

## **DMQTWB 15 - Evidence from: Stephen Smith**

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Senedd Cymru | Welsh Parliament

Pwyllgor Newid Hinsawdd, yr Amgylchedd a Seilwaith | Climate Change, Environment, and Infrastructure Committee

Bil Tomenni Mwyngloddiau a Chwareli Nas Defnyddir (Cymru) | Disused Mine and Quarry Tips (Wales) Bill

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### **1. What are your views on the general principles of the Bill, and is there a need for legislation to deliver the stated policy intention?**

The principal objectives of the Bill - improved management of remnant, man made spoil tips with the aim of reducing the threat of landslips impacting human welfare (as well as infrastructure and the environment) - has my full support. I am aware of the work of the Coal Spoil Tip Safety Taskforce from my engagement with one of the workstreams in 2020 and had provided input to the work of the Law Commission in 2020/21. Although I had not wholly agreed with the way in which the Law Commission developed their case for new legislation, I have to accept that the workstreams progressed by the Taskforce concluded that new legislation is the only way forward.

The documents provided for this consultation are quite lengthy and require a significant time commitment to understand and interpret their likely success in achieving the stated objectives. I had committed many hours of my own time to the early stages of this work between 2020 and 2022 and provided responses to the Law Commission Consultation and the subsequent White Paper. Many of those comments may still be relevant. I feel my views on technical matters and the scale of the 'problem' are unlikely to have changed but I cannot be certain. Hence, I will caveat the views I offer below on the basis I have not read every word of the documents.

I will note, however, that there has been much discussion in both the Senedd and the press in recent months on this subject. I feel much of the emotive language used has forced the hand of the Senedd towards passing this legislation. There seems to be little recognition that Category C and D tips are regarded as high risk due to the potential impact of a slip and not due to the likelihood of a slip. Both of these factors need to be present for risk to be defined.

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## **2. What are your views on the Bill's provisions (set out according to Parts below), in particular are they workable and will they deliver the stated policy intention?**

### **▪ Part 1 - The Disused Tips Authority for Wales (sections 1 to 5 and Schedule 1)**

I am not aware of any organisation currently operating in Wales that could deliver the whole of the functions required under the new legislation. Hence, a new body would seem to be required. The Authority will need to be technically competent in a range of disciplines for the breadth of duties to be allocated. In my view, it need not require the scale of staffing that seems to have been assumed in the EM for the Bill. I also feel that staffing requirements over the lifespan of the Authority will reduce as the scale of work ultimately needed to maintain tips as safe as possible becomes clearer.

The operations of the Authority are also potentially impacted by the rhetoric from MS's and the views of the public. The Authority must be allowed adequate autonomy to make important technical decisions on the scope of any remedial work and to define those works on the basis that they are proportionate and necessary – for instance, the calls for removal of all tips is unrealistic and should not be adopted as a target outcome for Wales' coalfield areas or for specific remedial works. As a public body, the Authority will inevitably be subject to scrutiny and analysis to justify value to the public purse.

### **▪ Part 2 - Assessment, registration and monitoring of disused tips (sections 6 to 32 and Schedule 2)**

The assessment process requires a well defined structure and recording format in order to achieve the stated objective of consistency across all tips. The availability of technical skills for this work has diminished in recent years due to staff retirements / restructuring and reduced workload in on tip reclamation across the industry. I would suggest support needs to be given to developing a new cohort of tip assessors, perhaps through encouraging changes to the curricula of university courses.

The 'wash out of tip material' at Gwastod Tip during Storm Bert in November 2024 highlighted the difficulty of assessing stability and forecasting of the level of risk. It has been reported that the tip had been inspected in August 2024, but no works were deemed necessary. No one wants to see the type of local damage

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caused by that slip, but if works had been required, would they have been undertaken prior to November? Probably not, nor is it certain that any defined works would have addressed the mechanism of 'failure'

- **Part 3 - Dealing with tip instability and threats to tip stability (sections 33 to 54 and Schedule 3)**

As commented elsewhere, any works to deal with verified threats must be demonstrated as necessary and proportionate.

- **Part 4 - Supplementary (sections 55 to 70)**

No views offered

- **Part 5 - General (sections 71 to 88)**

No views offered

### **3. What are the potential barriers to the implementation of the Bill's provisions and how does the Bill take account of them?**

Barriers will continue to be presented in the same way as were reported by Law Commission in 2021 with regard to difficulties experienced in utilising Part 2 of the Mines and Quarries Act 1969. Local authorities indicated that they could not implement powers they were granted unless there was proven (or an indication of?) instability [NB No alternative interpretation of Part 2 was offered!]. Local authorities reported reluctance to use powers for fear of challenge. Whilst the new proposals may provide extended powers of intervention, resistance from landowners may still delay any action.

### **4. How appropriate are the powers in the Bill for Welsh Ministers to make subordinate legislation (as set out in Chapter 5 of Part 1 of the Explanatory Memorandum)**

No views offered

## **5. Are any unintended consequences likely to arise from the Bill?**

No views offered

## **6. What are your views on the Welsh Government's assessment of the financial implications of the Bill as set out in Part 2 of the Explanatory Memorandum?**

I am sceptical that the costs will be as significant as those reported.

## **7. Are there any other issues that you would like to raise about the Bill and the accompanying Explanatory Memorandum or any related matters?**

It should be noted that the current proposals to improve tip safety continue the process of addressing risks from disused tips applied in Wales over the past 50 years or so, this time with a different approach. During this time, there have been very few instances of tip slippage – albeit that ‘climate change’ has not had a significant impact until recent years. Although the work of local authorities under Part 2 of the Mines and Quarries Act 1969 may not have been as robust as it should have been, I would draw attention to Wales having had an extremely effective land reclamation programme in place. This was progressed under the powers of Section 16 of the WDA Act 1975 and had adopted safety as a priority for project selection. The partnership working with local authorities (and close liaison with the National Coal Board – pre privatisation – and The Coal Authority) had identified sites with potential threats and allocated grant funding to treat the identified threats. As an example, the programme had identified Tylorstown Tip as being in need of treatment but no works other than investigation and preliminary design had been undertaken by the local authority by the time Ministers terminated the programme in 2012. Other tip sites had also been identified at that time for future funding. The powers provided in the WDA Act are still available.

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