

MEMORANDUM OF UNDERSTANDING BETWEEN THE WELSH MINISTERS AND THE HEAD OF PLANNING AND ENVIRONMENT DECISIONS WALES

Introduction

1. This memorandum sets out the basis of the Welsh Ministers' relationship with the Head of Planning and Environment Decisions Wales (hereafter PEDW) which will form part of the Economy Skills and Natural Resources Group when first established. PEDW will report to the Director of Climate Change, Energy and Planning.

Functions

2. A summary of the principal functions to be exercised by the Head of PEDW as authorised under section 52 (9) of the Government of Wales Act and drawn from current legislation, is at Annex A. Save in the most exceptional circumstances, these functions will not be withdrawn, and not without formal submission to the Welsh Ministers and the Permanent Secretary.
3. PEDW is a Division within the Welsh Government which is responsible for determining planning and associated environmental appeals and casework, on behalf of the Welsh Ministers. PEDW came into being on 01 October 2021. The division's work includes handling planning and enforcement appeals, processing applications for Developments of National Significance (DNS), examining Local Development Plans (LDPs) and providing an appellate and examination service for other divisions within Welsh Government.
4. Inspectors are independent tribunals and are responsible for land use decisions which are binding, and can only be overturned via challenge in the High Court. They also make recommendations to Ministers on cases which are recovered for Ministerial decision. This work is frequently controversial and subject to public interest. Inspectors are, and must be seen to be, impartial, objective and professionally competent in order to maintain public confidence in their work.
5. PEDW assumed the work and absorbed the staff of the Planning Inspectorate's Wales Division. PEDW will be responsible for carrying out all functions previously carried out in Wales by the Planning Inspectorate and for which powers are devolved to the Welsh Ministers (as set out above), from that date. The Planning Inspectorate will continue to carry out its functions in Wales on behalf of the UK Government, in relation to non-devolved matters. All PEDW staff will be subject to the Civil Service Code and it will be the responsibility of the Head of PEDW to ensure that the Code is complied with.

Welsh Ministers

6. Welsh Ministers recognise the importance of PEDW Inspectors' professional independence and the judgment that they must deploy. The Minister for Climate Change is therefore responsible for the governance and oversight of devolved planning matters in Wales.

7. The Welsh Ministers accept the relevant officers of PEDW should have the capacity to make land use decisions pertinent to their functions, without prejudicial pressure or improper constraint. The Welsh Ministers also accept it is in the public interest that unbiased, objective and informed statements of the facts about planning decisions should be published, being intrinsic to fair, open and transparent plan-making and decision-taking.
8. As a consequence bodies such as PEDW are not subordinate elements of or integral to Welsh Government policy and operational departments which are most closely concerned with the services upon which planning decisions may be required. While policy responsibility for planning also sits within the Climate Change Energy and Planning Directorate, the principles of this MOU apply in exactly the same way in respect of those services, recognising the operational independence of the inspectorial and regulatory functions.

Operational responsibilities

9. On the date of transfer to Welsh Government, The Director General of the Economy Skills and Natural Resources Group (the "Director General") through the Director for Climate Change Energy and Planning is responsible for supporting the Head of PEDW in respect of:
 - ensuring requirements for high standards of professional judgement, and the independence necessary to form such judgements and to speak of them publicly, (not least in Committees of the Senedd), should be reflected in job descriptions and wider administrative practice;
 - enabling them to shape their own programmes of work based on their respective statutory and policy frameworks and on the work land use authorities which are not covered by this protocol;
 - to report under conditions of their own editorial control;
 - and likewise to issue accompanying media statements (subject to the constraints of the Civil Service Code); and
 - guaranteeing direct and independent rights of access to Welsh Ministers, and providing a framework of wider developmental assistance within which they can operate under their own responsibility day to day, prioritising activity as necessary.
10. The Director General through the Director for Climate Change Energy and Planning will formally delegate to the Head of PEDW on an annual basis the resources available to them to support the delivery of their statutory responsibilities and overall work programme.
11. The Director for Climate Change Energy and Planning is also responsible for the personal performance management of the Head of PEDW, and, in strategic terms, the functions they lead. Though the Head of PEDW is required to act on the reasonable requests and instructions of the Director General and/or the Welsh Ministers, the relationships are not that of direct and continuous command and control.

12. Instead the Head of PEDW has delegated responsibilities and is accountable to the Director, Director General and the Welsh Ministers for delivering upon them under conditions of suitably transparent governance. In turn the Head of PEDW is required:

- to contribute to the corporate operation and development of the Group as a whole;
- to commit, in so far as their functions apply, to achieving Welsh Government objectives;
- to contribute to delivering on mainstream requirements and principles;
- and to share resources for that purpose where it is possible to do so without compromising their ability to deliver on their determined priorities and statutory responsibilities.

13. The Head of PEDW is specifically responsible for:

- Maintaining the professional competence and independence of decision making for Planning Inspectors;
- determining the inspectorates' work programmes (following consultation) and delivering on their work programmes and operational objectives within available resources; and
- complying with all Welsh Government financial systems and the requirements of governance, data protection and records management, answerable fully to the Director and then the Director General as Additional Accounting Officer on operational issues.

Application and Implications

14. It follows that it is for the Head of PEDW to determine how to fulfil their statutory obligations, and how to deploy their staff teams for the purpose, keeping the Welsh Ministers informed in the context of briefings, formal meetings and direct access throughout the year as appropriate.

15. In consequence, neither the Welsh Ministers, the Director nor the Director General exercise practical operational decision making or professional judgement in relation to specific cases or settings; for any related issue of staffing (save as detailed in paragraph 16 below); nor for any detailed decisions about how best to meet priorities and objectives in year. All of those matters fall entirely to the operational responsibility of the Head of PEDW.

16. In relation to complaints handling, fraud controls, information asset management, the systems and controls operated by the Inspectorate must comply with Welsh Government and civil service requirements: this needs to be clear to staff and to clients. The process of recruitment must comply with the Civil Service code.

17. Complaints and challenges regarding land use decisions made by PEDW are excluded from operational accountability to the AO and AAO. Once such decisions are made by Ministers or Inspectors, the only way they can be challenged is via Judicial Review in the Courts. The Head of PEDW will be responsible for deciding whether or not to defend such legal challenges to Inspectors' decisions in the light of

advice from Government Lawyers on the probability of success, and the likely costs incurred as a result, and associated budget implications.

Review

18. This memorandum describes the position that will apply from the date of transfer of the new division on 1 October 2021. It is proposed that the responsibilities of the Director General and the Director of Climate Change, Energy and Land Use Planning should transfer to the Welsh Government's Chief Operating Officer once that post is established.

19. At the behest of the Head of PEDW this memorandum will be regularly reviewed with the Director, and any recommendations for change submitted to the Welsh Ministers for their consideration.

Agreed by the Rt Hon Mark Drakeford MS, First Minister

On behalf of the Welsh Ministers

22 September 2021

ANNEX A – SUMMARY OF FUNCTIONS CARRIED OUT BY PLANNING AND ENVIRONMENT DECISIONS WALES

Planning and Environment Decisions Wales determines roughly 1,000 appeals and associated consents in each financial year. In cases where decision-making powers are delegated, Inspectors make decisions directly as “appointed persons” on behalf of the Welsh Ministers.

Where the final decision rests with Ministers, Inspectors provide professional, objective and impartial advice on the land use issues raised by each application type. This includes for Developments of National Significance and offshore consents, such as Harbour Orders, Transport and Works Act orders, and Electricity Act Orders. These are applications for large infrastructure projects, including most energy projects. Planning and Environment Decisions Wales also provides pre-application advice for these application types.

Planning and Environment Decisions Wales also determines non-planning cases, often on behalf of other policy Divisions within Welsh Government, which are subject to separate performance targets. These include:

- Listed Building Consent appeals and enforcement cases, and appeals against the Listing of a building;
- Marine Licensing appeals;
- Environmental Permitting appeals (such as waste carriers licensing, water abstraction licensing and Drought Orders);
- Common Land appeals;
- Rights of Way Orders, modifications to Rights of Way and Rights of Way appeals;
- Transport and Works Act Orders;
- Sustainable Urban Drainage Systems appeals;
- Harbour Orders;
- Compulsory Purchase Orders;
- Commonable Rights;
- Section 215 “untidy land” Notice appeals;
- Hazardous Waste Appeals;
- Joint Housing Land Availability Studies; and
- Environmental Scoping or Screening decisions.

The Head of Planning and Environment Decisions Wales will be responsible for carrying out of all of the above functions.