



Department  
for Business  
Innovation & Skills

Better  
Regulation  
Delivery Office

# **A Review of Natural Resources Wales against the Principles of Good Regulation**

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**June 2015**

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## Executive Summary

This report has been prepared by the Better Regulation Delivery Office (BRDO) for Welsh Government. It sets out an assessment of a review of progress made by Natural Resources Wales (NRW) working with the principles of good regulation and the Regulators' Code<sup>1</sup>. Assurance that a regulator is following the principles of good regulation is a prerequisite in order for it to be granted civil sanctioning powers\*. NRW is a new Welsh-specific regulator and this review is required because NRW has assumed civil sanctioning powers previously awarded to Environment Agency Wales.

The report concludes that NRW is still in the relatively early stages of shaping its regulatory approach as distinct from its legacy organisations. As such, it still has some work to do to fully address all the provisions of the Regulators' Code. However, the review team is sufficiently convinced of NRW's intentions to achieve regulatory excellence through commitments made, policy development in train, and aspirations to build staff capability.

We commend this report to Welsh Ministers as a sound basis on which they could grant NRW continued access to civil sanctioning powers. Additionally, and perhaps more importantly, it has from the outset been our intention that this review should go beyond assessing whether NRW is a 'good regulator', but given its stage of genesis, the review should add value to NRW and help it become the kind of regulator it aspires to be.

### Key findings from the review

Overall, there is evidence that NRW has a broad understanding of the principles of good regulation and the Regulators' Code, is committed to embedding these in its ways of working, and is actively working towards achieving this aim. Coupled with a willingness and attitude on the part of those NRW staff responsible for regulatory policy, this provides an excellent foundation on which NRW can continue to cultivate an original and pioneering regulatory approach with an emphasis on supporting compliance and business growth in Wales.

Stakeholders the review team spoke to were very mindful that NRW is still a young and developing organisation and were keen for their views to be seen in a constructive rather than critical light. There were messages from businesses that NRW clearly wanted to 'do the right thing'. Businesses said NRW needs to focus on getting the basics right rather than be distracted by pressure to be 'all things to everyone'. Other delivery partners praised the bold and pioneering stance being taken by NRW, but recognised that more time was needed for some of this innovative thinking to be translated in practice.

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\* Professor Macrory recommended that these powers should only be made available to those regulators which will use them in accordance with the principles of good regulation described by the Legislative and Regulatory Reform Act 2006 and reproduced in the Regulatory Enforcement and Sanctions (RES) Act 2008. These state that enforcement activities should be carried out in a way that is transparent, accountable, proportionate, consistent, and targeted only at cases where action is needed. This framework has been replicated in other legislation, such as the Climate Change Act 2008.

The review team noted the following key areas where NRW is performing particularly well:

- **NRW has made efforts to embed all six provisions of the Regulators' Code in its policy, culture and practice.** There was agreement across the stakeholder groups the review team spoke to that generally NRW is a 'proportionate' and 'risk-based' regulator. The desk-based work showed positive indication that NRW is beginning to consider its impact on business success; is making information and guidance more accessible; recognises the value of sharing data; and, is building the principles of the Regulators' Code into all its policy documentation.
- **NRW shows ambition to develop a new and different regulatory approach which recognise its diverse role, business expectations and focus on outcomes.** In its first set of regulatory principles described in 'Our approach to regulation to support natural resource management'<sup>2</sup>, NRW sets out a vision of how it will address the needs of business, industry and government whilst also caring for the environment. This proposes a flexible, responsive and collaborative approach to delivering outcomes. Coupled with the clearly articulated set of outcomes in the Corporate Plan, this provides the basis for an integrated and innovative regulatory style going forwards.
- **NRW recognises the value of engagement and has put in place a variety of mechanisms to ensure those they regulate or who are impacted by regulation have the opportunity to share their views.** The review team heard that NRW staff are trained in business awareness and engagement. This was reflected in reports from businesses that although initially internally focused, NRW is now perceived to be an outward-facing, visible and accessible organisation. NRW attends various business forums, has initiated productive working relationships with business and local authority representative groups, and actively seeks their opinions in developing policy, guidance and procedures.
- **The NRW approach to working with the hydropower sector is noteworthy and an excellent example of regulatory co-production.** The review team heard from various stakeholder groups- Welsh Government, NRW staff, and businesses- that NRW has developed excellent communications with the hydropower sector resulting in the co-design of guidance, new permitting arrangements and risk assessment. Benefits reported by stakeholders include more effective targeting, more support for planners, fewer revisited applications and an overall saving in time and effort for both business and NRW.
- **Transparency is a key strength of NRW.** NRW staff the review team spoke to were keen to show their commitment to transparency about their activities, and described an organisation that has transparency embedded in its ethos, with a Board that meets in public and publishes all its papers online. Delivery partners reflected that this spirit of transparency was exemplified in very practical terms by the area panels that NRW convene, whilst businesses pointed to the transparency in decision making exhibited in relation to their work with the hydropower sector.

## Recommendations

We have identified the following overarching series of cross-cutting thematic recommendations:

- **NRW needs to finalise its regulatory principles and start putting these into action.** NRW, as a new Welsh-specific regulator has the unique opportunity to craft its own regulatory approach without obligation to those of its legacy organisations. The recommendations in this report will help NRW to ensure alignment with the principles of better regulation and the review team would suggest that NRW also works closely with those it regulates to ensure these are fit for purpose. However, we also heard that NRW is prepared to be 'bold', to try new ways of doing things and it is important that this ambition for a new approach is brought to fruition.
- **NRW should develop and embed its approach to supporting compliance by small businesses.** This should include:
  - Efforts to cultivate visibility to and awareness, confidence and trust of the small business community;
  - Recognition that small businesses are differentially impacted by regulatory activity compared to large businesses and have specific needs;
  - Mechanisms to help small businesses access support and advice;
  - Clear messaging about how NRW handles requests for advice from businesses concerned that they might be non-compliant; and
  - Continuation of the relationship building already in train with relevant business representative organisations.
- **Although significant improvements have been made to the NRW website interface over the duration of this review, more work still needs to be done.** The website is a key portal through which businesses access NRW information and guidance. As such it needs to 'feel' more business friendly and to portray NRW as a business-facing organisation. Planned improvements to website navigation will help, but thought also needs to be given to presentational aspects- logical grouping and signposting of information, prominent placement of key information such as the NRW 'service standards'<sup>†</sup>, and building links with other websites accessed by businesses. Businesses and business representative groups that the review team spoke to would be keen to be involved in further website and content development. The review team suggests NRW works with its business customers to further shape how information appears on the website.

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<sup>†</sup> Including- how to get in contact; the NRW enforcement policy; how to access advice and guidance; risk approach; how to complain; how to provide feedback; and fees and charges and how these are calculated.

- **NRW needs to recognise and exploit the ability of business to contribute to the outcomes it wants to see.** There are several areas where NRW could improve how it works with and responds to business to support compliance. Businesses say they would like:
  - To feel they are listened to and that NRW has a good understanding of the challenges and pressures faced by business- this could be achieved through a business survey or business reference group
  - Communications such as updates, newsletters and bulletins, which are specifically targeted at the business community and demonstrate an understanding of their issues and needs
  - Reassurance regarding continuing access to the expert and sector specific advice that existed in the NRW legacy organisations.
  - Involvement in designing information intended for them e.g. website layout and materials, guidance, data collection mechanisms.
  - Better clarity around what constitutes legal requirement as opposed to advice or good practice, and
  - More emphasis on cultivating the 'soft skills' of NRW officers
  
- **NRW needs to rethink how it can best work to support growth and compliance by the forestry sector.** NRW is both regulator and regulated in the forestry sector and this should be a strength in terms of providing a useful internal perspective on regulation and how it impacts on business. To enable this approach to work effectively, NRW needs to:
  - Build the trust and confidence of this sector;
  - Communicate to its competitors that the regulatory regime around its own forestry operations is fair and transparent;
  - Address the perceived lack of available information and guidance for the forestry sector; think about how risk is communicated to this sector; and
  - Consider the impact of felling licence application turnaround times which have caused forestry businesses to miss planting seasons.

A full set of detailed findings and recommendations grouped by Regulators' Code theme is included in **Appendix 1**.

## Introduction

1. This review aims to provide a structured check against the principles of ‘good regulation’<sup>‡</sup> using the provisions of the Regulators’ Code which came into force in April 2014, as the standard. It is intended to provide a basis on which Welsh Government could satisfy itself that NRW will act in accordance with the principles in exercising civil sanctioning powers. It is also intended to help NRW shape their approach to business regulation moving forwards by highlighting where the organisation is performing well against the principles of the Code, along with areas for improvement.

### Background to Natural Resources Wales

2. Natural Resources Wales (NRW) is a single environmental body employing 1,950 staff across Wales and with a budget of £176 million for 2015/16. It was legally established as a statutory body in July 2012 with assets and liabilities transferring from legacy bodies in April 2013<sup>§</sup>. It brings together the work of the Countryside Council for Wales, the Environment Agency Wales and the Forestry Commission Wales, and also took over a number of Welsh Government functions.
3. NRW is managed by a board appointed by the Welsh Government’s Minister for Natural Resources. It has a very broad remit and undertakes a mix of activities in terms of managing, protecting and using Wales’s natural resources. It is also the largest Welsh Government Sponsored Body with the majority of its funding sourced from a Grant in Aid allocation. Income is sourced not only from businesses it regulates but also through licensing activities such as fishing.

### NRW Remit

4. NRW’s purpose is stated as being *‘to ensure that the environment and natural resources of Wales are sustainably maintained, sustainably enhanced and sustainably used, now and in the future’*<sup>§</sup>.
5. Of interest to this review and in terms of its remit, NRW works closely with Welsh Government to deliver a shared set of cross-cutting outcomes which include ‘supporting enterprise and jobs’. This is reflected in the NRW aims<sup>4</sup> which include:
  - To work for Wales’s economy and enable the sustainable use of natural resources to support jobs and enterprise.
  - To help businesses and developers to understand and consider environmental limits when they make important decisions.

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<sup>‡</sup> The five principles of good regulation are: consistency, transparency, proportionality, accountability and targeting.

<sup>§</sup> By the Natural Resources Body for Wales (Establishment) Order 2012 and the Natural Resources Body for Wales (Functions) Order 2013, under the Public Bodies Act 2011



6. NRW organises its Corporate Plan and the work it does around five independent and cross-cutting themes: **Good knowledge** to achieve a **Good Environment** that is **Good for People** and is **Good for Business**. NRW aims to deliver this through being a **Good Organisation**. Welsh Ministers set objectives for NRW through an annual Remit Letter. In the current remit letter for 2015-16<sup>5</sup> under the theme 'Good for Business', Welsh Government expects NRW to action the following:

- Ensure timely input to planning decisions.
- Ensure effective risk-based implementation of regulatory regimes.
- Take a positive, risk-based approach to the development of distributed energy generation which maximises benefit for Wales.

7. NRW's roles and responsibilities are many and varied, and those pertinent to this review include:

- **Adviser:** to Welsh Government, industry, the public and voluntary sector, about issues relating to the environment and its natural resources.
- **Regulator:** making sure sectors including forestry, nuclear power stations, industrial and waste sites meet high standards to protect local communities and the environment
- **Designator:** of Sites of Special Scientific Interest, Areas of Outstanding Natural Beauty (AONBs), National Parks, and National Nature Reserves, and protecting important, recognised sites that make up 30% of Wales' land and waters – including 76 National Nature Reserves, one Marine Nature Reserve, 1060 Sites of Special Scientific Interest, 10 Ramsar sites<sup>\*\*</sup>, 92 Special Areas of Conservation and 20 Special Protection Areas.
- **Responder:** to some 9,000 reported environmental incidents a year as a Category 1 emergency responder
- **Statutory consultee:** Responding to over 9,000 planning applications a year fulfilling the duties within their remit on key issues like flood risk, conservation and water quality
- **Manager/Operator:** managing seven per cent of Wales' land area including 120,000 hectares of woodlands, planting three million trees made up of 32 different species and marketing over 650,000 tonnes of timber to fulfil 300 tree harvesting contracts
- **Evidence gatherer:** monitoring the environment, commissioning and undertaking research, developing knowledge, and being a public records body

#### NRW Regulatory Responsibilities

8. Natural Resources Wales is the regulatory authority in Wales for a wide range of environmental legislation. This includes more than 40 different types of regulatory regimes across a wide range of activities inherited from its predecessor organisations<sup>††</sup>.

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<sup>\*\*\*</sup> Ramsar sites are wetlands of international importance, designated under the Ramsar Convention.

<sup>††</sup> Including major industry (refineries, chemicals, cement, power stations, iron and steel, food and drink etc.); waste industry (storage, treatment, disposal); Sites of Special Scientific Interest - consents and assents;

For most of these activities NRW grants permits or licences<sup>††</sup>, undertakes compliance assessments and, where necessary, takes formal enforcement action. NRW also regulates some activities where the requirements are laid down in legislation rather than in site specific permits, for example, the waste ‘duty of care’ system.

## **Background to the review**

### Principles of good regulation

9. Good regulatory delivery provides assurance and protections for citizens and drives businesses compliance. In turn this creates fair and competitive markets and underpins business prosperity and growth. In his 2005 review for UK Government<sup>6</sup>, Sir Phillip Hampton set out a vision for a regulatory system that targeted persistent offenders whilst supporting those businesses that want to comply. This review also highlighted the need to revisit the range of sanctions available to regulators. This was subsequently undertaken by Professor Richard Macrory in 2006<sup>7</sup> who recommended introducing a set of ‘civil sanctions’ that would allow regulators to impose proportionate, flexible and meaningful sanctions in situations of regulatory non-compliance as an alternative to criminal prosecution.
10. The recommendations from these reviews were accepted by UK government and the conditions for granting and use of civil sanctioning powers were incorporated into the Regulatory and Enforcement Sanctions Act 2008 (RES Act)<sup>8</sup>. As this marked a significant change in enforcement practice, a proviso was imposed that before a regulator can exercise these powers, Ministers must be satisfied that the regulator will use the powers in accordance with the principles of good regulation i.e. that regulatory activities should be carried out in a way which is transparent, accountable, proportionate and consistent and should be targeted only at cases in which action is needed. These principles are set in statute by the Legislative and Regulatory Reform Act 2006 and exemplified by the Regulators’ Code.

### The Regulators’ Code

11. The UK Government’s Regulators’ Code<sup>9</sup> came into statutory force on 6<sup>th</sup> April 2014 and provides a clear, flexible and principles-based framework for how regulators should engage with those they regulate. The Code applies to most UK non-economic regulators, including local authorities, fire and rescue authorities and national regulators who must have regard to it when developing policies and procedures that guide their regulatory activities. There are six provisions of the Code:

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radioactive substances (nuclear and non-nuclear); European protected species licensing; marine licensing; tree felling licensing; water discharges (surface & groundwater); water resources (abstraction, impoundment, drought); packaging regulations and EU/UK trading schemes; Countryside Rights of Way Act – access restrictions, open access land; commercial fisheries (eels, salmon, shellfish).

<sup>††</sup> For licensing activities alone, NRW issues over 10,000 permits, 65,000 fishing rod licences and 100 marine licences each year.

- Regulators should carry out their activities in a way that supports those they regulate to comply and grow;
- Regulators should provide simple and straightforward ways to engage with those they regulate and hear their views;
- Regulators should base their regulatory activities on risk;
- Regulators should share information about compliance and risk;
- Regulators should ensure clear information, guidance and advice is available to help those they regulate meet their responsibilities to comply; and
- Regulators should ensure that their approach to their regulatory activities is transparent.

12. NRW is cited in the listing order under the relevant schedule of the Legislative and Regulatory Reform (Regulatory Functions) Order 2007<sup>10</sup> and has therefore been subject to the new Code since it came into force in April 2014 for those functions which are exercisable across both England and Wales. In practice this equates to a fairly narrow legislative field dealing with the control of major accidents and hazards<sup>11</sup>. NRW has however from its introduction acknowledged that the Code represents good practice in regulatory delivery and has committed to its principles in their policy making and to embedding it in their ways of working across the organisation.

#### NRW and Civil Sanctioning Powers

13. Welsh Government favours the use of civil sanctions, and section 36 of the Regulatory Enforcement and Sanctions (RES) Act 2008<sup>12</sup> provides that the power to make an Order conferring civil sanctioning powers on a regulator may be exercised by Welsh Ministers in relation to a Welsh Ministerial matter<sup>§§</sup>. Welsh Ministers granted the Environment Agency Wales (EAW) access to civil sanctions for a range of environmental offences in 2010<sup>\*\*\*</sup> following review of the Agency has across its operations in England and Wales against the principles of good regulation in 2007 and 2009<sup>13</sup>. The list of regulations under which these civil sanctions were available to EAW is appended at **Appendix 2**.

#### Why this review is needed

14. The functions for which EAW had access to civil sanctions transferred to NRW on its creation on 1<sup>st</sup> April 2013. Of the three NRW legacy organisations, neither the Forestry Commission Wales<sup>†††</sup> nor the Countryside Council for Wales previously had access to

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<sup>§§</sup> In terms of what constitutes ‘a Welsh Ministerial matter’, the National Assembly for Wales has the right to pass laws in 20 areas where those powers have been expressly conferred. These are outlined in the schedule 7 to the Government of Wales Act 2006 and include Environment, Forestry, and Water and Flood Defence.

<sup>\*\*\*</sup> These civil sanctioning powers were granted under the Environmental Civil Sanctions (Wales) Order 2010 and the Environmental Civil Sanctions Miscellaneous Amendments) (Wales) Regulations 2010 from July 15<sup>th</sup> 2010

<sup>†††</sup> Although the Forestry Commission had undergone an assessment of their regulatory approach.

civil sanctions. Under the provisions of the RES Act 2008<sup>14</sup>, and for their continuing access to civil sanctions as a new Welsh-specific regulator, Welsh Ministers need to be satisfied that NRW is acting in accordance with the principles of good regulation.

15. BRDO was commissioned by Welsh Government to undertake this review in autumn 2014. Whilst the purpose of the review is primarily to provide Welsh Ministers with the necessary assurance that as a new regulator, NRW is following the principles of good regulation, it will also provide NRW with insight to help further shape their regulatory approach.

#### The role of BRDO and its work in Wales

16. BRDO is part of the UK Government's Department for Business, Innovation and Skills and exists to drive better delivery of regulation, working with business, regulators and policy makers to make regulatory delivery more consistent, transparent and accountable. It is also the key organisation working with regulators and the business community to support effective implementation of the Regulators' Code, and whilst the BRDO is not an auditing or inspection body, the Code provides the standard for this review.
17. A Memorandum of Understanding (MoU)<sup>15</sup> exists between the Secretary of State and Welsh Ministers setting out how they should work together in the exercise of their respective functions. This MoU positions BRDO so it can work effectively at both UK national and Welsh devolved levels. BRDO have worked with Welsh Government to deliver six annual work plans in Wales allowing unique insight into and understanding of the regulatory landscape and delivery agents in Wales. It jointly chairs a Welsh Regulators' Forum<sup>16</sup> with Welsh Government which included representation from EAW from the outset and, more recently, representation from NRW.
18. BRDO have undertaken a review of this kind previous in Wales. In 2010, BRDO's predecessor, LBRO, was commissioned by Welsh Government to review the progress made by all local authorities in Wales towards working with the principles of good regulation for the purposes of conferring civil sanctioning powers. The report provided the necessary assurance to enable Welsh Ministers to grant all local authorities in Wales the civil sanctioning powers contained within the Single Use Carrier Bag Charge (Wales) Regulations 2010, under the Climate Change Act 2008<sup>17</sup>.

## **Methodology**

19. There are two elements to good regulation- one is about the design of regulations, and the other is about the way regulations are enforced. This review considers the latter and explores the NRW approach to regulatory delivery. As such, the review focusses on those aspects of the NRW's activities that impact on regulated entities, such as licensing, permitting, inspections, advice and guidance, and access to information.

20. The purpose of the review was to conduct an assessment of NRW as a regulator against the principles of good regulation as exemplified by the Regulators' Code. It comprised of two phases- a series of workshops and meetings with a range of stakeholders<sup>+++</sup> to gauge their experience of regulation by NRW and to develop a more rounded narrative around this, followed by a desk-based review of relevant available documentation.
21. A comprehensive account of the approach to the review is detailed in **Appendix 3**. Using the combination of documentation analysis alongside the evidence collected from a series stakeholder sessions using the question set in **Appendix 4** has provided the basis for a comprehensive and structured check of NRW against the principles of good regulation. The assessment framework in **Appendix 6** has enabled the review team to identify those areas where NRW is performing well in terms of its regulatory approach, but has also flagged up the key issues that the review team believes NRW needs to consider in terms of its future organisational direction and aspirations to become a world class regulator.

## **Analysis against the Regulators Code**

22. In this section we consider all the evidence gathered through the stakeholder engagement sessions and meetings, website review and desk based research of corporate documentation. These are reported against the six themes of the Regulators' Code and the requirements included under each of these, using the assessment framework in **Appendix 6**.

### ***Theme 1: Regulators should carry out their activities in a way which allows those they regulate to comply and grow***

In summary, this part of the Code requires a regulator to:

- Ensure that officers have the necessary knowledge and skills to support those they regulate, and understand the statutory principles of good regulation and the Code.
- Consider how they might support or enable economic growth of compliant businesses or regulated entities in the design and review of their policies, practices and procedures;
- Be proportionate – taking into account business size and capacity.
- Avoid imposing any unnecessary burdens through their regulatory activities on those they regulate.

#### **Key findings**

- **Welsh Government and NRW staff report that there is an increasing focus on the importance of economic growth within NRW as an organisation.**

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<sup>+++</sup> Including with businesses and business representative groups, Welsh Government policy leads and other delivery agents along with policy and operational staff at all levels within NRW- organisations consulted are listed in Appendix 5

- **The business experience does not always match up to NRW's policies which aspire to support growth**
- **There is good evidence that NRW aspires to support growth in its corporate documentation and business plans, but more can be done to incorporate the reduction of burdens and the support of growth in their policies and procedures and advice to businesses.**
- **Some stakeholders raised a concern over how NRW can demonstrate that it is nurturing a level playing field in the forestry sector given that they are also an operator in the managed forestry sector.**
- **There is good evidence that NRW is ensuring that its staff have the necessary skills and knowledge to support those they regulate.**

#### Regulatory burdens and proportionate approaches

23. The Code states that regulators should avoid imposing unnecessary burdens through their regulatory activities and should assess whether similar social, environmental and economic outcomes could be achieved by less burdensome means. They should choose proportionate approaches to those they regulate, based on relevant factors including, for example, business size and capacity.

- **Welsh Government and NRW staff report that there is an increasing focus on the importance of economic growth within NRW as an organisation.**

24. The review found evidence that NRW are seeking to engage with those they regulate in order to ensure burdens are kept to a minimum. In a workshop session, officials from Welsh Government felt that NRW are taking steps to recognise the need to reduce administrative burdens and that it has made some good progress in this area – a particular example was the engagement that NRW is doing with industry and the wider stakeholder group in order to co-design the new permitting arrangements for hydropower organisations, in a manner which takes account of economic, as well as social and environmental impacts<sup>§§§</sup>. NRW have invested resource in the sector to support them through the application process – reducing administrative costs for both business and NRW.

- **The business experience does not always match up to NRW's policies which aspire to support growth**

25. Small businesses we spoke to reported feeling that NRW is inaccessible – they want to comply with regulations but often don't know how to get the information, and struggle to access this through the website. There was a general feeling amongst business that the amount of advice available has reduced as staff numbers have declined, for example, they report that NRW now carries out fewer visits for advice purposes. These elements are explored in further detail under 'theme 5' which deals with advice and guidance. Other concerns over staffing were also cited, for example despite the fact that businesses are charged on a cost recovery basis, long delays were being experienced in

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<sup>§§§</sup> This is explored further under theme 5 which includes a case study

permit processing times which can impact on business e.g. for the forestry sector felling licence applications and NRW turnaround times causing them to miss planting seasons.

26. A business representative group said that, while NRW generally takes a proactive approach to business support, some businesses have reported less positive experiences and feel that they have been overly firm in their regulation. The review team also heard of a particular example, cited by a business representative group, concerning a company director who was interrupted by NRW officers whilst he was having a business meeting and who reported the conduct of the officers to be inappropriate. The director made an official complaint which was followed up by NRW.

#### Business support and growth in policies

27. The Code asks regulators to consider how they might support or enable economic growth when designing and reviewing policies, operational procedures and practices.

- **There is good evidence that NRW aspires to support growth in its corporate documentation and business plans, but more can be done to incorporate the reduction of burdens and the support of growth in their policies and procedures and advice to businesses.**

28. Evidence of good practice can be found in the 2013-14 consultation on NRW's Corporate Plan<sup>18</sup>, which made clear commitments to understand the impact of their actions on business and the 2015-16 Business Plan<sup>19</sup> which explains its commitment to Developing Enterprise and Business. One objective is to "facilitate further opportunities for others to work with [NRW] to develop their businesses" including building good working relationships with business. The business plan also commits to support the wind energy and hydropower sectors to grow.

29. The review also found evidence in the 'Corporate Plan' and the regulatory principles in 'Our Approach to Natural Resource Management'<sup>20</sup> that NRW is designing policies and procedures with a view to supporting or enabling growth. Their internal resources for NRW staff 'NRW Roadmap- Our Journey to Success' also points to an organisation that through its transformation portfolio aspires to 'develop business and enterprise':

#### **Excerpt from NRW Roadmap- demonstrating NRW's commitment to supporting business growth in Wales**

NRW's commitment to supporting business and economic growth is stated as one of their key objectives and publicised widely. Their February 2015 'Roadmap' for internal staff which sets out their vision and the values and behaviour to achieve this includes:

*'Good for business- Support businesses to create prosperity and jobs, while using the environment and our natural resources in a responsible way.'*

30. The Welsh Local Government Association said that they believed NRW is moving towards more proactive business support, for example working with local authorities to help businesses who want to bring in renewable energy.

31. Although there is evidence of good practice as described above, the review found that more can be done by NRW to demonstrate that they are avoiding imposing unnecessary burdens or that they are reducing the burden of regulatory activity. The review team recognises that the existing NRW Enforcement and Prosecution Policy<sup>21</sup> predates the Regulators' Code but would suggest this is now revisited and revised to bring in line with the Code, and particularly to explain how NRW proposes to reduce burdens or carry out their activities in a way that supports those they regulate to comply and grow. A business representative group felt that there was room for NRW to improve in this regard, stating that NRW should do more to explain how they support business and economic growth in their corporate documentation.
32. Moreover, in the developing set of NRW regulatory principles, "Our Approach to regulation to support Natural Resource Management<sup>22</sup>", additional detail is needed as to the ways in which NRW and its staff will regulate in a way that reduces burdens and encourages growth. This document does however indicate a commitment to have regard to the Regulators' Code and that NRW staff are required to have knowledge of the principles of good regulation.
- **Some stakeholders raised a concern over how NRW can demonstrate that it is nurturing a level playing field in the forestry sector given that they are also an operator in the managed forestry sector.**
33. Welsh Government had heard that the forestry sector has complaints about how fair and transparent the regulatory regime is. This view was supported by business and representative groups who said that, because NRW operates managed forestry (about 60% of the Welsh market) they are therefore both a competitor and a regulator, which creates an unfair playing field with one set of rules for NRW and another for the rest of the industry.
34. Unlike its predecessor, the Forestry Commission Wales, the review team heard that NRW does have a process in place to deal with internal applications for permits which gives it parity with the private sector. This provides arrangements for NRW to refer itself to the Crown Prosecution Service if it causes a significant pollution event. Forestry businesses seem unaware of this. This may be because whilst information on self-permitting decisions is published on the NRW website, detail concerning the mechanism for dealing with non-compliance in relation to their own estate is not. Better communication of this proviso would serve to build a better relationship with the private forestry industry and foster understanding that their status is the same regardless of the fact that they both regulate and manage the Welsh Government Woodland Estate.

#### Appropriately skilled officers with awareness of the Code

35. The Code requires that regulators ensure their officers have the necessary knowledge and skills to support those they regulate, and that their officers understand the principles of good regulation and how a regulator can deliver its activities in accordance with them.



- **There is good evidence that NRW is ensuring that its staff have the necessary skills and knowledge to support those they regulate.**

36. The review found documentary evidence to support the view that NRW is ensuring that its officers have the necessary knowledge and skills to support those they regulate. In workshops we conducted, NRW staff said they felt that there has been a greater emphasis on economic growth since they became the new organisation. They said that their knowledge and understanding of the markets and sectors they regulate enables them to frame regulation appropriately – for example, NRW engaged and consulted extensively with the sector to develop its tree disease management strategy. Similarly, in the document ‘Our Approach to regulation to support Natural Resource Management’ NRW emphasises its commitment to ensuring that its staff have the right skills and knowledge to understand others and engage with them effectively.

### Recommendations

- NRW should consider reviewing its policy and guidance documents to explain more specifically how they reduce the burden of their regulatory activity and how they support those they regulate to comply and grow.
- The ‘Enforcement and Prosecution Policy’ and ‘Our Approach to Natural Resource Management’ should be reviewed and updated to reflect the requirements of the Regulators’ Code as the current standard dictating what good regulation looks like.
- NRW should consider the mechanisms through which small businesses can access support and advice and explore whether there is more it can do to support them to comply and grow.
- NRW should consider whether there is more it could do to demonstrate that the regulatory regime around its forestry operation is fair and transparent to its competitors.
- NRW should continue with their efforts to build staff awareness and competency in relation to the principles of better regulation with a focus on the Regulators’ Code – see theme 6.

## ***Theme 2: Regulators should provide simple and straightforward ways to engage with those they regulate and hear their views***

In summary this part of the Code requires a regulator to:

- Have mechanisms in place to engage with those they regulate and regularly invite and receive ‘customer’ feedback;
- Consult with those they regulate before changing policies or practices;
- Provide and explain clear, impartial routes to appeal and complaints procedures;
- Be clear about what non-compliance has taken place, what advice is being given to the organisation and what action is required, providing an opportunity for dialogue about compliance.

### **Key findings**

- **NRW has gone to great lengths to establish stakeholder engagement mechanisms to inform the development of its policies, guidance and procedures.**
- **The new single point of contact Customer Care Centre is easy to contact and has been a positive development.**
- **There is limited evidence of a consistent and comprehensive engagement strategy when NRW undertakes formal consultations.**
- **NRW's policy towards addressing non-compliance is clear and transparent.**
- **There is limited evidence that NRW has developed a clear and transparent route to appeal.**
- **NRW's complaints procedure is clear and transparent.**

### Engagement mechanisms

37. The Code requires regulators to have mechanisms to enable those they regulate to contribute to the development of their policies and service standards so that the impact of policies, practices or service standards on business is taken into account.

- **NRW has gone to great lengths to establish stakeholder engagement mechanisms to inform the development of its policies, guidance and procedures.**

38. The review team saw several examples of NRW developing mechanisms to engage with those they regulate in order to contribute to the development of their policies. NRW's engagement with the hydropower sector was a very positive example. NRW convened a stakeholder group with representatives from industry and environment to help shape the guidance available to the sector, streamline licensing processes and provide a forum in which parties can represent their interests. This example is explored in further detail under theme 5 which includes a case study relating to the co-production of guidance with the hydropower sector. As a result of their efforts, Welsh Government reported being impressed with the lengths NRW had gone to engage with the sector. Another example cited by NRW staff of best stakeholder engagement practice was full and comprehensive consultation with the forestry sector during the redesign of the felling licence application process.

39. NRW staff report that they are building relationships with a broader range of sectors, including actively seeking forums for business engagement, and only creating new ones where a gap exists. Welsh Government and the representatives of the WLGA shared this view, stating that the level of engagement NRW undertakes is increasing – describing it as an evolutionary process. Business representative groups had a different perspective – arguing that NRW could make more use of existing fora –Dwr Cymru Welsh Water (DCWW) was specifically mentioned here. They did however report that they meet with NRW on a regular basis – this provides an opportunity for the business representative groups to provide NRW with feedback from its members. NRW says it does meet with DCWW as part of a Customer Challenge Group through which it has previously advised on the legal framework and responsibilities of DCWW to deliver its obligations with regard to the DCWW business plan.

40. Other examples of NRW's stakeholder engagement forums include the Charge Payers Consultative Group, Wales Land Management Forum, Forest Business Group, and

Flood Risk Wales Management Committee. These groups are made up of a range of representatives from members of the public, individual businesses, representative organisations (e.g. farming unions), trade bodies (e.g. Energy UK, UK Petroleum Industry Association, Chemical Industry Association, Mineral Products Association), local authorities and third sector organisations. NRW report that their engagement with these typically includes; discussing and setting their priorities, providing information and considering potential areas for policy development, through to reviewing the need for guidance, and providing a feedback route for comments and concerns. In particular, business groups fed back that the way NRW had engaged with the business community in the development of its charging policy was extremely positive.

41. In its regulatory principles, “Our Approach to regulation to support Natural Resource Management<sup>23</sup>” NRW recognises that a key challenge they face is to ensure that they provide ways for those they engage with to provide feedback on how they regulate. A commitment is made to proactively engage with stakeholders in order to keep their regulatory principles and their approach to natural resources management under review.

- **The new single point of contact Customer Care Centre is easy to contact and has been a positive development.**

42. Both Welsh Government and NRW staff felt that the single point of contact helpline was a positive step that makes things easier for business. The review team found it easy to find information on how to contact the Customer Care Centre both on the NRW website and through its written communications with businesses, and it clearly explains that the centre handles everything from straightforward general enquiries to more complex questions about registering for various permits. It goes on to provide details as to the topics upon which the Centre is able to provide information. More analysis of the service provided by the Customer Care Centre and the proposed ‘Customer Care Strategy’ is provided under theme 5 on ‘advice and guidance’.

- **There is limited evidence of a consistent and comprehensive engagement strategy when NRW undertake formal consultations.**

43. Despite NRW’s excellent approach to engagement, the review found limited evidence that NRW has used a variety of methods for engaging with and gathering the views of their stakeholders in their formal consultations. For example, the recent consultation on draft flood risk management plans for Wales only provided one way for stakeholders to submit their views – via a proforma on the website. A more inclusive approach might have been to offer a variety of ways for those NRW regulates to submit their views, for example online or attendance at engagement events.

#### Communicating non-compliance

44. In responding to non-compliance, regulators should clearly explain the nature of the non-compliance, the advice being given, actions required or decisions taken, and the reasons for these. They should provide an opportunity for dialogue in relation to the advice, requirements or decisions, except in circumstances where immediate enforcement action is required to prevent or respond to a serious breach.

- **NRW's policy towards addressing non-compliance is clear and transparent.**

45. There is clear evidence in NRW's corporate and guidance documents that they aim to explain the nature of non-compliance and the actions required to rectify it to those they regulate. The introduction to NRW's published Enforcement and Prosecution Policy<sup>24</sup> states "We offer information and advice to those we regulate and seek to avoid bureaucracy or excessive cost." The document explains that its general approach to non-compliance is to provide advice and guidance to help the non-compliant to comply and that NRW tries to match its response to the circumstances – indicating an intention to adopt a proportionate approach.

#### Appeals mechanisms

46. The Code requires regulators to provide an impartial and clearly explained route to appeal against a regulatory decision and the route to appeal should be publicised.

- **There is limited evidence that NRW has developed a clear and impartial route to appeal.**

47. NRW are the lead regulator for a number of regulatory regimes each of which has a formal appeals mechanism required by the relevant legislation to deal with disputed decisions. Additionally, when undertaking its regulatory role, the review team heard that NRW engages in a range of more informal discussions with customers should their regulatory decisions be questioned. Such informal mechanisms include questioning inspectors' decisions during a regulatory visit, discussing regulatory decisions with the inspector on the telephone after the visit has taken place, and written correspondence outside of the formal appeal process.

48. No specific feedback was received on NRW's routes to appeal regulatory decisions and there is little evidence that NRW has made clear on their website how to go about appealing a decision. There is little mention of appeals in the enforcement and prosecution policy or the areas of the website concerned with how to make a complaint. Guidance for specific application processes tends to point a regulator to contact NRW directly if they wish to appeal.

49. NRW do recognise that they do not currently have an appeal process for customers to query decisions and are proposing a new NRW process to handle customers who wish to challenge a particular regulatory decision and to develop a communication plan to disseminate the decision and approved process both internally and externally. This should include processes for providing a timely explanation in writing of any right to appeal or to representation. As the route to appeal is part of the 'service standards' which regulators should make clear to businesses, this is picked up again under theme 6 which deals with 'transparency'.

## Complaints

50. The Code also requires regulators to make clearly explained complaints procedures available; and also requires regulators to have a range of mechanisms to enable and regularly invite, receive and take on board customer feedback.

- **NRW's complaints procedure is clear and transparent.**

51. NRW's website provides clear and concise guidance for those who wish to make a complaint, and NRW have made provision for complaints to be made in different ways – either by filling in a form or over the phone. The published complaints policy clearly explains the complaints process and the timescales within which a complainant can expect their complaint to be dealt with. It was broadly felt (by Welsh Government and business representative organisations) that NRW's complaints procedures are not always clear, however the review team feels that NRW has already taken considerable steps to address this through the complaints section of the website, and there is now clarity around procedures for complaints.

52. The review team found less evidence to demonstrate how NRW handles complaints once it receives them. Business groups reporting a feeling that whilst NRW does have a complaint procedure in place, there didn't seem to be any consequences or follow up action where it was found that NRW had made a mistake. The reporting of follow-up to complaints and appeals is further explored under theme 6.

## Recommendations

- NRW should continue with their work to develop their strategic approach to regulation and to build a distinct and visionary set of regulatory principles which reflect the ethos of the NRW as a new regulator, and are responsive to the needs of those it regulates.
- NRW should clearly explain to businesses routes to appeal any regulatory decisions- this information should be communicated through the NRW website but also in letters and advice to businesses

## **Theme 3: Regulators should base their regulatory activities on risk**

In summary, this part of the Code requires regulators to:

- Use evidence-based assessments of priority risks, and target resources according to those risks
- Have a robust risk assessment framework in place, which it uses to plan interventions. Businesses should be aware of this framework.
- Base decisions in response to breaches on risk, with an approach in place to ensure that these are proportionate to the nature of the offence and the harm caused.
- Recognise compliance approaches and ensure the effectiveness of regulatory activities.
- Review the effectiveness of their chosen regulatory activities in delivering the desired outcomes and make any necessary adjustments accordingly.

## Key findings

- **NRW uses evidence-based risk assessments to help target its actions according to risk.**
- **Staff at both operational and policy levels have confidence in the Opra tool (which forms the basis of the risk assessment framework).**
- **NRW provides guidance on its use of enforcement and sanctions, and this explains NRW's approach to ensuring that actions are proportionate to risk and harm.**
- **More could be done to ensure that businesses understand how they are being assessed, and to ensure transparency.**
- **There is some evidence that NRW reviews its regulatory activities to ensure that these are effective in delivering outcomes.**

## Developing risk-based approaches to business support and interventions

53. The purpose of this principle is to ensure that regulators focus their attention where it is needed most – at the highest risks. Risk should be assessed using a robust framework, which should be open and transparent to businesses, and decisions should be evidence-based and proportionate. Regulators should recognise and reward the efforts of compliant businesses.

- **NRW uses evidence-based risk assessments to help target its actions according to risk.**

54. NRW takes a risk-based approach to its regulatory functions. This is based on the Operation Risk Assessment model (Opra), a key tool inherited from EAW, which forms the basis of NRW's risk assessment framework. Opra is used to assess risk and also to inform charging. It is therefore important in terms of ensuring that charging is based on risk assessment.

- **Staff at both operational and policy levels have confidence in the Opra tool (which forms the basis of the risk assessment framework) however improvements could be made in terms of ensuring that businesses are aware of it, and how it works.**

55. NRW staff we spoke to are confident in NRW's risk based approach. There is a feeling amongst policy staff that this has traditionally been focused only on environmental impacts, but going forward this also needs to take into consideration socio-economic impacts as well. Staff are conscious that NRW benefits from a wealth of experience stemming from the legacy organisations and there is a positive feeling that NRW is a place-based organisation which has close contact with its customers, and that this helps foster a risk-based approach.

56. Operational staff are keenly aware of, and value, Opra as a tool to help score risk. Staff are similarly confident that businesses are aware of Opra and how it works. The NRW website contains a page explaining Opra and NRW's approach to assessing

compliance,<sup>25</sup> although the information on this page is brief. The website also has a 'How we regulate you' page<sup>26</sup> which has the potential to be a useful signposting tool, however some of the information it leads to is scant. This is explored further under theme 5.

- **More could be done to ensure that businesses understand how they are being assessed, and to ensure transparency.**

57. Business stakeholders participating in the review however did not seem to have a well-developed understanding of NRW's risk approach, or knowledge of Opra. Some sectors, particularly forestry, feel that NRW is inconsistent in its approach to risk, by being more firm on some businesses than on others, where this may be inconsistent with the risks posed.

58. Business stakeholders also cited transparency as being a key problem. They seem unsure of the criteria against which they are being assessed. There was also an indication that some high risk businesses may be subject to fewer inspections in comparison to some low risk businesses.

59. Business stakeholders indicated that they value the relationships they have with individual inspectors (carried over from the legacy organisations) and that this plays an important role in giving businesses confidence in the risk assessments made by NRW. They are however concerned that as NRW grows and matures, these relationships may be lost.

60. Opra was inherited by NRW from EAW and continues to be used by the Environment Agency in England. NRW told the review team that it intends to continue using Opra as this provides a level playing field and avoids confusion for businesses operating across country boundaries. NRW therefore hasn't specifically consulted with businesses about Opra and its risk assessment framework more generally, although details of Opra and how this is used to calculate charges for some NRW regulated activities were included in a consultation on the NRW proposals for fees and charges for 2015-16<sup>27</sup>. The lack of apparent direct consultation with businesses on how NRW assesses risk could contribute to their poor awareness.

- **NRW provides guidance on its use of enforcement and sanctions, and this explains NRW's approach to ensuring that actions are proportionate to risk and harm.**

61. NRW's enforcement policy explains that NRW takes a risk-based approach to targeting and inspection activity.<sup>28</sup> The policy lists the enforcement options available to NRW, which range from provision of advice and guidance to prosecution. It also states that NRW will publish information about its enforcement activities, where it is appropriate and proportionate to do so. NRW publishes guidance on its use of enforcement and sanctions<sup>29</sup>. This includes further detail as to the range of enforcement measures available to NRW and explains the approach that NRW takes in deciding a proportionate response to wrongdoing. It is noted that these documents are currently under review (the current versions date back to 2013 and is identical to the document published by Environment Agency Wales).

## Reviewing effectiveness of regulatory activities

62. The Regulators' Code indicates that regulators should review the effectiveness of their chose regulatory activities in delivering the desired outcomes and make any adjustments accordingly.

- **There is some evidence that NRW reviews its regulatory activities to ensure that these are effective in delivering outcomes.**

63. Whilst NRW clearly publishes the outcomes it is committed to delivering, and reports to its Board regarding progress against Corporate Plan Outcomes, Business Plan targets, and delivery of Business Case benefits<sup>30</sup>, the review found scant evidence to indicate that NRW specifically reviews the effectiveness of its regulatory activities. Without such review activity, it will be difficult for NRW to modify their chosen intervention or way of working with those they regulate to best effect. NRW told the review team that it does undertake monitoring for some regulatory regimes e.g. annual compliance reports for the waste sector, and that any recommendations made are implemented. However, certain regimes are subjected to more scrutiny than others, and the review team found no published evidence.

## Recommendations

- Additional work needs to be undertaken to ensure that businesses are aware of the risk assessment framework (including Opra) and to ensure businesses have confidence in it, and confidence that it is applied in a transparent, consistent way.
- NRW should ensure that it reviews its regulatory activities to ensure that they are effective in delivering outcomes, and this review work should be published.

## ***Theme 4: Regulators should share information about compliance and risk***

In summary, this part of the Code requires regulators to:

- Adhere to the principle of 'collect once, use many times' when requesting information from those they regulate.
- Share information about compliance and risk, where legally possible.

## **Key findings**

- **The foundations for adhering fully to this principle are in place, but more needs to be done to streamline information sharing as NRW matures.**
- **Businesses are somewhat unsure as to the reasons underlying NRW's information requests, and report that these requests are sometimes inconsistent. Making these reasons clearer would improve business trust and foster a willingness to provide information.**



## Sharing information about compliance and risk

64. This principle of the Code is aimed at ensuring that regulators have sufficient information in order to fulfil their statutory functions adequately, whilst considering how best to obtain this information. The principle of ‘collect once, use many times’ requires regulators to consider the information requests they make of the businesses they regulate, and how these are made, with a view to ensuring that the burden of these is minimised. It is good practice for a regulator to make best use of the information it collects by using the information multiple times, and sharing it internally, rather than making repeated requests of business to supply the information multiple times. Where legally possible, regulators should work together to share the information about compliance and risk so as to be able to function efficiently whilst also reducing burden on business.

- **The foundations for adhering fully to this principle are in place, but more needs to be done to streamline information sharing as NRW matures.**

65. NRW is a member of the Welsh Regulators Forum<sup>31</sup> and uses this forum to link to local and national regulators. The review team heard that NRW has arrangements in place to share data with HSE, particularly in relation to non-compliance; provides information to the local government data unit, ‘Data Unit Wales’; the ‘Lle<sup>32</sup>’ data and information hub developed in partnership with Welsh Government; and that it contributes air quality data from its mobile air quality monitoring station to the Welsh Air Quality Forum<sup>33</sup> for use by other regulators.

NRW shares knowledge and practice with other UK environmental agencies through “Five Agencies” meetings<sup>\*\*\*\*</sup> and through the Shared Agency Regulatory Evidence Programme (ShARE) which supports collaborative research in the field of regulation. NRW is also an active member of the European Union Network for the Implementation and Enforcement of Environmental Law (IMPEL) which aims to promote the exchange of information and experience between its membership.

66. The ‘collect once, use many times’ principle is reflected in the NRW Corporate Plan<sup>34</sup> which states that NRW will use others’ information ‘where it is suitable and meets our needs’. This could lead to an inference that NRW will only consider seeking information from other regulators if the information readily matches NRW’s specific needs, and that NRW’s preferred method is to seek information from business. Whilst the review found no evidence to indicate that this is the case, NRW should be mindful of this wording in the Corporate Plan.

67. NRW staff recognise that whilst there are some data sharing arrangements in place as a result of the legacy organisations, streamlining of these arrangements is needed going forward. NRW staff generally recognise that the basic building blocks for data sharing exist, but there remains room for improvement. At operational level, staff are relatively confident that NRW is sharing information adequately, whilst recognising that practical

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<sup>\*\*\*\*</sup> These include the Irish Environment Protection Agency, the Environment Agency, the Scottish Environment Protection Agency, and the Northern Ireland Environment Agency.

issues such as a lack of a common IT system can make sharing within the organisation challenging.

68. Some stakeholders felt that NRW could improve its sharing of information within the organisation (across different teams and parts of the organisation). There is a perception amongst stakeholders that bringing the legacy organisations together has made sharing information difficult, with some stakeholders indicating that they have little confidence that NRW staff are actually communicating effectively with one another across the organisation as a whole. This situation will change now all areas of NRW are using a common IT system.

- **Businesses are somewhat unsure as to the reasons underlying NRW's information requests, and report that these requests are sometimes inconsistent. Making these reasons clearer would improve business trust and foster a willingness to provide information.**

69. Some business stakeholders expressed concern about NRW's information reporting requirements, including inconsistent requirements from one year to the next, which adds burden. Business stakeholders indicated they would be content to provide information if they were informed about the purpose for collecting the information and that information requirements were more consistent. At present, there is a feeling that information submitted by businesses 'disappears' once provided to NRW. NRW should seek greater engagement with businesses to design information collecting mechanisms. This would foster business confidence in reporting requirements and provide clarity to businesses as to the timing and nature of, and reasons for, reporting requirements.

### Recommendations

- Work should continue on information sharing arrangements, both internally within NRW and with other regulators/organisations.
- Reasons for collecting information from businesses should be made clear to those businesses, with emphasis on ensuring that information requests are as consistent as possible, to make it less burdensome for businesses to prepare this information.
- NRW should work with businesses to design information collecting mechanisms, to improve confidence and clarity for business.

***Theme 5: Regulators should ensure clear information, guidance and advice is available to help those they regulate meet their responsibilities to comply.***

In summary this part of the Code requires a regulator to:

- Provide information, advice and guidance that is focused on assisting those they regulate to understand and meet their responsibilities. Legal requirements should be distinguished from suggested good practice.

- Provide guidance in a clear, accessible, concise format, using media appropriate to the target audience and written in plain language.
- Consult those they regulate in relation to the guidance.
- Ensure that those they regulate have confidence in the advice they receive and feel able to seek advice without fear of triggering enforcement action.
- In responding to requests for advice, provide the advice necessary to support compliance, and ensure that it is reliable.
- Work collaboratively to assist those regulated by more than one regulator.

### Key findings:

- **NRW has committed to providing clear guidance to help businesses comply and has pledged to review and rationalise its guidance in consultation with business.**
- **There are some good examples of guidance presented in a format accessible to business, but user-friendliness can also be an issue.**
- **Better and easier access to advice and guidance would make compliance easier for small businesses.**
- **NRW staff are perceived as being visible, approachable and generally helpful in providing advice.**
- **Navigating the website to find information and guidance can be a challenge**
- **There are some excellent examples of co-production of guidance with business**
- **Small and new businesses often don't know what they need to do to comply and are reluctant to approach NRW directly for advice for fear of prosecution**

### Provision of information, advice and guidance

70. The Regulators' Code asks that regulators provide information, advice and guidance to help businesses meet legal requirements. NRW has from the outset committed to the provision of timely advice and guidance to enable businesses in Wales to operate effectively. Indeed, in establishing the business case for the creation of NRW, one of the key anticipated benefits of a single organisation as compared to the three separate legacy bodies was the provision of joined up advice and clearer guidance, particularly in its role as adviser and statutory consultee. That having been said, NRW has inherited a considerable amount of published guidance from its legacy organisations.

- **NRW has committed to providing clear guidance to help businesses comply and has pledged to review and rationalise its guidance in consultation with business.**

71. Current and previous business plans<sup>35</sup> include reference to ongoing review of this guidance, but the sheer volume of information means this is unlikely to be completed before 2019/20. Delivery partners we spoke to recognised the difficulty of meeting the needs of a multitude of industry sectors and appreciated that the finessing and organisation of website information was challenging but were clear that it would ultimately reap benefits, particularly if they were involved or consulted on this.

72. NRW has pledged to streamline, enhance and tailor their published guidance using business intelligence and stakeholder feedback to ensure it is fit for purpose and easy to understand. They have also set review dates on all web pages to provide a mechanism

to ensure guidance remains up-to-date and relevant. As this is an iterative process and being done systematically, the review team anticipate that it will become easier to identify and locate relevant information with time.

- **There are some good examples of guidance presented in a format accessible to business, but user-friendliness can also be an issue.**

73. In its Enforcement and Prosecution Policy<sup>36</sup> NRW cites the provision of clear advice and guidance as its first line approach to securing compliance by those it regulates. The review team found a wealth of information published on the NRW website which aims to satisfy this commitment. For example, understanding and navigating Environmental Permitting Regulations can be a complex area, and the NRW website includes a bank of information on how to apply for and comply with Environmental Permits supplemented by other resources intended to make this more accessible to businesses:

#### **NRW Environmental Permitting Regulations (EPR) Guidance**

Guidance for activities that come under the EPR guidance is divided into a number of categories:

- **‘Horizontal Guidance’** which considers issues relevant to all sectors such as noise, odour, or protection of land and water;
- **Regulatory Guidance Notes** to help permit holders understand definitions and terms used in the environmental permitting regulations (EPR).
- **Environmental Management System Toolkits** comprising guidance developed in consultation with relevant trade associations for Small and Medium Enterprises (SMEs);
- **Sector Guidance Notes** for both operators and NRW regulatory officers with advice on indicative standards of operation and environmental performance, categorised by seven industrial sectors;
- **Technical Guidance Notes** which describe the standards and measures to control the most common risks of pollution and help businesses understand how to comply with the conditions or rules of their permit.

74. The review team found this suite of guidance to be a comprehensive and comprehensible package of information brigaded in a coherent interlinked suite on the NRW website. The Regulatory Guidance Notes are particularly pertinent in that they help businesses understand what constitutes policy and legal interpretation as opposed to good practice in implementing these Environmental Permitting Regulations. The boundary between advice and legal requirement for regulatory compliance is however an issue which perhaps requires further consideration by NRW and is one which some stakeholders have reported lack of clarity in their understanding of, and which has the potential to cause confusion and unnecessary business burden.

75. Business stakeholders commented that there were good and bad examples of guidance appearing on the NRW website- the waste carrier licensing section for example was mentioned as being better than its EA predecessor.

- **Better and easier access to advice and guidance would make compliance easier for small businesses.**

76. Businesses, particularly small businesses and new start-ups also found difficulties in finding the right information, sometimes owing to different 'jargon' being used by different industry sectors. One suggestion from them was to embed hyperlinks into industry sector websites. The review team note that the 'Business Wales' website in particular pays attention to signposting businesses to relevant information on the NRW website. Also, the 'NetRegs'<sup>37</sup> website, which was closed to businesses operating in Wales in August 2012, was mentioned by several business stakeholders as being a much more user-friendly and business-focussed resource. The review team believe that NRW are committed to ensuring the best user experience in terms of developing its website and that in time and with due regard to business feedback this will improve both in its content and ease of use.

77. Feedback from business representatives, particularly those from forestry and farming sectors on NRW information, guidance and advice available to them suggests there is some room for improvement in this area- both in terms of the website material, which largely stems from the legacy organisations, but also with regards to the advice provided through the contact centre. One notable exception to this was the information available to the hydropower sector which was exemplary. This is discussed in further detail under the section dealing with 'consultation on guidance' below.

78. NRW issues routine emails and newsletters for stakeholders e.g. a regular newsletter to fisheries stakeholders outlining key achievements. Businesses variously reported these as being 'good' to 'irritating and unhelpful' – businesses would however welcome a regular bulletin aimed specifically at the business sector.

- **NRW staff are perceived as being visible, approachable and generally helpful in providing advice.**

79. The NRW Customer Care Centre is the main portal for telephone enquiries and handles everything from straightforward general enquiries to more complex questions about registering for various permits, and provides information across a range of topics.<sup>†††</sup>

80. The Customer Care Centre takes part in bi-annual mystery shopper exercises to get feedback on their customer service and help identify areas where they may need to improve knowledge or standards. In the most recent exercise in September 2014 results suggested that more comprehensive information in response to questions was required, for example, in relation to Hazardous Waste registration explaining all of the available options- online, over the phone and postal applications- not just the most convenient and pertinent information.

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<sup>†††</sup> These include: water and waste exemptions, hazardous waste registrations, fish net licences, cockling licences, water resources permit applications, waste permit applications, water quality permit applications, permit applications for installations, marine licence applications, and planning applications.

81. An NRW 'Customer Care Strategy'<sup>38</sup> was presented to its board in October 2014 setting out a foundation for developing and improving services which involves identifying and engaging directly with customers, and asking what they need or want before agreeing what the organisation will deliver. In their remit letter for 2015-16<sup>39</sup> Welsh Government has asked NRW to prioritise this responsiveness to customers.
82. From an operational perspective, NRW staff we spoke to told us they have developed checklists for businesses to help them understand what they need to produce when applying for permits and licenses. For example, a set of questions for operators of waste recovery plants has provided more clarity around information requirements and the quality of applications has improved as a result. NRW operational staff also say they make a point of talking to businesses to find out exactly what they need so they can then signpost them to relevant information and guidance.
83. More generally, NRW staff are perceived by businesses and business representative groups we spoke to as being very visible and proactive about going out and speaking to stakeholder groups at meetings and conferences- for example the review team heard that NRW presents regularly at Chemical Industries Association meetings, providing updates on regulatory requirements which businesses find very valuable.

#### Accessibility

84. The Regulators' Code indicates that guidance and information should be made available in formats appropriate and accessible to businesses. In its first year, NRW developed internal policies and procedures such as Access to Information<sup>40</sup> and its Welsh Language Scheme<sup>41</sup>. In these NRW has committed to production of future advice and guidance in formats that are readily accessible, clear, and concise, and written in plain language that businesses will find easy to understand. Efforts have been made in terms of making the website interface user-friendly through access keys and high resolution interface options, and an easy-read version of its Corporate Plan for 2014-17<sup>42</sup> promotes understanding of its purpose and goals to a wider audience.
- **Navigating the website to find information and guidance can be a challenge**
85. Over the course of the review period, the review team acknowledge that NRW has made progress in terms of making its website as accessible and usable as possible, and recognise that this is an ongoing process. Part of the challenge is the NRW customer base which is many and varied ranging from citizens and communities to private, voluntary and public sectors and businesses. The review team acknowledge there isn't an easy solution to addressing all their competing needs through a single portal.
86. Businesses felt entering the NRW website home page can give the impression that the site is geared towards the interests of the public rather than provision of regulatory information for a business audience as it populated with twitter feeds, news stories, blogs and flood alerts. The business facing pages do follow below this headline material, and include tabs signposting businesses to information on how they are regulated by NRW, how to apply for licenses and permits, sector specific information etc. Business representative organisations reflected that the material produced by NRW is much more

focussed on NRW as a regulator than as a business facing organisation and felt that the balance needed to be redressed.

87. Navigation of the website was an issue mentioned by all stakeholder groups consulted, and with substantial amounts of quite technical material was considered to be particularly daunting for small businesses and new start-ups. Stakeholders reported that 'googling' was often a more reliable way of accessing information. NRW report that a new search engine being introduced in the 2015-16 financial year should help in this respect. The 'Business Wales'<sup>43</sup> website is the first port of call for many businesses seeking advice and guidance and is particularly user-friendly. It includes links to information on the NRW website and the review team believe there is opportunity to learn from and capitalise on the 'Business Wales' interface with businesses in terms of provision of advice and guidance.
88. With the transition from the EA to NRW there are still many links to EA materials which now connect to the EA website hosted through '.GOV' and which consequentially has much less information than previously available. Businesses suggested that NRW needs to build up their portfolio of guidance to bridge this gap and also report that their English counterparts use the NRW website to access information previously available through the EA website and which is now archived.
89. The NRW website is clearly the main hub for guidance available to businesses, and whilst NRW routinely sends links to this information to its customers, there is evidence that NRW also gives consideration to whether other formats might be more appropriate- for instance NRW operational staff say they print out guidance as hand-outs for farmers who might not have access to technology.
90. NRW staff we spoke to are very aware of the need to address website issues and to seek feedback from businesses to ensure the right information is there and that it can be easily accessed. Business representative groups in turn also recognise that the website is work in progress and report substantial improvement over recent months.

#### Consultation on guidance

91. The Regulators' Code asks that regulators consult with businesses in developing guidance to ensure this is fit for purpose. In its Corporate Plan for 2014-17<sup>44</sup> NRW recognises that most of the businesses they work with would welcome a more collaborative and streamlined approach and that NRW should where possible work with its stakeholders from the outset, sharing information and advice, linking into trade bodies or partnerships, and considering rural and agricultural businesses as well as industry. There was evidence from both corporate documentation and stakeholder feedback to indicate that NRW consults with stakeholders in developing its advice and guidance. Welsh Government told us they routinely worked with NRW in this respect.

- **There are some excellent examples of co-production of guidance with business**

92. The suite of Hydropower Guidance Notes<sup>45</sup> and supporting information providing technical guidance for designers and developers of hydropower schemes is a good example of how NRW has worked with an industry sector to co-produce this:

### **Case study – Working together with the hydropower sector to develop new guidance for water resources licences**

NRW have taken positive action to engage with the growing hydropower sector in Wales and improve the service they provide as a regulator to this industry, whilst still protecting the environment. Through the establishment of a hydropower stakeholder group, NRW have consulted and collaborated with businesses to develop new guidance on how they licence abstractions and impoundments for hydro power schemes. The Stakeholder group enables all involved parties to represent their interests ensuring consideration of both economic and environmental impacts.

The new guidance has produced the following results:

- The development of a single approach to licensing with consistency and transparency in decision making
- The adoption of an evidence based approach to licensing that balances the needs of environmental protection and the growth of the renewable power industry
- An increase in how quickly licenses can be issued and a reduction in the staff time needed to determine applications.
- A reduction in the regulatory burden on applicants in terms of environmental surveys and assessment requirements

In addition, NRW has worked with the stakeholder group to develop guidance which will support designers and developers of hydropower schemes. It will shortly be publishing guidance notes providing technical guidance to assist businesses in the process of choosing the location and design of their scheme, and information on what they must do to comply with legislation. NRW also offers a free of charge pre –application to advise businesses on their proposal and provide support for their formal application. These measures reduce effort and costs for business and NRW.

93. Similarly, we heard that NRW has engaged with farming unions in checking guidance relevant to the farming sector is fit for purpose. Interestingly, mechanisms to consult on guidance can work both ways e.g. ‘UK Energy’ are producing sector specific guidance which NRW has inputted to and endorsed.

#### Confidence in advice

94. The Regulators’ Code indicates that businesses should feel confident in the advice they receive and able to seek advice from the regulator without fear of triggering enforcement action. The NRW Enforcement and Prosecution Policy<sup>46</sup> clearly states that if an operator or individual is not complying, NRW will normally provide advice and guidance to help them do so, although it also considers the use of formal enforcement powers and sanctions to be an important part of achieving compliance.

95. Businesses can access the NRW through a single telephone number and customer care centre that handles everything from straightforward general enquiries to more complex questions about registering for various permits and holds expert contact lists to direct queries to the most appropriate part of the organisation. For some sectors, such as forestry, the NRW website directs customers who have previously done business with



them to their existing contacts as their first point of call- this twin track can cause confusion, and indeed businesses report that they would prefer to access advice through named contacts with whom they can build rapport and feel comfortable approaching than through a 'helpline'. This seems to be more of an issue for SMEs than for large businesses that for the most part seem to have well-developed relationships with NRW staff and through these are confident that they can access the advice and support they need to comply.

- **Small and new businesses often don't know what they need to do to comply and are reluctant to approach NRW directly for advice for fear of prosecution**

96. The review team was particularly concerned to hear that small businesses and new start-ups were more likely to access advice and guidance through 'Business Wales' or trade associations such as the Federation of Small Businesses rather than approaching NRW directly. This was reportedly because these businesses were often not aware of regulatory requirements relevant to them and were afraid that raising their issues with NRW would lead to prosecution. This 'fear factor' was also reported by local authorities, and is a particular concern for the waste sector where we heard there had been instances of businesses facing prosecution following requests for advice.

97. There is perhaps a need for NRW to articulate more clearly its ambition to work with businesses to help them achieve compliance and success, and to stress the importance of businesses feeling able to approach NRW for advice when they need it. Local authorities tend to have well-developed links with their local business communities which they felt NRW could tap into and make better use of. In common with business representative groups, they reported that businesses often use them as a first port of call for advice. They did however concede that NRW approachability would improve as the organisation embeds and matures.

98. Larger businesses report a different experience as exemplified by the following case study:

**Dealing with non-compliance using the range of regulatory tools available: Working with the developer of the new nuclear power station on Anglesey, Wylfa Newydd.**

An issue involving the demolition of a number of houses and agricultural buildings in relation to development of a new nuclear power station on Anglesey was raised by the developer with NRW. 3000 tonnes of waste material had been produced without the relevant authorisation (i.e. permit or exemption). NRW consulted with all parties concerned and used their Enforcement and Sanctions Guidance to determine an appropriate response. As there was no environmental impact caused, this was to provide sufficient advice and guidance to the company in order to bring all further activities into compliance. The willingness of the business to be proactive in working with NRW and having a single NRW officer managing the relationship have ensured that advice and information has been consistent, bringing the site into compliance and improving the company's awareness of their environmental responsibilities.

99. Consistency of advice is important to NRW. We heard that NRW do not have separate internal and external guidance- wherever possible they produce one document for key

activities to ensure their approach is both consistent and transparent. This is further reinforced by deploying staff from both policy and operational backgrounds to work together on development of guidance. From an operational perspective, NRW staff we spoke to say they have a focus on ensuring businesses know where to go to access relevant guidance enabling a feedback loop which allows them to review how successful the guidance is and whether any changes need to be made. Different internal NRW forums have also been established, for example a Communications Forum, whereby staff can flag up issues which have been raised by customers providing a good mechanism for getting feedback on and input to the NRW guidance development process.

100. Generally, stakeholders acknowledged that NRW reacted 'sensibly' to requests for advice and guidance and indeed gave good advice. NRW was also considered to be sympathetic to the issues faced by businesses and aware that some regulations such as those relating to packaging were notoriously difficult to understand, and that once advice had been given, NRW allow businesses time to 'get their house in order'.
101. We also heard that whilst EA as an organisation was well known and respected, businesses were less familiar with NRW- business representative organisations thought there needed to be more effort by NRW to raise awareness and engender the confidence of the small business community.
102. Building individual relationships with NRW staff was something that all business stakeholders we spoke to felt would help engender confidence, along with efforts to do this on a proactive rather than reactive basis. Several of the business stakeholders the review team met with were concerned that NRW seems to have lost expertise on specific issues and seemed to have fewer experts to whom sector specific questions could be directed.
103. The review team believes this issue will resolve as new organisational structures settle down. Indeed, in their internal document 'Delivering our Multiple Roles as a Land Manager, Statutory Adviser and Regulator- Decision making supported by transparency and accountability'<sup>47</sup> NRW recognises that for many of the activities they are involved in they may exercise more than one role, and sets out how their organisational structure supports an integrated approach to natural resource management. NRW are already making efforts in this direction, for example an NRW Environment Officer has been nominated as a single point of contact to provide advice on conventional waste and water quality issues arising from the early stages of planning and development, from the proposal to build a new nuclear power station on Anglesey, Wylfa Newydd.

#### Collaboration with other regulators

104. As many businesses are regulated by more than one regulator, the Regulators' Code asks that there are mechanisms in place for these to work collaboratively. In its 2013-14 Annual Report<sup>48</sup> NRW give a clear indication that they understand the value of working with partners, customers and stakeholders to deliver the best possible outcomes, and that focusing efforts on provision of advice in a timely manner, for instance at the pre-application stage by providing advice and guidance to developers on forthcoming planning and permit applications, adds most value. NRW routinely works with other UK

environmental regulators- the Environment Agency, the Scottish Environmental Protection Agency, and the Northern Ireland Environment Agency through a “Five Agencies” network.

105. They also work with local government and other regulators on matters such as planning, air pollution, public health and occupational safety to ensure they take a coordinated, effective and consistent approach that will deliver the best outcome. Some stakeholders however commented that there needed to be better clarity on roles- e.g. responsibility for regulating air quality which sits between NRW and Welsh local authorities- so that businesses can be directed appropriately. Local authorities agreed that it was important to maintain close working links with NRW to ensure they deliver a consistent message to business.

106. In its Regulatory Principles<sup>49</sup> NRW sets out an approach to regulation to support natural resource management making use of the skills and tools of others and enhanced collaborative and partnership approaches.

#### Recommendations:

- Clarity on what constitutes advice or good practice and what is legal requirement for regulatory compliance can be confusing for businesses and this should be a key consideration for NRW when issuing advice and developing guidance.
- More work is required to make the NRW website more accessible to businesses, and they and their representative organisations should be involved in any further development. Links to the NRW website from other relevant business services which signpost businesses to information and guidance should be exploited where possible.
- The perceived lack of available information and guidance for the forestry and farming sectors needs to be addressed.
- NRW should consider reviewing distribution lists for their regular newsletters and should explore the merits of producing a bulletin specifically for businesses.
- NRW material needs to reflect their role as a business-facing organisation and not just as a regulator.
- NRW needs to communicate its approach to non-compliance more clearly to the small business community and to cultivate its visibility to and relationships with small businesses.
- Some thought should be given to how to handle expert and sector specific questions by ground level staff that may now have a broader remit.
- Better clarity on the role and responsibilities of NRW as distinct from those of local authorities would help businesses to know where to go for advice without wasting time finding the relevant authority.

## **Theme 6: Regulators should ensure that their approach to their regulatory activities is transparent**

In summary this part of the Code requires a regulator to:

- Ensure that information published to meet the provisions of the Code is easily accessible, including on their website;
- Publish a clear set of service standards, setting out how they will communicate, their approach to providing information, guidance and advice, their approach to compliance checks, their enforcement policy and routes to appeal a decision and/or make a complaint; and
- Publish performance data regularly on their service standards, feedback received, and complaints and appeals.

### **Key findings:**

- **NRW service standards are incomplete and their positioning on the website needs further consideration.**
- **NRW publish information on how they respond to non-compliance, but not how they monitor compliance**
- **NRW do not publish any information for businesses setting out their appeals process**
- **NRW staff are generally conversant with the principles of good regulation**
- **Transparency is generally a key strength of NRW and is embedded within their values**

### Information to meet the provision of the Code

107. The Regulators' Code sets out an expectation that NRW will ensure that their approach to their regulatory activities is transparent, and whilst this is articulated in section 6 of the Code, the principle applies across all provisions of the Code. These include but are not limited to published service standards setting out what those they regulate should expect from them.

108. As a general approach, and in line with the Information Commissioner's model publication scheme, NRW routinely makes information available against 7 categories- its role and responsibilities, spending, priorities and performance, decision making, policies and procedures, lists and registers and services offered, including in hard form on request. The review team also found throughout the course of this review that NRW staff were keen to demonstrate commitment to accountability and transparency about their activities.

### Service standards

109. The Regulators' Code expects that published service standards should be made available at a single point on the regulator's website, and this may be satisfied by providing links from here to information published elsewhere.

- **NRW service standards are incomplete and their positioning on the website needs further consideration**

110. In terms of setting out its 'service standards' and explaining to businesses their offer, the NRW website has a page entitled 'Our regulatory service standards- what you can expect from us' aimed at the business audience. This links from the 'About Us' tab on the home page but the review team believes businesses would be more likely to look under the 'How we regulate you' tab from the home page. This should be tested with the business community.

111. The NRW service standards are listed under a series of headings including:

- 'How we monitor and support compliance and our approach to checks on compliance' - this is limited to their approach to risk assessment (although the detail of, and link to, the risk assessment framework is not included here) and to checking businesses regulated under the Environmental Permitting Regulations.
- 'What are our fees and charges are and how these are worked out'<sup>\*\*\*\*</sup>. Supplementary documentation listed here explains the NRW charging scheme for 2015-16 and provides clear and straightforward guidance on charges for businesses. A quick reference section and series of hyperlinks are embedded within this creating a user-friendly interface. The review team found however that the portal entitled 'Charges' didn't detail all the charges handled by NRW- for instance, marine licensing has its own dedicated suite of pages including fee tables.

112. Links to the two topics above are replicated under other pages from the home page entitled 'Waste' and an 'Apply and Buy' tab where 'Waste' appears once more. On the one hand this could be construed as signposting businesses to the information regardless of which route they take in navigating the website; however the review team found the organisation of the material tended to lack clarity and consistency, and that finding the relevant information being sought without resort to the search facility can prove difficult.

113. From a business perspective, particularly for small businesses who wouldn't necessarily know what they might expect to find, this could present a burden. That having been said, there are a set of activity- and sector-specific tabs both from the home page and nested in the 'How we regulate you' section of the NRW website dealing with e.g. forestry, chemical industry, planning, nuclear regulation, permit applications. These also provide a bank of useful information including published guidance, electronic forms, and contact details for pre-application advice and for help understanding how to comply.

- **NRW publish information on how they respond to non-compliance, but not how they monitor compliance**

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<sup>\*\*\*\*</sup> This includes charging schemes for environmental permitting alongside various other charges, for instance relating to water abstraction, pollution incident and cost recovery, and fisheries charges

114. The Enforcement and Prosecution Policy<sup>50</sup> and associated 'Guidance on enforcement and sanctions'<sup>51</sup> which explain how NRW makes enforcement decisions are not available under either the 'How we regulate you' or 'How we assess business compliance' tabs on the website. The review team would suggest more prominent placement for ready retrieval of this information.

115. With regards to other information which could reasonably be expected to sit as part of the NRW 'service standards' for businesses such as how to get advice, make a complaint, appeal, or provide feedback, this is accessed through the 'About us - Contact us' tab from the home page. Whilst this provides information about how to get in touch by email/telephone and how to make a complaint with details of the NRW complaints policy included, it is a 'one size fits all' facility which doesn't distinguish between business needs and interests and those of citizens who may be wishing to report an incident or feedback on service received.

- **NRW do not publish any information for businesses setting out their appeals process**

116. The 'complaints' section of the website makes passing reference only to appeals against properly made' decisions and indicates the need to follow 'relevant' appeal processes in such cases, but doesn't provide any links to these. Other sector and activity specific pages mention appeals but direct the reader to contact NRW for more information about the appeals process- this is not readily available on the website and in the opinion of the review team is an area that NRW need to address.

117. NRW do recognise that they do not currently have an appeal process for customers to query decisions and are proposing to produce a paper for their Regulatory Business Board setting out an NRW process to handle customers who wish to challenge a particular regulatory decision and to develop a communication plan to disseminate the decision and approved process both internally and externally.

118. Delivery partner organisations the review team talked to believed that NRW were making every effort to ensure service standards were in place but had concerns around how accessible these were to businesses from the NRW website. This was confirmed by businesses and their representative organisations who would like to see a single webpage entitled 'what to expect from us' with all the relevant information corralled in a single place rather than having to wade through a plethora of policy pages to find this. Businesses would also like to be involved in any activity to make the service standards more accessible, particularly in relation to small businesses that don't have regulatory compliance experts to locate or interpret this on their behalf.

#### NRW staff awareness and application of Regulators' Code principles

119. The Regulators Code expects regulators should have mechanisms in place to ensure that their officers act in accordance with their published service standards, including their enforcement policy.

- **NRW staff are generally conversant with the principles of good regulation**

120. Through their participation in the Welsh Regulators' Forum<sup>52</sup> and a national regulator briefing seminar led by the BRDO, NRW has been kept abreast of the development and implementation of the new Regulators' Code. This in turn has been embedded in the NRW induction guidance and checklist, a series of workshops have been delivered with policy and operational staff, the NRW Board has been appropriately briefed on the detail and thrust of the Code and how this fits with the NRW approach to regulation, and a 10-point factsheet has been produced for staff.
121. The review team recognises and commends the effort that has gone into disseminating and engendering familiarity with the Regulators' Code principles amongst its staff, and indeed this was evident in the workshop sessions with NRW staff. The review found that, while awareness of the Regulators' Code was generally well embedded, understanding of the requirements of the Regulators' Code was more limited, but awareness was gradually increasing over time. However, the review team noted that training materials were branded as 'Hampton' and going forwards, the team would be keen to see a move towards these more clearly recognising the Regulators' Code.
122. In terms of embedding the NRW service standards at an operational level, NRW have a 'Regulatory officer technical development framework' which includes a series of competencies which requires development of understanding of NRW's enforcement role and approach and how this is applied in practice. The framework also includes elements relating to 'better regulation principles', 'securing compliance', and 'customer and partner relations' all of which fit with this theme. The framework includes detailed descriptions of relevant activities, tasks and indicators with a series of capability levels from 'novice' to 'expert' and is used to drive and assess staff development and expertise.

### Transparency

123. Section 6 of the Regulators' Code sets an expectation that regulators will ensure that their approach to their regulatory activities is transparent.

- **Transparency is generally a key strength of NRW and is embedded within their values**

124. As an organisation, transparency is part of the NRW organisational ethos. The NRW Board meets in public six times a year and these meetings are open for the public and stakeholders to attend as observers. The NRW also publishes copies of the agendas and Board Papers their website. NRW also recognise that transparency is important in maintaining public confidence in their ability to regulate and also that this is integral to an officer's role. The NRW 'Guidance on Enforcement and Sanctions'<sup>53</sup> provides transparency on how NRW approach and deal with offences whilst their 'Enforcement and prosecution policy'<sup>54</sup> sets out how they do this:

**Excerpt from the NRW 'Enforcement and Prosecution Policy':**

Transparency is integral to an officer's role and we will continue to train our staff and to develop our procedures to ensure that:

- where remedial action is required, we clearly explain why the action is necessary and when it must be carried out, making a distinction between best practice advice and legal requirements;
- we provide the opportunity to discuss what is required to comply with the law before formal enforcement action is taken, unless urgent action is required, for example to protect the environment or to prevent evidence being destroyed;
- where we require an operator to take urgent action, we will provide a written explanation of the reasons for this as soon as possible after the event; and
- we will provide a written explanation of any rights of appeal against formal enforcement action at the time the action is taken.

125. Since their inception NRW has maintained a series of disclosure logs on their website<sup>55</sup>. These are released under the Freedom of Information Act 200 and/or the Environmental Information Regulation 2004, and are selected on the basis of public interest, demonstration of internal procedures and demonstration of how public money has been spent or information about resources. As part of their 'Enforcement Transition Project', NRW propose to publish an 'Annual Enforcement / Regulatory Report' which will demonstrate to the public how and why they regulate/ enforce and demonstrating how different enforcement and regulatory tools are deployed in different circumstances. The proposal has been taken to the NRW Regulatory Business Board and the risk that NRW may be perceived as being an organisation that isn't fully following the principles of the Regulators' Code without this information raised with them.

126. NRW has various duties to publish information about a range of decisions and activities including in relation to applications for permits and permitting decisions<sup>56</sup>. A monthly report that contains all the environmental permit decisions made for the previous month is published on the NRW website along with information about permit applications and permitting decisions made for NRW own plans, programmes and projects i.e. self-permitting<sup>57</sup>. Business were positive about the information provided by NRW on why licenses are issued in a particular way and regarded this to be a good indicator of their transparency.

127. Delivery partners commented also that NRW exhibits transparency through its series of area panels which serve to provide oversight of all local enforcement action and the activities which may generate it. In the spirit of transparency, the Regulators' Code also expects regulators to publish feedback from those they regulate. With regards to its regulatory responsibilities, NRW consulted extensively with its stakeholders in developing its Corporate Plan, and it reports against relevant indicators within this and its Business Plan 3 times a year to its Board and summarises progress in its Annual Report.

128. NRW however have not yet undertaken any kind of business satisfaction survey, although the EA has previously conducted tracker surveys. The review team would encourage NRW to consider undertaking similar surveys to help them gauge awareness and perception of NRW as a regulator, and to make sure they are addressing the needs of these business customers.

129. In a recent paper to their Board, NRW enunciate an approach to 'Customer care and service standards'<sup>58</sup> which advocates openness and fairness to customers' needs and



use of feedback to drive a better, more efficient service. This brings together the range of information explaining to businesses what they might expect from NRW in relation to their response to incidents, planning advice, their permitting service and their approach to inviting and responding to feedback. When fully implemented this will fulfil many of the aspects of the Regulators' Code relating to transparency.

130. Businesses reported they were particularly keen to get information on metrics on turnaround times, volumes of permits, numbers of prosecutions etc. as these would help them in their forward planning. They were however in general agreement that transparency and independence was an NRW area of strength, particularly in relation to difficult issues such as response to the Welsh Government consultation on the M4 corridor around Newport.

### Recommendations

- NRW should further refine the organisation and detail of their website 'service standards' to:
  - address the gaps identified in this review, including those relating to charges, appeals processes, monitoring compliance, and complaints and appeals against NRW and its decisions
  - make sure these are clear and accessible by testing with businesses they regulate and business representative groups.
- NRW should continue with their efforts to build staff awareness and competency in relation to the principles of better regulation with a focus on the Regulators' Code (as opposed to 'Hampton').
- NRW should endeavour to capture feedback from their business customers as this would help further shape the NRW 'offer to businesses.

## **Acknowledgements**

We would like to extend our thanks to all those who contributed to the success of this review - to the NRW and Welsh Government for their openness throughout and support in developing the terms of the review; to NRW and others for collecting and making the evidence available to us; and to the organisations who gave up their time to participate in the workshops and meetings.

## Appendices

### Appendix 1: Key findings and recommendations by Regulators' Code theme

Regulators' Code theme 1: Supporting business and economic growth		
<ul style="list-style-type: none"> <li>Regulators should carry out their activities in a way that supports those they regulate to comply and grow</li> </ul>		
High level topic guide	Key Findings	Recommendations
1.1 Regulatory burdens & proportionate approaches 1.2 Business support and growth in policies 1.3 Appropriately skilled officers 1.4 Officer awareness of the principles and Code	<ul style="list-style-type: none"> <li>Welsh Government and NRW staff report that there is an increasing focus on the importance of economic growth within NRW as an organisation.</li> <li>The business experience does not always match up to NRW's policies which aspire to support growth</li> <li>There is good evidence that NRW aspires to support growth in its corporate documentation and business plans, but more can be done to incorporate the reduction of burdens and the support of growth in their policies and procedures and advice to businesses.</li> <li>Some stakeholders raised a concern over how NRW can demonstrate that it is nurturing a level playing field in the forestry sector given that they are also an operator in the managed forestry sector.</li> <li>There is good evidence that NRW is ensuring that its staff have the necessary skills and knowledge to support those they regulate.</li> </ul>	<ul style="list-style-type: none"> <li>NRW should consider reviewing its policy and guidance documents to explain more specifically how they reduce the burden of their regulatory activity and how they support those they regulate to comply and grow.</li> <li>The 'Enforcement and Prosecution Policy' and 'Our Approach to Natural Resource Management' should be reviewed and updated to reflect the requirements of the Regulators' Code as the current standard dictating what good regulation looks like.</li> <li>NRW should consider the mechanisms through which small businesses can access support and advice and explore whether there is more it can do to support them to comply and grow.</li> <li>NRW should consider whether there is more it could do to demonstrate that the regulatory regime around its forestry operation is fair and transparent to its competitors.</li> <li>NRW should continue with their efforts to build staff awareness and competency in relation to the principles of better regulation with a focus on the Regulators' Code – see theme 6.</li> </ul>

<b>Regulators' Code theme 2: Engaging with the business community</b>		
<ul style="list-style-type: none"> <li>Regulators should provide simple and straightforward ways to engage with those they regulate and hear their views</li> </ul>		
<b>High level topic guide</b>	<b>Key Findings</b>	<b>Recommendations</b>
2.1 Engagement mechanisms 2.2 Communicating non-compliance 2.3 Route to appeal 2.4 Explanation of rights to appeal 2.5 Complaints procedure 2.6 Customer feedback mechanisms	<ul style="list-style-type: none"> <li>NRW has gone to great lengths to establish stakeholder engagement mechanisms to inform the development of its policies, guidance and procedures.</li> <li>The new single point of contact Customer Care Centre is easy to contact and has been a positive development.</li> <li>There is limited evidence of a consistent and comprehensive engagement strategy when NRW undertakes formal consultations.</li> <li>NRW's policy towards addressing non-compliance is clear and transparent.</li> <li>There is limited evidence that NRW has developed a clear and transparent route to appeal.</li> <li>NRW's complaints procedure is clear and transparent.</li> </ul>	<ul style="list-style-type: none"> <li>NRW should continue with their work to develop their strategic approach to regulation and to build a distinct and visionary set of regulatory principles which reflect the ethos of the NRW as a new regulator, and are responsive to the needs of those it regulates.</li> <li>NRW should clearly explain to businesses routes to appeal any regulatory decisions- this information should be communicated through the NRW website but also in letters and advice to businesses</li> </ul>
<b>Regulators' Code theme 3: Developing risk-based approaches to business support and interventions</b>		
<ul style="list-style-type: none"> <li>Regulators should base their regulatory activities on risk</li> </ul>		
<b>High level topic guide</b>	<b>Key Findings</b>	<b>Recommendations</b>
3.1 Evidence-based assessment of priority risks 3.2 Risk-based decision making 3.3 Risk assessment	<ul style="list-style-type: none"> <li>NRW uses evidence-based risk assessments to help target its actions according to risk.</li> <li>Staff at both operational and policy levels have confidence in the Opra tool (which forms the basis of the risk assessment framework).</li> <li>NRW provides guidance on its use of enforcement and</li> </ul>	<ul style="list-style-type: none"> <li>Additional work needs to be undertaken to ensure that businesses are aware of the risk assessment framework (including Opra) and to ensure businesses have confidence in it, and confidence that it is applied in a transparent, consistent way.</li> <li>NRW should ensure that it reviews its regulatory activities</li> </ul>

<p>framework</p> <p>3.4 Recognition of compliance approaches</p> <p>3.5 Effectiveness of regulatory activities</p>	<p>sanctions, and this explains NRW’s approach to ensuring that actions are proportionate to risk and harm.</p> <ul style="list-style-type: none"> <li>• More could be done to ensure that businesses understand how they are being assessed, and to ensure transparency.</li> <li>• There is some evidence that NRW reviews its regulatory activities to ensure that these are effective in delivering outcomes.</li> </ul>	<p>to ensure that they are effective in delivering outcomes, and this review work should be published.</p>
<p><b>Regulators’ Code theme 4: Sharing information about compliance and risk</b></p>		
<p><b>4</b> Regulators should share information about compliance and risk</p>		
<p><b>High level topic guide</b></p>	<p><b>Key findings</b></p>	<p><b>Recommendations</b></p>
<p>4.1 ‘Collect once, use many times’</p> <p>4.2 Share information where the law allows</p>	<ul style="list-style-type: none"> <li>• The foundations for adhering fully to this principle are in place, but more needs to be done to streamline information sharing as NRW matures.</li> <li>• Businesses are somewhat unsure as to the reasons underlying NRW’s information requests, and report that these requests are sometimes inconsistent. Making these reasons clearer would improve business trust and foster a willingness to provide information.</li> </ul>	<ul style="list-style-type: none"> <li>• Work should continue on information sharing arrangements, both internally within NRW and with other regulators/organisations.</li> <li>• Reasons for collecting information from businesses should be made clear to those businesses, with emphasis on ensuring that information requests are as consistent as possible, to make it less burdensome for businesses to prepare this information.</li> <li>• NRW should work with businesses to design information collecting mechanisms, to improve confidence and clarity for business.</li> </ul>
<p><b>Regulators’ Code theme 5: Providing information, guidance and advice</b></p>		
<p><b>5</b> Regulators should ensure clear information, guidance and advice is available to help those they regulate meet their responsibilities to comply</p>		
<p><b>High level topic guide</b></p>	<p><b>Key findings</b></p>	<p><b>Recommendations</b></p>
<p>5.1 Provision of advice and guidance</p> <p>5.2 Accessibility</p> <p>5.3 Consultation on</p>	<ul style="list-style-type: none"> <li>• NRW has committed to providing clear guidance to help businesses comply and has pledged to review and rationalise its guidance in consultation with business.</li> <li>• There are some good examples of guidance presented in a</li> </ul>	<ul style="list-style-type: none"> <li>• Clarity on what constitutes advice or good practice and what is legal requirement for regulatory compliance can be confusing for businesses and this should be a key consideration for NRW when issuing advice and</li> </ul>

<p>guidance</p> <p>5.4 Promoting confidence in advice</p> <p>5.5 Collaboration with other regulators</p>	<p>format accessible to business, but user-friendliness can also be an issue.</p> <ul style="list-style-type: none"> <li>• Better and easier access to advice and guidance would make compliance easier for small businesses.</li> <li>• NRW staff are perceived as being visible, approachable and generally helpful in providing advice.</li> <li>• Navigating the website to find information and guidance can be a challenge</li> <li>• There are some excellent examples of co-production of guidance with business</li> <li>• Small and new businesses often don't know what they need to do to comply and are reluctant to approach NRW directly for advice for fear of prosecution</li> </ul>	<p>developing guidance.</p> <ul style="list-style-type: none"> <li>• More work is required to make the NRW website more accessible to businesses, and they and their representative organisations should be involved in any further development. Links to the NRW website from other relevant business services which signpost businesses to information and guidance should be exploited where possible.</li> <li>• The perceived lack of available information and guidance for the forestry and farming sectors needs to be addressed.</li> <li>• NRW should consider reviewing distribution lists for their regular newsletters and should explore the merits of producing a bulletin specifically for businesses.</li> <li>• NRW material needs to reflect their role as a business-facing organisation and not just as a regulator.</li> <li>• NRW needs to communicate its approach to non-compliance more clearly to the small business community and to cultivate its visibility to and relationships with small businesses.</li> <li>• Some thought should be given to how to handle expert and sector specific questions by ground level staff that may now have a broader remit.</li> <li>• Better clarity on the role and responsibilities of NRW as distinct from those of local authorities would help businesses to know where to go for advice without wasting time finding the relevant authority.</li> </ul>
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<b>Regulators' Code theme 6: Promoting transparency in regulatory activities</b>		
<b>6 Regulators should ensure that their approach to their regulatory activities is transparent</b>		
<b>High level topic guide</b>	<b>Key findings</b>	<b>Recommendations</b>
<p>6.1 Publication of service standards</p> <p>6.2 Content of service standards</p> <p>6.3 Accessibility</p> <p>6.4 Mechanisms to ensure officers follow service standards</p> <p>6.5 Publication of performance data</p>	<ul style="list-style-type: none"> <li>• NRW service standards are incomplete and their positioning on the website needs further consideration.</li> <li>• NRW publish information on how they respond to non-compliance, but not how they monitor compliance</li> <li>• NRW do not publish any information for businesses setting out their appeals process</li> <li>• NRW staff are generally conversant with the principles of good regulation</li> <li>• Transparency is generally a key strength of NRW and is embedded within their values</li> </ul>	<ul style="list-style-type: none"> <li>• NRW should further refine the organisation and detail of their website 'service standards' to: <ul style="list-style-type: none"> <li>○ address the gaps identified in this review, including those relating to charges, appeals processes, monitoring compliance, and complaints and appeals against NRW and its decisions</li> <li>○ Make sure these are clear and accessible by testing with businesses they regulate and business representative groups.</li> </ul> </li> <li>• NRW should continue with their efforts to build staff awareness and competency in relation to the principles of better regulation with a focus on the Regulators' Code (as opposed to 'Hampton').</li> <li>• NRW should endeavour to capture feedback from their business customers as this would help further shape the NRW 'offer to businesses.</li> </ul>

## Appendix 2: Regulations under which civil sanctions are available to NRW

Civil sanctions can be used for offences committed after 15 July 2010 in Wales. The civil sanctions legislation allows access to specific civil sanctions on an offence by offence basis under the following legislation:

- Water Resources Act 1991
- Control of Pollution (Oil Storage) (England) Regulations 2001
- Nitrate Pollution Prevention Regulations 2008 (England only)
- Water Industry Act 1991
- Environment Act 1995
- Producer Responsibility Obligations (Packaging Waste) Regulations 2007
- Hazardous Waste (England and Wales) Regulations 2005 & Hazardous Waste (Wales) Regulations 2005
- Transfrontier Shipment of Waste Regulations 2007
- Sludge (Use in Agriculture) Regulations 1989
- Environmental Protection (Disposal of Polychlorinated Biphenyls and other Dangerous Substances) (England and Wales) Regulations 2000
- Water Resources (Environmental Impact Assessment) (England and Wales) Regulations 2003
- Salmon and Freshwater Fisheries Act 1975
- Salmon Act 1986
- Land Drainage Act 1991

## Appendix 3: Approach

- i. In establishing the review methodology, BRDO has considered the framework previously developed by the Better Regulation Executive and National Audit Office for the 'Hampton Implementation Reviews'<sup>\*</sup>, and also the adaptation of this used by the LBRO when undertaking the 2010 review of local authorities in Wales. The Regulators' Code places clear emphasis on the need for regulators to take into account the impact of their activities on the economic prospects of businesses they regulate, and this review is therefore centred on the relationship between NRW and the businesses it serves. As such it explores the day-to-day experience of how regulation is delivered and enforced by NRW as it is this that builds business and consumer confidence and ultimately drives economic growth.
- ii. BRDO has been keen to pitch this review at an appropriate level recognising that NRW is a very new regulator in terms of its organisational maturation. The methodology has therefore been devised to provide a high level, but robust and thorough investigation of the approach to frontline delivery of regulation by NRW and its interface and relationship

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<sup>\*</sup> 36 national regulators were reviewed between 2007 and 2009- see <http://webarchive.nationalarchives.gov.uk/20121212135622/http://www.bis.gov.uk/policies/better-regulation/improving-regulatory-delivery/implementing-principles-of-better-regulation/reviewing-regulators/hampton-implementation-review-reports>

with the businesses and other regulated entities it deals with. The review has taken into account the overarching approach to regulation by NRW and looks at how the NRW meet the specific provisions elements of the Regulators' Code in more detail.

- iii. The approach has been developed in full consultation with Welsh Government and NRW to ensure the end report is fit for purpose in terms of providing the assurance required by Welsh Ministers for the continuing use of civil sanctioning powers by NRW, but also to provide feedback for consideration by Welsh Government and NRW in terms of further shaping NRW's regulatory culture going forwards.
- iv. The review was conducted by a BRDO expert team including individuals with relevant experience, insight and expertise in the field of regulatory policy and the delivery environment in Wales. It comprised of two phases- a series of workshops and meetings with a range of stakeholders to gauge their experience of regulation by NRW and to develop a more rounded narrative around this, followed by a desk-based review of relevant documentation.

#### Stakeholder engagement

- v. BRDO worked with NRW to identify the key stakeholders that they engage with on a regular basis. A series of focus groups and interviews were conducted with businesses and business representative groups, Welsh Government policy leads and other delivery agents along with policy and operational staff at all levels within NRW. The review team used a high level question set brigaded under the provisions embedded in the Regulators' Code and differentiated according to the different stakeholder groups to capture feedback from these stakeholders. The question sets used are included in **Appendix 4**. In total 4 workshops and 5 meetings took place in the period between October 2014 and February 2015 with the organisations consulted listed in **Appendix 5**. These sessions were scheduled ahead of the documentation research phase to allow the review team to develop their understanding of NRW; focus their attention going forwards on those aspects identified through the stakeholder work that might merit further exploration; secure 'buy-in' to the review and its outcomes from the aforementioned stakeholders; and, to allow NRW additional time to organise and corral their corporate and policy documentation.

#### Documentation review, analysis and reporting

- vi. Following on from the stakeholder engagement phase, BRDO worked with NRW to identify and map relevant sources of information about NRW and its approach to regulation. These were primarily publicly available documents, but NRW submitted a number of other sources of corporate and internal evidence providing a substantial and solid evidence base. A framework setting out assessment criteria against the Regulators' Code principles was developed by the review team in consultation with NRW and the Welsh Government. This is detailed in **Appendix 6**. The documentary evidence was mapped against this framework and this framework was used as the standard for the report structure.



## Appendix 4: Question set used for stakeholder workshops

### Review of Natural Resources Wales against the Principles of Good Regulation: Questions for meetings with business representatives\*

<b>Regulators' Code theme 1: Supporting business and economic growth</b>	
<ul style="list-style-type: none"> <li>Regulators should carry out their activities in a way that supports those they regulate to comply and grow</li> </ul>	
<b>High level topic guide</b>	<b>Questions</b>
1.5 Regulatory burdens & proportionate approaches 1.6 Business support and growth in policies 1.7 Appropriately skilled officers 1.8 Officer awareness of the principles and Code	<ul style="list-style-type: none"> <li>Do you think that NRW take sufficient account of the impact that their interventions have on businesses?</li> <li>From your discussions with NRW, do you feel that NRW makes use of a range of alternatives, including advice to businesses to encourage compliance, before resorting to sanctions?</li> </ul>
<b>Regulators' Code theme 2: Engaging with the business community</b>	
<ul style="list-style-type: none"> <li>Regulators should provide simple and straightforward ways to engage with those they regulate and hear their views</li> </ul>	
<b>High level topic guide</b>	<b>Questions</b>
2.7 Engagement mechanisms 2.8 Communicating non-compliance 2.9 Route to appeal 2.10 Explanation of rights to appeal 2.11 Complaints procedure 2.12 Customer feedback mechanisms	<ul style="list-style-type: none"> <li>Do you feel that NRW's engagement with businesses is working well in terms of influencing how they develop their policies and practices?</li> <li>Do you have any particular comments on their approach in terms of complaints and appeals?</li> <li>Do you feel that NRW places sufficient emphasis on inviting and making use of feedback from businesses to improve its delivery?</li> </ul>
<b>Regulators' Code theme 3: Developing risk-based approaches to business support and interventions</b>	
<ul style="list-style-type: none"> <li>Regulators should base their regulatory activities on risk</li> </ul>	
<b>High level topic guide</b>	<b>Questions</b>

\* Differentiated versions of this base question set were used with other stakeholder groups- other delivery partners and NRW staff

6.6 Evidence-based assessment of priority risks 6.7 Risk-based decision making 6.8 Risk assessment framework 6.9 Recognition of compliance approaches 6.10 Effectiveness of regulatory activities	<ul style="list-style-type: none"> <li>Do you understand how NRW allocates its resources to compliance checks?</li> <li>Do you think NRW allocates the right proportion of its resources to more high risk businesses?</li> </ul>
<b>Regulators' Code theme 4: Sharing information about compliance and risk</b>	
7 Regulators should share information about compliance and risk	
<b>High level topic guide</b>	<b>Questions</b>
7.1 'Collect once, use many times' 7.2 Share information where the law allows	<ul style="list-style-type: none"> <li>Do you feel that NRW pays sufficient attention to minimising burdens on businesses in terms of the data that it collects from them?</li> </ul>
<b>Regulators' Code theme 5: Providing information, guidance and advice</b>	
8 Regulators should ensure clear information, guidance and advice is available to help those they regulate meet their responsibilities to comply	
<b>High level topic guide</b>	<b>Questions</b>
8.1 Provision of advice and guidance 8.2 Accessibility 8.3 Consultation on guidance 8.4 Promoting confidence in advice 8.5 Collaboration with other regulators	<ul style="list-style-type: none"> <li>Do you feel that NRW pay sufficient attention to making sure that advice and guidance is available to help businesses to comply, and that it is easily accessible to them?</li> </ul>
<b>Regulators' Code theme 6: Promoting transparency in regulatory activities</b>	
9 Regulators should ensure that their approach to their regulatory activities is transparent	
<b>High level topic guide</b>	<b>Questions</b>
9.1 Publication of service standards 9.2 Content of service standards 9.3 Accessibility 9.4 Mechanisms to ensure officers follow service standards 9.5 Publication of performance data	<ul style="list-style-type: none"> <li>Are you aware of how NRW communicate their approach to businesses?</li> <li>Do you feel that they pay sufficient attention to the importance of being transparent?</li> </ul>

## **Appendix 5: Stakeholder groups and organisations that we spoke to**

- Welsh Government policy staff
- NRW staff:
  - Policy staff
  - Operational staff
- Welsh Local Government Association and local authority representatives
- Business representative groups- Federation of Small Businesses and Business Wales
- Business sectors:
  - Manufacturing
  - Chemicals industry
  - Energy sector- including alternative energy and nuclear power industry
  - Technology driven financial services
  - Forestry industry
  - Farming
  - Rural landowners and business

## Appendix 6: Assessment Framework

Regulators' Code theme 1: Supporting business and economic growth	
<ul style="list-style-type: none"> <li>Regulators should carry out their activities in a way that supports those they regulate to comply and grow</li> </ul>	
High level topic guide	Assessment criteria
1.1 Regulatory burdens & proportionate approaches 1.2 Business support and growth in policies 1.3 Appropriately skilled officers 1.4 Officer awareness of the principles and Code	<ul style="list-style-type: none"> <li>There is evidence that officers understand (and where appropriate, are trained in how to) consider the economic impact of their regulatory activity (including inspections, advisory visits and complaint investigations) and the bearing this has on business confidence to invest and grow.</li> <li>There is evidence that the regulator actively seeks to support and promote business compliance through their policies, procedures and practices.</li> <li>There is evidence that officers have the appropriate knowledge and skills to understand those they regulate and tailor their approach so that the costs to business of regulatory intervention are appropriate to the risk posed.</li> <li>There is evidence that the regulator demonstrates an understanding of the challenges faced by business; and recognises good practice, promoting confidence in businesses to enter into a dialogue with the regulator.</li> <li>Guidance for business seeks to minimise the cost of compliance.</li> <li>There is evidence that the regulator raises awareness of the principles of good regulation among its staff.</li> <li>There is evidence that staff have an understanding of these principles of good regulation.</li> </ul>
Regulators' Code theme 2: Engaging with the business community	
<ul style="list-style-type: none"> <li>Regulators should provide simple and straightforward ways to engage with those they regulate and hear their views</li> </ul>	
High level topic guide	Assessment criteria
2.1 Engagement mechanisms 2.2 Communicating non-compliance 2.3 Route to appeal 2.4 Explanation of rights to appeal	<ul style="list-style-type: none"> <li>There is evidence that the regulator uses a range of mechanisms (such as focus groups, formal consultation and dialogue with both representative bodies/trade associations and underrepresented groups) to consult with the businesses it regulates when it develops or changes policies, practices or service standards.</li> <li>There is evidence that the regulator has evaluated the impact the impact of changes in policy and practice before bringing such changes into practice (e.g. Accountability for Regulator Impact assessments).</li> <li>The regulator clearly explains why any enforcement action is necessary outlining the non-compliance that has</li> </ul>

<p>2.5 Complaints procedure</p> <p>2.6 Customer feedback mechanisms</p>	<p>occurred and how this can be remedied.</p> <ul style="list-style-type: none"> <li>• It is clear to business how to contact the regulator to discuss advice, requirements or decisions made in respect of them.</li> <li>• There is a straightforward mechanism for businesses to raise concerns in relation to advice, decisions, action, service standards etc. with the regulator</li> <li>• Businesses appeal a decision taken in respect of their compliance.</li> <li>• There is evidence that businesses are aware of complaints procedures and that they find these clear and accessible.</li> <li>• There is evidence that the regulator seeks and takes on board feedback from the businesses it regulates (such as through regular stakeholder forum events or customer satisfaction surveys).</li> </ul>
<p><b>Regulators' Code theme 3: Developing risk-based approaches to business support and interventions</b></p> <ul style="list-style-type: none"> <li>• Regulators should base their regulatory activities on risk</li> </ul>	
<p><b>High level topic guide</b></p>	<p><b>Assessment criteria</b></p>
<p>3.1 Evidence-based assessment of priority risks</p> <p>3.2 Risk-based decision making</p> <p>3.3 Risk assessment framework</p> <p>3.4 Recognition of compliance approaches</p> <p>3.5 Effectiveness of regulatory activities</p>	<ul style="list-style-type: none"> <li>• There is evidence that the regulator carries out evidence-based assessments of the risks presented by the businesses it regulates, and that it allocates resources on the basis of these risks</li> <li>• The regulator has a robust risk assessment framework which it uses to plan interventions.</li> <li>• There is evidence that individual officers are aware of this framework and have a good understanding of how to use it to direct their activities.</li> <li>• The regulator explains its risk based approach to business. (6.2)</li> <li>• There is evidence that the regulator bases decisions in response to breaches, on risk and that there is an approach in place to ensure these are proportionate to the nature of the offence and the harm caused.[6.2 and6.4]</li> <li>• There is evidence that officers have the appropriate skills to select suitable interventions, and that they base their choices on all available compliance records and data.</li> <li>• There is evidence that the regulator assesses the effectiveness of its regulatory activities in delivering against outcomes [6.5].</li> <li>• There is evidence that the regulator changes its approach where activities are not effective in delivering against its outcomes.</li> </ul>

<b>Regulators' Code theme 4: Sharing information about compliance and risk</b>	
4 Regulators should share information about compliance and risk	
<b>High level topic guide</b>	<b>Assessment criteria</b>
<p>4.1 'Collect once, use many times'</p> <p>4.2 Share information where the law allows</p>	<ul style="list-style-type: none"> <li>• Data requirements (including licensing processes) are streamlined and easy to use, and data is shared with other regulators where appropriate (5.6).</li> <li>• There is evidence that the regulator makes efforts to share information internally (across teams, for example) where appropriate</li> <li>• When considering information requests made to business, the regulator checks whether this is necessary, and whether it may already be held by the regulator</li> <li>• The regulator demonstrates that it considers how information is required from business (format, timing etc.) with a view to minimising any burden</li> <li>• There is evidence that the regulator takes account of information held by co-regulators for business regulated by both regulators</li> <li>• The regulator demonstrates a willingness to share information with co-regulators, where legally possible</li> <li>• The regulator understands the barriers to sharing data with co-regulators and seeks to address these.</li> <li>• The regulator provides guidance on data sharing for officers to help them understand when they can or can't share specific data.</li> </ul>
<b>Regulators' Code theme 5: Providing information, guidance and advice</b>	
5 Regulators should ensure clear information, guidance and advice is available to help those they regulate meet their responsibilities to comply	
<b>High level topic guide</b>	<b>Assessment criteria</b>
<p>5.1 Provision of advice and guidance</p> <p>5.2 Accessibility</p> <p>5.3 Consultation on guidance</p> <p>5.4 Promoting confidence in advice</p> <p>5.5 Collaboration with other</p>	<ul style="list-style-type: none"> <li>• Appropriate resource is allocated to providing information, guidance and advice to support compliance</li> <li>• The regulator clearly communicates its approach to providing guidance and advice (6.2)</li> <li>• The regulator is targeting the allocated resource on the basis of an analysis of risk (3.2). For example, it has done an assessment of which businesses or sectors have the greatest need for support</li> <li>• The regulator is clear about its target audiences for information, guidance and advice (amongst those it regulates)</li> <li>• There is evidence that the regulator understands the needs of its target audiences for compliance support</li> <li>• The regulator takes steps to understand the target audiences' preferred ways of receiving and accessing</li> </ul>

regulators	<p>information, guidance and advice</p> <ul style="list-style-type: none"> <li>• Guidance is developed with input from target audiences, for example, businesses and their representative bodies, to ensure that it meets their needs</li> <li>• Information and guidance is made available in an appropriate range of styles and formats (e.g. languages, meeting accessibility guidelines)</li> <li>• Information and guidance is easily accessible to the target audiences</li> <li>• There is evidence that the regulator takes care to distinguish clearly, in its information, guidance and advice, between legal requirements and suggested good practice</li> <li>• There is evidence that the regulator takes care to avoid imposing unnecessary burdens through its guidance and advice, for example, by ‘gold plating’</li> <li>• There is evidence that the regulator takes steps to understand the impact of its guidance and advice, for example its effectiveness in supporting compliance (3.5)</li> <li>• There is evidence that the regulator takes steps to provide business with confidence in the regulator’s advice and guidance, for example, by assuring its own advice</li> <li>• There is evidence that the regulator takes steps to create an environment in which businesses feel able to seek advice from the regulator without fear of triggering enforcement action, for example, by providing reassurances</li> <li>• The regulator has mechanisms in place to work collaboratively with other regulators that are providing information, guidance and advice to its target audiences, for example, to produce joint guidance</li> <li>• There is evidence that the regulator respects advice and guidance provided to a business by another regulator, or works with that regulator to resolve any disagreement</li> </ul>
<b>Regulators’ Code theme 6: Promoting transparency in regulatory activities</b>	
<b>6</b> Regulators should ensure that their approach to their regulatory activities is transparent	
<b>High level topic guide</b>	<b>Assessment criteria</b>
6.1 Publication of service standards	<ul style="list-style-type: none"> <li>• The regulator publishes a set of ‘service standards’ explaining what those they regulate should be able to expect from them.</li> </ul>
6.2 Content of service standards	<ul style="list-style-type: none"> <li>• The regulator makes this information available through single page (which may link to information published elsewhere) on their website.</li> </ul>

<p>6.3 Accessibility</p> <p>6.4 Mechanisms to ensure officers follow service standards</p> <p>6.5 Publication of performance data</p>	<ul style="list-style-type: none"> <li>• There is evidence that the regulator signposts businesses to this information (e.g. through written communications such as letters and records of visit) and makes it available in other formats where required.</li> <li>• There is evidence that this information on ‘service standards’ is kept up-to-date</li> <li>• The ‘service standards’ that the regulator publishes includes information on: <ul style="list-style-type: none"> <li>○ how to get in contact</li> <li>○ their enforcement policy and how they respond to non-compliance (2.2)</li> <li>○ how to access advice and guidance (5)</li> <li>○ the ways they monitor and support compliance (e.g. including through inspections, advisory visits and complaint investigations) (1.1)</li> <li>○ their approach to checks on compliance, including details of the risk assessment framework used to target those checks (3) as well as protocols for their conduct, clearly setting out what those they regulate should expect;</li> <li>○ how to complain or appeal against decisions (2.3, 2.5)</li> <li>○ how to provide feedback (2.6)</li> <li>○ what relevant fees and charges are and how these are worked out</li> </ul> </li> <li>• The regulator makes information about their performance transparent to those they regulate, including: <ul style="list-style-type: none"> <li>○ details of complaints and appeals against them</li> <li>○ results of any customer satisfaction surveys (2.6)</li> </ul> </li> <li>• There is evidence that the regulator takes steps to ensure that their officers are aware of the principles of good regulation and the Regulators’ Code, and understands their service standards and enforcement policy (1.4)</li> </ul>
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## Appendix 7: Source documents and references

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- <sup>11</sup> *The Control of Major Accident Hazards Regulations 1999*. Available online at: <http://www.legislation.gov.uk/uksi/1999/743/schedule/2/made>
- <sup>12</sup> *Regulatory Enforcement and Sanctions Act, 2008*. Available online at: [http://www.legislation.gov.uk/ukpga/2008/13/pdfs/ukpga\\_20080013\\_en.pdf](http://www.legislation.gov.uk/ukpga/2008/13/pdfs/ukpga_20080013_en.pdf)
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- <sup>14</sup> *Regulatory Enforcement and Sanctions Act 2008*. Available online at: [http://www.legislation.gov.uk/ukpga/2008/13/pdfs/ukpga\\_20080013\\_en.pdf](http://www.legislation.gov.uk/ukpga/2008/13/pdfs/ukpga_20080013_en.pdf)
- <sup>15</sup> *Memorandum of Understanding between Welsh Government and BRDO*. Available online at: <https://www.gov.uk/government/publications/memorandum-of-understanding--2>
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