

Draft Environmental Principles Policy Statement for Northern Ireland

9 December 2024

Legislation and
Governance Unit

Introduction

We welcome the publication of the [draft Environmental Principles Policy Statement](#) (EPPS) for Northern Ireland.

The EPPS could have a powerful impact on systemising and promoting greater consideration of environmental protections in policy making. But, for this to succeed over the long term, sustained commitment is needed across all departments, with repositioning of the environment as a top priority across the executive.

We hope that the suggestions we make below to strengthen the wording and implementation of the EPPS can be incorporated by the department.

Consultation questions

1. Do you believe the Introduction, Background and Purpose sections give the reader a good understanding of the aims and objectives of the EPPS?

These sections are clearly drafted and provide a helpful explanation of the origin of the EPPS and its aims and objectives, as well as the wider context set by international agreements which embrace the environmental principles and to which the UK is a signatory.

We welcome the desired outcomes of the EPPS listed on pages 3 and 4. We also welcome the explicit recognition on page 2 of the key role that the EPPS will play in supporting and driving the environmental improvements set out in the [Environmental Improvement Plan](#) for Northern Ireland.

3. Is there enough information provided on the due regard duty to effectively assist policy makers to comply with the statement?

Page 4 of the draft EPPS states that “This policy statement sets out how ministers should interpret and proportionately apply the principles, so that they are used effectively to shape policy to protect the environment and promote sustainable development”.

This could be read to suggest that the EPPS only applies to policy which relates to environmental protection and the promotion of sustainable development, whereas the EPPS duty applies to all policy making. **We encourage the department to consider some minor rewording of this section for the sake of clarity.**

Page 5 of the draft EPPS states that “It does not seek to dictate a set formula for how environmental principles should be applied to policymaking.” While we understand the need for flexibility given the wide range of policy making the EPPS will apply to, **it is important that a set of guidelines and minimum expectations are provided to departments so that the EPPS duty is applied, considered and reported on consistently and with sufficient rigour.** We comment on this further in our response to question 5.

We welcome the clarification on pages 6 and 7 in the section ‘What is Policy?’ that the EPPS applies across all types of policymaking, including vertical and horizontal.

On page 7, **the section on ‘What is ‘making policy’?’ should be expanded** as follows, with new text in green:

For the purposes of this statement “making policy” includes developing, adopting, ~~or~~ revising **or repealing** policy. This is the definition used by the UK government in its [EPPS](#) (see the section on policy making).

We welcome the recognition on page 7 that the indirect nature of the EPPS duty does not lessen the importance of the principles themselves. This is important as the principles are interwoven into legal frameworks in other ways. For example, the precautionary principle is embedded in UK REACH and the Habitats Regulations and supported by a range of case law.

On the meaning of ‘due regard’, it is helpful that the EPPS (on page 8) includes a list of the principles for compliance which emanated from the judgment in the Brown case. We hope that **these will be included in the guidance that the department will be issuing to policy makers**, including that it is good practice for a decision maker to keep records demonstrating consideration of the duty and to expressly refer to the duty. This will help increase transparency of how the EPPS is informing the policy making process; our [research](#) on the first year’s operation of the UK government’s EPPS duty includes several examples of why this would be helpful.

Page 11 provides guidance on proportionality. Proportionality requires that action taken does not go beyond what is necessary to achieve the objective(s) aimed for. It provides a framework to guide action when there are competing demands on decisions being made by public bodies.

Proportionality in process is often helpful, if used properly. It can help frame difficult and complex decisions of prioritisation and legitimacy but must not be used as an excuse for ignoring or diluting the principles. It is sometimes misinterpreted when policy makers take a narrow view of “cost” and fail to have regard to or assess environmental risk.

The draft EPPS is clear that determining what is a proportionate course of action does not obviate the need to have due regard to the policy statement, nor should this be used as a reason to demote the importance of environmental protection and sustainable development. This is welcome.

The EPPS could, however, be clearer on when proportionality bites. This is especially relevant for the section on the precautionary principle. For example, policy makers cannot decline to apply the precautionary principle because of proportionality. Rather, they must always apply precaution: it is the decisions that they take as a result that must be proportionate.

4. Do you believe the descriptions of the 5 principles and advice for policy makers give adequate assistance to policy makers on how the principles should be applied?

Integration principle (page 13)

The integration principle is a mechanism for infusing environmental considerations into policy making and ensuring that they are factored into a range of policy areas.

Para 6(5) of [Schedule 2](#) of the Environment Act states that environmental protection “should be” integrated into the making of policies. Para 1245 of the [explanatory notes](#) on the Act clarifies that this means that “Environmental protection must be embedded in the making of policies.”

It is important to note that neither the Act, the explanatory notes nor the UK government’s EPPS propose that applying the integration principle should mean that the potential environmental impacts of policies are weighed against the potential economic and social impacts. This implies an exercise of policy trade off rather than one of integration. **We suggest that this wording is removed in the final EPPS.**

Prevention principle (pages 14 to 15)

The prevention principle should generally be used in preference over the rectification at source principle or the polluter pays principle, as these principles are used in instances when prevention cannot be achieved. The draft EPPS recognises this on page 14 (for example, “...prevention rather than cure is the ideal...” and “While the actions that apply the prevention principle should normally be taken in preference to those that would allow harm to occur and then seek to rectify the damage, that will not always be possible”).

It is important to recognise that in many cases the principles should be considered iteratively, rather than separately or consequentially. We welcome the clarification in this section and on page 20 that applying the principles simultaneously and in combination could be both appropriate and beneficial and is likely to be the most effective approach for environmental protection and sustainable development.

The draft EPPS helpfully recognises that the prevention principle could mean it is necessary to modify a policy or even abandon it altogether. **The list of actions that might be taken as a result of considering the principles (page 20) should be amended to include the potential repeal or abandonment of a policy as an option available to policy makers.**

We suggest the department considers adding a reference to clarify that, when applying the prevention principle, policy makers should particularly consider those habitats and species that are endangered, in decline or vulnerable, and national environmental priorities such as those outlined in the Environmental Improvement Plan.

Precautionary principle (pages 15 to 16)

The precautionary principle is a central component of good environmental law and policy making. It is vital in enabling regulatory or other action to be taken when there is an absence of scientific certainty about environmental harm.

The draft EPPS uses a description of the precautionary principle based on the Rio Declaration. As Professor Maria Lee [explains](#), “This approach has long been criticised for the high threshold for action (serious or irreversible) and the counter-intuitive assumption that in a state of uncertainty the cost effectiveness of decisions can be calculated. It is a highly defensible and common definition, but could be far more ambitious.”

The draft EPPS describes the precautionary principle as a risk management tool, which underplays its significance to policy makers. We note that the draft EPPS suggests that ‘risk’ in this context means the combination of the likelihood of occurrence and the impact of such damage.

We would prefer the approach suggested by the Office for Environmental Protection in its [advice](#) on the Northern Ireland Environmental Principles Policy Statement provided on 29 August 2023: “In the advice for policymakers, we believe that the test for whether a precautionary approach should be deployed is if there are threats of serious or irreversible environmental damage. The principle comes into effect when there is a lack of full scientific certainty, not when there is a lack of evidence.”

Rectification at source principle (page 17)

The draft EPPS defines this as the principle that environmental damage should, as a priority, be rectified at source and by targeting its original cause and taking preventive action at source.

The inclusion of the concept of preventative action is welcome as it clarifies that this is an important foundation of this principle.

We also welcome the recognition that the principle encourages processes that are inherently clean rather than approaches which treat the problem as or after it occurs. This reflects the principle's value as a tool to change behaviour and support innovation to make sure those bearing most responsibility for harm take or support preventative action.

Polluter pays principle (pages 17 to 18)

We welcome the recognition in the draft EPPS that the polluter pays principle includes the prevention of pollution or other types of environmental harm as well as its control and remediation.

We note that the draft EPPS describes three forms of remediation: primary; complementary; and compensatory, and clarifies that compensatory remediation is different to financial compensation. On the latter, **it may be helpful for the EPPS to reflect that, in some circumstances, financial compensation should be allocated to the remediation of the harm or providing associated environmental benefits.** For example, fines levied on water companies in relation to pollution incidents should be used for improving the natural environment of the catchment where the incident occurred, rather than ending up in general executive funds.

5. Departments will be required to monitor their compliance of the EPPS – do you believe the guidance given in the Monitoring and Reporting section is sufficient?

We welcome the recognition on page 12 that ensuring that supporting evidence can be provided on the implementation of the EPPS duty will be key to policy makers being able to meet their statutory duties and effectively apply the EPPS and its principles.

We also welcome the commitment on page 12 that the processes and mechanisms which underpin the implementation of the EPPS “should be as transparent as practicable and provide an appropriate audit trail”.

While we welcome the commitment to provide policy makers with a template, and guidance on its completion, **this must be designed and applied carefully to avoid the EPPS becoming a tick box exercise.**

We suggest that the department adopts the following recommendations to strengthen implementation, monitoring and reporting on the EPPS duty.

Recommendations

The duty should be a visible component of policy making, with departments encouraged to be open about their approach to help strengthen accountability and transparency.

The department should embed the EPPS in relevant cross cutting policy mechanisms and guidance, aiming to complete this before the final EPPS is published. For example, this should include:

- A [Practical Guide](#) to Policy Making In Northern Ireland
- [Guidance and frameworks](#) for appraising, developing and planning projects and programmes and on post programme or project [reviews](#)
- Regulatory impact assessments [guidance](#)
- [Code of Practice](#) on guidance on regulations

This will be important to support the culture needed for the EPPS duty to be applied meaningfully over time.

Environmental Principles Assessments should be routinely adopted across departments and published to improve transparency and provide MLAs and stakeholders with information on how the EPPS duty has been factored into policy making. **Departments should maintain clear paper trails on the EPPS, publishing these where necessary.**

Political and unforeseen events can sometimes mean that policy decisions need to be made speedily. To minimise the risk of the EPPS duty being overlooked in such circumstances, **the department should clarify that policies made using urgent procedures or in expedited timescales must nevertheless take full account of the EPPS duty.**

The EPPS should clarify that **the EPPS duty must be taken into account when making legislation, including executive bills and statutory rules.**

The EPPS duty should be included in relevant civil service training and capability programmes.

The EPPS duty applies to Northern Ireland departments and Ministers of the Crown when making policy relating to Northern Ireland. While it doesn't apply directly to public authorities, the UK government has [explained](#) that its application will mean that the environmental protection promoted by the principles will “filter down” into local policy and strategic decisions.

The draft Northern Ireland EPPS is silent on this matter. **We would therefore welcome clarification on whether this ‘filtering down’ will extend to arms’ length bodies in Northern Ireland.**

The department should conduct an early review of the implementation of the EPPS duty so that lessons might be learned and course corrections made to increase the efficacy of the duty. Its findings should be published.

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