

Dame Glenys Stacey: Westminster Energy, Transport and Environment Forum Speech

It is my pleasure to speak with you today, as the Chair-designate of the Office for Environmental Protection (the OEP).

We live in interesting times. We now recognise and instinctively warm to the view most recently and elegantly expressed by Sir Partha Dasgupta, that nature is an asset,^{1,2} just as buildings, factories and elements of human capital are assets. We understand that biodiversity enables nature to be productive, resilient and adaptable and that it is crucial in supporting a green recovery. We appreciate that biodiversity provides many of the essentials of life: food, fuel, medicines, carbon sequestration, and indeed the sheer joy and restorative power of nature itself.

We live in a time when our measures of biodiversity are nowhere near comprehensive, but the measures we do have confirm what we see - that biodiversity is declining. Current measures show a worrying picture for many birds^{3,4}, butterflies³, bees and other pollinators⁵, for example. Many of you will be more familiar than me with the fuller picture.

We know that some steps are being taken. To give one example: in England, native woods and trees support a fifth of the UK's Priority Species for conservation⁶. The national tree planting scheme will play a part in meeting the net zero target, yes, but it will also develop more biodiverse communities beyond our established woodlands.

Policy initiatives are central to reversing the worrying trends of recent decades. Concerted conservation action and (where needed) legislative provisions and protections are important too. For example, populations of five species of bats are recovering following stronger legal protection of bats and their roosts. The bat index

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/9572/Dasgupta_Review_-_Headline_Messages.pdf

³ In 2018 the UK Farmland Bird Index was 45% of its 1970 value, with some species declining by 90% or more. - *JNCC's UK Biodiversity Indicators 2020. Indicator C5. Birds of the wider countryside and at sea* ³
From 2019 to

⁴, the unsmoothed habitat specialist butterflies index had fallen by 59% - *JNCC's UK Biodiversity Indicators 2020. Indicator C6. Insects of the Wider Countryside*

⁵ In 2017 the distribution of pollinating bee and hoverfly species had declined by 30% since 1980⁴ - *JNCC's UK Biodiversity Indicators 2020. Indicator D1c. Status of pollinating insects*

⁶ <https://www.woodlandtrust.org.uk/trees-woods-and-wildlife/british-trees/whytreesareimportantforbiodiversity/>

has increased by 45% between 1999 and 2018⁷. Purposeful, coordinated steps can make a difference.

And now, with powers and responsibilities repatriated to the UK, England is more able to take greater ownership of its policies and the effectiveness of the law, to protect and enhance the environment.

The OEP will play an important role, to make a difference where needed and to help government keep on track to deliver against its 25 Year Environment Plan, and its biodiversity and other environment targets. Where appropriate, the OEP will take action to enforce serious breaches of policies on biodiversity enshrined in environmental law.

Update on the OEP

By way of reminder, the OEP will have two broad areas of responsibility:

Firstly, we will have a range of scrutiny and advice functions including independent monitoring and reporting on government's progress in the implementation of its environmental improvement plans and targets. These functions also include monitoring and reporting on the implementation of environmental law more generally.

Secondly, the OEP is to respond to complaints and other sources of information to determine if there are serious infringements of environmental law by government or other public authorities, including local authorities. We can also undertake enforcement action.

However, you will know that the Bill is carried over, its provisions are still under parliamentary scrutiny, and the OEP is therefore unlikely to achieve Royal Assent and be constituted until later this year.

Every cloud has a silver lining. The Secretary of State has agreed to establish the OEP as an interim body from on or before 1 July this year, and we are making good progress. The initial shape of the organisation is settled, with the need for independence and for flexibility guiding the design. Our location, Worcester, has been confirmed. Board member recruitment is very advanced, and the first wave of externally advertised staff recruitment is underway, with a second wave planned for launch soon. We are looking for the best of people, to join us.

The OEP cannot formally commence its statutory functions until after the Environment Bill receives Royal Assent, but Interim OEP can lay the groundwork.

Interim OEP will be able to receive (albeit not formally investigate) complaints about alleged breaches of environmental law. Our aim will be to make sure that complaints that will fall within the OEP's remit are in good order for when the OEP is constituted, and empowered.

⁷ *JNCC's UK Biodiversity Indicators 2020. Indicator C8. Mammals of the Wider Countryside*

And with our board appointed, we will be able to start the necessary hard thinking, on our overall strategy and approach. And we will be able to give advice to government in our non-statutory capacity.

We will not be anywhere near fully staffed, of course. In interim form, we must be prepared to focus our enthusiasm and manage our ambitions as necessary, while we build our capacity in the lead up to vesting later in the year. That said, we will aim to report before the calendar year end on government's progress with its 25 Year Environment Plan. I think this right, as otherwise there will be a reporting gap for 2021. I have no doubt we will develop our reporting over the years ahead, with this first nonstatutory report inevitably a stop gap – but we will give it our best shot, use our best endeavours with the resources we will have.

OEP's role in relation to biodiversity policies

I would now like to focus on our role in enhancing and improving biodiversity.

Monitoring the EIP and Targets

The 25 Year Environment Plan sets out to 'achieve a growing and resilient network of land, water and sea that is richer in plants and wildlife'. The Environment Bill will commit government to setting at least one legally binding long-term target on biodiversity. Of course, I hope that government will go beyond the statutory minimum and set more than one target, in this and other areas – and that those targets are sufficiently stretching and aligned to the ambitions of the 25 Year Environment Plan, so that we can see that golden thread.

The OEP will have an explicit duty to monitor progress with the 25 Year Environment Plan goal related to biodiversity, and the statutory target, or targets once set, and may comment on how progress could be improved.

I have high ambitions here - to assess the true state of plants and wildlife in England and provide a comprehensive and clear analysis of change. This is not straightforward, as you know. We and indeed Defra and wider government will need baseline data to be able to pinpoint changes, good or bad.

And ideally, our assessment should evaluate species and ecological communities as part of the complex systems which they depend upon and support. That is extremely challenging, I know.

I am pleased that Defra recognise the need for more comprehensive baseline environment data, and are taking steps now to develop it, and of course we have an exceptionally keen interest in that work. And as Interim OEP, we will be talking with expert stakeholders more immediately about how the OEP should assess biodiversity, now and over time. We want to really listen, and to hear and evaluate your ideas.

Monitoring and providing advice on the implementation of environmental law

The OEP will also have a role to monitor the implementation of environmental law and provide advice to government on changes to environmental law. I believe this is the first time our domestic legislation has empowered an independent body to do this. In my view, this function has such great potential to effect change.

The body of environmental law has grown as environmental concerns have grown, not only domestically but internationally. Over 800 pieces of European environmental legislation are now in large part embedded in UK law⁸. The subject matter is now wide-ranging and diverse. A first task for the OEP then is to consider with stakeholders how to best use the resources we have, to monitor environmental law effectively.

I want to keep our options open at this early stage, with one option being a targeted approach. For example, the Environment Bill takes the good habits of those local authorities who already require, as a condition of granting planning permission, that development delivers a net biodiversity gain, and makes this a national legal requirement. Certain new developments in England will need to demonstrate a 'net gain' of 10% to biodiversity, in line with the National Planning Policy Framework principle that planning permission should increase rather than reduce levels of biodiversity.

Over time, the OEP could assess how this new environmental law is working in practice and whether it is delivering the intended benefits. We shall see, but whatever approach we adopt, I know that NGOs will play an important role for us, as the eyes and ears on the ground and I welcome that relationship.

If we find any environmental law is not fit for purpose, or not targeted sufficiently, we will be able to recommend improvements, and make the case for change. We will want to offer well thought-through advice and practical solutions, because in that way we are most likely to influence for the better.

Investigations and enforcement

Good advice and constructive dialogue with public authorities will be important, but our enforcement powers have a central role to play as well.

The OEP will be able to investigate suspected breaches of environmental law which it considers serious. Where it conducts investigations, the OEP will be able to rely on statutory powers, including the duty of cooperation for public authorities and the OEP's power to serve information and decision notices. These powers should generally lead public authorities to rectify any non-compliance.

Following its investigations, the OEP will produce reports and recommendations for the public authorities in question, and for government. Where necessary, this will help to drive systemic improvements to tackle the root causes of non-compliance.

In appropriate cases, the OEP will be able to take cases to court in the form of an environmental review. Our legal framework will allow the OEP to bring legal

⁸ House of Commons Environmental Audit Committee – The Future of the Natural Environment after the EU Referendum, Sixth Report of Session 2016-17

proceedings outside the normal judicial review timescales, ensuring the OEP has time to resolve issues through less confrontational means, rather than rushing into litigation.

That said, in cases where there is an urgent threat of serious damage to the environment or human health, the OEP will be able to apply directly for judicial review without going through its earlier notice processes.

Our enforcement provisions are designed to bring about solutions, if possible, without ending up in court. Often the answer is not enforcement in the traditional, narrow sense. It may instead be influence, or exposure, or a request to join others' proceedings, or whatever we judge is the best way to use our powers and position to make the most difference.

The skill will be in choosing what and when to influence, and then using the right tools from the toolkit. The OEP should exert influence to good effect, to ensure laws designed to protect our biodiversity and the wider environment are upheld effectively, to deliver the intended benefits. However, where formal enforcement proceedings are the best tool, we will not hesitate.

Conclusion

To conclude, there is no doubt about the severity of the threats to biodiversity. Climate change, the degradation of our soils, water and air quality, unsustainable farming and fishing practices, and the spiralling effect of resource consumption and waste generation are all significant contributors to the loss of our biodiversity.

Most recently, the Dasgupta Review highlighted the financial importance of protecting nature, and the implications if we do not. These issues really do threaten not only our environment but also economic prosperity, our wellbeing, our health.

Now is the time to recognise biodiversity as a real and essential asset - part of the balance sheet of the country. Together we must stop further degradation of our environment and the biodiversity it holds. More than that, we must seek to improve it. This is the *raison d'être* of the OEP, enshrined in its principal statutory objective.

For my part, I promise that biodiversity will always enjoy its proper place on the OEP's agenda, alongside rather than subject to other pressing environmental topics and concerns.

Thank you all very much for listening, and I very much look forward to working with you all in the future. Thank you.

Dame Glenys Stacey

29th April 2021