



Llywodraeth Cymru
Welsh Government

Disused Mine and Quarry Tips (Wales) Bill

Explanatory Memorandum
incorporating the
**Regulatory Impact Assessment and
Explanatory Notes**

9 December 2024

Disused Mine and Quarry Tips (Wales) Bill

Explanatory Memorandum to the Disused Mine and Quarry Tips (Wales) Bill

This Explanatory Memorandum has been prepared by the Local Government, Housing, Climate Change and Rural Affairs Group of the Welsh Government and is laid before Senedd Cymru.

Member's Declaration

In my view the provisions of the Disused Mine and Quarry Tips (Wales) Bill, introduced by me on 9 December 2024, would be within the legislative competence of Senedd Cymru.

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Deputy First Minister and Cabinet Secretary for Climate Change and Rural Affairs
Member of the Senedd in charge of the Bill

9 December 2024

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PART 1 – EXPLANATORY MEMORANDUM

1. Description

- 1.1 The Bill provides for a new system of regulation for disused tips in Wales (both coal and non-coal), delivering a consistent approach to the assessment, registration, monitoring, maintenance and oversight of disused tips. It removes functions placed on local authorities in Wales under the Mines and Quarries (Tips) Act 1969 (the 1969 Act) to ensure that disused tips do not constitute a danger to members of the public. This, in effect, largely disapplies Part 2 of the 1969 Act in relation to Wales. The Bill establishes a new body to implement the regime, the Disused Tips Authority for Wales (the Authority), whose main objective, when carrying out its functions, is to ensure that disused tips do not threaten human welfare by reason of their instability. The Bill provides the Authority with the power to require an owner of land to carry out operations, and it gives the Authority the power to carry out operations on land itself. It also makes provision for connected purposes.

2. Legislative Competence

- 2.1 Senedd Cymru (the Senedd) has the legislative competence to make the provisions in the Disused Mine and Quarry Tips (Wales) Bill (the Bill) pursuant to Part 4 of the Government of Wales Act 2006 (GoWA 2006) as amended by the Wales Act 2017.

3. Purpose and intended effect of the legislation

General Policy Background

Aim of the Bill

- 3.1 The overarching aim of the Bill is to protect human welfare by introducing a consistent and robust system of assessment, registration, management, monitoring and oversight of disused tips in Wales.
- 3.2 The Bill should not be looked at in isolation. It forms part of, and builds upon, broader work within the Coal Tip Safety Programme to deliver against policy objectives. Such work includes:
- funding to support local authorities in carrying out necessary maintenance works to ensure the safety of disused tips (Welsh Government has allocated £65m since 2020 to the Coal Tip Safety Programme),
 - continuing to build and improve partnerships and collaboration across stakeholders and public sector organisation,
 - addressing a skills gap in the workforce, to ensure sufficient capacity and capability to deliver the requisite ongoing inspections and maintenance programmes, and
 - supporting research and development projects which aim to innovate activities and practices in the monitoring, maintenance and management of disused tips.

Objectives of the Bill

- 3.3 The main purpose of the Bill is to prevent disused tips from threatening human welfare by reason of their instability. The Bill will achieve this by establishing a regime for the assessment, registration, monitoring and management of disused tips.
- 3.4 The objectives of the Bill include:
- ensuring that disused tips do not threaten human welfare due to instability;
 - the creation and maintenance of a register of disused tips that pose a threat, or could pose a threat, to human welfare by reason of their instability;
 - ensuring a consistent approach to the management of all disused tips.
- 3.5 The Bill will establish a new body, the Authority, and confers functions on the Authority. The Authority's main objective, as provided for in the Bill, is to ensure that disused tips do not threaten human welfare by reason of their instability. The Authority will undertake a range of activities,

including the assessment and subsequent categorisation of disused tips, monitoring functions and the creation and maintenance of an electronic register of disused tips. The Bill also provides the Authority with the ability to require an owner of land to carry out operations on land, where it considers such operations to be necessary to prevent or deal with threats to the stability of a disused tip, or to stabilise a disused tip or prevent it from becoming more unstable, so as to avoid or reduce threats, where it considers such operations necessary to achieve the objective set out in the Bill. Where the Authority considers it necessary, it may carry out operations on any land to prevent or deal with threats to the stability of a disused tip, or stabilise a disused tip or prevent a disused tip from becoming more unstable, to avoid or reduce threats to human welfare. The Authority must provide advice and assistance to Welsh Ministers in relation to disused tips and can give information and advice to any person in relation to disused tips.

Fulfilling a Welsh Government commitment to legislate

- 3.6 Our [Programme for Government \(2021-2026\)](#) includes a commitment to introduce legislation to deal with the legacy of centuries of mining and ensure coal tip safety during this Senedd term.
- 3.7 In June 2023, the then First Minister announced his legislative priorities for the next Senedd Term. As part of that statement, he announced a [“A Disused Tips Safety Bill will be a world first in managing disused tips, reforming current laws around coal tip safety and give greater security to the people living in their shadow”](#).¹
- 3.8 On 9 July 2024 the then First Minister delivered his [legislative statement](#) in which he announced the Mines and Quarries (Disused Tips) (Wales) Bill “will give greater security to the people living in their shadow”.
- 3.9 This Bill satisfies the commitment to legislate.

Why is the Bill Needed?

The Mines and Quarries (Tips) Act 1969

- 3.10 The existing legislative framework providing for the safety and stability of mining waste in the UK is the 1969 Act. This legislation was introduced following the catastrophic Aberfan disaster in South Wales in October 1966, when a coal tip landslide engulfed a row of houses and a school, killing 28 adults and 116 children. Prior to the 1969 Act, there were no laws or regulations governing mine and quarry tips and spoil tips. The scale of the increase in mining, especially in the South Wales valleys, led to tips being located higher up steep valleys, on a landscape which

¹ [First Minister announces Welsh Government’s legislative programme | GOV.WALES](#)

was and remains prone to natural landslides, and near growing communities.

- 3.11 At the time the 1969 Act was introduced, the coal mining industry in the UK was still active. The legislation was focussed on an active mining industry and was designed to regulate the tipping of waste from operational coal mines, as well as mines and quarries associated with the extraction of other materials. At that time disused tips were not considered to be a problem. However, currently in Wales almost all coal tips, nearly 2,500 in total, are disused. The 1969 Act no longer provides an adequate statutory regime for the modern day, where a mining industry is all but nearly gone.
- 3.12 Following heavy rainfall in South Wales in February 2020, another landslide occurred - this time in Tylorstown in the Rhondda. This resulted in 60,000 tonnes of material falling into the Rhondda Fach River, damaging a foul sewer and burying a strategic water main under several metres of debris. Fortunately, there was no loss of life. The landslide in Tylorstown demonstrated that risks to communities and property from some disused tips in Wales, a remnant from the industrial era, are ever present.
- 3.13 In the aftermath of the Tylorstown landslide, the then First Minister established the Coal Tip Safety Task Force, led by Welsh Government, working together with the Coal Authority, Natural Resources Wales (NRW) and local authorities, including the Welsh Local Government Association (WLGA). The purpose of the Task Force is to work collaboratively to deliver a programme of works, including reviewing the safety of coal tips across Wales, and the inspection and maintenance of the disused tips that have the higher level of potential threat. Since its establishment, the Task Force has worked with partners to establish a better understanding of the scale of the challenge and taken forward the works programme.

Law Commission Review

- 3.14 The Welsh Government asked the Law Commission to undertake an independent review of the legislation governing coal tip safety in Wales and make recommendations for its reform.
- 3.15 The Law Commission was also asked to consider options for a modern legislative framework and to recommend a coherent, standardised, and future-proofed system for identifying, recording, inspecting, and maintaining coal tips throughout their lifecycle, identifying an overarching set of duties and adopting a uniform approach to risk assessment. The Commission commenced its review in November 2020, [consulted](#) over summer 2021 and on 24 March 2022 [published its report and recommendations](#).

3.16 The Law Commission review concluded the existing legislation is outdated; it was introduced at a time when there was an active mining industry and relevant specialist experience was available. The Commission noted that the 1969 Act leaves the responsibility for disused tips to local authorities, but gives them limited powers of intervention, which are confined to situations where there is perceived to be an existing risk to the public by reason of a tip becoming unstable. The Law Commission report reflected that mechanisms in the 1969 Act requiring owners to carry out remedial works are cumbersome and time consuming, and that the alternative it provides - for the local authority to do the work and charge the owner - is unwieldy. It stated that the fragmentation of powers across local authorities led to an inconsistency in safety standards and risk classifications. Reform was seen as vital for protecting the public from any future landslides. Other key findings from the review included:

- There are only limited powers for local authorities to intervene – only where a local authority considers there is instability. Where there is disagreement, the legislation provides for a protracted approach and a confusing system of notices and counter notices. The result has been precarious tips being left without any inspection or maintenance,
- Local authorities have no power to oversee routine maintenance of tips and no powers to compel a tip owner to undertake even basic maintenance requirements to make a tip safe,
- There are no requirements in legislation to provide consistent categorisation, minimum level of expertise or consistency in inspections,
- The mechanism for the service of notices is cumbersome, time-consuming and costly,
- Local authorities are unable to intervene until they can prove there is a risk, but they are unable to prove the risk without intervention, and
- Tip owners may dispute that there is a danger to the public by arguing that the risk could be alleviated otherwise than by remedial works.

3.17 The Law Commission noted gaps in the provision made by the 1969 Act. The current system does not create a general duty to ensure the safety of coal tips. Nor does it provide a power to require tip owners to carry out preventive maintenance to prevent a tip becoming a danger or allow local authorities to carry out such works. It doesn't cover hazards other than instability. Crucially, the 1969 Act does not confer a duty on local authorities to inspect and secure disused tips, but merely provides a permissive regime.

3.18 The 1969 Act has many gaps including:

- No consistent standards applied to assessing the risk posed by disused tips,
- No consistent categorisation of disused tips,
- No standard methodology for determining the risk level of a disused tip,

- No consistent standards applied to monitoring and inspection of disused tips,
- No consistent standards applied to the management of disused tips,
- No standard approach to maintaining and keeping records,
- No regular monitoring system in place, raising questions as regards the accuracy of data being used to undertake assessments,
- No formal oversight and enforcement arrangements, and
- No central register of disused tips.

3.19 The Law Commission's recommendations are listed at Chapter 13 of its [Report](#).

3.20 The [Welsh Government's response](#) to the Law Commission report was published on 22 March 2023. This set out the Welsh Government's position on the recommendations set out in the report, providing the rationale for the responses to the recommendations. The letter explains that the principle of the recommendations was mostly agreed, but some aspects of delivery may vary to reflect the policy position of the Welsh Government.

Wider issues with Tip Safety

3.21 Certain activities on or near disused tips can create problems which can negatively impact the stability of a tip, such as:

- Excavation/alteration of tip profiles,
- Uncontrolled tipping of materials on plateaus or slopes can overload those areas or compromise the drainage infrastructure,
- Uncontrolled storage of materials on plateaus or slopes can overload those areas,
- Blocking/diversion of drainage/watercourses,
- Unauthorised removal of drainage infrastructure or alterations to the drainage infrastructure,
- Unofficial recreational use, such as the use of motorcycles and bicycles - for example off road vehicles cutting up and down the berms creating scour and rutting that changes and exacerbates the local surface scour, and
- Burning activities on the tip surface.

Lack of expertise

3.22 Over the last two decades there has been a loss of expertise within local authorities in respect of mining activities and disused tips. This reflects the decline in coal mining activity, and has been caused by several factors, including retirements, local authority restructuring and funding constraints. Over time responsibility for coal tips has shifted from specialist coal tip teams in local authorities, and now often sits with the flood, highways or land drainage departments. In smaller local

authorities', disused tip safety can be just one aspect of one person's job. Skills surveys undertaken in local authorities have revealed that there is a skills gap, which impacts on the quality of inspections and the ability to progress maintenance works.

Factors that lead to Tip Failures

- 3.23 There are a number of factors that can lead to instability of a disused tip, one of which is water. As mentioned in paragraph 3.12, the landslide at Tylorstown was preceded by heavy rainfall, and other tip landslides have coincided with heavy rainfall. As a result of climate change, the amount of rain falling on South Wales has increased by 13% since the 1960s, and has also shifted towards the winter months, meaning that rainfall is less spread out throughout the year. The current predictions are for this increase in rainfall to continue.
- 3.24 Other factors that can cause faults in tips include those that relate to a tip's original construction. Some older tips have no formalised drainage system, and were built by simply tipping material onto open, often sloping ground. Erosion also plays a part in faults as it can impact the drainage, and the felling of trees can lead to tip instability as tree roots act to anchor the soil.
- 3.25 There is a wealth of evidence on the impacts of climate change on our environment, communities, health, well-being and infrastructure. This is highly significant for disused tips management, as it is for other long-term challenges such as flood risk management and coastal erosion, as an increase in storms and rainfall intensity because of a changing climate could increase pressures on the engineered features of tips, which are fundamental to maintaining their integrity.
- 3.26 Over 90% of the disused tips that have a higher level of potential threat (C and D) are in the South Wales valleys, an area which experiences high levels of poverty. Several coal tip landslides, such as the one at Tylorstown, have been caused by increased rainfall impacting the engineered drainage systems, some of which were not designed to cope with [current and predicted levels of rainfall](#).
- 3.27 In 2021, the independent [Climate Change Risk Assessment for Wales](#) recognised the potential for climate impacts to increase the risk of future landslides and subsidence linked to historic mining activities.
- 3.28 The [Intergovernmental Panel on Climate Change \(IPCC\) published a report](#) in February 2022: "Climate Change: Impacts, Adaptation and Vulnerability". The report observed that human induced climate change has contributed to widespread adverse impacts and related losses and damages to people and nature. The most vulnerable people and systems are disproportionately affected.

- 3.29 More recently the [2023 UK Committee on Climate Change report](#) highlighted that climate impacts and risks will increase with increments of global warming, with risks becoming increasingly complex and difficult to manage.
- 3.30 The evidence supports the need for stronger climate change adaptation planning and to develop combinations of adaptations that can respond to climate change. Risks will happen concurrently and there will be varied impacts on our communities.

Welsh Government White Paper

- 3.31 The Welsh Government published the [Coal Tip Safety \(Wales\) White Paper](#) (White Paper) on 12 May 2022. The paper was a consultation document setting out proposals for a Coal Tip Safety (Wales) Bill and invited responses by 4 August 2022. It reflected many of the Law Commission recommendations. In some areas the paper presented an alternative approach, particularly in relation to the monitoring and maintenance of disused coal tips and in relation to hazard assessments and categorisations of tips. The proposals outlined in the White Paper provided an overarching framework, suitable for both disused coal and non-coal tips.

Impacts

- 3.32 The Bill is preventative in nature. The Bill will establish a new regime which is proactive rather than reactive, which will include on-going monitoring requirements for each disused tip in the register (with the disused tips that pose a higher level of potential threat being subject to more frequent and detailed checks) and will give the Authority powers to ensure that disused tips are properly maintained, to address tip instability and threats to tip instability. The impact of landslides can be catastrophic with potential fatalities, casualties, damage to the environment and critical infrastructure, the associated impact on communities and the substantial cost of repair. An effective management regime can contribute to significantly reduced costs of remediation as regular inspections and maintenance help to identify any issues and address these as early as possible, thereby reducing the need for more expensive works after a tip slips.

Summary of the Bill

- 3.33 The new regime will protect human welfare, safeguard communities and protect Wales's critical infrastructure through the establishment of a new public body that will have functions in relation to the assessment, registration, monitoring and management of tips.
- 3.34 The Bill includes the following:

- The establishment of a new body, the Authority, a Welsh Government sponsored body to implement the new regime ensuring that disused tips do not threaten human welfare by reason of their instability,
- Development and maintenance of a national register of disused tips which pose a threat, or could pose a threat, to human welfare by reason of their instability,
- A new national approach to the categorisation of tips, underpinned by a full assessment for each site where an initial assessment determines that registration may be appropriate,
- A monitoring regime with different monitoring and management requirements,
- The Authority will be able to require an owner or owners of any land to undertake operations to prevent or deal with threats to the stability of a disused tip or to stabilise a tip to prevent a tip from becoming more unstable,
- The Authority will have a power to undertake operations on any land to prevent or deal with threats to the stability of a disused tip or to stabilise a disused tip or prevent a disused tip from becoming more unstable. It will also be able to recover expenses from the owners for costs in connection with actions or operations and works of reinstatement reasonably necessary in consequence of those operations, and
- Obstructing monitoring assessments or activities under the Bill constitute a criminal offence. The Bill also contains provisions relating to powers of entry and powers allowing the Authority to require information and documents from certain bodies.

Detailed Provisions

3.35 The purpose of the Bill is to introduce a consistent approach to the management, monitoring and maintenance of disused tips, and this will be implemented by a new public body. The Bill's objective is to prevent or deal with instability of disused tips or threats to the reduce the likelihood of tip landslides through the appropriate management of disused tips, serving to protect human welfare.

3.36 The objectives of the new regime are to provide:

- Clarity of roles and responsibilities,
- Consistency of approach for all disused tips,
- Effective monitoring and inspection of disused tips to effectively manage disused tips and prevent threats to human welfare,
- Inform those whose actions might impact on a disused tip's stability (could be owners, occupiers, adjacent landowners or

others) of actions that must be taken to ensure the tip remains stable, address any instability, or stabilise a disused tip,

- A system that requires an owner of land to carry out operations on that land with the objective of preventing or dealing with instability of disused tips or threats to the stability of disused tips. It also provides the power for the Authority to carry out operations itself and makes provision relating to costs and appeal rights, and
- A new body to implement the monitoring and inspection of disused tips, whose functions include undertaking a range of activities, including: the assessment and subsequent categorisation of disused tips; monitoring functions; the creation and maintenance of a register of disused tips; and the provision of advice to Welsh Ministers and others in relation to disused tips.

3.37 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. In pursuance of this objective, the Authority must promote high standards in relation to the management of disused tips and threats to their stability.

3.38 The following sections provide an overview of the main features of the regime which would be established by the Bill. An explanation of individual provisions in the Bill can be found in the Explanatory Notes (Annex 1). An estimate of the likely timings and approach to be taken in the implementation of the Bill is in the Regulatory Impact Assessment (RIA) (Part 2).

The Disused Tips Authority for Wales

i. Background

3.39 Under current legislation there is no public body directly responsible for tip safety, the 1969 Act provides a permissive regime, where powers may be used only where it appears to a local authority there may be danger to the public due to instability. This means a local authority cannot intervene at an earlier point on a proactive basis to prevent risk arising.

3.40 As previously mentioned, the Law Commission concluded that the current legislative regime is outdated, and that with a combination of difficulties, such as operational challenges for local authorities with large numbers of tips in their areas, lack of expertise and specialist skills, resourcing challenges in local authorities, and the complicated ownership landscape, make it extremely difficult for local authorities to act in a proactive rather than reactive manner to ensure tip safety. All of these factors taken together support the case for the establishment of a new body to deliver a new management regime for disused tips.

ii. Why change is needed

- 3.41 To ensure consistency in approach of the new regime and compliance, oversight is needed. To do these things relevant expertise will be required to provide the necessary technical and operational input into delivering the functions of the Authority. Careful consideration was given to the Law Commission recommendation regarding a supervisory authority, and further analysis was undertaken to determine whether the body should be an existing organisation or a newly created one.
- 3.42 In assessing the most appropriate method to implement the new regime, six criteria were considered: accountability; independence; expertise; remit; value for money; and confidence. The analysis concluded that no one existing body matched against all criteria.
- 3.43 A significant number of respondents to the Law Commission review (91% of those that responded to the question) supported the proposal to establish a supervisory body with responsibility for the safety of all disused tips. In response to the Welsh Government White Paper, 88% of those who responded to the question supported a new Welsh Government sponsored body. After the Tylorstown landslide, the Welsh Government established the Coal Tip Safety Taskforce to deliver the coal tip safety programme of works. However, this is not a longer-term approach (see Part 2, RIA, Option 1 for more details).
- 3.44 Putting the new regime on a legislative footing and establishing the Authority ensures its long-term viability. The Authority will be funded to carry out its functions, ensuring consistency in the management of disused tips across Wales.

iii. Policy Objectives

- 3.45 The policy objectives of the Bill are to ensure that disused tips do not threaten human welfare by reason of their instability. This will be achieved by:
- establishing a new regime for the regulation, management, and inspection of tips;
 - establishing a new body, the Disused Tips Authority for Wales, to implement the new regime.
- 3.46 Establishing the Authority will realise several benefits, including:
- specialised technical skills, which can offer added benefit to local authorities, other public bodies, landowners etc in the management of disused tips,
 - implementation of the regime to ensure consistency in approach,
 - provision of oversight and monitoring to ensure landowners are complying with any requirements that may have arisen as a result of inspections and maintenance,

- ensuring consistency of implementation across the management regime, and
- potential to benefit from economies of scale.

3.47 The provisions in the Bill have been framed so that the Authority's core objective is to ensure that disused tips do not threaten human welfare by reason of their instability. The Authority's functions will be carried out with this objective at the core of its approach. The Bill introduces a comprehensive and risk-based registration and risk assessment of tips; makes provision for monitoring and inspection, with the Authority having the power to require operations to be undertaken by landowners to address risk to the stability of a tip, and also powers for the Authority to carry out works itself, including urgently necessary works to ensure the stability of a tip. This includes provisions relating to powers of entry and the ability to recover certain expenses from landowners.

3.48 The Bill establishes a new Welsh Government Sponsored Body upon which the responsibility for the oversight of the new disused tips regime will be conferred and around which a framework of powers and duties has been built. The primary objective of the new Authority will be to ensure that disused tips do not threaten human welfare by reason of their instability.

3.49 The functions contained in the Bill have been designed to ensure that the Authority has greater powers than those currently available to local authorities. This will include powers to gather information about disused tips to carry out its functions, including to assist it in properly assessing and categorising tips, obtaining information about tip ownership and other person's interests in land.

3.50 The Bill will ensure that the Authority has a power of entry not just to land on which a tip is located, but all land where necessary in the carrying out of its functions. This power will ensure that the Authority can properly assess risks associated with every disused tip. It will also ensure that issues on neighbouring land, that may have an impact on a disused tip, can be resolved. The Authority will have to exercise its powers of entry in a way that is justifiable and reasonable.

3.51 Creating the Authority will also help to develop and nurture the development of expertise and specialist skills in this area, which has seen a decline over recent decades with the decline in the coal mining industry.

iv. Purpose of the Legislation

3.52 The purpose of the legislation is to replace the current regulatory regime that is no longer fit for purpose, by establishing a new regime for the regulation, management, and inspection of disused tips, designed to reduce the likelihood of future landslides, thereby safeguarding human

welfare, Welsh communities and infrastructure that is in close proximity to disused tips.

- 3.53 Section 70 of the Bill makes amendments to the 1969 Act. These amendments are made in consequence of the establishment of the new regime under the Bill for managing threats that disused tips may pose to human welfare by reason of their instability. The main effect of the amendments is to remove the functions that Part 2 of the 1969 Act place on local authorities in Wales for the purpose of ensuring that disused tips do not constitute a danger to members of the public. Functions relating to the oversight of disused tips in Wales will now fall, instead, to the Authority. The amendments to the 1969 Act do not impact the application of the 1969 Act to local authorities in England or Scotland, in relation to whom the current position is preserved.
- 3.54 In order to achieve this effect, amendments are made to the heading of Part 2 and sections 11 and 36 of the 1969 Act to make clear that Part 2 only applies to local authorities in England and Scotland (not Wales). This explains the interplay between the new regime under the Bill and the current regime under the 1969 Act, noting that the amendments to the 1969 Act are small in number and so do not engage Standing Order 26.6C.
- 3.55 The new regime will provide a far more effective, robust and enhanced management regime to help ensure the safety of disused tips. The Bill has been drafted in such a way as to give the Authority the ability to intervene to secure the stability of disused tips at different stages. Importantly, this includes the ability to pre-emptively take, or require, action if necessary.
- 3.56 To deliver the required changes outlined above the Authority will be required to:
- Implement the new regulatory regime,
 - Create and maintain a register of disused tips,
 - Conduct preliminary assessments to ensure resources are focused on disused tips which may pose a threat to human welfare,
 - Conduct full assessments on disused tips where this is considered appropriate,
 - Identify and categorise tips which are deemed to pose a risk or could pose such a risk,
 - Carry out general or detailed inspections, informed by tip categorisation and assessment,
 - Ensure necessary routine maintenance specific to each tip, and
 - Use powers to require action or to act itself, where it considers such action is necessary to prevent or deal with threats to the stability of disused tips or to stabilise disused tips or prevent a

disused tip from becoming more unstable, to avoid or reduce threats to human welfare. This is supported by powers of entry, charging and compensation.

- 3.57 The Authority will also provide an advisory function to encourage people, for example, the owners of disused tips to meet their responsibilities, or to help with matters arising in relation to a disused tip. It will also have the power to step in where those with responsibility cannot or will not do so, or where it considers that operations need to be carried out immediately.

Assessment and registration of disused tips

i. Background

- 3.58 The 1969 Act does not confer a duty on local authorities to inspect and secure disused tips. As previously highlighted, it only provides for a permissive regime, that is reactive rather than proactive. Prior to the Tylorstown slip in 2020 there was no complete set of data on disused coal tips in Wales. Following the slide in 2020, the Welsh Government commissioned the Coal Authority to carry out a review of all coal tips in Wales, identifying their location, risk category and ownership type across local authorities. It took over two years to collect data on disused coal tips because there was no central register.

ii. Why change is needed

- 3.59 The work undertaken by the Coal Authority identified an inconsistent approach to record-keeping, with differences in the type of data recorded, and with some local authorities not keeping detailed records or tip plans. In addition, there was no consistent system for local authorities to assess and categorise risks. As outlined in paragraph 3.18, the 1969 Act has several limitations.

iii. Policy objectives

- 3.60 Our policy objective is to ensure that each disused tip in Wales is assessed, categorised, and if needed its stability, and threats to stability, are monitored. To effectively and proportionately achieve the objective of assessing, registering and monitoring disused tips, the Bill establishes a legal framework that requires the Authority to carry out certain functions.
- 3.61 The Authority will have powers to gather information and to assess and monitor all disused tips in Wales. These functions will be supported by a right of entry to land to enable it to carry out its functions and criminal offences are provided for in certain circumstances, for example where owners obstruct monitoring assessments or activities, and or refuse to provide information or access to land.

3.62 The Bill places a duty on the Authority to compile an electronic register of disused tips in Wales that pose a threat to human welfare by reason of instability or could pose such a threat in the event of instability. The Bill provides the criteria for registration and sets out what must be included for each entry in the register. This includes a map showing the area of a tip, information about the tip's location and the tip's category. The register is a central part of the new regime. Once established, the Authority will be responsible for the assessment and categorisation of disused tips in Wales.

3.63 Section 6 of the Bill places a duty on the Authority to compile and maintain an electronic register of disused tips. As part of the process of determining whether to include a tip in the register, the Authority must:

- Carry out a preliminary assessment in relation to every disused tip, to identify tips that may need to be included in it,
- Produce a report for each preliminary assessment,
- Carry out an additional preliminary assessment in relation to a disused tip where it is considered appropriate, because of a change in circumstances, or if information becomes available that was not available during the previous assessment,
- Carry out a full assessment on tips identified by a preliminary assessment as a tip that may meet the criteria for registration and may need to be included in the register,
- In certain circumstances, carry out a full assessment of tips that are already on the register, and
- Produce a report for each assessment.

iv. Purpose of the Legislation

Preliminary Assessment/Full Assessment of a tip

3.64 Sections 12 to 19 of the Bill set out the requirements regarding preliminary and full assessments of disused tips. The Authority will be required to undertake a preliminary assessment of all disused tips. This will be a desk-based exercise to enable the Authority to identify which tips potentially pose a risk to human welfare. This will inform whether a full assessment will be required.

3.65 Following a preliminary assessment, if it appears to the Authority that the criteria for registration may be met, the Authority must carry out a full assessment on a tip and produce a report of the assessment. The Authority can also carry out an additional full assessment in relation to a disused tip that is already on the register where this is considered appropriate because of a change in circumstances or because new information has become available since the tip was previously subject to a full assessment.

3.66 The Welsh Ministers will issue guidance on preliminary and full assessments which the Authority must have regard to.

Registering a tip

3.67 Once the Authority has conducted the necessary assessments, the Bill requires the Authority to give notice of the proposal to include the tip in the register to certain people, as set out in the Bill. This gives people the ability to make representations about the registration of a tip. Where the Authority decides that the criteria for registration are met, the tip must be included in the register. Information included in the electronic register will include the name of the tip, location, and category.

3.68 Section 8 the Bill provides Welsh Ministers with a regulation making power to require additional information to be included in the register but provides it must first consult with the Authority prior to making any regulations. In addition, Section 20 provides Welsh Ministers with a power to amend the period for tip owners and interested persons to make representations to the Authority about including the tip on the register.

Removing a tip from the register

3.69 Section 22 of the Bill includes provisions for the removal of a tip from the register after a full assessment concludes the criteria for registration are no longer met. In this instance, the Authority must notify the tip owner(s) and any interested persons (as set out in the Bill) of its intention to remove the tip from the register. Owners and interested persons will have as a minimum 30 days to make representations to the Authority about the proposal to remove the tip from the register. This section also provides a power for the Welsh Ministers to amend, by way of regulations, the minimum period for making representations.

Category of disused tips

3.70 Section 24 requires the Authority to place a disused tip into one of four categories depending on the tip's stability, potential for instability, and the tip's threat to human welfare because of its instability or potential instability. It is proposed that the categories are based on a numeric system. This means that tips will be entered onto the register into category 1- 4, with 1 being tips that pose a higher level of potential threat and 4 the lowest.

Public access to the register

3.71 The Bill includes provision in section 9 for the public to have access to the register. Information available to the public will include the tip name, location, and category. The Authority will have discretion over the records it keeps and the approach it takes to recording the locations of

disused tips, but as highlighted previously, Welsh Ministers will have the ability via regulations to require additional information that must be included in the register. Providing the public with access to the register is important in helping to improve public confidence through access to information.

Assessments and reports

3.72 When considering this section, it is useful to refer to section 69 of the Bill which provides that the Authority must have regard to guidance given to it by Welsh Ministers when undertaking its functions. It is proposed the methodology for full assessment, and content of assessment reports will be addressed in guidance. This is consistent with the approach taken in the Bill generally and will provide the Welsh Ministers with flexibility and scope to determine the level of detail required for each guidance document.

Management plans

3.73 It is also proposed that Welsh Ministers will develop guidance for the Authority, which will include guidance on management plans. Whilst the Bill does not require the production of management plans, these will be important to the application of the regime. The purpose of a management plan will be to detail tip specific information, and to provide a proactive, proportionate management strategy for a tip. This will include information and the details necessary to monitor and maintain the tip safety, alongside specific information on identifying and managing risks and the development of tip specific contingency plans. Management plans will be informed by the tip assessments and categorisation undertaken by the Authority.

3.74 The guidance from Welsh Ministers will include guidance on the roles and responsibilities of the Authority, how the Authority's role interacts with other public bodies, and guidance intended to assist private owner(s) of disused tips. This will include guidance in relation to management plans and their content. The guidance will make it 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 category tips (category 3 and 4). The guidance will cover scenarios such as emergency preparedness and incident response. The guidance will clarify that every tip location is unique, and each management plan is expected to detail the hazard potential, receptors at risk, emergency scenarios and response strategies. The guidance will set out an expectation that the plans crucially consider the site-specific constraints which may dictate emergency preparedness, incident response and remedial strategy. Such constraints will include the proximity of ecologically designated

sites, location of adjacent critical infrastructure or interactions with designated water courses.

- 3.75 The guidance will set out that the Authority will be expected to work with other bodies to develop management plans for tips within their ownership, and the Authority itself will be expected to produce management plans for private tip owners, who for whatever reason are unable to or refuse to produce a management plan. The expectation is that all management plans are signed off by the Authority.

Compensation

- 3.76 The Bill contains rights of entry for an owner of land who is required, by the Authority, to carry out certain operations. It also provides that a person authorised by the Authority may enter land to enable the Authority to carry out its functions in relation to inspection, monitoring, assessment, operations, consequential works etc.
- 3.77 The Bill therefore has provisions relating to compensation in respect of situations including those where land is damaged, property is damaged, removed or disposed of, or if there is disturbance to the enjoyment of land because of operations, works or investigations.

Dealing with Tip instability and threats to tip instability

i. Background

- 3.78 We have previously highlighted how the Welsh Government, working with the Coal Authority, has established a programme of work to identify the location, ownership and status of disused coal tips. The most recent data on disused coal tips in Wales can be found at Figure 1, which provides a breakdown of disused coal tips in Wales by local authority and category².

² The Table lists disused tips in Categories D to A. Category D is the category that poses the highest potential threat. "R" rated tips are those that are very unlikely to impact public safety, potentially removed or levelled and often built over. Under the Bill provisions, disused tips will have a numeric categorisation from 1 – 4, with 1 being the category that poses the highest potential threat.

Figure 1 - (March 2024)

Local authority	Category D	Category C	Category B	Category A	Category R	Total
Blaenau Gwent	5	13	38	63	9	128
Bridgend	6	36	37	94	6	179
Caerphilly	7	44	66	81	8	206
Cardiff	1	1	14	8	0	24
Carmarthenshire	0	1	58	58	53	170
Flintshire	0	0	19	40	6	65
Isle of Anglesey	0	0	3	7	0	10
Merthyr Tydfil	15	44	31	31	1	122
Monmouthshire	2	10	7	8	0	27
Neath Port Talbot	13	28	161	385	30	617
Pembrokeshire	0	1	6	54	0	61
Powys	0	1	20	6	3	30
Rhondda Cynon Taf	29	50	107	93	48	327
Swansea	0	5	37	125	42	209
Torfaen	5	30	81	49	10	175
Wrexham	0	3	21	107	85	216
Overall category total	83	267	706	1209	301	2566

(Ceredigion, Conwy, Denbighshire, Gwynedd, Newport and The Vale of Glamorgan have no recorded disused coal tips)

3.79 The data on disused tip ownership, by majority owner and category, can be found at Figure 2 below.

Figure 2 – Majority Ownership of Disused Tips by Category

Tip Category	Majority Coal Authority	Majority Local Authority	Majority Natural Resources Wales	Majority Private Land	Total
D – assumed Cat 1	5	25	10	43	83
C- assumed Cat 2	4	56	22	185	267
B – assumed Cat 3	11	154	110	432	706
A – assumed Cat 4	1	208	86	914	1209
R – assumed excluded	2	75	2	222	301
Total	23	518	230	1795	2566

3.80 In 2020 the Welsh Government set up a grant scheme to enable local authorities to undertake maintenance works identified through the inspection process, including remedial works on disused tips, which

have had slides, such as the one at Tylorstown. Local authorities submit bids into the grant scheme not only for their own disused tips but for any disused tips on private land, which require maintenance works. £44.4 million has been committed up until the end of the financial year 24-25.

ii. Why change is needed

- 3.81 In its [report](#) the Law Commission highlighted that nearly all coal tips in Wales are disused, resulting in an increased burden on local authorities at a time when climate change is contributing to increased rainfall, which is increasing the risk of tips becoming unstable. This problem is further compounded by the loss of specialist skills and knowledge (often due to retirement), which have not been replaced.
- 3.82 Most tips on the register are not likely to need complex remedial operations, but rather regular maintenance work to prevent tips from becoming unstable. Under the current regime local authorities are not able to compel owners to carry out maintenance on privately owned tips, and there is no onus on owners to carry out routine inspection and maintenance, nor is there a power for local authorities to carry out minor maintenance works, such as drainage channel repairs, culvert repairs or erosion control. Under the 1969 Act no action can be taken until there is a danger to the public, but it is the maintenance work that prevents tips from becoming a hazard. Routine maintenance work is far more cost effective than remediation works which are often very expensive.
- 3.83 The 1969 Act allows local authorities considerable discretion in their approach to matters like risk assessment, categorisation of tips, monitoring and inspection, management and maintenance of records and enforcement, which leads to inconsistency. This supports the need for legislative change which will strengthen the management regime for disused tips and ensure the approach is consistent and proportionate.

iii. Policy objectives

- 3.84 Our policy objective is to ensure that the Authority will be proactive in its approach to the maintenance of disused tips and the prevention of tip instability; the Bill will enable the Authority to intervene at an earlier stage than is possible under the current system and it will be able to do the following:
- Issue advice to disused tip owners and others on maintenance that is advisable in respect of the disused tip, or advice on how to undertake certain operations – this could be generic maintenance advice to ensure the safety of a tip or site-specific advice;
 - Recommend work to ensure the stability of a disused tip, or to ensure that the disused tip does not pose a threat to human welfare;

- Where the Authority considers that operations need to be carried out immediately, for example, to prevent an emergency scenario, or in the case of an emergency event, the Authority may act without needing to give notice before undertaking the works.

iv. Purpose of the Legislation

3.85 This section outlines the proposals in the Bill that will enable the Authority to effectively deal with tip instability and threats to tip stability, not just on land on which a disused tip is located, but on any land to prevent or deal with tip instability.

3.86 Under section 2 of the Bill, in pursuing its main objective the Authority must promote high standards in relation to the management of disused tips and threats to their stability. To help achieve this objective, the Authority will need to work extensively with stakeholders and provide advice on matters relating to a particular disused tip or on disused tips generally.

Requiring an owner to carry out operations

3.87 Section 33 of the Bill gives the Authority the power to give a notice to the owner of any land requiring them to undertake operations to prevent or deal with threats to the stability of a disused tip or to stabilise a tip or prevent a tip from becoming more unstable, to avoid or reduce threats to human welfare. Prior to the issuing of a notice, we would expect the Authority to engage in discussions with landowners on the need for the operations and what they are expected to achieve.

3.88 It will be important that the Authority engages in discussions with an owner of land prior to issuing a notice requiring works. This will provide an opportunity for landowners to make representations to the Authority about the expected works, in particular if they do not possess the technical or practical capacity or financial means to undertake the works expected by the Authority.

3.89 Welsh Ministers will issue guidance to the Authority on this matter, and the Authority must take this guidance into account when considering whether to exercise its powers to issue a notice under section 33.

3.90 Should the Authority issue a notice under section 33; the Bill provides a right of appeal to have it varied or cancelled under section 36. The owner of land, or a person who is given a copy of the notice, will have 21 days in which to make an application. There are several grounds which may be relied on to make an application. A more detailed discussion on the appeal provisions is outlined at paragraphs 3.95 – 3.103.

- 3.91 It is an offence if an owner of land fails to comply with the notice in the specified time frame. This will mean that they will be liable for a fine. It is anticipated that effective communications and discussions will mean that any failure to comply with a notice is rare.

Authority's power to carry out operations

- 3.92 The Authority will have the ability (under section 42) to carry out operations on land if it considers it 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 from becoming more unstable. It is expected that this power will be used in circumstances such as those where the Authority believes that owners are unable or unwilling to undertake the work themselves or following a successful appeal against a notice.
- 3.93 Another circumstance where it might be beneficial for the Authority to have the flexibility to carry out operations itself, is the scenario where an appeal is ongoing, and circumstances change to such an extent that the Authority considers it necessary to act to avoid or reduce threats to human welfare.
- 3.94 In an emergency the Bill provides the Authority with a power under section 44 to enter land to carry out operations without first complying with the usual notice requirements, where it considers that operations need to be carried out immediately. In these circumstances, the Authority is not required to issue a notice to the owner of the land prior to carrying out the operations. However, once it has commenced operations the Authority must, as soon as possible, give the owner of the land notice that the operations have begun. The notice must contain certain information, including details of the threat or threats to human welfare that the operations are intended to avoid or reduce.

Appeals

- 3.95 We recognise the importance of ensuring there are independent checks and balances built into the new regime. This will help to ensure the regime is fair and ensures individuals are able to question, challenge and appeal decisions that have been made. Once the Authority is established one of the key responsibilities will be to build relationships with stakeholders, and in particular with owners of disused tips. A focus on building relationships will help to reduce the need for appeals and notices, as the Authority will have established routes for dialogue and engagement with stakeholders. It is expected that in most cases matters of contention or disagreement can be resolved by engagement and dialogue between the Authority and tip owners and interested persons. However, mutual agreement and resolution may not be possible in all cases, therefore, the Bill includes provisions for a formal appeal process. This is set out below.

3.96 As outlined above at paragraph 3.87 the Authority will have the power to issue a notice to the owner of any land requiring them to undertake specified operations to prevent or deal with threats to the stability of a disused tip or to stabilise or prevent a disused tip becoming more unstable, to avoid or reduce threats to human welfare. The Bill includes the following approach for appeals in relation to these notices:

- Owners will have a right to apply to the Welsh Ministers to have such a notice varied or cancelled;
- An interested person (this includes an occupier of the land or someone who has contributed to the need for operations) will also have a right to apply to have a notice varied or cancelled.

3.97 The Bill sets out a number of grounds on which an owner and/or interested person can apply to have a notice varied or cancelled. These include:

- There are no reasonable grounds to believe the operations are necessary to avoid or reduce threat to human welfare,
- The operations are more extensive than necessary,
- The owner has already commenced different operations that will achieve the same effect, and
- The owner is unable to meet the costs of the operations required by the notice (this ground of appeal is only available to the landowner).

3.98 The Bill includes provisions to address the scenario where an owner can apply to the Welsh Ministers for reimbursement of expenditure incurred where a notice to carry out works on a disused tip has been cancelled but some works have already been undertaken.

3.99 The Bill provides for the applications outlined above to be determined by a person appointed by the Welsh Ministers. We have proposed that Welsh Ministers appoint an officer from Planning and Environment Decision Wales (PEDW) to perform the role of an appointed person to determine an application, or to appoint an external party to perform the role of determining an application. This is a function that PEDW currently performs in relation to planning appeals and marine licensing appeals on behalf of Welsh Ministers.

3.100 As outlined in paragraph 3.92, under section 42 of the Bill the Authority will have a power to undertake operations on any land to prevent or deal with threats to the stability of a disused tip or to stabilise a disused tip or prevent a disused tip from becoming more unstable to avoid or reduce threats to human welfare. The Authority must give the notice to landowners and copies of the notice to interested parties – the notice will set out the Authority's intention to carry out operations but there is no right of appeal against such notices. This is because:

- Where this occurs, the Authority will cover the upfront costs of the work (rather than the owner),
- No criminal penalties apply,
- The owner would have 21 days' notice of potential work on the land. If the owner wishes to refuse access, then the Authority would have to apply for a warrant to be issued by the Court, and
- The owner will be able to appeal any demand the Authority makes for a contribution to costs after the operations are completed.

Appeals against contribution orders

3.101 In section 51 it is proposed the Authority will have the ability to recover from the owner of the land, expenses reasonably incurred in relation to investigations, operations and works of reinstatement necessary in consequence of those operations.

3.102 The Bill also includes provisions in section 49 in relation to contribution orders, where an owner of the land can seek a contribution towards expenses from a contributory. The Bill sets out in section 46 who a contribution can be sought from, which includes:

- A person who had an estate or interest in the land on which the disused tip is situated at any time in the 12 years before the notice was given to the owner,
- A person who used the tip to deposit waste from a mine or quarry, and
- A person who caused or contributed to the need for the operations.

3.103 The Bill suggests the following approach in relation to:

- An owner's right of appeal – A landowner may apply to the Court to cancel or vary a demand from the Authority for costs, where the Authority has carried out operations on land to prevent or deal with threats to the stability of a disused tip or to stabilise a tip or prevent it from becoming more unstable.
- A contributory's right of appeal - A contributory may apply to the Court to vary a demand from a landowner to recover expenses the owner incurred complying with a notice.

How the legislation enables sectors to operate more efficiently

3.104 The current regime in Wales to inspect, monitor and manage disused tips in Wales is fragmented, inconsistent and most importantly does not provide safeguards robust enough to help prevent potential future landslides. The new regime has been designed to address the fractured

management regime for disused tips, of which more than 90% of the tips that pose a higher level of potential threat are in the South Wales Valleys, which are already impacted by high levels of poverty. Establishing a new body to implement the new regime will safeguard human welfare by introducing a proportionate and enforceable approach for the monitoring and management of disused tips in Wales, to reduce the likelihood of further slippages.

3.105 We are already working in partnership with key stakeholders, such as NRW, the Coal Authority and local authorities, however, establishing a new body with responsibility for disused tip safety, will provide a clear framework for disused tip safety, for these bodies to work within. The Authority will work with bodies that have experience of inspecting and maintaining disused coal tips, including entering service contracts. This will help to build and further strengthen cross-disciplinary relationships and share best practice and guidance.

3.106 Under the Well-being of Future Generations (Wales) Act 2015 (WBFG Act) the Authority will be required to think about the longer-term impact of its decisions, work closely with people and communities, and collaborate with other bodies. It must also adopt the five ways of working to achieve the well-being goals, one of which is to collaborate with public bodies to work effectively.

Risk if legislation is not made

3.107 If the legislation is not made it would mean a significant risk of the issues and inconsistencies identified in the current regime under the 1969 Act continuing. This could mean limited mitigation against the ongoing risk of slippage, which not only poses a risk to life, but also places considerable financial burdens on communities, local and national government. We know that routine maintenance is far more cost effective than the costs associated with remediation, such as Tylorstown, where the costs of remediation are estimated to be around £20 million.

3.108 Furthermore, if the legislation is not made there is a risk that the current regulatory framework, which provides only permissive powers to local authorities, will continue to be implemented in a fragmented and inconsistent manner. The current regime is a reactive approach, and its deficiencies are likely to only continue if not addressed and radically reformed. Not legislating will mean that mitigations and interventions will be limited by what the current legislation will permit.

3.109 If we don't transform the regime for the management of disused tips the legacy of the coal industry will not just continue to threaten our communities and infrastructure, but also our existing ecosystems, habitats, and wildlife. The impact of climate change, and in particular heavier rainfalls increases the risk of future landslips, landslides and subsidence linked to historic mining activities. Many disused tips provide

thriving ecosystems, as well as support habitats and wildlife of considerable local, regional and national importance. These ecosystems should be preserved and protected and the proposals in the Bill will help to ensure their ongoing survival and ability to thrive.

- 3.110 We continue to face significant and challenging risks of disused tip movement and slippages. The factors that contribute to this are not going to change, such as the number of sites, the extent and type of work needed to maintain and stabilise disused tips, climate impacts which are predicated to be more frequent and severe, and tip infrastructure that is ageing. These factors underline the need to legislate to create a regime that recognises these challenges.
- 3.111 Not making this legislation will represent a missed opportunity to be the first in the world to legislate to establish a robust, fit for purpose management regime for disused tips in Wales. This will also provide communities in Wales living near disused tips with the assurances and safeguards they need to feel safe and secure in their homes.
- 3.112 The current approach is not a suitable long-term approach to the issues that manifest in relation to the instability of disused tips. As evidenced by the [Law Commission report](#), there is a clear case to replace the current regime established by the 1969 Act and replace it with a new regulatory regime.

4. Consultation

Coal Tip Safety (Wales) White Paper

- 4.1 The Welsh Government's proposals for the Bill were consulted on in the White Paper on [A new regulatory framework for disused coal tips in Wales](#), which ran from 12 May 2022 to 4 August 2022. A total of 23 questions were included and respondents were able to respond via an online survey form, a dedicated email address or by post.
- 4.2 The White Paper sought views on the policy proposals on the main building blocks of the new management regime, which were:
- The creation of a Supervisory Authority,
 - The development of a new "National Asset Register" for disused tips, and
 - The design of the assessment, categorisation, monitoring, inspections, and maintenance processes.
- 4.3 The consultation events took place during the phasing out of Covid-19 restrictions, therefore, a range of digital communications channels (e.g. WG channels, stakeholder newsletters and media) were utilised to inform targeted stakeholders of the White Paper publication, proposals, and timeframe.

Summary of the responses

- 4.4 A total of 44 responses to the White Paper were received, 40 responses came from across Wales and 4 from respondents in England. Respondents included private individuals, a variety of organisations, elected representatives, private companies, academia, professional bodies, and local authorities.
- 4.5 A [consultation summary response](#) was published in November 2022. The responses reflected a variety of perspectives and views, but were, in general, supportive of the proposals for legislation in the White Paper.

Targeted engagement in 2022

- 4.6 The Welsh Government delivered several presentations on the White paper engaging with a broad section of stakeholders:
- Information Commissioner's Office (ICO)
 - Institution of Civil Engineers (ICE) Wales Cymru
 - Environmental Platform Wales (EPW)
 - Rhondda Cwm Taff Committee
 - Rural Payments Wales Stakeholder Forum (Farming organisations and landowners)
 - UK Environmental Law Association (UKELA) Wales Group
 - Quarries National Joint Advisory Committee (QNJAC)
 - Public Health Wales

- Children in Wales
- Children's Rights Advisory Group
- Welsh Local Government Association local Leaders Groups.

4.7 Technical briefings were delivered to Senedd Members, Welsh MPs, media, and local authority leaders. Two public events were held online and two engagement events with young people organised in partnership with Children in Wales. One was an online event with young people from across Wales, the other was an in - person event at Neath Town Hall with young people from Neath Port Talbot.

4.8 The engagement followed the National Principles of Public Engagement in Wales, information was provided to relevant partner organisations and stakeholders.

Policy Development following the White Paper consultation

4.9 There is a monthly Technical Group meeting attended by representatives of local authorities, NRW and the Coal Authority. Most recently during the active Bill drafting stage, officials have engaged with a variety of stakeholders in relation to the Bill's proposals. For example, engagement has been carried out with the Association of British Insurers, the Royal Institute of Chartered Surveyors, the National Farmers' Union, the Country Land and Business Association, Friends of the Earth Cymru and the Coal Action Network. Presentations have been given to the Health Professions Advisory Group and academics with an interest in disused tips.

4.10 Differences between the proposals contained in the White Paper consultation and the provisions contained in the Bill are outlined below.

The creation of a new Authority

4.11 The White Paper proposed the creation of a Supervisory Authority because no single existing body had the necessary expertise or capacity to implement the new management regime.

4.12 The scope of the Authority remains as it was outlined in the White Paper, however, its role as an expert body has been reframed. The Bill envisages the Authority, as an expert body, being advisory rather than prescriptive when carrying out its duties under the Bill, encouraging those who are responsible for disused tips to meet their responsibilities but also having effective and useable powers to step in where those with responsibility cannot or will not do so.

The development of a new “National Asset Register” for disused tips

Meaning of tip

- 4.13 The White Paper considered whether separate definitions of tip were required in line with the Law Commission's report and consulted on the possibility of including in the Bill the definition of a 'de minimis'³ tip. Respondents were supportive of the White Paper proposal, but it was not included in the Bill because further policy development led to the conclusion that the inclusion of several definitions of tip would raise many operational issues and therefore was unfeasible. The meaning of tip in the Bill remains the same as in the 1969 Act.
- 4.14 However, rather than trying to exclude certain tips from the Bill based on specified characteristics, we have instead chosen to take a regulation-making power (section 81) which will allow us to revise the meaning of "disused tip" based on experience and practice once the Authority has been established and is fully operational. This would enable the fulfilment of the recommendations from the Law Commission on this issue.
- 4.15 Tips located "wholly or partly in Wales" are captured within the definition of a "disused tip" for the purposes of the Bill. The Authority will have the power to act in respect of tips that cross the border, therefore the Authority will be able to exercise their functions in relation to tips that fall solely within Wales as well those that are partly in Wales and partly in England (cross- border tips).

Asset Register for Disused Tips

- 4.16 The White Paper proposed a minimum content of the register, set out in subordinate legislation, in line with the Law Commission's report recommending a consistent and coherent approach to data collection to avoid fragmentation. Further policy development strengthened this proposal by setting out the content of the asset register for disused tips on the face of the Bill and conferring regulation-making powers on the Welsh Ministers to amend the content of the register, after consultation with the Authority.

The design of the assessment, categorisation, monitoring, inspections and maintenance processes

Hazard assessment

- 4.17 The White Paper proposed a hazard assessment tool measuring hazard levels as a foundation of the tip categorisation process. Further policy development reconceived the design of the hazard assessment to make it more sensible, pragmatic and operable. The Bill therefore proposes a hazard assessment consisting of two interlocking steps, a desk-based preliminary assessment to gather initial information on the tip and to

³ Page 26 of the [White Paper](#) A de minimis tip definition could identify tip features, which pose a suitably low or insignificant risk from multi-hazards as outlined in Chapter 4 and key elements of the regime could be applied proportionately or exempted in relation to these small tips, depending on whether they posed no risk to communities, critical infrastructure or the environment.

inform the Authority when deciding whether it is appropriate to proceed to the next step, in which case, a full assessment would take place before categorisation.

Categorisation

4.18 The White Paper set out categories for disused tips, which were based on a hazard assessment and potential impact on receptors (e.g. schools, roads, houses and infrastructure). Respondents agreed with the proposal.

4.19 The Bill moves partially away from the categorisation system outlined in the White Paper as it focuses on the risks related to the stability of the tip rather than the impact of the hazard on receptors, but it maintains the numerical ordering of the White Paper, replacing the alphabetical system of the Coal Authority.

4.20 The Bill identifies four instead of five categories and ranks them from Category 1 which represents disused tips that pose the highest level of threat, to Category 4, which represents disused tips that pose the lowest level of threat. Details on categories will be set out in inspection guidance developed by the Welsh Ministers.

4.21 The differences between the three systems are highlighted in Figure 3:

Figure 3 - Differences between the classification systems.

Coal Authority System		White Paper Proposed		Disused Mine and Quarry Tips (Wales) Bill
D	Potential to cause risk to life known history of instability	1	High	Category 1 – Highest level of threat to human welfare
C	Potential to cause risk to life no known history of instability	2	Medium	Category 2 – Medium level of threat to human welfare
B	Unlikely to cause risk to life to property	3	Low	Category 3 - Low level of threat to human welfare
A	Minor tip/tip reclaimed/tip restored	4	Very Low	Category 4 – Lowest level of threat to human welfare
R	Historical tip location	5	Exempt(inactive)	

Tip clusters, Management Plans and Inspections/Appraisal.

4.22 The White Paper proposed tip clusters, management plans and a three-tiered approach to ongoing checks at set frequencies. Respondents were mostly in favour of the proposals. Further policy development informed our decision to not include tip clusters in the Bill because of the complexity in tip ownership and the challenge in identifying responsibility and liability. On the other proposals, Welsh Ministers will issue guidance that sets out the Welsh Ministers' expectation that, whilst not a statutory

duty, a management plan should be produced in respect of each disused tip on the register. The guidance will clarify the expectation on the minimum content of management plans and inspections/appraisals. Management plans are considered important to the application of the regime and will be created by way of collaborative working between the Authority and landowners. The purpose of a management plan will be to detail tip specific information, and to provide proactive, proportionate management strategy and advice for a tip. This will include information and the details necessary to monitor and maintain the tip safely, alongside specific information on identifying and managing risks and the development of tip specific contingency plans. Management plans will be informed by the tip assessments and categorisation undertaken by the Authority.

Maintenance

- 4.23 The White Paper proposed the Supervisory Authority would be responsible for maintenance works on designated tips (category 1), and that local authorities would be responsible for the maintenance of category 2 tips where appropriate, and owners responsible for the lower status tips (categories 3 and 4). This proposal has been altered to make the system more operable and proportionate, with owners remaining responsible for their tips.
- 4.24 The intention is that the Authority will issue advice, in management plans, to tip owners on maintenance required on the tip and will recommend work to ensure the stability of a tip, or to ensure that the tip does not pose a threat to human welfare. This differs from the more formal maintenance agreements proposed in the White Paper.
- 4.25 The Bill provides that the Authority must have regard to guidance given to it by Welsh Ministers when undertaking its functions. It is proposed Welsh Ministers will develop guidance for the Authority, which will include the expectation that management plans should be undertaken for the highest risk category of tips, (category 1 and 2) and discretionary for the lower rated category tips (category 3 and 4).
- 4.26 The White Paper proposed that the Supervisory Authority could issue maintenance orders if owners failed to comply with maintenance agreements, the Bill envisages similar powers for the Authority. The Authority will have power to give a notice to the owner of any land requiring them to undertake actions or operations to prevent or deal with threats to the stability of a disused tip or to stabilise a tip or prevent a tip from becoming more unstable, to avoid or reduce threats to human welfare. Failing to comply with such a notice within the specific time frame will be an offence – punishable with a fine.
- 4.27 The Bill also provides for the Authority to have flexibility to carry out operations on land itself if it considers it 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 from becoming more unstable. It is expected that

this power would be used if it believes that owners are unable or unwilling to undertake the work themselves or following a successful appeal against an earlier notice.

- 4.28 In addition, where the Authority considers that work is needed to be carried out immediately to avoid an emergency, it can carry out that work without having given prior notice. Similarly, the Bill also provides the Authority with a power to enter land if it considers that operations need to be carried out immediately. The Authority will be not required to issue a notice to the owner of the land prior to accessing the land. However, once it has commenced operations, the Authority must as soon as possible, give the owner of the land notice that the operations have begun.

Enforcement, Charging and Appeals

Enforcement

- 4.29 The White Paper proposed a range of enforcement powers and associated offences. These included powers of entry to disused tips and to land that needs to be crossed to access disused tips. The White Paper proposed access without notice in emergency situations. The Bill contains provisions for powers to enter any land to carry out operations. As set out above, access without notice is permitted where a disused tip is unstable and the instability poses a threat to human welfare that requires immediate entry to the land. There are protections in place for residential land, which mean if consent is not provided by the occupier, the Authority may not enter without a warrant. The Bill contains criminal sanctions for obstructing entry to land.
- 4.30 The White Paper also proposed a range of civil sanctions such as fixed monetary penalties, compliance notices, stop notices etc. These have not been included in the Bill. During the course of policy development, it was determined that their inclusion would make the regime overly bureaucratic and unwieldy. It would be difficult for the Authority to administer and complex for landowners. It would also not foster the collaborative approach the Bill favours with a focus on the Authority providing advice and assistance.
- 4.31 However, the Bill does give the Authority flexibility in determining what level of intervention is required. For example, the Authority has the power to issue notices to owners of land to carry out operations on land or to undertake operations on land itself. A person who fails to comply with a notice without reasonable excuse, is liable on summary conviction to an unlimited fine.
- 4.32 The Bill also includes a comprehensive suite of offences to ensure compliance with the regime established in the Bill. These include:
- Intentionally obstructing or interfering with the Authority carrying out inspections of, or monitoring activity on, disused tips,

- A landowner failing to comply with a notice issued by the Authority requiring them to carry out works on the land,
- 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 under the Bill,
- Failing 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.

Charging

4.33 The White Paper proposed a fair, proportionate and transparent charging scheme and the publication of guidance on how the power will be used. Under the Bill, the Authority will not have charging powers, but it will be able to recover costs when undertaking work on behalf of owners by giving a person a demand for the relevant sum. A person who is given a demand and disputes the amount payable, may apply to the court to either vary or cancel the demand.

4.34 Under the Bill, the Authority will also be able to charge for information, advice and assistance (section 3) and for administrative, technical, and professional service (section 68).

Appeals

4.35 The White Paper proposed that owners/occupiers should have the right to appeal against registration, imposition of maintenance orders and against the imposition of any charges for work under a maintenance order, where there is a disagreement about the costs. The White Paper also proposed that appeals should be heard by Welsh Tribunals.

4.36 The Bill broadly reflects these proposals, for instance owners/occupiers have the right to make representation to the Authority about a proposal to register a disused tip, and they can appeal against a notice of carrying out operations to a person appointed by Welsh Ministers on various grounds, including affordability.

4.37 The Bill also provides for the possibility for owners/contributories to appeal to the court in respect of contribution orders, they can ask to cancel or vary a demand from the Authority/landowners for costs, where the operations have been carried out on land to deal with a tip's instability.

Reasons for not consulting on a draft Bill

4.38 There has been no formal consultation on a draft Bill. The provisions that are included in the Bill align, for the most part, with the provisions

set out in the White Paper consultation. Where changes have occurred, these have been to create a simpler but more flexible approach, ensuring the provisions in the Bill are proportionate and reasonable. The changes represent an evolution in approach, rather than a radical departure from the original intent.

- 4.39 As outlined above, the White Paper consulted on the overall approach, and the general provisions included in this Bill. It built on the Law Commission's prior consultation on the existing regime, and how a new regime should function. Additional details of the operational arrangements of the new regime are proposed to be set out in secondary legislation with relevant statutory guidance where appropriate. Prior to the establishment of the Authority, a significant amount of statutory guidance will be developed by the Welsh Ministers and which the Authority must have regard to in exercising its functions. Once operational the Authority will develop further technical guidance.
- 4.40 Given that extensive consultation that has already taken place on the Law Commission's report, and a comprehensive consultation plan of engagement was developed for the White Paper to inform the Bill development, the number of responses and ongoing engagement with key stakeholders throughout the development of the Bill, it was not considered necessary to consult on a draft Bill.

5. Power to make subordinate legislation

5.1 The Bill contains provisions to make subordinate legislation and issue determinations. Table 5.1 (subordinate legislation) and Table 5.2 (directions, codes and guidance) set out in relation to these:

- (i). the person upon whom, or the body upon which, the power is conferred;
- (ii). the form in which the power is to be exercised;
- (iii). the appropriateness of the delegated power;
- (iv). the applied procedure, that is, whether it is “affirmative”, “negative”, or “no procedure”, together with reasons why it is considered appropriate.

5.2 The Welsh Government will consult on the content of the subordinate legislation where it is considered appropriate to do so. The precise nature of consultation will be decided when the proposals have been formalised.

Table 5.1: Summary of powers to make subordinate legislation in the provisions of the Disused Mine and Quarry Tips (Wales) Bill

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
8(2)(f)	Welsh Ministers	Regulations	Section 8 details the information that must be included in the register of disused tips. Paragraph (f) provides Welsh Ministers with a power to specify additional information that must be included in the register. It is appropriate to take a regulation making power so Welsh Ministers have flexibility to reflect the experience, practice and feedback from users of the register.	Negative	There is no power to reduce the list of information that must be included in the register. Section 8(3) requires the Authority to be consulted before regulations are made. Power to specify further information that must be included in the register is relatively minor in the context of the overall regime.
20(4)	Welsh Ministers	Regulations	Section 20 makes provision where the Authority proposes to register a tip. It provides that a notice of proposed registration must specify the period within which someone may make representations. Subsection (3)(e) stipulates that the period must be at least 30 days beginning with the day after the day on which the notice is given. Subsection (4) provides Welsh Ministers with a power to change this minimum period. As the Authority carries out its functions and the register is compiled, the experience may suggest that the minimum period for making	Negative	Power is limited to amending the minimum period within which someone may make representations and is considered minor in the context of the overall regime.

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
			representations may need to be reconsidered. A regulation making power is therefore considered appropriate.		
22(4)	Welsh Ministers	Regulations	Section 22 makes provision where the Authority proposes to remove a tip from the register. Subsection 22(3) provides that a notice of proposed deregistration must specify the period within which someone may make representations to the Authority about the proposal. Subsection (3)(d) stipulates that the period must be at least 30 days beginning with the day after the day on which the notice is given. Subsection (4) provides Welsh Ministers with a power to change this minimum period. As the Authority undertakes its functions and obtains experience in adding, and removing tips from the registers, this experience may suggest that the minimum period for making representations may need to be amended. A regulation making power is therefore considered appropriate.	Negative	Power is limited to amending the minimum period within which someone may make representations and is considered minor in the context of the overall regime.
29(3)	Welsh Ministers	Regulations	Section 29 makes provision where the Authority proposes to make a notifiable	Negative	Power is limited to amending the minimum period within which

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
			change to an entry in the register. Subsection 29(2)(e) provides that a notice of a proposed change must specify the period within which someone may make representations about the proposal, and that the period must be at least 30 days beginning with the day after the day on which the notice is given. Subsection (3) provides Welsh Ministers with a power to change this minimum period. As the Authority carries out its functions, in light of its experience it may be considered appropriate to amend the minimum period for making representations. A regulation making power is therefore considered appropriate.		someone may make representations, and is considered minor in the context of the overall regime.
38(1)	Welsh Ministers	Regulations	Power places a duty on Welsh Ministers to make regulations in relation to the procedure to be followed by an appointed person in determining appeals under section 36. Section 38(3) provides an indication of the provisions that may be included in regulations and subsection (5) provides that the Welsh Ministers may create offences where there is a failure to comply with any requirement imposed by or under the Regulations. The current detail of the appeal	Affirmative	The power requires the Welsh Ministers to set out an appeal procedure for an appointed person. The affirmative procedure is therefore deemed appropriate to ensure it is subject to Senedd scrutiny and the Senedd's agreement.

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
			procedure is not yet known and the Welsh Ministers intend to consult on this. Flexibility is therefore needed to be able to implement a system that reflects responses received as part of the consultation process. Furthermore, it may be necessary to amend the procedure in the future. A regulation making power is therefore considered appropriate.		
38(2)	Welsh Ministers	Regulations	Power provides that the Welsh Ministers may make other provision (i.e. other than procedure) in connection with the determination of applications, by an appointed person, under section 36. For example, provision in relation to rights of entry. The current detail of the appeal procedure is not yet known and the Welsh Ministers intend to consult on this. This will influence the content of any regulations. Flexibility is therefore needed to be able to implement a system that reflects responses received as part of the consultation process. A regulation making power is therefore considered appropriate.	Affirmative	The power enables Welsh Ministers to make other provision in relation to the appeal procedure for an appointed person. The affirmative procedure is deemed appropriate to ensure it is subject to Senedd scrutiny and the Senedd's agreement.

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
41(7)	Welsh Ministers	Regulations	Power places a duty on Welsh Ministers to make regulations about the procedure to be followed, by an appointed person, in determining applications made under section 41, namely where an owner applies to be reimbursed by the Authority where a notice under section 33 has been cancelled and expenditure has been incurred in complying with it. The current detail of the appeal procedure is not yet known and the Welsh Ministers intend to consult on this. Flexibility is therefore needed to be able to implement a system that reflects responses received as part of the consultation process. Furthermore, it may be necessary to amend the procedure in the future. A regulation making power is therefore considered appropriate.	Affirmative	The power requires the Welsh Ministers to set out an appeal procedure for an appointed person. The affirmative procedure is therefore deemed appropriate to ensure it is subject to Senedd scrutiny and the Senedd's agreement.
41(8)	Welsh Ministers	Regulations	Power provides that the Welsh Ministers may make other provision (i.e. other than procedure) in connection with the	Affirmative	The power enables Welsh Ministers to make other provision in relation to the appeal procedure for an appointed person. The affirmative

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
			determination of applications, by an appointed person, under section 41. The current detail of the appeal procedure is not yet known, and the Welsh Ministers intend to consult on this. This will influence the content of any regulations. Flexibility is therefore needed to be able to implement a system that reflects responses received as part of the consultation process. A regulation making power is therefore considered appropriate.		procedure is deemed appropriate to ensure it is subject to Senedd scrutiny and the Senedd's agreement.
55(3)	Welsh Ministers	Regulations	Power that enables the Welsh Ministers to amend section 55 to change the definition of "relevant public authority". Elsewhere in the Bill (sections 56 and 57) the Authority has a power to require a relevant public authority to give information, and duties are placed on relevant public authorities to share information. It is possible, in the future, that it may be considered necessary to amend the definition and a regulation making power is therefore appropriate.	Affirmative	Power enables the Welsh Ministers to amend the definition of "relevant public authority", which is a central concept to a number of provisions in the Bill. The affirmative procedure is deemed to be appropriate to ensure it is subject to Senedd scrutiny and the Senedd's agreement.

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
73(1)	Welsh Ministers	Regulations	Power to make consequential, transitional etc. provision is required as it may, in future, become necessary to make amendments to ensure the Bill can continue to operate in accordance with the stated policy intent.	Negative unless Regulations modify any provision of primary legislation (which are subject to the affirmative procedure)	Power enables amendments to be made to primary legislation, where the affirmative procedure is considered appropriate.
80	Welsh Ministers	Regulations	Power provides that the Welsh Ministers may modify the application of the Bill in relation to land in which the Authority has an estate or interest. A regulation making power is appropriate as the Authority, when established, will not have an estate or interest in land. If, at some point in the future, the Authority acquires an estate or interest in land, regulations are the most suitable way in which to ensure that the regime, with any necessary modifications, applies to the Authority.	Affirmative	The power enables Welsh Ministers to modify the application of the Bill. The affirmative procedure is deemed appropriate to ensure it is subject to Senedd scrutiny and the Senedd's agreement.

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
81(4)	Welsh Ministers	Regulations	Power that enables the Welsh Ministers to amend section 81 to change the definition of “disused tip” if the Quarries Regulations 1999 or the Mines Regulations 2014 are revoked or amended. It is appropriate for this power to be a regulation making power as it allows for the amendment of a key definition, should the 1999 or 2014 Regulations be revoked or amended, to ensure the Bill can continue to operate in accordance with the stated policy intent and to reflect any change in the legislative landscape.	Affirmative	Power enables the Welsh Ministers to amend the definition of “disused tip”, which is a central concept in the Bill. The affirmative procedure is deemed to be appropriate to ensure it is subject to Senedd scrutiny and the Senedd’s agreement.
81(5)	Welsh Ministers	Regulations	Power that enables the Welsh Ministers to provide that certain tips are not to be treated as a disused tip for the purpose of the Bill or regulations made under it. As the Authority carries out its functions under the new regime, experience may suggest that it may be appropriate to remove certain tips from the scope of the regime. This power provides for that possibility and a regulation making power is considered appropriate.	Affirmative	The power enables Welsh Ministers to remove certain tips from the application of the Bill. The affirmative procedure is deemed appropriate to ensure it is subject to Senedd scrutiny and the Senedd’s agreement.

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
87(3)	Welsh Ministers	Order	Provision in relation to the commencement of specified sections in the Act. Suitable for commencement by Order as coming into force needs to be timed to ensure delivery arrangements are in place.	No procedure	This Order relates to the commencement of specified provisions of the Bill.
Schedule 1 Paragraph 2(4)	Welsh Ministers	Regulations	Power for the Welsh Ministers, subject to certain limitations, to amend the number of members of the Authority. A regulation making power is appropriate as, once the Authority is established and carrying out its functions, certain experiences may support a change to the number. Subsection (4) provides that the regulations must ensure that the number of non-executive members continues to exceed the number of executive members.	Negative	Power is limited to amending the number of members of the Authority and is considered minor in the context of the overall regime.
Schedule 1 Paragraph 3(g)	Welsh Ministers	Regulations	Power for the Welsh Ministers to specify a holder of an office, or member of staff or body, that may be disqualified from being a non-executive member of the Authority. This power is considered appropriate as it enables the Welsh Ministers to keep this under review.	Negative	Power is limited to a discrete area and is considered minor in the context of the overall regime.

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
Schedule 1 Paragraph 19(10)	Welsh Ministers	Regulations	Paragraph 19 requires the Authority to prepare a corporate plan for each planning period. Sub-paragraph (9) defines planning period as “(a) the period of 3 years beginning with 1 October 2027, and (b) each subsequent period of 3 years”. Sub-paragraph (10) gives Welsh Ministers a regulation making power to amend sub-paragraph (9)(b). The power is considered appropriate for regulations as it enables the Welsh Ministers to keep the planning period for the corporate plan under review.	Negative	Power is limited to a discrete area and is considered minor in the context of the overall regime.

Table 5.2: Summary of powers to make directions in the provisions of the Disused Mine and Quarry Tips (Wales) Bill

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
Schedule 1 Paragraph 16(2)	Welsh Ministers	Direction	The Welsh Ministers may give the Authority directions in relation to the preparation of their statement of accounts. This is appropriate as a direction is specific to the practical implementation of the Bill. The substance of the power to direct the Authority is set out on the face of the Bill which makes clear what a direction will require.	No procedure	Directions will be technical in nature and largely deal with process, as such, a Senedd procedure is not considered appropriate.

PART 2 – REGULATORY IMPACT ASSESSMENT

6. Regulatory Impact Assessment Summary

- 6.1. A Regulatory Impact Assessment has been completed for the Bill, the details are as follows.
- 6.2. There are no specific provisions in the Bill which charge expenditure to the Welsh Consolidated Fund.

Table A

- 6.3. The following table presents a summary of the costs and benefits for the Bill as a whole. The table has been designed to present the information required under Standing Order 26.6 (viii) and (ix). Figures are rounded to the nearest £100,000.

<i>Disused Mine and Quarry Tips (Wales) Bill</i>		
Preferred option: To introduce a regulatory framework for disused tip safety, including the establishment of a new Authority.		
Stage: Introduction	Appraisal period: 2025-26 - 2039-40	Price base year: 2024
Total Economic Costs Total: £99.1 million Present value: £69.1 million	Total Economic Benefits Total: £143.4 million Present value: £102.6 million	Net Present Value (NPV): £33.4 million

Administrative Cost

Costs: The cost of establishing and operating the Authority as proposed in the Bill includes setting up costs, staff and non-staff running costs, including creating and maintaining an asset register.

The transitional period is taken as the first two years, up to the estimated point at which the regime goes live (1 April 2027). This includes both staff and non-staff costs during the transitional period in setting up the new body. When the funding Welsh Government currently provides to the Coal Authority is taken into account, the additional cost of establishing and operating the new Authority is £97.8m across the appraisal period.

Type	Years	Cost (£million)
Transitional costs	2025-26 to 2026-27	5.6
Recurrent salary costs under live regime	2027-28 to 2039-40	76.6
Recurrent non-salary costs under live regime	2027-28 to 2039-40	28.6
Less Funding currently provided to the Coal Authority to undertake assessments)	2027-28 to 2039-40	-13.0
Total	2025-26 to 2039-40	97.8

Transitional: £5.6million	Recurrent: £92.2 million	Total: £97.8million	PV: £72.8 million
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Cost-savings: No cost-savings have been identified.

Net administrative cost: £97.8 million

Compliance Costs

The cost of implementing the regulatory framework as proposed includes the costs of each of the activities required by the regime, less those undertaken by the Authority from within its own staff, which are included as part of the administrative costs above. Note also that the urgent works will be covered by the existing grant funding Welsh Government currently provides the Coal Tip Safety Taskforce (Taskforce) (but which will transfer to the Authority from April 2027). The cost of these urgent works is therefore not considered to be additional.

Activity	Years	Cost (£millions)
Urgent works	2027-28 to 2039-40	14.3
PEDW	2027-28 to 2039-40	1.3
Less Coal Tip Safety Grant Scheme funding (covering urgent works)	2027-28 to 2039-40	-14.3
Total		1.3

Transitional: £0	Recurrent: £1.3 million	Total: £1.3 million	PV: £0.9 million
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Other Costs

No other costs have been identified.

Transitional: £0	Recurrent: £0	Total: £0	PV: £0
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Unquantified Costs and Disbenefits

The programme of works envisaged under the proposed regime in accordance with the provisions of the Bill are quantifiable and have been estimated for the purpose of this RIA.

Benefits

Establishing a new regulatory framework for disused tip safety has quantified and unquantified benefits which include:

1. Avoided costs from the reduced likelihood and scale of disused tip failures which would require costly intervention. The frequency of these events is likely to increase as a result of climate change impacts,
2. Improvements in welfare value calculated from the recreational enhancements that can result from works actioned by the regime, and
3. Employment benefits linked to the series of activities associated with the regime.

Unquantified benefits include healthcare benefits and avoided costs with particular emphasis on mental health improvements in the areas surrounding the disused tips; and environmental benefits due to increased prevention of disused tip failures which would likely result in biodiversity loss, risks to rivers or CO₂ emissions associated with disused tip slides and their clear-up.

Benefit	Years	Value (£millions)
Avoidable costs	2027-28 to 2039-40	54.2
Welfare benefits	2027-28 to 2039-40	38.8
Indirect employment benefits	2027-28 to 2039-40	50.5
Total		143.5

Total: £143.5 million

PV: £102.6 million

Key Evidence, Assumptions and Uncertainties

The RIA builds upon the impact assessment carried out by the [Law Commission](#) and on the proposals in the Welsh Government [Coal Tip Safety \(Wales\) White Paper](#) (2022). Historical evidence from previous disused coal tip failures have been used as the basis for analysis in the RIA. The RIA draws on data from such sources as Stats Wales, University of Exeter and published academic journal articles on the impacts of landslides. With regard to uncertainties, a key consideration is the difficulty in predicting future disused tip failure events. This has been addressed using factors derived from the frequency of historical disused tip failures.

Estimation and analysis of costs and benefits have been guided by HM Treasury's Green Book and analysed in a timeframe of fifteen years⁴.

The work of the Taskforce since 2020 has been an important source of evidence for the costings. The Welsh Government has worked closely with the Coal Authority, NRW and local authorities to undertake and trial specific activities proposed in the Bill in relation to the disused coal tip estate.

⁴ The explanation for using a 15-year window is provided below.

7. Options

- 7.1. This section outlines the options which have been evaluated in relation to the introduction of a new framework for the management, monitoring and maintenance of disused tips. The following section will then consider the costs and benefits associated with each.
- 7.2. A significant amount of work – including consultations by the [Law Commission](#) and the Welsh Government's [Coal Tip Safety \(Wales\) White Paper \(2022\)](#) – has been undertaken to shape the proposed regime. In developing the proposal, legal issues have been considered including legislative competence and human rights. In addition, 'on the ground' work undertaken as part of the Taskforce's work has allowed for further refining and testing to ensure the proposals considered are practically feasible.
- 7.3. The above processes have shaped the development of a Bill which introduces a highly inter-connected, comprehensive regulatory framework – that is, it would not be possible to implement some elements of the regime without the others – it has therefore not been feasible to provide detailed options for each part of the regime.
- 7.4. The option of indefinitely extending the Taskforce, as an alternative to legislation, can be found as part of consideration of the 'business as usual' option below.
- 7.5. The following options have been identified and explored:
 - Option 1 – business as usual.
 - Option 2 – introduction of a new regulatory framework for the management, monitoring and maintenance of disused tips, subdivided into:
 - Option 2A – adaptation of an existing body to act as Authority for the new regime; and
 - Option 2B – introduction of a new public body to act as Authority for the new regime.

Option 1: 'business as usual'

- 7.6. This option would maintain the regulatory status quo under the 1969 Act. Local authorities would continue to be able to assess whether a disused tip in its area is stable and whether any instability of the disused tip is likely to constitute a danger to members of the public. If it appears to a local authority that the disused tip is unstable and constitutes a danger to members of the public (or is likely to), by reason of its instability, the local authority could continue to require that the owner of the disused tip carry out specific operations. Or the local authority could choose to carry out operations itself. The existing regime would remain

in its reactive state and there would be no legal requirement to take any organised and proactive measures to minimise the threat posed by any potential instability of disused tips.

- 7.7. As set out in Part 1 of this Explanatory Memorandum at paragraphs 3.16 -3.19, a review by the [Law Commission](#) found the current regulatory regime to be outdated, with elements of the existing regime cumbersome or unwieldy and gaps in its provision. It concluded that reform of the law covering disused tips is vital to protect the public from the risk of future landslides.
- 7.8. The Welsh Government's White Paper, built on the recommendations made by the Law Commission, set out legislative proposals for the introduction of a new statutory regulatory framework. This would provide a new, consistent approach to the management, monitoring, and oversight of disused tips and help mitigate the potential impacts from climate change. There was strong stakeholder support for the proposals set out in the White Paper with broad recognition of the need for an effective and expanded management regime to help ensure the safety of disused tips.
- 7.9. Immediately after the Tylorstown landslide in February 2020, the First Minister established the Taskforce to deliver a wide programme of work to ensure disused coal tips were effectively managed. This included the Welsh Government funding the Coal Authority to map and allocate interim categories for disused coal tips, and carry out disused tip inspections, and the creation of a Welsh Government grant scheme to enable local authorities to undertake maintenance works on disused tips. The Coal Authority are currently inspecting category C disused coal tips once a year and category D disused coal tips twice a year. The first inspections for category B disused coal tips commenced in autumn 2023.
- 7.10. Whilst funds are committed to this programme of work until 2025, there are clear reasons why the current programme cannot be seen as a long-term sustainable solution:
 - It functions within the limitations of the 1969 Act. Key among them, the reactive nature of that regime.
 - It is based on shorter-term decisions on funding and resources, with these usually agreed for the timeframes more typical of annual budgets or triennial spending reviews. This contrasts with the decades of management disused tips will require.
 - Such shorter-term funding, and the monitoring and maintenance work that depends on it, is necessarily vulnerable to changes in government, making it harder for those living near such disused tips to develop accurate expectations about disused tip management.

- The Taskforce is a Welsh Government internal programme, and though establishing the Taskforce has involved both bringing in specialist staff and working with external bodies, especially the Coal Authority, this does not allow the long-term development of specialist expertise that the new regime would support.

- 7.11. As such, the long-term continuation of the Taskforce is not considered to be sustainable. The 'business as usual' option is better understood as the pre-2020 situation mitigated by a short-term programme of work. Instead, it is assumed that funding via the Coal Tip Safety Grant Scheme will continue, but will be managed and distributed by the Authority, in line with its statutory duties
- 7.12. Maintaining the 'status quo' is therefore not considered to be a feasible, long-term option. Although this option could still allow for inspections and works for disused tips, this would still be, at best, a fragmented approach. This option undermines the outcome of the Law Commission review and the White Paper. The current legislative framework is not fit for purpose for managing disused tips in Wales and ultimately preventing threats to human welfare by reason of their instability, including through the reduction of the likelihood of landslides.

Option 2: introduction of a new regulatory framework

- 7.13. Option 2 would introduce a dedicated comprehensive governance framework for disused tips in Wales. This option is divided into two sub-options below: option 2A and 2B, both of which would have a public body acting as the Authority for the new regime.
- 7.14. The purpose of the Bill is to introduce a consistent approach to the management, monitoring, and oversight of disused tips. The main objective of the Authority, under the Bill, is to ensure that disused tips do not threaten human welfare by reason of their instability. It seeks to achieve this through the appropriate management of tips, which will help reduce the likelihood of future failure.
- 7.15. The new regulatory regime will allow for:
- Creation and maintenance of an asset register by the Authority,
 - A preliminary assessment to ensure resources are focused on disused tips which may pose a threat to human welfare,
 - Undertaking of full assessments by the Authority on those disused tips which 'pass' preliminary assessment,
 - Identification and categorisation of disused tips which are deemed to pose such a threat by the Authority,
 - Preparation of management plans, maintenance schedules, risk register and contingency plans for all disused tips that are awarded a category that indicates a higher level of threat, and any disused tips awarded a category that indicates a lower level of threat where the Authority deem it beneficial,

Please note: this document has been prepared solely to assist people in understanding the Disused Mine and Quarry Tips (Wales) Bill. It should not be relied on for any other purpose.

- Frequent undertaking of monitoring, specified by disused tip categorisation and assessment by the Authority,
- Overseeing of necessary routine maintenance specific to each disused tip, and
- A framework for responding to any immediate works.

7.16. The framework established by the Bill will enable the Authority to work in a way to ensure:

- Clarity of roles and responsibilities,
- Consistency of approach for all disused tips,
- A proportionate and bespoke response to individual disused tips as they are not homogenous, and
- Effective management of disused tips to reduce the threat to human welfare.

7.17. The regime will require the Authority to undertake a range of activities, including the assessment and subsequent categorisation of disused tips; monitoring functions; creating and maintaining an asset register; and to provide advice and assistance to Welsh Ministers and others in relation to disused tips.

7.18. The two options for such a body – adaptation of an existing public body and the establishment of new body – are considered in sub-options 2A and 2B.

Option 2A: adaptation of an existing body

7.19. Option 2A involves the adaptation of the roles and functions of an existing public body for the purpose of regulating disused tips. This option was considered in relation to disused coal tips by the [Law Commission review and consultation](#), as well as for disused tips more generally in the White Paper. Potential organisations included the Coal Authority, NRW and the Health and Safety Executive.

7.20. The White Paper notes that under current legislation, there is no public body directly responsible for disused tip safety. Local authorities have only permissive powers under the 1969 Act. Furthermore, no public body has any specific duties in relation to disused tips.

7.21. The White Paper sets out, at paragraph 2.15, the six factors considered in the assessment of the most appropriate mechanism for overseeing the new proposed management regime, namely:

- **Accountability** – within the Welsh governance framework, reporting to Welsh Ministers and/or the Senedd, being subject to audits by the Welsh Audit Office, and review by the Public Services Ombudsman for Wales in response to any administrative complaints:

- **Independence** – having independent structures, being accountable within the Welsh governance framework, and independently audited by a body such as the Auditor General for Wales;
- **Expertise** – should provide expertise across multiple areas to deliver its functions, including regulatory knowledge;
- **Remit** – no conflicts of interests in delivering its function;
- **Value for Money** – efficient and effective use of all available resources; and
- **Confidence** – from public to owners in its ability to deliver.

7.22. The White Paper notes that no single existing body matched against the six criteria. While some do have experience against some criteria, none met against all of them. The Welsh Government undertook an internal analysis of existing bodies for adaptation to incorporate disused tip safety management functions. This informed the conclusion that no single existing body would be adaptable for the envisaged purpose.

7.23. For example, the Coal Authority does not sit within the Welsh governance framework and is not accountable to the Welsh Ministers or to the Senedd and would not be subject to review by the Wales Audit Office or the Public Services Ombudsman for Wales. This also applies to the Health and Safety Executive, which oversees active tips under the Quarries Regulations 1999 (S.I. 1999/2024) and the Mines Regulations 2014 (2014/3248). NRW could create a perceived or potential conflict as it manages the largest coal tip estate in Wales on behalf of the Welsh Ministers. An independence of oversight and prioritisation is felt to be particularly important where small probability, but high impact risks are being managed.

7.24. In concurrence with the Law Commission recommendations, the [White Paper](#) therefore proposed a new supervisory authority, with specific governance and oversight functions for the safety of disused tips.⁵

7.25. However, in order to provide a more complete comparison, an assessment was made of the potential costs of adapting an existing body to carry out the functions as envisaged for the regime in the Bill. This would require changes to human, technical and financial resources, as well as procurement practices and governance structures. These costs are summarised below.

Option 2B: establishment of a new public body

7.26. This option considers the establishment of a new executive Welsh Government sponsored body to oversee and implement the proposed regulatory regime for disused tips.

⁵. Please see Chapter 2.

- 7.27. This option is informed by the consultation undertaken by the Law Commission and subsequent recommendations in their report [“Regulating Coal Tips Safety in Wales: Report”](#). The report recommended the function be delivered by a central public body. Under Part 2 of the 1969 Act, the responsibility for disused tips was allocated to local authorities.⁶ It will be necessary for the function to be carried out by a single body to “provide a uniform approach to risk assessment and inspections and prioritise the allocation of resources according to risk”.⁷
- 7.28. In considering what form of public body would be suitable for this function, the Welsh Government followed set guidance, and considered three key factors, namely:
- whether the service or function needed to be delivered by government,
 - what level of expertise was required, and
 - what level of independence such a body should have.
- 7.29. In addition, it would require substantial expertise across several different technical areas. The body would need to be an arms-length organisation to reduce the risk that public perception would be of a lack of independence.
- 7.30. The main benefits for establishing a single supervisory body are outlined at paragraph 2.20 of the White Paper as follows:
- Specialised technical skills, which can offer added benefit to local authorities in the management of disused tips,
 - Dedicated remit to ensure the safety of disused tips,
 - Providing independent oversight of the regime to ensure consistency in approach,
 - Providing independent oversight and monitoring to ensure compliance with the new regime, and
 - Economies of scale in procurement of services, gathering research and evidence and developing and sharing best practice and guidance.
- 7.31. [Respondents to the White Paper](#) broadly welcomed this approach and recognised that such a body would provide the arms-length independent oversight required.

⁶ *ibid*, paragraph 2.2

⁷ *Ibid*, paragraph 2.5

8. Costs and Benefits

- 8.1. This section will examine the associated costs and benefits of the legislative proposals in the Bill. As the elements of the regime are highly inter-connected, this will be considered as a single comprehensive option (Option 2). Within that option, two approaches are considered in relation to the body which would oversee the regime.
- 8.2. The costs and benefits have been calculated over a 15-year appraisal period, covering the years 2025-26 to 2039-40, and are rounded to the nearest £100,000 to reflect that values are estimates of large sums.⁸ The longer-than-usual period has been used to better reflect the longer-term nature of the programme, including that all disused tips will be phased into the regime over time. All costs are presented in 'real' base year (2024) prices, with the effects of general inflation removed. This is in line with the guidance in HM Treasury's Green Book. Costs have been discounted using HM Treasury's central discount rate of 3.5%.
- 8.3. The Authority will focus first on disused coal tips, prioritised by interim category. Once most of the disused coal tips have been assessed and, where warranted, added to the full regime, it will consider disused non-coal tips. To make best use of its resources, once they have been mapped the Authority will be able to prioritise those disused non-coal tips more likely to need to be added to the asset register. As such, the costs associated with the regime will increase over the assessment period, but at an ever-decreasing rate. By the end of the 15-year period, they will have started to level off.
- 8.4. The benefits are, on the other hand, calculated with reference to disused coal tips only. This is because these will account for the bulk of the benefits (and costs) and there is significantly less evidence available on disused non-coal tips. These benefits will have reached a relatively steady level by the end of the 15-years.

Cost of Option 1

- 8.5. There are significant potential impacts and costs associated with retaining the status quo. In 2021, the [independent Climate Change Risk Assessment for Wales \(CCRA3\)](#) recognised the potential for climate change impacts to increase the risk of future landslides and subsidence linked to historic mining activities.⁹ The impact of climate change could trigger more frequent and more violent bouts of extreme weather, resulting in floods, storms, and related damage.
- 8.6. Such events increase the risk of disused tip failures which can incur significant property and human costs. The Tylorstown landslide is

⁸ Totals may not sum due to this rounding.

⁹ Third UK Climate Change Risk Assessment Technical Report: Summary for Wales, p88

estimated to have cost over £20 million in recovery and remediation works.¹⁰ It is important to note that this event did not include other damage such as to property or life. To provide a comparison, a landslide from a disused coal tip in Hatfield in England in 2013 cost around £65 million to remediate and it closed a railway line for six months.¹¹ This cost did not include other economic losses. Maintaining the status quo means there will be no long term, sustainable solution in place to mitigate the increased risks posed by climate change.

- 8.7. Annex 4 of the White Paper provides an analysis of residential properties within 100 metres of a selection of 10 disused tips with a higher level of threat. The analysis demonstrated the potential cost implication of a disused coal tip failure on residential properties could range from £900,000 to £25 million, depending on the severity of the failure.¹²
- 8.8. The analysis also highlighted potential issues with insurance, particularly underinsurance, in the event of landslides from the disused coal tips. It calculated a potential degree of underinsurance of up to 50%. Considering the analysed properties are ranked among the 10% most deprived areas according to the Welsh Index of Multiple Deprivation (WIMD), such levels of underinsurance would have grave consequences.
- 8.9. This cost implication for properties excludes other potential impacts on, for example, infrastructure, the environment (particularly on ecosystems), culturally significant sites, as well as health and wellbeing implications for the affected communities.
- 8.10. An increase in annual mean rainfall in Wales, particularly in south Wales, suggests a possibility that climate change has already increased the risk of future landslides. In addition, heavy precipitation is expected to increase, which could further increase such risk.¹³

Cost of Option 2

- 8.11. This section considers the costs of the regime, excluding any initial and ongoing costs of creating or adapting a body to act as the Authority. Such costs will be considered in options 2A and 2B.
- 8.12. Many of the costs vary based on the category of the disused tip in question. In order to estimate this, the following assumptions have been made:

¹⁰ Welsh Government, [Integrated Impact Assessment: Coal Tip Safety in Wales: A Consultation](#), 2022.

¹¹ Ibid

¹² Welsh Government White Paper – [Coal Tip Safety \(Wales\) White Paper: A new regulatory framework for disused coal tips in Wales, 2022](#), Annex 4, at para 3.11

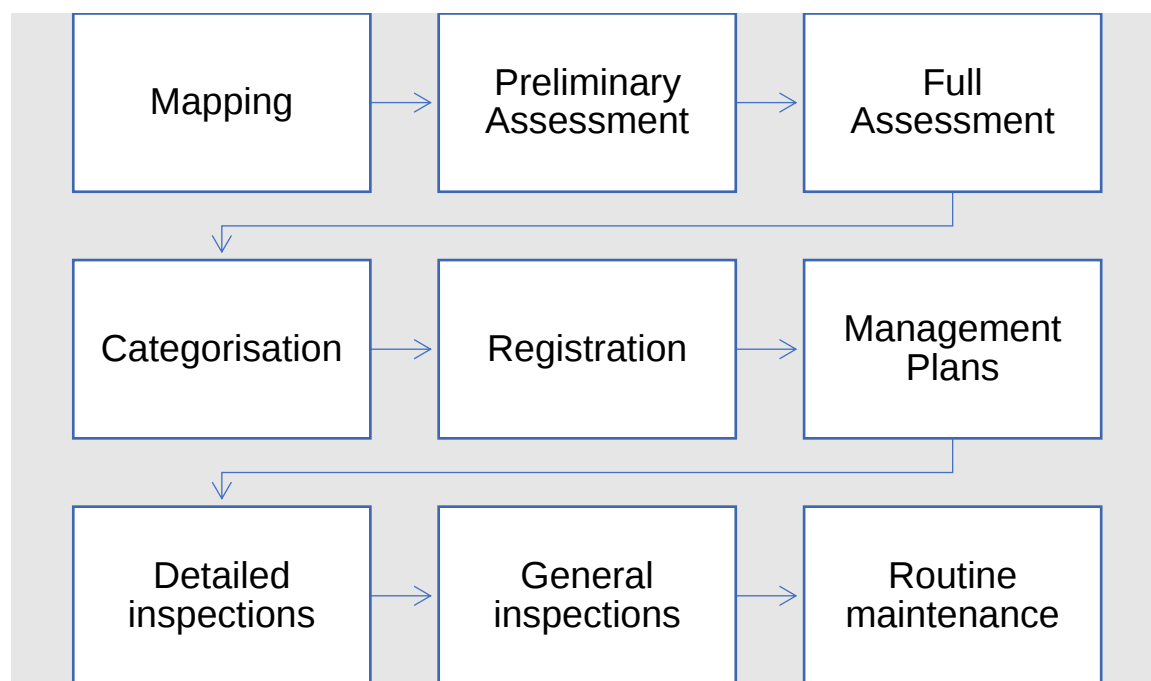
¹³ [Third UK Climate Change Risk Assessment Technical Report, Summary for Wales](#).

- The interim disused coal tip categories map exactly to the future categories. For example, all disused tips with an interim category of D are assumed to be Category 1 disused tips. Whilst this is the best estimate we have for the future number of disused tips by categories; as all disused tips in the new regime will be re-assessed, it is possible the number of disused tips per category could be higher or lower when the new regime is implemented.
- The numbers of disused coal tips of each category differ slightly from those published previously because of the live nature of the data¹⁴. The total used for our analysis here is slightly higher than previously released, and so is likely to slightly overestimate the costs. The disused non-coal tips that are added to the regime are done so at the same ratio of categories as disused coal tips in the interim categories, but a far lower proportion of disused non-coal tips are expected to be added to the regime (see paragraph 8.26 for more detail).
- The costs of individual activities are based on the work that has been undertaken as part of the Taskforce, and in particular in estimating the number of hours at each grade of staff required for a given activity, which have then been multiplied by estimated contracting-out rates to provide an estimated cost for contracting out a given activity. No economies of scale are assumed for the purposes of the RIA. The number of hours per activity have also been sense-checked with the Coal Authority. Details are provided in paragraphs 8.37-38.

8.13. The decision to estimate using ‘contracting-out’ rates, despite the expectation that some local authorities will be likely to establish in-house teams is for two reasons: firstly, for simplicity, and secondly as contracting-out is likely to be at least as expensive as an in-house team for those authorities which decide that it is more beneficial to establish such a team. It is also likely that authorities with a small number of disused tips will decide to work with other bodies, including other authorities, in order to discharge their duties.

8.14. The regime allows for the following principal elements.

¹⁴ Note the data represents a snapshot taken in July 2023, though ownership is subject to change.



8.15. For some elements of the regime, actions will be undertaken by the Authority for all disused tips. For others, it will fall to landowners to do so. This is detailed for each type of activity in the below sections.

Mapping / list of disused tips

8.16. Before an assessment of disused tips can be undertaken, they will first need to be mapped. This work has already been done in relation to disused coal tips but will need to be undertaken for disused non-coal tips as part of the new regime.

8.17. The mapping of disused non-coal tips and the creation and maintenance of a list of all disused tips will be undertaken by the Authority. This will be completed from within the assumed staffing levels and so represents no additional cost beyond that of the Authority (see Table 1).

8.18. There are approximately 2,500 disused coal tips, and it is estimated there are over 20,000 disused non-coal tips. Given that the Authority's main objective is to ensure that disused tips do not threaten human welfare by reason of their instability (under section 2 of the Bill), it is more likely to be concerned about the sorts of hazards presented by disused coal tips, than the sorts of hazards presented by disused non-coal tips. This is in part due to their location – they are far less likely to be in close proximity to residential housing and far less likely to be in narrow, steep valleys. Therefore, disused non-coal tips are likely to be sifted out in far greater numbers at preliminary assessment, and those registered in the regime are expected to be of a much lower category, on average.

Table 1 – Additional costs of mapping disused tips beyond that of the Authority’s running costs.

Additional costs of mapping disused tips beyond that of the Authority’s running costs	£0
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Preliminary Assessments

- 8.19. Preliminary assessments will be used to make a desk-based determination of whether a given disused tip needs to go forward for a full assessment. The preliminary assessment will assess whether it appears that the criteria for registering a disused tip (under section 7 of the Bill) may be met. The process will seek to screen out disused tips if there is adequate evidence to show that they pose no threat to human welfare by reason of instability or could not pose such a threat in the event of instability.
- 8.20. This desktop assessment will be undertaken by the Authority from within the assumed staffing levels, and so no additional costs are incurred over and above those related to running the Authority (see Table 2).
- 8.21. For disused non-coal tips, it is estimated that the Authority will start to consider these in 2032-33, the sixth full year of the regime being live, having focused on disused coal tips initially.¹⁵ It is estimated that it will then perform preliminary assessments on 500 disused non-coal tips a year thereafter. Such ‘run-rate’ estimates of the different activities are used to calculate required staffing of the Authority, the timings of subsequent activities or when disused tips are likely to be added to the full regime.
- 8.22. As set out in paragraph 8.18, based on current knowledge it is anticipated that the majority of disused non-coal tips will be found not to pose a threat to human welfare and will be screened out from being added to the register after preliminary assessment.
- 8.23. The Authority will prioritise the disused non-coal tips that it believes are most likely to be placed in category 1 or 2 (representing those disused tips that pose the highest threat), and as such cost estimates are based on a higher initial ‘pass’ rate, which will then drop. It has been assumed that 90% of disused non-coal tips will ‘pass’ preliminary assessment (meaning that a full assessment will be required) in the first-year disused non-coal tips are included, falling linearly to 10% in the fourth year where it then remains. These assumptions would mean that, by the end of the 15-year evaluation period, 30% of the 4000 disused non-coal tips considered – those the Authority believe most in

¹⁵ Though this would not prevent the authority assessing any non-coal tips it felt warranted earlier consideration at an earlier point.

need of evaluation – would have passed preliminary assessment. This would be expected to drop as the remainder of the non-coal estate is evaluated.

Table 2 – Additional costs of preliminary assessments beyond that of the Authority's running costs

Additional costs of preliminary assessments beyond that of the Authority's running costs	£0
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Full Assessments

- 8.24. The purpose of full assessments is to consider all significant factors identified at a site relating to the stability of the disused tip and the surrounding area and matters that have the potential to affect stability. These are all significant factors which may pose a threat to human welfare by reason of instability or in the event of instability, and are relevant to the management of the disused tip. It serves as the foundation of the disused tip categorisation process and will provide key information for the development of a management plan for a disused tip.
- 8.25. Full assessments will be carried out by the Authority for all disused tips which are not 'screened out' in the preliminary assessment stage. This will mainly utilise internal resource of the Authority, which will need to work through the disused tips at a manageable pace. The existing categories used by the Taskforce will enable the Authority to prioritise those disused tips most likely to be categorised in the categories of disused tips of highest potential threat.
- 8.26. Of the disused non-coal tips that are fully assessed, it is assumed for the purpose of the RIA that around 60% will be screened out, with the remainder categorised in the same way as the disused coal tips. That means, of those in the asset register, 3% are assumed to be Category 1, 12% Category 2, 32% Category 3, and 53% Category 4. Current expectations indicate that these are likely to under-estimate the numbers screened out at this stage, and over-estimate the number of disused tips of highest potential threat. However, in the absence of more concrete data on disused non-coal tips, a cautious approach is being taken to avoid under-estimating the costs of managing disused non-coal tips. Since their category determines the frequency and cost of subsequent activities, including maintenance, this is likely to lead to an over-estimation of costs in this document.
- 8.27. Table 3 summarises the consequences of the assumptions relating to the assessment of non-coal disused tips:

Table 3 – Summary of the consequences of the assumptions relating to the assessment of non-coal disused tips

	Disused non-coal tips
Estimated non-coal disused tips	20,000+
Preliminary assessments undertaken on x non-coal disused tips up to 2039-40	4,000
Of which, added to regime	480
Of which, as Category 1	14
Category 2	58
Category 3	154
Category 4	254

8.28. The Authority may also choose to undertake an additional full assessment of a disused tip, for example if there is a change in circumstances. It is estimated that this will occur for 20% of Category 1 disused tips each year, 10% of Category 2, and 1% of disused tips of least potential threat. For simplicity, these are assumed to start immediately once a disused tip is added to the regime.

8.29. Welsh Government currently provides funding to the Coal Authority in relation to the monitoring regime of the disused tips estate. This funding has totalled £986,400 in 2021-22, £753,869 in 2022-23, £883,662 in 2023-24 and £933,158 in 2024-25. To provide for flexibility in the operational decisions of the Authority, and to account for possible use of external contractors, especially in relation to the need for specialist advice, it is assumed that this funding from Welsh Government will continue but will be managed by the Authority from 1 April 2027, instead of the Coal Tip Safety team in Welsh Government as is currently the case. How the funding is used and for what purpose (including outsourcing to the Coal Authority), will be at the discretion of the Authority. For the purposes of the RIA, we assume a £1million per year funding agreement, as shown in the table below.

Table 4: annual costs¹⁶ for the Coal Authority monitoring regime, £(000s).

	2027-28	2028-29	2029-30	2030-31	2031-32	2032-33	2033-34
WG commission	1,000	1,000	1,000	1,000	1,000	1,000	1,000
Authority activities recharge	(1,000)	(1,000)	(1,000)	(1,000)	(1,000)	(1,000)	(1,000)
Total	0	0	0	0	0	0	0

	2034-35	2035-36	2036-37	2037-38	2038-39	2039-40	Totals
WG commission	1,000	1,000	1,000	1,000	1,000	1,000	13,000
Authority activities recharge	(1,000)	(1,000)	(1,000)	(1,000)	(1,000)	(1,000)	(13,000)
Total	0	0	0	0	0	0	0

Detailed inspection costs

8.30. The detailed inspection of disused tips is a comprehensive technical exercise. Under the proposed regulatory framework, a detailed inspection is the first type of inspection undertaken on a disused tip after it's registered. This should be carried out within six months for all Category 1 and 2 disused tips. They should then be undertaken at least every two years (Category 1) or three years (Category 2).

8.31. They may be undertaken more often, for example in response to change identified as part of a general inspection. They may also be undertaken on Category 3 and 4 disused tips, but there is no requirement to do so. For the purposes of the RIA, it has been assumed that 10% of Category 3 disused tips have a detailed inspection each year.

8.32. Detailed inspections will be undertaken by the Authority from within the assumed staffing levels, and so no additional costs are incurred over and above those related to running the Authority (covered in options 2A and 2B, below). To note, this activity is not set out in the Bill, but instead, guidance documents from Welsh Government will detail what is envisaged.

General inspection

8.33. The new regulatory regime will enable a 'reduced-technical' inspection to report on the condition and key feature types at the site. These should take place at least every six months for Category 1 disused tips, and every nine months for Category 2. Though there is no minimum frequency for disused tips of lowest potential threat, it is assumed that 20% of Category 3 and 10% of Category 4 disused tips will have a

¹⁶ Net impact of the Coal Authority monitoring commission, undiscounted.

general inspection each year – equivalent to one every five and ten years respectively.

- 8.34. General inspections will be undertaken by the Authority from within the assumed staffing levels, and so no additional costs are incurred over and above those related to running the Authority (covered in options 2A and 2B, below). Similar to detailed inspections, these are not mandated in the Bill, but instead, guidance documents will detail what is envisaged.

Development of management plans

- 8.35. Under the new regulatory regime, the intention is that responsibility for developing management plans will fall to the Authority. The Bill does not require the production of management plans, instead Welsh Government guidance will clarify the expectation that management plans should be produced, and set the parameters for these. Decisions on how management plans will be produced will be at the discretion of the Authority, including the use of the funding outlined in paragraph 8.29, should the Authority wish to. All Category 1 and 2 disused tips should have such a plan, and the Authority will determine if any category 3 or 4 tips require one. This approach has been informed by the work of the Taskforce.
- 8.36. The work to develop management plans will be undertaken by the Authority from within the assumed staffing levels, and so no additional costs are incurred over and above those related to running the Authority (covered in options 2A and 2B, below).

Estimated time and expenses for regime activities

- 8.37. The number of hours required by officials at different grades were benchmarked against the work undertaken as part of the Taskforce and sense-checked with the Coal Authority. These were then combined with estimates of hourly contracting-out rates for each grade and used in estimating the costs of contracting out each activity type. Expenses were also estimated.
- 8.38. No economies of scale are assumed, as there is not enough data to accurately estimate these.

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Table 5 – Estimated time (hours) and expenses (per inspection) for regime activities

Activity	Lead	Senior	Inspector	Expenses
Preliminary Assessment	0	1	5	-
Full Assessment	4	17	0	£150
Management Plan	2	9	24.5	£150
General Inspection	0	3	9.5	£150
Detailed Inspection	1	4	12	£150

Table 6 – Estimated hourly contracting-out rates by grade

Grade	Lead	Senior	Inspector
Hourly rate	£135	£110	£90

Routine maintenance costs

- 8.39. Routine maintenance is an essential element of the pro-active management of disused tips, and the Authority will provide advice for owners of disused tips in the register via management plans and inspection reports. Should the owners complete the routine maintenance advised by management plans, it will help ensure disused tips stay in a well-maintained condition, and therefore reduce the risks of problems escalating, and of failures.
- 8.40. Maintenance requirements will vary significantly between disused tips, and over time on the same disused tip.
- 8.41. For example, a comprehensive clearing of the culverts on a disused tip is likely to be a far more labour-intensive exercise after an extended period when no clearing has been done than if clearing is carried out annually.
- 8.42. The routine maintenance works carried out by the owners, following advice given by the Authority via management plans and inspection reports, should be no different to works already being completed where a disused tip is being maintained to a safe level and so no additional cost has been included.

Urgently necessary works

- 8.43. As well as routine maintenance, specified operations may be required by the regime, following a notice period. In addition, the regime allows the Authority to carry out operations immediately if it considers this to be necessary.
- 8.44. It is very difficult to predict whether/when immediate operations will be necessary. However, a fundamental purpose of the regime itself is to reduce the incidence of such events. As such, it is expected that the amount required to be spent on such works will be reduced both in

terms of the number of such occurrences, but also in their costs as a result of ongoing maintenance. It is assumed that the amount of funding allocated to immediate operations carried out by the Authority will decrease by 5% per year.

- 8.45. The Authority may undertake urgent work on unregistered land where there is no owner registered for a piece of land in His Majesty's Land Registry. Current data suggests that 12% of the tip estate in Wales is comprised of unregistered land.
- 8.46. The final aspect we've considered is where the owner is unable to pay for the works, without putting themselves in considerable financial hardship.
- 8.47. The best available data for such work is that undertaken as part of the Welsh Government's Coal Tip Safety grant scheme. Based on this, we are expecting the Authority to spend approximately £2m per year on urgently necessary works.
- 8.48. These costs will be covered by the Authority initially, because of a need for the works to be undertaken immediately, and then may be recovered from the relevant landowner(s), and others in some cases. It is assumed that 75% of such spending is unrecoverable, in line with figures in the Reservoir policy area and so this is built into the annual costs, displayed below. Note that the costs that are displayed below will be incurred and completed by the Authority, however the works will be funded by the continuation of the Coal Tip Safety Grant Scheme. More detail on this is provided below, in section 8.49, and the grant funding will cover not only the urgent works but portions of routine maintenance works undertaken by the bodies set out in the table below, as is currently the case. Thus, this does not constitute new costs as a result of the Bill. The bodies set out in the table below are already carrying out urgent works when it is deemed necessary.

Table 7 - Annual costs for urgently necessary works, by body¹⁷, £(000s)

Majority Owner	2027-28	2028-29	2029-30	2030-31	2031-32	2032-33	2033-34
The Authority	1,468	1,395	1,325	1,259	1,196	1,136	1,078
Local Authorities	114	108	103	98	93	88	84
NRW	45	43	41	38	37	35	33
Coal Authority	12	12	11	11	10	10	9
Private Land	319	303	288	273	259	246	234
Total	1,958	1,860	1,767	1,679	1,595	1,515	1,439

(£1000s)	2034-35	2035-36	2036-37	2037-38	2038-39	2039-40	Totals
The Authority	1,025	974	925	879	835	793	14,289
Local Authorities	79	75	72	68	65	61	1,107
NRW	31	30	28	27	26	24	437
Coal Authority	9	8	8	7	7	7	120
Private Land	222	211	202	191	181	172	3,101
Total	1,367	1,299	1,234	1,172	1,114	1,058	19,056

Major capital investment and future grant schemes

8.49. Major, non-urgent capital investment is not mandated by the regime. As part of the RIA, we assume that the grant scheme currently being run by the Welsh Government, will continue. An £10.3m capital grant and a £1m revenue grant is assumed to continue, and this should be adequate to cover not only the urgent capital investment required, outlined in the above section, but also the non-urgent capital maintenance or routine maintenance works on the disused tips estate. The grant is currently managed by the Welsh Government. However, management will transfer to the Authority on 1 April 2027. It will be the responsibility of the Authority to award grant letters and distribute funding appropriately. The assumption of £11.3m grant funding per year is based on the previous year's grant funding, however grant applicants have made bids totalling £27m in 2024-25 alone, so the demand for funding may well be considerably higher than the £11.3m we have assumed in this RIA. The Authority will therefore need to prioritise the way it allocates its funding in the same way that Welsh Government does in running the Coal Tip Safety Grant - this will include allocating funding over a multi-year operational period. Given this funding is currently already provided by the Welsh Government,

¹⁷ annual costs per body for urgent works, non-discounted.

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the net cost to the Authority will be zero. The below table shows the values, assuming £11.3m of funding is continued per year.

Table 8: annual costs¹⁸ for the Coal Tip Safety Grant scheme, £(000s).

	2027-28	2028-29	2029-30	2030-31	2031-32	2032-33	2033-34
Current WG funding	11,300	11,300	11,300	11,300	11,300	11,300	11,300
Coal Tip Safety Grant (Authority managed)	(11,300)	(11,300)	(11,300)	(11,300)	(11,300)	(11,300)	(11,300)
Total	0	0	0	0	0	0	0

	2034-35	2035-36	2036-37	2037-38	2038-39	2039-40	Totals
Current WG funding	11,300	11,300	11,300	11,300	11,300	11,300	146,900
Coal Tip Safety Grant (Authority managed)	(11,300)	(11,300)	(11,300)	(11,300)	(11,300)	(11,300)	(146,900)
Total	0	0	0	0	0	0	0

Welsh Government opportunity costs: Guidance

8.50. To assist the Authority with the exercise of its functions, Welsh Ministers intend to issue guidance to the Authority on matters to include monitoring, appeals and charging. In accordance with section 69 of the Bill, in exercising its functions, the Authority must have regard to guidance given to it by the Welsh Ministers. Set out at tables 9A and 9B below, is an estimate of the Welsh Government staff costs that will be incurred in preparing the relevant guidance documents. This includes time spent drafting guidance, relevant consultation documents, consideration of consultation responses and liaising with stakeholders. The costs are spread across 2025/26 and 2026/27.

¹⁸ Net impact of the Coal Tip Safety Grant Scheme, managed by the Authority.

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Table 9A – Costs of developing guidance 2025/26

Activity	Grade	Time	Cost
Preparing Guidance	7 x 2	(7 months each)	£108,318.00
	SEO x 2	(7 months each)	£83,276.67
	Deputy Director	(1 month)	£10,665.08
Translation	HEO x 2	(0.5 month)	£4,754.92
Total			£207,014.67

Table 9B – Costs of developing Guidance 2026-27

Activity	Grade	Time	Cost
Preparing Guidance	7 x 2	(8 months each)	£123,792.00
	SEO x 2	(8 months each)	£95,173.33
	Deputy Director	(1.5 months)	£15,997.63
Translation	HEO x 2	(0.5 month each)	£4,754.92
Total			£234,962.96

Costs relating to an appeal to PEDW

8.51. The regime includes rights to appeal at several points. Any uptake of these rights will therefore incur costs in relation to either the person appointed by the Welsh Ministers (this is likely to be the Planning and Environment Decisions Wales (PEDW)), or for the courts. To calculate the potential costs associated with this, the number of appeals has been estimated based on the number of notices that are subject to an appeal that are likely to be issued in relation to the different categories of disused tip. These are set out in the table below.

Table 10 – Estimate of the number of notices to be issued per annum, broken down by category of disused tip

Category	Number	Notice % Per Annum	No. Notices per Annum
1	83	10	8
2	267	5	13
3	706	1	7
4	1209	1	12
Total			40

- 8.52. Given the lack of available data on the number of appeals, we have assumed that 25% of notices requiring an owner of land to carry out operations will be the subject of an appeal, which means a total of 10 per year.
- 8.53. It is expected that most applications to vary or cancel such notices will be made in writing. Given the nature of the application and the issues that are likely to be raised (including, for example, disputes over whether operations are required or, if they are required, the nature of the operations), we have assumed that 80% of appeals will be determined on the basis of the information provided by the person who made the application and other interested parties and 20% in oral hearings.
- 8.54. This means that the average cost to PEDW of hearing appeals will be a maximum of £100k a year, this estimated cost is based on an average cost of PEDW considering an appeal, times the number of projected appeals. This cost is expected to be incurred from 2027-28.

Cost of Option 2A (adaptation of an existing body)

- 8.55. This option considers the implementation of the regime costed above through the adaptation of an existing body to be the Authority. These costs are therefore in addition to those of the regime in “Option 2”.
- 8.56. The costs would include the adaptation of an existing body to deliver the new regulatory regime, as well as the ongoing costs to the body of overseeing and implementing the regime. The current costs that are given to the Coal Authority for their inspection programme will transfer to the Authority, and these funds would then be available to use by the Authority as it sees fit, as outlined in section 8.29. This would include not just the cost of undertaking the new functions, but an increase in general administrative costs associated with an expansion of staff and functions.
- 8.57. The existing body would have to meet the criteria outlined in the White Paper and summarised here at paragraph 7.21. It is important to note that none of the public bodies considered were deemed to meet all the required criteria. Following stakeholder consultations, in which cases for and against the adaptation of existing bodies to deliver the new regulatory regime were considered, it was recommended in the Law

Commission report¹⁹ that the Authority should be a new body.²⁰
Adapting an existing body is therefore not considered a feasible option.

- 8.58. However, to provide a complete picture, the costs for this option are included.
- 8.59. Some costs will be the same whether an existing body is adapted, or a new body established. Where that is the case, the cost is included in both options, but the detail is included in the Option 2B section to prevent repetition.
- 8.60. An analysis of which costs would still be required were an existing body to be adapted, and which could be absorbed by that body's existing provision, with consideration to the opportunity cost of re-assigning staff time in this way, has been undertaken. This has included discussions with colleagues within Welsh Government who work closely with arms-length bodies, as well as with officials in several of those bodies. This has helped to benchmark our costings against real-life examples.

Staff salaries

- 8.61. Staffing can be divided into three general categories: those required to undertake the activities outlined in option 2 above ("regime staff"); the organisation's senior staff, including its Board ("senior staff"); and staff undertaking 'corporate' functions required to support the organisation's staff and work ("corporate staff").
- 8.62. The regime staff requirements are the same for an adapted existing body as for a new body since the 'regime activities' are required in both cases and would be new in both an existing and new body. These are detailed below in option 2B. In summary, this means 33 staff at a total cost of £33 million, or £2.2m a year.²¹
- 8.63. An existing body will allow some efficiencies with respect to senior staff, including the Board. It is assumed that an existing body would require an additional Board member to ensure the Board contained technical expertise on disused tips, as well as three new senior officials (G6) to run a new 'tips' division. An existing body is therefore assumed to require 4 additional senior staff, with a total cost of £5.2 million, or £0.3m a year.²²
- 8.64. Finally, the corporate staff would allow for some efficiencies, but there is a need to be cognisant of the opportunity cost of redirecting some of that existing resource to work related to the new division. It is therefore

¹⁹ Law Commission, "[Regulating Coal Tips Safety in Wales: Report](#)", 2022, at paragraph 2.2.

²⁰ Law Commission, "[Regulating Coal Tip Safety in Wales: Report](#)", 2022, at paragraphs 2.28 – 2.64

²¹ Over the 15 years the authority is established during our 15-year window. Simply, the total amount divided by 15. Therefore, this isn't the average (2024) cash amount each year.

²² Over the 15 years in which the full senior staff will be in post.

assumed that an existing body would require 16 additional corporate staff to support the new workload and staff, at a total cost over 15 years of £17.1 million, or £1.1m a year.²³

- 8.65. A contingency of 5% is then added to all staffing costs to account for a degree of flexibility and uncertainty in staffing. In summary, that gives a total number of additional staff to an existing body of 53, and a total cost for staffing of £58million, or £3.9m average per year (over the 15 years after the Authority is established).

Non-staffing costs

- 8.66. A number of the non-staffing costs would be the same as for a new body and are detailed below. These include elements such as the development and maintenance of the asset register, creation of a website, specialist software and equipment for regime staff, instrument's and technology costs.
- 8.67. Other costs will be reduced in proportion to the reduction in staff between options 2B and 2A. This includes elements such as the cost of laptops or office space. A 25% contingency is also added to the non-staff costs to reflect the uncertainty. Costing details are included in option 2B, below, but for option 2A, with its 53 staff, we have assumed that non-staff costs are proportional with the average staff costs for option 2B.
- 8.68. This all gives a non-salary cost of £21.4 million.
- 8.69. As aforementioned, the Coal Authority funding is assumed to continue and totals £13m. Since this funding is assumed to continue and will be at the discretion of the Authority to use, this has been deducted from the overall cost estimate, which considers additional spend as a result of the option.

Overall cost estimate

- 8.70. This gives an overall cost estimate of £66.4 million, or £4.4 million a year over the 15 years that the body would be formally established as the Authority.

²³ Over the 15 years the authority will be established during our 15-year window.

Table 11 – Estimate of overall costs over 15-year period

Costs (£millions)	No.	Average p.a.	Total
Senior staff	4	0.3	5.2
regime staff	33	2.2	33
Corporate staff	16	1.1	17.1
Inc contingency 5%			2.8
Staff costs	53	4	58
Authority running costs			21.4
Coal Authority funding			-13
Total			66.4

8.71. The total additional cost (over and above what is currently provided for) of option 2A plus option 2 is therefore £66.4million over the 15-year period, summarised in the table below, where the cost of implementing the regulatory regime is assumed to be covered by the Coal Tip Safety Grant already in existence.

Table 12 – Total cost of Option 2A (over the 15-year assessment period)

Costs (£millions)	Total
Cost of establishing and operating the Authority	66.4
Cost of implementing the regulatory regime	14.3
Coal Tip Safety Grant	-14.3
Total	66.4

Cost of Option 2B (establishment of a new body)

8.72. As with option 2A, the costs in this section relate to the Authority, and are in addition to the regime costs identified in option 2 above.

8.73. A number of assumptions have been made with regard to the structure, size of, and set up considerations for the Authority.

Staff salaries

8.74. Remuneration costs have been calculated using the latest Welsh Government average pay costs for non-senior and senior civil service (SCS) pay bands. Technical roles (maintenance, advisor, and inspector teams) have been uplifted by 10% to reflect the challenge in recruiting to such roles. Staffing number estimates have been supported by conversations with Welsh Government colleagues who work with arms-length bodies, as well as background discussions with officials in those bodies.

8.75. The Bill provides for a Board, including non-executive members who would work part-time, estimated at six, including the Chair. There would also be senior executive staff, estimated at four (1x SCCS3, 2x

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SCCS1, 1x G6). The total estimated salary cost of senior staff, including the Board, is £8.3million, or £0.6m a year.²⁴ Salary details, per grade, (which include “on costs”) are set out in table 13 below.

Table 13 – Staff salaries

Salaries	Annual cost
SCS 3	£189,592
SCS 2	£163,417
SCS 1	£127,981
Grade 6 (uplift)	£123,773
Grade 6	£112,521
Grade 7 (uplift)	£102,128
Grade 7	£92,844
SEO (uplift)	£78,518
SEO	£71,380
HEO (uplift)	£62,765
HEO	£57,059
EO (uplift)	£48,991
EO	£44,537
Board Chair	£12,288
Non-exec director	£9,504

8.76. Almost half of the expected staff would be working directly on the regime. This includes the following teams (grades range from EO to G6):

- Associate Director, Operations, Technical Delivery & Data (1x G6, one)
- Data (1x G7, 1x SEO, 2x HEO, 3x HEO, seven)

²⁴ Over the 15 years that the Authority is established.

- Maintenance (1x G7, 2x SEO, 2x HEO, five)
- Technical advisors (1x G7, one)
- Enforcement, compliance and charging (1x G7, 1x SEO, 1x HEO, three)
- Inspectors (2x G7, 6x SEO, 8x HEO, sixteen)

8.77. The experience of the Taskforce since 2020, including its work with the Coal Authority on the inspection regime, and with local authorities with the grant scheme, has allowed not just for the specifics of the regime to be trialled ‘on the ground’, but also to develop an increasingly sophisticated understanding of what running such a regime entails.

8.78. This has been supported by estimating the number of hours, at each grade, which are required to undertake each of the tasks within the regime, and therefore provide the minimum staffing level required – the demand will vary from year to year, and the current estimated mean number of full time equivalents (FTEs) needed for the inspection team is a little under 13, but a higher figure has been used to reflect that a stable team of full-time staff is likely to be preferred by the Authority, as well as a desire not to run at 100% of theoretical capacity. A funding equivalent to the current cost of the Coal Authority inspection regime is assumed to transfer into the Authority to capture the Authority’s option to do so, and its likely use of external expert advisors or outsource capacity.

8.79. The total number of staff in this area is estimated at 33. The total salary cost at £33 million, or £2.2m a year.²⁵

8.80. The final group of staff are those undertaking corporate and support roles. These are taken to include Legal, HR, Finance, Procurement, ICT, Governance, Comms and Strategy. They are estimated to number 34, and to have salary costs of £34.2 million, or an average of £2.3m a year.²⁶ This includes the following teams (grades range from EO to G7):

- Strategy & Comms (1x G7, 1x SEO, 1x HEO, 1x EO, four)
- Policy & Strategy (1x G7, 1x SEO, 1x HEO, three)
- Legal (4x G7, four)
- Human Resources (1x G7, 1x SEO, 1x HEO, three)
- Finance (1 x G7, 1x SEO, 1x HEO, three)
- Procurement (1x G7, 1x SEO, two)
- ICT (3x G7, 3x SEO, 1x HEO, 1x EO, eight)

²⁵ Over the 15 years that the Authority is established.

²⁶ Over the 15 years that the Authority is established.

- Executive support and governance (2x G7, 1x SEO, 1x HEO, 3x EO, seven)

8.81. A contingency of 5% has then been added to the above to reach a total staff cost of £79.3 million, or £5.3 million a year over the 15 years the Authority is established.

8.82. WLGA have raised some potential concern regarding the staffing pool available in South Wales, and have suggested the potential detriment to local authorities, should their current staff members leave their posts and join the Authority.

Non-salary costs

8.83. The other area of costings for the Authority, are non-staff costs. These are estimated at £32.8 million, and a breakdown of the cost categories is provided below.

8.84. These costs have also been benchmarked, where possible, against the work and requirements of the Taskforce, discussions with Welsh Government colleagues who work with arms-length public bodies, and with officials in such bodies, and are of comparative size to those.

8.85. However, implementation will be a significant undertaking over several years. The Authority is not anticipated to be established before 2027. As such, the estimated costs, though as accurate as possible at present, are preliminary. As preparatory work for the implementation progresses, it will be possible to refine the costings.

8.86. An annual contingency of 25% is added to the estimated non-staff costs to reflect this uncertainty.

Instrumentation and technology strategy

8.87. There is a significant cost associated with acquiring or utilising technology for carrying out technical activities as provided in the Bill and informed by the technology programme.

8.88. This will build on the trialling of technology undertaken as part of the work of the Taskforce. It is intended to both provide key data to support and enhance the monitoring of disused tips, as well as to explore the partial automation of elements of the regime. This might include, for example, the use of tilt, movement, or water sensors, or the automatic analysis of satellite imagery.

8.89. Technology will be important in supporting the delivery of a more effective, and increasingly cost-effective regime. However, no efficiency savings from future use of technology has been factored into this RIA due to the inherent uncertainty involved in future technology changes.

8.90. The total cost envisaged for this category is £6.1 million (£376k per annum once the regime is established plus £1.1m of one-off set up

costs in the establishment period of operations). This is included as part of the cost of establishing and running the Authority.

National tip register (development and support)

8.91. The register itself will require what is essentially an asset management system with a public-facing element. The costs for this are based on the current product costs from Microsoft Dynamics applications and are included in the £6 million of technology related spend. This has similarities with some other systems within the public sector such as those run by NRW but will have its own requirements.

8.92. An early analysis by officials has identified initial costs to set-up and adapt such a system of £1.5million, made up of a D365 Implementation partner, initial licenses and running cost of cloud environments, and then ongoing licencing and support costs of around £40,000 per annum. These include:

- System development, including public facing features;
- Annual support;
- Annual web and mobile licences.

8.93. This has resulted in an ongoing annual cost of £40,000.

Other costs

8.94. Other costs incurred include elements such as:

- computer hardware and software, including specialist packages;
- vehicles and their use;
- PPE and site equipment;
- Office space and utilities;
- Website and marketing;
- Office set-up costs:

8.95. A breakdown of likely costs by category is presented below:

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Table 14 – Breakdown of likely costs by category

Cost category – set up and annual recurring costs	Total spend (£)
IT technology – including IT infrastructure, software, systems, consumables	£5.9m
Website costs	£0.2m
Office costs – including service charges	£11.4m
Recruitment costs	£0.3m
Vehicles and PPE costs	£5.4m
Training	£0.8m
Future Generations Commissioner	£0.1m
Auditor General Wales	£0.1m
25% contingency	£6.2m
PEDW costs	£1.3m
Production of guidance documents	£0.4m
Total	£32.8m

8.96. As a new body would be added as a public body subject to the WBFG Act, the table above includes costs to fund the Well Being of Future Generations Commissioner and the Auditor General for Wales for the work it is required to do in accordance with the relevant provisions of Schedule 1 of the Bill.

8.97. Initial recruitment costs are estimated at £300,000 in 2026-27 (higher costs relating to appointment of senior staff), followed by £200,000 in 2027-28 when the bulk numbers of staff are expected to be recruited. This will be followed by a yearly on-going cost of £13,000 to cover the attrition rate.

8.98. Training costs have been estimated as a percentage of staff salaries, estimated at 1%, equating to £800,000 (£60,000 per year).

Summary of costs

8.99. Based on these assumptions, the total envisaged cost of establishing and operating the Authority has been calculated at £99.1 million, or

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£6.6 million a year for the 15 years after the Authority is established. This cost includes the set-up costs, staff, and non-staff running costs. This is broken down as transitional costs from 2025-26 to 2026-27 of £5.6m and recurrent costs totalling £92.2m from when the Authority goes live.

8.100. The following table summarises the cost of establishing and operating the Authority.

Table 15 – Indicative cost of establishing and operating the Authority (over the 15-year assessment period)

Costs (£millions)	Totals
Total set up and running costs	32.8
Staff running costs	79.3
Coal Authority funding	-13.0
Total	99.1

Total cost of Option 2B including Option 2 costs

8.101. The total cost of this option is estimated at £99.1million over the 15-year period, summarised in the table below.

Table 16 – Total cost of Option 2 (over the 15-year assessment period)

Costs (£millions)	Totals
Cost of establishing and operating the Authority	99.1
Cost of implementing the regulatory regime	14.3
Coal Tip Safety Grant Scheme	-14.3
Total	99.1

Table 17 - Cost summaries of options (over the 15-year assessment period)

	Option 2 and 2A	Option 2 and 2B	Difference
Total set up and running costs	£66.4m	£99.1m	£32.7m
Total	£66.4m	£99.1m	£32.7m

Benefits of Option 1

8.102. As outlined above in 7.6, the ‘business as usual’ option is not taken to include the current Taskforce work and associated grant scheme.

8.103. The net present social value (NPSV) of Option 1 – ‘business as usual’ without any assumption of the Taskforce continuing – is therefore considered, for the purpose of this analysis, to be zero.

Benefits of Option 2

8.104. The benefits likely to accrue from implementing a long-term regime which deals with the legacy of centuries of mining and quarrying in Wales's industrial past are varied and complex. In evaluating the individual benefits three are deemed to be partially quantifiable, namely:

- Avoided costs of disused tip slides,
- Welfare improvements, and
- Employment benefits.

8.105. All three of these benefits involve a high degree of uncertainty, and accordingly the assessment provided is intentionally cautious. There are also other benefits, such as health related and environmental, where it was not felt possible to provide a reasonable quantifiable estimate.

8.106. The analysis of the benefits considers Options 2A and 2B together as the benefits of both options are assessed to be the same. The assessment in relation to Options 2A and 2B were not driven by quantifiable benefits, but by the viability and appropriateness of each option, as discussed above.

Avoided cost of coal tip slide

8.107. In estimating the avoided costs of tip slides under the proposed regime, there are three significant uncertainties:

- The likelihood of a given tip sliding,
- The cost of such a slide, should it occur, and
- The reduction in the likelihood or cost due to the implementation of the regime.

8.108. In addition, climate change is predicted to increase the frequency and intensity of high rainfall events and associated flooding in areas with a high concentration of tips, in particular the South Wales valleys.²⁷ Such events would be expected to increase the risk of failures. However, the models for this, and particularly the likely impact on tips, introduces significant additional uncertainty, and is therefore not factored into our analysis.

8.109. Finally, it is critical that we do not conflate the attempt to estimate such avoided costs with any sort of prediction of possible future

²⁷ For example. "There are increased risks from intense rainfall on soils made up of unconsolidated material from contaminated land, spoil tips, and mine tailings in former mining areas" (page 26) or "With annual mean rainfall increasing in Wales, especially in South Wales, climate change may increase the risk of future slope failures" (page 88), [Evidence for the third UK Climate Change Risk Assessment, 2021](#)

failures. The implementation of a new regime is intended to reduce the threat to human welfare posed by any potential instability of disused tips. Practically, a regime of pro-active monitoring and maintenance means not only a reduction in the likelihood of tip failures, but the regular inspections and pro-active works will mean any adverse events are likely to be identified earlier and be of reduced significance too. Both of which would mean lower subsequent costs.

8.110. The approach therefore taken has been to extrapolate from available, recent data in order to give an indication of potential avoided costs. Estimates of costs associated with adverse events on tips²⁸ have been provided by members of the Taskforce's Technical Advisory Group (including representatives of local authorities, NRW, and the Coal Authority), based on the decade before the Taskforce was up and running (2010-2020).²⁹

8.111. These costs are limited to the direct costs of dealing with the incident. It does not include any indirect costs, such as impacts on economic productivity or opportunity costs, as reliable data is not available. It is therefore considered to be a conservative estimate of the total associated costs.

8.112. Data was provided by twelve local authorities (with 70% of disused coal tips situated in their areas) and NRW. Some of the data provided involved an estimate of costs. It is therefore important to note that what follows is an estimate built on partial data which nonetheless provides a useful indication of recent costs. Seventeen such events were identified, with a total cost of approximately £31 million. Most of the incidents identified happened in 2020.

8.113. To make use of the data in our analysis the following steps were taken:

- For each incident reported, a single figure (where a range was provided, the central point), and a single financial year (when the Authority identified the 'event' as taking place) was assigned.
- This was then uprated to 2024-25 prices using the GDP deflator.³⁰
- These were summed to provide a partial cost in 2024 prices of slips over the period – partial because not all local authorities provided data.

²⁸ The request was for slips, large scale washout, infrastructure failure (e.g. any event where the resulting impact affected the tips performance or public safety, subsequently requiring intervention/remediation)

²⁹ A decade was chosen to balance the desire for more recent data with a need to avoid over-representing 2020 through a too-short window. The time was taken until the Taskforce was established to reduce the risk of the data being impacted by its work. A shorter timeframe would have given a significantly higher total.

³⁰ UK Government figures: <https://www.gov.uk/government/statistics/gdp-deflators-at-market-prices-and-money-gdp-september-2023-quarterly-national-accounts>

- The proportion of tips of highest potential threat that are within the local authorities which had returned data was then considered (70%), and the total was extrapolated using that (that is, multiplied by 100/70).
- Finally, this figure was then scaled up (by 12/10) to provide a figure for twelve years (the length of time the higher rated tips will be fully within the regime within our analysis window).

8.114. This does not consider that the positive impact of maintenance works extends beyond the year in which they are done. So, were the regime to cease to function at the end of our 15-year window, there would still be a long tail of avoided costs which should be properly considered as benefits within the analysis window. Some works may have an impactful life of many years, even if that reduces over time, and so any such calculation would be likely to add materially to the estimated benefits of the regime. However, it would be complex to estimate the longevity of such benefits, and it would be compounding one uncertainty with another, so this is not included in the calculation.

Table 18: Potential avoided costs

Time period of analysis of historic tip data	10-year
Data received covered LAs which included this percentage of tips of highest potential threat	70%
Total direct cost of dealing with incidents (cash)	£31.2million
Total cost uprated to 2024	£35.5 million

8.115. This gives a sub-total for our indicative avoided costs of £42.6million (£38.7 million discounted to 2024 prices).

8.116. In addition to the uncertainties outlined above, a time-limited data snapshot is also likely to miss rarer-but-larger potential slips. Aberfan is clearly the most catastrophic of such failures, and this analysis does not intend to dismiss the devastating consequences of this tragedy that still scars this former mining community. Clearly, in terms of economic analysis, use of HM Treasury's Green Book approach to a single

disaster such as Aberfan would reach a monetary equivalent in the hundreds of millions of pounds.³¹

8.117. However, it would not be appropriate to present evidence that could be seen to indicate that a similar incident could ever be allowed to occur again: the Welsh Government is determined to do everything in its power to avoid any future similar tragedies ever occurring and the lengths that we have already gone to ensure such an event can never occur again should not be underestimated. It should also be noted that Aberfan was an active tipping operation, not a disused tip.

8.118. Instead, this analysis seeks to include a more proportionate hypothetical larger scenario. This is based on an example within our timeframe, but one which occurred in England and with no loss of life. In February 2013, a landslide occurred in a spoil heap at the Hatfield Main Colliery in England. Like Aberfan, Hatfield was an active mining operations site. The failure distorted a large section of train line in Yorkshire, disrupting train services for five months.³² Although this did not occur in Wales, the geophysical conditions and risk profile of the tip means it provides a good indication of the potential costs of a similar size failure in Wales. The cost of recovery and remediation following Hatfield was estimated at £65 million (£82.8 million in 2024 prices). This doesn't include the cost associated with closing a railway for six months.³³

8.119. A Hatfield-sized event is included in our analysis as a once-in-fifty-years event, which gives us a total, when scaled down to a 12-year³⁴ window of £19.9 million. Added to the figure above, this gives a working total of £62.5 million.

8.120. While the mitigation effort envisaged in the regulatory regime does not guarantee total removal of any risk, it will reduce the likelihood of disused tip slides. The extent to which such reduction can be predicted is difficult to define prior to the undertaking of comprehensive assessments of all tips. However, internal assessment by the Welsh Government suggests that a reasonable, but cautious estimate is to assume that there would be an 80% reduction in costs associated with disused tip failures because of successful mitigation measures. That would manifest as both fewer failures, and reduced impacts where they did still occur. This has been applied to the analysis to reduce the total avoided cost estimate.

³¹ See paragraph 8.118 onwards below for some general discussion of such an approach.

³² <https://www.bgs.ac.uk/case-studies/hatfield-colliery-south-yorkshire-landslide-case-study/>

³³ Law Commission, Coal Tip Safety in Wales: [Impact Assessment](#)

³⁴ 12-years to reflect the period within our analysis window that active maintenance is being carried out, so as not to consider avoided costs for tips not fully within the national register and benefiting from the full regime.

8.121. The calculation results in an avoided cost for our assessment period³⁵ of £50.0million. For the purposes of calculating annual figures, and to discount the total over time, this is taken to be £4.2million per year. This gives a total (discounted) value of **£38.7million**. This is summarised below.

Table 19: Indicative avoided costs

Estimate	Total
12-year total based on the data from the technical group	£42.6 million
12-year equivalent of Hatfield	£19.9 million
Total 12-year estimate	£62.5million
Reduced to reflect an 80% impact	£50 million
Gives a per year amount	£4.2million
Gives a discounted, indicative avoided cost total	£38.7million

Welfare improvements

8.122. An increase in people's willingness to utilise recreation sites close to disused tips, provides a useful, quantifiable indication of the increase to the welfare value of areas with disused tips.

8.123. This is not to undervalue the broader impact on communities and individuals of knowing that the tips in their area are being pro-actively monitored and managed. This is of significant importance. However, the ability to model such a benefit quantitatively is limited. The current analysis is intended to function as an imperfect, but indicative proxy for that. More directly, it can be viewed as seeking to model the historic reduction in utilisation of green spaces near to disused tips, which would be partly corrected through a comprehensive regime of monitoring and maintenance of the tips.

8.124. The University of Exeter's Land, Environment, Economics and Policy Institute (LEEP) has developed an Outdoor Recreation Value Tool (ORVal) that estimates welfare value based on visits to recreation sites

³⁵ The twelve years that higher-rated coal tips are in the regime.

across Wales and England.³⁶ The tool is a web application developed with funding from the UK's Department for Environment, Food and Rural Affairs.

- 8.125. LEEP defines welfare value as “a figure describing the monetary equivalent of the welfare enjoyed by individuals as a result of having access to a greenspace.”³⁷ The welfare value of such a space is a monetary estimate of the extra welfare enjoyed by the adult residents of Wales and England from being able to access that space.
- 8.126. The tool's primary purpose is to “provide information that might be useful to government, businesses and communities in understanding the benefits that are derived from accessible greenspace”. It is a sophisticated recreational demand model that uses a very large dataset to estimate these welfare values.³⁸
- 8.127. It is a person-level model that provides estimates of the recreational behaviour of a person with particular characteristics living in a specific location. The model can be used to predict which green spaces an individual might visit over the course of a year and how much welfare value they get from each of the green spaces available for them to visit.
- 8.128. In order to utilise the model, the latest welfare values were extracted from this tool for each of the 16 local authorities³⁹, in whose area known disused coal tips are situated. This provided a baseline. It was then assumed that the annual welfare value would increase in proportion to the area of each local authority area covered by disused coal tips (this is used as a proxy for proximity of recreation sites to tips) which ranges from 0% to 9.75%. This is applied every year the intervention is effective from, for up to 15 years, the time period used for the impact assessment.
- 8.129. The balance sought is between acknowledging that the tool only captures the benefits to recreational grounds, not any other similar benefits, and the lack of evidence (either way) as to the likely impact of a comprehensive management regime on recreational land use.
- 8.130. To calculate an estimate for the welfare value improvement, the estimated welfare value for each local authority is multiplied by the tip coverage of that local authority. To account for the uncertainty that the

³⁶ See <https://www.leep.exeter.ac.uk/orval/>

³⁷ Source:

https://www.exeter.ac.uk/v8media/research/leep/documents/publications/reports/orval_user_guide.pdf#:~:text=The%20Recreation%20Demand%20Model%20that%20underpins%20the%20ORVal%20Tool%20is – page 14.

³⁸ Source: https://www.leep.exeter.ac.uk/orval/pdf-reports/ORVal2_User_Guide.pdf - page 3

³⁹ Isle of Anglesey, Pembrokeshire, Carmarthenshire, Swansea, Neath Port Talbot, Bridgend, Rhondda Cynon Taf, Merthyr Tydfil, Caerphilly, Blaenau Gwent, Torfaen, Flintshire, Wrexham, Powys, Cardiff, and Monmouthshire.

welfare value of green space around tips is representative and could be an over-estimate given the type and quality of environment (which is likely to vary between areas), the value is reduced by 50%. The purpose of this calculation is to estimate the improvement in welfare value, given the mitigating efforts due to the new regulatory regime. This is a speculative attempt to capture the benefits to communities who live in the shadows of disused tips of a comprehensive regulatory regime – effectively to partially return the welfare value for the area towards what it might have been without the presence of disused tips. We acknowledge that though a sophisticated model, it is a partial measure of the welfare benefit of the regime.

- 8.131. This increase in welfare value is estimated to be £38.8 million (£27.7 million discounted) over the 15-year assessment period. For sensitivity, this would be £19.4 million or £58.2 million if a 25% or a 75% reduction value is applied instead of the 50% considered in this analysis.

Indirect employment benefits

- 8.132. Positive employment outcomes can also be linked to the implementation of the proposed regulatory regime. Such outcomes are related to positive perception changes in the kinds of employment activity that can be conducted around the areas.
- 8.133. An increase in welfare value as discussed above may also contribute positively to an improvement in employment prospects. This may be as simple as an increase in the confidence of a community in relation to the longer-term stability of nearby disused tips, leading to a greater willingness to establish a new business, or to invest in the land itself for more productive use.
- 8.134. This assessment has not carried out a sector-by-sector analysis of employment growth but has considered the average total growth rate of employment in the 16 local authority areas which contain coal disused tips. This amounted to an average annual increase of 1.1% over the decade from 2010.⁴⁰
- 8.135. The impact of implementing the regime on employment near to the disused tips has been estimated on an individual local authority basis, using the current employment numbers for that local authority as a baseline, and then calculating an individual growth rate factor using the medium-term average annual employment growth rate for the local authority along with the disused tip coverage in that local authority area (again, as a proxy for proximity to a disused tip). This is taken to be a one-off increase in employment.

⁴⁰ <https://statswales.gov.wales/Catalogue/Business-Economy-and-Labour-Market/People-and-Work/Employment/Persons-Employed> . Data beyond 2020 has been excluded to exclude the distorting and unusual impact of COVID 19.

- 8.136. For example, Blaenau Gwent, with by far the largest land area coverage of known disused coal tips of 9.75% and an annual average employment growth rate of 1.3%, gives us an annual growth factor of 0.13% (that is, 9.75% multiplied by 1.3%). This can then be multiplied by the employee numbers of 31,100 to estimate approximately 40 new employment opportunities during our 15-year window. Whereas Torfaen, with a mid-range disused tip coverage, has an annual growth factor of 0.02% (3.22% disused tip coverage of land area multiplied by annual average employment growth rate of 0.3%), and a base level of employment of 41,000, giving an estimate of approximately 9 additional employment opportunities in our 15-year window.
- 8.137. Overall, this implies a potential one-off addition of approximately 194 jobs across the country could be added as a result of the regime. This represents approximately 0.014% of the number of people in employment in Wales, or 0.017% within the 16 local authorities with disused coal tips. It is a conservative estimate and does not include further employment growth that will be associated with potential reclamation programmes on the viable disused tip sites.
- 8.138. These job opportunities are included as a benefit after the disused coal tips of greatest potential threat are fully incorporated in the regime and taken to be stable (in aggregate) over the remaining regime.
- 8.139. To quantify the economic benefit of this increase in employment, a monetary value has been determined by applying an annual wage at the minimum wage level of £20,048 (£11.44 per hour⁴¹ on a 35 hour⁴² week). This amounts to **£50.5 million** over the period in consideration.
- 8.140. Although not empirically tested, consideration has been given to the possible impact of displacement on the employment growth. It is assumed, for the purpose of this analysis, and given the small numbers involved, that the employment numbers are in addition to existing employment, based on new entrants to the workforce.
- 8.141. A summary by local authority is provided:

⁴¹ UK Government, [National Minimum Wage and National Living Wage rates](#)

⁴² ONS, [Average actual weekly hours of work for full-time workers \(seasonally adjusted\)](#)

Table 20 - Employment creation, summary by local authority

Local Authority	Employees	tip coverage	Avg. annual growth	Specific GF	New Jobs
Blaenau Gwent	31,100	9.75%	1.3%	0.13%	39.9
Bridgend	65,200	2.55%	0.7%	0.02%	12.3
Caerphilly	85,100	4.68%	1.8%	0.09%	72.6
Cardiff	185,600	0.06%	2.0%	0.00%	2.2
Carmarthenshire	78,400	0.14%	0.3%	0.00%	0.3
Flintshire	78,200	0.12%	1.0%	0.00%	0.9
Isle of Anglesey	30,600	0.00%	0.1%	0.00%	0.0
Merthyr Tydfil	24,200	5.54%	0.1%	0.01%	1.5
Monmouthshire	45,400	0.17%	0.9%	0.00%	0.7
Neath Port Talbot	61,500	2.28%	1.0%	0.02%	14.4
Pembrokeshire	55,700	0.02%	0.9%	0.00%	0.1
Powys	60,700	0.06%	0.1%	0.00%	0.0
RCT	99,800	5.21%	0.6%	0.03%	29.1
Swansea	113,400	0.49%	1.7%	0.01%	9.5
Torfaen	41,000	3.22%	0.7%	0.02%	9.3
Wrexham	64,400	0.60%	0.3%	0.00%	1.1
Totals (16 LAs)	1,120,300.00			0.02%	193.9
All of Wales	1,432,700.00			0.01%	

Table 21 - Summary of quantified benefits

Type	Totals
Avoided costs	£54.1 million
Welfare value	£38.8 million
Employment	£50.5 million
Total	£143.4 million

Unquantified benefits

Environmental

8.142. A number of environmental benefits are likely to be supported by the functioning of the new regime. They are not necessarily direct benefits of the work undertaken because of the regime, but closer to the enabling of more environmentally positive schemes; benefits from a greater awareness of the condition and proper management of disused tips; and the reduction in environmental damage from disused tip failures. A summary follows.

Avoided environmental costs

8.143. An important unquantifiable benefit of the regime is the reduced probability of future failures as a result of the improved condition and pro-active monitoring of the disused tips. This will likely result in the decrease in negative associated environmental impacts that would arise as a consequence of a disused tip failure, including the impact on biodiversity and ecosystems which exist on or around the disused tip. The avoided direct costs of failures are captured in paragraphs 8.107 onwards.

Biodiversity

8.144. Better management of disused tips may also serve to enhance the existing biodiversity value of the disused tips: colliery tips often have high biodiversity value and ensuring these disused tips are sustainably managed and can sit safely in our landscapes in the long-term will be important in safeguarding their rich natural heritage value for the future. The nature of the disused tips is such that they are nutrient-poor, which prevents dominant plant species from taking over; they are typically highly complex, and undisturbed with no fertiliser or other chemical use, which typically implies that nature can flourish unhindered.⁴³

8.145. This biodiversity includes over 900 invertebrate species recorded, 22% of which are of conservation priority level in the UK.⁴⁴ Importantly, physical interventions required to make some disused tips safer should be carried out in a manner which reduces the impact on biodiversity and restores appropriate habitats for the future. These are further defined in the Biodiversity Impact Assessment at Annex F.

Carbon dioxide (CO₂)

8.146. Potential CO₂ reductions may also be achieved in the long-term as a result of the reduction, and perceived reduction, of risk associated with disused tips. Reductions in CO₂ could result from better management of disused tips and allow further enhancements such as tree planting. [The UK Woodland Carbon Code](#), a voluntary standard for woodland creation projects in the UK that will make claims about the carbon dioxide they sequester, is an example of an initiative that can encourage such projects by eventually providing reliable estimates of the amount of carbon sequestered as a result of tree planting, as well as giving participating companies a verified status which might be considered to be an attractive selling point for potential customers.

8.147. Additionally, the potential carbon emissions associated with a failure can be significant. For example, the landslide at Tylorstown resulted in

⁴³ Source: "Biodiversity Value of Coal Tips", Liam Olds, Colliery Spoil Biodiversity Initiative, presentation available online via <https://epwales.org.uk/events/biodiversity-value-of-welsh-coal-tips/>

⁴⁴ Ibid.

60,000 tonnes of material slipping into the Rhondda Fach River.
Moving this quantity of tip material by lorry requires many thousands of trips with associated emissions.

Rivers

8.148. Tylorstown also offers an example of the risks associated with tip materials falling into and impounding a river. The blocking of the Rhondda Fach resulted in about 4,000 homes being at risk of flooding had the materials not been moved quickly. Such damage to property would come at a significant cost. Such costs were not included in the avoided costs calculations above.

8.149. The new regime will not only reduce the likelihood of such adverse events but may also improve incident responses which would make it easier to act quickly if needed.

Mental Health impacts

Avoided slips

8.150. Studies have demonstrated the negative impacts of landslides on mental wellbeing. For example, a study of the mudslides that occurred in Salerno, Italy in May 1998 showed that survivors of the disaster were more than 20 times more likely to suffer from post-traumatic stress disorder (PTSD) than members in the control group used in the analysis.⁴⁵ It also suggested that the increased probability of mental disorder among the survivors could be due to their exposure to the risk of similar disasters, having experienced multiple moderate episodes following the 1998 event.

8.151. Similar mental health impacts are found in response to the risk of flooding. According to Public Health Wales⁴⁶, an additional cause of stress to the experience of a flood is the strain associated with cleaning up and recovery. It outlines such stress points as: lack of access to healthcare, breakdown in household activities, loss of educational and social facilities, feelings of loss of control due to fear of reoccurrence, economic stress points such as loss of property and income, and reactions to media reporting.

8.152. The interventions occasioned by the proposed regime will reduce the likelihood and magnitude of disused tip failures and, in so doing, likely indirectly contribute to psychological and mental health benefits.

⁴⁵ Catapano F., Malafronte R., Lepre F., Cozzolino P., Arnone R., Lorenzo E., Tartaglia G., Starace F., Magliano L., Maj M. "Psychological consequences of the 1998 landslide in Sarno, Italy: A community study", Acta Psychiatrica Scandinavica 2001; 104(6): 438-442, referenced in Kennedy IT, Petley DN, Williams R, Murray V. "A systematic review of the health impacts of mass Earth movements (landslides)" PLoS Curr. 2015 Apr, available online via <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4423842/>

⁴⁶ PHW, "Flooding and mental health: essential information for front-line responders", <https://phw.nhs.wales/services-and-teams/environmental-public-health/flooding/flooding-and-mental-health-front-line-responders/>

General mental health benefits

- 8.153. Many communities, particularly in the South Wales valleys live in the physical and psychological shadow of disused tips. This is exacerbated by historic failures that live long in the memory, as well as events like Tylorstown, which are significant although fortunately not involving any injury, loss of life or damage to property.
- 8.154. This impact is complex and difficult to quantify, as is its reduction from introducing a comprehensive regime and dedicated body to manage the potential threats to human welfare stemming from the instability of disused tips or possible threat to human welfare in the event of instability.
- 8.155. The regime will also make a named public body responsible for the management and monitoring of a given disused tip, which may result in a positive impact on the owner or occupier of a disused tip and any sense of responsibility they may feel but are not necessarily able to properly discharge.

Direct Employment

- 8.156. Though not included as a quantified benefit, the proposed body will directly employ 75 people in Wales. These are roles which will need to be undertaken physically in Wales.
- 8.157. The largest element of costs for the new regime relate to maintenance operations. These often require specialist workers, and the work required will be physically located in some of the most deprived parts of the country.
- 8.158. As is usual practice for RIAs, these are not included in the calculated benefits. However, they are likely to be substantial.

Catastrophic failure, including loss of life

- 8.159. This analysis deliberately does not attempt to calculate scenarios in the quantifiable avoided costs benefits that include any injury to people or loss of life.
- 8.160. However, if we were to consider this further in economic terms, it could be possible to utilise the analysis undertaken by the Technical Advisory Group in relation to Covid.⁴⁷
- 8.161. This makes use of Quality Adjusted Life Years, for which a monetary value (in 20/21 prices) of £70,000 is provided. Which is to say, that is the monetary value used in such analyses of each year of lost life. There are similar monetary values used to estimate a reduction in someone's quality of life.

⁴⁷ <https://www.gov.wales/sites/default/files/publications/2022-06/the-social-value-of-a-covid-case-january-2022.pdf>

- 8.162. The inclusion here is not a suggestion that a failure that results in injury or death is in any way likely. It is included to acknowledge that a very unlikely, high impact event isn't captured in our analysis, but would be of considerable cost.
- 8.163. The regime proposed will serve to further reduce the already low probability of a failure which involves injury to persons.
- 8.164. If we investigate the 1966 Aberfan disaster which occurred at the Merthyr Vale Colliery in Aberfan, it led to 144 deaths, including 116 children. According to research collated from authors from Newcastle University, Glasgow Caledonian University and University of Birmingham, in a study assessing the monetary value of a life year⁴⁸ – the value of a human life is stated at £1.6million (at 2009-10 prices). This alone, demonstrates that should the Bill be successful in reducing the likelihood of a tip slip leading to threat to human welfare, the benefits of fewer casualties on the scale of a Aberfan-type disaster, far outweigh the costs of implementation. However, it should be noted that this has not been used in the calculation for the Net Present Value.

Increased central service capacity

Charging mechanism

- 8.165. The Bill gives the Authority power to provide administrative, technical or professional services to any devolved Welsh Authority within the meaning of section 157A of GOWA. Administrative, technical and professional services encompass backroom services such as finance, payroll, human resources and information technology. The Authority may charge a fee for the provision of a service under this section. It is anticipated that the systems that support these services will be modular and be able to be set up with multiple legal entities, enabling other public bodies to access these central services for their use, as necessary. This Bill allows the Authority to charge for the provision of these services, potentially covering the support costs incurred in the running of these systems. There are also likely to be broader economies of scale to be achieved in the operating costs of the public bodies that avail themselves of these centralised services.

Net Present Social Value (NPSV) and Benefit-Cost Ratio (BCR)

- 8.166. The NPSV and BCR of Option 2/2B (introduction of a new regime and establishment of a new public body) have been calculated using a discounted cashflow method taking consideration of the quantified benefits and costs of establishing the proposed regulatory framework for disused tip safety in Wales.

⁴⁸ [A scoping study on the valuation of risks to life and health: the monetary Value of a Life year \(VOLY\)](#)
- GOV.UK (www.gov.uk)

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8.167. The overall NPSV is £102.6 – £69.1 which gives a positive of £33.5 million.

8.168. The benefit-cost ratio has been calculated using the same figures, giving a BCR of 0.48 using the following formula:

$$\text{BCR of Option 2/2B} = \frac{102.6 - 69.1 \text{ million}}{£69.1 \text{ million}} = \mathbf{0.485}$$

Summary of preferred option

8.169. The preferred option is **Option 2B**, a new regulatory regime supported by the establishment of a new public body.

8.170. The Bill is a key step in delivering the recommendations of a review by the Law Commission⁴⁹ which found the current regime to be outdated and legislative reform vital to protect coalfield communities from any future landslides. A new statutory regulatory framework underpins our ambition to provide a new consistent, national approach to the management, monitoring and oversight of disused tips and help mitigate the potential impacts from climate change (Option 2).

8.171. As set out in previous paragraphs an analysis of existing bodies found none were suitable to act as the Authority, and as such the establishment of a new body is the preferred option (Option 2B).

8.172. Furthermore, though the current Taskforce is undertaking vital work, it is not considered to be a viable long-term option, as set out in paragraph 7.10.

8.173. The 2022 White Paper consultation responses were overwhelmingly supportive of the establishment of a regulatory regime for disused tip safety, and the creation of a new public body whose sole remit is to ensure the safety of disused tips.

8.174. Overall, the analysis of the costs and benefits of the preferred option results in a positive net benefit.

8.175. Our proposals also fully support the principles enshrined by the WBFG Act. Touching on all of the goals, there are particularly clear links to working towards a resilient,⁵⁰ healthier,⁵¹ more equal⁵² Wales of

⁴⁹ Law Commission, [Regulating Coal Tip Safety in Wales: Report](#), March 2022

⁵⁰ “A nation which maintains and enhances a biodiverse natural environment with healthy functioning ecosystems that support social, economic and ecological resilience and the capacity to adapt to change.”

⁵¹ “A society in which people’s physical and mental well-being is maximised and in which choices and behaviours that benefit future health are understood.”

⁵² “A society that enables people to fulfil their potential no matter what their background or circumstances (including their socio economic circumstances).”

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cohesive communities,⁵³ as drawn out in the next Chapter on the Impact Assessments.

Competition Assessment

8.176. A Competition Filter Assessment has been undertaken to assess the potential impact associated with the proposals in the Bill. This policy is not expected to have a detrimental effect on levels of competition in Wales or the competitiveness of Welsh firms. The results of a filter test (consisting of nine yes/no questions) which support this conclusion are below:

⁵³ “Attractive, safe, viable and well-connected.”

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The competition filter test	
Question	Answer yes or no
Q1: In the market(s) affected by the new regulation, does any firm have more than 10% market share?	No
Q2: In the market(s) affected by the new regulation, does any firm have more than 20% market share?	No
Q3: In the market(s) affected by the new regulation, do the largest three firms together have at least 50% market share?	No
Q4: Would the costs of the regulation affect some firms substantially more than others?	No
Q5: Is the regulation likely to affect the market structure, changing the number or size of firms?	No
Q6: Would the regulation lead to higher set-up costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q7: Would the regulation lead to higher ongoing costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q8: Is the sector characterised by rapid technological change?	No
Q9: Would the regulation restrict the ability of suppliers to choose the price, quality, range or location of their products?	No

9. Impact Assessments

- 9.1. A full Integrated Impact Assessment (IIA) has been undertaken, which covers all provisions in the Bill. A summary of the impacts is outlined below and the specific impact assessments will be published as appropriate.
- 9.2. In addition to the Health Impact Assessment Screening, specific assessments were undertaken to understand the impact of the Bill on the following areas:
- Children's Rights;
 - Welsh Language;
 - Equality;
 - Rural Proofing;
 - Data Protection;
 - Biodiversity;
 - The Socio-economic Duty;
 - Justice Impact Assessment.

Children's Rights

- 9.3. The [Rights of Children and Young Persons \(Wales\) Measure 2011](#) requires Welsh Ministers to have due regard to the United Nations Convention on the Rights of the Child.
- 9.4. The Welsh Government commissioned Children in Wales to deliver several consultation events aimed at gathering the views of young people aged 14-16 years. In addition, Welsh Government officials presented the White Paper's Proposal to the Children's Rights Action Group on 23 June 2022 utilising their expertise to reflect on how the proposals impact on children and young people.

Positive impacts

- 9.5. The overarching aim of the Bill is to protect human welfare by introducing a consistent and robust system of assessment, registration, management, monitoring and oversight of disused tips in Wales. Children and young people form part of the communities that could be affected by landslides from disused tips.
- 9.6. Landslides may have a negative impact on the mental health and anxiety in young people and children, for instance [The Public Health Wales recovery from landslides report](#) identified a stress indicator related to education and schooling, such as loss of education facilities and loss of

socialisation associated with attending school. The preventive nature of the Bill may avoid such stressful situations from occurring.

9.7. Children and young people were supportive of the White Paper proposals of making tips safe for future communities during the young persons' consultation event.

9.8. They mentioned that the regime would have a beneficial impact on the protection of the environment from further damage. They also held a positive attitude towards the proposals to create a new body to manage and maintain disused tips in Wales.

9.9. In addition, the adoption of the Bill's provisions was recognised as an opportunity to raise knowledge and understanding of the environments in which children and young people live.

Negative impacts

9.10. No negative impacts to Children's Rights were identified as part of the public consultation, stakeholder engagement or the preparation of this assessment.

Welsh Language

9.11. A Welsh language impact assessment has been completed, and while the Bill will not directly contribute to Cymraeg 2050, it can be linked to theme 2 – increasing the use of Welsh – and theme 3 – creating favourable conditions. While it is not possible to quantify the impact of the Bill on the Welsh language, the provisions will impact on the Welsh language in different ways. Further Welsh language impact assessments will be completed through the implementation process.

9.12. The Bill will establish a new Welsh Government sponsored public body. The Authority will exercise regulatory, compliance, and advisory functions when implementing the new tip management regime. The Bill provides for the Authority to be added to Schedule 6 of the Welsh Language (Wales) Measure 2011. The addition of the Authority to Schedule 6 will impose Welsh language standards on the Authority.

9.13. Additionally, the Authority will be responsible for the creation of an electronic register of disused tips, which the Authority will be required to ensure the public has access to. The public-facing register will be bilingual. This will help further the Welsh Government's strategy for the Welsh language by ensuring that the Welsh language is at the heart of innovation in digital technology to enable the use of Welsh in digital contexts.

9.14. The Bill contains provision to make subordinate legislation, and Welsh Ministers intend to issue guidance to the Authority on several matters such as monitoring, appeals and charging. All subordinate legislation

and guidance issued by Welsh Ministers will be consulted upon and published bilingually.

Equality

- 9.15. It is intended that the Authority is added, by order, to the list in Schedule 19 to the Equality Act (2010 Act). By virtue of its inclusion in the list of public authorities in Schedule 19 to the 2010 Act, the Authority will be subject to the public sector equality duty which requires it, in the exercise of its functions, to have due regard to the need to eliminate discrimination, harassment and victimisation, as well as to advance equality of opportunity and to foster good relations between people who share a relevant protected characteristic and those who do not.
- 9.16. An equality impact assessment has been completed which indicates there are no expected negative impacts on people with protected characteristics.
- 9.17. We believe the Bill will have a positive effect on the safety of all citizens, whether falling within a protected characteristic group or not, by reducing the probability of landslides and the associated impacts such as loss of life; injury; short and long-term physical and mental health concerns; damage to housing, schools and health centres; transport and utility disruption; pollution and destruction of the environment.
- 9.18. The main purpose of the Bill is to prevent disused tips from threatening human welfare by reason of their instability. There is likely to be some benefits to those with certain protected characteristics, such as people living in areas of high deprivation, because the majority of disused coal tips are located in the South Wales valleys, an area which experiences high levels of poverty.
- 9.19. The Bill contains provision to make subordinate legislation, and Welsh Ministers intend to issue guidance to the Authority on several matters. Both secondary legislation and guidance will be subject to equality impact assessments.

Rural Proofing

- 9.20. A rural proofing impact assessment has been completed which considers the impacts of the Bill on people living in rural areas, businesses and communities.
- 9.21. The preventive nature of the Bill will reduce the likelihood of future landslides associated with disused tips. The proactive nature of the new regime is expected to impact positively on rural businesses and communities (e.g. farms) by reducing the risks of tip slides and the costs incurred as a result of a landslide.

- 9.22. The Welsh Government engaged with the farming community during the consultation events on the White Paper proposals and responses from rural organisations and individuals from rural areas, such as concerns over timings of inspections and access have been considered during the policy development of the Bill. We have continued to keep farming representatives updated on the development of the Bill, such as meeting with the National Farmers' Union and the Country Land and Business Association.
- 9.23. The Bill will establish and confer functions on a new body, the Disused Tips Authority for Wales. Welsh Ministers intend to produce guidance for the Authority on inspections, and intend for the guidance to reflect responses received during the consultation, for example advising on the timeliness of inspections, assessment and monitoring on rural land which is used for grazing and other farming activities, and routine works would consider certain activities taking place seasonally, like lambing in the spring.
- 9.24. The powers in the Bill apply to all land, therefore rural land will be captured by the provisions in the Bill. The Authority will be able to require an owner of any land to undertake operations to prevent or deal with threats to the stability of a disused tip or to stabilise a disused tip to prevent it from becoming more unstable. This is necessary for the Authority to carry out its functions as provided for in the Bill.
- 9.25. The Bill includes the right to appeal in certain instances, for example in respect of a notice given by the Authority requiring a landowner to undertake operations, or in respect of a contribution order. In addition, the Bill makes provision in respect of compensation where land is damaged, property is damaged, removed or disposed of, or if there is disturbance to the enjoyment of land. For some tip and landowners, costs associated with necessary operations may be beyond their financial means. In these circumstances a landowner will be able to appeal against a notice to carry out operations on the ground that the owner is unable to meet the cost of operations required by the notice.
- 9.26. In an emergency the Bill provides the Authority with a power to carry out operations without giving notice, where it considers that operations need to be carried out immediately. In these circumstances the Authority will be acting to avoid or reduce threats to human welfare, it will have to act quickly, therefore, it is not required to issue a notice to the owner of the land prior to carrying out the operations. However, once it has commenced operations, the Authority must as soon as practicable, give the owner of the land notice that the operations have begun.
- 9.27. A Sustainable Land Management Assessment has not been undertaken as the conditions requiring the completion of the Assessment are not

met. When secondary legislation is made under powers in the Bill, we will consider the SLM duty, and whether an assessment is required.

Data Protection

9.28. Whilst our screening indicated a full Data Protection Impact Assessment was not necessary, we have, nevertheless prepared one to assess the impact of the Bill's provisions. The assessment was shared in draft with officials from the Information Commissioner's Office and their feedback has been incorporated into the document.

9.29. The assessment considers the provisions in the Bill that require the processing of personal data, or which could result in personal data being processed or information being shared. The relevant provisions were assessed to ensure they provide a legal basis for the processing of personal data, and that the processing of personal data or sharing of information is necessary and proportionate. Necessity and proportionality were assessed taking into consideration the main objective of the Authority, as set out in section 2 of the Bill, to ensure that disused tips do not threaten human welfare by reason of their instability.

Biodiversity

9.30. The Authority as a public authority under the Environment (Wales) Act 2016 must seek to maintain and enhance biodiversity in the exercise of its functions in relation to Wales, and in so doing promote the resilience of ecosystems, so far as consistent with the proper exercise of those functions.

9.31. The duty on the Authority to assess and monitor disused tips could contribute to an improved understanding of biodiversity on disused tip sites and adjacent land.

9.32. Guidance issued by Welsh Ministers will promote practices and principles to build capacity for biodiversity action.

Socio-Economic Duty

9.33. The Bill seeks to address a legacy issue from Wales' mining past. With over 85% of disused coal tips in the South Wales valleys, the Bill will provide a new regulatory regime which reduces the likelihood of landslides on these communities, many of whom are classed among the 10% most deprived using the WiMD. Given where most of the disused coal tips are in Wales, it is anticipated that a new regime for the monitoring and management of disused tips will have a greater positive impact on communities with socio-economic disadvantage, because these communities live in areas disproportionately affected by disused coal tips.

9.34. The Bill supports the principles enshrined by the Well-being of Future Generations Act in 2015. Touching on all of the goals, there are particularly clear links to working towards a resilient, healthier, more equal Wales of cohesive communities.

Positive impacts

9.35. It is anticipated that a new regime for the monitoring and management of disused tips will have a greater positive impact on communities with socio-economic disadvantage.

Negative impacts

9.36. For some tip and landowners, costs associated with necessary operations may be beyond their financial means. In these circumstances a landowner will be able to appeal against a notice to carry out operations on the ground that the owner is unable to meet the cost of operations required by the notice.

Justice System

9.37. We have considered the impacts of the Bill on the Justice system. The Welsh Government submitted a completed Justice System Impact Identification Form to the Ministry of Justice, which identified a low potential impact on the justice system. The Lord Chief Justice's Department has also been advised of the anticipated impact the Bill will have on our Justice System.

9.38. The Bill makes provision for the establishment of the Authority, and the conferral of appropriate powers and duties on the Authority in relation to the new regime. This includes regulatory, compliance and advisory functions in its oversight of a new disused tip management regime. A new enforcement regime is proposed to ensure and encourage compliance with the new regime. This includes:

- civil enforcement powers, including powers allowing the Authority to require information and documents, and to access and inspect disused tips;
- enforcement powers for the management of disused tips; and
- criminal enforcement powers.

9.39. Many of the offences, appeal rights, provision for applications to the Court etc are based on the existing provisions in Part 2 of the 1969 Act. The Bill will disapply Part 2 of the 1969 Act to local authorities in Wales, and therefore, Part 2 will not apply in relation to disused tips that are located wholly in Wales. There are a very small number of disused tips that straddle the border between England and Wales. For these tips,

both the 1969 Act and the Bill will apply. English local authorities will exercise powers under the 1969 Act and the Authority will exercise powers conferred on it by the Bill. Powers under the respective regimes will be exercisable in relation to the whole of the cross-border disused tip (not just the part of the tip that falls within the respective geographical jurisdictions).

- 9.40. The reason we are assessing the impact as low rather than “no impact” or “negligible” is because the Bill has a lower threshold for taking action in relation to ensuring the safety of disused tips than the 1969 Act and the powers in the Bill apply to all land not just disused tips and neighbouring land where the disused tip owner has an interest. The Authority has the function of providing advice and assistance to persons in connection with disused tips and it is anticipated that the Authority will work with landowners to ensure safe management of disused tips without, in the vast majority of cases, the need to use notice provisions, enforcement powers etc in the Bill.

High-Level Health Impact Screening

- 9.41. The overarching aim of the Bill is to protect human welfare by introducing a consistent and robust system of assessment, registration, management, monitoring and oversight of disused tips in Wales.
- 9.42. The Bill is preventative in nature and will establish a new regime which is proactive rather than reactive, which will include on-going monitoring requirements for each disused tip in the register and will give the Authority powers to ensure that disused tips are properly maintained, to address tip instability and threats to tip instability. The impact of landslides can be catastrophic with potential fatalities, casualties, damage to the environment and critical infrastructure, and with an associated impact on communities and a substantial cost of repair. An effective management regime can contribute to significantly reduced costs of remediation as regular inspection and maintenance help to identify any issues and address these as early as possible, thereby reducing the need for more extensive works after a tip slips. This proactive approach will ensure that communities are kept safe, and risks are managed to prevent the likelihood of landslides.
- 9.43. The RIA for the Bill describes the unquantified benefits of the impact of the new management regime and the role the Authority will have on the general health and more specifically on the mental health of communities living in proximity to disused tips.
- 9.44. The regime will prevent disused tips from threatening human welfare by reason of their instability and reduce the likelihood of future landslides

associated with disused tips which could have a negative impact on mental health, as reported in the RIA.

- 9.45. The preventive nature of the new regime provides for monitoring and inspecting disused tips, therefore mitigating the impact incidents may have. This proactive approach will ensure that communities are kept safe, and risks are managed to prevent, rather than intervene in, landslides. The RIA refers to a study of the mudslides that occurred in Salerno, Italy in May 1998. The study shows that survivors of the disaster were more than 20 times more likely to suffer from post-traumatic stress disorder than members in the control group used in the analysis.⁵⁴
- 9.46. Many communities, particularly in the South Wales Valleys live in the physical and psychological shadow of disused coal tips. With over 85% of disused coal tips located in the South Wales Valleys, the Bill will have a greater positive impact on communities with socio-economic disadvantage, because these communities live in areas disproportionately affected by disused coal tips. The Bill will also benefit communities living in proximity to disused tips.
- 9.47. It is complex to determine the potential impact on mental health of introducing a comprehensive regime and dedicated body to manage the potential threats to human welfare stemming from the instability of disused tips or possible threat to human welfare in the event of instability.
- 9.48. In the event of landslides, a stress factor identified by Public Health Wales⁵⁵, is similar to the response to the risk of flooding when cleaning up and recovery from flooding or landslides causes lack of access to healthcare, breakdown in household activities, loss of educational and social facilities, feelings of loss of control due to fear of reoccurrence, economic stress points such as loss of property and income, and reactions to media reporting.
- 9.49. During our engagement with stakeholders and consultation on the White Paper proposals, we have identified no negative impacts on the health of any group by the proposals within the Bill.
- 9.50. Health impact assessments will be prepared to accompany the implementation of the Bill's proposals. Where appropriate, health impact

⁵⁴ Catapano F., Malafronte R., Lepre F., Cozzolino P., Arnone R., Lorenzo E., Tartaglia G., Starace F., Magliano L., Maj M. "Psychological consequences of the 1998 landslide in Sarno, Italy: A community study", Acta Psychiatrica Scandinavica 2001; 104(6): 438-442, referenced in Kennedy IT, Petley DN, Williams R, Murray V. "A systematic review of the health impacts of mass Earth movements (landslides)" PLoS Curr. 2015 Apr, available online via <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4423842/>.

⁵⁵ PHW, "Flooding and mental health: essential information for front-line responders", <https://phw.nhs.wales/services-and-teams/environmental-public-health/flooding/flooding-and-mental-health-front-line-responders/>

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assessments will be undertaken to accompany secondary legislation and guidance.

10. Affordability Assessment

- 10.1. While an RIA assesses social value and therefore includes cultural, social and environmental impacts alongside economic costs and benefits, an affordability assessment is a purely financial assessment. As such, only cash costs and cash-releasing benefits are included. Any environmental, social, cultural and wider economic costs and benefits identified in an RIA would be removed from an affordability assessment.
- 10.2. To this end, the focus of this affordability assessment is on the costs linked to the establishment and running of the Authority, as well as the regime costs as would apply to the Authority and other responsible bodies tasked with various aspects of the regime.
- 10.3. As the benefits considered in this analysis are not cash-releasing, they have not been included in the affordability assessment.
- 10.4. The cash costs in this assessment have been adjusted to reflect anticipated inflation during the appraisal period. This adjustment has been based on the GDP deflator projections included in the Office for Budget Responsibility's (OBR) Economic and Fiscal Outlook, last published in November 2023.⁵⁶
- 10.5. As the GDP deflator rates only go as far as 2028-29, a moving three-year average of the GDP deflator is applied for the remaining period of the assessment. Although inflation is now decreasing, there remains a degree of uncertainty around its future path. Welsh Government will continue to monitor the impact of inflation on the financial costs of the Bill.

The Authority (funded by Welsh Government)

- 10.6. The estimated costs of the Authority represent the largest proportion of the additional overall costs of the regime, including responsibility for implementing the regime, operations its establishment and staffing costs. These costs are summarised below.

⁵⁶ <https://obr.uk/efo/economic-and-fiscal-outlook-november-2023/>

Table 22 – Estimated costs of the Authority

Type	
Authority costs	£31,400,000
Authority staffing	£79,300,000
Urgent works	£14,300,000
PEDW	£1,300,000
Less Funding currently provided by Welsh Government	-£13,000,000
Less Coal Tip Safety grant, covering urgent works	-£14,300,000
Total	£99,100,000

NRW

10.7. The costs attributable to NRW relate to the costs that they will be expected to incur as a result of the new regime in the Bill being implemented.

Table 23 – Estimated costs attributable to NRW

Type	Totals
Operations	£319,950
Less Coal Tip Safety grant	-£319,950
Total	£0

10.8. Additional costs to NRW associated with the Bill would be expected to be included in any future grants from the Welsh Ministers and will not come from its existing budget.

Local authorities

10.9. The costs attributable to local authorities relate to the costs that they will be expected to incur as a result of the new regime in the Bill being implemented.

Table 24 – Estimated costs attributable to local authorities

Type	Totals
Operations	£810,686
Less Coal Tip Safety grant	-£810,686
Total	£0

10.10. Additional costs to local authorities associated with the Bill would be expected to be included in any future grants from the Welsh Ministers and will not come from their existing budgets.

Coal Authority

- 10.11. The costs attributable to the Coal Authority relate to the costs that they will be expected to incur as a result of the new regime in the Bill being implemented.

Table 25 – Estimated costs attributable to the Coal Authority

Type	Totals
Operations	£87,610
Less Coal Tip Safety grant	-£87,610
Total	£0

- 10.12. The requirements of the Bill are roughly in line with the approach the Coal Authority already takes with its own tips. As such, it is not anticipated that it will place new costs on the body. However, it is important to note that the Coal Authority is a UK Government body and is funded for its work in relation to its own tips by the UK Government.

Summary

- 10.13. The total financial cost associated with the Bill across all these bodies is estimated to be £99.1 million over fifteen years. Whilst this document assumes that funding provided for the coal tip safety grant will continue, any reduction in grant will mean that the capital aspects of the bill will not be affordable.
- 10.14. At the current time there is no budget allocated to cover the running costs for the Authority. In order to ensure that a budget is available and the revenue costs in the Bill are affordable, the funding will need to be prioritised in future budget discussions or found from within existing resources.

11. Post Implementation Review

- 11.1. It is anticipated that an initial post-implementation review will be held approximately 5 years after the regime comes into effect, which would be 7 years after Royal Assent. This would allow for the vast majority of disused coal tips to have been fully assessed and, where appropriate, added to the register and would come at the point where non-coal tips were starting to be considered.
- 11.2. Such a review would likely consider both the effectiveness of the regime, including the guidance which will have been issued, as well as of the Authority.
- 11.3. Ongoing evaluation will also be possible through the statutory obligations on the Authority set out in the Bill to:
- prepare a corporate plan of how it intends to discharge its functions during the following three-year period and lay a copy before the Senedd;
 - prepare annual reports and lay a copy before the Senedd; and
 - prepare a statement of accounts on an annual basis.
- 11.4. As it is not possible to measure the counter-factual of ‘avoided slips’, it is likely that an evaluation will want to consider the robustness of the monitoring regime, established in guidance, including reviewing the expected minimum inspection frequencies for different categories of tips as well as the criteria used to assign tips to categories. A review of interaction with other environmental regimes may also be valuable, as well as the effectiveness of working relationships with the statutory bodies of related regimes.
- 11.5. Consideration may be given to the impact in relation to PEDW, as the volume of work related to this novel regime is challenging to estimate.
- 11.6. The regime will also rely on an adequate supply of competent staff to undertake technical assessments and inspections. This is an area which will require particular attention, both on an ongoing basis, and as part of a review.
- 11.7. The use of technology is anticipated to be an important part of the regime, and a significant budget for technology trials and implementation has been included in the RIA. New technologies may well allow and require a change in approach, in particular to monitoring. Any review will likely want to consider this impact of adopting technology on the regime, and any changes that may necessitate guidance.
- 11.8. We have also seen weather patterns change as a result of climate change in recent years, and as outlined in paragraph 8.5, this is expected to alter risks associated with high rainfall events. This effect is

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unlikely to be evenly felt and will need to be factored into the work under the regime. Adaptation of the regime to a changing climate would likely be part of a review.

11.9. Finally, such a review may consider the approach which should be taken to disused non-coal tips, which will have commenced mapping by this point. This will be informed by learning from the coal estate and allow the Authority to refine its approach to what are anticipated to be evaluated as, on average, disused tips which pose a lower potential threat, with the majority screened out of the regime altogether.

Annex 1 – Explanatory Notes

DISUSED MINE AND QUARRY TIPS (WALES) BILL

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes are for the Disused Mine and Quarry Tips (Wales) Bill, which was introduced into Senedd Cymru on 9 December 2024. They have been prepared by the Climate Change and Rural Affairs Group of the Welsh Government to assist the reader of the Act. The Explanatory Notes should be read in conjunction with the Act but are not part of it.

SUMMARY AND POLICY BACKGROUND

2. There are over 2,500 disused coal tips in Wales, predominantly in the South Wales valleys. In February 2020, following storms Ciara and Dennis, a series of coal tip landslides occurred in Wales, including a major landslide of a disused tip in Tylorstown which caused over 60,000 tonnes of debris to fall into the Rhondda Fach River. These landslides illustrate the potential risks that disused tips present to communities.
3. The First Minister for Wales, Mark Drakeford MS, established the Coal Tip Safety Task Force in early 2020. It was tasked with a wide-ranging programme of works including identification of the location and status of all disused coal tips in Wales; establishment of a programme of inspection and maintenance of coal tips; ensuring legislation is fit for purpose, and development of a future programme to remediate disused coal tips to address long-term stability issues.
4. To support the coal tip safety programme the Welsh Government has allocated £65 million in capital investment over three years - 2022/23 to 2024/25 - to support local authorities to carry out maintenance and remediation work on coal tips.
5. In October 2020, the Welsh Government invited the Law Commission to evaluate current legislation and to consider options for new legislation to ensure a robust, integrated and future proofed regulatory system, which adopts a uniform approach to inspection, maintenance and record keeping on coal tips. It reported on [24 March 2022](#). It made a number of recommendations including the creation of a single supervisory authority, creation of a coal tips register, and recommendations relating to inspection and on-going maintenance of coal tips.
6. [The Coal Tip Safety \(Wales\) White Paper](#), which consulted on Bill proposals, was published by the Welsh Government on 12 May 2022. It drew on the recommendations of the Law Commission and further analysis undertaken by the Welsh Government. [Responses to the White Paper consultation](#) were

published in November 2022. The White Paper asked whether the proposals for the Bill should apply to both coal tips and non-coal tips (for example tips containing waste from Wales's metal mining industry). The majority of responses (88%) agreed. Thus, the Bill's provisions apply to both coal and non-coal tips. It should be noted that it is estimated there are over 20,000 disused tips (not coal) in Wales.

7. There was a broad consensus from the consultations undertaken that the current legislation relating to disused coal tips, the Mines and Quarries (Tips) Act 1969 ("the 1969 Act") was no longer fit for purpose. It had been enacted at a time when Wales had an active coal industry. Consequently, it was not designed for and does not adequately address, the management of disused coal tips. Consequently, the Bill disapplies Part 2 of the 1969 Act to local authorities in Wales, and therefore, Part 2 does not apply in relation to disused tips that are located wholly in Wales.
8. The aim of the Bill is to reduce the likelihood of landslides on disused coal and non-coal tips through the establishment of a new public body which will have functions in relation to the assessment, registration, monitoring and management of disused tips.
9. In summary, the Bill:
 - (a) establishes the Disused Tips Authority for Wales ("the Authority") as a body corporate. Its 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,
 - (b) makes provision for the assessment, registration and monitoring of disused tips,
 - (c) contains provisions that enable the Authority to deal with tip instability and threats to tip instability. This includes powers to require an owner of land to carry out operations and for the Authority to carry out operations itself, and related provisions in respect of payments in connection with such operations,
 - (d) contains supplementary provisions including powers of entry for the Authority, information sharing provisions and powers to require information, and
 - (e) creates related offences to support the enforcement of the regime.
10. The Act comprises 88 sections and three Schedules.

COMMENTARY ON SECTIONS

Part 1 – The Disused Tips Authority for Wales.

Overview of Part 1

11. Part I of the Bill is comprised of sections 1 to 5 which establishes the Authority; introduces Schedule 1, which makes further provisions about the Authority; outlines the Authority's main objective when exercising its functions under the Bill and makes provision about both the general and ancillary functions of the Authority.

Section 1 - The Disused Tips Authority for Wales

12. Section 1 establishes the Disused Tips Authority for Wales. It is established as a body corporate which means it is a body that has its own legal rights and responsibilities and is, for example, able to enter contracts. Throughout the Bill, references to “the Authority” are to that body.
13. Subsection (3) introduces Schedule 1 which makes further provision about the Authority.

Schedule 1- The Disused Tips Authority for Wales

14. Schedule 1 makes provision about the Authority’s constitution and operational arrangements. Under section 87, section 1 comes into force on 1 April 2027, therefore the Authority is established as a body corporate on that date. Schedule 1 comes into force on 1 April 2027 too (section 87(2)).
15. Paragraph 2 provides that the Authority will have between 4 and 6 non-executive members, appointed by the Welsh Ministers, including a chairing member. One of these members may be appointed as a deputy chairing member.
16. The Authority’s membership will also include the person appointed under paragraph 6 as its chief executive. The first chief executive is to be appointed by the Welsh Ministers, with subsequent chief executives appointed by the non-executive members. In accordance with paragraph 15, the chief executive is the accounting officer for the Authority. The accounting officer’s responsibilities about the accounts and finances of the Authority are as specified by the Welsh Ministers.
17. Paragraph 2(1)(d) provides that the chief executive and non-executives must appoint at least one but no more than two members to the Authority from amongst the Authority’s staff. These members together with the chief executive are known as executive members (paragraph 2(3)(b)). Paragraph 2(4) gives the Welsh Ministers a regulation making power to amend the number of members appointed to the Authority, but the number of non-executive members must always exceed the number of executive members in the interests of promoting independent oversight of the exercise of the Authority's functions.
18. Among other things, the Authority will have the power under Schedule 1 to appoint staff and to establish committees and sub-committees. The Authority will be required to make rules regulating its procedure and the procedure of any of its committees or sub-committees.
19. Schedule 1 also sets out the reporting requirements for the Authority. Paragraph 19 places a duty on the Authority to prepare and publish a corporate plan for each planning period. Paragraph 19(2) requires the corporate plan to set out how the Authority intends to discharge its functions under the Bill during the planning period.

20. The first planning period will be a period of 3 years beginning with 1 October 2027. Subsequent planning periods will also run in 3-year cycles. The corporate plan for a planning period must be submitted to the Welsh Ministers for approval before the planning period begins.
21. Paragraph 20 sets out the Authority's duties in relation to the preparation and publication of an annual report on the exercise of its functions during the preceding financial year. A copy of the report must be sent to the Welsh Ministers, and the Welsh Ministers must lay a copy before the Senedd Cymru.
22. Part 8 of the Schedule makes minor and consequential amendments to existing primary legislation in connection with the establishment of the Authority.

Section 2 - The Authority's main objective

23. Subsection (1) provides that the Authority's main objective when carrying out its functions is to ensure that disused tips do not threaten human welfare by reason of their instability. Subsection (2) places a duty on the Authority to promote high standards in relation to the management of disused tips and threats to their stability. What is meant by a "threat to human welfare" is defined at section 82.
24. 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.
25. Similarly, a threat to human welfare could exist where the failure of a disused tip, due to instability, could block a water course and result in a consequential flooding threat to human welfare.
26. Such a threat could exist where slippage of a disused tip due to instability could block a highway and cause serious disruption to facilities for transport.
27. 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.

Section 3 - Information, advice and assistance

28. Subsection (1) requires the Authority to provide the Welsh Ministers with such information, advice or assistance about any of their functions as the Welsh Ministers may require. For example, the Welsh Ministers could ask the Authority for information relating to the number of notices under Part 3 issued by the Authority in relation to category 1 tips within a particular period. Subsection (2) provides that the Authority does not have to wait for a request from the Welsh Ministers, and may, of its own initiative, provide the Welsh Ministers with information, advice or assistance in connection with any matter relevant to their functions under this Bill or any of their other functions.

29. In accordance with subsection (5), “assistance” for the purposes of this section is defined to include the carrying out of operations on land: for example, works to strengthen a retaining wall on a disused tip.
30. Subsection (3) provides that the Authority may also give any other person (other than the Welsh Ministers) information or advice on, or assistance with, any matter relating to a particular disused tip, or disused tips in general. Subsection (4) gives the Authority power to charge a fee for the provision of such support under subsection (3). This means for example that the Authority could charge a local authority in England for providing advice and assistance with matters relating to a disused tip in its area, if that tip straddles the border between Wales and England.
31. As the Authority is a public authority, the principles of public law will require any fees charged by it to be reasonable.

Section 4 – Financial assistance

32. Subsection (1) enables the Authority to give financial assistance to any person in respect of relevant expenditure. Subsection (2) defines “relevant expenditure” for the purposes of this provision.
33. Under this section, financial assistance may be given to, for example, individuals, public authorities or corporations. In practice, the types of financial assistance that it is envisaged the Authority will provide includes administration of a grant to fund safety critical maintenance and remedial works to reduce threats to human welfare.

Section 5 - Ancillary powers

34. Section 5 provides that the Authority may do anything which is calculated to facilitate, or which is conducive or incidental to, the exercise of its functions. This ensures that in addition to the specific powers the Authority is given to perform its core functions under the Bill, it also has the powers it needs to be able to operate effectively, for example to enter into contracts, or to acquire land to accommodate its staff or equipment.
35. Subsection (2) places a restriction on the ability of the Authority to borrow money. It may only borrow from the Welsh Ministers.

Part 2 Assessment, Registration and Monitoring of Disused Tips

Chapter 1– Register of disused tips

Overview of Chapter 1

36. Chapter 1 makes provision requiring the Authority to compile and maintain a register of disused tips; setting the criteria for registration and the content of the register; giving a right of public access to the register and placing a duty on the Authority to monitor disused tips in the register.

Sections 6 and 7 – Duty to compile and maintain register and the criteria for registration

- 37. Section 6(1) places a duty on the Authority to compile and maintain an electronic register of disused tips that it has decided (a) pose a threat to human welfare by reason of instability, or (b) could pose such a threat in the event of instability.
- 38. The process for including disused tips in the register, or removing them from it, is set out in Chapter 3.
- 39. Section 7 sets out the criteria for registering a disused tip.
- 40. The criteria for registration are satisfied if either section 7(a) or (b) is satisfied in relation to a particular disused tip. Therefore, a disused tip does not need to be unstable at the time of assessment to be included in the register. It must also be included if it could pose a threat to human welfare (which is defined in section 82 and explained at paragraph 37) if it were to become unstable.

Section 8 – Content of the register

- 41. Subsection (1) provides that the electronic register that the Authority is under a duty to compile and maintain under section 6, must, for each registered tip, include a map identifying the area of the tip. In addition, the register must include the information listed in subsection (2).
- 42. Subsection (2) sets out what must be included in an entry for a disused tip in the register. This includes a unique identifier given by the Authority to the tip (for example, this could be a reference number such as T28703). Subsection (2)(f) provides that an entry in the register must include any additional information specified in regulations made by the Welsh Ministers. Subsection (3) places a duty on the Welsh Ministers to consult with the Authority before making such regulations.
- 43. Subsection (4) provides that the Authority may only change the mapped area for a disused tip or change the category that has been awarded to a tip, in accordance with the provisions of Chapter 5.

Section 9 – Public access to the register

- 44. Section 9 requires the Authority to ensure the maps and information in the register can be accessed electronically at all reasonable times by members of the public. The only exception to this requirement is in respect of information specified by regulations made under section 8(2)(f), which does not have to be made available to the public. In practice, it is intended this duty will be satisfied by making the register accessible on the Authority's website.

Section 10 – Duty to monitor registered tips

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- 45. Subsection (1) places a duty on the Authority to monitor the stability, and threats to the stability, of each disused tip in the register.
- 46. Subsection (2) provides that to perform its monitoring duty, the Authority may carry out inspections and other monitoring activities that it considers appropriate. Other monitoring activities might, for example, include the use of remote sensing to detect ground movement.
- 47. Utilising powers under section 58A Government of Wales Act 2006, Welsh Ministers intend to issue guidance to the Authority on monitoring. Section 69 of the Bill will require the Authority to have regard to such guidance in exercising its monitoring functions.

Chapter 2 – Assessment of Disused Tips

Section 11 - Overview

- 48. Section 11 provides an overview of the content of Chapter 2.

Sections 12 and 15 - Meaning of “preliminary assessment” and “full assessment”.

- 49. Section 12 defines “preliminary assessment” for the purposes of Chapter 2. The Welsh Ministers intend to issue guidance to the Authority about the way in which preliminary assessments should be carried out. 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.
- 50. Section 15 defines the meaning of a “full assessment” of a disused tip for the purposes of Chapter 2. The definition refers to the criteria for registration, which are described in section 7. The Welsh Ministers intend to issue guidance about the way in which full assessments should be carried out. It is anticipated that a full assessment will involve a physical inspection of the disused tip by a suitably qualified person.
- 51. A full assessment may only take place after a preliminary assessment has been conducted.

Section 13 - Preliminary assessment of all disused tips

- 52. Subsection (1) places a duty on the Authority to (a) carry out a preliminary assessment in relation to every disused tip in Wales, and (b) produce a report for each assessment.
- 53. There are approximately 2,500 disused coal tips in Wales, and it is estimated there are over 20,000 other disused tips (i.e. not coal) in Wales. Not all disused tips can be assessed at once. Consequently, subsection (2) requires the Authority to prepare a programme of work setting out its proposed approach to, and a timetable for, carrying out the preliminary assessments that are required by section 13.

54. It is anticipated that the programme of works will be developed so that the disused tips (whether they be coal or not) that are currently known to present the greatest threat to human welfare will be the first to receive a preliminary assessment. In respect of disused coal tips, decisions on prioritisation for preliminary assessment will be based on existing data from the Coal Authority.
55. Subsections (3) to (8) make further provision about the programme of work the Authority is required to prepare. In particular, the Authority must send the first programme of work to the Welsh Ministers for approval within 12 months of section 13 coming into force. The Welsh Ministers may approve the programme that is submitted to them by the Authority, or they may modify it prior to approving it. The Authority must publish the programme. It is anticipated the Authority will publish the programme on its website. The Authority may revise its published programme, subject to the approval of the Welsh Ministers. If it does so, the revised programme must be published as soon as practicable.

Section 14 – Additional preliminary assessments

56. There will be circumstances where the Authority has carried out a preliminary assessment of a disused tip and has decided it does not meet the criteria for inclusion in the register. An additional preliminary assessment must be carried out and a report of that assessment must be produced by the Authority, as soon as practicable, if the Authority considers such an assessment necessary in relation to the relevant tip: (a) because of a change in circumstances; or (b) because information is available that was not taken into account when the previous assessment was carried out.
57. An example of a change in circumstances might be the construction of a housing estate or a highway near to a disused tip, which might threaten the stability of the disused tip. An example of new information might be information not previously made available by an owner or occupier of the disused tip that highlights, for instance, evidence of an increased water run-off from neighbouring land that might pose a threat to the stability of the disused tip.

Section 16 – Full assessment of unregistered tip

58. Section 16 places a duty on the Authority to carry out a full assessment of an unregistered disused tip if, based on a preliminary assessment under either section 13 or 14, it appears to the Authority that the criteria for the registration of the tip may be met. The Authority is required to produce a report of the assessment.

Section 17 – Full assessment of registered tip

59. Section 17 provides that an additional full assessment must be carried out and a report of that assessment must be produced by the Authority, as soon as practicable, if the Authority considers such an assessment necessary in relation to the relevant tip: (a) because of a change in circumstances; or (b) because

information is available that was not taken into account when a full assessment was last carried out in relation to the tip.

60. For example, the Authority may decide to carry out an additional full assessment of a disused tip that is already on the register if it learns that drainage infrastructure under the tip has collapsed since the tip was last subject to a full assessment. Equally, the Authority may decide to carry out a full assessment of a registered tip if it receives information that suggests the tip no longer meets the criteria for registration.

Section 18 – Notice of intention to carry out full assessment

61. Before carrying out a full assessment in relation to a disused tip, subsection (1) places a duty on the Authority to give notice to every owner and every occupier of land to which access is required for the purposes of the assessment.
62. In practice, this means every owner and every occupier of the disused tip will need to be given notice. In addition, where the disused tip cannot be accessed directly from a public highway, the owners and the occupiers of any land the Authority will be required to cross to gain access to the disused tip will also need to be notified. Notice will also be given to owners and occupiers of land near to the disused tip, if access to that land is needed as part of the full assessment: for example, to assess whether there are any interdependencies between tips or to consider whether the criteria for registration (under section 7) are met.
63. An “owner” of land is defined for the purposes of the Bill in section 83 to mean the person who owns the freehold title to the land or holds a fixed term tenancy that has at least a year left to run and is not a mortgage term. This means banks and building societies that hold a mortgage on a piece of land are not considered to be owners for the purposes of the Bill. Section 83(b) provides that a person who has a reversionary interest in land that will only be realised when such a tenancy comes to an end is not to be considered an owner for the purposes of the Bill.
64. The “owner” of the land will, in many cases, be the occupier of the land too. However, there will be cases in which persons other than the “owner” are occupying the land: for example, persons who have a licence to occupy the land, or persons who hold periodic tenancies or tenancies which have less than a year to run. Where this is the case, notice will have to be given to those persons too.
65. Subsection (2) describes what must be included in a notice given under section 18(1). Amongst other things, the notice must specify the date on which access to the land may be needed. This must not be less than 14 days after the date on which the notice is given. So, if a notice is given on 1 November, access cannot be sought until 15 November.
66. The notice must also state that the Authority can apply for a warrant to enter land (in accordance with section 64) if access is refused. This requirement does

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not apply if the land in question is Crown land, as a warrant cannot be applied for to enter Crown land. Crown land is defined in section 84(2).

Section 19 – Notice of conclusions of full assessment

67. When the Authority produces a report of a full assessment in relation to a disused tip, it must, as soon as practicable, give notice of the conclusions of the report to every owner and every occupier of land on which the tip is situated.

Chapter 3 – Registering and Deregistering Disused Tips

Overview of Chapter 3

68. Chapter 3 sets out the process that the Authority must follow where it proposes to register a tip or to remove a tip from the register.

Section 20 – Proposal to register tip

69. Where the Authority concludes that the criteria for registering a tip (section 7) are met based on the report of a full assessment (section 16), section 20 places a duty on the Authority to give a “notice of proposed registration” to the persons listed in section 20(2)(a) and (b).
70. For the purposes of subsection (2)(b), persons with an estate or interest in the land who are neither owners (as defined in section 83 of the Bill) nor occupiers of the land may include, for example, those with an easement over the land.
71. Subsection (3) describes what must be included in a notice given under subsection (1). For example, the notice must advise the person to whom a notice is given under subsection (2) that they may make representations to the Authority on the proposal to register the tip (including the proposed category for the tip). The notice must give the person a period of at least 30 days, beginning with the day after the day on which the notice is given, to make representations. This means for example that if a notice is given on 1 October a person must be given until at least 31 October to make the representations. The notice must also explain how a person may make representations.
72. The ways of making representations could include, for example, the making of representations by email or post to the Authority.
73. It is anticipated that the Welsh Ministers will give guidance to the Authority to make reasonable adjustments for persons who may find it difficult to make representations using traditional methods.
74. In terms of the substance of the representations, it would be for the person making the representations to determine what additional evidence they wish the Authority to consider when making a decision on registration; this might include information they believe the Authority did not consider when carrying out its assessment.

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75. Subsection (4) gives the Welsh Ministers a regulation making power to change the time period for making representations.

Section 21 – Decision on registration

76. Section 21 sets out the procedure that the Authority must follow once the period for making representations about a proposal to include a disused tip in the register has expired.
77. Subsections (2) and (3) set out what the Authority must decide and the specific matters to which the Authority must have regard.
78. Subsection (4) provides that the Authority may also have regard to any other information it considers relevant. This could, for example, include information relating to the history of the tip's construction, proposed development on or around a tip that will affect the tip, or changes to land use. Subsection (5) provides that where the Authority decides the criteria for registration are met, it must include the tip in the register as soon as practicable.
79. Subsection (6) provides the Authority may, if it thinks it is appropriate to do so, register a tip otherwise than in accordance with the proposal contained in the notice of proposed registration. This might occur, for example, where the Authority takes into account representations made in accordance with section 20(3) and places the tip in a different category.
80. Subsections (7) and (8) list the persons to whom the Authority must give notice of its decision and the information that must be contained in the notice.

Section 22 – Proposal to remove tip from register

81. If it appears to the Authority, on the basis of a report of a full assessment under section 17, that the criteria for registration are no longer met in relation to a tip in the register, the Authority must as soon as practicable give a "notice of proposed deregistration" to the persons listed in subsection (2)(a) and (b). The persons listed in subsection (2)(a) and (b) are the same as those required to be notified about a proposal to register a tip under section 20(2).
82. Subsection (3) sets out what a notice of proposed deregistration must contain and the minimum period for making representations.
83. Subsection (4) gives the Welsh Ministers a regulation making power to change the minimum period for making representations.

Section 23 – Decision on removal of tip from register

84. Section 23 sets out the procedure that the Authority must follow once the period for making representations about a proposal to remove a disused tip from the register has expired.

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- 85. Subsections (2) and (3) set out what the Authority must decide and the specific matters to which the Authority must have regard. Subsection (4) provides the Authority may also have regard to any other information it considers relevant.
- 86. Subsections (6) and (7) list the persons to whom the Authority must give notice of its decision and the information that must be contained in the notice.

Chapter 4 – The Categories of Disused Tip etc

Overview of Chapter

- 87. All disused tips that are entered onto the register will be given a category by the Authority, based on the different degrees to which the disused tips cause the Authority concern. This Chapter explains the categories of disused tip, how the Authority will make decisions on categorisation and provides a process for review of categorisation.

Section 24 – Categories of disused tip

- 88. Subsection (1) provides that a disused tip may be placed in one of four categories on the register: category 1, 2, 3 or 4. The categories have a numeric descriptor as the register will be available in both English and Welsh.
- 89. Subsection (2) provides the four categories represent the different degrees to which disused tips cause the Authority concern. Decisions on the categorisation of a tip must be made on the basis of one or more of the factors set out in subsection (3).

Section 25 – Statement of policy on categorisation

- 90. Subsection (1) places a duty on the Authority to publish a statement of its policy on the categorisation of disused tips. It is anticipated that this statement will include matters such as the Authority's approach to categorisation and a description of the different categories.
- 91. Subsection (2) enables the Authority to revise the statement. If it does so, the Authority must publish the statement in its revised form as soon as practicable after making the revisions. It is intended the Authority will publish the statement on its website.

Section 26– Initial categorisation of a disused tip

- 92. When proposing to register a tip under section 20 or deciding to register a tip under section 21, the Authority must have regard to the report of the full assessment carried out under section 16 and follow the policy in the statement published under section 25.
- 93. The Authority may also have regard to any other information it considers relevant in proposing or deciding on a tip's category. This might include, for example, information about the tip's history that may be relevant to its stability.

Section 27 – Reviews of categorisation

94. The Bill allows the Authority to change a tip's category following a review. Subsection (1) places a duty on the Authority to review a tip's category as soon as practicable where the Authority carries out a full assessment of a disused tip that is already in the register and the report concludes the criteria for registration are still met.
95. Subsection (2) gives the Authority the power to review the category of a tip at any other time.
96. Subsection (3) provides that where the Authority considers on review that a disused tip's category should be changed, it must propose a different category for the tip as soon as practicable.
97. Subsections (4) and (5) mirror section 26(2) and (3), in that these provisions set out the information and documents that the Authority is required or permitted to have regard to in reviewing a disused tip's category and in proposing a different category. Where there has been more than one full assessment in relation to a disused tip, the Authority may have regard to all of these assessments but is only required to have regard to the report of the most recent assessment.

Chapter 5 – Notifiable Changes to the Register

Overview of Chapter 5

98. Chapter 5 makes provision about notifiable changes to the register. It defines what is meant by notifiable change, the process that the Authority must follow if it proposes to make a notifiable change, and the process for making a decision on a notifiable change.

Section 28 – Meaning of “notifiable change”

99. For the purposes of Chapter 5, a notifiable change means a change to the area shown as the area of a disused tip on the map included in the register, or a change to the disused tip's category.

Section 29 – Proposal to make notifiable change

100. Subsection (1) describes the persons that the Authority must notify if it proposes to make a notifiable change.
101. Subsection (2) describes what a notice under subsection 1 (i.e. a “notice of a proposed change to the register”) must address.
102. Amongst other things, the notice must advise the person to whom a notice is given under this section that they may make representations to the Authority about the proposal. The notice must give the person a period of at least 30 days beginning with the day after the day on which the notice is given to make representations. This means, for example, that if a notice is given on 1 October

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a person must be given until at least 31 October to make the representations. The notice must also explain how a person may make representations.

103. The ways of making representations could include, for example, by email or post to the Authority. It is anticipated that the Welsh Ministers will give guidance to the Authority to make reasonable adjustments for persons who may find it difficult to make a complaint using traditional methods.
104. In terms of the substance of the representations, it would be for the person making the representations to determine what additional evidence they wish the Authority to consider when making a decision, this might include information they believe the Authority has not considered or had access to.
105. Subsection (3) gives the Welsh Ministers a regulation making power to change the time period for making representations.

Section 30 – Decision on notifiable change

106. The provisions in this section set out the procedure that the Authority must follow in deciding whether to make the change, once the period for making representations about a proposal to make a notifiable change has expired.
107. Subsection (5) provides that in making its decision, the Authority must have regard to any representations about the proposal by a person who was given a notice under section 29. Subsection (6) provides that the Authority may also have regard to any other information it considers relevant. This could, for example, include information relating to the history of the tip and its stability.
108. Subsection (7) provides that where the Authority decides to make a notifiable change, it must update the register as soon as practicable.
109. Subsections (8) and (9) set out the procedure that the Authority must follow to give notice of its decision.

Chapter 6 – Supplementary Provision Overview

110. Chapter 6 contains provision that supplements the other provisions in Part 2. Section 31 makes provision for compensation for damage or disturbance arising as a result of specified activity carried out under Chapter 1 or 2 of this Part. It also introduces Schedule 2 - Claims for Contributions by Owners and Contributories. Section 32 makes it a criminal offence to obstruct monitoring activities or assessments under Part 2 of the Bill.

Section 31 - Compensation for damage or disturbance

111. Section 31 provides that the persons referred to in subsection (3) are entitled to recover compensation from the Authority for damage or disturbance resulting from carrying out activities listed in subsection (1).

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- 112. Subsection (4) provides that any dispute arising out of a claim for compensation under this section is to be determined by the court. “Court” is defined in section 85 as the High Court or county court.
- 113. Subsection (5) provides that Schedule 2 has effect in relation to certain claims for compensation under this section.

Schedule 2 – Claims for compensation by owners and contributories

- 114. Schedule 2 makes provision in relation to claims by owners or contributories for compensation. “Contributories” are persons in relation to whom a contribution order has been made under section 46.
- 115. Paragraph 1(1) provides that the Schedule applies to an owner of land where the Authority has carried out operations under section 42 or investigations under section 53 that resulted in the carrying out of operations, the owner has claimed compensation under the Bill and notwithstanding any contribution order that may have been made, the owner has expenses to bear in respect of those operations or investigations.
- 116. Paragraph 1(2) provides that the Schedule also applies to contributories if a contribution may be claimed from them in respect of expenses incurred by an owner of land in carrying out operations under section 34 or by the Authority in carrying out operations under section 42 or investigations under section 53 that resulted in the carrying out of operations, and the contributory has claimed compensation under the Bill from an owner of land or the Authority.
- 117. Paragraph 2 makes provision that applies where an owner of land seeks to enforce a claim for compensation from the Authority under the Bill and the Authority is entitled to demand a sum from the owner under section 51.
- 118. Paragraph 3 makes provision that applies where a contributory seeks to enforce a claim for compensation from the Authority or a landowner and the Authority or the landowner is entitled to demand a sum from the contributory (under section 49 or 51).
- 119. Paragraphs 2 and 3 prevent those claims for compensation from being enforced, other than by way of an offset against a demand, for a period of 12 months. The purpose of this restriction is to provide an opportunity for the relevant sums to be demanded (and potentially recovered) from the person before compensation has to be paid to the person.
- 120. Paragraph 4 provides that references to operations in Schedule 2 include works of reinstatement consequential on those operations.
- 121. Paragraph 5 makes provision relating to the time limit for bringing a claim for compensation referred to in paragraph 1. Section 9 of the Limitation Act 1980 requires the claim to be made within 6 years of the date on which the cause of action accrued, and paragraph 5 sets out when the cause of action is to be regarded as having accrued for that purpose.

Section 32 – Penalty for obstructing monitoring activities or assessments

- 122. Subsection (1) provides that it is an offence to intentionally obstruct or interfere with an inspection or other monitoring activity under section 10, or a preliminary or full assessment under Chapter 2.
- 123. Subsection (2) provides that a person who is found guilty of such an offence is liable on summary conviction to a fine.
- 124. Subsection (3) provides that a contravention of subsection (1) by the Crown does not make the Crown criminally liable. This is consistent with the policy expressed in section 28(3) of the Legislation (Wales) Act 2019, which provides that an Act of Senedd Cymru does not make the Crown criminally liable, but applies to persons in the service of the Crown as it applies to other persons.

Part 3 – Dealing with tip instability and threats to tip stability

Chapter 1 - Requiring an owner of land to carry out operations

Overview of Chapter

- 125. Chapter 1 gives the Authority a power to give an owner of land a notice to require the owner to carry out operations on that land to prevent or deal with threats to the stability of disused tips, or to stabilise disused tips or prevent them from becoming more unstable, so as to avoid or reduce threats to human welfare. It makes provision in relation to the owner's right to enter their land to carry out operations in situations where the owner is not in occupation of their land. It also makes provision requiring the Authority to give interested parties, such as occupiers of the land, copies of any notice requiring the owner to carry out operations. The Chapter also makes provision for related matters, such as rights of appeal against a notice and the imposition of a penalty for a failure to comply with a notice. It also enables the Authority to cancel a notice after it has been given and makes provision for reimbursement of expenses in such a situation.

Section 33 – Notice requiring owner of land to carry out operations

- 126. Section 33 gives the Authority the power by notice to require the owner of land to carry out specified operations on the land if the Authority thinks the operations are necessary to fulfil the objective set out in subsection (2).
- 127. Subsection (2) provides the objective is to (a) prevent or deal with threats to the stability of a disused tip, or (b) to stabilise a disused tip or prevent a disused tip from becoming more unstable, so as to avoid or reduce threats to human welfare. Therefore, the Authority has the power to intervene in the interests of the stability of disused tips at various stages, including by taking pre-emptive action.
- 128. "Operations" are defined in section 85 as including, but not limited to, building and engineering operations.

- 129. The Authority is given the power to issue notices to owners of land. This includes owners of disused tips but may also include owners of land that is not covered by a disused tip. In practice, such land is likely to be land that is immediately adjacent to a disused tip where conditions on that land are having a direct impact, or could potentially have a direct impact, on the stability of the disused tip.
- 130. The operations that might be required by a notice will vary in nature and degree. Some operations might be relatively minor in nature, such as clearing detritus from a culvert to allow proper drainage that might prevent a disused tip becoming unstable. Equally, a notice could require a major overhaul of a disused tip's drainage system that is no longer serviceable.
- 131. An example of the type of operations that might be required to be undertaken by an owner of land that is not a disused tip might include operations to capture and re-route water run-off which is uncontrollably discharging onto a disused tip from adjacent land and causing instability.
- 132. Subsections (3) and (4) set out the procedural requirements the Authority must follow in giving a notice under this section.
- 133. Welsh Ministers intend to issue guidance to the Authority about its functions under this Chapter. This is likely to include guidance on matters such as allowing sufficient time, when setting deadlines for the completion of operations, for the owners to obtain the necessary permissions or permits to carry out the operations, so as to ensure that the timeframe given for the completion of operations is reasonable.

Section 34 – Owner's right of entry onto land etc

- 134. Section 34 recognises that owners who are not in occupation of their land, or any part of it, need to be able to enter their land if they receive a notice under section 33 that requires them to carry out operations on the land.
- 135. Subsection (1) provides that if an owner of land who is given a notice under section 33 is not in occupation of the land on which the operations specified in the notice must be carried out, and the owner's estate in the land is superior to the estate or interest of the occupier, the owner has the right to enter the land (or part of the land) to carry out the operations and any consequential works of reinstatement. Such reinstatement works might include works to reinstate agricultural land. An example where the owner's estate is superior is where the owner holds the freehold estate in the land and the occupier merely has a licence to occupy the land.
- 136. Subsection (2) provides that an owner exercising a right of entry under subsection (1) may take other persons, equipment or materials onto the land. This is to facilitate the carrying out of the required operations.
- 137. Subsection (3) gives an owner who is given a notice under section 33 the power to remove and dispose of any property situated on the land that belongs to another person, if that the removal and disposal is for the purposes of carrying

out the operations required by the notice. Such property might include machinery that needs to be moved before the operations can commence or could comprise materials from the disused tip itself.

138. Subsection (4) provides that if the owner of the land disposes of such property by selling it, the owner must account to the owner of the property for the proceeds of sale. However, subsection (5) enables the owner to deduct any expenses that are reasonably incurred in selling the property and to offset the proceeds of sale against any sum the owner of the land is entitled to recover from the owner of the property under Chapter 3.

Section 35 – Duty to give interested parties copies of notice

139. Subsection (1) provides that where the Authority gives notice to an owner of land under section 33 requiring the carrying out of operations, it must also give a copy of the notice to any other person with an interest in the notice. This is to ensure that anyone who might be affected by the carrying out of operations on the land, or who might be required to contribute towards the cost of carrying out the operations, is informed about them. Subsection (4) requires the Authority to give copies of the notice within 7 days, beginning with the day on which the notice was given to the owner.
140. Subsection (2) prescribes the persons who (in addition to the owner) are persons with an interest in the notice.
141. The persons listed in subsection (2) include persons whose past conduct could have caused or contributed to the need for a notice to be served and who, in accordance with the provisions of section 46, could be required by the court to contribute to the costs of the operations under a contribution order. For example, a person who, to the Authority's knowledge, has within any time in the 12 years before the notice was given to the owner used the disused tip to deposit waste from a mine or quarry.

Section 36 – Right of owner and interested parties to appeal against notice

142. Section 36 gives an owner of land who is given a notice requiring the carrying out of operations on land pursuant to section 33, or a person who is given a copy of the notice under section 35, a right to apply to the Welsh Ministers to vary or cancel the notice.
143. Subsection (3) sets out at paragraphs (a) to (f) the grounds for an appeal under this section. Paragraph (f) enables an appeal to be brought on procedural grounds where it is contended there is a material defect or error in, or in connection with, the notice. This might include, for example, the appellant contesting that the notice provides insufficient information to enable compliance.
144. Subsection (4) also gives an owner who is served a notice under section 33 the right to apply to the Welsh Ministers to vary or cancel a notice on the grounds the owner is unable to meet the costs of the operations required by the notice.

145. An appeal might be brought on this ground where, for example, a private owner of a disused tip is faced with a notice requiring costly operations that they cannot afford. A landowner who makes a successful application under subsection (4) will not be liable for the criminal offence under section 39 of failing to comply with a notice issued under section 33. If the application succeeds and the section 33 notice is cancelled, the Authority will nonetheless be able to issue a notice under section 42 to ensure the operations are carried out.

Section 37 – Determination of appeals

146. Subsection (1) provides that an application made under section 36 to vary or cancel a notice issued under section 33 is to be determined by a person appointed by the Welsh Ministers (an “appointed person”).
147. In practice, it is intended that applications under section 36 and 41 will be determined by Planning and Environment Decisions Wales (PEDW). PEDW carry out casework relating to the development and use of land in the public interest. They deal with, amongst other things, planning and enforcement appeals, Strategic and Local Development Plans and environment appeals. They currently have a team of 20 inspectors who make appeal decisions, supported by 25 support staff.
148. Subsection (2) allows the appointed person to vary or cancel the notice if the appointed person is satisfied that any of the grounds on which the application was made have been proven. Where a notice is varied, subsection (3) provides that the notice, and any copy of it given under section 35, is to be treated as always having effect as varied.
149. Subsection (4) provides that where an application is made under section 36 and it is not withdrawn, the period specified in the notice as the period within which operations must be completed does not expire before the application is determined. This means that the person to whom the notice has been given cannot be guilty of an offence under section 39 for failing to comply with the notice whilst the determination of the application is pending.
150. Subsection (5) provides that the appointed person may extend the time specified in the section 33 notice for completing operations. This power can be exercised whether the grounds for an application are made out or not. It may, for example, be used if, by the time an appeal is determined, the deadline for completion of the operations specified in the notice is imminent.
151. Subsections (6) and (7) set out the steps that the Welsh Ministers must take once an application under this section has been determined.

Section 38 – Supplementary provision about appeals

152. Subsection (1) places a duty on the Welsh Ministers to make regulations about the procedure to be followed in determining appeals made under section 36. For example, this could include provision conferring a discretion on the person determining the appeal to decide which way the appeal proceedings should be

determined ie by written representations or a hearing. It could also include provision conferring a discretion on that person to appoint another person to advise on any technical matters arising in connection with an appeal.

153. Subsection (2) gives the Welsh Ministers the power to make regulations about any other (non-procedural) matter that is connected to the determination of appeals under section 36. For example, this might include matters that are preliminary or subsequent to the determination of an appeal, or which, for other reasons, cannot reasonably be characterised as a matter of procedure. An example might be conferring a power to enter land if that is necessary to fairly determine an appeal.
154. Regulations made under this section may cover both procedural matters and other matters connected to determining an appeal. Further detail about the type of provision that may be made in these regulations is contained in the Statement of Policy Intent that accompanied the Bill's introduction.
155. Subsection (3) sets out examples of the matters that may be included in regulations made under this section. Subsection (4) provides that regulations under this section may confer a discretion on a person. Subsection (5) provides that regulations under this section may create offences in connection with failures to comply with any requirements imposed by or under the regulations.

Section 39 – Penalty for failure to comply with notice

156. Subsection (1) provides that an owner who is given a notice under section 33 commits an offence if, without reasonable excuse, the owner fails to carry out the operations within the period specified in the notice, or, if the notice period is extended under section 37, within that extended period.
157. Subsection (2) provides that a person who is found guilty of the offence under subsection (1) is liable to a fine.
158. Subsection (3) provides that a contravention of subsection (1) by the Crown does not make the Crown criminally liable. This is consistent with the policy expressed in section 28(3) of the Legislation (Wales) Act 2019, which provides that an Act of Senedd Cymru does not make the Crown criminally liable, but applies to persons in the service of the Crown as it applies to other persons.

Section 40 – Power to cancel notice

159. Section 40 provides the Authority with a power to cancel a section 33 notice. The Authority may give a notice of cancellation to an owner of land at any time before the operations required by the section 33 notice are completed, even if works have begun or an application to vary or cancel the notice has been made under section 36.
160. The situations in which the Authority may wish to cancel a notice may include, for example, situations where circumstances change after the date on which the notice was given, and the Authority is of the view that different operations should now be performed on the land. In accordance with subsection (6)(b),

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cancelling a notice does not affect the Authority's power to give a further section 33 notice in relation to the land. A new notice could therefore be given requiring different operations to be carried out on the land.

Section 41 – Reimbursement of owner's expenses on cancellation of notice

- 161. Section 41 applies where the Authority has cancelled a section 33 notice and the owner who was given the notice has incurred expenditure in complying with it.
- 162. Subsection (2) gives the owner a right to apply to the Welsh Ministers to be reimbursed by the Authority for (a) any expenditure incurred by the owner as a result of them having been given the notice, and (b) any expenditure incurred by the owner that is attributable to the cancellation of the notice. For example, expenditure that has already been paid out by the owner in furtherance of the required operations, such as costs that have been paid to contractors or to hire plant or machinery or expenses incurred by the owner as a result of cancelling a contract for works or costs of reinstating the land.
- 163. Subsections (3) to (6) set out how an application under this section is to be determined.
- 164. As set out in paragraph 147 above, the intention is for PEDW to be appointed to determine applications under this section on behalf of the Welsh Ministers. The person determining the application may give a direction to the Authority to reimburse the owner and the Authority must comply with this direction.
- 165. Subsection (7) places a duty on Welsh Ministers to make regulations about the procedure to be followed in determining applications under this section. Subsection (8) gives Welsh Ministers the power to make regulations making other provision in connection with determination of applications under this section. This means that the Welsh Ministers have the power to make regulations about any other (non-procedural matter) that is connected to the determination of applications under this section. For example, this might include matters that are preliminary or subsequent to the determination of the application that cannot reasonably be characterised as a matter of procedure.
- 166. Subsection (9) applies the provisions of subsections (3) to (5) of section 38 to regulations made under this section.

Chapter 2 – Operations carried out by the Authority

Overview of Chapter

- 167. Chapter 2 gives the Authority a power to carry out operations on land to prevent or deal with threats to the stability of disused tips, or to stabilise disused tips or prevent them becoming more unstable, so as to avoid or reduce threats to human welfare (as defined in section 82). It gives the Authority related powers to remove and dispose of property from land. It also places a duty on the Authority to notify owners before carrying out works and requires the Authority to give interested parties a copy of the notice.

Section 42 – Authority's power to carry out operations

- 168. Section 42 gives the Authority the power to carry out operations on any land, if it considers it necessary to do so to achieve the objective in subparagraph (2). However, this power to carry out operations is subject to the requirement to give notice to owners set out in section 44.
- 169. The Authority has the power to intervene in the interests of the stability of disused tips at various stages, including by taking pre-emptive action.
- 170. “Operations” are defined in section 85 as including, but not limited to, building and engineering operations. Examples of such operations might include the clearing of drainage infrastructure, the removal of vegetation, the repair of retaining structures, the reinstatement of erosion features and the remediation of areas of landslip.
- 171. The Authority is given the power to carry out operations on any land. This includes land on which a disused tip is situated, but also includes other land. In practice this land is likely to be, land that is immediately adjacent to a disused tip where the conditions on that land are having, or have the potential to have, an impact on the stability of the disused tip.

Section 43 – Authority's right to remove and dispose of property

- 172. Subsection (1) provides the Authority may, for the purpose of carrying out operations or consequential works of reinstatement on land, remove and dispose of any property situated on the land that belongs to another person. Such property might include machinery that needs to be moved before the operations can commence or could, for example, comprise materials from the disused tip.
- 173. Subsection (2) provides that if the Authority disposes of such property by selling it, the Authority must account to the owner of the property for the proceeds of sale. However, subsection (3) enables the Authority to deduct any expenses that are reasonably incurred in selling the property and to offset the proceeds of sale against any sum the Authority is entitled to recover from the owner of the property under Chapter 3.

Section 44 – Duty to give notice to owners

- 174. Section 44 provides that, in most circumstances, the Authority may not carry out operations on land under section 42 unless it has given the owner of the land at least 21 clear days’ notice of its intention to do so. The content of the notice is specified in subsection (2).
- 175. However, subsection (3) provides that if the Authority believes 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 period outlined in subsection (1). For example, the Authority may form the view that operations need to be carried out immediately following an inspection of a

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disused tip following a period of heavy rain which reveals the tip, or a portion of it, is at risk of imminent failure without works to stabilise it. In practice, such scenarios are likely to be relatively rare.

176. Subsection (4) provides that where the Authority starts operations on land without having given notice, it must, as soon as practicable, give the owner of the land notice that the operations have started. The content of this notice is specified in subsection (5).

Section 45 – Duty to give interested parties copies of notice

177. Section 45 provides that where the Authority gives notice to an owner of land under section 44 that it intends, or has started, to carry out operations, it must also give a copy of the notice to any other person with an interest in the notice. These persons are listed in subsection (2). This is to ensure that anyone who might be affected by the carrying out of operations on the land, or who might be required to contribute towards the cost of carrying out the operations, is informed about them. Subsection (4) requires the Authority to give copies of the notice on the day the notice is given to the owner, or as soon as reasonably practicable after that day.

Chapter 3 – Payments in connection with operations

Overview of Chapter

178. Chapter 3 makes provision about contribution orders, compensation and demands for the recovery of expenses by both owners of land and the Authority. Chapter 3 also sets out the rights of owners and contributories to appeal against such demands.

Section 46 – Contribution orders

179. Section 46 provides that where an owner of land has to bear expenses as a result of the carrying out of operations specified in a notice issued under section 33 or 44, the owner or the Authority can apply to the court for an order requiring one or more other persons to contribute towards those expenses. “Court” is defined in section 85 as the High Court or the county court.
180. An order can only be made in relation to a person listed in subsection (2).
181. Subsections (5) and (6) set out the procedural requirements that the owner or the Authority must comply with when applying for an order under this section.
182. The court must take account of all the circumstances, including all the matters listed in subsection (7), in deciding whether to make an order, and in determining the amount of any contribution. If the court decides to make an order, the order must specify the percentage of the total amount in respect of which a contribution can be claimed under Chapter 3.

Section 47 – Meaning of “contribution order”, “contributory” and “the specified percentage”

183. This section contains definitions of terms used in the Bill in relation to contribution orders.

Section 48 – Compensation for damage, loss or disturbance etc.

184. Section 48 gives the persons listed in subsection (3) an entitlement to compensation from either the owner of the land or the Authority in certain circumstances.
185. Subsections (1) and (2) set out the circumstances in which a person is entitled to compensation. Compensation may only be claimed where operations or consequential works of reinstatement have been carried out in accordance with Part 3 or where the Authority has carried out investigations to determine whether operations are needed. If, as a result of operations under section 33 or 42 or reinstatement works carried out in consequence of such operations, land is damaged, other property is damaged, removed or disposed of or any person's enjoyment of any land is disturbed, the persons listed in subsection (3) are entitled to compensation. If as a result of investigations under section 53, land or other property is damaged or any person's enjoyment of land is disturbed, the persons listed in subsection (3) are entitled to compensation.
186. An owner of land is not entitled to compensation under this section for damage, removal, loss or disturbance resulting from operations carried out by them or by a previous owner of the land.
187. Disputes about claims for compensation under this section are to be determined by the court (defined in section 85 as the High Court or the county court).
188. Schedule 2 has effect in relation to certain claims for compensation under this section. See the notes at paragraphs 114 to 121 above in relation to Schedule 2.

Section 49 – Owner's right to receive expenses from contributory

189. Where a contribution order has been made under section 46 in relation to operations an owner carried out on their land in compliance with a notice issued under section 33, the owner is entitled to recover from the contributory the contribution specified in the order in accordance with section 49.
190. As explained in the notes for section 46, the contribution order will specify the percentage of the total amount of expenses incurred by an owner which the owner may seek as a contribution. Subsection (3) of section 49 sets out how the total amount is calculated. It is the sum of:
- (a) the expenses the owner reasonably incurred in carrying out the operations required by the notice issued under section 33 and any consequential works of reinstatement that were reasonably necessary,
 - (b) the amount of compensation that the owner has been, or may be, required to pay under section 48, and

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(c) the amount of compensation that the owner could have claimed under section 48 if the operations and works of reinstatement had been carried out by the Authority rather than by the owner.

- 191. Subsections (4) and (5) set out the procedural requirements an owner must follow to recover expenses from a contributory.
- 192. Subsection (7) provides that this section and section 50 have effect with the modifications set out in Schedule 3 in circumstances where an owner of land has carried out operations specified in a notice under section 33 and the Authority has cancelled that notice under section 40.

Schedule 3 – Modifications of sections 49 and 50 where a notice under section 33 is cancelled

- 193. Schedule 3 sets out the following modifications that will apply to sections 49 and 50 where the Authority cancels a notice it has given to an owner under section 33.
- 194. Where section 49 or 50 refers to operations carried out in compliance with a notice given under section 33, this is to be read as a reference only to operations carried out before the notice was cancelled.
- 195. The amount of expenses reasonably incurred by the owner in carrying out operations must be calculated for the purposes of determining the total amount in relation to which an owner is entitled to a contribution under section 49 or whether the grounds of an application to vary or cancel a demand for a contribution under section 50 are made out. Paragraph 3(1) of Schedule 3 provides that when calculating the amount of expenses reasonably incurred in carrying out operations in circumstances where the notice is cancelled, any sum that falls within paragraph 3(1)(a) and (b) must be deducted. A sum falls within paragraph 3(1)(a) and (b) if it is recoverable or has been recovered by the owner from the Authority under section 41 (see paragraphs 161 to 166 above) and relates to expenses the owner incurred in consequence of the notice given to them under section 33.
- 196. Under paragraph 3(2), where a notice is cancelled an owner of land is not entitled to a contribution under section 49 in respect of expenses they incur in carrying out works of reinstatement.
- 197. Paragraph 4 sets out modifications that apply if a direction is made under section 41 allowing the owner to recover sums from the Authority in respect of the expenditure the owner incurred in consequence of being given a notice under section 33. These include a requirement that any sums recoverable from the Authority as a result of the direction must be specified in any demand given under section 49 for a contribution towards the owner's expenses. A person who is given such a demand may apply under section 50 to vary or cancel the demand on the ground that the amount claimed in the demand does not make proper allowance for a sum that must be deducted by virtue of paragraph 3.

Section 50 – Right of contributory to appeal against owner's demand

- 198. Where a person is given a demand for a contribution under section 49, they can (within 6 weeks of the demand being given) apply to the court for an order varying the demand.
- 199. Subsection (3) sets out the grounds on which an application to vary a demand may be made. Where the court is satisfied that one or more grounds are made out the court may make an order reducing the amount recoverable from the contributory (subsection (4)).

Section 51 – Authority's right to recover certain expenses

- 200. Section 51 applies where the Authority has carried out operations on land under section 42. In this case, the Authority may recover from the owner of that land the expenses set out in subsection (1). The "owner" is the person who was the owner when the Authority started to carry out the operations (see subsection (9)).
- 201. Under subsection (2), the Authority may recover from the owner of land any expenses reasonably incurred by the Authority in carrying out investigations under section 53 that resulted in them giving the owner a notice under section 33 (see subsection (9) for an explanation of when investigations are to be treated as having resulted in the giving of a notice under section 33). The Authority may also recover the amount of any compensation recovered or recoverable under section 48 from the Authority in relation to such investigations. The "owner" is the person given the notice under section 33 (see subsection (9)).
- 202. Subsection (3) provides that the Authority may recover expenses from a contributory where an order has been made under section 46 in relation to expenses the owner may otherwise have to bear under subsection (1) or (2).
- 203. Subsections (4) and (5) set out the procedural requirements the Authority must follow in order to recover sums under this section.
- 204. Subsection (6) provides that a demand given by the Authority under subsection (4) is final and conclusive unless an application to vary or cancel the demand is made under section 52.
- 205. Interest is payable in relation to any sum recoverable under this section in accordance with subsection (7) and subsection (8) provides that any sum recoverable may be paid in instalments if agreed by the Authority.

Section 52 – Right to appeal against Authority's demand

- 206. Section 52 provides a person given a demand under section 51 with a right to apply to the court (as defined in section 85) for an order varying or cancelling the demand.
- 207. Subsections (3) and (4) of section 52 set out the grounds on which such an application may be made, and subsection (5) provides that where the court is

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satisfied that any of the grounds of the application are made out, the court may make an order cancelling the demand or reducing the amount that is recoverable from the person to whom the demand was given.

Chapter 4 – Supplementary Provision

Overview of Chapter 4

208. Chapter 4 is a short Chapter that gives the Authority the power to carry out investigations on land to determine whether specified operations on land need to be required or carried out. The Chapter also creates related offences.

Section 53 – Power to carry out investigations

209. Section 53 gives the Authority power to carry out investigations on land to determine whether operations need to be required or carried out by the Authority, or whether operations are being carried out in compliance with a notice given under section 33.

Section 54 – Penalty for obstructing operations etc.

210. Subsection (1) provides that a person commits an offence if they intentionally obstruct or interfere with - (a) an investigation under section 53, (b) the carrying out of operations required by a notice under section 33, or (c) the carrying out of operations under section 42. In accordance with subsection (3), a person guilty of an offence under subsection (1) is liable on summary conviction to a fine.
211. Subsection (2) provides that a person who intentionally damages or otherwise interferes with any works completed in the course of operations required by a notice under section 33 notice or carried out by the Authority under section 42 commits an offence. In accordance with subsection (3) a person guilty of an offence under subsection (1) is liable on summary conviction to a fine.
212. Subsection (4) provides that a contravention of subsection (1) or (2) by the Crown does not make the Crown criminally liable. This is consistent with the policy expressed in section 28(3) of the Legislation (Wales) Act 2019, which provides that an Act of Senedd Cymru does not make the Crown criminally liable, but applies to persons in the service of the Crown as it applies to other persons.

Part 4 – Supplementary

Overview of Part 4

213. Part 4 contains provisions about information sharing, powers to require information and penalties in connection with notices requiring information. These are contained at sections 55 to 61.
214. It also makes provision about powers of entry. These include provisions in relation to the giving of notice prior to entry, the issuing of warrants conferring powers of entry, entry to land both with, and without, a warrant, penalties for

obstructing entry to land and entry to Crown land. These are contained at sections 62 to 67.

215. There are also a number of miscellaneous provisions. These include provision giving the Authority the power to provide administrative, technical or professional services and provision in respect of guidance. They also include provision that makes amendments to the Mines and Quarries (Tips) Act 1969. These are contained at sections 68 to 70.

Section 55 – Meaning of “relevant public authority”

216. Section 55 defines “relevant public authority” for the purposes of Part 4 of the Bill. Some of the sections in Part 4 that relate to the provision of information apply specifically to relevant public authorities whilst others do not allow for information to be requested from such authorities.
217. Subsection (1) provides that the Welsh Ministers and a number of other public authorities are “relevant public authorities” for the purposes of Part 4. Those other public authorities are: Natural Resources Wales, county councils and county borough councils in Wales, National Park Authorities in Wales, the Coal Authority, and Fire and Rescue Authorities for areas in Wales.
218. Subsection (3) provides that the Welsh Ministers may make regulations to amend the meaning of “relevant public authority” in subsection (1). In accordance with subsection (4), such regulations may not include a public authority within the definition of “relevant public authority” unless that authority is a “devolved Welsh authority” within the meaning of section 157A(1)(a) of the Government of Wales Act 2006. This means that a public authority can only be included within the definition of “relevant public authority” if its functions are exercisable only in relation to Wales and are wholly or mainly functions that do not relate to reserved matters.

Section 56 – Authority's power to require relevant public authorities to give information

219. Subsection (1) places a duty on each relevant public authority to provide the Authority with information requested by the Authority for the purpose of exercising functions conferred by or under the Bill.
220. Subsection (2) provides that a relevant public authority is neither required nor permitted to give information to the Authority if that would be contrary to any prohibition contained in other legislation or imposed by another rule of law. For example, a relevant public authority would not be required to provide information if in doing so it would breach data protection legislation or breach a duty of confidence owed to a third party.
221. Subsection (3) requires a relevant public authority to give the Authority its reasons in writing where it refuses to disclose information to the Authority following a request under this section.

Section 57 – Duties of Authority and relevant public authorities to share information

222. Section 57 places a duty on a relevant public authority and the Authority, when certain circumstances are satisfied, to give information to the other party as soon as practicable.
223. Subsection (1) requires a relevant public authority, if it becomes aware of a threat to the stability of a disused tip or of evidence of a disused tip's instability, and it considers that information should be shared with the Authority in the interests of avoiding or reducing a threat to human welfare, to provide the Authority with that information as soon as practicable. For example, a local authority may become aware, as part of a planning application, of activity on or near a disused tip that it considers should be passed to the Authority in the interests of avoiding or reducing a threat to human welfare.
224. Similarly, subsection (2) requires the Authority, if it becomes aware of something that should be brought to the attention of a relevant public authority for the purpose of the public authority's exercise of its functions, to provide that information to the public authority as soon as practicable. For example, if when assessing a disused tip, the Authority becomes aware of a fire hazard on the tip or on neighbouring land, the Authority must provide that information to the Fire and Rescue Authority for that area.
225. Subsection (3) provides that the section can neither require nor permit a relevant public authority or the Authority to give information contrary to any prohibitions contained in legislation or imposed by another rule of law.

Section 58 – Information about estates or interests in land

226. Section 58 contains provisions that aim to help the Authority to obtain certain information.
227. Subsection (1) provides that the Authority may require an occupier of land, or a person who receives rent in respect of the land, to provide certain written information to the Authority: namely, the nature of their estate or interest in the land and whether they know of anyone else with an estate or interest in the land. If they are aware of any such person they must, if such information is known, provide the Authority with that person's name and contact details. Not giving such information, without reasonable excuse, or giving information which is false and misleading in a material respect, either knowing it to be false or misleading or being reckless as to whether it is so, is an offence under section 61.
228. The meaning of "contact details" is set out in subsection (2).
229. Subsection (3) provides that the Authority may not give a notice under section 58 requiring a person to provide information unless the Authority needs such information to enable it or assist it in exercising a function conferred by or under the Bill. The Authority might, for example, require information in order to establish who has an estate or an interest in certain land, so that the

Authority is able to comply with its duty under section 35 of the Bill to give certain persons a copy of a section 33 notice.

230. Subsection (4) sets out the period within which a notice under this section may require information to be given.
231. Subsection (5) clarifies that section 58 does not require or permit information to be given contrary to any prohibitions contained in legislation or imposed by another rule of law. Subsections (6) and (7) provide, respectively, that the Authority may not give a notice under section 58 to a relevant public authority or to an appropriate Crown authority in respect of an estate or interest in Crown land which is not a private interest. “Appropriate Crown authority”, “Crown land” and “private interest” are defined in section 84. This reflects the fact that there are provisions elsewhere in the Bill that allow notices to be given to relevant public authorities or in respect of estates or interests in Crown land: section 56 (which enable the Authority to require relevant public authorities to give information) and section 59 (which makes provision in respect of obtaining information about estates or interests in Crown land).

Section 59 – Information about estates or interests in Crown land

232. This section makes provision in relation to obtaining information about estates or interests in Crown land.
233. Subsection (1) provides that section 59 applies to an estate or interest in Crown land that is not a private interest. “Crown land” is defined in section 84(2) and “private interest”, in relation to Crown land, is defined in section 84(5).
234. Subsection (4) requires the appropriate Crown authority to provide information requested by the Authority under subsection (2), other than in the circumstances set out in subsection (4)(a) or (b).

Section 60 – Information to identify or assess threats to stability of a disused tip etc.

235. Subsection (1) provides that the Authority may give an “information notice” to a person. An information notice may not be given to a relevant public authority (subsection (5)). An information notice must specify the type of information sought by the Authority, which must be information that the Authority believes will allow or help it to assess a threat to the stability of a disused tip, or to assess the stability of a disused tip. The Authority must have a reason to believe that the person to whom the information notice is given either possesses the information or has the information under their control. It is an offence, under section 61, not to give the information without reasonable excuse, or to give information in response to the information notice that is false or misleading in a material respect, either knowing that the information is false or misleading or being reckless as to whether it is so. Information that might be requested under this section could include, for example, information about historical works carried out on a disused tip.
236. Subsection (2) provides that the Authority may, in the information notice, require a person to give information in a certain way and in a particular form.

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For example, the information notice could specify that a person must fill out a particular form.

- 237. Subsection (3) sets out the period within which a notice under this section may require information to be given. Subsection (4) provides that information cannot be required or permitted contrary to any prohibitions contained in legislation or imposed by another rule of law.
- 238. An information notice may not be given to a relevant public authority (subsection (5)). Sections 56 and 57 deal specifically with the sharing of information between the Authority and relevant public authorities.

Section 61 - Penalties in connection with notices requiring information

- 239. Subsection (1) provides that a person who is required to give information in accordance with a notice under section 58 or an information notice under section 60 commits an offence if the person fails, without reasonable excuse, to provide the required information. A person might have a reasonable excuse for the failure if, for example, the person was out of the country or hospitalised during the period within which the notice required the information to be given. However, this will be a matter for the court to determine.
- 240. In accordance with subsection (2), this offence is punishable, following summary conviction, by a fine not exceeding level 3 on the standard scale, which is currently £1,000.
- 241. Subsection (3) provides that a person who is required to give information under section 58 or 60 commits an offence if they knowingly or recklessly give information which is false or misleading in a material respect, either knowing that it is false or misleading or being reckless as to whether it is so. A person who is found guilty of this offence, in either the Magistrates' Court or the Crown Court, is subject to a fine.

Section 62 - Power to enter land

- 242. Subsection (1) gives an authorised person the power to enter any land (not just land on which there is a disused tip) to do any of the things listed in paragraphs (a) to (f) on behalf of the Authority. Subsection (4) defines an "authorised person" to mean a person authorised in writing by the Authority to act on its behalf. This could, for example, be a member of the Authority's staff or it could be a third party. The Authority will not always be able to do the things listed in subsection (1) itself. This power could be used, for example, to allow the Authority to authorise contractors with specialist knowledge or equipment to enter land and carry out investigatory or monitoring work on behalf of the Authority.
- 243. Subsection (2) allows an authorised person to take other people, equipment and material onto the land that may be necessary for the purposes mentioned in subsection (1). It also gives the authorised person the ability to leave equipment and material on the land. This means, for example, that whilst operations are being carried out, tools and machinery won't need to be removed from the land at the end of each day.

244. Subsection (3) provides that an authorised person may, for the purposes set out in subsection (1), carry out inspections and examinations on the land (this includes tests and surveys); take measurements and photographs and make recordings; take and remove samples from the land. These are actions an authorised person may need to undertake when doing the things mentioned in subsection (1) on behalf of the Authority.

Section 63 – Entry to land without a warrant

245. Subsection (1) provides that an authorised person cannot demand entry to land that is occupied unless at least 48 hours' notice of the intended entry has been given to every occupier of the land. Similarly, subsection (2) provides that an authorised person may not demand to take other people, equipment or material onto land that is occupied, nor can an authorised person demand to leave material on such land, unless at least 48 hours' notice of the intention to do so has been given to every occupier of the land. A notice must include, where relevant, details of the persons, equipment and material to be taken onto, or left on, the land.
246. If the authorised person seeks entry 48 hours after giving the notice, but an occupier or owner denies the authorised person entry, the authorised person will need to apply for a warrant to enter the land under section 64.
247. An authorised person can, with agreement, enter land without giving prior notice.
248. Subsection (3) disapplies the requirement, in subsections (1) and (2), for the Authority to give at least 48 hours' notice where 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 to:
- (a) investigate whether operations need to be carried out under Part 3, namely investigations to determine whether the Authority needs to require an owner of land to carry out operations under section 33, or to determine whether the Authority needs to undertake the works itself under section 42, or
 - (b) to carry out operations on land and consequential works of reinstatement itself under section 42.
249. 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.
250. Subsection (4) provides that an authorised person cannot demand admission as of right to residential land, although an authorised person could enter residential land with the consent of the occupier. If the occupier does not consent, the authorised person may apply for a warrant to enter. The

conditions that must be satisfied to obtain a warrant are contained in section 64(3).

- 251. “Residential land” is defined in subsection (7). Sub-paragraph (a) of the definition captures all dwellings and parts of dwellings, including for example, a flat in a building used for other purposes, such as a caretaker’s flat in a school. Sub-paragraph (c) of the definition captures, for example, communal areas in a block of flats. The Bill requires a warrant to enter residential land if the occupier does not consent to entry.
- 252. Subsection (5) provides that an authorised person can only demand entry to land under section 62 at a reasonable time. The exception to this is where the condition in subsection (3) is met. In such an instance, the Authority may demand entry to land at any time. This recognises that where a disused tip is unstable and immediate entry is required under subsection (3), an authorised person must be able to demand entry.
- 253. Subsection (6) provides that before entering land, if requested by an owner or occupier, an authorised person must provide evidence of their authorisation and state the purpose of entry. They must leave the land as effectively secured against trespassers as they found it, if they leave the land at a time when no owner or occupier is present.
- 254. Subsection (7) provides that references to “land” in this section do not include Crown land. “Crown Land” is defined in section 84(2). There are specific provisions governing entry to Crown land at section 67.

Section 64 – Warrant to enter land

- 255. Subsection (1) provides that a justice of the peace may issue a warrant conferring a power to enter land, if necessary, by force. For example, the Authority may apply for a warrant where, after the expiry of the 48-hour notice period under section 63(1), an occupier refuses to allow an authorised person access to land. Similarly, the Authority will need to apply for a warrant if an occupier refuses entry to land where the conditions for immediate entry without notice (as set out in section 63(3)) are met.
- 256. Subsection (2) provides a justice of the peace must be satisfied that there are reasonable grounds for entering land for a purpose mentioned in section 62(1) and that one or more of the conditions in subsection (3) are met.
- 257. Subsection (5) provides that a justice of the peace may also allow, where it is considered necessary, an authorised person to take other persons, equipment or material onto land or to leave equipment or material on the land. The warrant will include the power for the authorised person to do this, and where this is the case, must include details of the persons, equipment or material.
- 258. Subsection (7) provides that a warrant remains in force until the purpose for which it was granted has been fulfilled. If, for example, the warrant was issued to allow an authorised person to enter land to carry out specified operations

on a disused tip, the warrant remains in force until those operations have been completed.

259. Subsection (8) clarifies that references to “land” in this section do not include Crown land. “Crown Land” is defined in section 84(2). There are specific provisions governing entry to Crown land at section 67. “Residential land” has the meaning given in section 63(7).

Section 65 - Entry to land with a warrant

260. Subsection (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. What is a reasonable time will depend on the circumstances. What is considered to be a reasonable time for the purposes of entering a dwelling is likely to be different to, for example, what is reasonable when entering land that is not residential land.
261. The restriction that a warrant conferring a power to enter land must be at a reasonable time does not apply if the justice of the peace is satisfied that the conditions in subsection (2) are met. Where this is the case, the warrant may confer a power to enter land at any time.
262. The conditions 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).
263. Where a person is authorised to enter land, subsection (3) provides that before entering land they must produce the warrant and state the purpose of entry, if asked to do so by an owner or occupier of the land. They must leave the land as effectively secured against trespassers as they found it, if they leave the land at a time when no owner or occupier is present.

Section 66 - Penalty for obstructing entry to land

264. Section 66 creates an offence where a person intentionally obstructs a person exercising a power to enter land under section 62 or under a warrant issued under section 64. Subsection (3) provides that a person found guilty of an offence under subsection (2) is liable on summary conviction to a fine not exceeding level 3 on the standard scale, which is currently £1,000.

Section 67 - Entry to Crown land

265. This section governs the authorised person’s power to enter Crown land. “Crown land” is defined at section 84(2).
266. In accordance with subsection (1), an authorised person cannot enter Crown land (a) unless they have permission from the appropriate Crown authority or (b) the Authority believes a disused tip is unstable and the tip’s instability poses a threat to human welfare that requires immediate entry to the land, either to investigate whether operations need to be required or carried out under Part 3 or to carry out operations under section 42. Therefore, in practical

terms, entry to Crown land without consent will only be possible in circumstances where the Authority believes there is an immediate need to gain entry. This should be a rare occurrence. For example, an authorised person may need to enter Crown land without permission for the purpose of carrying out works to stabilise a disused tip if the Authority believes a tip is unstable and there is an immediate risk of a landslide that would pose a threat to human welfare. The disused tip need not be on Crown land: the authorised person might simply need to cross Crown land to gain access to the disused tip.

- 267. Where the Authority is of the belief, in accordance with the circumstances set out in subsection (1)(b), that immediate entry to the land is required, the authorised person may demand entry to the land and demand to take other persons, equipment or material onto the land and to leave equipment or material on the land.
- 268. Subsection (3) provides that the authorised person may not demand entry to any part of the Crown land that is residential land. Residential land is defined in section 63(7). Therefore, an authorised person may only enter Crown land that meets the definition of residential land with the appropriate consent.
- 269. Subsection (4) provides that if an authorised person enters Crown land without consent from the appropriate Crown authority because the circumstances in subsection (1)(b) apply, the Authority must inform the appropriate Crown authority as soon as reasonably practicable.
- 270. Subsection (5)(a) provides that if requested to do so by or on behalf of an owner or occupier of Crown land, an authorised person must provide evidence of their authorisation and state the purpose of entry before entering the land under section 62. If an authorised person leaves the land at a time when no owner or occupier is present, subsection (5)(b) places a duty on them to leave the land as effectively secured against trespassers as they found it.

Miscellaneous

Section 68 – Provision of administrative, technical or professional services

- 271. This section gives the Authority the power to provide administrative, technical or professional services to any devolved Welsh authority within the meaning of section 157A of the Government of Wales Act 2006.
- 272. Administrative, technical and professional services include “back room” services such as finance, payroll, human resources and information technology. The Authority may choose to charge a fee for the provision of a service under this section.

Section 69 – Guidance

- 273. Subsection (1) requires the Authority to have regard to any guidance given to it by the Welsh Ministers.
- 274. Subsection (2) provides that, when an appeal is being determined under section 36 or section 41, the person determining the appeal must have regard to guidance issued by the Welsh Ministers.

Section 70 – Amendments to the Mines and Quarries (Tips) Act 1969

- 275. Section 70 makes amendments to the Mines and Quarries (Tips) Act 1969 (“the 1969 Act”). These amendments are made in consequence of the establishment of a new regime under this Bill for managing threats that disused tips may pose to human welfare by reason of their instability.
- 276. The main effect of the amendments is to remove the functions that Part 2 of the 1969 Act placed on local authorities in Wales for the purpose of ensuring that disused tips do not constitute a danger to members of the public. Functions relating to the oversight of disused tips in Wales will now fall, instead, to the Authority. The amendments to the 1969 Act do not impact the application of the 1969 Act to local authorities in England or Scotland, in relation to whom the current position is preserved.
- 277. There are a small number of disused tips that straddle the border between England and Wales. The Authority will have functions in relation to those tips under this Bill, 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). The powers of the Authority in the Bill could also be exercised in relation to land in England for the purpose of dealing with threats to the stability of a tip situated wholly in Wales, for example, where the only threat to a tip’s stability exists on the English side of the border.
- 278. Section 5 confers power on the Authority to do anything which is calculated to facilitate, or which is conducive or incidental to, to the exercise of its functions. In respect of a cross-border tip, the Authority could potentially rely on this power to co-operate with English local authorities where such co-operation is conducive to the exercise of the Authority’s functions.

Part 5 – General Overview of Part 5

- 279. Part 5 makes provision in relation to offences by bodies corporate and specifies who may bring prosecutions for offences under the Bill. It makes provision about regulations made under the Bill, including the Senedd procedure that applies to particular regulation-making powers.
- 280. Part 5 also makes general provision in relation to the giving of notices and other documents under the Bill. It makes provision for special cases, including Church of England land. It provides definitions for terms used in the Bill, and an index of defined terms, listing where they are to be found in the Bill. It includes provision about when the provisions of the Bill will come into force. It sets out the Bill’s short title. Part 5 comprises sections 71 to 88.

Section 71 - Offences by bodies corporate

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281. This section provides that where an offence in this Bill, or in regulations made under it, is committed by a body corporate, and it is proved to have been committed with the consent or connivance of a senior officer of the body, or a person purporting to be a senior officer, or to be attributable to their neglect, that person (as well as the body corporate) will be guilty of an offence and is liable to be prosecuted.

Section 72 - Bringing proceedings

282. The Authority and the Director of Public Prosecutions may bring a prosecution in respect of an offence in this Bill, or in regulations made under it.
283. 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 Director of Public Prosecutions to do so.

Section 73 – Power to make consequential, transitional etc, provision

284. This section enables the Welsh Ministers to make regulations that make consequential, supplementary or incidental provision, or transitional or saving provision, in the circumstances described in subsection (1). Regulations made under this section may modify, amend, revoke or repeal any enactment (including an enactment contained in this Bill).

Section 74 - Regulations under this Act

285. This section provides that each power in the Bill to make regulations is exercisable by statutory instrument.
286. Subsections (3), (4) and (5) provide that a statutory instrument containing regulations made under the following provisions of the Bill are to be made under the affirmative procedure (i.e. a draft of the instrument must be laid before, and approved by a resolution of, Senedd Cymru):
- (a) section 38 (Procedure etc for appeals under Chapter 1 of Part 3);
 - (b) section 41 (Procedure etc. for claims for reimbursement of owners' expenses under Chapter 1 of Part 3);
 - (c) section 55 (Change to meaning of "relevant public authority" in Part 4);
 - (d) section 80 (Application of Act to land owned by the Authority);
 - (e) section 81 (Change to meaning of "disused tip");
 - (f) section 73 (Power to make consequential, transitional etc. Provision) - where the regulations modify any primary legislation. "Primary legislation" is defined in subsection (8).

287. Subsection (6) provides that statutory instruments containing regulations made under any other power in the Bill are subject to the negative procedure.

Section 75 – General provision about giving notices etc.

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- 288. This section contains provision about how notices or other documents are to be given.
- 289. Subsection (8) provides that this section does not apply in relation to the Crown. See, instead, section 77.

Section 76 – Additional provision about giving notices etc. to persons occupying or interested in land

- 290. This section applies, in addition to section 75, where there is a requirement to give a notice or other document to a person with an estate or interest in land or to someone who is occupying land. It provides additional methods of properly giving notice to these persons. These might be relied upon when the name or address of a person cannot be discovered despite reasonable inquiries having been made.
- 291. Subsection (6) provides that this section does not apply to the Crown. Section 77 makes provision in respect of notices etc. that must be given to the Crown.

Section 77 – Giving notices etc. to the Crown

- 292. This section provides that where a notice or other document is to be given to the Crown, it must be given to the appropriate Crown authority. "Appropriate Crown authority" is defined in section 84(6).

Section 78 – Raising of money in particular cases to meet expenditure

- 293. This section makes provision so that the payment of "relevant expenditure" is included as an authorised purpose for the application of moneys under section 71 and 73 of the Settled Land Act 1925, section 25 of the Duchy of Lancaster Act 1817 and section 8 of the Duchy of Cornwall Management Act 1863.
- 294. Subsection (2) defines the term "relevant expenditure".

Section 79 – Church of England land

- 295. This section 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.
- 296. Subsection (5) defines terms that are used in the section.

Section 80 – Power to modify application of Act to Authority land

- 297. This section provides the Welsh Ministers with a regulation-making power. Should the Authority acquire an estate or interest in land in the future, this provision enables the Welsh Ministers, by regulations, to modify the application of the Bill in relation to that land.

Interpretation

Section 81 - Meaning of “tip” and “disused tip”

298. This section defines “tip” and “disused tip”.
299. Both definitions encompass coal and non-coal tips. Non-coal tips (of which there are many in Wales) could, for example, include tips that are a legacy of historic metal mining and mineral quarrying in Wales.
300. Subsection (3) provides that tips that are located “wholly or partly in Wales” fall within the definition of “disused tip”. The Bill provides the Authority with the power to act in respect of tips that straddle the border, and the Authority is subject to duties in relation to tips that fall solely within Wales as well those that are partly in Wales and partly in England (cross-border tips). How the Bill applies to cross-border tips is explained at paragraph 277 above.
301. Subsection (3) places tips that are subject to the provisions of the Quarries Regulations 1999 (“1999 Regulations”) or the Mines Regulations 2014 (“2014 Regulations”) outside the scope of the Bill. The effect of this is that the Bill does not apply to any active tips that are associated with operational mines or quarries.
302. If either the 1999 Regulations or the 2014 Regulations are revoked or amended, subsection (4) enables the Welsh Ministers, by regulations, to amend the meaning of “disused tip”. This power reflects the interplay between the Bill and the legislation governing active tips and the need to avoid overlap.
303. Subsection (5) gives the Welsh Ministers a regulation-making power that enables them to set out certain descriptions of tip that would fall outside the definition of a “disused tip” either altogether or for the purposes of those provisions of the Bill specified in the regulations. The descriptions could refer to a tip’s height, gradient, volume, surface area or the material from which it is composed, or any combination of these.
304. Regulations under subsection (5) could, for example, provide that the Authority is not under a duty to carry out its functions under Part 2 of the Bill in relation to tips where there is a negligible accumulation or deposit of waste.

Section 82 - Meaning of “threat to human welfare”

305. This section defines what is meant by “threat to human welfare”. “Threat to human welfare” is a central concept within the Bill: section 2(1) provides that the Authority’s main objective is to ensure that disused tips do not threaten human welfare by reason of their instability. The concept arises throughout the Bill, including in the provisions relating to the Authority’s duty to compile and maintain a register (section 6), the criteria for registration of a disused tip (section 7), the categorisation of disused tips in the register (section 24), the issuing of notices requiring owners of land to carry out operations (section 33) and the Authority’s power to carry out operations on land itself (section 42).
306. Examples of scenarios where a disused tip could pose a threat to human welfare are provided in paragraphs 24 - 27.

Section 83 – Meaning of “owner”

307. This section defines “owner”, in relation to any land, to mean the person who owns the freehold title to the land or holds a fixed term tenancy that has at least one year left to run and is not a mortgage term. This means banks and building societies that hold a mortgage on a piece of land are not considered to be owners for the purposes of the Bill. Section 83(b) provides that a person who has a reversionary interest in land that will only be realised when such a tenancy comes to an end is not to be considered an owner for the purposes of the Bill.

Section 84 – Definitions relating to the Crown

308. This section defines certain terms used in the Bill that relate to the Crown: “Crown land”, “Crown interest”, “Duchy interest”, “private interest” and “appropriate Crown authority”. It clarifies that “the Crown” is to be treated as including the Senedd Commission.

Section 85 – General interpretation

309. This section defines “the court” and “operations”.

Section 86 - Index of defined terms

310. This section provides an index of the terms that are defined or otherwise explained in the Bill.

Section 87 – Coming into force

311. This section makes provision about when the provisions of the Bill come into force.
312. Subsection (1) provides that Part 5 will come into force on the day after the day on which this Bill receives Royal Assent.
313. Subsection (2) provides that sections 1,2 and 5 and Schedule 1 will come into force on 1 April 2027.
314. Subsection (3) provides that the other provisions of this Bill will come into force on a day appointed by the Welsh Ministers in an order made by statutory instrument. Subsection (4) enables such an order to make transitional or saving provision.

Section 88 – Short title

315. Section 88 sets out the short title of the Bill, by which it may be known and referred. Either the Welsh or the English language title of the Bill may be used, including as a citation in other enactments.

Annex 2 – Index of Standing Order requirements.

Standing order		Section	pages/ paragraphs
26.6(i)	Statement the provisions of the Bill would be within the legislative competence of the Senedd.	Member's declaration	Page 1
26.6(ii)	Set out the policy objectives of the Bill.	Chapter 3 - Purpose and intended effect of the legislation	Pages 5 - 29
26.6(iii)	Set out whether alternative ways of achieving the policy objectives were considered and, if so, why the approach taken in the Bill was adopted.	Part 2 – Regulatory Impact Assessment	Pages 50-99
26.6(iv)	Set out the consultation, if any, which was undertaken on: (a) the policy objectives of the Bill and the ways of meeting them; (b) the detail of the Bill, and (c) a draft Bill, either in full or in part (and if in part, which parts).	Chapter 4 – Consultation	Pages 30-37
26.6(v)	Set out a summary of the outcome of that consultation, including how and why any draft Bill has been amended.	Chapter 4 – Consultation	Pages 30 - 37
26.6(vi)	If the bill, or part of the Bill, was not previously published as a draft, state the reasons for that decision.	Chapter 4 – Consultation	Pages 36-37
26.6(vii)	Summarise objectively what each of the provisions of the Bill is intended to do (to the extent that	Annex 1 – Explanatory Notes	Pages 114-153

Standing order	Section	pages/ paragraphs
	it requires explanation or comment) and give other information necessary to explain the effect of the Bill.	
26.6(viii)	Set out the best estimates of: (a) the gross administrative, compliance and other costs to which the provisions of the Bill would give rise; (b) the administrative savings arising from the Bill; (c) net administrative costs of the Bill's provisions; (d) the timescales over which such costs and savings would be expected to arise; and (e) on whom the costs would fall.	Part 2 – Regulatory Impact Assessment Pages 50-99
26.6(ix)	Any environmental and social benefits and dis-benefits arising from the Bill that cannot be quantified financially.	Part 2 – Regulatory Impact Assessment Pages 52-53; Pages 83 - 84 Pages 92-97
26.6(x)	Where the Bill contains any provision conferring power to make subordinate legislation, set out, in relation to each such provision: (a) the person upon whom, or the body upon which, the power is conferred and the form in which the power is to be exercised;	Chapter 5 - Power to make subordinate legislation Pages 38-49

Standing order	Section	pages/ paragraphs
	(b) why it is considered appropriate to delegate the power; and (c) the Senedd procedure (if any) to which the subordinate legislation made or to be made in the exercise of the power is to be subject, and why it was considered appropriate to make it subject to that procedure (and not to make it subject to any other procedure).	
26.6(xi)	Where the Bill contains any provision charging expenditure on the Welsh Consolidated Fund, incorporate a report of the Auditor General setting out his or her views on whether the charge is appropriate.	The requirement of Standing Order 26.6(xi) does not apply to this Bill.
26.6(xii)	Set out the potential impact (if any) on the justice system in England and Wales of the provisions of the Bill (a “justice impact assessment”), in accordance with section 110A of the Act.	Part 2 – Regulatory Impact Assessment Pages 105-106
26.6B	Where provisions of the Bill are derived from existing primary legislation, whether for the purposes of amendment or consolidation, the Explanatory Memorandum must be accompanied by a table of derivations that explain clearly how the Bill relates to the existing legal framework.	The requirement of Standing Order 26.6B does not apply to this Bill.
26.6C	Where the Bill proposes to significantly amend existing primary legislation, the Explanatory Memorandum must be accompanied by a schedule	The requirement of Standing Order 26.6C

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Standing order		Section	pages/ paragraphs
	setting out the wording of existing legislation amended by the Bill, and setting out clearly how that wording is amended by the Bill.	does not apply to this Bill.	

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Annex 3 – Glossary

Abbreviation	Meaning
1969 Act	The Mines and Quarries (Tips) Act 1969
Authority	The Disused Tips Authority for Wales
BCR	Benefit Cost Ratio
Bill	Disused Mine and Quarry Tips (Wales) Bill
FTE	Full Time Equivalent
GDP	Gross Domestic Product
GF	Growth Factor
LEEP	University of Exeter Land, Environment, Economics and Policy Institute
NPSV	Net Present Social Value
PEDW	Planning and Environment Decisions Wales
RIA	Regulatory Impact Assessment
Senedd	Senedd Cymru
White Paper	Welsh Government Coal Top Safety (Wales) White Paper 2022
WiMD	Welsh Index of Multiple Deprivation
WLGA	Welsh Local Government Association