

Net Zero, Energy and Transport Committee

29th Meeting, 2023 (Session 6)

Tuesday, 24 October 2023

Cover note: Scotland's Guiding Principles on the Environment (SG 2023/162)

Title of Instrument:	Scotland's Guiding Principles on the Environment (SG 2023/162)
Type of Instrument:	Document subject to parliamentary control
Laid Date:	14/08/2023
Circulated to Members:	25/08/2023
Meeting Date:	24/10/2023
Minister to attend meeting:	No
Motion for annulment lodged:	No
Drawn to the Parliament's attention by the Delegated Powers and Law Reform Committee?	No
Reporting deadline:	29/10/2023

Recommendation

1. The Committee is invited to consider any issues which it wishes to raise on the document.

Background

2. The statutory guidance is laid before the Scottish Parliament under [section 18\(1\) of the UK Withdrawal from the European Union \(Continuity\) \(Scotland\) Act 2021](#). The guidance is to lie for 40 days during which period the Scottish Parliament may resolve that the guidance should not be published. As such, it is essentially treated by the Scottish Parliament as if it was a Scottish Statutory Instrument subject to the negative procedure.

3. The Scottish Ministers must not publish the guidance before the end of the 40-day period. If the Parliament resolves during the 40-day period that the guidance should not be published, the Scottish Ministers must not do so.

4. An electronic copy of the document is available at: [Scotland's guiding principles on the environment: statutory guidance - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/scotland-guiding-principles-on-the-environment-statutory-guidance/pages/2.aspx)

Purpose

5. The document sets out guidance on Scotland's guiding principles on the environment.

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

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

7. [Section 17](#) of the Continuity Act requires the Scottish Ministers to publish guidance on these guiding principles and on the duties placed on Ministers and public authorities to have due regard to them. The bodies subject to these duties must also have regard to the statutory guidance.

8. In July, the Cabinet Secretary for Transport, Net Zero and Just Transition [wrote to the Committee](#) setting out further information about the guidance and stated: "The purpose of the statutory guidance is to serve as a practical guide to support public authorities and Ministers to implement their legislative duties." (see Annexe for full letter).

9. The obligations on the Scottish Government and other public authorities to have due regard to the environmental principles are expected to come into force at the same time as the guidance is published (through a separate statutory instrument commencing the relevant sections of the 2021 Act).

Delegated Powers and Law Reform Committee consideration

10. At its meeting on 12 September 2023, the Committee considered the document and determined that it did not need to draw it to the attention of the Parliament on any grounds within its remit. [Read the Official Report – 24th Meeting, 2023](#)

Net Zero, Energy and Transport Committee consideration

11. At its meeting on 12 September the Committee agreed to write to several stakeholders asking for their views on the statutory guidance and on the Scottish Government's [report on environmental governance arrangements](#).

12. Responses were received from—

- SEPA – available [here](#)
- Scottish Water – available [here](#)
- ESS – available [here](#)
- Scottish Environment LINK – available [here](#)
- UK Environmental Law Association – available [here](#)
- Environmental Rights Centre for Scotland – available [here](#) (note: this response focussed on the environmental governance arrangements report only, not the guidance on environmental principles)

Parliamentary procedure

13. The Act requires a draft of the guidance on the environmental principles to be laid before the Parliament for a period of 40 days. The guidance cannot be published until after the 40 days have elapsed. It cannot be published at all if the Parliament resolves that it should not be. It is therefore effectively handled as if it were an SSI subject to negative procedure.

14. At the time of writing, no motion resolving not to publish the guidance has been lodged. Assuming no such motion is lodged, this guidance will be published after the 40-day period of parliamentary consideration (ending on 29 October).

15. As the procedure applying to this document is similar to that of a negative SSI, at the conclusion of consideration, the Committee will be invited to agree to make no recommendation in relation to the document.

Clerks

Net Zero, Energy and Transport Committee

Annexe

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.

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.

MÀIRI MCALLAN