

## **Board Paper**

### **Date**

12 October 2023

### **Title**

Environmental Principles Policy Statement Evaluation in England

### **Report Author**

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### **Paper for information**

### **Part open paper**

## **Issue**

1. This paper provides an update for information on the commencement of the duty on ministers to have due regard to the Environmental Principles Policy Statement (EPPS) in England and our plans for its evaluation.

## **Recommendation**

2. The Board is recommended to note and provide any comment on:
  - a) the commencement on 1 November 2023 of the duty to have due regard to the EPPS
  - b) our intended approach to monitoring implementation of the duty
  - c) our proposed communications activities regarding these matters.

## Background

3. The Environment Act 2021 requires Ministers of the Crown<sup>1</sup> to have “due regard” to the EPPS in making policy. The environmental principles that it covers are: the integration principle (that environmental protection be integrated into the making of policies); the prevention principle; the precautionary principle; the rectification of environmental damage at source principle; and the polluter pays principle.
4. As the EPPS explains “how the environmental principles should be interpreted and proportionately applied” by ministers when making policy (as required under the Environment Act 2021), if applied effectively it should become an important element of environmental governance in England. Indeed, it is intended to be one of the four main cornerstones of environmental governance in the Environment Act 2021, alongside the environmental targets, the Environmental Improvement Plan (EIP) and the OEP. The OEP has a strong interest in the EPPS having delivered advice on both the English and Northern Irish draft statements and identified environmental governance as a priority area in our corporate plan.
5. The OEP (in interim form) provided advice on the draft environmental principles policy statement<sup>2</sup> in July 2021 following a request from Environment Minister Rebecca Pow, when Defra originally consulted on it. We also wrote to Parliament<sup>3</sup> in June 2022 in relation to Defra’s revised draft statement put before Parliament for scrutiny.
6. Defra laid the final statement before Parliament in January 2023. This was followed by a nine-month implementation period, with the duty on ministers to have due regard to the EPPS commencing on 1 November 2023. It will apply to policy decisions from that date, including for policies which were already under development but not yet finalised.
7. The duty to have due regard to the EPPS does not apply to policy decisions made before 1 November. However, some departments have indicated that they have already started considering it as a matter of practice, ahead of the duty commencing. The development of government policy is also already subject to the same environmental principles under the provisions of various international agreements and other instruments (for example, the Rio Declaration on Environment and Development 1992), albeit without the accompanying express obligations, information or implementation mechanisms provided by the Environment Act 2021 and the EPPS.
8. The next step in our work programme regarding environmental principles is to scrutinise and report on the implementation of the EPPS in England under our functions in section 29 of the Environment Act 2021. We currently plan on laying our report after the 2024 summer recess.

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<sup>2</sup> <https://www.theoep.org.uk/news/advice-draft-environmental-principles-policy-statement>

<sup>3</sup> <https://www.theoep.org.uk/report/letter-lords-environment-and-climate-change-committee-draft-epps>

9. Defra have committed to reviewing the policy within two years of the duty coming into force.<sup>4</sup> Defra and Other Government Departments (OGD) discuss and promote the implementation of the EPPS through a cross-departmental working group. We have attended a meeting of this group and requested we attend again to discuss the evaluation methodology. There is also a Deputy Directors Ambassadors working group which supervises of EPPS implementation among other functions.

## Analysis

10. Our evaluation will address fundamental questions about the efficacy of the processes Government puts in place for consideration of the EPPS. As part of this we will look at Defra's EPPS "toolkit" (a suite of general guidance documents, examples and templates prepared to support implementation of the EPPS) as well as the specific mechanisms applied in a range of government departments. It will also address questions about impacts the EPPS has had on selected, individual policy decisions, to the extent that this is possible in the timeframe of the project and using the information that we can access on the development of those policies.
11. This scrutiny in the first few months after the duty to have due regard to the EPPS commences is aimed at providing the OEP with valuable insights into its initial period of implementation across Government, assessing its consistency and compliance with the law, and evaluating its impact on measures related to environmental protection and enhancement within policymaking. Through this scrutiny and reporting, we will seek to highlight any issues that need to be addressed at an early stage, to increase the likelihood of the EPPS achieving its full potential in the longer term. In developing our report, we will also consider how the EPPS's implementation links to other OEP priorities such as delivery of the EIP for England.
12. As part of this, the evaluation will look at whether risks previously highlighted by the OEP during the EPPS's development have been realised. In previously commenting upon the draft EPPS as it was being developed, we noted risks in areas such as its stated ambition levels, integration of environmental considerations (including natural capital) into other policy domains, proportionality, and the application of the precautionary principle. We recognise that full assessment in these areas may be challenging within the timeframe, as the true extent of the EPPS's impacts will likely evolve over a longer period. By the same token, however, this reiterates the desirability of conducting this evaluation in the initial period to maximise the scope for early course correction.

## Evaluation method

13. Our evaluation methodology is still being finalised but is approaching completion. During its development, we have engaged with Defra and with several other departments (including HM Treasury and the Departments for Education, Transport, Energy Security and Net Zero, Levelling Up, and Work and Pensions). This engagement, along with other practical

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<sup>4</sup> Explanatory memorandum to the environmental principles policy statement, s. 14.

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considerations, will inform our later decisions about which departments and policies to include as case studies within the evaluation. We have also sought comments on the evaluation method from our EPPS Advisory Group and environmental NGOs.

14. To guide the evaluation, our retained consultants, RPA, have produced a theory of change for how the EPPS is intended to work (summarised in Annex A). This was developed taking account of feedback we have received from Defra and other departments, as well as other stakeholders. The theory of change serves as a framework against which to test the reality of implementation. It spells out the intended steps Government will take and the outcomes they are expected to have, as well as the way external factors may affect the success or otherwise of the EPPS's implementation.
15. The evaluation questions fall into two types: process and impact. The process evaluation focuses on overall mechanisms for the EPPS's implementation, associated systems and processes, and their effectiveness. The impact evaluation seeks to identify the consequences of considering the EPPS in policymaking and its attributable impacts. The latter inevitably will need to be selective and illustrative at this early stage of the EPPS's practical application.
16. The main evidence that will be used to answer the evaluation questions will include document sources (e.g. the Defra EPPS toolkit, the new Civil Service Learning module on the EPPS<sup>5</sup> and individual departments' guidance documents, policy development templates, extracts from Ministerial submissions where available) and qualitative research (e.g. interviews with policy officials, notes from meetings).

### Requesting information

17. We have identified Defra, DLUHC, DESNZ, DfT, DfE, DWP and HMRC as departments to engage with regarding how they are preparing to implement the duty to have due regard to the EPPS. From this engagement, we will identify case studies to support our s.29 MEL report. We have been engaging with Defra on the EPPS since its earliest drafting stages, and commenced formal engagement with OGDs in early 2023. Due to the more advanced position of our relationship with Defra on the EPPS, we have submitted an information request. We have not yet submitted information requests to the other departments but have provided them with a high-level list of materials we would be interested in accessing as part of our evaluation.

*This section has been redacted as its publication would be prejudicial to the effective conduct of public affairs*

18. We are also aware that as part of the evaluation we may come across instances in which we need clarification as to whether and how due regard has been had to the EPPS in relation to newly finalised policies. This will allow us to flag good and bad practice in EPPS

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<sup>5</sup> <https://learn.civilservice.gov.uk/courses/iYX65XBpRg-zMbZIQeKCxg>

implementation in our final report. It might also lead us to identify possible issues of non-compliance.

## Northern Ireland

19. The production of the EPPS for Northern Ireland is running to a longer timetable due to the political situation there. We have provided advice to DAERA on a draft EPPS, on which it intends to consult in due course.
20. We anticipate that we will wish to undertake an evaluation for the implementation of the EPPS in Northern Ireland similar to that currently planned for England. However, we do not know when the duty to have due regard to the EPPS will commence in Northern Ireland. Most probably this will not be before mid-2025. We therefore said, in our recent advice to DAERA, that we will develop our plans for similar evaluation in Northern Ireland, taking account of resourcing issues and other priorities, as their statement is finalised and comes into effect. In the meantime, we will keep DAERA informed on our work in England, offering them the opportunity to comment as an “observer” at appropriate points, with a view to maximising the scope for any future evaluation in Northern Ireland to build on that currently planned in England.

## Finance and Resource

21. The main costs associated with this project until now relate to the hiring of the consultancy RPA, and the allocation of OEP resource to manage and steer the consultant’s work and engage with Defra and other departments. These costs have been agreed and factored into the budget. There may be scope for an extension of the project and associated increase in project costs if there are issues with obtaining the necessary detail of information from departments as we compile research for our report.
22. The costs of editing, proofreading, and publishing our section 29 report in 2024/25 have not yet been determined but should be similar to those in previous projects.

## Impact Assessments

### Risk Assessment

23. The overarching risk is of a delay to our section 29 report due to two main factors: firstly, possible lack of policy activity or decisions during the relatively short evaluation period; and secondly, potential lack of cooperation and transparency from departments. The latter is probably the greater risk.

#### *Lack of policy activity*

24. There could be a lack of (or relatively limited) policy activity and decisions to enable us to gather sufficient evidence to address our evaluation questions on the practical application of the EPPS over the period of the evaluation. There could also be other factors which interrupt policy activity altogether, such as a general election. To remedy this, we are building flexibility into our evaluation methodology, and outlining appropriate actions depending on

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what information we are able to gather. For the greater part, our approach prioritises assessing government-wide processes and mechanisms for application of the EPPS rather than focusing extensively on individual policy areas. Such examination in relation to individual policies, though important, is therefore intended to be selective and illustrative.

### *Potential superficiality of evaluation due to lack of cooperation and transparency from departments*

25. The other major risk underpinning a potential delay is departments not cooperating with us in a way that provides substantive information. We are heavily focusing on building good relationships across the target departments through introductory meetings and building our evaluation processes in consideration of their and others' feedback. We will continue to liaise with Defra contacts and counterparts in other departments to cultivate collaborative arrangements and seek to identify workable solutions.

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## **Equality Analysis**

26. No material equalities impacts have been identified.

## **Environmental Analysis**

27. The OEP's principal objective is to contribute to environmental protection and the improvement of the natural environment. Our future section 29 report will be intended to highlight any possibilities to strengthen and improve the implementation of the English EPPS in accordance with this objective.

## **Implementation Timescale**

28. We currently plan to lay a report before Parliament after summer recess 2024. There may be delays or changes to that timeline due to the upcoming election or, as explained above, the evolution of the engagement with Defra and other departments on the availability of information on the application of the EPPS in relation to specific policies. Our initial intention is to undertake a six-month analysis of policies and departmental procedures. As part of this, from January to March 2024 we will conduct interviews with stakeholders at various levels of seniority in departments to help shape our understanding of EPPS adoption.
29. We therefore aim to report our initial findings within a year of the duty's commencement, which we think will be welcomed by Parliament and other stakeholders given the statement's lengthy development and expectations during scrutiny of the draft EPPS around the OEP's role and interest.
30. However, we are keeping our timeline under active review, and will consider the possible impacts of an election and any other important political changes on the conduct of the evaluation and the completion of our report as we undertake project planning and delivery. We will also consider what action we might take, separate from or additional to our intended section 29 report, if we are not satisfied that the duty to have due regard to the EPPS has been followed for policies adopted after 1 November.

## Communications

31. The entry into force of the duty on ministers to have regard to the EPPS represents a significant, long-awaited and welcome milestone. We have coordinated with the Comms team to prepare the plan for the 1 November 2023 commencement date.
32. We will publish a press release and a quote from Dame Glenys on our website, recognising the EPPS as a cornerstone of environmental governance stemming from the Environment Act 2021, welcoming its entry into force and noting our intended evaluation activity. We are working proactively with Defra to understand what the scope and tone of their communications will be and are following up on this in upcoming meetings with Defra.
33. The communications related to our wider project and deliverables are in early scoping stages. We will develop a communications plan closer to publication when we have begun more definitively scoping the approach of the section 29 report.

## External Stakeholders

34. We have three main sources of engagement with external stakeholders beyond representatives of government departments: general engagement with environmental NGOs and the Aldersgate Group; the EPPS advisory group; and discussions with the Regulatory Policy Committee (RPC).
35. We recently met with a selection of environmental NGOs and the Aldersgate Group who provided their thoughts on our recent work, and whom we invited to comment on the evaluation methodology. The meeting was constructive and we received positive feedback on our progress and on the NI EPPS draft advice we published. We have also confirmed with the Defra team that they meet essentially the same group of external stakeholders to discuss EPPS matters on a regular basis.
36. To support our work on environmental principles more broadly, we have established an advisory group, with whom we interact on specific matters alongside our Board member critical friend, Julie Hill. The advisory group allows experts in their field to share experience and insights in a welcoming, supportive and productive environment. It comprises the following members:
  - Dr Tom Ashton (independent consultant on programme design and evaluation)
  - Professor Elizabeth Fisher (Corpus Christi College, University of Oxford)
  - Dr Viviane Gravey (Queen's University Belfast)
  - Jill Rutter (Institute for Government)
  - Professor Eloise Scotford (University College London)
37. The terms of reference agreed by the group provide for them to treat any material that we provide to them in confidence, much as is expected to occur with the College of Experts once this is in place. This is therefore different from any wider engagement with stakeholders interested in the environmental principles more generally.

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38. We have also met and will maintain dialogue with the RPC which is responsible for the Government’s “Better Regulation Framework” (BRF) document. Although Defra have previously mentioned plans to update the BRF (as well as the HM Treasury "Green Book") to reference the requirement to have due regard to the EPPS, this has not been done in the latest (mid-September 2023) BRF update. However, both the RPC and Cabinet Office have recognised this omission as a shortcoming and discussed it with Defra.

Paper to be published	Yes – in part
Paper to be published	Part-published only
Publication date (if relevant)	After 01 November 2023
If it is proposed not to publish the paper or to not publish in full please outline the reasons why with reference to the exemptions available under the Freedom of Information Act (FOIA) or Environmental Information Regulations (EIR). Please include references to specific paragraphs in your paper	The subject of the paper forms part of a wider approach to evaluation of the EPPS which will be published in full in due course through our Section 29(2) report. We are therefore not proposing to publish this entirety of this current because the information is intended for future publication (s.22 FOIA), <u>publication would harm the effective conduct of public affairs, including the Board's ability to receive candid advice and engage in free and frank discussion (s.36) publication would contravene data protection requirements (s.40)</u>

## ANNEXES LIST

### Annex A – Summary of draft Theory of Change and evaluation framework

*This section has been redacted as its publication would be prejudicial to the effective conduct of public affairs*