

Huw Irranca-Davies AS/MS
Y Dirprwy Brif Weinidog ac Ysgrifennydd y Cabinet dros
Newid Hinsawdd a Materion Gwledig
Deputy First Minister and Cabinet Secretary for Climate
Change and Rural Affairs



Llywodraeth Cymru
Welsh Government

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Llŷr Gruffydd MS
Chair
Climate Change, Environment and Infrastructure Committee
Welsh Parliament
Cardiff Bay
Cardiff
CF99 1SN

22 January 2025

Dear Llŷr,

Thank you for your letter of 18 December 2024, with follow up questions from the Committee session on 12 December. Please see below my responses to those questions.

The Disused Tips Authority for Wales

1. Section 2 provides that the Disused Tips Authority's (the Authority) "main objective" in carrying out its function is to ensure that disused tips do not threaten human welfare by reason of their instability. Can you clarify whether the objective set out in section 2 is the Authority's only objective? If not, what are its other objectives and why are these not provided for in the Bill?

Response

As set out in section 2, the Authority's main objective in carrying out its functions under the Bill is to ensure that disused tips do not threaten human welfare by reason of their instability. It is complemented by the provision in section 2(2) which provides that "in pursuance of its main objective, the Authority must promote high standards in relation to the management of disused tips and threats to their stability".

A list of the Authority's objectives is not included on the face of the Bill as it is not feasible to provide a comprehensive description in the Bill of all of the Authority's objectives.

The main objective, as the phrase suggests, is one of the Authority's objectives. There are others, but these will depend on the circumstances of a particular case, including the specific powers it is acting under. This will include complying with any relevant legal requirements, for example.

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1SN

Gohebiaeth.Huw.Irranca-Davies@llyw.cymru
Correspondence.Huw.Irranca-Davies@gov.wales

Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

The purpose of section 2 is to make clear, on the face of the Bill, what the Authority is, principally, being established to do. It helps set the provisions of the Bill in context.

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.

2. Section 2(2) provides that in pursuance of its main objective the Authority must promote “high standards” in relation to the management of disused tips and threats to their stability. What is the meaning of “high standards” in this context? How will the Authority be expected to demonstrate it is meeting this duty?

Response

As you will be aware, the Bill does not include a definition for “high standards”. This means that the phrase has its ordinary meaning, and what will be considered to be a “high standard” will be context dependent.

In promoting high standards, we would expect the Authority to follow best practice and relevant guidance, and to keep up to date and implement any developments in relevant technology or advancement in relevant knowledge. We would also expect the Authority to be seen to manage disused tips and threats to their stability in a transparent way that garners public trust. As part of this, the Authority will be proactive in helping and advising landowners on management of disused tips. The Authority will promote high standards by employing appropriately qualified individuals, ensuring that continuous training is undertaken and by designing operations based on the latest and most appropriate equipment and knowledge. As such, the Authority will continually demonstrate that it is meeting this duty through its actions, for example, in the way it carries out assessments, and the way it approaches operations etc. The Authority will also have to set out how it has carried out its functions during each financial year and how it has met its duties in its annual report.

3. Section 3(4) enables the Authority to charge a fee for the provision of information, advice or assistance under section 3(3).
 - a) The Bill makes no further provision in relation to how the Authority will determine the level of fees – why?
 - b) What factors do you expect the Authority to take into account when determining the level of fees, and will the Authority seek to achieve full cost recovery?

Response

The Authority will develop its own policy for charging fees for information, advice and assistance, but the level of fee charged for the provision of a service under section 3 will be limited by reference to the costs incurred in providing that service. This is a consequence of the absence of express wording in section 3 authorising the Authority to set fees at a higher level (e.g. fees that include an element of profit). At this stage we do not know what kind of services the Authority will want to provide or charge for, or whether it will seek to recover the full cost of providing a service. These will be matters for the Authority to determine, acting in accordance with the established principles of public law. We therefore do not consider it necessary for the Bill to make express provision in this regard.

The Welsh Ministers will issue guidance which will confirm that the Authority cannot charge a fee for services etc. in respect of which the Welsh Government has provided funding through grant in aid. For example, the current expectation is that the Authority will receive funding to carry out all preliminary assessments. No fee should be charged for these.

Register of disused tips

4. Section 9 makes provision for public access to the register. How will you ensure that digitally excluded groups/individuals are able to access the register?

Response

Accessibility and inclusivity will be considered during the design of the digital services provided by the Authority.

The electronic register of disused tips will be a digital service by design – it will be openly available on the Authority’s website, and will not require log in details to access. It is the intention that those who are digitally excluded will be able to request (e.g. by phone call or by letter) a printed copy of maps or information in the register.

5. The White Paper proposed layered access to the register with certain data publicly accessible and ‘excluded data’ only accessible to the supervisory authority, local authorities and individual tip owners.

- a) Can you clarify whether and how the Bill provides for ‘layered access’?
- b) To what extent are you satisfied that the regulation making power in section 8(2)(f) is sufficiently broad to enable the exclusion of information as specified in section 9?

Response

The Bill does not provide for layered access to the register.

Section 8 sets out information that must be included in an entry in the register for a disused tip and requires entries to include a map showing the area of the tip. This includes information such as the tip’s category and the date of the most recent inspection of the tip.

Section 9 places a duty on the Authority to ensure that that the maps and information can be accessed electronically by members of the public at all reasonable times. The Bill does not make express provision providing access to other information for bodies such as local authorities, NRW etc. These bodies will be able to access information on the register in the same way that members of the public will be able to.

We are satisfied that the regulation-making power in section 8(2)(f) is sufficiently broad to ensure that additional information which is included in the register will not be publicly accessible. Section 9 requires the Authority to ensure the maps and information in the register can be accessed electronically at all reasonable times by members of the public. The only exception to this requirement is in respect of information specified by regulations made under section 8(2)(f), which does not have to be made available to the public.

In practice, it is considered the section 9 duty will most likely be satisfied by making the register accessible on the Authority’s website.

Assessments of disused tips

6. Section 13 provides that the Authority must send its proposed programme of preliminary assessments to the Welsh Ministers for approval before the end of 12 months beginning with the coming into force of the section.
- a) Why do you consider it necessary for the Authority's proposed programme of work to be approved by the Welsh Ministers?
 - b) Section 13 does not include a timeframe within which the Welsh Ministers must approve the proposed work programme - why?

Response

It is not unusual for the Welsh Ministers to be involved in oversight of and approval of work programmes of sponsored bodies.

The work programme in question will set out the Authority's proposed approach and timetable for carrying out the preliminary assessments required by section 13 of the Bill. Preliminary assessments will determine which disused tips require full assessment. We believe there is a public interest in the Welsh Ministers approving the programme as it is key to the performance of the Authority's functions and to fulfilling its main objective.

There is no requirement imposed on Welsh Ministers to approve the programme. If the Welsh Ministers think that changes are required but those changes go beyond modifications of the programme, Welsh Ministers would send the programme back to the Authority for it to address their concerns. Setting a deadline on the face of the Bill would force the Welsh Ministers to approve a programme that may be unsuitable. Also any deadline would be arbitrary, as the time needed will depend on the content of the programme being considered).

The Welsh Ministers will be appraised of the work the Authority is doing to develop the work programme in the 12-month period between the coming into force of section 13 and the formal submission of the programme for approval. Therefore, the content of the programme will not come as a surprise to Welsh Ministers and we expect that approval will be able to be provided quickly.

7. In giving evidence to the Committee, you asserted that the Authority would be able to begin work before its proposed work programme has been approved by the Welsh Ministers.
- a) To what extent does this undermine the approval process?
 - b) Is there a risk that works would be undertaken that were not later approved, and costs and resources wasted?

Response

There is a 12-month period between the commencement of section 13 and submission of the work programme to the Welsh Ministers for approval. This timeframe is necessary to allow the Authority to develop a robust, well thought through programme of work that will guide, for example, how the Authority prioritises the carrying out of assessments and when preliminary assessments of non-coal disused tips begin.

It would not be acceptable for all of the Authority's work to be delayed by 12 months. The Authority will, during that 12-month period, begin work, including the process of undertaking preliminary assessments. It is anticipated that the programme of works will be developed so that the disused tips (whether they be coal or not) that are currently known to present the greatest threat to human welfare will be the first to receive a preliminary assessment. In respect of disused coal tips, decisions on prioritisation for preliminary assessment will be based on existing data from the Mining Remediation Authority.

Welsh Government officials will be involved in these early discussions when the Authority is established. The preliminary assessments will be conducted, in the main, by experts from the Authority on the basis of a paper exercise – considering existing inspections reports, mapping, categorisation level etc.

There is no risk of wasted costs. Welsh Ministers' approval is linked to the approval of the programme of works for carrying out preliminary assessments. However, Welsh Ministers' approval is not required for any works/operations that are carried out under other provisions in the Bill.

8. Do you envisage the Authority consulting on its proposed programme? If so, why does the Bill not make provision for this? If not, why?

Response

It is envisaged the Authority will engage with stakeholders who have relevant expertise and information that might assist in developing its programme of work for preliminary assessments, such as the Mining Remediation Authority, Natural Resources Wales and local authorities.

The development of the work programme will be a technical, expert led exercise aimed at conducting preliminary assessments of those disused tips that pose the greatest risk first. 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.

9. The Bill provides for the Authority to produce a report of each preliminary and full assessment. Will these reports be made publicly available? If so, how does the Bill provide for this? If not, why not?

Response

The Bill does not require the reports for each preliminary and full assessment to be made publicly available. However, 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. In our view, there is no public interest in general publication of the reports of each preliminary and full assessment.

Under section 19, where the Authority produces a report of a full assessment in relation to a disused tip, it must, as soon as practicable, give notice of the conclusions of the report to every owner and every occupier of the land on which the tip is situated. Providing the conclusions of the full assessment to these parties is considered appropriate and sufficient because they will be directly affected by the conclusions reached in the relevant report. If, the full assessment concludes that the criteria for registering a disused tip are met, the notice of proposed registration will set out the reasons for the proposal. These reasons will reflect the conclusions of the full assessment. The notice of proposed registration must be given to every owner and occupier on which the tip is situated, and any other person who, to the Authority's knowledge, has an estate or interest in that land. It is considered appropriate that notice is given to these persons.

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.

Making representations

10. The Bill provides the Welsh Ministers with regulation making powers to change the minimum period for making representations on proposals to register and deregister a disused tip, and make a notifiable change in relation to the disused tip.
 - a) Why is this power needed?
 - b) Can you confirm that this power could be used to reduce the minimum period for making representations? If so, under what circumstances do you envisage the power being used for this purpose?

Response

We have no current plans to exercise the regulation-making powers in sections 20(4), 22(4) and 29(3) that give the Welsh Ministers the ability to change the minimum period for making representations about a proposal by the Authority to, respectively, register a tip, remove a tip from the register or make a notifiable change.

A minimum period of 30 days to make representations to the Authority is a reasonable amount of time. However, it is considered necessary for the Welsh Ministers to have a power to change the period in the future, should that prove to be appropriate. As the Authority carries out its functions and gathers experience in adding and removing disused tips from the register and making notifiable changes, experience may indicate the minimum period for making representations may need to be reconsidered. For example, if experience shows that it often takes longer than 30 days to gather the requisite information to be in a position to provide meaningful representations, the ability to amend the 30-day period will ensure that the Welsh Ministers are able to be responsive to gained experience and are able to amend the minimum period for making representations, should that be considered necessary. Experience might also show that different periods are appropriate for different proposals. The powers in the Bill would allow Ministers to achieve this outcome.

It is possible that the power may be exercised to reduce the minimum period for making representations. At this stage, we do not envisage using the power in this way. As set out above, a minimum period of 30 days for making representations is considered reasonable.

Compensation for damage, loss or disturbance etc.

11. Sections 31 and 48 make provision for certain persons to recover compensation in certain circumstances. What factors do you anticipate will be taken into account when determining the amount of compensation that a person is entitled to recover?

Response

The Welsh Ministers intend to issue guidance that will provide examples showing how various situations can trigger a right to compensation.

The examples will illustrate various factors that should be considered when determining compensation, for instance:

- The type of land (e.g. urban, rural, residential and agricultural)
- The nature of damage to property and/or estate (e.g. structural repair, subsidence and waterlogging)
- The nature of disturbance to land (e.g. noise, dust and vibrations from heavy machinery).
- The type of land, the nature of damage and/or disturbance will determine the category of payment (e.g. property devaluation and loss of agricultural productivity) and the intention is that the final guidance will set out the expectation as to how the determination of compensation in respect of each category will work.

Draft high-level guidance on this issue will be made available to the Committee shortly – this will sit alongside the Bill and provide an illustration of the type of issues that we intend to cover in any guidance. This will be developed in more detail in consultation with key stakeholders and partners once the Bill has received Royal Assent.

12. The Bill makes provision for any person whose enjoyment of land is disturbed as a result of an inspection, monitoring activity, assessments, or operations being carried out to recover compensation. Why do you consider this provision reasonable and appropriate? How will the disturbance of a person's enjoyment be assessed?

Response

If a person's enjoyment of land is disturbed as result of an inspection, monitoring activity, assessments, or operations, we consider it reasonable and appropriate that compensation may be recovered by that person. Whether or not compensation will be paid will depend on the specific circumstances. Any disputes in relation to compensation for disturbance will be determined by the court in the normal way.

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.

Draft high-level guidance on this issue will be made available to the Committee shortly – this will sit alongside the Bill and provide an illustration of the type of issues that we intend to cover in any guidance. This will be developed in more detail in consultation with key stakeholders and partners once the Bill has received Royal Assent.

Duty to give interested parties copies of notice of operations

13. Sections 35 and 45 place a duty on the Authority to give a copy of the notice issued under section 33 (Notice requiring owner of land to carry out operations) and section 44 (Duty to give notice to owners) to any other person with an interest in the notice.
- a) How did you determine the persons (in addition to the owner of land) with an interest in the notice?
 - b) What is the rationale for the 12-year period in sections 35(2) and 45(2)?

Response

When determining who needs to be served a copy of a section 33 or section 44 notice, we considered the equivalent provisions under sections 14 and 17 of the Mines and Quarries (Tips) Act 1969.

The provisions in sections 35 and 45 are based on those provisions. However, it should be noted that sections 35 and 45 are wider, as under sections 33 and 44 notices can be given to persons other than the tip owner and the threshold for intervention in the Bill is lower than under the 1969 Act.

The provisions relating to who must be given a copy of a section 33 or 44 notice are identical. When drafting the list, we included those persons whom we consider to have an interest in being notified if operations are to be carried out on land – whether by the owner of that land or by the Authority. This is to ensure that anyone who might be affected by the carrying out of operations on the land, or who might be required to contribute towards the cost of carrying out the operations, is informed about them.

They might have an interest in being notified because, for example, they have a current interest/estate in the land, or occupy land or have an interest in any of the material comprised in a disused tip, and so may be impacted by the works required to be carried out under the notice. Pursuant to section 36, owners and interested parties (ie those who have been given a copy of the notice) may appeal against a section 33 notice.

In terms of why we have chosen the 12-year period, we have opted to maintain continuity with the relevant provisions of Mines and Quarries (Tips) Act 1969. Landowners are aware of the provisions of that Act and the 12-year period referred to in sections 14(4) and 17(5). For example, we understand some public authorities when selling land containing tips take steps to ensure the contract reflects this point. It is also considered that the 12-year period may act as an additional incentive for landowners to take responsibility for their land, and ensure it is well maintained. Twelve years is considered a reasonable amount of time for liability to last.

14. Please could you provide the breakdown of information on tip ownership that you referred to in Committee?

Response

The picture of ownership of disused coal tips is a complex one. Often a single tip can be owned by multiple parties made up of a mixture of public, private and commercial interests. Parts of a tip may also comprise of unregistered land. This makes information on tip ownership complicated. It should also be noted that ownership will change over time so that presentation of figures is a snapshot and therefore is subject to change.

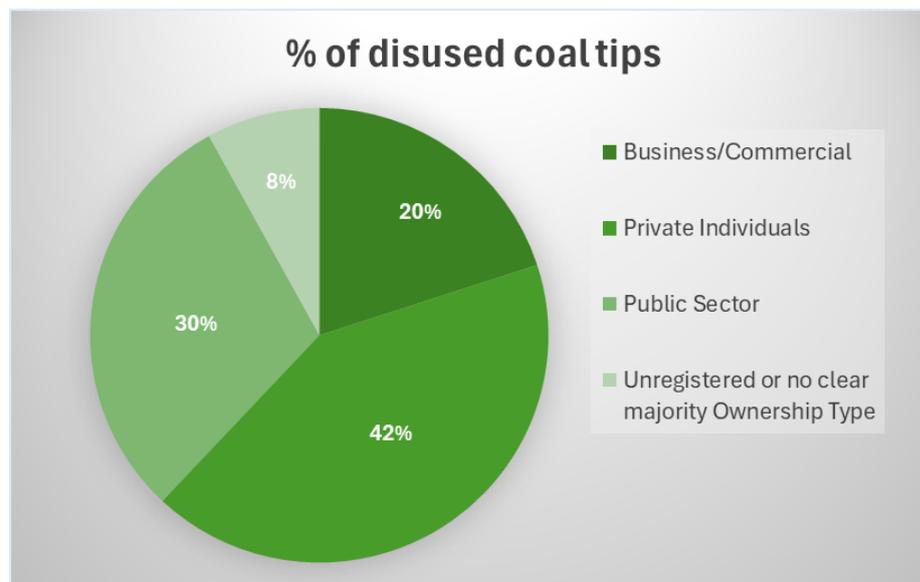
Ownership of disused coal tips by Ownership Type

Table 1 and figure 1 below provide a breakdown of disused coal tips in Wales on the basis of ownership type, which is based on majority ownership (that is where the sum of the areas assigned to one ownership type is greater than 50% of the tip's area). Note that each ownership type can represent a single owner (e.g. a business, an individual, or a public sector body) or multiple owners of that same type (e.g. more than one business, multiple individuals, or public bodies etc).

Table 1: disused coal tips by ownership

Ownership Type	% of disused coal tips
Business/Commercial	20
Private Individuals	42
Public Sector	30
Unregistered or no clear majority Ownership Type	8

Figure 1: disused coal tips by ownership



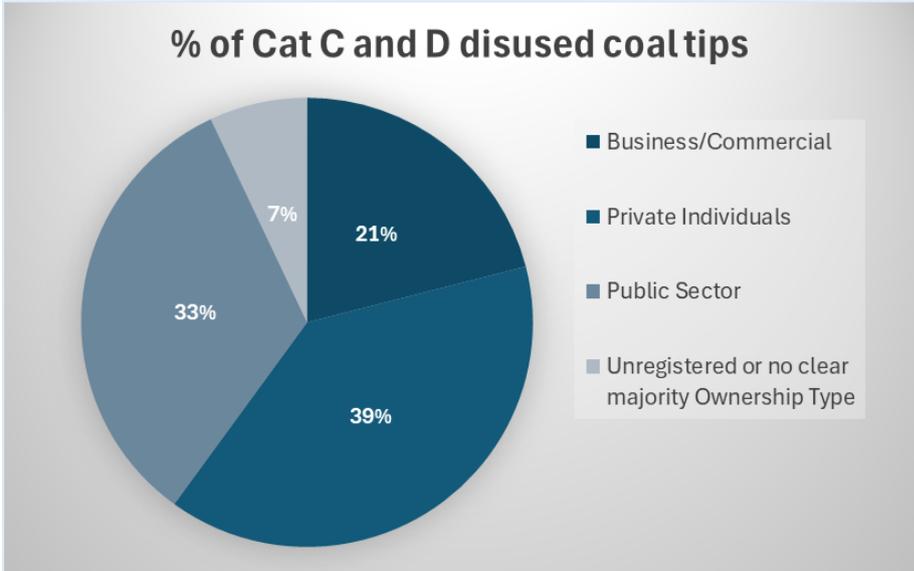
Ownership of Category C and D disused coal tips by Ownership Type

Table 2 and figure 2 below provide a breakdown of disused coal tips with a category rating of C or D on the basis of ownership type which is based on majority ownership (that is where the sum of the areas assigned to one ownership type is greater than 50% of the tips area). Note that each ownership type can represent a single owner (e.g. a business, an individual, or a public sector body) or multiple owners of that same type (e.g. more than one business, multiple individuals, or public bodies etc).

Table 2: disused coal tips by category and ownership type

Ownership Type	% of Cat C and D disused coal tips
Business/Commercial	21
Private Individuals	39
Public Sector	33
Unregistered or no clear majority Ownership Type	7

Figure 2: disused coal tips by category and ownership type



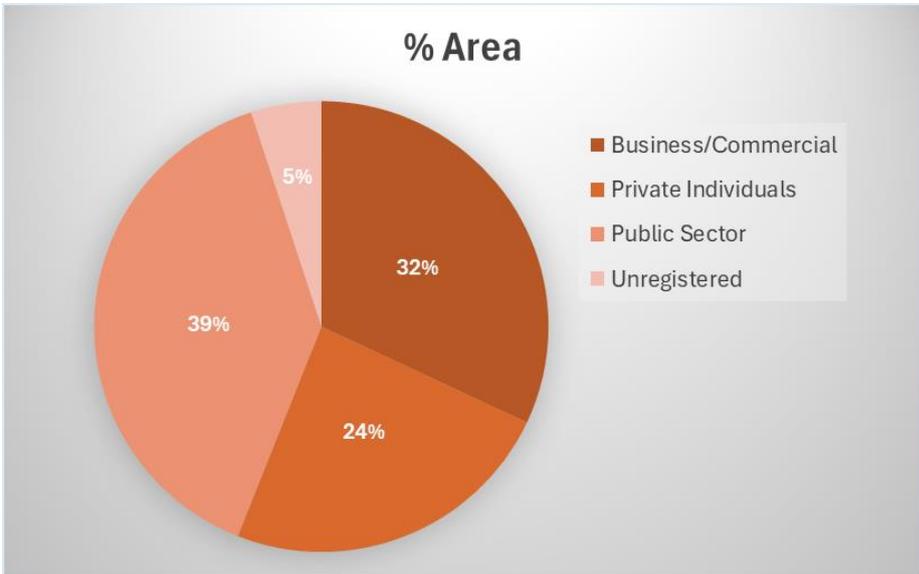
Total area of disused coal tips owned by Ownership Type

Table 3 and figure 3 below provide a breakdown of the sum of the area of all disused coal tips in Wales by assigned ownership type (as explained above).

Table 3: ownership of disused coal tips by km² area

Ownership Type	% Area	Area (km ²)
Business/Commercial	32	27.4
Private Individuals	24	20.3
Public Sector	39	33.7
Unregistered	5	4.5

Figure 3: ownership of disused coal tips by % area



Appeals against notices under section 33

15. Section 36 provides the owner of land who is given notice requiring the carrying out of operations a right to appeal against the notice. The appeal must be made within 21 days beginning with the day that the notice is given. What is the rationale for this minimum notice period?

Response

We believe that a period of 21 days to make an appeal is a reasonable timeframe. The Authority will only use its powers under section 33 to issue a notice requiring operations in circumstances where advice and support from the Authority has not resulted in an owner carrying out the necessary operations. Therefore, 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.

Also, it is important when considering the time frame for making an appeal to take account of the criteria for issuing a section 33 notice. The Authority will only issue such a notice where it considers that operations are necessary to prevent or deal with the threats to the stability of a disused tip, or to stabilise a disused tip or prevent a disused tip from becoming more unstable, so as to prevent or reduce threats to human welfare. 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.

Finally, section 15 of the Mines and Quarries (Tips) Act 1969, gives a 21-day period for making an appeal against a notice issued by a local authority under section 14 of that Act. Therefore, there is parity, in terms of time limits for making an appeal, with the current legislation.

16. The Bill does not include a timescale within which the “appointed person” (under section 37) must determine an appeal - why?

Response

Appeals under section 36 can be made on the grounds set out in section 36(3) or on hardship grounds under section 36(4), if the owner of land cannot meet the cost of the operations required by the notice.

The varied nature of the grounds of appeal and the likely differing complexity of the factual circumstances surrounding individual appeals – for example some land may have multiple owners – means that it is not considered appropriate to set a time limit within which the appointed person must determine every appeal. Some appeals will be determined on the basis of written representations, whilst others may involve the appointed person entering and inspecting land or the examination of expert witnesses. What is considered to be a reasonable timeframe for the determination of one appeal will therefore be different to what is considered reasonable in another appeal.

The Welsh Ministers must make regulations about the procedure to be followed by the appointed person in determining appeals. In addition, the Welsh Ministers intend to issue guidance on the subject of appeals which will underline the importance of timely determination of appeals.

Draft high level guidance on this issue will be made available to the Committee shortly – this will sit alongside the Bill and provide an illustration of the type of issues that we intend to cover in any guidance. This will be developed in more detail in consultation with key stakeholders and partners once the Bill has received Royal Assent.

17. According to the Explanatory Notes, in practice, appeals will be determined by Planning and Environment Decisions Wales (PEDW). To what extent are you satisfied that PEDW has sufficient capacity and resource to determine appeals in a timely manner so as to avoid delays in the carrying out of operations?

Response

It is expected, that in most cases, matters of contention or disagreement will be resolved through engagement and dialogue between the Authority and tip owners and interested persons. This expectation will be set out in guidance, which will include guidance about approaches and practices which can be used to avoid and resolve disagreements. As such, we anticipate the number of appeals to PEDW will be low.

The regulatory impact assessment estimates there will be 10 appeals under section 36 per year - based on the assumption that 25% of the estimated 40 notices requiring an owner of land to carry out operations will be the subject of an appeal. This represents approximately 1.5% of all appeal cases determined by PEDW each year, which is manageable within current working arrangements.

Section 41 applies where the Authority has cancelled a section 33 notice and the owner who was given a notice has incurred expenditure in complying with it. Subsection (2) gives the owner a right to appeal to Welsh Ministers to be reimbursed by the Authority for expenditure already incurred. Given the low number of notices anticipated, even fewer will be cancelled. Thus, the number of appeals made under section 41 are anticipated to be extremely low.

Whilst appeals under the Bill will be additional work for PEDW, PEDW is well placed to respond flexibly to workload demand, which is often necessary across its portfolio of appeals and other casework. PEDW's workload can vary significantly over time in response to market pressures as well as policy and legislative changes. Therefore, PEDW operates a flexible and responsive business model that can adapt to workload pressures and priorities as required.

Operations carried out by the Authority

18. Section 42(3) provides that where the Authority carries out operations necessary to achieve the objective in section 42(2), it may also carry out any consequential works of reinstatement that it considers are reasonably necessary. Why do you consider it appropriate to leave it to the discretion of the Authority to determine whether and what works should be carried out?

Response

It is not envisaged that consequential works of reinstatement will be required for all operations undertaken under section 42. As the expert body, the Authority will design and carry out operations under section 42, and is therefore best placed to determine whether any consequential works of reinstatement are reasonably necessary. As a public body, the Authority is under a duty to act in accordance with public law principles, and must act reasonably and rationally when reaching a decision as to whether or not any works of reinstatement are needed.

19. Section 44 provides that the Authority may not carry out operations on land under section 42 unless it has given the owner of the land at least 21 clear days' notice of its intention to do so. What is the rationale for this minimum notice period?

Response

We believe that a minimum of 21 days is a reasonable timeframe, noting that section 44(3) makes alternative provision in relation to operations that need to be carried out immediately. It gives the landowner sufficient time to, for example, remove plant and machinery or make alternative arrangements for livestock before the Authority, or contractors on behalf of the Authority, enter land to carry out the operations specified in the notice.

Section 17 of the Mines and Quarries (Tips) Act 1969 also requires a local authority to give at least 21 days' notice before entering land to carry out operations. Therefore, there is parity, in this regard, with the current law.

20. Who will be responsible for meeting the costs of operations required to ensure the safety of disused tips?

Response

The Bill does not change who is responsible for the safety of a disused tip. In normal circumstances the cost of operations will be met by the owner of the land on which the operations are carried out. Section 46 provides that where an owner of land has to bear expenses as a result of the carrying out of operations specified in a notice issued under section 33 or 44, the owner or the Authority can apply to the court for an order requiring one or more other persons to contribute towards those expenses.

If the Authority decides that it needs to undertake work on behalf of the owner (either because the owner cannot or will not), the Authority will undertake the work and pay for the work itself - it will then be able to recover the costs from the owner if the owner is able to cover the costs without suffering hardship.

21. Section 56 provides power for the Authority to require relevant public authorities to give information. The meaning of "relevant public authority" is set out in section 55. What consideration did you give to including the Health and Safety Executive within the meaning of "relevant public authority", given its role in overseeing active tips which may eventually become disused tips?

Response

Consideration was given to whether the Health and Safety Executive (HSE) should be included within the meaning of "relevant public authority" in section 55.

Given the reserved nature of the HSE, it was decided not to include the HSE in the list of reserved public authorities in the Bill.

Recovery of interest

22. The provisions of section 49 enable an owner to recover expenses from a contributory, but does not make provision for the payment of interest. Section 51(7) provides the Authority to recover certain expenses and entitles the Authority to recover interest "at a rate determined by the Authority". Why is it considered appropriate for the Authority to recover interest, and to determine the amount of interest due to it?

Response

It is anticipated that the Authority will have considered the financial situation of an owner before it decides to carry out work on behalf of that owner, and therefore before it seeks to recover expenses. Having done that analysis and having completed the work on behalf of an owner, it is important that the Authority has the ability to recover costs in a speedy manner, in line with Managing Public Money. Having the ability to charge interest is seen as a way of encouraging early settlement and is in the public interest.

Draft high level guidance to the Authority on this issue will be made available to the Committee shortly – this will sit alongside the Bill and provide an illustration of the type of issues that we intend to cover in any guidance. This will be developed in more detail in consultation with key stakeholders and partners once the Bill has received Royal Assent.

Matters relating to owners recovering expenses and any appeal to vary the demand will be considered by the courts rather than by persons appointed by Welsh Ministers. The courts will be bound by relevant legislation in respect of the application of interest.

Warrant to enter land

23. Section 64(7) provides that a warrant issued under section 64 continues in force until the purpose for which it is issued has been fulfilled. How will this provision as drafted protect against unreasonable delay in entering the land to fulfil the purpose for which it was issued?

Response

Unreasonable delay is inconsistent with the Authority's main objective and in any event, as a public body, the Authority must act in accordance with public law principles (i.e. it must act reasonably, fairly etc.). Therefore, it was not considered necessary to expressly include a provision to protect against unreasonable delay.

Power to modify application of Act to Authority land

24. Section 80 provides power to the Welsh Ministers to make regulations to modify the application of the Act in relation to land in which the Authority has an estate or interest.
- a) Why is this power needed?
 - b) Under what circumstances do you envisage the Authority acquiring an interest or estate in land in the future?

Response

The Bill establishes the Authority and gives the Authority various powers and duties relating to, for example, the assessment, registration and monitoring of disused tips. It also contains provisions that enable the Authority to deal with tip instability and threats to tip instability.

The regulation making power in section 80 allows the Welsh Ministers to modify the application of the Act so that the Act continues to operate as intended in the situation where the Authority is, for example, a landowner.

At present, there are no plans for the Authority to acquire an estate or interest in land. The regulation making power has been included as a safeguard should the Authority, at some point in the future, become a landowner, for example.

Any regulations made under section 80 will be subject to the affirmative procedure.

Use of Welsh Tribunals

25. What consideration did you give to using the Welsh Tribunals rather than the courts to carry out various functions under the Bill, for example to determine disputes and appeals, and to make or vary contribution orders. Why did you decide that the courts were your preferred option?

Response

The Bill provides for various criminal offences. It is considered appropriate that they are dealt with by the magistrates' court, and in relation to the offence in section 61(3) – the magistrates' court or the Crown Court.

Under the Bill, certain applications can be made to the Welsh Ministers who will appoint a person to determine those applications. It is anticipated that person will be Planning and Environment Decisions Wales (PEDW). PEDW will determine applications in respect of appeals against a notice requiring a landowner to carry out operations and in respect of reimbursement of an owner's expenses on cancellation of a notice requiring operations.

Disputes relating to compensation, applications for contribution orders, appeals by contributories against an owner's demand, appeals against the Authority's demand are all dealt with by the court. This will be the county court or the High Court, depending on the level of the claim.

Welsh Tribunals cover specific areas including the Welsh Language Tribunal, the Agricultural Land Tribunal for Wales and the Residential Property Tribunal Wales. None of the Welsh Tribunals have the necessary expertise to perform the functions imposed by the Bill. The courts (which currently determine disputes and deal with applications under the Mines and Quarries (Tips) Act 1969) and PEDW are considered better placed than any of the Welsh Tribunals to deal with the subject matter of any applications/disputes in connection with the Bill.

Funding

26. What financial assistance (if any) will be made available to disused tips owners to cover the costs associated with the new regime, in particular the cost of carrying out operations to comply with section 33 notices?

Response

Disused tip owners will be able to apply to the Coal Tip Safety Grant for support – it is envisaged that the grant will continue to provide financial assistance for owners to undertake remediation and maintenance works. This will include section 33 works, which we would expect to form one of the Authority's priorities.

27. The Regulatory Impact Assessment makes numerous references to the Coal Tip Safety Grant, in particular referencing the grant will mean there are no additional costs to the Mining Remediation Authority, local authorities or NRW as a result of the Bill. Can you clarify how much of the grant is covered by the additional funding from the UK Government, and how much is Welsh Government funding?
- a) The RIA states while it 'assumes that funding provided for the coal tip safety grant will continue, any reduction in grant will mean that the capital aspects of the bill will not be affordable'. Specifically, what would the impacts be if the grant was to reduce or end?

- b) The RIA outlines 'the assumption of £11.3m grant funding per year is based on the previous year's grant funding, however, grant applicants have made bids totalling £27m in 2024-25 alone, so the demand for funding may well be considerably higher than the £11.3m we have assumed in this RIA'. How will this funding gap be filled?

Response

At the time the RIA was published, no additional funding had been confirmed from the UK Government. Therefore, the additional funding is not included within the document.

The additional funding will have no impact on the affordability of the Bill, but will mean that work on tips in Wales will be expedited. The additional allocation of funds will be reflected in a revised RIA following Stage 2 of the scrutiny process.

Similarly, any reduction in funding would mean that the Authority would need to prioritise how it allocates funding, with priority given to tips with the highest risk.

Officials have written to applicants of the grant scheme to ascertain demand for funding for FY 2025-26 and this will provide an indication of whether a funding gap exists for future years. In FY 2024-25 - the Welsh Government allocated £18.4m to local authorities and NRW. Initial applications received totalled £29.4m. However, an appraisal of the applications concluded that it was unlikely that proposals totalling £11m will be delivered before the end of the 2024-25 financial year (which was the end of the multi-year budget timeframe). The proposals that were not deliverable within the timeframe of the grant will be considered for funding in future grant schemes.

If you have any further questions, please let me know.

Yours sincerely,



Huw Irranca-Davies AS/MS

Y Dirprwy Brif Weinidog ac Ysgrifennydd y Cabinet dros Newid Hinsawdd
a Materion Gwledig

Deputy First Minister and Cabinet Secretary for Climate Change and Rural Affairs