



# Consultation Response

## CONSULTATION ON DEFRA POLICY STATEMENT ON ENVIRONMENTAL PRINCIPLES

### Defra Consultation

Date: 2 June 2021

The Country Land and Business Association (CLA) is the membership organisation for owners of land, property and businesses in rural England and Wales. We help safeguard the interests of landowners, and those with an economic, social and environmental interest in rural land. Our members own or manage around half the rural land in England and Wales and more than 250 different types of businesses.

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

No

### Question 2. What is your name?

Harry Greenfield

### Question 3. Are you responding:

- On behalf of an organisation

### Question 4. What type of organisation are you responding on behalf of?

- Industry association

Please provide your organisation's name.  
Country Land and Business Association (CLA)

## **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 (pp.5-8) sets the scene for the principles and goes *some way* to explaining the rationale for using them which will support understanding and consistent application across government departments. However, their use by all government departments and public bodies in a wide range of different contexts and the overview could be improved with an introduction to the principles and a short description rather than leaving to later sections.

The CLA welcomes the fact that environmental protection and sustainable development are given equal standing in the overview section of the policy statement. Too often environmental policy gives rise to a static and restrictive atmosphere, tending to prevent progress and development while also failing to adequately protect (let alone improve) our rapidly degrading natural world. This Policy Statement is an opportunity to take a more positive and strategic approach, using the principles not just to prevent environmental harm but to guide and encourage environmental improvement. Sustainable development (a well-understood concept) recognises the value of investing in and supporting economic activity that enhances our natural capital for the benefit of current and future generations. The Principles should be used to build a greener economy, rather than to pit economic activity against the needs of the environment which is so often the case now.

The CLA is also pleased to see reference throughout the Policy Statement to the use of proportion when applying the principles. It is right that the Policy Statement should be used to allow for innovative thinking about the environmental impact of policy at an early stage, so as to design out environmental harm where possible and design in environmental improvement. But this does not mean that the environment trumps everything else in all situations. Proportionality allows for a judicious weighing-up of policy options to choose those that achieve the ultimate policy aims (which may be unrelated to the environment) while still taking environmental impacts seriously.

A further positive point from this section of the Policy Statement is the distinction between policy and individual decisions by public bodies, such as planning, regulatory or licensing decisions. The CLA strongly supports this distinction: we have consistently argued that national systems of environmental governance should not be used to slow down or overturn local decisions or the detail of implementation except in cases of clear environmental harm. This would lead to yet more delays in systems that are often already over-burdened. There is also a real risk that this would upset the existing balance between the social, economic and environmental aspects of sustainable development. **Rather than over-turning these types of decision, environmental principles should be used to ensure that policy, frameworks and guidance for decision-makers give the environment due consideration.**

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

Not entirely.

**Step 1 is helpful in outlining what it means for a policy to have an environmental impact but lacks detail on how to assess environmental impact in practice.** The focus on proportionality, while welcome, leaves significant room for a superficial and inadequate consideration of environmental consequences. While the CLA agrees that a “deep dive” into the full environmental impact of every single policy is excessive, it is still important to gain a proper understanding of how policies could affect the environment. This will avoid the need for hasty and reactive changes of direction in the future if previously overlooked environmental impacts come to light. **Signposting to additional guidance on how to assess environmental impacts is required.**

**The mention of overseas environmental impact is welcome, as this is often neglected in policy-making. However, the way this is framed in the Policy Statement risks continuing to ignore overseas impact from policies.** A particular issue for the farmers and land managers that the CLA represents is the impact of government policy on food production and consumption. **The environmental principles policy statement needs to prompt policy-makers to capture the likely impact of environmental, climate and agricultural policies on patterns of production and consumption.** This could reveal unintended consequences in the form of off-shoring our own environmental footprint by importing products of a lower environmental standard, as has happened historically in a number of manufacturing industries.

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

No, it is not clear that step one will ensure the most important environmental impacts are addressed.

While the points set out in step one are all reasonable, and ones the CLA would support, they do not amount to a clear framework for assessing or addressing environmental impacts. **The way step 1 is presented risks allowing the environmental principles to be ignored following a cursory analysis of the environmental impacts.** It is only by engaging with steps 2 and 3 that a fuller picture of how (and indeed whether) to apply the principles emerges.

**More detailed guidance, developed to be relevant to each government department, will be needed to put step one into practice.** Such guidance should include areas such as: how to assess and quantify the environmental impact of a policy; who to consult and at what stage; how to model the likely and potential environmental impacts; and what the output of step one is expected to be.

A proper engagement with the principles, taking a systematic approach, would help to reveal where such impacts might arise. Such a process has the potential to be complex, particularly given the interaction of the principles and the need to consider environmental impacts that are

indirect, spatially or temporally removed or that are at a low level but have a cumulative impact over time. Without this information, however, it is hard guarantee that policy-making addresses the most important environmental impacts.

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

**Not on its own, and not as currently framed.**

**A lack of detail on step two risks preventing policy makers from thinking thoroughly about which principle to apply.** As currently set out in the Policy Statement, step two lacks the detail to be of much use. It is only with the further detail seen in step 3, which explains each principle in more detail, that it becomes easier to select the appropriate principles. **To rectify this, it would be better to include the list and short description of each principle from step 2 earlier in the document, e.g. when introducing the principles in the Overview on p.5.**

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

**Yes, but could be improved by examples and scenarios.**

**The criteria for applying the principles are welcome, especially the need for proportion and to balance social, economic and environmental impacts of policy.** It is important to recognise that a cost/benefit analysis may give reasons to pursue a policy even if environmental impacts occur. The example of climate change brings this home, as there are many activities that necessarily lead to greenhouse gas emissions (such as food production) but this is a reason to reduce the environmental impact from these activities rather than stop them occurring. The rectification (and the polluter pays) principle recognises that fact that in some situations, preventing environmental damage may not be possible.

**Overall, this section would benefit from a greater use of examples and scenarios.** This should include clear examples of where and how the application of an environmental principle has led to a different policy design, i.e. what is the counter-factual if the principles had not been applied.

#### **a. Integration**

The integration principle is an important over-arching principle which should lead to more consideration of environmental impact across government. The CLA supports the aim of embedding environmental protection in a wider range of policies than those that traditionally or obviously deal with the environment. This is vital in order to achieve sustainable development, meet environmental targets and achieve net zero carbon emissions.

**It is not clear as currently formulated that the integration principle does anything more than simply aim to make policy-makers aware of environmental impact.** There is insufficient detail as to how this might be done or what it would look like in practice. The CLA recommends that developing guidance and sharing emerging practice in government departments to develop this understanding, but it is a missed opportunity for the Policy Statement not to do so. **We discuss further ways to embed environmental principles across government policy making in answer to question 10 below.**

**It should be made clear that the environmental principles should not be limited only to policies which cause negative environmental impact.** A more ambitious and positive approach would be to look for opportunities to deliver environmental improvement from policies, using policy development as an opportunity to embed high environmental standards and to drive positive action for the environment. The Policy Statement mentions the use of a natural capital approach and while this can show the benefits of preventing harm or degradation to natural capital assets, it also shows the benefits of restoring and improving these assets. **An example that should be included is using policy to drive nature-based solutions to climate change, flooding or air quality improvement, as opposed to the more capital intensive or high-tech solutions that have until now been preferred.**

#### **b. Prevention**

The CLA supports the aim of preventing environmental harm which is preferable to intervening at a later stage, either to rectify the harm, or require the polluter to pay, which may be difficult for both government and businesses. As a more proactive principle, it could help to drive policies that support or incentivise changes in more sustainable business practice such as investment in R&D and knowledge exchange and advice. **As recognised by the Farm Inspections and Regulations Review (2018), the use of softer approaches to regulation, including incentivisation, can be preferable to policies that simply penalise environmental damage after the fact, a recommendation that the CLA fully supports<sup>1</sup>**

#### **c. Rectification**

As with prevention and polluter pays principles, this requires robust evidence as to the source of pollution or other environmental harms, which is not always easy to achieve. **The prevention, rectification and polluter pays principles should be evaluated together by policy-makers and this should be made clear in the Environmental Principles statement.** The costs and benefits of applying the different principles may help guide policy-making, for example where the cost of prevention is very high, but the cost to rectify environmental harm is lower. Policy-makers should consider alternative scenarios using these three principles to establish which is most appropriate.

**The Policy Statement should include explanation that if the prevention and rectification principles are well-applied, then the polluter pays principle should only be used as a last resort.** This adds weight to the argument for investment in prevention or rectification, for example support for businesses to prevent pollution by adopting new technologies.

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[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/764286/farm-inspection-regulation-review-final-report-2018.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/764286/farm-inspection-regulation-review-final-report-2018.pdf) p.71

#### d. Polluter pays

**The application of the polluter pay principles will be welcomed by landowners affected by environmental damage and pollution.** Problems such as fly-tipping and the remediation of contaminated land often result in costs or liabilities for landowners, even when these are the result of illegal activity by other parties. A more robust interpretation of the polluter pays principle should manifest itself in better enforcement of fly-tipping and other forms of littering that blight the countryside causing social and economic, as well as environmental harm. It should also ensure that landowners do not have to pay for expensive remediation of land when the original polluter should do so, for example in local authority managed landfill sites.

In addition, effective application of this principle helps to ensure a level playing field, for example ensuring that all sections of the economy play their part in reducing environmental harm, and that businesses or methods of production that are inherently unsustainable are not able to avoid meeting high environmental standards. **The polluter pays principle should be applied to international trade to ensure that such a level playing field is maintained.**

**The CLA has an obvious interest in how the polluter pays principle will be applied to agriculture and land use.** The policy statement does begin to delve into the detail and potential complexity of this principle, in terms of who the polluter is and how and how much they should be required to pay. The application of the polluter pays principle to farming, especially to carbon emissions, is likely to result in a radical transformation of the industry. **As with all sectors of the economy, the transition to net zero needs to be carefully managed and unintended consequences need to be avoided.** Most obviously for agriculture, over-zealous regulation to eliminate pollution and emissions from agriculture at all costs, while consumers continue to demand cheap food, could lead to farm businesses going out of business and UK consumers exporting their environmental footprint abroad by purchasing less sustainable imported food. **We welcome the Policy Statement recognition of the Farm Inspections and Regulation Review and of Dame Glenys Stacey's approach to the polluter pays principle in that report.** This pragmatic approach would aim to achieve the required outcomes (reduction in pollution and environmental harm) and to intervene in the farming and food production system at the point most effective to achieve this outcome, rather than applying a principle un-thinkingly.

#### e. Precautionary

**The CLA supports the use of the definition of the Precautionary Principle used in the Rio Declaration, which refers to "serious or irreversible environmental damage"**. This allows for a proportionate and risk-based interpretation of the principle, applying it only when a lack of knowledge is combined with a potential high risk. The other principles should act as a series of backstops against environmental harm in situations where the potential damage is less severe. For example, if a lack of scientific evidence leaves the possibility open for minor environmental damage, this can be dealt with by rectification or polluter pays, if it is not serious or irreversible.

**Leaving the EU brings an opportunity to review the approach taken to the precautionary principle and improve upon it.** Too often, the EU approach was to attempt to eliminate all environmental hazards, such as by banning agri-chemicals, rather than work to minimise the risk by limiting exposure to such hazards. A risk-based approach allows for consideration of the real-world use of technologies and encourage mitigation of harms. The precautionary principle should be applied on the basis for a full, comparative risk-assessment, looking across social,

economic and environmental considerations. Key to this will be robust and reliable scientific evidence, and public engagement to build confidence.

The CLA welcomes the Policy Statement's discussion of innovation, in particular that the precautionary principle should not unfairly disadvantage new technologies by holding them to higher standard of safety than existing ones. A focus on serious or irreversible risks, and the use of further environmental principles; research and monitoring and good environmental regulation should create a suitable risk management environment for lower level risks.

**There are several examples of the current application of the precautionary principle that impact on our members:**

*Application to agri-chemicals*

Applying the precautionary principle in isolation can result in chemicals being withdrawn from use without considering the impact this will have based on subsequent behaviour change. When farmers or land managers switch to an alternative chemical this can cause negative consequences, for example increasing the overall environmental load due to the increased use of alternative chemicals. Reliance on a decreasing number of chemicals can also lead to resistance (which in turn leads to increased application rates). A more holistic approach to the environmental sustainability of agriculture, looking at the use of inputs overall and ways to limit harm from this would avoid unintended consequences of an ad hoc approach.

*Environmental land management*

EU case law requires that the Habitats Directive is interpreted in line with the Precautionary Principle (following the *Waddenzee case*). This has led to a situation where certain activities are prevented on or near to sites protected for wildlife. The CLA believes that this has often been done without a full consideration of the consequences. For example the banning of rotational burning on deep peat does not account for the environmental risks of wildfire and the loss of the environmental benefits that such burning can bring.

A further example where the precautionary principle could be applied would be the way that land management policy deals with land already in environmental management. In the situation where changes in policy are being considered, full application of the environmental principles and a risk assessment would help shape the correct policies before changes are made and avoid unintended consequences. This would minimise risk of unintended environmental harm or disproportionate business impacts.

**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.**

**The section of the Policy Statement on the "Interaction between the principles" is insufficient.** The principles tend to interact and, taken together, the precautionary, prevention, rectification at source and polluter pays principles create a framework for dealing with possible

environmental harms, similar to the mitigation hierarchy used in planning policy. The fact that the principles work better when taken together makes it difficult to consider them individually. The Policy Statement points this out, but does little to guide how the principles can be integrated into a more holistic assessment of the environmental impacts of policy.

The environmental principles are a foundation of environmental law, and reference to the application of the principles (or failure to apply them) is likely to be tested in the courts and by the Office for Environmental Protection (OEP). However, in order to achieve the goals to which the principles are directed, we would warn against taking a legalistic or litigious approach. This is likely to exacerbate a situation where Ministers aim to do the minimum necessary to meet legal requirements, while resenting the entire process.

**A better model is to find ways of embedding the principles and their use across government, with the forthcoming Environment Act acting as an impetus to do this.** The Policy Statement on Environmental Principles is a necessary part of this system of environmental governance required, but not sufficient on its own. It will need to be clearly linked to other aspects of environmental governance contained in the Environment Bill, including Environmental Improvement Plans, environmental targets and the advice and scrutiny of the Office for Environmental Protection. These other elements of environmental governance give more context and direction, which could help with the application of environmental principles. This would also require making explicit the link to existing systems of governance, such as the Treasury Green Book, the Regulatory Policy Committee and regulatory impact assessments. These should be updated to prompt an integration of environmental protection and improvement into policy making.

**There is a clear role for “softer” elements of environmental governance**, such as collaboration across government departments and between teams within departments; institutional change to give the environment more prominence; and the important role of horizon scanning and leadership to deliver environmental results.

When operating at their best, the application of environmental principles would help to drive the development of policy across government that encourages sustainable development, net zero emissions and the transition to a greener economy. **The CLA represents rural businesses that are ready and willing to play their part in this transition, so long as the right policies and effective regulation are in place to support them to do so.** Too often, businesses are on the receiving end of ill-thought through policies or, even worse, a sudden change or reversal in policy following legal review or bad publicity. There is an advantage to policy being developed with the environment in mind from the outset to provide clarity and stability. Demonstration that the principles have been considered will also provide reinforcement for government to stand up for decisions it has made, based on the knowledge that the environmental impacts were given due consideration from the outset.

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

It is not clear from the Policy Statement how this policy works in the UK context. We would like confirmation that Defra is talking to the Devolved Administrations and that the different approach to environmental principles in each UK nation can be effectively managed.

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