

Julie James AS/MS
Y Gweinidog Newid Hinsawdd
Minister for Climate Change



Llywodraeth Cymru
Welsh Government

The Right Honourable Lord Justice Green
Chair
Law Commission
1st Floor Tower
52 Queen Anne's Gate
London
SW1H 9AG

Nicholas.Green@lawcommission.gov.uk

March 2023

Dear Nicholas

DETAILED RESPONSE TO THE REPORT ON REGULATING COAL TIP SAFETY IN WALES

In September 2022, I issued an interim response to your report, *Regulating Coal Tip Safety in Wales* ("the report"). Our response focussed on the key themes within the report and our proposed approach to build on the Law Commission's recommendations.

This letter is the Welsh Government's detailed response to the report, issued in accordance with the Protocol between the Law Commission and the Welsh Ministers (July 2015).

I am grateful to you and to the Law Commission for its thorough and seminal review on this topic.

The Law Commission report clearly laid out the issues and shortcomings with the existing regime, and the importance of introducing a modern regulatory framework for disused tips. An importance underlined by the high-profile landslide at Tylorstown in 2020, and the growing impact of climate change and associated risks.

The Welsh Government has committed to bringing forward primary legislation during this Senedd term as part of the First Minister's Coal Tip Safety Task Force Programme. This will build on the legislative proposals set out in our White Paper¹ last year, which were

¹ Coal Tip Safety (Wales) White Paper: A new regulatory framework for disused coal tips in Wales (2022): <https://gov.wales/sites/default/files/consultations/2022-05/white-paper-on-coal-tip-safety-consultation.pdf>

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1NA

Gohebiaeth.Julie.James@llyw.cymru
Correspondence.Julie.James@gov.Wales

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.

underpinned by the Law Commission's findings. The White Paper consultation responses² have allowed us to refine our approach.

As part of the Task Force, we have worked with a range of partners, including the Coal Authority, local authorities, and Natural Resources Wales. Our work with the Coal Authority includes undertaking inspections of the higher-rated tips in Wales and the trialling of elements of the proposed regime in real-world situations. This has helped to refine our policy position further. This is particularly true of the more technical areas, such as hazard assessments, where the Law Commission indicated further work would be required.

Overview of our response

The Welsh Government's position on each of the 36 recommendations, as set out in the Law Commission's report, is provided in Annex 1 and summarised as a table in Annex 2. We have discussed our responses to the recommendations with your officials.

The rationale for our responses to the recommendations are categorised into the three outcomes set out in the protocol – accept, intend to implement in modified form, and reject. Where I have indicated our position as 'intend to implement in modified form', whilst we mostly agree with the principle of the recommendation, there may be aspects we will seek to vary to reflect the Welsh Government's policy position. This includes pursuing an alternative approach to addressing the issue raised.

Our overall responses are as follows:

- Accept – 50% (18 recommendations)
- Intend to implement in modified form – 33% (12 recommendations)
- Reject – 8% (3 recommendations)

In addition, there are three recommendations (8%) where we have identified a need for additional supporting evidence to inform a future decision on whether and how to take forward the recommendations.

A more detailed explanation, including rationale where we do not agree with a recommendation, is provided in Annex 1. It is worth noting that in some areas we have necessarily adapted the policy approach because of the inclusion of non-coal tips into the regime – a change the Law Commission's report anticipated. In most of these areas, though the policy may vary from the specific recommendation, the underlying intention is preserved.

Summary of proposed approach to a new disused tip regime

In order to provide the policy context for the detailed response, I will outline our overall approach to assessment, categorisation, management and maintenance. Some elements have evolved since my interim letter partly in response to our consultation.

² Coal Tip Safety (Wales) White Paper: Consultation – summary of response
https://www.gov.wales/sites/default/files/consultations/2022-11/white-paper-on-coal-tip-safety-summary_0.pdf

Diagram 1 shows the main steps in the new regime once a tip is added to the asset register, followed by an explanation of each step.

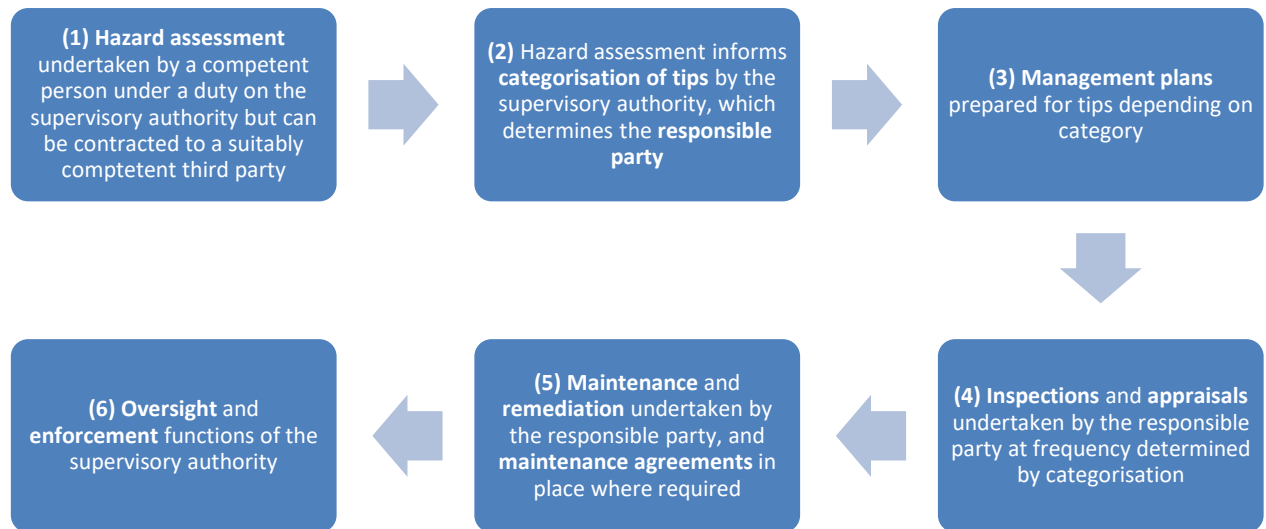


Diagram 1: summary of proposals.

- (1) Once a tip is added to the asset register the supervisory authority will be under a duty, within a defined timeframe, to undertake a **hazard assessment**. This is similar to the initial inspection and risk assessment in the Law Commission's report.

A hazard assessment will be a site-specific catalogue of all significant hazards at a tip location with an assessment of their hazard potential using a standardised matrices approach. This may be contracted out to a competent third party. Hazards will be assessed on their potential to cause injury or harm to certain receptor groups such as people/communities, property, infrastructure, and the environment.

- (2) The hazard assessment will then inform the **categorisation of a tip**. The supervisory authority will be required to assign each tip a category. The categories available to the supervisory authority are 1 to 5. These range from 1 – requiring an intensive level of oversight and management, to 5 – requiring minimal oversight and management. This approach differs from the report's proposals for the 'designation' of higher risk tips but maintains its underlying intention.

The category assigned will determine the **responsible party** for that tip (see Table 1), and the management regime applicable to it. The supervisory authority will have the power to reassign a tip to itself, should the circumstances require it. Further provisions will also allow for interconnected clusters of tips to be managed in a sensible, interconnected way; an issue which was raised in the Law Commission's report.

- (3) The supervisory authority will be under a duty to make arrangements for **management plans** to be prepared for category 1 and 2 tips. Plans may also be prepared for lower category tips should the responsible party for these tips wish to do so.

This differs from both the Law Commission's recommendations and the proposals outlined in the Welsh Government's White Paper in not requiring management plans for lower category tips. This approach is a proportionate one, based on the tips having been categorised as requiring a lower level of oversight and management, and the updated duties relating to inspections and appraisals being sufficient in achieving that.

The management plans will vary depending on the category and individual characteristics of each tip. They will include, at minimum, details of the tip; schedules of inspections, appraisals and additional specialist inspections required; and a proactive programme of maintenance and remediation works.

- (4) To reflect the need for a proportionate approach to monitoring the tips, two approaches have been defined:
- **Inspections** – a ‘reduced-technical’ inspection where a standard pro forma is used to report the condition and performance of key feature types at the site; and
 - **Appraisals** – a detailed, comprehensive technical appraisal, including site inspection. This will provide a detailed catalogue of all tip features, their condition and general remarks on the site. Recommendations are made for maintenance works, where applicable.

The responsible party will be under a duty to make arrangements to inspect and appraise tips in accordance with their category.

The proposed frequencies of both inspection and appraisal are subject to on-going discussions with technical experts and refinement in response to the work of the taskforce and have evolved since the White Paper was published.

Category	Responsible Party ³	Frequency	
		Inspection	Appraisal
1	Supervisory Authority	6 months	2 years
2	Local Authorities for tips in their estate and privately owned tips	9 months	3 years
3	Owners	18 months	6 years
4	Owners	30 months	N/A ⁴
5	Owners	Exempt	Exempt

Table 1: tip categories, responsible parties, and inspection/appraisal frequency

- (5) As part of the regime, the supervisory authority, and in certain circumstances local authorities, will be able to enter into **maintenance agreements** with tip owners. Maintenance agreements will provide a pro-active approach to prevent tip safety problems developing. They will allow responsible parties to understand what is expected of *them* in helping to ensure coal tip safety. They may clarify maintenance works required of the responsible party; inspection schedules for the responsible party; maintenance requirements that the supervisory authority or local authority will make arrangements for; and agree access rights.

Responsible parties will be under a duty to make arrangements to **maintain** and **remediate** their tips. The works necessary to be carried out may be identified in a management plan, a maintenance agreement, an inspection or appraisal report, or as a result of an incident, for example a slip.

- (6) The supervisory authority will oversee compliance with and consistent delivery of the regime both through the asset register, including the outcomes of hazard assessments, inspections and appraisals added to it, and by undertaking spot checks. These will be

³ The Coal Authority and Natural Resources Wales will be the responsible party for all tips they own.

⁴ Appraisal is triggered if significant change is identified from an inspection report

done by agreement where possible, but the supervisory authority will have powers of entry, including to assess compliance.

The supervisory authority, and in certain circumstances local authorities, will also have enforcement powers. This is in line with the Law Commission's recommendations.

Implementation

This is a complex area which will establish a world-first regime for managing disused tips and could ultimately cover more than 20,000 spoil tips across Wales. However, I remain committed to introducing a Bill to Senedd Cymru during the current Senedd term. If passed by the Senedd, and having secured Royal Assent, work will begin immediately to establish a new supervisory authority and deliver a regime able to oversee tip safety in Wales.

I wish to reiterate my thanks to the Law Commission for its valuable report, its ongoing support and assistance in delivering this important policy area, and the very positive and productive relationship the Welsh Government and Law Commission enjoy.

Yours sincerely

Julie James AS/MS
Y Gweinidog Newid Hinsawdd
Minister for Climate Change