



The Interim OEP Complaint Form

Who should use this form?

This form is for you to complain to the Interim Office of Environmental Protection (OEP). You can complain about public authorities you believe have not complied with environmental law. The Interim OEP provides environmental governance until the Office for Environmental Protection (OEP) has been established under the Environment Bill 2021. The Bill is expected to become law late in 2021. Before then the Interim OEP will receive complaints about public authorities suspected of not complying with environmental law. Once the OEP is established, it will review your complaint.

Please note the OEP is not obliged to open an investigation into every complaint it receives, even where it considers a breach may have occurred. It will prioritise investigations in accordance with its strategy and enforcement policy. In addition, if the OEP does formally follow up your complaint, its aim is a general one – to hold public authorities to account for failures to comply with environmental law. The OEP complaint process is therefore not appropriate for seeking personal redress, including compensation, from the public authority concerned. You may wish to consider alternative routes.

The role of the Interim Office for Environmental Protection

We will assess complaints against the criteria set out in the Bill. We will tell you if we think your complaint does not meet those criteria. We may also ask you to provide more information. This is so we can better assess your complaint against the criteria. Please note this assessment is to confirm whether your complaint will fall into the scope of a possible investigation by the OEP. The interim OEP will not itself be able to investigate your complaint or reach a conclusion. These are matters for the OEP to determine.

Once the OEP is established, we will pass your complaint on to it. We will do this even if we do not think your complaint meets the criteria. This is so the OEP can decide itself whether your complaint is eligible. We cannot guarantee the OEP will investigate all complaints we pass on, even if they do meet the criteria. The OEP will have to decide this, following its enforcement policies and priorities.

Data Privacy

By submitting this form you agree to our [Data Privacy Notice](#) which can be found on our website: www.TheOEP.org.uk The Interim OEP will use the information you provide to contact the relevant public authority to verify that you have finished their internal complaints procedure. You may tell us at any time if you wish to withdraw your complaint.

Completing this form

You should provide information about the breach of environmental law you believe has occurred, even if you cannot name the specific law. Please ensure that you enclose all documents that you believe are relevant to your complaint including any additional sheets. Please include anything that you regard as evidence of suspected breach of environmental law.

You only need to answer the Mandatory Questions prefixed with an asterisk* to complete this form. If you can give specific and detailed answers to optional questions it will help us to better assess your complaint.

You should follow the Interim OEP complaint procedure and may wish to read the information on our website before complaining. You should also refer to the guidance provided in Section B of this form.

Contact us if you need help using our service at TheOEPenquiries@defra.gov.uk or by phone 03300 416581. If you have any specific needs with regard to completing this form please advise us of this. We will do our best to communicate with you in the way you have requested. Please see our [Accessibility Statement](#) which you can also find on our website.

All correspondence in relation to Northern Ireland issues will be forwarded to staff in Northern Ireland who will respond.

*What is the title of your complaint?

Please provide below a short title for your complaint, with a maximum 30 words that makes it easily identifiable. We will give your complaint a unique ID number which will be emailed or sent by post when we receive your complaint.

Failure of Secretary of State and OFWAT to enforce water companies' duty to 'effectually deal with' sewage, section 94(1)(b) Water Industry Act 1991, enforceable under section 18 of that Act, and to exercise their functions under that Act to provide for a require sufficient investment in sewerage infrastructure

The Environment Bill sets out **criteria for complaining to the OEP**. You must be able to answer '**Yes**' to the following questions:

1. ***Do you think there has there been a breach of an environmental law?**

See guidance in Section B2.

Yes No

2. ***Does the breach relate to England, Northern Ireland or a reserved matter?** See guidance in Section B3.

Yes No

3. ***Is your complaint about a public authority?** See guidance in Section B4.

Yes No

4. ***Can you complain?** Public authorities cannot complain to the OEP. See guidance in Section B1.

Yes No

5. ***Are you within the time limit?** You must normally complain within 1 year of the breach or else within 3 months of the *public authority's* internal complaints procedure finishing. See guidance in Section B5.

Yes No

6. ***Have you complained to the public authority and received a final response?** This applies if the *public authority* has an internal complaint procedure. The OEP cannot consider a complaint unless you have first complained to the relevant *public authority* and exhausted its internal complaints procedure. You should have a letter or email confirming this.

Yes No

We will tell you if we think your complaint doesn't meet these criteria and explain why. We will also tell you if we need more information.

[Section A1 – About you](#) (see guidance in Section B1 of this form)

Please provide contact details. We require your name and **at least an email OR postal address**. If we cannot contact you, we will still try to process your complaint but we may not have the information we need. We also won't be able to keep you informed about your complaint.

Title

*Full Name

Organisation (if applicable)

Telephone number (optional)

*Email address	<input type="text" value="guy@linley-adams.co.uk"/>
*Address Line 1	<input type="text" value="Office E3, The Grange"/>
Address Line 2	<input type="text" value="Pinsley Road"/>
*Town	<input type="text" value="Leominster"/>
*Post Code	<input type="text" value="HR6 8NL"/>
*Country	<input type="text" value="United Kingdom"/>

[Section A2 – About your complaint](#)

***Do you know which environmental laws have not been complied with?**

Yes **No**

Please provide information about the breach of *environmental law* you believe has occurred even if you cannot name the specific law. Please be as detailed as possible and see section B2 of this form for guidance.

Section(s) of Act(s)	<input type="text" value="94(1)(b) & 18 Water Industry Act 1991 and ors"/>
Regulation(s)	<input type="text" value="n/a"/>
Other Legal Provision(s)	<input type="text" value="n/a"/>
I Don't Know	<input type="checkbox"/>

Details of the environmental law(s) concerned.

exercise his/her relevant functions so as to secure compliance with the requirements of the Water Framework Directive etc. That includes dealing with failure to achieve good ecological status caused by sewage pollution of rivers.

Section 94(1)(b) Water Industry Act 1991 - General duty to provide sewerage system provides that:

(1) It shall be the duty of every sewerage undertaker—

(a) to provide, improve and extend such a system of public sewers (whether inside its area or elsewhere) and so to cleanse and maintain those sewers [and any lateral drains which belong to or vest in the undertaker] as to ensure that that area is and continues to be effectually drained; and

(b) to make provision for the emptying of those sewers and such further provision (whether inside its area or elsewhere) as is necessary from time to time for effectually dealing, by means of sewage disposal works or otherwise, with the contents of those sewers.

Section 94(3) of the 1991 Act provides that “the duty of a sewerage undertaker under subsection (1) above **shall be enforceable under section 18** above (a) by the Secretary of State; or (b) with the consent of or in accordance with a general authorisation given by the Secretary of State, by the Authority” [Note that “the Authority”, in effect, means OFWAT]

In interpreting section 94(1)(b), note the opinion of Ramsey J in *Hanifa Dobson and others v Thames Water Utilities Ltd and another* [2007] EWHC 2021 (TCC), concluding that ‘effectually dealing with’ means the treating of sewage by way of sewage treatment systems:

“73. It is common ground that what is needed to deal effectually with the content of sewers is a matter of degree. However, where the contents of a sewer when emptied at a sewage treatment works causes odours and mosquitoes then I consider that, on the natural meaning of that phrase, the contents of the sewers have not been effectually dealt with.

74. I reach this conclusion for the following reasons:

(1) The provision in s 94(1)(b) has two obligations: to empty the contents and to deal with the contents. Whilst in some circumstances merely emptying the contents might “effectually deal” with that contents, there will generally be something further that has to be done.

(2) If the obligation to deal effectually were limited to “getting rid” of the contents then it is difficult to see what more would have to be done that was not covered by the obligation to “empty” the contents.

(3) What has to be done is a matter of degree. The obligation under s 94(1)(b) expressly refers to “effectually dealing” as being “by means of sewage disposal works or otherwise”. The fact that a sewage disposal works is one of the means indicates that such a process may be necessary. Under the WIA “disposal” is defined under s 219(1)(b) which states “disposal . . . in relation to sewage, includes treatment”. In those circumstances, what has to be done to deal effectually with the contents of sewers includes treatment.

(4) There is no need to imply any duty to “maintain or cleanse”, as suggested by the Claimants. The obligation to deal effectually with the contents of sewers imposes a sufficient relevant obligation.

(5) *There is a requirement to have regard to environmental pollution as part of the duty under s 94(1)(b). This, in my judgment, is consistent with s 3(2)(c) of WIA and the amendment to s 94(1)(b) introduced by reg 4(4) of the Urban Waste Water Treatment (England and Wales) Regulations 1994 which is premised on the basis that treatment may be included as part of the process of effectually dealing with the contents of sewers under s 94(1)(b).*

(6) One of the purposes of the requirement for effectually dealing with the contents is therefore to treat the sewage in such a way as to render it reasonably harmless and inoffensive. *I consider that this would include treatment so that it does not give rise to unreasonable odours or to insect infestations, while at a sewage treatment works”.*

(bold added for emphasis)

Finally, section 18 - Orders for securing compliance with certain provisions - provides for OFWAT and the S of S to enforce section 94(1)(b).

(1) Subject to subsection (2) and sections 19 and 20 below, **where** in the case of any company holding an appointment under Chapter I of this Part or any person holding a licence under Chapter 1A of this Part **the Secretary of State or the Director is satisfied—**

(a) that that company or that person is contravening—

(i) any condition of the company’s appointment or the person’s licence in relation to which he is the enforcement authority; or

(ii) any statutory or other requirement which is enforceable under this section and in relation to which he is the enforcement authority; or

(b) that that company or that person is likely to contravene any such condition or requirement, **he shall by a final enforcement order make such provision as is requisite for the purpose of securing compliance with that condition or requirement.**

(bold added for emphasis)

***What step taken by the *public authority* do you believe fails to comply with *environmental law*?**

Please be as specific as possible. Please include details of the step itself and why it fails to comply with *environmental law*. Please also provide details of any harm to the natural environment or to human health that you believe has occurred or could occur as a result. Please note that the OEP will only be able to investigate those complaints that it considers *serious*.

(Please continue on additional sheet if necessary)

Data released by the Environment Agency in 2020 shows that sewage and wastewater discharges by water companies into rivers account for damage to 36% of water bodies – failure to meet ‘good ecological status’ under the now-domesticated EU Water Framework Directive.

Note that Regulation 3 of The Water Environment (Water Framework Directive) (England and Wales) Regulations 2017 - Duties on ministers and regulators – requires the Secretary of State to exercise his/her relevant functions so as to secure compliance with the requirements of the Water Framework Directive.

Section 94 of the Water Industry Act 1991 has required water companies, since privatisation thirty years ago, to ‘effectually drain sewers’ and ‘effectually deal with sewage’.

That duty has been and remains enforceable by the Secretary of State and/or OFWAT under section 18 of the 1991 Act.

Despite this legal framework, water companies discharged raw sewage into rivers and coastal waters in England more than 400,000 times in 2020 according to Environment Agency data.

Untreated or undertreated sewage was discharged into rivers and seas for a total of 3.1m hours in 2020 via overflow pipes (commonly called Combined Sewer Overflows or CSOs) that are supposed to be used only in extreme weather to relieve pressure in the sewage system.

Discharges of untreated human waste are permitted only in exceptional circumstances, for example after extreme rainfall. In Commission v UK Case C-301/10, judgment 18th October 2012, the CJEU upheld the Commission’s infringement action against the UK for breach of the Urban Waste Water Treatment Directive 91/271/EEC (UWTD), the Court found the UK in breach particularly because storm discharges of untreated or under-treated sewage occurred after moderate rainfall and even in dry weather at the locations in question in that case.

That situation is in fact very widespread indeed across England. Many storm overflows carry sewage into English rivers after light or moderate rainfall or even after no rainfall events at all.

Under-treated or untreated storm sewage discharges in England into rivers and seas increased from 292,864 incidents in 2019 to 403,171 in 2020 – a 37% rise.

No relevant parties to this issue would argue that discharging untreated sewage to rivers at times other than during or following exceptional rainfall can constitute ‘effectually dealing with sewage’ per section 94(1)(b).

By common understanding, the water companies have failed, and continue to fail to meet the duties placed on them by the 1991 Act and that duty, patently, remains dramatically unenforced by the Secretary of State and/or OFWAT.

Note that the requirement in section 18 is that OFWAT or the S of S “shall by a final enforcement order make such provision as is requisite for the purpose of securing compliance with that condition or requirement”. There is no discretion as to whether a notice is served if the S of S or OFWAT is satisfied that there is a failure to meet the requirements of the Act, in this case 94(1)(b).

Some of these unacceptable discharges can be attributed to the manner in which water companies operate their infrastructure, but the water companies are not solely to blame for this situation where existing infrastructure is inadequate.

The 1991 Act set up a statutory system for water companies, with OFWAT closely controlling water company investment in sewerage infrastructure, under the Secretary of State’s overarching guidance and subject to his/her approval.

The state of affairs, where sewerage infrastructure, by DEFRA’s own admission, has not kept pace with population growth, has been allowed to develop since 1991 because the financial oversight provided by OFWAT, including by way of the Asset Management Plans (AMPs), that have flowed from the five-yearly periodic review process set up under the 1991 Act, has neither sufficiently required, nor sufficiently enabled the water companies to ensure their infrastructure keeps pace with population growth, such that they meet section 94(1)(b).

However, there has been no attempt by DEFRA and/or OFWAT to enforce section 94(1)(b) under section 18.

In the absence of sufficient sewage treatment infrastructure and capacity, rivers have been asked to do that ‘treating’ instead, which has harmed many English rivers.

The OEP is referred to the 2021 correspondence between S&TC and DEFRA below (and attached).



S&TC letter Rebecca PO2021_11482 - Nick
Pow 190421.pdf Measham.pdf

When did the failure to comply with *environmental law* happen?

Start date

End date

Ongoing

If you do not know the exact dates you can provide an estimate.

You should normally make a complaint by the later of:

- one year from when the breach of *environmental law* last occurred; or
- three months from when the *public authority's* internal complaints procedure (if it has one) finished.

Please see Section B5 for further guidance.

If you are making a complaint outside these time limits, please explain why.

n/a

Please provide any further information or evidence you believe is relevant to your complaint. *(Optional)*.

Please continue on additional sheets if necessary

The evidence that could be provided is very extensive.

S&TC has tried to limit the evidence in order not to overwhelm the OEP at this stage.

Recent correspondence with DEFRA is attached.

The Under-Secretary's response fails to address the issue of the failure of water companies to meet their duty under section 94(1)(b) and the lack of enforcement action by the Secretary of State and/pr OFWAT under section 18.

However, S&TC is ready to provide further specific information if and when required by the OEP.

Please enclose or attach any further information or evidence you believe is relevant. You may be able to provide additional evidence if the OEP considers your complaint further once it is operational.

Section A3 – About the Public Authority Complaint Process

The OEP will only be able to consider complaints after a *public authority's* internal complaints procedure has finished. If there is no internal complaints procedure please explain how you've tried to resolve your complaint with the relevant public authority before submitting it to us.

***Which *public authority* are you complaining against?** Please see Section B4 for guidance on the meaning of a *public authority*.

- 1) The Secretary of State for the Environment and Rural Affairs
- 2) OFWAT

***Have you complained about this matter to the European Commission, an ombudsman or anyone else apart from the public authority?**

Yes No

If yes, please provide details or enclose copies of any relevant correspondence.

n/a

***Does the *public authority* have an internal complaints procedure?**

Yes

No

Don't Know

***Has the *public authority's* internal complaints procedure finished?**

Yes

No

There is no internal complaints procedure

If "yes", please provide any evidence from the *public authority* that its internal complaints procedure has finished. This should include the final decision letter or any reference numbers. You can also supply a paper copy of this evidence by enclosing it with your submission.

Date Complaint Submitted:

19th April 2021

Reference (if known):

PO2021/11482/SG

Public Authority Address

Rebecca Pow MP
Parliamentary Under Secretary of State
DEFRA
Seacole Building
2 Marsham Street
London SW1P 4DF

Recent correspondence attached below:



Section B – Guidance (*Please also refer to the Customer Charter and our Frequently Asked Questions on our website*)

Section B1 – Who may complain?

Any person may make a complaint, whether in a personal capacity or on behalf of an organisation. We will assume that you are complaining as a private individual unless you provide details of your organisation. The only exception is that a *public authority* may not complain to the OEP (see Section B4 for further guidance on the meaning of a *public authority*).

If you need assistance to complete this form, please contact us at TheOEPEnquiries@defra.gov.uk

All correspondence in relation to Northern Ireland will be forwarded to staff in Northern Ireland to deal with.

Section B2 – Environmental law

You should use this form to complain about a *public authority's* failure to comply with *environmental law*.

The Environment Bill sets out what we mean by *environmental law*. It means any legislative provision (other than devolved provisions – see Section B3) to the extent that it is mainly concerned with environmental protection.

Environmental protection means any of the following:

- a) protecting the natural environment from the effects of human activity
- b) protecting people from the effects of human activity on the natural environment
- c) maintaining, restoring or enhancing the natural environment
- d) monitoring, assessing, considering, advising or reporting on anything under points (a) to (c).

The natural environment means any of the following:

- a) plants, wild animals and other living organisms
- b) their habitats
- c) land (except buildings or other structures), air, water and the natural systems, cycles and processes through which they interact.

The Environment Bill specifically excludes certain subjects from the definition of *environmental law*. These are any of the following:

- a) disclosure of or access to information
- b) the armed forces or national security
- c) taxation, spending or the allocation of resources within government.

Examples of environmental law include laws covering:

- air pollution
- water pollution
- contaminated land
- nature conservation
- waste and resource use
- climate change
- environmental assessment and monitoring

We will not consider complaints that don't relate to *environmental law*. We may, though, be able to advise whether you could complain to a different body.

Section B3 – What are *reserved matters*?

Devolution in the UK means that certain laws which were previously made by the UK Parliament can now be made by the Scottish Parliament, Welsh Parliament or Northern Ireland Assembly for their respective nations. Reserved matters are those topics for which the UK Parliament continues to make laws that affect the devolved nations.

The devolution settlements for Scotland, Wales and Northern Ireland establish which matters are reserved and which devolved. Generally, the environment is a devolved matter but some environmental topics are reserved matters. For example, the Government of Wales Act 2006 reserves to the UK Parliament the right to create

laws in Wales concerning water and sewage, nuclear energy and energy conservation.

There is no exhaustive list of reserved matters. We will need to consider whether a particular legal provision is a reserved matter on a case-by-case basis. If you are unsure, please refer the matter to us and we can look into it for you.

Section B4 – Public authorities

The Environment Bill sets out what is meant by a *public authority*. This is a person carrying out any function of a public nature save for certain excluded functions. Excluded functions are devolved functions, parliamentary functions and functions of any of the following:

- a) the OEP
- b) a court or tribunal
- c) either House of Parliament
- d) a devolved legislature
- e) the Scottish Ministers, the Welsh Ministers or a Northern Ireland department or Minister.

Examples of *public authorities* include:

- Government Departments (e.g. the Department for the Environment, Food and Rural Affairs, the Department for Transport)
- Government Ministers (e.g. the Secretary of State for the Environment, Food and Rural Affairs)
- Regulators (e.g. the Environment Agency, Natural England)
- Local Authorities
- Private bodies such as water companies – but only in respect of their public powers and duties.

You must first exhaust the internal complaints procedure of the *public authority* before complaining to us.

Section B5 – Time limits

The Environment Bill sets out *time limits* for making a complaint. You should normally make a complaint no later than one year after the failure to comply with *environmental law* or else three months after finishing the relevant *public authority's* internal complaints procedure. In practice this means that:

- If the *public authority* has no applicable internal complaints procedure, you must make a complaint within a year of the failure, or last failure, to comply with *environmental law*.
- If the *public authority* does have an internal complaints procedure and this finishes within 9 months of the failure, the *time limit* for making a complaint is still a year.
- If you complain to the *public authority* within a year of a failure, the *time limit* for making a complaint will be 3 months from when the *public authority's* internal complaints procedure finishes.

The OEP will be able to waive these *time limits*, but only in exceptional circumstances. We will pass on to the OEP complaints falling outside the *time limits* for its decision.

Feedback

We welcome feedback to help improve how we handle complaints. If you have any comments on this form or on the complaints process, please send them to TheOPEenquiries@defra.gov.uk.