

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

Eich cyf/Our ref: MA/HIDCC/0865/25

Mike Hedges MS  
Chair  
Legislation, Justice and Constitution Committee  
Welsh Parliament  
Cardiff Bay  
Cardiff  
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24 April 2025

Dear Mike,

Thank you for your Report on the Disused Mine and Quarry Tips (Wales) Bill. Please see below my responses to the recommendations set out in your report.

**Recommendation 1. The Cabinet Secretary should confirm whether the consent of His Majesty and the Duke of Cornwall has been received in accordance with Standing Order 26.67.**

**Response - Accept**

I confirm that Duke of Cornwall consent has been received in relation to the relevant provisions. We are awaiting a decision from His Majesty. As you know, we are required to signify we have received consent prior to Stage 4 proceedings.

**Recommendation 2. The Cabinet Secretary should review all the indicative guidance he has provided with a view to:**

- a) identifying provisions in that guidance that are more appropriate to be included on the face of the Bill or in regulations (subject to an appropriate procedure)**
- b) tabling appropriate amendments to the Bill.**

**Response - Accept**

I am happy to accept the recommendation and have noted Conclusion 2 in the Committee's report that "the balance between provisions that will be on the face of the primary legislation or to be made by regulations versus what is to be left to guidance is inappropriate". I have asked officials to review the indicative guidance.

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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.

As set out in my response to the Climate Change Environment and Infrastructure Committee, there are areas where I have asked officials to begin work on drafting amendments to redress that balance, for example, in relation to management plans and placing requirements on the face of the Bill in relation to minimum frequency of inspections for category 1 and 2 disused tips.

**Recommendation 3. The Cabinet Secretary should table an amendment to the Bill to supplement the Authority's main objective in section 2(1) with additional strategic secondary objectives covering what is expected of the Authority.**

**Response – Accept**

I am happy to accept the recommendation, and I have asked officials to begin drafting an amendment to reframe section 2 of the Bill to remove the concept of objectives, so it requires the Authority to exercise its functions under the Act with a view to ensuring that disused tips do not threaten human welfare by reason of their instability. The amendment will also require the Authority to promote high standards in relation to the management of disused tips and threats to their stability, when exercising its functions under the Act.

**Recommendation 4. The Cabinet Secretary should table an amendment to the Bill to provide a comprehensive list of the Authority's functions.**

**Response - Reject**

As almost every section in the Bill contains a function of the Authority, it would not be practical for the Bill to set out a comprehensive list of the Authority's functions. That would simply result in a long list. Instead, I have asked officials to amend the Explanatory Memorandum to the Bill to include a summary of the Authority's principal functions.

**Recommendation 5. The Cabinet Secretary should table an amendment (or amendments) to section 10 of the Bill such that the minimum requirements relating to the monitoring and inspection of disused tips are to be set out in regulations in order to enable the Authority to perform its duty under section 10(1).**

**This regulation-making power should be subject to the affirmative procedure.**

**Response - Accept**

**Recommendation 6. The Cabinet Secretary should table an amendment to the Bill to set out what information may be included in guidance in relation to the monitoring and inspection of disused tips (in addition to the requirements to be set out in regulations as a consequence of recommendation 5).**

**Response – Accept in principle**

I have considered the evidence provided in the report and the Committee's recommendations, and I am happy to accept recommendation 5, and to accept recommendation 6 in principle. I have asked officials to begin drafting amendments that will place the minimum frequency of inspections on the face of the Bill for category 1 and 2 tips, and another amendment that will place a duty on Welsh Ministers to consult on and issue guidance to the Authority on its monitoring functions under section 10.

I believe that this strikes an appropriate balance. As set out in response to recommendation 2 above, detail on how the Authority will actually monitor and inspect disused tips is best suited to guidance, rather than regulations, due to changes in technology and best practice.

It is also for that reason, I do not wish to specify on the face of the Bill what guidance on monitoring and inspection must include.

**Recommendation 7. The Cabinet Secretary should set out the sections of the Bill that are intended to deal with emergency situations that may arise or be discovered as a result of monitoring and the action the Authority will be able or required to take.**

### **Response - Accept**

I am happy to accept this recommendation.

There are a number of provisions in the Bill that enable the Authority to take immediate action in response to an emergency. They relate to empowering the Authority to undertake necessary operations to stabilise a disused tip or to prevent it becoming unstable, including without giving notice of those operations before they commence, and conferring powers to enter land.

#### Ability to carry out emergency works

Section 42 gives the Authority the power to carry out operations on any land to (a) prevent or deal with threats to the stability of a disused tip; or (b) stabilise a disused tip or prevent a disused tip from becoming more unstable, so as to avoid or reduce threats to human welfare. Section 42(3) gives the Authority the power to carry out any consequential works of reinstatement that it considers to be reasonably necessary.

Ordinarily, the Authority must give the owner of land at least 21 clear days' notice of its intention to carry out operations under section 42. However, the Bill also allows the Authority to carry out operations immediately in an emergency situation. Section 44(3) provides that where the Authority considers that operations need to be carried out immediately, it may carry out those operations without giving notice or, where it has given notice, before the end of the 21-day notice period.

#### Powers of entry

Sections 62 to 67 make provisions related to powers of entry. The powers of entry have been designed to allow access to land to carry out operations, including in emergency scenarios, whilst still being mindful of the safeguards that must be afforded to residential land.

Section 62 allows a person authorised by the Authority to enter land to do any of the things listed in subsection (1), which includes carrying out operations under section 42. There is also power, pursuant to subsection (2) to take other persons, equipment and material onto the land, and leave such equipment and material on the land.

Ordinarily, pursuant to section 63, at least 48 hours' notice must be given before demanding entry as of right, under section 62, to any land that is occupied. However, section 63(3) disapplies subsections (1) and (2) (which set out the 48 hour notice requirement), if the Authority believes that a disused tip is unstable, and the instability poses a threat to human welfare that requires the Authority to enter the land immediately for a purpose mentioned in section 62(1)(c) or (e) (i.e. investigating if operations are needed under Part 3 or for the purpose of carrying out operations under section 42).

Where the conditions in subsection (3) are satisfied, an authorised person may demand entry as of right to land which is occupied, without giving notice, and may demand that other persons be permitted to enter the land, and that equipment or material are taken onto, and left on, the land.

There is an exception to this in relation to residential land (as defined in section 63(7)). If an occupier of residential land does not consent to entry, the authorised person must apply for a warrant to enter the land. The court has a process for applying for an emergency warrant.

Section 64(1) provides that a justice of the peace may issue a warrant conferring a power to enter land, if necessary, by force. Section 65(1) provides that a warrant issued under section 64 can only confer a power to enter land at a reasonable time, other than where the circumstances in subsection (2) are satisfied. Where the conditions in subsection (2) are met, the warrant may confer a power to enter land at any time. The conditions in subsection (2) are that (a) a disused tip is unstable, and (b) the tip's instability poses a threat to human welfare that requires immediate entry to the land (by force if necessary) for a purpose mentioned in section 62(1)(c) or (e).

Section 67(1) enables an authorised person to enter Crown land without the permission of the appropriate Crown authority where the Authority believes a disused tip is unstable and that the tip's instability poses a threat to human welfare that requires immediate entry to the land for a purpose mentioned in section 62(1)(c) or (e).

**Recommendation 8. The Cabinet Secretary should consider whether the Bill needs strengthening generally in relation to dealing with emergency preparedness and emergency situations, including to ensure that relevant provisions are easily identifiable.**

#### **Response – Accept**

I have considered the Committee's report, and I am happy to accept this recommendation. I can confirm that I am satisfied that, as demonstrated in my response to recommendation 8, the Bill makes the necessary provisions to enable the Authority to carry out works to stabilise/prevent instability of a disused tip in an emergency situation.

However, I have asked my officials to begin work to draft an amendment to place a duty on the Authority to prepare management plans. This is discussed more fully in response to recommendations 18,19 and 20 below. The amendment will set out areas that must be covered by a management plan, as a minimum. This will include information that the Authority considers may be relevant in an emergency involving the tip; information about the roles and responsibilities of the Authority and other public authorities in such an emergency, including how they will co-operate.

I am of the view this amendment will strengthen the Bill and will mean that provisions dealing with emergency preparedness are easily identifiable.

**Recommendation 9. The Cabinet Secretary should table amendments to the Bill to require that regulations subject to the affirmative procedure set out how preliminary and full assessments of disused tips are to be undertaken, including by specifying minimum requirements.**

#### **Response – Reject**

**Recommendation 10. The Cabinet Secretary should table an amendment to the Bill to set out what information may be included in guidance in relation to how preliminary and full assessments of disused tips are to be undertaken (in addition to the requirements to be set out in regulations as a consequence of recommendation 9).**

**Response - Reject**

I have asked officials to begin work on drafting an amendment to place a duty on Welsh Ministers to consult on and publish guidance on preliminary and full assessment.

I am of the view this strikes an appropriate balance in this instance. I believe that a number of the more technical elements of the regime, including the approach to assessments, will require input from expertise within the Authority, which is why I do not support recommendations 9 and 10.

Using 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. This approach aligns with consultation responses made to Welsh Government following its White Paper.

This will enable those with expertise and experience to inform and shape the guidance and as the process for assessment becomes more sophisticated and adaptive we can quickly amend guidance to keep pace with changing circumstances, be they, for example, related to climate change, or technological advances.

I have already shared summary guidance for the Committee to consider, which gives an indication of the type of information that will need to be included – this will continue to be developed with expert stakeholders until the Authority is in place in April 2027.

**Recommendation 11. The Cabinet Secretary should explain the difference in wording between section 11(a) and section 13(1)(a) of the Bill as regards the carrying out of preliminary assessments.**

**Response - Accept**

I am happy to accept this recommendation and can provide the following explanation.

Section 11 provides an overview of the content of Chapter 2 of the Bill. Section 12 defines "preliminary assessment" for the purposes of Chapter 2. Section 13(1)(a) places a duty on the Authority to carry out a preliminary assessment in relation to every disused tip in Wales. There is a difference in the wording because section 11, rather than providing an operative provision, provides an overview of the Chapter.

**Recommendation 12. The Cabinet Secretary should table an amendment to the Bill to leave out section 38(5) and table amendments to make separate provision in the Bill about criminal sanctions relevant to the failure to comply with matters concerning the determination of applications under section 36 of the Bill (Right of owner and interested parties to appeal against notice).**

**Response – Reject**

Having considered the Committee's report, I am not able to support the recommendation. I believe that the principle of creating criminal offences in regulations is well established, for example, criminal offences are contained in the Official Controls (Plant Health and Genetically Modified Organisms) (Wales) Regulations 2020, the Environmental Protection (Single-use Vapes) (Wales) Regulations 2024 and the Food (Promotion and Presentation) (Wales) Regulations 2025.

This provision is also subject to appropriate safeguards, as regulations made using the power in section 38(5) are subject to the affirmative procedure. In addition, liaison with the Ministry of Justice, through the justice impact assessment process, is required whenever Welsh Government is considering the creation of criminal sanctions, whether they be in primary or secondary legislation.

In addition, I do not think that it is possible to draft amendments to place criminal offences on the face of the Bill without knowing what is to be contained in regulations made under section 38.

**Recommendation 13. The Cabinet Secretary should table an amendment to section 69 of the Bill to place a duty on the Welsh Ministers to issue, following consultation, guidance relevant to the operation of the new regime to be introduced by the Bill once enacted.**

#### **Response - Accept**

I am pleased to accept this recommendation, and I have asked officials to begin work on drafting amendments to the Bill that require Welsh Ministers to consult on and publish guidance to the Authority on key aspects of the Bill.

The Committee is sighted on high level guidance relating to these key areas already, and my officials have commenced work to develop the detailed guidance. Officials will continue to engage with and consult with stakeholders and those with the relevant expertise and experience to inform and contribute to the development of the detailed guidance on the key aspects of the Bill.

**Recommendation 14. The Cabinet Secretary should explain the circumstances in which the Authority may need to acquire an estate or interest in land, so there is clarity around the Welsh Government's justification for including section 80 in the Bill.**

#### **Response - Accept**

I can confirm that there are no plans for the Authority to acquire land. However, it is not possible to say definitively that the Authority will never acquire land at a future point, and it is not inconceivable that the Authority will own tips in the future, in a similar way that Natural Resources Wales own reservoirs.

Two possible examples of scenarios in which the Authority may need to acquire an estate or interest in land could be:

- the Authority acquiring an easement over land, so as to be able to gain entry to a site without having to give advance warning and/or seek a warrant, or
- the Authority acquiring a lease over part of a tip so that it can store equipment and materials there.

**Recommendation 15. The Cabinet Secretary should table an amendment to section 81 of the Bill to provide a free-standing definition of “disused tip” without the need to make reference to the Quarries Regulations 1999 or the Mines Regulations 2014.**

**Response - Reject**

The Quarries Regulations 1999 and the Mines Regulations 2014 apply to active tips. It is important that the definition of "disused tips" in the Bill makes clear that the Bill does not apply to any active tips that are associated with operational mines or quarries.

It is also essential that the definition in the Bill refers to the Quarries Regulations 1999 and the Mines Regulations 2014 to reflect the interplay between the Bill and the legislation governing active tips. If those regulations were not referred to, there would be a risk of creating a gap or overlap between these regimes, which would cause practical and legal difficulty.

**Recommendation 16. The Cabinet Secretary should table an amendment to section 81 of the Bill to provide for a duty to consult in respect of regulations to be made under section 81(4).**

**Response – Reject**

Section 81(3) sets out the meaning of a disused tip as a tip situated wholly or partly in Wales other than one to which the Quarries Regulations 1999 or the Mines Regulations 2014 applies. Section 81(4) gives Welsh Ministers the power to amend the definition of disused tip if either of these regulations is amended/revoked. As a result, any amendment to definition of ‘disused tip’ could be very technical and will need to ensure that the various regimes dovetail so as to avoid gaps or overlaps between the regimes.

After considering the report, I do not support the recommendation as a change to the Quarries Regulations 1999 or Mines Regulations 2014 might force us to change our definition of disused tip, possibly at short notice. So, requiring consultation could result in a meaningless consultation (because there's no other option except for what is being proposed) and/or unhelpfully delay action that needs to be taken for technical reasons. In addition, given the likely extremely technical nature of any amendment, it is not considered appropriate to attach a consultation requirement, although officials would, of course, consult with those with the relevant technical expertise if required.

**Recommendation 17. In reviewing the definition of disused tip in accordance with recommendation 16, the Cabinet Secretary should consider whether information can be placed on the face of the Bill about the tips that are not to be treated as disused tips, rather than relying solely on the regulation-making power provided by section 81(5).**

**Response - Reject**

After considering the report and the definition, I am not able to support this recommendation at this time.

On balance, I do not think that we are able to categorically state the specific characteristics that should be considered in reviewing the definition of a disused tip. I believe that this will be informed by the knowledge, expertise and practical experience of the Authority, once it is established and I want to be cautious and ensure that we do not take any action now, which may inhibit the ability of the Authority to improve the regime in the future.

However, given the importance of this particular regulation making power, I have asked officials to start work on preparing an amendment that will require Welsh Ministers to consult before making regulations under section 81(5).

**Recommendation 18. The Cabinet Secretary should table amendments to the Bill to:**

- **place a duty on the Authority to produce management plans for Category 1 and 2 disused tips; and**
- **enable the Authority to produce management plans for Category 3 and 4 disused tips.**

**Response - Accept**

**Recommendation 19. The Cabinet Secretary should table amendments to the Bill to:**

- **provide the Welsh Ministers with a regulation-making power, subject to the affirmative procedure to set out the minimum content of management plans; and**
- **provide a duty to consult for regulations that set out the minimum content of management plans.**

**Response – Accept**

**Recommendation 20. The Cabinet Secretary should table an amendment to the Bill to set out what information may be included in guidance in relation to management plans (in addition to the requirements to be set out on the face of the Bill and in regulations as a consequence of recommendations 18 and 19).**

**Response – Accept in principle**

I have always placed great emphasis on the importance of management plans, and I understand the Committee's view (as reflected in their report and the above recommendations) that provision should be made for management plans on the face of the Bill.

I have asked officials to begin work on drafting an amendment to give effect to recommendation 18, requiring the Authority to produce management plans for category 1 and 2 tips, with a discretion to prepare plans for those disused tips in category 3 or 4.

The amendment that is in development, will, in my view, go further than recommendation 19, by describing, on the face of the Bill, the minimum content that be set out in a management plan. I have also asked officials to begin work on drafting an amendment that places a duty on Welsh Ministers to consult on and publish guidance on management plans. The guidance will, of course, provide further information in respect of the areas that need to be covered in a management plan.

**Recommendation 21. The Cabinet Secretary should table amendments to the Bill to put an appropriate civil sanctions regime in place.**

**Response – Reject**

For the reasons already articulated in Committee and in correspondence, I do not accept this recommendation.

The framework of criminal sanctions in the Bill is sufficient to fully enforce the Bill's provisions. Table 1 below demonstrates the strength of the criminal sanctions regime that is included in the Bill, with, for example, failure to comply with notices requiring operations on land punishable by an unlimited fine. The kinds of matters to which we have applied criminal sanctions (e.g. obstructing monitoring activities or assessments, failing to comply with notices requiring operations) are of such a level of seriousness that, in my view, civil sanctions would be inadequate and would give the wrong message. In addition, the Authority is permitted to bring prosecutions, so it is not dependent on the Director of Public Prosecutions to prosecute.

To include supplementary civil sanctions would in my view be unnecessary. For example, compliance notices and stop notices would be technical and would mean a significant amount of additional administration and bureaucracy as well as the likelihood of delays caused by appeals against such notices. I also consider that civil sanctions would not foster the collaborative approach the Bill favours with a focus on the Authority providing advice and assistance.

The system of notices backed by offences for non-compliance is an effective and proportionate way of enforcing the regime established by the Bill. The Bill allows the Authority or the landowner to seek a contribution from anyone whose conduct 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.

**Table 1**

Section	Offence	Fine
32(1)	<p><b>Penalty for obstructing monitoring activities or assessments</b></p> <p>A person who intentionally obstructs or interferes with—</p> <p>(a) an inspection or other monitoring activity under Chapter 1, or</p> <p>(b) a preliminary assessment or full assessment under Chapter 2, commits an offence.</p>	unlimited
39(1)	<p><b>Penalty for failure to comply with notice</b></p> <p>An owner of land who is given a notice under section 33 commits an offence if, without reasonable excuse, the owner fails to carry out the operations required by the notice within the period specified in the notice or, if that period is extended under section 37, within the extended period.</p>	unlimited
54 (1) and (2)	<p><b>Penalty for obstructing operations etc.</b></p> <p>(1) A person who intentionally obstructs or interferes with—</p>	unlimited

	<p>(a) an investigation into—</p> <p>(i) whether operations need to be required under section 33 or carried out under section 42, or</p> <p>(ii) whether operations are being carried out in compliance with a notice given under section 33,</p> <p>(b) the carrying out of operations required by a notice under section 33, or</p> <p>(c) the carrying out of operations under section 42,</p> <p>commits an offence.</p> <p>2) A person who intentionally damages or otherwise interferes with any works completed in the course of operations required by a notice under section 33 or carried out under section 42 commits an offence.</p>	
<p><b>61(1)</b></p>	<p><b>Penalties in connection with notices requiring information</b></p> <p>(1) A person who is required to give information under section 58 or 60 commits an offence if the person fails, without reasonable excuse, to give the information.</p>	<p>Not exceeding level 3 on the standard scale (currently £1,000)</p>
<p><b>61(3)</b></p>	<p><b>Penalties in connection with notices requiring information</b></p> <p>3) A person who is required to give information under section 58 or 60 commits an offence if the person, in purported compliance with the notice—</p> <p>(a) gives information which is false or misleading in a material respect, and</p> <p>(b) either—</p> <p>(i) knows that the information is false or misleading, or</p> <p>(ii) is reckless as to whether the information is false or misleading</p>	<p>unlimited</p>

<b>66</b>	<b>Penalty for obstructing entry to land</b>  (1) This section applies where a power to enter land is conferred on a person by section 62(1) or by a warrant issued under section 64(1).  (2) A person who intentionally obstructs the exercise of the power commits an offence.	Not exceeding level 3 on the standard scale (currently £1,000)
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**Recommendation 22. The Cabinet Secretary should table amendments to the Bill to apply the affirmative procedure to the making of all regulations in the Bill that amend primary legislation and to which the negative procedure currently applies.**

**Response - Accept**

I have asked officials to begin drafting amendments to give effect to this recommendation. If you have any further questions, please let me know.

Yours sincerely,



**Huw Irranca-Davies AS/MS**

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a Materion Gwledig

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