benefits are mostly indirect.** Quantifying the benefits of environmental interventions in general is notoriously difficult and doing so for the OEP has an added layer of complexity. Like any regulator, the OEP will seek to add value not by intervening directly, but by influencing other actors in the system such as government and public bodies.
- ii. **It is not possible to know with precision what the 'do nothing' option would look like.** What would happen in this unprecedented, hypothetical scenario would depend upon the political choices of the government. It would also depend upon the extent to which existing organisations would be willing and able to take on functions like advice, and how effective they would be at influencing government.
- iii. **It is not possible to know with precision the impact of the OEP's output under different staffing levels.** Estimates of the outputs of the OEP, such as number of complaints investigated, have been produced for each staffing level. However, it is not possible to know with precision the accuracy of these estimates or the implications of these differences in outputs for the OEP's influence over government and public bodies, given their dependence on such uncertain factors such as organisational reputation.

As with all regulators, attributing to the OEP specific portions of the benefit of the measures it will influence would be challenging. To realise even a small proportion of the UK's £921 billion natural capital assets (UK Natural Capital Accounts – 2018) would significantly outweigh the OEP's expected costs.

**Appendix A** provides examples from various studies which have monetised the potential value of key environmental benefits that the OEP is likely to affect. It also includes case studies to demonstrate how the OEP will be able to use its powers and influence to contribute towards the realisation of these benefits.

### 3.4 Capability Assessments

The diagram below illustrates the business capabilities required across the OEP. These include strategic leadership, external engagement, core operations, specialist expertise and corporate services. These capabilities are developed in the TOM and are expected to be delivered in full (114FTE), to an acceptable standard (80FTE), or sufficient for initial operations only (40FTE).



### 3.5 Critical Success Factors

#### Statutory Obligations

Under a 'do nothing' scenario, there would be no existing body available to fulfil the statutory objectives as set out in the Bill (see Strategic Case). Option 1 therefore fails this test and is completely discounted as a feasible option. Under option 4 (40FTE), there is a risk that the OEP is under-funded and under-resourced to such an extent that it is unable to meet its statutory obligations. However, this risk has now been reduced by the decision to raise the FTE on commencement to 50FTE (see section 3.6 recommendation). The OEP must also be reviewed by the arm's length body review programme within 18-24 months of operation. Funding safeguards are set out in section 2.7 of the Strategic Case, including the Secretary of State's obligation, under Schedule 1 of the Bill, to pay to the OEP such sums as the Secretary of State considers are reasonably sufficient to enable the OEP to carry out its functions. Option 4 therefore passes with high-risk management. Option 2 passes this test. Option 3 also passes with some risk management.

#### Sufficient Independence

Option 2 (114FTE) is resourced to deliver the TOM in full and will be fully independent from the government. The OEP will be provided with safeguards to ensure its operational independence

from the government, without affecting ministerial accountability. These include a duty on ministers to have regard to the need to protect the OEP's independence. Ministers cannot set the OEP's programme of activity or improperly influence its decision-making. The Bill also requires the OEP to act objectively and impartially and have regard to the need to act transparently. Options 3 and 4 will also be sufficiently independent from government but could require some low-risk management to ensure this test is met. Option 2 passes this test. Options 3 and 4 also pass with some risk management.

### **Expertise**

Option 2 (114FTE) will have sufficient in-house specialists (legal, scientific and analytical) to build up deep expertise in the EIP measures and targets required to significantly improve the natural environment. It is expected that this model will support more internal 'deep dive' scrutiny into different environmental topics with no need for external support. Options 3 and 4 will have less in-house expertise but will be able to commission supplementary expert advice when necessary. Option 2 passes this test. Options 3 and 4 also pass with some risk management.

### **Deliverability**

The OEP will not be legally established until the Bill receives Royal Assent and as such set up activities and expenditure are constrained at this time. There are high deliverability risks for options 2 (114FTE) and 3 (80FTE), where staff numbers are likely to need phasing in from the Interim Environmental Governance Secretariat to the Interim OEP on 1 July 2021. This is partly due to recruitment constraints, where no jobs can be offered until the OEP legally exists and until there is an interim CEO in post as accounting officer. This- means that the recruitment of 80 or 114FTE would not be possible for 1 July 2021. Delivery of Option 4 is more likely by 1 July 2021. Options 2 and 3 will require a longer timeline and more risk management.

### **Value-for-money**

All three models would deliver significant environmental benefits (based on the qualitative approach as discussed in 3.3.4.) However, option 2 carries a risk of overstaffing, and option 4 carries the risk of understaffing. This means that under both options it may take longer to achieve these benefits. Option 3 is less likely to be under or over-staffed although both risks do exist.

### **Flexibility**

Option 4 (40FTE) is the most likely model to be understaffed and option 2 (114FTE) is the most likely model to be overstaffed. This limits their flexibility compared to option 3 (80FTE) where it is easier for this model to scale-up or scale down to meet workload demands. Option 4 is likely to be more flexible than Option 2 as it is generally easier to scale-up than scale-down.

## **3.6 Options Appraisal Summary and Recommendation**

In summary, the economic analysis concluded that:

- **Option 1 (do nothing)** was not considered appropriate as there is no domestic organisation with the full range of capabilities required to deliver all the scrutiny, advice, complaints and enforcement statutory functions specified in the Bill. **(NOT RECOMMENDED)**

- **Option 2 (114 FTE)** would deliver the TOM in its entirety. However, it carries a risk of over-staffing and does not adequately take into account further value for money considerations including organisational flexibility and ability to scale in response to changing workloads and priorities. It carries high deliverability risks. In view of the uncertainty about future workload including the volume of complaints that will be received, and the advice and enforcement actions needed, this is not the preferred model. **(NOT RECOMMENDED)**
- **Option 3 (80FTE)** would deliver most TOM functions to an acceptable degree. It takes into account the anticipated work volumes and provides a structure of established internal resources to undertake all the workload anticipated in all functions. This model therefore builds in a level of flexibility to allow the organisation to change organically once actual workloads and priorities are established. It is less likely to be over or understaffed compared to the other models, but still carries these risks. It also carries high deliverability risks. **(NOT RECOMMENDED)**
- **Option 4 (40 FTE)** is the minimum viable model with limited capacity to deliver the required functions for initial operations only. It supports an incremental approach to the establishment of a new organisation where there is uncertainty about future workload. This model requires 40FTE staff on commencement, with the possibility to increase staffing following a review of workload after 18-24 months of operation. This option will allow OEP managers to appraise actual workloads and make a case for additional resources if necessary.
- However, by definition, the 'do minimum' option means that there would be little or no spare capacity in the organisation to flex resources to deal with workload peaks in any functional area without having an impact on other work activities. For this reason, a variation of this model is recommended whereby the OEP would commence with **50FTE** during this initial period. These additional staff will provide the OEP with the opportunity to build and test a fully fit for purpose and agile organisation with the capacity and capability to achieve its goals within a reasonable timeframe. The OEP will also use external resources to gain suitable coverage and depth of knowledge, and a range of views. **(RECOMMENDATION: 50FTE IS REQUIRED FOR INITIAL OPERATIONS)**



## Appendix A Environmental Benefits - Examples

### A1.1 Environmental Benefits and Value

Examples of environmental benefits the OEP will help secure:

- (a) **Biodiversity net gain** is one of the major policies which will be introduced by the Bill, and whose implementation will fall within the remit of the OEP. The policy's published Impact Assessment estimated its net present value to be £8.2 billion. The policy will deliver valuable natural capital, often in close proximity to new and existing communities. The measure is also expected to promote housebuilding by clarifying ecological requirements and simplifying planning processes.<sup>2</sup>
- (b) **Good soil management**, a focus of the 25YEP, is likely to result in improvements in food production, water quality and regulation, climate regulation, habitats and biodiversity. Well managed soil is also integral to some of the UK's most treasured landscapes and archaeological sites. A 2015 study found that quantifiable soil degradation costs ranged between £0.9 billion and £1.4 billion per year, with a central estimate of £1.2 billion.<sup>3</sup> These costs are due to greenhouse gas emissions, lost agricultural output, and flooding.
- (c) **Helping people access green space**. Research by Exeter University found that people's 'physically active' visits to the natural environment were associated with £2.2 billion of yearly health benefits.<sup>4</sup> Measures to improve access to these green spaces will increase these benefits, as will measures to improve their quality. The OEP's remit in scrutinising the 25YEP will include policies to maximise environmental benefits by facilitating people's enjoyment of natural sites.
- (d) **Tackling waste crime** will reduce its associated negative externalities, and promote legitimate competition, leading to further improvements in standards. The *Supplementary evidence report*<sup>8</sup> estimated that waste crime cost the English economy over £600 million in 2015. This is caused by damaging the environment; generating expensive clean-up costs for government, local authorities and private landowners; and causing the Exchequer to forfeit some landfill tax revenues.
- (e) **Increasing resource efficiency** will have significant environmental and economic benefits. With no new initiatives, at least £4.2 billion of increased gross value added is expected to arise from increases in remanufacturing, leasing, repair, and recycling before

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<sup>2</sup> 2016 prices, 2017 present value

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/839610/net-gain-ia.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/839610/net-gain-ia.pdf)

<sup>3</sup> Graves, A.R., Morris, J., Deeks, L.K., Rickson, R.J., Kibblewhite, M.G., Harris, J.A., Farewell, T.S., and Truckle, I. (2015) The Total Costs of Soil Degradation in England and Wales. *Ecological Economics*. 119. 399-413 <https://doi.org/10.1016/j.ecolecon.2015.07.026>

<sup>4</sup> White, M. P. et al., (2016) Recreational physical activity in natural environments and implications for health: A population based cross-sectional study in England, <https://ore.exeter.ac.uk/repository/handle/10871/23047>

The study calculated health benefits by estimating the increase in Quality-Adjusted Life Years (QALYs) – 109,624 – and then valuing each QALY at £20,000, which is the threshold used by the National Institute for Health and Care Excellence by which healthcare interventions are deemed to be cost effective. The full social value of a QALY used for appraisal purposes is around £60,000 according to published appraisal guidance.

2030.<sup>5</sup> A 2011 study undertaken for government estimated that benefits worth £23 billion could be achieved by UK businesses through low-/no-cost improvements to their resource efficiency, in addition to current initiatives.<sup>6</sup>

## A1.2 Case Study 1 : Natural Capital Committee – Scrutiny and Advice

### Case Study 1 - Example of the benefits of scrutiny and advice: NCC

The Natural Capital Committee (NCC) was an independent advisory committee that ran from 2012 to 2020.

The NCC provided independent advice to government on the sustainable use of natural capital – natural assets including forests, rivers, land, minerals and oceans. The 25YEP, now so central to the government’s plans for the environment, was originally a recommendation of the NCC.<sup>7</sup> When the government drew up the plan in 2017, the then Secretary of State Michael Gove asked the NCC to provide advice as to what it should contain. By making these recommendations, the NCC has contributed towards the many benefits of the measures within the 25YEP.

The committee subsequently monitored the government’s progress in enacting the 25YEP, and more generally on its commitment in 2011 to leave the environment in a better state than it was found in. Knowing that its yearly 25YEP progress reports would be subject to close scrutiny and challenge by the NCC exerted a reputational incentive on the government to uphold its commitments and to produce rigorous plans. In this way, the NCC further contributed to the realisation of the benefits of the 25YEP.

The NCC’s advice centred on the need for an environmental baseline census and on the need to update HM Treasury’s Green Book of guidance for carrying out economic appraisal across government. If these recommendations are also followed, they will lead to the far-reaching and long-lasting benefits of a system which factors the environment into decision-making more effectively.

The NCC ceased in December 2020 and its scrutiny function passed temporarily to the Interim Environmental Governance Secretariat until the OEP can be properly established.

Unlike the NCC, the OEP will have a statutory duty to monitor the EIPs. The OEP’s reports will be laid before Parliament, and the government will have a legal duty to respond. The statutory status of the OEP’s scrutiny and advice should give it more force, especially as it will be supported by the threat of enforcement, in the case of breaches of environmental law.

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<sup>5</sup> Business Resource Efficiency – Quantification of the no cost/low cost resource efficiency opportunities in the UK economy in 2014, Oakdene Hollins report to Defra, 2017, [http://www.oakdenehollins.com/media/452/2017\\_Business\\_Resource\\_Efficiency.pdf](http://www.oakdenehollins.com/media/452/2017_Business_Resource_Efficiency.pdf)

<sup>6</sup> Joint written evidence submitted by DEFRA, BIS, CLG, HMT, DfID, FCO AND DECC: <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/environmental-audit-committee/growing-a-circular-economy/written/8952.pdf>

<sup>7</sup> NCC 2015: *The State of Natural Capital: Third report to the Economic Affairs Committee* [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/516725/ncc-state-natural-capital-third-report.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/516725/ncc-state-natural-capital-third-report.pdf)

### A1.3 Case Study 2 - Committee on Climate Change – Scrutiny and Advice

#### **Example of the benefits of scrutiny and advice: The Committee on Climate Change (CCC)**

The Climate Change Act 2008 established the CCC as an independent non-departmental public body to advise the government on tackling and preparing for climate change. The Act also created a duty for the government to ensure that the UK's net greenhouse gas emissions would be at least 80% lower in 2050 than in 1990. The government tasked the CCC with designing the stepped path to achieving this target by advising government on how to set and achieve a series of five-year 'carbon budgets' between 2008 and 2050.

In 2019 the committee published a report recommending the government adopted the more ambitious duty to ensure net zero greenhouse gas emissions by 2050. In its report *Net Zero – The UK's contribution to stopping global warming*,<sup>8</sup> the committee explained the actions that would be necessary across the economy for the government to achieve this aim. The report argued that cost reductions since 2008 in technologies such as offshore wind meant that the expected costs of achieving 100% net emissions reductions by 2050 were now no higher than what had been anticipated in 2008 as the cost of achieving 80% reductions by 2050. The government accepted the committee's recommendation, and the Climate Change Act was amended, enshrining in law the more ambitious target.

If the CCC is successful in holding the government to its commitment, the benefits of its advice to amend the target will be immense. The UK's path to net zero emissions in 2050 will result in lower levels of greenhouse gases in the atmosphere at every point up to and beyond 2050 than a path to the original target would have. The UK's case may even be able to inspire a global transition to lower emissions. The costs of global temperature rise, such as the damage wrought by extreme weather events and the impacts of lower global crop yields, would be less severe. The significant co-benefits, for example to health, will be achieved far sooner under the more ambitious plan, greatly increasing their net present value.

Climate change represents just one of the ten environmental goals identified by the 25YEP. The above example gives a sense of how the OEP could add value by contributing to the nine other types of environmental improvement. If the OEP were able to identify cost-effective strategies to increase the ambition of plans for environmental improvement in areas such as air quality, waste and biodiversity, it could add as much value as the CCC or more.

The following case study examines the area of air quality, giving an indication of the potential scale of the benefits that the OEP can contribute towards.

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<sup>8</sup><https://www.theccc.org.uk/publication/net-zero-the-uks-contribution-to-stopping-global-warming/>

## A1.4 Case Study 3 - National Emissions Ceilings (NCA)

### Case study: National Emissions Ceilings (NCA)

Air pollution is an environmental hazard inflicting very large and quantifiable costs on public health, the economy, and the natural world. In the UK, air pollution has been the subject of significant and growing public attention in recent years.

The UK recently adopted legally binding targets for reductions in the national emissions of five key air pollutants by 2020 and 2030, via the NEC Regulations 2018.

There is now a legal obligation for the government to publish a National Air Pollution Control Programme (NAPCP) every four years, setting out how it intends to meet the targets. The first NAPCP was published on 1 April 2019. It is currently the duty of the European Commission to scrutinise these NAPCPs and to publish a response setting out its judgment as to whether the plan for meeting targets is credible. If the Commission finds that the NAPCP does not set out a credible plan for meeting targets, the government must produce another within 18 months. From 2021 onwards, the monitoring of government's progress on coming into compliance with the emissions ceilings will fall within the duty of the OEP. In the 'do nothing' scenario, in which the OEP is not established, no institution would monitor the government's progress in meeting its NEC targets.

Although some progress has been made, more action is needed to ensure that these targets are met. The latest projections by the National Atmospheric Emissions Inventory (NAEI) in March 2020 estimated that unless further measures are put in place, the 2030 NECs will be exceeded for ammonia (NH<sub>3</sub>), nitrogen oxides (NO<sub>x</sub>), and fine particulate matter (PM<sub>2.5</sub>). Analysis carried out for the business case compared the air pollution that would be generated under the NAEI's current projections with the air pollution that would be generated if the UK followed a smooth path to compliance in 2030. Indicative estimates suggest that the extra air pollution that would be generated under current projections would have costs to the environment, the economy and public health worth a total of around £18 billion from 2020 to 2030.<sup>9</sup>

The government's Clean Air Strategy sets out a high-level vision for achieving compliance but designing and executing the necessary measures is a challenge that will require expert scrutiny and advice. The NAPCPs provide a way for the OEP to review the government's plans regularly. The threat of immediate robust legal challenge by the OEP, rather than piecemeal third-party judicial review, should provide a strong reputational incentive for the government to meet its targets, avoiding the costs of excessive air pollution arising.

Furthermore, the OEP may be able to provide a recommendation on how compliance could be achieved early, or the targets could be made more ambitious, as in the case of the CCC and the net zero target. Achieving the 2030 NEC targets early would greatly reduce the net present costs of air pollution. This is more likely to be achieved with the help of the OEP's scrutiny and advice watchdog function, and its power to take enforcement action.

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<sup>9</sup> This value was calculated in line with Defra's damage cost guidance for air quality appraisal. It was converted into 2020 present value using the standard annual discount rate of 3.5% combined with an uplift factor of 2% per year to reflect higher willingness to pay for health over time. The value was converted into 2020 prices using HM Treasury's GDP Deflators.