

**FAQ**  
**Coal Tip Safety White Paper – May 2022**

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## WHAT IS THE PURPOSE OF THE CONSULTATION?

The purpose of the consultation is to present proposals for the introduction of a new statutory regime to ensure disused tips are effectively managed. These proposals aim to address the multiple gaps, which have been identified in the current legislation.

Stakeholder and community views are very important to help us design the new regime and ensure it is fit for purpose.

## WHAT ARE THE CONSULTATION TIMESCALES?

The consultation will be open for 12 weeks from the 12 May until 4 August.

## HOW TO RESPOND TO THE CONSULTATION

You can respond to the consultation in any of the following ways:

- Online at <https://gov.wales/coal-tip-safety-wales-white-paper?>
- Write to us at:  
Coal Tip Safety (Wales) White Paper  
Water, Flood and Coal Tip Safety Division  
Welsh Government  
Cathays Park  
Cardiff  
CF10 3NQ

Or if you require a large print or Braille version please email [coaltipsafetyconsultation@gov.wales](mailto:coaltipsafetyconsultation@gov.wales)

## WHAT COMES NEXT

After the close of the consultation a summary report of consultation responses will be published in due course on the consultation webpage.

The responses will assist us in further developing our proposals, which will help in the development of new primary legislation, which the Welsh Government have committed to introduce during this Senedd.

## WHAT AREAS DOES THE CONSULTATION COVER?

The consultation is technical in nature and covers the following areas:

- Establishment of a new public body to oversee compliance with the new management regime – referred to in the White Paper as a supervisory authority
- Compilation and maintenance of a new asset register
- Hazard Assessment for all disused coal tips
- New categorisations for all disused coal tips
- Introduction of proportionate management plans for all tips
- Inspections and Appraisals of tips on a timescale determined by the categorisation of a tip
- Maintenance and Maintenance Agreements for tips
- Rights of Access for inspections, maintenance, and compliance checks
- Introduction of civil sanctions for non-compliance with the regime
- Activities on Disused Coal Tips

## **WHY IS A NEW REGIME REQUIRED?**

The existing legislation, the Mines and Quarries (Tips) Act 1969 does not provide any mandatory requirements on owners to inspect and maintain any disused tips on their land.

There has been no requirement in legislation to provide consistent categories to tips, which has meant different categorisation approaches have been adopted. Different approaches to inspections have also been adopted, which means it can be difficult to obtain a clear and consistent overview of the status of disused coal tips.

In the last two years the Task Force has been using interim categories to help provide consistency and the Coal Authority and local authorities are now using standardised inspection templates to inspect tips helping to address some of the consistency issues.

New legislation is required to ensure coal tips are effectively managed and address the gaps in the existing legislation.

## **WHAT ABOUT TIPS WHICH ARE NOT COAL?**

The current legislation dealing with tips is the Mines and Quarries (Tips) Act, and Part 2 of this Act, which deals with disused tips applies to all spoil tips and not only coal tips.

Whilst the Law Commission review focused only on disused coal tips, we recognise that any new regime may need to be applied to all disused spoil tips.

Detailed evidence gathering is needed but we estimate there may be in excess of 20,000 non-coal spoil heaps in Wales.

To ensure there is no delay to the introduction of new legislation for disused coal tips, the White Paper focuses on these tips but presents an approach, where other spoil tips could be added to the regime when the necessary information is available in the future.

## **WHAT IS THE ROLE OF A SUPERVISORY AUTHORITY?**

The supervisory authority will be the lead body in Wales on coal tip safety. It will oversee compliance with the proposed new regime and ensure consistency is applied in delivery of the regime. To not introduce a supervisory authority would mean significant risk of the issues and inconsistencies identified in the current regime continuing.

More than 90% of respondents to the Law Commission consultation supported the need for a supervisory authority to ensure consistency of delivery and compliance with a new management regime.

This body will play a central role in the management of disused coal tips and we propose it will lead on the management of the highest status tips – under the new categories these will be category 1 tips.

## **WHY IS AN ASSET REGISTER NEEDED?**

Currently there is no central register of disused spoil tips in Wales or anywhere in the UK. This means there is no record of the location of tips, their condition or ownership. Initially, it was considered there were 1,200 disused coal tips in Wales, the work of the Coal Tip Safety Task Force has now identified nearly 2,500 tips in Wales.

A new management regime requires up to date, coherent and reliable data and an asset register will help to do this.

This register will also allow the supervisory authority to have the information it needs to carry out its oversight role to ensure tips are being inspected and maintained.

We propose the asset register should include specific information (minimum content) and that this will be introduced by the Welsh Ministers in subordinate legislation. As the content will be technical it may be necessary to update the content at certain times (if other spoil tips are added to the register) and this can be more effectively done through subordinate legislation.

## **WHO WILL HAVE ACCESS TO THE ASSET REGISTER?**

The public will have access to the publicly accessible layer of the asset register which we propose includes information on: a) Tip Name/identifier; b) location; c) categorisation; and d) Inspection timeline.

The supervisory authority will have access to all layers of the asset register including public and confidential.

Local authorities will have access to tip information within their administration.

Owners will have access to their own tip information.

## **WHAT IS THE REGISTER OF PROFESSIONALS?**

This will not be a formal panel but will provide at hand information on experts who can provide much needed advice, support and information on coal tip safety and who are competent to undertake work on disused coal tips.

The Register of Professionals will be overseen by the Supervisory Authority and will ensure there is a wide range of competent professionals with a wide spectrum of skills and knowledge required for coal tip safety.

## **WHAT IS A HAZARD ASSESSMENT?**

Not all tips are the same, they have multiple differences such as size, location, composition of content, maintenance history and because of this the hazards they may pose are not the same. Due to the number of tips in Wales (nearly 2,500) the regime needs to be proportionate as not all tips will require the same level of inspection or management as they do not present multiple or significant hazards.

To help prioritise the regime and design it accordingly, a hazard assessment will help to identify the specific hazards on a tip such as: a) Ground movement/instability; b) Flooding; c) Pollution; and d) Combustion.

It will consider the potential impacts on communities, critical infrastructure, and the environment.

A hazard assessment will be carried out for each tip and will help to determine its categorisation.

To help prioritise hazard assessments, we propose the interim categories are used – tips with an interim category of C and D will be assessed first (within 12 months of a tip being added onto the asset register) and then those tips with an interim category A and B (within 36 months of being added onto the asset register).

## **WHY ARE NEW CATEGORIES NEEDED?**

We are currently using interim categories to help us identify those tips, which require more frequent inspections. These categories were necessary to help us to prioritise actions not only for inspections but also for maintenance works.

These interim categories (A to D), with A the lowest rated and D the highest rated, provided necessary consistency for our collation of coal tip data. However, the approach is not based on a hazard assessment and is not suitable for a robust, future-proof categorisation approach.

This consultation proposes new categorisations which are based on the outcome of the new hazard assessment.

As the categories will be translated into Welsh, we have moved from using letters to numbers to ensure consistency in both English and Welsh.

## **WHAT IS A TIP CLUSTER?**

Tips are often located close to one another. Some tips are so connected that what happens on one tip can impact on another. For example, one tip may sit above another tip, if something happened on either tip it could have a significant impact on the other. We call these tips 'interdependent'. In the White Paper, we propose these types of clusters should be managed together, so they should have a single management plan.

Other tips are located close to each other but if something happens on one it won't have an impact on the others. We call these 'proximate' tips. In the White Paper, we propose the supervisory authority may consider they should be managed collectively as this would provide operational efficiencies.

## **WHAT DO MANAGEMENT PLANS COVER?**

What is included in a management plan will be determined by its category and the outcomes of its hazard assessment. Due to the differences in tips, the management plan should be proportionate to the hazards presented by the tip.

Higher status tips (those falling under categories 1 and 2) will require a more detailed plan and we propose these plans should include: a) schedule of inspections and appraisals; b) whether the tip may require specialist inspections to assess the ecology of the tip or its drainage; c) pro-active programme of maintenance; d) details on the tip such as whether it is in a designated site, close to rivers.

Lower status tips (those falling under categories 3 and 4) will require only a standard plan covering such things as schedule of inspections and appraisals and general maintenance requirements.

## **HOW OFTEN WILL TIPS BE INSPECTED?**

Due to the number of disused tips in Wales, we have proposed a proportionate approach to carrying out checks on tips. We have taken into consideration that many of these tips are on private land.

The consultation proposes a two-tier approach:

- Inspections – a reduced-technical’ inspection where a standard pro forma and can be completed as a self-assessment; and
- Appraisals - A detailed, comprehensive technical appraisal, including site inspection.

The frequency of inspections and appraisals is determined by the category of a tip, for example the highest status tips (category 1) will require an inspection every 6 months and an appraisals every 12 months. The lowest status tips (category 4) will require an inspection every 24 months and there is no requirement for an appraisal unless if triggered by findings in an inspection or there is significant change to the tip.

## **WHO IS RESPONSIBLE FOR INSPECTIONS/APPRAISALS?**

In the White Paper we propose the following:

Category 1 – supervisory authority to lead;  
Category 2 – local authority to lead on own tips and those on private land;  
Categories 3 and 4 - owners

## **WILL OWNERS BE REQUIRED TO MAINTAIN THEIR TIPS?**

There will be requirements to ensure tips are maintained. We propose the following parties lead on making the necessary arrangements for tips:

Category 1 – supervisory authority to lead;  
Category 2 – local authority to lead on own tips and those on private land;  
Categories 3 and 4 - owners

The supervisory authority can arrange for maintenance agreements with tip owners, particularly for the lower status tips (categories 3 and 4).

These parties do not need to undertake the maintenance works but can arrange for a third party to carry out the works.

There may be times when the supervisory authority determines it may require to carry out the work, where it is considered necessary or convenient. In this instance the supervisory authority may consider charging the costs to the owners.

## **WHAT IS A MAINTENANCE AGREEMENT?**

A maintenance agreement provides a pro-active approach to prevent tip safety problems developing and for tip owners to understand what is expected of them in helping to ensure coal tip safety.

It will depend on the needs of the specific tip but can include general maintenance requirements such as duties to check drainage systems at stipulated intervals and after heavy rainfall, to maintain and improve drainage systems, or to install and check monitoring equipment.

They could also stipulate remediation work required and provide a timescale for completion. Depending on the complexity of the work, the agreement could specify that the work must be done by a suitably qualified professional.

Non-compliance with a tip maintenance agreement could lead to the supervisory authority issuing a tip maintenance order.

## WHAT IS A TIP MAINTENANCE ORDER?

A tip order places a requirement on a party to carry out the works required in the maintenance agreement. Failure to comply without reasonable excuse, with a tip order would be a summary offence punishable by imprisonment for a term not exceeding 51 weeks or by a fine or both.

We propose a tip order should be issued where:

- an owner or occupier has failed to comply with a maintenance agreement, and where appropriate notice has been given,
- the owner or occupier has been offered an agreement and has refused to enter into an agreement or has failed to respond within 42 days;
- work specified in the order to be urgently necessary; or
- it has been impossible to identify the owner or occupier despite having taken specified steps to do so

## WHAT ARE THE ENFORCEMENT MEASURES?

The White Paper includes a number of proposals covering rights of access, criminal and civil penalties and rights of appeal.

### Rights of Access

Currently there are limited powers of access for local authorities to determine the safety of a tip. The White Paper proposes a power of entry for the supervisory authority and local authorities (in relation to category 2 tips) for:

- a) inspecting, carrying out tests or sampling upon a known or suspected coal tip;
- b) performing, supervising or inspecting works of maintenance or remedial operations or installing and monitoring instrumentation upon a coal tip; and
- c) gaining access to a coal tip for the above purposes

In an emergency situation, we propose the power of entry shall be without notice.



## Criminal

Access: Obstruction of any authorised person or of an inspection, test or works we propose shall be a summary offence.

Tip Order: Failure to comply, without reasonable excuse, with a tip order would be a summary offence punishable by imprisonment for a term not exceeding 51 weeks or by a fine or both.

## Civil Sanctions

We seek views on whether civil sanctions should be available to the supervisory authority and local authorities for non-compliance with certain activities. For example, for the supervisory authority to have powers to issue a fixed monetary penalty if there is a continuous failure to provide up to date records on inspections, appraisals or maintenance.

## Appeals

We propose appeals should be available for the following:

- owner or occupier should have a right of appeal against registration on the asset register where there is no tip situated on the land;
- owner or occupier should have a right of appeal against the imposition of a maintenance order;
- owner or occupier should have a right of appeal against the imposition of any charges for the work under a maintenance order, where there is disagreement about the cost.

## **WHAT IS THE LAW COMMISSION REPORT?**

The Law Commission published the findings from its review of coal tip safety legislation and its recommendations for a new regime. The review was in response to the Welsh Ministers inviting the Law Commission, in November 2020, to review the existing legislative framework for coal tip safety.

The report follows on from Law Commission consultation paper '*Regulating Coal Tip Safety in Wales*', which was consulted upon in summer 2021.

The Law Commission published the report (bilingually) on 24 March, and the Welsh Ministers laid the report in the Senedd on the same day.

The Law Commission's report presents 36 recommendations, which include:

- Establish a new supervisory authority (a central public body), which is subject to a general duty to perform its functions so as to ensure the safety of coal tips;
- Supervisory authority to develop a national asset register;

- Supervisory authority should be under a duty to arrange an inspection of the tip on the register;
- Supervisory authority under a duty to arrange for a risk assessment and management plan of tips on the register;
- Power to enter into tip agreements and to make tip orders for lower risk tips should fall to the supervisory authority, and a duty to supervise the agreements and orders, including to carry out inspections, should fall to local authorities;
- Introduction of stronger rights of access to private land;

### **DOES THIS CONSULTATION AGREE WITH THE RECOMMENDATIONS IN THE LAW COMMISSION'S REPORT?**

There is general alignment in the Law Commission's report with our proposals in this consultation. However, in addition to the recommendations of the Law Commission we have considered, in greater detail, the technical requirements for the regime, in particular in relation to a new categorisation system and minimum content requirements for assessments of tips.

## WHAT HAVE WELSH GOVERNMENT BEEN DOING WITH COAL TIPS TO DATE?

The Welsh Government have committed in the Programme for Government to introduce legislation to deal with the legacy of centuries of mining and ensure coal tip safety; strengthening local authority powers to protect the public and the environment. This forms part of a package of mechanisms aligned with the coal tip safety work programme developed in 2020 to deliver the objectives of the First Minister's Task Force.

We have taken immediate action on coal tip safety, not only have we ensured the higher rated tips are being inspected but have provided funding for local authorities to carry out maintenance works.

There are also new technologies being trialled on tips, which will provide information on the most appropriate approach to monitor both ground and water movement on the higher rated tips.

We invited the Law Commission to undertake an independent review of coal tip legislation and we will use this report, along with this consultation, to develop a new statutory framework for coal tips. This new legislation will be introduced during this Senedd.

## HOW MANY DISUSED COAL TIPS ARE THERE AND WHAT ARE THEIR CATEGORIES?

The Coal Authority and local authorities have worked to collate data on disused coal tips and to date have identified 2,456 disused coal tips in Wales.

We have published a breakdown of these tips by category and local authority at the following site: [Coal tip safety | GOV.WALES](#)

While our understanding of the overall picture has vastly improved in the last two years, this data is live and is still subject to change as further quality assurance is undertaken and more tips are identified.

## WHEN WILL YOU RELEASE THE LOCATION OF TIPS?

We have committed to releasing the location of disused tips across Wales and are working hard to move to a position where that information is as accurate as possible to enable the release of this data.

This work is very much a live project, and we expect further adjustments to the overall number of tips as the work progresses. We remain committed to publishing locations of tips as soon as possible and as soon as it is responsible to do so. We must be confident in the data before we do so.

Information on tip locations have already been shared with local authorities and local resilience forums to assist in the development of emergency preparedness plans where required.

Before providing public access to the data in locations of higher rated tips, it is vital that the information when published is accurate and complete as possible.

## **WHAT ARE THE TECHNOLOGY TRIALS?**

The aim of the technology trials is to research and pilot a wide range of technologies to determine their suitability in contributing to the safe, effective monitoring of disused tips. The outcomes of the trial will inform the long-term technology and monitoring strategy of the future regime.

The information provided from the different technologies can provide local authorities with information on possible ground movement, from which they can instigate an inspection.

A number of the trials are scheduled to run for a period of years. As such, it is likely that the conclusions of the programme will not be made in final until 2023 or 2024.

Nearly 70 higher-rated tips are included within the technology trials programme. The first programme review will take place spring 2022. Periodic reviews are scheduled through 2022 and 2023.

Some of the technologies are very sensitive, for example tiltmeters can provide false readings if they are moved by external forces such as sheep.

## **HOW IS THE CURRENT WORK ON COAL TIPS FUNDED?**

Since 2020 Welsh Government have provided funding to local authorities to support them undertake maintenance works on both their own and privately owned tips. We have now committed £44.4 million in capital funding over the next three years to support local authorities to continue this maintenance work programme.

## **ARE YOU PROPOSING THE REMOVAL OF ALL DISUSED COAL TIPS?**

The consultation focuses on introducing a new management regime for disused coal tips.

We are not proposing the removal of all disused coal tips but will be looking at what opportunities there may be for the reclamation and remediation of many tips. Opportunities such as areas for tree planting, helping to enhance biodiversity, recreational and others.

In the future we will be seeking to engage with communities to discuss these opportunities.