

7 What is meant by 'separation of duties'?

Natural Resources Wales has a range of roles in relation to its regulatory functions, wider advisory remit and operational delivery. We may be an applicant ourselves, a statutory consultee and technical advisor, the regulator, a developer of our own plans and programmes, the consultation authority in relation to Strategic Environmental Assessment, Environment Impact Assessment and Habitats Regulations Directive Assessment and the competent authority in relation to Habitats Regulations Directive Assessment.

As a consequence, we are required to meet a series of legal and best practice obligations to establish clear and transparent decision making processes in fulfilling these roles. At the same time, we are required to deliver integrated sustainable development decisions with 'one voice' through adopting an ecosystems approach across our multidisciplinary teams. By separating out decision making through internal processes and also by separating functions between Directorates we avoid any confusion for the way decisions are made for our customers and stakeholders. The Non-Financial Scheme of Delegation together with the Publication Scheme offer clarity for the way in which we make decisions across the organisation – including those decisions we make for our own permits (known as self-permitting).

Table 3 introduces the roles and responsibilities of our Directorates as they relate to permit applications and permitting decisions when applications are made by others. **Table 4** introduces the roles and responsibilities of our Directorates as they relate to permit applications and permitting decisions when applications are made by ourselves as part of our own programme, plan and project management. Both tables set out the definitions for each role or function that NRW has in relation to permits, permitting decisions, statutory advice and assessment. The roles and principles are repeated in the Non-Financial Scheme of Delegation.

Tables 3 and 4 offer three options of Directorate for the role relating to the statutory impact assessment and determination stages for Strategic Environmental Assessment and Environmental Impact Assessment. For external applications National Services would be the logical Directorate – it is only when Natural Resources Wales is itself the applicant that the need for a further separation of duties or transparency measures becomes necessary. NRW may choose to employ a different model for external applicants than self-permitting or it may choose to employ the same solution for both types of application.

Table 5 sets out the rationale for each option and the issues associated with that option.

Table 6 sets out the roles and responsibilities of Directorates replicated in the Non-Financial Scheme of Delegation and gives some examples of activities that would be undertaken.

Table 7 gives some applied scenarios of the flow of activity between Directorates.

The Permitting Publication Scheme is the mechanism for making all roles, stages and decision transparent. Under the Second Order (functions) Natural Resources Wales is required to develop, adopt and review the information it holds and makes publically available in relation to applications for permits and permitting decisions including those which the organisation makes in relation to itself or self permitting.

Table 3 – The roles and responsibilities of Natural Resources Wales in permit applications and permitting decisions for an external applicant

Definition of role in permit applications and reaching permitting decisions	Role of Natural Resources Wales for an external applicant	
Role 1 - Applicant. The person who makes an application for a permit. Any registration, exemption, approval, permission, licence, consent, assent or other authorisation.	Applicant is external (includes third party on WG woodland estate)	
	Customer service centre logged & assigned 'Exceptional' casework identified Corporate risk register entry	
Role 2 - Originator of plan, programme or project. The ' Responsible Authority ' in statute for preparing a Strategic Environmental Assessment, Environmental Impact Assessment or Habitat Regulations Assessment	Originator of plan, programme or project is external. The external applicant may need to prepare a Strategic Environmental Assessment and / or Environmental Impact Assessment and seek a Habitat Regulations Assessment from the Regulator	
Role 3 - Regulator. NRW is the body, as defined by statute, that supervises a particular industry or business activity including its own activities. The provider of a permitting decision.	Permitting decision National Services	Enforcement & Compliance casework
	Permitting decision (eg SSSI consent) Operations	Operations
Role 4 - Statutory Consultee (planning). NRW is the body, as defined by statute, that must be consulted on relevant planning applications. The provider of evidence, information, advice to Local Planning Authorities to allow them to make an informed permitting decision.	Receive & reply strategic Knowledge, strategy, planning	Receive & reply place based (local) Operations
	Receive & reply - strategic Knowledge, strategy, planning	Receive & reply – place based (local) Operations
Role 5 - Nature Conservation, Countryside and /or Forestry Consultation Body. NRW is the body, as defined by statute, that must be consulted on relevant environmental assessments. The provider of evidence, information or expertise and advice on any significant issues of concern for plans and programmes (SEA, HRA) and projects (EIA) as the nature conservation, countryside or forestry body.	Option A* - National Services	
	Option B* – Knowledge, Strategy and Planning	
	Option C* - Governance	
Role 6 - Statutory impact assessment: SEA, EIA determination. NRW is the body, as defined by statute, that must be consulted on relevant environmental assessments. The provider of formal assessment stage responses for plans and programmes (SEA) and projects (EIA)	Formal assessment & determination National Services	
Role 7 - Competent Authority: Habitats Regulation Assessment. NRW is responsible for the undertaking of the Appropriate Assessment as the competent authority for HRA. NRW is the provider of HRA decision.		
Role 8 - Competent authority EIA (forestry projects). NRW is responsible for the undertaking of the formal assessment stages as the competent authority for EIA (forestry projects). NRW is the provider of EIA determination where consent has been applied for. NRW is the provider of an enforcement notice where work have been carried out that would have required consent.	Formal assessment & determination	Enforcement & Compliance casework
	National Services	Operations

* These three options are proposed to reflect the requirements when Natural Resources Wales is the applicant itself

Table 4 – The roles and responsibilities of Natural Resources Wales in permit applications and permitting decisions when it is the applicant itself

Definition of role in permit applications and reaching permitting decisions	Role of Natural Resources Wales as an applicant itself	
Role 1 - Applicant. The person who makes an application for a permit. Any registration, exemption, approval, permission, licence, consent, assent or other authorisation.	Applicant is Natural Resources Wales Operations (Welsh Ministers are notified of all applications at the time they are made)	
Role 2 - Originator of plan, programme or project. The 'Responsible Authority' in statute for preparing a Strategic Environmental Assessment, Environmental Impact Assessment or Habitat Regulations Assessment	Strategic Knowledge, strategy, planning	Place based (local) Operations
Role 3 - Regulator. NRW is the body, as defined by statute, that supervises a particular industry or business activity including its own activities. The provider of a permitting decision.	Permitting decision National Services	Enforcement & Compliance casework Operations* *geographically separate
Role 4 - Statutory Consultee (planning). NRW is the body, as defined by statute, that must be consulted on relevant planning applications. The provider of evidence, information, advice to Local Planning Authorities to allow them to make an informed permitting decision.	Receive and reply National Services	
Role 5 - Nature Conservation, Countryside and /or Forestry Consultation Body. NRW is the body, as defined by statute, that must be consulted on relevant environmental assessments. The provider of evidence, information or expertise and advice on any significant issues of concern for plans and programmes (SEA, HRA) and projects (EIA) as the nature conservation, countryside or forestry body.	Responsible authority does not at same time exercise function of consultation body (SEA)	
Role 6 - Statutory impact assessment: SEA, EIA determination. NRW is the body, as defined by statute, that must be consulted on relevant environmental assessments. The provider of formal assessment stage responses for plans and programmes (SEA) and projects (EIA)	Strategic Knowledge, strategy, planning	Place based (local) Operations
	Option A - National Services	
	Option B – Knowledge, Strategy and Planning	
Role 7 - Competent Authority: Habitats Regulation Assessment. NRW is responsible for the undertaking of the Appropriate Assessment as the competent authority for HRA. NRW is the provider of HRA decision.	Option C - Governance	
	Formal assessment & determination National Services	
Role 8 - Competent authority EIA (forestry projects). NRW is responsible for the undertaking of the formal assessment stages as the competent authority for EIA (forestry projects). NRW is the provider of EIA determination where consent has been applied for. NRW is the provider of an enforcement notice where work have been carried out that would have required consent.	Formal assessment & determination National Services	Enforcement & Compliance casework Operations* *geographically separate

Table 5 – Rationale and issues for placing the competent authority ‘assessment unit’ capability in the organisation (Strategic Environmental Assessment, Environmental Impact Assessment, Habitat Regulations Assessment).

Option	Rationale	Issues
A – National services	Consolidates technical expertise around regulation and assessment within single Directorate. Gives National Services a strong identity as the Regulator, Competent Authority and Assessment Unit across all EIA, SEA and HRA.	<p>Need to separate teams that respond to the formal assessment stages from eventual permitting decision. Can be achieved through decision logs and transparency in permitting publication scheme.</p> <p>An HRA Appropriate Assessment is undertaken by the competent authority and not the landowner or manager. National Services will be the ‘works manager’ in relation to some NRW’s assets. But this will be a separate team working as ‘agent’ to Operations as landowner and ‘client’.</p>
B – Knowledge, Strategy and Planning	Places responsibility with strategic programme and planning teams which will have relevant technical expertise.	<p>Adds a regulatory role to this Directorate which may complicate strategic/advisory positioning.</p> <p>Need to separate teams that provide advice on plan, programme or project preparation from those that respond to the formal assessment stages. Can be achieved through decision logs and transparency in permitting publication scheme.</p>
C - Governance	Places responsibility for formal assessment and determination in a Directorate clearly separated from other key roles of advice and permit determination. Same Directorate responsible for handling referrals / call-in’s to Welsh Ministers.	<p>Need for some organisational re-design and a re-positioning of this Directorate.</p> <p>Adds a regulatory role to this Directorate and potentially fragments scarce expertise across the organisation.</p>

Table 6 – Roles of Directorates under the Non-Financial Scheme of Delegation

Executive Director National Services

Role and Positioning where interfacing with other Directorates

- Option A - Regulator, competent authority and statutory/impact assessment unit (including Strategic Environmental Assessment, Environmental Impact Assessment and Habitats Regulation Assessment) for all NRW (from both Knowledge, Strategy & Planning and Operations) and external applications.
- Business development based on strategy mandated from Knowledge, Strategy & Planning and where NRW is the 'business' then projects are taken forward by Operations who are the 'Applicant'.
- Business Unit services provided as an 'Agent' on behalf of Operations who act as the 'Client'. Full service from Business Units will include professional project management and will be authorised to act by the 'Client'. Operations will always be the 'Applicant' just as they will always be the 'Landowner'.

Examples of NRW activity:

Provider of permitting decisions such as Felling licence; Drought permits; Protected species licences; Water resources permits; rod licences; septic tank registrations.

NRW as statutory consultee for Town and Country planning including influencing Local Development Plans and local policies and delivery of effective planning and development control responses – where NRW are the applicant

Exceptions: Developer of the NRW estate (third party is applicant) eg wind energy, hydro-power, telecoms

Executive Director Knowledge, Strategy and Planning

Role and Positioning where interfacing with other Directorates

- Establishes and develops the evidence base to be used by NRW
- Uses evidence base and shared (policy) outcomes with Welsh Government to help develop the business strategy and allocation of resources through corporate planning
- As part of strategy development develops programmes, including spatial plans that are mandated to Operations and National Services to deliver. Prepares the evidence and information for Strategic Environmental Assessment and Habitats Regulation Assessment as the 'Responsible Authority' or 'Appropriate Authority' on these NRW plans and programmes as necessary
- Participates in WG policy development as a partner and provides evidence, advice and information on strategic plans of other authorities including Welsh Government
- Option B - competent authority and statutory/impact assessment unit (Strategic Environmental Assessment, Environmental Impact Assessment) for all NRW (from both Knowledge, Strategy & Planning and Operations) and external applications.

Examples of NRW activity:

Strategic programmes and plans such as NRW Strategic Plan / Corporate Plan and Operational Plan and River Basin Management Plans. Strategic corporate programme with spatial prioritisation such as priority sites management; new woodland creation; wind energy / hydropower programme; flood risk management, River Basin Management Plans.

NRW as statutory consultee for Town and Country planning including influencing Local Development Plans and local policies and delivery of effective planning and development control responses (strategic)

Executive Director Operations – North and South

Role and Positioning where interfacing with other Directorates

- The landowner and land manager. Acts as proposer for designations based on programme or spatial plan set by Knowledge, Strategy & Planning. Always acts as 'Applicant'. In some circumstances is the project manager for NRW operational activity. Acts as the 'Client' for National Business Unit Services.
- The local place-based adviser for non-NRW statutory processes (planning authority) and other non-statutory advisory/extension work. Acts as the 'nature conservation body' in relation to Habitats Regulation Assessment and as the 'countryside authority' and 'forestry body' in relation to Strategic Environmental Assessment and Environmental Impact Assessment for external applications. Prepares locally required Habitats Regulation Assessment and Environmental Impact Assessment for NRW plans, programmes and projects as appropriate. ***Where NRW is 'Applicant' then NRW statutory advice to be incorporated into initial discussions/application for planning permission with transparent process.***
- Compliance, sampling and monitoring for all NRW and non-NRW permits and other reporting responsibilities and enforcement for breaches and illegal activity. ***Fully transparent process developed for any compliance/enforcement related to NRW activity.*** Enforcement and compliance casework for NRW activities will be taken forward by geographically separate operations manager split north/south. The same area cannot both receive and undertake this service.

Examples of NRW activity:

NRW Licences/permits required for tree felling work on NRW estate eg protected species licence; to create flood risk management assets eg flood defences; for local conservation works eg SSSI management work.

External licences required for tree felling work on NRW estate eg badger licence or Scheduled Ancient Monument consent

National or area based assurance certification eg Certification of WG Woodland Estate (applicant is NRW as a single national process)

Felling Licences for Welsh Government Woodland Estate Forest Design Plans

Application to external regulator eg Local Planning Authority for a new visitor centre.

Prepares local programmes and plans such as regional or location specific plans such as Forest Design Plans, SSSI plans

Provider of permitting decisions such as SSSI consents.

NRW as statutory consultee for Town and Country planning including influencing Local Development Plans and local policies and delivery of effective planning and development control responses (local, place-based)

Head of Communications and Governance

Role and Positioning where interfacing with other Directorates

- Acts as the conduit for referrals of significant / exceptional cases to Board (or committee) and handles 'call-in's' of permit applications and permitting decisions to Welsh Ministers
- Option C - competent authority and statutory/impact assessment unit (Strategic Environmental Assessment, Environmental Impact Assessment) for all NRW (from both Knowledge, Strategy & Planning and Operations) and external applications.

Table 7 - Applied scenarios of the flow of activity between Directorates

Scenario 1 *To implement the approved Forest Design Plan an area is to be felled on WG woodland estate. A protected species licence is required.*

- ED Ops - The Landowner is the applicant ie the person who plans the work
- ED NS (team a) - The Regulator makes the permitting decision, setting any licence conditions and approving the method statement
- ED NS (team b) -The Forest Work Manager is the person who commissions work on the forestry site ie directly engaging forestry contractors
- ED Ops - Exercise NRW powers in relation to compliance and enforcement (geographically separate)

Scenario 2 *As part of the agreed Business Plan a local team undertakes the creation of a new visitor centre. A pollution incident takes place and they disturb a bat roost breaching their licence conditions.*

- ED Operations has multiple roles throughout the process. They are the landowner (the applicant), the Work Manager (undertaker of works) and would exercise powers in relation to compliance and advice (via casework & planning teams).
- ED NS are the Regulator & provide the technical advice
- A geographically separate ED Operations area would undertake the regulatory services casework for compliance and enforcement

Scenario 3 *Preparation of a strategic corporate programme with spatial prioritisation such as priority sites management; new woodland creation; wind energy / hydropower programme; flood risk management, River Basin Management Plans.*

The originator of the programme (ED KSP) prepares the SEA working with landowner (ED Ops) for local evidence and information. ED NS provides the technical expertise, is the Consultation Body.

Scenario 4 *Preparation of regional or location specific plans such as Forest Design Plans, SSSI plans.*

The originator of the plan and Landowner (ED Ops) prepares the SEA working with evidence (ED KSP). Option A - ED NS provides the technical expertise and assessment as competent authority (or Option B – ED KSP or Option C – Governance)

Scenario 5 *Third party development of the NRW estate eg wind energy, hydro-power, telecoms managed under ED NS with asset creation by specialist units from ED NS (eg road construction).*

Originator of corporate programme (ED KSP) follows scenario 3 (above).

Originator of plan (ED Ops) follows scenario 4 (above).

Third party prepares SEA for overall plan – follows roles 5&6

Where planning consent is not required follows roles 5&7 (for HRA) and roles 5&6&8 (for EIA)

Where planning consent is required the HRA Appropriate Assessment is undertaken by Local Planning Authority (not ED NS). ED Ops provides the nature conservation body role. With input from ED KSP.

Asset creation by ED NS undertaken as a project and 'client' to ED Ops – follows scenario 6 (below).

Scenario 6 *To access an area to be felled a track or road is to be built that exceeds the EIA threshold but does not require Planning Permission).*

Landowner (ED Ops) works with Regulator (ED NS) and evidence (ED KSP) and local information (ED Ops) to provide screening opinion (by ED NS) on whether it is a relevant project.

Proceeds to full EIA determination if mitigation or alternatives cannot be found and consent is required.

- ED Ops - The Landowner is the applicant ie the person who plans the work
- Option A - ED NS (team a) – competent authority and provider of EIA decision (or Option B – ED KSP or Option C – Governance)
- ED NS (team b) - The Forest Works Manager is the person who commissions work on the forestry site ie directly engaging forestry contractors or its own civil engineering unit.
- ED Ops – exercise NRW powers in relation to compliance and enforcement (geographically separate)