

CONSULTATION ON THE DRAFT POLICY STATEMENT ON ENVIRONMENTAL PRINCIPLES

Arcadis Response

JUNE 2021



CONTACTS

Redacted

Redacted

Redacted

Redacted

Arcadis.
34 York Way
London N1 9AB



Question 1. Would you like your response to be confidential?

No

Question 2.

Redacted

Question 3.

This response has been submitted on behalf of an organisation. Arcadis is a large business.

Overview

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

No.

We welcome the integration of environmental principles into the policy making process and we believe the overview section of the draft policy statement is an essential part of the policy statement as it introduces important aspects of the statement to policy makers.

Policy makers will benefit from a clearly articulated and consistent guidance to help them effectively integrate the environmental principles into the policy-making process. However, this guidance should be drafted in such a way to make clear the policy imperatives associated with climate change, biodiversity and other environmental impacts. As currently drafted, the overview lacks this sense of urgency. To this effect we recommend some amendments in the structure and the text of the Overview section to help ensure it achieves its intended aim and provides a practical roadmap for policy makers.

Restructuring of the overview section

Context provided. We recommend that the section “*How will the policy statement contribute to the improvement of environmental protection and sustainable development?*” (p.6) should clearly set out the challenge the government is facing to act promptly, decisively and consistently to address the environmental crises the country faces and deliver on the legally binding targets it has committed to.

These span biodiversity loss, soil, air and water pollution, and challenges posed by climate change. The overview should also make the point that UK progress is behind target and that the contribution of all policy to environmental harms will need to be assessed under this policy statement. Adding this element of urgency to the overview will help to make it clear to policy makers that the application of the environmental principles represents a step change in practice.

Bringing forward some sections currently found later in the document. We also believe that the overview can provide a clearer roadmap for action to policy makers by presenting upfront some of the material introduced later in the document.

The *General application options* (p. 19), lays out possible policy actions that policy makers may take as a result of applying the principles. This provides a useful indicative menu for policy makers to take into account as they consider how the environmental principles apply in the early stages of policy making. We recommend that this section be moved and incorporated at the end of the section on *Process for applying the policy statement* (p.8).

The *Criteria for action* section (p.11) helps set the scene for the policy statement and introduces at a high level how policy makers should connect actions to take with environmental impact. This section currently introduces step three. We recommend that the summary description it provides will be most effective if positioned early on in the statement. We suggest that it should be moved to the Overview in the section *Process for applying the policy statement* (p.7).

Hierarchy of principles

In the section *What are environmental principles* (p.4), we recommend that the order of the environmental principles should be altered in line with a change to the hierarchy detailed in our response to question 11.

Systemic approach

We strongly agree that the environmental principles and this policy statement should be considered in the early stages of policy making. We believe, however, that the objectives of the policy statement can be better met by the application of a system of systems approach to both the environmental principles and policy making. While the environmental principles work together as a system, policy making also operates in a system, whereby an individual policy can have a knock-on effect on another policy – as is the case for example of a policy pursuing the expansion of electric modes of transport which will impact on energy policy.

This should be made explicit in the *overview*, and we recommend that the need for policy makers to consider these systemic interactions be addressed in the section *How will the policy statement contribute to the improvement of environmental protection and sustainable development?* (p.6).

Iterative process

In our response to Q11, we highlight the need to place greater emphasis on an iterative process of environmental assessment. Our suggestion is for an edit to the text of the general application options, which in our view should be moved from Step 3 to the overview.

Step one: Understanding environmental impact

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

No.

First paragraph

We recommend that the first paragraph of step one emphasises how the policy outcomes will need be better aligned with the enhancement and protection of the environment outcomes. To this effect we advise that the mention of a “*holistic, common sense approach*” advocated for in the last paragraph of step one (p.10), should be added to the first paragraph.

The sentence “*Policy-makers should take a holistic, common sense approach when thinking through the impact of a policy, to consider how adjusting the design in the early stages could result in greater environmental protection.*” (p.10), can be inserted after: “*It is the responsibility of Ministers, or those acting on their behalf, to assess whether a policy will have an environmental impact.*” (p. 8).

Bringing forward the need for a holistic assessment helps ensure that the enhancement and protection of the environment are the heart of policy making.

Meaning of environmental impact, p.8

We suggest that the *Meaning of environmental impact* section will also need to refer to the terminology commonly used and understood in environmental impact assessment of direct and indirect impacts. We advise that an additional bullet point be added to the list after “a primary effect (i.e., intended) or secondary;” to mention “direct and indirect impacts;”. We believe this will help ensure that all environmental impacts are captured under the definition.

The current wording in step one has the potential to oversimplify the systemic nature of environmental interactions and we also recommend that an additional paragraph be added *after the bullet point list* to spell out the systemic aspects of environmental impact assessment to policy makers. The definition of the meaning of environmental impact implies that the impacts are systemic, and, in our view, this should be

stated explicitly in the guidance, so that the policy making process accounts for the environmental principles working together as a system.

As an example, while the “*common sense approach*” recommended later in step one (p.10, par.2), might help filter out an issue with a low primary environmental impact, it might not give sufficient attention to a significant secondary impact that would arise from the low primary impact. If a systematic approach is not adopted.

Assessing whether a policy will have an environmental impact, p.9

In our response to Q11 we highlight the importance of emphasising biodiversity and climate considerations as part of the application of the environmental principles. This section on page 9 could be amended in line with this recommendation so that it explicitly refers to the loss of biodiversity in addition to the mention of climate change. The amendments we suggest are as follows:

“Policies can affect the environment in a variety of ways, for example through pollution, CO2 or other emissions, and physical changes and the loss of biodiversity.”

and

“... policy-makers should consider the primary and secondary impacts of the policy on the environment which, among other issues, includes the extent to which it will contribute to climate change and the loss of biodiversity.”

This will help ensure that the policy statement aligns with the national environmental priorities. We would like to see many more direct references to environmental impacts in the document.

We also recommend that this section should in addition describe the sequence of action with respect to policies for which an Environmental Impact Assessment (EIA) is being carried out. The text should be amended to make it clear that Ministers should take the EIA into account, either in the early stages of policy making or retrospectively.

- When an EIA has been carried out, the content should be examined by policy makers.
- When no EIA has been carried out, it may be the case that:
 - Proportionate research is the right course of action; or
 - An EIA carried out retrospectively will highlight a mismatch between the policy and the application of the environmental principles which may need to be considered.

Proportionality, p.9

We agree with the statement in par.2. that: “*the level of research into the environmental impact should be proportionate to the likely impact of the policy on the environment.*”

We recommend that the section on proportionality provides more structure around the process of decision-making associated with the allocation of assessment resource. This can for example be achieved by requiring policy makers to record and document the reasons for not undertaking an assessment of impact on a comply or explain basis. Such a process will highlight the expectation that a review will be undertaken where necessary. We note that the statement refers to a similar approach in the last paragraph of the section: “*where alternative policy options... the issues should be recorded...*” (p.10).

Iterative process of policy review

We believe that policy makers will need to review the design of the policy not only at an early stage but at different stages of the process as new information comes to light. We expand this point of view in our response to Q11. Furthermore, in our response to Question 5, we recommend that additional steps should be added to policy design and review in the overview.

Step one also needs to explicitly refer to the iterative process of policy review. As and when data becomes available it will need to be reviewed which in turn will need to trigger a review of the application of the principles. This will help ensure that new findings about the environmental impacts can be captured and integrated and that policy making addresses the most important environmental effects.

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

No.

We believe that the additions and amendments we have recommended for step one in our response to Question 6 are necessary in order to ensure that policy makers address the most important environmental effects. We refer here to the following:

- The additional consideration of direct and indirect impacts in the list of changes to the environment in the Meaning of environmental impact section will help ensure that policy makers capture all environmental impacts, including the potentially most important environmental effects.
- Laying out explicitly the systemic aspects of environmental impact assessment in the Meaning of environmental impact section will equally help ensure that a potentially most important environmental effect which may not be immediately or directly visible cannot be easily missed.
- Referring explicitly to the loss of biodiversity in addition to the mention of climate change in Assessing whether a policy will have an environmental impact section will help ensure that a most important environmental effects in terms of biodiversity and nature resilience are also captured and can be addressed by policy makers.
- The introduction of additional steps to the process of policy design and review. This will help ensure that new findings about environmental impacts, including most important environmental effects, can be captured and integrated in the review of policy, by policy makers.

Step two: Understanding which principles are relevant

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

No.

We do not believe that step two as it stands provides sufficient guidance to enable policy makers to make an informed decision. It serves as nothing more than a bullet point introduction to the five principles.

We recommend that either step two be dropped altogether, and its content moved to step three and incorporated as an introduction, or that, alternatively, step two be strengthened to provide more explicit guidance to assist policy makers select the appropriate environmental principles. Our preference is that part two is strengthened and in particular that it is used to describe a process that policy makers will use to apply the five principles to a particular policy issue. This will help to establish an expectation of quality and also ensure that such assessments are undertaken consistently. As DoE will have access to a library of assessment processes, we do not need to recommend a particular example in this case.

We recommend in the first instance that step two include the *Interaction between the principles* section (p.19) which provides a high-level description of how the environmental principles relate to each other. However, step two will also need to make the hierarchy of environmental principles more explicit.

The order of principles set out in this section should also be amended in line with our recommendations with respect to hierarchy in Q11.

Step three: Applying the principles

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

Please note that in response to this question, we also reference an alternative hierarchy of principles which we detail in our response to Q11. We also note that some of the principles are described in a disproportionate level of detail. For the five principles to be applied in accordance with the stated hierarchy, it is essential that each principle is described in sufficient detail to enable it to be applied consistently by a policy maker.

a. Integration

No.

We consider the integration principle, as the overarching principle, to be the most universal and far-reaching principle. Associated with enhancement and least harm to the environment, it is one of the most important environmental principles and we rank it second after the precautionary principle.

We believe that the description of the principle and how to apply it deserves greater attention and will need to be strengthened to highlight the primary importance of this principle.

We note that in step two, the integration principle is defined as *“the principle that policy-makers should look for opportunities to embed environmental protection in other fields of policy that have impacts on the environment.”* (p.10). We believe that this description needs to be strengthened in line with our recommendations outlined here. The guidance provided on p.12 *“opportunities to embed environmental protection in other fields of policy that have impacts on the environment.”* does not reflect the fundamental role that the integration principle needs to play to ensure that environmental protection and enhancement are at the heart of policy making. We also find that it lacks the level of detail that is available for other principles, such as for instance the Polluter pays principle.

We recommend that the application of the integration principle stresses that the *“holistic view”* policy makers should have, as specified in *Application* (p.12) must focus on the avoidance, minimisation or reduction of the risks of negative environmental impacts.

The application of the integration principle should also be extended to consider environmental enhancement as well as avoidance, minimisation or reduction. This will properly reflect the commitment to *“place environmental considerations at the heart of policymaking, so that we can protect and enhance our environment”* (p.4, par.1).

In addition, we believe that the application of the integration principle also presents a fundamental opportunity to pursue synergistic benefits between policies and that this needs to be made explicit in this section.

b. Prevention

No.

We believe that the prevention principle should be the third principle to be considered by policy makers, ranking high as a principle associated with enhancement and least harm to the environment.

Description

We recommend that the description of the prevention principle be strengthened and that the language in the description of the principle should include a statement that the aim of the policy assessment is that in the majority of cases, environmental damage is prevented by policy design.

When to use

We recommend that the statement: “*The prevention principle is applicable where a policy will cause environmental harm.*” should be strengthened to: “The prevention principle should be applied to all policies which will cause environmental harm.”

c. Rectification

No.

We believe that the rectification principle should be one of the last principles to be considered by policy makers as it is associated with actual environmental harm, and we rank it as the fourth principle.

The description needs to state explicitly that the rectification principle does not prevent environmental damage. It is associated with actual damage and should also only be adopted as a last resort

For example, the *Description* paragraph (p.14), states that: “*Rectification at source... efficient, and equitable in the long-run.*” We recommend that the meaning of “*equitable in the long run*” is clarified to ensure that it is not construed as an implicit acceptance that a long-term environmental impact is acceptable. Without this explicit wording, it is foreseeable that the environmental principles could be applied in a way that results in an extended environmental impact.

d. Polluter pays

Other.

The Polluter Pays principle should be the last principle after the Rectification principle. Associated with actual environmental harm, the Polluter Pays principle should be applied as a last resort with respect to new policy impacts and not routinely.

However, we note that the Polluter Pays principle has a very important part to play with respect to existing, historic sources of environmental damage where the consideration of who is responsible for damage and rectification will be very important. As greater emphasis is placed on the maximisation of the benefits to be gained from environmental restoration, then issues of polluter pays will need to be examined in greater detail. Our suggestion would be that the text references past as well as future environmental impacts.

We believe that the Polluter Pays principle needs to be applied only when it is absolutely essential. There is a risk that the level of detail provided for this principle, in comparison to that of other principles, may appear to legitimise a more reactive approach to environmental protection and enhancement which does not align with the intent of the policy statement.

e. Precautionary

No.

We believe that the precautionary principle needs to be the first principle to be considered by policy makers, as it is associated with enhancement and least environmental harm.

We recommend that the precautionary principle defined in the Rio Declaration mentioned in the first paragraph in the *Description* section be consistently and explicitly applied when making policy.

We welcome the reference to innovation in the next section (p.18).

In the *Application* section, we believe that applying the test of evidence “*severe or irreversible damage*” as specified in *Identification of the risk of serious or irreversible environmental harm* (p.18) moves away from

the meaning of the precautionary principle. On this basis, we recommend that the outline of the application of the precautionary principle requires more detail on how damage could be evidenced while respecting the absence of full scientific evidence. We also recommend that in *When to use* (p.17) the description omit the term “*plausible*” in “*plausible evidence*” to align with the definition of the precautionary principle outlined in the *Description*.

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

No.

We believe policy makers need a clear roadmap to be in the best position to effectively integrate the environmental principles into the policy-making process. In our response to the Questions 5 to 9, we have identified areas where we believe some restructuring of the content of the policy statement as well as amendments to the text will contribute to provide a more robust framework.

In addition, we also recommend that the level of detail in the commentary presented for the different principles be balanced. For instance, we find that the level of detail associated with the Polluter Pays principle is much greater than that which is given for the overarching integration principle. Our assumption is that Government would want to apply the integration/prevention principles as widely as possible as they will deliver policy with the least potential for environmental harm. Our concern is that the technical detail associated with the polluter pays principles will encourage its adoption by officials, which might result in unintended policy consequences. The solution is to provide additional detail for the integration, prevention and precautionary principles rather than reducing the existing detail associated with the Polluter Pays principle for example.

We recommend that the policy statement includes another section to articulate how the guidance it provides will combine and interact with existing policies and regulations.

Question 11. Do you have any other comments on the draft policy statement which are not covered by the previous questions?

Yes.

Alignment of the principles to the policy imperatives of climate change and biodiversity loss

In our view, all aspects of environmental impact should be addressed by the application of the environmental principles.

We note the mention in the first paragraph of the policy statement *Introduction* (p.4) of biodiversity and climate considerations: “*all within the context of building resilience to biodiversity loss and the effects of our changing climate.*”.

Climate change and biodiversity are mentioned only twice each in the document and in our view, there should be much greater emphasis on the greatest policy challenges associated with the environmental agenda – climate change and biodiversity loss. The net effect of this omission is to make the application of the principles quite abstract and technical. In practice, the application of the principles will in part determine whether the UK meets its legally binding carbon reduction and biodiversity commitments. We would like to see this point communicated much more clearly throughout the document. This will help to ensure that the principles are applied with the thoroughness and seriousness that are required in this policy area.

As the net zero and biodiversity loss agendas continue to gain prominence, all policies will need to be reviewed and assessed for their impact on climate change. We recommend that the robustness and shelf-life of the policy statement will be enhanced by heightened references to the UK climate and biodiversity agendas as an additional guidance to policy makers

In our response to question 6 we provide one example of how communication of this point can be improved. We would like to see further emphasis throughout the document.

Hierarchy of principles

In our view the clear communication of the hierarchy of the environmental principles is an important consideration in that the Policy Guidance may be the first document that policy makers read in connection with these very important considerations. It is essential that the hierarchy should emphasise principles associated with low environmental impacts.

We recommend that the order of the environmental principles detailed in part 3 should be altered to follow a hierarchy of environmental principles that prioritises the principles which are associated with enhancement (e.g., integration) and least harm (e.g., prevention)., whereas principles associated with actual harm (e.g., polluter pays) should be given an explicitly lower ranking. This means that the Precautionary principle needs to come first followed by the overarching integration principle. The Polluter Pays principle needs to be the last principle after the Prevention principle and the Rectification principle.

Our recommendation is in line with the hierarchy laid out in the Environment Bill Clause 16, Par.5, where the Integration principle comes first and the precautionary principle, third after the Prevention principle and before Rectification principle. The Polluter pays principle comes last.

Iterative process of impact assessment.

We assume that an iterative process of policy review will be adopted as an integral part of the application of the Environmental Principles. Such an iterative process will take account of the development of the environmental impact evidence base and the potential for the interaction of policy agendas.

We believe that policy makers will need to review the design of policy not only at an early stage but at different stages of the process as new information comes to light. In our view the policy statement needs to clearly state that as and when data becomes available it will need to be reviewed and that in turn will need to trigger a review of the application of the principles. This will help ensure that new findings about the environmental impacts can be captured and integrated and that policy making addresses the most important environmental effects.

The importance of this iterative process should be made explicit by being introduced as an additional step in *the General application options* (p.19). We recommended that this section should be integrated in the *Overview* section (p.8). A reference to the importance of an iterative approach can be added as additional bullet point between point 3 and point 4.

Past and future environmental impacts

Our reading of the environmental principles is that most of the applications in mind are dealing with future environmental impacts – e.g., policy will be designed to avoid the risk of an unacceptably large impact.

We note that future policy may also address issues associated with existing, historic environmental impacts where an assessment will also be necessary. This might include the design of incentives to encourage improvement to damaged/depleted natural assets.

In our view, this use case should be made explicit in the overview and parts one and three. We have raised this issue specifically in connection with the Polluter Pays principle.

Definitions

We observe that definitions are given for ‘environment’ and ‘environmental impact’ are included in the body of the text in step 1 (p.8).

However, the definition of environmental harm is included in a footnote to p.12. In our view, as the objective of the environmental principles is to reduce the adverse environmental impacts of policy decisions, then it is correct for *environmental harm* to be a defined term included in the body of the text.

Arcadis UK

34 York Way
London N1 9AB

Redacted

[arcadis.com](https://www.arcadis.com)