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Deputy First Minister and Cabinet Secretary for Climate
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Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: MA/HIDCC/10847/24

Llŷr Gruffydd MS
Chair
Climate Change, Environment and Infrastructure Committee
Welsh Parliament
Cardiff Bay
Cardiff
CF99 1SN

9 December 2024

Dear Llŷr,

Following the introduction of the Disused Mine and Quarry Tips (Wales) Bill into the Senedd on 9 December 2024, please find attached a copy of the Statement of Policy Intent. This is provided to support the Committee's scrutiny of the Bill.

I look forward to providing evidence to the Committee on 12 December.

I am copying this letter to the Chair of the Legislation, Justice and Constitution Committee.

Yours sincerely,

Huw Irranca-Davies AS/MS
Y Dirprwy Brif Weinidog ac Ysgrifennydd y Cabinet dros Newid Hinsawdd
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Deputy First Minister and Cabinet Secretary for Climate Change and Rural Affairs

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

Statement of Policy Intent for the Disused Mine and Quarry Tips (Wales) Bill

Introduction

This paper summarises the Welsh Ministers' powers and duties for making secondary legislation under the provisions of the Disused Mine and Quarry Tips (Wales) Bill (the Bill), as introduced to the Senedd Cymru on 9 December 2024.

The statement explains the current policy intention as to how these powers and duties are intended to be used. The justification for the Senedd procedure selected in respect of each regulation-making power or duty is set out in table 5.1 of the Explanatory Memorandum.

In developing subordinate legislation, the Welsh Ministers will work closely with stakeholders, and regulations made under powers in the Bill will be subject to consultation where appropriate.

The Welsh Ministers have considered the use of powers in the Bill, as set out below, and are satisfied they are necessary and justified.

Overview of the Bill

The Bill contains 5 Parts and 3 Schedules.

In summary, the Bill:

- 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;
- makes provision for the assessment, registration and monitoring of disused tips;
- 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;
- contains supplementary provisions including powers of entry for the Authority, information sharing provisions and powers to require information; and
- creates related offences to support the enforcement of the regime.

Other documentation

This statement has been prepared in order to assist committees during the scrutiny of the Bill. It should be read in conjunction with the following:

- the Disused Mine and Quarry Tips (Wales) Bill;
- the Explanatory Notes to the Bill; and
- the Explanatory Memorandum to the Bill.

Register of Disused Tips

Section	Form	Proposal	Procedure
8(2)(f)	Regulations	Section 8 details the information that must be included in an entry for a disused tip in the register. Paragraph (f) provides Welsh Ministers with a power to specify additional information that must be included in an entry in the register.	Negative

Description of power

Section 8 specifies what must be included within an entry in the electronic register the Authority is required to compile and maintain. Subsection (2)(f) gives the Welsh Ministers the power to make regulations to specify additional information the register must contain.

Policy purpose and intent

Section 6 of the Bill requires the Authority to compile and maintain an electronic register of disused tips that pose a threat to human welfare by reason of instability, or which could pose such a threat in the event of instability.

Section 8(1) and (2) require the following information to be included in an entry in the register:

- a map showing the area of the tip;
- the name or names by which the tip is commonly known (if any);
- the location of the tip;
- a unique identifier given by the Authority to the tip;
- the tip's category;
- the date of the most recent inspection of the tip (if any).

This is information needed by the Authority to perform its functions, and is considered to be information that should be publicly available in the register of disused tips. In accordance with section 9, the Authority must ensure the maps and information in the

register (other than any information specified by regulations under section 8(2)(f)) can be accessed electronically at all reasonable times by the public.

Section 8(2) lists all of the information that is currently considered appropriate and necessary to include in an entry in the register. Whilst there is no current policy intention to exercise this power, it is considered prudent for Welsh Ministers to have the ability to specify additional information that must be included in the register. This power will ensure that, once the register is established and being accessed by the public, should it become clear that including additional information would be useful, there is the flexibility to reflect the experience, practice and feedback from users of the register. This will help to ensure that the register remains fit for purpose in the future. The power in section 8(2)(f) cannot be used to remove any of the categories of information that are specified on the face of the Bill. The Bill therefore provides certainty in this regard. Subsection (3) requires the Welsh Ministers to consult the Authority before making regulations under subsection (2)(f).

Proposal to register a tip

Section	Form	Proposal	Procedure
20(4)	Regulations	A power for the Welsh Ministers to amend subsection (3)(e) to change the minimum period for making representations.	Negative

Description of power

Where the Authority concludes that the criteria for registering a tip are met, based on the report of a full assessment, section 20 requires the Authority to give a “notice of proposed registration” to the persons detailed in section 20(2)(a) and (b).

Subsection (3) prescribes what a notice of proposed registration must include. Subsection (3)(e) provides the notice must specify the period the recipient of the notice has to make representations to the Authority in relation to the proposal: this must be a period of at least 30 days beginning with the day after the day on which the notice is given.

Subsection (4) gives the Welsh Ministers the power to make regulations to amend subsection (3)(e) so as to change the minimum period for making representations.

Policy purpose and intent

We have no current plans to exercise the regulation-making power to amend subsection (3)(e) to change the minimum period for making representations. A minimum period of 30 days to make representations to the Authority in relation to a proposal to register a disused tip is considered to be a reasonable amount of time.

However, it is considered necessary for the Welsh Ministers to have a power to change the period in the future, should that prove to be appropriate. As the Authority carries out its functions and gathers experience in including disused tips in the register, experience may indicate the minimum period for making representations may need to be reconsidered (for example, if experience shows that it often takes longer than 30 days to gather the requisite information so as to be in a position to provide meaningful representations in response to a notice of proposed registration).

Deregistering a tip

Section	Form	Proposal	Procedure
22(4)	Regulations	A power for the Welsh Ministers to amend subsection (3)(d) to change the minimum period for making representations.	Negative

Description of power

Where the Authority concludes, on the basis of a report of a full assessment, that the criteria for registration are no longer met in relation to a disused tip in the register, section 22 requires the Authority to give a “notice of proposed deregistration” to the persons detailed in section 22(2)(a) and (b).

Subsection (3) prescribes what a notice of proposed deregistration must include. Subsection (3)(d) provides the notice must specify the period the recipient of the notice has to make representations to the Authority in relation to the proposal. This must be a period of at least 30 days beginning with the day after the day on which the notice is given.

Subsection (4) gives the Welsh Ministers the power to make regulations to amend subsection (3)(d) so as to change the minimum period for making representations.

Policy purpose and intent

We have no current plans to exercise the regulation-making power to amend subsection (3)(d) to change the minimum period for making representations. A minimum period of 30 days to make representations to the Authority in relation to a proposal to remove a tip from the register is considered to be a reasonable amount of time.

However, it is considered necessary for the Welsh Ministers to have a power to change the period in the future, should that prove to be appropriate. As the Authority carries out its functions and gathers experience in removing tips from the register, experience may indicate the minimum period for making representations may need to be reconsidered (for example, if experience shows that it often takes longer than 30 days to gather the requisite information so as to be in a position to provide meaningful representations in response to a notice of proposed deregistration). The ability to amend subsection (3)(d) will ensure that the Welsh Ministers are able to be responsive to gained experience and are able to amend the minimum period for making representations, should that be considered necessary.

Proposal to make a notifiable change in relation to a disused tip

Section	Form	Proposal	Procedure
29(3)	Regulations	A power for the Welsh Ministers to amend subsection (2)(e) to change the minimum period for making representations.	Negative

Description of power

Section 29 makes provision where the Authority proposes to make a notifiable change to an entry in the register. Section 28 defines a “notifiable change” as:

(a) a change to the area shown as the area of a disused tip on a map in the register; or

(b) a change to a disused tip's category.

Section 29(1) places a duty on the Authority to notify prescribed persons if it proposes to make a notifiable change in relation to a disused tip.

Subsection (2) prescribes what a notice of a proposed change to the register must include. Subsection (2)(e) provides the notice must specify the period the recipient of the notice has to make representations to the Authority in relation to the proposal: this must be a period of at least 30 days beginning with the day after the day on which the notice is given.

Subsection (3) gives the Welsh Ministers the power to make regulations to amend subsection (2)(e) so as to change the minimum period for making representations.

Policy purpose and intent

We have no current plans to exercise the regulation-making power to amend subsection (2)(e) to change the minimum period for making representations. A minimum period of 30 days to make representations to the Authority in relation to a proposal to make a notifiable change to an entry in the register for a disused tip is considered to be a reasonable amount of time.

However, it is considered necessary for the Welsh Ministers to have a power to change the period in the future, should that prove to be appropriate. As the Authority carries out its functions, experience may indicate the minimum period for making representations may need to be reconsidered (for example, if experience shows that it often takes longer than 30 days to gather the requisite information so as to be in a position to provide meaningful representations in response to a proposal to make a notifiable change).

Supplementary provision about appeals and Reimbursement of owner’s expenses on cancellation of notice

Section	Form	Proposal	Procedure
38(1)	Regulations	Duty to make regulations in relation to the procedure to be followed by an appointed person in determining applications under section 36.	Affirmative
38(2)	Regulations	Power for the Welsh Ministers to make regulations making further provision in connection with the determination of applications under section 36.	Affirmative
41(7)	Regulations	Duty on Welsh Ministers to make regulations about the procedure to be followed by an appointed person in determining applications made under section 41.	Affirmative
41(8)	Regulations	Power for the Welsh Ministers to make other provision in connection with the determination of applications under section 41.	Affirmative

Description of power

Section 38(1) and (2)

Section 36 allows an owner of land who is given a notice (under section 33) requiring the carrying out of operations on land, 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. Section 36(3) and (4) sets out specified grounds on which an application may be made.

Section 37 provides that an application made under section 36 is to be determined by a person appointed by the Welsh Ministers (an “appointed person”).

Section 38(1) places a duty on the Welsh Ministers to make regulations about the procedure to be followed, by an appointed person, in determining appeals made under section 36.

Section 38(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.

Section 41(7) and (8)

Section 41 applies where the Authority has cancelled a section 33 notice (a notice requiring an owner of land to carry out operations) and the owner who was given the notice has incurred expenditure in complying with it.

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.

Subsection (7) places a duty on Welsh Ministers to make regulations about the procedure to be followed in determining applications under section 41.

Subsection (8) gives Welsh Ministers the power to make regulations making other provision in connection with the determination of applications under section 41. 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 section 41.

Policy purpose and intent

It is the policy intention to make one set of regulations that cover both procedural matters (pursuant to sections 38(1) and 41(7)) and non-procedural matters (pursuant to sections 38(2) and 41(8)) connected to determining appeals brought under the respective sections. It is intended the regulations will come into force on 1 April 2027, as this is when the Authority will be established.

Sections 38 and 41 set out the following examples as matters that may be included in regulations made under these sections:

- (a) the attendance and examination of parties or witnesses (including provision authorising an appointed person to administer oaths or to take affirmations);
- (b) the production and inspection of documents;
- (c) powers to enter land.

Sections 38 and 41 also allow for the creation of offences in connection with failures to comply with any requirements imposed by or under the regulations. So, for example, if individuals are authorised to enter land for the purposes of determining an appeal, and entry is refused, this could be subject to a criminal sanction.

In terms of procedure to be followed when determining an appeal, under either section, the regulations could, for example, confer a discretion on the person determining the appeal to decide the way in which the appeal proceedings should be determined, i.e. by written representations or a hearing. The regulations could also include provision conferring a discretion on the person determining the appeal to appoint another person to advise on any technical matters arising in connection with an appeal (e.g. an expert in a particular field).

In relation to non-procedural matters, the regulations could, for example, make provision about 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.

Section 37 provides that an application under section 36 is to be determined by a person appointed by the Welsh Ministers (an appointed person). Similarly, section 41(3) provides that applications under section 41 are to be determined by an appointed person. It is currently the policy intention for Planning and Environment Decisions Wales (PEDW) to be appointed as the “appointed person” by Welsh Ministers to deal with appeals under both sections. 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 and are considered to have relevant experience and expertise in terms of appeals that will be brought under the Bill.

The detail of the appeal procedure will be developed through consultation with relevant stakeholders. In addition, it may be necessary to amend the procedure in the future. Officials intend to involve PEDW on the development of regulations made under sections 38 and 41.

Meaning of “relevant public authority”

Section	Form	Proposal	Procedure
55(3)	Regulations	A power for the Welsh Ministers to make regulations that amend the definition of “relevant public authority” in section 55(1).	Affirmative

Description of power

Part 4 of the Bill contains provisions about information sharing and powers to require information between the Authority and relevant public authorities.

Section 55(1) defines “relevant public authority” for the purposes of Part 4.

Subsection (3) gives Welsh Ministers a power, by regulations, to amend section 55 to change the definition of “relevant public authority”.

Policy purpose and intent

Part 4 of the Bill contains provisions about information sharing and powers to require information. 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. Section 56 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. Section 57 places a duty on the Authority and a relevant public authority, if certain conditions are satisfied, to share information with the other party as soon as practicable.

The provisions are included to ensure that there is a framework for the Authority to gather, or be provided with, the information it requires to perform its functions under the Bill. It also provides benefits to each relevant public authority as it requires the Authority to share information that the Authority considers ought to be brought to the attention of a particular relevant public authority, for the purpose of the exercise of its functions.

It should be noted that the information sharing provisions are subject to the safeguard that information is not required or permitted to be given contrary to any prohibition imposed by an enactment or other rule of law.

“Relevant public authority” is defined in section 55(1) as:

- (a) the Welsh Ministers;
- (b) Natural Resources Wales;
- (c) a council for a county or county borough in Wales;
- (d) a National Park Authority for a National Park in Wales;
- (e) the Coal Authority;
- (f) a Fire and Rescue Authority for an area in Wales.

The bodies listed, on the face of the Bill, as a relevant public authority are the public bodies that we anticipate the Authority may wish to require information from under section 56 for the purpose of carrying out its functions. For example, the Authority may require information held by the Coal Authority, that has been inspecting disused coal tips in Wales since 2020 and has detailed, expert knowledge of the current state of disused coal tips in Wales, when it is determining its programme of monitoring and inspections of disused tips. The Authority may also need access to information held by a council who has detailed records of maintenance operations undertaken on a disused tip in the council’s ownership, when it is determining its assessment of the disused tip.

Section 57(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. The bodies that are listed as a “relevant public authority” are considered to be the public bodies that are likely to receive or use such information in the course of carrying out their day-to-day functions. 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.

Section 57(2) places a duty on 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. Again, the public bodies that are listed at subsection (1) are considered to be the bodies the Authority may need to share information with.

Consequently, we are satisfied section 55(1) captures the appropriate public bodies within the definition of “relevant public authority” and there are no current plans to exercise the regulation-making power to amend the definition of “relevant public authority”. However, the regulation-making power in subsection (3) gives Welsh Ministers an opportunity to make regulations, at a later date, should it become apparent that another body should be added to the definition in subsection (1). This will ensure that if, for example, a new body is created with functions that mean it receives information relevant to the Authority, such a body could be brought within the scope of section 55.

It should be noted, the exercise of the Welsh Ministers’ regulation-making power is constrained by subsection (4). Subsection (4) provides that regulations under subsection (3) may only bring a person within the scope of a “relevant public authority” if they are a “devolved Welsh authority” within the meaning of section 157A(1)(a) of the Government of Wales Act 2006¹.

That means a body can only be added if its functions are exercisable only in relation to Wales and are wholly or mainly functions that do not relate to reserved matters.

Power to make consequential, transitional provision etc

Section	Form	Proposal	Procedure
73(1)	Regulations	Power to make supplementary, incidental or consequential, transitional or saving provision.	Negative unless regulations modify any provision of primary legislation (which are subject to the affirmative procedure)

¹ 2006 c.32

Description of Power

Section 73 gives Welsh Ministers the power to make regulations that make consequential, supplementary or incidental provision, or transitional or saving provision, in consequence of, or for giving full effect to any provision of the Bill. Regulations may modify any enactment (which includes primary and secondary legislation). The power to modify includes the power to amend, revoke and appeal.

Policy Purpose and Intent

These are standard Bill provisions.

At present there is no intention to utilise the powers to modify existing enactments, save to the extent that transitional or savings provisions may be necessary.

Transitional and savings provisions are often utilised to ensure smooth transition between existing and new regimes. It is not possible to say, at this point, precisely what legislation – if any - may need to be adjusted, but an example of a transitional provision generally is the ‘saving’ of existing legislation (such as a provision under the Mines and Quarries (Tips) Act 1969) so that it continues to apply where, for example, processes under an existing regime are part way through when a new regime is established. For example, there may need to be transitional/savings provisions that enable any notices to carry out works under the 1969 Act that have already been given to be completed before the new regime under the Bill can apply to that particular area. We will liaise with stakeholders including the Coal Authority and local authorities on the need for such provisions. We would expect that any transitional/savings regulations would need to be in force by 1 April 2027.

Power to modify application of Act to Authority land

Section	Form	Proposal	Procedure
80	Regulations	Power for the Welsh Ministers to modify the application of the Bill in relation to land in which the Authority has an estate or interest.	Affirmative

Description of power

Section 80 gives the Welsh Ministers a regulation-making power to modify the application of the Bill should the Authority acquire an estate or interest in land.

Policy purpose and intent

When it is established, the Authority will not have any estates or interests in land – for example it will not own the freehold title to any land nor have a leasehold interest in land.

It is not the current policy intention for the Authority to acquire an estate or interest in land.

Nevertheless, it is considered prudent to include a regulation-making power to enable the Welsh Ministers, by regulations, to modify the application of the Bill, should the Authority acquire an estate or interest in land in the future. Any regulations will reflect the Authority's role in the new regime, in the context of any acquisition of an estate or interest by the Authority.

Meaning of “tip” and “disused tip”

Section	Form	Proposal	Procedure
81(4)	Regulations	Power for Welsh Ministers to make regulations changing the definition of “disused tip” if either the Quarries Regulations 1999 or the Mines Regulations 2014 is revoked or amended.	Affirmative

Description of power

Section 81(3) defines a “disused tip” as a tip situated wholly or partly in Wales other than one to which the Quarries Regulations 1999² (1999 Regulations) or the Mines Regulations 2014³ (2014 Regulations) applies.

If either the 1999 Regulations or the 2014 Regulations is amended or revoked, subsection (4) gives the Welsh Ministers a regulation-making power to amend section 81 to change the definition of “disused tip”.

Policy purpose and intent

Section 81 defines “tip” and “disused tip”.

Subsections (1) and (2) provide that for the purposes of the Bill, “tip” means an accumulation or deposit of waste from a mine or quarry (whatever its form or composition) other than an accumulation or deposit situated underground. Any wall or other structure (whether or not composed entirely or partially of waste) which retains or confines a tip is to be treated for the purposes of the Bill as forming part of the tip.

Subsection (3) defines a “disused tip” as being a tip situated wholly or partly in Wales other than one to which the 1999 Regulations or the 2014 Regulations apply. Those regulations apply to tips that are associated with active mine or quarrying works.

The effect of this definition means that the Bill does not apply to any active tips that are associated with operational mines or quarries.

The regulation-making power in subsection (4) allows for the amendment of the definition of “disused tip”, a key definition in the context of the Bill. The power to amend this definition is connected to any amendment to, or revocation of, the 1999 or 2014 Regulations. There is no current policy intention to exercise this regulation-making power, however its inclusion within the Bill is considered imperative to ensure the Bill can continue to operate in accordance with the stated policy intent by reflecting any

² S.I. 1999/2024

³ S.I. 2014/3248.

changes in the legislative landscape. The regulation-making power can only be exercised should either of these two sets of regulations be amended or revoked.

Meaning of “tip” and “disused tip”

Section	Form	Proposal	Procedure
81(5)	Regulations	Power for 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.	Affirmative

Description of Power

Sections 81(1), (2) and (3) define “tip” and “disused tip”.

Section 81(5) gives the Welsh Ministers a regulation-making power to prescribe that certain descriptions of tip fall outside the definition of a “disused tip” either altogether or for the purposes of those provisions of the Bill specified in the regulations.

Policy Purpose and Intent

In line with the [Law Commission’s Report on Regulating Coal Tip Safety in Wales](#), the Welsh Government’s [Coal Tips Safety Wales White Paper, 2022](#) considered whether separate definitions of tip were required and consulted on the possibility of including in the Bill the definition of a ‘de minimis’⁴ tip to which certain provisions of the Bill would not apply.

Respondents were supportive of the White Paper proposal. However, it was considered preferable, rather than trying to set a definition of a de minimis tip on the face of the Bill, which could lead to complexity and confusion and risk striking the wrong balance, to, instead, take an appropriate regulation-making power.

⁴ 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.

Section 81(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.

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.

Once the Authority is operational and is conducting its programme of work to assess disused tips, consideration will be given as to whether regulations are needed under section 81(5), setting out certain descriptions of tips that would fall outside the definition of “disused tip”, and in what circumstances they should be brought forward. Any consideration of this issue will include consideration of the Authority’s experience. Any regulations would be the subject of consultation and would be subject to the affirmative procedure.

Coming into Force

Section	Form	Proposal	Procedure
87(3)	Order	Power for the Welsh Ministers to bring specified sections of the Bill into force by order.	None

Description of power

Section 87 makes provision in relation to when provisions of the Bill come into force.

Subsection (1) provides that Part 5 comes into force on the day after the day on which the Bill receives Royal Assent.

Subsection (2) provides that sections 1, 2 and 5 and Schedule 1 come into force on 1 April 2027.

Subsection (3) provides that the other provisions of the Bill 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.

Policy purpose and intent

Sections 1, 2, 5 and Schedule 1 come into force on 1 April 2027. These are the provisions that establish the Authority.

It is intended to bring those provisions of the Bill that are not mentioned above, into force by way of Order on or after 1 April 2027.

The Welsh Government has in place an implementation team that is undertaking the preparatory work necessary to establish the Authority on 1 April 2027.

Schedule 1 – the Disused Tips Authority for Wales

paragraph	Form	Proposal	Procedure
2(4)	Regulations	Power for the Welsh Ministers to amend sub-paragraph (1) of paragraph 2 to Schedule 1 (which makes provision in respect of the number of members of the Authority), to substitute any of the numbers specified in it, provided the number of non-executive members of the Authority continues to exceed the number of executive members.	Negative

Description of power

Paragraph 2(1) of Schedule 1 specifies the members of the Authority as:

- (a) a person appointed by the Welsh Ministers as its chairperson;
- (b) at least 3 but not more than 5 other persons appointed by the Welsh Ministers;
- (c) its chief executive; and
- (d) at least 1 but no more than 2 other members appointed by the chief executive and the non-executive members from among the Authority's staff.

Sub-paragraph (4) gives the Welsh Ministers a regulation-making power that enables them to amend the number of members specified in sub-paragraph (1), but a limit is placed on the power as sub-paragraph (4) specifically provides that the regulation-making power must be exercised in such a way as to ensure the number of non-executive members continues to exceed the number of executive members.

Policy purpose and intent

Paragraph 2 of Schedule 1 makes provision in respect of the composition of the Authority. The Authority comprises executive members (staff of the Authority) and non-executive members (who are not staff of the Authority and who are appointed by the Welsh Ministers through the public appointments process).

In accordance with paragraph 2(1) there will be between 2 and 3 executive members of the Authority and between 4 and 6 non-executive members. It is a principle of good governance and accountability that the number of non-executive members on a board should outnumber the executive.

The Welsh Ministers have no current plans to make regulations using this power as we are satisfied the membership that is prescribed in paragraph 2(1) is what is required for optimal functioning of the board of the Authority. However, it is usual practice to

take a power to amend the membership requirements should it be considered there is a need for change at some point in the future.

paragraph	Form	Proposal	Procedure
3(g)	Regulations	Power for the Welsh Ministers to specify a holder of an office, a member, or member of staff of a body, that may be disqualified from being a non-executive member of the Authority.	Negative

Description of power

Paragraph 3 of Schedule 1 to the Bill prescribes the circumstances in which a person is disqualified from being appointed, or holding office, as a non-executive member of the Authority.

A person is disqualified if they are or become:

- (a) a member of the Authority's staff,
- (b) a member of Senedd Cymru,
- (c) a member of a council for a county or county borough in Wales,
- (d) a member of the House of Commons or the House of Lords,
- (e) a member of the Welsh Government, or
- (f) a person employed in the civil service of the State.

In addition, subparagraph (g) provides a person is disqualified if they are or become the holder of an office, or a member or member of staff of a body, specified by regulations made by the Welsh Ministers.

Policy purpose and intent

It is considered that the list of disqualified persons set out in paragraph 3 of Schedule 1 to the Bill is sufficient and proportionate. There is no policy intention to utilise the regulation-making power to amend the list at present. However, having a regulation-making power to add to that list is necessary to keep the list of disqualifications up to date if, for example, a new public body were created.

paragraph	Form	Proposal	Procedure
19(10) of Schedule 1	Regulations	Power for the Welsh Ministers to amend paragraph 19(9)(b) (meaning of “planning period”).	Negative

Description of power

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), i.e. to amend the three yearly planning period cycle.

Policy purpose and intent

At the time of drafting, it is considered a three-year planning cycle is appropriate.

Having a regulation-making power provides the flexibility to keep the planning period for the corporate plan under review and amend if considered necessary.

Guidance

The Bill does not confer powers on the Welsh Ministers to issue guidance. The Welsh Ministers intend to issue guidance utilising existing powers under section 58A of the Government of Wales Act 2006⁵.

Section 69(1) of the Bill places a duty on the Authority to have regard to guidance issued by the Welsh Ministers when exercising its functions. Section 69(2) places a duty on a person appointed by the Welsh Ministers, when determining an appeal under section 36 (application to vary or cancel a notice requiring an owner to carry out operations) or section 41 (application for reimbursement of owner's expenditure where notice to carry out operations is cancelled), to have regard to guidance given by the Welsh Ministers when exercising those functions. As set out above, it is intended that PEDW will be appointed by the Welsh Ministers to determine such applications.

Welsh Ministers intend to issue guidance to the Authority to assist it in the performance of its functions. Guidance will be developed with the Authority and other relevant stakeholders (and be subject to consultation). It is intended that guidance will be developed to cover a number of areas including:

Monitoring and assessment

The Bill requires the Authority to monitor all disused tips in the register. The Welsh Ministers intend to develop guidance in respect of monitoring, including what is considered to be the minimum frequency of inspection and the minimum requirement of each inspection (e.g. information to be recorded). The frequency of inspection will be influenced by factors such as the category of the tip, with the guidance reflecting that higher rated tips should be inspected at a higher frequency than lower rated tips.

Guidance is also intended to additionally set out the approach which should be used by the Authority when carrying out both preliminary and full assessments of disused tips. Assessments will be crucial to inform any decision in respect of registration and, if required, the category of a disused tip. Assessments will also contribute towards the development of management practices, where the intention is that these will be included in a management plan, where appropriate.

⁵ 2006 c. 32.

Cost recovery, contributions and charging

Under the Bill, the Authority may carry out operations on any land if it considers it necessary to do so in order to achieve the objective set out in section 42(2). As regards these operations, the Authority will not have charging powers, but it will be able to apply to the court for a contribution order. A person who is given a demand and disputes the amount payable, may apply to the court to either vary or cancel the demand.

The Authority will be able to charge for information, advice and assistance, and for administrative, technical, and professional services.

Welsh Ministers intend to develop guidance for the Authority on cost recovery and charging. The Authority will be subject to public law principles, meaning it will need to be reasonable and proportionate in its activities to recover costs and charging for advice and services and the guidance will reflect this. The guidance will provide a description of the powers. The guidance is intended to set out suggested approaches for the Authority on cost recovery, including cost recovery where there are disused tips with multiple owners and on how best to reach an amicable agreement on repayment terms with owners. It will also provide advice for situations where the Authority and owner cannot agree, e.g. what approaches the Authority can take to recover appropriate costs, such as repayment schedules. The guidance will include a suggested approach on what happens in circumstances when a person says they are not able to afford operations.

Management plans

It is also proposed that Welsh Ministers will develop guidance for the Authority 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 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.

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 intention is for the guidance to 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.

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.

Appeals

The Bill requires Welsh Ministers to make regulations regarding the determination of appeals by an appointed person. The regulations will be developed in consultation with key stakeholders and it is anticipated that they will include (but will not be limited to) provisions about the attendance and examination of parties or witnesses, the production and inspection of documents, powers to enter land and offences in connection with failures to comply with requirements imposed by the regulations.

To accompany the regulations, Welsh Ministers intend to develop guidance for the appointed person regarding the appeals process. The appointed person must have regard to this guidance when exercising its functions and determining an application under section 36 or 41.

The guidance from Welsh Ministers will include guidance on the roles and responsibilities of the appointed person and of landowners in the appeals process. 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.

