

# A review of implementation of the duty to have due regard to the Environmental Principles Policy Statement in England





Office for  
Environmental  
Protection

# A REVIEW OF IMPLEMENTATION OF THE DUTY TO HAVE DUE REGARD TO THE ENVIRONMENTAL PRINCIPLES POLICY STATEMENT IN ENGLAND

Laid before Parliament pursuant to section 29(5)  
of the Environment Act 2021

27 February 2025

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Any enquiries regarding this publication should be sent to us at:  
The Office for Environmental Protection  
Wildwood  
Wildwood Drive  
Worcester WR5 2QT

[www.theoep.org.uk](http://www.theoep.org.uk)

03300 416 581  
[enquiries@theoep.org.uk](mailto:enquiries@theoep.org.uk)

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# Contents

Foreword.....	3
Executive Summary and Recommendations .....	5
Chapter 1. Introduction .....	11
Chapter 2. The EPPS and Duty to Have Due Regard .....	15
Chapter 3. Methodology.....	21
Chapter 4. Findings and Recommendations.....	25
Chapter 5. Conclusions.....	39
Annex A. Glossary .....	42
Annex B. Advisory Group members.....	43
Annex C. Information provided by government .....	44



# Foreword



# Foreword

Government is committed to a bold vision for significantly improving the natural environment over the medium term. It has several legally binding targets for doing so, the most proximate – for water, climate, nature and air – falling due in 2027 or 2030, just a few years away. It is important that achieving such targets happens in a joined-up way. The Prime Minister has spoken of the essential nature of government’s mission to tackle the climate crisis, and that this is done in a way that makes people better off. This sits alongside the other missions and milestones that reflect government’s priorities, including that for growth.<sup>1</sup> Making policy coherent so that it rises to both environmental challenges and growth needs is not easy. But it is the essence of sustainable development.

Environmental principles are an important tool to support government in this endeavour. The government’s Environmental Principles Policy Statement sets out how the five environmental principles (integration, prevention, rectification at source, polluter pays and precautionary principle) should be interpreted and proportionately applied when making policy.

This policy statement has been in place for just over a year. However, given the pressing nature of environmental trends and challenges, it is so important not to miss early opportunities to embed this policy statement in government thought and action. It is with this in mind that I am pleased to present the Office for Environmental Protection’s report on the implementation of the Environmental Principles Policy Statement in England.

We have found positive early signs of the policy statement taking effect, with measures in place to help it continue doing so. However, more can and must be done to fully embed, across government, habits of thinking about and acting on environmental principles, so they may deliver as intended for the environment.

We identify opportunities for strengthening the policy statement by better reflecting the significance of government’s environmental targets and its plans and strategies for realising them, not least the Environmental Improvement Plan. We also identify where strong leadership is needed, and where transparency will help in sharing learning and ensuring public accountability. In several places government can more effectively reflect the policy statement in its existing policymaking guidance. This includes by meeting commitments it made some time ago but has not yet acted upon.

In our view the benefits of improved policy coherence, strengthened cross-government endeavour, and improved transparency are all achievable. They would help maximise the policy statement’s contribution towards meeting government’s ambitions for environmental protection and improvement, which is so needed.



A handwritten signature in black ink, appearing to be 'G Stacey'.

Dame Glenys Stacey  
Chair, Office for Environmental Protection

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<sup>1</sup> Prime Minister’s Office, ‘Plan for Change: Milestones for Mission-Led Government’ <[www.gov.uk/government/publications/plan-for-change](https://www.gov.uk/government/publications/plan-for-change)> accessed 20 December 2024.





# Executive Summary and Recommendations

# Executive Summary and Recommendations

## What is the duty to have due regard to the Environmental Principles Policy Statement?

In January 2023 the Department for Environment, Food and Rural Affairs (Defra) published an Environmental Principles Policy Statement (EPPS) outlining five internationally recognised environmental principles (described more fully at section 2.4):

1. Integration
2. Prevention
3. Rectification at source
4. Polluter pays, and
5. Precautionary principle

With limited exceptions, ministers, and officials on their behalf, must have due regard to that EPPS when making policy (the EPPS duty). This EPPS duty is set out in section 19 of the Environment Act 2021 (the Environment Act) and came into effect on 1 November 2023.

## What is the intended purpose of the EPPS duty?

The EPPS duty is one of several considerations that ministers and policymakers should take into account to ensure policy coherence. However, few of these considerations carry the same legal weight as the EPPS duty. This legal weight reflects the significant role that policymaking across government should play in meeting environmental commitments and ambitions.

Considering environmental principles is intended to support better policymaking across government, making it more coherent and environmentally conscious. This use of environmental principles has long applied in the UK. Under EU Treaties, the five environmental principles referred to above guide EU-level policymaking and have therefore influenced EU-derived UK law, now termed ‘assimilated law’. The UK has also committed to applying environmental principles through its ratification of other international agreements. For example, the UK is a party to The Montreal Protocol on Substances that Deplete the Ozone Layer, under which the parties determined to protect the ozone layer by taking precautionary measures to control equitably total global emissions of substances that deplete it.<sup>2</sup>

The EPPS builds on this and is intended to contribute to sustainable development and the improvement of environmental protection. The integration principle, covered by the EPPS, promotes the integration of environmental considerations into non-environmental policies and instruments. These considerations are encapsulated in binding targets, including those set under the Environment Act, which would collectively achieve a significant environmental improvement if met,<sup>3</sup> and in the Government’s Environmental Improvement Plan (EIP) for the steps intended to deliver that improvement.

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2 Montreal Protocol on Substances that Deplete the Ozone Layer 1989 (1522 UNTS 3).

3 Defra, ‘Report on the First Review of Environmental Targets (the Significant Improvement Test)’ (2023) <[https://assets.publishing.service.gov.uk/media/63d8dc338fa8f518877e76bc/Review\\_of\\_environmental\\_targets\\_Outcome\\_of\\_the\\_Significant\\_Improvement\\_Test.pdf](https://assets.publishing.service.gov.uk/media/63d8dc338fa8f518877e76bc/Review_of_environmental_targets_Outcome_of_the_Significant_Improvement_Test.pdf)> accessed 12 November 2024.

Through consideration of the EPPS, policymaking should therefore support delivery of these targets and EIP steps in a coherent, cross-government way. This can only be effective if such consideration is evidence based, informs meaningful assessment, and that assessment occurs throughout the policy development process to inform decisions.

## **What have we assessed, and what have we found?**

From Summer 2023, we independently assessed a selection of government departments' preparations for and early implementation of the EPPS duty. We also assessed the impact of the EPPS duty on instances of policymaking within those departments, although this was limited by our ability to access relevant information.

This report sets out our findings from this evaluation. In general, we found several positive signs of early implementation. However, there are opportunities for improved policy coherence, using the EPPS to drive consideration of where policies can contribute to government meeting its environmental targets and delivering steps to do so set out in its EIP.

There has been good preparation and development of processes to support implementation of the EPPS duty. That said, some key elements for ensuring the EPPS duty is embedded across government policy making are missing, with reference to the duty still absent from core guidance, such as the His Majesty's Treasury (HMT) Green Book. We identify further opportunities for embedding the EPPS duty to the extent needed for environmental considerations to be effectively integrated into all relevant policymaking.

With limited information as to the extent to which the EPPS duty is affecting policy decisions, further and ongoing monitoring and evaluation will be needed. Transparency is important for ensuring this can be done rigorously and with the necessary accountability.

## **What do we recommend?**

We have the following recommendations for how government can build on this early implementation to improve processes and maximise opportunities for ensuring the EPPS duty contributes towards coherent policymaking, supporting delivery of government's environmental and climate change commitments:

### **Recommendation 1 – update the EPPS**

Defra should amend the EPPS so that it clearly and tangibly directs policymakers to consider how their policy can support government in meeting its environmental targets and delivering its plans and strategies for doing so.

The targets referred to should include those government relies on to collectively deliver a significant environmental improvement as set out in Defra's January 2023 report to Parliament under section 7 of the Environment Act. Reference to plans and strategies should include reference to the EIP, Net Zero Strategy and Carbon Budget Delivery Plan.

These amendments could be made, for example, by incorporating consideration of targets and their associated plans and strategies into the section of the EPPS dealing with the integration principle.

## **Recommendation 2 – update the EPPS explanatory memorandum**

Defra should swiftly update the EPPS explanatory memorandum to refer to considering how policy making can support delivery of the targets, plans and strategies covered by recommendation 1.

## **Recommendation 3 – update EPPS duty guidance**

Defra and other government departments should update their guidance and templates developed to support implementation of the EPPS duty to:

- create a clear and strong link between the EPPS and relevant environmental targets and their delivery plans and strategies (see recommendation 1)
- clarify the relationship between EPPS assessment and other assessments (such as natural capital assessments)
- aid policymakers' understanding of what constitutes a 'policy' decision to which the EPPS duty applies
- provide additional guidance and examples from practice for determining proportionate application
- set expectations for the audit trail of how the EPPS has been considered throughout the policy development process, and
- set the expectation that EPPS assessments should be published to improve transparency and consistency (see recommendation 6).

Additionally, departments should review and update guidance and templates in response to other formal reviews of EPPS implementation.

## **Recommendation 4 – update the HMT Green Book**

Defra and HMT should uphold their commitments to include reference to the EPPS in updates to the Green Book and supplementary guidance. This should be done as soon as possible.

## **Recommendation 5 – update other cross government guidance**

Government should update policymaking guidance, templates and processes to include reference to the EPPS duty and to clarify the relationship between this and other requirements (such as for natural capital assessments and decarbonisation). The relevant government department in each case should update the following as a priority:

- Cabinet Office Write-round processes
- Cabinet Office Guide to Making Legislation
- Department for Business and Trade (DBT) Better Regulation Framework
- DBT Options Assessment guidance and templates
- DBT Post implementation review templates
- HMT Business Case guidance and templates

## **Recommendation 6 – publish EPPS assessments**

Government departments should publish their EPPS assessments, showing how they have implemented the EPPS duty in respect of their policymaking decisions, specifically in the cases of:

- Impact assessments
- Policy announcements
- Environmental assessments
- Evidence reports
- Consultations

Government should clarify in guidance the expectation in respect of publication (see recommendation 3). Government should also consider making public the findings from any internal evaluation/review as to the implementation of the EPPS duty.

## **Recommendation 7 – continue to embed the EPPS duty**

Defra should consider, on an ongoing basis as well as part of any formal evaluation:

- the extent to which guidance and training on EPPS duty implementation has been accessed, taken up and followed in practice across all government departments and professions (e.g. policy and legal professions), and
- the extent to which EPPS duty implementation is being led from the top (by Ministers, Cabinet Office, HMT, Mission Boards and senior civil servants).

This should include consideration of the knowledge, skills and preparedness of senior leaders involved in effectively embedding the EPPS duty across government.

## **Recommendation 8 – evaluate the impact of the EPPS duty**

Defra should consider in its evaluation of EPPS duty implementation, due by November 2025, the extent to which the EPPS duty has influenced specific policy decisions to be more coherent with delivering the government’s environmental commitments, particularly the targets, plans and strategies referred to in recommendation 1.

Defra should seek to gather, and publish, the evidence that exists to enable such consideration.

Defra should assess how the EPPS has been taken into account from the start of, and throughout, policy development. For this to be done effectively it will require improved transparency (see recommendations 3 and 6).





# Chapter 1. Introduction

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## 1.1 Focus of this report

When Defra published the EPPS in January 2023, the intention was that it would put environmental considerations at the heart of policymaking across government.<sup>4</sup> It was envisaged that considering the five principles covered in the EPPS would support delivery of government's environmental and climate commitments.<sup>5</sup> These are encapsulated in binding targets, including net zero and targets set under the Environment Act, and in the government's EIP, Net Zero Strategy and Carbon Budget Delivery Plan.

More recently Defra has reaffirmed that 'the duty ensures that nature and environmental considerations are proactively factored into policy development across government, supporting delivery of government's environmental commitments, including the Environmental Improvement Plan and targets'.<sup>6</sup>

The EPPS duty sits alongside other legal duties, such as the Public Sector Equality Duty, and non-statutory guidance on issues such as rural proofing and climate change adaptation. Together, these duties and guidance seek to ensure coherent policymaking that reflects multiple priorities. Application of the duty also now sits in the context of government's priorities, reflected in its missions and milestones.<sup>7</sup> Acknowledging this complexity, the EPPS duty stresses the fundamental need to consider the environment early and throughout the policymaking process to ensure meaningful and impactful application of the principles.

On 1 November 2023 the duty came into effect, requiring ministers, and officials on their behalf, to have 'due regard' to the EPPS when making policy (subject to limited exceptions). This established one of the core elements of the new system of environmental governance introduced by the Environment Act to help secure a significant environmental improvement.

The explanatory memorandum that accompanies the EPPS states that when making policy, which includes when developing new or revising existing policy, Ministers must consider the policy statement with substance, rigour and an open mind.<sup>8</sup> Both the EPPS and explanatory memorandum are clear that this is not just a tick box exercise.

Whilst policymakers are advised to take a proportionate approach, they are encouraged to consider both potential negative and positive effects of the policy under development for the environment. These effects need to be considered alongside other priorities and outcomes (e.g., social and economic). The EPPS describes how early consideration might result in adjustments to policy design that could result in increased environmental protection. For this to be realised, EPPS assessment will be necessary throughout the policy development process.

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4 Defra, 'Environmental Principles Policy Statement' (31 January 2023) <[www.gov.uk/government/publications/environmental-principles-policy-statement](https://www.gov.uk/government/publications/environmental-principles-policy-statement)> accessed 25 October 2023.

5 Defra, 'Environmental Principles Policy Statement' (n 4).

6 Defra, 'Government Response to the Office for Environmental Protection's Report on Progress in Improving the Natural Environment in England from January 2024' (2025) <[www.gov.uk/government/publications/government-response-to-oepp-report-progress-in-improving-the-natural-environment-in-england/291dae3e-78eb-45f7-84c8-df32f5f426a7](https://www.gov.uk/government/publications/government-response-to-oepp-report-progress-in-improving-the-natural-environment-in-england/291dae3e-78eb-45f7-84c8-df32f5f426a7)>.

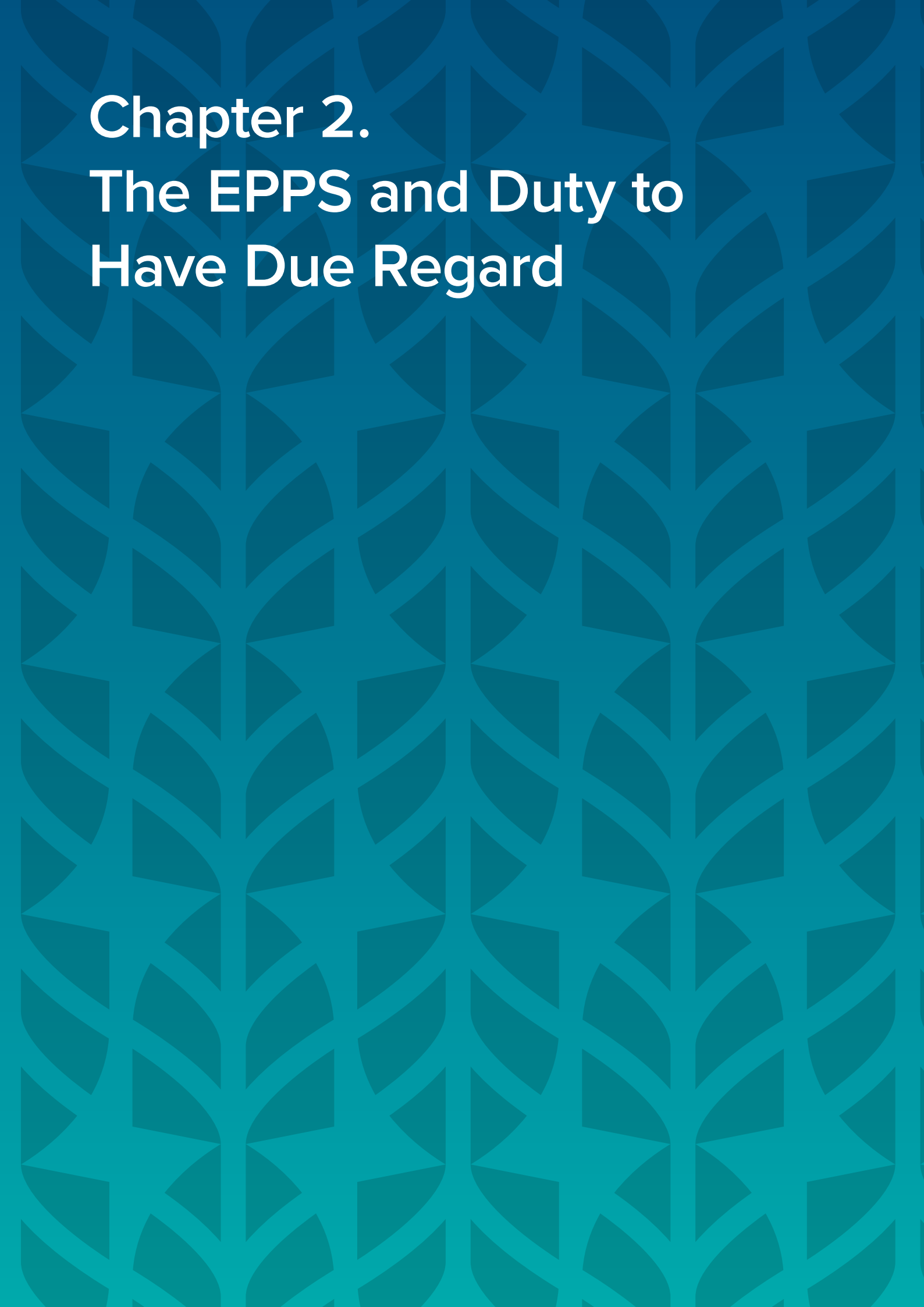
7 Prime Minister's Office (n 1).

8 Defra, 'Explanatory Memorandum to the Environmental Principles Policy Statement' (31 January 2023) <[www.gov.uk/government/publications/environmental-principles-policy-statement/explanatory-memorandum-to-the-environmental-principles-policy-statement](https://www.gov.uk/government/publications/environmental-principles-policy-statement/explanatory-memorandum-to-the-environmental-principles-policy-statement)> accessed 11 October 2024.



Our analysis, summarised in this report, provides early insight into how the EPPS duty is being implemented across a selection of government departments (listed in Annex C). To the extent possible at this stage and given limited information provided by some departments, we have also assessed the EPPS duty's substantive impact on policymaking within those departments.





# Chapter 2.

## The EPPS and Duty to Have Due Regard

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## 2.1 Legal context – The Environment Act

The EPPS and associated duty, together form one of the four cornerstones of environmental governance in England introduced by the Environment Act – the others being legally-binding environmental targets, the EIP and the OEP.

The Environment Act introduced both the requirement for the Defra Secretary of State to produce an EPPS, and a new duty on ministers to have due regard to it when making policy.<sup>4</sup> It applies to all policy (with some exceptions<sup>9</sup>), not just to environmental policy.

The EPPS explains how the five internationally recognised environmental principles should be interpreted and proportionately applied by ministers (and officials on their behalf) when making policy. It also explains how ministers (and officials), when interpreting and applying the environmental principles, should take into account other considerations relevant to their policy.<sup>10</sup>

Section 19 of the Environment Act provides that Ministers of the Crown must, when making policy, have due regard to the current EPPS. This duty also applies to officials working on policymaking on a minister's behalf.

The Environment Act provides that the EPPS duty does not require Ministers to take, or refrain from taking, any action that would have no significant environmental benefit, or if the environmental benefit would be disproportionate when compared to other factors. The EPPS duty also does not apply to devolved policymaking or to policy so far as relating to:

- (a) the armed forces, defence or national security, or
- (b) taxation, spending or the allocation of resources within government.

The Environment Act defines “policy” as including proposals for legislation but excluding administrative decisions taken in relation to a particular person or case (for example, a decision on an application for planning permission, funding or a licence, or a decision about regulatory enforcement). “Making” policy is defined as including “developing, adopting or revising policy”.

The EPPS duty is not a duty to apply the five environmental principles, but to have due regard to the EPPS, which explains how those principles should be interpreted and proportionately applied by Ministers of the Crown when making policy. The Government's intention was explained by Lord Goldsmith in the House of Lords:

“Clearly, the environment must transcend the work of Defra alone. That is why we are embedding internationally recognised environmental principles into domestic law. These principles include the integration, prevention, and precautionary principles, as well as the rectification at source principle and the polluter pays principle. Policymakers across government, from the Department for Work and Pensions to the Department for

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<sup>9</sup> Environment Act 2021 s.19.

<sup>10</sup> Defra, ‘Environmental Principles Policy Statement’ (n 4).

Transport, will be legally obliged through a statutory policy statement to consider these principles in all policy development where it affects the environment. This is a serious innovation in how the Government make policy.”<sup>11</sup>

## 2.2 Adoption of the EPPS

Government undertook a consultation on its draft EPPS from March to June 2021. We provided advice on the draft EPPS in July 2021.<sup>12</sup> Government published a summary of the consultation, including our advice, in May 2022. Much of our advice was incorporated in the revised draft EPPS laid before Parliament for scrutiny on 12 May 2022.

In June 2022, we wrote to the Chair of the Lords Environment and Climate Change Committee to set out our views on the revised draft EPPS.<sup>13</sup> In this letter we set out that five pieces of the advice we provided had been followed either in whole or in part. However, there were still areas where we felt issues remained, these are summarised below:

**Proportionality** – in respect of the proportionate consideration of the policy statement, the draft EPPS contained statements that we considered to be at odds with that included under s.19 of the Environment Act. We advised that this risked weakening the intent behind the principles. Amendments were made to the final version which addressed these points.

**Precautionary principle** – we advised that the approach to this principle included in the draft EPPS was overly narrow. We considered that the wording used did not reflect the typical understanding and application of this principle – with the revised draft EPPS implying that the principle is relevant only when environmental effects are likely to arise and be substantial. We also considered that linking innovation with the precautionary principle, in the way done in the revised draft EPPS, risked diluting its purpose or conflating the intention of the principle (dealing with uncertainty) with a different policy objective (promoting innovation). In this regard, our advice was not followed.

**Guidance** – we advised that the revised draft EPPS should go further in setting out how the EPPS will contribute to sustainable development and the improvement of environmental protection. Whilst there had been changes to language and tone, we considered that the level of ambition was limited.

Defra laid the amended, final, EPPS before Parliament in January 2023. At that time the Defra Secretary of State, Thérèse Coffey, confirmed she was satisfied, in line with the Environment Act, that the EPPS would contribute to the improvement of environmental protection and sustainable development.

The EPPS duty came into effect on 1 November 2023.

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11 Hansard, HL Deb 7 June 2021, vol 812, col 1198.

12 OEP, ‘Advice on the Draft Environmental Principles Policy Statement’ (2021) <[www.theoep.org.uk/index.php/report/advice-draft-environmental-principles-policy-statement](http://www.theoep.org.uk/index.php/report/advice-draft-environmental-principles-policy-statement)> accessed 26 March 2024.

13 OEP, ‘Letter to the Lords Environment and Climate Change Committee on the Draft EPPS’ (30 June 2022) <[www.theoep.org.uk/report/letter-lords-environment-and-climate-change-committee-draft-epps](http://www.theoep.org.uk/report/letter-lords-environment-and-climate-change-committee-draft-epps)> accessed 16 October 2024.

## 2.3 Overview of the EPPS

The EPPS describes the process expected to be followed by policymakers for taking environmental principles into account. It does not require a particular outcome but is intended to ‘ensure that nature and the environment are proactively designed into the policymaking process’.<sup>14</sup>

Policymakers are advised to consider and use the principles iteratively from the outset and during subsequent stages in policy development. They should identify the potential environmental effects (positive or negative) and use the principles to inform and influence the design of their policy.

## 2.4 The Five Environmental Principles

Environmental principles first emerged in international agreements, an early example of which is the Rio Declaration on Environment and Development (often known as the ‘Rio Declaration’),<sup>15</sup> which introduced integration and precautionary principles. The purpose of the principles was to embed norms that would support sustainable development and environmental protection.<sup>16</sup> Legal scholars identified some of the ‘Rio principles’ as important in environmental law: the principle of sustainable development, the integration principle, the prevention principle, the polluter pays principle, the precautionary principle and the principle of intergenerational equity.<sup>17</sup> Environmental principles apply in many international laws, including the EU Treaties. Through those Treaties they have influenced EU policy- and law-making. They continue to underpin the UK’s, EU-derived, ‘assimilated law’ and are relevant to the domestic implementation of many of the UK’s international obligations.

Interpretations of environmental principles can differ, but the EPPS gives five relevant principles a meaning for the purposes of section 19 of the Environment Act, as follows.

1. **Integration** – This is the principle that environmental protection should be integrated into the making of policies.
2. **Prevention** – This is the principle that government policy should aim to prevent environmental harm.
3. **Rectification at source** – This is the principle that environmental damage should, as a priority, be addressed at its origin to avoid the need to remedy its effects later.
4. **Polluter pays** – This is the principle that, where possible, the cost of pollution should be borne by those causing it, rather than the person who suffers the effects of the resulting environmental damage or the wider community.
5. **Precautionary principle** – This is the principle that where there are threats of serious or irreversible environmental damage, a lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.

14 Defra, ‘Environmental Principles Policy Statement’ (n 4).

15 Rio Declaration on Environment and Development (1992) A/CONF.151/26 (Vol. I).

16 Winfried Lang, ‘UN-Principles and International Environmental Law’ (1999) 3 Max Planck Yearbook of United Nations Law Online 157, 159.

17 Elizabeth Fisher, Bettina Lange and Eloise Scotford, *Environmental Law: Text, Cases, and Materials* (1st edn, Oxford University Press 2019) 405.

Each principle is summarised in the EPPS. Guidance is provided as to when and how they should be used and what policymakers need to understand. For example, that rectification at source requires policymakers to identify the potential or actual environmental damage and its source, then weigh up rectification at source against other options. There is also guidance on which principles to use and how to take a proportionate approach.

Four examples are provided of actions that could be taken to apply the principles:

- (a) amending policy options or including an additional option in initial policy design to reflect consideration of the environmental principles
- (b) reframing the policy as a result of applying the principles
- (c) embedding a principle in law or guidance, and
- (d) postponing a policy to enable further evidence to be obtained.

The EPPS is accompanied by an explanatory memorandum, which provides further information.<sup>18</sup>

## 2.5 Duty to have due regard to the EPPS (the EPPS duty)

Subject to limited exceptions, the Environment Act places a duty on ministers (and officials on their behalf) to have due regard to the EPPS when making policy (the EPPS duty). The explanatory memorandum and the EPPS describe the purpose of this duty as: ‘to ensure that environmental protection forms an integral part of policy development in all government departments’.<sup>19</sup>

The EPPS duty is one of several considerations for policymaking to ensure that it is coherent with other government objectives, and balances environmental, social and economic needs such as the public sector equality duty (PSED).<sup>20</sup> However, compared to some considerations it has added significance in that it is a legal duty and applies (with limited exceptions) across all government departments. This is reflective of the importance of policymaking in supporting government to achieve its environmental commitments.

The EPPS states that ‘[t]he duty to ‘have due regard’ is commonly used in legislation. This will ensure an effective and consistent application, which is not just a tick-box exercise.’ A well-known example, referred to by government in proposing the EPPS duty, is the PSED. This requires that public authorities have ‘due regard’ to certain factors relevant to equality in exercising their functions. It is intended to make them think about how they can improve society and promote equality in every aspect of their day-to-day business.<sup>21</sup>

Principles for implementing the PSED have emerged from caselaw. These include the need for decision makers to exercise the duty with substance, rigour and an open mind. They must exercise the duty before making a decision, not as a rear-guard action. The Government’s response to the Environmental Audit Committee’s pre-legislative scrutiny

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18 Defra, ‘Explanatory Memorandum to the Environmental Principles Policy Statement’ (n7).

19 *ibid.*

20 Equality Act 2010 s.149.

21 Equality and Human Rights Commission, ‘The Public Sector Equality Duty (PSED)’ (2022) <[www.equalityhumanrights.com/guidance/public-sector-equality-duty-pсед](http://www.equalityhumanrights.com/guidance/public-sector-equality-duty-pсед)> accessed 11 October 2024.

report on the Environment Bill<sup>22</sup> recognises that “due regard” is intended to be a stronger duty than “regard”, requiring “fuller consideration of the principles by Ministers of the Crown” and that the EPPS duty is “more than a process requirement or ‘tick box’ exercise” but a requirement for “policymakers to pay proper heed to environmental matters in the policymaking process.”


The strength of the EPPS duty may therefore be similar to the strong requirements of the PSED. However, the extent to which the PSED caselaw is applicable is uncertain as the EPPS duty has only been considered by the courts once so far. In *R (Rights: Community: Action Ltd) v Secretary of State for Levelling Up, Housing and Communities*,<sup>23</sup> the Claimant asked the court to judicially review a written ministerial statement on energy efficiency standards. One ground was that the Government had failed to meet the EPPS duty. The judge agreed with the Government that on the facts, the retrospective assessment met the requirements of being done in substance, with rigour and an open mind. The Court of Appeal has agreed to hear an appeal against that decision and has given us permission to put additional arguments at the hearing from our independent perspective.

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22 Defra, ‘Response to the Environmental Audit Committee Eighteenth Report of Session 2017–19, Scrutiny of the Draft Environment (Principles and Governance) Bill’ (HC 1951) (2019) <<https://publications.parliament.uk/pa/cm201919/cmselect/cmenvaud/238/23802.htm>> accessed 12 November 2024.

23 *R (Rights: Community: Action Ltd) v Secretary of State for Levelling Up, Housing and Communities* [2024] EWHC 1693 (Admin).





# Chapter 3. Methodology

# Chapter 3. Methodology

## 3.1 Our approach

This report is based on a number of strands of work we have undertaken involving independent consultants, government, environmental lawyers and environmental organisations. We carried out this work under our duty to monitor and our power to report on the implementation of environmental law (section 29 Environment Act), seeking to advise on the development of the EPPS and to monitor the commencement of the EPPS duty in November 2023 and its early implementation.

We commissioned independent consultants (Risk and Policy Analysts Ltd) to evaluate government's preparation for, and early implementation of, the EPPS duty, covering the period of July 2023 to October 2024. The pre-election period ahead of the General Election in July 2024 limited the number of policy decisions being made and there were significant delays in receiving information we requested from government.

Before, during and after the independent evaluation, we engaged with government to understand the practical context for EPPS duty implementation, to raise awareness of our monitoring role, and to facilitate information sharing. This has resulted in greater access to policy information, which we have subsequently analysed and combined with the evaluation to produce this report.

We convened an advisory group of environmental law and policy experts to test and scrutinise our work throughout the preparation for and production of this report (see Annex B).

Defra committed to undertaking a high-level review of implementation of the EPPS duty within two years of the duty coming into force. We have engaged with Defra to ensure our work has been timely and informative for the design of government's own review.

## 3.2 Evidence and analysis

We commissioned external consultants to develop and apply an evaluation framework. This posed questions about the processes involved in implementing the EPPS duty and the impacts it had on policy development and decisions.

The evaluation study developed a theory of change of what would be required for the EPPS duty to be successfully implemented. This drew on relevant policy literature and engagement with government to set out the steps of the implementation journey and the assumptions that would need to hold true along the way for the EPPS duty to be effective.

The EPPS duty applies to most government policymaking decisions save for limited exceptions, with all central government departments in scope. The evaluation was designed to capture evidence about how the EPPS duty was being implemented across a range of different government departments and policy decisions. This includes those with direct and indirect relevance for protecting and enhancing the environment. It is not representative of all public bodies to whom the duty applies but is broad enough to allow us to highlight a variety of experiences and best practice to produce broad recommendations that would support implementation of the duty.

We made information requests to government departments, asking to see documents relevant to their EPPS processes and implementation. Not all the requested information was provided or made available, either at all or in a timely way. Generally, we were afforded good access to information on how departments were preparing for, and supporting officials e.g., training, guidance and process details. However, we were not afforded the same level of access to information about how the EPPS duty had been implemented in specific instances of policymaking.

We analysed a range of internal government documents relating to the EPPS processes and implementation. This included, for example, training materials and communications preparing for the commencement of the EPPS duty as well as guidance and blank templates that form part of the policymaking process. It also included summary narratives from policy teams and populated policymaking templates and Ministerial submissions describing how regard had been had to the EPPS in policy design. Although we asked for all relevant information about EPPS implementation, it may be the case that what was provided – and therefore included in our analysis – was not exhaustive. A list of the 18 policy decisions to which the EPPS had been applied, and that information was provided to us, is shown in Annex C.

We also drew on publicly available information about the EPPS and its implementation, which is cited throughout the report. To gather this information, we searched [legislation.gov.uk](https://legislation.gov.uk) for all published impact assessments between 01 November 2023 and 14 March 2024. We used Google Alerts and PoliMonitor to capture broader policy announcements and publications since the commencement of the duty that contained reference to the EPPS.

To complement the documentary analysis, we drew on interviews with 26 government officials across eight departments (Annex C). Interviewees' responsibilities and experiences of the EPPS included: promoting and guiding implementation of the EPPS duty in their departments, communications and engagement about the EPPS internally, and applying the EPPS duty during policy development. Interviews were structured around officials' experiences of processes, guidance, best practice, and application of the principles to policies. Transcripts were coded and analysed to identify evidence about the assumptions of the EPPS theory of change.

We engaged with five<sup>24</sup> Defra Group arms-length bodies via correspondence and interviews to understand their role but have not included them in the scope of this report because at the time they were still establishing their processes and most had not yet been involved in implementing the EPPS duty.

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24 Environment Agency, Forestry Commission, Health and Safety Executive, Joint Nature Conservation Committee, and Natural England.





# Chapter 4. Findings and Recommendations

# Chapter 4. Findings and Recommendations

## 4.1 Coherence with government’s environmental commitments

The EPPS duty is a tool to integrate consideration of the government’s environmental commitments into policymaking across all parts of government. This is essential for policy coherence, and for all government departments to play their part in achieving those commitments.

Key government commitments are its legally-binding environmental targets, such as to halt the decline in species abundance by 2030 and achieve net zero greenhouse gas emissions by 2050.

Achieving legally-binding targets and other environmental commitments is supported by the EIP, which should transparently set out steps (a delivery plan) for meeting relevant targets and achieving a significant environmental improvement. A similar role is played by the Net Zero Strategy<sup>25</sup> and Carbon Budget Delivery Plan<sup>26</sup> in respect of achieving the net zero target.

The Climate Change Act places a duty on government to ensure that the net UK carbon account for 2050 is at least 100% lower than the 1990 baseline. Responsibility for preparing proposals and policies for meeting the carbon budgets is also the duty of the Secretary of State for Energy Security and Net Zero. There is no comparable obligation on policymakers in other departments. The EPPS is an opportunity to impose such a duty<sup>27</sup> and the Net Zero Strategy 2021 formally states that it relies on the EPPS to ‘require the government to reflect environmental issues such as climate change in national policymaking through consideration of five environmental principles’.<sup>28</sup> In practice, via Defra’s EPPS toolkit, policymakers are encouraged to consider Net Zero alongside various other environmental considerations.

Consideration of the extent to which policy decisions might affect (positively or negatively) government’s ability to meet its targets or deliver EIP steps should, therefore, be central to EPPS assessments.

Based on the information we received from departments during our information gathering stage, across the 18 policy decisions about which we received information, only two included explicit descriptions of how they would affect targets or EIP delivery as part of recording due regard to the EPPS. These were Defra’s Agricultural Transition Plan update and Simpler Recycling. We found no evidence of other Government departments considering what their policies mean for EIPs and targets as part of their due regard to the EPPS – something that, through our annual EIP progress reports, we have recommended government address.

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25 Department for Business, Energy and Industrial Strategy (BEIS), ‘Net Zero Strategy: Build Back Greener’ (2021) <<https://assets.publishing.service.gov.uk/media/6194dfa4d3bf7f0555071b1b/net-zero-strategy-beis.pdf>> accessed 26 November 2024.

26 BEIS, ‘Carbon Budget Delivery Plan’ (2023) <<https://assets.publishing.service.gov.uk/media/6424b2d760a35e000c0cb135/carbon-budget-delivery-plan.pdf>> accessed 26 November 2024.

27 NAO, ‘Achieving Net Zero’ (2020) <[www.nao.org.uk/wp-content/uploads/2020/12/Achieving-net-zero.pdf#page=7](http://www.nao.org.uk/wp-content/uploads/2020/12/Achieving-net-zero.pdf#page=7)> accessed 26 November 2024.

28 BEIS (n 25) 251.

At the time of writing, HMT Green Book guidance and Defra toolkit guidance encourages assessment of environmental effects by focussing principally on the natural capital approach, without making the link to meeting targets or delivering EIP steps.

In the EPPS the only links to Environment Act targets and/or the EIP are in the introductory section, where it states “the 5 principles in this statement play an important role to support Environmental Improvement Plans and to delivering on our net zero commitment to tackle climate change”, and in discussion about the application of the prevention principle, where it states “when applying the prevention principle, policymakers should particularly consider those habitats and species that are endangered or vulnerable, and national environmental priorities such as those outlined in the Environmental Improvement Plan, environmental targets, and net zero”.

These references do not refer to considering how a policy might affect government’s ability to meet its targets or deliver the steps for doing so set out in the EIP. Creating sufficient links to targets and the EIP would therefore require amendment to the EPPS to direct Ministers (and policymakers on their behalf) to consider how their policymaking might contribute (positively or negatively) towards government achieving its binding targets and/or towards delivering the steps set out in its EIP.

### **Recommendation 1 – update the EPPS**

Defra should amend the EPPS so that it clearly and tangibly directs policymakers to consider how their policy can support government in meeting its environmental targets and delivering its plans and strategies for doing so.

The targets referred to should include those government relies on to collectively deliver a significant environmental improvement as set out in Defra’s January 2023 report to Parliament under section 7 of the Environment Act. Reference to plans and strategies should include reference to the EIP, Net Zero Strategy and Carbon Budget Delivery Plan.

These amendments could be made, for example, by incorporating consideration of targets and their associated plans and strategies into the section of the EPPS dealing with the integration principle.

Implementing recommendation 1 would require that Defra follows the statutory processes in the Environment Act for updating the EPPS. In the meantime, coherence between policymaking across government, the EPPS, environmental targets and associated plans and strategies, such as the EIP, could be improved through changes to the EPPS explanatory memorandum (recommendation 2), and other guidance (recommendation 3).

### **Recommendation 2 – update the EPPS explanatory memorandum**

Defra should swiftly update the EPPS explanatory memorandum to refer to considering how policy making can support delivery of the targets, plans and strategies covered by recommendation 1.

## 4.2 Embedding the EPPS duty across government

Overall, the preparations and processes put in place to support policymakers with implementing the EPPS duty have been successful. These include government-wide support such as online training on Civil Service Learning and a toolkit for policymakers developed by Defra. It also includes department-specific provisions such as bespoke training and communications as well as adapted templates and guidance.

All departments we spoke to reported undertaking awareness-raising activities ahead of the EPPS duty coming into effect. The lead-in time of these activities varied, with Defra, Department for Education (DfE), Department for Transport (DfT) and HMT carrying out activities over several years, alongside the development of the EPPS itself and Defra's toolkit. Examples of preparatory activities included communications campaigns, dedicated meetings with senior officials, briefing notes, intranet webpages and online presentations.

All departments used the training and guidance materials developed by Defra, with many adapting or developing them further to suit their own policy contexts. For example, DfE developed a bespoke training programme and used case studies to demonstrate the use of guidance and processes for applying the EPPS to specific policy decisions. The Department for Levelling up, Housing and Communities (DLUHC, now MCHLG) created guidance for including the principles in impact assessments,<sup>29</sup> using recent domestic building regulations as an example.<sup>30</sup>

Two common changes were made to policymaking processes across departments. First, departments used Defra's policymakers' template, or a variation on it. This was intended to provide officials with a structure for recording information about how the EPPS has informed their policy development. Second, they updated Ministerial Submission templates to include reference to the EPPS. This was intended to ensure relevant information was provided to ministers to support them in complying with the EPPS duty. Ministerial Private Offices were also able to check and prevent submissions from being made without information about the EPPS being included, and to gather additional information from officials if they felt it was required.

Officials reported that forums for sharing experiences have proven useful for troubleshooting during the early stages of implementation. There are such forums within departments, which consider how environmental principles may apply to different policy areas and enable policymakers to discuss any emerging challenges. Defra has convened a cross-government working group on EPPS which is attended by representatives from policymaking departments and ALBs involved in policymaking. Officials described this as highly informative and useful for departments working together to address common concerns or questions.

Although officials positively regarded the processes and support for implementing the EPPS duty, they also noted room for ambiguity and inconsistent interpretation. Interviewees particularly highlighted uncertainty around what constitutes a policy decision to which the EPPS duty applies and determining what is a proportionate application of the principles.

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29 DLUHC, 'Environmental Principles Assessment Guide' (2024) <[www.gov.uk/government/consultations/sprinklers-in-care-homes-removal-of-national-classes-and-staircases-in-residential-buildings/outcome/environmental-principles-assessment-guide](http://www.gov.uk/government/consultations/sprinklers-in-care-homes-removal-of-national-classes-and-staircases-in-residential-buildings/outcome/environmental-principles-assessment-guide)> accessed 8 October 2024.

30 DLUHC, 'Impact Assessment on the Introduction of Second Staircases in Residential Buildings above 18m' (2024) <[https://assets.publishing.service.gov.uk/media/6605c8cd91a320b20282b085/Annex\\_C\\_-\\_Impact\\_Assessment.pdf](https://assets.publishing.service.gov.uk/media/6605c8cd91a320b20282b085/Annex_C_-_Impact_Assessment.pdf)> accessed 14 October 2024.



Where such queries have arisen, officials had recourse to dedicated departmental EPPS champions and/or their legal teams. They also made use of the cross-government working group and the Defra EPPS team. This proved sufficient for addressing the queries in respect to specific decisions, but did not resolve the fundamental issue of ambiguity. This leaves room for differences in interpretation and the potential for divergence in how the EPPS duty is implemented. That said, it will take time for practice to develop and, as described under section 2.5 above, the EPPS duty has only been considered once by a court so far.

Self-directed training and guidance can only provide a baseline understanding of the EPPS duty and the EPPS. Departmental processes for implementing the EPPS duty are relatively light-touch and non-prescriptive. In our view, both should be developed further in response to feedback from officials over areas requiring greater clarity and about challenges encountered in practice. This could be done using more applied examples that become available through monitoring and evaluation, to complement the ones used in Defra's toolkit before the EPPS duty came into force.

When uncertainty arises during implementation, policy officials need to draw on legal and analyst professions as well as EPPS champions and other experts. There is a need for dedicated advice services and expertise during policymaking as well as active forums for problem-solving and collaboration within and across departments.

Departments' approaches to monitoring, evaluating and adapting their EPPS processes differed. Defra, DfE and DfT undertook internal activities to track and improve the efficacy and deployment of their resources. For all officials, centralised guidance and support, like the Defra toolkit, will be a helpful supplement to their departmental resources. Similarly, forums for sharing lessons will help refine processes and encourage consistency across government.

### **Recommendation 3 – update EPPS duty guidance**

Defra and other government departments should update their guidance and templates developed to support implementation of the EPPS duty to:

- create a clear and strong link between the EPPS and relevant environmental targets and their delivery plans and strategies (see recommendation 1)
- clarify the relationship between EPPS assessment and other assessments (such as natural capital assessments)
- aid policymakers' understanding of what constitutes a 'policy' decision to which the EPPS duty applies
- provide additional guidance and examples from practice for determining proportionate application
- set expectations for the audit trail of how the EPPS has been considered throughout the policy development process, and
- set the expectation that EPPS assessments should be published to improve transparency and consistency (see recommendation 6).

Additionally, departments should review and update guidance and templates in response to other formal reviews of EPPS implementation.

Further to the bespoke tools introduced to support implementation of the EPPS duty, other guidance and templates exist that are key to ensuring consistency across policymaking. These include the HMT Green Book and supplementary guidance, the Cabinet Office Guide to Making Legislation, the Better Regulation Framework, and templates used throughout the policymaking cycle, such as business cases, options assessments, impact assessments and those for post implementation review (noting that guidance on producing post implementation review was updated in May 2024 to include reference to EPPS).<sup>31</sup>

Government committed to embedding environmental principles into existing policymaking guidance, including HMT Green Book guidance on how to appraise policies, programmes and projects.<sup>32</sup> This commitment was repeated in the explanatory memorandum to the EPPS.<sup>33</sup> The National Audit Office (NAO) reported in October 2024 that HMT told it that the Green Book is an important tool to help departments consider environmental and climate change issues in their project appraisals and funding bids.<sup>34</sup> Whilst we note that the Green Book web page makes reference to the EPPS duty, and the commitment to update the Green Book, these updates have yet to be made.

The Cabinet Office Guide to Making Legislation (2022) does not currently include reference to the EPPS, but we note, and welcome the recent commitment to update it to include reference to environmental principles.<sup>35</sup> The guidance does include, at para 3.11, reference to the section 20 provision of the Environment Act. This provision requires that, if a Bill contains environmental law, the Minister must state that this is so and confirm that it will not lower the current level of environmental protection provided for under existing law, or else that it will but the government has chosen to introduce the Bill nevertheless. Under the Guide, such a statement is required to be signed by the Minister on the front page of the Bill. We consider that any EPPS assessment should inform the evidence base for such a statement. Further, irrespective of whether a Bill would constitute environmental law, due regard must generally be paid to the EPPS. Reference to the EPPS should be made in this Guide as soon as possible to reflect the commitments made.

In the Better Regulation Framework, updated in September 2023, consideration of environmental impacts is based on natural capital and net zero. The Framework does not refer to the EPPS, nor does it reference government commitments to environmental improvement set out in environmental targets or the EIP.

The Regulatory Impact Assessment template,<sup>36</sup> which was updated in 2023, carries a section on evidence, which says “all policies, where relevant, must have due regard to the EPPS, and demonstrate how the policy will affect the achievement of the legally binding Environment Targets set out in the Environment Act.” However, current options assessment, and post implementation review templates do not include comparable references to the

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31 DBT, ‘Producing Post-Implementation Reviews: Principles of Best Practice’ (2024) <[www.gov.uk/government/publications/business-regulation-producing-post-implementation-reviews/producing-post-implementation-reviews-principles-of-best-practice](https://www.gov.uk/government/publications/business-regulation-producing-post-implementation-reviews/producing-post-implementation-reviews-principles-of-best-practice)>> accessed 20 December 2024.

32 HC Deb (2020) UIN 57159 W <<https://questions-statements.parliament.uk/written-questions/detail/2020-06-09/57159>> accessed 14 November 2024.

33 Defra, ‘Explanatory Memorandum to the Environmental Principles Policy Statement’ (n 7) para 7.7.

34 NAO, ‘Achieving Environmental Improvement and Responding to Climate Change: Enablers for Success’ (2024) <[www.nao.org.uk/wp-content/uploads/2024/10/achieving-environmental-improvement-and-responding-to-climate-change.pdf](https://www.nao.org.uk/wp-content/uploads/2024/10/achieving-environmental-improvement-and-responding-to-climate-change.pdf)> accessed 12 November 2024, 13.

35 HC Deb (2024) UIN 18013 W <<https://questions-statements.parliament.uk/written-questions/detail/2024-12-04/18013>> accessed 13 December 2024.

36 DBT and BEIS, ‘Regulatory Impact Assessment Template (2023 Reforms)’ <[www.gov.uk/government/publications/impact-assessment-template-for-government-policies](https://www.gov.uk/government/publications/impact-assessment-template-for-government-policies)> accessed 16 December 2024.

EPPS and targets. Whilst there is requirement for consideration of the extent to which proposals support commitments to improve the environment and decarbonisation, there are no specific references to the EPPS and associated duty, environmental targets or the EIP. Users are sign-posted to the HMT Green Book and Cabinet Office Guide to Making Legislation for further guidance. Neither of these forms of cross-government guidance currently carry reference to the EPPS, targets, or EIP.

Cabinet Office and HMT have key roles to play in ensuring that the EPPS is incorporated into the cross-government guidance that underpins policymaking. Referring to the EPPS in these documents would help to ensure coherence between the EPPS duty and other matters which need to be taken into account in policymaking. It would clarify when the EPPS should be considered, and how it might interact with any other assessments (i.e. those relating to natural capital and decarbonisation). The EPPS provides a useful framework for considering potential environmental effects (both good and bad) of policymaking and could improve policy coherence through more joined up action contributing to delivery of environmental targets and the EIP. Updating existing guidance is an efficient way of using existing tools to further embed the EPPS duty in departments' cultures and practices.

Ensuring the EPPS is included in relevant templates used in the policymaking cycle will improve consistency, transparency and accountability. It would allow Parliament, and bodies such as the NAO and the Regulatory Policy Committee, to scrutinise proposals using the right evidence at the most appropriate time – ensuring the EPPS duty is given meaningful consideration throughout the policymaking process, as intended.

#### **Recommendation 4 – update the HMT Green Book**

Defra and HMT should uphold their commitments to include reference to the EPPS in updates to the Green Book and supplementary guidance. This should be done as soon as possible.

#### **Recommendation 5 – update other cross-government guidance**

Government should update policymaking guidance, templates and processes to include reference to the EPPS duty and to clarify the relationship between this and other requirements (such as for natural capital assessments and decarbonisation). The relevant government department in each case should update the following as a priority:

- Cabinet Office Write-round processes
- Cabinet Office Guide to Making Legislation
- DBT Better Regulation Framework
- DBT Options Assessment guidance and templates
- DBT Post implementation review templates
- HMT Business Case guidance and templates

## 4.3 Transparency

Our research indicates that, as yet, there is no clear, consistent practice by government towards publishing information about how due regard has been had to the EPPS in respect of individual policy decisions. There is no legal requirement on government to include this information in policy impact assessments or other publications. However, we would consider it best practice, and in government's own interest, to do so.

Three of the 40 impact assessments published during the timeframe of our evaluation included information about the EPPS. One<sup>37</sup> included a high-level statement and reference to a fuller assessment that was published separately.<sup>38</sup> One provided summaries for each principle in turn.<sup>39</sup> One stated the consideration had been given to the EPPS but there were no relevant impacts.<sup>40</sup>

References to the EPPS were even more scant amongst policy announcements, briefings and written ministerial statements announcing policy decisions. For example, the Agricultural Transition Plan Update involves decisions about agri-environment schemes and food production that are particularly relevant to some of the environmental principles e.g. integration and prevention. The EPPS was considered as part of the policy design, but the publication does not mention it.<sup>41</sup>

The same holds true for evidence reports and consultations. For example, the Strategic Environmental Assessments and consultations for recently published Fisheries Management Plans reference the fact the EPPS was considered but do not provide any detail on how.

This lack of consistent transparency in government's publications risks the EPPS duty becoming part of policymaking that is closed off to scrutiny and wider public understanding. This undermines transparency and accountability, core principles of environmental governance.

It is in the public interest that government publishes evidence of its compliance with legal duties and demonstrates the positive effect this is having on its policymaking and delivery of its objectives. In the case of the EPPS duty, government has an opportunity to show that it is helping make policy decisions coherent with meeting environmental commitments and obligations, such as those to meet environmental targets and deliver steps set out in the EIP.

It is also in the public interest that government publishes sufficient detail about how due regard to the EPPS has been taken. Observers will then be able to understand the evidence and rationale behind decisions, fostering greater buy-in and support as well as providing opportunity for constructive challenge.

Of the 18 policy decisions whose internal documents applying the EPPS we analysed, only three included mentions of their implementation of the duty in their public announcements and publications that were captured by our search of public documents. These were, Defra's

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37 DLUHC (n 30).

38 DLUHC (n 29).

39 Department for Energy Security and Net Zero (DESNZ), 'Offshore Petroleum Licensing Bill Impact Assessment' (2023) <[publications.parliament.uk/pa/bills/cbill/58-04/0009/20231107OffshorePetroleumLicensingBillImpactAssessment.pdf](https://publications.parliament.uk/pa/bills/cbill/58-04/0009/20231107OffshorePetroleumLicensingBillImpactAssessment.pdf)> accessed 20 August 2024.

40 DBT, 'Reducing the Administrative Burden of the Working Time Regulations. Impact Assessment.' (2023) <[www.legislation.gov.uk/ukia/2023/149/pdfs/ukia\\_20230149\\_en.pdf](https://www.legislation.gov.uk/ukia/2023/149/pdfs/ukia_20230149_en.pdf)> accessed 28 November 2024.

41 Defra, 'Agricultural Transition Plan Update January 2024' <[www.gov.uk/government/publications/agricultural-transition-plan-2021-to-2024/agricultural-transition-plan-update-january-2024](https://www.gov.uk/government/publications/agricultural-transition-plan-2021-to-2024/agricultural-transition-plan-update-january-2024)> accessed 14 November 2024.

Fisheries Management Plans<sup>42</sup> and Fishing in Marine Protected Areas,<sup>43</sup> and Ministry of Housing, Communities, and Local Government's (MHCLG)<sup>44</sup> Second staircases in new, tall residential buildings.<sup>45</sup>

Published information ranged from statements that the policy was excluded from the scope of the EPPS duty, or it was deemed to have no effect on the environment, through to summaries of the consideration given to each principle. This limited detail and lack of consistency across announcements makes independent monitoring and evaluation more difficult. In all cases there was no description of what evidence or advice formed the basis of consideration of the environmental principles or how they affected advice to ministers or how ministers factored them into final decisions.

Information about the application of the EPPS in general, informed by departmental and cross-government monitoring and evaluation, should also be made public. Through such publications, stakeholders and the public can see the cumulative effects of the EPPS duty and how government is improving its implementation over time.

We understand that Defra is currently leading a government-wide review of EPPS duty implementation. The Defra-led review will be looking across Government at the effectiveness of the processes in place to support implementation and looking at select policies to analyse the impact of the duty on the policymaking process. The findings and implications of such reviews should be published and considered as part of wider environmental governance activities such as EIP progress reports and revisions.

Departments should provide an appropriate opportunity for transparency and audit of their implementation of the EPPS duty. Increased consistency in publishing details of EPPS application would assist monitoring, evaluation and learning internally within government.

### Recommendation 6 – publish EPPS assessments

Government departments should publish their EPPS assessments, showing how they have implemented the EPPS duty in respect of their policymaking decisions, specifically in the cases of:

- Impact assessments
- Policy announcements
- Environmental assessments
- Evidence reports
- Consultations

Government should clarify in guidance the expectation in respect of publication (see recommendation 3). Government should also consider making public findings from any internal evaluation/review as to the implementation of the EPPS duty.

42 Defra and Marine Management Organisation (MMO), 'Fisheries Management Plan for Channel Demersal Non-Quota Species' (2023) <[www.gov.uk/government/publications/channel-demersal-non-quota-species-fisheries-management-plan-fmp/fisheries-management-plan-for-channel-demersal-non-quota-species--3](http://www.gov.uk/government/publications/channel-demersal-non-quota-species-fisheries-management-plan-fmp/fisheries-management-plan-for-channel-demersal-non-quota-species--3)> accessed 26 November 2024.

43 HM Government, 'Marine Mammals: Government Response to the Committee's Sixth Report' (2023) Sixth Special Report of Session 2022–23, HC 1942 <<https://publications.parliament.uk/pa/cm5803/cmselect/cmenvfru/1942/report.html>> accessed 26 November 2024.; MMO, 'Stage 2 Decision Document: September 2023' (2023) <[https://assets.publishing.service.gov.uk/media/65bb6d2427fccf000d4bd1c9/Stage\\_2\\_Decision\\_Document.pdf](https://assets.publishing.service.gov.uk/media/65bb6d2427fccf000d4bd1c9/Stage_2_Decision_Document.pdf)> accessed 19 December 2024.

44 The department was called the Department for Levelling Up, Housing, and Communities (DLUHC) at the time of this study being conducted. DLUHC is now the Ministry for Housing, Communities and Local Government (MHCLG) and will therefore be referred to as MHCLG throughout this report.

45 DLUHC (n 30).

## 4.4 Consideration of the environment in policymaking

Effective implementation of environmental principles requires more than just that policymakers have due regard to the EPPS. It requires a culture within government where policymakers see the value of the principles in contributing to protecting and enhancing the environment, and to making policymaking across government more coherent. They must also understand their role in making the EPPS an effective tool for achieving this.

The NAO has found there continue to be challenges in harnessing collective effort across government on environmental and climate change issues, with the EIP still being seen as Defra's programme of work, rather than a cross-government endeavour.<sup>46</sup> The EPPS duty is an important tool for bringing these considerations more firmly and formally into the consciousness of all departments.

Across the 18 policy decisions we analysed, the depth of policymakers' engagement with environmental evidence and considerations varied. In interviews, officials from departments that did not have a significant environmental remit reported the EPPS duty helping to formalise taking account of environmental considerations that had hitherto been more ad hoc. For example, the Department for Work and Pensions (DWP), DfT, DfE, and HMT officials said it had formalised and improved the detail of their environmental considerations. And had been 'useful for getting people to have more conversations about the environment'.

There were also signs that the EPPS duty is shifting the way policymakers consider the environment, not as a potential barrier to their objectives but as an opportunity for co-benefits. Officials from Defra and DfT reported seeing this effect, with policymakers looking for potential positive impacts on the environment rather than just avoiding potential negative ones.

The extent to which the principles are considered during policymaking is partly determined by the requirement to apply them proportionally, as set out in section 2.1. Departments are gaining experience in applying the EPPS, but as we discuss in section 4.2, additional guidance would be useful. Another important factor is the ambition and capability of officials to fully explore options for applying the principles to their policy context that could lead to benefits for the environment.

More can be done to support the culture shift that is needed for the EPPS duty to be fully embedded in all stages and aspects of policymaking, to support improved policy coherence, and enable it to deliver greater protection and improvement of the environment alongside delivering government's other policy objectives.

Within departments there needs to be wider buy-in and influence exerted from the top-down. We identified an important role played by Ministerial Private Offices with regards to checking the adequacy of EPPS consideration, but we do not know how widespread that practice is. We also do not know the extent to which individual ministers engaged with the detail of the underlying EPPS assessments or whether they, and other senior leaders, have established expectations as to its importance throughout their departments.

Whilst we have considered work done to prepare and support policy officials, it is not clear from our review whether, or how, equivalent work was regularly undertaken across other government professions, such as analysts and lawyers, who play key roles in

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<sup>46</sup> NAO (n 34) 12.

the policymaking process and consideration of the environment. The same applies to stakeholder engagement and communications teams who can facilitate information gathering and dialogue about the EPPS.

Outside of policymaking departments, the influence of central government leadership and coordination could be pivotal – identifying and maximising opportunities to promote and embed the EPPS duty. For example, internal and external communications from Number 10 and the Cabinet Office regarding the importance of the EPPS for achieving the Government’s environmental (including climate) commitments could strengthen efforts to shift towards a positive culture surrounding the EPPS. The Government’s new Mission Boards, established to better support coordination amongst senior leadership, could also have a role to play in integrating environmental considerations across government.

In addition, practical coordination processes run by Cabinet Office and HMT (e.g., departmental write-round and policy business cases respectively) could do more to include and make the EPPS prominent (see recommendation 5 above).

### **Recommendation 7 – continue to embed the EPPS duty**

Defra should consider, on an ongoing basis as well as part of any formal evaluation:

- the extent to which guidance and training on EPPS duty implementation has been accessed, taken up and followed in practice across all government departments and professions (e.g. policy and legal professions), and
- the extent to which EPPS duty implementation is being led from the top (by Ministers, Cabinet Office, HMT, Mission Boards and senior civil servants).

This should include consideration of the knowledge, skills and preparedness of senior leaders involved in effectively embedding the EPPS duty across government.

## **4.5 Impact on policymaking**

In addition to evaluating how the EPPS duty had been complied with regarding specific decisions, we also looked for evidence of the influence the EPPS had on policies. The EPPS notes four ways applying the environmental principles could affect a policy: amending or adding new policy options, reframing to accommodate a principle, embedding a principle in law or guidance, or postponing a policy decision.

During the timeframe of our evaluation, we analysed the application of the EPPS to 18 policy decisions across five departments (see Annex C). Eight policy decisions had environmental outcomes among their objectives and 10 had non-environmental priorities but some indirect implications for the environment.

As discussed in section 4.4, consideration of the environment during policy development had increased and become more systematic and exploratory across all departments we considered (bar Defra, for whom it has been a mainstay).

However, amongst the documentary materials we analysed, including policymaker templates and Ministerial Submissions, there was little to no evidence of how the EPPS duty had influenced stages of policy development, informed policy design or affected final decisions.

Some policy development pre-dating the commencement of the EPPS duty had already involved consideration of the environment, and this was updated to reflect the principles. For example, Defra's Biodiversity Net Gain and Simpler Recycling policies both involved retrospective applications of the EPPS to decisions and advice that predated the commencement of the EPPS duty. In both instances policymakers concluded that no amendment to the policy was required.

Whilst we consider it good practice to retrospectively apply the EPPS to policymaking which pre-dated commencement of the duty, in the examples we analysed this did not lead to any significant revision. As the definition of 'making policy' includes revising policy (see Section 2.1 above), the EPPS should be applied to any revision to a policy made before the duty came into effect. In theory, a retrospective application of the principles to policy that pre-dates the duty could lead to changes in direction or implementation for those policies as future decisions are made, especially where these upcoming decisions are in scope of the EPPS definition of what constitutes policymaking.

We consider it is clear, from the EPPS itself and from government's internal guidance, that the intention (now that the duty applies) is that the EPPS is considered iteratively to inform all stages of the policymaking process. Applying it retrospectively to past decisions, or at the final moment when a decision is about to be made, risks not achieving the intention behind the EPPS duty. In taking this course, policy makers may miss opportunities to fully explore policy options that could lead to better outcomes for the environment.

With regards to reframing a policy or embedding specific environmental principles, again we found no explicit evidence of this per se but there were instances where some principles were more pertinent and received fuller analysis and/or prominence in advice to Ministers.

For example, MHCLG's decision designating wastewater treatment works for upgrades includes detailed explanation of the polluter pays principle and the precautionary principle and is largely framed in these terms.

Decisions within the second Road Investment Strategy published by DfT draw on a thorough and evidence-based EPPS assessment covering all principles and how the policy performs on multiple environmental challenges such as noise, biodiversity loss and pollution run-off.

In comparison, MHCLG's decision to alter how environmental assessments are used in consenting for Nationally Significant Infrastructure Projects only addresses the prevention principle in any detail and relies on a broad logic of improved efficiency in process leading to improved environmental outcomes, giving no consideration to potential negative effects.

We would expect the application of the integration principle in particular to have a positive impact on policy decisions and their implications for environmental outcomes. As per Defra's toolkit and training on applying the EPPS, the integration principle involves consideration of the environmental impacts of a policy decision. It is our view that such considerations should include assessments of how a policy would help or hinder government's progress towards its legally binding targets, such as those set under the Environment Act, and in implementing steps set out in associated plans and strategies such as the EIP. Policy decisions including this consideration would thus be expected to reflect greater coherence with these ambitions and include an explanation of how a particular policy decision contributes to progress, or else manages or avoids any trade-offs.



None of the policy decisions we analysed were postponed, having considered environmental principles. Some of the officials we spoke to in Defra, DfT, Department for Culture, Media and Sport (DCMS) and Department for Energy Security and Net Zero (DESNZ), and policy and implementation teams commented that additional resource was needed during the policymaking process to have due regard to the EPPS. In practice delays were avoided as policymakers had sufficient resources and evidence available. However, it is likely that this will not be the case universally, particularly in policy areas where potential environmental impacts are less well evidenced or understood.

In the policy decisions we analysed, there was a tendency to cross-refer to other policies and future implementation decisions as factors affecting adherence to the principles. For example, MHCLG's policy for second staircases in new tall residential buildings cites the use of 'planning gain' rules to offset the negative environmental impacts the policy could give rise to. Similarly, two large-scale HMT decisions (allocating funding for the manufacturing sector and small-medium enterprises) note the potential for both positive and negative environmental impacts and that these would be determined by the decisions of implementing departments.

On the one hand these examples show an encouraging degree of coherence and thinking across multiple policy decisions. On the other hand, it introduces the potential for an over-reliance on related or future policies to fully apply the principles. The focus of the EPPS assessment must be the policy in question, with any weight given to other potential policies reflecting that there is a risk they may not be developed as presumed.

Our ability to provide a representative evaluation of policy decisions was hampered by the availability of information. It is also methodologically challenging to evidence how the EPPS duty led to changes to a decision and any associated environmental outcomes. Future evaluations of the EPPS duty would need to address this through greater access to policymaking audit trails, greater transparency from government about the implications of applying the EPPS, and the use of appropriate evaluation methodologies.

Throughout our review and analysis of individual policy decisions, we considered our earlier advice in respect of the EPPS (see section 2.2), and whether, in the areas where our advice had not been addressed in the final version, this could be seen to have any impacts in respect of implementation. Overall, it has not been possible, at this stage, to fully assess the extent to which issues previously raised by us are impacting on implementation of the EPPS duty. It would be beneficial to consider this in future evaluations of implementation.


### **Recommendation 8 – evaluate the EPPS duty**

Defra should consider in its evaluation of EPPS duty implementation, due by November 2025, the extent to which the EPPS duty has influenced specific policy decisions to be more coherent with delivering the government's environmental commitments, particularly the targets, plans and strategies referred to in recommendation 1.

Defra should seek to gather, and publish, the evidence that exists to enable such consideration.

Defra should assess how the EPPS has been taken into account from the start of, and throughout, policy development. For this to be done effectively it will require improved transparency (see recommendations 3 and 6).





# Chapter 5. Conclusions

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The EPPS duty forms one of the four cornerstones of environmental governance introduced by the Environment Act, alongside statutory targets, the EIP and the OEP. It was introduced with the intention of embedding environmental considerations at the heart of policymaking across government.

The EPPS duty applies to across government, making it a potentially impactful tool to benefit the environment. It should play an important role in ensuring policymaking is coherent with the government delivering its legally binding environmental targets and EIP.

Our review provides early insight into how the EPPS and the EPPS duty are being implemented across several government departments.

Our findings indicate that, while there has been early progress, there are areas where further action is needed to enhance the implementation and efficacy of the EPPS duty. These present opportunities to better support government in meeting its environmental commitments.

In this report we make recommendations to address the challenges in implementation we have identified. This includes providing clearer guidance, engaging effectively across departments and policy experts to raise awareness of the EPPS and its importance in environmental governance, ensuring consistent understanding and application across government and improving consistency and transparency of documentation that sets out how the EPPS has been considered in policymaking.

Effective monitoring and evaluation are essential components of good governance and policymaking, and in determining the extent to which the EPPS contributes to the improvement of environmental protection and sustainable development. Although implementation of the EPPS duty thus far indicates some positive progress, the issues of coherence with government's environmental commitments, further embedding of the EPPS duty, transparency, and impact that we have identified must be addressed to enable the EPPS duty to fully achieve its intended result.

# Annexes



## Annex A. Glossary

BEIS	Department for Business, Energy and Industrial Strategy (now DBT)
DBT	Department for Business and Trade (previously BEIS)
DCMS	Department for Culture, Media and Sport
Defra	Department for Environment, Food and Rural Affairs
DESNZ	Department for Energy Security and Net Zero
DfE	Department for Education
DfT	Department for Transport
DLUHC	Department for Levelling Up, Housing and Communities (now MHCLG)
DWP	Department for Work and Pensions
EIP	Environmental Improvement Plan
Environment Act	The Environment Act 2021
EPPS	Environmental Principles Policy Statement
EPPS duty	The duty, under section 19 of the Environment Act, for ministers (and officials on their behalf) to have due regard to the EPPS when making policy
HMT	His Majesty's Treasury
MHCLG	Ministry for Housing, Communities and Local Government (previously DLUHC)
OEP	Office for Environmental Protection
PSED	The Public Sector Equality Duty (section 149 of the Equality Act 2010)

## Annex B. Advisory Group members

We are grateful to these individuals for their valuable contributions to our review.

Name	Affiliation
Tom Aston	Independent (No affiliation)
Liz Fisher	Oxford University
Dr Viviane Gravey	Queen's University Belfast
Jill Rutter	Institute for Government
Prof Eloise Scotford	UCL Laws

## Annex C. Information provided by government

Department	Number of interviewees	Documented application of EPPS to policies
Department for Environment, Food and Rural Affairs (Defra)	9	Agricultural Transition Update January 2024: design of Sustainable Farming Incentive and Countryside Stewardship Higher Tier
		Biodiversity Net Gain
		Fisheries Management Plans
		Fishing in Marine Protected Areas
		Simpler Recycling
Department for Transport (DfT)	4	Road Investment Strategy
		Transport Adaptation Strategy
Ministry for Housing, Communities and Local Government (MHCLG)  Formerly the Department for Levelling up Housing and Communities (DLUHC)	1	Second staircases in new, tall residential buildings
		Designation of Sensitive Catchment for Wastewater Treatment Works Upgrades
		Nationally Significant Infrastructure Projects Action Plan
		Plan-makers Written Ministerial Statement
His Majesty's Treasury (HMT)	0	£4.5bn manufacturing funding announcement
		Future Fund: Breakthrough & recovery loan scheme and British Business Bank programme
		Contribution to European Bank for Reconstruction and Development
Department for Education (DfE)	3	Nature Park and Climate Action Award
		Sustainability Leadership and Climate Action Plans
		Mobile phones in schools
		Music Hubs Capital Programme
Department for Energy Security and Net Zero (DESNZ)	1	-
Department for Work and Pensions (DWP)	2	-
Department for Business and Trade (DBT)	3	-
Department for Culture, Media and Sport (DCMS)	3	-





