**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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Mike Hedges MS
Chair
Legislation, Justice and Constitution Committee
Welsh Parliament
Cardiff Bay
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7 March 2025

Dear Mike,

Thank you for your letter of 14 February regarding the Disused Mine and Quarry Tips (Wales) Bill. Please see, in **Annex G** below, my responses to the questions in that letter.

In addition, during the scrutiny session on 10 February 2025, 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 (these have already been shared with the Climate Change Environment and Infrastructure Committee):

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

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

At this stage, it is not possible to provide detailed, definitive draft guidance because the development of draft guidance will be informed by engagement and consultation with stakeholders, in particular Planning and Environment Decisions Wales (PEDW), the Mining Remediation Authority (MRA), Natural Resources Wales and, where possible noting its establishment timeline, the Disused Tips Authority for Wales (the Authority). This will ensure the guidance works for the Authority, other bodies and the owners of land.

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

In time, the guidance will need to reflect future regulations which will set out the procedure for appeals and claims for reimbursement of owner's expenses on cancellation of a notice (issued under section 33) requiring a landowner to undertake operations.

The regulations and guidance will be informed by consultation and/or engagement with relevant stakeholders. A full suite of guidance will be published prior to the Authority becoming operational in April 2027.

At the session on 10 February, there was detailed discussion about the use of guidance and the perceived disadvantages of guidance when compared to settled provisions on the face of the Bill, or even further particular powers/duties in regulations.

To reiterate, I agree that in the development of any Bill, there is a balance to be struck between the use of guidance and the use of legislative provisions. I confirm that careful consideration has been given to what should be included on the face of this Bill, where a regulation-making power is appropriate and which areas are most appropriately addressed in guidance. I appreciate that this matter is of significant interest to the Senedd and to this Committee in particular.

In my view, guidance provides the Welsh Ministers with the flexibility to respond quickly to changing circumstances, such as climate change and advancements in technologies. If some of the areas intended to be covered in guidance were, instead, detailed on the face of the Bill or even included in regulations, there is a very real risk that those provisions could become outdated very quickly. This is particularly true of, for example, guidance on assessments. There are also areas where, by their very nature, the detail that is needed to supplement existing Bill provision falls more naturally to guidance as a result of the multitude of factors that need to be taken into consideration by the Authority when exercising its powers, for example, guidance on compensation and cost recovery.

The status and strength of the guidance seemed to be a concern to members of the Committee. Under section 69 of the Bill, both the Authority and PEDW (who will be appointed by the Welsh Ministers to determine relevant appeals on their behalf) are required to *have regard to* guidance given by the Welsh Ministers. Having regard to guidance means that the body to whom it is addressed must take it into account when exercising its functions. For example, in carrying out its duty to monitor registered tips, the Authority must take into account the relevant guidance and should reflect this in its actions, which I would expect, for example, to include the use of up-to-date inspection techniques.

The Authority and PEDW cannot simply ignore guidance given to them by Welsh Ministers. What this means in practice is that the Authority/PEDW must take the guidance into account and if it deviates from the guidance it will have to be able to provide clear reasons for doing so. If challenged, the Authority/PEDW should be able to demonstrate that it has considered and had regard to any relevant guidance – for example by referencing the guidance directly in the reasoning for any decision.

I believe that guidance is a very effective tool in technical, rapidly changing areas where it is imperative that both the Authority and Welsh Government are able to keep abreast of, and reflect, best practice and developing knowledge and expertise.

I would, of course be happy to have further discussions with the Committee on this or any other matter.

Yours sincerely,

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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

## Annex G

**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?

**Response**

I am pleased to advise that Secretary of State consent has recently been received. A letter confirming receipt of consent has been sent to the Climate Change Environment and Infrastructure Committee, copied to the Llywydd, the Legislation, Justice and Constitution Committee and Finance Committee.

**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?

**Response**

Human rights implications were considered during the development of the Bill. I am satisfied that the Bill is compatible with the European Convention on Human Rights, including Article 1 of Protocol 1, Article 6 and Article 8.

**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?

**Response**

As per my response above, during the Bill's development, consideration has been given to human rights. We are satisfied that the Bill is compatible with Convention rights. There is not an intention to release any additional information on human rights, other than that which is set out in the Impact Assessments - which were published on the Welsh Government website on the Bill's Introduction.

**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?

**Response**

I can confirm the outcome of the justice impact assessment did not result in a change of approach in relation to the Bill.

The provisions in the Bill that relate to policy on offences, appeals etc are what, in our view, are necessary and proportionate to support the new regime established under the Bill.

As set out in detail in response to questions 16 and 17 below, consideration was given to alternative means of enforcement, such as civil sanctions, but these alternative means of enforcing the Bill's provisions were not chosen for the reasons set out below which are unrelated to their potential impact on the justice system.

**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?

**Response**

Whilst the Bill does change elements of what was set out in the White Paper, the provisions that are included in the Bill align, in key respects, with the provisions set out in the White Paper.

It is customary for there to be differences between what is set out in the White Paper and what is contained in the eventual draft Bill. Some of the changes came about following consideration of the White Paper responses. Others came about due to more detailed testing of the White Paper proposals during the Bill development process.

As you note in the question, where we have made changes to the policy they have been made to improve it – to make it more flexible, proportionate etc.

One of the main reasons for not consulting on a draft Bill is we did not consider the level of changes necessitated formal consultation, particularly when the level of engagement with key stakeholders in the Bill development stage, post White Paper, is taken into consideration.

Given the importance of the subject matter, we were keen to introduce the Bill. In light of my view that further formal consultation was not necessary, consulting on a draft would have unnecessarily delayed introduction and the establishment of the Authority.

**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?

**Response**

As set out above in relation to question 5, what we have done with the White Paper proposals is what any good proposal for legislation should do, we have considered the responses to the White Paper consultation and used these to inform and adjust the proposals. There was a real consensus following the White Paper that a new regime, headed by a specialist Authority, was needed for disused coal tips and also for non-coal tips. The responses also recognised the complexity of disused tips and the need for categorisation. The Bill delivers on all of these things.

Some changes have been made, but the fundamentals are there. Changes that have been made are necessary, proportionate and are intended to deliver a regime that will enable the Authority to deliver on its main objective to ensure disused tips do not threaten human welfare by reason of their instability. The differences are set out in detail in Chapter 4 of the Explanatory Memorandum (paragraph 4.9 onwards).

Table 1 below sets out the occasions where the White Paper suggested the use of primary or secondary legislation, but guidance is now proposed instead.

**Table 1: changes in legislative approach**

| Area | White Paper proposal | Draft Bill |
|---|---|---|
| Assessments | Requirement for the Authority to undertake assessments prescribed on the face of the Bill.<br>Minimum content of assessments prescribed in subordinate legislation.<br>The statutory minimum content supported by guidance developed by the supervisory authority. | Requirement for the Authority to undertake assessments prescribed on the face of the Bill.<br>The Welsh Ministers intend to provide guidance to the Authority in respect of assessments. |
| Content of the register | The minimum content of the register prescribed in subordinate legislation. | The minimum content of the register prescribed on the face of the Bill. |
| Management plans | Duty placed on the Authority to produce management plans.<br>The minimum content of management plans to be prescribed in statutory legislation. | The Welsh Ministers intend to provide guidance to the Authority in respect of management plans. |
| Inspection | Minimum content for inspection/ appraisal reports as prescribed by Welsh Ministers in subordinate legislation. | Requirement on Authority to monitor all registered disused tips on face of the Bill.<br>The Welsh Ministers intend to provide guidance to support the Authority in respect of monitoring and inspections. |
| Guidance about sanctions | A requirement for the Authority to produce guidance on enforcement and civil sanctions, setting out its decision-making approach and use of both criminal and civil sanctions available to it under the Bill. | The Bill does not make provision for civil sanctions, and so there is no requirement for the Authority to produce guidance on that topic. No requirement to provide guidance on enforcement. |
| Cost recovery | It was proposed the Welsh Ministers by statutory instrument set out principles governing the allocation of financial responsibility for tip safety work between persons or entities in the public and private sectors. | The Bill sets out the factors that a court must take into account in allocating financial responsibility - i.e. demands for payment/contribution orders/compensation etc.<br>The Welsh Ministers intend to provide guidance on the circumstances in which the Authority should seek to recover its costs, or should charge for the provision of advice, assistance or information. |

**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).

**Response**

No, I do not believe the inclusion of non-coal tips in the Bill has led to a greater reliance on guidance.

I believe we have struck the right balance between the use of guidance and the use of legislative provisions. There has been careful consideration given to what should be put on the face of this Bill or in regulations, and what would be most appropriately addressed in guidance. The balance between guidance and legislative provision would have been the same had the Bill only applied to disused coal tips.

Guidance is preferred as we are creating an expert body who will apply its expertise in determining what action needs to be taken in a particular case: this is the main purpose of creating the Authority. While the Welsh Ministers may wish to guide the application of the Authority's expertise, the imposition of fixed rules may be too prescriptive given the wide range of circumstances that may arise and the range of factors that may need to be taken into account.

I am also of the view that the use of guidance will provide the Welsh Government and the Authority with maximum flexibility to respond quickly to changing circumstances and requirements, which would not be available if this were done on the face of the Bill or even, to a lesser extent, in regulations. This flexibility will help to ensure that guidance is robust, but also that it can keep pace with changing circumstances and technological developments.

**(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?

**Response**

From the outset the provisions in the Bill have been developed to apply in the same way to coal and non-coal tips, therefore the inclusion of non-coal tips in the Bill has not impacted on the level of detail in the Bill, nor on decisions regarding the use of powers or guidance. The Bill enables the Authority to deal with threats in respect of any disused tip – this is important for the safety of communities in Wales.

I believe we have arrived at the right balance between the level of detail on the face of the Bill, powers to make regulations and what is appropriate to be addressed in guidance. The statement of policy intent (SOPI) sets out our policy intentions in relation to each of the delegated powers in the Bill. The SOPI was shared with the Climate Change Environment and Infrastructure (CCEI) Committee when the Bill was introduced.

I can assure the Committee that significant thought went into decisions regarding what was included on the face of the Bill and what we intend to address in guidance. I am of the view that guidance is an appropriate vehicle to set out our expectations, because it enables the Authority and stakeholders to be involved in shaping the regime, and, as set out in response to question (i) above, we are creating an expert body who will apply its expertise in determining what action needs to be taken in a particular case and the imposition of fixed rules may be too prescriptive. As you are aware, I have provided outlines of guidance to the CCEI Committee to give an indication of policy thinking/direction in some of these areas, they are also enclosed with this letter.

**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?

**Response**

The meaning of "threat to human welfare" in section 82 is fundamental to the Authority's main objective. The reference to "threatening human welfare" in section 2(1) is to be interpreted in accordance with section 82. This means, that underpinning all the Authority's actions, is an awareness and evaluation of threats and potential threats to human welfare in the context of disused tips and any existing, or potential, instability.

By way of example, there could be a threat to human welfare if a disused tip located near a residential area became unstable and where any slippage resulting from instability could result in loss of human life, serious human illness or injury or serious damage to property.

Similarly, a threat to human welfare could exist where a disused tip located near electrical power lines and pylons becomes unstable and where any ground movement from instability could result in serious disruption to energy supply.

**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?

**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.

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.

**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?

**Response**

I can confirm that careful consideration was given to what would be on the face of this Bill and what would be more appropriately addressed in guidance. Several of the more technical elements of the regime, including the approach to assessments, will require input from experts, including experts from the Authority. This gives us the ability to have experts inform and shape the guidance, as the process for assessment becomes more sophisticated.

Guidance on assessments will need to keep pace with technological advances, putting the detail of how assessments should be carried out on the face of the Bill risks those provisions becoming outdated very quickly. Our approach ensures a robust and future proofed regime and gives the Authority flexibility to adapt its approach to the assessment processes. Guidance supports the principles of an adaptive and futureproof regime as it will allow the practical experience of the Authority, as it develops, to be incorporated into guidance.

I did give consideration to including a provision on the face of the Bill requiring regulations to prescribe how assessments are to be conducted. Whilst regulations are quicker to amend than primary legislation, they are still not as responsive to change and developments in best practice and technology as guidance. So, for that reason, I determined that guidance was the most appropriate vehicle.

**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?

**Response**

The Law Commission's recommendation belongs to a different system, under which the inclusion of a tip in the register automatically triggered obligations on landowners. The system in the Bill operates differently, and so the same approach is not needed.

In accordance with section 21(3)(b), the Authority is under a duty to have regard to any representations submitted to them as part of its decision-making process on whether to include a disused tip in the register.

I am of the view the right to make representations captures the essence of the Law Commission's recommendation which sought to ensure balance and fairness and a right for those affected by decisions on registration to have their views heard and taken account of. However, an advantage with our proposal is it gives those who receive a notice of proposed registration the opportunity to make representations **before** a decision on registration is made – rather than after as would be the case with an appeal.

It is also relevant to note that once a disused tip is included in the register, there are provisions within the Bill to remove a tip from the register. The Bill does not prevent a person from presenting evidence to the Authority requesting a tip's removal. As a public body, the Authority would have to consider any such representation received.

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

**Response**

The Henry VIII powers in sections 20, 22 and 29 respectively allow the Welsh Ministers, by regulations, to amend the minimum period for making representations in respect of a proposal to register a disused tip; a proposal to remove a tip from the register and a proposal to make a notifiable change to an entry on the register.

The negative procedure was applied to the respective regulation making powers, even though they give the power to amend primary legislation, as these are considered to be relatively minor changes in the context of the overall regime.

**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?

**Response**

Paragraph 7.7 of the White Paper relates to responsibility for inspecting a disused tip. It, and the following paragraphs, propose different arrangements for different categories of tip.

Under the Bill, the Authority will be responsible for monitoring all tips that are included in the register. This places the Authority under a duty to monitor any disused tip that poses a threat to human welfare by reason of instability, or which could pose such a threat in the event of instability. The monitoring and inspection of tips not included in the register – i.e. those tips that do not meet the criteria for registration, will remain the responsibility of the owner. We think this is a far more robust approach that ensures any disused tip with any potential to pose a threat to human welfare by reason of its instability falls under the monitoring responsibility of the Authority.

In terms of responsibility for the land, the Bill confirms that responsibility for land remains with the owner. It is a really important part of the Bill that it does not change responsibility or liability for a tip – it retains the status quo.

**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?

**Response**

I want to re-emphasise the importance of management plans, which will be integral to the new system. The draft outline guidance that I have made available to the CCEI Committee makes clear that the Welsh Ministers expect the Authority to produce management plans for the highest risk category of tips – categories 1 and 2, and to consider on a case by case basis whether a management plan is considered appropriate for the lower rated tips.

In reaching a decision on how best to incorporate management plans into the Bill, I am aware that we are leading the way, and we are one of the first/or the first country to devise a system for managing disused tips in a post mining environment during a time of great change in climate. With that in mind I am keen to ensure that we have the flexibility to respond quickly to developing expertise and changing circumstances.

**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?

**Response**

The Authority must have regard to the relevant guidance which will clearly state the expectation that the Authority produce management plans for category 1 and 2 tips. Therefore, if the Authority decided not to produce a management plan for a category 1 or 2 tip, it would have to be able to show that in making that decision it has taken account of the relevant guidance and have cogent reason(s) for departing from it. We cannot envisage an instance where, or a reason why, the Authority would not produce a management plan for a category 1 or 2 tip.

**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?

**Response**

I recognise the importance of effective enforcement provisions within the new regulatory regime, and I am satisfied that the Bill has a comprehensive suite of criminal offences that ensure the regime established under the Bill is enforceable. To illustrate, the Bill contains offences in relation to:

- Intentionally obstructing or interfering with the Authority carrying out inspections, monitoring activity or assessments under the Bill;

- A landowner, without reasonable excuse, failing to comply with a notice issued by the Authority requiring them to carry out operations on land necessary to prevent or deal with threats to the stability of a disused tip or to stabilise a disused tip or prevent a disused tip becoming more unstable so as to avoid or reduce threats to human welfare, within the period specified in the notice or within any extension granted in accordance with the provisions of the Bill;

- Intentionally obstructing or interfering with an investigation into whether operations on land are needed or the carrying out of operations;

- Intentionally damaging or otherwise interfering with works completed in the course of operations required by, or carried out under the Bill;

- Failing, without reasonable excuse, to give information required by the Authority or knowingly or recklessly providing information which is false and misleading in a material respect; and

- Intentionally obstructing a person exercising a power of entry under the Bill.

Section 72 of the Bill provides the Authority may bring prosecutions for offences under the Bill, as may the Director of Public Prosecutions (DPP) (or anyone else with the consent of the DPP). This is important to note, as it is not just the DPP that can act as a prosecutorial authority. As set out in the Justice Impact Assessment, it is anticipated that the Authority will bring the majority of any prosecutions that are brought under the Bill and it will not be reliant on a third party to do so on its behalf.

During the Bill's development, the conclusion was reached that including fixed monetary penalties, compliance and stop notices etc, would have made the system unwieldy and add an unnecessary layer of complication to the system including additional appeals which could lead to delay. These delays could have a negative impact on timescales for completion of work on disused tips. This would have been difficult for the Authority to administer and complex for landowners.

A policy judgement needed to be made balancing the utility of such measures against (i) the added bureaucracy and potential delay to the completion of works on disused tips that the institution of such measures could engender and (ii) damage to the collaborative approach that the Bill fosters with an emphasis on advice and assistance (with notices requiring works only being issued as a last resort where advice and assistance has not worked).

Our judgement was, when weighing these factors, that the complexity and bureaucracy that would accompany these measures was not justified when a comprehensive system of enforcement is provided for by the criminal sanctions under the Bill.

The aim of the Bill is to devise a regulatory system where the Authority works with landowners and supports them in the responsible management of disused tips. In the vast majority of cases advice and support will be sufficient and a complex system of civil sanctions was not considered to be warranted and would run counter to the collaborative ethos fostered by 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?

**Response**

Including express authorisation for removal and disposal within these provisions is considered necessary, because express authorisation avoids doubt about whether the property rights of third parties represent an obstacle to carrying out operations.

The sale of any property would essentially be 'a means to an end' – a way to remove material from land for the purposes of carrying out operations required by a notice issued under the Bill. Such a sale would be ancillary to the overarching objective of the Bill: to ensure that disused tips do not threaten human welfare by reason of their instability.

Property that might need to be sold under this power would depend on the specific circumstances but could comprise materials from the disused tip itself or objects on the land which might interfere with the ability to carry out operations.

**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?

**Response**

There isn't a need to include a power for the Welsh Ministers to produce and update guidance, because such a power to make guidance already exists in the Government of Wales Act 2006. We intend to utilise the power in section 58A to make guidance in connection with the Bill, as it would be inappropriate to duplicate legal powers. There is no reason why this guidance would not be published and therefore a specific duty in the Bill is not considered necessary.

In my view, the Bill and the supporting guidance is consistent with the Welsh Government's accessibility agenda. As we have heard from numerous people giving evidence in respect of the Bill before the CCEI Committee, the current regime under the Mines and Quarries (Tips) Act 1969 no longer provides an effective management framework for disused tips in the twenty-first century. The Bill and supporting guidance will be written bilingually and will be available electronically. The guidance will assist in ensuring that the legislation is easy to understand, and accessible, to all who may wish to rely on it. This is consistent with, and promotes, the values underpinning the 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 of with the consent of the Director of Public Prosecutions. Why is this provision necessary?

**Response**

The Authority and the Director of Public Prosecutions (DPP) may bring proceedings in respect of an offence in the Bill, or in regulations made under it. Third parties may also bring a private prosecution in respect of an offence in the Bill, or in regulations made under it, but need the consent of the DPP to do so. This restriction helps to prevent baseless or duplicative prosecutions from being brought: the DPP acts as a filter in this respect.

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

**Response**

It is usual practice in Senedd Bills to include a Henry VIII power in the section that confers powers on Welsh Ministers to make consequential, transitional etc provisions. For example, such powers are included in the Health and Social Care (Wales) Bill and the Local Government Finance (Wales) Act 2024 that have recently been before the Senedd.

Without such a power, there is a risk that the government would be unable to make all the necessary consequential and/or transitional provisions required to give effect to the policy.

Such a power, if exercised, is subject to the affirmative resolution procedure and so will be subject to Senedd scrutiny and approval.

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

**Response**

Section 79 makes provision relevant to the way in which the Bill applies to land belonging to the Church of England and reflects the unique structure of the Church of England. There are a small number of Church of England dioceses that have land in Wales.

**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?

**Response**

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 has an estate or interest in land.

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 do so, at some point in the future. Any regulations would reflect the Authority's role in the new regime, in the context of any acquisition of an estate or interest by the Authority. It might be necessary, for instance, to modify the provisions relating to the service of notices on landowners if the Authority acquires land, as the Authority would otherwise be required to serve notice on itself.

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

**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?

**Response**

Section 84(7) helps to future proof the Bill as whilst we are not aware that the Senedd Commission owns land that could affect the stability of a disused tip, or intends to own such land in the future there could be a circumstance in the future – although I appreciate this appears unlikely – where the Senedd Commission purchases land containing, or near, a disused tip and entry may be required.

Including the Senedd Commission in section 84(7) follows recent precedent set in other legislation such as the Infrastructure (Wales) Act 2024 and the Historic Environment (Wales) Act 2023 and allows land owned by the Commission to be treated in the same way as land owned by Government departments.

**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)?

**Response**

It is considered that the list of disqualified persons set out in paragraph 3 of Schedule 1 to the Bill is sufficient and proportionate at the current time. There is no policy intention to use the regulation-making power to amend the list at present. However, having a regulation-making power to add to that list is necessary to keep the list of categories of person who must be disqualified from being appointed or holding office as non-executive members of the Authority up to date if, for example, a new public body were created.

**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?

**Response**

Paragraph 19(1) of Schedule 1 to the Bill places a duty on the Authority to prepare a corporate plan for each planning period. Paragraph 19(9) provides that the meaning of planning period is (a) the period of 3 years beginning with 1 October 2027, and (b) each subsequent period of 3 years. Paragraph 19(10) gives the Welsh Ministers the power to amend sub-paragraph 19(9)(b) by regulations.

I am satisfied a three-year planning period is appropriate, and there are no current plans to amend it. However, I am conscious that once the Authority is established there may come a time when, based on practical, operational experience, the Authority may ask that consideration be given to changing the planning period. This could be an increase or a decrease in the current three-year term.

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

**Response**

There are a small number of disused tips that straddle the border between England and Wales (cross-border tips). Under the Bill, the Authority will have functions in relation to cross-border tips, and the relevant local authorities in England will have functions in relation to those tips under the 1969 Act.

The functions of the Authority, and of the English local authorities, will be exercisable in relation to those cross-border tips in their entirety, not just the parts of those tips that fall within the respective geographical areas. Therefore, cross-border tips will be subject to the regime established under the Bill (operated by the Authority) and the regime under the 1969 Act operated by English local authorities (situated along the border).

The Authority's powers are broad enough to enable it to co-operate with such local authorities when exercising its functions 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?

**Response**

There are no plans to make changes to other legislation (such as planning and environmental legislation) to accommodate provisions made in the Bill.

The intention is that the Bill will work alongside existing laws and regulations, including planning and environmental legislation.

**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?

**Response**

The establishment of any new body takes time and whilst 1 April 2027 is challenging, it is a realistic and sensible date.

We have a significant amount of work to do to ensure that everything is in place in readiness for the Authority to be operational. We are already looking at what has worked well in the establishment of other bodies in order to learn lessons from this. We now have a well-established implementation team that is already working on what is required in terms of recruitment, public appointments, IT needs etc. We cannot underestimate the quantity of work that is involved in establishing a body such as the Authority.

It is important to note that whilst the Authority will be established on 1 April 2027, Welsh Government and the MRA will continue work on disused tip safety until all the Authority's functions come into force. There will be no gap in provision. Appropriate transitional arrangements will be put in place to ensure there is continuity as we move forward.

**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?

**Response**

Scrutiny to date suggests there is broad cross-party support for the Bill. I, therefore, think it is highly unlikely that a future government would fail to fully implement the Bill if enacted. A future government will, as a matter of law, be subject to an ongoing duty to do so, with the timing being the sole matter for the government. The Authority will, let's not forget, be undertaking absolutely vital functions relating to the stability of disused tips in Wales.

It is important that we make sure that all stakeholders are ready for the start of the new regime, there is a considerable amount of preparatory work that needs to be done, and an earlier start date poses a serious risk that the relevant systems, staff, secondary legislation and guidance would not be in place.

I can assure you that work on the coal tip safety programme will not stop, as the Bill progresses through the Senedd or when the Bill has passed – and we will make sure that we implement effective transitional arrangements so that the Authority hits the ground running.

I am also working closely with the MRA to ensure that its inspection programme continues. We have agreed that the MRA will have inspected and reported on every disused coal tip by 1 April 2027, including minimum inspection regimes for category C and D tips. This will provide the Authority with important information to build on and, of course, Welsh Government will continue to provide a coal tip safety grant.

There is a clear implementation plan and detailed work schedule to support delivery, this means that following Royal Assent we will be ready to drive forward implementation.

**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?

**Response**

The Authority will be established on 1 April 2027.

To support it from day one, the intention is that any necessary guidance will be available and secondary legislation will be in force from that date.

Officials are already working on the timelines for the relevant subordinate legislation and guidance, taking into account consultation periods, and the need to engage with stakeholders, to ensure the deadline is met.