

Disused Mine and Quarry Tips (Wales) Bill: Stage 1 Report

April 2025



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Disused Mine and Quarry Tips (Wales) Bill:

Stage 1 Report

April 2025



About the Committee

The Committee was established on 23 June 2021. Its remit can be found at:
www.senedd.wales/SeneddClimate

Current Committee membership:



**Committee Chair:
Llyr Gruffydd MS**
Plaid Cymru



Janet Finch-Saunders MS
Welsh Conservatives



Delyth Jewell MS
Plaid Cymru



Julie Morgan MS
Welsh Labour



Carolyn Thomas MS
Welsh Labour



Joyce Watson MS
Welsh Labour

The following Member attended as a substitute during the scrutiny of the Bill:



Hefin David MS *
Welsh Labour

* Hefin David MS substituted for Joyce Watson MS at 12 December 2024 committee meeting.

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Recommendation 3. The Welsh Government should provide a detailed explanation of existing environmental legislation and systems in place to address environmental harm caused by disused tips, and commit to reviewing these to ensure they are sufficiently robust and effective.

Recommendation 4. The Welsh Government should provide further assurance that:

- existing planning legislation, the Welsh Government’s coal policy and Planning Policy Wales are sufficiently robust to ensure that proposals to remediate a disused tip involving coal extraction will not be permissible unless they are for the purpose of ensuring public safety, and
- the Welsh Government’s coal policy will prevent any coal extracted during remediation work from being sold for the purpose of burning.

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- make regulations on the monitoring and inspections of disused tips. These regulations must specify the minimum frequency of inspections for each category of tip, and
- consult relevant experts, stakeholders, and other persons with an interest in disused tips before making regulations.

These regulations should be subject to the affirmative procedure.....Page 47

Recommendation 12. If the Welsh Government is unwilling to accept Recommendation 11, it should bring forward amendments to the Bill to place a requirement on the Welsh Ministers to:

- give guidance to the Authority on monitoring and inspections, and
- consult relevant experts, stakeholders, and other persons with an interest in disused tips before giving guidance.Page 47

Recommendation 13. The Welsh Government should bring forward amendments to the Bill:

- to place a duty on the Authority to develop management plans for disused tips categorised as causing the Authority most concern (categories 1 and 2),
- to enable the Authority to develop management plans for disused tips categorised as causing the Authority the least concern (categories 3 and 4), and

- to include a requirement for the Welsh Ministers to make regulations setting out the minimum content of management plans. Before making regulations, the Welsh Ministers must consult stakeholders and other persons with an interest in disused tips. Regulations should be subject to the affirmative procedure.Page 47

Recommendation 14. The Welsh Government should bring forward amendments to the Bill to include a requirement on the Welsh Ministers to:

- make regulations specifying minimum requirements for preliminary and full assessment. This should include what a preliminary and full assessment will involve, what each assessment will be expected to include, and the minimum content of inspection reports, and
- consult relevant experts, stakeholders, and other persons with an interest in disused tips before making regulations.

These regulations should be subject to the affirmative procedure.....Page 54

Recommendation 15. The Welsh Government should ensure that regulations on assessments (see Recommendation 14) provide for a preliminary assessment to include a physical inspection. The regulations should provide that the Authority is not required to undertake a physical inspection of a disused tip that has been inspected in the 2 years prior to the regulations coming into force.Page 54

Recommendation 16. If the Welsh Government is unwilling to accept Recommendation 14, it should bring forward amendments to the Bill to place a requirement on the Welsh Ministers to:

- give guidance to the Authority on preliminary and full assessments, and
- consult relevant experts, stakeholders, and other persons with an interest in disused tips before giving guidance.Page 55

Recommendation 17. The Welsh Government should bring forward amendments to the Bill to ensure that the Authority publishes reports of preliminary and full assessments..... Page 55

Recommendation 18. If the Welsh Government is unwilling to accept Recommendation 17, it should bring forward amendments to the Bill to ensure that the Authority:

- publishes its conclusions of reports of preliminary and full assessments, and
- provides access to reports of preliminary and full assessments on request, without an individual having to rely on their statutory right of access to public and environmental information.Page 55

Recommendation 19. The Welsh Government should clarify how it will give practical effect to the commitment to ensure that public information and engagement is a priority for the Authority. This should include information sharing and engagement with communities living in the vicinity of disused tips.
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Recommendation 27. The Welsh Government should bring forward amendments to the Bill to address any gaps in provisions to prevent or control activities that may impact on the stability of disused tips.....Page 71

Recommendation 28. The Welsh Government should clarify:

- what consideration was given to extending the duties in section 56 and 57 to the Crown, relevant UK Government departments, and to the Health and Safety Executive;
- whether and how the powers of entry in the Bill are broader than those available to local authorities under the 1969 Act; and
- whether and how it intends to give guidance to public authorities (other than the new Authority) to support the implementation of the Bill.
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Recommendation 29. The Welsh Government should bring forward an amendment to the Bill to place a duty on the Welsh Ministers to consult stakeholders, communities living in the vicinity of disused tips, and the wider public, before bringing forward regulations using the powers provided in section 81(4) and (5). Page 79

Recommendation 30. The Welsh Government should clarify the following in relation to the definition of “threat to human welfare”:

- whether “damage to property” includes “death or damage to livestock on common land”, and
- whether “disruption to a supply of water” includes water contamination
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Introduction

1. On 9 December 2024, the Deputy First Minister and Cabinet Secretary for Climate Change and Rural Affairs (the Deputy First Minister), Huw Irranca-Davies MS, introduced the Disused Mine and Quarry Tips (Wales) Bill (the Bill) to the Senedd. On 10 December 2024, the Deputy First Minister made a statement on the Bill in Plenary.
2. The Business Committee referred the Bill to the Climate Change, Environment and Infrastructure Committee (the Committee) for Stage 1 scrutiny with a reporting deadline of 4 April 2025.

Terms of reference

3. The Committee agreed the following terms of reference:
 - The general principles of the Bill and the need for legislation to deliver the stated policy intention.
 - The Bill's provisions, including whether they are workable and will deliver the stated policy intention.
 - The appropriateness of the powers in the Bill for Welsh Ministers to make subordinate legislation.
 - Whether there are any unintended consequences arising from the Bill.
 - The financial implications of the Bill.

Committee's approach to scrutiny

4. The Committee undertook a public consultation between December 2024 and January 2025 and received 28 responses. 25 of these were from organisations and 3 from individuals.¹
5. We held oral evidence sessions with the Deputy First Minister on 12 December 2024 and 6 March 2025. Following the 12 December 2024 meeting, we wrote to the Deputy First Minister to request a response on additional matters not

¹ The majority of disused tips are in private ownership and the details of owners of are not publicly available. The Committee was therefore unable to consult these owners directly to inform its scrutiny of the Bill. However, details of the public consultation were made available on the Senedd's website and promoted through social media channels.

covered during the session. The exchange in correspondence can be found on the [Senedd's website](#).

- 6.** We held a series of oral evidence sessions with external witnesses, including legal experts, representatives from public authorities (some of which are disused tip owners), the environmental sector, and the mining and quarrying sector.
- 7.** Details of written submissions and oral evidence sessions can be found at the end of this report.
- 8.** We would like to thank all those who contributed to our work.

Scrutiny of the Bill by other Senedd committees

- 9.** The Senedd's Finance Committee and Legislation, Justice and Constitution Committee took evidence from the Deputy First Minister on their respective areas of interest. Their reports can be found on the Senedd's website.

1. Policy and legislative background

Current legislative framework for disused tip safety

10. The current legislative framework providing for the safety and stability of mining waste in the UK is the [Mines and Quarries Tips Act 1969](#) (the 1969 Act). Part 2 of the 1969 Act makes provision for tips left behind by abandoned mine and quarry workings (referred to in the Act “disused tips”). It confers functions on local authorities for the purpose of ensuring that disused tips do not, by reason of instability, constitute a danger to members of the public.

Policy background and the Bill’s development

11. Following a landslide at a disused coal tip in Tylorstown, Rhondda Cynon Taf, in February 2020, the Welsh Government established a Coal Tip Safety Taskforce to deliver a programme of works, including reviewing the safety of coal tips across Wales, and inspections and maintenance of tips with the potential to impact public safety.

12. The Welsh Government also undertook a review of the existing arrangements for oversight of coal tip safety, including assessing the effectiveness of the current legislative framework. Following the review, the Welsh Government invited the Law Commission to undertake an independent assessment of the legislative framework for coal tip safety and provide recommendations for a future bill.

The Law Commission’s report

13. The Law Commission published its report, [Regulating Coal Tip Safety in Wales](#), in March 2022. In summary, it found Part 2 of the 1969 Act “no longer provides an effective management framework for disused coal tips in the twenty-first century”. The report included 36 recommendations to the Welsh Government.

14. In March 2023, the Welsh Government published a detailed response to the Law Commission’s report and recommendations.

The Coal Tip Safety (Wales) White Paper

15. In May 2022, the Welsh Government published its [Coal Tip Safety \(Wales\) White Paper](#). It drew on the recommendations of the Law Commission and further analysis.

2. General principles of the Bill

Purpose and intended effect of the Bill

16. The Explanatory Memorandum (EM) accompanying the Bill states:

“The overarching aim of the Bill is to protect human welfare by introducing a consistent and robust system of assessment, registration, management, monitoring and oversight of disused tips in Wales.”

17. The objectives of the Bill, outlined in the EM, are:

- ensuring that disused tips do not threaten human welfare due to instability;
- the creation and maintenance of a register of disused tips that pose a threat, or could pose a threat, to human welfare by reason of their instability;
- ensuring a consistent approach to the management of all disused tips.

The need for the Bill

18. The majority of contributors supported the general principles of the Bill, highlighting the need to reform the current safety regime to better protect communities living in the vicinity of disused tips, in particular coal tips.

19. The Law Commission said the Bill “provides a solution to the central problems which our 2022 report set out to address”.²

20. In supporting the Bill, Councillor Andrew Morgan, Welsh Local Government Association (WLGA), explained, “at present, unless there’s a defined or an imminent risk, local authorities have limited powers”.³ He suggested the mechanisms available to authorities to carry out investigations were time consuming and cumbersome.

² Written evidence, Law Commission

³ RoP, para 295, 30 January 2025

21. The Institute of Materials, Minerals and Mining said the Bill “is a necessary response to the challenges associated with disused mine and quarry tips”. It added:

“The unpredictable nature of spoil tip stability poses a tangible risk to communities living near these sites. By instituting comprehensive monitoring and maintenance frameworks, the Bill will significantly reduce the likelihood of accidents or disasters.”⁴

22. Friends of the Earth (FoE) said the Bill was “urgently needed”, particularly “as extreme weather events caused by climate change become more frequent and more extreme, causing unprecedented tip destabilisation”.⁵

23. Several contributors commented on the importance of the Bill from a social justice perspective, highlighting that the majority of disused coal tips are located in some of Wales’ most socio-economically disadvantaged communities.

24. The British Aggregates Association (BAA) and the Minerals Products Association (MPA) did not support the Bill, primarily on the basis that it applies to disused non-coal tips.

25. Contributors sought clarification on, or raised concerns about, specific provisions within the Bill. They also highlighted implementation challenges and potential unintended consequences. These matters are explored throughout this report.

Inclusion of disused non-coal tips

26. The majority of contributors were content that the new regime will apply to disused non-coal tips, noting that all tips could potentially pose a threat to communities, regardless of their origin or makeup.

27. Rick Brunt, Health and Safety Executive (HSE), said aligning the regulatory regimes for disused coal and non-coal tips was “sensible”. He explained:

“as a regulator, we would always look at things like what are the nature of the risks, what are the characteristics, and it doesn’t actually matter whether that was a coal activity or non-

⁴ Written evidence, Institute of Materials, Minerals and Mining

⁵ Written evidence, Friends of the Earth

coal activity. If the characteristics are the same and the risk exists, we would always seek to regulate in the same way.”⁶

28. Carl Banton, Mining Remediation Authority (MRA) expressed a similar view.

29. Contributors suggested addressing the paucity of information on disused non-coal tips would be a sizeable task, take time, and require considerable resource. As such, they considered the Welsh Government’s proposal to introduce disused non-coal tips over time was sensible and pragmatic.

30. The BAA and MPA objected to the inclusion of disused non-coal tips. The MPA stated:

“nowhere has the necessary research [on disused non-coal tips] been undertaken. This is stealth legislation without the supporting evidence base. We are now faced with ill-conceived proposals to regulate all disused tips.”⁷

31. The BAA said the current regime for disused non-coal tips works well. It said, “The problem lies with the coal mining legacy issues of spoil heaps being placed on land above areas of population and infrastructure that have not been regularly inspected by the Coal Authority or the Local Authority unless it was an emergency”.⁸ As an alternative to the Bill, the BAA suggested amending the 1969 Act to enable proactive inspection of coal tips.

32. The MPA asserted the new regime should apply only to disused coal tips and be overseen by the MRA “until such time as a full and proper assessment/research has been undertaken into the non-coal sector”.⁹

33. The BAA said extending the new regime to disused non-coal tips risks “diverting funds away from dealing with the legacy coal mining issues”.¹⁰

⁶ RoP, para 159, 30 January 2025

⁷ Written evidence, Mineral Products Association

⁸ Written evidence, British Aggregates Association

⁹ Written evidence, Mineral Products Association

¹⁰ Written evidence, British Aggregates Association

A narrowly focused Bill

The extent of threats and risks

34. The new regime provided for in the Bill focuses on disused tip “instability”. Other risk factors, such as pollution, combustion and flooding, will not be taken into account as part of the assessment and categorisation process when they are independent of ‘instability’. The Law Commission highlighted that this is a deviation from its recommendation. UK Environmental Law Association (UKELA) and FoE called for these risk factors to be taken into account, emphasising the harm they can cause to the environment.

35. The British Geological Survey said “explicit consideration [should be] given to risks of environmental contamination (of soil, surface water and groundwater bodies) from disused tips in the event of collapse or changes to drainage conditions, including for ‘stable’ tips”.¹¹

36. Several contributors, including UKELA and representatives of the environmental sector, called for the new regime to address the “threat of environmental harm” from disused tips. UKELA asserted:

“Importantly, threats to habitats, biodiversity, landscapes, watercourses etc. while exhibiting indirect effects on individuals and communities, may not be caught by the definition of ‘threat to human welfare’...For this reason, the extent and scope of the threats arising from the disused tips should be wide and go beyond direct human threats.”¹²

37. Dominic Driver, Natural Resources Wales (NRW), said extending the new regime to cover environmental matters “would have been too complicated and too prone to perverse unintended consequences”.¹³

38. The National Sheep Association highlighted the risk disused tips associated with metal mines present of pollution and the impact of this on animal health. It suggested the new regime should seek to address this issue.

¹¹ Written evidence, British Geological Survey

¹² Written evidence, UK Environmental Law Association

¹³ RoP, para 140, 30 January 2025

Dealing with the aftermath of a tip failure

39. UKELA said it was “surprising that the Bill does not cover action to address the aftermath of a tip failure”.¹⁴ The Committee asked Professor Lee (UKELA) to expand on this issue. He said:

“It’s a big thing, I think. The whole Law Commission paper was premised on the fact that we weren’t just going to deal with something preventative in terms of instability for the future, but that, actually, we might do things that are remedial. In other words, if there is a coal tip failure—heaven forbid—why don’t we charge the authority with the oversight of the remediation of everything that then needs doing?”¹⁵

40. He added that it would be “very sensible” for the new Disused Tips Authority for Wales (see Chapter 3) to have a role in overseeing wider remediation.¹⁶

Lack of detail and use of guidance

41. A recurring theme in the evidence received from contributors was the lack of detail in the Bill on key elements of the new regime, in particular assessments, monitoring and inspections. This stems, at least in part, from the Welsh Government’s decision to leave much of the detail to guidance.

42. UKELA commented that the EM makes “extensive promises of guidance to fill out missing detail” in the Bill.¹⁷ It asserted, “the rule of law requires that legislation should be clear and complete, not leaving gaps to be filled by soft law guidance when hard law, statutory provision is more appropriate”.¹⁸ While acknowledging that guidance provides flexibility, Professor Lee (UKELA) said:

“flexibility can work two ways, because flexibility can also mean quite significant shifts and changes by the mere issuance of guidance... it is a question, really, as to whether that balance between what’s delegated by regulation and what is left to guidance is appropriately struck.”¹⁹

¹⁴ Written evidence, UK Environmental Law Association

¹⁵ RoP, para 99, 5 February 2025

¹⁶ RoP, para 99, 5 February 2025

¹⁷ Written evidence, UK Environmental Law Association

¹⁸ Written evidence, UK Environmental Law Association

¹⁹ RoP, para 41, 5 February 2025

43. He added:

“the question is: are there things that are so important that we wouldn’t want them only to be in guidance, that we would want some degree of oversight by this body, by the Senedd?”²⁰

44. Although the Law Commission would not be drawn on the appropriateness of the use on guidance, Professor Alison Young (in her capacity as a constitutional lawyer) explained:

“... with statutory instruments, there’ll be democratic scrutiny; with guidance, there would not. But guidance is much more flexible, and can be changed much more quickly in terms of technical need and to make sure that it’s up to date, than statutory instruments.”²¹

45. Daniel Therkelsen, Coal Action Network (CAN), emphasised the importance of ensuring the right balance “between making the Bill flexible enough to adapt to future challenges, but also making sure that it is open to scrutiny and cannot be arbitrarily changed from what the Senedd thinks that they are passing”. He added:

“I’m not sure that that balance is right... I’m also mindful of the election that is coming up in around a year’s time and the potential to change quite substantively the work that the authority does [if the detail is left to guidance]”²²

46. Haf Elgar (FoE) expressed a similar view. She suggested, as a minimum, the Bill should include a requirement on the Welsh Ministers to give guidance to the Authority, and for timeframes to be included in the Bill.

Potential for “re-mining”

47. CAN, FoE and the WLGA raised concern that the Bill could inadvertently stimulate “re-mining” of disused coal tips.

²⁰ RoP, para 50, 5 February 2025

²¹ RoP, para 38, 30 January 2025

²² RoP, para 217, 5 February 2025

48. CAN referred to the proposals by ERI Ltd to remediate Bedwas colliery tips at no cost to the owner (Caerphilly County Borough Council) “in return for selling the extracted ‘waste coal’”. It asserted:

“We believe similar proposals would be an attractive prospect to other landowners facing open-ended coal tip liabilities under the lower thresholds introduced by the new Bill. This is particularly true for landowners who may struggle to sell on land containing higher risk coal tips.”²³

49. FoE expressed similar views, saying, “this could escalate into a dangerous new coaling industry – as we have seen with opencast coal mining”.²⁴

50. Andrew Morgan (WLGA) told the Committee that Rhondda Cynon Taf County Borough Council (CBC) was regularly contacted by private companies with offers to remediate disused tips owned by the council. He added:

“There is the possibility that this will bring people forward, but, ultimately, if the public purse is paying for tips to be put right, or at least made safe, then it’s down to public bodies to decide if that is an option they want to consider. The risk, I suppose, is potentially with private landowners. I know one in our area... was suggesting that he was going to deal with a tip by doing this... So, it is something to think about.”²⁵

51. CAN asserted, “If this Bill stimulates the practice of ‘re-mining’ coal tips across Wales, it could have significant consequences for Wales climate change emissions”.²⁶ It called for the Welsh Government to undertake a Carbon Impact Assessment and full Climate Change Impact Assessment for the Bill. FoE echoed this.

Evidence from the Welsh Government

The need for the Bill

52. In outlining the need for the Bill, the Deputy First Minister explained the 1969 Act was introduced at a time when there was an active mining industry. He said,

²³ Written evidence, Coal Action Network

²⁴ Written evidence, Friends of the Earth

²⁵ RoP, para 427, 30 January 2025

²⁶ Written evidence, Coal Action Network

“What we’re dealing with now is the legacy of [mining], so we need to actually update the legislation”.²⁷ The Deputy First Minister said the approach taken by the Welsh Government is underpinned by the findings of the Law Commission’s review. He added:

“[The Law Commission] found that the 1969 Act is no longer fit for purpose in the twenty-first century, so a very clear, very fundamental finding that they had. But in addition to that...what we’ve seen since then is instances such as the Tylorstown slip...That’s what this Bill is fundamentally about: looking after the human welfare implications, making communities and individuals feel safe, and genuinely are safe.”²⁸

53. When asked what consideration the Welsh Government had given to strengthening the 1969 Act, the Deputy First Minister said, “we ruled it out for some significant reasons”. He reiterated the importance of consistency, a proactive and preventative approach, and a “single unified oversight body, with that capacity and expertise and a single focus on this issue”.²⁹

Inclusion of disused non-coal tips

54. When asked why the Welsh Government had decided to extend the Bill to include disused non-coal tips, the Deputy First Minister said, “I worry that we are in the same position with disused non-coal tips, as we found ourselves with coal tips following events at Tylorstown in 2020”.³⁰ He added:

“At the current time, we do not know how many disused non-coal tips there are, where such tips are located or the full extent of the risks posed by those tips. Nor do we have a single body that is responsible for managing and mitigating those risks. Whilst disused non-coal tips, in the main, pose less of a threat than disused coal tips, there will undoubtedly be disused non-

²⁷ RoP, para 6, 12 December 2024

²⁸ RoP, para 6, 12 December 2024

²⁹ RoP, para 5-6, 6 March 2025

³⁰ Letter from the Deputy First Minister to the Climate Change, Environment and Infrastructure Committee, dated 17 February 2025

coal tips where there is the potential for severe consequences if such tips are not appropriately monitored and managed.”³¹

55. The Deputy First Minister said, “it is sensible and proportionate to be proactive, so that we can locate, evaluate, understand and monitor these tips when the time is right and resources allow”. He added:

“I am keen to make sure that we have a body responsible for dealing with all disused tips in Wales, otherwise there would be a void of oversight and regulation which would have the potential to lead to uncertainty and delay should there be an emergency in the future on a disused non-coal tip.”³²

56. The Deputy First Minister said the intention is for the Authority to prioritise disused coal tips, with assessments on non-coal tips commencing around 2033. He added the Authority will have the flexibility to prioritise any disused tip should it become aware of a risk relating to instability or threat to human welfare.

A narrowly focused Bill

The extent of threats and risks

57. In commenting on the narrow focus of the Bill, the Deputy First Minister said:

“Recognising that resources are limited, and wanting to ensure that any new regime is deliverable and succeeds, it was necessary to design a more focused regime – one which concentrates on tip instability which could cause a threat to human welfare”.³³

58. He also said:

“the new regime will take account of wider threats to the stability of a tip such as those caused by pollution, combustion and flooding. These are factors that will be considered as part

³¹ Letter from the Deputy First Minister to the Climate Change, Environment and Infrastructure Committee, dated 17 February 2025

³² Letter from the Deputy First Minister to the Climate Change, Environment and Infrastructure Committee, dated 17 February 2025

³³ Letter from the Deputy First Minister to the Climate Change, Environment and Infrastructure Committee, dated 17 February 2025

of the monitoring and management processes, where they are relevant to instability.”³⁴

59. The Deputy First Minister explained the Bill “has been designed to work alongside existing environmental legislation and systems that are in place to deal with wider environmental threats”. He added:

“What I would caution against is the idea of making this the one piece of legislation that solves all the problems, including environmental, pollution, et cetera, et cetera. There are other regimes in place already. This is a very, very, rightly laser-focused regime which is on human welfare and safety, and taking away the risks, or the potential risks, of the instability of those tips.”³⁵

Dealing with the aftermath of a tip failure

60. The Deputy First Minister said he intends for the Authority to be a Category 2 responder under the Civil Contingencies Act 2004. He also said that management plans (see Chapter 4) will set out contingency arrangements should there be an incident involving a disused tip. This would include “how the respective partner agencies, including the Authority, will respond to particular scenarios that may arise in respect of a particular tip, and their respective roles in dealing with any incident”.³⁶

Wider matters relating to the legacy of mining

61. The Deputy First Minister acknowledged that there are “some wider industrial legacies that need to be addressed in the longer term”.³⁷ He said:

“I do not think this focused Bill is the right vehicle for tackling these strategic issues, and I am keen to deal with these issues as part of a wider discussion about our industrial legacy with the UK Government”.³⁸

³⁴ Letter from the Deputy First Minister to the Climate Change, Environment and Infrastructure Committee, dated 17 February 2025

³⁵ RoP, para 42, 6 March 2025

³⁶ Letter from the Deputy First Minister to the Climate Change, Environment and Infrastructure Committee, dated 17 February 2025

³⁷ Letter from the Deputy First Minister to the Climate Change, Environment and Infrastructure Committee, dated 17 February 2025

³⁸ Letter from the Deputy First Minister to the Climate Change, Environment and Infrastructure Committee, dated 17 February 2025

Lack of detail and use of guidance

62. The Deputy First Minister told the Committee “we’ve got the right balance” between the detail in the Bill and that left for guidance. He asserted that guidance provides flexibility and will help future proof the new regime, adding:

“the ability of guidance, actually—particularly when you’re setting up a new authority that will develop its own expertise and capability, that will need to deal with advancements in knowledge as well—the ability to allow guidance to do this gives real flexibility...There are real advantages here to getting the balance right with guidance to allow that work on this; develop the expertise, refine the guidance, futureproof the guidance, change that dynamic approach, whilst being steered, I have to say, by the views of Welsh Government as well.”³⁹

63. The Bill does not include a requirement on the Welsh Ministers to give guidance to the Authority. The Welsh Government has indicated it intends for guidance to be given using existing powers under the Government of Wales Act 2006. When asked what would prevent any new government from adopting a different approach to guidance to the one envisaged by the serving Welsh Government, the Deputy First Minister said:

“I’d find it almost inconceivable based on the cross-party support for what we’re trying to establish...that there would not be an impetus to actually bring forward the guidance in the way that I’ve described, in the way that we’ve set out in front of this committee, in the way that others that you’ve received evidence from have also said is going to be necessary. It seems difficult to conceive of a situation where any future Government, as this comes forward post 2026...would turn on its heels and say, ‘We don’t want guidance being brought forward.’”⁴⁰

64. On 6 February 2025, the Deputy First Minister shared with the Committee summary guidance on monitoring; appeals against demands for costs;

³⁹ RoP, para 15-16, 6 March 2025

⁴⁰ RoP, para 18, 6 March 2025

compensation claims; cost recovery; and management plans.⁴¹ This was followed by summary guidance on assessments, on 27 February 2025.⁴²

Potential for “re-mining”

65. The Deputy First Minister said he did not agree with the concerns raised by contributors that the Bill could inadvertently stimulate “re-mining”, saying “We don’t think that they’re well founded”.⁴³ He said:

“this Bill is entirely focused on the stability, or the lack of stability, of disused tips and human welfare. It does not include any proposals that would allow for or enable generic remediation or the recovery of coal for commercial purposes.”

66. He referenced the Welsh Government’s coal policy⁴⁴, which he asserted is “very, very clear”.⁴⁵

Our view

The need for the Bill

The coal tip landslide in Tylorstown in 2020 and the more recent landslide in Cwmtillery, serve as a stark reminder of the risks posed by Wales’ mining heritage. Events such as these highlight the urgent need to better protect communities from those risks. This means a more robust regime for the management of disused tips, which prioritises the safety of communities.

The Law Commission’s review of the current legislation governing the safety of coal tips sets out a compelling case for a new legislative regime. The findings of the review were cited by contributors in providing support for the Bill. They told us the 1969 Act is outdated and insufficient for managing the risks posed by disused tips, particularly given the increasing impact of climate change.

⁴¹ Letter from the Deputy First Minister to the Climate Change, Environment and Infrastructure Committee, dated 6 February 2025

⁴² Letter from the Deputy First Minister to the Climate Change, Environment and Infrastructure Committee, dated 27 February 2025

⁴³ RoP, para 54, 6 March 2025

⁴⁴ Coal policy statement: The Welsh Government’s policy objective to avoid the continued extraction and consumption of fossil fuels (March 2021)

⁴⁵ RoP, para 52, 6 March 2026

Given the evidence received from contributors and the imperative to ensure the safety of communities living in the vicinity of disused tips, we support the general principles of the Bill.

As a Committee, we are keen to ensure that the new regime is robust and effective. While we support the general principles of the Bill, we believe there are several matters that need to be addressed for it to deliver on this. We explore these matters throughout the report and make recommendations to the Welsh Government for amendments to the Bill where we believe they are needed.

The inclusion of disused non-coal tips

The Deputy First Minister provided a persuasive argument on the need for a comprehensive picture of Wales' disused non-coal tips, and for oversight to ensure management and mitigation of any potential risks they may pose. Given this, and the support in evidence from the majority of contributors, we are content that the Bill includes disused non-coal tips.

Notwithstanding the above, we are concerned that the inclusion of disused non-coal tips means resource will be spread more thinly than would otherwise be the case. We seek assurance from the Welsh Government that the decision to include disused non-coal tips will not impact on the effective delivery of the new regime, or result in resource being diverted away from ensuring the safety of disused coal tips.

A narrowly drawn Bill

The Bill is narrowly focused on preventing disused tips from threatening human welfare by reason of their instability. While we recognise the urgent need to legislate on this, we would have preferred the Bill to have encompassed other matters associated with Wales' mining and quarrying legacy. This includes land remediation, and the on-going challenges associated with the restoration of former opencast mines.

We note the Deputy First Minister's assertion that existing environmental legislation and systems are in place to address environment harm from disused tips. We expect there to be sufficient join-up between these and the new disused tip safety regime, with coordination and collaboration across regulators and other relevant agencies. Given the growing nature emergency, we believe there is merit in reviewing existing legislation and systems to ensure they are sufficiently robust and effective.

Lack of detail and guidance

We are concerned that the Bill lacks detail in several key areas. We have been told that details will be set out in guidance, which will be given at the discretion of the Welsh Ministers. We are concerned about this approach for several reasons.

First, the lack of detail means the Welsh Government's policy intentions are not clearly shown in the provisions of the Bill. This has inhibited scrutiny. While we are grateful to the Deputy First Minister for sharing summary guidance with us, it was received too late in the scrutiny process to seek stakeholders' views on it, and for the Committee to consider it in detail.

Second, the new regime will not apply until 1 April 2027. As such, it will be a matter for the next Welsh Government to determine the policy detail, and whether to issue guidance. There will be no obligation on any new government to meet commitments made by this Welsh Government in relation to giving guidance, or the content of it.

Finally, leaving the policy detail to guidance means that significant changes can be made in future, which could impact on the effectiveness of the new regime, without consultation or Senedd scrutiny.

We recognise that guidance has a role to play in ensuring the effective implementation of the Bill. But it should not be used to fill in important policy details that we would expect ordinarily to be set out in legislation, providing proper democratic oversight. It is also vital that members of the public can read and understand the new regime and how it will help to ensure their safety and that of their communities.

As the Deputy First Minister has told us, there is a balance to be struck between "flexibility" or "future proofing" the Bill and providing more detail. We are not persuaded that the correct balance has been struck in this Bill.

Throughout this report, we make recommendations aimed at ensuring that a more appropriate balance is struck between the detail included in legislation (either in the Bill or regulations) and that which is left to guidance.

Potential for "re-mining"

We note the Deputy First Minister's view that the concerns raised in evidence that the Bill could stimulate "re-mining" are not well founded. To be clear, we

acknowledge the Bill does not facilitate wider remediation of disused coal tips involving coal extraction. However, we share the concerns raised with us about the risk of unintended consequences arising from the Bill. In particular, that a desire to avoid the financial implications of a more proactive management regime may incentivise owners to seek out alternative options, including remediation activity involving coal extraction.

We note that any such remediation proposals will be subject to existing planning legislation, the Welsh Government's coal policy and Planning Policy Wales (PPW). While the Welsh Government's coal policy makes clear its objective is to stop the extraction and consumption of coal, it leaves the door open for coal extraction in "wholly exceptional circumstances". We have already made clear our views on this matter in our report, [Restoration of opencast mining](#) (August 2024).

We seek further assurance from the Welsh Government that existing planning legislation and policies are sufficiently robust to ensure that proposals to remediate a disused tip involving coal extraction would not be permissible unless they are for the purpose of ensuring public safety. Further, we seek assurance that any coal extracted during remediation work will not be sold for the purpose of burning.

Recommendations

Recommendation 1. The Senedd should support the general principles of the Bill.

Recommendation 2. The Welsh Government should provide assurance that the decision to include disused non-coal tips will not impact on the effective delivery of the new regime, or lead to resource being diverted away from ensuring the safety of disused coal tips.

Recommendation 3. The Welsh Government should provide a detailed explanation of existing environmental legislation and systems in place to address environmental harm caused by disused tips, and commit to reviewing these to ensure they are sufficiently robust and effective.

Recommendation 4. The Welsh Government should provide further assurance that:

- existing planning legislation, the Welsh Government's coal policy and Planning Policy Wales are sufficiently robust to ensure that proposals to

remediate a disused tip involving coal extraction will not be permissible unless they are for the purpose of ensuring public safety, and

- the Welsh Government's coal policy will prevent any coal extracted during remediation work from being sold for the purpose of burning.

3. Part 1 – The Disused Tips Authority for Wales

Part 1 establishes the Disused Tips Authority for Wales (the Authority) and introduces Schedule 1, which makes further provisions about the Authority. The Authority will be established on 1 April 2027 (in accordance with the coming into force provisions set out in section 87).

Part 1 also outlines the Authority’s main objective when exercising its functions under the Bill. It also makes provision about both the general and ancillary functions of the Authority.

The establishment of a new Authority

67. There was broad support for the establishment of the Authority. Professor Young highlighted one of the Law Commission’s key recommendations was to create one, single, centralised authority with responsibility for the safety of disused tips, which the Bill gives effect to.

68. Several contributors considered the Authority will enable a consistent and coordinated approach to disused tip safety, which they suggested was currently lacking. The MRA asserted:

“The beauty of having one body that oversees it all is that you do get that consistency and you do get that single level of categorisation and that single level of understanding of risk.”⁴⁶

69. The Institute of Materials, Minerals and Mining said the Authority has “the potential to provide the focused oversight and accountability required to manage the complexity of disused tip[s]”.⁴⁷

70. Kevin Kingsley, Blaenau Gwent CBC, told the Committee the establishment of the Authority “will take a lot of pressure off local authorities”, who currently oversee the safety of disused tips.⁴⁸ Daniel Therkelsen (CAN) raised a similar point, emphasising the need to avoid placing additional burdens on “already overstretched” authorities.⁴⁹

⁴⁶ RoP, para 186, 30 January 2025

⁴⁷ Written evidence, Institute of Materials, Minerals and Mining

⁴⁸ RoP, para 336, 30 January 2025

⁴⁹ RoP, para 112, 5 February 2025

71. The WLGA considered it is important for Wales to have its own body, accountable to the Welsh Government.

72. UKELA said a new statutory body will provide “a degree of permanence and certainty”.⁵⁰ A similar view was expressed by FoE.

73. One individual and Carmarthenshire County Council (CC) questioned the need for a new statutory body, particularly given the cost involved. Carmarthenshire CC suggested the development of “a Wales tip specific arm of [the MRA]” would be more cost-effective than establishing a new body.⁵¹

74. The Institute of Materials, Minerals and Mining said consideration should be given to the interaction between the Authority and the MPA, referring to “the potential for legislative overlap”. It suggested the nature of the relationship between the Authority and “ancillary bodies” should be “considered and formalised”.⁵²

75. The Chartered Institute of Buildings questioned whether the Authority could be established sooner than 1 April 2027, noting the current timescale “would be a further two-and-a-half years of risk and insecurity for construction projects affected by these disused sites across Wales”.⁵³

76. A recurring theme in the evidence received was the need for the Authority to be adequately funded and well-resourced to deliver its functions effectively. The financial implications of the Bill, including the costs associated with the Authority, have been considered by the Senedd’s Finance Committee.

The Authority’s main objective

77. Section 2 sets out the Authority’s main objective is “to ensure that disused tips do not threaten human welfare by reason of their instability”. In pursuing its main objective, the Authority “must promote high standards in relation to the management of disused tips and threats to their instability”.

78. As outlined in Chapter 2, several contributors called for the new regime to address the “threat of environmental harm” and risks posed by disused tips that

⁵⁰ Written evidence, UK Environmental Law Association

⁵¹ Written evidence, Carmarthenshire County Council

⁵² Written evidence, Institute of Materials, Minerals and Mining

⁵³ Written evidence, Chartered Institute of Buildings

are independent of “instability”. UKELA called for the Authority’s main objective to be amended to reflect this.

79. NRW called for the promotion of high standards in section 2(2) “[to] be interpreted to include standards across all relevant elements of environmental protection, akin to our core purpose to pursue “sustainable management of natural resources”.⁵⁴

80. Rhondda Cynon Taff CBC said the term “high standards” is “subjective”. It called for greater clarity and transparency about what “high standards” will mean in practice.⁵⁵

Impact of the Bill on nature and biodiversity

81. UKELA, FoE and Buglife highlighted the ecological significance of disused coal tips. They explained that operations undertaken to address instability could transform the character of sites, impacting negatively on biodiversity. They emphasised the need to ensure the impact of operations on nature are considered from the outset and minimised.

82. FoE said:

“Welsh coal tips often support habitats and wildlife of considerable local, regional, and national importance. Across Wales, colliery spoil sites provide a refuge for diverse communities of birds, mammals, amphibians, reptiles, plants, fungi, lichens, and invertebrates.

There are currently 99 coal tips in Wales that are within designated Sites of Special Scientific Interest (SSSI), and a further 32 that are Special Areas of Conservation (SAC).”⁵⁶

83. Similar points were made by Buglife. It emphasised the need for the Authority to be “properly advised on appropriate management and maintenance plans that will conserve each site’s biodiversity”.⁵⁷ Further, it highlighted the

⁵⁴ Written evidence, Natural Resources Wales

⁵⁵ Written evidence, Rhondda Cynon Taf County Borough Council

⁵⁶ Written evidence, Friends of the Earth

⁵⁷ Written evidence, Buglife

importance of “consultation and information sharing between the Authority and relevant stakeholders involved in nature conservation on disused tips”.⁵⁸

84. UKLEA emphasised the need for the Authority to comply with the biodiversity duty in the Environment (Wales) Act 2016 when exercising its powers, stating:

“Proactive action to curb threats to human welfare ought not to override considerations of environmental sustainability which are poorly iterated in the Bill as it stands.”⁵⁹

85. FoE called for a reference to environmental legislation to be included in the Bill.

Staffing and skills

86. Many contributors emphasised that, in order for the Authority to deliver its functions effectively, it would need suitably qualified staff across a range of disciplines. They suggested staff recruitment could be a key challenge for the Authority, highlighting a lack of skills and expertise in the existing workforce.

87. The MRA, representatives of local government, and the mining and quarrying sector, reported existing recruitment challenges, referring to a shortage of technical experts in and beyond Wales. The MPA raised concern that the establishment of the Authority will exacerbate these challenges. Nick Horsley (MPA) said:

“To have a separate authority, in my view, creates a bigger challenge to the skills challenge that the sector already faces...As well as the competition that you get between industry and local authority, you’ll get competition from one authority to another.”⁶⁰

88. The WLGA raised concern that local authorities could lose experienced staff to the Authority, particularly if it were to offer higher salaries. It explained this could create challenges for local authorities in meeting their duties as disused tip owners. Councillor Andrew Morgan (WLGA) said:

⁵⁸ Written evidence, Buglife

⁵⁹ Written evidence, UK Environmental Law Association

⁶⁰ RoP, para 318, 5 February 2025

“Across Wales, there isn’t an abundance of engineers, so there is a concern that the new body doesn’t just suck all of that knowledge and expertise out of local authorities...Because otherwise, you could have a well-resourced body that tells local authorities they should be doing x, y, and z, but we don’t have the engineers to do it, because they’ve all left local authorities maybe to go to work for the new body that may be paying more.”⁶¹

89. There were calls for the Welsh Government to work with public and private sector partners to understand future skills needs and identify ways to address them.

Evidence from the Welsh Government

The establishment of a new Authority

90. The Deputy First Minister explained the creation of a new statutory body is in line with the Law Commission’s recommendation. He said:

“If we’d spread [out responsibility] amongst the existing [bodies], it could be fragmented, but, more importantly, we get one identifiable body that carries accountability and carries the expertise, and drives forward this agenda. So, we did think about alternative ways, but they were discounted as not workable, not practical, and they wouldn’t deliver the outcomes we’re trying to do.”⁶²

91. The Deputy First Minister acknowledged the MRA’s significant expertise in this area. However, he explained the MRA is also an owner of disused tips, which could create a conflict of interest. He said the MRA is not directly accountable to the Welsh Government, adding, “That direct line of accountability is critical”.⁶³

92. The Deputy First Minister said the timeframe for establishing the new Authority is “challenging, ambitious but achievable”.⁶⁴ He outlined a three-phase approach: implementation, establishment and transition.

⁶¹ RoP, para 339, 30 January 2025

⁶² RoP, para 62, 12 December 2024

⁶³ RoP, para 83, 6 March 2025

⁶⁴ RoP, para 66, 12 December 2024

93. The Deputy First Minister emphasised that the current programme of work on disused coal tips, led by the MRA, will continue until such time as the new Authority is operational. He explained that Welsh Government officials will continue to work with the MRA to ensure a smooth transition with a view to avoiding any issues of overlap.

The Authority's main objective

94. The Deputy First Minister explained the purpose of section 2 (The Authority's main objective) "is to make clear, on the face of the Bill, what the Authority is, principally, being established to do".⁶⁵ He added:

*"The main objective will, at a general level, operate to influence judgments made by the Authority about how the other powers and duties that are conferred on it ought to be carried out. In common with other public bodies, it will have general objectives relating to performance of its functions that will be set in the remit letter for the Authority."*⁶⁶

95. When asked to explain the meaning of "high standards" in section 2(2), the Deputy First Minister said, "the phrase has its ordinary meaning, and what will be considered to be a 'high standard' will be context dependent".⁶⁷ He said that in promoting high standards, the Authority will be expected to follow best practice and relevant guidance; keep up to date and implement any developments in relevant technology or advancement in relevant knowledge; manage disused tips in a transparent way that garners public trust; and employ appropriately qualified individuals, among other things.

Impact of the Bill on nature and biodiversity

96. The Deputy First Minister said the Bill is underpinned by existing environmental legislation. He explained the Authority and owners of land will need to ensure that any maintenance or remediation plans comply with existing legislation on environmental protection.

⁶⁵ Letter from the Deputy First Minister to the Climate Change, Environment and Infrastructure Committee, dated 22 January 2025

⁶⁶ Letter from the Deputy First Minister to the Climate Change, Environment and Infrastructure Committee, dated 22 January 2025

⁶⁷ Letter from the Deputy First Minister to the Climate Change, Environment and Infrastructure Committee, dated 22 January 2025

97. According to the Deputy First Minister, referencing environmental legislation in the Bill “is probably not necessary and not proportionate, and it may inhibit us in future, because we’d have to come back to this and adjust it, if we adjusted that legislation”.⁶⁸

Staffing and skills

98. In commenting on the need to ensure the new Authority has sufficient capability and capacity to carry out its functions, the Deputy First Minister said:

*“we need to start building those pipelines very cogently, and there are ways we can do that. I think that does mean working with those bodies out there, but also with the further education and higher education sectors”.*⁶⁹

99. He referred to the Cambourne School of Mines engineering in south-west England, saying:

*“what we need to be doing is building that pool here in Wales as well, developing that thing that will lift all boats, so local authorities, NRW and the new authority as well, because we need more people with more skills and newer skills and developing skills within it, so that we have those good salaries right across the piece and we also have good expertise. Local authorities are going to be key to this. And I see it working in concert, in collaboration with the new authority.”*⁷⁰

100. The Deputy First Minister said developing the workforce in this area would take time. He emphasised the need to support local skills and job growth, including in communities affected by disused tips, as well as looking beyond Wales to draw in expertise. He explained the Welsh Government has begun work with Talent Beyond Boundaries, which connects employers with skilled refugees and opens migration pathways for them.

101. He acknowledged the importance of developing career pathways and diversifying the workforce, adding, “I would expect the authority, and other

⁶⁸ RoP, para 24, 12 December 2024

⁶⁹ RoP, para 96, 6 March 2025

⁷⁰ RoP, para 96, 6 March 2025

partners, like local authorities and NRW, and with the support of our HE and FE colleagues, to be working to do this”.⁷¹

Our view

A new Disused Tip Authority for Wales

Overall, contributors and the Deputy First Minister provided strong arguments for the establishment of a new Authority, dedicated to overseeing the management of disused tips to ensure their safety. We are content, therefore, with section 1 of the Bill.

While we recognise that establishing any new statutory body involves considerable work and takes time, we would have preferred for the Authority to have been established sooner. We expect the Welsh Government to ensure that the Authority is fully operational from day one. This means all guidance should be ready, and all relevant regulations should be in force by 1 April 2027.

We welcome the commitment from the Deputy First Minister that the current programme of work, led by the Mining Remediation Authority, will continue until the new Authority is operational. The Senedd and the public, in particular communities living in the vicinity of disused coal tips, need to be confident that the Welsh Government maintains focus on delivery while the Authority is being established. To ensure transparency and support scrutiny, we believe the Welsh Government should provide regular progress reports on its programme of work.

We are broadly content with the Authority’s main objective, which reflects the core purpose of the Bill. As outlined earlier, we would have preferred the Bill to have encompassed wider matters associated with Wales’ mining and quarrying legacy, and for the Authority to have had oversight of these.

Impact of the Bill on nature and biodiversity

The evidence we received emphasises the high biodiversity significance of disused tips. We are keen to ensure that these tips are managed and maintained in a way that protects and enhances their biodiversity value, particularly given Wales’ biodiversity commitments. The environmental sector and local nature conservation groups have a wealth of knowledge and expertise that can be drawn on to help achieve this.

⁷¹ RoP, para 260, 6 March 2025

Later in the report, we explore the issue of management plans. We are keen for the Authority to engage the environmental sector and local conservation groups in the development of management plans, with a view to ensuring the new regime supports the delivery of positive biodiversity outcomes.

As a newly established public body, which will be subject to the section 6 biodiversity duty, the Authority has an opportunity to embed biodiversity into its thinking and business planning from day one. We expect the Authority's corporate plan to reflect this.

Staffing and skills

We share the concerns raised by contributors that the Authority may face recruitment challenges due to a small talent pool in this area of work. The establishment of the Authority will, we hope, provide opportunities to nurture the development of technical expertise and specialist skills in the medium to longer-term. However, it must have suitably qualified and experienced personnel to enable it to carry out its functions effectively from day one.

We note the Deputy First Minister's evidence on this matter. However, we would welcome a more detailed explanation of how the Welsh Government is working with its partners to ensure that current and future skills demand is met.

Finally, we also recognise that, within the sector, women and black and ethnic minority (BAME) communities are under-represented. We support the Welsh Government's commitment to ensure career pathways in this area are open to all, and would welcome further clarity about how this will be ensured.

Recommendations

Recommendation 5. The Welsh Government should ensure that the Authority is fully operational from 1 April 2027, with all guidance in place and all necessary regulations in force by that date.

Recommendation 6. The Welsh Government should provide biannual updates to the Senedd on progress towards delivery of its current programme of work to inspect and maintain disused coal tips, being led by the Mining Remediation Authority.

Recommendation 7. The Welsh Government should set out its expectation for the Authority to engage the environmental sector and local nature conservation groups in the development of management plans.

Recommendation 8. The Welsh Government should bring forward an amendment to the Bill to ensure that the Authority's corporate plan sets out clearly how it will embed the consideration of biodiversity into its thinking and business planning.

Recommendation 9. The Welsh Government should provide details of actions it is taking, working with its partners, including education and skills providers, to address skills and representation gaps in the workforce and develop suitable career pathways, to support the effective implementation of the Bill.

4. Part 2 – Assessment, registration and monitoring of disused tips

Chapter 1 – Register of disused tips

Chapter 1 makes provision requiring the Authority to compile and maintain a register of disused tips. It sets out the criteria for registration and the content of the register. It provides a right of public access to the register.

This chapter also places a duty on the Authority to monitor disused tips in the register.

Register of disused tips

102. Contributors considered a publicly accessible register will improve transparency and accountability in relation to disused tips and their management. Public Health Wales cautioned that the register may unintentionally “harm health by making people aware of a tip in their area that they did not know about”.⁷²

103. The Law Commission noted the Bill does not give full effect to the recommendation in its report for a national asset register of all disused coal tips. It explained the register provided for in the Bill “will not be a comprehensive list of all disused tips, but only those which in the Authority’s view are a threat or a potential threat to human welfare by reason of instability”. It added, “given the broadening of the scope of application of the Bill to all disused tips...[this] may be a necessary policy choice to ensure the utility of the register balanced against the cost of creating and maintaining the register”.⁷³

104. Several contributors expressed a preference for a comprehensive register of all disused tips. The MRA said, “we should have a single register that should cover all tips, and then at least all the information is available in one place”.⁷⁴ HSE considered a comprehensive register would provide greater clarity and help promote public confidence. Haf Elgar (FoE) expressed a similar view, saying “It’s

⁷² Written evidence, Public Health Wales

⁷³ Written evidence, Law Commission

⁷⁴ RoP, para 199, 30 January 2025

better for the public and nearby communities to know, ‘Yes, my tip has been recognised. It’s not at risk, but it’s on the list.’”⁷⁵

105. The Law Commission and FoE suggested a comprehensive register would be a useful tool to help inform the planning development process. Haf Elgar (FoE) explained:

*“if we don’t have a comprehensive register, we don’t know they’re there, or local authorities looking at a planning application won’t necessarily know to take that into account and to consider that impact on tips, even if they’re not currently identified as ‘at risk’, whether they could be made ‘at risk’.”*⁷⁶

Duty to monitor

106. The evidence from contributors highlighted a lack of clarity about the on-going monitoring and inspection requirements for disused tips. Several contributors called for further detail to be included either in the Bill, in secondary legislation, or in guidance.

107. The MRA said “it would be clearer if the manner and minimum frequency of inspections were specified”. Carl Banton (MRA) added:

*“it’s just ensuring that we’ve got the minimum level specified, that there’s sufficient, I suppose, within the legislation to ensure that that has actually happened, and, if not, then why not.”*⁷⁷

108. Rhondda Cynon Taf CBC said inspections currently undertaken by the MRA are not frequent enough, particularly for high risk tips. It added, “They are by their definition higher risk and can be prone to rapid changes which is why a higher minimum frequency of inspection would be prudent”.⁷⁸ It explained:

“[We] currently inspect Cat D tips (D1, D3) on a monthly or 3 monthly cycle. Cat C tips on a 6 month cycle, Cat B annually, and Cat A’s on 2 or 4 year cycles. This not only provides a robust

⁷⁵ RoP, para 168, 5 February 2025

⁷⁶ RoP, para 170, 5 February 2025

⁷⁷ RoP, para 219, 30 January 2025

⁷⁸ Written evidence, Rhondda Cynon Taf County Borough Council

inspection and monitoring regime it provides public confidence that these assets are being managed effectively.”⁷⁹

109. Dominic Driver (NRW) emphasised the need to remain open to technological advances to monitor instability, adding “the guidance has to encompass that, rather than become a constraint on bringing that in”.⁸⁰

110. Local government representatives noted that although the new Authority will be responsible for monitoring and inspections, local authorities are also likely to continue monitoring disused tips in their ownership.

Management plans

111. The Law Commission’s report recommended the new regime should include statutory management plans. In its evidence to the Committee, the Law Commission noted, “the Bill does not require the production of management plans” and “[they] do not feature anywhere in the Bill”.⁸¹ It explained:

“Additionally, there is no provision in the Bill for the Welsh Ministers to prescribe by statutory instrument the matters to be included in an assessment or tip management plan, as envisaged by our 2022 report. Nor is there a provision in the Bill requiring Welsh Ministers to produce guidance relating to the content of management plans. [Section] 69 of the Bill, rather requires the Authority to take any guidance relating to management plans into account when exercising its functions.”⁸²

112. The British Geological Survey called for the introduction of statutory management plans. It said:

“We recommend that the criteria for establishing a management plan (i.e. for what category and whether these should be tip specific, or more general), who is responsible for initiating and reviewing them, and the time frames involved, should be stated clearly within the Bill.”⁸³

⁷⁹ Written evidence, Rhondda Cynon Taf County Borough Council

⁸⁰ RoP, para 221, 30 January 2025

⁸¹ Written evidence, Law Commission

⁸² Written evidence, Law Commission

⁸³ Written evidence, British Geological Survey

113. The MRA, NRW and local government representatives highlighted the importance of management plans. Carl Banton (MRA) said, “[a management plan] pulls together all of the relevant information to make sure that tip is kept safe”.⁸⁴ Dominic Driver (NRW) referred to management plans as “essential”, while Kevin Kinsey (Blaenau Gwent CBC) said they are “a key element of the legislation”.⁸⁵

114. Carl Banton (MRA) emphasised that guidance would be “paramount” to ensure a consistent approach to the development of management plans.⁸⁶

Evidence from the Welsh Government

Register of disused tips

115. The Deputy First Minister said a comprehensive list of disused coal tips is already available, following the work by the Coal Tip Safety Taskforce to locate and identify them. He said:

“The register rightly focuses on those tips where it is deemed that there is either a threat of instability that would jeopardise the human welfare and safety of communities, or where there is a risk of instability developing. Now, that’s the register, and it’s right that that is the register, because those are the ones that we need to prioritise the work on. But there is a list as well, which is more comprehensive, of all of the disused tips.”⁸⁷

116. He added:

“we’re not starting from a blank sheet of paper on this. So, as I’ve stated, it’s expected the authority will work to compile a comprehensive list of all disused tips in Wales—both coal and non-coal. But it’s the difference between what’s on that and what’s the register.”⁸⁸

The proposed approach to monitoring and inspections

117. The Deputy First Minister explained the Welsh Government is aiming “[to] mirror the [monitoring and inspections] arrangements we’ve currently got in place

⁸⁴ RoP, para 237, 30 January 2025

⁸⁵ RoP, para 328, 30 January 2025

⁸⁶ RoP, para 237, 30 January 2025

⁸⁷ RoP, 113, 6 March 2025

⁸⁸ RoP, 116, 6 March 2025

with the Mining Remediation Authority”.⁸⁹ He said the minimum recommended monitoring requirements, including the frequency of inspections, will be set out in statutory guidance.

118. The Committee asked the Deputy First Minister why he had chosen not to include further detail on monitoring and inspections in the Bill. He said:

“If we had to return to the Bill...to adjust the monitoring frequency, or whatever, that would be a real impairment for that new authority. But secondly, the big, obvious one is the advances in technology...in another three or four years...technology will have moved on again...So, rather than coming back to the front page of a piece of law, putting it in statutory guidance, I think, gives that flexibility to the authority.”⁹⁰

119. The Deputy First Minister explained that, although consideration was given to including regulation-making powers on monitoring and inspections, “Our assessment is that [guidance] gives us that robustness, but it also futureproofs the approach as well”.⁹¹

120. When asked why the Bill does not place a requirement on the Welsh Ministers to give guidance on monitoring and inspections, the Deputy First Minister said:

“we intend to use the powers that we’ve already got in the Government of Wales Act 2006 to make the guidance...there’s no reason why this guidance won’t be published. There’s an expectation that it will be published. I think everybody would be surprised if there wasn’t guidance. So, there isn’t a need to repeat that within this Bill; the power is already there within the Government of Wales Act.”⁹²

121. On 6 February 2025, the Deputy First Minister shared with the Committee summary guidance on monitoring and inspections.⁹³

⁸⁹ RoP, para 98, 12 December 2024

⁹⁰ RoP, para 104, 12 December 2024

⁹¹ RoP, para 106, 12 December 2024

⁹² RoP, para 108, 12 December 2024

⁹³ Letter from the Deputy First Minister to the Climate Change, Environment and Infrastructure Committee, dated 6 February 2025

Management plans

122. The Deputy First Minister asserted that “management plans are absolutely crucial to the new system”.⁹⁴ He said:

“We expect that a management plan will be produced for all, under the new categorisation, category 1 and 2 tips, and, on a case-by-case basis, management plans for lower rated tips as appropriate as well...The purpose of them is to set out the work that’s needed—maintenance or other work—to reduce the risk of the problems escalating and the risk of any tip failures. They’ll be very site specific; they could identify, for example, one-off operations to remove or reduce threats to the stability of a tip.”⁹⁵

123. He added that management plans will address emergency preparedness and incident response.

124. When asked why the Bill does not make provision for management plans, the Deputy First Minister said:

“We do think, with the management plans, that, genuinely, the right place for this is within guidance, but we do recognise that there may be a case for having some clarity on the Bill about what should be in those management plans”.⁹⁶

125. He added:

“if you have it predominantly within the guidance, then that allows for a more collaborative space where those agencies can come together. So, I genuinely think there’s a cogent argument, but it may be that there is something more that we can put on the face of the Bill, and we’re willing to look at that.”⁹⁷

⁹⁴ RoP, para 169, 6 March 2025

⁹⁵ RoP, para 169, 6 March 2025

⁹⁶ RoP, para 172, 6 March 2025

⁹⁷ RoP, para 173, 6 March 2025

126. On 6 February 2025, the Deputy First Minister shared with the Committee summary guidance on management plans.⁹⁸

Our view

A comprehensive register of all disused tips

We welcome the creation of a publicly accessible register of disused tips. Like many contributors, we believe it would be beneficial to have a comprehensive register, including those disused tips which have not been categorised. This will ensure clarity and certainty for owners and the wider public, in particular, communities living in the vicinity of disused tips. We expect the Welsh Government to bring forward amendments to the Bill to give effect to this.

We acknowledge the above will require consequential amendments to the provisions in Chapter 1 of Part 2 to ensure they are workable and deliverable.

Monitoring and inspections requirements

As outlined in the White Paper, “A clearly defined monitoring regime is a fundamental component of any new management regime to provide public confidence that tips are being assessed”. However, the Bill provides no detail on the monitoring regime, rather it places a general duty on the Authority to monitor disused tips in the register.

The Welsh Government has set out its intention to give guidance to the Authority on how to meet this duty. This will include monitoring and reporting activities, and frequency and timing of inspections, among other things. As outlined earlier in this report, given the summary guidance was shared with the Committee at the end of the Stage 1 scrutiny process, we were unable to seek the views of stakeholders on its content. Regardless, we reiterate, we do not consider it appropriate to use guidance to fill in policy detail which we would ordinarily expect to see in legislation.

It is essential that the public, in particular communities living in the vicinity of disused tips, can be confident that those tips which may pose a risk are subject to rigorous and effective monitoring and inspections arrangements. Leaving the detail to guidance means that significant changes could be made to the

⁹⁸ Letter from the Deputy First Minister to the Climate Change, Environment and Rural Affairs Committee, dated 6 February 2025

monitoring regime without proper consultation or Senedd scrutiny. This is of concern to us.

Our strong preference is for minimum requirements for monitoring and inspections, in particular, the frequency of inspections, to be set out in regulations. These minimum requirements would not make the Bill any less “future-proof” but would safeguard against a potential weakening of the regime. We expect the Welsh Government to bring forward amendments to the Bill to give effect to this. If the Welsh Government is not minded to agree, we believe the Welsh Ministers should be under a duty to give guidance to the Authority on monitoring and inspection, and for this guidance to be subject to consultation.

We acknowledge that technical matters related to monitoring and inspection activities could reasonably be left to guidance. This will provide the Authority with flexibility to adapt its approach, for example, to take account of developments in technology.

Management plans

As stated by the Deputy First Minister, management plans “are absolutely crucial” to the new regime. This was supported by the evidence we received from contributors.

According to the summary guidance, the purpose of management plans is, “to provide a proactive, proportionate management strategy for a disused tip. This will include information and the details necessary to monitor and maintain the disused tip safety, alongside specific information on identifying and managing risks and the development of tip specific contingency plans.”

It is extraordinary, therefore, that the Welsh Government has chosen not to place management plans on a statutory footing. The omission of management plans is a key weakness of the Bill. It leaves a significant and undesirable gap in the legislative framework for the management of disused tips. We expect the Welsh Government to bring forward amendments to the Bill to address this issue.

The Deputy First Minister has set out the intention for category 1 and 2 disused tips to have management plans, and for category 3 and 4 tips to have plans if needed. We believe this is a sensible and proportionate approach. However, we reiterate the need for management plans to be placed on a statutory footing.

Recommendations

Recommendation 10. The Welsh Government should bring forward amendments to the Bill to provide a duty on the Authority to create and maintain a comprehensive register of all disused tips.

Recommendation 11. The Welsh Government should bring forward amendments to the Bill to include a requirement on the Welsh Ministers to:

- make regulations on the monitoring and inspections of disused tips. These regulations must specify the minimum frequency of inspections for each category of tip, and
- consult relevant experts, stakeholders, and other persons with an interest in disused tips before making regulations.

These regulations should be subject to the affirmative procedure.

Recommendation 12. If the Welsh Government is unwilling to accept Recommendation 11, it should bring forward amendments to the Bill to place a requirement on the Welsh Ministers to:

- give guidance to the Authority on monitoring and inspections, and
- consult relevant experts, stakeholders, and other persons with an interest in disused tips before giving guidance.

Recommendation 13. The Welsh Government should bring forward amendments to the Bill:

- to place a duty on the Authority to develop management plans for disused tips categorised as causing the Authority most concern (categories 1 and 2),
- to enable the Authority to develop management plans for disused tips categorised as causing the Authority the least concern (categories 3 and 4), and
- to include a requirement for the Welsh Ministers to make regulations setting out the minimum content of management plans. Before making regulations, the Welsh Ministers must consult stakeholders and other persons with an interest in disused tips. Regulations should be subject to the affirmative procedure.

Chapter 2: Assessment of disused tips

Chapter 2 makes provision for the assessment of disused tips; in particular, it requires the Authority to carry out—

- (a) a preliminary assessment of disused tips not in the register, to identify those tips that may need to be included in it;
- (b) a full assessment of those tips identified by a preliminary assessment as ones that may need to be included in the register;
- (c) in certain circumstances, a full assessment of tips already in the register.

Lack of detail on assessments

127. There was broad support for the “two-stage” approach to assessments set out in the Bill. However, several contributors highlighted a lack of detail on how assessments would be carried out and by whom, and on the assessment methodology. They called for further details to be included either in the Bill, in secondary legislation, or in guidance.

128. Rhondda Cynon Taf CBC said the assessment methodology “is a fundamental aspect to this legislation and it is what the registration, categories, inspection, maintenance and management plans all rely on and is not currently explained in any detail”. The Institute of Materials, Minerals and Mining asserted:

“what constitutes a full assessment under Sections 15 and 16 could be outlined in greater detail. For instance, it is unclear whether this would include intrusive ground investigation and/or proprietary software 2 and 3-D modelling.”⁹⁹

129. The MRA said it would be clearer if the details of assessments were specified, either in secondary legislation or in guidance. It sought clarification on whether full assessments would include “ground investigation, soil testing and slope stability analysis”.¹⁰⁰

⁹⁹ Written evidence, Institute of Materials, Minerals and Mining

¹⁰⁰ Written evidence, Mining Remediation Authority

130. The British Geological Society recommended the Bill “provide explicit provision for a transparent and recognised risk-based approach [to assessments and categorisation]”. It added:

“The rigour of the risk analysis should also be commensurate with tip category, with greater effort given to the assessment of risk presented by tips in the highest categories. This could include numerical modelling of slope stability and likely runouts, consideration for multi-hazard and cascading-hazard and potential impacts under different future climate scenarios.”¹⁰¹

131. The Institute of Materials, Minerals and Mining said it was “vital” that preliminary and full assessments are carried out in line with British Standards. It added, “There is no reference to an approved code of practice when assessing and categorising tips and this should be rectified”.¹⁰² A similar point was raised by Jacobs UK Limited.

132. Several contributors emphasised the need for assessments to be carried out by suitably qualified and competent persons, highlighting a shortage of technical experts in and beyond Wales. Stephen Smith suggested “support needs to be given to developing a new cohort of tip assessors, perhaps through encouraging changes to the curricula of university courses”.¹⁰³

The approach to preliminary assessments

133. The EM sets out the Welsh Government’s intention for preliminary assessments to be “desk-based”. Several contributors raised concern about the efficacy of this approach. Kevin Kinsey (Blaenau Gwent CBC) said:

*“I would question the validity of [a desk-based assessment]... because I’ve certainly seen instances where tips have been identified just on a desktop basis, and when you actually go on site and visit them what you’re presented with is something totally different... nothing replaces just going to site and just having a walkover”.*¹⁰⁴

¹⁰¹ Written evidence, British Geological Survey

¹⁰² Written evidence, Institute of Materials, Minerals and Mining

¹⁰³ Written evidence, Stephen Smith

¹⁰⁴ RoP, para 392 to 395, 30 January 2025

134. Local government representatives and CAN suggested a physical inspection should form part of the preliminary assessment for all disused tips. UKELA considered it would be prudent to include a physical inspection for disused coal tips in particular.

Reports of assessments

135. The Bill places a duty on the Authority to produce a report of each preliminary and full assessment that it carries out. These reports do not need to be made publicly available. When asked to explain the rationale for this, the Deputy First Minister said, “in our view there is no public interest in general publication of [the reports]”.¹⁰⁵ The Committee sought the views of FoE and CAN on this issue. FoE said:

“having worked with communities for a number of years on all sorts of different environmental justice issues, issues of transparency and access to information just come up time and time again, and where that transparency isn’t there, it creates distrust and fear and concern in local communities...I’d say there is a significant public interest in making [reports] available, whether it’s for reassurance that everything’s been considered, and there isn’t a risk, or for awareness that there may be concerns.”¹⁰⁶

136. CAN echoed this. While CAN acknowledged that the Environmental Information Regulations 2004 will provide a route for the public to obtain reports, it suggested the process is difficult to navigate and time-consuming.

Evidence from the Welsh Government

Detail on assessments

137. In explaining why the detail on assessment will be set out in guidance, rather than in the Bill or in regulations, the Deputy First Minister said:

“A number of the more technical elements of the regime, including the approach to assessment, are going to need expert input from the authority. If we use guidance, supporting

¹⁰⁵ Letter from the Deputy First Minister to the Climate Change, Environment and Infrastructure Committee, dated 22 January 2025

¹⁰⁶ RoP, para 188, 5 February 2025

that principle of an adaptive futureproofed regime, it allows the practical experience of the authority to feed into it and into that guidance.”¹⁰⁷

138. On 27 February 2025, the Deputy First Minister shared with the Committee summary guidance on assessments.¹⁰⁸

139. The Deputy First Minister said he envisaged the Authority will engage with relevant stakeholders in developing its programme of work for preliminary assessments, including the MRA, NRW and local authorities. He explained

“Due to its very technical nature, it is not the type of programme that is suitable for public consultation. However, section 13(5) requires the Authority to publish the programme. As a public authority, if individuals, during the course of the programme’s development, were to make representations to the Authority about the content of the programme these would be taken into consideration.”¹⁰⁹

Preliminary assessments

140. In explaining how the Welsh Government intends for preliminary assessments to be undertaken, the Deputy First Minister said by the time the Authority is operational, all disused coal tips are expected to have been subject to a physical inspection by the MRA (as part of the on-going programme of work for disused coal tip safety). He said these inspection reports will be available to the Authority when it carries out preliminary assessments. As such, it is not envisaged that a further physical inspection will be conducted as part of preliminary assessments.

Reports of assessments

141. The Deputy First Minister explained the Authority must give notice of the conclusions of a report of a full assessment to every owner and every occupier of the land on which the tip is situated. He asserted this “is considered appropriate

¹⁰⁷ RoP, para 121, 12 December 2024

¹⁰⁸ Letter from the deputy First Minister to the Climate Change, Environment and Infrastructure Committee, dated 27 February 2025

¹⁰⁹ Letter from the deputy First Minister to the Climate Change, Environment and Infrastructure Committee, dated 22 January 2025

and sufficient because they will be directly affected by the conclusions reached in the relevant report”.¹¹⁰

142. The Deputy First Minister said, “In our view, there is no public interest in general publication of the reports of each preliminary and full assessment”.¹¹¹ He explained members of the public will be able to request information held by the Authority (e.g. under the Freedom of Information Act 2000, the Environmental Information Regulations 2004) subject to restrictions on disclosure under relevant data protection legislation.

143. The Deputy First Minister asserted:

“Welsh Government will expect the Authority, subject to the relevant legislation and standards for handling and releasing sensitive information, to make available all information deemed necessary to keep members of the public informed and provide all necessary assurances that a disused tip is safe and secure.”¹¹²

144. He added, “That’s different from, however, doing full disclosure of every single preliminary and full assessment. There are implications—significant implications—of doing that. So, we think the balance is absolutely right here.”¹¹³

Our view

Lack of detail on assessments

In view of the evidence received, we believe the ‘two-stage’ approach to assessments is reasonable and proportionate, particularly given the extension of the new regime to disused non-coal tips and the need to prioritise tips that pose a threat, or could pose a threat.

Notwithstanding the above, we are concerned about the lack of detail in the Bill on what will be assessed, and how.

¹¹⁰ Letter from the Deputy First Minister to the Climate Change, Environment and Infrastructure Committee, dated 22 January 2025

¹¹¹ Letter from the Deputy First Minister to the Climate Change, Environment and Infrastructure Committee, dated 22 January 2025

¹¹² Letter from the Deputy First Minister to the Climate Change, Environment and Infrastructure Committee, dated 22 January 2025

¹¹³ RoP, para 142, 6 March 2025

The Welsh Government has set out its intention to give guidance to the Authority on assessments. We note that some contributors were content with this approach, for reasons of flexibility. We acknowledge that technical matters related to assessments could reasonably be left to guidance. This will provide the Authority with flexibility to adapt its approach, for example, to take account of developments in technology.

However, we reiterate, we do not consider it appropriate to use guidance to fill in policy detail which we would ordinarily expect to see in legislation. Our strong preference is for minimum requirements for preliminary and full assessments to be set out in regulations. These minimum requirements would not make the Bill any less “future-proof” but would safeguard against a potential weakening of the regime. We expect the Welsh Government to bring forward amendments to the Bill to give effect to this. If the Welsh Government is not minded to agree, we believe the Welsh Ministers should be under a duty to give guidance to the Authority on assessment, and for this guidance to be subject to consultation.

The approach to preliminary assessments

We note the support in evidence for preliminary assessments for disused tips, in particular coal tips, to include a physical inspection. We welcome the assurance provided by the Deputy First Minister that all disused coal tips will have had a physical inspection as part of the Welsh Government’s on-going programme of work on coal tip safety. However, this does not address the matter of disused non-coal tips.

We believe regulations on assessments (recommended earlier) should specify that a preliminary assessment includes a physical inspection. To avoid duplication, the Authority should not be required to undertake a physical inspection of a disused tip that has been recently inspected by the Mining Remediation Authority. We expect the Welsh Government to bring forward amendments to the Bill to give effect to this.

Reports of assessments

While we note the Deputy First Minister’s assertion that “there is no public interest in general publication” of the reports of assessment, we do not agree. As a default, we expect the Authority to be fully transparent, not least to help build public confidence and trust. Our preference would be for the Authority to publish all reports of assessments, and for the Bill to be amended to provide for this. If the Welsh Government is not minded to agree, we believe the Authority

should publish the conclusions of reports. Anyone wishing to obtain a full report should be able to do so on request, without having to rely on their existing statutory rights of access to public and environmental information.

The Deputy First Minister has made clear that the Welsh Government will expect the Authority “to make available all information deemed necessary to keep members of the public informed and provide all necessary assurances that a disused tip is safe and secure”. While we welcome this, we note that the Bill does not make provision for the sharing of information with the public, including communities affected by disused tips. We expect the Welsh Government to clarify how it will give practical effect to the Deputy First Minister’s commitment and ensure that public information and engagement is a priority for the Authority.

Recommendations

Recommendation 14. The Welsh Government should bring forward amendments to the Bill to include a requirement on the Welsh Ministers to:

- make regulations specifying minimum requirements for preliminary and full assessment. This should include what a preliminary and full assessment will involve, what each assessment will be expected to include, and the minimum content of inspection reports, and
- consult relevant experts, stakeholders, and other persons with an interest in disused tips before making regulations.

These regulations should be subject to the affirmative procedure.

Recommendation 15. The Welsh Government should ensure that regulations on assessments (see Recommendation 14) provide for a preliminary assessment to include a physical inspection. The regulations should provide that the Authority is not required to undertake a physical inspection of a disused tip that has been inspected in the 2 years prior to the regulations coming into force.

Recommendation 16. If the Welsh Government is unwilling to accept Recommendation 14, it should bring forward amendments to the Bill to place a requirement on the Welsh Ministers to:

- give guidance to the Authority on preliminary and full assessments, and

- consult relevant experts, stakeholders, and other persons with an interest in disused tips before giving guidance.

Recommendation 17. The Welsh Government should bring forward amendments to the Bill to ensure that the Authority publishes reports of preliminary and full assessments.

Recommendation 18. If the Welsh Government is unwilling to accept Recommendation 17, it should bring forward amendments to the Bill to ensure that the Authority:

- publishes its conclusions of reports of preliminary and full assessments, and
- provides access to reports of preliminary and full assessments on request, without an individual having to rely on their statutory right of access to public and environmental information.

Recommendation 19. The Welsh Government should clarify how it will give practical effect to the commitment to ensure that public information and engagement is a priority for the Authority. This should include information sharing and engagement with communities living in the vicinity of disused tips.

Chapter 3 – Registering and deregistering disused tips

Chapter 3 sets out the process that the Authority must follow where it proposes to register a disused tip or to remove a disused tip from the register.

145. Several contributors questioned how the Authority will be alerted when a disused tip that had not met the criteria for registration (and was therefore “unregistered”) needed an additional preliminary assessment (under section 14).

146. Rhondda Cynon Taf CBC sought clarification on whether details of “unregistered” disused tips will be held separately by the Authority and whether those tips will be monitored for any potential change in circumstance.

147. The Coalfields Regeneration Trust suggested the Bill should include a requirement on owners to report any change in circumstance relating to an “unregistered” disused tip to the Authority. It also suggested owners should “have the power to request a new assessment with relevant rationale”.¹¹⁴

¹¹⁴ Written evidence, Coalfields Regeneration Trust

148. Those contributors who commented on the right to appeal against a registration (or deregistration) were content with the approach taken.

Evidence from the Welsh Government

149. The Deputy First Minister explained the information sharing provisions in section 57 would ensure the Authority is alerted to changes in circumstances which could prompt an additional preliminary assessment. He added, “local authorities, NRW, landowners, as well, would need to actually alert the authority to something that could make a material difference to their initial assessment of that site”.¹¹⁵

150. The Deputy First Minister provided examples of circumstances that would likely prompt the Authority to undertake an additional preliminary assessment. This includes development on or adjacent to a site that could increase the risk of instability, or an adverse weather incident.

Our view

We are broadly content with the provisions on registering and deregistering disused tips. We believe the creation of a comprehensive register of all disused tips, which we have recommended, will help address the issues raised by contributors in evidence.

Chapter 4 – The categories of disused tip

All disused tips that are entered onto the register will be given a category by the Authority, based on the different degrees to which the disused tips cause the Authority concern. Chapter 4 sets out the categories of disused tip, how the Authority will make decisions on categorisation and provides a process for review of categorisation.

151. Section 25 places a duty on the Authority to publish a statement on its policy on the categorisation of disused tips. According to the Explanatory Notes (EN), it is anticipated that this will include matters such as the Authority’s approach to categorisation and a description of the different categories.

¹¹⁵ RoP, para 121, 6 March 2025

152. Rhondda Cynon Taf CBC noted the Bill does not include a timeframe within which the Authority must publish its statement.

153. Several contributors suggested the Authority should consult on its proposed policy on categorisation. Kevin Kinsey (Blaenau Gwent CBC) said consultation with local authorities and other relevant experts “would be invaluable in developing the policy”. However, Carl Banton (MRA) said, “we’ve got a consistent approach now that works...I don’t see what much more benefit you’d get from a consultation.”¹¹⁶ He presumed the Authority will continue with the current approach to categorisation (used by the MRA to assign interim categories to disused coal tips).

Evidence from the Welsh Government

154. When asked why the Bill enables the Authority to set its own policy for categorisation, the Deputy First Minister said:

“I think it’s really important that we develop the criteria with the relevant experts in the new authority once they are in place. And I also believe they’ll need to be kept under review. So, it’s important we have that flexibility to respond to circumstances and to do that at pace.”¹¹⁷

155. He added, the approach taken “strikes the right balance, setting out the matters that need to be considered whilst giving that flexibility for the expert authority—the authority—to decide the finer details.”¹¹⁸

156. While the Bill does not place a duty on the Authority to consult on its policy on categorisation, the Deputy First Minister said he would be expect it to do so.

Our view

We are broadly content with the provisions for categories of disused tips and the approach taken to categorisation. There is a clear desire among some contributors with direct experience of disused tip safety to help shape the Authority’s policy on categorisation. For the sake of clarity and certainty, we believe the Authority should be under a duty to consult on its policy proposals.

¹¹⁶ RoP, para 251, 30 January 2025

¹¹⁷ RoP, para 137, 12 December 2024

¹¹⁸ RoP, para 137, 12 December 2024

We expect the Welsh Government to bring forward an amendment to the Bill to address this issue.

Recommendation

Recommendation 20. The Welsh Government should bring forward an amendment to the Bill to place a duty on the Authority to consult stakeholders, relevant experts and other persons with an interest in disused tip safety, on its proposed policy for categorisation.

Chapter 5 – Notifiable changes to the register

Chapter 5 makes provision about notifiable changes to the register. It defines what is meant by a notifiable change, the process that the Authority must follow if it proposes to make a notifiable change, and the process for making a decision on a notifiable change.

157. The Committee received limited evidence on the provisions in Chapter 5.

Our view

We did not consider the provisions in Chapter 5 in any detail. In the absence of any evidence to suggest otherwise, we are content with the provisions.

Notwithstanding the above, we are aware of [recent reports](#) that decisions to re-categorise disused coal tips as higher risk may not have been adequately communicated to communities living in the vicinity. As outlined earlier in this report, we expect public information and engagement to be a priority for the Authority, particularly with regard to communities living in the vicinity of disused tips. The Welsh Government should set out a clear expectation for the Authority to keep those communities informed of any changes to the categorisation of those tips.

Recommendation

Recommendation 21. The Welsh Government should set a clear expectation for the Authority to inform communities living in the vicinity of disused tips of any changes to the categorisation of those tips.

Chapter 6 – Supplementary provision

Chapter 6 contains provision that supplements the other provisions in Part 2. Section 31 makes provision for compensation for damage or disturbance as a result of specified activity carried out under Chapter 1 or 2 of Part 2. It also introduces Schedule 2 - Claims for contributions by owners and contributories. Section 32 makes it a criminal offence to obstruct monitoring activities or assessments under Part 2 of the Bill.

Compensation for damage or disturbance

158. Section 31 provides that certain persons are entitled to claim compensation for damage to land or other property, or for disturbance of a person's enjoyment of land, resulting from the Authority's activities (specified in that section). The Chartered Institute of Building welcomed the provisions for compensation. Rhondda Cynon Taf CBC sought clarification on the meaning of "property" and on the circumstances under which a claim could be made for disturbance of a person's enjoyment of the land. It suggested that only persons with an interest in the land should be entitled to claim compensation for disturbance of enjoyment.

Penalties

159. Under section 32(2), a person convicted of obstructing monitoring activities or assessments is subject to a fine. UKELA suggested the Bill should expressly provide that the fine is unlimited "[so] that there is no doubt as to the potential consequences of committing an offence".¹¹⁹ It made the same point in relation to section 39(2) (penalty for failing to comply with a notice requiring the owner of land to carry out operations).

Evidence from the Welsh Government

Compensation claims

160. The Deputy First Minister explained the Welsh Government intends to issue guidance that will provide examples showing how various situations can trigger a right to compensation. He said the examples will illustrate various factors that should be considered when determining compensation.

¹¹⁹ Written evidence, UK Environmental Law Association

161. On the matter of compensation for disturbance of a person’s enjoyment of land, the Deputy First Minister said, “we consider it reasonable and appropriate that compensation may be recovered by that person”. He added:

“An example of where compensation may be appropriate could be where a campsite needs to be temporarily closed whilst operations are being carried out and the land owner suffers a drop in income as a result, or where a farmer is not able to farm on a particular piece of land during operations.”¹²⁰

162. On 6 February 2025, the Deputy First Minister shared with the Committee summary guidance on compensation claims.¹²¹

Penalties

163. The Deputy First Minister said he considered the Bill sets out clearly where “[fines are] unlimited or where there are limits to the fines”.¹²² He explained a fine is unlimited, the amount will be determined by the court.

Our view

We welcome the Deputy First Minister’s intention to give guidance on compensation claims. We hope this will address the concerns raised in evidence. As outlined earlier in this report, for the sake of clarity and certainty, we believe the Bill should include a requirement on the Welsh Ministers to give guidance to support the effective implementation of the Bill. This includes guidance on compensation claims.

On the matter of fines, we are content with the approach taken. However, we note that, unlike the 1969 Act, the Bill provides for unlimited fines. We expect the Welsh Government to ensure that this change, and other changes arising from the Bill more broadly, are brought to the attention of all those likely to be affected by them.

We are content with the provisions in Chapter 6.

¹²⁰ Letter from the Deputy First Minister to the Climate Change, Environment and Infrastructure Committee, 22 January 2025

¹²¹ Letter from the Deputy First Minister to the Climate Change, Environment and Infrastructure Committee, 6 February 2025

¹²² RoP, para 208, 6 March 2025

Recommendations

Recommendation 22. The Welsh Government should bring forward amendments to the Bill to place a requirement on the Welsh Ministers to give guidance on compensation claims, and to consult before giving guidance.

Recommendation 23. The Welsh Government should set out the steps it will take to ensure that owners of land, and other persons likely to be affected by the changes to the disused tip safety regime arising from the Bill, are aware and understand the implications of those changes.

5. Part 3 - Dealing with tip instability and threats to tip stability

Chapter 1 - Requiring an owner of land to carry out operations

Chapter 1 gives the Authority a power to give an owner of land a notice to require the owner to carry out operations on that land to prevent or deal with threats to the stability of disused tips, or to stabilise disused tips or prevent them from becoming more unstable, so as to avoid or reduce threats to human welfare. It makes provision in relation to the owner's right to enter their land to carry out operations in situations where the owner is not in occupation of their land. It also makes provision requiring the Authority to give interested parties, such as occupiers of the land, copies of any notice requiring the owner to carry out operations.

Chapter 1 also makes provision for related matters, such as rights of appeal against a notice and the imposition of a penalty for a failure to comply with a notice. It also enables the Authority to cancel a notice after it has been given and makes provision for reimbursement of expenses in such a situation.

Removal and disposal of materials from a disused tip

164. Section 34 makes provisions about the owner's right to enter their land to carry out operations required by a notice, where the owner is not the occupier of the land. It also enables the owner to remove and dispose of property situated on the land that belongs to another person. Similar rights are provided for the Authority in section 43.

165. According to the EN accompanying the Bill, "property" could comprise "materials from the tip itself", for example, coal. FoE raised concern about this.

Right to appeal against a notice

166. Section 36 provides that an owner of land who is given a notice to carry out operations may appeal against a notice to the Welsh Ministers. An appeal application must be made within 21 days of the notice being given. Section 36(3) and (4) sets out the grounds for appeal.

167. The Institute of Materials, Minerals and Mining said the 21-day period within which an appeal application can be made "is insufficient for any landowner to

engage with a specialist and prepare a reasonable response”.¹²³ It called for a longer timeframe to be provided.

168. Daniel Therkelsen (CAN) considered the grounds for appeal are broad, which risks unmeritorious appeals that seek to delay operations. He noted the Welsh Government’s intention to issue guidance to support the appeals procedure, which he hoped would reduce this risk. He added that dealing with appeals promptly will reduce the incentive to make an application for the purpose of delaying operations.

169. Under section 36(3)(c), an appeal application may be made on the grounds that operations other than those specified in a notice could avoid or reduce the threat to human welfare. The Institute of Materials, Minerals and Mining said, “The Bill should make clear that the efficacy of alternative operations must be rigorously established”.¹²⁴

170. Under section 36(4), an appeal application may be made on the grounds that the owner is unable to meet the costs of the operations required by the notice. The Institute of Materials, Minerals and Mining said, “the Bill should mandate that these claims are substantiated by a qualified budget assessment”.¹²⁵

171. Section 37 provides that an appeal application is to be determined by a person appointed by the Welsh Ministers (an “appointed person”). The Welsh Government has set out its intention for Planning and Environment Decision Wales (PEDW) to be appointed to determine appeals. While UKELA considered PEDW will be best placed to undertake this role, it questioned why the Bill does not expressly provide for this.

172. Rhondda Cynon Taf CBC emphasised the need for an “appointed person” to have “tip management and drainage knowledge”.¹²⁶

173. Section 38 enables the Welsh Ministers to make regulations about the procedure to be followed in determining appeal applications. UKELA said, “the appeal systems and structures should preferably be in place within the [Bill]”.¹²⁷ Professor Lee (UKELA) cited the Countryside and Rights of Way Act 2000 as an example of primary legislation that includes details of an appeal procedure.

¹²³ Written evidence, Institute of Materials, Minerals and Mining

¹²⁴ Written evidence, Institute of Materials, Minerals and Mining

¹²⁵ Written evidence, Institute of Materials, Minerals and Mining

¹²⁶ Written evidence, Rhondda Cynon Taf County Borough Council

¹²⁷ Written evidence, UK Environmental Law Association

Evidence from the Welsh Government

Removal and disposal of materials from a disused tip

174. The Deputy First Minister explained materials removed from a disused tip and subsequently disposed of could include coal. He added:

“That is not the primary purpose or the underlying reason for this Bill, which is focused on stability and human welfare. The Bill only allows for sale of property, including coal, for the purpose of carrying out operations or consequential works of reinstatement. It’s important to note that the new body would only recommend moving material from a tip for a safety purpose.”¹²⁸

175. The Deputy First Minister explained that while the removal and sale of coal would be permissible under the Bill, it “will not be for commercial exploitation”.¹²⁹

176. The Deputy First Minister reiterated that any operations to remove material from a disused tip will be subject to existing planning law, the Welsh Government’s coal policy and Planning Policy Wales (PPW).

Right to appeal against a notice

177. The Deputy First Minister said he considered the 21-day period within which to make an appeal to be “a reasonable timeframe”. He explained:

“the issuing of a notice is a measure of last resort where informal approaches have failed. In these circumstances, an owner should not be surprised to receive such a notice and will understand why the Authority believes operations are necessary...A period of 21 days allows a person sufficient time to decide whether to appeal against a notice, which also recognises that a longer timeframe for making an appeal could result in delays and deterioration of the site.”¹³⁰

¹²⁸ RoP, para 183, 12 December 2024

¹²⁹ RoP, para 57, 6 March 2025

¹³⁰ Letter from the Deputy First Minister to the Climate Change, Environment and Infrastructure Committee, dated 22 January 2025

178. The Deputy First Minister said the Welsh Ministers intend to issue guidance on appeals, which will underline the importance of timely determination of appeals, among other things.

179. The Committee asked the Deputy First Minister whether he was satisfied that PEDW has sufficient capacity and resource to determine appeals in a timely manner to avoid delays in the carrying out of operations. He said it was anticipated that the number of appeals would be around 10 per year, which was “manageable within current working arrangements”.¹³¹

180. The Deputy First Minister said he considered the grounds of appeal to be “proportionate” and “fair”.¹³² He added:

“if a person does launch an appeal that is without merit, just to try and delay the process, it’s very important to remember the authority can undertake operations itself under section 42. So any delaying tactics wouldn’t prevent necessary operations from being taken forward in a timely manner. It would also not result in the landowner avoiding the costs of the operations because the authority can seek to recover its costs where appropriate.”¹³³

181. The Deputy First Minister explained where appeals are made on the grounds of hardship, the appointed person “will require those individuals to actually provide the information that shows that they do not have the funds available and for a judgment to be made”.¹³⁴

Our view

Removal and disposal of materials from a disused tip

The Deputy First Minister has made clear that the Bill will only enable the removal and disposal of coal for the purpose of carrying out operations required to prevent disused tips from threatening human welfare by reason of their instability. While we welcome this, we seek further assurance that the Welsh

¹³¹ Letter from the Deputy First Minister to the Climate Change, Environment and Infrastructure Committee, dated 22 January 2025

¹³² RoP, para 197, 6 March 2025

¹³³ RoP, para 197, 6 March 2025

¹³⁴ RoP, para 205, 6 March 2025

Government's coal policy will not permit coal extracted during the course of operations to be sold for the purpose of burning.

Right of appeal against a notice

We acknowledge the concerns raised with us about the broad nature of the grounds of appeal. However, we note the Welsh Government's intention to give guidance on appeals, which we hope will help address them.

As outlined earlier in this report, for the sake of clarity and certainty, we believe the Bill should include a requirement on the Welsh Ministers to give guidance to support the effective implementation of the Bill. This includes guidance on appeals.

While we note the call for the 21-day appeal period to be extended, we accept the rationale put forward by the Deputy First Minister in relation to this. We are satisfied, therefore, that the appeal period is reasonable and appropriate.

Recommendations

Recommendation 24. The Welsh Government should provide further assurance that the Welsh Government's coal policy will prevent coal extracted during the course of operations to stabilise a disused tip from being sold for the purpose of burning.

Recommendation 25. The Welsh Government should bring forward amendments to the Bill to place a requirement on the Welsh Ministers to give guidance on appeals, and to consult on this guidance.

Chapter 2 – Operations carried out by the Authority

Chapter 2 gives the Authority a power to carry out operations on land to prevent or deal with threats to the stability of disused tips, or to stabilise disused tips or prevent them becoming more unstable, so as to avoid or reduce threats to human welfare. It gives the Authority related powers to remove and dispose of property from land. It also places a duty on the Authority to notify owners before carrying out works and requires the Authority to give interested parties a copy of the notice.

Interplay with environmental and planning law

182. Several contributors raised concern that the Bill does not address potential tensions between disused tip safety and environmental and planning law.

183. While the Bill enables the Authority to carry out operations “immediately” to avoid an emergency, contributors pointed out that it will still need to comply with existing environmental and planning law. UKELA provided examples of what this may involve in practice, including: gaining planning consent; undertaking an environmental impact assessment; obtaining a waste permit; obtaining a tree felling licence; and undertaking an ecological Habitats Regulation Assessment.

184. UKELA and local authority representatives explained this could lead to delays in operations or, if operations are undertaken without the necessary permits and permissions, result in enforcement action against the Authority.

185. Councillor Andrew Morgan (WPGA) drew comparison with Rhondda Cynon Taff CBC’s experience following the landslip at a disused coal tip in Tylorstown. He explained that, while undertaking urgent clean-up work to ensure public safety, local authority officers were cautioned for failing to obtain the necessary environmental permits. He asserted, “that situation should never arise again, and I’m just concerned that the Bill doesn’t address those fundamentals”.¹³⁵

186. UKELA noted the Law Commission had recommended a power of direction for the Welsh Ministers as a means of resolving potential conflicts between tip safety responsibilities and other regulatory requirements. It suggested the power could be used to provide exemptions from any requirement to seek advance consent under planning or environmental legislation. Professor Lee (UKELA) told the Committee, “That seems to me to be a perfectly good way ahead, but it’s not one that’s included in the Bill”.¹³⁶

187. NRW said its guidance, Site-specific Coal Tip Contingency Plans: Environmental Considerations, “is a good basis on which the new body could build to work out how to resolve the interaction with other environmental legislation”.¹³⁷

¹³⁵ RoP, para 324, 30 January 2025

¹³⁶ RoP, para 23, 5 February 2025

¹³⁷ Written evidence, Natural Resources Wales

Preventing activities that may impact on stability

188. There was some support in evidence for the Bill to include powers for the Authority to prevent activities that may impact on the stability of disused tips, and for accompanying civil sanctions.

189. Rhondda Cynon Taf CBC reported having to rely on planning enforcement to stop excavations and deposition of materials on a disused tip. It suggested the Authority should have the power to issue a “stop notice” to prevent an owner from continuing an activity which may threaten the stability of disused tip. Professor Lee (UKELA) echoed this, adding, “there’s greater room for civil sanctions than the Bill gives provision for”.¹³⁸

190. Rhondda Cynon Taf CBC suggested it would be useful for the Authority to have power to prevent future operations which may impact on tip stability, for example, “widescale deforestation”.¹³⁹

191. On the matter of civil sanctions, NRW said:

“We believe that civil sanctions are part of a proportionate and cost-effective approach to enforcement. We recommend not closing off the introduction of civil sanctions power at some later date.”¹⁴⁰

192. Carmarthenshire CC considered the Authority should have greater enforcement powers, although it did not go so far as to suggest what these might be.

Evidence from the Welsh Government

“Immediate” operations

193. When asked how the Deputy First Minister intended to resolve tensions that may arise in emergency situations between the need to protect human welfare and environmental considerations, he said this would be addressed in management plans. He explained:

“the Welsh Government’s Coal Tip Safety Collaborative Working Group is developing a joint protocol which will set out how

¹³⁸ RoP, para 97, 5 February 2025

¹³⁹ Written evidence, Rhondda Cynon Taf County Borough Council

¹⁴⁰ Written evidence, Nature Resources Wales

partner organisations (such as local authorities, NRW and the Authority) will respond to an incident on a disused tip. Again, this will include advance planning for instances where it is foreseen there is potential for tension between works required for public safety and environmental legislation."¹⁴¹

194. He added, "Establishing those better relationships and working practices across the agencies and statutory bodies is a much more practical, workable, proportionate approach in tackling these issues [than providing a legal solution]".¹⁴²

195. Further, the Deputy First Minister said, "I do not think that it is sensible for this Bill to include specific environmental provisions which could, given the complexity and breadth of existing environmental legislation, disapply legislation that has been put in place for specific purposes, especially when we are facing the threat posed by climate change".¹⁴³

196. When asked what consideration had been given to providing the Welsh Minister's with a power of direction (in line with the Law Commission's recommendation), Chris Jones (Welsh Government) said:

*"we've had lots of discussions around this. Nobody's been able to say to me, as a policy person, which part of the environment or legislation they want to turn off. They all say, 'Have an exemption', and when I say to them, 'Okay, tell me which exemption you want, for how long and for why', nobody can answer that question."*¹⁴⁴

197. He added, "If we provide a precedent there where we provide that switch-off power, then I think it needs a lot more scrutiny and a lot more thought."¹⁴⁵

198. The Deputy First Minister explained that, in the event of a serious incident on a disused tip, the provisions of the Civil Contingencies Act 2004 would apply. He

¹⁴¹ Letter from the Deputy First Minister to the Climate Change, Environment and Infrastructure Committee, dated 17 February 2025

¹⁴² RoP, 212, 6 March 2025

¹⁴³ Letter from the Deputy First Minister to the Climate Change, Environment and Infrastructure Committee, dated 17 February 2025

¹⁴⁴ RoP, para 223, 6 March 2025

¹⁴⁵ RoP, para 232, 6 March 2025

reiterated the Welsh Government’s intention for the Authority to be a Category 2 Responder for the purposes of that Act.

Additional powers and civil sanctions

199. The Deputy First Minister said the Welsh Government had ruled out including provision in the Bill to ban or require consent for certain types of activities that may be detrimental to the stability of disused tips. He said local authorities, NRW and the HSE already have powers under planning and health and safety legislation to address activities, in certain circumstances. He added, “Given that we are encouraging a collaborative approach it is important that we make sure that there is no cross over or confusion in responsibilities in these areas”.¹⁴⁶

200. The Deputy First Minister said:

“any system of issuing stop notices would be technical and would mean a significant amount of additional administration and bureaucracy as well as confusion. The use of stop notices could also cause delay, were such a notice to be challenged.”¹⁴⁷

Our view

“Immediate” operations

The proactive approach to disused tip safety provided for in the Bill will, we hope, minimise the risk of the failure of a disused tip. However, the Authority must be able to take immediate action to avoid a failure should the need arise. We heard that obligations under environmental and planning law could stand in the way of this. As a Committee, we fully support strong environmental protections. But, where operations are needed to avoid an emergency, the priority must be ensuring the safety of communities.

We welcome the steps the Welsh Government and its partners are taking on contingency planning, and to ensure regulatory approval is smooth and efficient. However, the Deputy First Minister has not persuaded us that this

¹⁴⁶ Letter from the Deputy First Minister to the Climate Change, Environment and Infrastructure Committee, dated 17 February 2025

¹⁴⁷ Letter from the Deputy First Minister to the Climate Change, Environment and Infrastructure Committee, dated 17 February 2025

alone will be sufficient to ensure the Authority will be able to act swiftly to avoid an emergency.

We are aware that tensions between the Authority's disused tip responsibilities and its obligations under environmental and planning law were highlighted by the Law Commission in its 2022 report, and in the subsequent study by Birmingham University, commissioned by the Welsh Government. The Law Commission provided a range of legal solutions for the Welsh Government to consider for resolving them. It is disappointing, therefore, that the Welsh Government chose not to pursue any of these options in the Bill.

It is not for this Committee to find legal solutions to complex matters. That is the responsibility of the Welsh Government. Our role is to highlight any potential weakness in the Bill and to recommend that they be addressed. We expect the Welsh Government to ensure that the Bill enables the Authority to take action to avoid the failure of disused tip without being delayed by its obligations under environmental and planning law.

Additional enforcement powers and civil sanctions

We note the Deputy First Minister's assertion that there are already mechanisms in place to prevent or control activities that may impact on the stability of disused tips. While we acknowledge the need to avoid duplication, the evidence we received suggests certain activities may not be subject to regulation or control. Where gaps exist, we expect the Welsh Government to consider how the Bill could be used to address them, for example by giving enforcement powers to the Authority.

Recommendations

Recommendation 26. The Welsh Government should bring forward amendments to the Bill to enable the Authority to carry out "immediate" operations to avoid the failure of disused tip without being delayed by its obligations under environmental and planning law.

Recommendation 27. The Welsh Government should bring forward amendments to the Bill to address any gaps in provisions to prevent or control activities that may impact on the stability of disused tips.

Chapter 3 - Payments in connection with operations

Chapter 3 makes provision about contribution orders, compensation and demands for the recovery of expenses by both owners of land and the Authority. It also sets out the rights of owners and contributories to appeal against such demands.

201. The Committee received limited evidence on the provisions in Chapter 3. Those contributors who did comment on the provisions were content with them.

Our view

We did not consider the provisions in Chapter 3 in any detail. In the absence of any evidence to suggest otherwise, we are content with the provisions.

Chapter 4 - Supplementary provision

Chapter 4 gives the Authority the power to carry out investigations on land to determine whether specified operations on land need to be required or carried out. The chapter also creates related offences.

202. The Committee received limited evidence on the provisions in Chapter 4. Those contributors who did comment on the provisions were content with them.

Our view

We did not consider the provisions in Chapter 4 in any detail. In the absence of any evidence to suggest otherwise, we are content with the provisions.

6. Part 4 – Supplementary

Part 4 contains provisions about information sharing, powers to require information and penalties in connection with notices requiring information. These are contained at sections 55 to 61. It also makes provision about powers of entry. These include provisions in relation to the giving of notice prior to entry, the issuing of warrants conferring powers of entry, entry to land both with, and without, a warrant, penalties for obstructing entry to land and entry to Crown land. These are contained at sections 62 to 67.

Part 4 also contains a number of miscellaneous provisions. These include provision giving the Authority the power to provide administrative, technical or professional services and provision in respect of guidance. They also include provision that makes amendments to the Mines and Quarries (Tips) Act 1969. These are contained at sections 68 to 70.

203. The Committee received limited evidence on the provisions in Part 4. Those contributors who did comment were broadly content with the provisions, although clarification was sought on specific matters.

Information sharing

204. Sections 26 and 27 place a duty on “relevant public authorities” (defined in section 55) to provide certain information to the Authority, and to share certain information with the Authority, to support the exercise of its functions. There was broad support for these provisions. FoE questioned whether the Crown and relevant UK Government departments should be subject to these duties.

Powers of entry

205. Rhondda Cynon Taf CBC suggested the power to enter land without a warrant (under section 63) may not be an improvement on the existing power available to local authorities under the 1969 Act. It sought clarification on how the power would be exercised in various scenarios.

Guidance

206. Section 69 places a requirement on the Authority and a person appointed to determine appeal applications (under sections 36 and 41) to have regard to guidance issued by the Welsh Ministers.

207. UKELA suggested the Welsh Ministers may need to give guidance to other public authorities to support the effective implementation of the Bill. It suggested section 69 may need to be amended to reflect this.

208. Contributors emphasised the need for guidance be informed by expert advice and take account of existing good practice, and be subject to consultation with wider stakeholders.

Evidence from the Welsh Government

209. In view of time constraints, we did not take evidence from the Deputy First Minister on the above matters raised by contributors.

Our view

We did not consider the provisions in Part 4 in any detail. Based on the evidence received, we are broadly content with the provisions on information sharing. However, we would like the Welsh Government to respond to the matters raised by contributors (set out in paragraphs 204 to 208).

Recommendation

Recommendation 28. The Welsh Government should clarify:

- what consideration was given to extending the duties in section 56 and 57 to the Crown, relevant UK Government departments, and to the Health and Safety Executive;
- whether and how the powers of entry in the Bill are broader than those available to local authorities under the 1969 Act; and
- whether and how it intends to give guidance to public authorities (other than the new Authority) to support the implementation of the Bill.

7. Part 5 – General

Part 5 makes provision in relation to offences by bodies corporate and specifies who may bring prosecutions for offences under the Bill. It makes provision about regulations made under the Bill, including the Senedd procedure that applies to particular regulation-making powers.

Part 5 also makes general provision in relation to the giving of notices and other documents under the Bill. It makes provision for special cases, including Church of England land. It provides definitions for terms used in the Bill. It includes provision about when the provisions of the Bill will come into force, and sets out the Bill's short title.

Meaning of “tip” and “disused tip”

Section 81 provides the meaning of “tip” and “disused tip”.

Section 81(1) and 81(2) define “tip”.

Section 81(3) defines “disused tip” by placing tips that are subject to the provisions of the Quarries Regulations 1999 and the Mines Regulations 2014 outside the scope of the Bill. The effect of this is that the Bill does not apply to any active tips that are associated with operational mines or quarries.

Section 81(4) and 81(5) provides the Welsh Ministers with regulation-making powers to:

change the definition of “disused tip” if the 1999 and 2014 Regulations are revoked or amended, and

set out certain descriptions of tip that would fall outside the definition of “disused tip” either altogether or for the purpose of specific provisions within the Bill.

210. Several contributors sought clarification on what would fall within the meaning of “tip”. HSE commented that the existing definition of “tip” in the 1999 and 2014 Regulations is broader than the definition in the Bill. It said, “[we] would

like to ensure where possible terminology and definitions across the whole regulatory framework is aligned”.¹⁴⁸

211. Professor Young (Law Commission) explained that, unlike the Bill, the existing Regulations include a non-exhaustive list of examples that would fall within the meaning of a “tip”. She added:

*“what the Bill is doing by not giving those examples, in some senses, you could say, ‘Well, it isn’t as broad because it doesn’t specifically include them’, but you could also interpret that by saying, ‘But it is as broad because it isn’t saying they’re not part of them’, if that makes sense. So, a lot of that would depend on how it’s interpreted in future.”*¹⁴⁹

212. HSE and the MRA emphasised the importance of a clear definition to avoid ambiguity. They suggested the definition could be further clarified in guidance.

213. CAN asserted, “there is not a compelling practical case for the power [in section 81(4)]”, noting the definition of “tip” had remained unchanged since the 1969 Act. It added, “Ministers should not be given the unfettered liberty to redefine what constitutes a disused tip”. On the power in section 81(5), it asserted:

*“This opens the door to an element of arbitrariness undermining the legislative aim of generating consistency and public trust in the application of a cohesive and even-handed regulatory regime”.*¹⁵⁰

214. Thomas Glyn Watkin provided an alternative view, saying the regulation-making powers were “appropriate...in order to future proof the ambit of the regime”.¹⁵¹

215. CAN called for public consultation on any proposed changes to the meaning of “disused tip”, which it said should focus on communities living nearby tips that would be affected by the change. HSE called to be consulted on proposed changes “so impacts on existing legislation can be considered”.¹⁵²

¹⁴⁸ Written evidence, Health and Safety Executive

¹⁴⁹ RoP, para 76, 30 January 2025

¹⁵⁰ Written evidence, Coal Action Network

¹⁵¹ Written evidence, Thomas Glyn Watkin

¹⁵² Written evidence, Health and Safety Executive

Meaning of “threat to human welfare”

Section 83 sets out that a “threat to human welfare” exists where there is a possibility of – loss of human life, serious human illness or injury, serious damage to property, serious disruption of a supply of food, water, energy or fuel, serious disruption of a system of communication, serious disruption of facilities for transport, or serious disruption of services relating to health.

216. Contributors welcomed the broad definition of “threat to human welfare”. CAN sought clarification on whether “damage to property” would include “death or damage to livestock on common land”.¹⁵³ FoE questioned whether disruption to a supply of water would include water contamination.

217. Local authority representatives commented that the term “serious” was ambiguous and open to interpretation. HSE emphasised the importance of a consistent interpretation of the term across regulatory regimes. There was consensus that further explanation of the meaning of “serious” should be included in guidance.

Evidence from the Welsh Government

Meaning of “tip” and “disused tip”

218. The Deputy First Minister said, the existing definitions of “tip” in the 1999 and 2014 Regulations were taken into account when determining the definition in the Bill. He considered the definition in the Bill is “easier to understand”.¹⁵⁴

219. The Deputy First Minister said the definition of “tip” in the Bill is no narrower than the existing definitions. He added, “the absence of particular examples does not mean, for the purposes of this Bill, that they are not within the scope of the definition”.

220. When asked why the Bill does not include a stand-alone definition of “disused tip”, the Deputy First Minister said the definition “needs to fit in with and not conflict with” the 1999 and 2014 Regulations, which apply to active mines and quarries.¹⁵⁵ He added:

¹⁵³ Written evidence, Coal Action Network

¹⁵⁴ RoP, para 251, 6 March 2025

¹⁵⁵ RoP, para 93, 12 December 2024

“If we created a stand-alone definition...we could inadvertently create an error here, a gap in the description of active or disused tips. We might even create an overlap in definitions, as well, so neither of those would be good in terms of the application of good law, good policy.”¹⁵⁶

221. The Deputy First Minister said the regulation-making power to amend the meaning of “disused tip”, “gives us a flexibility to react if circumstances change”.¹⁵⁷ He reiterated that regulations would be subject to the affirmative procedure.

Meaning of “threat to human welfare”

222. Madeline Rees (Welsh Government) said the meaning of “threat to human welfare” was “really quite broad...it is far more than just what you might think in terms of human life”.¹⁵⁸

223. When asked to explain what ‘serious’ means in the context of the definition, the Deputy First Minister said:

“There’s a reason we put ‘serious’ in there, which is to avoid ‘any’ impact on human welfare encompassed within this, which is a slightly low threshold, because if we didn’t have the qualification of ‘serious’, then any possible threat to human welfare, irrespective of the severity of that, could be included, whether it’s slight or negligible; it would make the Bill unworkable.”¹⁵⁹

224. He added,

“It is the ordinary meaning of ‘serious’, and I think it’s well understood. It’s something that is significant or dangerous because of the possibility of danger of risk. The qualification ‘serious’ will allow the authority to make that judgment considering all those surrounding circumstances.”¹⁶⁰

¹⁵⁶ RoP, para 95, 12 December 2024

¹⁵⁷ RoP, para 96, 12 December 2024

¹⁵⁸ RoP, paras 27 to 29, 12 December 2024

¹⁵⁹ RoP, para 82, 12 December 2024

¹⁶⁰ RoP, para 83, 12 December 2024

Our view

We note the concerns raised in evidence that the definition of “tip” in the Bill is narrower than the existing definition in the 1999 and 2014 Regulations. The Deputy First Minister has provided us with assurance that that this is not the case. We are content, therefore, with the definition of “tip” in the Bill.

We accept the Deputy First Minister’s rationale for the approach taken to defining “disused tip”. Given this, we are content with the definition.

We note the powers in sections 81(4) and (5) would enable the Welsh Ministers by regulations to amend the definition of “disused tip” and remove certain tips from the remit of the Bill. This has the potential to change the reach of the new regime fundamentally. We expect the Welsh Ministers to undertake full consultation on any proposed changes to the definition or to the Bill’s application. For the sake of clarity and certainty, we believe the Bill should be amended to provide for this.

We are content with the definition of “threat to human welfare”. However, in view of the evidence received, we would welcome clarification on whether “damage to property” includes “death to livestock on common land” and whether “disruption to a supply of water” includes water contamination.

Recommendations

Recommendation 29. The Welsh Government should bring forward an amendment to the Bill to place a duty on the Welsh Ministers to consult stakeholders, communities living in the vicinity of disused tips, and the wider public, before bringing forward regulations using the powers provided in section 81(4) and (5).

Recommendation 30. The Welsh Government should clarify the following in relation to the definition of “threat to human welfare”:

- whether “damage to property” includes “death or damage to livestock on common land”, and
- whether “disruption to a supply of water” includes water contamination.

Annex 1: List of oral evidence sessions.

The following witnesses provided oral evidence to the committee on the dates noted below. Transcripts of all oral evidence sessions can be viewed on the [Committee's website](#).

Date	Name and Organisation
12 December 2024	<p>Huw Irranca-Davies MS - Deputy First Minister and Cabinet Secretary for Climate Change and Rural Affairs, Welsh Government</p> <p>Chris Jones, Welsh Government</p> <p>Madeline Rees, Welsh Government</p>
30 January 2025	<p>Alison Young, Law Commission</p> <p>Dominic Driver, Natural Resources Wales</p> <p>Carl Banton, The Mining Remediation Authority</p> <p>Rick Brunt, Health and Safety Executive</p> <p>Cllr Andrew Morgan OBE, Welsh Local Government Association</p> <p>Stephen Williams, Rhondda Cynon Taf County Borough Council</p> <p>Jacqueline Mynott, Rhondda Cynon Taf County Borough Council</p> <p>Cllr Stephen Thomas, Blaenau Gwent County Borough Council</p> <p>Kevin Kinsey, Blaenau Gwent County Borough Council</p>
5 February 2025	<p>Professor Robert Lee, University of Birmingham - on behalf of the UK Environmental Law Association (UKELA)</p>

Date	Name and Organisation
	<p>Daniel Therkelsen, The Coal Action Network</p> <p>Haf Elgar, Friends of the Earth Cymru</p> <hr/> <p>Nick Horsley, Mineral Products Association Wales</p> <p>John Carlon, British Aggregates Association</p>
<p>6 March 2025</p>	<p>Huw Irranca-Davies MS - Deputy First Minister and Cabinet Secretary for Climate Change and Rural Affairs, Welsh Government</p> <p>Chris Jones, Welsh Government</p> <p>Madeline Rees, Welsh Government</p>

Annex 2: List of written evidence

The following people and organisations provided written evidence to the Committee. All Consultation responses and additional written information can be viewed on the [Committee's website](#).

Reference	Organisation
DMQTWB01	Individual
DMQTWB02	Isle of Anglesey County Council
DMQTWB03	Coal Action Network
DMQTWB04	Institution of Civil Engineers Wales Cymru
DMQTWB05	National Sheep Association Cymru
DMQTWB06	Friends of the Earth Cymru
DMQTWB07	Welsh Local Government Association
DMQTWB08	The Mining Remediation Authority
DMQTWB09	Natural Resources Wales
DMQTWB10	UK Environmental Law Association
DMQTWB11	Wales Audit Office
DMQTWB12	Jacobs UK Limited
DMQTWB13	Thomas Glyn Watkin
DMQTWB14	The Coalfields Regeneration Trust
DMQTWB15	Stephen Smith
DMQTWB16	Carmarthenshire County Council
DMQTWB17	Public Health Wales
DMQTWB18	The Chartered Institute of Building (CIOB)
DMQTWB19	Pembrokeshire County Council
DMQTWB20	Buglife
DMQTWB21	ICE Wales Cymru Ground Engineering Group

Reference	Organisation
DMQTWB22	Rhondda Cynon Taf County Borough Council
DMQTWB23	Institute of Materials, Minerals and Mining (IOM3)
DMQTWB24	Health and Safety Executive
DMQTWB25	Mineral Products Association Wales
DMQTWB26	The Law Commission
DMQTWB27	British Aggregates Association
DMQTWB28	British Geological Survey