

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

Ein cyf/Our ref: PO/HIDCC/0046/25

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

6 February 2025

Dear Llŷr,

During the evidence session on 12 December 2024, I offered to share summary guidance to assist the Committee with its scrutiny of the Disused Mine and Quarry Tips (Wales) Bill. Attached are the following summaries for the Committee's consideration:

- Annex A: Monitoring;
- Annex B: Appeals against Demands for Costs;
- Annex C: Compensation Claims;
- Annex D: Cost Recovery;
- Annex E: Management Plans.

The documents provide a broad outline of the key areas which will be covered in guidance together with an indication of policy direction.

Management plans have an important role in the regime being established under the Bill. I have, therefore, included summary guidance about management plans at Annex E to assist the Committee with its scrutiny of the Bill.

At this stage, it is not possible to provide detailed, definitive draft guidance because the development of draft guidance will be informed by engagement and consultation with stakeholders, in particular Planning and Environment Decisions Wales (PEDW), the Coal Remediation Authority, Natural Resources Wales and The Disused Tips Authority for Wales (the Authority), to ensure the guidance works for the Authority, other bodies and the owners of land who will have responsibility for disused tips.

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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.

Well in advance of the Authority becoming operational, key staff will have been appointed, including the Chief Executive Officer, the Chief Operations Officer and the Chief Finance Officer who will take part, along with other key stakeholders, in the advisory groups established to inform the development of the suite of draft guidance which will support the implementation and effective operation of the disused tip safety regime.

The draft guidance will also need to reflect draft regulations which will include the procedure for appeals and procedures for claims for reimbursement of owner's expenses on cancellation of a notice (issued under section 33) requiring a landowner to undertake operations.

In addition, the draft regulations and draft guidance will be subject to public consultation and amendments made as a result of the consultation responses.

A full suite of guidance will be published prior to the Authority becoming operational in April 2027.

Yours sincerely,

A handwritten signature in black ink, consisting of several fluid, overlapping strokes that form a stylized representation of the name Huw Irranca-Davies.

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

Disused Mine and Quarry Tips (Wales) Bill – Indicative Guidance in respect of the Authority’s duty to monitor registered tips

Introduction

The Bill establishes a regime of proactive monitoring to safeguard communities from the risk of tip instability. This document provides an outline of the guidance that will be given to the Authority by the Welsh Ministers in respect of its duty to monitor registered tips.

The Bill requires the Authority to monitor the stability, and threats to the stability, of each disused tip in the register. To do this, the Authority may carry out any inspections or other monitoring activities that it considers appropriate. Monitoring activities could include inspections, instrumentation, data capture and reporting activities.

Following registration, the Authority must monitor disused tips in the register. What monitoring is carried out will depend on the specific disused tip but could include gathering evidence on and considering the condition and stability of the tip and associated assets and infrastructure. The conclusion of these activities will assist the Authority in determining the shape of any maintenance works or one-off operations that are required to prevent or deal with threats to the stability of a disused tip or stabilise a disused tip or prevent it from becoming more unstable.

This document sets out an outline of the areas we expect guidance in relation to monitoring to cover. Further technical guidance will be issued by the Authority to cover operational matters.

In exercising its functions, the Authority must have regard to guidance given to it by the Welsh Ministers.

Aim of the guidance

This section will note that the guidance will have been developed in partnership with relevant stakeholders, experts etc to ensure that it has been informed by relevant good/best practice and ongoing operational experiences/learning.

It will also explain the aims and purpose of the guidance on monitoring. It will include detail on, but not be limited to:

- how, in practice, the Authority will be expected to fulfil its duty to monitor disused tips in the register.

Frequency and timing of inspections

The Authority will conduct inspections and other monitoring activities as appropriate, in the performance of its duty to monitor registered tips and in pursuance of its main objective. The guidance will set out the minimum recommended frequency of inspection - this will vary depending on the tip’s category.

It is likely that the guidance will recommend that the current monitoring regime overseen by the Mining Remediation Authority should continue. It is possible that this may need to change depending on the impact of climate change and frequency of major weather events.

The guidance will include advice on the timelines of inspections, assessment and monitoring (for example, in relation to rural land, grazing and other farming activities should be considered) and when planning routine works, certain activities that are

seasonal, such as lambing should be considered.

Providing guidance on monitoring will enable flexibility to update and amend the guidance as needed and at pace if required. This will ensure a robust and future proofed regime that can adapt and change to take account of the impact of climate change, the development and availability of new technologies and give the Authority flexibility to adapt its approach to monitoring and inspection processes.

Category 1 and 2 registered disused tips

The guidance will set out the expectation that the Authority should carry out the first inspection of a category 1 or 2 disused tip within 6 months, beginning with the day on which the tip is added to the register. The Authority will be expected to carry out subsequent inspections at the intervals specified in the table below.

Table 1 - Intervals of inspections

Category of registered tip	Recommended frequency of inspection
Category 1	Twice annually
Category 2	Annually

Category 3 and 4

The guidance will set out that it will be considered good practice for the Authority to carry out inspections on category 3 and 4 disused tips at the recommended frequency shown in the table below:

Table 2 - Intervals of inspections

Category of registered tip	Recommended frequency of inspection
Category 3	3 to 5 years
Category 4	5 to 10 years

The guidance will also outline the expectation that the Authority should inspect high risk tips on an ad hoc basis when there has been a major event (such as a storm or prolonged period of heavy rainfall) in an area or when technology indicates that thresholds for intervention have been met.

Non-coal disused tips

The guidance will outline that the Authority intends to prioritise the assessment of disused coal tips, however if has reason to believe that a non-coal tip poses a threat to human welfare the Authority is able to assess that tip. It is estimated that the Authority will begin to assess disused non-coal tips six years after the Authority is established(2032-2033). Once registered, all tips (coal and non-coal) will be inspected according to their categorisation.

Reporting

The guidance will set out the expectation that when the Authority carries out an inspection it should:

- set out the conclusions of the inspection in a report (an “inspection report”)
- add the date of the most recent inspection to the register of disused tips

The guidance will set out the expectation that, as a minimum, an inspection report should include:

- **Administrative information:**
 1. unique identifier of the tip
 2. the tip's category
 3. location of the tip
 4. name of Inspector
 5. date of current and last inspection.
- **Technical Information**

Table 3 – Examples of the type of technical information

1. Geotechnical	Tension cracking, hummocking, subsidence, erosion
2. Drainage	Channels, culverts, headwalls, trash screens
3. Engineering Infrastructure	Retaining structures, retention systems
4. Instrumentation & Monitoring	Rain Gauge, flow meter, survey points
5. Contamination & Geo-environmental	Pollution, hazardous materials, invasive species

The guidance will set out the expectation that, in the production of an inspection report, the Authority should include any recommendations for activities or operations to improve or secure the stability of a disused tip.

Competency

An inspection should only be conducted by a “competent person”. A competent person means an individual who has sufficient training, knowledge and experience to carry out the activity. The guidance will recommend that the Authority prescribes the necessary skills and qualifications needed in this regard and the expectation that the Authority will take the lead in skills development and build the necessary resource capacity and capability in Wales.

Future Review and Consultations

Welsh Ministers will periodically review the guidance to ensure it remains fit for purpose.

This section could also include information about how the guidance will be reviewed and updated. This will be done following discussion and engagement with relevant stakeholders.

FAQs

This section would set out an expectation that the Authority will publish an FAQ document.

Welsh Language

The Authority will be added to Schedule 6 of the Welsh Language (Wales) Measure 2011. The intention is for it to be added to Schedule 6 to the Welsh Language Standards (No. 2) Regulations 2016, and for the Authority to be subject to Welsh language standards. The Authority will be expected to promote and encourages the use of Welsh throughout all of its work in Wales. It will welcome correspondence in Welsh, bi-lingual or English format and will correspond in the stated language preference.

Disused Mine and Quarry Tips (Wales) Bill – Indicative Guidance in respect of appeals to be determined by PEDW

The information contained within this guidance relates to procedures in Wales only.

Guidance

This document sets out an outline of guidance that will be issued by the Welsh Ministers in respect of appeals made under the Disused Mine and Quarry Tips (Wales) Bill (the “Bill”).

The guidance will set out when appeals can be made, and which appeals will be determined by a person appointed by the Welsh Ministers and which will be determined by the courts.

The guidance will focus on appeals to be determined by a person appointed by the Welsh Ministers. The intention is that the Welsh Ministers will appoint Planning and Environment Decisions Wales (PEDW) to be that appointed person to determine such appeals. PEDW already carries out a similar role on behalf of Welsh Ministers in relation to (but not limited to) planning and environmental appeals.

The guidance will be aimed at PEDW, for the purposes of its role as “appointed person” under the Bill. PEDW must have regard to the guidance given by the Welsh Ministers when determining relevant appeals under the Bill.

The guidance will set out that PEDW will determine appeals against a section 33 notice and applications for reimbursement of an owner’s expenses when a section 33 notice has been cancelled.

The Welsh Ministers will make regulations about the procedure to be followed by PEDW when determining such appeals/applications. This guidance will sit alongside those regulations and provide clarification on the practical application of those provisions.

Aim of the Guidance

This section will note that the guidance will be developed in partnership with relevant stakeholders, experts etc to ensure that it has been informed by relevant good/best practice and ongoing operational experiences/learning. The aim of the guidance is to provide clarification on how the appeals to be determined by PEDW will operate in practice.

By way of example, the text below provides an indication of the type of information that the guidance will include:

- clarification that the expectation is that, in the main, appeals will be determined by way of written representations. In most cases, this is likely to be - the quickest, simplest and most cost-effective way of deciding an appeal
- the factors that PEDW might consider when deciding whether an oral hearing is warranted
- clarification that the expectation is that there may be circumstances where PEDW may want to visit the relevant site as part of the appeal determination
- information about when it might be appropriate for parties or witnesses to attend a hearing, and about the examination of those parties or witnesses

- reflecting what will be included in regulations (referred to above), the guidance will contain additional information explaining relevant powers to enter land and the creation of offences for failure to comply with requirements imposed under the regulations.

Appeals

Once the Authority is established one of the key responsibilities will be to build relationships with stakeholders and, in particular, with owners of disused tips. The guidance will explain that it is expected that a focus on building relationships will help to reduce the need for notices and subsequent appeals, as the Authority will have established routes for dialogue and engagement with stakeholders.

The guidance will explain that PEDW will determine appeals against notices issued by the Authority requiring an owner to carry out operations on their land. These appeals may be from the landowner(s) or anyone who receives a copy of the notice as a person with an interest in the notice. The guidance will clarify the grounds on which an appeal against such a notice can be made to Welsh Ministers.

One such ground relates to hardship i.e. an owner of land who is given a notice under section 33 may appeal on the ground that the owner is unable to meet the costs of the operations required by the notice. In the guidance, we intend to provide details of the circumstances when this ground may be relied upon. Failure to comply with a section 33 notice, without reasonable excuse, is an offence. The guidance will set out that part of the motivation for allowing an appeal on the basis of financial hardship is to avoid a person committing a criminal offence because they could not afford to comply with the notice. The guidance will also explain and provide example scenarios illustrating how these provisions will work in practice where there is more than one owner of a disused tip.

The guidance will explain that the other application to be determined by PEDW under the Bill is where an owner applies to the Welsh Ministers for reimbursement of expenses from the Authority, if those expenses were incurred in complying with a notice that the Authority has cancelled.

The guidance will note that when making such determinations, PEDW can consider evidence, for example, documents, quotes, notes of research, correspondence between the owner and the Authority which will help PEDW to form a view as to whether a section 33 notice should be varied or cancelled or whether the expenses claimed are reasonable.

The guidance will provide examples of the types of evidence that might be considered, such as (but not limited to):

- evidence from experts
- photographic evidence of damage or how enjoyment of land has been interfered.

Timescales

The guidance will reflect what is contained in the regulations in terms of the timescale for making an appeal to Welsh Ministers.

The guidance will set out that there will be an expectation that PEDW will take all practical and reasonable steps to ensure that applications are to be determined as expeditiously as possible and in accordance with the regulations made by the Welsh

Ministers. The guidance will encourage the Authority to provide information on its website for landowners regarding the appeals process.

The guidance will explain that the varied nature of the grounds of appeal and the likely differing complexity of the factual circumstances surrounding each appeal – for example some land may have multiple owners – means that it is not considered appropriate to set a time limit within which PEDW must determine every appeal. Some appeals will be determined on the basis of written representations, whilst others may involve PEDW 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 guidance will also note that, in determining an appeal some of the tasks that PEDW will need to undertake could include, but will not be limited to:

- preparation for any site visit
- carrying out any site visit- and
- writing the decision.

The guidance will set out the expectation that PEDW will deal with the administration of relevant appeals from receipt and validation of the application to the issue of the appeal decision. Appeals will be administered in line with the procedures set out in regulations.

Should a hearing be considered appropriate, PEDW will be responsible for organising it.

Making an appeal to the courts

The guidance will refer to the appeals, applications and disputes arising under the Bill that will be determined by the court. For example, a person who is given a demand by the Authority for expenses incurred by the Authority in carrying out operations, may apply to the court for an order varying or cancelling that demand. Welsh Ministers do not propose to issue guidance to the courts in respect of applications/disputes to be determined by the court under the Bill.

Responsibilities

The guidance will clarify the responsibilities of the Welsh Ministers in respect of appeals to be determined by PEDW, and the responsibilities of PEDW when determining such an appeal on behalf of the Welsh Ministers. For example, the guidance will explain that, under the Bill, Welsh Ministers must notify the Authority and each person who was given a copy of the relevant section 33 notice, when an application under section 36 is received.

The guidance will also make clear that all parties are expected to behave reasonably during the appeals process.

Costs

The guidance will clarify that there will be no charge to make an application to the Welsh Ministers under the Bill; however, all parties to an appeal are responsible for meeting their own appeal expenses.

Future Review and Consultations

Welsh Ministers will periodically review the guidance to ensure it remains fit for purpose.

This section could also include information about how the guidance will be reviewed and updated. This will be done following discussion and engagement with relevant stakeholders

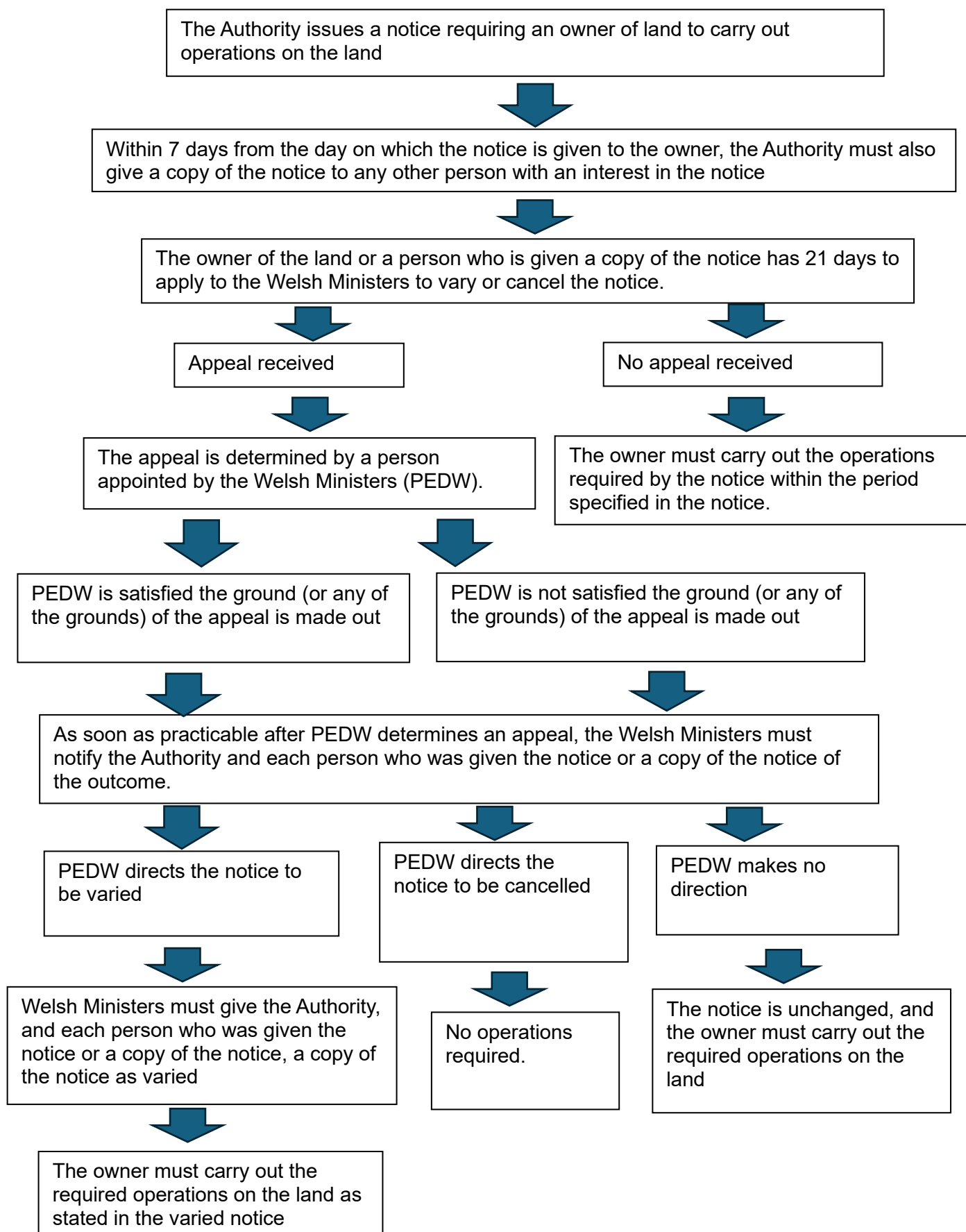
FAQs

This section would set out an expectation that the Authority will publish an FAQ document about how someone might make an appeal.

Welsh Language

The Authority will be added to Schedule 6 of the Welsh Language (Wales) Measure 2011. The intention is for it to be added to Schedule 6 to the Welsh Language Standards (No. 2) Regulations 2016, and for the Authority to be subject to Welsh language standards. The Authority will be expected to promote and encourages the use of Welsh throughout all of its work in Wales. It will welcome correspondence in Welsh, bi-lingual or English format and will correspond in the stated language preference.

Annex 1: Appeals by owners and interested parties against a notice to carry out operations



Disused Mine and Quarry Tips (Wales) Bill - Indicative Guidance in respect of Compensation

Introduction

This document provides an outline of guidance that will be given to the Authority by the Welsh Ministers in respect of compensation provisions in the Bill (sections 31 and 48). The guidance will set out in a straightforward way an explanation of the provisions in the Bill on compensation and provide details about how the provisions work, and expectations in respect of compensation.

In exercising its functions, the Authority must have regard to guidance given to it by the Welsh Ministers.

Aim of the guidance

This section will note that the guidance has been developed in collaboration with key stakeholders, such as the Mining Remediation Authority, Natural Resources Wales and other public bodies.

It will also explain the aims and purpose of the guidance on compensation, including detail on (but will not be limited to) the following:

- when and who may be entitled to claim compensation under the Bill;
- an explanation of how compensation fits in the wider context of the management regime;
- an overview of potential scenarios illustrating how the entitlement to compensation will work;
- details on the procedure to follow when there is an entitlement to compensation; and
- information about dispute resolution.

The right to compensation

The Bill includes provisions for compensation and allows for claims if operations or investigations have damaged any land, property, or the enjoyment of land has been disturbed. There is also an entitlement to compensation if property is removed or disposed of because of operations carried out.

Eligible individuals will have the right to seek compensation from the responsible parties:

- the landowner carrying out the operations to in compliance with a notice (section 33),
- the Authority carrying out an inspection or other monitoring activity, a preliminary or a full assessment (section 31), and
- the Authority carrying out operations or any consequential works of reinstatement (section 42) and/or investigation (section 53) to determine whether operations must be carried out by the owner or by the Authority.

Landowners and others can seek compensation from the Authority, except when damage is due to their own or prior owners' operations.

The right to compensation in the wider context of the management regime.

The guidance will set out different factors which may be considered in respect of a claim for compensation, for instance:

- the type of land (e.g. urban, rural, residential, agricultural)
- the nature of damage to property and/or estate (e.g. structural repair, subsidence, waterlogging)

- the nature of disturbance to land (e.g. noise, dust and vibrations from heavy machinery)
- proportion of relevant land owned.

Given the complexity of ownership, the guidance will provide advice to the Authority in respect of the Welsh Ministers' expectations as to how to determine compensation when multiple owners are involved. The guidance will set out the factors that the Welsh Ministers expect the Authority to consider so that compensation is equitable.

Potential scenarios illustrating how the right to compensation will work.

This section of the guidance will set out the context in respect of the right to compensation in the Bill:

a) Compensation for damage, loss or disturbance following inspection, monitoring activity or assessment

The guidance will make clear that there is an entitlement to compensation from the Authority if the Authority carried out:

- an inspection, or other monitoring activity, a preliminary or a full assessment (section 31)
- or any consequential works of reinstatement (section 42)
- and/or investigation (section 53) to determine whether operations must be carried out by the owner or by the Authority.

b) Compensation for damage, loss or disturbance following operations carried out in compliance with a notice.

The guidance will also make clear that there is an entitlement to compensation from the landowner if the landowner carried out operations in compliance with a notice (section 33).

The guidance will clarify those persons with an entitlement to claim compensation as outlined below:

- If the landowner carried out the operation (section 33)
- If the Authority carried out assessment, inspections, monitoring activity (section 48) any consequential works of reinstatement (section 42) and/or investigation (section 53) to determine whether operations must be carried out by the owner or by the Authority.

- Damage to land** – Any person with an estate or interest in the land
- Damage to other property** – The owner of the property
- Removal or disposal of other property** – The owner of the property
- Disturbance to a person's enjoyment of land** – The person whose enjoyment is disturbed

An overview of the claims for compensation is attached **at Annex 1**.

Examples of possible damage, loss or disturbance

a) Damage to land

Access routes across agricultural land used to undertake investigatory works, sustain damage due to the higher ground pressures experienced during the mobilisation and demobilisation of specialist plant to support works.

b) Damage to other property

A gate securing access to land adjacent to a disused tip is damaged in the mobilisation of equipment to undertake operations at a disused tip.

c) Removal or disposal of other property

A landowner had a shed that is used to shelter sheep during lambing season, however the shed had to be removed (and during the course of removal, was damaged to such an extent so that it could not be returned) to allow operations to be carried out on the land.

d) Disturbance to a person's enjoyment of land

A campsite needs to be temporarily closed whilst operations are being carried out and the landowner 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.

Indicative process to follow when seeking compensation.

This section of the guidance will explain the procedure to follow when seeking compensation from the Authority or from an owner of land.

The guidance will explain that the Authority intends to put in place a digitally enabled service to receive compensation claims, with a pre-defined approval process (based on the type of compensation claim) behind it to progress the claim as quickly as possible. When submitting a claim for compensation to the Authority, claimants would be required to complete a form within a set deadline and to enclose supporting documentation.

By way of explanation, the information required to complete the claim form would cover personal information (e.g. name, postal and digital address) and administrative data (e.g. Tip ID and/or notice number, type of claim and financial claim value) and claimants would be required to provide relevant evidence, for instance copies of all paperwork that will help to assess the claim, including photographic evidence of damages.

The claim form will be available in an accessible and bilingual digital and paper format and the claim could be submitted online and by post to the Authority.

The Authority will issue a compensation policy detailing the process and the timeframes for responding. The policy will be published on the Authority's website

Dispute Resolution

The guidance will explain that any dispute arising from a claim for compensation sought from the Authority or an owner of land for damage of land and/or property and for disturbance to the enjoyment of land will be determined by the court.

Future Review and Consultations

Welsh Ministers will periodically review the guidance to ensure it remains fit for purpose.

This section could also include information about how guidance will be reviewed and updated. This will be done in discussion and engagement with relevant stakeholders.

Frequency asked questions (FAQs)

This section would set out an expectation that the Authority will publish an FAQ document on compensation.

Welsh Language

The Authority will be added to Schedule 6 of the Welsh Language (Wales) Measure 2011. The intention is for it to be added to Schedule 6 to the Welsh Language Standards (No. 2) Regulations 2016, and for the Authority to be subject to Welsh language standards. The Authority will be expected to promote and encourages the use of Welsh throughout all of

its work in Wales. It will welcome correspondence in Welsh, bi-lingual or English format and will correspond in the stated language preference.

Annex 1

Table 1: Claims for compensation

Section	Activity which can give rise to a claim	Compensation which can be claimed	Claim can be made by	Claim made to	Body who determines disputes
Section 31	Compensation for damage or disturbance as a result of inspections, monitoring activity or assessments undertaken by the Authority	damage to land	Any person with an estate or interest in the land	The Authority	the Courts
Section 31	Compensation for damage or disturbance as a result of inspection, monitoring activity, or assessments undertaken by the Authority	damage to other property	The owner of the property	The Authority	the Courts
Section 31	Compensation for disturbance or disturbance as a result of inspection, monitoring activity or assessments undertaken by the Authority	disturbance to person's enjoyment of land	The person whose enjoyment of the land is disturbed	The Authority	the Courts
Section 48(1)(a)	Compensation for damage as a result of operations carried out by an owner of land to comply with the requirements of a notice issued by the Authority (under section 33) or any consequential works of reinstatement	damage to land	Any person with an estate or interest in the land	The owner of the land	the Courts
Section 48(1)(a)	Compensation for damage as a result of operations carried out by an owner of land to comply with the requirements of a notice	other property, which is damaged, removed or disposed of	The owner of the property	The owner of the land	the Courts

	issued by the Authority (under section 33) or any consequential works of reinstatement				
Section 48(1)(a)	Compensation for disturbance as a result of operations carried out by an owner of land to comply with the requirements of a notice issued by the Authority (under section 33) or any consequential works of reinstatement	disturbance to person's enjoyment of land	The person whose enjoyment of the land is disturbed	The owner of the land	the Courts
Section 48(1)(b)	Compensation for damage to land as a result of operations, or any consequential works of reinstatement, carried out by the Authority (under section 42)	damage to land	Any person with an estate or interest in the land	The Authority	the Courts
Section 48(1)(b)	Compensation for damage to property as a result of operations, or any consequential works of reinstatement, carried out by the Authority (under section 42)	other property, which is damaged, removed or disposed of	The owner of the property	The Authority	the Courts
Section 48(1)(b)	Compensation for disturbance as a result of operations, or any consequential works of reinstatement, carried out by the Authority (under section 42)	disturbance to person's enjoyment of land	The person whose enjoyment of the land is disturbed	The Authority	the Courts
Section 48(1)(c)	Compensation for damage to land as a result of investigations carried out by the Authority (under section 53) to determine whether operations are required.	damage to land	Any person with an estate or interest in the land	The Authority	the Courts
Section 48(1)(c)	Compensation for damage to other property as a result of investigations carried out by the	other property is damaged,	The owner of the property	The Authority	the Courts

	Authority (under section 53) to determine whether operations are required				
Section 48(1)(c)	Compensation for disturbance as a result of investigations carried out by the Authority (under section 53) to determine whether operations need are required.	disturbance to person's enjoyment of land	The person whose enjoyment of the land is disturbed	The Authority	the Courts

Disused Mine and Quarry Tips (Wales) Bill Indicative Guidance - Powers of the Authority to Recover Costs

Introduction

This section of the guidance will provide a description of the powers of the Authority to recover costs and the approach and procedures which must be followed when these powers are exercised by the Authority.

In exercising its functions, the Authority must have regard to guidance given to it by the Welsh Ministers.

The guidance will set out the sections of the Bill which relate to cost recovery, explain their meaning and provide examples, where appropriate, of how costs recovery will work in practice.

Relevant provisions

Necessary operations

Under section 33 of the Bill, the Authority may issue a notice requiring an owner of land to carry out operations on the land if the Authority considers it necessary to achieve the objective of:

- preventing, or dealing with, threats to the stability of a disused tip or
- stabilising a disused tip or preventing a disused tip from becoming more unstable

so as to avoid or reduce threats to human welfare.

In addition, under section 42 of the Bill the Authority may carry out operations on any land it considers necessary to do so to achieve the objective set out above (subject to relevant notice provisions in section 44). This power is intended to be used in circumstances such as those where the Authority believes that owners are unable or unwilling to undertake the work themselves or following a successful appeal against a section 33 notice.

Where the Authority carries out operations, it may also carry out any consequential works of reinstatement that it considers are reasonably necessary.

Recovering Costs

Under section 51(1) of the Bill, where the Authority has carried out operations, it may issue a demand to the landowner (the person who was the owner when the Authority started to carry out the operations) to recover reasonable costs associated with:

- investigations which resulted in the Authority carrying out operations on the land
- operations and any works of reinstatement undertaken by the Authority
- any compensation that is recoverable from the Authority under section 48.

Under section 51(2), where the Authority has carried out investigations that resulted in a notice requiring the landowner to carry out operations, the Authority is entitled to recover,

from the landowner (the person given the section 33 notice), reasonable costs associated with:

- the carrying out of those investigations
- any compensation that is recoverable from the Authority under section 48.

Where a contribution order has been made, the Authority may recover costs from a contributory.

Right to appeal against the recovery of costs

Under section 52 landowners and contributories may apply to the court to vary or cancel a demand for the recovery of costs issued by the Authority.

Guidance will set out when owners may make an appeal against the recovery of costs.

Charging fees

The guidance will explain the provisions of the Bill which give the Authority the power to charge a fee.

Under section 3, the Authority may charge a fee for the provision of information, advice or assistance.

In addition, under section 68 the Authority may charge a fee for administrative, professional or technical services to any devolved Welsh authority.

Cost recovery

Public law principles

As a public body, the Authority will be subject to the principles of public law, meaning it will need to be reasonable and proportionate in its activities to recover costs and charging for advice and services and the guidance will iterate this.

Avoiding the need for the Authority to undertake works under section 42

The Bill is preventative in nature – it establishes a new regime for managing tips to ensure disused tips and are properly maintained to address tip instability. The guidance will provide advice on establishing an effective management regime which, through earlier intervention to prevent tip instability, will reduce the need for the Authority to undertake operations under section 42, particularly those operations which need to be carried out immediately.

The guidance will also provide advice on providing information, advice and assistance to landowners with little, or no, knowledge about managing disused tip instability to reduce the need for the Authority to undertake operations under section 42.

Providing information, advice and assistance will enable landowners to become familiar with, understand and engage in the inspection and monitoring regime and will support the ability and willingness of private landowners to maintain disused tips and, where required, to undertake operations required under a section 33 notice.

Guidance will set out the expectation that the Authority should provide information, advice and assistance to landowners to support them to undertake general maintenance to ensure disused tips remain stable and to understand:

- how any operations recommended or required by the Authority will address tip instability or threats to tip instability;
- how to undertake certain operations to maintain tips or to undertake operations recommended or required by the Authority;
- the potential costs involved in maintaining a tip to ensure stability or to undertake certain operations recommended or required by the Authority
- how the costs to the landowner could be offset through contributions from others
- how applications to the Coal Tip Safety Grant can be made.

Charging fees for information, advice and assistance

The Authority has discretionary powers to charge fees for the information, advice and assistance it provides.

The guidance will align with HM Treasury guidance Managing Public Money¹ and will set out the expectation that the Authority will develop a full cost recovery model to the information, advice and assistance it provides to landowners, where appropriate. The guidance will provide advice, and examples, about the circumstances which should be considered when deciding what forms of information, advice and assistance will incur a fee, factors that should be taken into account when setting fee levels and the circumstances in which it may be appropriate to waive certain fees, in full or in part.

The guidance will clarify that the Authority must not charge for a service where the Welsh Government has provided the Authority funding for the provision of that service, this includes, for example:

- general information provided to owners, interested parties and the public
- advice to landowners about routine maintenance and operations required to be undertaken on a particular tip
- tip inspections
advice and assistance to develop a management plan.

Informing landowners about the cost of carrying out investigations and operations

The guidance will clarify that, other than where operations need to be undertaken immediately, the Authority must provide the owner of the land and interested parties with 21 clear days' notice of its intention to carry out operations. The notice must specify:

- the disused tip in connection with which the notice is given,
- the nature and extent of the proposed operations and of any proposed consequential works of reinstatement, and
- the threat to human welfare that the operations are intended to avoid or reduce.

In addition, the guidance will set out the expectation that the Authority will generally provide additional information to all landowners well in advance of operations being undertaken, so they are fully informed about:

- the reason why any investigations are/were necessary to inform the operations which are necessary and the costs of those investigations;
- why the operations are required, the estimated costs and whether the owner can seek to reduce the costs incurred to them through, for example, seeking a contribution order or securing funding via the Coal Tip Safety Grant Scheme towards the costs;
- when the costs are likely to become payable;
- details about arrangements which could be put in place should the landowner not be in a position to pay the costs when due; and
- information about how to appeal against the costs.

In exceptional circumstances, it may not be possible for the Authority to provide the additional information to all landowners in advance of investigations and operations being undertaken under section 42. This could include where the Authority has not had the opportunity to engage with the owner because operations needed to be undertaken by the Authority immediately (section 44(3)(a)) or in cases where the owners of the land could not be traced.

In such cases, the guidance will set out an expectation that the Authority should provide the landowner with the additional information as soon as reasonably practicable.

Invoicing the landowner for investigations and operations undertaken

The guidance will clarify that where the Authority is seeking to recover costs from a landowner for investigations or operations, the Authority must send a demand to the owner setting out:

- the sum claimed by the Authority from the person;
- if the demand is given to a contributory, the total amount in respect of which the contribution is claimed;
- if the demand is given to the owner of the land, the sums (if any) that the Authority is entitled to recover from any contributory or contributories; and
- the separate amounts which comprise the total amount recoverable by the Authority, broken down by reference to the relevant investigations, operations and compensation (section 51(5)).

As well as the information which must be included in a demand, the guidance will set out the expectations that the following additional information should be included with the demand:

- what the landowner can do if they are unable to pay the costs
- information about the right to appeal against the costs, including the timeframe in which an appeal must be made and contact information for who an appeal can be made to
- information about how the Authority might be able to support dispute resolution and contact information for other organisations which can support owners in making appeals about costs.

The guidance will set out the recommended timeframe within which demands should be sent following the completion of investigations and operations and set out that the Bill allows six weeks for landowners and contributors to lodge an appeal against the demand.

Proportionate costs for investigations and operations

The guidance will set out expectations that the costs being recovered must be reasonable and proportionate.

To support the Authority to demonstrate it is complying with public law, the guidance will include advice about ways that the Authority can demonstrate to the owner that the costs it is seeking to recover are proportionate and reasonable. This will include providing information about:

- ways in which the Authority can demonstrate the specific investigations and/or operations were necessary to investigate and/or address tip instability and/or a threat to tip instability
- how the operations were proportionate – for example, where the approach taken avoids the need to undertake unnecessary work or larger scale work
- due diligence undertaken when commissioning and appointing contractors involved in the work, ensuring the contractors were competent to undertake the work and that the procurement process was competitive.

Approach to recovering costs for operations under section 42 where agreement can not be reached

In most instances, it is expected that the approach taken by the Authority, including engagement with the landowner and the use of management plans, will reduce instances of disagreement between the landowner and the Authority regarding the costs being recovered.

It is recognised, however, that there will be situations where the landowner does not agree with the cost and, on that basis, is unwilling to reimburse the Authority for the operations undertaken under section 42.

The guidance will provide advice on approaches the Authority could use to avoid court action.

The guidance will set out advice to the Authority about resolving disagreements. This will include providing information and examples of actions the Authority can take to engage and reach agreement with landowners in relation to costs. The guidance will provide information about using independent services such as the use of dispute resolution or mediation services, that might be able to assist with this.

Approach to recovering costs where the landowner is unable to pay

As set out in the regulatory impact assessment, it has been assumed (based on the experience of the reservoir policy) that 75% of costs incurred by the Authority in undertaking operations which are required immediately, will not be recoverable.

The guidance will, however, set out the expectation that the Authority will recover costs in situations where pursuing the costs would be cost-effective and fair. The guidance will also provide examples of situations where it would not be cost-effective or reasonable for the Authority to pursue payment. This would include, for example, where a landowner is unable to work due to age or long-term illness and does not have significant savings or liquid investments.

In addition, the guidance will set out that, where appropriate, the Authority may suggest a repayment plan and provide examples of the financial circumstances which should be considered when deciding whether it would be appropriate to implement a repayment plan.

The guidance will also include advice on charging interest on outstanding sums, including matters the Authority should consider when determining the rate of interest and whether it would be appropriate to charge interest in cases where a repayment plan has been agreed or where an appeal is being pursued.

Recovering costs where the landowner is unwilling to pay

In rare occasions, where a landowner can pay the costs demanded by the Authority but is unwilling to do so, despite attempts made by the Authority to resolve any disagreements, the guidance will set out the options available to both parties.

As set out above, landowners have a right to appeal against the Authority's demand for payment against costs demanded and the guidance will set out the expectation that the Authority will include information about these rights when invoicing the landowner.

Where reasonable and proportionate, the Authority may pursue court action to recover costs, such as applying for a county court judgment.

The guidance will provide advice about the circumstances where it would be appropriate for the Authority to consider court action.

Recovering costs from multiple landowners

The Authority can carry out operations on any land if it considers necessary to do so. Any land includes both the land on which the disused tip is situated and land in the vicinity of a disused tip which has, or could have, an impact on the stability of that tip.

Landownership is complex. The land on which tips are located are in some cases solely owned by an individual, a local authority, a company or a charity and in others are owned by multiple individuals and/or bodies. It is likely that the ownership of land in the vicinity of a disused tip could be equally complex.

Given the complexity of land ownership, the guidance will set out that it is unlikely that one approach will be appropriate for recovering costs. The guidance will, therefore, provide advice on strategies which can be adopted to recover costs where there are multiple owners or a number of contributories. The guidance will provide advice around factors which should be considered to ensure cost recovery is equitable.

Future Review and Consultations

Welsh Ministers will periodically review the guidance to ensure it remains fit for purpose. This section could also include information about how the guidance will be reviewed and updated. This will be done following discussion and engagement with relevant stakeholders

FAQs

This section would set out an expectation that the Authority will publish an FAQ document.

Welsh Language

The Authority will be added to Schedule 6 of the Welsh Language (Wales) Measure 2011. The intention is for to be added to Schedule 6 to the Welsh Language Standards (No. 2) Regulations 2016, and for the Authority to be subject to Welsh language standards. The Authority will be expected to promote and encourage the use of Welsh throughout all its work in Wales. It will welcome correspondence in Welsh, bi-lingual or English format and will correspond in the stated language preference.

Disused Mine and Quarry Tips (Wales) Bill – Indicative Guidance in respect of Management Plans

Note: The information contained within this guidance relates to procedures in Wales only.

Introduction

Whilst the Bill does not require the production of management plans, these will be important to the application of the regime. The purpose of a management plan will be to detail tip specific information, and 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. Management plans will be informed by the tip assessments and categorisation undertaken by the Authority.

This document provides an outline of guidance for the Authority on management plans.

In exercising its functions, the Authority must have regard to guidance given to it by the Welsh Ministers.

Aims of the Guidance

This section will note that the guidance will be developed in partnership with relevant stakeholders, experts etc to ensure that it has been informed by relevant good/best practice and ongoing operational experiences/learning.

It will also explain the aims and purpose of the guidance on management plans. It will include detail on, but will not be limited to the following:

- how, in practice, the Authority will be expected to implement the guidance on management plans
- how management plans fit in with the wider regime, such as monitoring and inspection, appeals etc.
- expectations in respect of the minimum content of management plans and inspections/appraisals
- the roles and responsibilities of the Authority and its interaction with other public bodies.

Setting out advice on management plans in guidance will enable flexibility to update and amend the guidance as needed and at pace if required. This will ensure a robust and future proofed regime that can adapt and change to take account of the impact of climate change, the development and availability of new technologies and give the Authority flexibility to adapt its approach to monitoring and inspection processes.

The guidance will include an expectation that the Authority will provide information for private tip owners so that they know what to expect in respect of management plans. How this will be made available will be at the discretion of the Authority.

What will the guidance include

The Authority will have discretion as to how management plans will be produced. The guidance will make it clear that the expectation is that all Category 1 and 2 disused tips have a plan in place, as these are the highest risk category of tips. It will be for the Authority to consider and have the discretion to decide whether a management plan is appropriate for individual Category 3 and 4 disused tips. This will be done on a case-by-case basis.

The guidance will outline the expectation that management plans should contain the complete picture of how a disused tip should be managed, including, where appropriate, references to best practice. A management plan should include details regarding the minimum frequencies of monitoring activities and circumstances in which additional inspections should be carried out. Our thinking is that management plans should include details such as (but not limited to):

- a record of tip specific information
- how the Authority plans to carry out monitoring activity
- the circumstances in which the Authority may carry out additional inspections
- a description of any one-off operations the Authority considers would remove or reduce threats to the stability of the tip
- a timetable for carrying out the operations, and
- the arrangements for an effective response to any emergencies arising in relation to the tip.

The management plan for a particular tip will be informed by that tip's assessment and categorisation, which will have been undertaken by the Authority.

The Authority will provide routine maintenance advice to disused tip owners via management plans and inspection reports, and which, if necessary, will include recommended work to ensure the stability of a tip, or to ensure that the tip does not pose a threat to human welfare.

Emergency Preparedness

The guidance will also cover issues such as emergency preparedness and incident response. We recognise that each disused tip location is unique, therefore we would expect each management plan to detail the specific potential hazards, receptors at risk, emergency scenarios and response strategies relevant to each disused tip.

The guidance will set out the expectation that management plans should include details regarding emergency preparedness, incident response and the remedial strategy and how this has been developed and agreed with statutory bodies (local authorities, NRW) in respect of that particular disused tip.

Furthermore, the guidance will set out the expectation that management plans demonstrate consideration of potential site-specific constraints which may dictate emergency preparedness, incident response and remedial strategy. These constraints could include, but are not limited to:

- proximity of ecologically designated sites
- location of adjacent critical infrastructure, and
- interactions with designated water courses.

The guidance will make clear the expectation that the Authority will work with other bodies to develop management plans for disused tips within their ownership, and the Authority will also be expected to produce management plans for private tip owners, who for whatever reason are unable to or refuse to produce a management plan. We expect that all management plans are signed off by the Authority.

Future Review and Consultations

Welsh Ministers will periodically review the guidance to ensure it remains fit for purpose.

This section could also include information about how the guidance will be reviewed and updated. This will be done following discussion and engagement with relevant stakeholders.

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