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Thank you for your letter of 23 October 2020 in which you ask for more information, further to my recent comments to the EFRA Committee, about how the Government intends to set up an interim form of the Office for Environmental Protection in advance of the Environment Bill gaining Royal Assent.

To this end, my department is establishing an Interim Environmental Governance Secretariat, which will be hosted in Defra and will operate from 1 January 2021 until the Office for Environmental Protection can begin its statutory functions following the passage and Royal Assent of the Environment Bill. The interim arrangements will support the Chair of the Office for Environmental Protection once they have been engaged following the regulated public appointments process which is already at an advanced stage. The interim Secretariat will operate under the guidance of both the Chair and the other Board members when they have been confirmed in post, initially on a designate basis if needed ahead of Royal Assent of the Bill.

The interim arrangements are intended to operate on a temporary basis and to provide an effective transition to the permanent body. They are not a replacement for the Office for Environmental Protection nor a basis to delay its establishment. The interim Secretariat within Defra will therefore operate for no longer than is necessary. We want to have the Office for Environmental Protection established and operational as soon as possible following Royal Assent of the Environment Bill.

I am pleased to provide more detailed information in response to your specific questions as set out in Annex 1.

I can also confirm that the Chair pre-appointment scrutiny hearing is scheduled for 14 December 2020. My officials continue to liaise with your clerks about the arrangements.

**RT HON GEORGE EUSTICE MP**

## Annex 1

Questions are numbered as in your letter.

**1. The first question has two distinct parts, and for convenience these are answered separately under (a) and (b) below.**

**a) What legal form will this interim Office for Environmental Protection take?**

We are establishing the Office for Environmental Protection through the Bill as a new, independent, public body which will be legally separate from the Crown. The interim arrangements, in contrast, necessarily must be non-statutory, since we are only introducing them because of the delay in the Bill's passage. They also only need to operate for a limited period.

I have therefore asked my officials to set up a new Interim Environmental Governance Secretariat in Defra, to act from 1 January 2021 until the Office for Environmental Protection is up and running. This will operate as a specific, dedicated team within the Environmental Governance Division in Defra. While the Secretariat is not legally the same as the Office for Environmental Protection, it is intended to be a precursor to it, exercising some functions on a non-statutory basis in the interim period, and transitioning to and paving the way for the permanent body to deliver its full, statutory functions.

**b) Which of the Office for Environmental Protection's functions and powers currently provided for in the Bill will the interim body be able to exercise?**

The Office for Environmental Protection's statutory roles are set out in the Environment Bill and can only be delivered in full once the necessary legal framework and functions have been established following Royal Assent. It is impractical – and would in any case be inappropriate – for an interim, non-statutory team in Defra to undertake all of the same functions as the Office for Environmental Protection or to implement them in the same way. The interim arrangements will implement those elements of the Office for Environmental Protection's intended functions that the Secretariat can deliver on a non-statutory basis and without prejudicing the ability of the permanent body, once established, to take its own legal decisions. In this context the Secretariat will have both a "preparatory" function for the Office for Environmental Protection and an interim "delivery" function.

In its preparatory role, the Secretariat will create draft documents and processes to hand over for further development and adoption by the Office for Environmental Protection, for example in relation to its strategy and working framework. The Secretariat will not seek to present any final documents for the Office for Environmental Protection in this regard, since it will be for the permanent body, as an independent legal entity, to adopt and ensure it is satisfied with its own working framework. The intention, therefore, is to undertake preparatory work on which the Office for Environmental Protection can build, rather than leaving it to begin operating from a standing start.

As regards its interim delivery function, the Secretariat will have two main areas of responsibility.

Firstly, it will receive and assess complaints submitted by members of the public about alleged failures of public authorities to comply with environmental law. The Secretariat will check the complaints against the criteria specified in the Environment Bill to determine if they will fall within the remit of possible investigation by the Office for Environmental Protection, interacting with the complainants and public authorities in question to gather further information where necessary to determine these facts. It will assess the information received and pass it on to the Office for Environmental Protection once established, so that the permanent body can determine which complaints to consider further through the exercise of its legal functions including formal investigations and enforcement. For example, the

Secretariat will check that any complaint it receives has already been fully considered through the internal complaints procedure of the public authority in question. This is a prerequisite for the Office for Environmental Protection to be able to consider complaints. The interim Secretariat will therefore support the objective of addressing complaints as far as possible through the internal procedures of public authorities, with the Office for Environmental Protection only being able to act where these procedures have been exhausted without resolution.

As a result, the Office for Environmental Protection will be able to use its legal powers to investigate and take enforcement action, where appropriate, against any serious failures alleged to have occurred from 1 January 2021. For example, if the interim Secretariat receives a complaint in February 2021 about an alleged failure to comply with environmental law which happens in January 2021, it will pass this to the Office for Environmental Protection once it becomes operational. At that point the Office for Environmental Protection will be able to consider whether the matter is serious and action should be taken in connection with that complaint. This will be even though the Office for Environmental Protection will not have been in place at the time of the alleged failure to comply with environmental law.

The Office for Environmental Protection will apply the same legal framework and standards to complaints received via the interim Secretariat as for those arriving after it begins its statutory functions. For example, it will need to determine their seriousness and priority for attention as a basis for commencing any formal investigation. Where it chooses to take enforcement action, unless the case is urgent (see question 2), the Office for Environmental Protection will need to work through cooperation and statutory notices to seek to resolve the matter before, as a last resort, referring any case to Environmental Review. Its approach to such matters will be set out in its own enforcement policy.

Secondly, the interim arrangements will also provide for continuity and handover of the technical work currently undertaken by the Natural Capital Committee and its Secretariat in relation to monitoring progress in implementing the 25 Year Environment Plan, which will become the first statutory Environmental Improvement Plan under the Bill. The Secretariat will not itself produce any binding conclusions or reports in relation to this function which would pre-empt independent statutory decisions and functions that fall to the Office for Environmental Protection. The interim work will, however, ensure that the permanent body, once established, is in a position to swiftly produce its first statutory report on the Government's progress against the implementation of the 25 Year Environment Plan, as provided for in the Environment Bill.

**2. What steps will the interim Office for Environmental Protection be empowered to take where it believes a public body is failing to follow environmental law, and in particular where it considers the breach is a “serious failure” likely to cause “serious damage” to the natural environment so that the use of its powers under Clause 36 of the Bill would have been warranted if the Bill had been enacted?**

Under the enforcement provisions of the Bill (clauses 29-38) the Office for Environmental Protection will be able to take enforcement action in serious cases.

As described above, the interim arrangements, being non-statutory, cannot themselves entail any enforcement action against public authorities equivalent to that provided for by the Office for Environmental Protection in clause 36 of the Bill. However, the interim Secretariat will be able to receive complaints and conduct initial assessments (see further under questions 3 and 7 below). This will act as a basis for the Office for Environmental Protection, once established, to consider such complaints further to reach its own view as to whether any are serious and merit investigation.

In the meantime, while the interim Secretariat will not take any enforcement action if necessary it will escalate any serious issues or complaints to Ministers. This would be expected to involve the permanent body's Chair (or Chair-designate) once in post, as further explained under question 6. Third parties will also continue to be able to pursue their own enforcement action before the Office for Environmental Protection exists through Judicial Review, if they consider it necessary.

**3. How will the public be able to submit complaints to the interim Office for Environmental Protection? What work has Defra done to ensure that this process is accessible to all and well publicised?**

People will be able to submit complaints to the interim Secretariat by completing an online complaints form accessible through a link on GOV.UK. We also intend to allow people to submit the completed form by email or in hard copy through the post if they want.

The complaints form and related materials are under development and have already been shared in draft form with a number of stakeholders, including representatives of several civil society organisations, to test their completeness and clarity. We will also be conducting work to ensure that the complaints system meets appropriate accessibility standards, and plan user-testing of the online system that we are developing before the end of the year. We will be publicising the interim arrangements as a whole, including the complaints system, through media and stakeholder engagement activity before the end of this year. Key civil society stakeholders are already broadly familiar with the framework of our proposals and are well placed to pass information on to their members.

**4. How many staff (or full-time equivalent posts) will the secretariat for the interim body have? How will they be recruited, and who will they be employed by? How many will be in post at the beginning of January 2021?**

We currently envisage a staff contingent for the interim Secretariat of 18 people. We aim to have all of these staff members in post for the beginning of January 2021. They are being recruited via re-allocation of internal resource within Defra and by secondments from the department's arm's length bodies. Staff members on secondment who are not employed by Defra will remain substantive employees of their home organisations while working under terms and conditions specified in their secondment agreements.

It is possible that members of the interim Secretariat team could be seconded into the Office for Environmental Protection for an initial period once it comes into operation to support a handover. This would be subject to agreement with the Office for Environmental Protection as an independent legal entity.

**5. What will be the interim body's budget for the remainder of the 2020/21 financial year, and who will be the Accounting Officer for it? If the relevant parts of the Environment Bill have not been commenced by the end of the financial year how will its budget be set for 2021/22?**

As part of Defra rather than as a separate legal entity, the interim Secretariat does not have its own separate budget or accounts. Defra has allocated the sum of up to £1.36M within its internal budget to cover the cost of setting up and running the Secretariat in 2020/21. Since the Secretariat is part of Defra, its financial management falls within the responsibility of Defra's overall Accounting Officer, the Permanent Secretary.

If the relevant parts of the Environment Bill have not been commenced by the end of the financial year, the Secretariat will be retained to ensure continuity, and budgeted for in the

same way. We have included provisional amounts in our 2021/22 funding figures to allow for this if necessary.

**6. What internal governance arrangements will be in place to oversee the work of the interim Office for Environmental Protection, for instance do you intend to appoint an interim board to support the Chair-designate?**

The interim Secretariat derives its non-statutory ability and remit to act from the Secretary of State, with whom accountability rests. As such, the team will be formally managed and governed within Defra.

However, as you know, our plan is to identify and announce the Secretary of State's preferred candidate for the Chair of the Office for Environmental Protection before the end of this year, for appointment as Chair-designate (before the Bill's Royal Assent) after their joint EFRA and EAC hearing in December. Once the Chair-designate is in post, they will be supported by and provide leadership to the interim Secretariat. The Secretariat will report to the Chair-designate on matters such as the numbers and subject areas of complaints received, including any significant issues that emerge and any lessons learned for the Office for Environmental Protection.

This will allow the Chair-designate to highlight any important matters to Ministers or the Secretary of State if necessary, including in the event of there being any matters which appear likely to give rise to a possibility of serious damage to the natural environment before the Office for Environmental Protection comes into operation, as queried in section 2. Any matters reported to the interim Secretariat of such high gravity would most probably already be known to the Secretary of State or Government anyway, but in any case the possibility of the Chair-designate raising a matter with Ministers or Government will form part of the interim arrangements to be used if needed.

We do not think it is necessary or appropriate to appoint an interim Board to support the Chair-designate. As well as being at an advanced stage of the public appointments process for the Chair campaign, we are also currently moving ahead with plans to identify the Office for Environmental Protection's other Non-Executive Directors and additionally to recruit an Interim Chief Executive Officer. These will allow the Board of the Office for Environmental Protection to become quorate soon after the Bill receives Royal Assent.

It would be confusing and inappropriate, in parallel, to create an interim Board of individuals appointed by a different process for a non-statutory body. We must not do anything that could call into question the proper implementation of the public appointments process for the Board of the Office for Environmental Protection, such as by creating the appearance of having pre-selected "Board members in waiting", without due process, through the composition of an interim Board. It is also unnecessary to establish such an interim Board given the actual functions that the interim Secretariat team will undertake, which will leave the Office for Environmental Protection free to make its own decisions once its Board has been constituted. In any case, in the first instance, the Chair-designate will be well supported by the interim Secretariat until the rest of the Board is assembled.

**7. How will you guarantee the independence of the work of the interim Office for Environmental Protection? How will you avoid the perception of a conflict of interest, or the possibility of undue pressure on staff (if they are Defra employees), where complaints have been made about the actions of UK Government Departments or Ministers, and especially Defra?**

As described under question 1(b), members of the public will be able to submit complaints about alleged failures of public authorities to comply with environmental law to the interim Secretariat from the start of next year. The function of the interim arrangements in this regard is to receive complaints and conduct initial assessments, as a basis for further consideration by the Office for Environmental Protection once established. It will therefore be possible for the Office for Environmental Protection to hold public authorities to account in relation to any serious failures alleged to have occurred from the beginning of 2021. The role of the interim arrangements is to provide this continuity, not take legal decisions.

On this basis, the handling of complaints should not give rise to actual conflicts of interest. All of the complaints received, together with the interim Secretariat's initial assessments of them, will be passed on to the Office for Environmental Protection for consideration. The Secretariat will not be making definitive decisions about whether or not complaints fall within the Office for Environmental Protection's remit, their seriousness or priority for legal investigation, or judgements about whether or not the public authority in question has failed to comply with environmental law. These will be matters for the Office for Environmental Protection to determine, as an independent legal entity, in accordance with its legal powers.

As a result, the concern about conflicts of interest for members of staff who may be Defra employees is misplaced, since the substantive decisions will need to be taken by the Office for Environmental Protection anyway. Any person who initially complains to the interim Secretariat will be able to expect that their complaint will later be passed to the permanent body, which will be accountable for its own, independent decisions in respect of that complaint.

You also raise the issue of concern over the perception of conflicts of interest. In this context I believe the following points should help provide reassurance.

- The interim Secretariat will be a dedicated and specific team within Defra, expressly formed for this purpose and with no other functions, rather than carrying out their role alongside other responsibilities.
- As Defra employees/secondees, all staff in the Secretariat will have to abide by the civil service code and its core values: integrity, honesty, objectivity and impartiality.
- As described under question 6 above, while working within Defra, the Secretariat will be subject to guidance and leadership from the individuals selected for the Office for Environmental Protection's Chair, Non-Executive Director and Interim Chief Executive positions as they are brought into post.
- Details on individual complaints received will only be accessible to the Secretariat rather than wider Defra staff. Information will only be shared with other Defra teams or public authorities where that is necessary to complete the required assessments ahead of presenting the information to the Office for Environmental Protection once established. For example, where a complainant indicates that they have exhausted the internal complaints procedure of the public authority in question – which is a pre-requisite for complaining to the Office for Environmental Protection – the Secretariat may need to confirm this with that public authority.
- The Secretariat team members will work with probity in handling complaints and will publish summary information on its activities. The team will have its own legal resource, distinct from the Government Legal Department.
- Details of complaints will be saved in a secure data environment. The Secretariat is being provided with dedicated working space including restricted access storage space for any sensitive physical material.

**8. What steps are you taking to ensure that the interim arrangements you are putting in place for England are aligned with those in the rest of the UK, and that there will be appropriate co-operation on cross-border issues?**

The environment is a devolved matter, subject to a small number of reserved areas. Therefore, the Office for Environmental Protection's remit will cover England and reserved matters. As such, it will be able to investigate and enforce potential breaches of English environmental law and of reserved areas of environmental law. The interim Secretariat will have the same remit in respect of its initial, non-statutory functions.

If the Secretariat receives a complaint that is about another part of the United Kingdom and is not concerned with a reserved matter, they will refer it to the relevant devolved government for consideration. More broadly, my officials are in contact with their counterparts in Northern Ireland as they consider whether and how any similar interim arrangements might operate there. This is a matter for Northern Ireland's Ministers to determine but we are pleased to assist. My officials similarly plan to discuss the interim arrangements with Welsh Government and would be pleased to do likewise with colleagues in Scottish Government.

**9. How quickly do you expect to commence the relevant parts of the Environment Bill once Royal Assent is achieved?**

The government still intends to bring the Office for Environmental Protection into operation in 2021, but due to the delay in the Environment Bill's passage and the wider context of Covid-19, we cannot yet confirm exactly when it will start. I am pleased that the Bill's Committee stage has now resumed. We are seeking to establish the Office for Environmental Protection as soon as practical after Royal Assent, with no delay longer than is necessary. We anticipate that clause 21, which establishes the Office for Environmental Protection as a legal entity, would be commenced within a few days of Royal Assent. This will allow formal appointment of the Chair and then, after consultation with the Chair, the other Non-Executive Directors to form the Board. The Board will need some time to come together and confirm the Office for Environmental Protection's practical operating framework. On this basis, we anticipate that the permanent body should be in a position to start exercising its statutory functions within about three months of Royal Assent although this of course is dependent on some external factors such as the ability of the Board members to take up their positions.