



Department
for Environment
Food & Rural Affairs

Draft Environment (Principles and Governance) Bill Statement of Impacts

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Introduction

The draft Environment (Principles and Governance) Bill includes provisions to maintain the level of environmental protection once the UK leaves the European Union, and avoid a governance gap, through the implementation of three measures:

- 1) Establishment of an Office for Environmental Protection, which replaces the current European governance system on environmental protection.
- 2) Inclusion of the environmental principles, which are currently enshrined in EU law, into domestic primary legislation, alongside a duty to publish a policy statement outlining their interpretation and proportional application.
- 3) Giving the 25 Year Environment Plan statutory status by introducing a series of duties on government to:
 - a. Prepare and update (at least every five years) a plan for improving the environment;
 - b. Report annually to Parliament on progress;
 - c. Develop and publish a suite of indicators and metrics on environmental change to help measure long-term progress towards the environmental goals.

The following documents explain in detail, for each of the three measures, what the problem under consideration is, why government has decided to implement these measures, what different options have been considered, as well as business and wider impacts.

The publication of these documents is done on a voluntary basis, to increase transparency.

Statement of impacts – Office for Environmental Protection

Background

Environmental governance is important to ensure that environmental law is being implemented and abided by and also that the long-term goal of environmental improvement is being delivered, for example through implementation of the 25 Year Environment Plan.

Under current EU environmental governance arrangements, the European Commission (EC) oversees Member States' implementation of EU environmental law. It does this using information in submissions and reports from Member States, its own assessments, and those of other EU bodies including the European Environment Agency (EEA). The EEA provides sound, independent information on the environment and is a major information source for those developing, adopting, implementing and evaluating environmental law and policy. This includes producing and publishing independent assessments of progress in the implementation of the EU's Environmental Action Programmes, which are the guiding frameworks for long-term EU environmental policy.

The EC also maintains a service through its website whereby individuals and organisations can lodge complaints, free of charge, about alleged breaches of EU law. The EC can take action if it considers that EU law is not being properly implemented in a Member State. If necessary it can refer the case to the CJEU (Court of Justice of the European Union). It can also ask the CJEU to order interim measures before judgment is given.

Problem under consideration and rationale for government intervention

Once we leave the EU, and regardless of the nature of the future relationship we negotiate, we will no longer be a party to the EU Treaties or under the direct jurisdiction of the CJEU. Therefore the governance, information and advisory functions provided under the EU regime will be lost.

The establishment of the new body – proposed to be called the Office for Environmental Protection (OEP) - will provide independent assurance of government's delivery of environmental law and the 25 Year Environment Plan, and impartial advice to support the development of improved measures for future application. This will bolster and complement our domestic governance framework to ensure that the U.K. has the ability to implement environmental legislation in an improved and more complete manner, so

enabling the law to deliver its intended benefits. This will ensure that the current level of accountability and environmental protection is not weakened after the U.K. leaves the EU, while providing for a wide range of additional social, environmental and economic benefits through improved policy design due to the scrutiny and advice functions.

The intervention will therefore ensure standards and environmental protection are upheld in order to:

- **Improve public engagement and accountability**

The new body would be able to receive complaints from the public that may relate to weak enforcement of environmental law. It would also be able to monitor the enforcement of environmental law itself. Where deficiencies in delivery or enforcement are highlighted, the new body would be able to open an investigation and use enforcement mechanisms where appropriate to ensure that environmental laws are being implemented effectively.

- **Ensure a long-term view on the environment**

Policy-making may be driven by short-term considerations without always taking sufficient account of long-term challenges. This may lead to suboptimal decision-making over the long term (e.g. delaying action may result in higher costs into the future) as well as lowering the level of environmental ambition. By providing scrutiny and advice on environmental law and the 25 Year Environment Plan over the long-term, the new body will be able to act as an independent adviser that is empowered to take the long-term perspective.

In addition, the new body will improve information dissemination related to the environment by producing an annual progress report on the current 25 Year Environment Plan that take into account new and emerging information.

The Office for Environmental Protection (OEP) will also provide advice to government regarding any changes to environmental law, based on the latest evidence and findings from internal and external sources. This would also help address the market failures related to the environment.

Policy objectives and the intended effects

The policy objective is to ensure that leaving the EU does not lead to a lowering of environmental standards. Rather, we are seeking to introduce new mechanisms which will replace and improve upon the corresponding EU environmental governance processes, while also supporting the development and implementation of our domestic environmental ambitions as recently articulated in the government's flagship 25 Year Environment Plan.

The proposal is intended to lead to improved and more complete implementation of environmental legislation, so that the law can deliver the benefits intended. It will also provide independent assurance of government's delivery of law and the 25 Year Environment Plan, and impartial advice to support the development of improved measures for future application. At the same time, the new body will allow citizens to make complaints regarding alleged improper or ineffective implementation of environmental legislation. This will increase confidence in the steps taken by the UK in protecting and enhancing the environment, also improving citizens' participation in achieving these objectives. Environmental legislation will also include this Bill when it becomes an Act so will also include the duty to have regard to the policy statement on environmental principles. This will be enforced in the same way as any other piece of environmental law.

Details of each function and its benefits are outlined below:

1. **A scrutiny and advisory function.** The scrutiny function would cover both environmental law and the 25 Year Environment Plan and would allow government to be provided with independent information outlining areas where they are making good progress on environmental issues and highlight where focus could be concentrated in the future. This would bolster public confidence and industry certainty that the government will deliver on its commitments and not reduce environmental standards. The advisory function would cover proposed changes to environmental law, as well as other matters affecting the environment when requested by government. This function would allow for constructive solutions and dialogue with government to occur rather than only having the potentially more adversarial options of investigating complaints or taking enforcement action against government in cases of alleged failure to implement the law.
2. **An enforcement function,** enabling the body to take steps to seek to bring about compliance where necessary. This would provide environmental safeguards by establishing a national framework that will operate once the functions of the EC and CJEU, who currently provide oversight and enforcement of the implementation of EU environmental law, no longer apply. Furthermore, an enforcement function would allow for failings by government or public authorities (for example arm's length bodies and local authorities) to appropriately apply environmental law to be

corrected, ensuring that the legislation has the effect, and delivers the benefits, intended. This would not only provide an incentive for government and public authorities to implement the law properly and fully, but would also allow for the courts to clarify the law where necessary as a result of the new body initiating judicial review proceedings in serious cases, reducing ambiguities and uncertainties in its interpretation and application.

3. **A complaints function** would provide for any organisation or member of the public (other than another public authority) to be able to submit a complaint to the body if they believe government or a public authority has not properly applied existing environmental law. This creates a clear, single forum for the receipt of complaints about the public implementation of environmental law, replacing the equivalent EC and European Parliament services. This would encourage individuals to express their concerns and support democracy and transparency along with citizen engagement on environmental issues, leading to greater oversight of the implementation of environmental legislation and associated safeguarding and enhancement of it.

These functions are expected to lead to a reduction in the number and costs of judicial reviews. Through the body's complaints and scrutiny function, breaches of environmental law would be flagged. Through its enforcement function, the body would initially serve advisory notices based on these breaches. This means that government would have the opportunity to take corrective action before court action is undertaken, reducing the need for bringing judicial reviews against government leading to an overall saving. Moreover, the fact that there is an independent statutory body charged with overseeing the delivery of environmental law by government and public authorities, and providing a focal point for the receipt of complaints, means that it is less likely that other organisations bring their own judicial reviews. As a result, the overall number of judicial reviews is expected to be lower than in the counterfactual (do nothing) scenario, where there is no other alternative than to bring legal challenges.

To provide context for the number of cases that the body may be required to deal with in future, the historical number of infringement cases taken by the European Commission against the UK can provide an indicator. Between 2001 and 2005, the European Commission opened an average of 11.4 environmental infringement cases for bad application of environmental law per year against the UK. After that, during the period between 2007 and 2017, the average number of formal cases opened per year against the UK was 19. However, the latter figure does not distinguish between non-communication, non-conformity and bad application cases. Non-conformity and non-communication cases will no longer apply after EU Exit.

To conclude, the aim of the intervention, to create a new body, is to replace the functions currently undertaken by the EU institutions. For example, the EEA similarly assesses and

reports progress against the EU's Environmental Action Programmes. Therefore, the activities it is expected to carry out are measures to which the U.K. government is already subject, although they have not previously been seen in one domestic national body for the environment.

The UK government already has independent bodies similar to that proposed, for example the Equality and Human Rights Commission (EHRC) and the Committee on Climate Change (CCC). These two institutions provide scrutiny and advisory functions like those proposed in our intervention, while the EHRC can also take enforcement action. For example, the EHRC has the power to challenge, protect and promote human rights by holding government to account, while the CCC provides reports to Parliament and advice to government on meeting its climate requirements and ambitions as laid out by the Climate Change Act 2008.

The new body's power to propose improvements to existing environmental law is also one already undertaken by the EC, which can propose amendments to existing EU environmental legislation, while the EHRC has powers to recommend improvements to government related to equality and human rights law.

Policy options considered, including an alternative to regulation

Description of policy options considered

Defra has considered a wide range of options for addressing environmental governance gaps following the UK's departure from the EU. A range of proposals have been explored and are outlined below:

- 1) Do nothing - under a 'do nothing' option, environmental governance would be provided through existing domestic functions. The scope of these functions would not change from today, and there would be no replacement for existing EU functions. This would leave a significant gap in environmental governance once the UK leaves the EU.
- 2) New functions in existing bodies - Functions would be integrated into existing bodies where scope best align in order to scrutinise the 25 Year Environment Plan and environmental law. For example, the Environment Agency or another body could expand its advisory function to include scrutiny of environmental policy and regulation. The Parliamentary and Health Services Ombudsman and the Local Government and Social Care Ombudsmen could play greater roles with additional, specialist expertise to consider complaints about the implementation of environmental law by government and public authorities.

- 3) New functions in a new body, the independent Office for Environmental Protection - option three creates a new independent Office for Environmental Protection as a non-departmental public body that encompasses the enforcement, complaints, scrutiny and advice functions set out in the previous section.
- 4) New functions in a parliamentary accountable entity - this option provides for functions to be delivered by creating a new parliamentary body which reports to a parliamentary committee such as the Environmental Audit Committee, or establishing a new local government/devolved administration public body. A parliamentary body, like the National Audit Office, is directly accountable to Parliament and not comprised of civil servants. This body's funding is independent from government as it is sourced directly from Parliament rather than through a sponsoring government department.

Appraisal of policy options

The wide range of options considered were appraised against their ability to provide objective and impartial scrutiny, advice, enforcement and complaints functions. The appraisal for each is outlined below:

1) Do nothing

Whilst government has the capabilities to measure whether or not it is complying with environmental law and meeting its objectives, only through a separate mechanism can such scrutiny be, and be seen to be, truly objective and authoritative. In addition to NGOs, the existing domestic mechanisms for scrutinising government policies include parliamentary committees, advisory committees, and the National Audit Office. However, none of these mechanisms has sufficient breadth and depth of coverage to fully scrutinise environmental law and policy in a focused and systematic way. The same applies to the other functions, and in particular enforcement. **Therefore, do nothing is not a viable option because it does not fully provide objective and impartial scrutiny, advice, enforcement and complaints functions.**

2) New functions in existing bodies

There is no existing body that could reasonably be given the function and powers to take enforcement action, including legal proceedings, against government where needed. As existing delivery bodies, such as the Environment Agency, have a role in regulating to ensure compliance with environmental law, they would not be able to impartially assess complaints or initiate enforcement action against themselves. This also means that, even if

the other functions were allocated to other bodies that already exist, they could not be integrated within a single entity. It is important that all functions are joined up under one body due to their interdependencies. For example, the enforcement function is dependent in part on effective scrutiny to understand where government has breached environmental law. Similarly, the complaints function provides cases for both the scrutiny and enforcement functions to explore further and the scrutiny function offers an opportunity to provide constructive advice on opportunities for improvement, rather than just having the harder options of seeking remediation of problems through the complaints and enforcement mechanisms. **Therefore, this is not a viable option because, given that it would not provide the enforcement function, it would not capitalise on the benefits of having all functions integrated in one body.**

3) New functions in a new body, the independent Office for Environmental Protection

Integrating all the functions outlined above in a new arm's length body would provide sufficient scope and capacity to deliver the strategic objectives required. This option would be able to be achieved before the end of the implementation period, ensuring that a governance gap is avoided. **Therefore, providing the new functions in a new arm's length body is a viable option because it would join up all functions in one single and independent entity.**

4) New functions in a parliamentary accountable entity

While this option would provide for the integration of all functions, it would be inappropriate in constitutional terms and without precedent for the new body both to be an emanation of Parliament and to take enforcement action (e.g. initiate legal proceedings) against the Government. Additionally, as the body will be spending public funds, an emanation of Parliament would offer less accountability, transparency and oversight than an arms-length body of the Executive in ensuring the entity adheres to the financial standards set out in "Managing Public Money". This includes accountability to Parliament through the roles of the Treasury, the NAO and the PAC. **Therefore, providing the functions in a parliamentary accountable entity is not a viable option, one reason being due to the difficulties in providing the enforcement function.**

This section outlines how option 3, new functions in a new arm's length body, is the only viable option to deliver all the functions required with the necessary level of independence. This is therefore the preferred option. Specifically, for the new body to realise the highest possible benefits it should have the power to provide scrutiny, advisory, enforcement and complaints functions in relation to the implementation of environmental legislation and the 25 Year Environment Plan. This is necessary as the environment is a long-term challenge and so a long-term system for oversight is required. By delivering on this it will assist the

realisation of the economic benefits associated with environmental law by ensuring correct government delivery of law as designed.

Expected level of business and wider impacts

This intervention will create no direct impacts on business. The measure would only be relevant to government policy making and the implementation of environmental legislation by government and its public delivery bodies. Therefore it is not envisaged as having any direct impact on businesses (including small businesses) or community or voluntary sector groups. Similarly, the measure will have no distributional impacts.

Direct impacts from these powers may arise in future legislation and will be taken into consideration through the appropriate impact assessments when changes to business regulation are known.

The establishment of a new body will entail set up and ongoing costs covered by grant-in-aid.

Brief assessment of wider impacts

This intervention will develop a national replacement (but not a copy of) the current environmental governance mechanisms found in the European Union Treaties and institutional arrangements, once the United Kingdom leaves the European Union. The intervention will operate after we are no longer subject to the functions of the EC and the CJEU insofar as they currently provide for the oversight and enforcement of the implementation of environmental law.

The new body intends to overcome this governance gap by providing environmental safeguards in the form of a national framework that aims to maintain the current level of environmental protection. This will provide for the following wider benefits:

- Reassurance to citizens and businesses that government will deliver on its legal requirements on the environment and thus provide certainty for business and reassurance for citizens concerned about our environment. According to a poll carried out in August 2016 by YouGov for Friends of the Earth, 46% of people said that, after leaving the EU, Britain should increase (compared to current EU laws) the level of protection for wild areas and wildlife species through new legislation, while 37% stated that new legislation should keep the same level of protection as it

is currently under the EU regime. Only 4% of people argued that new laws should lower protection.¹

- Increased trust and confidence in UK's environmental authorities.
- Ensure long-term considerations are built into a system of delivery and not driven by short-term considerations, as the environment is a long-term challenge.
- Ensure that net benefits of existing regulation are realised.
- Provide for the wider economic benefits of environmental law being delivered on the ground by ensuring correct government delivery as designed.
- It should also create a more level playing field by supporting the consistent application of environmental law. The pressure for third party challenges against government's implementation of the law is expected to reduce as a result.
- Many global trade deals, particularly those between developed nations, now look to include environmental protection. This is expected to become an increasing factor in future trade negotiations. For example, a growing number of bilateral EU trade agreements now include trade and sustainable development chapters (TSDs). TSDs set out to promote sustainable management of natural resources and avoid lowering of environmental standards for the purpose of improving trade. At a multilateral scale, the latest trade negotiations between members of the World Trade Organisation ('the Doha round') explicitly reflect environmental concerns, and look to mutually support trade and environment. An independent statutory body would provide additional assurance to demonstrate that the UK is committed to upholding its environmental standards, and provide explicit evidence of this through reports produced by the scrutiny function. This may support the UK in future trade negotiations.

¹ YouGov / Friends of the Earth survey - <https://friendsoftheearth.uk/sites/default/files/downloads/yougov-survey-brexit-environment-august-2016-101683.pdf>

Statement of impacts – Environmental Principles

Background

Environmental principles are important because they ground environmental law and policy decision-making. They offer protection to the natural world by offering a guide for policy makers to follow. They also offer clarity to the public, lawyers and NGOs on the key considerations of policy makers. While there is no single agreed definition of environmental principles, a number of internationally recognised principles have been developed that help shape environmental policy around the world. Applying the environmental principles consistently and with greater clarity has the potential to increase the level of protection of the environment as well as improving the effectiveness of policy-making.

The environmental principles are currently enshrined in EU law and act as a basis for all EU environmental policy-making. These principles form a foundation for EU environmental law and shape how EU environmental legislation is developed. They are important to avoid potential shortcomings, or ‘market failures’, in relation to regulation and protection of the environment.

Problem under consideration and rationale for government intervention

At a national level, the UK does not currently have the environmental principles in one place, or define their role in policy-making or delivery. When we leave the EU, the UK will cease to have a defined set of guiding environmental principles. This is because some of these environmental principles are included in specific pieces of EU legislation, whilst others are included within our domestic legal framework. This may lead to potential confusion as well as a higher risk of reducing standards on environmental decision-making, owing to the removal of the clear and consistent foundation on which to base environmental legislation that the environmental principles provide.

The principles are already considered in policy-making but including them in primary legislation should ensure that they are applied more consistently and with greater clarity, which should improve the effectiveness of policy-making as well as helping to protect the environment.

As well as developing the environmental principles themselves, we will also be issuing a policy statement to provide direction on the application of the principles and the process by which they should be used. The rationale for publishing this policy statement is to give further clarity to policy makers on how they should consider the environmental principles.

The environmental principles proposed are already established in various sources. As part of our membership of the European Union, the principles are set out in the 'Treaty on the Functioning of the European Union'. The EU is required to ensure that environment policy incorporates consideration of these principles throughout the policy and law-making process. The principles have also been agreed to through international commitments that the UK has signed up through international agreements. For example, some of the principles are set out in the Rio Declaration.

In leaving the EU, there is currently no requirement in UK law to base environmental policy-making on a clear list of environmental principles. This has the potential to mean that there will be a lowering of environmental standards and could create confusion in policy-making.

In general terms, the rationale for this intervention can be broadly divided into two parts: the rationale for introducing legislation on the environmental principles and the rationale for including this specific list of principles.

First, including environmental principles within primary legislation and publishing a corresponding policy statement should provide the following:

- **Certainty:** Developing a clear list of environmental principles and placing these within primary legislation offers a degree of certainty for policy-makers, stakeholders and the public as it ensures that this list of principles cannot easily be edited or removed.
- **Predictability:** The principles ensure that those who are subject to government interventions can use the principles as a reasonable prediction of the government actions and act accordingly as it will become public which principles are being used in the consideration.
- **Transparency:** Having open debate on the environmental principles should help to inform and define these environmental principles.
- **Longevity:** Placing the environmental principles in primary legislation will help ensure long term regard to the environment in future policy making.

- Coordination: A list of defined environmental principles will help departments to better align future policy which may impact the environment.
- Clarity: Including the environmental principles in UK domestic legislation will ensure a degree of clarity for policy makers as well as for the public to understand the legal expectations in the development of environmental policy.

Second, including the list of environmental principles as the nine currently set out in the Bill will ensure:

- Consistency: The list of environmental principles as currently set out in the Bill are principles that the UK has already signed-up to through international treaties and already govern the approach through being a member of the EU. To maintain the same list of environmental principles ensures a consistent approach.
- Protection of the environment: Significant case law and examples have shown the value of the environmental principles for ensuring the protection of the environment. By including the list of the 9 environmental principles, we ensure that this protection is continued.

In addition, setting out environmental principles, and including the current list of environmental principles, addresses three key 'market failures' in relation to the environment. These 'market failures' demonstrate how the environment may be negatively impacted when it is not given due regard in decision making. The environmental principles provide a framework for this due regard. Specifically, the environmental principles will address the following:

- **The environment being seen as a 'common pool' resource.** The environment is not exclusive, it is open for anyone to use. However, not everyone's intentions for using the environment are the same, and one person's actions could hinder another's. This can lead to over exploitation as individuals don't take account of the diminishing potential benefit others can draw from the resource as a result of their own consumption. For example, air pollution diminishes air quality and so reduces the benefits others in society get from having clean air. The individual carrying out the air pollution does not realise, or underestimates, the damage their pollution causes but, if everyone were to pollute, the commonly held resource, clean air, would be diminished. Similarly, there is no incentive for individuals to invest in improvements or maintenance of environmental assets which are common pool resources as you cannot prevent others from benefiting or recouping the value of your investment. This means that whenever anyone would invest in maintenance of the environment the private benefit they receive is much lower than the overall social benefit. Meaning if one individual invests, the rest of society may free-ride,

disincentivising the investment. For example, if one individual invests in coastal defences to prevent erosion, all of those living behind these defences will benefit, without investing. Principles can support attribution of 'property rights' to support in correcting these challenges.

- **Information failure.** The environment is complex and it is difficult for individuals to make fully informed decisions or to effectively monitor aspects of the environment. This may lead to ineffective decision making and increases the risk of harmful practices or unintended consequences negatively affecting the environment. Likewise, where information asymmetries occur these may be exploited. Some environmental principles, particularly access to information, can support individuals in being more fully informed about the environment around them and help them make better decisions. This is made easier by the accompanying policy statement which will outline how the environmental principles should be applied. Additionally, environmental principles can act as heuristics (mental shortcuts) to allow policy-makers who may not be in possession of all of the necessary facts to make decisions about the environment. They can do this by applying the environmental principles to their decision to allow them to make the best decision possible.
- **Negative externalities.** Activities which impact the environment can generate negative impacts or costs that are larger than the associated benefits from these activities. As these negative impacts or costs do not accrue for those benefiting, the market does not fully reflect externalities in prices and this leads to levels of consumption or production which are not optimal for society over all. These costs to the environment should ideally be internalised into the cost of the product or activity to achieve an efficient outcome both economically and for the environment. Principles can help us ensure that external costs are more effectively reflected in users' decision making. For example, introducing the 5 pence plastic carrier bag levy, as an application of the polluter pays principle, has ensured that the negative impact of single-use plastics is considered by the user.

Policy objectives and the intended effects

The intended effect of the principles in and of themselves is that they help ensure incentives are in place to improve environmental outcomes i.e. that government has greater regard to environmental consequences in policy making.

For the process for applying the environmental principles, the intended effect is to establish a clear and actionable way for the environmental principles to be used. This should include guidance around their application.

The intended effect is that the government must have regard to a statutory policy statement on the environmental principles in its policy-making after exiting the EU. This should also offer clarity to decision-makers, NGOs, the public and the legal community on how policies are developed. The list of principles also gives clarity to the public of governmental priorities in terms of policy-making.

The environmental principles are wide-ranging in scope and touch on many different policy areas. As such, there is potential contention with several policy elements. There are some environmental principles which have contentious elements, including:

- The polluter pays principle: The polluter pays principle sets out that the costs of pollution control and remediation should be borne by those who cause pollution rather than the community at large. The polluter pays principle has the potential to have far-reaching effects in terms of who is responsible for environmental harm, for example whether farmers are responsible for the harm caused by pesticides when growing food, or the attribution of the harm of climate change to energy producers. Again, considerate drafting will need to be undertaken here to ensure that the principle is proportionate and does not prevent necessary action due to litigation.
- The sustainable development principle: This principle has a potential wide-range of scope, encompassing social, economic as well as environmental protection. This principle could be misapplied to presume that one of the three factors for consideration is more important than others, rather than focusing on a balance of the three considerations. For example, there is a risk that the principle could be applied in a certain way so as to justify a decision that harmed the environment for economic gain rather than weighing up the two considerations.
- Access to environmental information, public participation in environmental decision-making and access to justice: These are usually understood as pillars of good governance as opposed to principles. Careful drafting in the policy statement will be needed to highlight the different nature of these mechanisms.

The precautionary principle as it relates to the environment: this principle can be seen to be contentious because it can be applied as a hazard-based principle as opposed to a risk-based principle. This means that the principle can sometimes be applied so as to prevent action in the evidence of a hazard (hazard-based approach) as opposed to taking into account the likelihood of that hazard happening before acting (the risk-based approach). The former approach has the potential to create extra burden on government and organisations working for government as there is potential for projects being slowed, or significantly altered, on the basis of hazards which have a low likelihood of either happening or causing significant damage. There will need to be suitable considerations in drafting to ensure that the precautionary principle is applied in a risk-based, as opposed to a hazard-based, approach.

To ensure contention around these principles is addressed, government will ensure clarity in the drafting of the policy statement and will engage across government to gain agreement on the application of the principles.

Policy options considered, including an alternative to regulation

Options for implementation

In the implementation of the policy options, there are three main options for consideration:

- 1) Do nothing – this option would not implement the environmental principles in UK statute. The principles could still be considered by policy makers but there would be no legal requirement to do so (with the exception of a very small proportion of environmental regulation where the principles are given direct legal effect).
 - The risk with this option is that policy makers would have less clarity on the key considerations in environmental decision making, which risks significant, and lasting, environmental harm.
- 2) Include the environmental principles within the Environment Bill, with a statutory policy statement under the legislation to explain how they should be interpreted and applied.
 - Under this option, the Environment Bill would include:
 - i. a set of environmental principles;
 - ii. a requirement on the government to publish a policy statement explaining how specific environmental principles should be interpreted and applied;
 - iii. a requirement for government to have regard to the statutory policy statement on environmental principles in their policies and carrying out their relevant functions; and
 - iv. powers for a new environmental body to provide oversight of application of the statutory policy statement by government.
- 3) In this option, the Environment Bill would include a requirement on government to have regard to the policy statement and the policy statement would list the environmental principles. Unlike Option 2, the Environment Bill would not list the environmental principles.
 - Under this option, the Environment Bill would include:
 - i. a requirement on government to publish a policy statement explaining how environmental principles (as set out in the policy statement) should be interpreted and applied;

- ii. a requirement for government to have regard to the statutory policy statement on environmental principles in developing and implementing their policies; and
- iii. powers for a new environmental body to provide oversight of application of the statutory policy statement by government.

The government will be taking forwards option two, which is the preferred option. This has benefits over the other two options as it means that environmental principles are fixed in legislation. This option means that the government would have to go through a relatively long process to change the environmental principles, meaning they become stable between regime changes. This therefore offers more clarity to policy-makers, legal professionals and NGOs on the fixed nature of the environmental principles.

Options for the environmental principles

In the definition of environmental principles, there are two main options for consideration:

- 1) To maintain the list of environmental principles as they currently stand;
- 2) To introduce a different list of environmental principles.

As these principles are derived from a variety of internationally agreed conventions and EU treaties, such as the Rio Declaration, the preferred option is to include them in their current form as opposed to developing new principles. This is because these principles are widely recognised and are currently applied in both domestic and international circumstances. Furthermore, as these principles are already widely applied, there are policies and court decisions to support their implementation. If new principles were to be developed, this may not be the case.

On balance, keeping the principles as they currently are has numerous benefits. This is exemplified by the numerous instances where the environmental principles have added environmental benefit both internationally and domestically. Such as:

- An example of the application of the precautionary principle is the restriction of neonicotinoid insecticides in the EU by the European Commission. In this case, these insecticides were banned on the basis of initial scientific uncertainty about their impact on bees. This is the application of the precautionary principle. Evidence then arose which has showed that the initial evidence and application of the precautionary principle was correct, and the EU was right to ban neonicotinoids on

the basis of this initial evidence. This shows the value of the precautionary principle in protecting the environment.

- Instances of the 'polluter pays principle' can be seen from the plastic bag charge. This charge, introduced in 2015, requires businesses to charge consumers 5 pence for any single-use plastic carrier bags they use. The purpose of this charge is to reduce the use of single-use plastic carrier bags, and the litter they can cause, by encouraging people to reuse their bags and think carefully about disposal after use. Since the introduction of the charge, plastic bag use has gone down by more than 80 per cent, which means that more than nine billion fewer plastic bags have been used, whilst also generating millions of pounds in donations to good causes by retailers. This is an example of a very successful application of the polluter pays principle.
- An instance of the integration principle can be seen in the use of Strategic Environmental Assessments (SEAs) and Environmental Impact Assessments (EIAs) in the UK. SEAs and EIAs are legally enforced systematic assessments of the environmental impacts of land use. This is an example of the integration principle because it demonstrates an obligation to consider of the environment in planning and policy. These SEAs have ensured that the environment is considered in planning decisions and therefore ensured a high-level of environmental protection.

The principles to be included in the Bill as well as justification for these principles are proposed as:

1. Precautionary principle as it relates to the environment: The definition as set out in the Rio Declaration is: "where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation"². It is important to include the precautionary principle because it underpins many international treaties and pieces of legislation. It acts to ensure that significant environmental damage does not happen in cases where there is a lack of knowledge leading to uncertainty. The precautionary principle is important in contributing to greater environmental protection as it encourages policy makers to anticipate, prevent and mitigate the causes of environmental harm. The reason people do not fully understand the consequences of their actions is due to the existence of information failure, further highlighting the need for intervention. This also relates to the common pool resource rationale set out earlier. When individuals degrade the

² Report of the United Nations Conference on Environment and Development - <http://www.un.org/documents/ga/conf151/aconf15126-1annex1.htm>

environment because they do not fully understand the consequences of their actions, it has a negative impact on others who use the environment.

2. Polluter pays principle: The definition as set out in the Rio Declaration is: “national authorities should endeavour to promote the internalisation of environmental costs and the use of economic instruments, taking into account the approach that the polluter should, in principle, bear the cost of pollution”³. The polluter pays principle needs to be included as it helps to manage the costs of damage to the environment by setting out a clear direction that the costs of pollution control and remediation should be borne by those causing the pollution. It sets out a clear expectation that government policy can attribute responsibility to those that have caused environmental damage. Practically, this principle enables a financial obligation or responsibility to address harm by a party. This is key in internalising the negative externalities of pollution – making sure those causing harm account for the wider costs, and take account for them in their decision making. This also links to the common pool resource rationale – effectively assigning a property right of a clean environment to the common and ensuring individuals who are responsible for the degradation of the environment should be held accountable to disincentivise harming what is not owned solely by the polluter.
3. Prevention principle: The prevention principle states that preventive action should be taken to avert environmental damage⁴. This principle helps to avoid environmental damage and therefore helps to protect the environment. Importantly, it helps to avoid additional costs and complexities that would be caused if environmental damage were not avoided. As a common pool resource there is little incentive for individuals to rectify environmental damage given the benefit to do so is distributed across society the personal loss of the environmental damage to the polluter is minimal, thus creating a ‘free-rider’ effect. This principle averts the need for the investment challenge after an incident. Likewise, the cost of preventing environmental damage is usually lower than the cost of irreversible environmental damage and cleaning up environmental damage- it is economically more efficient to prevent than repair.
4. Rectification at source principle: The rectification at source principle is the notion that environmental damage should as a priority be rectified by targeting its original cause and taking preventive action at source. This principle is important because it reinforces the responsibility for managing environmental damage to the source of environmental harm- therefore linking it to the polluter. This results in a more equitable outcome (those who create environmental damage take responsibility)

³ Report of the United Nations Conference on Environment and Development - <http://www.un.org/documents/ga/conf151/aconf15126-1annex1.htm>

⁴ Report of the United Nations Conference on Environment and Development - <http://www.un.org/documents/ga/conf151/aconf15126-1annex1.htm>

and prevents an unnecessary burden on government to be responsible for sorting out instances of environmental damage.

5. Integration principle: The integration principle states that environmental protection requirements must be integrated in the definition and implementation of policies and activities. This principle is important because it forms the basis of the environmental principles as it requires an integrated approach across government towards environmental protection. There is also a direct link between the integration principle and sustainable development as it ensures that the environment is considered in each decision. An integrated approach is needed to address negative environmental externalities which occur across all policy areas.
6. Sustainable development: The most common and accepted definition of sustainable development is “development that meets the needs of the present generation without compromising the ability of future generations to meet their own needs”.⁵ Sustainable development is closely linked to most of the other environmental principles and can be seen as an overarching principle. Sustainable development has also already been incorporated into a lot of UK legislation and policy development. This principle has the potential to ensure proportionality in the application of the principles as recognises the need to balance the needs of the environment along with social and economic concerns. A big economic rationale for sustainable development is that it will help to maintain intergenerational equity as opposed to the short sighted visions some policies often take, this will help improve economic efficiency in the long run. This principle may encourage firms to become more innovative as they try to find more environmentally friendly methods of production, which will improve overall efficiency in the market.
7. The principle of public access to environmental information: This principle provides appropriate access for individuals to information concerning the environment that is held by public authorities. This principle is important because it aims to increase transparency and helps the public to hold the government to account. This principle also gives a chance for NGOs and academics to view information and advise the government helping to better the implementation of policy. This helps to counter potential asymmetry of information and information failure which may occur should information not be readily available to all parties.
8. The principle of public participation in environmental decision-making: public participation recognises that “environmental issues are best handled with the participation of all concerned citizens” and requires “states shall facilitate and encourage public awareness and participation by making information widely

⁵ Brundtland Report – Chapter 2. Towards Sustainable Development - https://en.wikisource.org/wiki/Brundtland_Report/Chapter_2._Towards_Sustainable_Development

available”.⁶ This is important because it provides citizens with the right to participate in decision-making thereby enhancing the robustness and transparency of those decisions. This principle provides an opportunity for the views of many different groups of society to be considered in policy making. The principle of public participation is also integral to the public consultation process and for the development of Environmental Impact Assessments. The exclusion of public participation could mean policy makers do not have all the information available to make accurate, fully informed decisions on environmental issues. This principle will therefore aid in the removal of information failures surrounding environmental issues. This principle will also ensure equity across society as all people will be able to participate in environmental decision-making. This means that views of many different groups of society will be able to be considered in policy making.

9. The principle of access to justice in relation to environmental matters: The principle of access to justice in relation to environmental matters recognises the importance of effective access to judicial and administrative proceedings, including redress and remedy. This principle contributes to enhanced accountability and transparency in environmental decision-making and serves to reinforce the pillars relating to participation and access to information.

Expected level of business and wider impacts

The measure would only be relevant to government policy making. Therefore it is not envisaged as having any direct impact on business (including small businesses). However, by incorporating environmental principles into the Bill there is potential for the burden on businesses to be reduced by enabling businesses to access the principles in one place.

Brief assessment of distributional impacts

There is unlikely to be significant distributional impacts of the policy on different business and sectors. This is because to a large extent the environmental principles are already entrenched in UK policy development so there is unlikely to be any change in behaviour regarding our treatment of different businesses and sectors.

⁶ Report of the United Nations Conference on Environment and Development - <http://www.un.org/documents/ga/conf151/aconf15126-1annex1.htm>

Brief assessment of wider impacts

This measure will have impacts which can be split into two areas: the impacts of putting the principles in primary legislation (implementation) and the impacts of the chosen environmental principles themselves.

Implementation

Putting these principles into legislation should have positive environmental impacts as it ensures that instances of policy and decision making on the environment take into account a set of environmental principles. It should help to embed a practice of consideration of environmental impacts when developing policy. The principles are already considered in policy-making but this approach should apply the principles more consistently and with greater clarity, which should improve the effectiveness of policy-making and ensure that all new policy considers its impact on the environment.

The environmental principles

The environmental principles themselves should also have positive environmental impacts. For example, the rectification at source principle, which outlines how, when environmental damage occurs, it should be rectified at its origin, is likely to avoid future damage to the environment once the source of the damage is identified. An example of a positive environmental impact as a result of environmental principles can be found in the precautionary principle, which has led, amongst other things, to the restriction of the use of neonicotinoid pesticides and the implementation of the harvest control rule to prevent overfishing of fish stocks.

By adopting and applying these environmental principles, the government can encourage stakeholders, business and the public to give consideration to the principles in their interactions with government. This may have further positive impacts for the environment and even on society at large, as a result of a protected environment.

There are likely to be minimal financial impacts as there may be some cost implications of applying the principles in instances of policy making, but these principles should already largely be embedded in this process, so it is unlikely to add a significant extra burden. We are drafting the Bill and policy statement to ensure that the principles will be applied in a

proportionate way to consider the economic costs and environmental benefits of the proposed policy.

Statement of impacts – 25 Year Environment Plan

Background

The government has a manifesto commitment to be the first generation to leave the environment in a better state than we inherited it. In pursuit of this ambition, the government published its 25 Year Environment Plan (25 YEP) in January 2018. The plan sets out 10 strategic goals for environmental improvement up to 2043 and identifies over 230 actions that government will take to help deliver progress towards these goals in the short-term.

Problem under consideration and rationale for government intervention

The actions identified in the 25 YEP are just a start; many of them simply signal future policy development (for example, the 25 YEP commits government to developing a Resource and Waste strategy which will contain further measures). There is widespread recognition that sustained action over the full 25 year period will be required to deliver environment improvement and start to address the pervasive market failures that have driven long-term environmental declines to date. In recognition of this, Defra is seeking to introduce duties on the government to 1) prepare and update (at least every five years) a plan for improving the environment, 2) report annually to Parliament on progress, and 3) develop and publish a suite of indicators and metrics to measure environmental change to help measure long-term progress towards the 10 goals.

Policy objectives and the intended effects

Through the Environment Bill, the government intends to give the 25 YEP statutory status through a series of duties that will work in combination to drive an ongoing process of planning, monitoring and reporting to deliver the government's manifesto commitment to protect and improve the environment.

Policy options considered, including an alternative to regulation

The current 25 YEP already commits government to updating the plan at least every five years, putting in place metrics and reporting annually on progress. Defra Ministers are seeking to turn these existing policy commitments into legislative requirements so the 25 YEP can fulfil its stated objectives. We anticipate these measures will be welcomed (some stakeholders and parliamentarians may argue we should have made these commitments sooner).

It would be entirely possible to revisit the detail of the approach we are proposing (e.g. whether to report biannually instead of annually or to update the plans more regularly than every five years) but the arrangements included within the 25 YEP were subject to thorough scrutiny and close examination by other government departments so it is difficult to see any benefit in doing so.

What wider measures (e.g. selecting specific policy commitments from within the 25 YEP to become legal commitments) might be necessary to achieve the government's objective of environmental improvement is being considered as part of the process of developing the Environment Bill as a whole and is out of scope of the current proposals.

Expected level of business and wider impacts

There are no impacts on business or regulatory burdens to consider as the proposed duties fall entirely on government and are the formalisation of existing government policy. We could expect future government to bring forward environment policy proposals aimed at meeting the 10 goals set out in the 25 YEP. But it is not possible to foresee what mix of policies a future government might choose to pursue; the impacts on business should form an important part of the decision making process when the plan is revised under each successive government.