

Annex 2

SUMMARY TABLE OF WELSH GOVERNMENT RESPONSE TO LAW COMMISSION'S RECOMMENDATIONS

Chapter 1: Introduction		
	Recommendation	Response
1	We recommend that the existing regulatory regime for tips associated with operational mines should not be altered.	Accept
2	We recommend that any new legislation should not apply to a tip to which the Quarries Regulations 1999 or the Mines Regulations 2014 apply.	Accept
Chapter 2: A Supervisory Authority		
3	We recommend that a supervisory authority with responsibility for the safety of all disused coal tips should be established.	Accept
4	We recommend that the supervisory authority should be a new body.	Accept
5	We recommend that the supervisory authority should be a central public body.	Accept
6	We recommend that the supervisory authority should be subject to a general duty to perform its functions so as to ensure the safety of coal tips, without limitation to specified risks.	Accept
Chapter 3: A Tip Register		
7	We recommend that a central tip register should be compiled and maintained by the supervisory authority.	Accept
8	We recommend that the contents of the tip register should be prescribed by the Welsh Ministers by statutory instrument	Accept
9	We recommend that the supervisory authority should be under a duty to include on the register any tip of which it is aware.	Reject
10	We recommend that an owner or occupier of all or part of land identified in an entry on the tip register should have a right of appeal on the ground that there is no tip situated on the land.	Accept
	We recommend the exercise of the right of appeal should not be permitted to delay urgent work	
11	We recommend that it should be a summary offence, punishable by a fine, to fail to notify the supervisory authority, within a prescribed time limit, of the existence of a coal tip particulars of which are not included on the tip register.	Reject
	We recommend that the offence should be capable of being committed by: (1) a freehold owner of land containing the whole or part of such a coal tip; and (2) the owner of a leasehold interest in such land originally granted for a term of more than seven years who has reasonable grounds to believe that the land contains all or part of a coal tip.	

12	We recommend that the prescribed content of the tip register should be governed by whether it is in the public interest for particular information concerning coal tips to be publicly available.	Intend to implement in modified form
13	We recommend that there should be public access to the tip register, providing an accessible summary of relevant information.	Intend to implement in modified form
14	We recommend that the Welsh Government engages with the Law Society, the Coal Authority and local authorities in Wales with a view to establishing a search of the tip register as part of a standard conveyancing search in relation to property in Wales.	Further work required
Chapter 4: Tip Inspections, Risk Assessments, Tip Management Plans and Risk Classifications		
15	We recommend 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.	Intend to implement in modified form
16	We recommend that, at the time of inspection, there should be a duty on tip owners and occupiers to provide to the supervisory authority documents in their possession of relevance to the tip or the land on which it is situated.	Intend to implement in modified form
17	We recommend that <ul style="list-style-type: none"> (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; (2) the supervisory authority should be under a duty to approve the tip management plan; and (3) the supervisory authority should allocate a risk classification to each tip based on the inspection report and risk assessment. 	Intend to implement in modified form
18	We recommend that the Welsh Ministers should have power to prescribe the matters to be included in a risk assessment and tip management plan by statutory instrument.	Intend to implement in modified form
19	We recommend that the risk classification of coal tips should have regard to the risk of instability of a tip and the consequences of a stability failure	Intend to implement in modified form
20	We recommend that the risk classification of coal tips should also have regard to the risk the tip presents of pollution, combustion or flooding.	Intend to implement in modified form
Chapter 5: Securing the Maintenance of Lower Risk Tips		
21	We recommend that coal tip safety legislation should provide for the making of agreements between authorities and the owners or occupiers of land registered in the tip register, providing for the carrying out of operations specified in the tip management plan.	Accept

22	We recommend that an authority should be under a duty to arrange for inspections to ensure compliance with a tip maintenance agreement, with a power to delegate inspections to suitably qualified third parties.	Reject
23	<p>We recommend that an authority should be able to make a tip order where:</p> <p>(1) the owner or occupier of land has failed to comply with a tip agreement entered into by them and has been given appropriate notice of that failure and reasonable opportunity to rectify it;</p> <p>(2) the owner or occupier has been offered an agreement and has refused to enter into an agreement on suitable terms or has failed to respond within 42 days;</p> <p>(3) the authority considers the work specified in the order to be urgently necessary; or</p> <p>(4) it has been impossible to identify the owner or occupier despite having taken specified steps to do so.</p> <hr/> <p>The authority must be satisfied that the measures proposed are proportionate to the objective to be achieved.</p> <hr/> <p>The order must either require the owner or occupier to carry out operations or provide for an authority to carry them out.</p> <hr/> <p>The owner or occupier should have a right of appeal against the imposition of an order, but the exercise of the right of appeal should not operate to prevent work which is urgently necessary.</p> <hr/> <p>Save in the case of an order made where work is urgently necessary, the order must provide sufficient time within which to appeal.</p>	Accept
24	We recommend that 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.	Accept
Chapter 6: Prioritising Work on Higher Risk Tips		
25	We recommend that coal tip safety legislation should provide for the designation by the supervisory authority of tips that meet criteria prescribed by the Welsh Ministers by statutory instrument.	Intend to implement in modified form
26	We recommend that the criteria for designation should be developed by the Welsh Government in consultation with experts.	Intend to implement in modified form
27	<p>We recommend 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.</p> <hr/> <p>We recommend that the supervisory authority should have power to contract out this work or to provide in a tip agreement for the tip owner or occupier to carry out the work where it is appropriate to do so.</p>	Intend to implement in modified form
28	We recommend that provision for the carrying out of work on designated tips, whether by the supervisory authority or a tip owner or occupier, should be made by way of a tip agreement or order.	Intend to implement in modified form

Chapter 7: Definitions		
29	We recommend that, to the extent that liability under our recommended scheme rests with the owner, in economic terms, of land containing a coal tip, that owner should be regarded as the owner of the freehold estate or the owner of a leasehold estate of 21 or more years, save where the freehold or leasehold estate is in reversion on a leasehold estate of 21 or more years.	Accept
Chapter 8: Enforcement Powers, Offences and Appeals		
30	We recommend that 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 <ul style="list-style-type: none"> (1) inspecting, carrying out tests or sampling upon a known or suspected coal tip; (2) performing, supervising or inspecting works of maintenance or remedial operations or installing and monitoring instrumentation upon a coal tip; and (3) gaining access to a coal tip for the above purposes 	Accept
	We recommend that the power of entry should be exercisable upon 48 hours' written notice to the owner if identifiable and any other person known to be in occupation of the land or without notice in an emergency	
	We recommend that 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 for a warrant authorising entry by force where a person has prevented or is likely to prevent the exercise of the power of entry, and it is reasonable to use force in the exercise of that power; the warrant may require those entering pursuant to it to be accompanied by a constable.	
	We recommend that persons authorised to enter land under these provisions should have power to take with them necessary equipment, provided that notice includes a description of any heavy machinery to be taken onto the land.	
	We recommend that obstruction of any authorised person or of an inspection, test or works should be a summary offence.	
31	We recommend that failure, without reasonable excuse, to comply with a tip order should be a summary offence punishable by imprisonment for a term not exceeding the maximum penalty for a summary-only offence, or by a fine, or both.	Accept
	We recommend that the Welsh Government give consideration to the use of civil sanctions in respect of infringements of a tip maintenance order.	

Chapter 9: Financial Terms of Agreements and Others		
32	<p>We recommend that the provision that can be made in a tip agreement or order should include provision</p> <p>(1) for the making of payments by a person named in the agreement or order;</p> <p>(2) for the making of payments to a person named in the agreement or order;</p> <p>(3) for the sale of any materials recovered from a coal tip;</p> <p>(4) for the payment of the proceeds of sale of such materials to a person named in the agreement or order; and</p> <p>(5) for the payment of compensation by a person named in the agreement or order to another person named in the agreement or order.</p>	Accept
33	We recommend that principles governing the allocation of financial responsibility for tip safety work between persons or entities in the public and private sectors should be laid down by the Welsh Ministers by statutory instrument.	Accept
Chapter 10: Specialist Skills		
34	We recommend that the Welsh Government enters into discussions with academic institutions and professional and industry bodies in the field of tip safety work with a view to securing compilation of a register of professionals competent to undertake tip safety work	Accept
Chapter 11: Tip Safety and Environmental Legislation		
35	We recommend that the Welsh Ministers should have power to give directions to the supervisory authority regarding actions to be taken in response to a coal tip emergency.	Further work required
	We recommend that the power be subject to a requirement, where possible, to consult the supervisory authority and other relevant authorities as to the terms of such directions.	
	We recommend that the Welsh Government give consideration to the desirability of providing, in the legislation creating the power or in environmental and planning legislation, an exemption from any requirement to seek advance consent under planning or environmental legislation. Any such exemption should be subject to a duty to seek required consents retrospectively.	
36	We recommend that the Environmental Permitting (England and Wales) Regulations 2016 be amended to define an emergency in the context of tip material.	Further work required