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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

17 February 2025

Dear Llŷr,

Thank you for your letter of 3 February. Please see below, my responses to the questions in that letter.

1. Why does the new regime not extend to threats to the environment that could arise as a result of the instability of disused tips?

2. Can you explain why you have chosen to deviate from the Law Commission's recommendation that the new regime should take account of the risk disused tips present of pollution, combustion or flooding?

The Welsh Government carefully considered the Law Commission's recommendations and the responses received to the White Paper. Recognising that resources are limited, and wanting to ensure that any new regime is deliverable and succeeds, it was necessary to design a more focused regime – one which concentrates on tip instability which could cause a threat to human welfare.

As I confirmed in my evidence to the Committee in December, the definition of “threat to human welfare” encompasses wider structural issues such as infrastructure and energy. In this same way, I believe that the new regime will take account of wider threats to the stability of a tip such as those caused by pollution, combustion and flooding. These are factors that will be considered as part of the monitoring and management processes, where they are relevant to instability.

I have been clear in my evidence to date, that the legislation has been designed to work alongside existing environmental legislation and systems that are in place to deal with wider environmental threats. Of course that includes regulations, rules and processes that are already in place for pollution, combustion and flooding that would be outside of the scope of this Bill.

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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.

The Authority will have to consider environmental issues, such as biodiversity, and work with Natural Resources Wales (NRW) and other statutory partners to comply with environmental legislation and reflect and support wider Welsh Government priorities such as protection of the environment. This will be reflected in guidance that will be issued by Welsh Government.

The Bill contains provisions that facilitate this co-operative approach. For example, the wide ranging power in section 3 of the Bill enables the Authority to provide information, assistance and advice to partners about any matter relating to a disused tip or disused tips in general. Part 4 of the Bill contains provisions relating to information sharing that require the Authority and relevant public authorities (which is defined as NRW, Welsh Ministers, local authorities, a National Park Authority for a National Park in Wales, the Mining and Remediation Authority¹ and the Fire and Rescue Authority for an area in Wales) to share information relevant to the exercise of their respective functions.

I acknowledge that there are some wider industrial legacies that need to be addressed in the longer term, however I do not think this focused Bill is the right vehicle for tackling these strategic issues, and I am keen to deal with these issues as part of a wider discussion about our industrial legacy with the UK Government.

3. Can you outline your rationale for including disused non-coal tips in the Bill and provide the evidence base that supports the need to apply the new regime to these tips?

I think it is important that we learn the lessons from the past and that we prepare for all eventualities in the future.

I am extremely concerned that we do not have a reliable evidence base from which to make decisions about disused non-coal tips. I worry that we are in the same position with disused non-coal tips, as we found ourselves with coal tips following events at Tylorstown in 2020. That is why we started mapping disused coal tips, and that is one of the reasons why we are introducing new legislation. At the current time, we do not know how many disused non-coal tips there are, where such tips are located or the full extent of the risks posed by those tips. Nor do we have a single body that is responsible for managing and mitigating those risks. Whilst disused non-coal tips, in the main, pose less of a threat than disused coal tips, there will undoubtedly be disused non-coal tips where there is the potential for severe consequences if such tips are not appropriately monitored and managed.

Therefore, I think it is sensible and proportionate to be proactive, so that we can locate, evaluate, understand and monitor these tips when the time is right and resources allow. This approach was endorsed during the consultation on the White Paper, when the majority of respondents supported the inclusion of disused non-coal tips within the scope of the Bill.

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

¹ The Mining and Remediation Authority is still referred to as the Coal Authority on the face of the Bill as the legal name for the organisation has not yet changed.

4. Can you clarify whether and how the Bill provides for the ‘phasing in’ of disused non-coal tips into the new regime over time and as appropriate?

The Bill places responsibility on the Authority for monitoring the stability and threats to stability of all disused tips in the register. As a first step to determining whether a disused tip should be entered on the register, the Bill requires the Authority to carry out a preliminary assessment of all disused tips in Wales – whether they be coal or non-coal disused tips. Section 13 requires the Authority to prepare a programme setting out its proposed approach to, and proposed timetable for, doing this. The programme must be sent to the Welsh Ministers for approval and the programme must be published. It does not make any provisions for the phasing in of responsibilities.

However, The Explanatory Memorandum and the Regulatory Impact Assessment are clear (and guidance will confirm) that it is important that the Authority prioritises disused coal tips initially, as they are likely to pose a greater threat to human welfare. The assumption at this stage is that work on non-coal tips will start after 6 years (so around 2033), although it is important to note that the Authority will have the flexibility to prioritise any disused tip should it become aware of a risk relating to instability or threat to human welfare.

We estimate that the six-year timescale will give the Authority time to properly assess and monitor all disused coal tips and to set up substantive systems to ensure they are managed effectively.

5. What engagement have you had with the quarrying and extractive industry (outside of the White Paper consultation) to inform the Bill’s development?

My officials have not engaged directly with the quarrying and extractive industry since the White Paper consultation. However, we are aware of contributions they made to the Law Commission consultation as well as responses received to the White Paper and these have been considered during the development of the Bill.

My officials will also be in touch with stakeholders during the passage of the Bill through the Senedd as we look to develop more detailed guidance and documentation in the lead up to Royal Assent and the formation of the Authority. I can confirm that this will include representatives of the quarrying and extractive industry.

It will be important for the Authority to take a collaborative and considered approach when working with the quarrying and extractive industries, as they will need to work together to implement the requirements of the new regime, for example, to develop management plans in respect of high-risk sites.

6. Can you explain how the Bill addresses the potential conflicts between disused tip safety and environmental and planning legislation? In particular, how does it reconcile the need for the Authority to carry out operations immediately to ensure tip stability with the need to comply with environmental and planning legislation?

The Bill has been designed to work alongside existing laws and regulations, including planning and environmental legislation. I do not think that it is sensible for this Bill to include specific environmental provisions which could, given the complexity and breadth of existing environmental legislation, disapply legislation that has been put in place for specific purposes, especially when we are facing the threat posed by climate change.

The powers in the Bill allow the Authority to act proactively. Management plans for all category 1 and 2 disused tips will contain contingency plans in respect of what might happen in an emergency. They will be tailored to the specific site and will identify and reflect particular risks, for example management plans could identify one off operations to remove or reduce threats to the stability of a tip, such as re-directing watercourses. They would also set out an emergency preparedness plan for actions needed should, for example, a tip located near a highway slip and obstruct the highway. Management plans will be developed with NRW and local authorities so that planning and environmental requirements in other legislation are taken into account before any emergency action is undertaken.

The plans would be specific to a particular disused tip. Work on this has already started and the Welsh Government's Coal Tip Safety Collaborative Working Group is developing a joint protocol which will set out how partner organisations (such as local authorities, NRW and the Authority) will respond to an incident on a disused tip.

As part of this work, NRW has developed a Site Specific Coal Tip Contingency Plans: Environmental Considerations (Guidance Note) that relates to contingency planning with the aim of minimising environmental impacts from incidents at coal tips.

Therefore, I can assure Committee that work is underway to ensure that in the event of an incident at a disused tip that requires emergency work, human welfare will be protected but works will also be cognisant of relevant environmental and planning legislation to manage any potential conflicts.

It should also be remembered that in the event of a serious incident on a disused tip, the existing provisions of the Civil Contingencies Act 2004 would also come into play. As set out below, the intention is for the Authority to be a Category 2 Responder for the purposes of that Act. This will be done by Order in advance of the Authority being established in April 2027.

7. In 2023, the Mining Remediation Authority (formerly the Coal Authority) became a category two responder under the Civil Contingencies Act 2004. What consideration have you given to including the Authority (established under the Bill) as a category two responder under the Act?

I can confirm that the intention is for the Authority to be a Category 2 responder for the purposes of the Civil Contingencies Act 2004. Pursuant to section 13(2A) of that Act, Welsh Ministers have the power to amend Part 5 of Schedule 1 to the Act to add the Authority, as a devolved Welsh authority (within the meaning of s.157A of the Government of Wales Act 2006) to the list of Category 2 responders.

Such an Order must be made by Statutory Instrument, and will be subject to the affirmative procedure. Section 14B(2) of the Act provides that the Welsh Ministers must consult a Minister of the Crown before making such an Order.

8. Can you clarify what role the Authority will have in the aftermath of a tip failure and how the Bill provides for this?

As stated above, the intention is that the Authority will be a Category 2 responder under the Civil Contingencies Act. The Authority will be added to Part 5 of Schedule 1 of that Act by Order made by the Welsh Ministers.

Should there be an incident involving a disused tip the Authority will work with partners including local authorities, NRW, the relevant Fire and Rescue Authority etc to ensure communities are protected.

In addition, as set out above, management plans will set out contingency arrangements should there be an incident involving a disused tip. Management plans will set out how the respective partner agencies, including the Authority, will respond to particular scenarios that may arise in respect of a particular tip, and their respective roles in dealing with any incident.

9. While the above matter falls outside the scope of Bill, can you explain whether and how you intend to resolve existing tensions between public safety operations in the aftermath of a tip failure and compliance with environmental legislation?

In line with my response to question 6 above, the Bill has been designed to work within the existing regulatory system, including environmental legislation. Management plans will contain contingency plans to support partner agencies in working through any tensions that may arise in emergency situations between the need to protect human welfare and environmental considerations.

Further, as set out above, the Welsh Government's Coal Tip Safety Collaborative Working Group is developing a joint protocol which will set out how partner organisations (such as local authorities, NRW and the Authority) will respond to an incident on a disused tip. Again, this will include advance planning for instances where it is foreseen there is potential for tension between works required for public safety and environmental legislation.

10. Why have you chosen not to make provision in the Bill for banning or controlling activities on disused tips with the aim of preventing threats to their stability?

11. Can you outline any plans you have (outside of the Bill) to ban or control certain activities on disused tips, including timeframes?

I can confirm that we considered this issue in some depth and the White Paper sought views on the types of activities on tips which stakeholders consider may require to be banned or require consent.

The Bill does not give the Authority powers to ban or control certain activities on disused tips for the following reasons (similar issues were raised by respondents to the White Paper consultation):

- there are a range of powers - under the planning and health and safety legislation - already available for local authorities, the Health and Safety Executive and NRW to act in certain circumstances. Given that we are encouraging a collaborative approach it is important that we make sure that there is no cross over or confusion in responsibilities in these areas;
- the Bill will allow the Authority or the land owner to take action or seek a contribution from anyone whose conduct (or failure to do something that they might reasonably have done), in the opinion of the court, has caused or contributed to the need for operations on land. This will act as an additional deterrent to engaging in conduct that is detrimental to the stability of a disused tip;
- any system of issuing stop notices would be technical and would mean a significant amount of additional administration and bureaucracy as well as confusion. The use of stop notices could also cause delay, were such a notice to be challenged.

12. What consideration have you given to including the Authority as a statutory consultee for planning applications on or in the vicinity of a disused tip?

We are currently considering whether the Authority should become a statutory consultee or be statutorily notified of planning applications, where an application is in respect of land on or in the vicinity of land on which there is a disused tip. At this stage my preference is to ensure that the Authority has similar powers to the Mining Remediation Authority.

There is an additional point I wish to raise, unrelated to the questions posed in your letter of 3 February. At the stakeholder evidence session on 5 February there was an exchange relating to the process for preliminary assessments, which the Authority is required to carry out by virtue of section 13 of the Bill. Please see paragraphs 174 to 186 of the transcript. I want to provide clarity on that process. As set out in paragraph 49 of the Explanatory Notes to the Bill, it is anticipated that a preliminary assessment “will take the form of a desktop survey that will look at matters such as the height and volume of a disused tip, its proximity to sensitive receptors (such as housing, infrastructure etc), any information about the tip’s history that may be relevant to its stability and existing inspection or structural reports”.

By the time the Authority is operational in April 2027, we expect that the Mining Remediation Authority will have completed its physical inspections of all disused coal tips in Wales. The reports from those inspections will be available to the Authority when it carries out the preliminary assessments, as required by section 13. It is not envisaged that a further physical inspection of disused tips will be conducted at preliminary assessment stage, although the Authority will be able to do this if it is considered appropriate. A physical inspection of the tip is considered necessary at the full assessment stage. A full assessment is conducted if, based on a preliminary assessment, it appears to the Authority that the criteria for registration of the tip may be met. The criteria for registration are set out in section 7 of the Bill. I am of the view this approach strikes the appropriate balance and is proportionate.

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

Yours sincerely,



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