

Consultation Question 1. 10.37 We provisionally propose that the existing regulatory regime for tips associated with operational mines should not be altered. Do you agree?

Members are supportive of this proposal

Consultation Question 2. 10.38 We seek views on whether a satisfactory definition of a disused coal tip could refer to waste from coal mining and whether it should include express reference to overburden dumps, backfill, spoil heaps, stock piles and lagoons.

There was a general acceptance that the definition of a disused coal tip should include express reference to overburden dumps, backfill, spoil heaps, stock piles and lagoons.

Consultation Question 3. 10.39 We provisionally propose that any new legislation should not apply to a tip to which the Quarries Regulations 1999 or the Mines Regulations 2014 apply. Do you agree?

Members were keen to establish if the Commission will be recommending legislation that is Primary legislation, UK wide or secondary legislation, adding to the 1969 Act. Members felt that this was a key question as one piece of legislation governing the mining legacy in Wales which is not applicable to England may impact on the 'buy in' from the UK Government.

Members were unanimous that the Legislation does need updating and that funding should be forthcoming from UK Government in view of the fact that Wales and RCT has been disproportionately affected.

Members were also keen for the new legislation to capture the coal mining legacy.

Consultation Question 4. 10.40 To the extent that liability under the new regulatory framework rests with the owner of land containing a tip, we provisionally propose that the owner should be defined as the freeholder or a leaseholder under a lease of 21 or more years, except where their interest is in reversion upon a term of 21 or more years. Do you agree?

Members were in favour of the responsibility of the framework resting with the owner of the land however, Members sought clarification on how this would apply to absent landlords (e. g in a situation where the landlord has passed away)

Members had an understanding that there is a power to release public funds (where available)

Members also sought clarification around liability under the new regulatory framework and whether it would rest with the owner of the land or whether it would remain a matter between Welsh Government and UK Government. The resolution of this argument would make a difference to who funds what and in what circumstances.

Consultation Question 5. 10.41 We provisionally propose that a supervisory authority with responsibility for the safety of all disused coal tips should be established. Do you agree? If not, please set out the alternative that you would favour.

Members were in favour of a supervisory authority for responsibility of all disused coal tips as there was overwhelming support for a new regime to replace the outdated, existing regime, which they considered was not currently 'fit for purpose'. A coal tips register, compiled and maintained by the supervisory authority which would include a wide range of information including potential risks associated with each disused tip

Consultation Question 6. 10.42 We seek views on whether the supervisory authority should be an existing body or a newly created body.

Members preferred the proposal that a single supervisory authority should be a **newly created body**

Consultation Question 7. 10.43 If a new body is established, what form should the new body take? Should it be, for example, a central public body, a corporate joint committee of local authorities under the Local Government and Planning (Wales) Act 2021, or something else?

Central Public Body

Consultation Question 8. 10.44 We provisionally propose that the supervisory authority's duty to ensure the safety of tips should be framed as a general one, rather than one limited to specified risks. Do you agree?

Members were supportive of this proposal, that the involvement of the supervisory authority will manage the tip and reduce the chance of significant dangerous incidents occurring.

Consultation Question 9. 10.45 We provisionally propose that a central tip register should be compiled and maintained. Do you agree?

Members agreed that a central tip register should be compiled and maintained by the supervisory authority, which would include a wide range of information including potential risks associated with each disused tip. This would support a uniform approach to inspection.

Consultation Question 10. 10.46 We provisionally propose that the contents of the tip register should be prescribed by the Welsh Ministers by statutory instrument. Do you agree?

Members agreed that the contents of the tip register should be prescribed by the Welsh Ministers by statutory instrument.

Consultation Question 11. 10.47 We provisionally consider that (1) the supervisory authority should have a duty and a power to include on the register any tip of which it is or becomes aware; and (2) an owner of land should have a right of appeal against the inclusion of the landowner as owner of land on which a tip is situated; the grounds of appeal should be (a) that the land owner is not the owner of the land in question and/or (b) that there is no tip situated on the land. Do you agree?

Members were supportive of this provisional proposal and acknowledged the landowners right to appeal should they not be the owner of land on which a tip is situated or that there is no tip situated on the land.

Consultation Question 12. 10.48 We seek views on whether an owner of land should be under a duty to notify the supervisory authority of any tip of which the landowner is or becomes aware situated on land owned by the landowner, unless the landowner has reason to believe that it has already been registered.

Members agreed that the landowner should be under duty to notify the supervisory authority that this is the case and of any subsequent changes to land ownership should be updated.

Consultation Question 13. 10.49 Do you think that the information in a tip register should or should not be publicly accessible? Are there any particular categories of information that should not be published?

Tip Register information should be available, however certain information in the tip register should not be accessible to the public, this would be personal information, tip inspection reports, calculations, costings, etc.

Consultation Question 14. 10.50 We provisionally propose that, upon the entry of a tip onto the register, the supervisory authority should be under a duty to arrange an inspection of the tip unless it considers that a sufficiently recent and thorough inspection has been conducted. Do you agree?

Members held the view that as with current good practice in the local authority which validates an inspection regime, the supervisory authority should be under a duty to arrange an inspection of the tip unless it considers that a sufficiently recent and thorough inspection has been conducted (but only in this case).

Consultation Question 15. 10.51 We provisionally propose that (1) the supervisory authority should be under a duty to arrange for the compilation of a risk assessment and management plan for any tip included on the register; and (2) the Welsh Ministers should have power to prescribe the matters to be included in a risk assessment and management plan by statutory instrument. Do you agree?

Members were supportive of this proposal.

Consultation Question 16. 10.52 We provisionally propose that the risk classification of coal tips should have regard to the risk of instability of a tip and the consequences of a slide of spoil. Do you agree?

Members agreed that, as is current practice within the local authority tips should be classified based on risk of instability of a tip and the consequence of a slide or a spoil. Members understood instability as the greatest risk posed by coal tips with rainfall a significant cause of tip slides.

Consultation Question 17. 10.53 Should coal tip classification also have regard to the risk the tip presents of pollution, combustion or flooding?

Members agreed that these issues should be a consideration and understood the risks posed:

Pollution – the detrimental impact on local habitats and wildlife

Flooding – tips can contribute to flooding

Spontaneous combustion - coal tips can spontaneously combust and remain alight for many years. (Members raised concern that this could be caused potentially from mountain fires)

Members also recognised that the impact of climate change has meant the amount of rain falling on the South Wales coalfields has increased and is a significant cause of tip slides.

Consultation Question 18. 10.54 We provisionally propose that the coal tips safety legislation should provide for the designation of a coal tip by the safety authority as “higher risk” where the tip meets criteria prescribed by the Welsh Ministers by statutory instrument. Do you agree?

As with current practice Members agreed with the proposal to properly designate those high-risk tips (subject to identified criteria) and they should be classified as such in the safety legislation

Consultation Question 19. 10.55 We seek views on whether the designation of a tip should be by reference to any of the following, or other, criteria: (1) the tip shows signs or has a recent history

of movement or instability; (2) a slide of spoil from the tip would be likely to impact or affect (a) buildings or areas designed for human habitation or occupation; (b) a road, railway, canal or other infrastructure; or (c) a watercourse; (3) there is a substantial risk of the tip releasing dangerous pollution into the environment; (4) there is a substantial risk of the tip causing flooding; (5) there is a substantial risk of material in the tip spontaneously igniting; (6) the tip requires engineering work.

Members agreed that the designation of a tip should be by reference to the points listed above, which will identify stability, public safety and environmental issues.

Consultation Question 20. 10.56 We provisionally propose that a person aggrieved by a designation of a coal tip as higher risk should have a right of appeal. Do you agree?32

Members were supportive of this proposal.

Consultation Question 21. 10.57 We provisionally propose that in the case of a designated tip the supervisory authority itself should normally be under a duty to carry out the operations specified in the tip management plan for the tip. Do you agree?

There was a general acceptance of the proposals in respect of the supervisory authority being under a duty to carry out the operations specified in the tip management plan for the tip.

Consultation Question 22. 10.58 We provisionally propose that an authority should be empowered to enter into a tip maintenance agreement with the owner of land registered in the tip register, providing for the carrying out by the owner of the operations specified in the tip management plan. Do you agree?

Members considered that the supervisory authority should take responsibility for the tip maintenance agreement as quickly as possible so that it can utilise its expertise and legislation in this case. In many cases the local authority does not have the resources required for this role.

Consultation Question 23. 10.59 Do you agree that a duty of inspection should fall to an authority to ensure compliance with the tip maintenance agreement?

As above, Members considered that the responsibility of inspection would be inconsistent across all local authorities as some are smaller and have less resources to manage this as well as others.

Consultation Question 24. 10.60 We provisionally propose that an authority should be able to make a tip maintenance order where (1) the owner has failed to comply with an agreement entered into and has been given appropriate notice of that failure and reasonable opportunity to rectify it; (2) the owner has been offered an agreement and has refused to enter into an agreement on suitable terms or has failed to respond within 42 days, and the authority think it unlikely that the owner will agree; (3) the authority considers the work specified in the order to be urgently necessary; or (4) it has been impossible to identify the owner despite having taken specified steps to do so. 10.61 The authority must be satisfied that the measures proposed are proportionate to the objective to be achieved. 10.62 The order must either require the owner to carry out the operations or provide for the authority to carry them out. 10.63 The owner should have a right of appeal against the imposition of a maintenance order. 10.64 Save in the case of an emergency order, the order must provide sufficient time within which to appeal. Do you agree?

Members felt that, as with the previous responses, this would be a matter of resource and time and the best fit would lie with the supervisory authority as the appropriate authority to make a tip maintenance order where necessary.

Consultation Question 25. 10.65 Do you think that responsibility for tip maintenance agreements for lower risk tips should fall to the supervisory authority or lie with local authorities? 10.66 If you think that responsibility should lie with the local authority, should this include both making and supervising the agreements, or should the supervisory authority be given the duty to make the agreement?

Responsibility for tip maintenance agreements for lower risk tips should fall to the supervisory authority so that it can develop a centre of excellence to sustain the appropriate skills and appropriate legislation in place.

Consultation Question 26. 10.67 We provisionally propose that (1) persons authorised in writing by the supervisory authority or any other public body charged with functions under the coal tip safety scheme should have a power of entry upon land for the purposes of (a) inspecting or carrying out tests upon a known or suspected coal tip; and (b) performing, supervising or inspecting works of maintenance or remedial operations upon a coal tip; (2) the power of entry should be exercisable upon 48 hours' written notice to the owner and any other person known to be in occupation of the land or in an emergency; (3) the supervisory authority or any other public body charged with functions under the coal tip safety scheme should have power to apply to a justice of the peace authorising entry by force; (4) persons authorised to enter land under these provisions should have power to take with them other persons or equipment as necessary; and (5) obstruction of any authorised person or of an inspection, test or works should be a summary offence. Do you agree?

Members agreed that the supervisory authority should have a power of entry upon land for the purposes listed above.

Consultation Question 27. 10.68 We provisionally propose that failure, without reasonable excuse, to comply with a tip maintenance order should be a summary offence. Do you agree?

Members were in agreement with this proposal.

Consultation Question 28. 10.69 We provisionally propose that the supervisory authority and any other public bodies having functions under the coal tip safety scheme should have a general power to charge fees and expenses to the owner of land containing a tip, which could include periodic charges. Do you agree?

Members were keen for liability to rest with the landowners and for fees and charges to be charged to them (as previously raised, concern with absent landowners)

Consultation Question 29. 10.70 Is it appropriate for legislation underpinning a new coal tip safety regime to include (1) a power to sell material not belonging to the owner of a coal tip that is removed from a tip in the course of remedial work on the tip; if so, should it be accompanied by a duty to account to the owner for the proceeds of sale? (2) provision for compensation where an order to carry out remedial works is revoked? (3) a duty to compensate persons other than the owner of a tip for damage to or disturbance of enjoyment of land in consequence of tests or remedial operations? (4) provision for the discretionary award of financial contributions to the liability of an owner? If so, should the categories of person liable be as set out in section 19(1) of the Mines and Quarries (Tips) Act 1969 and the circumstances to be taken into consideration be as set out in section 19(4) of the Act? If they should not be, what alternative provision should be made?

Members were supportive of these proposals

Consultation Question 30. 10.71 Do you think that a panel of engineers with specialist qualifications to inspect and supervise prescribed types of work on coal tips is a good way to ensure consistency and safety?

Members were very supportive of this proposal; they recognise that current practice involves experts being brought out of retirement to conduct inspections. They felt that it was an area where engineering expertise could be developed and that sufficiently qualified engineers with specific experience in the mining industry will ensure consistency and safety.

Consultation Question 31. 10.72 Do you think that the Welsh Ministers should be able to give directions to the supervisory authority and other relevant parties regarding actions to be taken in response to a coal tip emergency?

Generally, Members were supportive of the proposal.

Consultation Question 32. 10.73 Do you think that the power of the supervisory authority to take action in an emergency pursuant to regulation 40 of the Environmental Permitting Regulations (England and Wales) 2016 should be widened? If so, in what way?

Yes. **There is a need to define “emergency works”** and this could include the actions to prevent an emergency developing— emergency works may not necessarily be short duration and could potentially be proactive but would not fall under current timescales for permits. There could possibly be a ‘fast track’ option for URGENT works that have a lead in time of weeks/months but less time than that available to obtain permits for activities. But there is also a need for EMERGENCY works where work has to commence within hours/days/weeks, for example clearing out drainage ditches, creating discharge points to remove water from tips.

There could also be a provision for retrospective consent where there is insufficient time to obtain permits. If the requirement to take reasonable steps for minimising pollution and to furnish the regulator with details as soon as reasonably practicable remain as per Regulation 40(1) this should ensure that the environmental impact is minimised.

Consultation Question 33. 10.74 Do you suggest any other approaches to deal with clashes between environmental legislation and tip safety? If so, please set them out.

Depending on the level of risk or immediate danger posed then (at least in the short term – refer to Q32 above) emergency works should override environmental considerations and be backed up by WG if required. Retrospective permissions can then be applied for to ensure compliance going forward as has already been suggested.

Alternatively, this aspect is covered separately under new legislative powers.

There must be a “common sense principle” approach to dealing with not just emergency works but general maintenance as well. Major maintenance and reclamation of tip sites must take into consideration existing and future environmental legislation – however, timescales and seasonality are often major hurdles when it comes to planning engineering works and their juxtaposition with environmental considerations. This is possibly even more of an issue with tips due to the nature of the materials being dealt with and the exposed nature of many sites and the conflicting requirements of current flood management techniques and requirements and the need to manage and move water off and away from tip material.

Tip legislation should include or account for current environmental legislation possibly within some form of hierarchical scale in relation to any proposed maintenance works. But not make general

maintenance so bureaucratic that it does not get undertaken (particularly on private tips). The more minor maintenance undertaken the less major works will be required and this will ultimately reduce risk. Possible simplistic example e.g.

Small scale works – (identified either by cost or scope) - no/minimal requirements

Minor maintenance works - (identified either by cost or scope) – no/minimal requirements or ecological watching brief

Major Maintenance - (identified either by cost or scope) - ecological watching brief or permitting.

Major maintenance / Reclamation - - (identified either by cost or scope) – Required Permits

Maybe these stages could require sign off (or not) by the overseeing body?

In addition to any new legislation It would be a good idea to produce a “best practice guide” to tip management and maintenance which includes hierarchical procedural flow charts, including legislative process and permitting, timescales etc. Together with examples of typical details etc. This is obviously not an exhaustive list.

A further option could be a one stop shop consent, similar to a Development Consent Order for Nationally Significant Infrastructure Projects. This consent could authorise and regularise all activities in respect of the works for example waste management, environmental permits, planning and land drainage works.

Consultation Question 34. 10.75 Do you think that new tip safety legislation should be combined with provision for the consideration of tip reclamation? If so, do you favour any particular model

Yes – no favoured model but all aspects need further exploration – While this aspect should be considered alongside the new tip safety legislation it may have to form a separate/distinct element to the legislation which covers general tip safety and maintenance.

Given that various current legislation (planning, environmental, waste etc) would cover removal or remediation of a tip site it makes this process difficult so it would make sense to have this process covered by a single piece of legislation.

Risk (be it to people, property or ecology) should be the driving factors to removal or reclamation – not all sites will require removal or remediation and indeed many are now developing into unique ecological habitats in their own right.

There are many things to consider if removal or reclamation is considered to be the best option. Many tips are difficult to access and disturbance of the surface will generate its own issues e.g. stability of material, generation of silt, interim drainage and pollution control etc. It is not just the tip site that will require consideration either. e.g. transport links, receptor sites (if required), Planning, waste classification, end use – the list is long.

It is not a simple process so those bodies which govern any specific legislation required need to have an agreed approach - whether this be specific legislation (existing or new) on remediation and removal or just an agreed process to follow.

Management of, and representation in, this process (which ideally will be covered by new legislation) to avoid conflicts further down the line is something that possibly sits best with an overseeing body and the “expert panel”.

DRAFT