

Reforming the Framework for Better Regulation consultation response

1 October 2021

The government has set out ambitious nature and climate goals – to support their achievement, all parts of the policy making process must contribute to delivering better environmental outcomes. This consultation reinforces an outdated view that economic development and environmental protection are conflicting rather than interdependent objectives. Clear, well-designed and properly enforced environmental regulation unlocks jobs, investment and other economic benefits.¹ We urge the government to revisit and revise its approach so that regulation is seen as a tool to deliver important public policy objectives, rather than solely as a burden on business.

Question 5: Should a proportionality principle be mandated at the heart of all UK regulation?

The government has pledged to place “environmental considerations at the heart of policy making”.² It is therefore very concerning that this consultation characterises the precautionary principle as an impediment to innovation and proposes replacing it in certain regulatory areas with a proportionality principle.

The precautionary principle is vital in enabling regulatory or other action to be taken when there is an absence of scientific certainty about environmental harm. It is a central component of good environmental law, is enshrined in international agreements and underpins existing UK legislation. It also has a wider application beyond the environment on areas where there is scientific uncertainty and potential harm, for example human health, food and safety.

Vested interests have long sought to present the pragmatic caution of the precautionary principle as an obstacle to innovation. However, this ignores the many examples of how it has worked to both prevent harm, drive innovative solutions and develop newer, safer, better products, such as in chemicals regulation where dangerous products are replaced with safer alternatives – an embodiment of precaution and innovation in one. In fact, the precautionary principle has been key to securing environmental protection in international policy making. For example, a precautionary approach underlay 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.

Precaution does not stifle innovation, but rather guards against damage being caused by new products or processes before it is too late to fix. This includes 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. 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”.³ This compares with the dozens of examples when hindsight shows a more precautionary approach would have been beneficial.

To replace a cornerstone of environmental law with the bland concept of a proportionality principle would be a betrayal of ministerial promises to ensure that levels of environmental protection will not be lowered following our departure from the EU.

Question 6: Should a proportionality principle be designed to 1) ensure that regulations are proportionate with the level of risk being addressed and 2) focus on reaching the right outcome?

Proportionality already provides a framework to guide action when there are competing demands on decisions being made by public bodies, requiring that action taken does not go beyond what is necessary to achieve the objective(s) aimed for. It can help frame difficult and complex decisions of prioritisation. However, if care is not taken, it can be deployed as a tool to deprioritise environmental measures by declaring them disproportionate. It is crucial that environmental matters are properly accounted for in decision making and therefore we strongly oppose the proposed abandonment of the precautionary principle in certain regulatory areas and its replacement with a proportionality principle.

Question 7: If no, please explain alternative suggestions.

Public bodies already rely on proportionality as a justification not to take action to address environmental harm purely on the grounds of cost. An example of this is the decision of the Environment Agency to continue to delay 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 government should ensure that its finalised environmental principles policy statement supports a move beyond this short term, imbalanced approach and that environmental delivery and enforcement bodies such as the Environment Agency and Natural England are adequately resourced.

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Endnotes

¹ BuroHappold Engineering (December 2017) *Help or Hindrance? Environmental regulations and competitiveness*

² Defra (10 March 2021) *Draft Environmental Principles Policy Statement*

³ European Environment Agency (2013) *Late lessons from early warnings: science, precaution, innovation*

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