



The Scottish Parliament
Pàrlamaid na h-Alba

All committee conveners (by email)

**Net Zero, Energy and Transport
Committee**

c/o Clerk to the Committee
Room T3.40
The Scottish Parliament
Edinburgh
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9 November 2023

Dear Convener,

Guiding Principles on the Environment

I am writing to you about Scotland's Guiding Principles on the Environment, and associated legal duties, which are shortly to come into force, and which the NZET Committee has recently considered. As the principles have the potential to impact on most policy areas, the Committee has agreed that I should write to all Conveners to notify them to you and set out some background context on them.

The European Union (Continuity) (Scotland) Act 2021 ("the Continuity Act") requires the Scottish Ministers, and other public authorities, to have due regard to five guiding environmental principles—

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

These principles underpinned EU environmental law and are enshrined in the Treaty on the Functioning of the European Union. They are also reflected in other international agreements such as the Rio Declaration on Environment and Development and the UN Convention on Biological Diversity.

Commencement regulations recently laid in the Parliament¹ will now bring into force the duty to have regard to the guiding principles on **16 November 2023**.

¹ The UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021 (Commencement No. 3) Regulations 2023

The Continuity Act also requires the Scottish Ministers to publish guidance on these guiding principles. Under the Act, the bodies required to have regard to the principles must also have regard to the statutory guidance. [This guidance](#) was laid in the Parliament on 14 August for 40 days, as required under the Continuity Act. This guidance can now be published since no motion objecting was passed in the 40-day period.

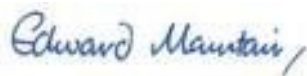
What all this means is that from 16 November onwards, the Scottish Ministers must have due regard to both the guiding principles and the guidance when making policy, including proposals for legislation. “Responsible authorities”² must also have due regard to the principles and guidance when preparing, a qualifying plan or programme. Qualifying plans and programmes are defined in [section 5](#) of the Environmental Assessment (Scotland) Act 2005 – effectively situations where Strategic Environmental Assessment is required.

The duties do not extend to individual decisions by the Scottish Ministers or responsible authorities made under a particular policy. As the guidance explains: “In general, individual regulatory and operational decisions under an established policy will not need separate consideration of the principles”. However, where Ministerial decisions can be seen as making or amending existing policy, this would be subject to the duty.³

The duties to have regard to the principles and the statutory guidance apply in all policy areas, and to the development of all legislation, other than policies or proposals relating to national defence or civil emergency, or to finance and budgets.⁴ This means that due regard must be given to the principles (with regard to the guidance) even in policy areas that are not obviously environmental.

On behalf of the Committee, I suggest that monitoring how well the Scottish Government and public bodies are complying with these duties, and how well they are integrating the principles into their policy-making work would be a useful and important addition to committees’ work hereon. The Scottish Parliament Information Centre would be happy to assist committees in this work.

Yours sincerely,



Edward Mountain MSP
Convener
Net Zero, Energy and Transport Committee

² A “responsible authority” in this context is any person, body or office-holder exercising functions of a public character but excluding Scottish Ministers or Ministers of the Crown (who are both caught by the separate duty under section 14).

³ See section 4.6 of the guidance.

⁴ The guidance clarifies that “the exclusion of finance or budgets applies to processes that are purely financial, such as the consideration of the annual budget cycle. This exclusion does not prevent the duties applying to the consideration of policies or programmes that involve expenditure or costs on other parties.