

Consultation response: draft environmental principles policy statement

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We welcome the opportunity to respond to this consultation. We set out below the main ways in which the policy statement should be improved, if it is to deliver the joined-up thinking that will be necessary across every part of the policy making process to tackle environmental challenges. Without a stronger approach, the government's aim to put the wellbeing of our natural environment at the heart of government will not be realised. We also provide answers to questions 5 to 10.

Summary

We are facing a climate and nature crisis. As the introduction to the policy statement correctly highlights, we need a system that "places environmental considerations at the heart of policy making". A robust and ambitious policy statement could help to achieve this goal, as well as helping to fulfil the government's ambition to leave the environment in a better state than that in which it was found. It could also help the government to achieve its international legal commitments, including the Sustainable Development Goals and the Paris Agreement, neither of which are referenced in the document.

However, as drafted, the policy statement falls far short of achieving this aim. We are concerned that the large number of caveats, carve outs and limitations will mean that the application of the principles will rarely result in any positive change to policy, even where it causes environmental harm.

Throughout the passage of the Environment Bill, there has been strong support for robust, direct application of the principles within primary legislation. We continue to believe that this is necessary to enable more consistent application of the principles.

To be effective, the policy statement must:

- Incorporate more ambitious language and tone and explicitly recognise the potential for the principles to drive environmental enhancement.
- Present a positive economic case for the principles. Far from being a burden, the principles incentivise innovation and therefore create commercial opportunity.
- Establish the principles as a golden thread running through all government policy making and avoid them becoming a 'tick box' exercise.
- Remove the repeated, excessive references to proportionality.
- Adopt a more progressive approach to the integration principle and reinforce the aim of the prevention principle is to avoid harm occurring in the first place.
- Reinforce the precautionary principle as a central component of good environmental law and remove the overemphasis on innovation.
- Encourage ministers to instruct, through policy, 'their' arm's length bodies to take account of the principles and the policy statement in their own policy making.
- Emphasise not proceeding with a policy as a possible action for policy makers.

The government should also:

- Clarify the process and timescale for embedding the principles in HM Treasury's Green Book.
- Embed the principles in civil service training and awareness raising programmes and initiatives before the legal duty in the Environment Bill is commenced.
- Reflect more closely the approach taken on embedding the Public Sector Equality Duty.
- Publish examples and case studies of how environmental principles have been used in policy making as helpful aids to interpretation.
- Appoint a Senior Responsible Owner, or equivalent, in every department with responsibility for environmental principles.
- Include an assessment of the principles in the collective agreement process for policy.
- Report annually, with contributions from all departments, on how environmental principles have informed policy making and improved environmental outcomes.
- Establish a clear process for engaging stakeholders on environmental principles.

Environmental principles underpin the government's environmental ambitions

The government has committed to be the first generation to leave the environment in a better state than that in which we found it. However, the policy statement does not embrace the ambitious language that will be needed for the statement to be implemented enthusiastically by policy makers. The government's commitment¹ for the most ambitious environmental programme of any country on earth is bold. The language and the tone of the policy statement must match the ambition of such statements, otherwise it will undermine delivery of these many commitments in practice.

Ambition is further dampened by the cascade of caveats and by the draft statement's approach to innovation and economic development. For example, there are numerous references to "supporting economic growth", "proportionality" and the "weighing up of costs and benefits of action", threatening the statement's ability to place the environment at the heart of policy making. The reductive approach to the integration and prevention principles exacerbates this.

We suggest that the introduction includes a much stronger and clearer direction to policy makers that the policy statement is a springboard for delivering the government's environmental ambitions. This should prime policy makers to read the policy statement with these in mind and to aim to achieve a high level of environmental protection and significant environmental improvement.

In accordance with its international law duties, the government must ensure the statement is compliant with the Aarhus Convention. The policy making processes to which it relates must be participatory and access to information and justice protected.

Ensuring the principles do not become a 'tick box' exercise

The environmental principles should be a golden thread running through all government policy making. But for this to happen, the approach in the policy statement must reflect more closely that taken on the Public Sector Equality Duty.

Guidance² from the Equality and Human Rights Commission on the Equality Duty clearly states that it must be undertaken “...in substance, with rigour and with an open mind in such a way that it influences the final decision” and “...is not a question of ‘ticking boxes’”. The lack of any such instruction to policy makers in relation to environmental principles is problematic.

Given that the legal duty in Clause 16 of the Environment Bill is identical to that in Section 149 of the Equality Act 2010 (to have “due regard”) the omission of similar advice to policy makers in the draft statement is even more striking. This, along with the heavily caveated language of the draft statement, sends an unfortunate and no doubt unintended message to policy makers that they can ignore or disregard environmental principles through any given number of ‘escape routes’.

The Equality Duty guidance includes several examples, ranging from illustrations of ways in which the courts have interpreted the duty to examples of good practice and the ways in which bodies subject to the duty might respond. These help to illustrate the principles and concepts used in the legislation and are a helpful tool for improving understanding. **The government should publish examples and case studies of how environmental principles have been used in policy making as helpful aids to interpretation.**

Defra could also usefully provide guidance, as the Equality and Human Rights Commission has done, on the legal demands of the “due regard” duty.

Capturing the potential for environmental enhancement

The draft policy statement makes some mention of the potential for environmental enhancement, but in general this is heavily overshadowed by references to whether policy will have an environmental impact. Page 6 of the draft statement should be redrafted to explain the potential for enhancement in a more compelling way, rather than referring only to the technical content of Clause 44 of the Environment Bill, which does not capture the imagination of policy makers sufficiently.

The statement should include a more explicit instruction to policy makers on the government’s expectation for environmental principles to drive environmental enhancement. This would assist with the delivery of the requirement in Clause 16(4) of the Environment Bill for the Secretary of State to be satisfied that the statement will contribute to the improvement of environmental protection. The role of the principles as a key element of the new environmental governance system should also be described, including **how the policy statement can support departments on their role in achieving Environment Bill targets and the goals of Environmental Improvement Plans.**

A more proportionate approach to proportionality

Proportionality requires that action taken does not go beyond what is necessary to achieve the objective(s) aimed for. It provides a framework to guide action when there are competing demands on decisions being made by public bodies.

Proportionality in process is often helpful, if used properly. Unfortunately, the current framing of proportionality in the draft statement risks proportionality being deployed as a tool to deprioritise environmental measures by declaring them disproportionate. Instead, the statement must be used to ensure that environmental matters are properly accounted for in decision making.

Proportionality can help frame difficult and complex decisions of prioritisation and legitimacy but must not be used as an excuse for ditching or diluting the principles, as the draft statement would allow. For example, the draft statement notes that “when considering the environmental impact of a policy, policy makers also need to take a proportionate approach. The environmental effects that should be considered are those which are both a) likely to occur, and b) likely to have a substantial impact.” This wording suggests that policies will only be reconsidered where a great deal of harm to the environment is anticipated, making it easy for policy makers to dilute or disregard the principles in a wide range of circumstances. This would include situations where the likelihood or impact of harm is initially underestimated, or where a lack of harm obscures potential for policies to be upgraded to offer improved environmental outcomes.

The draft policy statement risks worsening an existing tendency of public bodies to rely on proportionality as a justification not to take action to address environmental harm purely on the grounds of cost (for example, the decision of the Environment Agency to continue to push back the date for achieving good water quality in River Basin Management Plans from 2015 to 2027). Public authorities misinterpret proportionality, not least by taking a narrow view of “cost” and failing to have regard to environmental risk and, in some cases, failing to assess environmental risk altogether. The policy statement offers an opportunity to move beyond this short term, imbalanced approach.

In general, the policy statement takes a wholly disproportionate approach to proportionality, with mentions of “proportionate/proportionality” (19) on a par with “protect” (20) but greatly outweighing “enhance” (7) and “improve” (4). While policy makers will not be counting words when they come to apply the statement, they will nevertheless be greeted by a blizzard of proportionality steers. This will result in policy hesitancy and a tentative approach to the principles and is likely to increase the risk that they will be ignored, disregarded or downplayed in policy making.

Clause 16(2) of the Environment Bill explains that the policy statement should be “proportionately applied” by ministers when making policy and Clause 18(2) provides a further proportionality instruction in relation to the “due regard” duty. The draft policy statement (page 5) makes clear that environmental principles “...cannot dictate policy decisions by Ministers”, thus preserving the sanctity of ministerial discretion. The draft policy statement also contains a section on proportionality on pages 9 and 10. To further imbue the policy statement with proportionality reminders at every turn sends completely the wrong message to policy makers and is nothing short of policy overkill. It encourages a culture in which the policy statement will be seen as a burden rather than driver of policy making.

The repeated, excessive references to proportionality should therefore be removed from the policy statement and the section on proportionality should be moved further down in the proposed process (see our response to question 7). This section should be rewritten to clarify how proportionality can also work in favour of achieving higher environmental outcomes and preventing disproportionate environmental impact.

Page 9 of the draft statement states that “...the level of research into the environmental impact should be proportionate to the likely impact of the policy on the environment.” This circular reasoning is repeated on page 11 (“Where there is a substantial risk to the environment, the weight given by Ministers to this policy statement increases”). Without doing enough research, how can ministers be assured about the environmental impact? **These sections should be redrafted to clarify that the level of research should be commensurate with that needed to assess the likely policy impact.**

The policy statement should be clearer on when proportionality bites. This is especially relevant for the section on the precautionary principle. For example, decision makers cannot decline to apply the precautionary principle because of proportionality. Rather, they must always apply precaution: it is the decisions that they take as a result that must be proportionate.

The interdependence of environmental and economic objectives

The draft policy statement reinforces an outdated view that economic development and environmental protection are conflicting rather than interdependent objectives. The statement should instead present a positive economic case for the principles. Far from being a burden, the principles incentivise innovation and create commercial opportunity.

Levies set for environmental purposes can fund investment in greener infrastructure, bringing environmental and economic benefits. Clear environmental regulation and policy consistency unlocks jobs, investment and other economic benefits. For example, the 2021 government consultation on Air Passenger Duty explicitly recognises that the tax, which was brought in as a revenue raiser, would be improved by closer alignment with environmental objectives via consideration of the polluter pays principle.

Landfill tax was initially introduced in a fairly cost neutral way for businesses, offset by National Insurance changes. As it has changed over time, the interdependency between direct taxation, indirect taxation, the cost of other waste and environmental services and environmental impacts has been very apparent. Future similar measures could learn from and apply the lessons of the landfill tax experience by engaging with these issues earlier in the policy development process.

The statement could helpfully clarify the interdependency between environmental and economic objectives, provide clear examples of the potential benefits of an integrated approach, and reflect on how the principles might impact on all elements of government thinking, including those currently excepted from the “due regard” duty in the Environment Bill.

Exemptions from the “due regard” duty

Pages 6 and 7 of the draft policy statement describe the exemptions for policy relating to the armed forces, defence or national security and taxation, spending or the allocation of resources within government, as set out in Clause 18(3) of the Environment Bill. While the legal basis of those exclusions is a matter for the bill rather than the policy statement, they are relevant considerations for this consultation.

If the bill itself is not changed, it makes even less sense that the statement is written so defensively. If these exemptions remain in the legislation, it is essential that the draft policy statement does not reinforce their limitations and the statement guides ministers along the lines set out in Defra’s clarification below.

In response to media coverage³ of concerns about the wide exclusions on the face of the bill, Defra offered some clarification⁴ on spending, including that “It is not an exemption for any policy that requires spending”. While welcome, the problem remains that these wide exemptions remain in the legislation, meaning policy makers are less likely to apply the policy statement in relation to the policy on defence and financial matters without explicit instruction otherwise.

Further, so far as the allocation of resources between departments is undertaken without regard to environmental principles, the principles are liable to be applied too late in the process to have real impact. In its report on environmental tax measures⁵ the Public Accounts Committee highlighted the importance of leadership and coordination on environmental matters and recommended that HM Treasury assess the environmental impact of every tax change considered. The tax system interacts with environmental policy areas which are the responsibility of other government departments. Given HM Treasury's cross government remit, environmental principles must feature in its policy making.

In relation to defence, while an exemption may be reasonable were it to be confined to decisions relating to urgent military matters, the bill is not drafted as such and appears to offer a blanket exclusion for the Ministry of Defence, the Defence Infrastructure Organisation and the Armed Forces. We note that Article 296 of the Treaty on the Functioning of the EU only excludes "trade in munitions" so takes a much narrower approach to exemptions.

Given the highly sensitive environments in which military training areas and exercises are often located and the associated policy processes (for example, byelaw reviews, planning applications, contract and procurement decisions and applications for live firing and use of heavy artillery), the exemptions are concerning.

The national security exemption carves out the activities of GCHQ and facilities such as RAF Fylingdales in the North York Moors National Park for example. However, we note that the Environmental Impact Assessment Regulations, by contrast, apply to such facilities and contain no exemption for national security. The logic for not extending a policy document to the siting, construction and operation of such facilities where environmental impact assessment nonetheless applies is somewhat unclear.

Approach on the individual principles

The description of the principles should follow international best practice and should be at least as environmentally ambitious as in current EU law to ensure that the policy statement delivers on the government's environmental ambitions. Regrettably, the draft policy statement follows a less demanding approach and, in some instances, such as on integration, risks the UK falling behind what other nations are doing.

The integration principle

The approach to the integration principle is one of the most disappointing aspects of the draft policy statement. This principle should be a mechanism for infusing environmental considerations into policy making and ensuring that environmental interests have a voice in a range of policy areas. Instead, the draft policy statement seeks to diminish and curtail the principle, undermining the value of integration to Defra and to policy makers.

The draft policy statement is also out of step with the language of the Environment Bill, which is more consistent with how the principle is generally regarded. Section 16(5) of the bill states that environmental protection "should be" integrated into the making of policies, backed up by the bill's explanatory notes which state that environmental protection "must be" integrated into the making of policy and embedded in the making of policies (para 186 and para 1141).

Instead, the draft policy statement tells policy makers to “...look for opportunities to embed environmental protection” and to undertake “...proportionate consideration of whether the policy has the potential to cause an environmental impact which could be avoided, minimised or reduced through alterations to the policy”. **This bland downplaying of the integration principle risks it being cast adrift from the policy appraisal process when it should be at the very heart of it.** It fails to present the opportunities to actively improve the environment via integrated policy making and undermines the possible benefits of the principle through reference to proportionality.

This section of the policy statement should be rewritten to set out the benefits of the integration principle. The draft statement notes that “in applying the integration principle, policy-makers should...be mindful of unintended consequences, such as adopting inappropriate or ineffective policies just for the sake of demonstrating integration.” This misses the point: in practice, the risk of unintended consequences from not effectively integrating environmental considerations into the earliest stage of policy making would be far greater.

For example, if integration were properly embedded, a policy maker would not look to see how renewable energy generation could be supported in a new development but would begin with an aim of considering how a potential new development could contribute to aims to cut emissions, pursuing that aim of sustainability from the start.

The fact that the principles are presented throughout the draft policy statement as an externality and a checklist to apply to a process is problematic – they should be an integrated part of that process and presented as such. This is compounded by the proposition of a step-by-step process in which the principles are presented as only becoming or remaining relevant for discrete periods of the policy making process (ie when there is an anticipated impact, then when the types of impact have been reviewed to determine which principles are relevant).

Finally, in relation to the Public Sector Equality Duty, case law is clear that the duty to have due regard in the equality context requires assessment of impacts at the outset of the policy formulation process. Given the similarity of the statutory context, clarification on this point is also required in the draft policy statement.

The prevention principle

Section 16(5) of the Environment Bill and the accompanying explanatory notes (para 186 and para 1142) describe this principle as “the principle of preventative action to avert environmental damage”.

The draft statement appears to divert the principle away from its core meaning of “prevention”, instead stating government policy should aim to “prevent, reduce or mitigate environmental harm”. This unduly wide interpretation risks policy makers wrongly assuming a degree of harm is inevitable and only capable of reduction or mitigation, rather than focusing on whether the harm is preventable.

While reducing and mitigating environmental harm are of course appropriate considerations in some circumstances as the statement notes on page 13, **the policy statement should explicitly state that the principal aim of the prevention principle should be to avoid the harm occurring in the first place.**

Page 12 of the draft statement states that the prevention principle should promote policy design options that prevent environmental damage either before it has occurred or to contain existing damage. For the principle to be preventative, it must occur before the harm, otherwise this would be rectification. **To clarify this, we suggest that the words “or to contain existing damage” are deleted from this section, as well as references to the “mitigation” of environmental harm.**

The rectification at source principle

In the government’s 2018 paper on the policy statement⁶, the rectification principle is described as meaning “that environmental damage should [...] be addressed by targeting its original cause and taking **preventive** action at the origin of the problem” (our emphasis). In contrast, the draft statement suggests that rectification is limited to addressing damage “at its origin to avoid remedying its effects at a later date or location”. The essentially preventative and iterative approach of the principle is thus lost.

The sections on both the rectification and polluter pays principles miss an important point – while these principles can help to mitigate the impacts of harms that cannot be prevented, they are also tools to change behaviour and support innovation to make sure those bearing most responsibility for harm take or support preventative action. Again, the 2018 paper emphasises this clearly by describing rectification as encouraging “processes that are inherently clean rather than approaches which treat the problem as or after it occurs.” This application should be explicitly referenced within the statement.

The polluter pays principle

This section is more fully drafted than others which provides greater clarity to policy makers. We welcome the recognition on page 16 that consumers can be considered polluters as well as producers. However, we query the inclusion of carrier bag charges as an example of best practice, as there have been some unintended consequences⁷ and consumer behaviour has not changed substantially.

A more effective application of the rectification and polluter pays principles would have been to address all carrier bags for reduction, including thicker bags for life, which people too often use as single use, and bags from alternative materials such as paper, which are usually just as unnecessary as single use plastic bags. The incomplete application of the principles has likely resulted in increased material use.

The 2018 information paper stated that “The principle can cover both the direct costs of control and remediation, as well as indirect costs to society and the environment.” We suggest that this might be a helpful point to echo in the policy statement.

The precautionary principle

The precautionary principle⁸ is a central component of good environmental law. It is vital in enabling regulatory or other action to be taken when there is an absence of scientific certainty about environmental harm. Beyond that, the precautionary principle prioritises environmental protection over other interests.

The precautionary principle is not a complete free for all however because it demands that the best evidence possible in the circumstances be sought. Nor does it dictate any particular outcome.

The precautionary principle is complex. It is impossible to fully explore all its contours and applications in a few sentences. Its precise application may vary in different policy areas. There is, therefore, value in providing greater detail and clarity for policy makers as to what is required in various situations.

The draft statement undermines precaution through its approach on innovation. Worthwhile innovation itself is, of course, a valuable means to meet policy objectives. However, **to innovate is not an objective in itself, innovation is not an environmental principle and its emphasis in the policy statement is grossly exaggerated.**

The draft policy statement presents the pragmatic caution of the precautionary principle as an impediment to innovation and innovation itself as an aim with some intrinsic causal link to improved environmental outcomes. The risks of over reliance on innovation in environmental policy making are summarised in this briefing⁹. Some of the dirtiest industries are trying to use it to undermine laws on chemicals and pesticides, amongst others, as well as legal principles to protect the environment and human health.

Precaution does not stifle innovation, but rather guards against damage being caused by new products or processes before it is too late to fix. There are only a handful of documented examples (all from the USA) of precautionary action being taken which later turned out to be unnecessary. It was found that these “actually sparked innovation within industry and within government”.¹⁰ This compares with the dozens of examples when hindsight shows a more precautionary approach would have been beneficial.

Precaution, in fact, drives innovation as recognised on page 18 of the draft statement: newer, safer, better products are developed thanks to the precautionary principle. However, the draft statement then introduces a concerning caveat when it states, “New or innovative technologies should not be held to a higher standard of safety than existing ones where the level of risk is comparable, otherwise their potential to deliver benefits will be lost.” We question this as surely the aim of government policy should be to constantly be seeking ways to improve safety, and that should be part of the aim of innovation and one of its main benefits. That is, for example, one of the aims of chemical regulation – to keep replacing dangerous chemicals with safer alternatives, which is an embodiment of precaution and innovation in one.

The draft statement uses the Rio description of the precautionary principle. As Professor Maria Lee explains, “This approach has long been criticised for the high threshold for action (serious or irreversible) and the counter-intuitive assumption that in a state of uncertainty the cost effectiveness of decisions can be calculated. It is a highly defensible and common definition, but could be far more ambitious.”¹¹

Footnote 11 provides a helpful clarification that the precautionary principle has a wider application beyond the environment on areas where there is scientific uncertainty and potential harm, for example human health, food and safety. We suggest that this should be given more prominence than being housed solely in a technical footnote.

There are many examples of how the precautionary principle has been used in international policy making to protect the environment, including. These include banning dumping of sewage sludge at sea, arresting the depletion of the ozone layer, protecting pollinators from neonicotinoid sprays and the 1992 UN Framework Convention on Climate Change. The policy statement should refer to some of these to highlight the importance of the precautionary principle.

General application options

Pages 19 and 20 of the draft statement set out several actions that could be taken as a result of having considered the principles. These include amending or postponing a policy until further evidence is gained. However, the draft statement does not explicitly identify not proceeding with a policy as a possible action. **This is a significant omission – after proper application of the policy statement, some policies may pose too great an environmental risk and should not be proceeded with. The draft statement should emphasise that a policy should not be proceeded with in such circumstances.**

We recognise that the fourth action on page 20 does recognise that in rare cases it may be appropriate to discontinue a policy. While this is welcome, “discontinue” implies that a policy maker could cease an existing policy, but not necessarily decide not to proceed with a policy at all.

This section of the draft policy statement should therefore be clarified by adding the text shown in bold below:

“...or where the risk is serious, amending, postponing or discontinuing the policy in rare cases **or not proceeding with the policy at all.**”

This would ensure consistency with the approach set out by the HM Treasury Green Book¹². Section A5:25 states that good practice on risk mitigation and management includes several factors, including “abandoning the proposal – finally, the proposal may be so risky that, whatever option is considered, it has to be abandoned”.

It would also be consistent with how policy appraisal is undertaken by other departments. For example, the BEIS business support evaluation framework¹³ makes it clear that evaluations for business support should include criteria for modifying or discontinuing interventions, for example, if there is significant evidence of harm either to those receiving, or those not receiving, the intervention or if the number of programme applicants is significantly lower than expected.

Implementation

Provided it is strengthened in the ways that we have outlined in this response, the policy statement offers significant potential for Defra ministers and officials to work with their counterparts across the rest of government to secure improved environmental outcomes from policy making. This will, however, also rely on the ongoing application of the principles through the courts and existing legislation. The policy statement must not be considered a replacement for the ways in which the principles have been embedded in law, but a chance to develop this application more holistically across the policy cycle.

It is surprising that neither the draft statement nor the consultation document contains any detail on how the statement will be implemented in practice and the principles durably embedded in the policy making cycle. We set out some thoughts on this below.

Embedding the principles in policy making guidance and processes

Minister Pow has clarified¹⁴ that the principles will be embedded in existing government policy making guidance, including HM Treasury’s Green Book, which is welcome. **Further detail on how and when this will be done, including the scope for consultation and stakeholder engagement, would be helpful.**

The inclusion of the principles in the Green Book and the BEIS better regulation framework guidance¹⁵ should be prioritised. The principles should be embedded in civil service training and awareness raising programmes and initiatives before the legal duty in the Environment Bill is commenced.

Regardless of the exemptions in the current version of the Environment Bill, there is no restriction on HM Treasury or the Ministry of Defence considering the principles in their thinking. Cross government training programmes should therefore extend and be open to officials from all departments.

The role of the Senior Civil Service

The effective implementation of the principles will also depend on them being visible to and championed by senior civil servants. **There should be a Senior Responsible Owner¹⁶, or equivalent, in every department** and cross government project boards or similar governance structures should regularly assess delivery. Ministerial private offices are also well placed to play an important awareness raising role and support Defra ministers in maintaining oversight.

Within Defra, there should be a permanent, dedicated environmental principles team, to monitor and assist with implementation. This team should work closely alongside the policy profession, both in Defra and in other departments. Developments in the application of the principles in the EU should also be monitored.

The Infrastructure and Projects Authority (IPA) should be asked to undertake a critical friend review of the government's approach to embedding environmental principles, followed up by an assurance action plan exercise.

Annual reporting on principles

The government should report annually, with contributions from all departments, on how environmental principles have informed policy making and improved environmental outcomes. Maintaining an audit trail would provide transparency and enable Defra and external scrutineers and oversight bodies to assess the impact of the "due regard" duty, including whether there is adequate cross government investment in this work.

We note that reporting requirements are built into the Public Sector Equality Duty. The Section 153 'specific duties' require public bodies to publish relevant, proportionate information demonstrating their compliance with the Section 149 'general duty', and to set themselves specific, measurable equality objectives.

The department should also establish a clear process for engaging stakeholders on environmental principles.

Embedding principles in the collective agreement process

Including an assessment of the principles in the collective agreement process for policy would help deliver the government's objective to "...ensure that ministers across Whitehall are guided to not just protect the environment, but tackle problems at their origin".¹⁷

The policy statement and arm's length bodies (ALBs)

The draft statement is silent on how it will apply to ALBs. Our understanding is that the government intends for the "due regard" duty to trickle down to ALBs in those instances where ALBs are developing policy on behalf of a minister of the crown. We assume that this would include policies such as the Environment Agency's National Flood and Coastal Erosion Risk Management Strategy for England.

The policy statement should encourage ministers to instruct, through policy, 'their' arm's length bodies to take account of principles and the policy statement in their own policy making. The principles should be included in framework documents between departments and 'their' ALBs. Of course, the most effective way to provide clarity would be to extend the scope of the "due regard" duty to include all public authorities and not just ministers of the crown. We urge the government to adopt this improvement before the Environment Bill receives Royal Assent.

Consultation questions

Question 5. Do you think the overview section provides an adequate foundation for policy makers to apply the environmental principles in policy making?

No, for the reasons explained above.

Question 6. Do you think step one allows policy makers to correctly assess the potential environmental effects of their policy?

No, for the reasons explained above.

The statement as drafted would operate as a check on pre-defined policy rather than as a way of shaping the heart of policy. A policy maker should ask what a good policy would look like and not merely assess a policy for environmental impact, and then decide the most effective way to achieve that (this is how proportionality is meant to work).

The principles should be treated as relevant throughout the policy making process, from inception to implementation and during policy monitoring and review. Pages 19 and 20 could helpfully recognise that actively considering the principles before a policy is formed can lead to a more robust approach to risk identification and mitigation.

Early and consistent application of the principles across all government policy would help achieve better environmental outcomes, avoid uncertainty and reduce the burden on the public purse.

Question 7. Do you think step one ensures that policy making will address the most important environmental effects?

No, for the reasons stated above, including that the potential for environmental enhancement is not given enough emphasis in the draft statement.

Suggested changes:

- Add a 'step zero' around considering environmental aims together with other departmental aims and, when a policy is contemplated, anticipating where it might intersect with the principles.

- Amend “It is the responsibility of Ministers, or those acting on their behalf, to assess whether a policy will have an environmental impact” to refer to a “potential area of policy development” and include explicit reference to doing this at the very outset of policy formulation.
- Proportionality should be moved from step one and placed further along in the process, and references incorporated to proportionality to support additional environmental action, in line with comments above.
- The line “the environmental effects that should be considered are those which are both a) likely to occur, and b) likely to have a substantial impact.” should be amended to reflect more clearly that proportionality should be in action/response, not in respect of which impacts require consideration.

Question 8. Will step two assist policy makers in selecting the appropriate environmental principles?

Not without further explanation, which could be improved by the inclusion of examples.

It would be particularly useful to unpack the sentence “Some of the environmental principles will be appropriate for all relevant policy areas, whereas other principles will only be relevant in circumstances where there are specific factors for their use.” Which principles beyond integration would be seen as having such cross cutting relevance, and what are the “specific factors” referred to?

The definition of the prevention principle should be changed to emphasise the primacy of prevention.

Question 9. Do you think step three provides a robust and sufficient framework for the application of each individual environmental principle?

No, because the draft statement has inadvertently opted for a lowest common denominator approach in order to avoid imposing “disproportionate” impacts on policy makers. Instead, step three should be clearer that the policy statement implies a broad approach to be applied in all policy making and at all levels of governance. The principles imply the need for wide consultation and involvement. When making policy the principles must be actively interpreted at the outset.

Question 10. Do you think the process for applying the policy statement (the three steps) provides a robust and sufficient framework for the application of the environmental principles as a whole?

No, including because of the excessive references to proportionality and the unambitious descriptions of the principles.

Part of the value of the principles is in providing a level of certainty and consistency on how policy makers consider environmental matters. The draft statement will result in an uneven application of the principles between departments and successive governments. The flexibility it attempts to embed risks increasing uncertainty.

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Endnotes

- ¹ [Conservative manifesto 2019](#) (page 3).
- ² [Technical Guidance](#) on the Public Sector Equality Duty: England, Equality and Human Rights Commission, updated Feb 2021.
- ³ [BBC](#): UK environmental protections 'being flouted', 10 March 2021.
- ⁴ [Defra media blog](#), 11 March 2021.
- ⁵ [Report on environmental tax measures](#), Public Accounts Committee, April 2021.
- ⁶ [Information paper](#) on the policy statement on Environmental Principles, Defra, December 2018.
- ⁷ [Plastic promises](#): what the grocery sector is really doing about packaging, Green Alliance, January 2020.
- ⁸ [Briefing](#) on the precautionary principle, Greener UK, October 2018.
- ⁹ [The 'innovation principle' trap](#), Corporate Europe Observatory, December 2018.
- ¹⁰ [Late lessons from early warnings](#): science, precaution, innovation, European Environment Agency, Jan 2013.
- ¹¹ [Defra's draft Environmental Principles Policy Statement](#), Professor Maria Lee, 15 April 2021.
- ¹² [The Green Book](#), central government guidance on appraisal and evaluation, HM Treasury, 2020.
- ¹³ [Business support evaluation framework](#), BEIS, January 2019 (page 9).
- ¹⁴ [Written parliamentary question](#), 16 June 2020.
- ¹⁵ [Better regulation framework: guidance](#), BEIS, March 2020.
- ¹⁶ [The role of the Senior Responsible Owner](#), Infrastructure and Projects Authority, July 2019.
- ¹⁷ [Defra media blog](#), 11 March 2021.

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