

Date

2 February 2022

Title

Delegation of functions

Report by

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Paper for decision

Open in part

Issue

1. The Board has delegated certain functions in accordance with its Governance Framework, its Rules of Procedure and a limited financial scheme of delegation (FSoD). As the OEP gains its substantive functions, it will be important to build on this. We propose building on this approach to ensure the OEP has a legally robust, comprehensive, transparent and workable framework for delegated decision-making.

Recommendation

2. The Board is recommended to consider the matters raised in this paper, together with ARAC's feedback on those matters (ARAC meets after Board papers are due, so feedback will be provided at the meeting).
3. The Board is recommended to adopt the following, pursuant to paragraphs 10(1), 10(2) and 11(1) of Schedule 1 to the Environment Act 2021:
 - (a) delegation policy (**Annex A**)
 - (b) amended version of the existing FSoD (**Annex B**)
 - (c) limited non-financial scheme of delegation (NFSoD) (**Annex C**), and
 - (d) amendments to the Board's Governance Framework to reflect (a) to (c) above (**Annex D**).
4. The Board is also asked to note the approach and timing for further developing the FSoD, NFSoD and supporting policies and procedures.

Background

5. The Board cannot delegate certain functions but otherwise may delegate to its committees, Board members and employees authorised for the purpose. Such delegations must be in accordance with a delegation policy, which the Act requires that the OEP adopts.
6. The Board's current arrangements for delegated decision-making may be summarised as:
 - (a) some matters are reserved to the Board (Annex B to the Governance Framework); this includes matters that must be reserved by law (although in the case of relevant Northern Ireland functions, they are reserved only because of a catch-all provision)
 - (b) limited functions are delegated to Board committees (para 52 of the Governance Framework)
 - (c) limited functions are delegated to the Chair (para 46 of Annex A, and para 1.m of Annex B, to the Governance Framework)
 - (d) all statutory functions other than those at (a) and (b) above are delegated to the Interim CEO (para 56); this includes the power of delegation itself (paras 56 and 57), and the power to enter into contracts (para 58)
 - (e) via a separate delegation (a limited FSoD, adopted on 4 November 2021) certain staff are also authorised to enter into contracts, and
 - (f) on occasion the Board has made specific delegations (e.g. to extend the period for strategy consultation) or recovered previously delegated matters (e.g. the Board has temporarily recovered all strategically significant decisions to investigate).
7. Thus, the OEP's current approach to delegations is set out in different places across a number of documents, and with some overlap between them.
8. We have revisited this approach in anticipation of the OEP obtaining its substantive functions. We propose that the Board puts in place a more comprehensive, robust and transparent framework for delegation. *This section has been redacted as it contains legally privileged advice.*
9. *This section has been redacted as it contains legally privileged advice.*
10. We anticipate bringing further proposals to that Board meeting. In the meantime, we are proposing that the Board makes interim changes to its current delegation arrangements as set out in the following documents:
 - (a) a delegation policy (**Annex A**)
 - (b) an amended version of the existing FSoD (**Annex B**)
 - (c) a limited NFSoD (**Annex C**), and
 - (d) amendments to the Board Governance Framework reflecting points (a) to (c) above (**Annex D**).
11. The FSoD and NFSoD at (b) and (c) above are intentionally limited in scope. We have drafted fuller versions of these documents. However, these are not yet in a sufficiently advanced state to put to the Board. For example, more consideration needs to be given to

the appropriate levels of financial delegations (as well as to how those delegations interact with any applicable government spending controls). Delegations should also sit alongside guidance and within an overall governance framework for staff decision-making, which are yet to be finalised.

12. We therefore propose tabling more fully developed FSoD and NFSoD by the time of the Board's meeting on 17 March.

Analysis

The delegation policy

15. The proposed delegation policy is intended to unambiguously satisfy the requirement in the Act that "*The OEP must prepare a document that sets out its policy on how its functions may be appropriately delegated*". We propose that the policy is high level and largely reflects principles for delegation the Board has previously approved via the Governance Framework. However, the delegation policy goes beyond the Governance Framework in two material respects.
 16. First, it contains a general statement that delegations should take account of risk, uncertainty and the possible consequences of decision-making. *This section has been redacted as it contains legally privileged advice and its publication would be prejudicial to the effective conduct of public affairs.*
 17. Second, the policy contains a section on how staff should exercise delegated powers (Section 3.2). Most of this section mirrors aspects of the existing Governance Framework. It does though contain two deeming provisions, as follows:
 - (a) a statement that any functions delegated to OEP employees may also be exercised by those above them in their line management chain, and
 - (b) a statement that all delegated functions are deemed to carry with them a delegation of ancillary functions which it is reasonably necessary for the relevant employee to have to fulfil the primary delegated function and to fulfil their roles more generally.
18. These provisions are intended to allow a degree of flexibility and pragmatism in putting delegated decision-making into practice. The first provision is intended to increase the range of employees who may take a specific decision, avoiding keyman dependencies which could otherwise arise. It also avoids an anomalous scenario whereby a more junior member of staff could take decisions that their more senior line manager could not.
19. The second provision is intended to help employees efficiently carry out their roles. They will encounter a myriad of miscellaneous and ancillary decisions in their day-to-day work. A deeming provision allows them to take these decisions without spelling them out individually (something which cannot readily be done in advance) or else have to defer those decisions

to the Board. *This section has been redacted as its publication would be prejudicial to the effective conduct of public affairs.*

Amended FSoD

20. We are proposing limited amendments to the existing FSoD to include clarification as to what is meant by awarding, signing etc a 'contract' (e.g. that it includes various types of written agreement, but excludes contracts of employment). We are also proposing to add conditions to the delegations to ensure staff obtain necessary internal approvals when contracting on the OEP's behalf.
21. The proposed delegation policy and FSoD constitute one element of financial governance. In addition, financial policies and procedures are currently being drafted to cover all areas of operational finance and procurement. The finance function (including procurement) is expected to become operational on 1 February 2022. The associated policies and procedures are anticipated to be in a first draft form by 31 March 2022. The suite of documents will then be tabled to the Board for formal sign off. Recommended delegations of authority to change these policies will be included.
22. We have included a temporary delegation in the updated FSoD to cover the period until the end of this financial year (or the finance policies and procedures are agreed by the Board, if sooner). This delegation is to authorise the Interim CEO, Chief of Staff or Head of Finance and Corporate Services to establish appropriate internal financial controls and management. We have also included a condition to the contractual delegations to staff, that they must comply with such financial controls and management.

Limited NFSoD

23. We are proposing that the Board adopts an NFSoD of initially limited scope. We are proposing, in particular, that the Board includes in the NFSoD certain delegations to the Chair and committees previously covered in the Governance Framework (NFSoD Part 1) as well as delegations for:
 - (a) handling complaints (though *not* undertaking investigations or enforcement) (Part 5)
 - (b) press and media/social media (Part 8), and
 - (c) obtaining legal advice (Part 9).
24. For the timebeing the proposed interim NFSoD would sit alongside an amended Governance Framework (Annex D), such that all non-financial decision-making not covered in the NFSoD

(and financial decision-making not covered in the FSoD) would remain delegated to the CEO in accordance with the Governance Framework, unless reserved to the Board.

25. We aim to develop other Parts of the NFSoD, including the omitted Parts 2 to 4, 6 and 7, by the Board's meeting on 17 March. We also aim to finalise related internal guidance and governance arrangements by this time.

Amended Governance Framework

26. An amended Governance Framework to accommodate the proposed changes to the Board's delegations discussed above is at Annex D. The amendments are to delete sections covered instead via the delegation policy. We also propose removing the provision that the CEO may sub-delegate functions delegated to them *this section has been redacted as it contains legally privileged advice*. This will mean most delegated decisions must temporarily rest with the CEO. We propose addressing this over the next 6 weeks or so, so that we can put forward a more comprehensive FSoD and NFSoD when the Board meets on 17 March.

Finance and Resource

25. There are no material financial or resource implications directly associated with the recommendations in this paper.
26. The proposals in this paper are intended in part to strengthen the OEP's financial governance, ensuring value for money in our decision-making. They are also intended to enable decision-making that supports us in making best use of our resources, streamlining how we do what we must, so we can do more of what we should as well.

Impact Assessments

Risk Assessment

27. *This section has been redacted as it contains legally privileged advice and its publication would be prejudicial to the effective conduct of public affairs.*
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Equality Analysis

29. No equalities impacts are identified from the recommendations proposed.

Implementation Timescale

30. We propose implementing any approved delegations policy, FSoD and NFSoD immediately. We also propose undertaking follow-up work as set out above, to be completed for the next Board meeting on 17 March.

Communications

31. We propose any adopted delegation policy, FSoD and NFSoD are made available to staff and Board members, including on the OEP website and intranet. We also propose to use existing channels of internal communications to raise staff awareness of these documents and the need to take decisions in accordance with them.

Internal Stakeholders

32. A version of this paper was taken to SLT on 20 January and to ARAC on 26 January 2022.

ANNEXES LIST

ANNEX A – This section has been redacted as it contains information for future publication.

ANNEX B – This section has been redacted as it contains information for future publication.

ANNEX C – This section has been redacted as it contains information for future publication.

ANNEX D – section has been redacted as it contains information for future publication.