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Dear Edward,

### **Guiding Principles on the Environment**

Thank you for your letter dated 2 November 2023, about the new duties on Ministers and other public authorities to have due regard to the guiding principles on the environment contained in the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2020. I am grateful for the Committee's consideration of the statutory guidance, and I can confirm that the [guidance](#) has now been published and the duties on Scottish Ministers and public authorities to have due regard to the principles have come into force.

You asked a number of questions in your letter, informed by the contact that you had with stakeholders in your consideration of the guidance.

***1. What mechanism have you created to capture and record whether and how bodies have due regard to the principles, so that this can be monitored and scrutinised?***

For the decisions with the greatest potential impact on the environment, the guidance states that the Scottish Government and other public authorities should fulfil the duty and consider the principles as a part of the Strategic Environmental Assessment (SEA) process. This is also reflected in SEA advice. The consideration of the principles will then form a part of any subsequent Environmental Reports, which are publicly available documents. This approach reflects the design intention that the provisions for the new duties should be effective and consistent without placing an undue burden on public authorities.

The duty on Ministers extends to all policy making. Clearly the relevance of the principles to different policy making processes across the full span of Government responsibilities will be very variable.

It is important that the duty is fulfilled for all policy making decision processes, and the consideration of the principles is recorded, in a way that is proportionate. The guidance does not propose a single model for this, and responsible officials will ensure that the consideration of the duty appropriate for the policy making process in question is duly recorded alongside the other considerations for that decision. For policy developments with more than minor potential environmental impacts, the SEA system will record consideration of the principles duty. For decisions with the significant potential environmental impacts, this will be through the environmental assessment process. If a proposal is judged as not requiring an environmental assessment, there will be a record of consideration of the principles through the completion of SEA pre-screening or SEA screening. The SEA database records and makes publicly available all SEA casework, and can therefore be used as a means to monitor the consideration of the principles across government.

***2. How will you ensure that public bodies are supported in carrying out these new duties, in order to ensure that the guidance will make a practical difference?***

The guiding principles on the environment are not new, the duties are broadly equivalent to the effect of principles that influenced policy development in the European Union. As noted above, for the decisions with the greatest potential impact on the environment, the guidance states that the Scottish Government and other public authorities should fulfil the duty and consider the principles as a part of the Strategic Environmental Assessment (SEA) process. This is also reflected in SEA advice. Given the technical nature of SEA, it will be usual for assessments to be undertaken by environmental or planning professionals with relevant subject expertise and we expect that practice will readily accommodate this new duty into the process.

The duty on Ministers extends to all policy making. We are providing additional internal guidance and training support for Scottish Government officials to assist in providing advice to Ministers that reflects this new duty.

***3. Could you provide some examples of how you would like to see the principles applied in areas that are less obviously environmental?***

For policies that do not have clear environmental impacts, the integration principle is important, as it makes clear that the impact of all new policies on protection of the environment should be considered. There will need to be a proportionate effort to consider whether there are environmental impacts within the policy development process, and whether different policy options have different environmental impacts.

The precautionary principle is important as it will guide the consideration of policy decisions where there is uncertainty about the environmental impacts. Both the preventative principle and the rectification at source principle give guidance as to how any identified environmental impacts should be addressed. Finally, the polluter pays principle gives guidance as to how the costs of addressing any environmental impacts should be allocated.

**4. Do you consider that the Scottish Government and UK Government approach to environmental principles to be complementary? If not, how will any practical difficulties arising from differences be addressed?**

The two approaches to environmental principles are broadly complementary, and given the nature of the principles any joined up working with the UK Government is expected to be straightforward in this regard.

**5. How will the guidance be updated in future? What timescales have you set for a future review of the guidance?**

There is no set timescale for a review of the statutory guidance. There are other ways in which we can make additional information available without a formal review of the statutory guidance. The internal guidance to Scottish Government officials will be updated over time as examples of application of the duty are available, and we will consider providing additional information that can support the consideration of the duty through the SEA process.

**6. How do you plan to gather information about real examples of the principles in operation to enable that to feed into any review of the guidance?**

It will be possible to use the publicly available SEA database that records and makes publicly available all SEA casework, and can therefore be used as a means to monitor the consideration of the principles for all decisions. We will consider in due course the most effective mechanisms to gather information on policy making practice within the Scottish Government.

I hope the response to your questions provides the clarity you were seeking on the environmental guiding principles. I look forward to continuing working closely with the Committee to protect and improve Scotland's environment.

Yours sincerely,

**MAIRI MCALLAN MSP**