

Response to the Scottish Government consultation on guiding principles on the environment: draft statutory guidance

15 February 2022

About Energy UK

Energy UK is the trade association for the energy industry with over 100 members spanning every aspect of the energy sector – from established FTSE 100 companies right through to new, growing suppliers and generators, which now make up over half of our membership.

We represent the diverse nature of the UK's energy industry with our members delivering nearly 80% of the UK's power generation and over 95% of the energy supply for the 28 million UK homes as well as many businesses.

The energy industry invests £13bn annually, delivers nearly £30bn in gross value added on top of the nearly £100bn in economic activity through its supply chain and interaction with other sectors, and supports over 700,000 jobs in every corner of the country.

Question 1 Do you think that the draft guidance is clear and has the right content to support the implementation of the duties in the Continuity Act? How could it be improved?

We welcome the opportunity to respond to Scottish Government's Guiding Principles: A Consultation on Statutory Guidance. We acknowledge that this supports the development of policies and legislation in Scotland while facilitating the vision and outcomes of the Environment Strategy for Scotland published in February 2020.

Our primary concern is that whilst the Ministerial Foreword recognises the importance of the climate crisis and Net Zero, the Guiding Principles should also discuss in detail how they apply to Scotland's target of Net Zero greenhouse gas emissions by 2045. This would recognise that Net Zero is the most important policy for addressing climate change and seeking to prevent the irreversible environmental damage associated with it.

We believe that this is a fundamental omission that needs to be addressed as a matter of urgency. Given the vital need to tackle climate change and reach legislated emissions targets, net zero is clearly central to future policy making in Scotland and as such should be explicitly recognised in the guidance. We strongly urge the Scottish Government to make it clear in the Guiding Principles that Net Zero is one of the key policy objectives over the next few decades and should be recognised as an overarching policy goal. As the principles are used in the development of policy, ultimately whilst parity can be maintained across principles, the Guiding Principles should allow for prioritisation of policy development that directly contribute to Net Zero. Aligning the guidance with the transition to net zero in this way would allow Ministers and public authorities to prioritise policy and decisions that directly contribute to delivering net zero, for example increased consenting of onshore wind through more timely planning decisions.

Question 2 Do you think that the draft guidance provides useful explanation of the meaning of the guiding principles? How could this be improved?

We welcome the requirement for the interpretation and application of the Guiding Principles to be balanced, proportionate and weighed against other statutory obligations and relevant considerations. Our members operate across all of the UK and we would therefore urge the Scottish Government to seek consistency and proportionality with wider UK policy and legislation where possible as divergence within the UK could be detrimental to companies operating across the whole of the UK.

Question 3 Do you think the draft guidance provides a good explanation of how the guiding principles will be used during the development of policies and other significant decisions? How can this be improved?

We welcome the requirement for the interpretation and application of the Guiding Principles to be balanced, proportionate and weighed against other statutory obligations and relevant considerations.

We would like to make reference to Section 5.3 of the draft document which states:

“Different levels of damage may be acceptable, according to the circumstances of each individual policy decision. For example, the creation of key infrastructure inevitably causes some damage to the environment. Having due regard to the guiding principles will ensure that this damage is further considered, and avoided or mitigated where possible, as the principles are weighed against the other factors in the decision-making process”

While we welcome this approach, it will not ensure that Net Zero is given appropriate weight alongside the principles for Ministers and other public authorities to take into account when making decisions. While no single climate or environmental goal should automatically outweigh another, long-term benefits should often be given greater weight than temporary or localised environmental damage arising from a specific project, particularly in the context of climate change mitigation.

To provide a more holistic approach in the Guiding Principles, the document should refer to the concept of inter-generational equity, recognising that the task of preventing environmental damage should not be left to future generations; this point is particularly important when considering the damage arising from climate change. Therefore, we would encourage the Scottish Government to elaborate on how long-term and short-term environmental gains or damages will be weighed against each other for improved clarity in policy making.

In order to prevent disproportionate regulation and ensure an integrated approach to the application of the principles in the formation of environmental policy, we also recommend that the Guiding Principles should refer to the following principles:-

- Evidence-based regulation – Decisions should be based on the best available scientific evidence.
- Risk-based regulation – Decisions should be based on an assessment of the risk to the environment.
- Proportionality of action – Decisions should be based on an assessment of the full set of costs and benefits of a policy or regulatory proposal.

We would welcome clarity from the Scottish Government to make it explicit that there is not a fixed hierarchy for application of the principles as this will allow flexibility for policy makers. In addition, the draft guidance states that the duty to apply these principles must be performed with a substantial, rigorous and open-minded approach. We would encourage the Scottish Government to outline how compliance with this approach will be enforced to ensure it is carried out.

Question 4 Do you think the draft guidance adequately supports recording and documenting compliance with the duties?

We would like to see the guidance on recording and documenting compliance with the duties to be strengthened. There is a need for improved integration between regulatory bodies, with clear accountability and management of the boundaries between their responsibilities to avoid double

regulation, while maintaining a holistic view of environmental impacts when they are implementing the policy at the individual decision-making level.

Question 5 Do you think that there is appropriate use of examples and case studies in the draft guidance? Can you suggest any additional examples or case studies to illustrate the guiding principles?

We believe that the examples of case studies related to the integration principle fall short of providing a clear understanding of how the different principles would be balanced. The case studies cover high level policy areas rather than policy decisions and don't provide the details of the issues that would need to be considered.

In relation to the discussion on the prevention principle, the draft guidance states that duty holders should weigh up the severity and likelihood of any impact as well as potential for negative longer term effects. However, to ensure a balanced application of principles a reference should be made to consideration by duty holders of the longer term positive impacts such as delivering net zero.

In relation to the polluter pays principle, the draft guidance states that there may be instances where a polluter should not pay or cannot pay or indeed should not pay the full cost but no further detail or examples are given to expand on these points.

Question 6 Do you have any further comments or views on the draft guidance that you would like to share?

We believe that a duty on policy makers and regulators to consider the Net Zero implications of their decisions would be an important step in enabling regulatory bodies to take a holistic approach and to consider longer term benefits for the environment from reducing greenhouse gas emissions.

We would also suggest a clear statement on timeframes for when the guiding principles would be reviewed and updated over time to ensure that it is kept fit for purpose. The first of these reviews should be scheduled within 5 years to take into account the fact that this is a whole new system and there may be kinks still to work out in its early days.

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