

Scotland's Guiding Principles on the Environment: Statutory Guidance – Consultation Analysis Report

Statement required under Section 18 (4) of the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021 (“the Continuity Act”)



1. Introduction

The UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021 (“the Continuity Act”) introduces new duties on Ministers and other public authorities to have due regard to five guiding principles on the environment¹.

The principles are set out at section 13(1) of the Continuity Act, and are as follows;

- principle that protecting the environment should be integrated into the making of policies;
- precautionary principle as it relates to the environment;
- principle that preventative action should be taken to avert environmental damage;
- principle that environmental damage should as a priority be rectified at source; and
- principle that the polluter should pay.

These duties will ensure that consideration of protection and improvement of our environment is embedded in decision-making across different policies and sectors. In effect, this will keep Scotland aligned with the practice of consideration of environmental principles in policy development in the EU, and will contribute to sustainable development.

Section 17 of the Continuity Act requires Scottish Ministers to publish guidance on the guiding principles and the duties introduced by sections 14 and 15, as read with section 16. The purpose of the statutory guidance is to serve as a practical guide to support public authorities and Ministers to implement their legislative duties. As set out in section 17(3) of the Continuity Act, anyone subject to the duties must have regard to the statutory guidance. The final version of the guidance, once approved by Parliament, will promote a common understanding and interpretation of the guiding principles and how they should be considered and applied when developing future policy and legislation.

Section 18 of the Continuity Act sets out the procedure for the publication of the guidance. One of the requirements is for Scottish Ministers to lay before parliament a Statement in support of the Guidance on the guiding principles on the environment.

Draft statutory guidance was prepared by the Scottish Government following discussions with a range of internal and external stakeholders, and has been subject to public consultation. A final version of the statutory guidance will now be laid before Parliament for final approval, before the new duties are brought into force.

There has been a delay in the commencement of the duties, during which time the Scottish Government has taken steps to prepare for the implementation of the duties. Officials have worked to promote consideration of the principles in policy development across government ahead of the commencement of duties, and have

¹ The duties are set out in Sections 14 and 15 of the Continuity Act. The duty on UK Ministers have been modified by section 19 of the [Environment Act 2021 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/2021/12/section/19) (see discussion at paragraph 4.4 of the draft guidance).

prepared for the coordination of the duties and Strategic Environmental Assessment. We do not believe that there has been any material changes since we consulted on the guidance that would affect our ability to reflect the results of the consultation in the final guidance.

2. The consultation process

Section 18(3) of the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021 requires Scottish Ministers to consult with a Minister of the Crown, each responsible authority who is subject to the duty under section 15 of the Continuity Act and such as other persons as they consider appropriate, before the guidance can be laid before Parliament for approval.

Consultation on the draft statutory guidance on the guiding principles commenced on 26 November 2021 and ran for a period of 12 weeks until 8 February 2022.

The draft statutory guidance was made available online on the Scottish Government consultation website and was supported by a series of three online workshop sessions held during January 2022. The analysis report and full consultation responses have been published and the full detailed report is attached in the Annex.

Details of the consultation was circulated to a wide range of stakeholders, from a range of sectors, including local authorities, civic society organisations, membership organisations, environmental non-government organisations, public bodies, regulators and regulated sectors, as well as the UK Government and the devolved administrations.

3. Response Summary

There was a wide range of views expressed in response to the consultation, with reasonable support for the length and scope of the guidance. The Scottish Government is grateful for all the suggestions for improvements to the draft guidance made by respondents. In responding to the consultation views, the Scottish Government has sought to make the guidance clearer and more accurate, so that it will support duty holders and officials in complying with the new duties. In line with a number of helpful suggestions, we have taken further opportunities to highlight the purpose of the duties, and how the principles and the guidance will support good decision making in the interests of environmental quality and sustainability.

The analysis report describes 27 specific recommendations for improvements to the draft guidance. We have been able to make changes to the text to reflect 21 of these recommendations. Significant changes to the document were made to improve clarity, add value and insight where necessary and are detailed in the analysis report below. The report also details why certain respondent suggestions have not been acted on as they were judged to be out of scope of the document or inconsistent with the statutory provisions. A summary of the changes made to the document have been summarised below;

- The environmental purpose of the guiding principles is reflected more clearly in the revised title for the guidance.

- Greater emphasis on the purpose of ‘protecting and improving the environment and contributing to sustainable development’ has been added, providing greater clarity on what the guiding principles will bring.
- Further guidance for consultation authorities has been detailed, alongside further information regarding demonstration of compliance and routes of enforcement.
- Information has been provided explaining the relationship of the guiding principles to national planning guidance.
- Further information has been provided on ‘weighing up and balancing’ environmental policy decisions, acknowledging that the requirement is placed on duty holders to make these detailed decisions and ensure the duties are fully considered, this aims to prevent the process becoming tick box in nature, with decisions being made ‘in the round’.
- Two further Information boxes have been added, alongside additional and updated case studies that have been reframed as illustrative and indicative examples, to enhance understanding and application of the duties. .

4. Conclusion

This guidance has been developed over the last 18 months with thorough formal and informal engagement. Scottish Ministers value the contributions received from across all sectors through formal and informal engagement routes. The Scottish Government has aimed for transparency throughout this process, and we will be publishing consultation responses, where the respondent has given permission, and the analysis report.

Consultation circles has been at the very core of ensuring that this guidance is clear, practical and informative for the end user. Through this collaborative approach, the guidance has been improved and considered by a wide range of interests. We can be confident that the guidance will help to promote better environmental decision making to protect and improve the environment and contribute to sustainable development.

Scotland’s Guiding Principles on the Environment: Statutory Guidance – Consultation Analysis Report.

Table of contents

1. Introduction	6
1.1 Background.....	6
1.2 The consultation process	6
1.3 Next steps	7
1.4 Process for updates and revisions	7
2. Overview of respondents	8
3. Consultation questions and summary of responses.	8
4. Summary of changes made to the draft guidance in response to the consultation. “You Said, We Did”	13
ANNEX A Summary of consultation workshops	19

1. Introduction

1.1 Background

The UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021 (“the Continuity Act”) introduces new duties on Ministers and other public authorities to have due regard to five guiding principles on the environment². The principles are set out at section 13(1) of the Continuity Act:

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

These duties will ensure that consideration of protection and improvement of our environment is embedded in decision-making across different policies and sectors. In effect, this will keep Scotland aligned with practice in the EU where policy development is guided by environmental principles, and will contribute to sustainable development.

Section 17 of the Continuity Act requires Scottish Ministers to publish guidance on the guiding principles and the duties introduced by sections 14 and 15, as read with section 16. The purpose of the statutory guidance is to serve as a practical guide to support public authorities and Ministers to implement their legislative duties. As set out in section 17(3) of the Continuity Act, anyone subject to the duties must have regard to the statutory guidance. The final version of the guidance, once approved by Parliament, will promote a common understanding and interpretation of the guiding principles and how they should be considered and applied when developing future policy and legislation.

Draft statutory guidance was prepared by the Scottish Government, in consultation with a range of internal and external stakeholders, and has been subject to public consultation. A final version of the statutory guidance will now be laid before Parliament in line with section 18. The Scottish Government intends to bring the new duties into force once the guidance is published.

1.2 The consultation process

Section 18(3) of the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021 requires Scottish Ministers to consult with a Minister of the Crown, each responsible authority who is subject to the duty under section 15 of the Continuity Act and such as other persons as they consider appropriate, before the guidance can be laid before Parliament for approval.

The consultation on the draft statutory guidance on the guiding principles commenced on 26 November 2021 and ran for a period of 12 weeks until 8 February 2022.

² The duties are set out in Sections 14 and 15 of the Continuity Act. The duty on UK Ministers will be modified by section 19 of the Environment Act 2021 once that provision is in force [Environment Act 2021 \(legislation.gov.uk\)](https://www.legislation.gov.uk) (see discussion at paragraph 4.4).

The draft statutory guidance was made available online on the Scottish Government consultation website and was supported by a series of three online workshop sessions held during January 2022. A summary of these workshop sessions is provided in Annex A.

The consultation was circulated to a wide range of stakeholders, from a range of sectors, including local authorities, civic society organisations, membership organisations, environmental non-government organisations, public bodies, regulators and regulated sectors, as well as Ministers of the Crown and the devolved administrations.

Prior to this, discussions took place with a wide range of internal and external stakeholders to develop the draft guidance that was presented for consultation.

1.3 Next steps

A copy of the final guidance must be laid before the Scottish Parliament for a minimum of 40 days prior to publication. The guidance must be accompanied by details of the consultation undertaken under section 18(3) of the Continuity Act, a summary of the views expressed in response to the consultation and either;

(i) details of how those views (if any) have been taken into account in preparing the guidance that is laid before the Parliament; or

(ii) a statement that no views were expressed in response to the consultation or that no account has been taken of views expressed.

This consultation summary report provides an overview of the views expressed on the draft guidance and how those views have been taken into account.

Once Parliamentary approval has been received, the final version of the statutory guidance will be prepared for publication.

A further set of commencement regulations are being prepared to commence the relevant provisions of the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021, which will bring the new duties and statutory guidance into force – to coincide with the publication of the final version of the statutory guidance.

In addition, the Scottish Government will publish a supplementary note to the Strategic Environmental Assessment guidance once the final statutory guidance has been approved – to ensure consistency and accuracy.

1.4 Process for updates and revisions

The Scottish Ministers must, from time to time, review the guidance. Scottish Ministers may also revise the guidance and publish revised guidance.

Furthermore, the Continuity Act provides that the Scottish Ministers may, by regulations, modify section 13 of the Continuity Act to add or remove guiding principles on the environment, or amend any of the guiding principles currently listed at section 13(1). These regulations may remove, amend or further define a guiding principle but only so far as is necessary to reflect the removal of or an amendment to the equivalent principle in

accordance with EU law, or to otherwise ensure that the guiding principle reflects the guiding principle as it has effect in EU law from time to time.

In addition, Scottish Ministers must, in preparing the statutory guidance on the guiding principles, have regard to the interpretation of those equivalent principles by the European Court from time to time.

The Scottish Government will monitor developments in EU practice and the effectiveness of the implementation of the new duties in Scotland. We do not anticipate an early revision to the statutory guidance.

2. Overview of respondents

4 Local Authorities, 2 public bodies, 2 industry, 4 NGOs, 9 other organisations and 5 individual respondents.

- Aberdeenshire Council
- British Association for Shooting and Conservation (BASC)
- Chartered Institute of Ecology and Environmental Management
- Chartered Institute of Wastes Managements Scotland
- East Dunbartonshire Council
- EDF Energy UK
- Scottish Southern Energy
- Energy UK
- Nature Scot
- Royal College of Surgeons Edinburgh
- Royal Society for the Protection of Birds Scotland
- Law Society of Scotland
- Scottish Environmental Services Association
- Scottish Environment Link
- Scottish Environment Protection Agency
- The National Trust For Scotland
- The United Kingdom Environmental Law Association (UKELA)
- University of Dundee
- 5 individual respondents including academic experts.

3. Consultation questions and summary of responses.

Q1. 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?

Of the 25 respondents to this consultation 13 said Yes, 6 said No, 3 said Don't know and 3 did not respond or did not respond directly to the question.

More than half of respondents responded favourably to this question about the clarity and scope of the content of the draft guidance. Responses on the guidance were generally positive, with respondents describing it as accessible, easy to follow and clear in setting out the background to the environmental principles. Respondents indicated that the guidance

contained an appropriate amount of supportive content, although some commented that it was repetitive at points.

The proportionate approach to the application of the duties on a case-by-case basis was generally well received, however, recommendations for improvement included greater emphasis on the need for a full and comprehensive analysis, specifically relating to the most complex environmental problems and where unintentional consequences may be more likely.

Concerns were raised by respondents about what is meant by the need to ‘consider’ the guidance and how this should be demonstrated. It was thought that inconsistencies could arise in the application of the principles. It was suggested that further content could be included in the guidance to clearly illustrate how to navigate the often complex and intertwined environmental matters and risks faced by planners and policy makers.

A number of respondents recommended being more positive about recognising the potential for the principles to drive environmental enhancement, and that the principles should be a ‘golden thread’ running through all government policy making and avoid them becoming a ‘tick box’ exercise. This was stressed as imperative if Scotland is to “show leadership” on tackling the climate emergency and biodiversity crisis.

It was stated that the interpretation of the duty to ‘have due regard’ to the principles and the process for applying the principles could be clarified and improved in places.

Three respondents urged further detail and emphasis on balancing local short term impacts with the wider long term benefits of a policy/decision and suggested the guidance should further elaborate on how long-term and short-term environmental gains or damages will be weighed against each other for improved clarity in policy making. These respondents felt this was particularly relevant to tackle climate change.

One organisation suggested the guidance provided an opportunity to explain and make clear that the exclusion of finance and budget matters under section 14(3)(b) of the Continuity Act should be interpreted narrowly, and should not be used as a means to avoid consideration of the principles whenever there are financial implications

Respondents suggested that specific examples could be provided early on within the guidance to include different types of groups/organisations who might be interested in the guidance – beyond only decision-makers.

Q2. Do you think that the draft guidance provides useful explanation of the meaning of the guiding principles?

Of the 25 respondents to this consultation 13 said Yes, 5 said No, 3 said Don’t know and 4 did not respond or did not respond directly to the question

The majority of respondents acknowledged that the draft guidance provides a useful explanation of the meaning of the guiding principles and felt that this is supported by an adequate range of useful information, case studies and definitions.

Feedback from respondents suggested greater emphasis should be given to the overall purpose of the environmental principles, throughout the document. Respondents recognised and welcomed the reference to section 16 which sets out the purpose of ‘protecting and improving the environment and contributing to sustainable development’, but that this should be given a greater ‘presence’ in the guidance to ensure the purpose is predominantly at the forefront of duty holders considerations.

A small number of respondents also called for an additional one-page summary of the environmental principles and their definitions at the beginning of the guidance.

Q3. Do you think that the draft guidance provides a good explanation of how the guiding principles will be used during the development of policies and other significant decisions?

Of the 25 respondents to this consultation 10 said Yes, 10 said No, 2 said Don’t know and 3 did not respond or did not respond directly to the question

Respondents views were mixed. Some indicated that the guidance offers a good explanation of how the guiding principles will be used during the development of policies and other significant decisions.

Some respondents called for further clarity on the interpretation of the duty to ‘have due regard’ to the principles and the process for applying the principles. It was recommended that greater emphasis was given in the guidance to the early application of the principles in the decision making process.

Respondents also highlighted a desire for greater clarity on the weight applied to the principles and more specifically how to weigh the principles against each other, especially in the case of any conflicts arising between them. It was suggested that more explicit guidance could be given to balancing the consideration of other relevant legislative requirements and Government policies when considering potential environmental impacts.

Q4. Do you think that the draft guidance adequately supports recording and documenting compliance with the duties?

Of the 25 respondents to this consultation 8 said Yes, 7 said No, 6 said Don’t know and 4 did not respond or did not respond directly to the question.

Respondents views in response to this question were mixed. The clarity of the guidance with respect to level of application and recording of the guiding principles was queried, in relation within EIA as well as SEA. Other respondents stated that the draft guidance clearly explains the key two key areas in which the guiding principles should be recorded and documented in order to comply with the duties, as well as giving examples of how this should be recorded in either scenario.

Where an SEA assessment is not required, respondents felt there could be greater requirement in terms of what is expected, for example a standardised procedure or proforma, and how this should be recorded. There were a few calls for transparency about this process. Others were more cautious and stated that an inflexible procedure could

inadvertently make the process a tick box exercise which would diminish its meaning and purpose.

Generally, respondents supported the requirements for reporting and documenting compliance with the duties. Support was also given for the integration of compliance with the duty into the process of environmental assessment, in particular the preparation of the environmental report. A number of respondents were not clear on how the principles would be reflected as part of the process.

Respondents felt that, alongside a broader range of examples and case studies, details about recording and documenting the consideration should also be included.

Compliance, monitoring and enforcement of the duties was raised through consultation responses as well as at workshop sessions with respondents generally looking for greater clarity on where responsibilities and obligations should fall.

Q5. Do you think that there is appropriate use of examples and case studies in the draft guidance?

Of the 25 respondents to this consultation 9 said Yes, 9 said No, 2 said Don't know and 5 did not respond or did not respond directly to the question

Respondent views were mixed in response to this question. Respondents indicated that they thought that the case studies and examples were appropriate for the document and are useful in setting out "real life" examples. Some respondents felt that some of the case studies were inaccurate, could cause confusion and did not provide enough detail, especially with regard to recording and documenting compliance.

The majority of the case studies covered 'obvious' environmental issues and a number of respondents suggested that the guidance should show how environmental principles are relevant in areas where policy making is being done and decisions made where environmental matters are relevant but are not likely to be the main feature involved, e.g. healthcare, housing, and planning.

A number of respondents called for inclusion of a case study covering Local Development Plans

Q6. Do you have any further comments or views on the draft guidance that you would like to share?

Of the 25 respondents to this consultation 20 provided a response.

Many of the respondents stressed that despite the delay between the implementation of the principles and guidance, and the development of major government policies, strategies and legislation including the Fourth National Planning Framework (NPF4), reference to the guiding principles should be made in these 'live' proposals.

Respondents felt that this guidance should showcase the positive opportunities presented by the guiding principles, and encourage duty holders to utilise them to not only mitigate negative impacts, but to maximise positive impacts on the economy, society and the environment.

Respondents called for clarification on whether the Scottish Government's Strategic Environmental Assessment guidance (which will be updated once the final version of the statutory guidance on the guiding principles has been approved) will be out for public review.

A few respondents called for a stronger form of duty than 'to have due regard' was called for alongside consideration of alternative definitions for the principles themselves.

4. Summary of changes made to the draft guidance in response to the consultation. “You Said, We Did”.

Table 1 Summary of views shared and changes made to guidance document

	Summary of issue raised - ‘you said’	Scottish Government response - ‘we did’ - including discussion of where no change was made
1	Specific guidance for consultation authorities for SEA, and further clarity required on oversight and enforcement of the duties.	Additional information for consultation authorities, as well as further clarification on oversight and enforcement of the duties has been provided in an INFO BOX 2 in section 6 of the guidance.
2	Further clarification on whether the Scottish Government’s Strategic Environmental Assessment guidance (which will be updated once the final version of the statutory guidance on the guiding principles has been approved) will be out for public review.	The draft consultation document clearly set out that ANNEX A will also form part of the SEA guidance, ensuring cross referencing was clear between both guidance documents. There are no plans for a wider review of SEA guidance.
3	<p>Consideration of the principles within the fourth National Planning Framework (“NPF4”) to support planning authorities in their duties</p> <p>Where the principle of integration might be significant (Figure 4, p13), mention should be made of National Planning Framework 4 (NPF4). We also suggest that NPF4 makes specific reference to the principles and the Continuity Act. NPF4 will be the main reference for all Planning Policies and therefore having a link to the Environmental Principles guidance and/or reference to the Continuity Act and where the principles apply, would give more importance to the Act and the principles. It would also make it easier to ensure that public authorities will fulfil their duties to have due regard to the guiding principles on the environment across all areas.</p>	<p>The draft fourth National Planning Framework (“NPF4”) was published on 10 November 2021. Once finalised and adopted, NPF4 will be a strategic document which sets out how the Scottish Government’s approach to planning and development will help achieve a net zero, sustainable Scotland by 2045. NPF4 will guide decisions on future development across Scotland, including the preparation and delivery of local development plans.</p> <p>Work to develop NPF4 including Strategic Environmental Assessment began prior to the Continuity Act 2021, and therefore the statutory duty to have due regard to the guiding principles did not apply. The SEA for the draft NPF4 can be viewed as the first stage in the environmental assessment process, and individual decisions influenced by NPF4 may themselves be subject to environmental assessment appropriate for their scale and impact. Although the development of NPF4 was not subject to the principles duty, the Scottish Government believes that the NPF4 and the principles duties will be complementary, and will both support good policy making for the natural environment.</p>

		<p>For this statutory guidance, it is appropriate to describe the interrelation between the principles and national planning guidance. Some brief additional information on this subject has been included at section 5 as INFO BOX 1 in the final guidance. The Scottish Government believes that national planning guidance and the principles duties will be complementary, and will both support good policy making for the natural environment.</p>
4	<p>Further importance could be placed on the importance of the early consideration of the principles in decision-making processes.</p>	<p>Additional guidance on the need for early consideration of the principles has been included at section 5.2 and 5.3 of the final guidance.</p>
5	<p>Provision of additional information regarding the range of other duties and obligations to which public authorities are subject.</p>	<p>This is recognised as an important issue. However, to breakdown and consider all the other duties that may, or may not apply to decisions affected by the guiding principles, would go beyond the scope of this guidance, and would be impossible to achieve in a manner that was both comprehensive and usable. As the guiding principles apply to all policy areas, duty holders and the officials and others who advise them are best placed to judge what other duties are relevant to a decision and how they should be balanced against the guiding principles.</p>
6	<p>Paragraph 2.9: It was felt the emphasis of this paragraph focuses too heavily on how the guidance will not apply, rather than how it can be applied.</p>	<p>Additional text has been included at section 2.9 of the final guidance on the support the guidance offers to good decision making for the environment.</p>
7	<p>Paras 2.8 and 2.9: wording does not clearly distinguish between the principles themselves and the guidance. The Act imposes the main duty to “have due regard” to the principles themselves and a further one to “have regard” to the statutory guidance. The difference and primacy of the principles should be more clearly indicated.</p>	<p>Additional clarity has been drafted in Para 2.9 of the final guidance</p>

8	Paragraph 5.16: Polluter pays principle – further information was suggested on how duty holders should undertake proactive consideration of ‘potential polluters’, as opposed to a reactive application of this principle once damage has occurred.	Additional text has been included at section 5.17 of the final guidance on identifying potential polluters.
9	Further clarity is required when an individual decision/action (where the duty would not routinely apply) would likely cross that threshold and impact on policy	Further detail on the threshold between regulatory decisions and policy making has been provided in para 4.6 with an indicative example.
10	Paragraph 5.3: The wording regarding “balanced and proportionate” could be reframed to include detail regarding how the application of the duties can support the achievement of balanced and proportionate consideration of the five guiding principles.	We have sought to clarify the text at paragraph 5.3. The new illustrative example on Local Development Plans provides an illustration of a balanced consideration of the five principles.
11	Paragraph 6.9: Further examples are required regarding how consideration of the duty can be recorded in circumstances where an Environmental Report is not required including public publication of decisions.	Additional guidance on recording consideration of the duties in this instance has been included at section 6.9 of the final guidance.
12	Use of standardising a procedure where decision making not caught by sections 1 of SEA 2005 Act	There were a mix of views expressed on this issue in consultation responses, with respondents highlighting pros and cons of having a fixed proforma/standardised procedure to capture compliance of the duties where section 1 of the SEA Act may not apply. Standardising or providing a proforma will provide a rigid process could risk a purely routine consideration of the principles, rather than a consideration appropriate for the particular decision at hand. On balance, the Scottish Government has not included a proforma/standardised procedure, and will ensure awareness of the new duty across Directorates, so that a proportionate approach is taken to the duty in individual decisions.
13	Case Studies: Case studies are not in real time and projects were not carried	In the final draft of the guidance, we have moved from the term case studies to illustrative examples.

	out under the duty – respondents believed this could cause confusion.	
14	Additional examples are required to; demonstrate the application of all five principles within a single policy / piece of legislation; cover less obvious environmental policy such Local Development Planning.	A new illustrative example of the consideration of the guiding principles for Local Development Plans has been included at section 5 of the final guidance.
15	Application of duties to UK Ministers: The UK Environment Act 2021 was enacted after the draft guidance was published.	Paragraph 4.4 gives information on the how the duty on Ministers of the Crown is modified by the UK Environment Act 2021. This is highlighted in footnotes where the duty on Ministers is introduced.
16	Application of duties to UK Ministers: Further detail regarding circumstances where the duties will or will not apply to UK Ministers would be helpful.	Paragraph 4.4 gives information on the how the duty on Ministers of the Crown is modified by the UK Environment Act 2021. This is highlighted in footnotes where the duty on Ministers is introduced.
17	Section 16 of the Continuity Act: More emphasis on the environmental purpose throughout document should be made to keep this at the forefront of duty holders considerations.	Additional focus on the environmental purpose of the duties has been added to the text, including at paragraphs 1.2, and 5.2.
18	For greater clarity, the title of the final document should refer not just to “Guiding Principles” without context but include some reference to the environmental purpose.	Final title has been amended to “Scotland’s Guiding Principles on the Environment: Statutory Guidance”.
20	Further detail on the weighting given to the application of the duties, including longer term benefits (net zero) vs short term environmental damage.	A wide range of policy decisions will be covered by the duties, and it is therefore difficult to give guidance on the balance of short and long term effects, which will vary from decision to decision and will be systematically different for different policy areas. The principles themselves, in particular the preventative principle and the precautionary principle, are concerned with effects over time, and the explanation of the principles is the focus of the guidance.
21	Keeping the guidance as a “live document” with up-to-date examples added of how the principles are being used in practice as they occur would, improve the guidance over time and keep it more on the radar of public authorities.	By its nature as a statutory document it is not possible to make it live as described. The Scottish Government will promote awareness of the principles and the guidance amongst duty holders and those who advise them, and will consider how to

		promote and share best practice in the application of the principles.
22	In Figure 5 (p14), examples of policy decisions where the precautionary principle might be significant, we suggest removal of the “water recycling” example as it confuses what is meant by water recycling and the regulation of effluent discharges.	This has been removed as an example.
23	In Figure 6 (p15), examples of policy decisions where the preventative principle might be significant, we suggest removal of the “radioactive substances” example as it is inaccurate to say that the behaviour of people living around nuclear sites is surveyed. It is however a legislative requirement for SEPA to make arrangements for the estimation of doses to members of the public from radioactive substances activities, and any specific decision not to authorise a radioactive substances activity based on the dose estimate would be an individual regulatory decision that is not subject to the duty on public authorities under Section 15(1) of the Continuity Act.	This example has been removed
24	As the case studies (Figure 6 Stornoway Deep Water port; Figure 10 SEA of Sectoral Marine Plan for Offshore Wind Energy) were developed prior to the new duties, they cause confusion as to the appropriateness of inclusion here and whether the principles could be applied retrospectively. They could instead be used in training material when rolling out the new duties to government departments and public authorities?	We have changed the term case studies to illustrative examples.
25 a)	In Figure 8 (p17), examples of policy decisions where the rectification at source principle might be significant, rather than refer to Sustainable Urban Drainage Schemes, reference could be made instead to the consideration of surface water management and blue-green infrastructure more generally in line with Scottish Government policy framework on water-resilient places and	New example as suggested has been added to the text.

	the need to apply this to not just new developments, but as a core consideration for all urban design.	
b)	Also under Figure 8, the emissions control example does not read well and could instead say that emissions control from industrial sites can reduce harm to the environment	The text has been amended in line with this suggestion.
26	The guidance should provide commitment (given in several for a) that the exclusion of finance and budget matters under section 14(3)(b) of the Continuity Act will be restrictively applied and should not be used as a means to avoid consideration of the principles whenever there are financial implications	Further information is included in section 4.5 of the guidance which provides clarity on exemptions.
27	A stronger duty with a stronger emphasis on the guiding principles was raised alongside consideration of alternative definitions for the principles themselves.	It is recognised that these are important issues, and was openly discussed during the Parliamentary consideration of the Continuity Act. These issues were settled in the legislation, and this position has to be reflected in the guidance.

ANNEX A

Summary of consultation workshops

Three consultation workshops were held online in mid-January 2022. The purpose of the workshops was to;

- Provide an overview of the relevant provisions of the Continuity Act;
- Provide an overview of the purpose and contents of the draft statutory guidance;
- Answer any questions participants may have had regarding the draft statutory guidance and the new duties;
- Ensure the final version of the guidance is clear, comprehensive and useful; and
- Raise awareness of the forthcoming introduction of the duties.

A presentation from Scottish Government officials was given, followed by an open question and answer session. A summary of the main issues and topics raised at each event follows below. Informal feedback provided at these events has also been used to shape the final version of the guidance.

The workshop sessions were primarily organised into three sectors; public bodies, environmental NGOs and regulated sectors, however, stakeholders were free to attend whichever session(s) best suited their availability. Due to the COVID-19 regulations and guidance in place at the time it was not possible to host face-to-face workshops.

4.1 Workshop One - Tuesday 18 January 2022

Twenty-eight (28) attendees joined the workshop, comprised of representatives from local authorities, public bodies, Scottish Government, civic society organisations and UK Government.

Table 2 Attendees breakdown - 18 January 2022

Sector	Number
Local authorities	13
Public bodies	6
Civic society organisations	2
Scottish Government	2
UK Government	3
Other	2
Total	28

Questions raised by attendees covered the following topics/areas;

- Will the duty also apply to the environmental impact assessment regime, as well as the Strategic Environmental Assessment regime?
- Will further advice be provided to the consultation authorities regarding the new duty and the information they will receive? What will the role of the consultation authorities be in relation to this new duty?

- When will the Scottish Government’s updated Strategic Environmental Assessment (“SEA”) guidance be released? Will any further changes be made to the SEA guidance?
- How will consideration of the duties be included in the forthcoming fourth National Planning Framework (“NPF4”)?
- Will the duties apply retrospectively? How will the duties apply to areas where the principles have not been considered, but where application of the principles would have resulted in different policy/legislative decisions?
- Will the introduction of the duties introduce a new stream (or open door) for challenge to decision making?
- Questions regarding the establishment of Environmental Standards Scotland, its remit and its role in the enforcement of the new duties.

4.2 Workshop Two - Wednesday 19 January 2022

Nine (9) attendees joined the workshop, comprised of representatives from environment NGOs, local authorities and other sectors.

Table 3 Attendees breakdown - 19 January 2022

Sector	Number
Environmental NGOs	7
Local authorities	1
Other	1
Total	9

Questions raised and comments provided by attendees covered the following topics/areas;

- Is the duty being implemented within Scottish Government before the provisions are commenced and brought into force? If so, how is this operating in practice? What dialogue is happening internally regarding these new provisions?
- Discussion as to how the principles can be reflected within existing plans/programmes, which will be finalised before the duties are brought into force.
- How have the principles shaped the development of the NPF4 and how has this been reflected within the documentation?
- Further emphasis could be placed on the importance of early consideration of the application of the principles early within the decision-making process (in all circumstances where the duty applies).
- How will consideration of the duties be recorded by Scottish Ministers where the 2005 Act applies? How can this information be accessed, to ensure transparency, in circumstances where a consultation report or other public document is not produced and published?
- Will consideration of the guiding principles shape the development of the new Human Rights (Scotland) Bill?
- Could an additional case study be provided which demonstrates the application of all five principles within a single policy/legislation?

- Could an additional case study be provided which demonstrates how the duty could apply to individual regulatory decisions?
- Could a single page short summary be provided within the guidance which sets out all five principles, the legal definition and the interpretation?
- Further detail regarding reserved matters, where the UK Policy Statement will apply, would be useful.
- Comments were provided on the specific wording of paragraph 2.9 and 5.3 and how these paragraphs could usefully be reframed to support duty holders.

4.3 Workshop Three - Thursday 20 January 2022

Twenty-six (26) attendees joined the workshop, comprised of representatives from regulated sectors, eNGOs, academia and public bodies.

Table 4 Attendees breakdown - 20 January 2022

Sector	Number
Regulated sectors (inc. membership organisations)	19
Academia	4
Environmental NGOs	2
Public bodies	1
Total	26

Questions raised and comments provided by attendees covered the following topics/areas;

- Could an additional case study be provided which covers a policy area less directly connected to environmental concerns?
- Could additional information be provided regarding the other duties which public authorities are subject to and will need to consider alongside the guiding principles?
- The interpretation provided of the 'polluter pays principle' focusses more on a reactive application of the principle, as opposed to encouraging duty holders to focus on 'potential polluters' (i.e. via decommissioning bonds or similar). Could the interpretation provide further information regarding these considerations?
- The guidance could provide stronger encouragement for duty holders to consider the guiding principles from the start of the policy development process.
- Will the guiding principles shape the process of developing the new agricultural subsidies regime?
- The strength of the duty and how that is expressed and whether there is any scope for a stronger duty to comply to be introduced.
- The scope of the financial and budgetary exclusions on the duty for Ministers and whether this would apply to matters such as subsidies or fiscal incentive policies.
- Whether the guidance could provide further information regarding how consideration of the principles could be recorded in circumstances where an

Environmental Report is not required and how this information could be made publicly available. Examples of possible recording mechanisms may be helpful.

- Whether the current wording around balancing the duty with other considerations/obligations could be reframed to more positively encourage compliance, as opposed to highlighting the limits of the scope of the duty.



© Crown copyright 2023



This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit nationalarchives.gov.uk/doc/open-government-licence/version/3 or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: psi@nationalarchives.gsi.gov.uk.

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

This publication is available at www.gov.scot

Any enquiries regarding this publication should be sent to us at

The Scottish Government
St Andrew's House
Edinburgh
EH1 3DG

ISBN: 978-1-83521-043-7 (web only)

Published by The Scottish Government, August 2023

Produced for The Scottish Government by APS Group Scotland, 21 Tennant Street, Edinburgh EH6 5NA
PPDAS1316963 (08/23)

w w w . g o v . s c o t