



**Cyfoeth
Naturiol**
Cymru
**Natural
Resources**
Wales

Our regulatory approach to deliver
sustainable management of
natural resources

Our Regulatory Principles

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Executive Summary

Our purpose is to ensure that the natural resources of Wales are sustainably maintained, enhanced and used, now and in the future. Our approach is about how we will secure the long term well-being of Wales, working with those we have direct contact, using new ways of working.

We have set out how we define regulation in the context of the sustainable management of natural resources and our regulatory principles to help the delivery of this.

We define the role of regulation and how this fits in with our purpose and the legislation being put in place by Welsh Government and builds on our already established regulatory principles.

Our regulatory principles are:

- **Deliver outcomes**
- **Be intelligent**
- **Prepared to challenge**
- **Use the full range of tools available**
- **Be flexible**
- **Bring the right skills / expertise together**
- **Be efficient and effective**
- **Be clear on what we do and why**

We explain how our regulatory principles define the themes for our delivery, which are:

- **Outcomes** – We show how effective delivery of regulation and legislation provides a vital foundation for the sustainable management of natural resources, and how long term resilience depends on raising standards by orders of magnitude;
- **Evidence** - We state that we will use regulatory evidence to drive our interventions and innovation, using European Networks and links with other regulators. We set out our position regards data requests from operators;
- **Understanding others** – We set out our commitment to work with and engage with others, through our established stakeholder groups and working with them on future policy changes;
- **Understanding ourselves** – We show the link between our approach and our core organisational values;
- **Tools** – We show how we will use the right regulatory intervention according to the circumstance.
 - We will work from the assumption that those we regulate want to comply with the law and that the responsibility rests on applicants and operators to demonstrate their compliance.
 - We will look to secure a body of clear, accessible and concise guidance materials and work with others to develop this.

- We will be clear on what compliance means and we want to discuss with operators any problems that they may have in achieving this.
- We will encourage and support improvement, and recognise those who are compliant.
- We will be clear on our enforcement and prosecution policy and be tough on those that simply ignore the law or take chances by avoiding compliance.
- We will work with the compliant operators to help us deal with the criminals and provide a level playing field;
- **Organisation** – We set out our commitment to have the right skills in place and that our staff understand the Regulators Code. We will work with others to access the right skills as we need them. We will fully recover our costs and ensure that the income from fees and charges is used only to fund formal regulatory activities. We will continue to work on our efficiency and effectiveness, and where possible we will minimise formal regulatory burdens and encourage compliance and growth;
- **Communication** - We state that we will be open and transparent, and use our Regulatory Service Standards. We are committed to develop our website as part of our wider development of our communications strategy;
- We will deliver the principles of good regulation.

Introduction

Our purpose is to ensure that the natural resources of Wales are sustainably maintained, enhanced and used, now and in the future. Our current responsibilities provide us direct contact with some 1,700 industrial, waste and water sites across Wales. We also grant over 10,000 permits, 65,000 fishing rod licences, 480 tree felling licences and 100 marine licences a year.

Our approach is about how we will secure the long term well-being of Wales, working with those we have direct contact, using new ways of working. These new ways of working reflect the wide range of roles and responsibilities of Natural Resources Wales, and also the new legislative framework put in place by Welsh Government to deliver the long term well-being of Wales. Not only does this mean new ways of working and a flexible approach, but new ways of describing and looking at the challenges to deliver this in Wales.

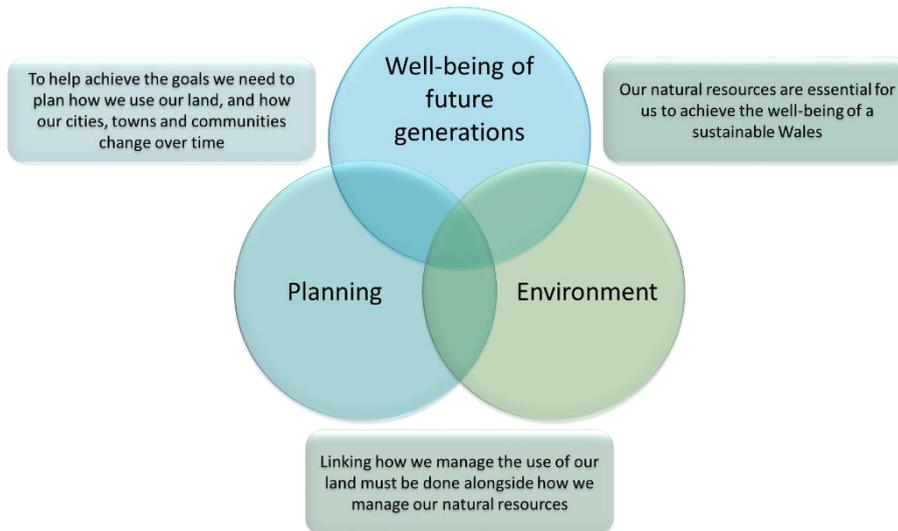
One of the key challenges we seek to address is what is actually meant by regulation. We recognise that this means different things to different groups, but we believe that regulation is about doing something that makes a difference. This is not just about the law, it is broader than this and can include economic and voluntary tools, and the use of information and knowledge sharing. However, we recognise that we must be clear about where things are legally required, and where things are just a good, or the right, thing to do. This is something we aim to do, to help those we are involved with stay the right side of the law.

We must be clear, however, that where legal requirements exist, we are required to apply them. Complementary approaches are simply that – complementary. They cannot simply act as a replacement, where legal provision exist. We will continue to apply the requirements of the law.

Here, we set out, both for those we come into contact with, and for ourselves, how we look to define regulation in the context of the sustainable management of natural resources and our regulatory principles to help the delivery of this.

The sustainable management of natural resources

The new overarching legislative framework being put in place in Wales seeks to deliver the long term well-being of Wales. This framework comprises three main components around the well-being of future generations, the environment and planning.

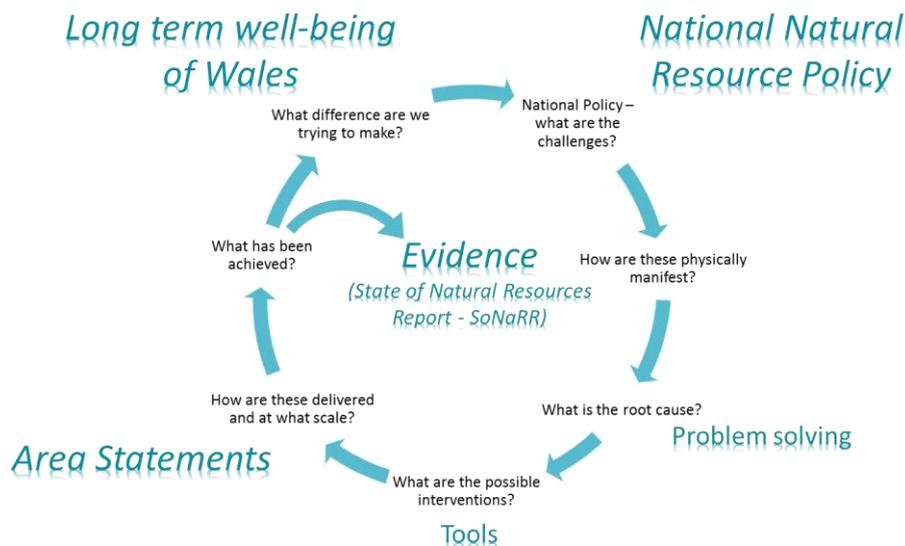


Primary legislative landscape in Wales

The Well-being of Future Generations (Wales) Act places us under a duty to apply the sustainable development¹ principles in our work. This means acting in a manner which seeks to ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs. This is reinforced by the Environment (Wales) Act that states that we must:

- (a) pursue sustainable management of natural resources in relation to Wales, and*
- (b) apply the principles of sustainable management of natural resources, in the exercise of its functions, so far as consistent with their proper exercise.*

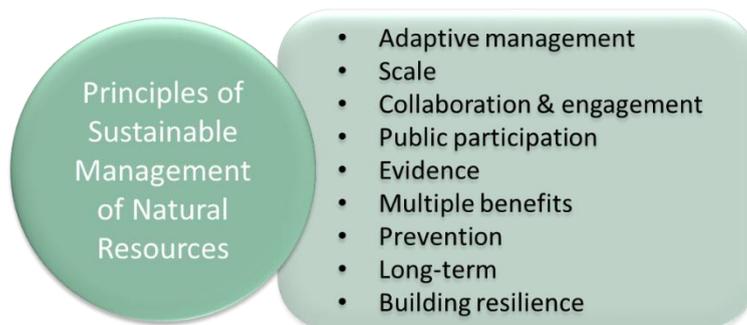
Therefore, we have a key role in the delivery of the long term well-being of Wales and the sustainable management of natural resources. This includes understanding the evidence around the state and resilience of natural resources, how this can then inform national policy and through to what does this mean locally.



Delivering the long term well-being of Wales

¹ The Well-being of Future Generations (Wales) Act defines sustainable development as “the process of improving the economic, social, environmental and cultural well-being of Wales, by taking action in accordance with the sustainable development principle aimed at achieving the well-being goals”.

The sustainable management of natural resources is not a prescriptive approach, but provides some guiding principles² about working with nature for a healthy and resilient environment, for people and nature alike. It is a way of considering the environment – and its health – as a whole, rather than dealing with individual aspects separately. It will enable our projects and programmes to deliver as many benefits as possible for the people, environment and businesses in Wales.



Sustainable management of natural resources principles

The aim is to work with other colleagues, communities, industry and Government from the start in order to establish common aims and objectives for a given activity or location. It is a way of helping us all find multiple wins in everything we do, and will enable us to take a more integrated approach across all of our work.

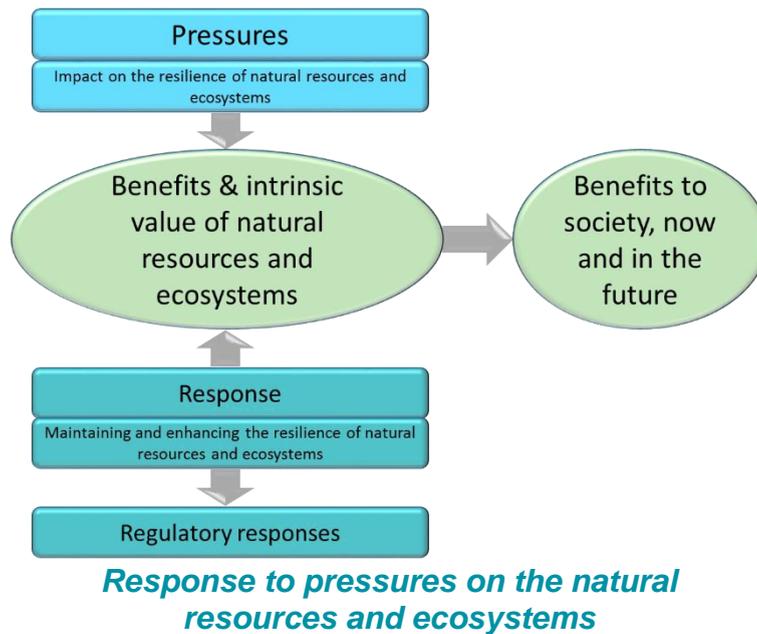
This can make use of our traditional range of tools to protect the environment, but will also require us to build in new ones which will help us achieve even more. This also encourages us to consider the spatial scale and timescale for our actions, managing our approach at the most appropriate level, to help achieve common outcomes. This will also encourage us to think about when to act and look at where early intervention or prevention may deliver better outcomes.

What is the role of regulation?

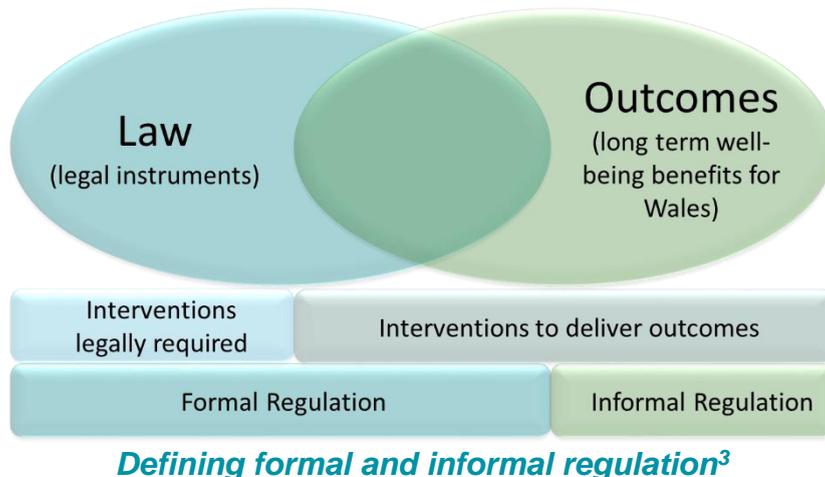
When considering the role of regulation in the context of sustainable management of natural resources, we need to consider how our current, and future, society benefits from natural resources and ecosystems. These benefits can include things like water, food and fuel, access to green and blue space, and the natural role that the environment takes in regulating things we benefit from, such as pollination or the water cycle. However, these may be subject to pressures, such as new activities or pollutants, and/or the concentration or localisation of these pressures in the environment. These may compromise or reduce the resilience of these natural resources and ecosystems to provide the range of benefits to society.

The pressure on the resilience of natural resources and ecosystems, and the threat this may pose, needs a response. The sustainable management of natural resources is this response, and can protect or enhance the resilience and capacity of natural resources and ecosystems, to deal with these man-made or natural pressures.

² The nine principles of sustainable management of natural resources are expressed in the Environment (Wales) Act.



We believe that regulation is about doing something that makes a difference. This is not just about the law, it is broader than this. However, we recognise that we must be clear about where things are legally required, and where things are just a good, or the right, thing to do. To provide this clarity, we refer to formal regulation and informal regulation, reflecting where interventions may or may not be underpinned by the law.



This will require a change in perspective and examination of the way we have worked previously in our legacy organisations. We will look at what has worked well, what hasn't, and develop new ways of approaching the challenges we, people, businesses, and the natural resources face in Wales.

The nature of the interventions, how these can be delivered, what evidence underpins this, and where this fits with the delivery of national policy are pulled together in the Area Statements. This reflects the need for tailored approaches, respecting the spatial scale of the challenges.

The delivery of this framework will not be achieved overnight. We will need to pull together a range of skills, experience and links to many other organisations. This presents us with a

³ Some may refer to these as direct and indirect regulation.

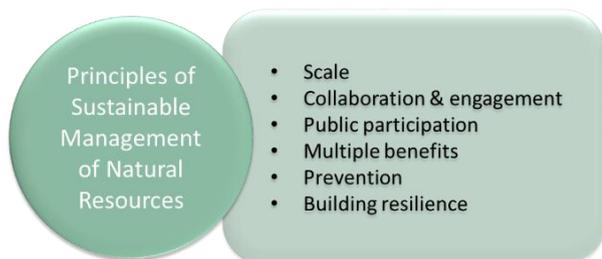
unique opportunity to re-appraise approaches and look at how to effectively deliver our shared outcomes.

Our Regulatory Principles

Given this broad context for regulation, not all possible approaches can be defined for all circumstances. We have therefore looked to adopt a principles approach, and have defined a set of eight regulatory principles, which also reflect on the principles of sustainable management of natural resources and the ecosystem approach.

1. Deliver outcomes

We will deliver outcomes, not just deliver regulation, seeking to deliver shared outcomes where we can.

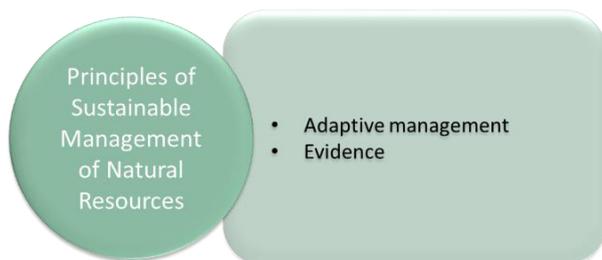


This ensures that the work we do is rooted in the delivery of outcomes. This clarifies the role of regulation as a tool in the delivery. This allows us to consider outcomes reflecting on societal choice and how we all would want our natural resources and ecosystems to function and be resilient.

For example, by looking at area-based approaches (Area Statements) to deliver the outcome of sustainable management of natural resources, we can through trials understand the most effective way to utilise our and others skills and knowledge. The delivery of such an outcome would provide benefits for the people, environment and businesses of Wales.

2. Be intelligent

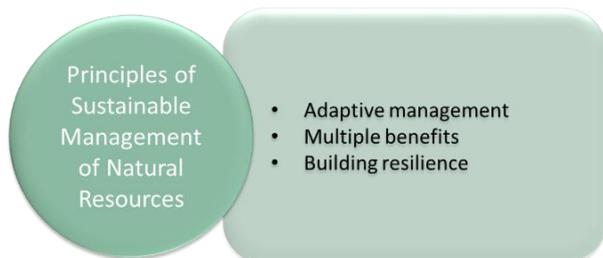
We will use all available evidence and will ensure the data we collect contributes to the evidence to inform action to deliver outcomes.



We will ensure that we collect and use data efficiently, seeking this only once wherever possible. We will apply where possible Geographical Information Systems (GIS) principles and use the data collected to deliver action informed by intelligence. This will encourage the use of new types and sources of data, using it with problem solving techniques to create knowledge. Using broad evidence (knowledge, information and data), including that in the State of Natural Resources Report (SoNaRR), will help inform risk based approaches, and highlight the priority areas for action.

3. Prepared to challenge

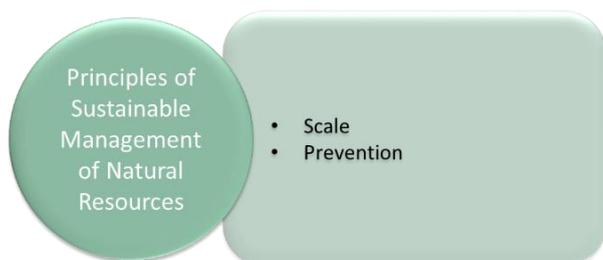
We will challenge and address barriers where they don't contribute to the outcome.



By reviewing the effectiveness of the delivery of outcomes, we will be encouraged to challenge the way we work and how we deliver. This also looks to encourage us to identify and highlight potential barriers to delivering outcomes, and look for ways to remove these.

4. Use the full range of tools available

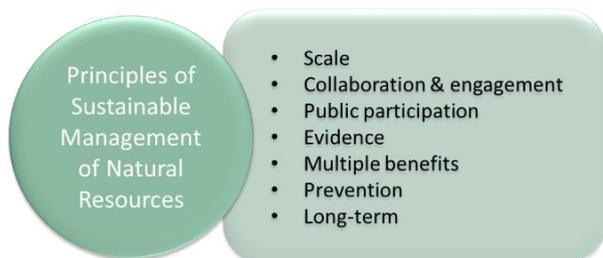
We will apply a wide range of tools, including the law to deal with those who act illegally, to protect honest business, society and the environment.



We will access an extensive toolkit. We will understand the effectiveness of the tools and in what context and when they are best applied. Such tools won't necessarily be limited to legal (formal regulatory) approaches. We will use specific legal tools where the circumstances justify, and where this is the right thing to do.

5. Be flexible

We will be flexible and tailor the approach to the needs of the recipient.



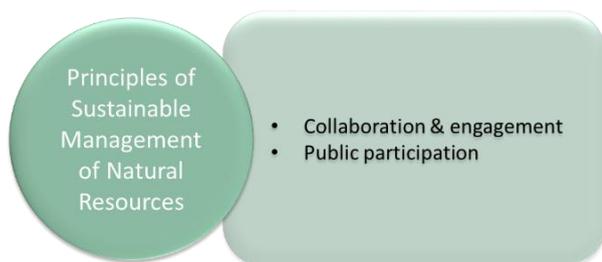
This encourages us to engage and collaborate, and seek to achieve a common understanding of what needs to be done using a wide range of tools, including the use of market mechanisms. Continued and prolonged engagement may instil commitment from those involved to make things happen for wider benefit. We will therefore need to understand the interests and motivations of those we meet. We will engage in conversation, develop mature relations, and avoid simply instructing.

We will however still need to recognise that for some, there will be a need for more help and support than for others. We will tailor appropriately, giving thought to those we engage with, considering factors such as behaviours and knowledge, and for businesses we will need to understand their size, skills and capacity. We will look to foster innovation and novelty and be less bound by historical process or old geographical boundaries.

We will think about the spatial scale and timescale for our actions, and what the most appropriate level and time to do things might be. This will encourage us to think about when to act and look at where early intervention or prevention may deliver better outcomes. Being flexible will also allow us to manage and recognise the inevitability of change.

6. Bring the right skills / expertise together

We will ensure we have the skills to use the right tools or work with those who do.



We will work with others when their skills and tools will deliver the best outcome. This includes looking at the tools others possess and assessing if they would enable us to be more flexible and effective. When using our own tools, we must ensure that our teams have the right skills to apply them efficiently and effectively. We will also ensure that we have access to the right skills and knowledge so we can understand others and engage with them effectively.

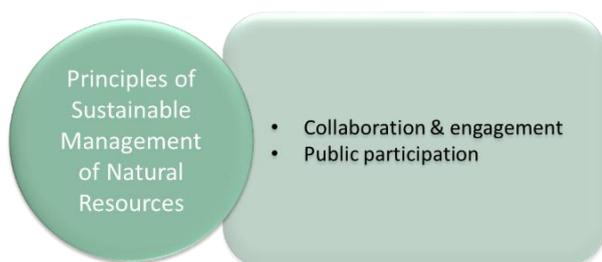
7. Be efficient and effective

We will deliver in an efficient and effective way, working with others where we can, and where this is a good thing to do.

We will clearly explain what our standards of service are, and how we will measure our effectiveness and efficiency. We will be clear as to how and where we spend our income, and ensure there is the correct balance between costs to business and costs to the tax payer.

8. Be clear on what we do and why

We will ensure everyone understands our role in such a way that it is easy to see the link between what we are doing and why.

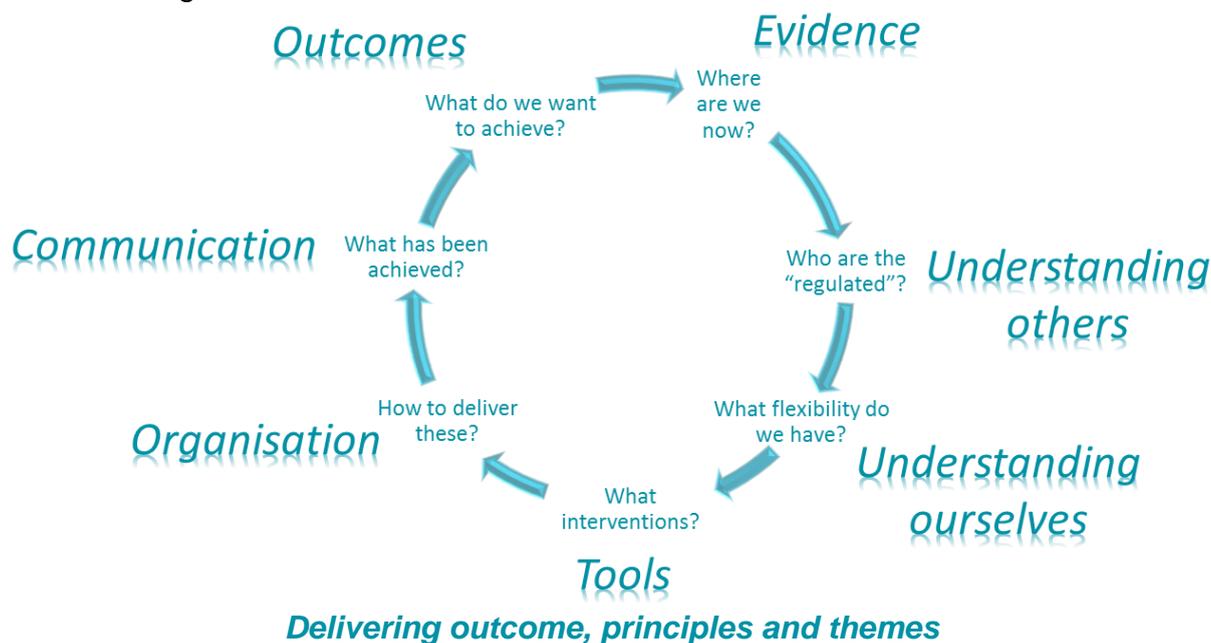


We will clearly explain what we do, and why, in a language and style that means something. This will provide for openness and transparency and, where we consult, clarity on how this can inform our decision making.

What we will do, and how we will do it

Our Regulatory Principles highlight seven main themes. These are:

- **Outcomes** - ensuring that the outcomes are defined so as to secure optimum benefits and communicated in a way to secure “buy-in” both externally and internally;
- **Evidence** - utilising evidence to inform actions;
- **Understanding others** – understanding how others work, their outcomes, their challenges, and what skills they may have;
- **Understanding ourselves** – understanding our skills, looking at our behaviours and culture, and what changes we need to make;
- **Tools** – understanding the tools that we and other possess, how to properly access and use these, and understand which are the most effective;
- **Organisation** - how best to organise ourselves to deliver in a flexible, effective and efficient way;
- **Communication** - how do we best communicate what we do, why, what has been achieved as a consequence, and how to provide feedback on what we, and others, are doing.



Our seven themes

By looking at these seven themes, we can define how we will look to deliver our Regulatory Principles.

Outcomes (Principle 1)

The high level outcomes are currently expressed in Welsh Governments Natural Resources Policy Statement and will be described in the National Natural Resource Policy.



Key challenges for the sustainable management of natural resources⁴

These challenges manifest themselves in different ways in the physical environment, and have many root causes, and therefore there are a wide range of actions capable of addressing these root causes. Understanding these root causes requires problem solving techniques and evidence.

One of the tools identified to deliver these governmental outcomes is legislation, and it is this that defines formal regulation. The legislation may include specific standards, or define how particular activities need to be controlled, in order to protect people or the environment. Many of these standards arise through European legislation, which is created as instruments to implement and deliver European Union policy objectives.

There are also other outcomes that business and people would expect, that are not necessarily underpinned by legislation. These could be a supportive environment to promote business growth, or reducing the impact of activities that have a negative impact on communities.

Evidence (Principle 2)

To manage our evidence needs, we will develop a Regulatory Evidence Action Plan. This will not only define our own regulatory evidence work, but will show the links to the work of others through programmes such as the Shared Agency Regulatory Evidence Programme (ShARE), IMPEL, and the Welsh Government’s evidence programmes (alongside Defra) (Annex 1). This is essential to ensure that we undertake evidence work in the most efficient and effective way possible, using evidence already available, and working with others where new evidence work is required. This Regulatory Evidence Action Plan will be part of the delivery of our broader Evidence Strategy⁵.

⁴ These challenges may change, depending on a better understanding of the evidence.

⁵ Good Evidence - Our Evidence Management Strategy and Delivery Plan 2014-2017, July 2014

Data and information – what we request from others

Part of our evidence base is derived from those we formally regulate. Much of this will be related to the process of demonstrating compliance, including information needed to report to Government or the European Commission under a range of legal obligations.

Although there are certain obligatory reporting requirements, we will ensure that formal regulatory reporting to us is:

- Simple;
- Only requested once;
- Requested in a way that it is clear what is needed.

Our development of new systems will ensure this is what we do in relation to information we ask for.

We will also continue to work with those we regulate to understand if there is evidence that can be informative to the State of Natural Resources Report (SoNaRR), beyond obligatory requirements. Any provision of this information will be on a collaborative basis as this would be outside of any formal regulatory framework, but may be useful to inform policy and actions more generally in Wales.

Understanding others

To deliver effectively, we need wider business (from small and new businesses to large and well established organisations) and societal “buy-in”, recognising that shared outcomes greatly increase the likelihood for success. We need to recognise that business itself also needs buy-in from its customers, shareholders, local community and others who may have an influence on the decisions made by the business. It is a combination of all these that provides business with its “licence to operate”, which is likely to be broader than meeting its legal obligations, and this balance may be different depending on the nature and size of the business.

By understanding those we work with through formal regulation, we will be able to get a better understanding as to whether other informal regulatory approaches can achieve the same, or better outcomes. We also need to understand behaviours and the nature of those we work with in relation to their size, location, sector and risk potential. We will engage in conversation, develop mature relations, and avoid simply instructing.

We will engage with these organisations and groups. We already do this through a number of business fora, and trade associations. This also provides a mechanism to ensure better delivery of formal regulation, examine new approaches, and gain a proper understanding of where formal regulation simply does not work, either for business or for society as a whole.

Understanding ourselves

We also recognise that our behaviours will be important in delivering outcomes. We will ensure we embed our values and behaviours and be seen as **passionate** and **ambitious**, **disciplined** and **focused**, **trusted** and **professional**, **responsible** and **accountable** and applying **common sense**. In addition, we will be impartial and independent in our decision making around formal regulation.

The way we behave, and the limits and constraints we have, gives us an understanding of the flexibilities available to us. We will need to address those areas where our behaviours

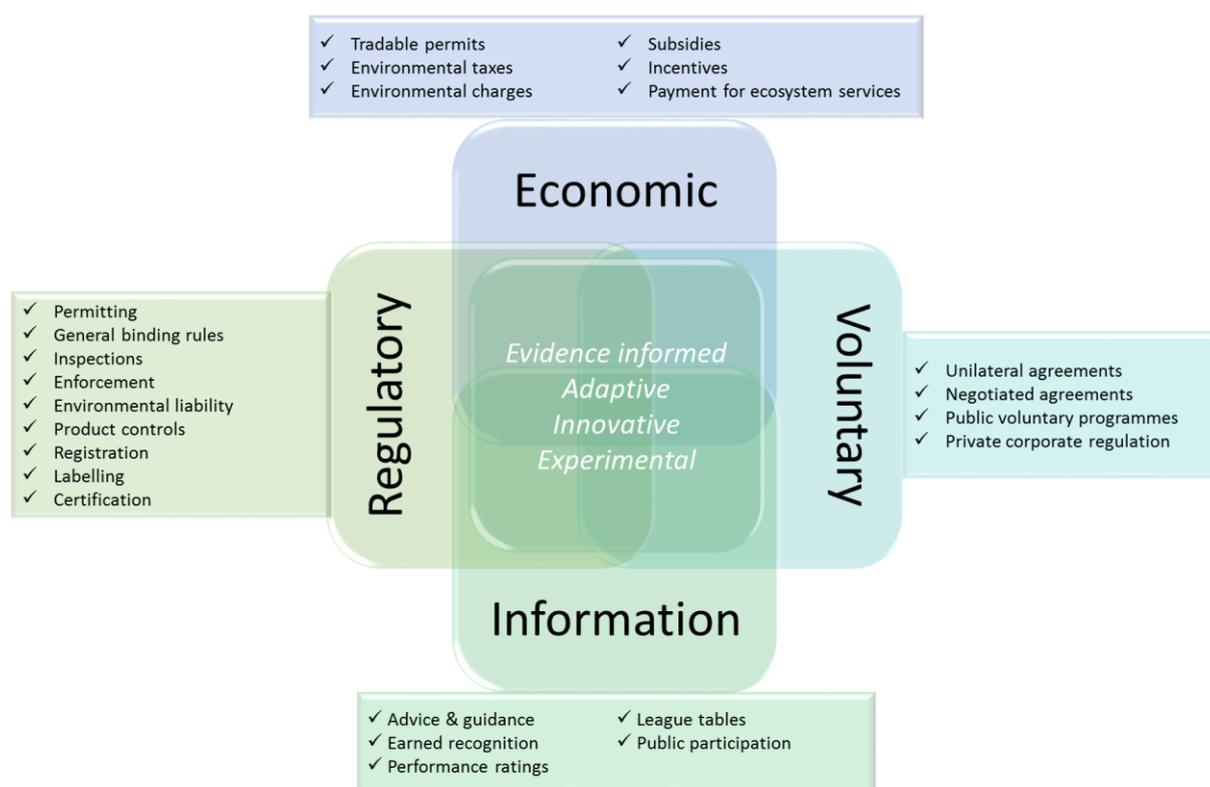
inhibit the flexible and tailored responses we need to make to deliver the sustainable management of natural resources.

Tools (Principles 3 & 4)

By understanding others and ourselves, and understanding the interests and motivations of those we meet, we will tailor our approach appropriately, giving thought to those we engage with.

We already possess a wide range of tools that provide us some ability to do this, many of which are based around the legal powers and duties we have around formal regulation. There are other tools available including environmental charges, and advice and guidance, amongst others.

This “toolkit” extends beyond what some would consider regulation⁶, and can be grouped into various types. There are a number of typologies for these tools, but we are adopting a simple version⁷.



Types of formal and informal regulatory types. Some approaches may involve more than one type

Regulatory (formal)

Given the historical focus on the use of formal regulatory interventions, most of the current ways of working are built around the delivery of these. These are around permitting,

⁶ Regulators’ Code principle 1 – Regulators should carry out their activities in a way that supports those they regulate to comply and grow.

⁷ This typology is defined in the SNIFFER work, “Better Regulation Evidence: Topic Area 2 – Choose and design interventions – ER30 Final Summary Report” from April 2013. There are other groupings, including those arising from work involving Defra & Cranfield University Centre for Environmental Risk and Futures. These are grouped as: Direct Regulation, Economic Instruments, Co-Regulation, Information Based Instruments, Civic and Self Regulation and Support and Capacity Building.

compliance, and enforcement. In recent years, with the broader consideration of what is available in the regulatory toolkit, this has also included advice and guidance as an informal regulatory approach to support the more formal methods.

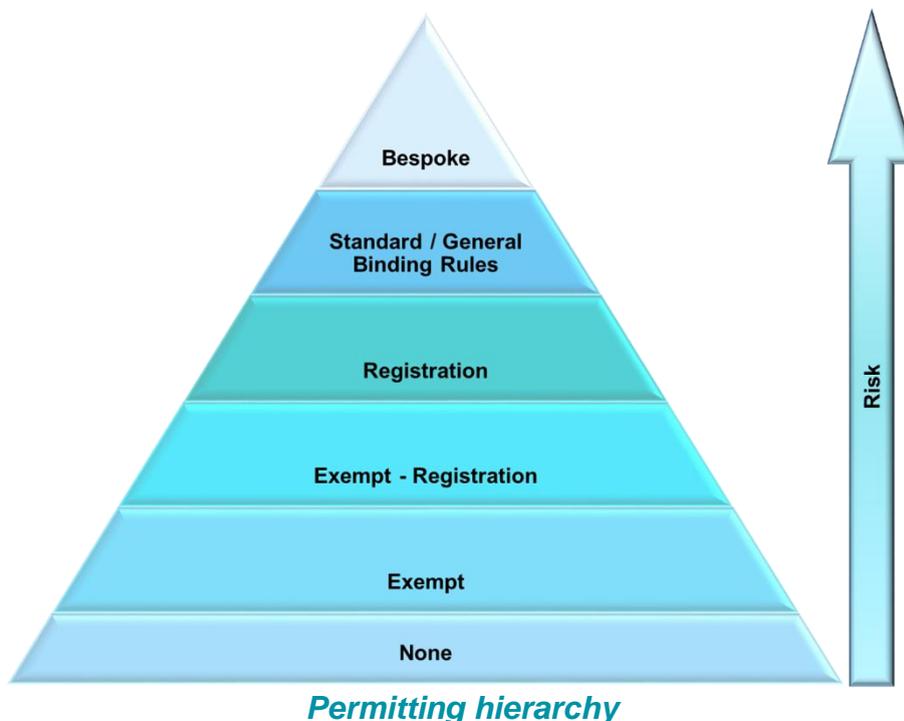
We work from the basic assumption that those we regulate want to comply with the law, and that their applications for permits and subsequent actions responding to permit conditions are intended to achieve this. This places responsibility on applicants and operators to demonstrate their compliance. Some may need help with this, and we have an important role in helping applicants and operators secure compliance. However, there will also be those who will simply not try to comply with their legal obligations.

There are a number of elements to formal regulation, which can be used to deliver outcomes through compliance with legal frameworks.



Permitting – many of the formal regulatory approaches state the requirement for some form of permit within the legislation. The precise form may not necessarily be specified, so the implementation of permitting approaches can become burdensome, not only on those applying for permissions, but for us to deliver them.

We will, as allowed by the legislation, use the permitting approach that appropriately reflects the risk associated with the activity. We will drive permits down the hierarchy as appropriate.



Where this isn't possible, for example where the legal requirements specify the nature of the permit more prescriptively, we will examine how we will drive elements of the permits down

the hierarchy. This will include using standardised or general rule sets within bespoke permits, leaving the bespoke element to reflect site specific needs or requirements.

We will also provide help to operators or applicants to identify where, by doing things differently, their activities may not necessarily require legal controls, as the potential harm the activities may cause are reduced or eliminated.

Where we permit, we will undertake compliance work and potential enforcement. This will be risk-based but the holder of a permit must ensure that they comply with their conditions. Where there is evidence that a permitting approach is not the best way to deliver policy outcomes, then we will seek to improve the legislation underpinning this through discussion with Government.

We will ensure that those who have legal obligations, are helped to ensure they comply with them. This requires clear and effective guidance for those who are applying for permissions. Therefore we will ensure we have clear and accurate guidance on what kind of permit is most appropriate, and how to properly apply for this. This will include an explanation as to why the information requested is needed and important. This will be available alongside clear application forms, which require the minimum use of consultants to complete. We will be flexible around the use of application forms, where the information submitted clearly delivers the information we require (as explained in our advice and guidance).

Many of the legislative regimes contain statutory determination periods, and we will comply with these. We also publish standards of service⁸, and applicants can expect us to deliver in accordance with these standards. There may be times, that in order to deliver a better product, we may need to deviate from these. Where we believe this to be the case, we will be clear as to why, what the benefits are, and when a final determination will be expected. Any deviance from our service standards would have to be agreed with the applicant. At the other extreme, we will respond positively where an applicant has an urgent need for a permit (or change to a permit), and look to accommodate this wherever possible and practical.

Permitting incurs costs for both the applicant and for us. Some applicants may find the charges challenging, so we will try to be flexible as to how and when application fees are paid. We still expect full payment prior to the granting of an environmental permit.

In relation to all applications, we actively encourage early engagement, to ensure that operators (and potential operators) have all the necessary information to enable them to submit an appropriate application and comply with their legal requirements.

Compliance – we believe in supporting people to comply with legal obligations, providing ways for that compliance to be demonstrated.

The permitting stage provides the first formal opportunity to help people comply with their legal obligations. It will be this that defines the conditions of compliance, so the requirements must be as clear as possible. We recognise that circumstances change, and that it is possible that not all the necessary information is (or can be) available at the time of permitting. We will be flexible to respond to these changing circumstances through the way we formally regulate compliance with permits. We actively encourage operators to discuss their issues with us, so that we can make an appropriate response, including updating and changing permits, where justified.

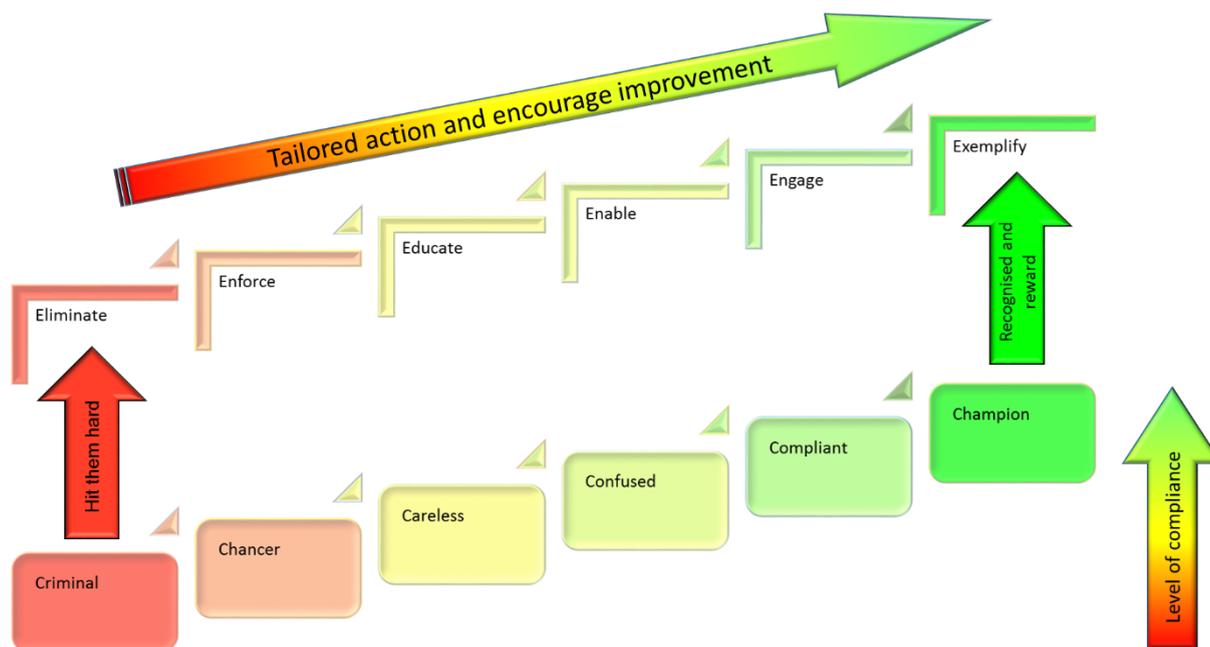
We recognise that it is too easy to label someone as a “non-compliant” operator. This could result in an approach taken by us that may not necessarily be the best for encouraging future

⁸ <http://naturalresources.wales/how-we-regulate-you/permit-applications-consultations-and-decisions/permitting-service-levels-in-natural-resources-wales>

compliance. Some operators will be reticent to discuss any compliance problems they have, for fear of labelling, or possible enforcement action. We want to support compliance, so by knowing what problems some may have, we can provide guidance to help secure future compliance. We may still need to take enforcement, but the nature of such enforcement may be influenced by the positive approach taken by an operator to secure compliance. Our compliance assessment approach recognises that we need a mature relationship with those we regulate, and is about identifying problems and fixing them.

Our approach when considering “non-compliance”, will be based on a compliance and engagement spectrum, and will be about encouraging and supporting improvement. We will be clear about where legal compliance ends⁹, and where doing the right thing beyond legal responsibilities start. We will not enforce where operators fail to do the right thing, beyond their legal compliance responsibilities.

Encouraging and supporting improvement can benefit from the use of other informal regulatory tools. For example, economic approaches through incentives and our charging scheme, recognising the value of compliance. There is also a significant role for information (through advice and guidance).



Tailoring approaches to compliance¹⁰

Enforcement – we will ensure that our enforcement and prosecution policy is regularly updated to reflect our understanding of the behaviours of those we regulate, and what can be done to bring them into compliance.

At the extreme end of compliance are those that simply ignore the law, or take chances by avoiding compliance. We recognise that those that actively ignore the law have an impact, not just on people and the environment, but also by damaging the competitiveness of legitimate businesses and their ability to grow. Therefore, it is not just in our interests to eliminate these, but also in the interest of other legal business. There is a clear role (and benefit) for the compliant to help us deal with criminals, and we will actively seek this support

⁹ Regulators’ Code principle 5 – Regulators should ensure clear information, guidance and advice is available to help those they regulate meet their responsibilities to comply.

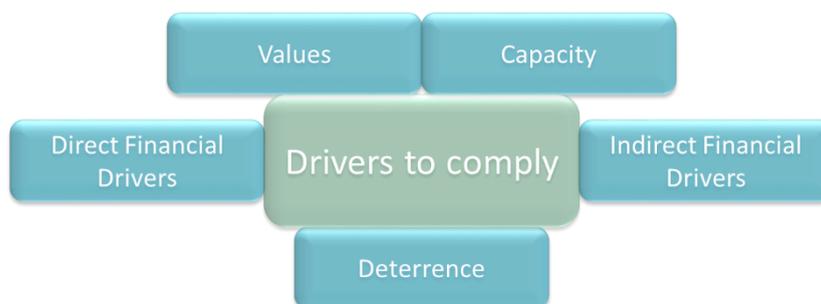
¹⁰ Taken from SEPA’s Compliance and Engagement Spectrum.

and help. We will also work with other law enforcement agencies, as criminals are likely to be ignoring more than just environmental law.

It is important that there is a clear understanding of the enforcement work we have undertaken and how successful this has been. We will therefore publish an annual enforcement report that describes this.

Recognition – given that we are encouraging compliance, and helping operators to achieve this, then they need to be rewarded. Where operators can demonstrate compliance (or where they have voluntarily done better), this will be recognised. Our charging scheme rewards highly compliant sites with a reduction to the fees and charges. The use of this will be further investigated as we develop our future charging scheme.

What is considered to be reward or recognition may not be the same for all operators, and may depend on their drivers to comply. It is therefore essential we hold dialogue with highly compliant operators to fully understand what recognition and rewards work for them. Alongside the publication of our annual enforcement report, we will also provide examples of what we have done to recognise exceptional performance.



Drivers on Companies to Comply¹¹

Advice & guidance for formal regulation – we have inherited a large body of guidance from our legacy bodies around our formal regulation. This is likely to cover the spectrum from “invaluable” through to “confusing and unhelpful”. As we increasingly use tailored approaches, there remains a challenge for us to secure a body of clear, accessible and concise materials that are useful to everyone. We are committed to this, and will look to work with others to develop this body of materials, using co-production or referral to others where appropriate and sensible. We will also be engaging with those we formally regulate to properly understand what kind of guidance they really need to help them comply with the legal requirements, and in what form, recognising that this also needs to be delivered in an affordable way.

Informal appeal – the formal regulatory regimes underpinned by legislation have formal appeal mechanisms. These can be burdensome, or a disproportionate way of dealing with concerns an operator or applicant may have regarding a decision made by us.

We will therefore provide an informal appeals route for such concerns to be raised, and this will be made clear to those we formally regulate, and to those we take enforcement action against. This does not prevent or replace any of the formal appeal mechanisms.

¹¹ Annex 9, “Report Exploring Complementary Approaches to Environmental Inspection for Ensuring Compliance”, IMPEL, May 2012

Economic & market-based

As well as formal regulatory approaches, there are a range of economic and market based instruments. Some of these may be underpinned by legislation, and thus may also be considered as formal regulatory approaches. There may be a need for market based approaches and incentives where these do not yet currently exist, or are not effective.

The flexibility around those formalised economic instruments may be limited by legislation. Others provide potential to drive change, such as payment for ecosystem services and environmental charges.

Payment for Ecosystem Services (PES) – this is a developing area that has been identified as an additional economic intervention that may be useful in the context of sustainable management of natural resources. This may be particularly useful as a way of dealing with the possible disconnect between those undertaking work to deliver outcomes (and incurring costs), and those benefitting from the delivery of such outcomes.

Charging Scheme - another form of economic instrument is our own charging scheme. This is currently in a form similar to those inherited from the legacy bodies that created NRW. Currently there are some modifications in place to this scheme to reflect the work being undertaken by us. However, we will be looking at the nature and form of our charging scheme. This will recognise the need to be able to recover the costs of the work we do, but also the different approach we will be taking, and that the types of intervention involved may involve work outside of the formal regulatory approaches that currently attract fees and charges. This also needs to reflect our approach in relation to compliance, and that we would look to incentivise demonstrable compliance.

Voluntary and information / communications-based

There are a number of intervention types under these two headings which are of interest and will require further work to understand their use, where these are most effective and how to ensure they can be delivered efficiently and effectively. These include advice and guidance beyond that associated with formal regulation.

Such informal regulatory advice and guidance may be associated with preventative measures, or advice in advance of formal legal frameworks. Our approach to advice and guidance will reflect need and affordability. This means we will need to be flexible about delivery, ensuring that this can be developed in a way that is affordable to us, and useful to those who use it.

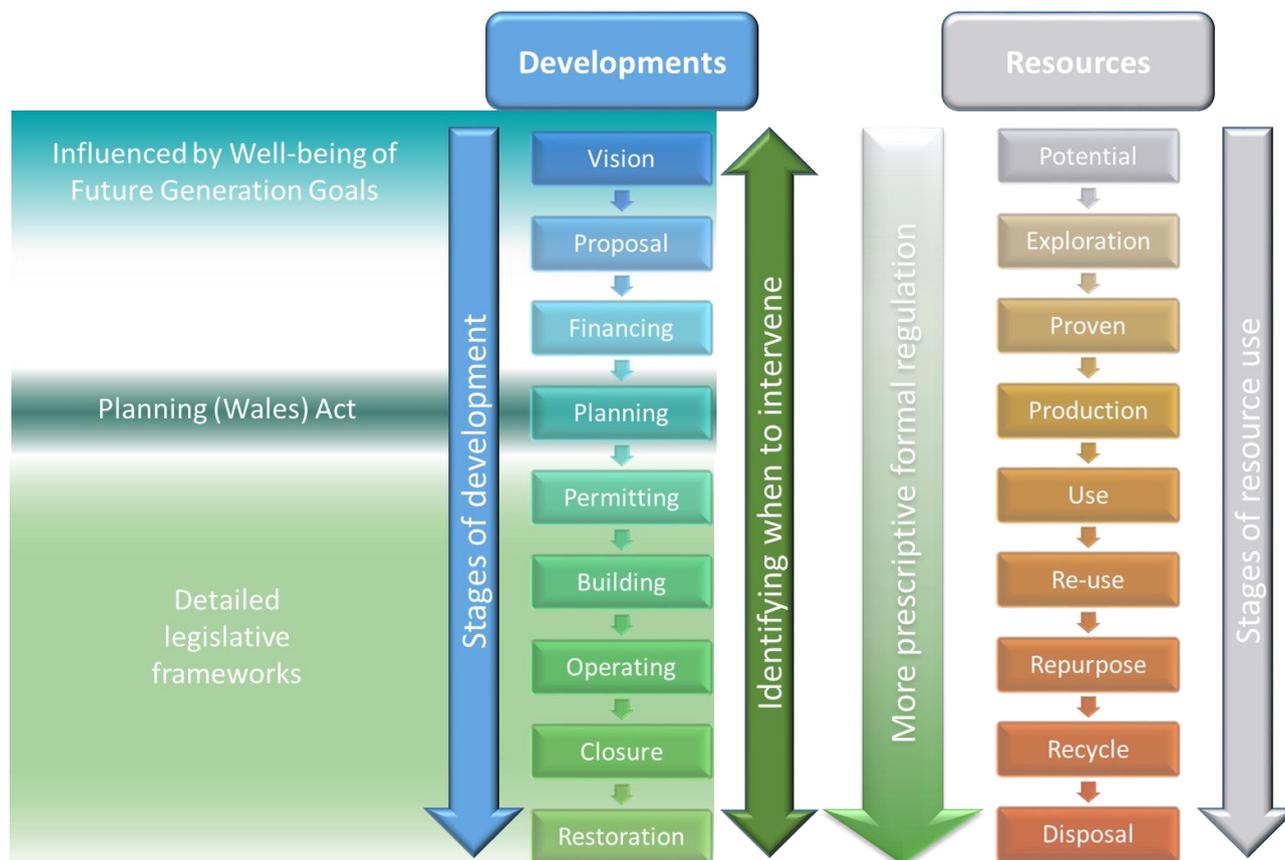
Using the regulatory toolkit

When considering the use of tool types and their efficient and effective application, it is important to reflect on the outcomes being sought. There remains a risk that looking at driving the efficiency of delivery of a single tool (or tool type) can have consequences elsewhere (by displacing burden from one tool to another), or failure to recognise the value of other interventions. For example, early intervention and prevention via informal regulation may remove or limit the requirements for formal regulation, thus delivering greater benefits than concentrating on formal regulation alone.

This is where the consideration of the sustainable management of natural resources is key, as this provides that broad picture of the outcome being sought.

Where, when, who?

As well as considering the toolkit, we also need to consider when might be the best time to intervene. This may expand the potential to use informal regulatory approaches, before developments, or the use of natural resources, enter the legal and formal regulatory frameworks.



When might be the best time to intervene?

It makes sense to intervene as early as possible, but this requires resources to be available to do so. We will examine the options for early intervention and what this means for how we work (or work with others) and how this should be funded.

Risk and what this means for what we do

We will not, and will never be able to do all the possible things that may be asked of us. We therefore need a mechanism which provides a way for us to prioritise our work. One such mechanism is to look at the risks associated with not intervening and looking to undertake some form of formal or informal regulation to mitigate these.

We remain committed to taking a risk based approach¹², but also recognise that this approach needs to be undertaken in the context of sustainable management of natural resources. We therefore need to develop our risk approach further, which historically focused on environmental risks in isolation to other social and economic risks. This will form part of our evidence base for the approaches we take.

¹² Regulators' Code principle 3 – Regulators should base their regulatory activities on risk.

This is not about weakening the necessary formal regulation for issues of high risk, but a mechanism to help identify where the priorities are, and where the most effective interventions can be deployed in the most efficient way, using public money and income from those we formally regulate.

Many of our formal regulatory activities take this into account, but we will be extending this to activities that do not yet fully apply this. Our risk based approach needs to be consistent across our formal regulatory activities, so we can target activities presenting the greatest risk. We will review and revise our approach to risk, and ensure that decisions around this are consistent across all the legislative regimes and geography.

Organisation (Principles 5, 6 & 7)

We are committed to working flexibly and in a way that delivers the best outcomes, and provides the best value of money. We also need to work in a way that is affordable in the medium and long term. This means we need to have the right people with the right skills with the confidence to use the tools available. We are committed to ensuring we have the right skills and support the development and maintenance of these skills. This includes ensuring all those working in the area of formal regulation fully understand the principles of good regulation and the Regulators' Code. We also need to work with others when their skills and tools will deliver the best outcome.

This means we will be flexible in our ways of working, ensuring that we maintain expertise and skills, whilst being able to respond in the integrated way needed to deliver sustainable management of natural resources. The ways of working will reflect the scale of the challenges as reflected in Area Statements, which should encourage more localised decision making and collaboration. Our flexible response will reflect on long-term objectives but be able to respond to change. To do this we will review our current processes and practices to drive efficiency (saving fee payers and tax payers money), and improve effectiveness.

We will be careful that where we look to improve the effectiveness and efficiency of elements of the way we work, we fully understand the wider impacts on our business and those we formally regulate. We will not implement changes that simply displace burdens or costs.

We are also committed to ensuring that we fully recover our regulatory costs. We will ensure that income from fees and charges is only used to undertake formal regulatory activities as allowed under Managing Welsh Public Money. Alongside the 'Annual Report and Accounts', we will publish a more detailed report on regulatory income, activity and expenditure. This will also provide the route for us to report on our progress on improving our approaches, what we are doing to minimise formal regulatory burdens and encouraging compliance and growth.

Communication (Principle 8)

It is important that we are able to clearly explain what we do, and why, and be open and transparent. We will also provide a clear mechanism to use informal routes to appeal those decisions¹³.

¹³ Regulators' Code principle 2 – Regulators should provide simple and straightforward ways to engage with those they regulate and hear their views.

We are committed to developing our website so that it is meaningful and simple for users, so that they can find what they want, and be confident that the information is current and accurate. To supplement this, we will use targeted electronic bulletins and other communications.

We will maintain and update a communications strategy, which identifies the most appropriate route to share and communicate information with the wide range of those we formally regulate. This will reflect the particular needs of sectors such as small or medium enterprises, forestry or the farming sector.

We will also be clear on our service standards and what you can expect from us¹⁴, as well as being clear as to what we expect from those that are formally regulated by us.

To help us understand how we are doing, we will seek feedback through a process of engagement with the regulated community. We will also engage with the wider community who may be affected by activities that we formally regulate. Both of these provide a valuable route to understand whether we are doing the right thing. We will therefore also report on what kind of feedback we have received, and what our response to this is.

Delivering the principles of good regulation

The five principles of good regulation state that any regulation should be: [transparent](#), [accountable](#), [proportionate](#), [consistent](#), and [targeted](#). We will apply the principles of good regulation, and we believe that delivering the Regulators' Code can help us deliver our Regulatory Principles (Annex 2). We have been reviewed by the Better Regulation Delivery Office (BRDO) and are responding to the recommendations made in their report.

The BRDO report recommends that “*NRW should continue with their work to develop their strategic approach to regulation and to build a distinctive 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*”. We believe this document provides our vision and reflect our ethos.

We recognise however, that there is work that needs to be done on embedding this in our organisation and building on our competency. This is not simply around the Regulators' Code and our Regulatory Principles. This also includes the wider objectives around sustainable management of natural resources, and what this means for how we work, and what we do. Delivering good regulation has a key role to play in this.

Feedback

If you would like to provide any feedback, comments, suggestions or ideas after reading this document, these can be submitted to:

regulatory.principles@cyfoethnaturiolcymru.gov.uk

¹⁴ Regulators' Code principle 6 – Regulators should ensure that their approach to their regulatory activities is transparent.

Annex 1 – Evidence Programmes

Defra One Programme – Evidence Action Plans

Recognising that the Defra One Programme covers both England and Wales, Welsh Government is seeking to ensure better involvement and engagement in the Evidence Action Plans that describe the evidence areas that will be covered.

Engaging and influencing this through Welsh Government has the potential to provide access to the funding available from the Defra One Programme, or influence those that benefit from this programme.

IMPEL

IMPEL is an international non-profit association of the environmental authorities of the EU Member States, acceding and candidate countries of the European Union, EEA and EFTA countries. The association is registered in Belgium and has 47 members from 33 countries including all EU Member States, the former Yugoslav Republic of Macedonia, Turkey, Iceland, Norway and Switzerland.

IMPEL was set up in 1992 as an informal network of European regulators and authorities concerned with the implementation and enforcement of environmental law.

The Network's objective is to create the necessary impetus in the European Community to make progress on ensuring a more effective application of environmental legislation. IMPEL facilitates awareness raising, capacity building and exchange of information and experiences on implementation, enforcement and international enforcement collaboration as well as promoting and supporting the practicability and enforceability of European environmental legislation.

IMPEL's topic areas include: industry regulation, waste, water, air quality, trans-frontier shipment of waste, environmental impact assessment, nature and wildlife.

Shared Agency Regulatory Evidence Programme

The Shared Agency Regulatory Evidence Programme (ShARE) is a new programme involving five environmental regulators. These regulators are Natural Resources Wales, the Environment Agency, the Scottish Environmental Protection Agency (SEPA), the Northern Ireland Environment Agency (NIEA) and the Irish Environmental Protection Agency (Irish EPA), known as the "Five Agencies".

The purpose of the ShARE Programme is to create a flexible framework for Five Agencies' evidence collaboration in the field of regulation. Its objective is to deliver regulated industry evidence of common need, where it is most efficient and effective to work on a UK and Ireland wide basis.

"Make It Work" Project

The Make it Work Project is an initiative by The Netherlands (Ministry of Infrastructure and the Environment), the UK (Department for Environment, Food & Rural Affairs) and Germany (Federal Ministry of Environment, Nature Conservation, Building and Nuclear Safety) to establish a forum for discussing broader, strategic approaches to smarter EU environmental law. The project seeks to identify opportunities to systematically improve the quality of EU environmental law and thus help to achieve the benefits associated with the law while

delivering a more level playing field across the EU. In particular, it aims at establishing a more coherent and consistent framework for the EU environmental acquis¹⁵ through developing guidance on the use of cross-cutting instruments and procedures in EU environmental directives and regulations.

We will look to work with Welsh Government regarding any input to this project and also through IMPEL who also are involved and have interests in this particular project.

¹⁵ Environmental aquis - this refers to the collection of all environmental laws. The term aquis in French means “that which has been agreed upon”.

Annex 2 – Regulators’ Code and our Regulatory Principles

Regulatory Principles	Elements of the Regulators’ Code
<p>1. Deliver Outcomes We seek to deliver environmental outcomes, not just deliver regulation, seeking to deliver shared outcomes where we can.</p>	<p>3.5 - Regulators should review the effectiveness of their chosen regulatory activities in delivering the desired outcomes and make any necessary adjustments accordingly</p>
<p>2. Be intelligent We should use all available evidence from a range of sources and seek to ensure the data we collect from those we regulate contributes to the evidence to inform action to deliver outcomes.</p>	<p>3.1 - Regulators should take an evidence based approach to determining the priority risks in their area of responsibility, and should allocate resources where they would be most effective in addressing those priority risks.</p> <p>3.2 - Regulators should consider risk at every stage of their decision-making processes, including choosing the most appropriate type of intervention or way of working with those regulated; targeting checks on compliance; and when taking enforcement action.</p> <p>4.1 - Regulators should collectively follow the principle of “collect once, use many times” when requesting information from those they regulate.</p> <p>4.2 - When the law allows, regulators should agree secure mechanisms to share information with each other about businesses and other bodies they regulate, to help target resources and activities and minimise duplication.</p>
<p>3. Prepared to challenge We will challenge and address barriers where they don’t contribute to the environmental outcome.</p>	<p><i>There are no obvious Regulators’ Code elements that directly support this. However, UK Governments will look at this via other reviews, including the “Red Tape Challenge” undertaken by UK Government. However, we believe it remains important to continually assess all the tools and approaches to ensure they are fit for purpose and delivery against outcomes, and seek to address any issues, even if that is simply ensuring that Government is aware of the issues and the evidence supporting this.</i></p>
<p>4. Use the full range of tools available We seek to apply a wide range of tools, chosen for their effectiveness in delivering outcomes. This includes using the law to deal with those who act illegally, to protect honest business, society and the environment.</p>	<p>5.1 - Regulators should provide advice and guidance that is focused on assisting those they regulate to understand and meet their responsibilities. When providing advice and guidance, legal requirements should be distinguished from suggested good practice and the impact of the advice or guidance should be considered so that it does not impose unnecessary burdens in itself.</p> <p>5.2 - Regulators should publish guidance, and information in a clear, accessible, concise format, using media appropriate to the target audience and written in plain language for the audience.</p> <p>5.5 - In responding to requests for advice, a regulator’s primary concerns should be to provide the advice necessary to support compliance, and to ensure that the advice can be relied on.</p>
<p>5. Be flexible We seek to be flexible and tailor the approach to the needs of the recipient, using innovation and novel approaches where appropriate and learning from past experience.</p>	<p>1.1 - Regulators should avoid imposing unnecessary regulatory burdens through their regulatory activities and should assess whether similar social, environmental and economic outcomes could be achieved by less burdensome means. Regulators should choose proportionate approaches to those they regulate, based on relevant factors including, for example, business size and capacity.</p> <p>1.2 - When designing and reviewing policies, operational procedures and practices, regulators should consider how they might support or enable economic growth for compliant businesses and other regulated entities, for example, by considering how they can best: understand and minimise negative economic impacts of their regulatory</p>

Regulatory Principles	Elements of the Regulators' Code
	<p>activities; minimising the costs of compliance for those they regulate; improve confidence in compliance for those they regulate; encourage and promote compliance.</p> <p>3.4 - Regulators, in making their assessment of risk, should recognise the compliance record of those they regulate, including using earned recognition approaches and should consider all available and relevant data on compliance, including evidence of relevant external verification.</p> <p>5.1 - Regulators should provide advice and guidance that is focused on assisting those they regulate to understand and meet their responsibilities. When providing advice and guidance, legal requirements should be distinguished from suggested good practice and the impact of the advice or guidance should be considered so that it does not impose unnecessary burdens in itself.</p> <p>5.2 - Regulators should publish guidance, and information in a clear, accessible, concise format, using media appropriate to the target audience and written in plain language for the audience.</p> <p>5.3 - Regulators should have mechanisms in place to consult those they regulate in relation to the guidance they produce to ensure that it meets their needs.</p> <p>5.4 - Regulators should seek to create an environment in which those they regulate have confidence in the advice they receive and feel able to seek advice without fear of triggering enforcement action.</p> <p>5.5 - In responding to requests for advice, a regulator's primary concerns should be to provide the advice necessary to support compliance, and to ensure that the advice can be relied on.</p>
<p>6. Bring the right skills / expertise together <i>We seek to ensure we have the skills to use the right tools effectively, or seek access to and work with those who do.</i></p>	<p>1.3 - Regulators should ensure that their officers have the necessary knowledge and skills to support those they regulate, including having an understanding of those they regulate that enables them to choose proportionate and effective approaches.</p> <p>1.4 - Regulators should ensure that their officers understand the statutory principles of good regulation and of this Code, and how the regulator delivers its activities in accordance with them.</p> <p>5.6 - Regulators should have mechanisms to work collaboratively to assist those regulated by more than one regulator. Regulators should consider advice provided by other regulators and, where there is disagreement about the advice provided, this should be discussed with the other regulator to reach agreement.</p>
<p>7. Be efficient and effective <i>We will seek to deliver in an efficient and effective way, working with others where we can, and where this is a good thing to do.</i></p>	<p>6.1 - Regulators should publish a set of clear service standards, setting out what those they regulate should expect from them.</p> <p>6.2 - Regulators' published service standards should include clear information on:</p> <ul style="list-style-type: none"> a) how they communicate with those they regulate and how they can be contacted; b) their approach to providing information, guidance and advice; c) their approach to checks on compliance including details of the risk assessment framework used to target those checks and protocols for their conduct, clearly setting out what those they regulate should expect; (Including inspections, audit, monitoring and sampling visits, and test purchases); d) their enforcement policy, explaining how they respond to non-compliance; e) their fees and charges, if any. This information should clearly explain the basis on which these are calculated, and should include an explanation of whether compliance will affect fees and charges; and f) how to comment or complain about the service provided and routes to appeal.

Regulatory Principles	Elements of the Regulators' Code
	<p>6.3 - Information published to meet the requirements of this Code should be easily accessible, including being available at a single point on the regulator's website that is clearly signposted, and it should be kept up to date.</p> <p>6.5 - Regulators should publish, on a regular basis, details of their performance against their service standards, including feedback received from those they regulate, such as customer satisfaction surveys, and data relating to complaints about them and appeals against their decisions.</p>
<p>8. Be clear on what we do and why We will seek to ensure everyone understands the role and purpose of the regulator and what our outcomes are, in such a way that it is easy to see the link between what we are doing and why and to embed a consistent approach.</p>	<p>2.1 - Regulators should have mechanisms in place to engage those they regulate, citizens and others to offer views and contribute to the development of their policies and service standards. Before changing policies, practices or service standards, regulators should consider the impact on business and engage with business representatives.</p> <p>2.2 - In responding to non-compliance that they identify, regulators should clearly explain what the non-compliant item or activity is, the advice being given, actions required or decisions taken, and the reasons for these. Regulators should provide an opportunity for dialogue in relation to the advice, requirements or decisions, with a view to ensuring that they are acting in a way that is proportionate and consistent. <i>(This paragraph does not apply where the regulator can demonstrate that immediate enforcement action is required to prevent or respond to a serious breach or where providing such an opportunity would be likely to defeat the purpose of the proposed enforcement action.)</i></p> <p>2.3 - Regulators should provide an impartial and clearly explained route to appeal against a regulatory decision or a failure to act in accordance with this Code. Individual officers of the regulator who took the decision or action against which the appeal is being made should not be involved in considering the appeal. This route to appeal should be publicised to those who are regulated.</p> <p>2.4 - Regulators should provide a timely explanation in writing of any right to representation or right to appeal. This explanation should be in plain language and include practical information on the process involved.</p> <p>2.5 - Regulators should make available to those they regulate, clearly explained complaints procedures, allowing them to easily make a complaint about the conduct of the regulator.</p> <p>2.6 - Regulators should have a range of mechanisms to enable and regularly invite, receive and take on board customer feedback, including, for example, through customer satisfaction surveys of those they regulate.</p> <p>3.3 - Regulators designing a risk assessment framework, for their own use or for use by others, should have mechanisms in place to consult on the design with those affected, and to review it regularly.</p> <p>6.4 - Regulators should have mechanisms in place to ensure that their officers act in accordance with their published service standards, including their enforcement policy.</p>



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