



Law Society
of Scotland

Consultation response

Consultation on the draft policy statement on
environmental principles

2 June 2021



Introduction

The Law Society of Scotland is the professional body for over 12,000 Scottish solicitors.

We are a regulator that sets and enforces standards for the solicitor profession which helps people in need and supports business in Scotland, the UK and overseas. We support solicitors and drive change to ensure Scotland has a strong, successful and diverse legal profession. We represent our members and wider society when speaking out on human rights and the rule of law. We also seek to influence changes to legislation and the operation of our justice system as part of our work towards a fairer and more just society.

Our Environmental Law Sub-committee welcomes the opportunity to provide comment the Department for Environment Food & Rural Affairs' consultation on the *draft policy statement on environmental principles*¹ (the consultation).

General comments

We note that the provisions in the Environment Bill concerning environmental principles (clauses 16 – 18) extend to England and Wales and apply to England only. As a result, we do not seek to comment on the substantive questions addressed in the consultation.

The Scottish Parliament passed the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021 (the Act). Section 13 of the Act sets out the following guiding principles on the environment:

- “(a) the principle that protecting the environment should be integrated into the making of policies,
- (b) the precautionary principle as it relates to the environment,
- (c) the principle that preventative action should be taken to avert environmental damage,
- (d) the principle that environmental damage should as a priority be rectified at source,
- (e) the principle that the polluter should pay.”

We note that these are in line with the principles set out in the Environment Bill, although it is significant that the Act requires reference to the principles themselves, taking account of their interpretation by the Court of Justice of the European Union, whereas under the Environment Bill, the reference point is the policy statement to be made by the Secretary of State.

Section 14 of the Act places certain duties on Ministers, both Scottish Ministers and Ministers of the Crown, in relation to the principles:

¹ <https://consult.defra.gov.uk/environmental-principles/draft-policy-statement/>

- “(1) The Scottish Ministers must, in making policies (including proposals for legislation), have due regard to the guiding principles on the environment.
- (2) Ministers of the Crown must, in making policies (including proposals for legislation) so far as extending to Scotland, have due regard to the guiding principles on the environment.
- (3) The duties in subsections (1) and (2) do not apply in relation to any policy or proposal so far as relating to—
- (a) national defence or civil emergency,
 - (b) finance or budgets.”

A similar duty applies to other “responsible authorities” (section 15). Section 17 of the Act requires Scottish Ministers to publish guidance on the guiding principles and the duties under section 14, among others, whilst under section 16 compliance with the duties is to be achieved “with a view to –

- (a) protecting and improving the environment, and
- (b) contributing to sustainable development.”

It should also be remembered that the UK Government is bound under the EU-UK Trade and Co-operation Agreement to “respect[...] the internationally recognised environmental principles to which it has committed” (Article 7.4 of Part Two, Title XI).

The formulation and application of the statement on environmental principles required under the Bill should therefore take account of this wider context, rather than being seen in isolation. While the extent to which consistency is sought is a political matter, we consider that coherence in the manner in which principles are understood and applied may be of benefit in ensuring that international environmental obligations are met and avoiding disparities that might encourage 'environmental regulatory tourism'. While differentiation is a natural consequence of devolution, we consider that strong collaboration between the UK Government and devolved administrations in relation to environmental governance is essential. This is particularly significant given the transboundary effects of environmental impacts and the duties imposed on UK Ministers under the Scottish Act. Some coherence may also be of assistance in relation to UK-wide discussions and forums, for example, in relation to the Joint Nature Conservation Committee (JNCC), the REACH regime, and agreement of the Joint Fisheries Statement (under the Fisheries Act 2020).

For further information, please contact:

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