

Huw Irranca-Davies MS

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

14 February 2025

Dear Huw,

**Disused Mine and Quarry Tips (Wales) Bill**

Thank you for attending the Legislation, Justice and Constitution Committee meeting on 10 February 2025 to discuss the Disused Mine and Quarry Tips (Wales) Bill.

At the close of the meeting, I said that the Committee would write to you with further questions that we were not able to reach during the meeting. The questions are enclosed in the Annex. During the meeting, you also offered to provide copies of draft guidance, to assist the Committee's scrutiny of the Bill.

We would be grateful to receive a response, and copies of the draft guidance, by 5 March 2025.

I am copying this letter to the Chair of the Climate Change, Environment, and Infrastructure Committee.

Yours sincerely,



Mike Hedges

Chair



## Annex

**Question 1:** There are a number of provisions within the Bill which require the consent of the Secretary of State under Schedule 7B to the *Government of Wales Act 2006*. In a letter to the Llywydd dated 8 November 2024, the First Minister stated that engagement with the UK Government to seek Secretary of State consent for the provisions had begun. Can you provide an update as to when consent is expected to be received?

**Question 2:** The Explanatory Memorandum accompanying the Bill does not discuss human rights, although there is mention of human rights within the RIA. What account have you taken of human rights in preparing the Bill?

**Question 3:** What was the outcome of any assessments undertaken in relation to the human rights impacts of the Bill? What steps have you taken to limit the interference with human rights by the Bill?

**Question 4:** Please can you explain if the outcome of the justice impact assessment resulted in a change of approach in relation to the Bill and if so, what that change was?

**Question 5:** You have acknowledged that the Bill changes elements of your [2022 White Paper](#) for reasons of flexibility, proportionality and reasonableness. Why did you not therefore consult on a draft Bill given the importance of the subject matter?

**Question 6:** What are the differences between the Bill as described in the White Paper and the Bill as introduced, and as part of that information can you identify every occasion where the White Paper suggested the use of primary or secondary legislation but guidance is to be used instead?

**Question 7:** The White Paper proposals focused on disused coal tips, but it suggested that the government would look to develop a framework, which can apply equally to both coal and non-coal tips, enabling the phasing in of other spoil tips into the new regime over time (paragraph 1.44).

- (i) Has the application of the Bill to non-coal tips led to a greater reliance on guidance to deliver its objectives rather than subordinate legislation? (For example, in relation to management plans – see paragraph 6.12 of the White Paper).
- (ii) If that is not considered to be the case, how has the decision to extend the Bill to include disused non-coal tips impacted on the level of detail included in the Bill, the powers to make regulations and the use of guidance?

**Question 8:** What is the relationship between the definition of “threat to human welfare” in section 82, and the Authority’s main objective in section 2(1) to ensure that disused tips do not threaten human welfare?

**Question 9:** Section 2(1) of the Bill sets out the Authority’s main objective. What are the Authority’s other objectives, and why aren’t they on the face of the Bill?

**Question 10:** Sections 12 to 19 concern assessments of the stability of a tip. The way assessments will be carried out is to be determined in guidance issued by the Welsh Ministers.

Why is there no detail about how assessments are to be carried out on the face of the Bill? Why did you not consider including a power for that information to be set out in regulations?

**Question 11:** The Law Commission recommended a right of appeal against an entry in the tip register on the grounds that there is no tip situated on the land. Rather than an appeals process, section 20 of the Bill enables the tip owner (and other persons) to make representations on the proposal to register a tip, which section 21 requires the Authority to have regard to when deciding whether to register it. To what extent do you consider that this approach captures the intent of the Law Commission's recommendation?

**Question 12:** Sections 20, 22 and 29 contain Henry VIII powers. Why are they subject to the negative procedure?

**Question 13:** Section 24 concerns the categories of tips. The White Paper (paragraph 7.7) says:

*"We believe to provide clarity on roles and responsibilities, the legislation should clearly state who is responsible for which category of tip, providing parties with sufficient knowledge in advance of what responsibilities they will be required to meet."*

Why have you not followed what the White Paper proposed?

**Question 14:** The Welsh Government's [letter](#) to the Law Commission in March 2023 said that the Authority will be under a duty to make arrangements for management plans to be prepared for Category 1 and 2 tips. However, the EM states (paragraph 3.73) that:

*"Whilst the Bill does not require the production of management plans, these will be important to the application of the regime."*

While management plans were discussed during the evidence session, it would be helpful if you could please explain what caused this position to change?

**Question 15:** If the preparation of management plans is only an expectation in guidance, does that mean some Category 1 and 2 tips could feasibly not have management plans and therefore undermine the effectiveness of the legislation?

**Question 16:** The White Paper proposed a range of enforcement powers and associated offences, and a range of civil sanctions like fixed monetary penalties, compliance notices, stop notices etc. These haven't been included in the Bill. The EM states (paragraph 4.30) during the course of policy development it was determined "their inclusion would make the regime overly bureaucratic and unwieldy".

Why would enforcement matters being placed on the face of the Bill be overly bureaucratic and unwieldy and is there a risk that this gap could reduce public confidence in the regime?

**Question 17:** Why is there no civil sanctions regime on the face of the Bill?

**Question 18:** Sections 33 and 34 enable property to be disposed of by the Authority and disused tip owners, including by sale. Why do you consider that this provision is necessary and could you provide details of what could be sold under this power?

**Question 19:** Given the amount of detail that will be left to guidance, why wasn't a duty placed on the Welsh Ministers to produce and update guidance and why are you relying on the executive ministerial functions in section 58A of the *Government of Wales Act 2006*? How is that consistent with the Welsh Government's accessibility agenda?

**Question 20:** Section 72 prevents proceedings being brought in respect of an offence in the Bill, or regulations made under it, other than by the Authority or with the consent of the Director of Public Prosecutions. Why is this provision necessary?

**Question 21:** Why do you consider that the Henry VIII power in section 73 is required?

**Question 22:** What is the purpose of section 79 of the Bill, which makes specific provision in respect of Church of England land?

**Question 23:** Section 80 enables the Welsh Ministers to make regulations which modify the application of this Act in relation to land in which the Authority has an estate or interest. Why is this power necessary?

**Question 24:** Specific reference is made to the Crown including the Senedd Commission in section 84(7) of the Bill. Why is this provision needed?

**Question 25:** Paragraph 3(g) of Schedule 1 to the Bill enables the Welsh Ministers to specify in regulations office holders, members and members of staff of bodies who are to be disqualified from being a non-executive member of the Authority. Why was this provision not included on the face of the Bill to provide clarity given that other disqualified persons are listed in paragraph 3(a) to (f)?

**Question 26:** Paragraph 19(1) of Schedule 1 includes a Henry VIII power to amend the planning period for the Authority. Why do you consider this power to be necessary?

**Question 27:** How will cross border tips be dealt with under the Bill?

**Question 28:** In your view, will further legislation be required in the near future in other areas of the law to accommodate the provision made by the Bill? For example, changes to planning or environmental legislation to assist with the implementation of the Bill?

**Question 29:** What would the timescales be for the preparation and introduction of the proposed legislation referred to in question 28?

**Question 30:** Section 87 provides that some provisions of the Bill will come into force on 1 April 2027. Why will there be such a delay between Royal Assent and the relevant provisions coming into force?

**Question 31:** Is there a risk that delay in commencement of the provisions of the Bill may carry a risk that the protections offered by the Bill provisions are delayed or not fully brought into force by a future Welsh Government?

**Question 32:** Should the Bill be passed and enacted, when do you envisage all provisions of the Bill and the accompanying subordinate legislation and guidance being fully in force?

