

Edward Mountain MSP  
Convenor  
Net Zero, Energy and Transport Committee

31 July 2023

Dear Edward,

### **Guiding principles on the environment**

The Scottish Government is strongly committed to maintaining environmental standards following the UK's exit from the EU, and to remaining aligned, where possible, with standards and practice in EU environmental law. As you will recall, Part 2 of the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021 ("the Continuity Act") included three key measures to help to achieve this commitment. Firstly, Environmental Standards Scotland is established under the Continuity Act, and has commenced its important work in ensuring that Scotland still has effective environmental governance. Secondly, the Scottish Government is working to develop our Environment Strategy to ensure that policies across government work together in a systematic way to achieve our ambitious goals for climate and nature.

I write today to set out the next steps in the third arm of the Continuity Act measures, ensuring that environmental principles continue to influence the development of policies. I will set out the process for presenting to Parliament the guidance on the guiding principles on the environment and the associated consultation report on the draft guidance.

The Continuity Act introduced new duties on Ministers and other public authorities, that once commenced, will require them to have due regard to five guiding principles on the environment set out at section 13(1) of the Continuity Act. The principles, which are derived from EU law are set out at section 13(1) of the Continuity Act, are as follows:

- the principle of integration,
- the precautionary principle,
- the preventative principle,
- the rectification at source principle and;
- the polluter pays principle.

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See [www.lobbying.scot](http://www.lobbying.scot)

St Andrew's House, Regent Road, Edinburgh EH1 3DG  
[www.gov.scot](http://www.gov.scot)

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

Section 17 of the Continuity Act requires Scottish Ministers to publish guidance on the guiding principles and the duties introduced on Ministers (section 14) and public authorities (section 15). The purpose of the statutory guidance is to serve as a practical guide to support public authorities and Ministers to implement their legislative duties. As set out in section 17(3) of the Continuity Act, anyone subject to the duties must have regard to the statutory guidance.

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

The Consultation commenced on 26 November 2021 and ran for a period of 12 weeks until 8 February 2022. The draft statutory guidance was made available online on the Scottish Government consultation website and was supported by a series of three online workshop sessions held during January 2022. The analysis report and full consultation responses will be published when the guidance and Parliamentary statement are presented.

There was a good range of views expressed in response to the consultation, with reasonable support for the length and scope of the guidance. In responding to the consultation views, the Scottish Government has sought to make the guidance clearer and more accurate, so that it will support duty holders and officials in complying with the new duties.

Under the provisions in section 18 of the Continuity Act, we are also obliged to lay the guidance in draft before the Scottish Parliament for a period of 40 days before it can be published, not beginning until recess has finished on 3 September. Parliament may in the 40 day period resolve that the guidance should not be published. If Parliament does not so resolve, Ministers may proceed to publish the guidance. The final version of the guidance, will promote a common understanding and interpretation of the guiding principles and how they should be considered and applied when developing future policy and legislation.

Once Parliamentary scrutiny is completed, the final version of the statutory guidance will be prepared for publication. A further set of commencement regulations will be prepared to commence the relevant provisions of the Continuity Act, which will bring the new duties and obligation to publish statutory guidance into force – to coincide with the publication of the final version of the statutory guidance. The timing of this is expected to be later this year.

Yours sincerely,

**MÀIRI MCALLAN**

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See [www.lobbying.scot](http://www.lobbying.scot)

St Andrew's House, Regent Road, Edinburgh EH1 3DG  
[www.gov.scot](http://www.gov.scot)

**INVESTORS IN PEOPLE™**  
We invest in people Silver

