



Llywodraeth Cymru
Welsh Government

GUIDANCE

Requesting approval for Coal Authority mining operation licences

Guidance on how to provide evidence in support of a request for the Welsh Ministers' approval of a Coal Authority mining operation licence.

First published: 20 July 2022

Last updated: 20 July 2022

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Introduction

All coal-mining operations require a licence from the Coal Authority under the Coal Industry Act 1994 (“CIA”). Section 26A of the CIA states mining activities in Wales authorised under a Coal Authority licence can only take effect if the authorisation is approved by the Welsh Ministers. It will be the responsibility of mine operators to ensure that any licence issued by the Coal Authority has the approval of the Welsh Ministers before commencing coal mining operations.

This guidance document is intended to assist mine operators in providing the necessary evidence to support a licence approval request (which may be requested by the Coal Authority as part of its licence determination process, or directly by the mine operator following discussions with the Welsh Government).

It is recognised that all mines, operations and licence applications are different, and that flexibility is required to ensure the licensee is afforded a proper opportunity to make a case for a licence approval. Therefore, this guidance does not prescribe specific evidence requirements, allowing the mine operator the freedom to determine how best to support the request for licence approval.

This guidance does, however, provide an overview of the licence approval decision-making framework and the type of evidence that will help the Welsh Ministers to make a prompt decision on the request.

It is important to recognise that not all sections outlined below will apply to every licence approval request, and that further information not outlined below can also be submitted.

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Discussions with Welsh Government prior to submitting the license approval request

Mine operators are advised to contact the Welsh Government to discuss the licence approval process and evidence requirements as soon as a licence application is submitted to the Coal Authority. Officials will be able to:

- Discuss the licence approval process; in particular, when and how the request for a licence approval can be made;
- Discuss the content of this guidance; and
- Direct the mine operator to the relevant policies and legislation.

It is important to note that the Welsh Government will not be able to provide advice on licencing more widely, as this remains the responsibility of the Coal Authority.

Part 1: Decision making framework

The role of the Coal Authority

The Coal Authority remains the licensing authority for all coal-mining operations carried out in Wales, including issuing new licences and variations to existing licences. All coal-mining operations require a licence from the Coal Authority under the CIA. Those wishing to carry out underground or surface coal-mining operations in any part of Wales require:

- Authorisation to mine from the Coal Authority, who will issue an Underground Mining Licence or Surface Mining Licence for this purpose;
- The property interest in the coal, which, in virtually all circumstances, will be owned by the Coal Authority who will grant a Lease in conjunction with the

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Licence for this purpose;

- Access rights from the surface landowner
- All other necessary permissions or consents, e.g. planning permission and environmental consents; and
- Approval from the Welsh Ministers.

The Coal Authority continues to determine licence applications in Wales in accordance with its statutory duties, as outlined in the CIA. These include to secure, so far as practicable, that an economically viable coal mining industry is maintained and developed; that licensees are able to finance both the operations and the discharge of any liabilities resulting from them; and that adequate security is in place so that those affected by subsidence damage do not sustain a loss. The Coal Authority will also take account of the extent to which the applicant has obtained the other necessary underground access rights, permissions and consents.

The role of the Welsh Ministers and the Welsh Government

Section 26A does not give the Welsh Ministers full coal licensing powers: these remain with the Coal Authority. Instead, it requires the Welsh Ministers to either approve or refuse to approve the licence issued by the Coal Authority. The licence is of no effect unless and until it is approved by the Welsh Ministers. If the Welsh Ministers refuse to approve a licence, the mine operator is not authorised to undertake coal-mining operations.

In considering whether to approve a licence, the Welsh Ministers will not duplicate the Coal Authority's existing statutory licensing duties; retake the decision on the licence itself; or introduce additional conditions to the licence. The Welsh Ministers will however, according to relevant policies, consider whether they want the licensed activities to take place on land in Wales.

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Operations that trigger S26A

Approval of the Welsh Ministers is required for:

- new licences granted by the Coal Authority authorising coal-mining operations in Wales; or
- variations to existing licences which change the time allowed for mining operations in Wales, or which alter the licence boundary in Wales; and
- potentially other licence variations which involves coal-mining operations in Wales.

Mine operators are advised to contact the Welsh Government, at the earliest opportunity, to discuss whether the approval of the Welsh Ministers may be required.

Welsh policy considerations

The Welsh Government will consider any request to approve a Coal Authority licence against relevant Welsh policy objectives and legislative requirements.

Mine operators will be required to submit to the Welsh Government appropriate information and evidence, as discussed in the following sections, which demonstrates how the mining operations comply with the relevant Welsh policies and legislation. This section outlines the most relevant policies, and licensees are advised to read the policies in full before submitting any evidence.

Coal Policy

Welsh Government policy is to prevent further extraction and consumption of coal. However, our coal policy also reflects that Wales has existing mines that need to be managed and closed safely. Therefore, our policy is that unless

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extraction can be shown to be needed in the context of greenhouse gas emissions reductions targets, or to manage and safely close a site, Welsh Government policy is that coal extraction should not be permitted. Each proposal would be considered on its individual merits, but to be successful must clearly demonstrate:

- Why the extraction is required to support industrial non-energy generating uses for coal, or otherwise needed in the context of greenhouse gas emissions reductions targets;
- Why the extraction is needed to ensure the safe winding-down of mining operations or site remediation; and
- How the extraction contributes to Welsh prosperity and our role as a globally responsible Wales.

Decisions will be made on the specific circumstances of each case based on its climate and safety impact, with the presumption being against extraction.

Planning Policy Wales

The coal relevant planning policy contained in Planning Policy Wales, which sets out the land use planning policies of the Welsh Government, is also broadly relevant to licence approval decisions.

Welsh Climate Change targets

In Wales, demanding targets to limit carbon emissions are enshrined in the Environment (Wales) Act 2016 and the legislation made under it. The Act requires the Welsh Government to reduce emissions of greenhouse gases in Wales by 100% by the year 2050. Our Welsh carbon budgets require a 63% reduction by 2030 and an 89% reduction by 2040.

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The Low Carbon Delivery Plan 2 (LCDP2)

The Welsh Government's second statutory decarbonisation plan is scheduled to be published in the autumn of 2021. It will describe the policies and approach we intend to take to meet Wales' second Carbon Budget (2021-25) and propose policies and actions for the longer term.

The LCDP2 will describe:

- the maximum level of emissions we can emit during the Carbon Budget;
- the actions (policies) which we expect will enable us to remain within this budget;
- proposed future actions which will allow us to continue to decarbonise further in the longer term; and
- wider actions taken and pledges made by our partners in Wales, which will contribute to meeting Welsh climate targets.

Well-being of Future Generations

The Well-being of Future Generations (Wales) Act 2015 provides for better decision-making by requiring public bodies in Wales to take account of the long-term impact of their decisions, to take a collaborative and integrated approach with others, and to help to prevent persistent problems, such as poverty, health inequalities and climate change, from occurring or getting worse.

Specifically, the Act requires public bodies to carry out sustainable development, i.e. the process of improving the economic, social, environmental and cultural well-being of Wales. Sustainable development requires public bodies to act in a manner that seeks to ensure the needs of the present are met without compromising the ability of future generations to meet their own needs.

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Each public body listed in the Act (including the Welsh Ministers and the Welsh Government) must set and publish well-being objectives, and then take all reasonable steps in exercising its functions to meet the well-being objectives it has set. Considering the approval of a Coal Authority licence is a function captured by the Act, therefore, the Welsh Government will assess any application for a licence approval against the well-being objectives.

The Programme for Government (June 2021) sets out the 10 well-being objectives that the Welsh Government will use to maximise its contribution to Wales' long-term well-being goals and the steps we will take to deliver them.

The Programme for Government 2021 to 2026: Well-being Statement sets out how the Welsh Government has set its well-being objectives in line with our statutory duty under the Act. Prior to considering what evidence to submit in support of a licence approval, licensees are advised to familiarise themselves with the current well-being objectives.

Part 2: Submitting evidence

The following section suggests types of evidence that could be submitted in support of a licence approval request. Targeted, concise and structured evidence will facilitate an effective and timely consideration of the licence approval application.

Non-technical summary of proposal

Mine operators are requested to provide a short (2-3 page) non-technical summary of the proposed mining activities, including the tonnage and volumes of coal to be extracted; the extraction processes, timeline and milestones, and how continued mining facilitates the operator's ability to comply with site restoration commitments. Mine operators should also provide their

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understanding of whether the licence approval will provide additional time for mining, or increase the spatial extent or depth of the licence.

Planning history

Planning permissions will be a material consideration in support of a licence approval. When seeking licence approval, mine operators are advised to submit an account of the planning history, including any supporting evidence that is pertinent to the licence approval (e.g. any reports that evidence the impact of mining on climate change, job creation and retention, environmental impacts, remediation plans, Health Impact Assessments etc).

Required information:

- Timeline for relevant granted planning permissions and variations, including planning references; decision dates; date of activation of planning permission; and if the permission is temporary, the date the permission expires;
- For each planning permission in the timeline, a short explanation of the permission (1-2 paragraphs, which can be extracted from planning authority's online public register);
- Any outstanding planning applications related to the licence approval decision; and
- A brief summary of any existing Town and Country Planning Act 1990 section 106 agreement relating to site restoration and aftercare (and where applicable, document references), including an outline of any restoration guarantee funds held by the local planning authority.

A succinct summary of the planning history will enable Welsh Government to consider to what degree relevant policies and well-being objectives have already been considered in the planning regime.

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Environmental permit history

Environmental permits, as issued by Natural Resources Wales (or previously the Environment Agency Wales) or a Local Authority, will be a material consideration in support of a licence approval. When seeking licence approval, mine operators are advised to submit an account of the environmental permitting history, including any supporting evidence that is pertinent to the licence approval (e.g. any environmental impact assessment reports).

Required information:

- Timeline for relevant granted environmental permits and variations, including permit reference numbers; decision dates; date permitted activity commenced; and if the permit is for a temporary activity, the date the permission expires;
- For each environmental permit in the timeline, a short explanation of the permitted activity (1-2 paragraphs, which can be extracted from the environmental permit introduction or the permit decision document); and
- Any outstanding permit applications related to the licence approval decision.

A succinct summary of the environmental permitting history will enable Welsh Government to consider to what degree relevant policies and well-being objectives have already been considered in the environmental permitting regime.

Coal product markets

A summary of the intended markets for the coal products produced under the licence will allow the Welsh Government to consider the impact on the industries that rely on the extracted coal, and estimate the likely greenhouse gas emissions from consuming the coal. Mine operators are therefore requested to

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submit a summary of the coal product destinations.

Required information:

- Maximum total monthly/annual coal extraction allowed under the planning permission; and
- Total coal volumes extracted for the previous five years, including the relative split between destinations. For example, the percentage each year used for energy, steelworks, filter mediums, cement works, heritage railways, domestic, etc.

Work force

The Welsh Government will consider the impact on job creation and job retention as a result of the licence approval. Mine operators are therefore required to submit a summary of the current mine work force. In particular:

How many people are employed at the mine, including contractors that are integral to the mine operation, and any ongoing/planned apprentices; and Impact of the licence approval on job retention or creation, including evidence as to how mining provides local jobs.

Site plans

An outline of the mine licence boundary is required, including any proposed extensions that would become active should the licence be approved.

Impact on climate change emissions

Mine operators are advised to provide any evidence that would identify the likely

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climate change impact of a licence approval.

Although it is recognised that the coal extraction may not be intended for energy production, most production processes produce an amount of coal by-products that are not suitable for industrial applications. It is common practice for such by-products to be processed for heat markets. Therefore, for both energy coal and any by-products produced that may be used for heat, it will be necessary to demonstrate that extraction is needed in the context of greenhouse gas emissions reductions targets. The Welsh Government will be looking for evidence that demonstrates that domestically produced coal will result in a net reduction in CO₂ emissions when compared to imported coal.

Examples of relevant evidence:

- Where energy coal is not the primary market, the volume of coal by-product likely to be sold to heat or other energy markets;
- The percentage of the extracted coal that is likely to be exported;
- Evidence of any onsite measures that reduce the carbon intensity of the extraction processes;
- Evidence of transition to renewable energy or sustainable land use;
- Evidence that clearly demonstrates that the coal is not entering energy or heat markets (e.g. supply contracts with end users); and
- Evidence that domestic production would not result in an increased global demand for coal.

Site safety, remediation and environmental protection

It is recognised that it may be desirable to mine and remove coal to ensure long-term site safety, or facilitate remediation or environmental protection. For example, removing coal to control site drainage or stabilise exposed faces.

Mine operators are therefore advised to consider whether coaling is required to ensure the safe management of the site, remediation of the site, or

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environmental protection. Evidence of this could be:

- Independent site assessments that identify the need to remove the coal (in particular, where such reports have supported planning applications);
- Progress against work programmes agreed in the planning permission or with the Coal Authority; the impact of failing to complete the work programme; and any alternative options to removing the coal; and
- Whether the coaling facilitates the ability to comply with any section 106 Agreement (Town and Country Planning Act 1990) for restoration of the site.

Acceptable evidence

This guidance does not prescribe the precise nature of the evidence that must be submitted. This reflects the varied nature of mines and mining; their position in their life-cycle; the varied nature of the licence applications; and what further developments are being proposed. Operators can provide a valuable insight into the history of the site, as well as its current status and proposed progress. However, if there is any independent evidence that supports the view of the operators then this should also be provided.

For example:

- Independent third party reports, assessments or applications considered by the local planning authority or Natural Resources Wales;
- Any new independent assessments commissioned to support the licence approval; and
- Published and referenced technical papers in journals where relevant.

It is fine to submit summarised materials as opposed to extensive documentation; however, when doing so, operators should provide a full reference to the complete document or report.

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Publication of the evidence

All licence approval decisions are published on the Welsh Government website. However, the evidence provided by the licensee will not normally be published. Mine operators are reminded that information submitted to Welsh Government is potentially captured by the Freedom of Information Act 2000 or Environmental Information Regulations 2004, and following a request, could be released to the public. Licensees are therefore advised to consider this potential outcome, and discuss the issue with the Welsh Government before submitting documents.

Further, it is likely that some of the information submitted will be confidential. Wherever possible, licensees are requested to remove or redact such information before submitting documents to the Welsh Government. However, where this is not practical or appropriate, licensees are advised to discuss confidentiality issues with the Welsh Government before submitting any documents.

Part 3: Outline of the section 26A approval process

The following provides an overview of the indicative licence approval process. In all circumstances, the applicant is advised to contact the Welsh Government as soon as an application is submitted to the Coal Authority to discuss the approval process:

- When a new Welsh coal licence application is received by the Coal Authority, for either a varied or new licence, the Coal Authority will formally notify the Welsh Government.
- The Coal Authority will also advise the operator to discuss its licence application with the Welsh Government at the earliest opportunity. This will

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provide an opportunity to discuss how and when the mine operator could submit evidence in support of a licence approval.

- The Coal Authority will then assess the application, in line with its duties under the Coal Industry Act 1994.
- After completing its determination, the Coal Authority will issue the Welsh Government with a letter formally notifying Welsh Government of its decision.
- Where section 26A applies, upon issue of the licence by the Coal Authority, the Welsh Ministers' will notify the Coal Authority and the applicant of their decision under section 26A in writing.
- Should the Welsh Ministers decide not to approve the licence, the Welsh Government will work with the Coal Authority and the licensee to give effect to the Welsh Ministers' decision.

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