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By Email Only

08 September 2025

Dear Ruth

RESPONSE TO REQUEST FOR INFORMATION

Ref No: 1274

Thank you for your email of 11 August 2025 where you requested information about the OEP's remit in Wales. Your second question has been dealt with under the terms of the Freedom of Information Act 2000.

Question 1 - Does the OEP consider that the public authorities listed in the annex to this letter fall within the scope of its investigation and enforcement powers?

The OEP's investigation and enforcement powers only apply to "public authorities" as defined in s.31(3) of the Environment Act 2021 ("EA 2021"). The bodies listed in the annex to your letter can fall within that definition insofar as they are carrying out functions that are reserved matters for the purposes of Schedule 7A of the Government of Wales Act 2006. However, our enforcement functions are also defined with reference to "environmental law", the definition of which excludes "devolved legislative provisions" (s.46(3) EA 2021), so the question of whether those authorities will actually fall within the scope of our powers in any particular case will also depend on the nature of the laws they have been allegedly breaching.

Question 2

(a) What proportion of complaints received by the OEP since its establishment relate to reserved matters in Wales, and (b) How many of the OEP's investigations have involved such matters?

Of the complaints that we have received since establishment where the eligibility determination process is complete, we have not received any complaints relating to reserved matters in Wales and none of our investigations have been into such matters.

Nonetheless, our work that focusses on UK-wide legislation could have potential implications for Wales. One example is our ongoing investigation into the Defra Secretary of State's potential failure to comply with the duty to achieve good environmental status in the marine strategy area by 31 December 2020. The relevant legislation - the Marine Strategy Regulations 2010 - apply across the 'marine strategy area' which encompasses, amongst other things "the area of sea within the seaward limits of the territorial sea adjacent to the United Kingdom". This includes the sea around Wales.

Moreover, there are requirements in the 2010 Regulations on the Welsh Ministers, to assist the Secretary of State with the development of the component parts of the UK Marine Strategy. With this in mind, it could be that, depending on the outcome of the ongoing investigation, there are implications for the Welsh Ministers (who are not within the definition of Public Authorities for our purposes).

Question 3 - How does the OEP intend to raise public awareness of its potential role on reserved matters in Wales, given the low public awareness of this?

We are mindful of the ongoing progress towards a new oversight body for Wales and we anticipate future interactions with this body to negotiate a revised memorandum of understanding (MOU) to replace our existing MOU with the Interim Environmental Protection Assessor for Wales.

We also expect that the likely publicity surrounding the launch of the new body will provide opportunity for us to clarify and publicly outline the OEP's role, particularly in areas where there may be overlap or jurisdictional uncertainty - such as reserved matters in Wales.

Additionally, as part of our ongoing commitment to enhancement and in preparation for the launch of the new body, we will undertake a review of our website content to ensure it effectively communicates our responsibilities concerning reserved matters.

Question 4 - The Crown Estate is reserved in relation to Wales and has been specified by the ONS as a public corporation. If the Crown Estate was acting in Wales, including in Welsh marine waters, on a reserved matter, would that activity fall within the OEP's remit?

The Crown Estate is a reserved body pursuant to Schedule 7A, Part 1, paragraph 1 of the Government of Wales Act 2006 so it could fall within the definition of “public authority” at s.31(3) EA 2021 and so potentially be within the remit of the OEP.

Where it is acting in breach of an environmental law falling within s.46(1) EA 2021, the OEP has oversight. Where it has acted in breach of a devolved Welsh legislative provision or s.46(2) of the Environment Act 2021 applies (excluded matters), then the activity would fall outside the OEP's remit.

Question 5 - Is the explanatory memorandum correct to state that the OEP does not have oversight powers relating to bodies such as the Ministry of Defence operating in Wales?

Section 46(2)(b) excludes legislative provisions that are concerned with “the armed forces or national security” from the definition of environmental law at s.46(1) of the Environment Act 2021.

Given that the Ministry of Defence is responsible for such matters, it is conceivable that in most cases the OEP would not have oversight over its functions. However, the Environment Act 2021 does not completely exclude the Ministry of Defence from the OEP's enforcement functions. Therefore, were it to act in breach of an environmental law which did not concern any of the matters specifically excluded by s.46(2)(b), the OEP would retain oversight.

Potential Oversight Gap

Paragraph 3.263 of the explanatory memorandum to the Environmental (Principles, Governance and Biodiversity Targets) (Wales) Bill, notes that where a public body is engaged in reserved matters but has breached Welsh Environmental Law, then neither the OEP nor the OEGW can intervene.

The OEP could not act where a Welsh environmental law has been breached since this would be a “devolved legislative provision” under s.46(4)(b)(ii) of the Environment Act 2021 and so excluded from the meaning of “environmental law” which underpins the OEP's functions. We note that as the Bill is currently drafted it is envisaged that the OEGW could also not act as the body would not be a devolved Welsh authority falling within clause 30(a) of the Bill (nor would clause 30(b) apply).

Therefore, the current drafting of the Bill would appear in principle to allow for a situation where some activities of public authorities would not be subject to oversight by either the OEP or the OEGW. The explanatory memorandum suggests that the

two bodies could seek to address this through voluntary cooperation. The OEP anticipates a close cooperative relationship with the new OEGW. However, such cooperation would not allow the OEP to take up matters which would be beyond its statutory powers.

If you are dissatisfied with the handling of your request (in relation to question 2), you have the right to ask for an internal review. Internal review requests should be submitted within 40 working days of the date of receipt of this response and should be addressed to: informationrequests@theoep.org.uk.

Please remember to quote the reference number above in any future communications to help us identify your matter quickly.

If you are not content with the outcome of the internal review, you have the right to apply directly to the Information Commissioner for a decision. The Information Commissioner can be contacted at: Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF. The Information Commissioner also has guidance on their website that you may find to be of use: <https://ico.org.uk/your-data-matters/official-information/>

Yours sincerely,

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