

# CONSULTATION

## Response Document



**Consultation on the Draft Policy Statement on  
Environmental Principles  
(Department of Environment, Food and Rural Affairs)**

**2 June 2021**

# Introduction to CIEEM

The Chartered Institute of Ecology and Environmental Management (CIEEM), as the leading membership organisation supporting professional ecologists and environmental managers in the United Kingdom and Ireland, welcomes the opportunity to comment on this consultation.

CIEEM was established in 1991 and has over 6,000 members drawn from local authorities, government agencies, industry, environmental consultancy, teaching/research, and voluntary environmental organisations. The Chartered Institute has led the way in defining and raising the standards of ecological and environmental management practice with regard to biodiversity protection and enhancement. It promotes knowledge sharing through events and publications, skills development through its comprehensive training and development programme and best practice through the dissemination of technical guidance for the profession and related disciplines.

CIEEM is a member of:

- Scottish Environment Link
- Northern Ireland Environment Link
- Wales Environment Link
- Environmental Policy Forum
- IUCN – The World Conservation Union
- Professional Associations Research Network
- Society for the Environment
- United Nations Decade on Biodiversity 2011-2020 Network
- Greener UK
- Irish Forum on Natural Capital (working group member)
- National Biodiversity Forum (Ireland)
- The Environmental Science Association of Ireland

This response was coordinated by our [England Policy Group and members of our wider membership with professional expertise in this area](#). We welcome the opportunity to participate in this consultation and we would be happy to provide further information on this topic. Please contact Jason Reeves (CIEEM Head of Policy and Communications) at [JasonReeves@cieem.net](mailto:JasonReeves@cieem.net) with any queries.

## Consultation Questions

**Question 1. Would you like your response to be confidential? (If you answered Yes to this question please give your reason)**

**Question 2. What is your name?**

**Question 3. Are you responding:** • As an individual • As an academic • On behalf of an organisation

**Question 4. What type of organisation are you responding on behalf of?** • A government body • Non-governmental organisation • Small or micro business (Less than 50

employees) • Medium business (50 – 249 employees) • Large business (250 or more employees) • Industry association • Responding on behalf of another type of organisation  
Please provide your organisation's name.

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

No.

We welcome the recognition of the need for environmental considerations to be placed at the heart of policy making. However, the caveat in the purpose of the principles that they only apply "*where relevant and appropriate*" does not provide clear direction or consistency. Additionally, while we welcome the inclusion of the need to consider principles early in the process, that consideration must also continue throughout, including in monitoring and feedback.

The Overview Section states that: "*This policy statement does not seek to dictate a set formula for how environmental principles should be applied to policy-making; instead, it aims to empower Ministers and those working on their behalf to think creatively and use environmental principles in an innovative and forward-thinking way to protect and enhance the environment whilst supporting innovation and economic growth.*" Whilst understanding that the policy statement does not intend to dictate a set formula, we do however consider that it is vitally important that Ministers and policy-makers are given clear guidance on the effective use of the principles so that its application is unambiguous and non-subjective. This statement, should also be amended to state "*...whilst supporting sustainable innovation and economic growth.*"

It is critical in our view that the principles are applied consistently across Government. We have therefore set out further, in response to other questions below, where clearer guidance and support could be provided through the policy statement to support the more consistent application of the principles.

In regards to the statement, "*However, this statement does not place any obligation on policy-makers to commission detailed research to inform an assessment*", we recognise the resource constraints associated with conducting detailed research; however, there must be an obligation to ensure policy is written based on independent sound expert advice.

Not applying this policy to "*taxation, spending or the allocation of resources within government*" seriously undermines the Polluter Pays principle, because one of the main mechanisms by which polluters contribute is via charges by environmental regulators or by taxation of some form. Money raised by charges counts as "public money" in terms of the controls placed on it by Treasury (see further comments below).

Departmental spending and taxation can have significant environmental implications in many ways, for example, it has been recognised by the Chair of Natural England that cuts to their budget allocation has limited their ability to carry out their Statutory duties.

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

No.

We believe that further advice and guidance is needed to allow policy-makers to correctly assess the potential environmental effects of their policy.

In discussing proportionality, the draft statement states that: *“When considering the environmental impact of a policy, policy-makers also need to take a proportionate approach; the environmental effects that should be considered are those which are both a) likely to occur, and b) likely to have a substantial impact. Environmental impacts will be different for each policy, and these will need to be assessed on a case-by-case basis.”* Substantial is a term that is used on several occasions in the Draft but is not defined. The Environmental Impact Assessment Regulations use the term ‘likely significant effect’, which is a widely understood term, so for consistency should also be used for this purpose.

In addition, it is important that the Precautionary Principle is applied when considering proportionality. If it is uncertain whether ‘substantial’ impacts will occur, then further investigation should be undertaken, with the degree of investigation proportionate to the effort needed to ascertain that there will be no such impacts. If this is not clear, the Precautionary Principle should be applied, and the policy adjusted accordingly.

The stipulation that *“it is not expected that policy-makers carry out a “deep-dive” assessment into all environmental impacts as these may not be known. Nor is it expected that policy-makers will need to replicate the environmental impact assessment process”* creates ambiguity over the extent to which Ministers and policy-makers are expected to apply the Principles, and individual assessments of what constitutes a ‘substantial’ impact can lead to inconsistencies.

It cannot be assumed that the policy-makers will have had any prior experience in identifying and assessing environmental effects and therefore we believe Ministers and policy-makers should be signposted to further sources of advice, guidance and information to assist them in applying the policy principles effectively. This guidance should consider the full suite of impacts including natural capital assets and ecosystems services including species, habitats, soils, air and water quality, climate change, food production, forestry and fisheries.

The final paragraph makes reference to using a ‘common sense’ approach which should be removed. This phrase introduces significant subjectivity and does not recognise the need for evidence-based input.

In considering economic impacts in cost-benefit analyses, the Policy Statement must consider the findings of the Dasgupta Review, that our economies rely on nature.

This statement does not provide a mechanism whereby changes will be made to give more weight to environmental policy than is given currently.

In assessing the international impacts of a policy, the wording of the draft statement does not recognise the need to assess likely transboundary impacts in other UK devolved nations as it currently only states “*in England or overseas*”. This should be amended to “*whether that be in England, elsewhere in the UK, or overseas.*” Additionally, the suggestion that the majority of domestic policy would not need to consider the environmental impact overseas may deter proper consideration of impacts. UK policies have significant impacts across the globe, for example in material usage and disposal.

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

Not as currently drafted for the reasons set out above and also in our further response to Question 9 below.

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

Not as currently drafted for reasons we set out in our further response to Questions 9 and 10 below.

This section does not provide any indication of what weight should be attached to the principles and how to weigh the principles against each other in the case of any conflicts between them.

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

**Integration Principle** – the Integration Principle should be used in an innovative way to achieve positive impacts on the environment, if we are to leave the environment in a better state. The draft statement currently only focuses on minimising negative impacts and should also highlight the opportunities for ‘win-win’ policies, such as biodiversity net gain.

The application of the Integration Principle is severely weakened by its disapplication to taxes as this would offer an opportunity to reduce damaging subsidies and incentivise positive action.

**Prevention Principle** – this should be applicable not just when a policy will cause environmental harm, but when the opportunity arises (e.g. through new technology) to mitigate or reverse existing harm. This also applies to the Rectification at Source principle.

We welcome the recognition that this principle is most effective when considered at an early stage, ideally before any environmental harm has occurred. However, the statement “*prevention requires reasonable certainty that an action will cause harm to the environment and understanding of the risks and their cause*” appears to not consider the Precautionary Principle. The statement should explain the definition of ‘reasonable certainty’ and how this relates to the Precautionary Principle.

The Prevention Principle must clearly follow the approach of the mitigation hierarchy to first avoid, reduce and then mitigate impacts.

**Polluter Pays Principle** - Notwithstanding the exclusion of taxation from the scope of the guidance, current Treasury guidance on the [Management of Public Money](#) does not allow for full application of the Polluter Pays Principle. It only allows for bodies such as Natural England or the Environment Agency to charge for the cost of administering a service – it does not allow them to take environmental costs into account. It does not allow for permit fees to be increased simply because one activity is more polluting or environmentally damaging than another – it would have to be shown that the activity gives rise to greater costs to the regulatory body concerned. The above Treasury guidance should make specific reference to the Polluter Pays Principle, and allow the principle to be used by environmental regulators when setting charges, so the charges act as a disincentive to polluting activities.

Any fees or charges taken must be ring-fenced for utilisation in projects to deliver environmental benefits.

**Precautionary Principle** - We welcome the statement: *“Where there are gaps in the scientific evidence base, this should not be relied on as a reason for inaction if there is a plausible risk of severe or irreversible harm.”* However, this is seemingly contradicted by the statement: *“However, in all cases for the precautionary principle to apply there must be sufficient evidence that the risk of severe or irreversible damage is plausible and real”*. Further guidance must be provided on what constitutes ‘sufficient evidence’ of the risk.

If there is reasonable doubt over the severity of impacts, higher levels of avoidance, mitigation and compensation must be incorporated within all schemes. Where there is a lack of evidence, policy would benefit from including environmental monitoring in order to better understand these impacts in future.

We would suggest the statement: *“It may be that there is inconclusive scientific evidence surrounding a particular activity, and a policy-maker might judge that they should exercise caution, preventing or limiting the activity until sufficient evidence to support a decision becomes available”* is amended to state *“...a policy-maker should judge...”* to ensure the Precautionary Principle is properly implemented.

In relation to innovation, there must be a distinct effort made to seek out the potential impacts of new developments, and assumptions of likely impacts based on existing knowledge should be taken into account.

**General Comments on Step Three** - Criteria for taking action:

We have commented separately on the current wording of Clause 18 in the Draft Environment Bill under Question 11, but further to our response to Question 6, this indicates the need for further guidance to aid these decisions. All the key principles are to be applied in circumstances where policy may cause adverse environmental impacts. There must therefore be an effective method for identifying the potential environmental effects of the policy in order to assist policy-makers in understanding when and where to apply the principles. Such guidance should be developed in consultation with environmental professionals.

It is not clear how the principles apply to Strategic Environmental Assessments which cover plans and policies.

Applying the principles: The Draft states that: *“The principles must be applied proportionately. This means that Ministers should balance social, economic, and environmental considerations in making policy. They should consider the environmental impact of a policy – and the value of any mitigating actions – in the context of the associated costs and benefits to society of the policy’s primary objectives, as well as the financial and economic costs and benefits. Having done so, Ministers may decide that the public interest is best served by taking forward a policy option that includes associated environmental impacts.”* This statement further demonstrates the need to value aspects of the natural environment that may be affected by policy decisions so that the value of potentially impacted natural capital/ecosystems services can be compared as part of the overall cost-benefit assessment. We recommend that the statement strengthens the suggestion to take a natural capital approach to assessing policies, and policy-makers are signposted to the appropriate existing research and tools to enable them to make these valuations e.g. <https://nerc.ukri.org/research/funded/programmes/valuingnature> and <http://sciencesearch.defra.gov.uk/Default.aspx?Menu=Menu&Module=More&Location=None&Completed=0&ProjectID=13902>.

In the event that the policy-makers deem they do not need to take action as the policy has no environmental impact, or the environmental impact is negligible, the statement must require them to clearly record and publish the process of this decision.

**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?**

Not as currently drafted for the reasons set out above. To ensure the consistent and effective application of the principles it is essential that further advice and guidance is provided to policy-makers as recommended in our responses to the previous questions.

Furthermore, we would recommend further clarification and guidance for policy-makers on the manner in which and the order in which they apply the key principles as outlined below:

- The Draft states that: *“In applying the principle, the policy-maker needs to make a reasonable assessment, using the best available scientific evidence, of the risk. Risk in this case should be understood as a combination of the likelihood of the environmental damage occurring and its severity”*. In other words, an assessment of likely significant effects. As such, we would reiterate the need for guidance to enable policy-makers to assess these likely significant effects. The policy-maker must then use this assessment to consider whether there are less damaging alternatives and whether the identified risks can be effectively avoided or mitigated through the way that the policy is implemented.
- It must be made clear that significant impacts on the environment are only allowed under exceptional circumstances under the Polluter Pays principle, and mitigation measures are employed where possible, i.e. where there are no feasible alternatives

to remove the negative impact of a policy, or alternative policy options. The Precautionary Principle must be applied when impacts are not fully known.

- Overall, the three steps need less ambiguity over the weight given to environmental policy, as the statement contains a significant number of caveats that could result in it being given less weight than financial decisions, that may not consider natural capital aspects.

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

Further to our response to Question 8, as currently drafted, Clause 18 states that: *“Policy statement on environmental principles: effect (1) A Minister of the Crown must, when making policy, have due regard to the policy statement on environmental principles currently in effect. (2) Nothing in subsection (1) requires a Minister to do anything (or refrain from doing anything) if doing it (or refraining from doing it)— (a) would have no significant environmental benefit, or (b) would be in any other way disproportionate to the environmental benefit. (3) Subsection (1) does not apply to policy so far as relating to— (a) the armed forces, defence or national security, (b) taxation, spending or the allocation of resources within government, or (c) Wales.”*

The issue here is that nowhere in this clause does it refer to likely significant environmental effects and the requirement to address these through the use of the key principles. It refers rather vaguely to considerations of ‘environmental benefit’ but this term is not defined anywhere in the Bill. This seems totally at odds with Clause 16(4) which sets out the intended purpose of the policy statement on environmental principles as being to improve environmental protection: *“(4) The Secretary of State must be satisfied that the statement will, when it comes into effect, contribute to— (a) the improvement of environmental protection, and (b) sustainable development.”*

It needs to be made explicitly clear in the guidance that policy-makers must always be guided by any relevant legislative requirements and other Government policies and standards when considering potential impacts on the environment. Policies that have the potential to not only cause environmental harm but that could result in unlawful actions or may conflict with other Government policy must be identified and avoided. This could be achieved as part of a Regulatory Impact Assessment process.

In heavily caveating its application, this statement also misses the opportunity to embed commitments made in the Government’s 25 Year Plan for the Environment to leave the environment in a better state than we found it. This Statement should set the environment as a priority in policy-making, particularly by highlighting how policies can integrate positive impacts on the environment.

Similarly, the stated ambition *“to deliver the most ambitious environmental programme of any country on earth”* cannot be met with a weakening of the application of environmental principles. Under EU law, the principles were legally binding for all public authorities, across all decisions; however, under current proposals they now only apply to policy-making.

In summary, this statement does not provide an adequate foundation for policy-makers to apply the environmental principles in policy-making, and clearer definitions, guidance and an audit trail are needed to deliver the Government's environmental ambitions.

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