



Department
for Environment
Food & Rural Affairs

Information paper on the policy statement on Environmental Principles

Information paper

December 2018



© Crown copyright 2018

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit nationalarchives.gov.uk/doc/open-government-licence/version/3

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

This publication is available at www.gov.uk/government/publications

Any enquiries regarding this publication should be sent to us at:

Draft Environment (Principles and Governance) Bill
Environment Bill Team
Department for Environment, Food and Rural Affairs
Ground Floor, Seacole Block
2 Marsham Street
London
SW1P 4DF
EnvironmentBill@defra.gov.uk

PB14550

Printed on paper containing 75% recycled fibre content minimum

Printed in the UK by the APS Group on behalf of the Controller of Her Majesty's Stationery Office

Contents

Summary	1
Introduction	2
Background	3
Part One: overview of the policy statement on environmental principles	4
Part Two: using the policy statement on environmental principles.....	7
Part Three: environmental principles	10
Background on environmental principles.....	10
Details of each environmental principle.....	11
Part Four: Consideration of the Environmental Principles.....	16
Relevance of the environmental principles.....	16
Nature of the principles	18
Part Five: Case studies and examples.....	22
Examples of where the principles have already been considered and applied	22
Examples of how the principles have been used in court judgments	22
Examples of application of the policy statement.....	23
Part Six: Compliance with the policy statement on environmental principles.....	25
Scrutiny and enforcement of application of the statement.....	25
Part Seven: Review of the policy statement on environmental principles	26
Part Eight: Next steps	27

Summary

The draft Environment (Principles and Governance) Bill clauses include a list of environmental principles and commits government to publishing a policy statement on the environmental principles. The policy statement will offer detailed guidance and interpretation on what the environmental principles mean in practice for policy-makers.

This is an information paper that sets out the government's initial approach to the development of the policy statement on the environmental principles. It is intended as a vehicle to help gather useful insights and comments from stakeholders and does not represent a full or final draft of the policy statement.

We are interested to gain stakeholder views on the approach set out in this document. The draft clauses require us to consult and we commit to a full, open public consultation on the policy statement prior to final publication. We will work closely with stakeholders in the meantime to further develop our approach to the policy statement.

Introduction

The government has committed to leaving the environment in a better state than that in which we found it. One way to ensure that we will do this is by placing a list of comprehensive, clear and stable environmental principles in legislation and publishing an accompanying statutory policy statement setting out how they should be interpreted and applied.

The environmental principles – such as that the polluter should pay or that the public should be able to participate in environmental decision-making - are fundamental to achieving our environmental ambitions because they offer direction to policy-making. In policy development, government continually takes decisions that affect the future of our nation and environment. The environmental principles are already key considerations in this policy development. However, they may be implicit and applied in different ways.

These environmental principles derive from international agreements and are reflected in the EU Treaties and environmental legislation. For EU Member States, these act as legal obligations governing our actions and so as we leave the EU, it is important that we continue to have a set of legal principles for the protection and improvement of the environment. Leaving the EU also gives us the opportunity to be more ambitious on the environment and work to ensure that environmental considerations are at the forefront of policy-making and development.

Therefore, through the draft clauses we are aiming to bring these environmental principles together in one place, with clear guidance on when and how they should be interpreted and applied by policy-makers. Presenting the environmental principles in a policy statement helps to reduce uncertainty on how principles will be applied in England for devolved issues and UK-wide for reserved matters for policy-makers and stakeholders, while at the same time enhancing our environmental outcomes and maintaining our environmental protections.

The draft clauses include a list of environmental principles and commits us to publishing a policy statement on the environmental principles. The policy statement will offer detailed guidance and interpretation on what the environmental principles mean in practice for policy-makers.

Background

Environmental principles underpin environmental law and shape policy-making. 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.

Environmental principles are important in helping to safeguard the protection of the environment and to ensure that environmental standards are maintained and improved because they offer direction for policy-makers to follow. They help to ensure that key environmental considerations are taken into account, alongside other considerations such as social and economic impact and benefits. Applying the environmental principles consistently and with greater clarity has the potential to increase the level of protection and investment in the environment as well as improving the effectiveness of policy-making.

The **policy statement** will set out guidance on the environmental principles to ensure that they are understood consistently and coherently. This should ensure that environmental protection and enhancement is integrated into policy-making and lead to increased understanding of the environmental principles among policy-makers and wider stakeholders.

Therefore, the policy statement should support:

- consistent integration of environmental concerns into policy-making;
- more transparent decision-making and policy development;
- maintenance and enhancement of environmental protection; and
- effective targeting of policies to prevent environmental harm.

The expectation is that the policy statement should be read alongside other government documents, such as National Policy Statements, and that the environmental principles will be considered alongside other aspects of good practice policy-making, such as cost-benefit analysis, to ensure a balanced and comprehensive approach.

Part One: overview of the policy statement on environmental principles

Legal status of statement

The policy statement on environmental principles will be a statutory document. It will be a legislative requirement that it be prepared and published, as set out in clauses 1 and 3 of the draft Bill.

The policy statement must explain how the environmental principles are to be interpreted and applied in relation to policy making, development and revision, as required by clause 1.

Clause 4(1) requires a Minister of the Crown to have regard to the policy statement when making and developing policies to which the statement relates. This means Ministers of the Crown should be able to demonstrate that the policy statement was considered in the design and development of policy.

The policy statement operates alongside domestic law and existing legislation. As such, Ministers will need to have regard to the policy statement alongside existing legislation. Where there are other clear legal requirements in other pieces of legislation, the provision set forward in this draft Bill will not alter these requirements.

The policy statement will only have effect when the relevant provisions in the draft Bill are commenced following Royal Assent and will not apply retrospectively to existing policies but would apply in their revision.

Territorial application of statement

Our starting point is that the policy statement on environmental principles applies to England and reserved matters throughout the UK, for which the UK government has responsibility.

We would welcome the opportunity to co-design proposals with the Devolved Administrations to ensure that they work across the whole of the UK, taking account of the different government and legal systems in the individual nations.

Organisations the statement applies to

The policy statement on environmental principles applies to Ministers of the Crown. This is because the majority of high-level and strategic policies relating to the environment are owned by central government. Central government sets the policy framework and legislation for any key policy decisions taken by other public bodies, for example in developing the National Planning Policy Framework. Therefore, the application of the policy statement to Ministers of the Crown will mean that environmental principles are also reflected in the operational policies, legislation and operating frameworks affecting the functions of a wide range of public bodies.

Policy decisions the statement applies to

The policy statement on environmental principles applies to all policy-making by Ministers of the Crown, apart from some topics that are specifically excluded. The types of activities that the policy statement would apply to include the development of primary and secondary legislation, the development of guidance documents, the design of a new policy and a revision of an existing policy.

The policy statement does not extend to individual regulatory decisions or administrative actions by government or its delivery bodies. This means that decisions such as a licensing decision or a decision about planning permission, regulatory enforcement or a grant of funding are out of scope of the policy statement. Government policies, or strategies, about approaches to these matters (rather than individual decisions) would be in scope, however.

The policy statement is applicable in all instances of central government policy-making where there is an impact on the environment, such as waste policy or large-scale strategic transport or housing policies. It is applicable where it is considered that there is a potential environmental benefit to be achieved in considering the environmental principles.

Environmental impacts here may include, for example, damage to protected species or natural habitats, to surface water or groundwater, or to land.

Whilst most policies will have some form of environmental impact, the policy statement will not be applicable for policies with no notable impact on the environment such as literacy policy, provision of welfare or media policy.

Where the Minister in question views that there will be no significant environmental benefit of applying the policy statement on environmental principles, they need not take any action. This may include examples where there is a negligible impact on the environment or where there is no benefit in applying the principles.

There are some exclusions set out in the draft clauses where it is not necessary for Ministers of the Crown to have regard to the policy statement. These include: the armed forces, defence and national security; taxation, spending or the allocation of resources within government.

The Secretary of State may also set out further exemptions to the policy statement, but the draft clauses requires that if this happens, it will be subject to Parliamentary scrutiny.

Guidance for whether the environmental principles policy statement is relevant

Figure 1 provides a guide as to whether the policy statement is required in a policy area. This is intended to support policy makers in their consideration of whether the environmental principles policy statement is relevant to a given policy area.

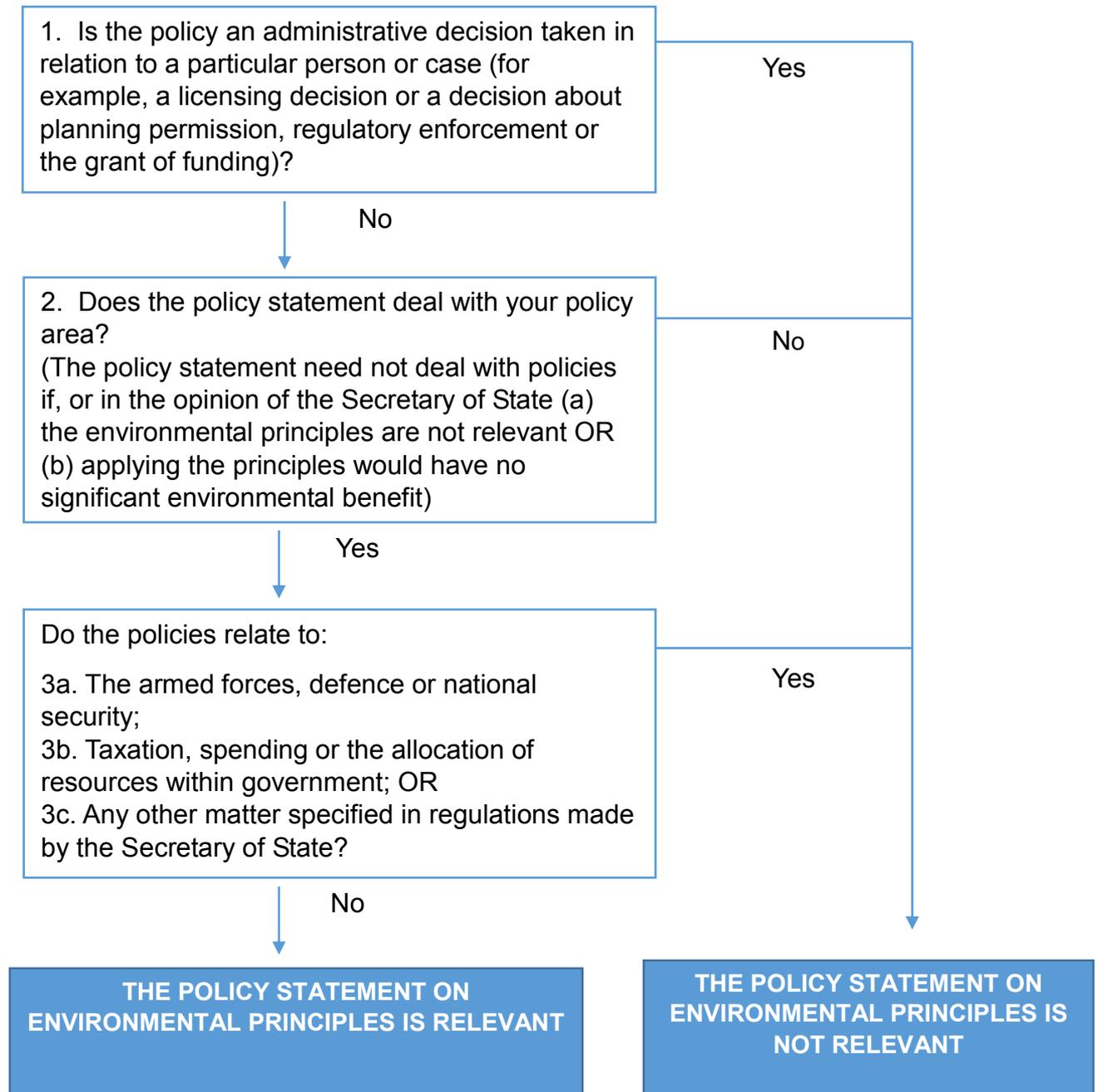


Figure 1 Guidance on whether the area of policy is relevant to the environmental principles policy statement

Part Two: using the policy statement on environmental principles

All Ministers of the Crown will have a legal obligation to consider the policy statement on environmental principles, where relevant, when making, developing or revising policies.

The legal duty is for Ministers of the Crown to 'have regard' to the policy statement. This means that Ministers of the Crown must consider the relevance of the policy statement for their given policy area and assess whether the policy statement applies, as set out in the draft clauses and Figure 1.

If it is deemed that a given policy area is relevant, it will be necessary to apply the process set out in the policy statement on the interpretation and application of the principles to the making, development and revision of policies. This process will include considering which principles are relevant and then taking these principles into account in policy development, justifying any extent to which it is not possible or appropriate to do so.

The policy statement may be considered throughout policy development, depending on the relevance. Ministers of the Crown could use the policy statement on environmental principles in the initial development of a policy, in the analysis of policy options, and in considering the design of the policy. In the initial development of a policy, the policy statement could be relevant in the assessment of how the problem or opportunity that the proposed policy would address is related to the environment, and how environmental considerations should be incorporated in the objectives and scope of the proposed policy.

The policy statement could also be used in the analysis of policy options. By considering how the policy options reflect the policy statement may help policy-makers make informed decisions by taking into account the environmental principles, as well as other relevant policy considerations.

The policy statement could also be applied in the consideration of the design of the policy. Specifically, the policy statement could be used in the detailed design to help inform how the policy could work in practice in a way that reflects the appropriate environmental principles most effectively.

There are numerous options for guaranteeing the effective implementation of the policy statement on environmental principles. Other policy statements which include environmental expectations are:

- The revised implementation of the National Planning Policy Framework. This is overseen by one government department which ensures that when a Local Planning Authority is preparing a local development document, it must have regard to the Framework.
- The Health, Safety and Environmental Protection for Defence Policy Statement. This statement is overseen by the Defence Safety Authority which is responsible for assuring compliance. The Defence Safety Authority produces an annual assurance report to Secretary of State for Defence which includes progress on compliance.

Furthermore, the government is already expected to understand and quantify the wider environmental consequences of large programmes and projects through requirements such as the Strategic Environmental Assessments (SEAs) or Environmental Impact Assessments (EIAs).

We will work to ensure that the policy statement is implemented effectively and properly considered. The duty to have regard to the principles policy statement will be a legal requirement on Ministers. As such, the Office for Environmental Protection (OEP) will be able to monitor compliance with this duty and, if necessary, take enforcement action if the duty is not upheld.

Part Three: environmental principles

Background on environmental principles

Environmental principles are a specific set of principles which are used to guide and shape modern environmental law and policy-making. They are fundamental to the achievement of our ambitions on the environment because they offer direction to policy-making. These principles help to protect the environment from damage by encouraging policy-makers to consider an approach that will result in the least harm to our environment and release opportunities to enhance the environment.

There is no single agreed definition of environmental principles. They are reflected in many international instruments such as Agenda 21, a non-binding action plan of the United Nations with regard to sustainable development, and the Convention on Biological Diversity.

Environmental principles are also set out in the EU Treaties as the basis for EU environmental law. Some of the environmental principles proposed in this Policy Statement are part of the 'Treaty on the Functioning of the European Union' and set out to underpin the development of policy and legislation by EU institutions. The EU ensures that environment policy incorporates consideration of these principles throughout the policy and law-making process.

The policy statement will cover the environmental principles set out in the draft Bill, which draws on current international and EU environmental principles. The environmental principles are complementary and interlinked. They are not listed in order of priority or importance.

Environmental principles in international law and treaties

Environmental principles feature in international law and treaties. One prominent example is the Rio Declaration on Environment and Development 1992 (known as "the Rio Declaration") which includes ideas about sustainable development, the precautionary principle, the polluter pays principle, access to environmental information and other environmental principles. Environmental principles are also featured in other environmental agreements to which the UK is a Party. For example, the Montreal Protocol

on Substances that Deplete the Ozone Layer and the Convention on Biological Diversity includes reference to the precautionary principle.

Access to information, public participation, and access to justice form the basis of good governance. They are often referred to as the mechanisms in the UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, also known as the Aarhus Convention, which establishes a number of public rights in relation to the environment. The Aarhus Convention provides for access to environmental information, public participation in decision-making, and access to justice in environmental matters. The UK has been a party to the Convention since it was signed in 2005.

Details of each environmental principle

The EU (Withdrawal) Act 2018 lists nine environmental principles for inclusion in the policy statement:

- (a) The precautionary principle so far as relating to the environment;**
- (b) The principle of preventative action to avert environmental damage;**
- (c) The principle that environmental damage should as a priority be rectified at source;**
- (d) The polluter pays principle;**
- (e) The principle of sustainable development;**
- (f) The principle that environmental protection requirements must be integrated into the definition and implementation of policies and activities;**
- (g) Public access to environmental information;**
- (h) Public participation in environmental decision-making; and**
- (i) Access to justice in relation to environmental matters.**

The following section provides a brief description on the objective of each environmental principle:

Precautionary principle so far as relating to the environment

The precautionary principle is understood as the principle that where there are threats of serious or irreversible damage, lack of scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.

This principle is included in many international treaties and is already embedded into UK policy areas, such as in fisheries or chemicals policy.

If applied appropriately, the precautionary principle can function to encourage innovation by incentivising policy makers to seek alternative options in policy design. The precautionary principle should be considered where there are reasonable grounds for concern and used in a proportionate manner, taking into account the available scientific evidence, and the associated costs and benefits of action and non-action.

Principle of preventative action to avert environmental damage

The prevention principle states that action should be taken to avert environmental damage, rather than simply tolerate or rectify it after it occurs. This means that measures should be taken to avoid harm, such as pollution. This principle helps to avoid environmental damage and ensures the avoidance of additional costs and complexities that would be caused if environmental damage were not avoided.

In invoking this principle, there must be scientific evidence that damage would be done to the environment by a certain policy or approach.

Principle that environmental damage should as a priority be rectified at source

The rectification at source principle means that environmental damage should, as a priority, be addressed by targeting its original cause and taking preventive action at the origin of the problem.

This principle places the responsibility for managing environmental damage on the polluter or the source of environmental harm. It reinforces the responsibility for managing environmental damage at the source of that damage - therefore linking it to the polluter.

The principle also encourages processes that are inherently clean rather than approaches which treat the problem as or after it occurs.

Polluter pays principle

The polluter pays principle provides an overarching convention of environmental responsibility and cost allocation. The polluter pays principle helps to manage the costs of damage to the environment by setting out an approach that, where possible, the costs should be borne by those causing the damage.

The polluter pays principle means that the costs of pollution control and remediation should be borne by those who cause pollution rather than the community at large. The principle is particularly relevant in the design of a policy as well as being used as a consideration in the event of environmental damage.

The principle can cover both the direct costs of control and remediation, as well as indirect costs to society and the environment.

Sustainable Development

Sustainable development means development that meets the needs of the present generation without compromising the ability of future generations to meet their own needs¹. Sustainable development has also already been incorporated across a lot of UK legislation and policy development, such as the National Planning Policy Framework.

Sustainable development is closely linked to most of the other environmental principles and can be seen as an overarching principle. This principle recognises the need to balance other considerations with the protection of the environment and the importance of balancing short and long-term objectives.

There is a key question about how the principle of sustainable development should be considered in the environmental principles policy statement. Sustainable development is a unique principle as it refers to environmental, social and economic development which makes it broader than the other environmental principles.

For the Final Bill, we are currently considering whether to:

- a. Make sustainable development an overarching objective in the Bill and policy statement, such as 'contributing to the achievement of sustainable development' or;

¹ Source: Our Common Future, also known as the Brundtland Report.

- b. Leave sustainable development as an environmental principle but acknowledge the different considerations in the policy statement.

Integration principle

The integration principle means environmental protection requirements must be integrated into the definition and implementation of policies and activities, and considered across all government departments and policy areas.

This principle is important because it forms the basis of the integrated approach across government towards environmental protection and enhancement. There is also a direct link between the integration principle and sustainable development as both seek to ensure that the environment is considered in each decision.

Public access to environmental information

This mechanism provides access for the public to environmental information held by public authorities. Environmental information includes information on the state of air, water, soil, land, biological diversity and energy, and policies that relate to the environment. This is an important mechanism to increase transparency, help the public participate effectively and hold the government to account in decision-making.

Access to information is currently implemented through the Environmental Information Regulations 2004. Under these Regulations, environmental information can take many forms, e.g. electronic, visual or material.

Public participation in environmental decision-making

Public participation recognises the importance of involving citizens in making effective environmental decisions. It is expressed as Principle 10 of the Rio Declaration:

“environmental issues are best handled with the participation of all concerned citizens” and requires states to “facilitate and encourage public awareness and participation by making information widely available”². Access to information thereby complements participatory processes because it aims to provide citizens with adequate information to enable meaningful participation.

² Source: <http://www.un.org/documents/ga/conf151/aconf15126-1annex1.htm>

Public participation is integral to the public consultation process and for the development of Environmental or Strategic Impact Assessments. It aims to contribute to more robust decision-making by facilitating more accurate and fully informed decisions on environmental issues

Access to justice in relation to environmental matters

Access to justice means effective access to judicial and administrative proceedings, including providing redress and remedy for citizens by matters of environmental law. It aims to enhance the involvement of citizens by recognising the importance of access to review procedures to challenge decisions relating to access to information, participation or other types of environmental matters.

This aims to help improve the quality of environmental decisions through greater transparency and involvement of different stakeholders in decision-making procedures.

Part Four: Consideration of the Environmental Principles

Relevance of the environmental principles

Policy-makers will need to identify which environmental principle(s) is relevant and should be considered during policy development. Some principles will be appropriate across all policy areas, for example the integration principle or the sustainable development principle. Whereas other principles will only be relevant in certain circumstances where there are specific factors for its use. For example, the polluter pays principle will only be relevant if there is a risk of environmental damage. The precautionary principle will only be relevant where there is sufficient scientific evidence – though not full scientific proof or consensus – pointing to a potential risk of negative environmental impacts.

However, not all environmental principles will be applicable or necessarily require further action in every case. Even when an environmental principle is found to be relevant, action may not be required or may not be appropriate. We would expect policy-makers to be able to be transparent about the considerations and approach when this is the case.

An example of when a principle is relevant but a decision is made that it is not appropriate to apply it concerns the exemptions for waste recycling. The UK has laws that require some businesses to make sure that they pay for recovery and recycling of the products or equipment they place on the market once those products or equipment are disposed of at the end of their life and so become waste. This is the implementation of the principle of 'polluter pays' as well as 'rectification at source'. However, certain small businesses are exempted from these legal requirements. Whilst this may be perceived as counter to the application of the principle, there are other factors, such as avoiding unmanageable burdens on small businesses, which need to be considered alongside the environmental principles in some cases. In cases like this, we would expect that policy-makers would be able to be able to justify why the principles have not been applied in the final decision. To take this approach is acceptable within the requirement to 'have regard' to the policy statement.

Overall, the principles should be applied in a proportionate manner, taking into account the (monetary and non-monetary) costs and benefits, and the associated risks. There may be

other considerations to take into account alongside the principles, such as social benefit. Ensuring proportionality in the application of the principles enables a balance so that effective, transparent, and coherent actions can be taken.

In considering environmental principles through the application of the policy statement, decision-makers could take account of factors such as:

- a. Available scientific and technical data;
- b. Potential economic and social costs and benefits of action, and of lack of action;
- c. Environmental benefits of action, and of lack of action;
- d. An evaluation of the risks and potential consequences of action and inaction; and
- e. Proportionality between the measures taken and the chosen level of protection, as actions taken or avoided should be proportionate to the wider costs and benefits, as well as other relevant public policy priorities.

Nature of the principles

As a whole, the environmental principles in this policy statement operate together to help maintain and improve environmental protection and enhancement. However, the principles are not all of the same nature or function. The environmental principles serve different purposes and will therefore be used in different phases of policy development. They can be grouped in the following ways:

- *Overarching environmental principle:*
 - Sustainable development
- *Decision-making environmental principle:*
 - Precautionary principle so far as relating to the environment
- *Operational environmental principles:*
 - The polluter pays principle
 - The prevention principle
 - The rectification at source principle
 - The integration principle
- *Procedural environmental principles related to public engagement:*
 - Public access to environmental information
 - Public participation in environmental decision-making
 - Access to justice in relation to environmental matters

Consideration of environmental principles in the policy cycle

Figure 2 indicates when the environmental principles may be considered in the ROAMEF Cycle (the Rationale, Objectives, Appraisal, Monitoring, Evaluation, Feedback cycle³). It is not a definitive illustration of when environmental principles apply as there may be circumstances throughout the Cycle where an environmental principle may or may not be relevant.

Note: the application of these principles will only occur if there is specific environmental harm and sufficient factors that activate the use of a specific principle.

³ Source: [The Green Book: appraisal and evaluation in central government](#)

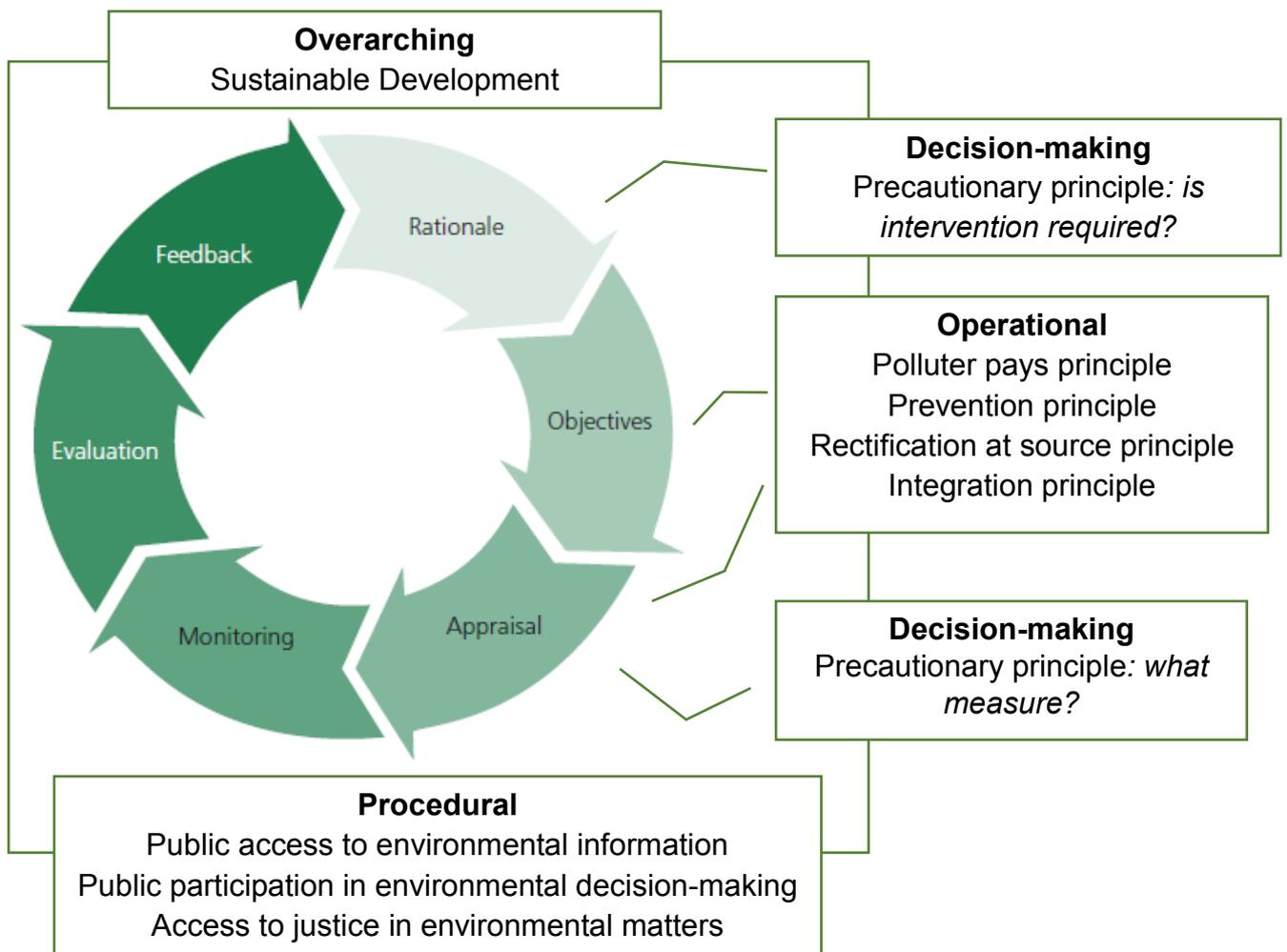


Figure 2 Consideration of environmental principles within the ROAMEF policy cycle

Overarching principle

Some environmental principles will be broadly applicable across government and act as overarching principles. The principle of sustainable development comes under this category. This principle shapes policy development and can apply to all activities included in the policy statement.

The principle of sustainable development can be reflected across all government activities. Sustainable development acts as an overall objective throughout the development of policy and requires policy makers to consider the long-term impact on future generations, as well as balancing economic, social and environmental development.

Decision-making principle

The precautionary principle can be considered predominantly a decision-making principle. This means that it is primarily considered in developing policies about how decisions should best be made. It may be used in two stages – in helping to decide whether or not action is required; and if action is appropriate, in helping to decide which policy measure to use.

Prior to the application of the precautionary principle, there must be certain criteria to prompt its use. In order to use the precautionary principle, it is necessary for:

- The identification of the potentially serious negative environmental impact;
- A scientific evaluation of the available data; and
- Sufficient evidence pointing to scientific uncertainty

The precautionary principle is applied in the context of decision-making under substantive uncertainty and for risk management. It is particularly relevant in circumstances where there is low knowledge, but there is significant risk. The principle should be used to resolve situations where there is a threat of serious or irreversible damage and sufficient evidence pointing to scientific uncertainty.

Operational principles

Operational environmental principles are applied during the development of policy in order to assess which policy options are required, and how they may be designed. The polluter pays principle, the rectification at source principle and the prevention principle function as operational principles. These three principles are considerations for policy-makers to use in the instance of environmental harm and should be designed into policy if there is any potential for harm. These principles work alongside each other and provide policy makers with specific considerations and priorities when developing policy options.

Different factors will trigger the application of specific operational principles. For example, the identification of an environmental harm would trigger use of the prevention principle and the rectification at source principle. The development of policy options would be shaped by these principles to prevent and treat the pollution at the source, as a priority. In

addition, the polluter pays principle could be considered, with regards to ensuring the costs of preventing economic and social cost of action is proportionate to the risk.

The integration principle can function as an operational principle. The integration principle requires environmental protection to be incorporated into the development of policy and decision-making. This principle underpins the entire purpose of the environmental principles policy statement and may be applicable throughout the development of policy.

Procedural environmental principles

Access to information, public participation and access to justice can be grouped as procedural principles. These principles are unlike other environmental principles, such as the polluter pays principle which is operational in nature and is only relevant under certain circumstances, for example if there is pollution present.

Instead, procedural principles are obligations relevant in all instances of policy-making and are promoted through public engagement. They function in a similar way to an overarching principle as there are no specific triggers for their use. Procedural principles are part of existing processes that must be followed in environmental policy and decision-making.

For example, access to information is implemented through the Environmental Information Regulations 2004. The Regulations provide for the dissemination of environmental information by public authorities; and for public authorities to make environmental information available if requested. Under the Regulations, information may be withheld if there is an existing exception and if the public interest in not disclosing the information outweighs the public interest in disclosure.

Public participation in environmental decision-making processes is implemented through a number of different measures. Public consultation is a requirement in many policies and is directly incorporated into legislation. For example, Government will generally consult the public when making changes to policy. There are expectations on the length of time these consultations should be open for and how this should be communicated. The aim of this is to provide the public with the opportunity to give their views about the proposed changes.

Part Five: Case studies and examples

The purpose of this section is to provide examples of where and how the environmental principles have already been applied. This is intended to provide an illustration of how they could apply in the future, without being a full or exhaustive list. The policy statement on environmental principles will provide more information on how the environmental principles should be applied.

Examples of where the principles have already been considered and applied

These are examples of previous application of the environmental principles as disseminated from EU and domestic law:

- The Environmental Liability Directive aims to prevent or otherwise remedy environmental damage to protected species, natural habitats, water and soil and so implements the polluter pays principle.
- The Water Framework Directive, as well as the regulations that transpose it into domestic law, refer to the polluter pays principle in considering the approach that policy-makers should take.
- Access to environmental information is implemented through the Environmental Information Regulations 2004 which provides rights of public access to environmental information.

Examples of how the principles have been used in court judgments

The environmental principles have been used by the courts to make judgments on decisions made. Examples of this include:

- The precautionary principle and **neonicotinoids**: in 2013, the European Commission restricted the use of three neonicotinoid insecticides in the EU on the basis of their negative impact on the bee population due to a risk assessment which identified potential negative impacts of these substances on bee health. This is the

application of the precautionary principle. The decision was challenged by pesticide companies through the Court of Justice of the European Union, which upheld the decision based, amongst other things, on the precautionary principle enabling measures to be taken when there is scientific uncertainty about the risks to the environment.

- In the case of the Walloon (Belgium) regional ban on the import of waste, the Commission complained that the ban was discriminatory as waste from other Member States was not any different from that of the area. However, in light of the 'rectification at source principle', the Court upheld the ban as being compatible with EU law⁴.
- In the case of the Commission v Germany on packaging and packaging waste, it was opined that the deposit and return system for non-reusable packaging was an appropriate and necessary measure for preventing environmental impairment⁵.

Examples of application of the policy statement

As discussed above, the environmental principles are already applied within UK policy-making but having regard to the environmental principles policy statement should mean that this approach is consistent and refined. Here are some examples of how policy-makers already consider environmental concerns within policy development and what it may mean to apply the environmental principles policy statement:

- **Large transport infrastructure project:** The environmental principles are already implicitly considered through existing expectations on consideration of environmental impacts in policy development, including using EIAs. Thus, actions and choices made on these projects may not be different if the environmental principles policy statement were considered, but it could mean more explicit consideration of the principles in the design of such projects, ensuring that a high level of environmental protection is maintained and opportunities for environmental improvement are taken. For example, in any expectations around compensation for any damage that was caused to the environment, the 'polluter pays' principle may be used more explicitly to frame the considerations.

⁴ Case C-2/90 *Commission v Belgium*.

⁵ Case C-463/01 *Commission v Germany*

- **Housing:** Individual decisions on housing are exempt from the legal duty to have regard to the policy statement on environmental principles as these have already been considered through the National Planning Policy Framework, which implements many of the environmental principles (such as the 'integration' principle and the principle of sustainable development). However, where policy on large housing projects is set by Ministers of the Crown, it would be expected that the policy statement on environmental principles would be considered explicitly in the consideration and design of the policy and approach.
- **Waste:** Environmental principles are applied in the waste sector with specific-sectoral approaches. For example, the plastic bag charge is an example of the polluter pays principle as it creates a cost on the consumer. The retailer is then free to decide where the proceeds of the charge are distributed. The sector also applies the rectification at source principle which underpins the waste management framework.

Part Six: Compliance with the policy statement on environmental principles

Scrutiny and enforcement of application of the statement

The Office for Environmental Protection (OEP) will have powers to take action where it believes government or other public authorities are failing to comply with environmental law. The statutory obligation to have regard to the policy statement would fall within the definition of environmental law for this purpose.

These powers provide a basis for the OEP to take action in relation to the statutory obligations regarding environmental principles in the same way as in other areas of environmental law. In this context, in relation to the environmental principles policy statement the OEP could:

- Monitor and report on the implementation of the requirement to have regard to the statement of environmental principles;
- Investigate a complaint against Ministers of the Crown as to whether they have 'had regard' to the environmental principles policy statement as required; and
- Take enforcement action, including serving information and decision notices and, if necessary, referring the matter to the High Court for judicial review, if satisfied on the balance of probabilities that a Minister has failed to have regard to the statement of principles as required, and it considers that failure to be serious.

Part Seven: Review of the policy statement on environmental principles

The policy statement on environmental principles may be revised by the Secretary of State when deemed to be necessary. When reviewed, the process as set out in the draft Bill will need to be followed in the same way as for the first policy statement. This will include undertaking consultation and laying a draft before Parliament for consideration.

Conditions when it would be appropriate to revise the policy statement may include:

- Significant new **case law on the meaning or application of the environmental principles**.
- On the basis of **scrutiny** reports from Parliament or the OEP that the environmental principles policy statement is not effective.

Part Eight: Next steps

The purpose of this paper is to set out an initial approach on how the policy statement on environmental principles may look and operate. We encourage stakeholder views or comments on the approach set out above. Note that opportunity to comment on the draft policy statement on environmental principles will be provided when the statement is published alongside the Bill.

Responses may be sent to the environmental.principles@defra.gsi.gov.uk inbox.