

Response ID ANON-JVC4-2Z33-9

Submitted to **Consultation on the Draft Policy Statement on Environmental Principles**

Submitted on **2021-05-24 13:36:37**

Foreword

You and Your Organisation

1 Would you like your response to be confidential?

No

If you answered Yes to this question please give your reason:

2 What is your name?

What is your name?:

Wassim Dbouk

3 Are you responding:

As an individual

4 What type of organisation are you responding on behalf of? [Please note this question only applies if you are responding on behalf of an organisation]

Not Answered

If responding on behalf of an organisation, please provide the name here. :

Background

Policy Statement on Environmental Principles

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

Yes

Please provide any additional information in support of your answer:

Process for Applying the Policy Statement

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

No

Please provide any additional information in support of your answer:

By requiring that the environmental effects that should be considered by policy-makers when assessing the environmental impact of a policy to be both a) likely to occur and b) likely to have a "substantial" impact, and by alluding to the fact that unknown environmental impacts need not be considered by policy-makers in this process, there exists a risk that significant threats to the environment, the effects of which may be irreversible or remediation thereof extremely costly, may be overlooked when policies are being considered. This would deprive policy-makers of crucial evidence/information that might allow them to adopt cost-effective measures which would mitigate the environmental risk posed by their policies. In order to embrace the precautionary principle and its function in supporting policy-makers in their management of given risks, the view of the environmental impact of a policy to be considered should be consistent with the understanding of risk provided on page 18 of the Statement ("a combination of the likelihood of the environmental damage occurring and its severity).

An approach that would embrace the environmental principles laid out in the Draft Environmental Principles Policy Statement would require that, through a Strategic Environmental Assessment, the scoping of the environmental effects that ought to be considered when policies are being introduced is sensitive to the limitation of science and our understanding of the relationship between human activities and the environment. To this end, reference should first be made to the "chosen level of protection" adopted by HM Government through its publicly available policy documents in respect to various human activities in different environments (land, sea, air, etc). Thereafter, while examining the potential impacts of a given policy, gaps of knowledge/uncertainties need to be acknowledged and where such gaps appear to be decisive in the consideration of whether or not the chosen level of protection at hand would be crossed by the proposed policy, policy-makers should err on the side of caution by interpreting this uncertainty in favour of the preservation of the environment.

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

No

Please provide any additional information in support of your answer:

The "most important" environmental effects should be those through which a proposed policy would cross an environmental protection objective set out and adopted by HM Government. As mentioned in response to Q6, these may be unlikely to occur, but present the risk of catastrophic and irreversible harm to the environment.

In short, uncertainties may surround our understanding of the environmental effects of given policies, and on a closer level, the projects that would be initiated for the implementation thereof. The decision of whether or not the threat posed is acceptable is a political one that is rooted in the assessment of whether the applicable chosen level of protection is at risk of being crossed.

Moreover, the objective should be to regulate human activities in a manner to ensure that, through the adoption of preventive and precautionary risk-averting measures, the given chosen level of protection is not crossed; rather than to prohibit proposed strategies/policies/activities when information is insufficient to make a holistic assessment of the risk at hand. This approach would be in line with the objective of sustainable development.

Step 2: Understanding Which Principles are Relevant

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

No

Please provide any additional information in support of your answer:

The Draft Statement is correct in highlighting that the principles it lists have different purposes and functions. However, it fails to explain (or to even mention) how, as a set of "overarching principles", these principles interact with one another.

This is a crucial point as the principles listed are not all as established and defined in academic literature and in practice. For example, the precautionary principle has received strong criticism, particularly in American literature, for not having a prescriptive force and for failing to mandate action. The principle has been described as ill-defined and ambiguous, which results in arbitrariness in its invocation and application in various settings. Of course, the precautionary principle has a very wide application and extends to an unlimited number of scenarios. However, it has received strong international support when invoked for the protection of the environment. In this particular context, the precautionary principle would, through its interaction with more prescriptive established neighbouring principles for environmental protection (e.g. the preventive principle), derive a prescriptive force while simultaneously expanding the scope of application of said neighbouring principles through requiring an adequate consideration of uncertainties/gaps of knowledge.

In short, the principles operate within a principle system of rules, and the Draft Statement fails to shed light on the interaction between them.

Step 3: Applying The Principles

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

Q10 - Integration:

Q10 - Prevention:

No

Q10 - Rectification:

Q10 - Polluter pays:

Yes

Q10 - Precautionary:

No

Integration Principle - Please provide any additional information in support of your answer:

Prevention Principle - Please provide any additional information in support of your answer:

The Draft Statment rightly provides that "prevention requires reasonable certainty that an action will cause to the environment and understanding of the risks and their cause". The Statement went on to explain that, in situations where the risk of environmental damage is acceptable because "it would be disproportionate to prevent all possible damage", policy-makers should consider relying on the rectification at source or polluter pays principles. What the Draft Statement fails to clarify is the interaction between the preventive principle and the precautionary principle. In particular, what constitutes "reasonable certainty". This is an important point as the dividing line between the two principles is precisely the level of available information that would enable an accurate assessment of the risk at hand. In entailing that preventive measures are taken to abate the risk at hand where there is merely a "plausible risk" of severe or irreversible harm, the precautionary principle practically extends the scope of application of the preventive principle. Acknowledging that uncertainty is inherent to all risks, prominent authors on the subject went as far as declaring that the precautionary principle "absorbed" the preventive principle. They advanced that the distinction between the two principles rests upon the degree of uncertainty surrounding the probability of the risk in question, which would determine the precautionary extent of the measures to be adopted (A. Trouwborst, Evolution and Status of the Precautionary Principle in International Law (Kluwer Law International 2002); A. Trouwborst, 'Prevention, precaution, logic and law: the relationship between the precautionary principle and the preventive principle in international law and associated questions' [2009] 2:2 Erasmus Law Review 105).

Rectification Principle - Please provide any additional information in support of your answer:

Polluter Pays - Please provide any additional information in support of your answer:

The Draft Statement touched upon a very important function of the polluter pays principle, one that influences the behaviour of proponents of risk-creating activities: its capacity to deter these risk creators from abstaining from adopting appropriate risk-abating and preventive measures and to encourage sustainable practices in general.

A major limitation to this function, however, is that risk creators would only invest in such measures to the extent of their potential liability (a matter that is properly addressed in the Draft Statement on pages 16-17 under "how much the polluter should pay").

Precautionary Principle - Please provide any additional information in support of your answer:

The reverse relationship between the required level of uncertainty and the risk of damage at hand provided for on page 18 is a very logical and useful way to allow policy-makers to determine whether or not the threshold for the invocation of the principle has been met. Framing this approach within a clearer delimitation with the preventive principle would avoid confusing policy-makers when deciding which principle to apply when considering the impact of a proposed policy.

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?

Yes

Please provide any additional information in support of your answer:

The Draft Statement provides a sufficient framework for the application of the principles as a whole. However, a clearer definition of how these principles operate within a principled system of rules is required (i.e. a better explanation of their interaction with each other).

Final Thoughts on the Policy Statement on Environmental Principles

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

No

Please provide any additional information in support of your answer:

Consultee Feedback on the Online Survey

12 Overall, how satisfied are you with our online consultation tool?

Dissatisfied

Please give us any comments you have on the tool, including suggestions on how we could improve it.:

It would be practical if respondents could navigate to the previous page without having to go back to the start.