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Secretary of State for the Environment, Food & Rural Affairs  
The Department for Environment, Food & Rural Affairs  
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Dear Secretary of State,

## **The UK Government's consultation on environmental targets**

I am writing to you in relation to Defra's presently active consultation on environmental targets, which opened on 16<sup>th</sup> March and closes on 11<sup>th</sup> May. This letter follows on from letters sent by ClientEarth and the Healthy Air Campaign coalition to Minister Churchill on 28<sup>th</sup> January 2022 to request enough time for the consultation and on 21<sup>st</sup> March 2022 about missing air quality information, to which we are still awaiting a response.

ClientEarth reserves our views on the substantive content of the consultation, including with regard to the suitability of the targets themselves, however, we have a number of concerns regarding the consultation process that we wish to raise at this point in time.

Both I and the wider ClientEarth team are pleased that the Environment Act 2021 (the "Act") was passed towards the end of last year and that stakeholders now have the chance to provide their thoughts on the shaping of the environmental targets. Whilst we welcome this opportunity, we have two major concerns about the way in which the consultation is being run, namely that it:

- lacks critical information to enable a properly informed consultee response; and
- is of insufficient length in terms of the consultation period prescribed.

In addition, we wish to seek clarification as to how the Secretary of State has or has not applied the still evolving and unfinished policy statement on environmental principles, intended by Parliament to be a key environmental governance mechanism under the Act to inform and underpin the development of the environmental targets.

### Lack of critical information

The consultation purports to rely on the following information in relation to the proposed targets and how these have been developed:

- evidence reports that underpin each proposed target;
- "outstanding" meeting minutes of expert groups that inform target development;
- impact assessments for each target that analyse delivery measures in addition to "an overarching Impact Assessment" in relation to target achievability and affordability; and
- the policy statement on environmental principles.

Defra states that the consultation “is being conducted in line with the Cabinet Office Consultation Principles”. The 2018 Consultation Principles, however, include the principle that a “[c]onsultation should be informative” and should “give enough information to ensure that those consulted understand the issues and can give informed responses”.<sup>1</sup>

In relation to the missing evidence reports, meeting minutes and impact assessments, the consultation document states that this information will be “published shortly”. However, this information has not yet been published as of the date of this letter -- nearly three weeks into the eight-week consultation period. In addition, no indication is given as to whether and how consideration has been given to the as yet unfinalised policy statement on environmental principles or – if any assessment of these principles (as set out in section 17 (5) of the Act) in relation to the targets consultation has in fact been completed – when or if that assessment will be published.

ClientEarth is of the view that this missing information, as detailed above and on which the targets proposals are purported to fundamentally rely, renders the consultation process flawed and, accordingly, unacceptable from the perspective of meaningful consultee engagement.

### Insufficient length of consultation period

Even without regard to the previous point about the lack of critical information associated with this consultation, the consultation period is too short to enable meaningful consultee engagement in relation to such significant, complex and far-reaching matters of environmental law and policy.

Again, the Cabinet Office Consultation Principles – which Defra purports to be acting in accordance with -- state that “[c]onsultations should last for a proportionate amount of time ... taking into account the nature and impact of the proposal.”

When considered in combination with the lack of critical information, ClientEarth’s view is that the consultation undoubtedly fails to comply with this principle. As of the date of this letter, there are just over 5 weeks of consultation time remaining. Even if the entirety of the missing information – which is likely to be substantial in terms of both volume and complexity - were to be immediately published, it would be completely unreasonable to expect consultees properly to engage with the information and respond meaningfully within the consultation time remaining.

### Clarification on the policy statement on environmental principles

Section 19(1) of the Environment Act (which we understand is yet to come into force) requires that “[a] Minister of the Crown must, when making policy, have due regard to the policy statement on environmental principles currently in effect.” A draft policy statement

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[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/691383/Consultation\\_Principles\\_\\_1\\_.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/691383/Consultation_Principles__1_.pdf)

must be consulted upon and then be laid before Parliament before it takes effect in accordance with the process outlined under section 18 of the Act.

We note that a “draft” Environmental Principles Policy Statement was the subject of a Defra consultation that ran from the 10<sup>th</sup> of March to the 2<sup>nd</sup> of June 2021. Defra committed to “analyse [consultee] responses and ... publish a summary along with the Government response within twelve weeks” of the consultation closing date (2<sup>nd</sup> June 2021). However, no such summary and response has been published by the Government in the past ten months. Accordingly, it is clear that the development and implementation of the policy statement is significantly lagging notwithstanding the present target development exercise.

Irrespective of these facts, Defra states in the targets consultation document that “[a]ll targets, both long-term and interim, must meet certain requirements that are set out in the [Act]” and that these “[n]ew legal requirements” include a requirement that “targets should be developed in a way that is consistent with the requirements of the policy statement on environmental principles, established under the [Act].” Defra also recognised this requirement in its 19 August 2020 policy paper: “Environment Bill – environmental targets” before the Environment Bill was even passed in to law.<sup>2</sup>

However, as the policy statement has not been finalised, it is not clear how Defra intends to meet this requirement – and its stated commitment to do so -- in practice, as presently there is only a draft policy statement in existence in relation to which the Government’s response to the views of consultees remains outstanding.

In ClientEarth’s view, the Secretary of State’s development of environmental targets under the Act in the absence of fully consulted upon and final policy statement, which has been laid before Parliament in accordance with the Act, does not appear to be in keeping with the Act’s intended approach to environmental governance. It is concerning that as the Government takes forward one of the most important steps of its future environment strategy – the setting of long-term environment goals under a seminal piece of post-EU exit environmental legislation – it appears to be implementing the Act’s governance provisions and processes in a rushed and arbitrary fashion, before a key underlying policy statement has been finalised and without proper regard for public participation principles.

In any event, to the extent that Defra have assessed the proposed targets against the “draft” policy statement, that assessment has not been published alongside the targets consultation (as we set out in respect of the consultation’s lack of critical information, above), and for this reason alone, we believe the consultation to be flawed.

Effective application of the policy statement to the present targeting exercise is of crucial importance. A number of consultees, including ClientEarth, have already commented publicly that the UK Government’s proposed targets are not ambitious enough to prevent environmental harm. It is therefore of interest to consultees, for example, how or whether the Secretary of State has applied “the principle of preventative action to avert environmental damage” in relation to his proposing of these targets, and how or whether the concept of proportionality has been applied to his analysis in this respect. With regard to the content of the present consultation, neither the Secretary of State’s treatment of these principles nor the other principles referred to in section 17 of the Act are capable of being ascertained by the public.

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<sup>2</sup> [19 August 2020: Environment Bill - environmental targets - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/policies/environmental-targets)

## Conclusion

For the above reasons ClientEarth strongly recommends that the Secretary of State should:

- Publish the missing information referred to in this letter without further delay, including any information as to how the Secretary of State engaged with the Act's environmental principles (or draft environmental principles policy statement) (or if he has not, then why not); and
- Subsequently extend the consultation period for an appropriate period of time, consistent with the Cabinet Office Consultation Principles, to enable consultees to review the additional information in conjunction with the proposals set out in the targets consultation;
- Publish the final version of the environmental principles policy statement and bring sections 17 to 19 of the Act into force without further delay.

We are keen to receive a written response from you on these important issues. We would also be more than happy to arrange a meeting to discuss this further with you and find a way to ensure a robust and stakeholder-engaged consultation can take place, given how important this process is to the long- term protections of our environment and our reputation on the international stage.

Yours sincerely,



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