

Response to Defra consultation

Draft Policy Statement on Environmental Principles

Summary

- 1.1. We welcome the publication of the draft environmental principles policy statement that will guide future ministerial decision-making and the opportunity to comment on it.
- 1.2. We strongly support Defra's ambition, as laid out in the consultation document and the statement, to place environmental considerations at the heart of policy-making in order to protect and enhance our environment. The statement should be used at the forefront of policy-making to maximise environmental benefits.
- 1.3. We believe the five principles included (integration, prevention, rectification at source, polluter pays and precautionary) are the right principles to underpin and guide future policy-making, to help protect and enhance the environment.
- 1.4. We believe there are some areas where the policy statement could be strengthened to help bring Defra's ambitions to fruition.

Introduction

- 1.5. In response to Defra's 2018 consultation on "Environment Principles and Governance after the United Kingdom leaves the European Union," we welcomed proposals to consult on the draft policy statement and to present it to Parliament for scrutiny. We are therefore pleased that the statement has been published for comment and that it will be shared in Parliament at a later date.
- 1.6. The statement is key to providing greater transparency and accountability in relation to how environmental principles are considered in government policy-making. We are therefore pleased that the statement will apply to all government ministers and not just Defra ministers.
- 1.7. The statement provides a framework to guide decision-makers and clearly sets out the principles that need to be considered. The statement itself should be positive and ambitious and aim for a high level of environmental protection so that it can have a meaningful influence on policy-making.
- 1.8. We are concerned that the combination of the duty in the Environment Bill to have due regard to the policy statement, rather than to apply the principles themselves, the exclusions set out in the Bill and the way that the policy statement requires the principles to be applied proportionately could reduce the effectiveness of the principles.
- 1.9. We suggest three areas below where we believe the statement could be strengthened. Our response to the consultation's specific questions is provided in Annex A.

Proportionality

- 1.10. It is sensible that the principles should be applied proportionately, balancing social, economic and environmental considerations. It is also sensible that the

principles do not need to be considered if there is no significant benefit or the environmental impact is negligible.

- 1.11. As drafted, the advice on how to apply the principles 'proportionately' could be interpreted as giving policy makers considerable discretion without the necessary guidance to enable them to give proper weight to environmental considerations.
- 1.12. It is well known that the cost of regulation is easier to calculate than the environmental benefit. The recently published Dasgupta Review on The Economics of Biodiversity calls for changes in how we think, act and measure economic success to protect and enhance our prosperity and the natural world. Without a true valuation of the environment, the balance favours social and economic factors meaning that the principles are less likely to be properly considered and applied in a way that ensures environmental protection in the longer term.

Examples

- 1.13. Adding further guidance and examples of the application of the principles could increase transparency and help policy-makers give proper weight to environmental considerations.

Record keeping

- 1.14. We would like the policy statement to include references to record keeping and the need for an audit trail of decision making. This will improve transparency and accountability, allowing third parties, including the Office for Environmental Protection, to see that ministers have had due regard to the policy statement in their decision making.

Conclusions

- 1.15. We are pleased that the draft environmental principles policy statement has been published for consultation. We strongly support Defra's vision set out in the statement and the consultation document.
- 1.16. There are some areas where changes, as outlined above and in the annex, would improve consistency and clarity and would help to ensure that environmental considerations are placed at the heart of policy-making, and that the government meets its commitment 'to be the first generation to leave the environment in a better state than that in which we found it'.
- 1.17. We would be happy to work with Defra to identify examples and additional guidance that could be used to strengthen the statement.

Redacted

Further information

Further information of background to this response can be obtained from:

Redacted

May 2021

Annex A: response to consultation questions

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

The overview section provides some foundation but could set a stronger tone. It could be written in a more positive way and show greater ambition.

For example, the green box on page 5 could talk about ministers and policy-makers proactively seeking to maximise environmental benefits in policy making rather than simply guiding ministers and policy-makers towards “opportunities” to prevent environmental damage and enhance the environment.

The section could offer further guidance on when the exemptions do or do not apply. For example, the explanatory notes published alongside the Environment Bill provide more detail on the exemptions than is provided in the policy statement.

Footnote 2 (international obligations) could be expanded to include a reference to the Trade and Cooperation Agreement.

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

Step one provides some useful definitions (such as the meaning of ‘environment’ and ‘environmental impact’) but there is a strong emphasis on proportionality. Terms such as ‘substantial impact’ and ‘likely impact’ (page 9) should be better explained (for example, the precautionary principle applies where there is a lack of certainty about the likely impact).

It is sometimes difficult to anticipate all environmental impacts (for example, the impact of air pollution was not fully considered in the decision to prioritise diesel cars to reduce CO2 emissions). More guidance could be provided for those who don't have an environmental background. It would be useful to provide some examples and provide signposts to further information for those with limited environmental expertise.

Question 7: Do you think step one ensures that policy-making will address the most important environmental impacts?

The statement sets out a framework for identifying environmental impacts. However, we do not have confidence that the most important environmental impacts will always be addressed. This is because of the emphasis on proportionality and the way it is explained (for example, it ‘allows for policy-makers to apply the policy statement in a lighter-touch way...where the environmental impact is limited’). There is considerable room for interpretation and an expectation of a certain level of expertise and experience when making these judgments. More examples, guidance and signposting would help policy-makers to reach the most appropriate decision.

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

Step two sets out the principles that should be considered. Some examples of how the principles have been applied in previous policy decisions would strengthen this section.

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

The structure of the framework is helpful (Description; When to use the principle; and Application of the principle) but the language of step 3, in relation to the individual principles, could be more ambitious. Some examples are provided below. The addition of some examples of application of the principles would be helpful.

Integration principle: the way the ‘application’ section is written makes it sound more like the prevention principle. It talks about the potential to cause negative impacts. The

principle of integration should be considered in all policy making and not just where negative environmental impacts have already been identified. It should be used at an early stage of policy making to identify potential risks and opportunities to deliver environmental improvements. This is covered, but not until page 19.

Prevention principle: the text states that policy-makers should have particular regard to “national environmental priorities”. It would be helpful to include signposts to more information on this. The section directs the reader to the Natural Capital approach; there could also be references to biodiversity net gain, the Dasgupta Review and the HM government’s Green Book.

Precautionary principle: the precautionary principle should be considered early on in policy-making but appears last on the list of considerations. Its application is reduced by the weight given to incentivising innovation.

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?

As currently drafted, the statement provides a framework for applying the policy statement but the weight given to proportionality and the balance between environmental and socio-economic factors could undermine its application. The considerations should be vital and central to sustainable prosperity. There is a risk that policy-makers may overlook or rule out impacts. It should be clearer and easier for policy-makers to understand how and when to apply the principles than it is to understand when they don’t have to apply the principles. The emphasis should be on avoiding harm and identifying opportunities for environmental improvement.

The list of options on page 20 does not include an action to discontinue policy preparation if the impacts are likely to cause environmental harm.

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

Application of environmental principles should not be seen as a burden to development but can support growth and innovation. Application of the prevention, rectification at source and polluter pays principles, via the Best Available Techniques process in the Environmental Permitting Regulations, has led to innovation and implementation of new technologies in industry sectors (such as hydrogen trials in the cement sector and heat exchangers in the intensive farming sector).