

Coal Tip Safety in Wales Consultation Analysis

INTRODUCTION TO THE CONSULTATION ANALYSIS

- 1.1 This is an introduction to the consultation analysis document which accompanies the publication of our report on Regulating Coal Tip Safety in Wales. In June 2021, we published a consultation paper on Regulating Coal Tip Safety in Wales.¹ The report sets out our recommendations for reform. This consultation analysis is a working document and is intended to provide a more detailed view of how we analysed the responses to our consultation paper.

THE CONSULTATION PROCESS

- 1.2 Public consultation began on 9 June 2021 and continued until 10 September 2021. We are grateful to everyone who participated in the consultation process, both for attending consultation events and submitting written responses.

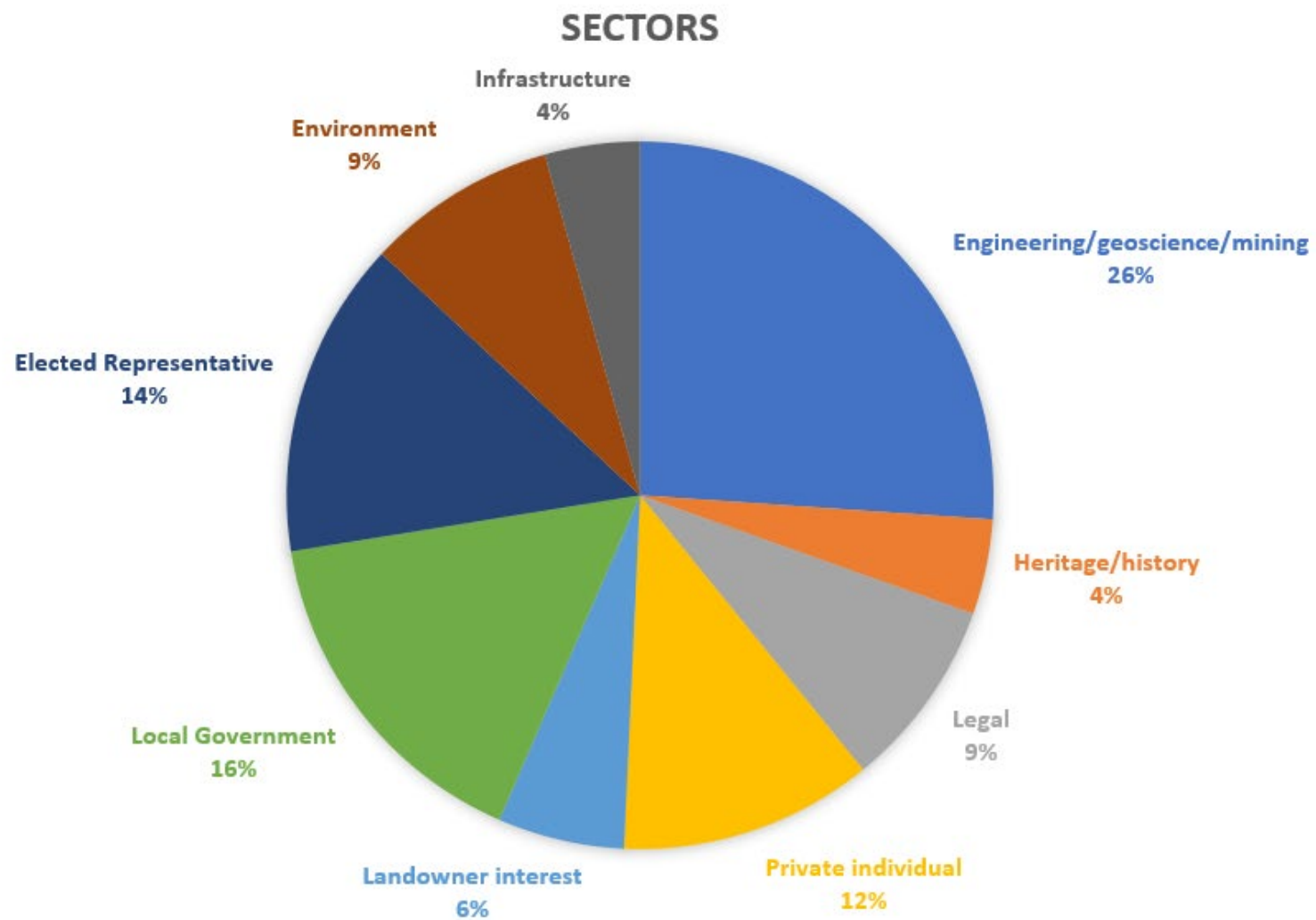
Consultation events

- 1.3 Law Commission staff attended 18 consultation events during the consultation period. Appendix 1 to the report lists the consultation events and meetings.

Written responses

- 1.4 We received a total of 69 responses following the publication of the consultation paper. A list of respondents can be found at appendix 2 to the report and you can find all of the responses, in the language and format they were submitted, by following a link to them on the project page on the Law Commission website. The pie chart below shows the variety of respondents:

¹ Regulating Coal Tip Safety in Wales (2021) Law Commission Consultation Paper No 255.



HOW TO READ THE CONSULTATION ANALYSIS DOCUMENT

- 1.5 The consultation analysis document consists of tables containing the responses to each consultation question. The consultees responding to each consultation question (“respondents”) are listed in a column on the left-hand side of the table.
- 1.6 Respondents submitted their responses using a variety of mediums, including Citizen Space, word response form, and email.
- 1.7 In order to create the tables set out below, we had to break down the responses submitted to us via email and assign them to individual consultation questions.
- 1.8 Some of our consultation questions asked respondents to register a view (yes/no/other) and to provide text to expand on this view. Where respondents did not register a view, but simply provided text, we selected a view based on the text. These views are presented in the second column of relevant consultation questions.
- 1.9 In those cases where the respondent did not categorise their view, the text sometimes expressed a view very clearly (for example, we agree with the proposal). This permitted us to register a straightforward view. In certain cases, however, we had to analyse the text further to uncover the respondent’s view. These views are presented in the second column as “treated as” yes, no or other. “Treated as other” was sometimes chosen if the respondent’s view was balanced, or it was difficult to determine the respondent’s view. In a very small minority of cases, respondents registered a view but the text they provided contradicted this. In such cases, we amended the views accordingly. These responses are also presented as “treated as” yes, no or other.
- 1.10 Once we began the more detailed analysis, it was sometimes necessary to copy responses into more than one consultation question as they raised points relevant to both questions. This is indicated on the table as “*Also copied to CQ[X]*”. In some cases, we decided to move responses from one consultation question to another as the substance of the response was better suited to an alternative question. Where this has been done, the response is marked “*Moved to CQ[X]*” and “*From CQ[Y]*”.

STATISTICS

1.11 Confidential consultation responses are not included in the tables below but are included in our statistics and in any numbers referred to at the top of the table. Therefore, the statistics do not always match up exactly with the numbers that would be indicated by a manual count of responses in each table.

CQ1: We provisionally propose that the existing regulatory regime for tips associated with operational mines should not be altered. Do you agree?

1.12 88% yes, 9% no and 2% other.

CQ3: 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?

1.13 78% yes, 17% no and 5% other.

CQ4: 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?

1.14 Yes: 76%, No: 17%, Other: 7%.

CQ5: 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.

1.15 Yes: 91%, No: 6%, Other: 4%.

CQ6: We seek views on whether the supervisory authority should be an existing body or a newly created body.

(1) New body: 20 (43%)

(2) Existing body: 18 (38%)

(3) Other: 9 (19%)

1.16 Of those who said existing body:

- (1) Coal Authority: 14 (78%)
- (2) NRW: 1 (6%)
- (3) HSE: 1 (6%)

CQ7: 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?

- 1.17 Central public body: 26 (57%)
- 1.18 Other: 14 (31%)
- 1.19 Corporate joint committee: 2 (4%)
- 1.20 Natural Resources Wales: 1 (2%)
- 1.21 UK wide body: 1 (2%)
- 1.22 Coal Authority: 1 (2%)

CQ8: 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?

- 1.23 Yes: 81%, No: 8%, Other: 10%.

CQ9: We provisionally propose that a central tip register should be compiled and maintained. Do you agree?

- 1.24 Yes: 93%, No: 2%, Other: 5%.

CQ10: We provisionally propose that the contents of the tip register should be prescribed by the Welsh Ministers by statutory instrument. Do you agree?

- 1.25 Yes: 84%, No: 11%, Other: 4%.

CQ11: 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?

1.26 Yes: 83%, No: 10%, Other: 6%.

CQ12: 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.

1.27 Yes or broadly agree: 78%, No: 10%, Other: 12%.

CQ13: 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?

1.28 Should be publicly accessible: 81%, Should not be publicly accessible: 10%, Other: 10%.

CQ14: 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?

1.29 Yes: 90%, No: 2%, Other: 8%.

CQ15: 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?

1.30 Yes: 84%, No: 6%, Other: 10%.

CQ16: 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?

1.31 Yes: 92%, No: 4%, Other: 4%.

CQ17: Should coal tip classification also have regard to the risk the tip presents of pollution, combustion or flooding?

1.32 Yes: 90%, No: 4%, Other: 6%.

CQ18: 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?

1.33 Yes: 87%, No: 7%, Other: 7%.

CQ19: 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.

1.34 Agreed to all: 24 (52%)

1.35 Agreed to some: 7 (15%)

1.36 Disagreed with all: 2 (4%)

1.37 Other: 13 (28%)

CQ20: 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?

1.38 Yes: 81%, No: 17%, Other: 2%.

CQ21: 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?

1.39 Yes: 80%, No: 6%, Other: 14%.

CQ22: 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?

1.40 Yes: 77%, No: 11%, Other: 13%.

CQ23: Do you agree that a duty of inspection should fall to an authority to ensure compliance with the tip maintenance agreement?

1.41 Yes: 85%, No: 8%, Other: 6%.

CQ24: 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.

The authority must be satisfied that the measures proposed are proportionate to the objective to be achieved.

The order must either require the owner to carry out the operations or provide for the authority to carry them out.

The owner should have a right of appeal against the imposition of a maintenance order.

Save in the case of an emergency order, the order must provide sufficient time within which to appeal.

Do you agree?

1.42 Yes: 80%, No: 11%, Other: 9%.

CQ25: Do you think that responsibility for tip maintenance agreements for lower risk tips should fall to the supervisory authority or lie with local authorities? 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?

1.43 Supervisory Authority: 82%, Local Authorities: 7%, Other: 11%.

CQ26: 11.31 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?

1.44 Yes: 82%, No: 5%, Other: 14%.

CQ27: We provisionally propose that failure, without reasonable excuse, to comply with a tip maintenance order should be a summary offence. Do you agree?

1.45 Yes: 90%, No: 5%, Other: 5%.

CQ28: 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?

1.46 Yes: 68%, No: 27%, Other: 5%.

CQ29: 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?

1.47 (1) 72% yes, 16% No, 12% Other.

1.48 (2) 61% Yes, 17% No, 22% Other.

1.49 (3) 64% Yes, 20% No, 16% Other.

1.50 (4) 57% Yes, 19% No, 24% Other.

CQ30: 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?

1.51 Yes: 86%, No: 7%, Other: 7%.

CQ31: 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?

1.52 Yes: 78%, No: 12%, Other: 10%.

CQ32: 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?

1.53 Yes: 72%, No: 25%, Other: 3%.

CQ34: 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?

1.54 Yes: 70%, No 9%, Other: 21%.

CONSULTATION QUESTION 1

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

Consultation Question 1 asked respondents whether they agreed with our provisional proposal (yes/no/other). Some consultees also provided text to further explain their view. This text has been added to the table. Some respondents did not directly respond to Consultation Question 1, either because they did not use the Citizen Space platform or because they tailored their response to their particular experience.

Respondent	Response to CQ 1 (Yes/No/Other)	Text
Of those who responded Yes 38 No 4 Other 1		
Blaenau Gwent CBC	Yes	
Professor Bob Lee	Yes	<p>but there are a couple of reasons to think carefully about this, namely:</p> <ol style="list-style-type: none"> 1. On the back of moves to net zero carbon, certain metals are in high demand and there is likely to be an increase in metallic mineral extraction. Quite how much of this activity is likely to be located in Wales is a matter better answered by a geologist but silver, copper, cobalt and manganese production might be possible. 2. Alongside this we know that safeguards such as financial provision for aftercare

		<p>have failed over time as the Consultation Paper itself illustrates.</p> <p>On the whole, however, I believe that such failures of regulation have been to a large degree operational and that in principle, if properly administered, the requirements of planning law, environmental permitting (including waste law) and mining law provisions ought to be adequate to make long term provision for mining waste. I can see also pragmatic advantages in confining the reform to the historic problems created by mines that are no longer operational.</p>
Bob Leeming	Yes	
Bridgend CBC	Agrees with WLGA	
Caerphilly	Yes	
Chris Seddon	Yes	Caveat – this lies outside my area of expertise
CLA Cymru - Country Land and Business Association	Yes	Agree, as operational mining activity is already subject to regulations, this Consultation as I see it relates to legacy issues.
Coal Action Network	No	We disagree that concerns relating to the closure and remediation of operational coal mines relate purely to practice rather than regulatory framework. In the example cited within this consultation, Celtic Energy's sale of the land and liabilities of Margam, East Pit, and two other mines to a shell company was deemed legal

		<p>within the current regulatory framework, but dishonest (East Pit is now being partly restored which was secured by the LPA issuing a new mining licence to Celtic Energy in return for a restoration plan that Celtic Energy later downgraded to the current plan). It is not possible to exclude the possibility, therefore, that operational coal mines will do likewise depending on the specific conditions around how and when the restoration bond is paid. Thus, parts of any future regulatory regime should apply to currently operational coal mines where this may prevent actions not limited to this example, that compromise the financial resources required to make safe and restore currently operational coal mines and associated coal tips.</p>
Professor David Petley	Yes	The current regulatory regime for operational mines is fit for purpose.
Graham Hathaway	Yes	
Howard Siddle	Yes	The regulatory regime for tips associated with operational mines need not be altered as it is provided for by existing legislation summarised in Chapter 4 of the Consultation Paper (CP).
Huw Williams	Yes	
ICE Wales Cymru	Yes	Agreed, legislation for tips associated with operational mines appears adequate. However, such tips should be included on the tip register

		categorised as 'active' with links to key data for ease of subsequent inclusion on the register as a 'disused tip'.
Jacobs UK Ltd (formerly Halcrow)	Yes	Agreed, covered in existing legislation
Jane Iwanicki	Yes	There is an existing robust and modern system in place for the regulation of tips associated with operational mines, which is further supported and enforced by the Town and Country Planning System and environmental/pollution prevention and control legislation. A similarly robust system will have applied to mines/tips closing in recent years. This consultation address the legacy of old tips - e.g. pre-dating the implementation of good practices that emerged as a consequence of the Mines and Quarries (Tips) Act 1969 and subsequent health and safety legislation.
Joel James MS	Yes	I understand that the regulation for operational mines has made provision for tips and this is working appropriately and necessary provision is made to inspect and make safe any tips.
Dr John Perry	Yes	The regime is already detailed for what is an out of date circumstance.
Cllr Julie Edwards	Yes	They are no longer safe and need regular monitoring
Keith Bush	Yes	Ydw. Nid oes dystiolaeth nad yw'r drefn bresennol mewn perthynas a thomennydd sy'n gysylltiedig a

		mwyngloddiau gweithredol yn effeithiol. Fe fyddai hefyd yn dasg gymhleth i sicrhau cysondeb rhwng trefn newydd ar gyfer tomennydd felly a'r fframwaith gyfreithiol sy'n ymwneud a diogelwch mwyngloddiau gweithredol yn gyffredinol.
Kim Moreton	Yes	The existing regime functions adequately - leaving aside wider issues of operational funding and adequate closure funds.
Lee Jones	Yes	Focus should be on historic tips. There is sufficient legislation currently re: management of tips associated with operational mines.
Merthyr Tydfil CBC	Yes	
Mineral Products Association	Yes	
Natural Resources Wales	Yes	We recognise that the existing legislation is disjointed and often out of date with today's mining sector in Wales. Aligning legislation to the current situation is well overdue.
Neath Port Talbot CBC	Yes	
Network Rail	Other	The observations of others such as the Chief Inspector of Mines at the HSE should be sought in respect of this question. If the consultation and proposals are to relate only to legacy coal tips it may be necessary to revise the title of future documents implementing the proposals to reflect this. Network Rail has no reason to question the appropriateness of legislation to control tipping at

		operational mines in Wales but notes that the legal controls being in place is one thing. Network Rail is unable to comment on the assurance process for those controls.
Ove Arup and Partners Ltd	Yes	
Owen Jordan	No	The regime is fifty years out of date. There is a pressing need on environmental grounds to cap and line all tipped carbonaceous material, to prevent it being released into the environment. The best way to do this is to put it back into the hole it came out of, and that solves the 'tip' safety issue, and many others, too.
Paul Connolly	Yes	
Dr Peter Brabham	Yes	Existing mines should operate under current regulations.
Philip Thomas	Yes	
Rhondda Cynon Taf CBC	Yes	Members are supportive of this proposal
Richard Arnold	Yes	
Stephen Smith	Yes	
Steve Harford	No	The experience of managing and monitoring old spoil tips could provide important learning for the management of an active tip. Regulations could allow for the experience of the new independent

		body to feed advice and guidance into regulations covering active tips.
Steve Jones/Pembrokeshire Council	Yes	But only if the current permissions for the tip operation conform to the final outcomes of this piece of work.
Sue Jordan	No	Current provision is demonstrably unsafe. it is left to local authorities, who have proved incompetent in this respect. Please contact me for further information.
The Law Society of England and Wales	Yes	We agree that the existing regulatory regime for tips associated with operational mines should not be altered.
Torfaen response	Agrees with WLGA	
Vikki Howells MS	Yes	
WLGA	Yes	
Wrexham CBC	Yes	
Wyn Williams	Yes	I find the reasoning in support of this recommendation persuasive. I have nothing to add.

CONSULTATION QUESTION 2

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.

Consultation Question 2 asked respondents for their views. Some respondents did not directly respond to Consultation Question 2, either because they did not use the Citizen Space platform or because they tailored their response to their particular experience.

Respondent	Response to CQ 2
ALGAO	Considerable work on site terminology has been undertaken by the various organisations responsible for maintaining archaeological records in the UK to ensure consistency. These include terms for individual industrial feature types and overarching terms for complexes or group sites. Whilst this work has not been done with a view to informing legislation, it may be possible to utilise an existing glossary of bilingual terms and definitions. The National Monuments Record of Wales and regional HER officers may be able to advise on the suitability of these terms for use in the new framework.
Blaenau Gwent CBC	In order to give clarity, it will be helpful to make express reference to what is covered by the term 'waste from coal mining'.
Bob Leeming	Overburden dumps spoil heaps and lagoons, yes if abandoned. Backfill piles I equate to overburden dumps, so same answer. Stock piles usually not waste, so will be associated with a working mine / quarry so are covered by current mines / quarries legislation.
Professor Bob Lee	Yes: This is as much a technical as a legal question and its answer may depend on the ambitions of the legislation to guard against risks beyond catastrophic failure of tips and protect the wider environment in addition to human health and safety. Broadly, the definition of a 'tip' in the 2014 Regulations seems to be adequate. Arguably the statement that the definition is not limited to particular sorts of infrastructure, as listed above, is not necessary though actually the effect of this is to put aside any arguments that overburden dumps, backfill, spoil heaps, stock piles and lagoons are somehow excluded and given (e.g.) the

	water impacts of backfilling, spoil heap run-off and lagoons, in the interests of the wider environment, it may make sense to retain this formulation.
Bridgend CBC	Agrees with WLGA
British Geological Survey	Yes, the better the clarity around mine waste types the greater the potential to assess the implications for stability, e.g. by guiding the hydrology in the waste.
Caerphilly	Tips are known under a number of guises. It is therefore appropriate that coal mining waste should include such references detailed.
Chris Seddon	The definition of a coal tip should be robust and unambiguous. In my view, expressly referring to the types of waste is useful in achieving this.
CLA Cymru - Country Land and Business Association	<p>Looking at this logically and the reasons behind this consultation, notwithstanding Question 1, this is a legacy issue of Coal Mining Activity in Wales. Any tip relating to past coal mining activity be it overburden, colliery waste or other stockpiles should at least be subjected to inspection to assure its safety.</p> <p>Lagoons however are different and present their own issues, I am of the opinion they should come under either existing reservoir regulation or their own bespoke set of rules. I am not sure how many defunct lagoons are currently in existence?</p>
Coal Action Network	<p>We read with interest the information within the consultation paper regarding the context of live and abandoned coal tips. Our response regards scope being limited to coal tips, noting that tips can be defined to include refuse in “a liquid state” and to overburden dumps, backfill, spoil heaps, stock piles and lagoons. There are a number of abandoned unrestored, or partially restored, opencast coal mines in Wales - Margam and East Pit being an example of partially restored opencast coal mines. Exposed craters are a safety hazard in ways that are not captured under that definition of coal tips. For example, exposed coal seams can cause coal dust to be carried in the wind and the steep sides can also be a safety hazard for animals and people with signage and poor fencing an ineffective deterrence - but that wouldn't fit within this definition of coal tips.</p>

	Therefore, we believe parts of any future regulation relating to the safety of abandoned coal tips in Wales must be expanded to include other aspects of abandoned coal mines as well, not currently captured within the definition of coal tips mentioned above.
Graham Hathaway	Those things that pertain to the extraction of minerals such as waste from coal mining and the those products and extenuations arising from it should be associated with remedial action and attention.
Howard Siddle	<p>The definition is potentially complicated but needs to be robust to avoid any possible claim by an owner that a tip is outside the definition used in the legislation. The CP throughout refers to “disused coal tips” but the legislation is about tips of waste material not coal. Best to get that right!</p> <p>Despite its title, the proposed new legislation is aimed at safety of disused waste tips from abandoned coal mines. However, it needs to be recognised that tips of indistinguishable form, character and apparent visible composition, composed of predominantly shaley material were formed from widespread mining of ironstone nodules for early ironworks and lesser workings of seatearth for brickmaking. These tips are widespread along the northern part of the south Wales coalfield (especially in areas like Blaenavon and Merthyr and Aberdare) where they are intermingled with colliery waste tips. To prove unequivocally the source of spoil in these tips is coal mining can require extensive research. Therefore, I think it best if the proposed new legislation provides for tips including waste from all these sources, because they are visually indistinguishable from tips from just coal mining, to counter a potential claim from a landowner that their tip is not covered by the legislation and because these tips have the same safety issues. My suggested definition of a disused tip for the purpose of the new legislation would be: “ a deposit formed by the above-ground disposal of waste materials derived from the extraction of coal and associated minerals including ironstone and seatearth but excluding sandstone”. Note the use of terms “extraction” so as to include patchworkings and “excluding sandstone” to exclude Pennant sandstone quarries. I would be interested to learn the remit given by the Wales Government Task Force (WGTF) to The Coal Authority (TCA) in their quest to identify all “coal tips” in Wales as this may unfortunately dictate the definition adopted in any proposed legislation, particularly if the definition has been prejudged and omits the gathering of information that an alternative definition requires. However, if the definition is not correctly framed, I foresee unhelpful disputes with tip owners.</p>

Huw Williams	<p>I note that the accomopanying text seeks guidance from the mining indutry and relevant brnaches of the engineering profession.</p> <p>In terms of a definition though, is the concern here the possibility that mining waste may have been re-used for an engineering purpose and might thus fall outside a definition of warte? If so then the definition should focus on whether the material was discarded following the extraction of coal any other primary mineral, regardless of whether it is subsequently used for any other engineering purpose.</p>
ICE Wales Cymru	<p>A comprehensive definition should be developed including coal mining waste originating from all sources. Inspection/management/maintenance regimes will vary site by site and with due cognisance of how the tip was formed and the nature of the material therein be that run-of-mine waste, opencast overburden, washery tailings, lagoon deposits or other source coal waste material.</p>
Jacobs UK Ltd (formerly Halcrow)	<p>For completeness it would be preferable to have an expanded definition with a statement along the lines of " including overburden dumps, backfill, spoil heaps and lagoons".</p> <p>It would also be beneficial to extend the definition to define the 'tip' to include waste from mining as it is not necessarily just coal mining. Many of the tips in South Wales relate to ironstone mining or a combination of coal and ironstone.</p>
Jane Iwanicki	<p>The definition of what is captured by any new legislation needs careful consideration - specific references may result in a definition that is not exhaustive or inadvertently include features that are not potential liabilities. Historically "coal waste" has been used as a readily available construction material e.g. to make road embankments and mineral railway beds. Also "coal mining" often included the extraction of other commercial minerals (e.g. fireclay and brick clay) that would have contributed to the spoil.</p> <p>The prime objective of the proposals is to deal with old coal tips that pose a risk or hazard. A dedicated programme of works/funding managed by a dedicated body and tackling these problem sites might be a better focus than rewriting regulations that apply across England and Wales. Mining is a national (and multi-national) industry and changing regulations in part of the UK could be confusing for the mining sector, landowners and regulators.</p>

Joel James MS	I believe that it is important to make safe all waste associated with coal mining. If the definition of a coal tips is broadened so that it incorporates express reference to overburden dumps, back fills, spoil heaps, stock piles and lagoons and this ensures better standards of safety then it should be included.
Dr John Perry	I would prefer 'disused coal mine workings'. It does need to include lagoons but also with climate change old workings are flooding and causing community damage. Lagoons are extremely dangerous as they are prone to failure and release large quantities of contaminated water and silt. Any heap of non-engineered fill is a potential problem. So a much broader definition would be preferred,
Cllr Julie Edwards	Clear explanations would be of benefit to everyone. Common language allows people to understand better.
Keith Bush	Nid oes tystiolaeth fod y diffiniad presennol o "tip" yn adran 11(3A) o Ddeddf (Tomennydd) Mwyngloddiau a Chwareli 1969 (a gafwyd, yn wreiddiol, yn adran 2(1) o'r Ddeddf cyn i Ran 1 ohoni gael ei diddymu) yn annigonol. Mae'n wir fod y diffiniad a geir yn rheoliad 2(1) o Reoliadau Mwyngloddiau 2014 wedi'i eirio'n wahanol, gan gyfeirio'n benodol at nifer o fathau penodol o wastraff, ond nid yw'n glir bod hynny'n adlewyrchu unrhyw wahaniaeth o sylwedd. Fodd bynnag, pe na bai unrhyw wahaniaeth o sylwedd rhwng y mathau o wastraff a restrir yn Rheoliadau 2014 a'r diffiniad cyffredinol yn Neddf 1969 (mater sy'n gofyn am gyngor technegol) mae yna ddadl amlwg dros fabwysiadu, ar gyfer deddfwriaeth newydd, yr un diffiniad ag sydd yn Rheoliadau 2014. Fel mae pethau'n sefyll ar hyn o bryd, gall ymddangos bod y mathau o domen sy'n cael eu rheoleiddio pan fydd mwynglawdd yn weithredol newid pan fydd y fwynglawdd yn peidio a gweithredu, ac onibai fod yr argraff honno'n un fwriadol dylid cael gwared ohoni.
Kim Moreton	Overburden dumps, backfill, spoil heaps, stock piles and lagoons are all waste-bearing structures, and will all require maintenance or remediation. At this point in the life of most former mineral properties each of these features represents potential risk; and the review of coal tip safety represents a once in a generation opportunity to bring the whole 'family' of legacy structures under one umbrella .
Lee Jones	I think it should just refer to "waste from coal mining" whereby the waste is deposited upon land. However should the definition of "mining" also be determined? For example, would the definition include mine exploration and resultant spoil generated from this activity, if following exploration, it was deemed non viable for coal production?

Merthyr Tydfil	Reference to all of the above should be included within the definition of a disused coal tip.
Mineral Products Association	It may be more appropriate to refer to the Coal Mining Tips as Coal Mining Waste Facilities and draw parallels to the Mining Waste Directive definition, albeit, it is important that the two regimes remain separate. The MWD definition of a mining waste facility is 'any area designated for the accumulation or deposit of extractive waste'. An appropriate definition could be 'any area designated for the accumulation or deposit of coal mine extractive waste'
Monmouthshire CC	The inclusion of the wider features in the definition may help to ensure such features are considered in future inspection and maintenance plans.
Natural Resources Wales	<p>We believe "Disused Coal Tip" is a misleading term. Structures present from legacy mining activity include many structures that could pose a hazard, including overburden, spoil heaps and lagoons. All disused features could pose a risk and should be managed accordingly. There is also a need to cover other mining and quarrying assets. This includes the potential for overlap with other legislation such as the contaminated land Regulations and this needs to be addressed.</p> <p>There are some issues which may also need to be considered, particularly for developed urban areas. These may be better suited to being assessed under the Contaminated Land Regulations, so some thought and investigation may be needed ahead of developing a definition. By way of an example: Virgil St Sidings in Grangetown, Cardiff that covered an area exceeding a couple of hectares. Malcolm Evans the Chief EHO walked across it in his wellies in the early 1980's with a stick. When his stick caught fire, he realised something was awry. This led to a contaminated land investigation by WS Atkins circa 1983. It had a small cluster of 5 trial pits that assessed the calorific value. The fire was smothered, and the flat area developed for residential purposes. There will be dozens of areas like this in Wales and whilst still potentially an issue for spontaneous combustion there is negligible stability risk if foundations were suitable.</p> <p>Spoil tips/heaps or coal tips/heaps may be a reasonable grouping, perhaps with a spatial size or depth as the definition? This definition could incorporate mineral mining waste/spoil if extending to Non-Coal deposits.</p>
Neath Port Talbot CBC	In order to give clarity, it may be helpful to make express reference to what is covered by the term 'waste from coal mining' (e.g. a lagoon may not automatically be considered as such). Maybe introduce the possibility of introducing land raises or depressions associated with tips. NPT also have a number of quarry

	waste tips and the extent, if any, to which this new legislation may affect their management may need to be considered.
Network Rail	The definition should include express reference to all the component parts to which the legislation is to be applied.
Ove Arup and Partners Ltd	For completeness the definition should include reference to the different types of waste that a tip may incorporate, e.g. solid coal waste, shale and other natural soils / rocks present and also fines from washery plants, lagoons etc.
Owen Jordan	There is no need to go overboard on definitions - a simple 'catch-all' phrase to include all material removed from a mine, and all works associated with a mine.
Paul Connolly	It should be as prescriptive as possible to incorporate as many scenarios and types of tip as possible. This will help to clarify exactly what types of legacy tips are referred to in legislation and in turn who is responsible for their safety.
Dr Peter Brabham	I would prefer 'disused coal mine workings'. It does need to include lagoons but also with climate change old workings are flooding and causing community damage. Lagoons are extremely dangerous as they are prone to failure and release large quantities of contaminated water and silt. Any heap of non-engineered fill is a potential problem. So a much broader definition would be preferred,
Philip Thomas	It should very much include areas altered at any time, particularly during the 1970s, in order to alleviate any concerns of a disused coal tip; as this continues to affect an ongoing impact to local residents and the community. Including but not limited to; diverted watercourses, risk of combustion, any potential development nearby which could increase the burden (such as watercourses) on other natural or man-made ecosystem conduits.
Plaid Cymru Group, Neath Port Talbot	<p>Treated as relevant comment</p> <p>The report specifically refers to coal tips, but areas can also be affected by instability of underground working and quarries, often in proximity to the tips. Will these also be covered by the new legislation?</p>

	Cyfeiria'r adroddiad yn benodol at dipiau glo, ond mae gweithfeydd tanddaearol ansefydlog a chwarelu hefyd yn effeitho ardaloedd, yn aml yn agos iawn at tipiau. A fydd rhain hefyd o dan y ddeddfwriaeth newydd?
Rhondda Cynon Taf CBC	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.
Richard Arnold	<p>A disused coal tip is by its very presence :</p> <p>Waste from former Coal mining activities.</p> <p>Questionable original location and construction where operational convenience</p> <p>was prioritised over short, medium and long term impact on land scape, values and community safety and general well being.</p> <p>Known to be subject to long term degrading.</p> <p>And ultimately left to Local Councils, Primarily lacking in both resources and Specialisation. struggling in a post mining economy, to manage, monitor the</p> <p>inevitable 21st century evolving economic and ecological embarrassment.</p> <p>In respect of overburden dumps, backfill, spoil heaps, stock piles and lagoons in relation to disused mines and mining activity - yes</p>
Stephen Smith	Extending the definition to include 'overburden dumps, backfill, stock piles and lagoons (generally)' would not be appropriate in my view as these are covered by other regimes, principally the Quarries Regulations 1999. However, there is a case for clarifying the definition of 'waste from coal mining' – perhaps by reference to a 'mine' being an underground operation served by a shaft or adit.
Steve Harford	I think that the definition should be as broad as possible. In many locations the South Wales Coalfield will have small drift mines that could have worked Red Ash or Iron Ore in addition to coal. Although these are small in relation to many of the deep mine tips across South Wales, they could still pose a danger. Having a

	broad definition that includes these and the the other references referred too, will reduce the ability of landowners to avoid responsibility.
Steve Jones/Pembrokeshire Council	<p>Waste from mining. I have a real issue that this work is far too South Wales coal valleys centric.</p> <p>Unstable spoil from any form of quarrying or mining, including metal mines can be no less hazardous. Although metal mines in mid Wales have been subject of extensive treatment over recent years, the proposed legislation should be consistent.</p> <p>A Government minister would be severely criticised if an incident occurred outside the coalfield and the subsequent enquiry was told that this workstream was to concentrate solely on coal.</p>
Sue Jordan	Agree with extending provision
The Law Society of England and Wales	We agree with the proposal and consider that a satisfactory definition of a disused coal tip should include express reference to overburden dumps, backfill, spoil heaps, stock piles and lagoons to ensure the tip owners are subject to greater liability.
Tom St John	I believe the definition should include stockpiling of any geological products of the coal mining process. It may be helpful to sub-categorise where it is possible to differentiate the composition of the tip.
Torfaen response	Agrees with WLGA
Vikki Howells MS	Yes - it should express reference to overburden dumps etc.
WLGA	In order to give clarity, it may be helpful to make express reference to what is covered by the term 'waste from coal mining' (e.g. a lagoon may not automatically be considered as such). North Wales LAs have raised issues relating to slate mines and the extent, if any, to which this new legislation may affect their management.

Wrexham CBC	I think clarity on what is meant by a disused tip is needed and whether those other features are relevant to the legislation or not, the opinion of mining industry professionals could be sought as they will utilise these terms commonly and presumably could clearly distinguish the difference and thereby remove any ambiguity.
Wyn Williams	Given the history explained in the Consultation Paper of managing the risks associated with tips I consider that every effort should be made to make any definition as all-embracing as possible. Accordingly I would favour spelling out the descriptions of all the states of affairs which are to be regarded as constituting a disused coal tip.

CONSULTATION QUESTION 3

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?

Consultation Question 3 asked respondents whether they agreed with our provisional proposal (yes/no/other). Some consultees also provided text to further explain their view. This text has been added to the table. Some respondents did not directly respond to Consultation Question 3, either because they did not use the Citizen Space platform or because they tailored their response to their particular experience.

Respondent	Response to CQ 3 (Yes/No/Other)	Text
Of those who responded: Yes 32 No 7 Other 2		
Blaenau Gwent CBC	Yes	Sensible to separate the two sets of legislation
Bob Leeming	Yes	As above. Current provisions are quite adequate for working mines and quarries.
Bob Lee	Yes	I am reading this as proposing that operational mining/quarrying would continue to be regulated by the current law leaving the new legislation to address the issue of abandoned and disused facilities. Unless, on consultation, the regulatory authorities point to issues in the 1999 and 2014 legislation of which I am unaware, the problems largely emanate from the regime in Part 2 of the

		1969 Act and it seems sensible to direct efforts there.
Bridgend CBC	Agrees with WLGA	
Caerphilly	Yes	
CLA Cymru - Country Land and Business Association	Yes	I think the issues relating to legacy issues relating to coal mining are very different and a bespoke set of rules and regulations need to be adopted.
Cllr Julie Edwards	Other	If I've understood correctly then the section which states, 'if and only if there is, or there is reasonable ground for believing that there is likely to be, such a movement of the refuse which makes up the tip as to cause a significant increase in the area of land covered by the tip' is linked to tips believed to be likely to slip. However as in the case with the recent very large slip in Tylorstown then this is insufficient. All coal spoils/tips, whatever they are appropriately called need to be monitored and removed.
Dr John Perry	Yes	I think including quarries is a second step unless its not going to hold up coal tip legislation. Although coal tips are a small percentage by number of all tips in Wales they are the ones nearest communities. Quarry tips (the majority of tips) tend to be away from populated areas but not in all cases. So coal tips are the most critical at the moment.

Dr Peter Brabham	Yes	We are talking about historical tips here.
Graham Hathaway	Yes	If there is already existing prove-able legislation that can be operated without prejudice of being and remaining suitable and effective beyond new legislation then I agree.
Health and Safety Executive	Yes	
Howard Siddle	Yes	The proposed legislation is rightly concerned with disused tips and therefore any reference to active tips already regulated by other legislation is superfluous. The issues of concern of disused tips are different to those of active tips as was recognised by their different treatment in the M&Q (Tips) Act.
Huw Williams	Yes	
ICE Wales Cymru	Yes	As these Regulations apply to operational mines, opencast sites and tip washing operations they should not be included in the new legislation for disused tips (see also response to question 1 above)
Jacobs UK Ltd (formerly Halcrow)	Yes	Agree, legislation should not apply to tips associated with active mines/quarries.
Jane Iwanicki	Yes	See comments at question 1.
Joel James MS	Yes	I understand that the quarries regulations 1999 and the mines regulations 2014 apply to

		operational mines which incorporates necessary regulations for tip management.
Keith Bush	Yes	<p>Ydw. Fel yr awgrymwyd uchod, mae'r dasg o reoleiddio tomennydd sy'n gysylltiedig a mwyngloddiau gweithredol yn debyg o fod yn llawer mwy cymhleth.</p> <p>Hefyd, byddai ceisio deddfu ar gyfer tomennydd mwynfeydd gweithredol yn debyg o fod tu allan i gymhwysedd deddfwriaethol Senedd Cymru am y byddai'i ymwneud a "coal, including - deep and opencast coal mining" (Deddf Llywodraeth Cymru 2006 atodlen 7A paragraff 98) a "the subject-matter of Part 1 of the Health and Safety at Work Act 1974" (ibid paragraff 155).</p>
Kim Moreton	Yes	This distinction would enable the legacy structures to be dealt with under a different intervention process, possibly tailored to minimise business disruption for operational mineral sites.
Lee Jones	Yes	Focus should be on historic tips. There is sufficient legislation currently re: management of tips associated with operational mines.
Merthyr Tydil CBC	Yes	
Mineral Products Association	Yes	Yes, it is imperative that the two regimes remain separate and distinct.
Natural Resources Wales	Yes	Yes - It would be confusing if there were more than one piece of active legislation. The current

		legislation is adequate for operational mines and quarries but not adequate for disused mines and quarries. Any new legislation needs to define what a “disused” mine is and be clear that it only applies to that.
Neath Port Talbot CBC	Yes	Since disused tips are defined as ones to which these two pieces of legislation do not apply it would seem sensible to retain that separation when the new legislation is introduced.
Network Rail	Yes	Network Rail is supportive of this approach which would aid clarity on which regime applies in each circumstance. (See also Q1)
Ove Arup and Partners Ltd	Yes	Agree, as the provisions of those Regulations hold mine / quarry owners responsible for the safety / inspection of their tips. The Mines and Quarries (Tips) Act 1969 (Part II) is still valid and it outlines the functions and provisions by which the Local Authority may intervene. It may be that a new body overseeing tip safety take on the responsibilities of the Local Authority.
Owen Jordan	No	The two are contiguous. As we have seen, the ability of the regulators -never mind the actual companies profiting from the work - to squirm their way out of responsibility, is just the sort of thing this split encourages. Throw in the Reservoirs Act as well and job done; everyone will say the regs don't apply to them, or are not their responsibility, as the LPA's, NRW, Coal

		Authority, etc, etc, do now. See East Pit for details.
Paul Connolly	Yes	
Philip Thomas	No	If a private landowner has multiple instances of operations, disused or active, they should be considered as a whole. This will help to identify the integrity of the owner.
Rhondda Cynon Taf CBC	Other	<p>(Such was the need for clarification on the following point - Is it Welsh Government's intention to repeal the Mines and Quarries (Tips) Act 1969 or remain as England/Wales Legislation? Members requested a letter be written to Welsh Government to seek clear and unequivocal advice on the matter)</p> <p>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.</p> <p>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.</p>

		Members were also keen for the new legislation to capture the coal mining legacy.
Richard Arnold	No	Tips formed since the 2014 legislation should be assessed and graded consistent with any new legislation with the relevant action taken for any Tips emerging into a high designation of potential danger primarily as a consequence of climate change and unprecedented levels of rain fall. At some point virtually all current mines will be disused.
Stephen Smith	Yes	Agreed
Steve Harford	No	The responsibility of the new independent body should cover all tips. A tip regardless of how or when formed could still pose a danger.
Steve Jones/Pembrokeshire Council	No	There are some huge steep waste tips around some of the old slate mines in mid to north Wales, some of these above inhabited areas.
Sue Jordan	No	UK legislation is likely to be tighter.
The Law Society of England and Wales	Yes	We agree
Torfaen response	Agrees with WLGA	
Vikki Howells MS	No	New legislation should capture the coal mining legacy and apply across the board.
WLGA	[Treated as yes]	Since disused tips are defined as ones to which these two pieces of legislation do not apply it

		would seem sensible to retain that separation when the new legislation is introduced.
Wrexham CBC	Yes	
Wyn Williams	Yes	The reasoning in support is persuasive.

CONSULTATION QUESTION 4

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?

Consultation Question 4 asked respondents whether they agreed with our provisional proposal (yes/no/other). Some consultees also provided text to further explain their view. This text has been added to the table. Some respondents did not directly respond to Consultation Question 4, either because they did not use the Citizen Space platform or because they tailored their response to their particular experience.

Respondent	Response to CQ 4 (Yes/No/Other)	Text
Of those who responded: Yes 31 No 7 Other 3		
Blaenau Gwent CBC	Yes	Agree

Bob Leeming	Yes	Seems reasonable that the operator of the tip should assume the duties of the owner if in long-term occupancy.
Professor Bob Lee	Yes	YES: the issue here relates to the potential liability of the leaseholder. Given that there might be short term leases for forestry or even perhaps rough grazing, it seems sensible only to include within ownership longer leases with some capital value. Any cut-off is somewhat arbitrary but 21 years is fairly customary.
Bridgend CBC	Agrees with WLGA	
Caerphilly	Yes	Agreed
CLA Cymru - Country Land and Business Association	Yes	This sounds a logical approach to defining a landowner. However this whole issue of liability for the tip sparks concerns. If owners see considerable liabilities likely to come their way as a result of owning a coal tip on their land, they will do everything to try and absolve themselves of any ongoing and potentially costly liability associated with the ongoing management and remedial works relating to said tip. Shell offshore Companies may start to pop up, with unclear ownership, thus making the liability for remedial works unclear. For our members (however few) this could be a financially crippling prospect in having to tidy up a long ago liability, which in

		some cases has come back to cause them problems through no fault of their own.
Dwr Cymru Welsh Water	Agreed	Agree. We agree with the view that there should be a greater degree of certainty over ownership and liability of tips in order that the responsibilities of maintenance and remediation are clear for all parties. We also agree that it is unreasonable to expect that an agricultural tenant on a short-term grazing tenancy should be liable. From the perspective of a drinking water provider, it is important that the owner can easily be identified in order that there is no delay in mitigating any risks identified with coal tips to either public or private drinking water supplies.
Graham Hathaway	Yes	<p>I've supported this proposal. The concern hitherto has been identification and status of these tips with regards to ownership. There are many where identification and status isn't clear or known. The matters surrounding the behaviour of Celtic Energy is unacceptable. Deliberate avoidance and with support of a decision of Court to be able to avoid proper scrutiny and adherence to their obligations civil and legal.</p> <p>I'll wait to see where these other questions lead future policy but this must be addressed. The issue of private owners of coal tips is an anathema. I see it as avenues of avoidance as in Celtic Energy. Why purchase and why continuing</p>

		<p>to do so set against a growing concern of accidents and potential serious outcomes where proper maintenance and care is left to chance or at the behest of a person or person seeking profit.</p> <p>I would ask that consideration is given to the compulsory purchase of all privately owned coal tips. Is it called fee simple or purchase for £1.</p> <p>Without writing a lengthy comment on my experience with the Ffrwd Tip in Mountain Ash, where a contractor without permission placed heavy machines on the tip and carved out roadways all over the tip besides carving up the right of way to access the tip for which they were fined in Court ; a case brought by the Local Authority for damage to a right of way also a bridal way. The contractor admitted liability.</p> <p>There was also damage to the drainage piping leading from the tip into the Ffrwd stream and never repaired, not even the roadways that are still visible today. The damage to the environment and particularly the vegetation and silver birches specifically planted to help stabilise the tip we're ripped up. I'm not a believer in the concept of enterprise related to further extraction of already extracted minerals in areas devastated by such action. Compulsory purchase by LA, or the Senedd is needed.</p>
Howard Siddle	Yes	No further comment

Huw Williams	Yes	I have had the benefit of seeing the Law Society's response on this in draft and agree with the position adopted.
ICE Wales Cymru	Yes	Agreed. The tip owner should be the Freeholder, the primary lessee under a lease of 21 years or more (ie not including sub-leases where liability should stay with the primary lessee) and would remain with the Freeholder where such a lease is in reversion upon a term of 21 years or more. Note that there may be issues of extant lease agreements where these predate the proposed new legislation.
Jacobs UK Ltd (formerly Halcrow)	Yes	The proposal will clarify matters and seems reasonable.
Jane Iwanicki	No	<p>Ownership of land containing a coal tip may have passed to another through various means and they would not necessarily have any connection to the tipping activities that have created the potential liability (e.g. during the years that the coal industry was nationalised it would have been the NCB or British Coal that created the tips as owner/ operator). It is correct that owners should be involved in terms of access and future proposals but "liability" should not necessarily attach to the owner.</p> <p>It is interesting that the Coal Authority are obliged to deal with the legacy of mining subsidence but</p>

		not the placement of the mine waste arisings deposited at surface.
Dr John Perry	Yes	
Dr John Perry	Yes	
Cllr Julie Edwards	Yes	However I don't understand why we have to call them anything other than tip owner? Regardless of freehold or leasehold, they have a duty of care to maintain these tips and to do so safely. Failure to do so is negligent and should be regarded as a criminal offence.
Keith Bush	No	Nac ydw. Credaf ei fod yn angenrheidiol i wahaniaethu rhwng dwy ystyriaeth wahanol. Un yw adnabod y sawl sy'n elwa o berchnogaeth o'r tir (ac a ddylai, felly, fod yn gyfrifol am y gost o'i gadw'n ddiogel). Y llall yw adnabod y sawl sydd a rheolaeth gyfreithiol dros y tir ar y foment, gan mai'r person hwnnw yw'r unig un sy'n gallu caniatáu mynediad i'r tir ac (yn ddarostyngedig i natur y denantiaeth os oes un) yn medru cario allan gwaith arno. Mae'r Ddeddf bresennol yn canolbwyntio ar yr ail ddosbarth mewn perthynas a'r diffiniad o "berchennog" ac mae hyn yn hollol resymegol. Os nad yw'n deg fod y tenant yn ysgwyddo'r baich o wneud gwaith costus ar y tir (yr ystyriaeth arall), mae'r Ddeddf bresennol yn galluogi'r tenant i hawlio cyfraniad at y gost oddi wrth berson arall (fel y rhydd-ddeiliad) o dan adran 19. Pe byddai'r diffiniad o berchennog yn

		<p>ceisio adlewyrchu maint buddiant economaidd tenant a rhydd-ddeiliad yn y tir, yn hytrach na'r ffaith syml o feddiannaeth ar y tir ar y pryd, byddai cwestiynau eithaf cymhleth a dadleuol yn codi. Pam. Er enghraifft, y dylid trosglwyddo'r cyfrifoldeb dros ddiogelwch y safle (o leiaf yn y lle cyntaf) o'r tenant i'r rhydd-ddeiliad unwaith y bydd llai nag 21 mlynedd i redeg ar y brydles? Mewn gwirionedd mae hyn yn llinell eithaf mympwyol. Mae yna achos amlwg dros beidio a llwytho dyletswyddau cyfreithiol ar denantiaid sydd a chyfnodau byr iawn i redeg ar eu prydles, ond efallai bod 12 mis yn gyfnod rhy byr ar gyfer sicrhau'r egwyddor honno. Ond er mwyn osgoi dibynnu ar farn fympwyol, gellid seilio'r penderfyniad ar hyd y "cut-off" ar y ffaith fod tenantiaeth o fwy na 7 mlynedd yn fuddiant cofrestradwy o dan Ddeddf Cofrestru Tir 2002. Pe byddai'r diffiniad o "berchennog" yn cyfeirio at rhydd-ddeiliad neu denant sydd a mwy na 7 mlynedd i redeg ar ei denantiaeth byddai hynny'n golygu y byddai'r awdurdod gouchwyllo'n medru gweld, o'r gofresr (o leiaf yn achos tir y mae teitl iddo wedi'i gofrestru) at bwy i gyflwyno hysbysadau. Ac nid yw'n afresymol i ddisgwyl i denant sydd a mwy na 7 mlynedd i redeg ar ei brydles i ymddiddori yng nghyflwr y tir ac i fod yn gyfrifol am hawlio cyfraniad oddi wrth y rhydd-ddeiliad i'r gost o wneud gwaith sylweddol i'r tir.</p>
Kim Moreton	Yes	

Lee Jones	Yes	
Merthyr Tydyl CBC	Yes	
Mineral Products Association	Other	<p>Whilst this would appear a logical approach, there are complications as to who owns the tipped material and whether or not that material is part of the land.</p> <p>The coal ownership is likely to be separate to the landownership, and one should consider whether or not the owner of the coal should burden some of the responsibility as they undoubtedly benefitted from its extraction. One should consider whether or not the Coal owner is the owner of the tipped material.</p>
Monmouthshire CC	Yes	In principle yes, this would seem sensible.
Natural Resources Wales	Yes	<p>Yes - But if the lease is less than 21 years, it should be clearly stated where the responsibility for the Tip then lies i.e. would it be with the Freeholder or the Local Authority or someone else.</p> <p>The Reservoirs Act uses a sequential test to attribute liability as identified in section 9.9. If there is a potential for a disused tip to remain under the control of a person other than an owner, tenant, or lessee, then this should be accounted for so that liability remains with the most appropriate person. The default position as last resort could be the owner or lessees <u>of the land</u> on which the tip is situated to avoid argument</p>

		<p>that ownership of the tip is in some way separate from ownership of the land it's on.</p> <p>More consideration is also needed on whether the default is “owners <u>and</u> lessees”, or “owners <u>or</u> lessees” and whether the proportionality of liability should be silent; set by civil agreement or a more clearly defined sliding scale to account for end of lease period.</p> <p>Where British Coal/Coal Authority has covenanted the sale, this is fine for these coal mines. With the tips that the Coal Authority retains ownership that is fine too.</p> <p>The possibility of extending to Non-Coal mine spoil heaps, brings in an ownership dilemma as the safety could be the land owner, but the mineral rights owner would retain ownership of the spoil, so it would be unfair to require the landowner to be identified unless the mineral rights owner had bequeathed their interest to the land owner, whom would need some time to secure an appropriate level of insurance.</p>
Neath Port Talbot CBC	Yes	
Owen Jordan	No	<p>The owner is the person - individual not company - who created the tip - or risk - and not the owner of the land. Risk transfer should not occur at any point in the life of that individual, and a claim</p>

		against his or her estate made Sine Die until the risk is removed.
Paul Connolly	Yes	
Dr Peter Brabham	Yes	
Philip Thomas	No	If a private landowner has multiple instances of operations, disused or active, they should be considered as a whole. This will help to identify the integrity of the owner.
Pontypool Park Estate Office	Other [treated as relevant comment]	Who is the “owner” (10.11) if the owner of the tip material is different from the owner of the underlying land. The land might have been on long lease to an entity which sinned, by omission or commission, and then defaulted on its obligation, so that the liability reverted to the landowner. This was the case when the NCB, as arm of government, acted with impunity.
Rhondda Cynon Taf CBC	Other	<p>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)</p> <p>Members had an understanding that there is a power to release public funds (where available)</p> <p>Members also sought clarification around liability under the new regulatory framework and whether it would rest with the owner of the land or whether</p>

		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.
Richard Arnold	No	The precedence for managing ex coal mining Waste, (Tips) should be the responsibility of a Welsh government specialist technical department.
Stephen Smith	Yes	Agreed
Steve Harford	No	The responsibility of the new independent body should cover all tips. A tip regardless of how or when formed could still pose a danger.
Steve Jones/Pembrokeshire Council	Yes	
Sue Jordan	No	Liability rests with the Coal Authority and all other bodies responsible for granting permission (e.g. Welsh government, local authorities). They should pursue those creating the tip or residual shareholders, where possible. In the case of the old lead mines, where the owner cannot be traced, responsibility devolves to UK govt.
The Law Society of England and Wales	Yes	We agree. This is fairly standard.
Torfaen response	Agrees with WLGA	

Transport for Wales	Yes	We agree that the term of the leasehold interest granted should be the deciding factor as opposed to the residual term on the lease.
Vikki Howells MS	Yes	I am in favour of responsibility lying with the owner of a tip. Clarification is needed on the question of absent landlords.
WLGA	Yes	
Wyn Williams	Yes	The reasoning of the Commission is persuasive.

CONSULTATION QUESTION 5

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.

Consultation Question 5 asked respondents whether they agreed with our provisional proposal (yes/no/other). Some consultees also provided text to further explain their view. This text has been added to the table. Some respondents did not directly respond to Consultation Question 5, either because they did not use the Citizen Space platform or because they tailored their response to their particular experience.

Respondent	Response to CQ 5 (Yes/No/Other)	Text
Of those who responded: Yes 48 No 3 Other 2		

Dr Ben Curtis	Treated as Yes	<p>As part of my submission of evidence, I was asked for my thoughts as to what recommendations the Law Commission could make to the Welsh Government regarding this question. In response, my suggestion was that, in my view, there ought to be created a single supervisory authority charged with ongoing task of monitoring all of these spoil tips and ensuring their safety both now and into the future, and that this authority be vested with sufficient powers and resources to enable it to fulfil this mission. Consequently, I was very pleased to see that the main recommendation of the report was the following;</p> <p>“The consultation seeks views on the proposed framework including the introduction of:</p> <ul style="list-style-type: none"> <input type="checkbox"/> A single supervisory authority with a duty to supervise the management of all disused tips. <input type="checkbox"/> 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. <input type="checkbox"/> Inspections of each tip for the purpose of a risk assessment and designing a tip management plan. The inspection could potentially cover all potential risks including the risk of tip slides but also flooding, pollution and any other risks.
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		<p><input type="checkbox"/> For those coal tips designated as high risk, an enhanced safety regime with increased involvement of the supervisory authority to manage the tip and reduce the chance of significant dangerous incidents occurring.”</p> <p>I endorse the above recommendation and very much hope that the Welsh Government will take the necessary steps to bring this into being as soon as is practicable.</p>
Blaenau Gwent CBC	Yes	Local Authorities under resourced so would prefer a fully funded external body
Bob Leeming	Yes	Seems reasonable that the operator of the tip should assume the duties of the owner if in long-term occupancy.
Professor Bob Lee	Yes	<p>YES to Question 5; my own view is that local government has changed greatly since the 1960s when the two relevant local authorities would have had available considerably greater resources and expertise. Part of the problem is with a structure that is now over 50 years old. Given that expertise in particular is likely to remain an issue (judging by the age of my colleagues on the Expert Group on Coal Tip Safety!) we need to focus on the expertise we can bring to the problem of disused coal tips. Indeed I share some of the sentiments of the Consultation Paper that the role of the supervisory authority might be quite widely conceived and could include</p>

		not just stability but questions of utilising value, if at all possible, from the land in question.
Bridgend CBC	Agrees with WLGA	
Caerphilly	Yes	<p>Agree with the establishment of a Supervisory Authority with appropriate funding. Their role and responsibilities will need definition as each local authority will have differing requirements and expectations of such a body.</p> <p>Therefore, flexibility needs to be maintained to allow authorities to take on what they can (subject to funding) or pass out this function if they have no or very little tips, or no expertise in-house to manage the function.</p>
Chris Seddon	Yes	<p>It has been my experience that where there is ambiguity regarding responsibility for safety this is exploited by all parties to avoid taking ownership. A single supervisory authority will go a long way to mitigating this risk.</p>
CLA Cymru - Country Land and Business Association	Yes	<p>A one size fits all Authority with the sole responsibility of ensuring legacy issues of Coal tips are looked after, rather than splitting responsibility between two Authorities as is partly the case at present, where things may slip between the two.</p>
Professor David Petley	Yes	

Dwr Cymru Welsh Water	Yes	Agree. We agree that a single authority should provide consistency and a useful avenue through which individual issues can be progressed, with the added benefit that specialist skills and experience are concentrated and developed rather than thinly spread across several organisations.
Graham Hathaway	Yes	
Heledd Fychan MS	Treated as Yes	Tra fy mod i'n llwyr gytuno â'r argymhelliad i sefydlu awdurdod newydd a fydd yn mapio, monitro a chynnal y tomenni, hoffwn ategu at yr alwad gan ein grŵp Cynghorwyr i gael awdurdod goruchwyllo cwbl annibynnol fydd yn atebol i'r Senedd.
Howard Siddle	Yes	Agreed. My preference would be for a single Supervisory Authority (SA) to ensure consistency of responsibilities throughout Wales. However the remit of such an authority needs further consideration, clarification and expansion. Apart from setting up and managing the register and the issues that spring from it, will the authority have any remit and therefore the skills and experience to manage or advise on tip failures and other emergencies and in what capacity? The remit of the SA should spell out all its duties and responsibilities, once these have been decided.
Huw Williams	Yes	I agree in principle with this approach. However, I think that the approach needs to recognise the

		concentration of disused coal tips in a small number of local authority areas as set out in paragraph 3.41 onwards of the Consultation Paper.
ICE Wales Cymru	Yes	Agreed. The sole coal tip supervisory authority responsible for health, safety and environmental aspects of all disused tips should be independent of all tip owners. This would therefore exclude The Coal Authority, Local Authorities and Natural Resources Wales.
Jacobs UK Ltd (formerly Halcrow)	Yes	<p>A single supervisory body is essential for achieving compliance of regulatory requirements and achieving a consistent and quality standard across Wales.</p> <p>It will overcome the current split of responsibility across many organisations and it will allow identification and allocation of an appropriate ring-fenced level of funding for the supervisory body, which current arrangements lack. The body should have a clear remit on emergency planning for tips where the risk rating of a tip is established to be at a level requiring intervention.</p> <p>A single supervisor body will be able to establish a framework for the assessment of tip safety and set out guidelines/minimum requirements for that work. Such requirements were established for the assessment of the National Coal Board spoil heaps 1967-mid 1980's providing consistency of</p>

		approach and technical assurance. Such requirements will be of even greater importance in the case of multiple organisations making assessments.
Jane Iwanicki	Yes	A supervisory body and program of works could be established without the need for reviewing the 1969 Act in Wales.
Joel James MS	No	The responsibility for the safety of all disused coal tips should be given to The Coal Authority. They should already have the necessary expertise and a new supervisory authority would only be duplicating this at expense to either the public purse and/or the coal tips owners.
Dr John Perry	Yes	
Cllr Julie Edwards	No	For one supervisory authority, it would be impossible without heavy financial resource. A possible option to reduce costs would be to create a two tier system which creates a supervisory authority but also puts responsibilities on land/tip owners to conduct regular maintenance checks and feedback to the SA should changes occur. This shares responsibility but also relieves pressure.
Keith Bush	Yes	Ydw. Mae'r papur ymgynghori'n cynnwys tystiolaeth gref oddi wrth awdurdodau lleol am yr anhawsterau a wynebir gan awdurdodau unigol wrth geisio gweithredu'r Ddeddf bresennol. Mae'r

		<p>anawsterau hynny'n cynnwys yr amhosiblwydd o feithrin arbenigedd yn nhechneg rheoleiddio tomennydd, wrth i'r gyfrifoldeb gael ei gwasgaru dros gymaint o gyrff unigol, y baich gweinyddol anghymesur maent yn gorfod ysgwyddo os bydd achos yn codi sy'n gofyn am gamau cyfreithiol cadarn a'r prinder adnoddau sy'n golygu nad oes ganddynt y gallu i ariannu a goruchwyllo gwaith sylweddol er mwyn diogelu tomennydd lle nad yw'r perchennog yn gallu neu yn fodlon gwneud y gwaith. Er y byddai trosglwyddo'r baich i bwyllgorau corfforaethol rhanbarthol yn lliniaru'r anhawster ni fyddai'n ei ddatrys. Er mwyn gwneud hynny rhaid cael un corff a fyddai'n gyfrifol am reoleiddio tomennydd ar draws Cymru. Gan ystyried natur ei swyddogaethau presennol, a hefyd y ffaith mai ef yw'r awdurdod goruchwyllo ar gyfer cronfeydd o dan Ddeddf Cronfeydd 1975 y corff priodol ar gyfer cyflawni'r dasg honno mewn perthynas a thomennydd yw Cyfoeth Naturiol Cymru.</p>
Kim Moreton	Yes	
Lee Jones	Yes	
Merthyr Tydíl CBC	Yes	<p>Yes definitely agree, providing there is no additional financial obligation on local authorities to support it. A single supervisory authority would ensure a consistent approach is applied across Wales. It would also be able to establish a team of officers with specific expertise in this area</p>

		which is something LA's cannot do due to lack of resource.
Mineral Products Association	Yes	Yes, however, it is unclear if this legislation and regulation is to be applied across the whole of the UK. If so, one body should be charged with overseeing the legislation and implementing the regulations. It is important that the devolved regulators, the EA, NRW and SEPA are not charged with implementing the legislation as this will lead to further inconsistencies and ineptitude.
Monmouthshire CC	Yes	Agreed, a single supervisory authority would ensure consistency and clarity across Wales.
Natural Resources Wales	Yes	<p>Yes - we believe the present regulatory bodies in Wales are not resourced and do not have the right expertise to deal with the Disused Coal Tips.</p> <p>Though not linked to coal tip safety there maybe value from looking at the regulation of COMAH (Control Of Major Accident Hazards). This is a working example of where H&S and environment are managed in partnership. The regulators for both themes form something called the Competent Authority and there's a clear way of working to ensure the regulation manages both H&S and environmental risks. It's well established, embedded into practice and though not perfect, it does cover some of the points raised in the consultation.</p>
Neath Port Talbot CBC	Yes	Yes, subject to the funding for the body being additional. Local authorities are already stretched

		<p>and it would be helpful to have one central body with the required skills to support coal tip safety activity.</p> <p>It would result in a consistent approach across Wales and ensure there is capacity when needed, given the loss of expertise over recent years in local authorities in the face of financial pressures. With climate change and more intense downfalls of rain expected, the demands are likely to outweigh local authority resources in most cases.</p>
Network Rail	Yes	Network Rail agrees with the proposal. It notes that having one overriding responsible and accountable body would be the best outcome from an insurance and claims perspective too (see also Network Rail's response to Consultation Question 6 on the position if this were to be extended to England and Scotland, as well as Wales).
Ove Arup and Partners Ltd	Yes	Agreed, Could this be part of NRW or under a separate remit of NRW or Coal Authority.
Owen Jordan	Yes	It is difficult to see NRW as anything other than simply a waste of space; if the system allows the supervisors to sleep, then change is not going to change that.
Paul Connolly	Yes	
Dr Peter Brabham	Yes	The fundamental problem in 2021 is that there is no central register of relict historical tips. Its been

		dispersed across many bodies. Information collected post Aberfan seems to have been lost. Also post Aberfan many tips were remediated and made safe this data needs to be centrally held.
Philip Thomas	Yes	
Plaid Cymru Group, RCT	Treated as Yes	<p>We wholeheartedly agree with the recommendation to establish a new authority that will map, monitor and maintain the tips. We believe that the new single supervisory authority should be a wholly independent authority answerable to the Senedd. It should not be a part of any other authority - neither local authority, Natural Resources Wales (NRW) or British Coal. The new authority would be free to call on any other authority should the need arise, and to utilise any expertise available in other authorities. The new authority would have the resources and the expertise to carry out its functions.</p> <p>We cannot emphasise enough the point that the new authority must be funded fully in order to carry out its duties and functions efficiently. There should be an assurance to the new authority that any remedial work that needs to be done in order to maintain public safety will be funded. It would be pointless to have a new authority that is unable to perform its duties in full. We feel that the NRW's response to the recent floods proves this point perfectly, NRW has shown that being</p>

		<p>underfunded hindered their abilities to maintain a robust and effective system.</p> <p>Cytunwn yn llwyr â'r argymhelliad i sefydlu awdurdod newydd a fydd yn mapio, monitro a chynnal y tomenni. Credwn y dylai'r awdurdod goruchwyllo newydd fod yn awdurdod cwbl annibynnol sy'n atebol i'r Senedd. Ni ddylai fod yn rhan o unrhyw awdurdod arall - ddim awdurdod lleol, Cyfoeth Naturiol Cymru (CNC) na Glo Prydain. Byddai gan yr awdurdod newydd yr hawl i alw ar unrhyw awdurdod arall pe bai angen, gan defnyddio unrhyw arbenigedd sydd ar gael mewn awdurdodau eraill. Dylai fod gan yr awdurdod newydd yr adnoddau a'r arbenigedd i gyflawni ei ddyletswyddau.</p> <p>Allwn ni ddim pwysleisio gormod bod yn rhaid i'r awdurdod newydd gael ei ariannu'n llawn er mwyn cyflawni ei ddyletswyddau a'i swyddogaethau'n effeithiol. Dylai fod sicrwydd i'r awdurdod newydd yr ariennir yn llawn unrhyw waith adfer y mae angen ei wneud, er mwyn cynnal diogelwch y cyhoedd. Does dim pwynt sefydlu awdurdod newydd sy'n methu â chyflawni ei ddyletswyddau yn llawn. Teimlwn bod ymateb CNC i'r llifogydd diweddar yn enghraifft berffaith i brofi hyn, lle roedd yn amlwg bod cael eu tanariannu yn rhwystro eu gallu i gynnal system gadarn ac effeithiol.</p>
Pontypool Park Estate Office	Other [treated as relevant comment]	Who is the "owner" (10.11) if the owner of the tip material is different from the owner of the underlying land. The land might have been on

		long lease to an entity which sinned, by omission or commission, and then defaulted on its obligation, so that the liability reverted to the landowner. This was the case when the NCB, as arm of government, acted with impunity.
Rhondda Cynon Taf CBC	Yes	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
Richard Arnold	Yes	See answer to previous question. 4
Sioned Williams AS	Treated as Yes	<p>Firstly, it is important to note that I fully agree with the primary recommendation of establishing a single supervisory authority with a duty to supervise the management of all disused tips in Wales. I believe that this is fundamental.</p> <p>I believe that the new supervisory authority should be a wholly independent and answerable to the Senedd. Importantly, the new authority must have the resources and the expertise to carry out its functions.</p>
Stephen Smith	Other	Given a political will to adopt a more robust management regime for coal spoil tips, there is a

		<p>clear benefit of having a single body responsible for overseeing delivery of requirements emanating from this 'project' – be that a new regime or strengthened existing regime. The key questions are those under 6 and 7, for which I offer the following thoughts:-</p> <p>i. The Coal Authority were established in the 1990s to look after the residual coal estate and, hence, should have the necessary expertise. However, as owners of tips, they would have to act as 'poacher and gamekeeper'. Additionally, they are a UK national body and would presumably need a Wales specific arm to take on the role. A better role for them would seem to be in defining guidance on standards to employ.</p> <p>ii. Natural Resources Wales similarly manage tips in Wales and may have a conflict. They do, however, have an existing role on public and environmental safety (e.g. contaminated land) so have a level of expertise.</p> <p>iii. A corporate joint committee approach would also have potential conflicts – given local authorities own tips.</p> <p>iv. Unit within Welsh Government – although unlikely to be a favoured approach, a newly formed unit with appropriate technical expertise would offer some benefits and be directly accountable to Ministers. This could be similar to</p>
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		<p>the former land reclamation units of Welsh Office and Welsh Development Agency, who had a critical technical and management role on the delivery of land reclamation in Wales, including budget requirements.</p> <p>v. An 'arms length' approach could be delivered through a new body managed by a Board comprising representatives from existing regulatory bodies enhanced by external technical / management expertise (e.g. from business or universities)</p>
Steve Harford	Yes	this will avoid any confusion on the responsible body for tips. However, it will work best if the definition of tips is kept as broad as possible and include spoil tips from other mining activities.
Steve Jones/Pembrokeshire Council	Yes	
Sue Jordan	No	Tips are already registered with local authorities. There are numerous bodies with responsibility. UK & Welsh governments should force existing bodies to act e.g. NRW, Coal Authority. All tips should be removed, and land returned to original profiles. money should be spent on this, rather than another bureaucratic system.
The Law Society of England and Wales	Yes	We agree.
Thomas Glyn Watkin	Yes	

Tom St John	Yes	
Torfaen response	Agrees with WLGA	
Transport for Wales	Yes	
Vikki Howells MS	Yes	The current regime is not fit for purpose.
WLGA	Yes	Yes, subject to the funding for the body being additional. Local authorities are already stretched, and it would be helpful to have one central body with the required skills to support coal tip safety activity. It would result in a consistent approach across Wales and ensure there is capacity when needed, given the loss of expertise over recent years in local authorities in the face of financial pressures. With climate change and more intense downfalls of rain expected, the demands are likely to outweigh local authority resources in most cases.
Wrexham CBC	Yes	<p>We agree a single supervisory authority should lead on this, for both high risk and low risk sites, and it should not fall to LAs at all. The main reasons for this are a single authority will provide consistency, expertise and resilience, but also because many LAs, WCBC included, have no Officers (now or in the past) with the necessary geotechnical expertise.</p> <p>A single supervisory Authority for the whole of Wales would support more effective partnership working at a regional level with other national</p>

		<p>regulators with involvement in these matters e.g. NRW and also reduce inconsistencies in enforcement if Local Authorities were supervising authorities. Expertise built up through regulating all manner of tips will also provide opportunity for gap analysis and research going forward. A single supervisory authority is more likely to make evidence based policy making procedures and enforcement with associated priorities without undue political persuasion .It would also avoid the issue of which Council regulates a tip site that traverses two local authority boundaries.</p> <p>From experience as a Contaminated Land Team, after the legislation was introduced in 2001 LAs were well resourced and able to fund appropriately qualified members of staff and undertake the implementation of the Strategies, this was aided by the Welsh Government introducing a capital funding program. However, over the last 10 years there is no longer any funding available from Welsh Government resulting in many authorities being unable to undertake any proactive work in this field. This has caused some authorities to lose qualified staff and are therefore unable to undertake their statutory duties under the Contaminated Land Regulations and also struggle with other land contamination related workloads. Furthermore this has caused significant disparities across the Welsh authorities in terms of contaminated land work that is carried out both through Part 2a and</p>
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		the Planning regime. A centralised supervisory body should avoid such disparities occurring under this new regime.
Wyn Williams	Yes	I accept the reasoning of the Commission

CONSULTATION QUESTION 6

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.

Consultation Question 6 asked for their view. Some respondents did not directly respond to Consultation Question 6, either because they did not use the Citizen Space platform or because they tailored their response to their particular experience.

Respondent	Response to CQ 6
Blaenau Gwent CBC	Coal Authority Coal Authority seems the most appropriate who have the required skills necessary to inspect and maintain safety.
Bob Leeming	Coal Authority I favour an existing body, and lean towards the Coal Authority as a current centre of expertise in this field, managing their own tips. Therein lies a possible conflict of interest.
Professor Bob Lee	Other Unless we envision an entirely new body, which might just draw expertise away from existing bodies, and which is an expensive solution in terms of overheads, then the obvious candidates are Natural Resources Wales (NRW) or the Coal Authority. Both are to some degree conflicted as managers or owners of existing coal tips in Wales. Such conflicts are less than ideal but not entirely unknown in regulatory settings (e.g. environmental health and statutory nuisance duties in respect of public sector housing or

	<p>planning call-in powers by the Secretary of State where there is a clear central government interest in a site). The real expertise lies within the Coal Authority which has a now limited function in relation to licensing (given the few operational coal mines) whereas NRW is an integrated environmental supervisory authority which discharges considerable enforcement duties. NRW is a part of Welsh infrastructure more so than the Coal Authority as a UK wide executive non-departmental public body. There may be room for joint responsibility with the Coal Authority undertaking responsibilities for compilation of registers, including risk assessment and management plans, and NRW pursuing matters of enforcement (including conclusion and supervision of maintenance agreements).</p> <p>The process of creating NRW as an integrated agency has not been easy but ought to become easier over time. I am reluctant to propose a newly created body which would derogate against principle of integration and which would run contrary, to some extent, to the ambition of the management of natural resources in Wales under the Environment (Wales) Act 2016. Speaking frankly, I do have worries, however, that some of the other enforcement duties of NRW in relation to waste and water management, biodiversity and perhaps forestry will have to be negotiated alongside tensions thrown up in guaranteeing coal tip safety. However, I conclude that such reconciliation would remain the case with a separate supervisory body so it may be better to address these issues from within NRW and this ought to be possible if new legislation places clear duties in relation to coal tip safety on NRW.</p>
Bridgend CBC	Agrees with WLGA
British Geological Survey	HSE HSE in Wales have a regulatory role, with a history of involvement in mines, understand risk and working in collaboration with partners – clearly in this case the Coal Authority and Local Authorities, as well as the British Geological Survey in a supporting role.
Caerphilly	Coal Authority An existing body such as The Coal Authority would be best placed to take on this role. We note that resources and experience are sparse in this field of work. If The Coal Authority cannot take on the function then yes a newly created body or an amalgamation of local authorities may be required.
Chris Seddon	Other The difference is semantic. The focus should be on creating an appropriate structure, either within an existing body, or a newly created body and to ensure that appointments are made based on merit, rather than 'experience' within this organisation or that.

	The choice of whether to create a new or restructured organisation should be based on achieving this aim.
CLA Cymru - Country Land and Business Association	Other We don't have a view on this, however whatever is the final outcome the Authority needs to have all the tools to do its job under one roof.
Professor David Petley	New body I do not believe that there is any existing body that is able to discharge this responsibility. I also believe that existing bodies would lack the advantages of a clean sheet organisation that is free from the complex history of tip regulation and management.
Graham Hathaway	New body A newly created body please. No existing authority has demonstrated competence in the execution of its duties sufficiently to warrant retaining or revamping them. This was pointed out in the report just now defunct or nonexistent they were. The reasons are too obvious to mention. Apathy and lack of invention, resources, direction and leverage. Any new body must have strong statutory powers. My Local Authority was insufficiently staffed or skilled enough to drive through policies needing competence, vision and belief.
Howard Siddle	New body I don't see that any existing authority has the knowledge, experience or resources (as the evidence in the CP admits) to act as the SA. Therefore, my preference would be for a newly created body which is independent of all tip owners (and which therefore excludes NRA, TCA and local authorities).
Huw Williams	New body I support a newly created body.
ICE Wales Cymru	<p>New body The supervisory authority should be free of any conflict of interest as a tip owner and should have pan-Wales responsibilities only (i.e. no responsibilities outside of Wales as the new regulations will only apply in Wales). This would exclude The Coal Authority, Natural Resources Wales, and Local Authorities. Note, that whilst some Local Authorities in Wales will not be tip owners (particularly those wholly located outside coalfield areas) it does not seem appropriate that they would take on these responsibilities as they may have no domain knowledge or understanding of coalfield communities.</p> <p>Whilst the HSE could be considered, the scope of responsibilities of the supervisory authority would extend beyond their remit (e.g. environmental matters) and they would therefore not be suitable. As such, the creation of a new body would seem most appropriate.</p>

Jacobs UK Ltd (formerly Halcrow)	<p>New body New body but taking lessons learnt from the Coal Authority in the management of tips.</p> <p>The Coal Authority has extensive historic knowledge and records of South Wales mines and many colliery tip sites and has staff based in South Wales that cover the area. It is recognised however that this may be beyond their remit as they have responsibility beyond Wales.</p>
Jane Iwanicki	<p>Other It doesn't really matter as long as the new responsibilities and resources are clearly defined, and provided the body has or is able to procure appropriate technical advice.</p>
Dr John Perry	<p>Other It does not matter to me provided they have the responsibility, are independent AND have the resources to do it.</p>
Cllr Julie Edwards	<p>New body Newly created and inclusive of representative tip owners but also answerable to local authorities and/or welsh government. The burden must be shared.</p>
Keith Bush	<p>Natural Resources Wales Mae'r papur ymgynghori'n cynnwys tystiolaeth gref oddi wrth awdurdodau lleol am yr anhawsterau a wynebir gan awdurdodau unigol wrth geisio gweithredu'r Ddeddf bresennol. Mae'r anawsterau hynny'n cynnwys yr amhosiblwydd o feithrin arbenigedd yn nhechneg rheoleiddio tomennydd, wrth i'r gyfrifoldeb gael ei gwasgaru dros gymaint o gyrff unigol, y baich gweinyddol anghymesur maent yn gorfod ysgwyddo os bydd achos yn codi sy'n gofyn am gamau cyfreithiol cadarn a'r prinder adnoddau sy'n golygu nad oes ganddynt y gallu i ariannu a goruchwyllo gwaith sylweddol er mwyn diogelu tomennydd lle nad yw'r perchennog yn gallu neu yn fodlon gwneud y gwaith. Er y byddai trosglwyddo'r baich i bwyllgorau corfforaethol rhanbarthol yn lliniaru'r anhawster ni fyddai'n ei ddatrys. Er mwyn gwneud hynny rhaid cael un corff a fyddai'n gyfrifol am reoleiddio tomennydd ar draws Cymru. Gan ystyried natur ei swyddogaethau presennol, a hefyd y ffaith mai ef yw'r awdurdod goruchwyllo ar gyfer cronfeydd o dan Ddeddf Cronfeydd 1975 y corff priodol ar gyfer cyflawni'r dasg honno mewn perthynas a thomennydd yw Cyfoeth Naturiol Cymru.</p>
Kim Moreton	<p>New body A newly created body with distinct lines of funding, finance and accountability, and the opportunity to build cross-disciplinary relationships with local authorities, environmental stakeholders and Network Rail/Highways England etc.</p>

Lee Jones	New body The Authority should be a newly created body. This is important to demonstrate impartiality and transparency. Some of the existing bodies may already be landowners e.g. NRW and local authorities, on whose land tips are currently located. This would also make enforcement very difficult e.g. service of maintenance / remediation orders as they would not be able to legally serve these upon themselves.
Merthyr Tydfil	Coal Authority Providing it is suitably resourced and empowered to take any requisite action then it could be an existing body or new. However, the most sensible and obvious existing organisation would be the Coal Authority to become the supervisory authority. They already have expert knowledge and existing systems in place which could be developed further to undertake any additional duties. The Coal Authority would need an office base within Wales if they were to become the supervisory body. Alternatively, NRW could also become the supervisory authority as they are for Reservoirs currently, however, it would be more challenging for them in establishing this due to no existing systems or experienced staff in place.
Mineral Products Association	Coal Authority It would be appropriate for the Coal Authority to be the supervisory body.
Monmouthshire CC	Coal Authority Existing bodies such as Local Authorities and NRW are highly unlikely to have resources and the required expertise to act as a supervisory authority, either individually or collectively. The Coal Authority may be better placed to take on this role given their expertise in this field, or a new supervisory body be formed supported by the allocation of required resources. Monmouthshire CC has coal field with a total area of c.7km ² , it would be difficult for us as a local authority to build up the required level of expertise to service such a small area.
Natural Resources Wales	<p>Coal Authority An Existing body would be preferential. The Coal Authority is well placed to undertake this and NRW would favour this approach. However, this depends on them being able to pay their fees and charges, whether they could serve Administrative Notices on themselves and whether existing land ownership would prevent them from being this body.</p> <p>What-ever the decision there should be an overarching Board that has the sponsor, the Environmental lead authority NRW, WLGA select local authority representatives/PSBs and possibly the Emergency Services (Fire & Rescue) engaged to help steer the organisation so that it can focus and aspire towards reducing carbon emissions within remedial interventions, whilst considering the well-being aspects of impacted</p>

	communities and providing multiple benefits. In line with delivering the Sustainable Management of Natural Resources (SMNR).
Neath Port Talbot CBC	<p>Coal Authority The Coal Authority would be well-placed to act as a supervisory body given the skills and experience within the organisation. However (i) it is understood that it may not be able/permitted to take on this role and (ii) a base within Wales for the organisation would be essential, reporting and accountable to Welsh Government. The possibility of a joint venture between the Coal Authority and Natural Resources Wales might be worthy of consideration if it could address both issues.</p> <p>Having, or being able to attract, the requisite range of skills and experience would be vitally important whatever the nature of the body that takes on the role.</p> <p>Setting up of a new National Organisation would be beneficial with help and guidance from the experts The Coal Authority in its set up.</p>
Network Rail	Coal Authority Network Rail works closely with the Coal Authority and recognises that it has significant experience in the management of such tips. To this end they may be little merit in creating something new. If the decision were taken that a new body is required for this purpose there would need to be clarity on who has duties in which circumstances. This is particularly the case if there were plans in the future to widen the regime beyond Wales. If the Coal Authority were tasked with the role it would make roll out to the wider UK simpler in the future.
Ove Arup and Partners Ltd	Existing body Existing such as NRW or Coal Authority.
Owen Jordan	Other Scrap NRW and create a new one? That's the way the money goes, so why not?
Paul Connolly	New body A newly created body in my opinion, may offer a different perspective of how safety should be managed. The assumption would be the lead of the new body would need to be recruited from outside the existing regulators though would anticipate numerous staff being brought in from previous organisations to ensure continuity and to retain experience.
Dr Peter Brabham	Coal Authority It could be part of the Coal Authority but in a totally separate newly created division.

Philip Thomas	New body Newly created. I think it can be seen with current and past activity since the events of storm Ciara and Dennis; Rhondda Cynon Taf Local Authority, National Resources Wales, Dŵr Cymru and likely other responsible agencies has not been forthcoming with how their operations potentially exacerbated the events of February 2020.
Pontypool Park Estate Office	Coal Authority An existing body, the Coal Authority. NRW cannot meet its existing obligations.
Rhondda Cynon Taf CBC	New body Members preferred the proposal that a single supervisory authority should be a newly created body .
Richard Arnold	New body This needs to be a Newly created body. Efficiently resourced with the focus on clearly defined, short term. medium term and long term objectives with solutions that can create enhanced values outcomes for the valleys and ex mining regions.
Sioned Williams AS	Other I believe that the new supervisory authority should be a wholly independent and answerable to the Senedd. Importantly, the new authority must have the resources and the expertise to carry out its functions. [treated as relevant comment]
Stephen Smith	Other i. The Coal Authority were established in the 1990s to look after the residual coal estate and, hence, should have the necessary expertise. However, as owners of tips, they would have to act as 'poacher and gamekeeper'. Additionally, they are a UK national body and would presumably need a Wales specific arm to take on the role. A better role for them would seem to be in defining guidance on standards to employ.

	<p>ii. Natural Resources Wales similarly manage tips in Wales and may have a conflict. They do, however, have an existing role on public and environmental safety (e.g. contaminated land) so have a level of expertise.</p> <p>iii. A corporate joint committee approach would also have potential conflicts – given local authorities own tips.</p> <p>iv. Unit within Welsh Government – although unlikely to be a favoured approach, a newly formed unit with appropriate technical expertise would offer some benefits and be directly accountable to Ministers. This could be similar to the former land reclamation units of Welsh Office and Welsh Development Agency, who had a critical technical and management role on the delivery of land reclamation in Wales, including budget requirements.</p> <p>v. An ‘arms length’ approach could be delivered through a new body managed by a Board comprising representatives from existing regulatory bodies enhanced by external technical / management expertise (e.g. from business or universities)</p>
Steve Harford	<p>New body a newly created body. To add these responsibilities to an existing body would reduce its effectiveness and could result in the focus on tips being reduced.</p> <p>Additionally, the surveying and monitoring of tips is a specialised area, with the knowledge required unlikely to sit in any existing organisations, other than the Coal Authority.</p>
Steve Jones/Pembrokeshire Council	<p>New body Can't think of an existing body which would tick the right boxes to take this forward.</p> <p>I'd suggest it is best to have a dedicated body so as not to dilute their attention.</p>
Sue Jordan	<p>Existing body Existing authority: this avoids spending on further bureaucracy. NRW or the Coal authority would be suitable.</p>
The Law Society of England and Wales	<p>Other We are neutral as to the form and structure of the supervisory authority and are more concerned with ensuring that it would be sufficiently resourced to discharge its duties.</p>

Tom St John	New body I believe this should be a newly created body.
Torfaen response	Agrees with WLGA
Transport for Wales	New body Our view is that it should be a newly created body.
Vikki Howells MS	New body Newly created and fit for purpose.
WLGA	<p>Coal Authority The Coal Authority would be well-placed to act as a supervisory body given the skills and experience within the organisation. However (i) it is understood that it may not be able/permitted to take on this role and (ii) a base within Wales for the organisation would be essential, reporting and accountable to Welsh Government. The possibility of a joint venture between the Coal Authority and Natural Resources Wales might be worthy of consideration if it could address both issues. Alternatively, would Welsh Government have the devolved powers to establish a Welsh Coal Authority, with links to the existing Coal Authority? (Welsh Government has undertaken similar roles in the past – e.g. marine licensing before it was transferred to NRW).</p> <p>Having, or being able to attract, the requisite range of skills and experience would be vitally important whatever the nature of the body that takes on the role.</p>
Wrexham CBC	New body A newly created body should be the Supervisory Authority. It seems likely the Coal Authority (CA) have existing expertise to fulfil the role, however this is not solely an all Wales body. Natural Resources Wales (NRW) on the other hand are an all Wales body but whilst their expertise lies in water pollution and possibly drainage to a degree too, their knowledge of slope stability and coal mining which is key in this legislation is probably much less than that of the CA's. If the CA can't feasibly take this on then a new body should be created.
Wyn Williams	New body I consider the supervisory authority should be a new body thereby clearly signalling a new regime. That does not mean, however, that experience persons from existing bodies should not be eligible to become members of the newly created body.

CONSULTATION QUESTION 7

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?

Consultation Question 7 asked respondents for their view. This text has been added to the table. Some respondents did not directly respond to Consultation Question 7, either because they did not use the Citizen Space platform or because they tailored their response to their particular experience.

Respondent	Response to CQ 7
Blaenau Gwent CBC	Central public body A central body would have the advantage of being able to adopt a consistent approach across Wales and not rely on selected Authorities who have the staff and expertise to undertake inspection works.
Bob Leeming	Central public body Central public body
Professor Bob Lee	<p>Other This leaves the more difficult question 6. [Copied to CQ 6] Unless we envision an entirely new body, which might just draw expertise away from existing bodies, and which is an expensive solution in terms of overheads, then the obvious candidates are Natural Resources Wales (NRW) or the Coal Authority. Both are to some degree conflicted as managers or owners of existing coal tips in Wales. Such conflicts are less than ideal but not entirely unknown in regulatory settings (e.g. environmental health and statutory nuisance duties in respect of public sector housing or planning call-in powers by the Secretary of State where there is a clear central government interest in a site). The real expertise lies within the Coal Authority which has a now limited function in relation to licensing (given the few operational coal mines) whereas NRW is an integrated environmental supervisory authority which discharges considerable enforcement duties. NRW is a part of Welsh infrastructure more so than the Coal Authority as a UK wide executive non-departmental public body. There may be room for joint responsibility with the Coal Authority undertaking responsibilities for compilation of registers, including risk assessment and management plans, and NRW pursuing matters of enforcement (including conclusion and supervision of maintenance agreements).</p> <p>The process of creating NRW as an integrated agency has not been easy but ought to become easier over time. I am reluctant to propose a newly created body which would derogate against principle of integration</p>

	<p>and which would run contrary, to some extent, to the ambition of the management of natural resources in Wales under the Environment (Wales) Act 2016. Speaking frankly, I do have worries, however, that some of the other enforcement duties of NRW in relation to waste and water management, biodiversity and perhaps forestry will have to be negotiated alongside tensions thrown up in guaranteeing coal tip safety. However, I conclude that such reconciliation would remain the case with a separate supervisory body so it may be better to address these issues from within NRW and this ought to be possible if new legislation places clear duties in relation to coal tip safety on NRW.</p> <p>If there were a specialist unit within NRW, then question 7 is largely answered.</p>
Bridgend CBC	Agrees with WLGA
Caerphilly	Corporate joint committee If existing body cannot undertake duties and a new body has to be established then a Corporate joint committee of local Authorities is preferred.
Chris Seddon	Other This falls outside my expertise. However, this choice should be made on the basis of achieving the aims set out in my response to Question 6.
CLA Cymru - Country Land and Business Association	Central public body The new Authority should be a central public body with streamlined processes and command structure to carry out its role efficiently without numerous layers of bureaucracy.
Professor David Petley	Central public body A central public body would be the most effective structure.
Graham Hathaway	<p>Other Please not the same old failed organisations. LAs that have been complicit in doing so little and with blemish to their track record of proactive and decisive. If it rests with Council and councillors it will wither and be subject to outside manipulation and interference. Councils and councillors are known for planning fraud and profiting from approaches to pass planning applications that do not pass scrutiny. This isn't me or new but auditors and others who see it and report it over the ages. There's currently a case in Liverpool right now with the stepping down of its chair while investigations are ongoing.</p> <p>The new body should be independent of joint committees of LAs and be given statutory powers of investigation and be quasi judicial. It's judgements should have legal status otherwise it's a talking shop.</p>

Howard Siddle	Other I have insufficient knowledge to provide an authoritative answer. However, the new body might be modelled around some aspects of The Coal Authority which seems to have the correct knowledge, resources, experience, responsibility and focus to deal with the safety of their disused tips, in accordance with their own procedures based on the existing legislation and the TCA'S well proven track record in interpreting it . My experience is that this has worked well and a similar “Welsh” organisation, modified to include the processes proposed for the new legislation would seem to me to be best able to provide overall management of disused tips and their owners. I think that local authorities or existing government agencies may be prone to too many other competing priorities which will, over time, undermine the aims of the legislation.
Huw Williams	Corporate joint committee Given the extremely limited continuing coal mining activity in Wales and the concentration of the disused tips in a small number of authorities, I think: <ol style="list-style-type: none"> 1. That the authorities with significant numbers of tips should form a corporate joint committee. 2. The remaining local authorities in Wales should enter into agency agreements with the Joint Committee to enable them to utilise the expertise of the Committee's staff (which I envisage becoming a Centre of Excellence) in compiling registers for their areas and dealing with such tip safety issues as arise in their areas. 3. Powers for the Welsh Ministers to establish a statutory scheme to underpin this arrangement may be necessary to ensure that every local authority joins these arrangements.
ICE Wales Cymru	Central public body It should be a central public body reporting directly to the Welsh Ministers. Corporate joint committees will be regional and as such, if their geographical responsibilities are considered, more than one supervisory authority would be required and this is not recommended. As corporate joint committees are a new statutory mechanism for regional collaboration by local government, this would also raise the issue of conflict of interest with a local authority tip owner. Effective lines of communication between the supervisory authority, government, corporate joint committees, local authorities and other interested parties should be developed and maintained.
Jacobs UK Ltd (formerly Halcrow)	Central public body A central public body, provided with an appropriate level of funding.

Jane Iwanicki	Other If the current system is deemed to be ineffective, it may be preferable to have a central body that co-opts members/support from local regions that have relevant experience. It might be difficult to separate local authority (or Coal Authority) roles as owners from that of regulators. Has this been identified as a barrier under the existing arrangements?
Dr John Perry	Central public body A central independent public body.
Cllr Julie Edwards	Other I'm not the expert so I don't know what the right answer is but I would say the form needs to be proactive in approach, able to work in partnership and understanding of issues so that it can be ready to start from day one. These tips have been a legacy of our past which once caused people in the south wales valleys to live in fear, and do again following the slip in 2020. It can't go on.
Keith Bush	Natural Resources Wales Mae'r papur ymgynghori'n cynnwys tystiolaeth gref oddi wrth awdurdodau lleol am yr anhawsterau a wynebier gan awdurdodau unigol wrth geisio gweithredu'r Ddeddf bresennol. Mae'r anawsterau hynny'n cynnwys yr amhosiblwydd o feithrin arbenigedd yn nhechneg rheoleiddio tomennydd, wrth i'r gyfrifoldeb gael ei gwasgaru dros gymaint o gyrff unigol, y baich gweinyddol anghymesur maent yn gorfod ysgwyddo os bydd achos yn codi sy'n gofyn am gamau cyfreithiol cadarn a'r prinder adnoddau sy'n golygu nad oes ganddynt y gallu i ariannu a goruchwyllo gwaith sylweddol er mwyn diogelu tomennydd lle nad yw'r perchennog yn gallu neu yn fodlon gwneud y gwaith. Er y byddai trosglwyddo'r baich i bwyllgorau corfforaethol rhanbarthol yn lliniaru'r anhawster ni fyddai'n ei ddatrys. Er mwyn gwneud hynny rhaid cael un corff a fyddai'n gyfrifol am reoleiddio tomennydd ar draws Cymru. Gan ystyried natur ei swyddogaethau presennol, a hefyd y ffaith mai ef yw'r awdurdod goruchwyllo ar gyfer cronfeydd o dan Ddeddf Cronfeydd 1975 y corff priodol ar gyfer cyflawni'r dasg honno mewn perthynas a thomennydd yw Cyfoeth Naturiol Cymru.
Kim Moreton	Central public body Central public body with a suitable skill base from top to bottom. Accountable to Welsh central government.
Lee Jones	Central public body A central public body that is a Non Ministerial Department.
Merthyr Tydfil	Central public body A central body would provide a consistent approach. Local authorities do not have the expertise or resource to undertake this role.

Mineral Products Association	UK wide This needs to be a UK wide body. High level technical expertise is required and the involvement of local authorities runs the risk of politicising the regime.
Monmouthshire CC	Coal Authority The Coal Authority would appear to be the best placed body to take on the new role. Governance, scrutiny, funding etc. will need to be considered, and Local Authorities will need input into matters local to them.
Natural Resources Wales	<p>Central public body We see merit in a Central body.</p> <p>A centralized body can draw on expertise from anywhere and call upon support from existing government organisations. To help there should be an overarching Board that has the sponsor, the Environmental lead authority NRW, WLGA/select local authority representatives/PSBs and possibly the Emergency Services (Fire & Rescue) engaged to help steer the organisation. This would enable it to focus and aspire towards reducing carbon emissions within remedial interventions, habitat creation, whilst considering the well-being aspects of impacted communities and providing multiple benefits. This would help transform the body to be a truly sustainable one.</p> <p>We believe there are numerous risks with a joint organisation. Existing bodies would struggle with their existing internal structure to deal with the issue. We do, however recognise that local bodies may have the benefit of better local knowledge and contacts.</p>
Neath Port Talbot CBC	Central public body A central National body would have the advantage of being able to adopt a consistent approach across Wales. Within a CJC arrangement regional variations might develop and the burden would probably fall disproportionately on those LAs with a large number of tips in their areas. There will have to be a good relationship between a CJC, the Supervisory Body and the constituent LAs. Some form of local government representation on the board of the Supervisory Body should be part of the governance arrangements.
Network Rail	Other Network Rail does not have a view on the type of body; however, it is essential that it has the necessary power to act as a regulator under the legislation.
Ove Arup and Partners Ltd	Central public body A central public body.

Owen Jordan	Other As there is enough of the Balkans in Wales' government, how about scrap local govt and have three regions that can deal with all issues, in south, mid and north wales?
Dr Peter Brabham	Other I would think it should be a body of many inclusive members inc Coal Authority, local Authorities, BGS, Chartered Engineers, Chartered geologists and other experts in tip management and possibly mine historians.
Philip Thomas	Central public body A sexy body with nice sharp teeth. Not a joint committee, a central public body. Pretty much what most people would have assumed what the Coal Authority was responsible for in the first place.
Plaid Cymru Group, RCT	<p>Central public body We believe that the new single supervisory authority should be a wholly independent authority answerable to the Senedd. It should not be a part of any other authority - neither local authority, Natural Resources Wales (NRW) or British Coal. The new authority would be free to call on any other authority should the need arise, and to utilise any expertise available in other authorities. The new authority would have the resources and the expertise to carry out its functions.</p> <p>Credwn y dylai'r awdurdod goruchwyllo newydd fod yn awdurdod cwbl annibynnol sy'n atebol i'r Senedd. Ni ddylai fod yn rhan o unrhyw awdurdod arall - ddim awdurdod lleol, Cyfoeth Naturiol Cymru (CNC) na Glo Prydain. Byddai gan yr awdurdod newydd yr hawl i alw ar unrhyw awdurdod arall pe bai angen, gan defnyddio unrhyw arbenigedd sydd ar gael mewn awdurdodau eraill. Dylai fod gan yr awdurdod newydd yr adnoddau a'r arbenigedd i gyflawni ei ddyletswyddau.</p> <p>[Treated as relevant]</p>
Pontypool Park Estate Office	Other A new body, run as part of WAG, would be unfortunate. It will be incompetent and expensive, and WAG will seek to move the resulting burden onto tip owners to compensate for its failings.
Rhondda Cynon Taf CBC	Central public body A Central Public Body
Richard Arnold	Central public body Central Public body operating with accessibility in the regions utilising existing Local government operating office space / workshops / plant etc.

	Real visible action , not overly centralised and operationally and technically efficient.
Sioned Williams AS	<p>Central public body I believe that the new supervisory authority should be a wholly independent and answerable to the Senedd.</p> <p>Importantly, the new authority must have the resources and the expertise to carry out its functions.</p> <p>[Treated as relevant comment]</p>
Stephen Smith	<p>Other</p> <ul style="list-style-type: none"> i. The Coal Authority were established in the 1990s to look after the residual coal estate and, hence, should have the necessary expertise. However, as owners of tips, they would have to act as ‘poacher and gamekeeper’. Additionally, they are a UK national body and would presumably need a Wales specific arm to take on the role. A better role for them would seem to be in defining guidance on standards to employ. ii. Natural Resources Wales similarly manage tips in Wales and may have a conflict. They do, however, have an existing role on public and environmental safety (e.g. contaminated land) so have a level of expertise. iii. A corporate joint committee approach would also have potential conflicts – given local authorities own tips. iv. Unit within Welsh Government – although unlikely to be a favoured approach, a newly formed unit with appropriate technical expertise would offer some benefits and be directly accountable to Ministers. This could be similar to the former land reclamation units of Welsh Office and Welsh Development Agency, who had a critical technical and management role on the delivery of land reclamation in Wales, including budget requirements. v. An ‘arms length’ approach could be delivered through a new body managed by a Board comprising representatives from existing regulatory bodies enhanced by external technical / management expertise (e.g. from business or universities)
Steve Harford	<p>Other The proposed body should be established as an arms length body from the Welsh Government. This could be as a wholly owned subsidiary or other mechanism to place it on similar lines to the Natural</p>

	<p>Resources Wales and other bodies. That would give the organisation more operating flexibility than being part of a government department or as a joint committee of local authorities. It would also have an independent Board of Directors (appointed by Welsh Government) to provide advice and guidance to the management team of the proposed organisation.</p> <p>There is also the option of establishing a Commissioner, but as they are Corporate soles the proposed organisation would not necessarily have the support of a Board of Directors.</p> <p>It should be independent of Local Authorities to ensure that there is no bias between a local authority or a private landowner.</p>
Steve Jones/Pembrokeshire Council	Central public body Central Public body. Local authorities will be the owners of many of these assets and could find themselves placed in a difficult position
Sue Jordan	Central public body Central. Local authorities do not have the expertise, and are the causes of many unsafe tips, due to their failures to avoid problems at planning permission stage.
The Law Society of England and Wales	Other We are neutral as to the form and structure of the supervisory authority and are more concerned with ensuring that it would be sufficiently resourced to discharge its duties.
Torfaen response	Agrees with WLGA
Transport for Wales	Central public body We believe that it should be central public body with full accountability for managing coal tip safety, one with rigid governance and the capacity and competence.
Vikki Howells MS	Central public body Central public body.
WLGA	Central public body A central body would have the advantage of being able to adopt a consistent approach across Wales. Within a CJC arrangement regional variations might develop and the burden would probably fall disproportionately on those LAs with the skills and capacity. It is still too early to know what form CJs will take but a good relationship between them, the Supervisory Body and the constituent LAs will be

	needed. Some form of local government representation on the board of the Supervisory Body should be part of the governance arrangements.
Wrexham CBC	<p>Central public body It should be a central public body, not something that comprises Local Authorities.</p> <p>We agree a single supervisory authority should lead on this, for both high risk and low risk sites, and it should not fall to LAs at all. The main reasons for this are a single authority will provide consistency, expertise and resilience, but also because many LAs, WCBC included, have no Officers (now or in the past) with the necessary geotechnical expertise. A single supervisory Authority for the whole of Wales would support more effective partnership working at a regional level with other national regulators with involvement in these matters e.g. NRW and also reduce inconsistencies in enforcement if Local Authorities were supervising authorities. Expertise built up through regulating all manner of tips will also provide opportunity for gap analysis and research going forward. A single supervisory authority is more likely to make evidence based policy making procedures and enforcement with associated priorities without undue political persuasion. It would also avoid the issue of which Council regulates a tip site that traverses two local authority boundaries.</p> <p>From experience as a Contaminated Land Team, after the legislation was introduced in 2001 LAs were well resourced and able to fund appropriately qualified members of staff and undertake the implementation of the Strategies, this was aided by the Welsh Government introducing a capital funding program. However, over the last 10 years there is no longer any funding available from Welsh Government resulting in many authorities being unable to undertake any proactive work in this field. This has caused some authorities to lose qualified staff and are therefore unable to undertake their statutory duties under the Contaminated Land Regulations and also struggle with other land contamination related workloads. Furthermore this has caused significant disparities across the Welsh authorities in terms of contaminated land work that is carried out both through Part 2a and the Planning regime. A centralised supervisory body should avoid such disparities occurring under this new regime.</p>
Wyn Williams	Other I do not however the skill set to offer a view on this question.

CONSULTATION QUESTION 8

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?

Consultation Question 8 asked respondents whether they agreed with our provisional proposal (yes/no/other). Some consultees also provided text to further explain their view. This text has been added to the table. Some respondents did not directly respond to Consultation Question 8, either because they did not use the Citizen Space platform or because they tailored their response to their particular experience.

Respondent	Response to CQ 8 (Yes/No/Other)	Text
Of those who responded: Yes 39 No 4 Other 5		
Blaenau Gwent CBC	Yes	To cover all aspects of Tip Safety.
Bob Leeming	No	The study was triggered by unstable tips, and the work of the authority should concentrate on that, rather than diverting onto wildlife and pollution, which are presumably covered by other bodies, such as NRW.
Professor Bob Lee	Yes	That leaves question 8 and it might be apparent from my answer above is that I do favour a more general duty that sits in line with Welsh legislation in both the Well-being of Future Generations (Wales) Act 2015 and the Environment (Wales)

		Act 2016 to offer something rather more than a guarantee of tip stability and address questions of environmental, social and economic sustainability in Welsh former coalfield communities still badly scarred by coal pit closures after so many years. This would be a wide supervisory brief, involving both the Coal Authority and NRW but one which ought not to be overlooked..
Bridgend CBC	Agrees with WLGA	
Caerphilly	Yes	Agree that risk should be general and cover all the risks associated with the tip.
Chris Seddon	Yes	Framing the supervisory authority's duty in a general way will allow the organisation to adapt to unforeseen and developing hazards as legacy tips age and our understanding of their implications changes over time.
CLA Cymru - Country Land and Business Association	Yes	Its role should be to protect the Welsh public and be capable of undertaking whatever is required to ensure there are no risks associated with the old coal tips to the public
Professor David Petley	Yes	The safety of tips is complex and will evolve with time. To focus on specific risks could lead to an emphasis on the wrong types of risk, or to miss risks that evolve with time. It will also create a scenario in which actions or directions can be contested on the basis that they do not perfectly align with specific risks.

Dwr Cymru Welsh Water	Yes	Agree. Where there are risks to drinking water supplies and mitigation is time sensitive, it would be undesirable for time to be wasted in determining whether the authorities' specific duties were relevant or if other parties had to be pursued.
Graham Hathaway	Yes	Overarching and integrated by association with all matters related to its subject and status of coal extraction and its attendant consequences set against the environment, its practice and outcomes. Whatever these are or where.
Howard Siddle	No	<p>I do not agree that the SA's duty to ensure safety should be framed as a general one, if this is to be justified only on the unconvincing evidence put forward in the CP. In my view, other safety issues should only be included if:</p> <p>1 They are real issues, supported by reliable evidence.</p> <p>2 Information to inform a realistic risk assessments can be collected meaningfully, cost effectively and their method of use has been established. Unlike stability hazard, these do not appear to have been considered in the CP, thus far.</p> <p>3 They are not covered by other existing regulations or by regulations which are not fit for purpose.</p>

		<p>I think the evidence put forward in the CP of other risks posed by tips is shaky.</p> <p>- The examples of flooding do not support the notion that disused tips cause flooding (except, of course as a consequence of tip sliding or failure of a tip drainage system, both of which are processes associated with stability and maintenance and already covered in the CP proposals). The 50+ year old examples from Aberfan refer to the an active Merthyr Vale colliery site and, if my memory serves me correctly, were due poor management of active tipping and fine discards. The Grove Field incident appears from the information provided to have been caused by poorly designed earthworks and not a disused tip. Para 2.36 refers to underground mining features contributing to flood events, using the event at Skewen as an example. However my understanding is that this event was caused by an outburst of underground mine water and not a disused tip.</p> <p>- The section on Pollution (2.37 et seq) lacks clarity and conflates general UK statistics (not Wales specific), runoff from acid mine drainage, high metal concentrations from metalliferous mine wastes and treatment of acid mine drainage. Metalliferous mine wastes are not proposed to be covered in the proposed new legislation and we are informed in para 5.29 of the CP that NRW advise Part 2A of the EPA, 1990 “is unlikely to be</p>
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		<p>used to deal with coal tip issues. Examples given in the CP of “coal mine water discharge” (eg para 2.42) are not related to disused tips and cannot be used as evidence supporting the proposed legislation. Be aware that many mine adits discharge contaminated (“ochreous” water) and that these often lie within areas of disused tips.</p> <p>A superficial inspection might suggest an association but the source of contamination is mine waters and not the disused tips. My view therefore is that any “generality” in the SA's duties needs to be carefully drafted do as not to suggest liability for problems that don't exist or for which responsibility already lies elsewhere. With regard to the latter my understanding is that the responsibility for monitoring and remediating pollution from minewater rests with TCA as set out in para 9.104 of the CP. Has WG an appetite to change this? Is there any benefit in making tip owners responsible for mine waters? Could an owner of land containing a discharge of polluted water be reasonably held to account for its remediation?</p> <p>It seems perverse that, from the evidence presented, the only tips with significant potential to pollute surface waters from their leachates are those associated with metalliferous mines, which are excluded from the new legislation.</p>
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		<p>- It is true that many (perhaps the majority of) the older disused tips have burnt in the past, evidenced by the pink clinker, fused spoil within them. To my knowledge there have been a very limited number of tip fires (at Swansea, Pontypridd and Mountain Ash) in Wales in the last 25 years or so which does not seem to justify a widespread problem needing regulation. Moreover recent fires have been caused by spread of surface vegetation fires and not</p> <p>spontaneous combustion (SC) as suggested in the CP. Bear in mind also that many tip fires on active tips in the past were caused by disposal of hot ashes from colliery boilers and not SC. Doubtless the potential for SC might be crudely assessed from the age of a tip (and therefore its likely coal content), whether it has already burnt and its method of construction (post- Aberfan tips being highly compacted and not prone to combustion). Whether a tip is burning at the present time might be determined by thermal imaging by drone. However I question whether these data are sufficiently reliable or cost effective for the SA or owner to obtain and use in a meaningful risk assessment. The impact of climate change may make wildfires more prevalent in future but mitigating their risk through regulation for which all tip owners would be responsible will not be straightforward.</p>
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		<p>In summary, unless more persuasive information on other risks can be put forward, I think the risks to be considered in the new legislation should be tip stability and tip drainage (see my response to Q17 to justify drainage).</p>
Huw Williams	Yes	<p>The specification of risks could result in arguments as to whether a specific risk had eventuated.</p> <p>There is sufficient evidence set out in the Consultation Paper to demonstrate that the deposit of mining waste is inherently risky (albeit at low level in many instances). Also there is a dynamic element in the way that environmental and climatic changes can impair the effectiveness of previous engineering operations to render a tip stable. The notion that a tip that has been reclaimed can be deemed to be no longer a risk is now untenable as the events that have given rise to this consultation demonstrate.</p> <p>Once mining or quarrying waste arises and is deposited on the surface it should be regarded as presenting a permanent potential risk that requires management. The definition should reflect this by framing the duty around the fact of the deposit of the material on the surface, rather than a specification of (currently known) risks.</p>

ICE Wales Cymru	Yes	Agreed. The supervising authority's duties should cover all health, safety and environmental risks associated with disused coal tips.
Jacobs UK Ltd (formerly Halcrow)	Yes	<p>The supervisory authority's role needs to be all encompassing. There are a wide range of risks affecting tip safety, some of which are not readily apparent.</p> <p>Each tip is unique and to assess a tip it is imperative to understand the tip holistically based on historical records, geomorphological setting/ geological setting/ground conditions (including soil and rock properties)/groundwater conditions and based on its current condition and behaviour. Some influences on tip stability are less obvious for example the strains imposed by past mining. To limit to specific risks, runs the risk of missing out something that could be very important.</p>
Jane Iwanicki	Yes	There is sense in adopting a holistic engineering and management approach to identified risks/hazardous sites rather than dealing with only one aspect and leaving other regulators to consider if, when and how they intervene.
Joel James MS	Yes	
Dr John Perry	Yes	Risks get added and values change so a general approach preferred.
Cllr Julie Edwards	Yes	

Keith Bush	Yes	Ydw. Mae'r dyletswydd presennol, sy'n seiliedig ar yr egwyddor o ddileu rhisg o "beryll" i aelodau o'r cyhoedd (adran 11) yn rhy gyfyng (gweler isod) ac yn gosod trothwy rhy uchel ar gyfer ymyrraeth gan y cyrff goruchwyllo. Mae'r dystiolaeth yn dangos bod hyn yn gallu bod yn rhwystro i gynghorau weithredu am ei fod yn eu hagor i fyny i'r posiblwydd o gael eu herio yn y llysoedd.
Kim Moreton	Yes	Risks continue to evolve...
Lee Jones	Yes	This would ensure all associated potential impacts could be considered (e.g. environmental, physical etc) and give the supervisory authority the flexibility needed to mitigate problem tips. It would also give flexibility in addressing unforeseen events / impacts arising either prior to or during remediation.
Merthyr Tydfil CBC	Yes	
Mineral Products Association	Other	The structure of this question is unclear. The risks must be made clear and any action must be justified and supported by evidence.
Monmouthshire CC	Yes	
Natural Resources Wales	Yes	Yes – If you specify risks it is inevitable that some will be overlooked initially. Our view is that a general approach with high level outcomes will allow the agility to deal with the wide range of

		<p>risks that may exist at so many varying sites across Wales.</p> <p>Although the safety of tips would be the primary purpose of a new authority there are other issues that should be considered. Some tips although not posing a safety threat do pose a risk to the environment. This environmental threat should be part of the new authority's remit. There may be others such as air quality, combustion, plant health too.</p> <p>There may be economical issues which may benefit Wales in the future such as reclaiming land for development or recycling spoil material. This could be from tips that are currently not hazardous, but a central authority would need to be in control to realise these benefits.</p> <p>We would welcome non-coal tips being included, so a "loose" definition could help, but we need to balance this with our duties under the Water Framework Directive (WFD). NRW is currently working on the metal mines joint remediation programme to restore river quality and ecological health.</p> <p>NRW has also received hazard incidents and stakeholder / consultant commentary on Penmaenmawr granite quarry, Cambrian slate mine, Parc/Crafnant lead mines and Moelwyn slate mine. We have no legal responsibility or</p>
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		rights to access to land that isn't a metal mine, unless directed to do so from the emergency services. Flexibility could help with these non-coal sites.
Neath Port Talbot CBC	Yes	<p>In the first instance, the duty should be on the land/tip owner to maintain the safety of the tip. They should be given the opportunity to address any issues that are identified. Should intervention be necessary, due to inaction on the part of the land/tip owner, a 'general duty' on the Supervisory Body would have to be defined, especially if there is any possibility of the role/responsibility being passed to LAs to be discharged. In defining the duty, though, it is hard to see how this could be done without specifying the types of risk expected to be managed under the duty?</p> <p>Base line inspections by the Supervisory Authority should classify the tip, evaluate the risk and carry out the risk assessment prior to its registration.</p>
Network Rail	Yes	Network rail agrees, the authority should have the flexibility to evolve to react to new risks if they are identified.
Ove Arup and Partners Ltd	No	The role should be limited to and focused on ensuring safety of the public against instability/failure of the slip. Other key risks, such as pollution, flooding etc are covered by other legislation.

Owen Jordan	Yes	See above. If you catch-all, you might just do so. Specified perils is the insurer's dream - easily evaded. And will be.
Paul Connolly	No	I believe risk areas or types should be clearly identified so they can be assessed as relevant or not to each individual site. This list can always be expanded and updated as new risks or categories of risk are identified.
Dr Peter Brabham	Yes	
Philip Thomas	Yes	All safety concerns connected in the ecosystem.
Pontypool Park Estate Office	Other	This is a leading question. Since WAG is already responsible for coal tip safety, all WAG must do is 1) contract out its obligations to a competent party (which a new WAG-owned entity would not be) and 2) define the terms of that contract. We do not need to reinvent the "supervisory authority's duty to ensure the safety of tips"; we have established that already rests with WAG.
Rhondda Cynon Taf CBC	Yes	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.
Richard Arnold	Yes	Identify, Inspect

		<p>categorise and then</p> <p>Develop appropriate and sustainable management and monitoring.</p> <p>Eliminate high hazard category tips as investments both economically and in communities. Obtain covenants from land owners to share in uplifted land values on reclaiming tip land for development purposes etc. etc</p>
Stephen Smith	Yes	Agreed, but a framework is required to offer guidance on 'specific tasks'.
Steve Harford	Yes	this will ensure that the body has the flexibility to deal with tip related issues as it sees fit and not constrained by legislation.
Steve Jones/Pembrokeshire Council	Yes	As long as they work to a clear, agreed strategy.
Sue Jordan	Yes	
The Law Society of England and Wales	Yes	We agree
Thomas Glyn Watkin	Yes	However, it would be desirable for the general duty to make express reference to criteria to be considered in its discharge, including the use of the categories DCBA adopted by the Coal Authority team from the approach used by Rhondda Cynon Taf, together with the receptors (see 8.7 and 8.8).

Torfaen response	Agrees with WLGA	
Transport for Wales	Yes	The authorities duty should be all encompassing in respect of coal tip safety, with remit across the full scope of the legislation.
Vikki Howells MS	Yes	
WLGA	Other	In the first instance, the duty should be on the land/tip owner to maintain the safety of the tip. They should be given the opportunity to address any issues that are identified. Should intervention be necessary, due to inaction on the part of the land/tip owner, a 'general duty' on the Supervisory Body would have to be defined, especially if there is any possibility of the role/responsibility being passed to LAs to be discharged. In defining the duty, though, it is hard to see how this could be done without specifying the types of risk expected to be managed under the duty? The decision on whether the Supervisory Body has responsibility for all tips or, say for C and D designated tips, will be important here. It will impact on the powers of intervention/enforcement of the Body and these should be defined within the new legislation.
Wrexham CBC	Yes	Yes agreed, limiting it to specified risks may unintentionally create loopholes and undermine the overall aim which is to ensure the safety of tips.

		<p>There are other risks that coal tips pose in addition to instability and these often don't exist in isolation of each other and mitigation/remedial measures needed to address instability may also resolve these other risks.</p> <p>Examples of other risks are pollution from ground contamination, contaminated water, dust emissions which might include fine particulates (less than 2.5 or 10 micron).</p> <p>Combustion smoke and emissions can create pollution, possibly hazardous to nearby residents and might not be actionable as a statutory nuisance unless the tip site was an industrial, trade or business premises (most are not). The respondent is aware of at least one coal spoil tip that combusted (ignition source not identified) causing statutory nuisance to properties on and around the tip – an abatement notice was served and extensive works in default undertaken .</p> <p>Off road bikes can create noise nuisance dealt with by Statutory nuisance regime, however these can undermine stability, create erosion, water pollution.</p> <p>Climate change may potentially have a significant impact on the risks that coal tips pose due to more extreme and frequent weather events, such as greater levels of surface run off, rising perched groundwater and flooding.</p>
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Wyn Williams	Yes	I agree with the reasoning of the Commission.
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CONSULTATION QUESTION 9

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?

Consultation Question 9 asked respondents whether they agreed with our provisional proposal (yes/no/other). Some consultees also provided text to further explain their view. This text has been added to the table. Some respondents did not directly respond to Consultation Question 9, either because they did not use the Citizen Space platform or because they tailored their response to their particular experience.

Respondent	Response to CQ 9 (Yes/No/Other)	Text
ALGAO	Yes	Yes. This will be an essential tool in the implementation of the new framework. In addition, it will be a valuable resource that can help to inform archaeological decision making for proposals within these areas. As noted below, many tips are recorded on the archaeological information systems which underpin archaeological advice and research strategies. It is suggested that a protocol could be established whereby register information (such as survey and condition updates) is provided to the relevant HER, NMRW and Cadw on a regular (e.g. annual) basis to maintain the currency of their databases, and/or for links to be provided by each party to allow the databases to be readily cross-referenced. Please see also comments on Question 33 below.

Dr Ben Curtis	Treated as yes	<p>Consequently, I was very pleased to see that the main recommendation of the report was the following;</p> <p>“The consultation seeks views on the proposed framework including the introduction of:</p> <ul style="list-style-type: none"> <input type="checkbox"/> A single supervisory authority with a duty to supervise the management of all disused tips. <input type="checkbox"/> 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. <input type="checkbox"/> Inspections of each tip for the purpose of a risk assessment and designing a tip management plan. The inspection could potentially cover all potential risks including the risk of tip slides but also flooding, pollution and any other risks. <input type="checkbox"/> For those coal tips designated as high risk, an enhanced safety regime with increased involvement of the supervisory authority to manage the tip and reduce the chance of significant dangerous incidents occurring.” <p>I endorse the above recommendation and very much hope that the Welsh Government will take the necessary steps to bring this into being as soon as is practicable.</p>
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Blaenau Gwent CBC	Yes	Yes, this would provide an accurate and consistent picture across Wales that could be continually updated.
Bob Leeming	Treated as other	Absolutely essential if the problem is to be managed.
Professor Bob Lee	Yes	YES: though I am not entirely neutral on this issue given that work has already begun on this. I do not accept that there will be great likelihood of blight, which discounts considerable local and lay knowledge in the communities in question, though I can see that insurers might make use of any register and it would be difficult to guard against this if, as it should be, this information is available to the public (see below). Broadly as for reservoirs, I find it hard to see why one would wish to begin a process of supervision without uniform and reliable data.
Bridgend CBC	Agrees with WLGA	
Buglife	Yes	
Cadw	Treated as Yes	We are supportive of your proposals to establish a central tip register, and to adopt a uniform approach to recording information. We recommend that this includes relevant historic environment data such as significance, designation, vulnerability etc.
Caerphilly	Yes	Agreed.

Chris Seddon	Yes	This would be an invaluable resource to the ground engineering community, improving safety and value for money for our clients, who include central and local government.
CLA Cymru - Country Land and Business Association	Yes	This needs to be done as a matter of urgency, it is surprising there is not already one?
Professor David Petley	Yes	At present there is considerable uncertainty as to the location and scale of the problem. It is likely that some tips have not been identified adequately, and that others are poorly characterised. A single, coherent register of tips is the starting point for a risk-based management structure. This has proven to be highly effective elsewhere (for example in terms of dangerous slopes in Hong Kong).
Dwr Cymru Welsh Water	Yes	Agree. A single reference point for all tips would be extremely useful in determining location, risks and management including those pertinent to drinking water supplies.
Graham Hathaway	Yes	<p>Essential and it's the first base position. You can't form policy and practise or be proactive until the full extent of the register is known and maintained.</p> <p>This is crucial to be enacted and be thorough. The question is why has it been left to wither as is it now, This is negligence and has reflected the</p>

		<p>lack of attention and priority afforded this crucial task.</p> <p>I'm so disappointed to read this account in the report of missing information and lack of due diligence in maintaining records. This isn't by way of overt criticism but a statement of fact when staff retire or leave the service. Expertise dies with it. I liked the example of the officer looking to find out who owned the tip to walk on it and ask! Rather effective I would say. What is important is the same doesn't happen again . Surely.</p>
Howard Siddle	Yes	<p>Agreed. There should be a central tip register though, as noted in Q2 above, the question of which tips qualify for inclusion is not as straightforward as it might seem. Be aware that some agencies already have or had their own registers. The NCB compiled a list of 800 odd tips in their ownership after Aberfan and this document must exist somewhere. NRW certainly has one as I was a party to its formulation and use.</p>
Huw Williams	Yes	<p>The Welsh Ministers should be under a duty to compile and maintain a register with powersby means of a statutory scheme to appoint another body to discharge that duty - see my reply to Q7.</p>

ICE Wales Cymru	Yes	Agreed. A comprehensive central tip register is critical to consistent, holistic, comprehensive and effective risk management of disused coal tips.
Jacobs UK Ltd (formerly Halcrow)	Yes	For completeness and reasons of quality assurance it makes absolute sense to have a single source of reference.
Jane Iwanicki	Yes	It sounds as if the process of collating available data is well advanced so it should be utilised in a constructive way. There would need to be clear obligations for reviewing and updating the register otherwise it will become a snapshot in time rather than a useful management tool.
Joel James MS	Yes	
Dr John Perry	Yes	
Cllr Julie Edwards	Yes	Which should include categorisation so that people know where danger lies.
Keith Bush	Yes	Ydw. Mae hyn yn angenrheidiol er mwyn sicrhau trefn gynhwysfawr effeithiol ar gyfer sicrhau diogelwch tomennydd ar draws Cymru.
Kim Moreton	Yes	This exercise would be straightforward, new geospatial technologies would enable the information to be shared in the public domain - for example via Land Registry/local authority registers/OS technical registers

Lee Jones	Yes	A centrally held register would enable ease of its updating and harmonising of records from several sources to ensure consistency and accuracy.
Merthyr Tydfil CBC	Yes	Yes. This would ensure all tip information across Wales is accurately recorded in the same format.
Mineral Products Association	Yes	
Monmouthshire CC	Yes	
Natural Resources Wales	Yes	<p>Yes - The format of this register and the amount and type of data it holds should be agreed by all stakeholders / users of such a register. This will ensure:</p> <ul style="list-style-type: none"> • we capture all the required data, and no more, and • that stakeholders will not see a need to form their own registers, and • We end up in a situation where we have numerous registers all containing different data. <p>The opportunity of utilising the latest Digital services thinking should be adopted to ensure customer needs are central in designing a register and that it efficiently and effectively delivers the right product for all parties through easily accessed media.</p>

Neath Port Talbot CBC	Yes	Yes, this would provide an accurate and consistent picture across Wales that could be continually updated.
Network Rail	Yes	
Ove Arup and Partners Ltd	Yes	
Owen Jordan	No	Waste of time and money.
Paul Connolly	Yes	A 'one stop shop' for a central tip register is essential to ensure records are as accessible as possible in to introduce efficiencies for all parties accessing those records.
Paul Funck	Other	Although data collection is mentioned throughout the above documents and that the data will be stored on DataMapWales platform. It is how the analysis of this data can highlight certain problems that may prove “the data’s worth”. For example, subjecting the data to certain “search” criteria, distance to nearest housing, angle of slope/repose, in which direction, subsoil conditions, watercourses in the vicinity. In order to subject the data to this interrogation the initial data would need to have been captured. Pointless capturing the “polygon” of the tips and not having “internal data”, meaning the polygon has the “corners” staked but the center of the polygon is “100’s” of feet higher than the perimeter? Or the subsoil conditions are unknown, but considering

		<p>the top of the tip is “flat”, it’s classified into a lower risk category?</p> <p>Interim approach to organising tip data</p> <p>Para 8.6</p> <p>The problem with storing any form of data, is maintaining the data in a form that is accessible to all involved parties. Not only must the data be accessible but relevant to all parties/departments involved. In order to prevent rehashing data and attempting to merge data at a later stage, it is of paramount importance to involve all stakeholders up front, in order to determine what data each party requires. This will also remove duplication of captured data. This process could of data capture decision could takes days or weeks to agree upon. But would be far “cheaper” than trying to add/merge data at a later stage.</p>
Dr Peter Brabham	Yes	Absolutely this is the fundamental problem that nobody has been keeping a modern digital mapping (GIS database) and updating it.
Philip Thomas	Yes	Why is RCT and the Welsh Government currently denying our public right to have a copy of the existing register? All current FOI request have been declined. Draft 18 months since Tylorstown is a feeble excuse/diversion.
Plaid Cymru Group, RCT	Treated as Yes	The new authority would create a list of every tip in Wales and categorise those tips using the

		<p>DCBA category system. The list, for the sake of public confidence, would be open for anyone to see. Transparency and public confidence here is paramount. Reclaimed tips should remain on the list of tips.</p> <p>Byddai'r awdurdod newydd yn creu rhestr o bob tomen yng Nghymru ac eu categorïddio gan ddefnyddio system categori DCBA. Byddai'r rhestr, er mwyn cadw hyder y cyhoedd, yn agored i unrhyw un ei gweld. Mae tryloywder a hyder y cyhoedd yma o'r pwys mwyaf. Dylai tomenni sydd wedi eu hadfer aros ar y rhestr o domenni.</p>
Pontypool Park Estate Office	Yes	There should be a tip register; it is bizarre that there is not one already. The real question is what should be registered, and how, and to what end?
Rhondda Cynon Taf CBC	Yes	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.
Richard Arnold	Yes	Based on all former questions answered.
Sioned Williams AS	Treated as Yes	I therefore support the recommendations to establish 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.
Stephen Smith	Other	The 'project' has invested a lot of time in gathering and cleansing data on tips across Wales, which would be wasted if there is no requirement for a register. However, there is a fundamental requirement for all entries to be effectively categorised to ensure accuracy and to be based on available data (e.g. historic records of investigation or remediation). This is a major technical and land referencing task requiring a significant commitment of funds and time.
Steve Harford	Yes	
Steve Jones/Pembrokeshire Council	Yes	<p>We are told that the results will go onto Data Map Wales? Would also like to see layers placed on the secure government portal - Resilience Direct, to which emergency services, NRW, local authorities and the military have controlled access. This would enable a better shared understanding of a situation at the time of an incident.</p> <p>The system was used to brief UK Govt COBRA at the time of the Toddbrook Reservoir incident.</p>
Sue Jordan	Yes	The information exists in the 22 local authorities.
The Law Society of England and Wales	Yes	We agree.

Thomas Glyn Watkin	Yes	
Tom St John	Yes	
Torfaen response	Agrees with WLGA	
Transport for Wales	Yes	A register should be centrally held and there should be requirement to share the information contained within it with stakeholders (e.g. Tfw).
Vikki Howells MS	Yes	This should include information on potential risks of each disused tip to support a uniform approach towards inspection.
WLGA	Yes	Yes, this would provide an accurate and consistent picture across Wales that could be continually updated.
Wrexham CBC	Yes	A central register, as opposed to something split regionally for instance will not only ensure a consistent approach is applied but primarily will allow resources to be focused on the highest priority tips in all of Wales first. It is inevitable that many tips will require works to be undertaken and resources will not stretch to the work all being done at the same time, prioritisation will have to take place. However if a regional register is created and funds are then split regionally it is possible funding may not be directed towards the highest risk tips in Wales first because some authorities may not have very high risk tips. For example, Authority A may have 5 very high risk

		sites and Authority B may have no very high risk sites but 1 medium risk site. If funding was allocated equally to each Authority then the medium risk site would be dealt with in Authority B whilst Authority A may only have sufficient funds to deal with only 1 or 2 of its very high risk sites.
Wyn Williams	Yes	I agree with the reasoning of the Commission.

CONSULTATION QUESTION 10

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

Consultation Question 10 asked respondents whether they agreed with our provisional proposal (yes/no/other). Some consultees also provided text to further explain their view. This text has been added to the table. Some respondents did not directly respond to Consultation Question 10, either because they did not use the Citizen Space platform or because they tailored their response to their particular experience.

Respondent	Response to CQ 10 (Yes/No/Other)	Text
Of those who responded: Yes 38 No 5 Other 2		
ALGAO	Other	No comment. However, we would highlight that Cadw, the regional HERs and NMRW hold information on disused tips and associated

		industrial archaeology, which may be relevant for management purposes. This might include any the extent of any statutory or non-statutory designations, historical information, maps, photographs, records of field observations, previous interventions and conservation management recommendations. It is recommended that compilers of the tip register consult the respective record managers regarding this existing information and the scope for future data sharing, as suggested under Question 9 above. Please see also comments on Question 33 below.
Blaenau Gwent CBC	Yes	
Bob Leeming	Yes	makes sense so the authority does not make it up as they go along, and tailor it to fit their purpose.
Professor Bob Lee	Yes	YES: Little to add; I think that the experience within Welsh Government and elsewhere in thinking about this to date is has gone some way towards compiling the necessary data and Welsh secondary legislation could prescribe the contents with the benefit of this work and experience.
Bridgend CBC	Agrees with WLGA	
Caerphilly	Yes	Agreed.

CLA Cymru - Country Land and Business Association	No	We would like this to be brought forward in primary legislation so that a full debate and full scrutiny can be given to any proposals.
Professor David Petley	Yes	
Graham Hathaway	Yes	Essential. And my previous answer speaks to this important practice. Otherwise it will be rebated as non essential.
Howard Siddle	Yes	Agree that the content of the tip register should be prescribed by statutory instrument. Note that it is suggested that the data that will or could be included in the register outlined in paras 8.16 to 8.18 in the CP seem to start at the present. However, many tips including those owned or formerly owned by TCA, some local authorities and some managed by NRW, have been investigated in great detail and some have a plethora of reports prepared, inter alia, to meet the requirements of the old legislation, dangerous occurrences and land reclamation projects as well as inspection reports referred to in para 8.18. These reports are of the utmost importance in future management as they provide information on their history, past behaviour, stability, drainage and the design standards, if any, adopted in their construction. The register for each tip should include references to all previous reports and their custodians to ensure existing and future owners can access them.

Huw Williams	Yes	I agree, although an alternative might be for the statutory scheme (which could be made by SI) to specify the contents of the register the designated body should compile.
ICE Wales Cymru	Yes	Agreed. In prescribing the contents of a tip register, Welsh Ministers should take full account of recommendations from expert advisors with knowledge of past, current and potential future coal tip events (e.g. tip instabilities), legislation and climatic or other trends to ensure that the register is robust and future proofed as far as reasonably possible.
Jacobs UK Ltd (formerly Halcrow)	Yes	Agree, but the contents needs to be driven by suitably qualified and experienced personnel with knowledge of the likely requirements of such a register.
Jane Iwanicki	No	I do not see the need for this to be prescribed by statutory instrument and the process should be in consultation with technical advisers and drawing upon the recommendations of local authorities and the Coal Authority.
Joel James MS	Yes	
Dr John Perry	Yes	
Cllr Julie Edwards	No	
Keith Bush	Yes	Bydd angen ysytyriaeth ofalus o natur y manylion sydd angen eu cynnwys yn y gofrestr, ac

		ymgynggori trylwyr gyda'r rhan-ddeiliaid perthnasol. Hefyd, gall dealltwriaeth o ystod y manylion y dylid eu cynnwys newid dros amser. Am resymau ymarferol dylai ffurf a chynnwys y gofrestr gael eu pennu, felly, gan Weinidogion Cymru trwy is-ddeddfwriaeth.
Kim Moreton	Yes	
Lee Jones	Yes	
Merthyr Tydfil CBC	Yes	Yes. This would ensure a consistent approach is applied.
Mineral Products Association	Yes	Yes, but it is important that all nations in the UK are engaged.
Monmouthshire CC	Yes	
Natural Resources Wales	Yes	<p>Although we agree that the Welsh Ministers should prescribe the need for a register via statutory instrument, the content of the register should be designed around the 12 Digital Service Standards (https://digitalpublicservices.gov.wales/toolbox/digital-service-standards/). This will ensure that the register content meets the customer needs. A full Business Analysis function of the register needs to be undertaken driven by the users' needs and requirements.</p> <p>Such a register needs to be Agile enough that it can be altered for future requirements if required. It needs to be flexible to deal with possible new</p>

		requirements in the future. Changes could be agreed via its Board or sponsorship.
Neath Port Talbot CBC	Yes	Yes – again this would support a clear and consistent approach.
Network Rail	Other	Network Rail has no view on the mechanism for prescribing the contents of the register but agrees that it is sensible to set out the contents that are required.
Ove Arup and Partners Ltd	Yes	It is important that there is a legal requirement via an SI for the specific content to be registered.
Owen Jordan	No	It would be difficult to find a civil servant, much less a minister, who knew anything about tips, so why waste money on it?
Dr Peter Brabham	Yes	
Pontypool Park Estate Office	No	Bad idea; much better make it contractual.
Rhondda Cynon Taf CBC	Yes	Members agreed that the contents of the tip register should be prescribed by the Welsh Ministers by statutory instrument
Richard Arnold	Yes	But keep it simple and fluid.
Stephen Smith	Yes	Agreed, but note the contents of the register will need to be refined whilst the work under 9 above proceeds.

Steve Harford	Yes	But they should be flexible to allow the body to add data to help in their monitoring.
Steve Jones/Pembrokeshire Council	Yes	
Sue Jordan	Yes	
The Law Society of England and Wales	Yes	We agree and consider that the statutory instrument should be subject to Senedd scrutiny via the affirmative procedure.
Thomas Glyn Watkin	Yes	
Tom St John	Yes	I believe the contents stipulated should be considered the minimum contents required. Certain sites may require additional site-specific content.
Torfaen response	Agrees with WLGA	
Transport for Wales	Yes	
Vikki Howells MS	Yes	
WLGA	Yes	Yes – again this would support a clear and consistent approach.
Wrexham CBC	Yes	To ensure consistency across Wales.
Wyn Williams	Yes	As previously.

CONSULTATION QUESTION 11

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?

Consultation Question 11 asked respondents whether they agreed with our provisional proposal (yes/no/other). Some consultees also provided text to further explain their view. This text has been added to the table. Some respondents did not directly respond to Consultation Question 11, either because they did not use the Citizen Space platform or because they tailored their response to their particular experience.

Respondent	Response to CQ 11 (Yes/No/Other)	Text
Of those who responded: Yes 39 No 5 Other 3		
Blaenau Gwent CBC	Yes	Yes – the supervisory authority should maintain a comprehensive and up-to-date register. The question of whether a tip exists or not would seem relatively non-controversial, but issues relating to land ownership could be taken on appeal for determination by an appropriate independent body. It is the details contained on the register, though, that will be the key issue for landowners. Allocation to a high-risk category could impact on the value of the land on which the tip is located as well as surrounding areas.

Bob Leeming	Yes	The register needs to be complete and comprehensive.
Professor Bob Lee	Other	<p>In my suggested scheme above one would need to decide whether the Coal Authority should shoulder the responsibility for compilation of the register or whether this duty would fall to NRW acting on Coal Authority recommendations. I agree that relying on owners to register tips is not sufficient in itself though that is not a reason for dispensing with a duty to report for registration any tip of which the owner becomes aware (answering question 12). I say this while noting that any such duty will be difficult to enforce in practice. I wonder whether framework with both a duty and a power is over elaborate. I can see that an authority might wish to act independently of any report by an owner, but presumably it will do so having become aware of information suggesting the presence of a tip. At the point that an authority becomes so aware, unless we are worried about <i>de minimis</i> deposits of coal waste, why not impose a duty to register at that point, given the need for risk assessment which then arises?</p> <p>An owner should clearly have appeal rights. I think that designation (question 20) is the more likely basis of appeal but both grounds suggested make sense and one can envisage scenarios in which both grounds 11(a) and 11(b) could form the basis of appeal. Without fully knowing the</p>

		content of a register, one could see other potential grounds of appeal. For example if presence of receptors were to be included on the register, might it not be a ground of appeal that the tip is wrongly scheduled as being in proximity to a receptor such as a protected or sensitive habitat?
Bridgend CBC	Agrees with WLGA	
Caerphilly	Yes	Agreed.
Chris Seddon	Yes	Agreed. Appeal on the basis of (b) will be difficult to evidence, particularly in the case of overburden tips or where colliery waste has been purchased as an earth working material by a previous owner.
CLA Cymru - Country Land and Business Association	No	We agree that mistakes may be made and that any landowner has the right to appeal any decisions which may affect his land and with it potential liabilities.
Professor David Petley	Yes	
Graham Hathaway	Yes	Yes, by statute. I presume the second part covering right of appeal is if there this is disputed by the actual owner? Wouldn't this be held centrally at Swansea Registry Office. Or if not then somehow claimed but not legally. Confusing but not surprising. Given the Klondike like attention to maintaining records and acting with due diligence.

Howard Siddle	Yes	Agree that the authority should have this duty and power and that an owner should have the right of appeal. The absence of a “tip” as a ground for appeal might be misused by some owners if the definition of a “tip” requiring registration is not very precisely crafted.
Huw Williams	Yes	I think that the identification of tips by the supervisory authority will be the main way by which tips will be added to the register. There is no discussion of where an appeal might lie. The two grounds proposed raise different issues. The question of who is the landowner is a question law best determined by a devolved tribunal. The question of whether there is a tip situated on the land appears to be one more suited to the Planning Inspectorate.
ICE Wales Cymru	Yes	Agreed. The register should be comprehensive and inclusive of all coal tips regardless of classification except where such tips have been physically removed e.g. tip material has been incorporated into a separate project and engineered in place in line with all relevant legislation, regulations and codes of practice. Note, this duty should include the tip owner if not the same as the landowner (see response to question 4).

Jacobs UK Ltd (formerly Halcrow)	Yes	<p>1 - The register should be a 'live' document that should include new information as it become apparent.</p> <p>2 - Agree there should be a right of appeal.</p>
Jane Iwanicki	Yes	Subject to earlier comments and clear definitions of what is captured by the term "tip" and also whether the feature has been reclaimed and no longer poses a risk.
Joel James MS	Yes	
Dr John Perry	Yes	
Cllr Julie Edwards	No	All tips need to be named. If they are on landowner sites then there's no shame but they do need to work with others to make them safe. Being named provides accountability!
Keith Bush	No	<p>Nac ydw. Cytunaf yn gyffredinol a'r argymhelliad. Ond mae'n rhaid i mi fynegu amheuaeth mewn perthynas a'r cyfeiriad at hawl gan rywun sydd wedi'i gofnodi fel perchennog i apelio yn erbyn hynny. Y broblem yw bod hyn yn ei gymryd yn ganiataol y bydd y gofrestr yn nodi pwy sy'n berchennog ar y tir. Gan mai mater i Weinidogion Cymru bydd penderfynu pa fanylion a fydd yn ymddangos ar y gofrestr ni ddylid rhagdybio y bydd perchnogaeth yn un ohonynt. Byddai'n ddigon ymarferol ac yn rhesymegol i adael manylion perchnogaeth y tir i gael eu cofnodi ar y gofrestr tir a gedwir o dan Ddeddf Cofrestru Tir</p>

		2002 (heblaw wrth gwrs yn yr achosion llai a llai cyffredin lle nad yw teitl eto wedi'i gofrestru). Mae yna hefyd ddadl ymarferol yn erbyn cofnodi perchnogaeth, sef y byddai hynny'n creu system gyfochrog i'r un o dan Ddeddf 2002 o gofnodi perchnogaeth - un a fyddai'n gofyn, wrth gwrs, am ddiwygio'r gofrestr pob tro y byddai newid ym mherchogaeth y tir. Beth sydd ei angen, yn fy marn i, ar gyfer yr argymhelliad hwn yw hawl gan berchennog i apelio yn erbyn cynnwys y gofrestr, heb ragdybio beth bydd y cynnwys hwnnw.
Kim Moreton	Yes	(1) agree (2) right of appeal would allow for vaguaries of title registration, beneficial/responsible ownership and mapping/plan errors to be identified and corrected
Lee Jones	Yes	However the right to appeal should be time limited (e.g. 21 days) from the time the supervisory authority notifies the landowner.
Merthyr Tydfil CBC	Yes	Yes, the supervisory body should have a duty to include all tips they are aware of on the register. Yes, the landowner should be able to appeal.
Mineral Products Association	Other	As indicated above, one may need to consider who owns the tipped material as this may differ from the landowner.
Monmouthshire CC	Yes	

Natural Resources Wales	Treated as Yes	<p>NRW supports this, – however this requires sound up to date evidence of extent of the asset and an accurate definition of what a “tip” is. This information would need to be assessed before accepting the asset onto the register. This may be a basic assessment, but this is where the definition is key. Without this assessment the register could be devalued.</p> <p>There is also the question of data accessibility. If the register is publicly available, the issue of devaluing properties in proximity or on previously unrecognised “tips” would affect confidence in these sites. This would need to be recognised and overcome. NRW experienced similar concerns when publishing flood risk location maps.</p>
Neath Port Talbot CBC	Yes	<p>The supervisory authority should be required to maintain a comprehensive and up-to-date register. The question of whether a tip exists or not would seem relatively non-controversial, but issues relating to land ownership could be taken on appeal for determination by an appropriate independent body. It is the details contained on the register, though, that will be the key issue for landowners. Allocation to a high-risk category could impact on the value of the land on which the tip is located as well as surrounding areas.</p>
Network Rail	Yes	<p>Network Rail agrees with the principle. This said the definition of what constitutes a tip will be</p>

		critical most especially in respect of point 2b above.
Ove Arup and Partners Ltd	Yes	
Owen Jordan	No	It's not the land owner, but the tip owner - see above - that needs to be in the frame. Some tips are very old, some have houses on them, the land occupier is not a party to the process.
Paul Connolly	Yes	The right of appeal should be included as part of the process of inclusion on the register with a further legal definition of the tip tied intimately to the parcel of land. This will avoid the situation where a land owner will plead ignorance of the registration of the tip.
Dr Peter Brabham	No	If a tip exists it should be on the register.
Philip Thomas	Yes	
Pontypool Park Estate Office	Yes.	
Rhondda Cynon Taf CBC	Yes	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.
Richard Arnold	Yes	
Stephen Smith	Other	(1) is agreed as this will ensure a register is effective. (2) whilst I agree there should be a right

		of appeal for any errors in the register, surely the data gathering and cleansing under 9 above would be robust enough to avoid this?
Steve Harford	Yes	1. yes the authority should be able to make the decision on inclusion onto the register 2. yes a right to appeal, but the final decision should be with the authority. Disputing who owns the land does not remove the fact that there could be a tip present.
Steve Jones/Pembrokeshire Council	Yes	Sensible
Sue Jordan	Yes	
The Law Society of England and Wales	Yes	We agree
Thomas Glyn Watkin	Yes	
Torfaen response	Agrees with WLGA	
Transport for Wales	Yes	Proposal 2b raises questions around the evidence necessary to prove that there is no tip situated on the land, particularly around the type and weight of evidence that would be considered sufficient. The burden of evidencing should rest with the appealing party.
Vikki Howells MS	Yes	
WLGA	Yes	Yes – the supervisory authority should be required to maintain a comprehensive and up-to-date register. The question of whether a tip exists

	For the maintained safety of coal tips, it is important that there is as clear and accurate a picture as possible of all tips, their location and owner. Our concern if there is not a centrally compiled list, is that in the event of further events which pose risk to tips, not having a centrally compiled list will hinder the speed at which remedial works can be undertaken.	or not would seem relatively non-controversial, but issues relating to land ownership could be taken on appeal for determination by an appropriate independent body. It is the details contained on the register, though, that will be the key issue for landowners. Allocation to a high-risk category could impact on the value of the land on which the tip is located as well as surrounding areas.
Wrexham CBC	Yes	
Wyn Williams	Yes	As above.

CONSULTATION QUESTION 12

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.

Consultation Question 12 asked respondents for their view. Some respondents did not directly respond to Consultation Question 12, either because they did not use the Citizen Space platform or because they tailored their response to their particular experience.

Respondent	Response to CQ 12
Of those who responded: Yes/Broadly agree: 39 Other: 6	

No: 5	
Blaenau Gwent CBC	Yes Yes but this going to be difficult to enforce or expect land owner to come forward with information that is going to cost them money of blight their land/property
Bob Leeming	Yes Yes, agree. Perhaps needs to be an offence not to?
Professor Bob Lee	<p>Other In my suggested scheme above one would need to decide whether the Coal Authority should shoulder the responsibility for compilation of the register or whether this duty would fall to NRW acting on Coal Authority recommendations. I agree that relying on owners to register tips is not sufficient in itself though that is not a reason for dispensing with a duty to report for registration any tip of which the owner becomes aware (answering question 12). I say this while noting that any such duty will be difficult to enforce in practice. I wonder whether framework with both a duty and a power is over elaborate. I can see that an authority might wish to act independently of any report by an owner, but presumably it will do so having become aware of information suggesting the presence of a tip. At the point that an authority becomes so aware, unless we are worried about <i>de minimis</i> deposits of coal waste, why not impose a duty to register at that point, given the need for risk assessment which then arises?</p> <p>An owner should clearly have appeal rights. I think that designation (question 20) is the more likely basis of appeal but both grounds suggested make sense and one can envisage scenarios in which both grounds 11(a) and 11(b) could form the basis of appeal. Without fully knowing the content of a register, one could see other potential grounds of appeal. For example if presence of receptors were to be included on the register, might it not be a ground of appeal that the tip is wrongly scheduled as being in proximity to a receptor such as a protected or sensitive habitat?</p>
Bridgend CBC	Agrees with WLGA
Caerphilly	Yes Landowner should have duty to notify supervisory authority of any tip (or potential tip) that they are or become aware of.

	Remove last sentence “unless the landowner has reason to believe that it has already been registered” as this is too vague. Landowner should have duty to check register so they can’t argue they “believed it was already registered”.
Chris Seddon	<p>Other Care should be taken in the definition of 'becomes aware'. For example, a landowner who carries out a small scale ground investigation for foundations for a residential building has reports that material encountering is suspected to be colliery spoil, and a desk study has not identified any tip on their land.</p> <p>Is this landowner:</p> <p>a) under a duty to inform the supervisory authority of the possibility of a tip on their land;</p> <p>b) under a duty required to carry out additional ground investigation to demonstrate there is/is not a tip on their land before informing the supervising authority, or</p> <p>c) not under a duty to inform the supervisory authority because the tip has not been confirmed?</p>
CLA Cymru - Country Land and Business Association	<p>Other We would hope the new Authority would already have this sort of legacy information from the Coal Authority, the relevant Local Authority and Natural Resources Wales? This seems to duplicate work. As this is a legacy issue this should be a one off process? A clear set of rules and definitions need to be established so Landowners know what they are looking for. Natural Resources Wales when compiling their reservoir register pretty well knew what they were looking for, as stated above I hope this is also the case. We can see the reason behind this being as a 'belt and braces' approach. What however would be the penalty for non notification by the relevant landowner would it be a criminal offence?</p>
Coal Action Network	<p>Yes We believe there should be this duty on land owners, along with an active duty that requires landowners to check their land for signs of a coal tip. This should be augmented by a clear, accessible, and low-burden process for members of the public to report a suspected coal tip, which may be on someone else's land. The authority can assess the report and respond accordingly - all reports of this nature should be documented along with the Authority's response.</p>

Professor David Petley	Yes I believe that the risk is to be managed appropriately then this is an essential requirement. I also believe that the onus should be on the landowner to confirm that the tip has been previously registered (i.e. there should be an expectation that s/he takes proactive measures to ensure that this is the case).
Dwr Cymru Welsh Water	Yes Agreed. We agree that the landowner should be responsible for notifying the supervisory authority of any tip on their land.
Graham Hathaway	Yes Yes a duty. Essential for complete records and the application of safety measures. Like tax returns. Made compulsory. With proof of ownership as well. Then through electronic Mail or such like a regular updating or sharing of information such as a yearly report on developments arising from the passing of new legislation.
Howard Siddle	<p>Yes Agree that an owner should be under this duty. I also think that an owner should be under a duty to disclose to the SA:</p> <ul style="list-style-type: none"> o the existence and availability of previous reports on tips in their ownership, whether or not commissioned by them to ensure crucial information is not lost over time o dangerous occurrences. This raises the question of the role of the SA in managing any future tip failure – regulatory, management, advisory or what?
Huw Williams	<p>No I do not support this. If such a duty backed by sanctions were to be introduced, the question arises as to what steps would be required to draw the attention of landowners throughout Wales to such an obligation. Such a duty may actually have a positively disincentivising effect on landowners to examine their land too closely if signs of historic unsuspected tipping start to manifest themselves.</p> <p>A better approach, especially given such innovations as drone flying and satellite mapping, is to give the supervisory authority comprehensive powers of entry and investigation and a duty to provide information as to land ownership backed up with criminal sanctions for non-compliance and obstruction.</p>
ICE Wales Cymru	Yes Agreed. Assuming that the tip register will be in the public domain and hence will be available to check prior registration, there should be a duty on the landowner and tip owner (if not the landowner – see response to question 4) as noted. Would it also be possible to include a responsibility on third parties who

	become aware of an unrecorded tip to notify the supervising authority? As an example, a consultant completing a desk study for a new scheme may, through review of desk study sources, become aware of a tip that neither the supervising authority nor the landowner, nor the tip owner is aware.
Jacobs UK Ltd (formerly Halcrow)	Yes Agree, but not sure how implemented. Would landowners be notified that the tip is to be included in the register at the outset? There appears to be no obligation for a landowner to request inclusion of a tip on the register, particularly in the case of tips in private ownership.
Jane Iwanicki	No This could be onerous - coal tips are historic features and may not be within the corporate memory of the current owners or even on the public record. Owners should not be penalised for not having knowledge of such features - how do you gauge "awareness" of whether a feature is an old coal tip or comprised of other materials?
Joel James MS	Yes The safety of the general public from coal tips is paramount. Landowners should have a duty of care to register a coal tip, however there should be no fees involved which may discourage them from doing so.
Dr John Perry	No My only query here would be whether the landowner is competent/experienced enough to recognise a tip. Some may not so I'd prefer the independent body to prepare the register and consult with the owner. When buying land, the lawyer should consult the register for the buyer and inform them of their legal obligations.
Cllr Julie Edwards	Other The list should be monitored and updated regularly.
Keith Bush	Yes Mae hyn yn syniad rhesymol, gan y gall gweithgareddau ar dir ddatgelu presenoldeb tomen nad oedd yn hysbys o'r blaen. Natur y dyletswydd ddylai fod i hysbysu'r awdurdod os bydd gan y perchennog sail resymol i gredu bod tomen cofrestradwy ar dir y mae ganddo fuddiant ynddo, oni bai fod y domen eisoes wedi'i gofrestru'n gywir.
Kim Moreton	Broadly agree The difficulty here is of mandating disclosure - not as matter of principle, but as a practical matter whereby failure to disclose at point of conveyance might be a conscious choice (for example to evade detriment to value) or simple lack of awareness. Duty to notify is the optimum solution, no ambiguity there,

	maybe an appeal/revision process could be appended? Or a sliding scale of penalty. The property profession has the tools to accommodate this new compliance feature, and the relative value of real property suggests to me that any complaints about 'burden' on transactions would be somewhat overblown.
Lee Jones	Yes Yes the duty should be applied to the landowner.
Merthyr Tydfil	Yes Yes, the landowner should have a duty to notify the supervisory body if the landowner becomes aware of a tip on the land.
Mineral Products Association	Broadly agree Tentatively yes, however, it is unclear what actions/penalties are being proposed for failure to notify. Again, however, this is not just the landowner's responsibility, but the owner of the tipped materials.
Monmouthshire CC	Broadly agree In principle this would seem a good idea. In practice its not clear on how land owners would be made aware of this duty and how likely they are to offer up this information without the knowledge that they may face a considerable fine if they were not to do so. Some landowners may see the designation as beneficial and be reassured in the knowledge that a tip would have been assessed, ranked and possibly be included in an inspection/maintenance regime if risks are present. Others may simply ignore.
Natural Resources Wales	<p>Broadly agree In principle this is a sensible proposal, but there are several issues that need to be thought through. For example, a landowner could claim they had no idea there was a tip present and how could this be proved otherwise? Landowners would need to be made aware of their responsibilities and this could have big cost implications with little benefit. Historic records of mines are famously inaccurate, and a landowner could easily disagree with any findings that, without Geotechnical ground investigation taking place, would be very expensive.</p> <p>Remote sensing and the work recently undertaken by the Coal Authority may be a better route to at least establish potential sites. This information made publicly available (with the caveats described above) would potentially go some way to remove the argument that an owner was unaware of the site's history. Under this approach it would then be reasonable to expect a landowner to both register/notify the SA of any tip on their land and to provide the prescribed information. Provision of the register initially held by the SA should satisfy most of the owners' liability to register.</p>

	To overcome multiple ownership where a site has been developed for housing/development the duty to notify should fall to a developer &/or local planning authority.
Neath Port Talbot CBC	Yes If the register is to be as comprehensive as possible it would make sense to place land owners under a duty to notify the supervisory body of any un-registered tip. Even with maps of tip boundaries being made available to landowners, it may be difficult to prove whether or not a landowner 'has reason to believe' that a tip on their land has been registered, especially if it is adjacent to a tip that is already registered. Base line data should be agreed with the Supervisory Authority and notified to land owners.
Network Rail	Yes Network Rail agrees that there should be a duty to notify the authority in line with the above. Network Rail is of the view that there should also be a mechanism (though not a duty) by which third parties can inform the authority of the suspected presence of a tip. It is the authority, after having made necessary enquiries, that then has a duty to add the site to the register.
Ove Arup and Partners Ltd	Yes Yes, the landowner should be under a duty to notify.
Owen Jordan	No No. Those who are concerned will pipe up, those who want to avoid liability will keep quiet - often with official approval. Duty has nothing to do with this process.
Paul Connolly	Yes As with the legal requirement for home sellers to make purchasers aware of defects during a house sale, a similar system should be in place for landowners. Landowners should be made aware of this requirement whether or not they believe it to be registered. As with reservoir inspection under Section 10 of the reservoirs act there is a legal obligation to undertake an inspection every 10 years to ensure the dam is being operated safely. A similar system of routine inspection could be incorporated into landowner legal packs for acceptance on completion of the inspection.
Paul Funck	Other I feel this is open to interpretation by parties on both sides. If a landowner comes upon land which he may consider to be a tip, it would not be in their financial interest to declare said tip. It should be mandatory for the landowner/leaseholder to declare the tip. It would then be up to the supervisory authority to investigate and determine if the land is a tip.

Dr Peter Brabham	Broadly agree You would have to define a minimum size, There are 1000s of small tips associated with individual mine adit portals throughout South Wales valleys.
Philip Thomas	Broadly agree Yes, but I think this needs to be a significant size tip. I'm not what arbitrary number of tons, of waste but a figure should be provided. 10 tonnes let's say?
Plaid Cymru Group, RCT	Yes The new authority will already be aware of the tips that are present, but there should be a duty on any landowner to report tips present on their land, and this should include any tips that have been reclaimed. Bydd yr awdurdod newydd eisoes yn ymwybodol o'r tomenni sy'n bresennol, ond dylai fod dyletswydd ar unrhyw dirfeddiannwr i roi gwybod am domenni sy'n bresennol ar eu tir, a dylai hyn gynnwys unrhyw domenni sydd wedi'u hadfer.
Pontypool Park Estate Office	No No. Self-criticism has gone out of fashion since the Cultural Revolution. How can an owner reasonably be expected to admit to something that may not exist, or she may not know exists?
Rhondda Cynon Taf CBC	Yes 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.
Richard Arnold	Broadly agree This seems reasonable as long as it is kept simple. If it becomes too complex and time consuming it will defeat the objective of having a definitive register. Land owners will quickly determine if it becomes counter productive to get involved.
Sioned Williams AS	Yes Landowners should also be under a duty to notify the supervisory authority of any tip on their land of which they become aware which is not on the register.
Steve Harford	Yes yes a landowner should have a duty of care to notify the authority of any tip on their land. Likewise the authority should have a duty of care to notify all landowners that a tip is present.
Steve Jones/Pembrokeshire Council	Other I think this would be very difficult to enforce. The owner can plead ignorance which in the above definition, is bliss!

The Law Society of England and Wales	Yes We agree in principle and consider that the notification duty should be accompanied by a financial penalty for non-observance.
Thomas Glyn Watkin	Yes This seems a perfectly sensible approach, provided that provision is made whereby landowners are made and periodically kept aware of the responsibility.
Torfaen response	Agrees with WLGA
Transport for Wales	Yes Agreed.
Vikki Howells MS	Yes Yes - this should be a duty on the landowner.
WLGA	<p>Yes If the register is to be as comprehensive as possible it would make sense to place land owners under a duty to notify the supervisory body of any un-registered tip. Even with maps of tip boundaries being made available to landowners, it may be difficult to prove whether or not a landowner 'has reason to believe' that a tip on their land has been registered, especially if it is adjacent to a tip that is already registered. If the categorisation from A to D is retained, then the duty to notify should definitely apply to C and D tips with a potential penalty for not notifying. The experience of NRW in dealing with registration of septic tanks and private sewage might be useful in this respect: see Natural Resources Wales / Register your septic tank or small sewage (package) treatment plant.</p> <p>There is also the issue of what happens if land containing a tip is sold. Details of the landowner will need to be kept up to date to ensure all responsibilities are transferred to the new landowner but any outstanding enforcement etc should not be transferred to the new landowner</p>
Wrexham CBC	Yes Yes, they should have a duty to notify.
Wyn Williams	Yes I consider it to be very important to impose this positive obligation on a landowner. The history demonstrates the need to be pro-active in this area and it is too much to hope that all landowners will behave responsibly - hence the need for a positive duty.

CONSULTATION QUESTION 13

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?

Consultation Question 13 asked respondents whether they agreed with our provisional proposal (yes/no/other). Some consultees also provided text to further explain their view. This text has been added to the table. Some respondents did not directly respond to Consultation Question 13, either because they did not use the Citizen Space platform or because they tailored their response to their particular experience.

Respondent	Should it be publicly accessible?	Categories of information that shouldn't be publicly accessible
Of those who responded: Information <u>should</u> be publicly accessible 42 Information <u>should not</u> be publicly accessible 5 Other 5		
ALGAO	Other	It may be appropriate for different levels of access to be possible for different user groups, for example stakeholders, consultees and the public. Where information is included that has been provided by a third party, the originating body should be consulted on any copyright, access or usage restrictions prior to inclusion in a publicly accessible register.

Blaenau Gwent CBC	The information in the tip register should not be publicly accessible	There will be a need to comply with GDPR requirements in relation to any personal information about the landowners. Making categories of tips publicly available could run the risk of 'blight' for high-risk tips, as noted above, impacting on land values and property prices in the vicinity.
Bob Leeming	The information in the tip register should be publicly accessible	Generally yes, but personal details of ownership should may need to be redacted for data protection.
Professor Bob Lee	The information in the tip register should be publicly accessible	Yes: Anything other than a public register would run contrary to the spirit of existing Welsh legislation, though I am assuming that registered information would not include background documents underpinning registered information. For example, although inspection frequencies could be registered, inspection reports might not be -in the interest of keeping the register of thousands of tips relatively accessible. Inspection reports and similar information underpinning the risk ranking could be accessed by Freedom of Information Act (FOI) and/or Environmental Information Regulations (EIR) requests and I can see no case for exempting these from disclosure. If the legislation is successful in promoting greater coal tip safety, this should offset any commercial disadvantage of registration – although, as I say above, such risks may already be 'baked in' to property valuations.
Bridgend CBC	Agrees with WLGA	
Caerphilly	The information in the tip register should not be publicly accessible	There are potential ramifications here, especially on adjacent or nearby properties that could be affected or become blighted by information publicly accessible. Could affect insurances and property values. Limited access to information is preferable.

Chris Seddon	The information in the tip register should be publicly accessible	
CLA Cymru - Country Land and Business Association	The information in the tip register should be publicly accessible	Afterall Land Registry information is publicly available. Details such as that of the owner should be publicly available, however specific details relating to the tip, should be kept confidential such as any appeal, specific details of remediation works, contractual details etc.
Coal Action Network	The information in the tip register should be publicly accessible	We think it is vital that the tip register be made open-access and user-friendly for public trust and accountability - particularly for the communities that have suffered in the shadow of coal tips, with little recourse to action.
Professor David Petley	The information in the tip register should be publicly accessible	
Dwr Cymru Welsh Water	(should be) Welsh Water does not hold a view on which information should be made generally available. However, as a drinking water provider it would be of utmost importance that information related to management and risks posed by tips could be made available to us in order that drinking water and therefore public health can be protected. Similarly, such information should be available to the public to protect private water supplies in Wales.	
Graham Hathaway	The information in the tip register should be publicly accessible	

Howard Siddle	The information in the tip register should be publicly accessible	I think it should be publicly available (can this be avoided anyway?) to make sure the locations of tips are known to guide safe development and avoidance of destabilising activities. Keep the information in the register factual and leave opinions on security to reporting. Avoid emotive terms such as high risk etc in the register.
Huw Williams	The information in the tip register should be publicly accessible	The information is likely to be of a type that is similar to that on other publicly available registers or other public sources, especially those relating to contaminated land. Special consideration may be required if tips are located on land where there are national security or defence implications.
ICE Wales Cymru	(should be) The developed coal tip register should be in the public domain whilst ensuring it is compliant with GDPR and other legislation. Due cognisance should also be taken with regard the publication of data that could heighten public anxiety without due cause.	
Jacobs UK Ltd (formerly Halcrow)	The information in the tip register should be publicly accessible	Yes publicly available to allow appropriate regard and planning on/in the vicinity of the tips.
Jane Iwanicki	The information in the tip register should be publicly accessible	
Joel James MS	The information in the tip register should be publicly accessible	
Dr John Perry	The information in the tip register should be publicly accessible	If I was a buyer of land I'd want to be able to consult the register in the same way as flood maps.

Cllr Julie Edwards	The information in the tip register should be publicly accessible	
Keith Bush	The information in the tip register should be publicly accessible	Dylai'r wybodaeth ar gofrestr tomennydd fod ar gael yn gyhoeddus. Mae'n amlwg y gall presenoldeb tomen ar y gofrestr gael effaith ar werth tir, neu werth tir cyfagos. Ond gan mai holl bwrpas y drefn yw gwarchod pobl ac eiddo rhag canlyniadau tomennydd ansefydlog dylai fod gan y cyhoedd hawl i wybod am bresenoldeb tomennydd er mwyn iddynt medru gofyn cwestiynau perthnasol am gyflwr y tomennydd hynny.
Kim Moreton	The information in the tip register should be publicly accessible	Commercially sensitive lease information where an existing business is in place.
Lee Jones	The information in the tip register should be publicly accessible.	<p>1) The ongoing determinations of the Authority in relation to tip stability should not be published as these would need to be reviewed on a regular basis due to expected changes in the tip characteristics. However if a tip is deemed an imminent danger to the public then the proper communication routes could then be used to release the necessary information to those likely to be affected.</p> <p>2) Ongoing considerations, relating to proposed enforcement actions, should not be made accessible to the public. However once determined and actioned, then yes, details could be made publicly available e.g. served maintenance / remediation orders.</p>
Merthyr Tydfil	It should <u>not</u> be publicly accessible.	If it were accessible it may cause unnecessary concern for the public viewing tip information near their properties. It may also affect land value and impact future development of sites.

Mineral Products Association	The information should be publicly available and transparency is critical.	
Monmouthshire CC	The information in the tip register should be publicly accessible	Blight may be an issue, but the presence of a public register may result in the identification of previously unknown tips or risks that the public may be aware of. Publication may also help to raise awareness amongst landowners about the possible requirement to notify the supervisory body of a tip on their land, and for the public to report any clearly visible issues such as movement following heavy rainfall.
Natural Resources Wales	The information in the tip register should be publicly accessible	<p>Our view is that this information should be publicly available, using the best Digital approaches to enable all communities to be aware of data on public safety; it is in the public interest for it to be available.</p> <p>Personal information subject to Data Protects issues should be excluded as standard. Prescribed register info should identify bodies corporate, associations, etc. or provide for “private landowner” status for public release.</p> <p>There are some exemptions. For example, consultation with engineers to establish if any data on the physical attribute of a tip could be considered sensitive or may reveal vulnerabilities which could be exploited by malicious intent, for example dam infrastructure which retains a liquid tip.</p> <p>A search of records at the Information Commissioner’s Officer will reveal several decisions relating to the provision of sensitive material related to reservoir safety, which may prove useful. Such as:</p>

		<p>Freedom of Information Act 2000 (Section 50) (ico.org.uk)</p> <p>Microsoft Word - IC-48075-B0D4 Decision Notice for website (ico.org.uk)</p> <p>There is also the concern around the “blight” that may follow for housing identified close to at risk sites, or for properties built on remediated sites. House purchase searches already access Coal Authority records of coal mine assets, flood risk areas and landfills and this data will no doubt be used too. Currently the “owners” of this information charge for searches, and this may be an income source which could support the work of an authority.</p> <p>[See also CQ11]</p>
Neath Port Talbot CBC	The information in the tip register should not be publicly accessible	There will be a need to comply with GDPR requirements in relation to any personal information about the landowners. Making categories of tips publicly available could run the risk of ‘blight’ for high-risk tips, as noted above, impacting on land values and property prices in the vicinity. Should they show up on LA’s Searches.
Network Rail	Network Rail is of the view that it should be publicly available; this would facilitate risk assessment and reporting to inform the design of new infrastructure on the railway network and would also assist the risk management process for insurers of adjacent / affected landowners.	
Ove Arup and Partners Ltd	The information in the tip register should be publicly accessible	The information held on the tip register should be in the public domain. However the register should be comprehensive enough and include information from which a risk based assessment can be made in relation to risk / consequence of instability / failure.

Owen Jordan	The information in the tip register should be publicly accessible	
Paul Connolly	The information in the tip register should not be publicly accessible	There is a potential issue of blighting areas and property prices if tips are considered an elevated risk.
Dr Peter Brabham	The information in the tip register should be publicly accessible	It would be good for University research projects for example that we can access the data and setup collaborative research projects on tips.
Philip Thomas	The information in the tip register should be publicly accessible	It should be publicly available, but what happens to those impacted residents below? e.g. If maintenance has not been undertaken since the 1970s and so the tip risk is even greater, there a loss of property value compensation scheme, a disruption compensation scheme? See also CQ9
Plaid Cymru Group, RCT	The information in the tip register should be publicly accessible	The new authority would create a list of every tip in Wales and categorise those tips using the DCBA category system. The list, for the sake of public confidence, would be open for anyone to see. Transparency and public confidence here is paramount. Reclaimed tips should remain on the list of tips. Byddai'r awdurdod newydd yn creu rhestr o bob tomen yng Nghymru ac eu categoreiddio gan ddefnyddio system categori DCBA. Byddai'r rhestr, er mwyn cadw hyder y cyhoedd, yn agored i unrhyw un ei gweld. Mae tryloywder a hyder y cyhoedd yma o'r pwys mwyaf. Dylai tomenni sydd wedi eu hadfer aros ar y rhestr o domenni.

Pontypool Park Estate Office	Other	<p>Different questions. Whether the information should be public depends on what the register records. In order to complete my recent Rent Smart (sic) Wales owner registration, I was compelled, by oral instruction from the WAG employee who was talking me through, to answer questions on my:</p> <ul style="list-style-type: none"> • married status • sexual orientation • Welsh identity • ethnicity (with the usual absurd non-ethnic choices ie white, Pakistani, Black British) • disability identity • pregnancy status • language skills • religious belief <p>I question whether such questions are either relevant, appropriate or meaningful.</p>
Rhondda Cynon Taf CBC	Tip Register information should be available,	<p>However certain information in the tip register should not be accessible to the public, this would be personal information, calculations, costings, etc. With regard to tip inspection reports the Committee would suggest that these could be released if there is a standard uniform approach and classification to the tip reports and they are undertaken by experienced, competent engineers. However, recognition should be given that an insurance issue may arise if previously a Council has not disclosed information which they were required to do at the time of a request under the relevant statutory regime, and a private landowner has in reliance on this made incorrect representations in respect of an insurance policy. The disclosure of information under a new statutory regime may</p>

		have implications for the insurer and the insured, which may in turn have consequences for the respective Council.
Richard Arnold	The information in the tip register should be publicly accessible	This needs to be carefully considered by all stake holders and experts as the principle of all information being public is a desirable principle but may have serious unforeseen impacts in a number of areas eg Insurance of properties etc. and risk related / prohibitive premiums being introduced along with disclosure issues.
Sioned Williams AS	The information in the tip register should be publicly accessible	I therefore support the recommendations to establish 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. I also believe, in the interests of openness and transparency, that the list should be available publicly.
Stephen Smith	Treated as The information in the tip register should be publicly accessible	This is a difficult area (for instance adoption of Pt 2a of EPA 1990 had a lengthy delay over issues such as blight), but, on balance, I feel access to the register would be beneficial – unlike contamination buried in the ground, the presence of a tip is very visible.
Steve Harford	The information in the tip register should be publicly accessible	None - this should all be of public record to ensure openness and promote public confidence that the authority is operating appropriately.
Steve Jones/Pembrokeshire Council	The information in the tip register should be publicly accessible	However the risk rating should be confidential. Identifying a tip above human habitation publicly as high risk opens up the potential for hostile actors to exploit weaknesses to set off landslides to cause immense damage and risk to life by fairly minimal low tech means.

		Owners of properties in the vicinity of identified high risk tips would also face issues over insurance and marketability of their homes.
Sue Jordan	The information in the tip register should be publicly accessible	
The Law Society of England and Wales	The information in the tip register should be publicly accessible	<p>We consider that the information should be publicly available, particularly to those looking to buy or take an interest in land. Consideration would have to be given to how far a spoil site needs to be from a property for it to be disclosed. Consideration would also have to be given to the impact on home insurance, whether insurers have been consulted, what is their view, and what their response has been to recent incidents.</p> <p>We further consider that any change in the law goes further to clarify the Coal Authority's liability to inspect and take action in respect of underground workings and shafts, above and beyond just tips.</p> <p>Any information that could be made available as a result of the proposals being enacted ought to be included as part of a standard CON29M search and not necessitate an additional question being raised with a subsequent additional fee payable by clients. Any risks associated with tips, as with subsidence generally, are likely to require specialist advice outside of the retainer of a solicitor</p>
Thomas Glyn Watkin	The information in the tip register should be publicly accessible	Information regarding the ownership of the land or tip and of any past proceedings against owners.
Torfaen response	Agrees with WLGA	

Transport for Wales	The information in the tip register should be publicly accessible	The tip register should be publicly accessible. However, we appreciate that some of the information contained within it (e.g. risk categorisations) could have implications for third parties, and that this information must therefore be managed carefully and sensitively.
Vikki Howells MS	The information in the tip register should be publicly accessible	Some information may have to be excepted, such as personal information, calculations and costings.
WLGA	Other	There will be a need to comply with GDPR requirements in relation to any personal information about the landowners. Making categories of tips publicly available could run the risk of 'blight' for high-risk tips, as noted above, impacting on land values and property prices in the vicinity. There may be implications here in terms of CON29M Official Coal Mining Searches. With increased risks associated with climate change, the Law Society may wish to extend searches and seek information to ensure adequate maintenance plans and safety arrangements are in place. As such, the tip register may need to be made public or information shared under such searches.
Wrexham CBC	The information in the tip register should be publicly accessible	Subject to data protection, yes the information should be publicly available. Where available it should include the findings of the risk assessment and actions required for tips and it should be updated in a timely manner following any inspections.
Wyn Williams	The information in the tip register should be publicly accessible	I am not in favour of excluding categories of information. The public interest in ensuring the safety of tips is such that there should be a public record of all relevant registered details.

CONSULTATION QUESTION 14

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?

Consultation Question 14 asked respondents whether they agreed with our provisional proposal (yes/no/other). Some consultees also provided text to further explain their view. This text has been added to the table. Some respondents did not directly respond to Consultation Question 14, either because they did not use the Citizen Space platform or because they tailored their response to their particular experience.

Respondent	Answer to CQ14	Text
Of those we responded: Yes 45 No 1 Other 4		
Dr Ben Curtis	Treated as Yes	<p>Consequently, I was very pleased to see that the main recommendation of the report was the following;</p> <p>“The consultation seeks views on the proposed framework including the introduction of:</p> <ul style="list-style-type: none"> <input type="checkbox"/> A single supervisory authority with a duty to supervise the management of all disused tips. <input type="checkbox"/> 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. <input type="checkbox"/> Inspections of each tip for the purpose of a risk assessment and designing a tip management plan. The inspection could potentially

		<p>cover all potential risks including the risk of tip slides but also flooding, pollution and any other risks.</p> <p><input type="checkbox"/> For those coal tips designated as high risk, an enhanced safety regime with increased involvement of the supervisory authority to manage the tip and reduce the chance of significant dangerous incidents occurring.”</p> <p>I endorse the above recommendation and very much hope that the Welsh Government will take the necessary steps to bring this into being as soon as is practicable.</p>
Blaenau Gwent CBC	Yes	Every tip should be subject to an inspection
Bob Leeming	Yes	A risk rank needs to be established to direct future inspections / work.
Professor Bob Lee	Yes	Yes: For the higher risk tips, it is likely that there will have been relatively recent inspections, always accepting that some tips may be moved into a higher risk category. So the notion that there has been a sufficiently recent inspection should be applied and inspection frequency according to risk category will dictate future inspections. To demand that all newly registered tips be inspected anew would impose a possibly unmanageable burden.
Bridgend CBC	Agrees with WLGA	
Caerphilly	Yes	Agreed
Chris Seddon	Yes	

CLA Cymru - Country Land and Business Association	Yes	This seems to be sensible approach.
Professor David Petley	Yes	There should be an agreed set of parameters that are recorded for all tips in the register. This information should be collated by a professional with relevant experience
Graham Hathaway	Yes	Straightforward requirements of inspection would apply. I would like these reports made public. Stating who is the inspector and its findings on the state of the tip.
Howard Siddle	Yes	Agree but Initial inspection (and subsequent risk assessment and management plan), however thorough, will count for little if the inspector has no previous knowledge of the history of the tip as set out in response to Q10. I would urge that registration needs to be preceded by a review of previous reports so that the history of the tip, and previous instability and remedial measures can be understood and critically reviewed during the inspection and inform its conclusions. The proposal as it stands grossly underplays the importance of evaluation of previous reports. Note that previous reports, if available will contain factual information on, inter alia, design factor of safety on which to assess the degree of stability of tip slopes (see response to Q16 for more consideration of this issue). An inspection and its report will need to conclude with the inspector's opinion on security of the tip which should be based not only on their inspection but also design criteria, if any, such as factor of safety of slopes all of which will be recorded in reports. Review of previous reports should also be required in the development of management plan.
Huw Williams	Yes	It should be recognised that conducting initial inspections of all the tips currently known to establish a base line of information is itself

		likely to take several years. It should be for the supervisory body to prioritise the order based on current knowledge.
ICE Wales Cymru	Yes	Agreed. Any inspection should be completed by a competent person with suitable expertise in disused coal tips and the new regulatory environment. If the competence of the person(s) completing a 'sufficiently recent' inspection is unknown or uncertain then the supervising authority's own competent person(s) should complete a new inspection. The arbiter of 'competent' in these circumstances should be the supervisory authority.
Jacobs UK Ltd (formerly Halcrow)	Yes	<p>It is essential to establish a consistent and quality of baseline data against which future inspections can be effectively reviewed. A lack of or poor baseline data is likely to make interpretation of future inspections more difficult, time consuming and at greater cost.</p> <p>It should be wider than just an initial inspection. It needs to be an 'on entry to register' inspection and high level assessment of the tip to accurately classify the tip, which will drive the actions going forward. As described in Q8, each tip is unique and to make an assessment it is imperative to understand the tip holistically. There is a lot of existing historic information on many of the tips in South Wales; that information needs to be collected, collated and reviewed as part of an 'on entry to register' high level assessment. Some of the tips will have existing reports and classifications that will require interrogation on their current status.</p>
Jane Iwanicki	Yes	
Joel James MS	Yes	
Dr John Perry	Yes	.

Cllr Julie Edwards	Treated as Other	It's easy to overlook when it's 'assumed' that a recent inspection has taken place. Different standards would also be problematic. Upon entry to the register, clear inspection guidelines and expectations including a 'tick list' should be created so that all tips are inspected to the same standard and without exception
Keith Bush	Yes	Ydw. Dim byd i'w ychwanegu.
Kim Moreton	Yes	This is an opportunity to build a contemporary 'record of condition' which would enable a baseline to be established, against which risks due to deterioration or unforeseen future events could be modelled; this in turn would enable the creation of a 'priority' intervention list (the Supervisory Authority will most likely not have unlimited funds)
Lee Jones	Yes	Yes, this would demonstrate proportionality to both the public and landowners of disused tips in avoiding unnecessary work and burden on the public purse in the delaying of the inspection / remediation process.
Merthyr Tydfil	Yes	Yes, the supervisory authority should arrange a tip inspection.
Mineral Products Association	Yes	
Monmouthshire CC	Yes	
Natural Resources Wales	Yes	Yes – We suggest, however, that an inspection should happen before or at least while it is entered on the register. There should be a high degree of confidence that the data on the register is correct and without this the relevance of a register would be undermined. A clear standard of what an acceptable inspection is also needed. We appreciate that this is set in the context that all

		<p>key sites have (probably) had inspections in the last year. With around 2,500 sites colliery sites across Wales and probably an equivalent number of metal mine and quarry spoil tips this would create a very high workload when setting up a register. Inspections may need to be prioritised and the approach may need to be pragmatically defined.</p> <p>You propose that a duty of inspection should fall on the supervisory authority. This parallels the reservoirs regime. The Reservoirs Act does not require the enforcement authority to carry out any inspection. The authority has a duty to ensure the undertaker comply with the law which requires them to appoint an engineer who is independent of the undertaker and who was not the construction engineer. The owner should retain liability for the appointment and costs of inspection. NRW has a reserve power to appoint an engineer following default of a statutory notice requiring an inspection.</p> <p>Entry onto the register must be dependent on the “tip” definition. There may be a need for a right of appeal on a decision to include a site; however, it would be better to collate evidence with a desk study and conducting a site walkover prior to making the determination. Again, if a site such as Dowlais or EV Garden City had major reclamation works conducted, the mere identification on an old 1920’s map may be inaccurate. If the coal tip has been moved then unless there has been the visual inspection, there could be a successful right of appeal. Thought would need to be given over developed sites such as with the residents on the former Virgil St Sidings, where there is no visual evidence, just historic plans? One may require a ground investigation to confirm the existence. So, in such cases, it may be better to follow advice in</p>
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		para 4.75 and require an initial assessment and possibly Geotech assessment as per Quarries Regulations 1999.
Neath Port Talbot CBC	Yes	Every tip should be subject to an inspection to ascertain/confirm the level of risk.
Network Rail	Yes	Network Rail agrees.
Ove Arup and Partners Ltd	Yes	Agreed. However the register should be comprehensive enough and include information from which a risk based assessment can be made in relation to risk / consequence of instability / failure.
Owen Jordan	No	The tips that pose short term risks are known. All pose long term risks and should be put into a programme for treatment.
Paul Connolly	Treated as Other	As per previous response with regards to the reservoirs act a regular schedule of inspection with maximum periods allowable between inspections should be developed. This would remove the need to determine the suitability and potentially ambiguous determination of how recent the last inspection was undertaken.
Dr Peter Brabham	Yes	Every tip needs an initial inspection perhaps using imagery first then a walk-over survey.
Philip Thomas	Yes	They should be obliged to arrange an inspection, without the need for owner consent.
Pontypool Park Estate Office	Yes	Surely yes? Otherwise we will mimic the absurd situation with waste where, explicitly because of lack of resources <i>sic</i> , NRW does not monitor sites operating under exemption, ie most waste sites.
Rhondda Cynon Taf CBC	Yes	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).
Richard Arnold	Treated as Other	The supervisory authority should always obtain an initial start position inspection to maintain consistency and responsibility.
Sioned Williams AS	Treated as Yes	I also support the recommendation to mandate inspections of each tip for the purpose of a risk assessment and the design of a tip management plan – to include all potential risks including the risk of tip slides but also flooding, pollution and any other risks.
Stephen Smith	Other	At what point would this be implemented? Full inspections from day 1 would be a huge task. If the initial data gathering exercise has been comprehensive and properly authenticated, then any 'at risk' tips will have been identified for more rigorous inspection. There will be very few 'new' entries after the initial set up.
Steve Harford	Yes	
Steve Jones/Pembrokeshire Council	Yes	
Sue Jordan	Yes	But the Coal Authority should be doing this anyway. That they are not indicates a serious breach in their duty of care.
The Law Society of England and Wales	Yes	We agree.
Thomas Glyn Watkin	Yes	
Tom St John	Yes	

Torfaen response	Agrees with WLGA	
Transport for Wales	Yes	
Vikki Howells MS	Yes	
WLGA	Yes	Yes, every tip should be subject to an inspection to ascertain/confirm the level of risk. Some concerns were raised by LAs about tips that have been developed and the cost/disruption that could be involved in inspecting these. Reflecting this, it may be that separate criteria will need to be applied for inspections relating to such tips. That would help to ensure a consistent approach in these cases.
Wrexham CBC	Yes	
Wyn Williams	Yes	I agree with the reasoning of the Commission. In my view there is a clear public interest in having such an inspection and I consider it necessary to impose a duty to that effect.

CONSULTATION QUESTION 15

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?

Consultation Question 15 asked respondents whether they agreed with our provisional proposal (yes/no/other). Some consultees also provided text to further explain their view. This text has been added to the table. Some respondents did not directly respond to Consultation Question 15, either because they did not use the Citizen Space platform or because they tailored their response to their particular experience.

Respondent	Answer to CQ15	Text
Of those who responded: Yes: 43 No: 3 Other: 5		
Blaenau Gwent CBC	Yes	This will assist with the aim of achieving a consistent approach across all tips.
Bob Leeming	Yes	
Professor Bob Lee	Yes	Broadly agree: There are others better placed to comment on management plans for coal tips, which, incidentally, probably makes this a suitable matter for an appropriate statutory instrument. My only query is whether some prioritisation and timescale might be required. Some tips will already be appropriately and consistently managed such that existing plans

		can be approved but other high risk sites may be need of more urgent consideration.
Bridgend CBC	Agrees with WLGA	
Buglife	Treated as Other	Buglife strongly recommends that biodiversity is included within all Tip Management Plans and given due consideration alongside other factors such as flooding and tip stability. In order to ensure that biodiversity is adequately embedded into Tip Management plans it is essential that ecological experts within Local Authorities, Natural Resources Wales, Non-Government Organisations (e.g. environmental charities such as Buglife, Plantlife, Bumblebee Conservation Trust, Butterfly Conservation, Amphibian and Reptile Conservation, Wildlife Trusts) and any other relevant stakeholders (e.g. individual experts) are involved in the process and that plans are designed using their input. An Ecological Stakeholder Task Force may be one useful means of ensuring that the biodiversity importance of old coal tips is given due consideration.
Caerphilly	Yes	Agree there should be a minimum standard, however, many tips are unique and the ability to add additional matters pertinent to each tip should be afforded.
Chris Seddon	Yes	Suspect this may be the topic of further consultation.
CLA Cymru - Country Land and Business Association	Yes	<p>Suggestion 1 is sensible.</p> <p>Suggestion 2. We would like any new regulation to be open for consultation prior to its implementation (unless in an emergency) and not issued without this provision. A statutory Instrument is not open to full transparent scrutiny.</p>

Clare Dinham	Treated as Other	It is important that biodiversity is adequately considered as should be included in Tip Management Plans.
Professor David Petley	Yes	
Dwr Cymru Welsh Water	Yes	Agreed. We agree that the compilation of a risk assessment should be a priority, and if possible, the results of which should be made available to both the public and specifically Welsh Water in order that risks to public drinking water supplies can be identified. We do not have a view on how these powers are prescribed.
Graham Hathaway	Yes	My previous response applies. Particularly part (2) .
Howard Siddle	Yes	Agreed But I don't think that an initial inspection is adequate to undertake a risk assessment or design a management plan. As indicated above, review of previous reports is essential. I am also not a fan of including spontaneous combustion or pollution risk both because the risk appears low and would be difficult, time consuming and unnecessary expensive to collect anything other than simplistic information on which to base it.
Huw Williams	Yes	The specification of the risk assessment and management plan will be a specialised engineering task and a requirement to undertake these tasks in accordance with guidance drawn up by the supervisory authority and approved by the Welsh Ministers may be a better approach and more flexible in dealing with advances in knowledge and understanding of risks and management techniques.
ICE Wales Cymru	Yes	Agreed, with the Welsh Ministers heeding the advice of suitably experienced and competent advisors in the field of coal tip health,

		safety and environmental impacts. Note concern that the terms 'management plan' and 'maintenance plan' are both used in these questions but the difference does not appear fully defined.
Jacobs UK Ltd (formerly Halcrow)	Yes	<p>For assurance, a consistent and quality of information approach is important for risk assessment and management plans. Placing the duty to arrange with the supervisory authority provides an opportunity to lead this. As previously noted it is essential that the tip is understood holistically based on previous records as part of the development of a future management plan.</p> <p>Prescribing the matters to be included in the risk assessment will provide consistency of approach.</p>
Jane Iwanicki	No	<p>Not all risks will apply to all sites so the authority needs to be able to prescribe the matters that are relevant on a site specific basis and avoid unnecessary work and cost. Any process should avoid over cautious risk management or attempts to simply cover all bases - there should not be an onus on owners or other stakeholders to prove that something is not necessary as a consequence of over cautious regulation (e.g. identifying potential risks just in case rather than a measured and informed approach). Further to earlier comments, i question whether a statutory instrument is the most effective means of delivering solutions.</p>
Joel James MS	Yes	
Dr John Perry	Yes	.
Cllr Julie Edwards	Yes	
Keith Bush	Yes	Ydw. Byddai'r drefn arfaethedig yn rhan anorfod o unrhyw system effeithiol o wella diogelwch tomennydd. Efallai y dylid cynnwys yn

		yr argymhelliad esboniad y byddai cymhlethdod yr asesiad rhisg amrywio o achos i achos. Gall fod yn un sylweddol iawn mewn rhai achosion ond, mewn achosion eraill – er enghraifft tomen fach neu anghysbell - gall fod yn fyr ac yn syml.
Kim Moreton	Yes	
Lee Jones	Yes	
Merthyr Tydfil	Yes	Yes. This will provide a consistent approach and ensure risk assessments are compiled correctly by experienced officers.
Mineral Products Association	Yes	1) Yes 2) Yes, but this should be drawn up in parallel with UK national Governments and only in the proviso that Ministers advice is based upon sound technical/geotechnical advice and not politicised.
Monmouthshire CC	Yes	
Natural Resources Wales	Other	We believe that a risk management plan should be <u>owned</u> by the tip owner. It is acknowledged that owners may lack technical competence, but this is a matter for the authority to address through guidance and training. There is an opportunity for owners to “contract out” risk management; this could be to a consultant or to the Supervising Authority. This is certainly how NRW currently does this with the Coal Authority acting as our contractor. The risk assessment and management plan need to be done under a consistent methodology to provide the same assessment criteria across all tips. One authority overseeing this, rather than multiple authorities, is the best way to ensure a consistent approach. The regulatory authority (or a single nominated contractor such as the

		<p>Coal Authority under direction of the Regulatory Authority) would ensure consistency and integrity of the tip data.</p> <p>It may be expedient with clusters of tips to consider remedial work or collective impact. This is the approach used in tackling the Water Framework Directive targets. This considers the pressures on waterbodies and takes a catchment approach to raise multiple environmental standards. We have approached works on contaminated land in a similar way.</p>
Neath Port Talbot CBC	Yes	This will assist with the aim of achieving a consistent approach across all tips.
Network Rail	Yes	Network Rail agrees, provided sufficient resources are made available to the supervisory authority to enable them to undertake the works.
Ove Arup and Partners Ltd	Yes	(1) as per flood plans/emergency on site plans under the Reservoirs Act
Owen Jordan	No	Let the whole process be driven by those who perceive that a tip poses a risk - give them the right to demand - and get - action to remove their concerns. A lot cheaper, less wasteful of public monies, and out of the political arena, possibly.
Paul Connolly	Yes	WG should only intervene if through advice from appropriately qualified advisors that have the relevant competencies to assess the appropriateness of the risk assessment and management plan.
Dr Peter Brabham	Yes	
Philip Thomas	Yes	Prescribe matters yes, with an obligation on the owner not the public purse to rectify. If the owner is unwilling/unable the land

		should be brought into public ownership for the benefit of the community - a park, bike trails etc - much like Parc Penallta, the area from Pengam to Aberbargoed, Parc Cwm Darren and so on.
Pontypool Park Estate Office	Other	Of course WAG commissions, since it is the principal responsible, and the agent merely effects. Am I missing the point?
Rhondda Cynon Taf CBC	Yes	Members were supportive of this proposal.
Richard Arnold	Yes	As long as the process is efficient.
Sioned Williams AS	Treated as Yes	I also support the recommendation to mandate inspections of each tip for the purpose of a risk assessment and the design of a tip management plan – to include all potential risks including the risk of tip slides but also flooding, pollution and any other risks. [See also CQ 20]
Stephen Smith	Other	We have not yet seen the data from the initial work by TCA, but I feel this proposal does not appear to recognise that a majority of the identified tips will need very little (if any) maintenance. In these cases, a 'management plan' would not be required. As a result, I feel there needs to be a defined category of tip that would need such a plan rather than it being a general duty.
Steve Harford	Yes	Additionally, the Coal Authority should have a responsibility to provide the authority access to any data that it holds in relation to the tip, workings below the tip and shafts and adits in the vicinity of the tip.
Steve Jones/Pembrokeshire Council	No	Remediated tips on flat areas of ground posing no danger or environmental hazards should not require a management plan,

		<p>other than a periodic assessment to confirm previous 'zero risk' ratings and no material changes in the intervening period.</p> <p>Agree that content of risk assessments and management plans should be prescribed to ensure consistency.</p>
Sue Jordan	Yes	
The Law Society of England and Wales	Yes	We agree and consider that the statutory instrument should be subject to Senedd scrutiny via the affirmative procedure.
Thomas Glyn Watkin	Yes	With regard to the power to prescribe that matters to be included, it is important that the development of these matters over time should not be hampered by their being too rigid. The supervisory authority should in my view be encouraged to develop best practice, and be empowered to recommend to the Welsh Ministers such additions or amendments to the matters as it from time to time considers beneficial, and the Welsh Ministers should be required to have due regard to such recommendations when periodically revising the matters to be included.
Tom St John	Yes	
Torfaen response	Agrees with WLGA	
Transport for Wales	Yes	
Vikki Howells MS	Yes	
WLGA	Yes	Yes. This will assist with the aim of achieving a consistent approach across all tips. The consultation document refers to it being "open to the [supervisory] authority to draw up the plan itself, or to arrange for the plan to be prepared". WLGA received some

		<p>differing views from LAs on this issue. Some felt that the tip owner should be made legally responsible for drawing up the plan, with the supervisory body then signing it off. Others felt that such an approach would be acceptable for low-risk tips only. And yet others felt that for reasons of consistency, and subject to its budget, the supervisory body should be responsible for all assessments and plans. If WG Ministers specify the content of the assessments and plans, though, that should help to achieve consistency, irrespective of who undertakes the work. It will be important though to reduce the risk of appeals/court cases against the supervisory authority if a landowner considers unacceptable a management plan that is drawn up (see Q 20 below).</p>
Wrexham CBC	Yes	
Wyn Williams	Yes	<p>I agree with the reasoning of the Commission. There is a clear public interest in these suggestions.</p>

CONSULTATION QUESTION 16

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?

Consultation Question 16 asked respondents whether they agreed with our provisional proposal (yes/no/other). Some consultees also provided text to further explain their view. This text has been added to the table. Some respondents did not directly respond to Consultation Question 16, either because they did not use the Citizen Space platform or because they tailored their response to their particular experience.

Respondent	Answer to CQ16	Text
Of those who responded: Yes 45 No 2 Other 2		
Blaenau Gwent CBC	Yes	
Bob Leeming	Yes	This is fundamental and underpins the whole exercise.
Professor Bob Lee	Yes	Yes to question 16: Given enduring memories of Aberfan, classification based on slide seems entirely appropriate but it ought not to be too narrowly drawn, so for example the Tylorstown tip failure could have given rise to devastating flooding which might have included loss of life as well as property damage.
Bridgend CBC	Agrees with WLGA	
Caerphilly	Yes	Agreed, instability is a factor also refer to Q17.

Chris Seddon	Yes	This is the risk with greatest consequence associated with coal tips in Wales. As such, the risk of instability should not be 'diluted' by secondary risks such as those mentioned in question 17.
CLA Cymru - Country Land and Business Association	Yes	This is the underlying issue governing this whole consultation, so this must be the determining factor.
Professor David Petley	Yes	Risk is hazard x vulnerability x consequence. Thus, to be useful the register must consider all components.
Dwr Cymru Welsh Water	Yes	Yes, however despite the serious consequences of a slip, additional risks should also be acknowledged, classified, and presented.
Graham Hathaway	Yes	<p>This will be a constant requirement at each visit. Indicating any sign of instability particularly after heavy rain . Also the retention of correspondence relating to the said tip and responses. The Aberfan disaster is pertinent here from the point of public concern hitherto the slip. The tragedy was avoidable, notice of concerns were manifold. They were ignored and there were lies told send systems ignored.</p> <p>As a boy I visited these sites and could see the angles of slope and height of the tips as dangerous. Even then. It was geometry gone mad. But on streams and high flows of water then only one thing was likely. We must never resort to penny pinching or dither. Never fail with due diligence on record keeping and good practice.</p>
Howard Siddle	Yes	<p>I agree that the likelihood and consequences of a tip slide should inform a risk categorisation.</p> <p>(I see some confusion over the terms hazard and risk. In natural hazard terminology, the term hazard is usually taken as the</p>

		<p>probability or likelihood of a damaging process, such as instability, whereas risk is a measure of its impact, where Risk = Hazard x Consequence)</p> <p>I respectfully suggest that the correct formulation of the question should therefore have been:</p> <p>"...of coal tips should have regard to the likelihood of instability of a tip and the consequences of such a failure."</p> <p>An assessment of the likelihood of instability could be contentious, unless it can be based on something measurable or observable. Therefore, before including risk of the processes set out in Q16 and Q17 in the register, one needs to be sure that these fields can be reliably populated with something more than opinion. Relative degrees of instability/stability are usually portrayed quantitatively by factors of safety but this is only possible where tip slopes have been designed and records exist of the engineering calculations. A suggestion might be to classify slopes as</p> <ul style="list-style-type: none"> - actively unstable (evidence based) with inferred FoS no more than unity - unremediated slopes with evidence of previous movement (where FoS would be around unity) - as tipped slopes with no previous movement (FoS at or slightly above unity) - engineered slopes (Fos could be minimum of 1.2 or as high as 1.5 depending on their design)
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		These might be combined with elements at risk in a 2-D matrix to portray relative degrees of risk for instability hazard. A similar methodology would be required if other hazards (pollution, burning or flooding) were to be included in a risk assessment. As noted in my response to Q 8 and Q17 it is not clear how this can be achieved to populate a "general" risk assessment or if the result would help management of individual disused tips.
Huw Williams	Yes	
ICE Wales Cymru	Treated as Yes	The term 'spoil' is undefined and question 2 relates to the definition of a disused spoil tip from a variety of originating sources of coal mining waste. This question relates only to instability and a 'slide' of 'spoil' but the risks at any particular disused coal tip are more varied and all risks should be considered within a tips classification system. Whilst tip slides such as at Aberfan 1966 and Tylorstown 2020 highlight the risk of tip instability and movement on sloping valley slides, lagoon waste, for example, would most likely be found on relatively level ground but could present a significant risk of subsidence even under relatively low loading such as a person. The above said, it is reasonable to base a classification system on the potential magnitude of consequences from any perceived risk at a disused coal tip combined with an assessment of the likelihood or probability that such a risk will become manifest.
Jacobs UK Ltd (formerly Halcrow)	Yes	Agreed, a qualitative risk based assessment should be used. The classification system should be improved to utilise current industry best practice for managing geotechnical risk which considers the degree of risk. To establish the degree of risk that the hazards associated with a tip have to be identified and assessed; the degree of risk being the expected impact of damage, loss or harm

		<p>from a given hazard, under particular circumstances, which is expressed as:</p> <p>Degree of risk = Likelihood (of a hazard) x Effect (or consequence).</p> <p>this will then inform the classification of risk a tip presents.</p> <p>All hazards at a site should be identified and assessed. It is to be noted also that there is not just one "slide of spoil" slope instability failure mechanism, there several. There are a range of widely recognised and defined slope instability failure mechanisms and those that might apply to a tip and may require management depend on the particular geomorphological/geological/hydrogeological circumstances at the site. Hazards such as drainage will be important to assess.</p> <p>The classification system needs very careful consideration to ensure that it is fit for purpose and does not have unintended consequences. There is an opportunity now to develop an effective approach and classification system for the future. It is noted that the Coal Authority in its initial work the Welsh Government adopted the Rhondda Cynon Taf (RCT) classification system, which is longstanding. Categories C & D refer to "potential to cause risk to life or property", a very broad statement which does take account of the degree of risk. Jacobs understands that RCT assigned a tip inspection regime to each category. Adopting a risk based approach to the assessment of tips will ensure that hazards are identified and managed appropriately and will provide a tip specific management plan. Using category definitions along the lines of "potential to cause risk to life or property" would no longer be appropriate and would be misleading. A clear unambiguous classification needs to be developed and it must be developed</p>
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		<p>within the overall context of the future way of managing tips in Wales. There could be advantages in creating new rather than following what was done in the past, possibly with some tweaks. It is probably best to limit the numbers of categories and redefining the categories to current best practice and a wider understanding of tip management would allow that. In Jacobs opinion there can be no Category R "Tip fully restored/reclaimed but kept in database as a record. Nothing to inspect." Virtually all stabilisation/reclamation schemes comprise a combination of earthworks and drainage both surface drainage to carry run-off and shallow (up to 5m depth) sub-surface drainage to control groundwater levels and springs. It is essentially all tips are inspected on a consistent and regular basis, the frequency of which will depend on the risks. Surface drainage needs to be maintained and kept clear to ensure its correct function and avoid erosion and potential flooding incidents. Jacobs is aware that the stability of some tips is maintained solely by deep sub-drainage drainage, including drainage galleries and small diameter (of the order of 150mm) directionally drilled drains. Deep sub-surface drainage requires specialist maintenance. In time it is to be expected that Sub-surface drainage (shallow and deep) will require replacement. With rising groundwater levels owing to cessation of minewater pumping and/or climate change the emergence of new springs on a stabilised/remediated tip needs to be identified and assessment of the need for drainage measures made and works implemented as appropriate. Regular inspection of a tip will ensure that this is actioned in a timely manner. Jacobs is aware of several tips, including one of the most recent significant failures where had action been undertaken early the failure would most likely not have occurred.</p>
Jane Iwanicki	Yes	

Joel James MS	Yes	
Dr John Perry	Yes	.
Cllr Julie Edwards	No	Unless these tips are monitored regularly, no-one knows when they will go. The slip in Tylorstown is an example of that. Climate change is having an impact on what's going on underneath and the naked eye can't see that. Instability can occur whenever
Keith Bush	Yes	Ydw. Dyma, yn sicr, yw'r ddwy elfen y dylid eu hasesi yn y lle cyntaf - sefydlogrwydd y domen a natur y canlaniadau pe byddai'r domen yn llithro.
Kim Moreton	Yes	Safeguarding against loss of life should be the overriding priority.
Lee Jones	Yes	
Merthyr Tydfil	Yes	
Mineral Products Association	Yes	Yes, however, the methodology needs to be clear, concise and technically sound. It will also be necessary for landowners and owners of the tipped material to have a right to appeal any decisions and as such an arbitration body must also be created.
Monmouthshire CC	Yes	
Natural Resources Wales	Other	<p>We agree with this although the likelihood of tip instability and the impact this may have should failure occur should be a major, but not the only category. We now have significant experience to define all the conditions and outcomes, so we support a range of clear definitions of cause and consequence.</p> <p>We say this as if the consequence is the driving factor legislation should avoid the term "risk". Also, it may be sensible to not restrict</p>

		the definition to a “slide of spoil”; the movement at Tylorstown was a flow. A better term would be slope movement or failure.
Neath Port Talbot CBC	Yes	Tip instability can lead to land slips in certain areas of geological instability, plus redirection of established water courses.
Network Rail	Yes	Network Rail agrees that this is a primary consideration. It should also be linked to the other risks associated with surface water flooding, contamination spread, interaction with other mining features such as mine shafts etc.
Ove Arup and Partners Ltd	Yes	Agree with risk of instability, and agree with consequence so long as this is simpler than the reservoirs act designation of 'loss of life' vs 'loss of life to a community' etc.
Owen Jordan	No	Any risk is the only option.
Paul Connolly	Yes	This is a fundamental of the risk assessment process developing a scoring matrix based on likelihood versus impact. This will allow characterisation of tips into risk groups and the ability to prioritise higher risk tips.
Dr Peter Brabham	Yes	<p>Absolutely it's no good just putting a tip on map without classifying it and coming up with a risk matrix classification for each one. There would have to be a decision made about risk based on:</p> <p>Volume of spoil</p> <p>slope angles</p> <p>nature of spoil</p>

		<p>water pathways</p> <p>angle of foundation slope (hillsides)</p> <p>Potential run off areas</p> <p>Infrastructure within run off area zone</p>
Philip Thomas	Yes	<p>Instability - yes.</p> <p>Consequences of a slide - yes.</p> <p>And other risks, which I think are set out in the below questions.</p>
Pontypool Park Estate Office	Other	<i>Inter alia</i> , or exclusively?
Rhondda Cynon Taf CBC	Yes	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.
Richard Arnold	Yes	However the risk should be evaluated not just on current risk of instability but a matrix of relevant factors including climate change current negative economic impacts to land and potential positive economic and community impact on a final solution.
Sioned Williams AS	Treated as Yes	I also support the recommendation to mandate inspections of each tip for the purpose of a risk assessment and the design of a tip management plan – to include all potential risks including the risk of tip slides but also flooding, pollution and any other risks.

Stephen Smith	Yes	This must be a given. Instability has historically been regarded as a fundamental threat and will continue to be so. Noted that, each tip will require a dedicated assessment of the risk posed based on standard methodology.
Steve Harford	Yes	Agreed, but as you would with any Risk Register, there should be a clear matrix to determine the overall risk factor,
Steve Jones/Pembrokeshire Council	Yes	
Sue Jordan	Yes	Also needs to include earthquakes, appearance and other factors.
The Law Society of England and Wales	Yes	We agree.
Thomas Glyn Watkin	Yes	
Tom St John	Yes	
Torfaen response	Agrees with WLGA	
Transport for Wales	Yes	
Vikki Howells MS	Yes	This is essential for public peace of mind.
WLGA	Yes	
Wrexham CBC	Yes	
Wyn Williams	Yes	I agree with the reasoning of the Commission.

CONSULTATION QUESTION 17

Should coal tip classification also have regard to the risk the tip presents of pollution, combustion or flooding?

Consultation Question 17 asked respondents whether they agreed with our provisional proposal (yes/no/other). Some consultees also provided text to further explain their view. This text has been added to the table. Some respondents did not directly respond to Consultation Question 17, either because they did not use the Citizen Space platform or because they tailored their response to their particular experience.

Respondent	Answer to CQ17	Text
Of those who responded: Yes 45 No 2 Other 3		
Blaenau Gwent CBC	Yes	Risks should also be considered as part of the assessment/plan
Bob Leeming	Other	Combustion yes, as it can cause instability. Not convinced of the merits of the other two.
Professor Bob Lee	Other	As for question 17, it is also crucial not to overlook hazards and nuisances caused by combustion within tips and potential impacts of coal waste on the wider environment and on biodiversity. This can be achieved, however, by measures which go beyond initial risk classification, which I would be minded to keep relatively simple and based on existing, post-Aberfan emphasis on stability.
Bridgend CBC	Agrees with WLGA	
British Geological Survey	Yes	

Caerphilly	Yes	Yes this needs consideration. The classification risk could also include a suffix that denotes the risk type (Instability, Flooding, pollution, combustion etc) otherwise people will be concerned all CAT D tips are susceptible to instability which may not be the case. It could be a tip is a CAT D tip due to flood risk for example.
Chris Seddon	Yes	Suggest that coal tips should be classified by an overall risk rating taking account of all of these. The challenge will be in providing a suitable framework for assessing these risks. As is common with geo-hazards risk factors can often combine. An obvious example would be a tip which poses and instability hazard, the consequences of which are release of pollutants and flooding. How will this compare with a tip with independent instability, pollution and flooding hazards?
CLA Cymru - Country Land and Business Association	Yes	This should be a secondary consideration for any classification.
Professor David Petley	Yes	
Dwr Cymru Welsh Water	Yes	Yes. All these issues have the potential to have serious impacts on drinking water supplies, so a clearer classification based on these criteria is essential.
Graham Hathaway	Yes	This becomes essential from reading the report of possible risks associated with certain tips. Combustion in particular and remedial work to counter it. Flooding is now a crucial issue . Climate change is the new menace to our lives and our well being. Nothing will stop it now only to limit it. Including our ability to survive the extremes of heat and storms. This is a warning. I've spent 2 days reading this excellent report. With note taking. But will others. Will we be secure in the future ; will these tips remain safe or best to remove them ; at

		least the ones classified so. Where will the resources come from to deal with such large numbers of potential slippage and more destruction and deaths likely with severe storms able to flood towns and villages.
Howard Siddle	No	<p>As noted in my response to Q8 above, I don't believe there is compelling evidence to include risks of pollution from tip waste as opposed to the real (though not tip related) pollution risk of surface waters from mine drainage) or flooding. Combustion from wildfires could become an increasing hazard</p> <p>but information on which to base a risk assessment might not be cost effective to obtain.</p> <p>A much more relevant hazard which needs to be included in risk assessment is that of the failure of drainage systems, either natural (stream or watercourse) or engineered (lined channels, culverts, pipelines, baffled channels, attenuation ponds, groundwater drainage systems etc) which are present in many tips constructed or remediated in the post Aberfan era. Failure of these systems can cause rapid erosion of spoil and its deposition elsewhere and can also trigger various forms of tip slides and flows, as we have seen at Tredegar Comprehensive School and Llanwonno. The probability of such an event would be difficult to quantify as it depends on the resilience and maintenance of the systems and their design standards but a suitable ranking of hazard could be produced from, for example, the existence, orientation, age and type of drainage structure.</p>
Huw Williams	Yes	

ICE Wales Cymru	Yes	Yes. Whilst the primary risk considered for tip classification may be instability, there is a need to align the new legislation with extant environmental legislation it would be appropriate to consider these risks. Furthermore, combustion can change the risk profile of a tip as the nature of the tip waste (e.g geotechnical characteristics) can change due to combustion. Furthermore, combustion may improve the tip characteristics for potential use as a secondary aggregate. Additionally, whilst a tip may impact on the local risk of flooding in its original location, it may also create a secondary flood risk should instability cause it to block a watercourse.
Jacobs UK Ltd (formerly Halcrow)	Yes	The classification should take into account of all the hazards that a tip presents, but some of these can at most sites be written out early. Tip fires in Wales are relatively rare and generally result from a third party having unwittingly started to burn on the tip. The risk of wildfires to ignite a tip may be something that could occur particularly with the drier summers experienced. Tip pollution in Wales is relatively rare and is usually associated with mine water. Drainage (surface carrying run-off) and sub-surface (carrying watercourses and regulating groundwater levels and springs) presents a significant hazard at many tips. Blockage of a surface channel or collapse of a culvert will result in a washout of the tip material, with possible risk of damming of watercourses and flooding. Drainage needs particular consideration.
Jane Iwanicki	Yes	If a risk of instability is identified it should lead to a review of the above issues - if a management plan or remediation strategy is being devised it should also address the above risks and provide a holistic solution.
Joel James MS	Yes	

Dr John Perry	Yes	.
Cllr Julie Edwards	Yes	
Keith Bush	Yes	Dylid. Un o wendidau'r drefn bresennol yw ei bod yn canolbwyntio ar berygl i bobl. Dylai'r drefn newydd ei gwneud yn glir bod y rhisg o ddifrod i eiddo ac i'r amgylchedd fod yn rhan o'r asesiad.
Kim Moreton	Yes	re. flooding; flood maps are evolving in complexity; omission of tips would impact on wider efforts to map and model flood risk. Combustion represents a risk of a significant source of CHG emissions. Pollution from coal tips can be a complex mix, and the tip itself a diffuse source through air and water; classification would enable near-area risks to be modelled with more confidence.
Lee Jones	Yes	These are all relevant associated risks that should form part of any classification system by establishing the source, pathway and receptor.
Merthyr Tydfil	Yes	Yes, anything that presents a risk to the public should be included within the classification.
Mineral Products Association	Yes	Yes and again, the methodology must be clear, concise, technically sound and open to appeal.
Monmouthshire CC	Yes	
Natural Resources Wales	Yes	Yes – there are several consequences that require management at legacy industrial sites. Having a register of sites is an opportune time to consider <u>all</u> the consequences of tip management. These three and other factors such as safe access will be important to

		<p>align this initiative into other legislative drivers such as the Environment Act and Wellbeing of Future Generations.</p> <p>In respect of flooding one needs to be careful on the definition, i.e. is it the risk of flooding from failure or from rapid tip drainage like that shown on the example of drainage at Wattstown and Pentre following recent storms</p>
Neath Port Talbot CBC	Yes	These risks should also be considered as part of the assessment/plan.
Network Rail	Yes	
Ove Arup and Partners Ltd	No	The consequence of failure could also relate to future pollution or flood risk but this is covered by other legislation. Tip regulation / inspection should be specifically related public safety.
Owen Jordan	Yes	All risks - there is no other option
Paul Connolly	Yes	These categories should be presented alongside tip instability to give an overall combined risk rating as well as detailing out each individual risk. Thresholds of risk could be set for each category that could automatically trigger remediation strategies where deemed to be sufficiently serious.
Dr Peter Brabham	Yes	<p>Possibly but that's the second order level of risk.</p> <p>Flooding I would put in first order as tip failure into rivers is high risk.</p>

		eg. Cylfynydd Pontypridd Tip failed into River Taff causing flooding. Tylorstown 2020 could have dammed the river causing a tidal wave on breaching.
Philip Thomas	Yes	Absolutely, many of the Halcrow & Partners reports highlight how rain, drainage, water flow (below and above ground), land use have a critical impact on the ever fragile ecosystem of the steep sloped areas associated with the coal fields.
Pontypool Park Estate Office	Other	Hazards, surely?
Rhondda Cynon Taf CBC	Yes	<p>Members agreed that these issues should be a consideration and understood the risks posed:</p> <p>Pollution – the detrimental impact on local habitats and wildlife</p> <p>Flooding – tips can contribute to flooding</p> <p>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)</p> <p>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.</p>
Richard Arnold	Yes	Yes as above in Q 16
Sioned Williams AS	Treated as Yes	I also support the recommendation to mandate inspections of each tip for the purpose of a risk assessment and the design of a tip

		management plan – to include all potential risks including the risk of tip slides but also flooding, pollution and any other risks.
Stephen Smith	Yes	Whilst acknowledging that these factors may be relevant, any new legislation or guidance would need to consider their significance and impact. I am not aware of any substantive evidence that pollution from coal spoil or direct flooding from tips is significant.
Steve Harford	Yes	This should be a part of the matrix to determine the overall risk.
Steve Jones/Pembrokeshire Council	Yes	
Sue Jordan	Yes	
The Law Society of England and Wales	Yes	We consider that maximum transparency in relation to risk information is key and therefore submit that coal tip classification should have regard to these additional hazards.
Thomas Glyn Watkin	Yes	
Tom St John	Yes	
Torfaen response	Agrees with WLGA	
Transport for Wales	Yes	
Vikki Howells MS	Yes	General risks posed by climate change must also be built in.
WLGA	Yes	Yes, agree these risks should also be considered as part of the assessment/plan.

Wrexham CBC	Yes	Qu 17 - yes, as covered by Qu 16. The draft Impact Assessment for this legislation identifies on going benefits (p2) and refers to reduced environmental damage as disasters are prevented avoiding adverse consequences of pollution to land and water. However, it may be the case that the tip is already causing pollution of the land and water, it is quite likely if pollution potential exists it exists now and not just when it is triggered by instability. It is possible remedial works for any one of these risks could at the same time deal with another risk, so it is likely that tackling risks simultaneously could be: more cost effective, less disruptive and use less resources. There may be some overlap with some existing legislation and policies, such as Part 2a of the Environmental Protection Act 1990, Water Framework Directive and the Metal Mine Strategy for Wales.
Wyn Williams	Yes	There is a clear public interest in taking these matters into account.

CONSULTATION QUESTION 18

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?

Consultation Question 18 asked respondents whether they agreed with our provisional proposal (yes/no/other). Some consultees also provided text to further explain their view. This text has been added to the table. Some respondents did not directly respond to Consultation Question 18, either because they did not use the Citizen Space platform or because they tailored their response to their particular experience.

Respondent	Answer to CQ18	Text
Of those who responded:		

Yes: 39 No: 3 Other: 3		
Blaenau Gwent CBC	Yes	Yes, categorisation of tips will be important in terms of prioritisation of work and determining of resource allocation. It does raise the possibility, as noted above, that designation as a high-risk tip will affect land and property values. LAs have already experienced Freedom of Information requests in relation to tips and it would be difficult, once inspections are complete, to argue that the designation is not in the public interest.
Bob Leeming	Yes	Follows the 'classified tip' model. likely to provide for a smooth transition from a working tip to a disused tip and coming under this legislation.
Professor Bob Lee	Other	Ranking is a vital factor in risk-based regulation in order to deploy resources to their most protective end use. With experience of the regime, and with regard to its possible extension over time, a statutory instrument may be best suited to enshrine risk based criteria. I will leave comment on the suggested criteria to others with greater and more relevant experience. I certainly agree that a right of appeal against both classification and designation should be included and I am assuming that this right would be confined to the owner of the tip (rather than say an adjoining property owner).
Bridgend CBC	Agrees with WLGA	
Caerphilly	Yes	Agreed

Chris Seddon	Yes	
CLA Cymru - Country Land and Business Association	Yes	I repeat my concern about Statutory Instruments. Any/ All proposals need to be fully consulted on beforehand.
Professor David Petley	Yes	
Dwr Cymru Welsh Water	Yes	
Graham Hathaway	Yes	Certainly, I can't see any other behaviour as appropriate.
Howard Siddle	Yes	Agree but we need to avoid emotive terms such as "higher risk" . Perhaps "regulated" tips or "designated" tips where regulation applies to tips satisfying certain physical criteria.
Huw Williams	Yes	<p>While the principle should be that any surface deposit is a potential risk the purpose of the initial inspection regime should be to identify the tips considered to pose the greatest risk.</p> <p>Recognising that the process of formal initial inspection may take time, I think there is a case for the supervisory authority to be able to provisionally classify a tip as higher risk based on current information pending initial inspection under the new statutory regime.</p>
ICE Wales Cymru	Yes	Agreed, providing the Welsh Ministers requirements are based on the advice of competent professionals with expertise in disused coal tips. Higher risk tips would require enhanced inspection/maintenance/monitoring/management regimes and could, should the risk profile be sufficiently high, be considered in a new programme of land reclamation and tip stabilisation schemes.

Jacobs UK Ltd (formerly Halcrow)	Yes	This is a reasonable proposal, but the naming of the categories needs to avoid the emotive 'risk'/'high risk' words. They be use the term "Designated Tip"? This will need detailed consideration and align with the proposed risk based approach.
Jane Iwanicki	Yes	There needs to be priority attached to higher risk tips but again I question whether regulation is the best means of defining the criteria.
Joel James MS	Yes	
Dr John Perry	Yes	.
Cllr Julie Edwards	Yes	
Keith Bush	No	Nac ydw. Mae'r system a fabwysiadwyd gan yr Awdurdod Glo yn ceisio dosrannu tomennydd yn ol maint y rhisg (Categoriâu A - D) a natur y difrod tebygol (Categoriâu 1, 2 a 3). Mae'n ymddangos, felly, y gall tomen syrthio o fewn un o 12 gwahanol gategoriâu. Mae hyn yn ymddangos yn drefn gymhleth ac nid oes tystiolaeth o faint mor effeithiol yw. Mae pob tomen yn wahanol a bydd angen i'r awdurdod wneud asesiad o'r hyn sydd angen ei wneud (os rhywbeth) mewn perthynas a phob tomen. Ni fydd hyn yn adlewyrch, o bosibl, gategoriâu syml. Gallai tip ansefydlog, ond lle na fyddai llithriad yn debyg o effeithio ar ddiogelwch personol neu amgylcheddol, hawlio blaenoriaeth uwch ar gyfer gwaith gwella diogelwch na thomen sydd mewn lleoliad sensitif ond sydd mewn cyflwr sefydlog iawn. Ni ddylai ymateb yr awdurdod gael ei rwyngu gan yr angen i osod tomen mewn categori artiffisial, gan greu disgwyliad y dylid rhoi blaenoriaeth i drin neu adfer tomennydd ar sail y categori maent wedi'u gosod ynddo.

Kim Moreton	Yes	
Lee Jones	Yes	Accompanying guidance to the statutory instrument could also be published to assist both the Authority and tip owners.
Merthyr Tydfil	Yes	
Mineral Products Association	Yes	Yes, however, again it is imperative that the legislation is founded on sound technical and geotechnical advice and not political expediency.
Monmouthshire CC	Yes	
Natural Resources Wales	Yes	<p>We agree that the supervisory authority should be able to do this based on such direction. This should adequately enable the category of a tip to change swiftly if issues were identified and thereby enable remediation to follow. As with Question 16 & 17 this should apply to both failure issues and environmental harm</p> <p>We would suggest however, that it is better to use “high hazard” if using consequence-based criteria</p>
Neath Port Talbot CBC	Yes	<p>Categorisation of tips will be important in terms of prioritisation of work and determining of resource allocation. It does raise the possibility that designation as a high-risk tip will affect land and property values. LAs have already experienced Freedom of Information requests in relation to tips and it would be difficult, once inspections are complete, to argue that the designation is not in the public interest.</p> <p>There should be a full risk evaluation and assessment of all tips, then a categorisation of all tips i.e. spoil heaps, mining, quarrying,</p>

		excavation residue, waste tips and all materials overlain by materials likely to flow when wet.)
Network Rail	Yes	Network Rail agrees as this will help inform risk assessments for the railway network.
Ove Arup and Partners Ltd	Yes	Yes, particularly where the consequence of failure is severe.
Owen Jordan	No	See above. Create classes and those liable will weasel their way out between them.
Dr Peter Brabham	Yes	
Philip Thomas	Yes	
Pontypool Park Estate Office	Other	It would be bizarre to have an objective survey if it did not include a subjective analysis.
Rhondda Cynon Taf CBC	Yes	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.
Stephen Smith	Yes	What would criteria be? Definition of these requires more work before the proposal could be agreed. On the assumption that there could be no breach of requirements arising from this, is it possible to prescribe criteria through guidance rather than statutory instrument?
Steve Harford	Yes	But there does need to be an element of flexibility on the definition of a coal tip and from an overall safety perspective, the responsibility of the new authority should cover spoil from other mining operations - not just coal.

Steve Jones/Pembrokeshire Council	Yes	
Sue Jordan	No	All tips should be removed. Those granting permission e.g. Coal Authority and its predecessors should be responsible.
The Law Society of England and Wales	Treated as Other	We agree and consider that the statutory instrument should be subject to Senedd scrutiny via the affirmative procedure.
Thomas Glyn Watkin	Yes	
Torfaen response	Agrees with WLGA	
Transport for Wales	Yes	
Vikki Howells MS	Yes	
WLGA	Yes	Yes, categorisation of tips will be important in terms of prioritisation of work and determining of resource allocation. It does raise the possibility, as noted above, that designation as a high-risk tip will affect land and property values. LAs have already experienced Freedom of Information requests in relation to tips and it would be difficult, once inspections are complete, to argue that the designation is not in the public interest.
Wrexham CBC	Yes	The criteria for each risk category should be defined in the legislation. This would ensure consistency and would avoid ambiguity. This is the case for contaminated land sites under Part 2a of the Environmental Protection Act.
Wyn Williams	Yes	I agree with the reasoning underpinning the proposal.

CONSULTATION QUESTION 19

Consultation Question 19: 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.**

Consultation Question 19 asked respondents for their views. Some respondents did not directly respond to Consultation Question 19, either because they did not use the Citizen Space platform or because they tailored their response to their particular experience.

Respondent	Answer to CQ19
Of those who responded: Agreed to all: 24 Agreed to some: 7 Disagreed with all: 2 Other: 13	

Blaenau Gwent CBC	Agreed yes - all of the above
Bob Leeming	Some yes to most, but not convinced about 3 which should be covered by environment legislation enforced by NRW.
Professor Bob Lee	Other Ranking is a vital factor in risk-based regulation in order to deploy resources to their most protective end use. With experience of the regime, and with regard to its possible extension over time, a statutory instrument may be best suited to enshrine risk based criteria. I will leave comment on the suggested criteria to others with greater and more relevant experience. I certainly agree that a right of appeal against both classification and designation should be included and I am assuming that this right would be confined to the owner of the tip (rather than say an adjoining property owner). [overlap with CQ 20]
Bridgend CBC	Agrees with WLGA
British Geological Survey	Other Terminology should be more clearly defined in this question. Tip stability might be considered as a scale of hazard with risk being defined by likelihood of the various impacts, e.g. (2-4). The need for engineering/ mitigation should relate to the risk. Spontaneous ignition is a separate hazard that could be subject to scaling and risk assessment.
Caerphilly	Some The points above are a good starting point (6) is very open which could be a good thing as there are many tips where drainage infrastructure, for example, is at or beyond its end of life and would be covered by "Engineering". Would maintenance work also come under (6)? Some tips are "Maintenance Hungry" and require regular maintenance to prevent them deteriorating rapidly and increasing in classification. Other common issues are protection of ecology, wildlife, water run-off, vegetation die back / replacement and maintenance of ecology and planting which may not be covered by (6) Engineering? Therefore, should inclusion of Landscaping be considered so areas can be re-planted to minimize run off or scour which in turn prevents maintenance issues.
Chris Seddon	Agreed This appears to be a comprehensive list of criteria.
CLA Cymru - Country Land and Business Association	Some As already stated we support the criteria in parts 1 and 2 as primary issues which should define a tips risk status, being primarily its risk to human life.

	<p>Item 3 by its nature is likely to be closely linked with item 2(c).</p> <p>Item 3 will be covered by environmental legislation and the owner/ responsible person should also be aware of this?</p> <p>Item 4 again part of the checklist criteria and should be used as a material consideration however in the context of the overall condition of any tip.</p> <p>Item 5 is an unwanted consequence but is it alone, a worthy of classifying it as high risk?</p> <p>Item 6, again is a consequence of the state and chances are that if the tip is showing signs within items 1 and 2, chances are it will need engineering work, not sure on where this specific aspect fits in?</p>
Professor David Petley	<p>Some This is generally correct. I would add:</p> <p>2 (d) An area of with significant economic value</p> <p>2 (e) Areas of ecological value</p> <p>7 The tip causing any other type of substantial risk</p> <p>I am unsure as the definition of "requires" in (6). Is there a timescale on this - currently? Is likely to require within 5 years?</p>
Dwr Cymru Welsh Water	<p>Agreed We agree that a higher risk designation should include if there are potential impacts to watercourses feeding drinking water supplies.</p>
Graham Hathaway	<p>Other These are crucial categories to which we, most, can relate too. It's a judgement that can only be made by an appropriately qualified person. I see the sensitivity in this question. From any of the categories above then it falls to a management plan to articulate the problem and source a response or remedy. Then there's public awareness. I urge publicity to these findings. There's inherent dangers to any one of these designations. We must know of them. By official reporting on the web sites of LAs. This should be made compulsory where there is danger to life form any cause. I again refer to climate change.</p>
Howard Siddle	<p>Some 1 - yes within a classification of hazard as in response to Q16</p>

	<p>2(a) – yes</p> <p>2(b) - yes</p> <p>2(c) – yes</p> <p>3 – no. I think this risk from disused tips from coal and associated mineral mining is low and has been misrepresented in the CP (see response to Q8)</p> <p>4 – no. Should be replaced by “substantial risk of failure of natural or engineered drainage system which would impact its security”. See response to Q17</p> <p>5 – yes but of questionable usefulness or cost effectiveness.</p> <p>6 no - This should be the conclusion of a risk assessment and not a factor in the “designation” of a tip.</p> <p>I believe “designation” of a tip is a label that should remain with the tip, even after works are carried out (contrary to the CP proposal in 10.68) to ensure the correct degree of inspection and maintenance are implemented because the elements at risk will remain the same and the tip remains a potential risk. It should be the management regime which changes after remedial works and not the designation.</p>
Huw Williams	<p>Other This is primarily an engineering question, but I would note that the concept of "substantial risk" creates scope for uncertainty and argument, especially if a tip is privately owned..</p> <p>I think it should be sufficient if a risk and a route or channel of causation can be identified for the purposes of classification.</p> <p>The risk of flooding should perhaps differentiate between flooding of land and the flooding of buildings or premises occupied as dwellings or for business.</p>
ICE Wales Cymru	<p>Some Bullet 1 – yes.</p> <p>Bullet 2a – yes, including temporary habitation such as a campsite.</p>

	<p>Bullet 2b – yes, including utilities such as water, gas, sewage, electricity.</p> <p>Bullet 2c – yes, with due consideration of tip dimensions and theoretical maximum movement as a flow slide, plus the secondary risks associated with the release of impounded water within an affected watercourse</p> <p>Bullet 3 – yes.</p> <p>Bullet 4 – yes, including secondary flooding from release of impounded water following failure.</p> <p>Bullet 5 – perhaps unlikely nowadays as most tips with high original coal content are either likely to have been reclaimed and coal recovered or will have self-combusted in the past. Data would be needed on the coal content of a tip to assess this risk.</p> <p>Bullet 6 – Engineering works for what? Engineering works may be required as a result of risk assessment and it is the risk assessments that would inform classification.</p> <p>Additional criteria:</p> <ul style="list-style-type: none"> • Tip is underlain by a landslide or marginally stable natural ground • Other adverse underlying ground conditions • For washery/lagoon waste – potential risk of subsidence and failure on loading • Nature of the waste in the tip. Different waste materials will have different geotechnical properties and hence different influences on tip instability and hence classification. • Mine entries in the vicinity and particularly immediate upslope of hillside tips that could present a risk of mine water outbursts that could trigger instability.
Jacobs UK Ltd (formerly Halcrow)	<p>Other The designation of a tip needs to come from the risk based assessment that considers all the hazards at a tip and establishes their associated risk rating. At tips where hazards are identified as having a 'high' risk rating that should then</p>

	result in designation of the tip. The whole process of classification and designation of tips requires detailed consideration to develop something that is fit for purpose and does not result in unintended consequences.
Jane Iwanicki	Other These are all valid considerations when assessing risk and considering potential engineering solutions, but not necessarily liability. However, the liability arising from the list of criteria may only have materialised because of later development on or near to the tip - i.e. it is the development that has created a pathway to any potential nuisance or damage.
Dr John Perry	Agreed Yes all of these. But as mentioned earlier I'd prefer 'works' to be the focus which includes tips but also anything else related to the coal mine.
Cllr Julie Edwards	Agreed Agree and there are probably other factors that need consideration too.
Keith Bush	Disagreed Gweler yr ateb blaenorol. Nid wyf yn cefnogi'r syniad o gategorïau cyfyng. Wrth gwrs, mae'r ffactorau a restrir yn amlwg yn rhai y byddai'r awdurdod yn cymryd i ystyriaeth wrth benderfynu ar eu blaenoriaethau ar gyfer defnyddio eu pwerau gorfodi.
Kim Moreton	Agreed Yes to all!
Lee Jones	Agreed In addition, other criteria should also include likely potential impacts and or effects upon protected species / environments e.g. within SACs, SSSIs, NRs and AONBs - either physically, chemically or biologically and also having due regard of potential harm to protected flora and fauna.
Merthyr Tydfil	Agreed All of the above should be included.
Mineral Products Association	Other The use of the term tip should be reconsidered. The legislation is to apply to any coal extractive waste facility and whilst the criteria listed are determinants to be considered when assessing the risk of the waste facility, they should not be used to determine whether or not the feature itself is a "tip" (Waste facility).
Monmouthshire CC	Agreed All of the above.

Natural Resources Wales	<p>Other The above covers many of the criteria we would consider relevant. However there needs to be careful thought over how these designations would be used to categorise one tip against another.</p> <p>We also believe that any designation should be based on consequence.</p> <p>The factors listed above should also influence the level of routine management required.</p> <p>Would significant pollution in (3) include combusting tips and atmospheric pollution?</p> <p>Finally, related to tip management – are there interventions by the owner that would, consequently, change the designation? Therefore, the “Authority” may need to be tasked in identify Good Tip Management practices and ensuring tip owners are aware and practice this guidance? Whether this would be voluntary or not is something to debate further.</p>
Neath Port Talbot CBC	<p>Agreed All of the above should be taken into consideration in relation to tip safety. Along with potential for further instability on adjoining land.</p>
Network Rail	<p>Agreed Network Rail agrees to all of the above criteria being included, notably (2)(b) in respect of the active railway network. The designation should also include the composition and nature of the tip.</p>
Ove Arup and Partners Ltd	<p>Agreed Yes on all points, but relating to the consequence of failure also.</p> <p>1) signs of historical movement should not be a governing factor as not necessarily an indication of tips failing in the future.</p> <p>Points 3-6 only if present immediate risk to public below slope. It is considered that the legislation would be more effective if focused on public safety.</p>
Owen Jordan	<p>Disagreed None of the above. These are subsidiary issues to the main point - people's concerns.</p>
Paul Connolly	<p>Other maybe they could also have a non-safety classification as a potential source of engineering or landscaping fill materials.</p>

Dr Peter Brabham	<p>Other Visual inspection of evidence of movement (cracks / flows)</p> <p>Volume of spoil</p> <p>slope angles</p> <p>nature of spoil</p> <p>water pathways (water coming out of tip in heavy rainfall)</p> <p>angle of foundation slope (hillsides)</p> <p>Potential run off areas</p> <p>Infrastructure within run off area zone (schools/houses/roads/railway/industry)</p>
Philip Thomas	<p>Other An example can be seen with collection of several tips above Ynyshir and Ynyshir Community School (Junior School, much like Aberfan). These tips are known to be category D - the highest risk. As you have mentioned in this consultation, the expertise and knowledge in this field has been degraded over time and does the entire system does not appear to be fit for purpose; hence the reason for the consultation on changing the law.</p> <p>My business (which I am not representing in this consultation response) further down the valley was flooded in February 2020. I know from personal experience how it is now impossible to obtain insurance against flooding. My neighbours in Ynyshir have found it difficult to obtain insurance against flooding since February 2020. The culvert near their houses was unable to cope with the increased flow of water, which would in part have been increased due to diverting of streams which would have passed through the coal spoil prior to the alterations in the 1970s. Who was managing this culvert?</p> <p>This same stream uphill has eroded a public bridleway (and green route/road) on private land - the landowner of the coal spoils. This public bridleway remains closed TODAY, 18 months later. We are very lucky there haven't been any significant hill fires (only a small instance) so far as this is the main access route for the fire service. Why isn't the landowner obligated to fix this vital route? A 4x4 would have been able to pass previously, to access the hillside fires and</p>

	<p>the coal spoil area. What happens if there is a major incident like a hill fire which causes combustion of the tips? The current authorities responsible don't seem to be taking heed at a great enough speed.</p> <p>This same landowner has obtained planning permission for two 125m wind turbines directly above these HIGH-RISK coal spoils! Halcrow & Partners specifically mention this area as a risk where planning has been granted (see below). The Local Authority have placed a condition on drainage which has not yet been discharged, but as residents below we have no confidence this will be properly considered in connection with the high risk tips. We know the trackway, foundations and construction can cause disasters to the watercourse. Imagine what this could be like with a high risk coal spoil to boot. If you are not aware of Meenbog in the Northern Part of the Republic of Ireland and the peat bog wind turbine construction incident in November 2020, you should have a look into the matter.</p> <p>https://www.bbc.co.uk/news/uk-northern-ireland-foyle-west-54994865</p> <p>https://twitter.com/rooneymobile/status/1327581502763380736?s=20</p> <p>*****</p> <p>Some more information on Ynyshir:</p> <p>My question on Borehole investigations to the Local Authority. It was recommended [in your inspection report] boreholes should be investigated in Feb 2020. Has this been undertaken? Since this report in February 2020, it has not been mentioned.</p> <p>Local Authority Response...it's a private tip and the LA does not have powers to undertake this work for the reasons stated above and at the present time there is no evidence that the tips pose an imminent risk to the public.</p> <p>My question on path erosion: [REDACTED] Bridleway was picked up in March 2019 [REDACTED]. Was the matter of culvert and path erosion brought to a satisfactory level of maintenance prior to the Feb 2020 problems?</p>
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	<p>[Local Authority response... This is an issue not connected to the tip complex and should not form part of the tip inspection report unless this has a direct effect on the stability of the tip. This has been highlighted to the inspection team.]</p> <p>But we know it forms part of the man-made watercourse from the tips.</p> <p>*****</p> <p>[Information taken from Halcrow Partners report on Ynyshir on the area of fractured/weathered pennant sandstone, which the developers of the wind turbine farm are saying is 'non-porous']</p> <p>With regard to the upper tip on higher slopes of Ynyshir toward Llanwonno. The uppermost non-porous seam of coal, the Brithdir Rider is overlaid by fractured sandstone and it can be seen in the narrow step feature of the uppermost part of the hill.</p> <p>a. A spring line may well develop where the junction of an overlying permeable and an underlying impermeable horizon outcrop along the hillside.</p> <p>b. Thick beds of jointed weathered and hence permeable Pennant sandstone overlie the impermeable rock types associated with the Brithdir Rider and Brithdir seams. Both are potential spring lines, and the greatest activity would be expected along the crop of the Brithdir Rider because of the very wide nearly flat catchment area of the overlying sandstone. The easterly dip is very low and will not significantly aid drainage of water to the east away from the tip site.</p> <p>c. The upper tips on the hillside of Ynyshir overlie the Brithdir Rider seam.</p> <p>d. Below the same tips and further east toward Llanwonno is above an area of extensive mine workings in the region of 20 to 40ft of cumulative extraction. This extensive mine extraction is likely to cause further opening up of joints in the underlying strata, thereby increasing permeability. Particularly when a heavy mass of coal spoil is placed above. It can also be seen on the southernmost part of the lower tip, small streams disappear likely due to fracturing.</p>
Rhondda Cynon Taf CBC	<p>Agreed 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.</p>

Richard Arnold	Agreed All above and as stated in answer to Q16
Stephen Smith	Other Whilst all of these factors are related to tip characteristics (apart from 6 which is a consequence of risk), I suggest that not all are relevant to tip safety. Consideration needs to be given to which are most relevant to the circumstances present in Wales and to issuing guidance on factors to be used in making assessments. Also note that a definitive assessment of risk may not be possible for some of the listed criteria.
Steve Harford	Agreed yes this should be part of the designation of a tip
Steve Jones/Pembrokeshire Council	Some Agree all except 6. Engineering work should be as a result of the assessment of the previous 5 factors.
Sue Jordan	Other Any and all risks. Any limitations will be used to evade compliance.
The Law Society of England and Wales	Agreed We agree with the criteria listed.
Thomas Glyn Watkin	Agreed Agree with all.
Torfaen response	Agrees with WLGA
Transport for Wales	Agreed We agree with the suggested criteria. We would like to request that: (a) TfW is consulted as part of the development of the new regulatory framework and tip risk assessment processes, to ensure that all potential impacts on its infrastructure are considered by tip risk assessments; (b) provision is made for those risks to be reassessed in response to changes to its infrastructure or use of it; and that (b) TfW is notified of all future changes to risk ratings or designations of tips that might affect its interests.

	<p>We believe that the criteria should include impact on public services (e.g. transport, healthcare and education). Consideration should also be given to classification that considers future forecasts (e.g. climate change) and their impacts, in order to ensure that the regulatory framework and risk methodologies used are robust and fit for the future. Consideration should also be given to the impact on natural landscapes and designations (e.g. sites of historical importance, etc.).</p>
Vikki Howells MS	Agreed All of the above.
WLGA	Agreed All of the above should be taken into consideration in relation to tip safety.
Wrexham CBC	Agreed Yes to all criteria being used, but the criteria should be weighted to ensure tips that present a risk to life are highest priority (this is most likely to be as a result of instability, but could in certain cases be from flooding or combustion and possibly pollution). Where multiple factors may become part of a risk assessment then having these undertaken using one methodology by one single supervisory body will ensure consistency and that tips are ultimately designated in order of priority ensuring the original spirit of the legislation is not overlooked.
Wyn Williams	Agreed I consider all these matters should be taken into account.

CONSULTATION QUESTION 20

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?

Consultation Question 20 asked respondents whether they agreed with our provisional proposal (yes/no/other). Some consultees also provided text to further explain their view. This text has been added to the table. Some respondents did not directly respond to Consultation Question 20, either because they did not use the Citizen Space platform or because they tailored their response to their particular experience.

Respondent	Answer to CQ20	Text
Of those who responded: Yes 39 No 8 Other 1		
Blaenau Gwent CBC	Yes	Should have the right to appeal to an independent body.
Bob Leeming	Yes	Seems a fundamental right.
Professor Bob Lee	Yes	I certainly agree that a right of appeal against both classification and designation should be included and I am assuming that this right would be confined to the owner of the tip (rather than say an adjoining property owner).
Bridgend CBC	Agrees with WLGA	
Caerphilly	Yes	Agreed

Chris Seddon	Yes	Absolutely. All legislation will be open to interpretation and so decisions should be open to review.
CLA Cymru - Country Land and Business Association	Yes	There must always be a right of appeal in this sort of circumstance, other than in an emergency situation.
Professor David Petley	Yes	Yes unless the risk is deemed to be imminent, in which case an appeal must not be allowed to impede actions intended to avoid an accident.
Graham Hathaway	Yes	Yes I do. I'm not sure of the appeals procedure or the grounds upon which it may be approved. I suppose another technical report by a qualified person. I see no problem with a dispute resolution.
Howard Siddle	Yes	Agreed. There should be a right to appeal but if the designation criteria are well crafted, appeals should be limited.
Huw Williams	Yes	I agree. The right of appeal should be to the Planning Inspectorate.
ICE Wales Cymru	Yes	Agreed, but professional assessment by a competent person with expertise in coal tip classification should be engaged to inform the appeal process.
Jacobs UK Ltd (formerly Halcrow)	Yes	This is a reasonable provision.
Jane Iwanicki	Yes	

Joel James MS	Yes	<p>I believe everyone should have a right to appeal; however, the higher risk category should remain in place whilst that appeal is being determined.</p> <p>I have known cases where the appeals process has been used to delay reclassifications.</p>
Dr John Perry	Yes	.
Cllr Julie Edwards	No	These tips are dangerous!
Keith Bush	No	Nac ydw. Gweler yr atebion blaenorol. Mae'r posibilrwydd o greu trefn apelio cymhleth mewn perthynas a system o gategoreiddio ffurfiol yn tanlinellu peryglon mabwysiadu system felly.
Kim Moreton	Yes	It may be advantageous in the long run for such designations to be tested in law at an early stage, however given the parlous state of access to the Courts and the ability of corporations to outspend authorities on the route to a decision, maybe the appeal 'window' should be limited to within eighteen months of the designation.
Lee Jones	Yes	However the higher risk designation should not be suspended/revoked but remain in force until the appeal hearing has concluded.
Merthyr Tydfil	No	No, the supervisory authority will have specialist knowledge and understanding of tip safety to designate a tip correctly and should not be challenged by non-qualified people.
Mineral Products Association	Yes	Yes. This is why it is imperative that any risk determination is based upon sound technical and geotechnical advice.
Monmouthshire CC	Yes	

Natural Resources Wales	Yes	<p>Yes – the right of appeal should be a fundamental principle of any regulation, though the outcome of an appeal may have major consequences for any methodology already used. As a result, the methodology may also need regular review to ensure its fitness for purpose. Careful thought is needed if we are to avoid continual questioning of the designation process.</p> <p>The Reservoirs Act has considered this and uses a staged approach to designation allowing:</p> <ol style="list-style-type: none"> 1. A provisional designation based on information initially held by the regulator 2. A period for representations so that an owner can correct errors or provide further evidence 3. A final designation based on all evidence gathered <p>The Final Designation may be appealed. This is worth considering.</p> <p><i>Additional comment from Paragraph 10.67 in full Consultation Document (First Part of Paragraph) [these two should be moved to CQ 14] Where the work was left to tip owners to undertake, whether pursuant to an agreement or an order, the regime would need to require and empower the supervisory authority to inspect the tips at appropriate intervals. Unlike the reservoirs model, we do not think that inspection should be left to the owner.</i></p> <p><i>As outlined in part of our answer to Q14 above - In principle, but a clear standard of what an acceptable inspection would look like would be needed.</i></p> <p>You propose that a duty of inspection should fall on the supervisory authority. This parallels the reservoirs regime.</p> <p>The Reservoirs Act does not require the enforcement authority to carry out any inspection. The authority has a duty to ensure undertakers comply with the law which requires them to appoint an engineer who is independent of the undertaker and who was not</p>
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		<p>the construction engineer. The owner should retain liability for the appointment and costs of inspection. NRW has a reserve power to appoint an engineer following default of a statutory notice requiring an inspection.</p> <p><i>Additional comment from Paragraph 10.67 in full Consultation Document (Second Part of Paragraph)</i> We have noted that disused tip owners differ from many reservoir undertakers in that the owners have no continuing economic interest in the tip. We think that this justifies an approach which places a greater burden on the supervisory authority itself to monitor the tip.</p> <p>There is merit in allowing the SA to carry out its own inspections, but this assumes the SA holds the appropriate technical expertise. If the availability of engineering expertise merits a “panel” like with reservoirs, then the duty to inspect could also include the power to Direct an owner to appoint an engineer from the panel to maintain independence.</p>
Neath Port Talbot CBC	Yes	<p>Given the potential financial implications for a landowner, it would seem appropriate that they have a right of appeal to an independent body (provided a body with the necessary knowledge and understanding can be identified). It does raise the question of whether that right should be limited to the immediate landowner or available to adjacent land and property owners who might also be affected. Any such right, though, should not be allowed to delay safety work identified as necessary.</p>
Ove Arup and Partners Ltd	Yes	
Owen Jordan	No	<p>The right should be fundamental to the process, not an add-on to be waved away by an inspector going through the motions.</p>

Paul Connolly	Yes	However unlikely it is that a landowner has sufficient experience or resource to employ someone to offer an alternative assessment, the right to challenge should always be open to the landowner. If the designation is then found to be incorrect the landowner should be refunded for costs incurred.
Dr Peter Brabham	No	If experts deem it to be a tip based on standard criteria then it's a tip.
Philip Thomas	No	My previous question answer reflects how it doesn't appear many landowners are taking their obligation to the residents and community below (including a junior school) very seriously. The Authorities word should be final, the landowner could appeal ONLY after a number of years have passed and improvements made.
Plaid Cymru Group, RCT	Treated as Yes	In any event, whoever the new authority may be, it should be the case that a landowner can appeal any maintenance plan imposed on them. It is therefore important that a robust and independent Appeals Body forms part of any new arrangements. Beth bynnag ddaw, a phwy bynnag fydd yn arwain yr awdurdod newydd, dylai fod gan tirfeddiannwr yr hawl i apelio yn erbyn unrhyw gynllun cynnal a chadw a osodir arnynt. Felly mae'n bwysig bod Corff Apeliadau cadarn ac annibynnol yn rhan o unrhyw drefniadau newydd.
Pontypool Park Estate Office	Yes	Of course. How?
Rhondda Cynon Taf CBC	Yes	Members were supportive of this proposal.

Richard Arnold	No	Because it's been designated high risk by independent specialist engineers see answer to Q 18 which may identify benefits emerging for the land owner with very high risk tips and initiatives to remove / remediate them for a permanent solution.
Sioned Williams AS	Treated as Yes	I also believe that a clear and robust appeals process should be developed to ensure that landowners can challenge particular elements within their maintenance plan which they deem to be unreasonable or contrary to evidence.
Stephen Smith	Other	A right of appeal would seem appropriate for defined categories (such as landowner to protect their interests), but doesn't such a provision leave similar problems as under the 1969 Act – covered in Chapter 7?
Steve Harford	Yes	There should be an appeals process in place, this could involve independent people, but ultimately the final decision from the appeal process should be evidenced based and be final.
Steve Jones/Pembrokeshire Council	Yes	
Sue Jordan	No	
The Law Society of England and Wales	Yes	We agree.
Thomas Glyn Watkin	Yes	Would it not be appropriate to allow persons with a legitimate interest in a tip's safety also to have a right of appeal against a decision not to so designate a tip? This would include local residents, businesses, transport and utility companies, etc., who

		could be adversely affected as a consequence of an incorrect designation.
Torfaen response	Agrees with WLGA	
Transport for Wales	Yes	The method and process of appeal needs to be fixed so that spurious appeals are dismissed. Definition is required of 'person aggrieved'.
Vikki Howells MS	Yes	
WLGA	Yes	Yes, given the potential financial implications for a landowner, it would seem appropriate that they have a right of appeal to an independent body (provided a body with the necessary knowledge and understanding can be identified). It does raise the question of whether that right should be limited to the immediate landowner or available to adjacent land and property owners who might also be affected. Any such right, though, should not be allowed to delay safety work identified as necessary.
Wrexham CBC	Yes	
Wyn Williams	Yes	I consider that fairness demands a mechanism whereby a designation can be challenged.

CONSULTATION QUESTION 21

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?

Consultation Question 21 asked respondents whether they agreed with our provisional proposal (yes/no/other). Some consultees also provided text to further explain their view. This text has been added to the table. Some respondents did not directly respond to Consultation Question 21, either because they did not use the Citizen Space platform or because they tailored their response to their particular experience.

Respondent	Answer to CQ21	Text
Of those who responded: Yes 40 No 3 Other 7		
Blaenau Gwent CBC	Yes	<p>Yes, in relation to inspections. The owner of the land on which a designated tip is situated should be engaged in the development of the management plan and encouraged, wherever possible, to take the actions identified in that plan themselves. The landowner should be responsible for meeting the cost of these actions. However, if they are unwilling or unable to do so then the supervisory authority should be under a duty to step in and reclaim costs. Otherwise, knowing the supervisory authority is under a duty to act may deter some landowners from taking necessary steps. For cases where landowners are unable to meet the costs (in full or in part), the supervisory body will need to be allocated funding at a level that enables it to undertake works identified in management plans. The duty will be unworkable if this is not the case (unless</p>

		this question refers solely to the inspection part of the management plan).
Bob Leeming	No	The owner should have this duty, with the Authority overseeing.
Professor Bob Lee	Other	Not sure: I have reservations about this. Once a high risk designation is determined then clearly some operational plan is necessary even if this restricts rather than demands activity on the designated structure. It is not unusual in environmental law to reach management agreements over sites which commit the site owner to agreed activity (as with management agreements for SSSIs under the Wildlife and Countryside Act 1981; and see my comments below on questions 22/23). I might be minded to allow that if a management plan can be agreed with the owner then that owner can be charged with fulfilling the requirements of this agreement under supervision. If the owner does not wish to conduct works or in default of any agreement, the authority can then assume conduct of the work in question. This may curtail disputes about management plans and provide a more conciliatory approach while ensuring that appropriate works are pursued.
Bridgend CBC	Agrees with WLGA	
Caerphilly	Yes	Agreed there should be a duty to undertake inspections at prescribed timeframes. No matter who Supervisory authority may be, the Local authorities should have option to undertake inspections and assist where possible. Assistance could be agreed on an authority by authority basis. Some authorities have local knowledge and experience built up over years of inspections and are normally the first point of call from residents if an issue is

		raised. Local authorities have out of hour services to react to any issues or concerns raised.
Chris Seddon	Yes	Wholeheartedly, especially if the tip poses and imminent threat to the community or environment.
CLA Cymru - Country Land and Business Association	Yes	We fully support this proposal and at the Authority's own expense.
Professor David Petley	Yes	
Graham Hathaway	Yes	Now we are in the realms of contracts and contracting. The governance of this must be by the supervisory authority. Subject to proper oversight on tendering etc.
Howard Siddle	Yes	Agree in principle but this could become very onerous and expensive. Perhaps the duty should be "to ensure that the operations specified in the tip management plan are carried out" leaving the onus mainly with the owners, especially where they are not a "men of straw". The SA would then only intervene when the owner had not the means to implement the agreed works.
Huw Williams	Yes	I agree with the reasoning set out in paragraphs 10.62 to 10.66
ICE Wales Cymru	Yes	Agreed. This avoids the risk of delays to management activities that may be considered urgent or essential by the tip owner who may not be competent to assess such matters or not be able to action in a timely manner.
Jacobs UK Ltd (formerly Halcrow)	Yes	This is a reasonable last resort provision for cases where operations are not carried out by the owner. Prior to that, the

		supervisory authority's duty might be to see that operations in the tip management plan are carried out by the owner.
Jane Iwanicki	Yes	Or by using suitably qualified contractors. There would have to be sufficient transparency to justify operations and to ensure that the authority was not creating a work stream for itself.
Joel James MS	Yes	
Dr John Perry	Yes	
Cllr Julie Edwards	Yes	But in conjunction with the tip owner so that frequent tests can be carried out.
Keith Bush	No	Nac ydw. Dylai'r ddyletswydd i sicrhau diogelwch tir syrthio ar berchnogion y tir. Mewn nifer da o achosion byddai gwneud y gwaith angenrheidiol yn cynyddu gwerth y tir. Dim ond os na fydd y perchnogion yn fodlon ac yn alluog i wneud y gwaith angenrheidiol y dylai'r awdurdod ddefnyddio'i bwerau wrth gefn i wneud y gwaith dan sylw.
Kim Moreton	Yes	This will allow the authority to employ suitably qualified people and maintain appropriate documentation. As a practitioner in mineral land management I have often seen generic construction/earthwork contractors creating more problems when working on mineral sites due their lack of knowledge or accountability under the contract specification.
Lee Jones	Yes	Provision of works in default should be available to the Authority where necessary.
Merthyr Tydfil	Yes	Yes, if the operations include inspections. If the operations involve maintenance work to the tip then the land owner should be responsible in organising the work as agreed within the

		management plan. The work carried out should be inspected and approved by the supervisory body to ensure compliance with the tip management plan. The land owner should meet all costs of the work.
Mineral Products Association	Other	It is not the designation of the “tip” itself, but the designation of the risks associated with it. There should be a clearly defined methodology and protocol for the supervisory authority to follow which is clear and open and must be shared with the landowner and the owner of the waste material.
Monmouthshire CC	Yes	Agree if the supervisory body is adequately resourced to do so and if tip owners are not best placed or have adequate means to do the works themselves. Some tip owners may wish to undertake works themselves. Local Authorities would not be in a position to take on this additional requirement.
Natural Resources Wales	Yes	Yes - The SA is likely to be better placed experientially and financially to supervise a management plan but there should be an expectation that measures within the reasonable capability of an owner (with guidance) should be carried out by the owner, for example routine monitoring and provision of monitoring records. However, they should be able to recuperate reasonable costs from the Landowner.
Neath Port Talbot CBC	Yes	Yes, in relation to inspections. The owner of the land on which a designated tip is situated should be engaged in the development of the management plan and encouraged, wherever possible, to take the actions identified in that plan themselves. The landowner should be responsible for meeting the cost of these actions. However, if they are unwilling or unable to do so then the

		<p>supervisory authority should be under a duty to step in and reclaim costs.</p> <p>Otherwise, knowing the supervisory authority is under a duty to act may deter some landowners from taking necessary steps. For cases where landowners are unable to meet the costs (in full or in part), the supervisory body will need to be allocated funding at a level that enables it to undertake works identified in management plans. The duty will be unworkable if this is not the case (unless this question refers solely to the inspection part of the management plan).</p>
Network Rail	Yes	Network Rail agrees, subject to the authority being provided sufficient resources to do so.
Ove Arup and Partners Ltd	Yes	Ideally yes, although it would need to be costed to see if it is viable.
Owen Jordan	No	Let those concerned drive the process; it's called democracy.
Paul Connolly	Yes	This should be adequately funded too.
Dr Peter Brabham	Yes	
Philip Thomas	Yes	<p>I agree, but the public purse should not pick up the cost. Most of the landowners acquired their land from the National Coal Board for a peppercorn fee in the 1980s knowing the risks and obligations under existing laws of safety to the nearby community.</p> <p>They should not benefit from funding in any way. The land should return to public ownership, for the community to benefit.</p>

Plaid Cymru Group, Neath Port Talbot	Other (treated as relevant comment)	<p>For many smaller owners responsibility for tip inspections and maintenance are unviable, on the other hand large current operators such as Celtic Energy should meet their responsibilities and some large wealthy landowners have made profits for generations which gives them an obligation.</p> <p>Tra bod hi'n afresymol i nifer o berchnogion llai o faint weithredu, dylid sicrhau bod cwmnïau mawr cyfredol gel Celtic Energy yn cwrdd â'i goblygiadau, ac mae cyfrifoldeb ar nifer o dirfeddianwyr mawr cefnog sydd wedi gwneud elw o'r gweithfeydd dros genedlaethau.</p>
Plaid Cymru Group, RCT	Other [treated as relevant comment]	The landowners, whether they be private, NRW, local authority or British Coal should be under an obligation to maintain the tips. With land ownership comes responsibility. There is a very muddy area here where some necessary remedial works would be financially far out of the reach of private owners, so there should be a system in place where the new authority could move to make a compulsory purchase of the land to enable the work to be done at public expense.
Pontypool Park Estate Office	Other	Do you mean designated as higher risk? And do you mean carry out at its own cost, or acting as agent for the owner or WAG? I am not clear I understand this question.
Rhondda Cynon Taf CBC	Yes	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.
Richard Arnold	Yes	It is not only a duty of care but common sense.
Sioned Williams AS	Other (treated as relevant comment)	However, we currently have a situation where over 70% of tips are owned by private owners and community groups. We may find that

		<p>they do not have the financial means to satisfy any new regulatory requirements and to carry out remedial works, as required by the management plans.</p> <p>I therefore believe that there should be a system in place whereby these tips can be taken back into public ownership by compulsory purchase, to ensure public safety.</p>
Stephen Smith	Other	Difficult to judge without some indication of the likely scale of tip operations to be imposed. If 200 tips need work, then this is a huge task for one body. If only (say) 10 tips, then this is more manageable. Hence, premature to offer a view in my opinion.
Steve Harford	Yes	A list of approved contractors should be available and the Welsh Government should provide appropriate levels of funding to the authority. This should ensure that works are completed timely and to the appropriate standard.
Steve Jones/Pembrokeshire Council	Yes	
Sue Jordan	Yes	
The Law Society of England and Wales	Yes	We agree.
Thomas Glyn Watkin	Yes	
Torfaen response	Agrees with WLGA	
Transport for Wales	Yes	The supervisory body should be regulated, competent and qualified.

Vikki Howells MS	Yes	This should be a responsibility of a single public authority as recommended above to ensure fairness and consistency.
WLGA	Yes	Yes, in relation to inspections. The owner of the land on which a designated tip is situated should be engaged in the development of the management plan and encouraged, wherever possible, to take the actions identified in that plan themselves. The landowner should be responsible for meeting the cost of these actions and the supervisory body should have the necessary powers to take the landowner to court. If the landowner remains unwilling or unable to act, then the supervisory authority should be under a duty to step in and reclaim costs. Otherwise, knowing the supervisory authority is under a duty to act may deter some landowners from taking necessary steps. For cases where landowners are unable to meet the costs (in full or in part), the supervisory body will need to be allocated funding at a level that enables it to undertake works identified in management plans. The duty will be unworkable if this is not the case (unless this question refers solely to the inspection part of the management plan). Any loopholes will need to be avoided. For example, a private owner may sell the land post-remediation works. The question of financial responsibility then needs to be clear – does it rest with the owner at the time the works were undertaken, or would any liabilities pass to the new owner? It may be worth considering the new legislation prohibiting the sale of any land subject to enforcement or court cases (existing provisions may already be in place for this). The example of multi-ownership or cross boundary tips was also mentioned during recent workshop discussions. There would need to be a good level of clarity on where responsibility would lie in such cases.
Wrexham CBC	Yes	WCBC believe that the supervisory authority should also have a duty to carry out the operations specified in the tip management

		plan for lower risk sites too, this will ensure consistency and that appropriately qualified professionals carry out the work.
Wyn Williams	Yes	I support the reasoning of the Commission.

CONSULTATION QUESTION 22

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?

Consultation Question 22 asked respondents whether they agreed with our provisional proposal (yes/no/other). Some consultees also provided text to further explain their view. This text has been added to the table. Some respondents did not directly respond to Consultation Question 22, either because they did not use the Citizen Space platform or because they tailored their response to their particular experience.

Respondent	Answer to CQ22	Text
Of those who responded: Yes: 36 No: 5 Other: 6		
Blaenau Gwent CBC	Yes	Yes – as above, the landowner should be responsible for carrying out the operations specified in the plan. The supervisory authority may require compulsory purchase powers to avoid the creation of ‘orphan assets’ where, for example, landowners declare bankruptcy. Any maintenance agreement would need to transfer with the ownership of the tip.

Bob Leeming	Yes	
Professor Bob Lee	Yes	Yes to all: My understanding is that present access to tip sites is messy and difficult in practice. Even though we are dealing here with less risky tips, the regime is toothless if there is no access to land to ensure that inspection and maintenance requirements are met. Provisions of access in (for example) the Environment Act 1995 could be extended to NRW to undertake this supervision of site maintenance. My support for a maintenance agreement framework may be clear from my response to question 21 so that these and the step-in rights for the authority could work across all classifications including designated sites. I believe that the sort of checks necessary to ensure that maintenance agreements are met will not be substantially different to the type of checks that NRW makes for a variety of regulated facilities/activities.
Bridgend CBC	Agrees with WLGA	
Caerphilly	Yes	Agreed
Chris Seddon	Yes	In principle, provided that the authority can demonstrate that the owner of land registered in the tip register is competent to carry out such operations. Onus should be on the authority to demonstrate due diligence in this regard.
CLA Cymru - Country Land and Business Association	Yes	We support this proposal in principle, however this must be subject to discussion between the parties and ultimately in the absence of agreement an appeal process must be available. As stated already if the Authority were to bear the cost, the landowner is far more likely to be agreeable. However we appreciate in an emergency situation this process could be superseded. 'Emergency' should however be defined.

Professor David Petley	Yes	
Graham Hathaway	Yes	Now we are moving onto a proactive part that has been so lacking hitherto. Of course there should be empowerment to tip maintenance as defined by for instance the management plan. These I see as the big step forward in professionalising the requirements needed for tip safety and enhancement of its preservation and health.
Howard Siddle	Yes	Agreed but I foresee owners avoiding carrying out the works because of lack of resources, either actual or manufactured.
Huw Williams	Yes	I agree with the reasoning in paragraphs 10.70 to 10.80 and support the principle of maintenance agreements.
ICE Wales Cymru	Yes	<p>The change in terminology from the 'supervisory authority' to 'an authority' is noted.</p> <p>However, it is considered that there should only be one authority responsible for disused coal tips and this should be the supervisory authority. Also noted the change in terminology from 'tip owner' (see response to consultation question 4) to 'the owner of land registered in the tip register'. As such it is agreed that the supervisory authority should be empowered to enter into a maintenance agreement with the tip owner. This should be legally binding with the supervisory authority having the power to access the tip and complete maintenance works not completed by the tip owner and recover the associated costs.</p>
Jacobs UK Ltd (formerly Halcrow)	Yes	This is a reasonable provision.

Jane Iwanicki	No	This might work in some circumstances but not all. Voluntary arrangements should be encouraged if possible and should allow for involvement of other stakeholders (e.g. NRW, local authorities, the Coal Authority etc) depending upon the operations. The operations may be beyond the ability of owners and may require consents or licences to be issued by other regulators. How would operations be viewed in the context of Town and Country Planning legislation?
Joel James MS	Yes	
Dr John Perry	Yes	.
Cllr Julie Edwards	Yes	
Keith Bush	Yes	Ydw. Hwn ddylai fod y drefn gychwynnol yn y rhan fwyaf o achosion.
Kim Moreton	Yes	Clear definition of actions and responsibility for the owner.
Lee Jones	Yes	It is important that any code of practice published should be clear as to what maintenance work requires a level of engineering/environmental competency and that if the landowner proposes to undertake the operations then he should demonstrate his competency (having regard to the CoP) to the Authority prior to commencement.
Merthyr Tydfil	Yes	Yes, but clarification of whether it's the local authority or the supervisory authority is required in terms of who enters into the maintenance agreement. The maintenance agreements would need to transfer with any change of ownership of the tip.

Mineral Products Association	Other	Again, this process must be clear, transparent and accountable.
Monmouthshire CC	Yes	
Natural Resources Wales	Yes	<p>Yes -But it does depend on the nature of this agreement. The authority would need the reassurance that the plan will be carried out to their satisfaction. There should also be consideration of keeping this as an ancillary power to enable an owner to make their own arrangements first. It may be worth considering whether and how penalties for not compliance could be imposed, or recovery of any costs incurred.</p> <p>Additionally, If the tip was sold and covenanted by British Coal/Coal Authority this is fine. The tip may still possess mineral content, particularly if combustible. The owner of the Mineral Rights could be considered and if expanding to non-coal mines the spoil may have metal in nano particulate form if harvested or some Rare Earth Elements (REE) content that has higher value. If we seek to put a responsibility on the landowner, surely, they should be declared as the rightful owner of the tip from a mineral rights perspective too? It may be unfair to seek recompense from the owner of the surface of the land.</p> <p>From a safety perspective I would agree, but this may render a challenge especially if extended to Non-Coal mines.</p>
Neath Port Talbot CBC	Yes	The landowner should be responsible for carrying out the operations specified in the plan. The supervisory authority may require compulsory purchase powers to avoid the creation of 'orphan assets' where, for example, landowners declare

		bankruptcy. Any maintenance agreement would need to transfer with the ownership of the tip.
Owen Jordan	No	Powers already exist for entry.
Paul Connolly	Yes	There could be benefits to allowing landowners to think of creative ways and inputting into remedial design that they gain benefit from.
Dr Peter Brabham	Yes	
Philip Thomas	No	This would be cumbersome and take too long. If no agreement in a month or so, commence work now! Agree later. No agreement = compulsory purchase.
Plaid Cymru Group, Neath Port Talbot	Other (treated as relevant comment)	<p>For many smaller owners responsibility for tip inspections and maintenance are unviable, on the other hand large current operators such as Celtic Energy should meet their responsibilities and some large wealthy landowners have made profits for generations which gives them an obligation.</p> <p>Tra bod hi'n afresymol i nifer o berchnogion llai o faint weithredu, dylid sicrhau bod cwmnïau mawr cyfredol gel Celtic Energy yn cwrdd â'i goblygiadau, ac mae cyfrifiloldeb ar nifer o dirfeddianwyr mawr cefnog sydd wedi gwneud elw o'r gweithfeydd dros genedlaethau.</p>
Plaid Cymru Group, RCT	Other (treated as relevant comment)	The landowners, whether they be private, NRW, local authority or British Coal should be under an obligation to maintain the tips. With land ownership comes responsibility. There is a very muddy area here where some necessary remedial works would be financially far out of the reach of private owners, so there should be a system in place where the new authority could move to make a compulsory

		purchase of the land to enable the work to be done at public expense.
Pontypool Park Estate Office	Yes	Yes, but meaningless without the detail. I am getting confused by "an authority"; do you mean the proposed supervisory authority? If so, how can I reply if I do not think there should be a supervisory authority as proposed? Surely WAG is responsible, the authority or agent acts for WAG, and all the powers etc to which you refer should (or already do) attach to WAG?
Rhondda Cynon Taf CBC	Yes	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.
Richard Arnold	No	<p>MY "NO" IS BASED ON THE PROPOSAL BEING UN QUALIFIED IN RESPECT OF WHAT MIGHT BE IN A MANAGEMENT PLAN.</p> <p>FULL DETAILS OF THE LIKELY CONTENT OF A MANAGEMENT PLAN FOR A LOW RISK (TO BE SPECIFIED CATEGORY) WHICH MUST BE BOTH REASONABLE AND DELIVERABLE WITHIN THE RESOURCES OF ANY LAND OWNER IF WE ARE NOT TO REPEAT THE STATUS QUO OF CURRENT MANAGEMENT.</p> <p>Physical costs applicable to executing a management plan by the land owner should fall upon the Authority as this is work in respect of managing "effectively industrial waste and potential risks of collapse and or pollution etc." This is a government budget responsibility and a growing risk via the evidential effects of climate change.</p>

		THE NCB was a nationalised industry. !!!!!!!!!!!!!
Sioned Williams AS	Other (treated as relevant comment)	<p>However, we currently have a situation where over 70% of tips are owned by private owners and community groups. We may find that they do not have the financial means to satisfy any new regulatory requirements and to carry out remedial works, as required by the management plans.</p> <p>I therefore believe that there should be a system in place whereby these tips can be taken back into public ownership by compulsory purchase, to ensure public safety.</p>
Stephen Smith	Other	As above, does this proposal ensure the objective of securing active tip management is achieved? All public sector owners of tips would respond to this but there will still be problems with private owners endeavouring to avoid their obligations.
Steve Harford	Yes	the tip management plan should be agreed by the landowner and be their responsibility. Monitored by the authority.
Steve Jones/Pembrokeshire Council	Yes	
Sue Jordan	No	No, removal and complete restoration is the only option.
The Law Society of England and Wales	Yes	We agree.
Thomas Glyn Watkin	Yes	
Torfaen response	Agrees with WLGA	

Transport for Wales	Yes	
Vikki Howells MS	Yes	This should be a responsibility of a single public authority as recommended above to ensure fairness and consistency.
WLGA	Yes	Yes – as above, the landowner should be responsible for carrying out the operations specified in the plan. The supervisory authority may require compulsory purchase powers to avoid the creation of ‘orphan assets’ where, for example, landowners declare bankruptcy. Any maintenance agreement would need to transfer with the ownership of the tip.
Wrexham CBC	Other	WCBC believe it would be preferable for supervisory body to manage these sites too, the draft Impact Assessment states 70% of tips are privately owned and many are small farmers who don't have skills or resources to inspect and maintain tips.
Wyn Williams	Yes	This makes practical and commercial sense.

CONSULTATION QUESTION 23

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

Consultation Question 23 asked respondents whether they agreed with our provisional proposal (yes/no/other). Some consultees also provided text to further explain their view. This text has been added to the table. Some respondents did not directly respond to Consultation Question 23, either because they did not use the Citizen Space platform or because they tailored their response to their particular experience.

Respondent	Answer to CQ23	Text
Of those who responded: Yes 41 No 4 Other 3		
Blaenau Gwent CBC	Yes	Supervisory Authority
Bob Leeming	Yes	
Professor Bob Lee	Yes	Yes to all: My understanding is that present access to tip sites is messy and difficult in practice. Even though we are dealing here with less risky tips, the regime is toothless if there is no access to land to ensure that inspection and maintenance requirements are met. Provisions of access in (for example) the Environment Act 1995 could be extended to NRW to undertake this supervision of site maintenance. My support for a maintenance agreement framework may be clear from my response to question 21 so that these and the step-in rights for the authority could work across all classifications including designated sites. I believe that the sort of checks necessary to ensure that maintenance agreements are met

		will not be substantially different to the type of checks that NRW makes for a variety of regulated facilities/activities.
Bridgend CBC	Agrees with WLGA	
Caerphilly	Yes	Agree
Chris Seddon	Yes	Ultimately, yes. This could be delegated to competent third parties (preferably not the land owner) depending on the risk rating of the tip.
CLA Cymru - Country Land and Business Association	Yes	However as we read it the Authority will also be responsible for undertaking maintenance as specified in the maintenance agreement?
Professor David Petley	Yes	
Graham Hathaway	Yes	This is the crucial part of the report. Compliance. Previously and seriously lacking. Backed up with statutory powers. Fixed penalty fines and imprisonment imposed for serious non compliance. It's that serious a business when lives are threatened such as in serious driving offences.
Howard Siddle	Yes	Agreed; essential to check works carried out under the agreement.
Huw Williams	Yes	My suggested statutory Joint Committee structure will facilitate the establishment and efficient deployment of inspectors to carry out this function.
ICE Wales Cymru	Yes	Yes, though the duty of inspection should fall to the supervisory authority not 'an authority' and the supervisory authority should have the powers to access the tip and complete maintenance

		works not completed by the tip owner and recover the associated costs.
Jacobs UK Ltd (formerly Halcrow)	Yes	This is a reasonable provision.
Jane Iwanicki	Yes	
Joel James MS	Yes	
Dr John Perry	Yes	.
Cllr Julie Edwards	Yes	
Keith Bush	Yes	Ydw. Dyma'r unig ffordd i sichrau bod y gwaith yn cael ei wneud yn drwyadl ac yn effeithiol.
Kim Moreton	Yes	Many examples of 'specialist compliance auditors' getting things wrong (worst case: Brumandinho). There is a window of opportunity to retain skills from the former mining workforce and to build a new skillbase with early-career engineers. There are a wealth of transferrable skills within mining and land management.
Lee Jones	Yes	To ensure consistency, especially should evidence of inspection be required to be presented in Court (Criminal or Appeal).
Merthyr Tydfil	Yes	Yes, but clarification of whether it's the local authority or the supervisory authority is required.
Mineral Products Association	Yes	
Monmouthshire CC	Yes	Agree if adequate resources are provided.

Natural Resources Wales	Yes	<p>We agree. The duty to arrange an inspection should lie with the owner or with the SA, but the inspecting engineer could be independent, certainly independent of the owner.</p> <p>If it is the responsibility of the SA to agree that the maintenance has been carried out, they should bear the responsibility (or their nominated agent/contractor) to inspect the works.</p>
Neath Port Talbot CBC	Yes	
Network Rail	Other?	Network Rail is not concerned with who this duty falls upon but does need the assurance that the process is adopted once the risks have been identified.
Ove Arup and Partners Ltd	Yes	
Owen Jordan	No	A waste of time. And money. See NRW for details. And the Coal Authority, who collectively do nothing for a lot of money
Paul Connolly	No	No it should be a centralised inspection authority.
Dr Peter Brabham	Yes	
Philip Thomas	Yes	But funded by the landowner, not the public purse.
Plaid Cymru Group, Neath Port Talbot	Other (treated as relevant comment)	<p>For many smaller owners responsibility for tip inspections and maintenance are unviable, on the other hand large current operators such as Celtic Energy should meet their responsibilities and some large wealthy landowners have made profits for generations which gives them an obligation.</p> <p>Tra bod hi'n afresymol i nifer o berchnogion llai o faint weithredu, dylid sicrhau bod cwmnïau mawr cyfredol gel Celtic Energy yn cwrdd â'i goblygiadau, ac mae cyfrifiloldeb ar nifer o dirfeddianwyr</p>

		mawr cefnog sydd wedi gwneud elw o'r gweithfeydd dros genedlaethau.
Pontypool Park Estate Office	Yes	Yes, but meaningless without the detail. I am getting confused by "an authority"; do you mean the proposed supervisory authority? If so, how can I reply if I do not think there should be a supervisory authority as proposed? Surely WAG is responsible, the authority or agent acts for WAG, and all the powers etc to which you refer should (or already do) attach to WAG?
Rhondda Cynon Taf CBC	Yes	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.
Richard Arnold	Yes	Yes but keep it efficient and workable as stated in Q22.
Sioned Williams AS	Other (treated as relevant comment)	<p>However, we currently have a situation where over 70% of tips are owned by private owners and community groups. We may find that they do not have the financial means to satisfy any new regulatory requirements and to carry out remedial works, as required by the management plans.</p> <p>I therefore believe that there should be a system in place whereby these tips can be taken back into public ownership by compulsory purchase, to ensure public safety.</p>
Stephen Smith	Yes	Compliance with any agreed plan is clearly critical to ongoing safety, so ongoing inspection obligations are required. Wouldn't the 1969 Act have allowed for such inspections?
Steve Harford	Yes	Yes this monitoring would be crucial to continued tip safety.

Steve Jones/Pembrokeshire Council	Yes	
Sue Jordan	No	Remove & restore, do not maintain.
The Law Society of England and Wales	Yes	We agree.
Thomas Glyn Watkin	Yes	
Torfaen response	Agrees with WLGA	
Transport for Wales	Yes	It should be the duty of the single supervisory body.
Vikki Howells MS	Yes	This should be a responsibility of a single public authority as recommended above to ensure fairness and consistency.
WLGA	Yes	Yes, assuming this refers to the supervisory body, for the reasons outlined in the consultation document (i.e. the lack of continuing economic interest in the tip on the part of the owner).
Wrexham CBC	No	It should be the supervisory body, not Local Authorities. Checks on compliance are vital.
Wyn Williams	Yes	There is no other reasonably practicable way in which to seek to ensure compliance which brings with it a prospect of appropriate supervision.

CONSULTATION QUESTION 24

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.

The authority must be satisfied that the measures proposed are proportionate to the objective to be achieved.

The order must either require the owner to carry out the operations or provide for the authority to carry them out.

The owner should have a right of appeal against the imposition of a maintenance order.

Save in the case of an emergency order, the order must provide sufficient time within which to appeal.

Do you agree?

Consultation Question 24 asked respondents whether they agreed with our provisional proposal (yes/no/other). Some consultees also provided text to further explain their view. This text has been added to the table. Some respondents did not directly respond to Consultation Question 24, either because they did not use the Citizen Space platform or because they tailored their response to their particular experience.

Respondent	Answer to CQ24	Text
Of those who responded:		
Yes 36		
No 5		

Other 4		
Blaenau Gwent CBC	Yes	Yes. The above provisions would help to deal with the issues raised above in relation to owners being unable or unwilling to carry out necessary works.
Bob Leeming	Yes	Agree with all of this.
Professor Bob Lee	Yes	<p>Yes to all: My understanding is that present access to tip sites is messy and difficult in practice. Even though we are dealing here with less risky tips, the regime is toothless if there is no access to land to ensure that inspection and maintenance requirements are met. Provisions of access in (for example) the Environment Act 1995 could be extended to NRW to undertake this supervision of site maintenance. My support for a maintenance agreement framework may be clear from my response to question 21 so that these and the step-in rights for the authority could work across all classifications including designated sites. I believe that the sort of checks necessary to ensure that maintenance agreements are met will not be substantially different to the type of checks that NRW makes for a variety of regulated facilities/activities.</p> <p>In relation to question 24, I am a little doubtful about the words “<i>and the authority think it unlikely that the owner will agree</i>” in 24 (2). I think that it might be easier to state that the absence of any response within the 42 day period is deemed a refusal to enter into an agreement. While I agree that the content of any maintenance agreement should be proportionate, this type of provision may be better filled out in guidance. For emergency orders (which should be rare</p>

		for undesignated tips) I would demand that the supervisory authority conduct the work so that the owner can appeal the imposition of any charges for this work on appeal.
Bridgend CBC	Agrees with WLGA	
Caerphilly	Yes	Agree
Chris Seddon	Yes	I do. Provision for addressing imminent risks is vital.
CLA Cymru - Country Land and Business Association	Yes	<p>In principle we support this proposal, however the principle of who pays has not been addressed as yet. If as a result of this whole process the tip owner who may be totally unconnected with the original operation which in most cases this will be the case, then we would see this as a major issue in regards to being able to implement any tip management plan.</p> <p>If the cost issue is not satisfactorily addressed then there will likely be instances where ownership, as already stated, may be less than transparent in an attempt to avoid ongoing liability.</p> <p>We accept the case in an emergency, see our previous statements on this subject. We also welcome the appeal proposal.</p>
Professor David Petley	Yes	
Graham Hathaway	Yes	Without any doubt. I'm not in favour of private ownership for these reasons

Howard Siddle	Yes	Agreed.
Huw Williams	Yes	The emergency order should come into force immediately but then still be subject to appeal once in force - the stop notices procedure in planning legislation is a useful precedent.
ICE Wales Cymru	Other	<p>This should apply to the supervisory authority, not 'an authority' or 'the authority'.</p> <p>Agreed. 10.60 item 1 should refer to a 'maintenance' agreement. 10.60 item 4 not understood as who would the tip maintenance order be served on if the tip owner is unknown. In such cases would responsibility fall to the supervisory authority? 10.62 – would the supervisory authority be able to recover costs? 10.63 – the 'tip' owner.</p>
Jacobs UK Ltd (formerly Halcrow)	Yes	<p>This is a reasonable provision. Timely intervention can be expected to reduce the risk of a major incident. Jacobs is aware of several tips where defects/problems and associated risks of failure were identified but delay in implementing action/remediation measures resulted in a major event that has required a greater level of assessment and remediation at much higher economic and social cost than would have been the case had action been taken early.</p> <p>This approach is used by the Coal Authority in the management of its tips.</p>
Jane Iwanicki	No	See comment under question 22 - process of management agreements requires further consideration.

Joel James MS	Yes	
Dr John Perry	Yes	.
Cllr Julie Edwards	Yes	Where they are not adhering to the plan, criminal proceedings must be taken. They are being negligent and therefore putting lives at risk
Keith Bush	Yes	Ydw. Mae hyn yn drefn arfaethedig sy'n ymddangos yn effeithiol ac yn gymharol syml i'w gweithredu.
Kim Moreton	Yes	This sequence is easily recognisable and robust.
Lee Jones	Yes	
Merthyr Tydfil	Yes	
Mineral Products Association	Yes	
Monmouthshire CC	Yes	
Natural Resources Wales	Yes	<p>(1) Yes – The authority needs to ensure the tip is made safe if the landowner is unable to do so. This may need a Magistrates Warrant unless urgent?</p> <p>(2) Yes- The authority is responsible for ensuring the safety of any tip. The duty to arrange an inspection should lie with the owner or with the SA, but the inspecting engineer could be independent, certainly independent of the owner. Again, the use of a Magistrates Warrant, unless urgent, may assist</p> <p>(3) We agree, though it is perhaps best that we define “urgency” alongside “emergency” or select one.</p> <p>(4) Yes – The authority must ensure the safety of the tip. But in this urgent case the authority should take responsibility for the land that the tip is on. For less</p>

		<p>urgent cases then a Magistrates Warrant would ensure equivalence to other legislative requirements.</p> <p>10.84 & 10.61 <i>The authority must be satisfied that the measures proposed are proportionate to the objective to be achieved.</i></p> <p>Yes – But this would depend on what the objective is. Would it be just to make the tip safe, or to clean up a slip that has happened, or would it be to protect the environment? Perhaps it would require proportionality to be subject to the opinion of qualified civil engineer (QCE)</p> <p>In Q19, bullet 3, above there is reference to pollution. If there is a likelihood of combustion the measures may be considered cost disproportionate, unless qualified with Geotech.</p> <p>10.85 & 10.62 <i>The order must either require the owner to carry out the operations or provide for the authority to carry them out.</i></p> <p>Yes – The owner should pay the costs though there should also be clarity on how funding can be acquired should the owner be unable to pay.</p> <p>Additionally, the Order should be officially “closed” on certified satisfaction or a qualified civil engineer sign off.</p> <p>10.86 & 10.63 <i>The owner should have a right of appeal against the imposition of a maintenance order.</i></p> <p>In principle we agree, but we hope that owners would be appropriately encouraged to engage with the process of</p>
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		<p>developing maintenance orders and thereby are happy to accept them. Only in cases where the owner does not engage would imposition be required and thereby a right of appeal against this imposition is right and proper.</p> <p>Where time is limited an imposition could be considered as a short cut to deliver maintenance, but imposition should really be a last resort.</p> <p>10.87 & 10.64 <i>Save in the case of an emergency order, the order must provide sufficient time within which to appeal.</i></p> <p>Agree. Perhaps a timescale could be set by an accreditation service such as QEC and be a statutory maximum timescale. It would be worth considering a process to amend timescales with QEC agreement if investigation reveal more substantial works than first anticipated, otherwise the owner could be bound by a strict liability offence and unable to comply.</p> <p>There may be an issue where an asset could fail during the appeal time period. Some thought may be needed for these rare cases especially if work is needed urgently. Maintenance orders should only be issued in an emergency where the risk of an unsafe event is imminent. In these cases, time is important and there should be no delay in making a tip safe.</p>
Neath Port Talbot CBC	Yes	<p>The above provisions would help to deal with the issues raised above in relation to owners being unable or unwilling to carry out necessary works. Is there a requirement for a grant aided scheme for land owners through no fault of their own are put at risk.</p>

Network Rail	Other	Network Rail has no comment on this. However, it would wish to be informed proactively of any issues with the management of a tip which may lead to an adverse impact to the railway. Is it possible to include a provision requiring the authority, on making a maintenance order, to notify potentially affected landowners in the vicinity?
Ove Arup and Partners Ltd	Yes	
Owen Jordan	No	Again this assumes that those concerned are not central to the process, but overpaid useless civil servants are. It's about power. And democracy.
Dr Peter Brabham	Yes	
Philip Thomas	Yes	That's more like it. However, the landowner should not benefit from the public purse investment in their land safety. It should enter ownership of the local authority, solely for the purpose of a park/recreation/not for building houses/biodiversity schemes.
Pontypool Park Estate Office	Other	WAG's responsibility towards tips is accepted. The extent to which an owner or occupier might be responsible for mitigation etc, whether under a maintenance order or otherwise, depends surely on the liability. It would be inappropriate for these general proposals to impose by the back door a greater burden on owners or occupiers than otherwise exists.
Rhondda Cynon Taf CBC	Other	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.
Richard Arnold	No	The answer is both yes and no. it is all about "proportionate to the objective to be achieved."
Stephen Smith	Yes	If tip management plans are to be adopted, then the supervising body will need such powers to ensure identified operations are undertaken
Steve Harford	Yes	This power would be crucial to the monitoring process.
Steve Jones/Pembrokeshire Council	No	<p>Fail to see why not being able to establish ownership should be a factor in determining whether to make an order.</p> <p>The start point for going down this route has to be identification of risk and the determination of risk level. For those where requirement for works has been identified, but efforts to trace ownership have failed, who is the order going to be made against?</p> <p>If it ends up with local authority, they are not going to resist a requirement to carry out works, before it gets to the stage where an order has to be made.</p>
Sue Jordan	No	Those granting permission should find the funds to restore. in many cases this was Wales or UK governments.
The Law Society of England and Wales	Yes	We agree.
Thomas Glyn Watkin	Yes	

Torfaen response	Agrees with WLGA	
Transport for Wales	Yes	We agreed in principle. However, we would also like to see provision for stakeholders (i.e. TfW) to instigate tip orders, for example, where a tip is considered a safety or environmental risk to its interests. In addition, we would ask for clarification of how the proposals will be developed to ensure that action to deal with unsafe tips is taken in situations where landowners do not have the financial means to carry out the works in accordance with the order? Will the supervisory authority be given the means to reclaim the land and undertake remedial works? How will the supervisory authority be funded to undertake those works?
Vikki Howells MS	Yes	This should be a responsibility of a single public authority as recommended above to ensure fairness and consistency.
WLGA	Yes	Yes. The above provisions would help to deal with the issues raised above in relation to owners being unable or unwilling to carry out necessary works. A fifth point could be added relating to the case where the owner has failed to seek necessary permits to undertake works (e.g. SUDs approval may be required or watercourse consents for discharge).
Wrexham CBC	Yes	Yes, however the supervisory body (not a Local Authority) needs to undertake the inspection of the tips and produce the subsequent tip management plan on a case by case basis. The supervisory authority should ensure the implementation of the plan.

		Yes the owner should have a right of appeal against the imposition of a maintenance order.
Wyn Williams	Yes	I agree with the reasoning of the Commission which underpins these proposals.

CONSULTATION QUESTION 25

Do you think that responsibility for tip maintenance agreements for lower risk tips should fall to the supervisory authority or lie with local authorities? 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?

Consultation Question 25 asked respondents where the responsibility should fall (supervisory authority/local authorities/other). Some consultees also provided text to further explain their view. This text has been added to the table. Some respondents did not directly respond to Consultation Question 25, either because they did not use the Citizen Space platform or because they tailored their response to their particular experience.

Respondent	Local authority ("LA") or supervisory authority ("SA")?	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?	Text
Of those who responded: SA 36			

LAs 3			
Other 5			
Blaenau Gwent CBC	SA Responsibility for tip maintenance agreements for lower risk tips should fall to the supervisory authority		This question generated considerable discussion amongst LA officers in LA areas with significant numbers of tips. However, eventually a broad consensus emerged that it would be better if there is one supervisory body responsible for ALL tip maintenance agreements, irrespective of the risk level.
Bob Leeming	SA Responsibility for tip maintenance agreements for lower risk tips should fall to the supervisory authority		All tips should be under the remit of the new Authority, who should there be able to make maintenance agreements.
Professor Bob Lee	Other		I would prefer that all levels of coal tip sites fall within the same regime of supervisory responsibility. There are examples (air pollution under Part 1 and contaminated land under Part 2A of the Environmental Protection Act 1990) where responsibility is shared in accordance with risk, and this may spread the cost of administration but at the expense of a less coherent system. In accordance with what is said above, I would prefer split responsibility in relation to registration, classification and designation discharged by the coal authority and supervision and enforcement discharged by NRW. There may be some downside in losing local authority expertise but this might be dealt with in

			recruitment of staff into the agencies charged with coal tip safety.
Bridgend CBC	Agrees with WLGA		
Caerphilly	<p>Other Responsibility for maintenance agreements should remain under one supervisory authority, with local authorities assisting where possible. They can assist especially where they own the tips and have experienced staff. Possibly could be a mixture where each authority agrees what they want or don't want to take on?</p> <p>Where Authorities don't have the Skills Knowledge or Experience responsibility should fall to Supervisory Authority or an agreement made</p>	<p>Copied to column 4 Believe agreements should be standardized and overseen by a Supervisory Authority.</p>	<p>Copied from column 3 Believe agreements should be standardized and overseen by a Supervisory Authority.</p>

	with another Local Authority.		
Chris Seddon	SA Responsibility for tip maintenance agreements for lower risk tips should fall to the supervisory authority		Giving responsibility for low risk tips to LAs will incentivise the supervisory authority to reduce the risk rating of tips to manage workload. I believe this will undermine the objectivity of the supervisory authority in carrying out risk assessments and should be avoided.
CLA Cymru - Country Land and Business Association	SA Responsibility for tip maintenance agreements for lower risk tips should fall to the supervisory authority		The new Authority should be responsible for all actions involved with the management of legacy coal tips so as to avoid any confusion as to who is responsible for what and where.
Professor David Petley	LA Responsibility for tip maintenance agreements for lower risk tips should lie with the local authorities	I believe that the local authority should have responsibility for both making and supervising the agreements	This is simply pragmatic - in non-urgent cases the local authority will have the understanding of the local situation required to undertake this work on a day to day basis. Replicating this at the level of the supervisory authority will be inefficient and ineffective
Graham Hathaway	SA Responsibility for tip maintenance agreements for lower risk tips should fall to the supervisory authority	Copied to column 4 I'm not in favour of delegating responsibility to the Local authorities for reasons I've set out previously. These are familiarity, competence and strength of leverage given the oversight of local councillors and nepotism. There will be variations	Copied from column 3 I'm not in favour of delegating responsibility to the Local authorities for reasons I've set out previously. These are familiarity, competence and strength of leverage given the oversight of local councillors and nepotism. There will be variations of approach from so many different Local Authorities and levels of expertise. It will be uneven approaches and interference for outside influences. The business of

		<p>of approach from so many different Local Authorities and levels of expertise. It will be uneven approaches and interference for outside influences. The business of local politics is governed by so many competing impacts of running a complex web of services. Priority setting is often difficult and the quality of staff is fundamentally varied. I cannot see building up the capacity and drive to achieve a good management plan and implementation with be effective everywhere . It must by definition by piecemeal and divergent . I recognise this as extant with all services but not matters of life and death from excessive dangers</p>	<p>local politics is governed by so many competing impacts of running a complex web of services. Priority setting is often difficult and the quality of staff is fundamentally varied. I cannot see building up the capacity and drive to achieve a good management plan and implementation with be effective everywhere . It must by definition by piecemeal and divergent . I recognise this as extant with all services but not matters of life and death from excessive dangers</p>
Howard Siddle	<p>SA Responsibility for tip maintenance agreements for lower risk tips should fall to the supervisory authority</p>	<p>Copied to column 4. Yes. It seems to me that consistency would dictate the SA might be the preferred body to make and supervise MAs. However, if wording and format could be standardised by the SA for commonly occurring maintenance works on lower risk tips, LAs could issue MAs on behalf of the SAs, inspect the satisfactory</p>	<p>Copied from column 3. Yes. It seems to me that consistency would dictate the SA might be the preferred body to make and supervise MAs. However, if wording and format could be standardised by the SA for commonly occurring maintenance works on lower risk tips, LAs could issue MAs on behalf of the SAs, inspect the satisfactory completion of the works for the SA to record on the Register.</p>

		<p>completion of the works for the SA to record on the Register.</p> <p>A guidance note for tip owners is required to explain responsibilities, sanctions, good maintenance practice and their benefits.</p>	<p>A guidance note for tip owners is required to explain responsibilities, sanctions, good maintenance practice and their benefits.</p>
Huw Williams	<p>LA Responsibility for tip maintenance agreements for lower risk tips should lie with the local authorities</p>	<p>In my view tip safety should remain primarily a function managed at local authority level. I refer to my earlier reply setting out my suggestion for a supervisory authority based on the statutory joint committee.</p> <p>One of the attractions of a statutory joint committee model is that it offers the potential to recreated the "centre of excellence" model that existed previously by offering an attractive and interesting organisation for engineers and other professions with an interest in soil mechanics and problems related to ground instability.</p> <p>I think it is an operational question for the statutory joint committee as to which tasks it undertakes</p>	

		itself and which are carried out more locally by individual local authorities.	
ICE Wales Cymru	SA All responsibilities for disused tips should lie with a single body, the supervisory authority.		
Jacobs UK Ltd (formerly Halcrow)	SA Responsibility for tip maintenance agreements for lower risk tips should fall to the supervisory authority	No comment.	It would be better to avoid a split in responsibility. This will ensure consistency of approach and application. It will also allow is identification of and appropriate level of funding for all such work.
Jane Iwanicki	SA Responsibility for tip maintenance agreements for lower risk tips should fall to the supervisory authority		There is risk in operating a two tier process (i.e. blurring of responsibilities and mixed levels of technical expertise and experience) and local authorities may lack funds and resources to deliver a consistent service across different areas.
Joel James MS	SA Responsibility for tip maintenance agreements for lower risk tips should fall to the supervisory authority		

Dr John Perry	SA Responsibility for tip maintenance agreements for lower risk tips should fall to the supervisory authority		I don't think the LAs have the expertise to manage coal tips throughout Wales and it should be with a specialised and focused supervisory authority. The question of who pays has not come up yet? perhaps later?
Cllr Julie Edwards	SA Responsibility for tip maintenance agreements for lower risk tips should fall to the supervisory authority		
Keith Bush	SA Responsibility for tip maintenance agreements for lower risk tips should fall to the supervisory authority	Not relevant.	Ni ddylid hollti cyfrifoldeb yr awdurdod. Ond er y dylai'r cyfrifoldeb fod ar yr awdurdod dylid medru dirprwyo'r pwerau perthnasol i awdurdodau lleol, trwy gytundeb, mewn achosion priodol - er enghraifft tomennydd llai neu risg isel.
Kim Moreton	SA Responsibility for tip maintenance agreements for lower risk tips should fall to the supervisory authority		
Lee Jones	SA Responsibility for tip maintenance agreements for lower risk tips should fall to	How would a maintenance agreement work if the LA is in fact the owner of a tip?	A LA (or any other regulator) should not be able to make, agree it with, or supervise it itself. Consistency should be maintained to ensure fairness to other "non regulatory" landowners and therefore responsibility

	the supervisory authority		should rest with the supervisory authority. The Authority would unlikely be an owner of land upon which a coal tip would be located. Therefore it would remain impartial and have no associated conflicting interest.
Merthyr Tydfil	SA Local authorities do not have sufficient resource to undertake additional work such as tip maintenance agreements therefore the supervisory authority should be responsible for all tip maintenance agreements. This will also provide a consistent approach to all tips.		
Mineral Products Association	SA The responsibility should lie with an appropriately funded supervisory body and NOT with the local authorities. Local authorities are routinely presented with duties for which		

	they do not have the expertise. Budgets are rarely ring-fenced. The seriousness of this issue justifies a funded non-politicised technical body.		
Monmouthshire CC	SA Responsibility for tip maintenance agreements for lower risk tips should fall to the supervisory authority	Copied to column 4 This should rest with the supervisory authority to ensure a consistent approach. Many local authorities are not likely to have resources or expertise to carry out this function effectively.	Copied from column 3 This should rest with the supervisory authority to ensure a consistent approach. Many local authorities are not likely to have resources or expertise to carry out this function effectively.
Natural Resources Wales	SA Our view is that a supervisory authority should be responsible for all tips. This not only ensures a consistent approach but also provides more certainty and strength in depth to maintain experienced and qualified experts. Splitting responsibility across	Copied to column 4 We believe that a supervisory authority should make the agreement. They will have the expertise to understand what is required in such an agreement. Having said that there should be a need for close working between a supervisory authority and local authority (and other interested parties) to ensure good communication and decision making. The example of the current development of a Coal Tip Protocol between the LA's, the Coal Authority, NRW and WG is a good example of this type of	Copied from column 3 We believe that a supervisory authority should make the agreement. They will have the expertise to understand what is required in such an agreement. Having said that there should be a need for close working between a supervisory authority and local authority (and other interested parties) to ensure good communication and decision making. The example of the current development of a Coal Tip Protocol between the LA's, the Coal Authority, NRW and WG is a good example of this type of joined up approach to working and delivering outcomes.

	<p>organisations would dilute this and prevent sufficient strength in depth, and resilience and career progression for staff. Having said this, a central authority will have to build its local and historical knowledge which may not be as effective as that held by a local organisation.</p>	<p>joined up approach to working and delivering outcomes.</p>	
Neath Port Talbot CBC	<p>SA Responsibility for tip maintenance agreements for lower risk tips should fall to the supervisory authority</p>	<p>Copied to column 4 It would be better if there is one supervisory body responsible for ALL tip maintenance agreements, irrespective of the risk level to maintain a consistent approach and to not unduly burden LA's with a higher number of tips within their boundary.</p>	<p>Copied from column 3 It would be better if there is one supervisory body responsible for ALL tip maintenance agreements, irrespective of the risk level to maintain a consistent approach and to not unduly burden LA's with a higher number of tips within their boundary.</p>
Network Rail	<p>SA Network Rail would prefer to be working in conjunction with one regulatory body (see also comments in</p>		

	risk tips should fall to the supervisory authority		
Philip Thomas	SA Responsibility for tip maintenance agreements for lower risk tips should fall to the supervisory authority		That's more like it. However, the landowner should not benefit from the public purse investment in their land safety. It should enter ownership of the local authority, solely for the purpose of a park/recreation/not for building houses/biodiversity schemes.
Pontypool Park Estate Office	Other		The challenge is competence. It is accepted that insufficient expertise remains in a devolved Wales. If such expertise currently does not exist, notwithstanding WAG's long-standing responsibility for tip safety, how will it now be imported, and how could local authorities be expected to acquire it? It would be more sensible to keep the general responsibility with WAG and its agent. Surely all tips (and non-tips) should be on the same register? I question if it is administratively practical to change administration depending on a subjective and changing judgement of the level of risk any one tip is deemed to present at any time, perhaps even back and forth?
Rhondda Cynon Taf CBC	SA 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.		
Richard Arnold	SA Responsibility for tip maintenance agreements for lower risk tips should fall to the supervisory authority		
Stephen Smith	<p>Copied to column 3</p> <p>Other A difficult balance to achieve for responsibility here, but, if a supervisory authority is to be established, then, for consistency, I feel they should take the lead for all management plans; with local authorities possibly having a delivery role for tips assessed as 'lower risk'. If responsibility for agreeing management plans is split, then, without</p>	<p>Copied from column 2</p> <p>A difficult balance to achieve for responsibility here, but, if a supervisory authority is to be established, then, for consistency, I feel they should take the lead for all management plans; with local authorities possibly having a delivery role for tips assessed as 'lower risk'. If responsibility for agreeing management plans is split, then, without robust guidance, there is a possibility that other bodies would endeavour to impose different (and perhaps unnecessarily more stringent) standards.</p>	

	robust guidance, there is a possibility that other bodies would endeavour to impose different (and perhaps unnecessarily more stringent) standards.		
Steve Harford	SA Responsibility for tip maintenance agreements for lower risk tips should fall to the supervisory authority	Copied to column 4 local authorities should be treated the same as all other land owners. this would help to ensure that all tips, regardless of risk, are managed in a consistent manner.	Copied from column 3 local authorities should be treated the same as all other land owners. this would help to ensure that all tips, regardless of risk, are managed in a consistent manner.
Steve Jones/Pembrokeshire Council	LA Responsibility for tip maintenance agreements for lower risk tips should lie with the local authorities	Should be LA with supervisory authority oversight. Supervisory authority should not be in a position to have to supervise its own works.	
Sue Jordan	SA Responsibility for tip maintenance agreements for lower risk tips should fall to the supervisory authority		Experience shows that they are too incompetent to do anything safely.

The Law Society of England and Wales	SA Responsibility for tip maintenance agreements for lower risk tips should fall to the supervisory authority	Copied to column 4 In the interest of administrative neatness and completeness, we consider that responsibility for tip maintenance agreements for lower risk tips should fall to the supervisory authority. We suggest that local authorities could be classified as statutory consultees in this agreement-making process.	Copied from column 3 In the interest of administrative neatness and completeness, we consider that responsibility for tip maintenance agreements for lower risk tips should fall to the supervisory authority. We suggest that local authorities could be classified as statutory consultees in this agreement-making process.
Thomas Glyn Watkin	SA Responsibility for tip maintenance agreements for lower risk tips should fall to the supervisory authority		
Torfaen response	Agrees with WLGA		
Transport for Wales	SA Responsibility for tip maintenance agreements for lower risk tips should fall to the supervisory authority		It should all fall to the single supervisory authority.
Vikki Howells MS	SA Responsibility for tip maintenance agreements for lower risk tips should fall to		Responsibility lying with the supervisory authority will ensure fairness and consistency. It will also enable the development of expertise and best practice.

	the supervisory authority		
WLGA	<p>SA This question generated considerable discussion amongst LA officers in LA areas with significant numbers of tips. However, eventually a broad consensus emerged that it would be better if there is one supervisory body responsible for ALL tip maintenance agreements, irrespective of the risk level.</p>		
Wrexham CBC	<p>SA Responsibility for tip maintenance agreements for lower risk tips should fall to the supervisory authority</p>	<p>We agree a single supervisory authority should lead on this, for both high risk and low risk sites, and it should not fall to LAs at all. The main reasons for this are a single authority will provide consistency, expertise and resilience, but also because many LAs, WCBC included, have no Officers (now or in the past) with</p>	

		<p>the necessary geotechnical expertise.</p> <p>Expertise built up through regulating all manner of tips will also provide opportunity for gap analysis and research going forward. A single supervisory authority is more likely to make evidence based policy making procedures and enforcement with associated priorities without undue political persuasion.</p> <p>It would also avoid the issue of which Council regulates a tip site that traverses two local authority boundaries. From experience as a Contaminated Land Team, after the legislation was introduced in 2001 LAs were well resourced and able to fund appropriately qualified members of staff and undertake the implementation of the Strategies, this was aided by the Welsh Government introducing a capital funding program. However, over the last 10 years there is no longer any funding available from Welsh Government resulting in many authorities being unable to</p>	
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		<p>undertake any proactive work in this field. This has caused some authorities to lose qualified staff and are therefore unable to undertake their statutory duties under the Contaminated Land Regulations and also struggle with other land contamination related workloads. Furthermore this has caused significant disparities across the Welsh authorities in terms of contaminated land work that is carried out both through Part 2a and the Planning regime. A centralised supervisory body should avoid such disparities occurring under this new regime.</p> <p>[See also CQ 21]</p>	
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CONSULTATION QUESTION 26

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?

Consultation Question 26 asked respondents whether they agreed with our provisional proposal (yes/no/other). Some consultees also provided text to further explain their view. This text has been added to the table. Some respondents did not directly respond to Consultation Question 26, either because they did not use the Citizen Space platform or because they tailored their response to their particular experience.

Respondent	26	(1)	(2)	(3)	(4)	(5)	Other text
Of those who responded:							
Overall Yes: 36							
Overall No: 2							

Overall other: 6							
Blaenau Gwent CBC	Yes - all of the above provisions are necessary for enforcement						
Bob Leeming	Yes - Agreed - follows the pattern for HSE Inspectors in the Health and Safety at Work Etc Act 1974						
Professor Bob Lee	Yes but see my answer to questions 22 – 24 above. One advantage of placing enforcement in the hands of NRW is that the enforcement powers under						

	the 1995 Act can apply and regulatory guidance can be amended to include enforcement duties in relation to any new legislation of coal tip safety.						
Bridgend CBC	Agrees with WLGA						
Caerphilly	Agree access required as above.		Under emergency conditions (2) 48hrs written notice may be too long and immediate action may be required to make safe an area.				
Chris Seddon	Yes						
CLA Cymru - Country Land and Business Association	Yes - In principle we agree if this is deemed as						

	<p>a last resort or an emergency. We would hope that sensible dialogue could be entered into with the Landowner and that agreement could be reached. We would suggest that the power of entry as indicated would be only be undertaken as a last resort and ideally only recommend following an appeal decision, or in an</p>						
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	emergency situation.						
Graham Hathaway	Most certainly. We'll set of requirement and supported						
Howard Siddle	Yes. Agreed as this will counter the problem with existing legislation that the LA has to demonstrate instability and a danger to the public before they have a right of entry to a tip.	The wording may need further scrutiny to make sure it covers all scenarios. For example, (1) (a) would better read: "inspection, carrying out surface or subsurface tests, installation and monitoring of instrumentation and sampling upon or around a known or suspected disused tip".					

		Investigations of tip stability almost always require access and investigation of surrounding land and it is best to include the full range of activities for which entry is required.					
Huw Williams	Yes. Section 172 -179 of the Planning and Housing Act 2016 which relate to entry to survey and value land for CPO purposes is an example of an up to date code covering these matters.						

ICE Wales Cymru	Agreed. (treated as Yes)	Definition of 'remedial operations' required.	There should be no written notice period in the case of emergency which would necessitate immediate entry as authorised by the Welsh Ministers.				
Jacobs UK Ltd (formerly Halcrow)	Yes. This is a reasonable approach.						
Jane Iwanicki	Yes		48 hours notice may be ok in an emergency but it is not sufficient where occupiers and others may be using the land and need to be contacted and informed by the owner.				Owners would have to be provided with full indemnity - i.e. they could not be held liable for any operations or works carried out by others or any harm or damage arising as a direct or indirect consequence of such operations or works or in relation to gaining access to the tip etc.
Joel James MS	Yes						
Dr John Perry	Yes						
Cllr Julie Edwards	Yes						

Keith Bush	Yes.						Mae'r pwerau hyn yn eithaf safonol. Ond mae'n bwysig bod yr hawl i'w harfer yn fwy eang nag o dan y gyfraith bresennol gan nad ydynt yn ddibynnol ar gred ar ran yr awdurdod bod perygl i bobl yn bodoli.
Kim Moreton	Yes						This is a matter of public and environmental safety. Setting out power of entry from the outset will go some way to 'future proofing' the ability of the authority to enter, in light of potential changes to law of trespass.
Lee Jones	Yes		The period for giving 48hrs Notice should be waived in an emergency situation where powers of entry should be immediate and exercisable under warrant. This could either be a magistrate warrant or	Agree, if force is required.	Agree. Other persons should include a police constable (e.g. where authorised persons are being obstructed /	Agree	

			even give inspectors warranted status to enter without notice (similar to HSE inspectors). Similarly, in the event that there is no owner or the owner cannot be found immediate entry could also apply.		prevented from entering)		
Merthyr Tydfil	Yes						
Mineral Products Association	In general, yes.		However, the advanced notification for routine inspections should be a minimum of 21 days. Powers of entry for emergency purposes only should be instantaneous, or by court order, if the seriousness of the incidence warrants an emergency position.				
Monmouthshire CC	Yes						
Natural Resources Wales	We agree with this						It could be suggested that the Environment Act s108 already allows

	proposal. (Yes)						access at any reasonable time (unless heavy plant or residential curtilage) and this could be used. We have applied this in NRW with mixed results; finding it a slow and burdensome approach that has had negative reactions from landowners over its formal approach. Additionally, we are unsure of its applicability when long term works are required. It is appropriate therefore to follow these suggestions and perhaps consider the pros and cons with the S108 approach to find a better system.
Neath Port Talbot CBC	Yes						All of the above provisions are necessary for enforcement activity where this is necessary.
Network Rail	Other						Network Rail does not have comments on the specific powers granted but observes that the authority will need the relevant powers to be able to effectively

							discharge its duties, importantly, so that the risks identified can be addressed and reduced. Network Rail would be interested to understand whether it would be able to request (at short notice in an emergency) that these powers be exercised, or whether it could exercise them on behalf of the supervisory authority in circumstances where it has concerns that the tip poses a risk to the railway.
Ove Arup and Partners Ltd	Yes						
Owen Jordan	No						See above.
Dr Peter Brabham	Yes						
Philip Thomas	Categorised as Other No. Agree except for....the power of entry should		Copied from column 1 Agree except for....the power of entry should be exercisable upon 48 hours' written notice				

	<p>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;</p> <p>Why 48 hours? So one waits 48 hours after the Aberfan disaster to enter the land above the school and houses to make any remedial life saving alterations to the waterflow of a stream? Shouldn't immediate</p>		<p>to the owner and any other person known to be in occupation of the land or in an emergency;</p> <p>Why 48 hours? So one waits 48 hours after the Aberfan disaster to enter the land above the school and houses to make any remedial life saving alterations to the waterflow of a stream? Shouldn't immediate access be required? Also, what if the landowner has not maintained access routes? Such as the [REDACTED] [REDACTED] bridleway (green route/road) in Ynyshir for access to the high risk tips. This access route has been unpassable to</p>				
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							<p>Landowners should be made aware of their legal duty to allow individuals working for the authority onto their land in order to inspect tips or to carry out any maintenance work necessary to maintain public safety. Public Health can inspect a food premises at any time, the same should be true with the inspection of tips, and staff must know that they have the legal protection in pursuance of their duty to serve the public.</p> <p>Dylai fod gan swyddogion yr awdurdod newydd, neu unrhyw staff o drydydd parti, yr hawl gyfreithiol i gael mynediad i dir er mwyn archwilio tomenni ar unrhyw adeg. Dylai tirfeddianwyr fod yn ymwybodol o'u dyletswydd gyfreithiol i ganiatáu i unigolion sy'n gweithio i'r awdurdod ar eu tir er mwyn archwilio</p>
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							tomenni neu wneud unrhyw waith cynnal a chadw sy'n angenrheidiol i gynnal diogelwch y cyhoedd. Gall adrannau lechyd y Cyhoedd archwilio safleoedd bwyd ar unrhyw adeg, dylai'r un peth fod yn wir wrth archwilio tomenni, a rhaid i'r staff wybod bod ganddynt y gefnogaeth gyfreithiol wrth wneud eu dyletswydd i wasanaethu'r cyhoedd.
Pontypool Park Estate Office	Other						This seems a bit detailed; we have not even worked out what is the job to be done.
Rhondda Cynon Taf CBC	Yes Members agreed that the supervisory authority should have a power of entry upon land for the						

	purposes listed above.						
Sioned Williams AS	Other						In terms of inspections, I believe that officers of the new supervisory authority should have the legal right to gain access to land in order to inspect tips at any time in order to maintain public safety.
Stephen Smith	Yes						Given the views of local authorities and other regulators set out in Chapter 7, then enhancement of powers would be necessary to achieve objectives. It does seem, however, that the main problems under the 1969 Act are a lack of technical expertise, limitations on funding and concern about the implications for the authority. Would these still remain under the proposals offered?
Steve Harford	Yes. this is important as some						

	landowners may not wish to have the tips on their land recognised as a tip!						
Steve Jones/Pembrokeshire Council	Yes						
Sue Jordan	Yes						
The Law Society of England and Wales	Yes. We agree.						
Thomas Glyn Watkin	No		(2) 48 hours written notice strikes me as being too short a period of time, other than in an emergency.		(4) If heavy equipment is to be taken on the land, express notice of this should be given in the written notice including a description of the equipment.		
Torfaen response	Agrees with WLGA						

Transport for Wales	Other						We agree that there is need for it to be a statutory body.
Vikki Howells MS	Yes						Vital to ensure compliance and public safety.
WLGA	Yes – all of the above provisions are necessary for enforcement activity where this is necessary.						
Wrexham CBC	Yes		Agreed but 24 hrs not 48 as per Public Health Act 1936, section 287. In addition, perhaps a remedial action power to deal with imminent risks to public health could be provided for in the new legislation – similar to the powers in Housing Act 2004 – remedial action by				

			<p>enforcing authority then statutory notice of works carried out sent to persons with an interest in the land/property (with recovery of costs provision). For land without an identifiable owner, a provision for land charge registration would be useful to ensure the supervising/enforcing authority can recover costs they incurred in undertaking works in default/imminently required works to prevent risk to public health.</p>				
Wyn Williams	Yes						Provisions of this type are necessary and proportionate for a regulatory regime such as this.

CONSULTATION QUESTION 27

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

Consultation Question 27 asked respondents whether they agreed with our provisional proposal (yes/no/other). Some consultees also provided text to further explain their view. This text has been added to the table. Some respondents did not directly respond to Consultation Question 27, either because they did not use the Citizen Space platform or because they tailored their response to their particular experience.

Respondent	CQ27	Text
Of those who responded: Yes 36 No 2 Other 2		
Blaenau Gwent CBC	Yes	
Bob Leeming	Yes	The system has to have some teeth, and an encouragement to comply
Professor Bob Lee	Yes	Yes but see my answer to questions 22 – 24 above. One advantage of placing enforcement in the hands of NRW is that the enforcement powers under the 1995 Act can apply and regulatory guidance can be amended to include enforcement duties in relation to any new legislation of coal tip safety. Similarly for question 27, provisions for failure to comply with a notice served by NRW will open up the possibility of prosecution and note that this allows for the possibility of civil sanctions in accordance with the Environmental Civil Sanctions (Wales) Order 2010 and the deployment of NRW Guidance on Enforcement and Sanctions.
Bridgend CBC	Agrees with WLGA	

Caerphilly	Agree	
Chris Seddon	Yes	
CLA Cymru - Country Land and Business Association	Yes	Only as a last resort if an appeal hearing finds in the favour of the Authority and urgent action is required to remedy any issues of major concern or imminent failure
Graham Hathaway	Yes	I've so commented that it should be. Without question.
Howard Siddle	Yes	Agreed that this potential sanction is required.
Huw Williams	No	A tip maintenance order is a serious step and the history of the consequences of tip slides would indicate that non compliance can have the most serious consequences. Trial on indictment should therefore be available. Precedents exist in environmental and historic buildings legislation.
ICE Wales Cymru	Yes	Agreed, there must be a penalty for non-compliance to maintain tip stability and to mitigate potential negative health and environmental impacts of disused coal tips.
Jacobs UK Ltd (formerly Halcrow)	Yes	Approach sounds sensible.
Joel James MS	Yes	
Dr John Perry	Yes	
Cllr Julie Edwards	Yes	
Keith Bush	Yes	Ydw. Mae angen hyn er mwyn i'r pwerau fod yn effeithiol.
Kim Moreton	Yes	

Lee Jones	Yes	However, consideration should be given to the issuing of a fixed penalty fine in the first instance and subsequently prosecution should the failure to comply with an order continue. This could initially ease the burden on the court system as well as the public purse.
Merthyr Tydfil	Yes	
Mineral Products Association	Yes	Yes, however any offence should be reasonable and proportionate. Details of summary should be the subject of appropriate consultation.
Monmouthshire CC	Yes	
Natural Resources Wales	Other	<p>In simplistic terms it makes sense that without any punitive measures why would a landowner comply? We advise that there are some exemptions needed to this approach to ensure fairness. For example, a hardship assessment is potentially required. Additionally, for the tips that British Coal/Coal Authority covenanted in sale, this would be fine. If not, what happens with the Coal Authority 33 owned sites it retains? Also, if a maintenance order was issued on an owner of an ordinary domestic property constructed with local authority/NHBC approval, we think this could be harsh.</p> <p>It would also depend on the mine type and who is the rightful owner of the colliery spoil heap or the metal mine/quarry spoil heap should this be extended. For very old sites it may difficult to ascertain today's legal responsibility.</p>
Neath Port Talbot CBC	Yes	
Owen Jordan	No	See above.
Dr Peter Brabham	Yes	
Philip Thomas	Yes	
Pontypool Park Estate Office	Other	This seems a bit detailed; we have not even worked out what is the job to be done.

Rhondda Cynon Taf CBC	Yes	Members were in agreement with this proposal.
Stephen Smith	Yes	Failure to undertake defined maintenance should be an offence under 1969 Act and I agree any new regime would need such powers.
Steve Harford	Yes	And with fines
Steve Jones/Pembrokeshire Council	Yes	
Sue Jordan	Yes	The Coal Authority & bodies granting permission should be responsible and brought to court for their failing.
The Law Society of England and Wales	Yes	We agree.
Thomas Glyn Watkin	Yes	
Torfaen response	Agrees with WLGA	
Transport for Wales	Yes	
Vikki Howells MS	Yes	Vital to ensure compliance and public safety.
WLGA	Yes	
Wrexham CBC	Yes	
Wyn Williams	Yes	It is a necessary safeguard against the irresponsible.

CONSULTATION QUESTION 28

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?

Consultation Question 28 asked respondents whether they agreed with our provisional proposal (yes/no/other). Some consultees also provided text to further explain their view. This text has been added to the table. Some respondents did not directly respond to Consultation Question 28, either because they did not use the Citizen Space platform or because they tailored their response to their particular experience.

Respondent	CQ28	Text
Of those who responded: Yes: 28 No: 11 Other: 2		
Blaenau Gwent CBC	Yes	However this could become a costly expense for Local Authorities with a large number of tips - fees required further discussions
Bob Leeming	Yes	Not sure about periodic charges, but no reason why the Authority should not recover its costs from tip owners for the work done.
Professor Bob Lee	Yes	Yes: Note that waste charging powers are subject to amendment in the current Environment Bill and these apply to Wales but it is presumably too late to use this as a vehicle for coal tip waste. Since 1969, the charging regimes for regulation have changed a good deal and such charges would not be out of line with those levied in other areas of environmental regulation. A tiered charge for annual registration which takes into account classification and risk may provide a simple model based on the regulatory licensing model.

Bridgend CBC	Agrees with WLGA	
Caerphilly	Yes	Agreed whether it be owner funded or Welsh Government funded
Chris Seddon	Yes	Agreed, except where the land is a private residence which is owner-occupied.
CLA Cymru - Country Land and Business Association	No	We consider that the Authority should bear the costs. In our mind this will result in a better outcome, reduce appeals and be able to concentrate on the work requiring to be done and not relying on a process where the landowner 'may disappear' from his liabilities and appeal at (what he/she may consider) as financially onerous commitments. If this is a genuine attempt to deal with an issue, it would be far better for the Authority to pick up the bill in which it can be assured of the work being done and to a suitable standard, so there is a degree of confidence in that the tips are in a safe condition going forward.
Graham Hathaway	Yes	Necessary to offset public expenditure when dealing with the private sector on matters of safety and prevention of accidents by negligence or lack of attention to required actions in the public interest
Howard Siddle	Yes	Yes but sounds a good idea but the others will need to decide whether there is a realistic prospect of recovery of fees in respect of owning an otherwise useless, decades old, perhaps innocuous tip from all owners. It seems counter productive to charge public bodies (the main owners) for the tips they own. There may be no easy answer to this one other than to note that "polluter pays principle" might suggest the coal industry should be responsible for the legacy of tip instability and cost of operations on disused tips. Levies on the use of old tips for new uses may also generate various funding streams to contribute to the management of disused tips.
Huw Williams	Yes	Further consideration will need to be given as to whether this should be a charge determined on a case by case basis with a view to full costs recovery or on a fixed scale similar to planning fees. If the former then a mechanism to dispute fees considered excessive would have to be considered.
ICE Wales Cymru	Yes	Agreed, though charges should be to the tip owner rather than the owner of the land?

Jane Iwanicki	No	There are questions of fairness and proportionality to consider here in relation to past ownership of coal interests and the associated tips, and the operations that were carried out under the nationalised coal industry.
Joel James MS	No	Land owners should not have to pay fees or expenses for simply owning land that contains a coal tip. It is however right that land owners who do not make the coal tip safe pay for emergency work carried out by a statutory body to make a coal tip safe.
Dr John Perry	No	Only because I don't think this will work. LAs and private owners will probably not have enough funds and may detract from other high priority services such as health and education. But the money has to be found from somewhere so I'd prefer the supervisory authority had the money so it did not get directed elsewhere.
Cllr Julie Edwards	No	Not unless the maintenance work is being carried out by the supervisory authority then they should be claiming it back
Keith Bush	No	Nac ydw. Nid yw'n ymddangos yn deg y gall perchennog tir sydd heb fod yn creu perygl i bobl nac i eiddo orfod talu at y gost o gynnal gwaith archwiliadol cyffredinol yr awdurdod goruchwyllo. Hyd yn oed pe byddai trefn felly yn dderbyniol mewn egwyddor byddai cwestiynau ymarferol cymhleth iawn yn codi mewn perthynas a phennu maint y tal a theilwra'r drefn i'r ffaith y bydd natur buddiannau perchnogion yn y tir yn amrywio cymaint. Nid yw'r drefn mewn perthynas a chronfeydd dwr yn gyfatebol. Mae perchennog cronfa ddwr yn cael elw allan o fodolaeth y gronfa a phe na byddai archwiliadau statudol yn digwydd fe fyddai angen i'r perchennog gwario ar ei archwiliadau ei hyn beth bynnag. Mae sefyllfa perchennog tomen sydd heb fod yn fygythiad presennol i unrhyw un ac nad yw'n gofyn am unrhyw ymyrraeth ymarferol ar ran y perchennog yn wahanol. Byddai ceisio codi tal ar berchennog felly yn codi ystyriaethau wahanol iawn.
Kim Moreton	Yes	Based on a sliding scale of charges according to risk level / projected maintenance costs
Lee Jones	Yes	This should however be determined by the level of inspection required i.e. whether the inspection is solely non intrusive (observational) and/or requires intrusive ground investigations which can be more costly.

Merthyr Tydfil	Yes	Yes, however, in the likely event of non-payment there must be avenues to pursue non-payers to ensure the fees are paid.
Mineral Products Association	Yes	Yes, for the supervisory body only. It is, however, important that fees for the “supervisory body” are taken from competitive market rates and NOT double those, as is the case for many of the current government charging rates provided through discretionary services. It is not clear what other “public bodies” are being referenced here and we do not support fees being extended to these without further clear definition.
Monmouthshire CC	Yes	
Natural Resources Wales	Other	<p>This is an important aspect as funding for any new organisation will be critical. Looking at ways of a high degree to self-finance through the service provided gives a better surety of their long-term sustainability.</p> <p>This issue is also dependent on land or mineral rights ownership.</p> <p>In the case where British Coal or the Coal Authority covenanted the sale, this would be fine. Where the Coal Authority still retains possession, they could charge themselves fees, but what if they didn't pay?</p> <p>In the case of non-coal mines, the mineral rights owner may be responsible unless the Supervisory Authority has the right to declare the landowner as the owner of the spoil tip.</p> <p>In cases where fees are not paid thought should be given on how the authority will recover costs and what longer term steps should be taken ensures the public is protected. Additionally, some thought needs to be given for the cases where no owner is identified for an asset and in these cases, who pays?</p>
Neath Port Talbot CBC	Yes	<p>There is a need for this general power within the legislation.</p> <p>The detail of how these fees would be calculated is for further discussion. However, it will be important that fees are fair, proportionate, transparent and consistent across Wales.</p>

		<p>By itself, having the power to charge will not address the issue of landowners who refuse to pay but there are other remedies in that respect.</p> <p>It is important that the system established for monitoring, charging and pursuing non-payers does not end up being more expensive and slower than directly carrying out preventive maintenance work.</p>
Network Rail	Treated as Yes	Network Rail accepts the principle of fee charging. It would be worthwhile considering whether there is also a provision required, enabling affected landowners to charge their reasonable costs where information and support is required from them to assist the owner of the land in discharging its duties.
Owen Jordan	No	That's simply a disgrace. The person responsible for the tip is the person who built it. Charge them for putting it right, not create a revenue stream for employing useless civil servants
Paul Connolly	No	This needs to be assessed, to determine if it will have an overall detrimental impact on safety of tips. It is unlikely that the landowner has gained financial reward from the mining activity that produced the waste and could cause conflict if fees and charges are applied.
Dr Peter Brabham	No	
Philip Thomas	Yes	Absolutely.
Pontypool Park Estate Office	No	No; not because the principle is unreasonable, but because it will inevitably be abused. WAG will run an expensive and inefficient organisation, over which the owner and the public will have no control, and WAG will pass the cost of its maladministration onto owners without redress.
Rhondda Cynon Taf CBC	Yes	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).
Stephen Smith	Other	Unlike for other regimes (e.g. reservoirs), most private tip owners have inherited the tips on their land and do not hold them as beneficial assets. It would, therefore, seem unfair to have a blanket 'catch all' scheme to impose charges. The only exit route from such an obligation would be to remove the tip – which would be an expensive operation (perhaps unjustified if the tip is deemed stable) and could be

		prevented by other environmental legislation – or dispose by sale – unlikely given the implications for any new owner.
Steve Harford	Yes	
Steve Jones/Pembrokeshire Council	Yes	Subject to reasonable constraints
Sue Jordan	No	Charge those granting permission. They can recover as appropriate.
The Law Society of England and Wales	Yes	We agree.
Torfaen response	Agrees with WLGA	
Transport for Wales	Yes	Agreed. However, this again raises the question of affordability for the landowner. What mechanisms are proposed to ensure the scheme is sufficiently funded if landowners are unable to afford those payments? Would the authority, in a worst case, have powers to take ownership in the interests of safety?
Vikki Howells MS	Yes	
WLGA	Yes	Yes. There is a need for this general power within the legislation. The detail of how these fees would be calculated is for further discussion, as indicated in the consultation document. However, it will be important that fees are fair, proportionate, transparent and consistent across Wales. By itself, having the power to charge will not address the issue of landowners who refuse to pay but there are other remedies in that respect. As the consultation suggests, though, it is important that the system established for monitoring, charging and pursuing non-payers does not end up being more expensive and slower than directly carrying out preventive maintenance work.
Wrexham CBC	Yes	

Wyn Williams	Yes	The work of the authority should be assisted by financial contributions from the relevant land owners where that is practicable and proportionate.
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CONSULTATION QUESTION 29

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?

Consultation Question 29 asked respondents their view. Some respondents did not directly respond to Consultation Question 29, either because they did not use the Citizen Space platform or because they tailored their response to their particular experience.

Respondent	Text
Blaenau Gwent CBC	The consultation document describes the existing legal arrangements as 'cumbersome'. It is important that, in refreshing the legislation, a priority is to simplify arrangements as far as possible and limit the opportunities for expensive and time-consuming court cases. Having said that, there do need to be adequate protections in place to safeguard the interests of landowners and allow them the right to appeal against decisions (with appropriate measures available for dealing with emergency situations). The consultation notes that the appeal mechanism is outside its scope and will be a matter for Welsh Government. Local authorities will be happy to engage with WG to discuss these matters further. Given the complexities that can arise, WLGA agrees with the comments made about the need for any appeal to be heard by a person with appropriate experience. Other

Bob Leeming	<p>1. Yes Yes to 1</p> <p>2. Probably. Not likely that such an order, once made, would be revoked. Other to 2</p> <p>3. No, I see no justification for this No to 3</p> <p>4. Yes, I think as 19(1) of the Tips Act, with a sharing of liabilities as in s 19(4) of the Act. Yes to 4</p>
Professor Bob Lee	<p>On the whole these provisions appear over-elaborate and cumbersome. I have no real knowledge as to whether they have been widely used but I should have thought that there are alternative remedies in some of the instances above and that, if agreements are negotiated, then these could include the types of provisions above. 29(1) does raise an interesting issue if one were to seek to realise value from coal waste (see below) but again n this might be a matter for agreement. No to all</p> <p>In terms of jurisdiction for appeals, I would support a move from the court to the tribunal system with the First Tier General Regulatory Chamber (Environment) as the appropriate venue. Note that there has been some discussion in Wales in the Environmental Governance Stakeholder Group of the proposed Environment Commission for Wales pursuing, as necessary, environmental review before the Upper Tribunal where there is an alleged failure by a public body in Wales to comply with environmental law.</p>
Caerphilly	<p>Different scenarios here.</p> <p>If there is a safety issue Yes to part (1) only. If it is a general / minor maintenance No to all the above. If it is a reclamation scheme / major Maintenance possibly agree to compensation, however, owners get benefit of land use after works completed so are compensated that way or do we reclaim costs if land sold / developed? Guidance will need to be clear. I note adjacent land owners also included for compensation this be similar to part 1 claims in Highways? Clear simple guidance required. Other</p>
CLA Cymru - Country Land and Business Association	<p>1. If the new Authority is to bear all costs, then it seems sensible for the Authority to be able to recover some of the cost of selling material as a result to offset some of the work. This seems to be equitable. However this must not be abused and advantage taken of the Landowner. If the Owner is expected to pay then this rather reverses this proposal and should be able to offset some of his/her's costs. Other to 1</p>

	<p>2. If the owner can show he/she has incurred costs following service of an order and then its revoked, then that seems reasonable. Yes to 2</p> <p>3. This seems to be an equitable proposal, again on being able to prove a loss. Yes to 3</p> <p>4. If indeed the Authority is not charged with covering all the costs as previously suggested. Other to 4</p> <p>If the Authority does not cover all the costs, and looking at the relevant Mines and Quarries legislation If the tip is made dangerous by way of third party trespass such as motorcycles, then due allowances should be made. This is a common problem</p>
Graham Hathaway	<p>1. I do not subscribe to accounting to the owner. I cannot see the need. Is this about due diligence on financial matters then it would fall the to the relevant authorities. No to 1</p> <p>2. Yes I do see the need for compensation. Yes to 2</p> <p>3. This is a difficult one. If there is substantial damage of property for example. I feel there is a duty to compensate but it needs defining. Other to 3</p> <p>4. I like the term discretionary since or offers scope of referral and upon individual circumstances of an award. But isn't this part of owner and the enterprise loses that applies to any business. I would not be in favour any contribution save the need for safety that will be overriding. No to 4</p>
Huw Williams	<p>I agree that the provisions under the 1969 Act are cumbersome and outdated and require updating in the light of the complete cessation of tipping of colliery waste. I think that the arrangements in the Contaminated Land Statutory Guidance (Wales) – 2012 and in particular the treatment of Class B owners in Section 7 provides a good basis for devising new arrangements for coal tips.</p> <p>In relation to the specific questions posed:</p>

	<p>1. The position of a third party owner of material removed during remedial work should be covered by a general provision to pay compensation for loss. The extent to which the owner of such material could make such a claim would depend in part on whether they were also a party potentially liable for clean-up costs. Yes to 1</p> <p>2. The compensation for revocation provisions should be strictly limited and linked to the costs of leaving the land in a tidy and stable condition no worse than the position before the notice. The possibility that work carried out notwithstanding the revocation will have resulted in an actual betterment should also be recognised. The design of the compensation liability should, as far as is consistent with Human Rights Act obligations, not act as a disincentive to the supervisory authority to take action. Other to 2</p> <p>3. Third parties who suffer damage and loss as a result of remedial work or testing should be compensated. The measure should be related to actual loss rather than a measure based on the reduction in value of a third party's land. Yes to 3</p> <p>4. As noted, the Contaminated Land Statutory Guidance regime offers a modernised approach to determining contribution liability. Other to 4</p> <p>As I comment in other responses, compensation disputes should go either to a devolved tribunal (which would be consistent with the approach recommended by the Commission on Justice in Wales – see recommendation 27) or to the Upper Tribunal (Lands Chamber).</p>
ICE Wales Cymru	<p>Response by reference to each numbered section.</p> <p>1) Coal is vested in the Crown. Other than coal, what materials are considered that may be in the tip but would not be owned by the tip owner? Unclear what is meant by 'account to the owner for the proceeds of sale' as the coal would not belong to the tip owner. Other to 1</p> <p>2) Compensation to whom? If this is to the tip owner, under what circumstances would it be appropriate to compensate for revocation where the responsibility for the tip is theirs as owner? If, for example, this would be to a third party local land or property owner whose asset values might increase if the tips were remediated, is there a right of betterment to these third parties? Other to 2</p> <p>3) Only for such operations that expand or require access beyond the extent of the land occupied by the tip itself. Other to 3</p>

	4) There should be a provision for tip owners or others defined in the Act to make contributions to necessary remedial works. Other to 4
Jane Iwanicki	The issues of compensation and generating revenue from remediation are far reaching and require detailed consideration. In response to (1) it is difficult to see how material removed from a coal tip (presumably having some coal content) fits with the Welsh Government's broader carbon reduction strategy (i.e. to avoid the extraction and combustion of fossil fuels). No to 1?
Dr John Perry	Yes include. Be useful to have a win-win mechanism for the Supervisory Authority and Owner. If the owner get financial benefits as well as not paying for the remedial works, I'm sure the coal tips would be quickly addressed and the SA seen as successful. Yes to all
Keith Bush	Mae'r holl argymhellion hyn yn rhai priodol er mwyn sefydlu trefn deg ac effeithiol ar gyfer sicrhau diogelwch tomennydd lle bo angen i'r perchennog neu'r awdurdod wneud gwaith ar y domen er mwyn sicrhau hynny. Yes to all
Kim Moreton	(1) Agreed, and yes sale of material could be offset against costs of remediation; some care is needed here as an aggrieved owner might be able to level the charge that fair market value was not highest market value at the point of sale. Yes to 1 (2) Yes, but only in as much as 'impediment to value' or disruption to business can be quantified and proven Yes to 2 (3) No, as multiple claimants (in a dense residential area, for example) might make the operation prohibitively expensive. No to 3 (4) Yes, and yes, working within the MaQ(T) 1969. This legislation is proven and understood within the legal and land management/investment communities. Yes to 4
Lee Jones	1) Yes, agree, should be accountable. Yes to 1 2) Only if it can be proved by the owner to have impacted him financially by preventing the use either fully or partially of the land to which the order relates. Other to 2 3) Yes, agree Yes to 3 4) Yes, agree. Yes to 4

Merthyr Tydfil	<p>(1) Yes Yes to 1</p> <p>(2) No No to 2</p> <p>(3) Yes Yes to 3</p> <p>(4) Yes Yes to 4</p>
Mineral Products Association	<p>It is noted that the reference is to the owner of the coal tip. It is not clear if this refers to the land owner or the owner of the tipped material.</p> <p>The ability to sell the material is supported, however, it is not clear if this would apply solely under emergency procedures. The removal of the tip outside the scope of emergency procedures may be a considered option, but should be subject to normal and routine planning procedures and policies, including EIA. Any effects of the proposed removal of the material should be a considered planning determination. Other</p>
Natural Resources Wales	<p>(1) We believe this is a sensible proposal, and the accounting back to the owner of “surplus” proceeds of any sale (after an agreed proportion of remediation costs have been recovered) is a key protection to ensure they maintain interest in the asset.</p> <p>Not all tips contain a saleable product, but where they do this could offset remediation costs and enable reuse of materials instead of treating as a waste. We should encourage and research the reuse, sorting, and stabilisation of spoil and help a Supervisory Authority strive to become more sustainable. Over time a Strategic long-term plan can be developed that moves to reuse of materials as opposed to business as usual moving spoil to another location to make the tip safe. This would create the market to drive this change and any new legislation should be agile to enable this potential future market driven solution and funding route. The supervisory authority should be encouraged to transform to sustainable reduced carbon footprint goals to help this happen. Yes to 1</p> <p>(2) We do not agree – All remedial works will improve the tip, and thus safety of that tip. In this case there is no such thing as un-necessary works because all activity will be done in line with the tip improvement plan. Consequently, how would a revocation happen? No to 2</p> <p>(3) This will depend on the impact on an individual</p>

	<p>It is quite normal for NRW to compensate where we gain access through a third parties land, even though we plan to leave it in an equivalent state and with equivalent security as we entered it.</p> <p>However, for disturbance of enjoyment it is not as clear cut and the definition around the scale of the impact may need to be thought through. Again, NRW uses its current powers to compensate using our land agents. However, we would need to be convinced this was a reasonable and justified claim. We would also be aware that, in many cases, those directly affected may be impacted both negatively and positively through the works we undertake</p> <p>Other to 3</p> <p>(4) Yes– Contribution orders and the classes of parties is fair, those with interest, having tipped there or otherwise contributed to the failure. We do however recognise that some private landowners may be subject to high costs in a short timeframe because of this and support should be on hand to lengthen the impact. Yes to 4</p>
Neath Port Talbot CBC	<p>It is important that, in refreshing the legislation, a priority is to simplify arrangements as far as possible and limit the opportunities for expensive and time-consuming court cases.</p> <p>However there do need to be adequate protections in place to safeguard the interests of landowners and allow them the right to appeal against decisions (with appropriate measures available for dealing with emergency situations). Other</p>
Network Rail	<p>Network Rail is particularly supportive of the proposal in (3) above but would welcome further consultation on any proposed provision, as the losses to the railway network as a result of such a disturbance are likely to be far greater than most land owners. For example, the normal level of Public Liability coverage recommended for operations that could potentially damage the railway network is £155m. It is suggested that there be a requirement for owners of a tip to obtain specific insurance or be part of a compulsory insurance scheme, possibly with some type of joint funding arrangement which can be drawn upon in the event of an incident. Also, all parties be subject to an agreed claims process which would bring clarity and save cost. t is important that, in refreshing the legislation, a priority is to simplify arrangements as far as possible and limit the opportunities for expensive and time-consuming court cases.</p> <p>Yes to 3</p>
Owen Jordan	<p>1. Yes, to recover costs Yes to 1</p>

	<p>2. Yes Yes to 2</p> <p>3. Yes - and not limited like Lands Chamber claims, which are a disgrace and probably illegal. Yes to 3</p> <p>4. No. See above for liability No to 4</p>
Paul Connolly	<p>1. If you can sell material to partly pay for the remediation that is common practice. eg Fros Y Fran land reclamation scheme. Yes to 1</p> <p>2. yes Yes to 2</p> <p>3. There are some tips used for recreation (e. biking) legally and illegally. If it's a legal biking organization for example who own the land then they can be compensated. Yes to 3</p> <p>4.</p>
Philip Thomas	<p>1. The proceeds could be deducted from the future or past costs incurred of management, only if residents have not been adversely affected by such undertaking present or recent. Yes to 1</p> <p>2. Why would it be revoked? ---</p> <p>3. Yes, including nearby residents. Yes to 3</p> <p>4. Not sure what this means, but owners should not be compensated if the land was bought from one of the many coal agencies/companies (such as National Coal Board) as it is almost certain the land would have been sold with a peppercorn fee, knowing the issues of coal tip and responsibilities (which were still present even if the law is difficult for various authorities to use). Other to 4</p>
Pontypool Park Estate Office	<p>Leading question. If the obligation already rests with WAG, to what extent is new legislation required? If, as seems likely, WAG has been failing in its obligation, arguably a new administrative procedure is required. But I question the subsequent leap to a raft of legislative changes in order to correct an administrative failure. It might be better for WAG to think first how better to do</p>

	its job, and then to work out what extra powers may be required and how to deliver them. It is easier to pass a new bad law, than it is to do an old good job; this has been WAG's problem since 1999. Other
Rhondda Cynon Taf CBC	Members were supportive of these proposals Yes to all
Stephen Smith	I have no experience of appeals and compensation mechanisms to assist on this question. However, it does seem that any such mechanism will continue to be cumbersome – as is the reported issue for the 1969 Act. No to all?
Steve Harford	1 - yes this should be an open and transparent process. Also the proceeds of any sale could be used to contribute to any works needed. Yes to 1 2 - only if costs have been incurred by the landowner Yes to 2 3 – yes Yes to 3
Steve Jones/Pembrokeshire Council	1. Yes Yes to 1 2. Yes Yes to 2 3. No - what is the world coming to? If a tip needs fixing it must be fixed, end of. I don't get compensated if a road I use gets dug up for repairs, so why should a tip 'user'? No to 3 4. Yes Yes to 4
Sue Jordan	Adjacent properties should be compensated. Other
The Law Society of England and Wales	We consider these to be appropriate elements of legislation underpinning a new coal tip safety regime. Yes to all
Thomas Glyn Watkin	I agree with (1), (2) and (3). Yes to 1, 2, 3 I have no opinion on (4).

Transport for Wales	<p>(1) We would ask for more detail in order to consider this point and its purpose. What residual value does the spoil have? Other to 1</p> <p>(2) We agree with the principle in the event that funds have been invested unnecessarily. It would require an appropriate compensation mechanism and method of calculation. Other? To 2</p> <p>(3) Definition of 'persons' in this context would be required. Would this include, for example, requirement to reimburse interested parties costs associated with facilitating access? (e.g. TfW, TfW Rail Ltd and TfW's Infrastructure Manager) Other? To 3</p> <p>(4) Does this cover grounds for contribution when a landowner is unable to fund works? Could this be covered by the new legislation? Other to 4</p>
Vikki Howells MS	I agree with each of the four provisions outlined above which will be critical to give a new safety regime 'teeth'. Yes to all
WLGA	<p>The consultation document describes the existing legal arrangements as 'cumbersome'. It is important that, in refreshing the legislation, a priority is to simplify arrangements as far as possible and limit the opportunities for expensive and time-consuming court cases. Having said that, there do need to be adequate protections in place to safeguard the interests of landowners and allow them the right to appeal against decisions (with appropriate measures available for dealing with emergency situations).</p> <p>The consultation notes that the appeal mechanism is outside its scope and will be a matter for Welsh Government. Local authorities will be happy to engage with WG to discuss these matters further. Given the complexities that can arise, WLGA agrees with the comments made about the need for any appeal to be heard by a person with appropriate experience. Other</p>
Wrexham CBC	This seems reasonable. Yes to all
Wyn Williams	<p>Other I do not have the relevant knowledge and/or expertise.</p> <p>Supplementary response:</p> <p>I have ... considered the text in the Consultation Paper at pages 172 and 173 and, specifically, the issue which is flagged but not answered (for good reason) as to whether disputes or appeals should be determined by the courts of England and Wales or by some specialist forum (such as the planning Inspectorate) or tribunal.</p>

	<p>My starting point must be that the Commission on Justice in Wales (of which I was a member) recommended that "the Welsh tribunals should be used for dispute resolution relating to future Welsh Legislation".</p> <p>Consistent with that recommendation I am of the view that disputes and appeals arising by virtue of Welsh only legislation relating to tips should be heard in a forum or tribunal which is specific to Wales. That militates against directing disputes or appeals to the existing courts of England and Wales.</p> <p>Given the diverse nature of the expertise which may be necessary to determine the sort of disputes identified in paragraphs 10.107 et seq in the Consultation Paper I do not feel I can offer any kind of definitive view upon the precise mechanisms for dispute resolution but I take the view that WG should conduct an in depth analysis of the existing Welsh tribunals (residential property and agricultural land) so as to make a judgment about whether their jurisdiction can be extended to accommodate disputes about tips. Further, if a First Tier Tribunal and/or an Appeal Tribunal for Wales is recommended by the LC and in due course created by WG, the Government should assess whether a new body should be created to fit into those structures to deal with dispute resolution relating to tips.</p>
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CONSULTATION QUESTION 30

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?

Consultation Question 30 asked respondents whether they agreed with our provisional proposal (yes/no/other). Some consultees also provided text to further explain their view. This text has been added to the table. Some respondents did not directly respond to Consultation Question 30, either because they did not use the Citizen Space platform or because they tailored their response to their particular experience.

Respondent	CQ30	Text
Of those who responded:		

Yes 38 No 3 Other 3		
Blaenau Gwent CBC	Yes	This is the only way to provide a consistent approach - qualifications for these Engineers require further discussions
Bob Leeming	Yes	
Professor Bob Lee	Other	I do agree that it is important to retain expertise in this area and to make provision for future training and qualification. I am less sure whether this fits within a statutory framework since these objectives could be pursued with the assistance of professional bodies (such as the ICE) and by supervisory authorities using appropriately qualified persons on a consultancy basis as necessary. I have reservations about obliging private owners to instruct an engineer from a limited panel, though I could see that there might be room for expert determination to resolve disputes regarding stability and associated matters as a means of dispute resolution and perhaps provisions to this regard could be included in model agreements.
Bridgend CBC	Agrees with WLGA	
Caerphilly	Yes	Agree
Chris Seddon	Yes	Yes, however, it should be incumbent on the organisation hosting the panel to ensure that: <ul style="list-style-type: none"> - Adequate weight is given to "currentness" of experience, as opposed to number of years in industry. - Provision is made for succession planning, with places on the panel afforded to trainee and junior engineers under supervision.

		- A requirement for auditing Continuing professional development is applied to all engineers on the panel.
CLA Cymru - Country Land and Business Association	Yes	This is vital.
Dwr Cymru Welsh Water	Yes	Agree. This should include appropriate awareness of issues relating to drinking water supplies and the impacts of specific contaminants and flow disruption.
Graham Hathaway	Yes	Essential
Howard Siddle	Yes	<p>Broadly agree but there are no "specialist qualifications" in the management of disused tips. A "Panel Engineer" should have not only qualifications but, above all, experience. I like the term "Competent Person" as used in previous legislation which admirably describes the job title which I can see no reason to change. I think WG should consider assigning a "Competent Person" or ensuring a "Competent Person" is assigned to be responsible for each designated/regulated/classified tip.</p> <p>This does not of course mean that the "Competent Person" does everything but they would oversee and be responsible for the activities required by the legislation. The range of activities to be covered includes:</p> <ul style="list-style-type: none"> - routine inspection and reporting - major inspection and reporting (equivalent to the 10yr inspection report adopted by TCA) - reporting of a dangerous occurrence - investigation and stability analysis - design of maintenance works

		<p>- design of a remediation scheme (including earthworks and drainage)</p> <p>- supervision of construction/maintenance works</p> <p>I think the CP might not give sufficient weight to these activities or recognise that they should be included in the role of a "Competent Person".</p>
Huw Williams	Yes	A panel of engineers would be required for the effective operation of the system of agreements with landowners, a condition of which could then be that works were designed and supervised by a panel engineer.
ICE Wales Cymru	Yes	Yes. Appointment to the panel should be by peer reviewed evidence of competence with appropriate qualifications and experience especially in respect of health, safety and/or environmental aspects of coal tips. Different grades could apply for different activities and reference could be made to the UK Register of Ground Engineering Professionals (UK RoGEP - RoGEP-guidance.pdf (ice.org.uk)). This register only relates to ground engineering and does not include specific competence in coal tips which should be assessed prior to appointment of the proposed coal tip panel. It is noteworthy that reference is made in the question to 'engineers' but other professionals have relevant skills with engineering geologists being a prime example in respect to issues of instability. Professionals with other specialisms may have competence suitable for inclusion on a 'panel of competent professionals' to provide services in respect of the issues being considered by this consultation e.g. environmental matters.
Jacobs UK Ltd (formerly Halcrow)	Yes	A panel of technical professionals with appropriate qualifications/registrations and also suitable experience is a good way to ensure consistency, accuracy/quality of assessment and ultimately safety. Ability and experience in the ground engineering aspects of colliery tip and slope/landslide investigation and assessment will be important. As detailed in the consultation document many experienced Inspectors have now retired or are nearing retirement. The knowledge held needs to be captured and new Inspectors mentored. Key professional registrations include chartered civil engineers (CEng), chartered geologists (CGeol) and also the UK Register of Group Engineering Professionals (RoGEP) administered through those professional institutions. The panel of 'engineers' needs to be inclusive of all relevant technical professionals.

Jane Iwanicki	Yes	The panel could potentially include mining engineers, health and safety advisers, geotechnical engineers, mineral surveyors and others. Other specialists may be required in connection with drainage, water quality, ecology, industrial archaeology etc - their input should be as enablers rather than presenting blocks to proposed remediation works.
Dr John Perry	Yes	<p>Agree completely. A similar arrangement to the Panel of Dam engineers is proposed and this is the level of expertise I would promote.</p> <p>There exists a Register of Ground Engineers specifically set up to ensure proper input and expertise. This is for general ground engineering so include highways, railways, buildings etc. I do not think this is by any means specialised enough for coal tips/works. In the same way dams prepared a register more specialised than 'ground engineer' so there should be the same for coal tips/works. The Coal tip/works Panel should be experienced as well as qualified. Universities should be encouraged (eg Cardiff, South Wales) to provide under and post graduate courses (or include in existing courses) as a 'feed' into the correct qualifications. There then follows a period of 'buddying' with a panel member before registration. See the Dam register process.</p>
Cllr Julie Edwards	Yes	
Keith Bush	No	Nac ydw. Mater i'r awdurdod bydd sicrhau eu bod yn cyflogi peirianwyr cymwys. Mae'r sefyllfa'n wahanol yn achos cronfeydd gan fod y peirianwyr yn cael eu penodi gan y perchnogion ac felly mae angen sicrhau bod y perchennog wedi cyflogi peiriannydd cymwys.
Kim Moreton	Yes	Vital to have mining, geotechnical and civils experts at the heart of works evaluation and design. I would be hesitant about opening up the panel to generic 'big firm' contractors or wider engineering academia as they often do not have mining skills or awareness.
Lee Jones	Yes	Engineers should also have full chartership status (e.g. member/fellow) of their associated recognised professional institutions.
Merthyr Tydfil	Yes	Yes. This would set a standard and provide consistency in decision making and tip safety.

Mineral Products Association	Other	A prescribed panel is important, but the scope would extend beyond “engineers”. This may include, geotechnical engineers, hydrologists, hydrogeologists, ecologists, archaeologists, air quality specialists (noise and dust) and transport specialists. The final landform may also require input from landscape architects.
Monmouthshire CC	Yes	
Natural Resources Wales	Yes	As a principle yes, but also that the panel of engineers have a clear code of practice and supporting forum (such as the Register of Ground Engineering Professionals (RoGEP)) to allow second opinion, referrals, peer review, agreement of best available technology/ techniques etc.
Neath Port Talbot CBC	Yes	This would be a good way of ensuring relevant expertise, with professional accreditation. As the consultation document notes, it may add to the costs but would help to ensure a consistent approach. However if the qualifications are too onerous it will limit the availability of staff and the system could grind to a halt.
Network Rail	Yes	Network Rail accepts the principle.
Ove Arup and Partners Ltd	Yes	Yes, in a similar manner to the reservoirs act.
Owen Jordan	No	The engineer panel is not needed - just get the work done
Dr Peter Brabham	Yes	Absolutely Chartered civil engineers, chartered engineering geologists and chartered hydrologists who understand soil mechanics and hydrology.
Philip Thomas	Yes	
Pontypool Park Estate Office	No	No. It would be premature to set up a new supervisory authority under a WAG that does not yet know its job, and then pay a raft of expensive experts to tell the new authority to tell WAG what it should be doing. The expertise on tip safety <i>inter alia</i> already exists in the Coal Authority.

Rhondda Cynon Taf CBC	Yes	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 is 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.
Stephen Smith	Other	Appropriate qualifications and experience would be essential for effective application of any tip safety regime. A Supervisory Authority would need technical skills, as would field and operations staff undertaking inspections and overseeing delivery. As a guide for a suitable model, I would suggest WG need to look at the contaminated land regime, where specialist skills are demonstrated through SiLC (Specialists in Land Condition); a registration scheme for qualified professionals. This type of 'register' would seem more appropriate than a Reservoirs Panel approach.
Steve Harford	Yes	
Steve Jones/Pembrokeshire Council	Yes	Yes. Essential to ensure consistency across the board.
Sue Jordan	Yes	Also need to include residents with experience of houses wrecked by coal workings.
The Law Society of England and Wales	Yes	We agree with this proposal.
Thomas Glyn Watkin	Yes	
Tom St John	Yes	
Torfaen response	Agrees with WLGA	
Transport for Wales	Yes	
Vikki Howells MS	Yes	Excellent suggestion to ensure consistency and safety.

WLGA	Yes	Yes, this would be a good way of ensuring relevant expertise, with professional accreditation, is 'on tap'. As the consultation document notes, it may add to the costs but would help to ensure a consistent approach. As with previous comments, such costs would need to be met via funding that is additional. Whilst not within the scope of the Law Commission's work, it would be important that Welsh Government provides adequate funding to develop and upskill any such panel of engineers. A subsidised training programme could perhaps be developed to ensure that the panel maintains the necessary skills.
Wrexham CBC	Yes	
Wyn Williams	Yes	This seems to me to be self-evident.

CONSULTATION QUESTION 31

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?

Consultation Question 31 asked respondents whether they agreed with our provisional proposal (yes/no/other). Some consultees also provided text to further explain their view. This text has been added to the table. Some respondents did not directly respond to Consultation Question 31, either because they did not use the Citizen Space platform or because they tailored their response to their particular experience.

Respondent	CQ31	Text
Of those who responded: Yes 32 No 5 Other 4		

Blaenau Gwent CBC	Yes	Yes, a power of direction along the lines of the Civil Contingency Act powers would give the flexibility needed to ensure that actions taken at the time of an emergency are lawful. The recent experience of local authority officers being threatened with prosecution when taking urgent actions to avert an emergency must be avoided at all costs.
Bob Leeming	Yes	
Bridgend CBC	Agrees with WLGA	
Caerphilly	Yes	
Chris Seddon	Yes	
CLA Cymru - Country Land and Business Association	Yes	If a tip is considered in imminent danger of collapse and with it a danger to life, then Coal Tip Safety measures must take precedence.
Professor David Petley	Yes	
Graham Hathaway	Yes	I thought this would be a given. I see the sensitivity though. At the end of the day it is the Senedd that becomes the sole arbiter of policy and law making. But sticking your nose in without being asked is another matter. Isn't it better for collaboration and joint working over such delicate matters. I think they should be given this authority.
Howard Siddle	Yes	This appears to me to be a pragmatic solution to the conflicts which will arise between environmental legislation and the need to mitigate risk. I am not an environmental specialist but it seems to me that the problem stems from the designation of colliery waste as contaminated.
Huw Williams	Yes	I agree that a power vested in the Ministers to declare a tip emergency to provide lawful cover for non-compliance with other regulatory regimes, subject to undertakings or conditions to seek required

		<p>consents as soon a circumstances permit, would help to ensure that action was not delayed due to hesitancy about the lawfulness of taking necessary steps to preserve life or property.</p> <p>One area where a power of direction or designation could be useful is in relation to clashes between the tip safety regime and planning legislation. A new permitted development right giving permission for emergency action specified in an emergency tip safety direction from the Ministers and subject to conditions about follow up applications could cover the situation described at paragraph 7.30 of the Consultation.</p>
ICE Wales Cymru	Yes	Yes, but only on the basis of advice from a competent professional in line with the panel referred to in Question 30. If grades such as those used by the UK RoGEP are used then such advice should be from a professional appointed to the highest level of competence.
Jacobs UK Ltd (formerly Halcrow)	Yes	This is a reasonable approach.
Jane Iwanicki	Yes	There is potential for conflicting views (i.e. from different regulatory bodies) and legislation to prevent action. Health and safety/hazard management should be an overriding consideration in high risk situations.
Dr John Perry	Yes	Are Ministers qualified to do so? There are technical and socio-political questions here. This is a difficult one as it's a question of who advises who? Does the SA advise the Ministers or do the Ministers advise the SA? I think in terms of 'directions' that's ok and this should be community based but in terms of actions they would have no idea how to stabilise a slip unless they were qualified to do so.
Cllr Julie Edwards	Yes	
Keith Bush	No	Nac ydw. Byddai hyn yn torri ar draws swyddogaeth yr awdurdod goruchwyllo. Os taw'r bwriad yw delio gyda sefyllfaoedd lle bydd yr angen i gymryd camau brys yn golygu peidio a chydymffurfio a gofynion deddfwriaeth gynllunio neu amgylcheddol, yr ateb yw eithrio gwaith brys mewn ymateb i risg sylweddol i bob neu eiddo o'r gofynion hynny, ond yn amodol (gweler isod).

Lee Jones	Yes	
Merthyr Tydfil	Yes	
Mineral Products Association	Other	There is a danger of any specific direction being politicised if the duty is given to Welsh Ministers on specific sites. Welsh Ministers could have input into an overall broad strategy, however, much will be influenced by the technical input and in consultation with the landowners and owners of the tipped material.
Monmouthshire CC	Yes	
Natural Resources Wales	Yes	Yes, - However the Minister should have regard to the advice of the Supervisory Authority, Panel Engineer and other advisors such as the Environmental body (NRW) prior to making such civil contingencies.
Neath Port Talbot CBC	Yes	A power of direction along the lines of the Civil Contingency Act powers would give the flexibility needed to ensure that actions taken at the time of an emergency are lawful.
Owen Jordan	No	It's the concerned persons right, not the politician's privilege.
Paul Connolly	No	Tip safety and engineering assessments required should not be politicised and should be left in the hands of experts.
Dr Peter Brabham	Yes	
Philip Thomas	Yes	
Pontypool Park Estate Office	Other	I thought WAG was responsible for tip safety? If so, surely the Minister must, whether through the proposed new supervisory authority or otherwise, give such directions? Have I misunderstood?
Rhondda Cynon Taf CBC	Other	Generally, Members felt that legislative provision should be made in these instances and that specialist, qualified staff and a panel of engineers should be responsible and take action in these circumstances. Members also commented that the proper authority should be making the decisions, taking action (quickly where necessary) and responding to coal tip emergencies.

Stephen Smith	Other	Whilst the objectives of EPR are well founded, I feel this should not act as a barrier to effective remediation/reclamation of a tip deemed to be in need of remedial operations for safety reasons. This applies to management of a tip as well as to the recovery of an emergency situation. Perhaps a Code of Practice is required specifically for coal spoil tips, in the same way as CL:AIRE developed a generic Definition of Waste CoP for materials arising from regeneration or engineering works.
Steve Harford	Yes	
Steve Jones/Pembrokeshire Council	No	Leave it to the professionals and don't meddle
Sue Jordan	Yes	Remove & restore - this question should not arise.
The Law Society of England and Wales	Yes	We consider that the Welsh Ministers should be provided with such a power of direction.
Thomas Glyn Watkin	Yes	
Torfaen response	Agrees with WLGA	
Transport for Wales	Yes	The supervisory authority should act as the subject matter expert (SME).
Vikki Howells MS	Yes	
WLGA	Yes	Yes, a power of direction along the lines of the Civil Contingency Act powers would give the flexibility needed to ensure that actions taken at the time of an emergency are lawful. The recent experience of local authority officers being threatened with prosecution when taking urgent actions to avert an emergency must be avoided at all costs.

Wrexham CBC	No	WCBC think the supervisory authority should be independent from Welsh Government, and that they should have sufficient knowledge and expertise to take action during a coal tip emergency. This is provided they have been given sufficient powers.
Wyn Williams	Yes	There needs to be a clear "chain of command" in the event of an emergency and the Government should sit at its head.

CONSULTATION QUESTION 32

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?

Consultation Question 32 asked respondents whether they agreed with our provisional proposal (yes/no/other). Some consultees also provided text to further explain their view. This text has been added to the table. Some respondents did not directly respond to Consultation Question 32, either because they did not use the Citizen Space platform or because they tailored their response to their particular experience.

Respondent	CQ32	Text
Of those who responded: Yes 23 No 8 Other 1		
Blaenau Gwent CBC	Yes	As above

Bob Leeming	Yes	To enable longer term work to be completed to assure safety of the tip.
Professor Bob Lee	Other	This is an important issue in my view and one that affects not only threatened tip failures but remediation and clean up in the aftermath of a failure (Question 32), where valuable time could be lost if ordinary procedures of environmental permitting are to apply. I cannot think that amendment of Regulation 40 of the Environmental Permitting (England and Wales) Regulation is appropriate. A Supervisory Authority ought not to need to invoke a defence in order to take urgent action. The problem is exacerbated if my suggestion of NRW as an enforcement authority is employed, perhaps requiring that there be some independent oversight of emergency activity. It may well be that Ministerial directions are the most appropriate solution and that these could direct the date by which necessary permits are obtained (rather than amending Regulation 40).
Bridgend CBC	Agrees with WLGA	
Caerphilly	Yes	Need also to be able to take preventative action to prevent emergency, (a need to do something). In all cases we need to consider timeframes and timelines that can affect work. (Permits (ecology, environmental, EIA's), lead in times, weather etc)
Chris Seddon	No	
CLA Cymru - Country Land and Business Association	No	
Graham Hathaway	Yes	The issues of environment and its protection must be uppermost and under constant review. We are not doing enough to combat climate change. We should increase our capacity to protect it and enhance it with improved monitoring of wild life activity and policies to improve and increase wild life

		<p>habitats. There should be an environment report on every tip setting out its characteristics, causes of poor wild life habits, usually from poor care and lack of planting. Destruction from off road motor bikes and lack of maintenance of existing flora and fauna</p> <p>It's critical to treat these tips as wild life havens and protect them along with their stability. A report for a qualified environmental consultant should be made on all tips with recommendations relating to rip safety and enhancement. There should be resources to add to the implementation and on going maintenance</p>
Howard Siddle	Yes	I have inadequate knowledge to comment from a regulatory perspective but it seems to me entirely appropriate that necessary actions following a tip failure should be able to be implemented in a timely fashion.
Huw Williams	No	I have had seen in draft the comments of the Law Society that it is not appropriate to deal with an emergency power by way of defence to an action that carries criminal penalties. I agree with this comment. Tips have associated with them a number of very unusual, if not unique, problems if they become unstable. The engineering operations that may be necessary such as removing a spreading material to dry out or to put out combustion are largely well understood. A better course would be to consider specific legislative derogations where tip safety is concerned and the supervisory authority is working in conjunction with other regulators.
ICE Wales Cymru	Yes	Emergency action should be completed by Local Resilience Forums which include the NRW, the regulator under the Environmental Permitting Regulations. As such, the regulator will know what acts are being undertaken at the time and be involved in any emergency response and associated decisions.
Jane Iwanicki	Yes	

Dr John Perry	Yes	Climate change is growing and is effecting more SAs than just the environmental agencies. The SA is more likely to know how to fix the emergency than NRW.
Cllr Julie Edwards	Yes	
Keith Bush	Yes	Ydw. Mewn sefyllfa lle bo angen cymryd camau brys er mwyn ymateb i risg sylweddol i bobl neu eiddo. Ond dylai'r eithriad fod yn un dros dro. Unwaith mae'r argyfwng wedi'i ateb, dylid gwneud cais am drwydded ac os nad yw'r gwaith argyfwng yn dderbyniol yn yr hir-dymor dylid ddod o hyd i ateb parhaol sy'n gydnaws a'r rheoliadau.
Lee Jones	Yes	Emergency waste storage areas should be sourced and directed by Welsh Government either from its land portfolio or in consultation with other landowners.
Merthyr Tydfil	Yes	
Natural Resources Wales	Yes	<p>Yes - Under paragraph 2 of regulation 40 a landowner should be responsible for any pollution event caused by contaminated water knowingly entering a water course. The landowner needs to take all reasonable steps to stop this. If they have taken no action, they are held responsible.</p> <p>This also needs to be considered carefully as this regulation is applicable to all other schedules in EPR and should therefore undergo consultation with all stakeholders. On the face of it, the regulation already provides a defence for carrying out work in an emergency with the intention of preventing harm to human health. It could be useful if it were widened to include catastrophic environmental damage, but of course this would need to be defined carefully and could be open to misuse.</p> <p>Emergency action should continue to be those activities needed to bring events under control and to make safe. If the emergency continues to be a significant risk a degree of short/medium term latitude is reasonable. Consideration should be given perhaps for a separate clause to account for the longer term "mop up" operations, to identify where liabilities fall, financial burden, limiting timescales, etc.</p>

		Any future drafting on new/amended regulation in this case needs to be mindful of what is deemed or classified as an emergency. Some of the timeframes we have recently experienced do not match how an emergency has been defined in other situations or sectors. It either needs to be made clearer or linked to other legislative examples of emergency management. The situation might be an incident or unplanned event but doesn't mean the whole scenario gets wrapped up as a long-term "emergency management". It should be balanced against the risk to human health & environment (safety reports under COMAH are good example of this in practice and wider emergency planning.
Neath Port Talbot CBC	Yes	
Owen Jordan	No	
Dr Peter Brabham	No	
Philip Thomas	Yes	To include the effect on the entire local ecosystem. Examples; Meenbog disaster in Nov 2020, as referred to earlier; flooding from related streams, combustion, road access for emergency services. See all previous responses!
Rhondda Cynon Taf CBC	Yes	<p>(In providing their response below, Members also sought clear and unequivocal advice as to whether this Act (for England and Wales) would be repealed for an All-Wales alternative)</p> <p>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.</p> <p>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</p>

		regulator with details as soon as reasonably practicable remain as per Regulation 40(1) this should ensure that the environmental impact is minimised.
Stephen Smith	Other	Refer to 31 above.
Steve Harford	No	
Steve Jones/Pembrokeshire Council	No	The defence in the regulations is sufficient.
Sue Jordan	Yes	
The Law Society of England and Wales	No	<p>We consider this a problematic proposal.</p> <p>Regulation 40 is actually a statutory defence to the EPR regulation 38 offences of operating without a permit, breaching permit conditions or failing to comply with a notice. The question (and accompanying text at paragraph 10.125 of the consultation document) reads oddly in that context i.e., as if</p> <p>regulation 40 is “allowing” emergency action, rather than providing a defence for emergency action which would otherwise be an offence. If the proposal is to specifically allow certain action by a supervisory authority, it might be better to do so by way of a specific exemption. A statutory</p> <p>defence is going to be quite an unreliable way of securing that outcome as the onus would be on the supervisory authority to prove it. It would also raise a range of other broader EPR coherence issues to solve a narrow problem with waste tips.</p> <p>The proposal is further incoherent where it states that the regulation could protect the authority “until such time as it is feasible to apply for appropriate permits” – the defence as it stands would cover this.</p>

		It would be rather risky for any prosecuting authority to prosecute for a failure to follow-up emergency action with a permit application unless the actions were reckless or deliberate
Torfaen response	Agrees with WLGA	
Transport for Wales	Yes	Longer term impacts would be covered via the widening of these powers.
Vikki Howells MS	Yes	Wales specific interventions needed? Must enable emergency but also fast track work to respond to issues. Also perhaps a need for retrospective consent where urgent actions are needed.
WLGA	Yes	Yes, as above.
Wrexham CBC	Yes	Yes this should be widened to apply to any breaches of the tip maintenance agreement or management plan if preventive emergency work is required imminently to protect public health or significant pollution of controlled waters e.g. if a section of the coal tip needs to be moved instead of maintained under the agreement/management plan requirements to avoid it collapsing/falling into a watercourse (which might be used as a potable private water supply/cause significant pollution).

CONSULTATION QUESTION 33

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

Consultation Question 33 asked respondents for their views. This text has been added to the table. Some respondents did not directly respond to Consultation Question 33, either because they did not use the Citizen Space platform or because they tailored their response to their particular experience.

Respondent	CQ33
Blaenau Gwent CBC	No further comments at this time
Bob Leeming	A clause that puts tip safety as the first consideration.
Professor Bob Lee	In answer to question 33, I am sceptical that there is much scope in changing waste definitions to accommodate coal tip stabilisations, since it does appear to me that we are dealing with unrecovered and untreated waste. Contrary to the view expressed in the Consultation Paper, it might be that a specific waste exemption for storage of coal waste in the course of or pending re-engineering (with appropriate limits of time and volume) might assist. To avoid the considerable retroactive regulatory applications that beset Tylorstown, might we accept that registered coal tips are deemed to have the necessary planning and permitting status to store coal waste under the terms of the maintenance agreements and that 'in situ' remediation work (accepting that some of the spoil might lie outside the site) to re-engineer the site, in accordance with a new WMP, is treated as a variation of existing approvals?
Bridgend CBC	Agrees with WLGA
Caerphilly	We have at least 2 major schemes (retaining structures) where colliery spoil has been used as an engineering fill. (It is similar to a 6I material). So it is possible to get material reclassified so it is not deemed a waste material.

	<p>It is not just the material you have to account for there is the habitat, ecology, third parties (commoners) consultation and agreements, new EIA legislation just brought in by WG Jan 2021 (which has delayed tip works in Fochriw for 12 months) and other wider emergency powers.</p> <p>May require further discussion?</p>
CLA Cymru - Country Land and Business Association	<p>In an emergency situation coal tip safety measures should take priority, however when not deemed an emergency then proper dialogue needs to be entered into between the relevant authorities in order to protect and mitigate any harmful activities which are likely to affect the environment. This will involve undertaking the necessary assessments in order to demonstrate compliance with all legislation and regulations appertaining to the proposed operations that are deemed to be required. This should be done and costs borne by the new Authority.</p>
Graham Hathaway	<p>This is not easy to answer. A very open ended question but clashes do exist. By virtue of open access and the spews of litter and footfall plus dumping of vehicles and household items. There are cases of animals like sheep can destroy the vegetation and weaken tip stability . There is clear evidence that deep vegetation helps tip resistance to slipping. The planting of trees and other species can help. But these need renewing and attention. Our implementation of good environmental practices are woeful. The removing of tips will be creating huge environmental damage on some tips. I can't see the solution. Using spoil for roads sounds good. A new</p> <p>M4 extension over the Gwent levels isn't such a good idea.</p>
Howard Siddle	<p>This seems a self-inflicted problem, brought about by the designation of colliery spoil as contaminated. Is there any evidence to indicate the many stabilisation works carried out after Aberfan have caused harm to the environment by pollution resulting from supposed contamination and if so, is this harm greater than that would have resulted from a tip slide or uncontrolled run-off from an unremediated tip?</p>
Huw Williams	<p>See replies above</p>
ICE Wales Cymru	<p>Tip safety (predominantly stability) and protection of life should be top priority. Any and all planned works should be completed in compliance with extant environmental legislation. Emergency works should be undertaken by Local Resilience Forums in line</p>

	with the Civil Contingencies Act 2004 with the supervisory authority being designated as a Category 1 Responder in Wales in respect of emergencies associated with disused coal tips.
Jacobs UK Ltd (formerly Halcrow)	No response or comment given.
Jane Iwanicki	The Waste Management Regulations could present a barrier to certain works. The limited availability of tipping facilities as well as gate prices also make the off site disposal of colliery spoil extremely challenging. Environmental regulators would need to collaborate with the supervisory authority - there could be instances of conflicting views from regulators and also environmental protection groups.
Dr John Perry	Getting the legislation right in the first place.
Cllr Julie Edwards	No-one will always be pleased. What's important though is that compromise is found.
Keith Bush	Nac ydwyf.
Lee Jones	<p>The Authority inspection should include focussed risk assessment (RA) to include unforeseen events such as tip slides. This RA would then form part of an emergency response plan and would include the designated reception areas for waste arisings.</p> <p>Analysis of the composition of the waste during tip inspection will reveal its polluting potential. It maybe that some wastes could be classed as chemically inert. This could determine the suitability for which temporary holding sites could be used based on pollution risk. Emergency holding sites could even be brownfield sites under Welsh Government/ LA ownership or waste sites e.g. landfill sites that already receive waste and may already have the necessary permit (or require minor changes).</p>
Merthyr Tydfil	No

Mineral Products Association	<p>It is important that the legislation remains wholly separate to existing legislation dealing with extractive waste under the Minerals and Quarries Regulations and the Mining Waste Directive. It is appropriate that the new legislation relates solely to Coal Mining Waste Facilities.</p> <p>The location of such facilities may ultimately determine which legislation and planning policies are applicable. For example, different criteria may apply to any proposal to remove material from a coal mining waste facility within a designated site, whether local, national or international designation, and the exceptional circumstance tests may be applicable. Further, due considerations may need to be given to the EIA regulations.</p>
Natural Resources Wales	<p>There should be no presumption that one form of legislation trumps another. For example, an Act created in the interests of protecting public safety may be considered superior to laws of environmental protection. There may be circumstances where human receptors are nil and the environmental receptors are high. Where the proposed legislation results in a clash, there should be clear process that a considered and evidenced decision to follow the most appropriate legislation should provide mitigation to any offences which may be caused under other legislation – and a reassurance that a person cannot be prosecuted for doing the right thing when faced with an impossible choice.</p> <p>The Supervisory Authority should also be enabled to invest in Research, Development and Innovation along with delivery. This would promote a move from short term current horizon of business as usual (such as transportation of unstable tips) to the next level. This would see layers of investment in innovation to enable transformation to the final horizon of a sustainable society. Accordingly investment in stabilisation, reuse, consideration of specific community cohorts (i.e. S Wales Coalfield, or Rhondda Fawr) for shared and contested values, with regular scanning of particular or higher risk PSB's for signposting of major work where such reuse could help provide multiple benefits for communities or new habitat.</p>
Owen Jordan	Make a commitment to remove all dumped carbon from the environment. Start now, complete in a decade. Job done.
Paul Connolly	The potential for immediate loss of life should override environmental legislation including the need for emergency works.
Dr Peter Brabham	Tip safety always comes first and overrides environmental legislation (biology, fauna etc.)

Philip Thomas	<p>Yes, I see issues with our net zero carbon legislation being superlative to the needs, wants and rights of residents and the wider local community. As per all previous responses, including Wind Turbine energy, foundations and trackway causing issues to the watercourse below, through underground channels and other means.</p> <p>Would it be right to flood local residents periodically in the interest of the nation's carbon lowering ambitions? Absolutely not. Besides - if one saw how many skips of rubbish were destined for landfill following the floods for 2020, one would easily conclude the total cost of waste and replacement of these belongings to the environment would very easily have a greater lifecycle impact.</p>
Pontypool Park Estate Office	<p>Surely the conflicts are multiple and general, not just between environment and safety?</p>
Rhondda Cynon Taf CBC	<p>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.</p> <p>Alternatively, this aspect is covered separately under new legislative powers.</p> <p>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.</p> <p>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.</p> <p>Small scale works – (identified either by cost or scope) - no/minimal requirements</p>

	<p>Minor maintenance works - (identified either by cost or scope) – no/minimal requirements or ecological watching brief</p> <p>Major Maintenance - (identified either by cost or scope) - ecological watching brief or permitting.</p> <p>Major maintenance / Reclamation - - (identified either by cost or scope) – Required Permits</p> <p>Maybe these stages could require sign off (or not) by the overseeing body?</p> <p>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.</p> <p>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.</p>
Stephen Smith	Refer to 31 above.
Steve Harford	Ultimately, tip safety is crucial. the Welsh Government should have responsibility to cover any such clashes.
Steve Jones/Pembrokeshire Council	<p>There needs to be a set hierarchy of priorities.</p> <ol style="list-style-type: none"> 1. Saving life 2. Preventing harm to humans (displacement from homes, disruption of rail / road links etc) 3. Preventing harm to the environment
Sue Jordan	Depends on the tip. removing & restoring would be unlikely to cause safety issues.
Torfaen response	Agrees with WLGA

Transport for Wales	Collaboration with other public bodies with environmental interest is required. Weighing up benefits of remediation against the environmental cost of that remediation.
Vikki Howells MS	Production of easily accessible and understandable best practice.
WLGA	No further comments at this stage, but happy to engage in future discussions on this matter.
Wyn Williams	I do not have the relevant expertise.

CONSULTATION QUESTION 34

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?

Consultation Question 34 asked respondents for their views. This text has been added to the table. Some respondents did not directly respond to Consultation Question 34, either because they did not use the Citizen Space platform or because they tailored their response to their particular experience.

Respondent	CQ34	Text
Of those who responded: Yes 30 No 4 Other 9		
Blaenau Gwent CBC	Yes	In light of climate change impacts there is a need for more radical action than remediation. This should extend to consideration of reclamation of tips, with the potential to bring sites back into beneficial use. Given constraints over development in flood plain areas the ability to make some significant, reclaimed sites could make an important contribution to climate resilience and green recovery efforts more generally.
Bob Leeming	Yes	Tip reclamation should always be considered when carrying out any remedial work. The ideal remedial work will be to completely remove the tip, thereby eliminating any future risk from the tip.
Professor Bob Lee	Other	I do think that it would be ideal to bring imaginative solutions to bear rather than to accept that coal tips are simply hazards that we must manage. A great deal of good might come from reclamation in

		<p>harmony with relevant Welsh legislation on sustainability. I do wonder whether gasification of coal waste with carbon capture could be a basis for the production of blue hydrogen. I have little idea whether technically coal waste would be a suitable feedstock, but this type of solution may have the capacity to turn a liability into an asset.</p>
Bridgend CBC	Agrees with WLGA	
Cadw	Other Treated as relevant comment	<p>We agree with the Coal Authority's opinion that, 'in most cases, removal of the tips is not considered to be a viable option', and note the potential harmful impact that lesser interventions such as minor and major civil engineering schemes and re-profiling can have on historic coal tips' heritage values. We ask that Cadw is given similar status in the proposed assessment process and is consulted on proposals that affect particularly historically significant and / or well-preserved coal tips.</p>
Caerphilly	Yes	<p>Yes, Scenarios can vary from location to location, so flexibility is important. Looking at various models you almost need to take the best bits from each one!! Coal washing is also considered as part of reclamation.</p> <p>Again important factors to consider are location, ecology (as there are arguments the tip surface now supports new ecological environments (Fochriw)), Consultations (public opinions), EIA's, funding. Also noted that remediation techniques have improved considerably which gives better after use options of tips compared to 20 years ago.</p>
CLA Cymru - Country Land and Business Association	Yes	<p>If there is any economical opportunity to rework or reprofile a tip that is considered dangerous, then this should be welcomed. This sort of work was undertaken when the Welsh Development Agency (WDA) undertook this task. The sort of works included, tip washing to recover the coal or reprofiling.</p> <p>However since the demise of the WDA and in more recent times coal is considered a dirty high carbon fuel which is detrimental to the current climate change agenda, it is very questionable whether it would be considered environmentally sustainable to look to using the coal and would there be a market</p>

		for it, to make the process economically viable?
Graham Hathaway	Yes	I can't see a for fit all model of tip reclamation with such diverse coal tips of different compositions, levels, sizes and locations.
Huw Williams	No	<p>Where a tip is to be redeveloped as part of a wider scheme by the public sector then the powers in Part VI of the Planning Act 1990 are sufficient.</p> <p>However, there should be a specific power to acquire a tip and any associated rights (e.g. for spreading and storage of material) compulsorily to secure its safety and management.</p> <p>While it is unlikely that a hazardous tip will have a positive value given the disappearance of the market for reclaimed coal, ideally a procedure equivalent to the nil valuation provision in listed building legislation should be considered where a landowner's neglect has resulted in an unsafe situation. However, I recognise that land compensation is currently a reserved matter.</p>
ICE Wales Cymru	Other	The new tip safety legislation should support risk assessments (health, safety and environmental risks) which would inform the need for coal tip reclamation, remediation and stabilisation schemes. The business case for any such schemes should take full account of relevant legislation such as the Wellbeing of Future Generations (Wales) Act 2015 and the Environment (Wales) Act 2016 and target social outcomes that would be of benefit to local communities.
Jacobs UK Ltd (formerly Halcrow)	<p>Other</p> <p>No comment, but see the note below.</p>	To date, stabilisation/reclamation work has been undertaken on many tips in Wales. The proposed risk based assessment will identify sites that it would be appropriate to undertake engineering works on, as was the case for the assessment of liabilities of tips on the Forestry Commission Wales estate in c1996. There are environmental benefit and industrial heritage considerations in respect of tips in Wales. Engineering works to tips should only be undertaken where there is an assessed need.

Jane Iwanicki	Yes	<p>This would have to be on a voluntary basis or driven by the regulator/Welsh Government with financial support unless a compensation regime was available to owners. Depending upon the reclamation scheme, owners and communities could be left with long term land management obligations or restrictions on land use.</p> <p>Is there potential to consider net biodiversity gain or carbon offsetting as a means to assist in financing reclamation projects. This is an emerging market and there is much to consider.</p>
Dr John Perry	Yes	Model should vary with the requirement
Cllr Julie Edwards	Yes	I can't comment as I'm not familiar enough with any model
Keith Bush	No	<p>Nac ydw. Nid yw'n glir beth a olygir gan "darpariaeth ar gyfer ystyried adfer tomennydd". Mae gan awdurdodau lleol a Gweinidogion Cymru rymoedd helaeth I ariannu prosiectau o adfer tomennydd - sef yr unig ffordd, yn y pen draw, o ddatrys problem rhai o'r tomennydd problemus. Yn sicr, ddylai swyddogaeth yr awdurdod goruchwyllo fod yn ddigon eang i'w alluogi i argymhell adfer tomen penodol yn hytrach na gwneud gwaith cynnal a chadw arno. Ond does dim rheswm amlwg dros greu swyddogaethau cyfreithiol newydd er mwyn cario allan gwaith felly. Mater o flaenoriaethu adnoddau ariannol, gan bwy bynnag sy'n gyfrifol am reoli'r adnoddau hynny, yn hytrach nag un cyfreithiol yw sefydlu a gweithredu prosiectau adfer.</p>
Kim Moreton	No	
Lee Jones	Yes	<p>Whilst the WDA success of bringing back economic potential of reclaimed land this was in the main the primary driver. However, future models for reclamation should not only include economic viability but include and place more emphasis on carbon capture and not only the protection of biodiversity but its promotion. Greater emphasis should also be placed on renewable energy as part of future reclamations.</p>

		<p>Co ownership of reclaimed land would be a sustainable route for future use and management for the benefit of the local environment and community.</p> <p>Joint ventures for management are needed between the environmental regulators (NRW/LA's) along with community group involvement.</p>
Merthyr Tydfil	Yes	
Mineral Products Association	Yes	Yes. This will be wholly dependent upon the location of the facility and the ability to integrate the reclamation in to existing land-use planning requirements.
Monmouthshire CC	Yes	
Natural Resources Wales	Yes	<p>Yes - The ultimate aim of tip safety is to repurpose the land so it can be used for the benefit of the people of Wales. This may require removal of the tip or engineering the land so that it can be re-used. If the material on a tip can be repurposed and provide economic benefits this should be considered.</p> <p>The powers under section 16 of the Environment (Wales) Act 2016 to make land management agreements could be worth considering supporting an owner in repurposing the site for environmental gain. If the repurposing for other uses other legislation would be needed and perhaps this is something that should be further explored to consider the options.</p> <p>We are currently dealing with climate and biodiversity emergencies and we should be looking at ways we can use our land to address these. Planting woodland or using the land for renewable energy could be the end goal. This is not just about how to make a spoil tip safe; we should be striving to reuse the land for the benefit of the people of Wales. Tip reclamation should be considered as a way of supporting The Well Being of Future Generations act and it is an opportunity to put into practice the "Well Being Goals" by reclaiming the land and using it in a sustainable way and fight climate change. Forestry Commission Wales in 2010 looked at repurposing colliery sites as possible community woodland sites where the land was close to communities.</p>

		There should be a presumption that a disused tip should be managed to continually reduce the risk it poses and ultimately to reclaim the land for a sustainable purpose, where that purpose may even be limited to visual amenity.
Neath Port Talbot CBC	Yes	In light of climate change impacts there is a need for more radical action than remediation. This should extend to consideration of reclamation of tips, with the potential to bring sites back into beneficial use. Given constraints over development in flood plain areas the ability to make some significant, reclaimed sites could make an important contribution to climate resilience and green recovery efforts more generally.
Network Rail	Treated as Yes	Network Rail considers it likely that any remedial works to a tip will have a component of reclamation and hence it would be expedient to facilitate through this legislation.
Owen Jordan	Yes	See above
Paul Connolly	Yes	I would assume they are separate entities as once a tip has been reclaimed it should have been engineered to achieve a sufficient level of safety/stability precluding it from requiring safety inspection.
Dr Peter Brabham	Yes	No but if a tip is unsafe and needs remediation then total reclamation is one option along with re-profiling (shallower slopes) and new drainage pathways. It's on a case by case basis.
Philip Thomas	Yes	Absolutely, see previous answers. Compulsory purchase of land Community benefit Recreational activity area Biodiversity

		<p>No house building</p> <p>No major building projects</p> <p>Nature and respect.</p> <p>Adequate compensation for those impacted.</p>
Plaid Cymru Group, Neath Port Talbot	Other Treated as relevant comment	<p>One point which is not mentioned in the report is that the former Welsh Development Agency (WDA) had an excellent land reclamation function which was disbanded and not replaced. This has reduced the capacity for planned pro-active work on tip safety which will need to be addressed again.</p> <p>Ni chyfeiriwyd at un pwynt yn yr adroddiad, diddymwyd adran adennilll tir ardderchog Awdurdod Datblygu Cymru (WDA) gan leihau'r capasiti l gynllunio a gweithredu gwaith ymlaen llaw. Mae hynny hefyd yn tanlinellu'r angen i'r fframwaith newydd gael digon o adnoddau ac am eglurdeb fel argymhellir yn adroddiad Comisiwn y gyfraith.</p>
Pontypool Park Estate Office	Other	Surely each case on its own merits?
Rhondda Cynon Taf CBC	Yes	<p>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.</p> <p>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.</p> <p>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</p>

		<p><i>ecological habitats in their own right (which Member hoped would continue to be acknowledged by the Ecologists)</i></p> <p>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.</p> <p>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.</p> <p>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”.</p>
Richard Arnold		[See CQ8]
RML	Other Treated as relevant comment	<p>We no longer offer engineering services but are closely involved in coordinating and supervising the environmental aspects of a wide range of construction projects. Our comments below reflect our focus on this aspect of construction in general and our ‘historical’ involvement in mineral waste rehabilitation in Wales.</p> <p>Since the production of our reports, referred to above, we have continued to work on environmental issues that face the construction industry especially on compliance with regulations aimed at protecting and improving the environment. Regrettably, we still find that civil engineering contractors require close monitoring in this respect and Environmental Clerks of the Works have become important members of the supervising team on site. Construction Environmental Management Plans now play an important role in construction projects. ‘Working with nature - a low-cost approach to land reclamation’, another of our reports, this time for the Welsh Development Agency, has long been the</p>

		<p>basis of our approach to site evaluation, design, construction, and aftercare. Vegetation is recognised by many as an element that now makes a positive contribution to the success of civil engineering projects. Public perception of civil engineering was far from positive in the 1970s and 1980s.</p> <p>Vegetation is the key element in enhancing biodiversity following construction work. Public access is important too so that communities can draw benefit from this diversity and new green spaces in general. We note that your report refers to many early reclaimed sites in Wales that offered only environmental enhancement. Many reclamation schemes reflected this, Brynbach Pond, close to the Heads of the Valleys Road, and Corris slate mine, near Machynlleth, are striking examples. Management of both the vegetation and access by the public are important aspects of any longterm plans. Planning and operating on a long-term basis are essential if design intent and objectives are to be achieved. Our diagram of the relationship between biodiversity and land management costs explains our approach.</p> <p>It is some years since we were involved in a reclamation scheme although we are currently working on a rewilding project to reclaim a former sand and gravel quarry in the Wrexham area. Our most recent reclamation projects, which were completed about 20 years ago, involved abandoned lead mines where the surface waste deposits were serious sources of heavy metal pollution. Vegetation played a key role in these projects by successfully stabilising surfaces against rainfall erosion. At Minera lead mine, near Wrexham, we used coal mine waste as a capping material over the lead waste before sowing grass seed on the prepared surface. The reclamation of Cyfarthfa-Georgetown tips and the colliery site at Merthyr Vale were our last schemes in South Wales.</p>
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		<p>Vegetation, not just grass, can play an important part in improving the situations on the coal tips which</p> <p>are of current concern</p>
Stephen Smith	Other	<p>Section 5 above provides an overview of reclamation delivered under the WDA Act 1975. I would support a more detailed analysis of the benefits of reclamation as a contributory mechanism for ensuring tips remain safe. In my view, this would work alongside enhanced guidance (and perhaps enhanced powers) to the 1969 Act and should be considered prior to any commitments being given to new legislation.</p> <p>5. Reclamation</p>

		<ul style="list-style-type: none"> a. As referenced above, tip remediation arising from requirements imposed by legislation and work under the public sector land reclamation programme has been integral to the improvements in tip safety over the past 50 years. Chapter 3 of the Paper makes reference to this programme in the context of ownership, but, other than a brief narrative at 2.69 to 2.73, does not expand on the objectives or outcomes in terms of public safety. b. Perhaps the detail of the programme was not discussed in sufficient detail whilst the Paper was being prepared, so a little more background may clarify the context. Firstly, I can advise that the land reclamation programme had stability and public safety as a key objective and funding was allocated to address many safety issues – either directly or as a by product of securing a beneficial new use. c. Delivery of the programme was based on a schedule of ‘approved projects’ with (nominally) 5 years of work identified. This ‘rolling programme’ allowed projects to be prioritised and deferred if delivery problems arose. For instance, in the same way as local authorities report struggles with implementing duties under the 1969 Act, delivery of the reclamation programme was also delayed or constrained by land ownership / acquisition problems. d. At 3.27, there is reference to the number of tips benefitting from the programme being relatively low. Has any assessment been made of how many – both in absolute numbers and as a proportion of high risk tips that were present in Wales? e. The tip sites owned by local authorities as a result of the reclamation programme will be largely reclaimed but not sold on, likely due to there being no economic use for the land. As correctly identified though, some tips remain unreclaimed due to the withdrawal of funding [NB the Tylorstown Tip was an example of this]. <p>The WDA had always managed the programme with a complement of technical staff providing advice to LAs and undertaking detailed reviews of proposed works. In my view, such a model remains critical for any future mechanism for tip safety either through a supervisory body with enhanced legislation or by adopting a reclamation approach.</p>
Steve Harford	Yes	

Steve Jones/Pembrokeshire Council	Yes	I have no real experience in this area of work to be able to comment further
Sue Jordan	Yes	Complete restoration. Return land to common land and open to leisure facilities.
The Law Society of England and Wales	Treat as Yes	We agree with this proposal and consider that the establishment of Corporate Joint Committee set up under the Local Government and Elections (Wales) Act 2021 would be an appropriate and practical model.
Thomas Glyn Watkin	Yes	There have certainly been very successful businesses founded on recovering material from the coal tips of south Wales. One thinks of the late Larry Ryan's Ryan Holdings company which was very successful in the second half of the twentieth century.
Torfaen response	Agrees with WLGA	
Transport for Wales	Other	Reclamation needs to be beneficial and not for the benefit of extraction for future usage. Parameters to include lower risk sites.
Vikki Howells MS	Yes	No preference.
WLGA	Yes	Yes. As the consultation document suggests, in light of climate change impacts there is a need for more radical action than remediation. This should extend to consideration of reclamation of tips, with the potential to bring sites back into beneficial use. Given constraints over development in flood plain areas the ability to make some significant, reclaimed sites could make an important contribution to climate resilience and green recovery efforts more generally.

Wrexham CBC	No	The legislation should be focused on tip safety first and foremost (stability) and also mitigating risks from pollution, flooding and combustion etc.
Wyn Williams	Yes	I agree in principle with the idea that tip safety legislation should be combined with provision for the consideration of tip reclamation but I do not have the necessary expertise to favour a particular model.

ADDITIONAL COMMENTS

Respondent	Text
ALGAO	<p>The Association of Local Government Archaeological Officers (ALGAO) is the UK-wide organisation that represents all archaeologists working for local authorities and national parks. Member local authorities are represented by the senior professional archaeologist (employed directly within the authority or in some cases by independent joint services) whose primary responsibility is to advise that authority, principally through the planning process, on conservation and management of the archaeological resource within the boundaries of that authority, and who has been nominated by that authority to represent it.</p> <p>The Association has four key objectives:</p> <ul style="list-style-type: none"> • To provide a strong voice for local authority historic environment services and promote these within local government to strengthen and develop their role within local government in delivering local, regional and national government policy. • To ensure that local government historic environment services are included within policy (national, regional and local) for culture and education. • To ensure that policy aims to improve the sustainable management of the historic environment. • To promote development of high standards in the historic environment profession. <p>ALGAO:Cymru is the national ALGAO body for Wales. The membership of ALGAO:Cymru comprises archaeologists who work in a curatorial capacity within the four Welsh Archaeological Trusts as well as archaeologists working for local authorities and Wales' three national parks.</p> <p>Members provide archaeological advice on activities carried out through the planning process, environmental permitting regimes, statutory provisions and other regulatory processes, including land management schemes. The proposed framework for managing disused coal tips will therefore interact directly with members' heritage management work.</p> <p>Consultation Response</p>

	<p>ALGAO:Cymru broadly welcomes the proposals to establish an up-to-date statutory framework for proactive management of disused coal tips, which, although it is not the main aim, will support conservation of this hugely important, but sometimes unloved heritage.</p> <p>Wales's industrial history is internationally renowned and of pivotal importance in the country's development. The transformative 18th and 19th century coal industry shaped the environment and culture of south Wales, its structures, settlements, infrastructure and landscapes standing as a permanent testament to human exploitation of natural resources and the Industrial Revolution. The impressive tips are almost synonymous with this heritage, retaining a defining presence despite historic and recent forestry plantation. In addition, the industry has left an intangible legacy of living communities, communal memory and is now valued as a tourism resource.</p> <p>The importance of the archaeology of the south Wales coal industry is attested internationally in the inscription of Blaenavon Industrial Landscape as a World Heritage Site. It is recognised at a national level in the designation of three Registered Landscapes of Outstanding or Special Historic Interest, either primarily or solely due to the coal industry (HLW (Mgl) 2 - Merthyr Tydfil; HLW (Mgl) 5 - The Rhondda; HLW (G) 1 – Blaenavon), with two further Registered Historic Landscapes having connections to the industry as part of the transport and shipping network (HLW (D) 9 – Taf and Tywi Estuary; HLW (D) 3 – Milford Haven Waterway).</p> <p>Whilst no coal tips are currently afforded individual statutory protection, they form part of statutorily designated sites and their settings (e.g. Scheduled Monument GM611 Cwm Glo Pit and Ironstone Tip). Hundreds of tips are recorded on the regional Historic Environment Records (HERs) and National Monuments Record of Wales (NMRW), both individually and as part of mine complexes, and are primarily protected through the planning process.</p> <p>The majority of the proposals considered by the consultation questions appear positive, but largely fall outside our area of expertise and as such we do not feel able to comment in detail. We do have some observations regarding the register of sites, potential conflict with other legislation, and broader historic environment considerations. We also consider that there are opportunities for historic environment staff to support delivery of the new framework, particularly through liaison with the Historic Environment Record at the Welsh Archaeological Trusts.</p>
Bob Leeming	No, other than to complement the team in a very thorough job.

Bridgend CBC	Agrees with WLGA
Buglife	<p>Over the last 20 years, the important biodiversity value of old coal tips in South Wales (and elsewhere in Wales and across the UK) has become increasingly recognised. Recent invertebrate surveys conducted across a number of sites in the South Wales Coalfield has highlighted the regional, national and international importance of these sites for biodiversity, particularly with regard to invertebrates.</p> <p>Surveys by the Colliery Spoil Biodiversity Initiative and National Museum Wales have discovered that old coal tips support some of Wales' (and the UK's) rarest and most threatened invertebrates. At least 1000 invertebrate species have been recorded on colliery spoil sites (including old tips) in South Wales in recent years, of which at least 200 (or 20%) are species of 'conservation importance' at a national level. This includes at least 12 species listed under Section 7 of the Environment (Wales) Act 2016 as 'species of principal importance for the conservation on biological diversity in Wales', 11 Nationally Rare species, and 29 Nationally Scarce species. Incredibly, these old tips also support two species recently discovered 'new to science' – THESE SPECIES ARE</p> <p>NOT KNOWN ANYWHERE ELSE IN THE WORLD, emphasising the international importance of some old coal tips. The biodiversity significance of these sites is further heightened when one considers wider biodiversity beyond invertebrates including amphibians, reptiles, birds, plants, fungi and lichens.</p> <p>It is of paramount importance that the local, regional, national and international biodiversity significance of old coal tips is recognised and properly considered before any 'management' works are implemented on old coal tips. TO ENSURE THIS, WE STRONGLY RECOMMEND THAT BIODIVERSITY IS INCLUDED WITHIN TIP MANAGEMENT PLANS.</p> <p>During a time of unprecedented biodiversity loss, and during the mists of a NATURE EMERGENCY (as announced by the Welsh Government in 2021), it is important that the regulation of coal tip safety in Wales does not contribute to further biodiversity losses and is avoided wherever possible. Where 'management' such as remediation is deemed essential, this should be done 'sympathetically' to minimise adverse impacts on biodiversity on old coal tips, including habitats and species listed under Section 7 of the Environment (Wales) Act 2016. Dialogue is needed between engineers, geologists, ecologists and other relevant stakeholders to ensure that the best possible outcomes are achieved for biodiversity, as well as public safety and other considerations. It is recommended that ecological experts within Local Authorities, Natural Resources Wales, Non-Government Organisations (e.g.</p>

	<p>environmental charities such as Buglife, Plantlife, Bumblebee Conservation Trust, Amphibian and Reptile Conservation, Wildlife Trusts) and any other relevant stakeholders (e.g. individual experts) are involved in the decision making process and 'management' plans designed using their input. An Ecological Stakeholder Task Force may be one useful means of ensuring that the biodiversity importance of old coal tips is given due consideration.</p> <p>It is also important to note that each coal tip is unique in shape, size, substrate composition, topography, elevation, aspect, hydrology, how it was created, and when it was created. As such, 'management' should be considered on a site-by-site basis and depends on an understanding of the individual tip; there is no "one size fits all" solution. It is recommended that reclamation of old coal tips is avoided wherever possible due to the negative impacts this will have on habitats and species considered a priority for conservation in Wales under Section 7 of the Environment (Wales) Act 2016. Reclamation should be seen as a 'last resort' solution and if deemed essential, reclamation should consider the ecological needs of the species currently present on site in order to maximise the biodiversity output of this reclamation. It is important that reclamation and remediation schemes avoid the use of fertile topsoil (as this is not conducive with a successful biodiversity reclamation), promotes natural succession as much as possible, and aims to replicate the varied topographical, hydrological and chemical complexity of old coal tips that are responsible for their high biodiversity value. This will ensure as great a variety of micro- and macro-habitat features are incorporated into design plans in an effort to 'replicate' the diverse, open mosaic of habitats found on old coal tips. Tree planting should be avoided wherever possible.</p> <p>Evidence clearly demonstrates the important role that Coal Tips play in supporting biodiversity. They also have cultural and historical significance, and can be used as areas to walk and experience nature. These factors align with several goals of the Well-being of Future Generations (Wales) Act 2015 including a 'RESILIENT WALES', a 'HEALTHIER WALES' and a 'WALES OF VIBRANT CULTURE...'</p> <p>Invertebrate conservation value of Colliery Spoil habitats in South Wales</p> <p>https://8372dda3-3bb8-46f5-bf93-fc46ad68ff06.filesusr.com/ugd/dccabd_bb278c9d887f433fb0af9e6dd285df8e.pdf</p>
Cadw	<p>Thank you for inviting our comments on the Law Commission's consultation paper on Regulating Coal Tip Safety in Wales (LC 255).</p> <p>Cadw is Welsh Government's historic environment service. We advise Welsh Ministers on policy and casework relating to the historic environment in Wales. The majority of your consultation questions are outside of Cadw's subject expertise and</p>

	<p>competence to answer. However, we think that it is important that the archaeological, historical and cultural significance of these coal tips are recognised and we are pleased to provide a broader consultation response for your consideration.</p> <p>Cadw understands that the historic remains of industrialised coal mining, particularly coal tips, can present hazards to communities that require resolution, and we acknowledge that reducing the risk to life and property are priorities. Equally, we are keen to work with partners to ensure that our significant industrial heritage is preserved for the enjoyment and education of this and future generations. Coal mining left an extensive legacy across much of Wales, which many communities are rightly proud of. As many of the colliery surface buildings that represented this once key industry in Wales, especially the iconic winding gear, have been demolished, it is often the coal tips that are the sole remaining physical manifestation and therefore the most visible, above-ground reminder of this aspect of our industrial coal mining past. It is important that we help preserve that legacy and history in those communities for this and future generations, especially as the Well-being of Future Generations (Wales) Act 2015 includes the well-being goal of ‘a Wales of vibrant culture and thriving Welsh language.’</p> <p>Coal tips are under-designated in Wales, with few examples being legally protected as scheduled monuments of national importance for their historic environment value. The under-designation does not detract from their overall cultural heritage value and national importance, and the surviving coal tips have undoubted significance as key elements of the historic environment that help current and future generations understand the Welsh experience during the Industrial Revolution and its decline during the twentieth century. To many, coal mines and their tips are synonymous with Welsh identity, and remain important to successive generations who live in the communities that created them. Those coal tips within the Blaenavon Industrial Landscape World Heritage Site have been inscribed by UNESCO for their international importance. Many historic coal tips are recorded as historic environment features on the Historic Environment Records maintained by the Welsh Archaeological Trusts, where their presence is treated as a material consideration in the planning process.</p> <p>Many historic coal tips have been removed or altered as part of past land reclamation and remediation schemes. Remediation and reclamation, especially landform remodelling, alters the physical appearance and the character of a coal tip, thereby affecting the heritage values that we derive from it. The future proposals considered by the proposed regulatory body also have the potential to adversely impact upon this important part of the Welsh historic environment.</p> <p>The historic environment value of coal tips and how this should be considered amongst other environmental considerations is not directly addressed in your proposals. Cadw recommends that consideration of the heritage values of the coal tips and the potential impact of proposed works on these historic coal tips are incorporated into your proposed assessment process.</p>
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	<p>Cadw is a statutory consultee in the planning and environmental impact assessment processes. Some historic coal tips have high heritage value, and work that disturbs the profile, surface and/or footprint of such a coal tip can be problematic from an historic environment policy perspective. We agree with the Coal Authority's opinion that, 'in most cases, removal of the tips is not considered to be a viable option', and note the potential harmful impact that lesser interventions such as minor and major civil engineering schemes and re-profiling can have on historic coal tips' heritage values. We ask that Cadw is given similar status in the proposed assessment process and is consulted on proposals that affect particularly historically significant and / or well-preserved coal tips.</p> <p>In terms of longer term coal tip management, Cadw funds the Welsh Archaeological Trusts to provide a heritage management advice service across Wales. We recommend that the Welsh Archaeological Trusts are consulted upon individual proposals that affect coal tips, so that they have an opportunity to offer historic environment management advice, particularly with regard to physical civil engineering interventions and to habitat development proposals. We are supportive of your proposals to establish a central tip register, and to adopt a uniform approach to recording information. We recommend that this includes relevant historic environment data such as significance, designation, vulnerability etc.</p> <p>We are supportive of the more holistic proposed approach for a coal tip regulatory framework, and recommend strongly that as well as recognising the historic environment value of coal tips, this process also includes an opportunity to undertake archaeological recording and community engagement prior to unavoidable works commencing.</p> <p>We are aware that other types of historic metal mining and mineral quarrying produced significant tangible remains, including tips of waste that may now be regarded as hazardous by local communities. We are in favour of your proposed approach being extended to apply to these other forms of waste from other types of historic mine.</p>
CLA Cymru - Country Land and Business Association	<p>1. We strongly feel that any inspections and associated works should be paid for by the Authority. This in turn will lead to a much swifter and easier process in order to affect any works that are identified to be done. It will also assist greatly in delivering the required outcome which is to ensure the long term safety of any tip.</p> <p>2. Some tips have scheduled status, in so far they are listed etc. You don't mention this aspect in the consultation.</p>

	<p>3. It must be made clear that tip owners cannot be made responsible where unauthorised access occurs which then leads to damage to the surface and the possibility of water ingress. This is especially the case where illegal motorcycling occurs, where damage to the surface results and with it tip safety due to water ingress.</p> <p>4. There needs to be an opportunity to remove tips from the register if they are re-worked or removed.</p> <p>5. If a said tip was re-engineered or re-profiled as the original tip was deemed to be unsafe, does the Landowner now take on the liability for the re-profiled tip or does the new Authority?</p>
Clare Dinham	<p>Coal spoil sites can provide havens for our wildlife in Wales and are especially important to invertebrates and lower plants. These habitats also support amphibians, reptiles, birds, a diversity of flora and more. We are currently living through a nature and climate emergency as declared by Welsh Government. It is therefore crucial in my opinion that biodiversity is properly taken into account when considering appropriate management framework for these sites.</p>
Coal Action Network	<p>There seems to be a limited role for impacted communities within the paper, with just one paragraph devoted to a fair balance between the interests of local communities and land owners rights to freedom from undue interference. We strongly propose that impacted communities should have a central role in agreeing any measures to secure or deal with coal tips in their areas. An independent consultation should be operated in each case, with mandatory feedback requirements to impacted communities.</p>
Colliery Spoil Biodiversity Initiative	<p>You are receiving this letter in regard to the Law Commission's consultation paper on 'Regulating Coal Tips Safety in Wales' published on 9th June 2021. We would like to take this opportunity to formally respond to the consultation and share our views on this topic.</p> <p>Coal tips form an important and unique part of the social, cultural, historic, visual, geological and biological landscape of Wales. Over the past several decades, many of Wales' coal tips have been lost through reclamation or remediation schemes, development, coal recovery and new opencast coal mining. Those that remain clearly display characteristics which are of significance culturally, visually, historically, socially, ecologically and geologically. The consultation paper, in its current form, gives little to no acknowledgement of these 'desirable characteristics' that require conservation on coal tips. Any engineering works on coal tips (such as management, remediation or reclamation) have the potential to remove or damage these characterises, and so it is important that these are acknowledged at the earliest opportunity during the decision-making process</p>

	<p>so that an informed assessment of the impacts of any proposals can be made. This will ensure that foreseen impacts are minimised or eliminated wherever possible to conserve these ‘desirable characteristics’.</p> <p>We are of the professional opinion that the ecological significance of coal tips (in their current state) is of particular importance and needs greater acknowledgement in the consultation paper. Many coal tips support a complex mosaic of habitats owing to their highly varied topography, aspects, gradients, pH and substrate composition. Commonly referred to as Open Mosaic Habitats on Previously Developed Land (OMHPDL), this habitat was identified as a UK Biodiversity Action Plan Priority Habitat in 2007 due to its high biodiversity value and was subsequently incorporated into Section 7 of the Environment (Wales) Act 2016. Section 7 of the Environment (Wales) Act 2016 makes provision for a list of habitats and species “of principal importance to maintaining and enhancing biodiversity in relation to Wales” (formerly Section 42 under the NERC Biodiversity Duty) and outlines a duty on Welsh ministers to take steps to maintain and enhance the habitats and species on the list.</p> <p>These open mosaic habitats on coal tips support some of Wales rarest and most threatened species including (but not limited to) the following Section 7 species: Adder; Slow-worm; Common lizard; Grass snake; Common toad; Great crested newt; Small pearl-bordered fritillary; Grayling butterfly; Dingy skipper butterfly; Brown-banded carder bee; and Tormontil mining-bee. Since any engineering works have the potential to damage or eliminate Section 7 habitats and species on coal tips, it is important that steps are taken during the decision-making process to maintain and enhance these habitats and species to fulfil the Section 7 duty under the Environment (Wales) Act 2016. It is recommended that experienced ecologists familiar with coal tip biodiversity are consulted prior to any proposed engineering works being agreed to ensure that the best outcomes for both biodiversity and public safety are achieved. It is anticipated that these ecologists could include individuals from Natural Resources Wales, National Museum of Wales, environmental charities (such as Buglife, Bumblebee Conservation Trust, Butterfly Conservation, Amphibian and Reptile Conservation, Plantlife, The Wildlife Trusts and RSPB), County Ecologists within Local Authorities, as well as individual ecologists and ecological consultancies with relevant experience, including members of Local Nature Partnerships. Given that the biodiversity and resilience of ecosystems duty under Section 6 of the Environment (Wales) Act 2016 requires public authorities in Wales to “maintain and enhance biodiversity...and promote the resilience of ecosystems”, public bodies must make biodiversity an integral part of policy and decision making.</p> <p>It is also deemed important to acknowledge how the conservation of coal tips directly contributes towards the following three well-being goals of The Well-being of Future Generations (Wales) Act 2015; there appears to have been a failure to mention this in the consultation paper.</p>
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	<p>A Resilient Wales - defined as “A nation which maintains and enhances a biodiverse natural environment with healthy functioning ecosystems that support social, economic and ecological resilience and the capacity to adapt to change”. As sites of great importance for preserving biodiversity and protecting rare species in Wales, coal tips are integral to the functioning of healthy ecosystems in Wales.</p> <p>A Healthier Wales - defined as “A society in which people’s physical and mental well-being is maximised and in which choices and behaviours that benefit future health are understood”. Coal tips also provide readily accessible green space for local communities in Wales, especially in the South Wales Valleys. In light of increasing evidence showing a lasting positive effect of green spaces on physical health and well-being, the potential importance of coal tips to the health and well-being of Valleys communities cannot be underestimated.</p> <p>A Wales of Vibrant Culture & Welsh Language - defined as “A society that promotes and protects culture, heritage and the Welsh language, and which encourages people to participate in the arts, sports and recreation”. Colliery spoil sites are an integral component of Wales’ rich culture and industrial heritage. They are part of our cultural identity (particularly as South Walesians) and are often the few remaining tangible links to our past. Their conservation is therefore paramount to the conservation of Welsh culture and heritage. As mentioned previously, by providing readily accessible green space for local communities, they also provide opportunities for sports and recreation including walking, cycling and running.</p> <p>In conclusion, we are of the professional opinion that the ecological significance of coal tips needs greater acknowledgement in the consultation paper, as does the cultural, visual, historic, social, and geological importance of these sites. It is important that this is acknowledged to ensure that an informed assessment of the impacts of any management/remediation/reclamation proposals can be made. With particular regard to the ecology of coal tips, failure to acknowledge their ecological significance will prevent necessary steps being put in place to maintain and enhance habitats and species considered a priority for conservation in Wales under Section 7 of the Environment (Wales) Act 2016. As such, the Section 7 duty “to take steps to maintain and enhance the habitats and species on the list” and the Section 6 duty to “maintain and enhance biodiversity...and promote the resilience of ecosystems” will not be fulfilled. Such actions would also contravene several well-being goals of The Well-being of Future Generations (Wales) Act 2015. It is important, therefore, that relevant stakeholders are consulted from the outset to ensure that negative impacts are minimised as much as possible and the best outcomes for both biodiversity and public safety are achieved.</p> <p>If you require any further information, please do not hesitate to get in touch.</p>
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Dwr Cymru Welsh Water	<p>Thank you for the opportunity to comment on the above consultation, launched on 9 June 2021.</p> <p>These comments are from Dŵr Cymru Cyfyngedig (Welsh Water), the statutory water and sewerage undertaker that supplies over three million people in Wales and some adjoining parts of England. We are owned by Glas Cymru, a single purpose, not-for-profit company with no shareholders. We provide essential public services to our customers by supplying their drinking water and then carrying away and dealing with their wastewater in a sustainable manner. In this way we make a major contribution to public health and to the protection of the Welsh environment. Our services are also essential to sustainable economic development in Wales.</p> <p>The potential risks to drinking water supplies from mines and tips have been well documented, both surface water and groundwater sources may be affected. Contamination can include iron rich waters, other metals and heavy metal-containing sediments, and turbid water from coal slurries.</p> <p>Removal of these contaminants directly increases the cost of energy and treatments that we must apply to ensure we continue to supply clean, wholesome drinking water to our customers.</p> <p>We understand there to be only a few instances across Wales where disused tips overlap with drinking water catchments, however this is a partial assumption based on difficulty in ascertaining consistent tip information – especially on Local Authority owned tips. Nonetheless we do believe that even in these few instances that localised impacts could be significant, especially in the context of increased tip instability in relation to changing weather patterns.</p> <p>Our responses to the questions raised in the consultation are enclosed. Welsh Water does not have a view on many of the questions asked which have been greyed out for clarity.</p> <p>In addition to the questions asked I believe you have received a separate response from my colleague Andrew Bowen in relation Welsh Water compliance with the requirements of the Reservoirs Act 1975 (As amended). This is one of the other regulatory models considered in the Consultation document, and we note you have received input from Matthew O'Brien, Reservoirs Regulation Team Natural Resources Wales. As a result, the reservoir safety regulatory model is described and discussed in some detail in the consultation document, and we have nothing further to add in this aspect. The Consultation document also acknowledges that the current reservoir safety regime has recently been subject of an independent review (Para 9.39). As a consequence, there are likely to be changes in the reservoir safety regime in the near future.</p> <p>I am copying this response to colleagues in the Welsh Government's Water Branch and Natural Resources Wales for their information.</p>
Graham Hathaway	<p>There is little I can usefully add. Other than an excellent and well written report.</p> <p>It is so necessary and of such high written quality and presentation.</p>

	<p>I do offer this summary of thoughts not expressed thus far that may be inappropriate for a report looking at a robust, integrated and future proof regulatory system</p> <p>The reclamation can be brought back into specific beneficial uses</p> <p>These have not been mentioned .</p> <p>My concern about climate change more than adequately explained.</p> <p>Matters of rewinding of tips with restoration with wild life in mind.</p> <p>Utilising recreation on tips.</p> <p>Policy of dealing with private ownership has been covered but I really don't see any need for private owned tips.</p> <p>That all staff involved in tip safety need project management training.</p> <p>The need for fencing of these tips against vehicles and motorbikes destruction and tip stability.</p> <p>The failure of the National Tip Safety Committee established in March 1968 when key elements were not mandated or put as a clause to create a lasting legal vehicle for implementation. This should be remembered.</p> <p>Crucial to have a competent powerful independent body to regulate the act and implementation of proper practises of enforcement. Deliberate avoidance and financial penalties or imprisonments are needed and essential . Thanks you for reading my comments .</p>
Hefin David MS	<p>I would like to make two points which I hope to see reflected in the consultation outcome:</p> <p>1. There need to be enhanced powers for the appropriate public authorities (devolved or otherwise) to regulate privately-owned coal tips in Wales; and</p>

	2. The Welsh Government requires additional funding (most likely from the UK Government) to address the cost of remediating publicly-owned coal tips in Wales.
Heledd Fychan MS	<p>O ystyried y tebygolrwydd y bydd ein patrwm tywydd rwan yn arwain at lawer mwy o stormydd eithafol, mae angen edrych o ddifri ar gynllun o waredu yr holl domenni peryglus mor gyflym a bo modd.</p> <p>O'r 2144 o domenni sydd gyda ni o hyd yng Nghymru, mae 294 yn cael eu hystyried yn beryglus. Rhaid i ni gymryd ein dyletswyddau at ddiogelwch y cyhoedd o ddifri. Roedd Tylorstown yn rhybydd clir; rhaid gwrandao ar y rhybydd. Allwn ni ddim gweld sefyllfa o golli bywyd i domen glo eto yng Nghymru.</p> <p>Rhaid i ni orfodi perchnogion y tomenni glo i wneud y gwaith, neu mae'n rhaid prynu'r tir yn orfodol i alluogi y gwaith adfer angenrheidiol ar bob tomen a ystyrir yn beryglus. Rhaid hefyd i hyn ddigwydd ar fyrder.</p>
Home Builders Federation	<p>In terms of the point you raise below regarding future liability for a tip being passed to the owner following development, I would suggest that some thought/flexibility is needed/allowed for who takes on that responsibility. It is very unusual for a housing developer to retain ownership of a site, with the individual plots being sold to the occupiers and any other land such as roads or parks either being passed to the local Council thorough adoption agreements or managed by a management company. In view of this I'd suggest there needs to be some flexibility within the legislation to allow for different ownership models.</p> <p>In terms of the drainage element as there is now a requirement for SuDS Wales with surface water being adopted by the SAB {or management company} is it worth considering how these might align, particularly as there is likely to be a strong link between the two.</p>
Howard Siddle	This seems a self-inflicted problem, brought about by the designation of colliery spoil as contaminated. Is there any evidence to indicate the many stabilisation works carried out after Aberfan have caused harm to the environment by pollution resulting from supposed contamination and if so, is this harm greater than that would have resulted from a tip slide or uncontrolled run-off from an unremediated tip?
Huw Williams	See replies above

ICE Wales Cymru	Tip safety (predominantly stability) and protection of life should be top priority. Any and all planned works should be completed in compliance with extant environmental legislation. Emergency works should be undertaken by Local Resilience Forums in line with the Civil Contingencies Act 2004 with the supervisory authority being designated as a Category 1 Responder in Wales in respect of emergencies associated with disused coal tips.
Jacobs UK Ltd (formerly Halcrow)	<p>The supervisory authority should be assigned the responsibility of establishing and maintaining an interactive database of all tip records, including inspections, technical reports and tip management plans going forward and also historical records. There is a lot of very useful historical information on many of the colliery tips in South Wales, including stability assessments, liability/risk assessments, remediation/reclamation schemes, inspection records, all of which will be of great value will regards tip classification and also future tip assessment work in respect of robustness against climate change.</p> <p>In our consultation response we have provided guidance to Welsh Government based on our 55 years experience and unparalleled knowledge of colliery tip assessment, stabilisation and management, but the information we can provide via this medium is extremely limited. There is substantially more information, advice and support that we could provide to The Regulating Coal Tip Safety in Wales team as it moves to the next phase of work and we would be pleased to do so.</p>
Jane Iwanicki	I became aware of this consultation through The Crown Estate and have not seen it published in the mining or quarrying press. The Law Commission could, therefore, be missing out on valuable contributions from mining industry representatives and their trade bodies etc.
Keith Bush	Ar hyn o bryd mae'r ddeddfwriaeth berthnasol - Deddf Mwyngloddiau a Chwareli (Tomennydd) 1969 yn gymwys nid yn unig i domennydd glo a grewyd wrth weithio pyllau dwfn sydd bellach yn segur ond i'r holl domennydd a grewyd wrth weithio unrhyw fwynglawdd neu chwarel. Mae maes llafur y prosiect presennol yn gyfyngedig i domennydd glo. Nid yw'n cyffwrdd, felly, a thomenydd a grewyd gan fwyngloddiau eraill, gan gynnwys y rhai plwm a chopor sy'n eithaf cyffredin yng Nghymru, na'r tomennydd lluosog a grewyd gan chwareli llechi a charreg. Mae'n bosibl nad yw'r tomennydd hyn yn gyfrifol am yr un peryglon a rhai glo. Ond ni ddylid cymryd hynny'n ganiataol. Dim ond trwy eu cynnwys yn rhychwant y ddeddfwriaeth newydd y gallai'r cyhoedd fod yn hyderus bod eu diogelwch wedi'i warchod. Ac fe fyddai diwygio Deddf 1969 mewn ffordd oedd yn gwneud darpariaeth ar wahan ar gyfer tomennydd glo yn golygu y byddai Deddf 1969 yn parhau yn gymwys ond yn unig mewn perthynas a thomenydd heblaw rhai glo ac a thomenydd chwarel. Byddai creu dwy drefn ar wahan ar sail natur y mwyn a weithiwyd yn wreiddiol yn groes i egwyddor, yn afresymegol ac yn debyg o amddifadu cynghorau lleol o'r ychydig arbenigedd ynglyn a thomenydd sydd ar ol ganddynt, gan wneud y dasg o gymhwyso Deddf 1969 i'r tomennydd a eithriwyd o'r Ddeddf

	<p>newydd yn llawer iawn mwy anodd. Dylai unrhyw ddeddfwriaeth newydd, felly, cynnwys darpariaeth sy'n gymwys i'r un ystod o domenydd a'r ddeddfwriaeth bresennol.</p> <p>Dylai unrhyw hawliau apelio o dan y Ddeddf fod yn apeliadau, yn y lle cyntaf, i dribiwnlys datganoledig er mwyn sicrhau hygyrchedd unrhyw rywmediau.</p>
Kim Moreton	<p>None. This is an exemplary initiative that could well be rolled out beyond Wales.</p> <p>For the Welsh Assembly, this initiative would align with The Investor Mining and Tailings Safety Initiative of the CoE.</p>
Mineral Products Association	<p>The Mineral Products Association (MPA) is the trade association for the aggregates, asphalt, cement, concrete, dimension stone, lime, mortar and silica sand industries. With the affiliation of British Precast, the British Association of Reinforcement (BAR), Eurobitume, MPA Northern Ireland, MPA Scotland and the British Calcium Carbonate Federation, it has a growing membership of over 530 companies and is the sectoral voice for mineral products. MPA membership is made up of the vast majority of independent SME quarrying companies throughout the UK, as well as the 9 major international and global companies. It covers 100% of UK cement production, 90% of GB aggregates production, 95% of asphalt and over 70% of ready-mixed concrete and precast concrete production. In 2016, the industry supplied £18 billion worth of materials and services to the Economy. It is the largest supplier to the construction industry, which had annual output valued at £169 billion in 2018. Industry production represents the largest materials flow in the UK economy and is also one of the largest manufacturing sectors. For more information visit: www.mineralproducts.org.</p> <p>With reference to the above consultation, please find below the MPA Wales' response to the questions posed. We have also added some general comments at the end of the document for your consideration.</p> <p>We highlight the need to determine the ownership of the tipped material. This may not be the landowner, but the coal owner, which may be the Coal Authority.</p> <p>Please do not hesitate to come back to me if you have any questions.</p> <p>General comments Para 1.18 As of today, there are five coal mines in Wales, three of which are currently producing coal. Planning Policy Wales stipulates that coal can only be mined for non-energy purposes, such as water filtration and cement or steel production.</p>

	<p>We note reference to Planning Policy Wales (PPW) but would add that whilst this is Welsh Government Policy, it is not an absolute.</p> <p>Para 1.31 Our provisional view is that we should not recommend any alteration of the regime governing the few remaining tips in Wales that are associated with operational mines. Stakeholder views and our review of the law in this area indicate that, while issues arise in relation to the operation of the controls in practice, the existing regulatory regime is comprehensive and is not in need of revision. We envisage that, as those mines become disused, and the legislation governing active tips ceases to apply to them, they would fall under our proposed regime.</p> <p>We support this approach and would seek assurance that the proposals relates solely to Coal Mining Tips/Facilities and not facilities associated with the wider extractive sector.</p> <p>Para 2.49 Coal tips do not only impact on watercourses. Dust from coal tips can also be detrimental to human health, for example if it contains silica, and have an impact on the quality of surrounding soil. There may also be toxic elements mixed in with the dust.</p> <p>We feel this is extremely loose wording and seek clarification on the source and justification for such a statement. Without substantiating evidence, the statement should be retracted.</p> <p>Para 3.5 The Welsh Ministers and the Coal Authority have significantly different criteria for approving a licence. The Coal Authority has a duty under the 1994 Act to carry out its licensing functions so as to secure “an economically viable coal mining industry in Great Britain”. In contrast, it is Welsh Government policy to avoid the continued extraction of coal. Further, Welsh Planning Policy places fossil fuels at the bottom of the energy hierarchy and does not permit the mining of coal for energy production. Coal may be extracted for non-energy purposes such as the production of steel and cement and for water filtration.</p> <p>It is important to emphasise the duty under legislation applied to the Coal Authority differs significantly from WG Policy.</p>
Natural Resources Wales	<p><u>General Comments on the Summery Consultation Paper</u></p> <ul style="list-style-type: none"> Any new regulation should not be limited to coal tips but should cover all spoil tips from mines, quarries and/or other activities. Section 2.3 inaccurate to describe coal tips as Shale as this is a particular Geological unit, also inaccurate to say they behave differently to natural material.

- 2.6 How do we know the design life of tips?
- Tips should be treated as engineering structures – Mines and Quarries Act 1969.
- Reservoir Act 1975 and Flood and Water Management Act are both good models for any new legislation.
- 9.14 refers to SuDS — It should be noted that this legislation only applies to new structures - flood and water management act 2010

Additional Comments

Remediation and reclamation of a tip could enhance the value of the land on which they are situated. As the owner is a principal beneficiary of this, any cost of works carried out by a Supervisory Authority should recoverable in tune with the enhanced value created by the works. This is an issue often cited with urban canal improvements where property adjacent benefitted from the works, but the canal organisation could not share in this added value. It should also combine with achieving multiple benefits at the site linked to Sustainable Management of Natural Resources (SMNR).

The design categories for reservoirs are from A—D with A holding the highest hazard and more detailed design requirements, and D the least. There is value in aligning tip safety categories to the same, rather than opposite.

There is a need for a clear power for the SA to “do the right thing at the right time” in the absence of an identifiable owner and not a reliance on Emergency Powers which may delay intervention until the situation worsens. Compulsory purchase powers would enable the SA to adopt property where an owner is absent which would enable the potential for wider societal benefits rather than just making safe.

The Reservoirs Act 1975 provides several exemptions from regulation based on mine and quarry legislation. A Coal Tip Act should set out clear boundaries between the legislations and a process for cross-notification to provide a clear identification of the appropriate regulator.

Retention of documents pertaining to the safety of the tip should be kept for the lifetime of the tip until reclamation has been certified complete; followed by a buffer retention period.

	<p>A panel of engineers is recommended and an appropriate body to establish standards and attributes of panel membership. This would be strengthened with the establishment of an expert group to oversee technical guidance to guide panel engineers.</p>
Neal Carhart	<p>I live near a spoil tip in cefnpennar/mountain ash there as been a on going problem with off road motor bikes and quads for two years now there is one big stream and one smaller stream that runs under the spoil tip am really dont know the affect that the vibration of the off road motor bikes and quads is having on those tunnels under neath the spoil tip and the damage of the environment to the spoil tip is so bad that they destroying all the undergrowth and trees on the spoil tip which really is holding it from sliding the council and police have been informed but the situation is still a on going problem it be much appreciated if you could look in to this problem yours sincerely Neal Carhart</p>
Network Rail	<p>This is the consultation response by Network Rail Infrastructure Limited ("Network Rail").</p> <p>Network Rail owns and operates Great Britain's railway network and has statutory and regulatory obligations in respect of it. Network Rail is a statutory undertaker in respect of its railway undertaking and has a statutory obligation to protect the rail infrastructure and procure the availability of safe train paths. As such it is required to take an active interest in any interest in its land or rights, any activities on, under or near our property and generally anything that impacts the network which potentially could affect the safe operation of the railway.</p> <p>In this regard it is essential that Network Rail is aware of any and all proposed activities adjacent to its land and activities which may interface with the railway i.e. mining operations.</p> <p>Network Rail is responding on the basis that its infrastructure and the trains using it may be adversely impacted by instability in coal tips, the effects of surface water run-off from coal tips and in the uncontrolled spread of contamination from such tips. Its response is framed from the position of flagging the risks posed by adjacent landowners to the railway network and the benefit of clearer regulation and framework in this area. The creation of a tip register would allow Network Rail to assess risks to each line in Wales, based on proximity to the railway network, steepness of slope etc. It is important the reuse of such spoil and coal tips is also taken account of and proposals for pools, lakes and similar features are properly risk assessed.</p> <p>With the expected increase in the effects of climate change, Network Rail is aware that extreme weather is likely to become more frequent and increase the risk of landslips. In light of the recent Lord Mair and Dame Slingo reports on earthworks and weather, Network Rail is itself taking steps to account for these risks, for example, its Intelligent Infrastructure programme for</p>

	<p>track side monitoring of earth movements. An approach, such as what is proposed by the consultation, which further reduces the risks from coal tips is welcomed.</p> <p>Network Rail is acutely aware of the historic effects of tip instability in Wales and has experienced the impact of failures of tips from live mine working onto its infrastructure, such as at Hatfield Colliery where the failure had a severe impact on the railway (closing a 4 track mainline for 5 months from February 2013, while the coal spoil continued to slide and the tracks were buckled). The responses to the consultation reflect this experience and other experience of failed mine workings impacting the railway, some smaller in scale, but with similar safety impacts on the operational running of the railway network.</p> <p>As Network Rail is not in ownership of land containing former mine workings, the proposals set out in the consultation do not appear to directly impact it, i.e. creating new obligations for Network Rail. For this reason, in some instances, Network Rail does not have any comment in response to a question. Therefore, we have responded to those where we consider Network Rail's response and experience to be useful in developing the proposals and further reducing risk in this area.</p>
Cllr Nigel Thomas Hunt	<p>Annwyl Law Commission,</p> <p>I as an elected member for the Aberafan Ward of Neath Port Talbot County Council would like to comment on the coal tips in Wales consultation.</p> <p>I think the urgency around coal tips has been highlighted by the slip in Tylorstown and the floods in Skewen recently. We go into bother winter with trepidation up in Neath Port Talbot as we have over 400 coal tips in the county.</p> <p>The precarious nature of the mining industry and its legacy is a difficult burden for the Welsh Government to manage and maintain yet it is a devolved matter and the onus is on Welsh Government..</p> <p>Does this entitle the Welsh Government to ownership of the substantial coal reserves in the coalfield?</p> <p>I would be very grateful as would many of the public if you could clarify the ownership of the coal reserves.</p> <p>Cofion Gorau</p> <p>Nigel Thomas Hunt - Plaid Cymru Councillor for Aberafan & Baglan Moors</p>

Ove Arup and Partners Ltd	Arup have extensive experience of the reservoirs act and slope stability assessments so would be happy to have more detailed discussions on the proposed regulations.
Owen Jordan	The origins of this 'consultation' are from people who are several steps remote from the problems, and are thus part of the problem, not contributors to a solution. At root, these problems are caused by greed, and that underpins this consultation - how to appear to be addressing the issue, while maintaining the status quo.
Paul Funck	<p>Having come across the concerns expressed by various parties in the media, regarding the quantity, current status, responsible parties, monitoring and remediation of Coal tips in Wales, I decided to investigate further, as mining design, development, building and commissioning have been part of my life for the past 20 years. Admittedly, when designing and building mines and their surrounding infrastructure, including drainage, tailings (or in a UK terms tips), safety could be catered for and designed in up front. In the instance of the tips in Wales this would be an ongoing legacy project. Tips, be abandoned or disused, there's no telling their history. As pointed out in the document (Regulating Coal Tip Safety in Wales A Consultation Paper).</p> <p>In terms of the document (Summary of the Consultation Paper) Para 2.2 through 2.6. Although these paragraphs are but a summary, what is of particular concern to me is that although a lot of the tips are decades old. Time does not ensure they become more stable. As mentioned in the above paragraphs, is that drainage is essential. Typically what would happen on these old tips, is that with rainfall, the finer particles would be "loosened up" and carried to the bedrock below, with the larger particles "separating" in layers above. Given the "ideal" factors increased rainfall, lack of drainage the sliding forces become greater than the resisting forces and a slip is imminent. What none of the documents outline is the manner nor method nor criteria the tips are subjected to, in terms of inspection. Which ultimately would determine the tips categorisation.</p> <p>Para 2.9 (pollution)</p> <p>Acid mine drainage is a phenomena I am all too aware of. Please refer to the link below outlining but one of the many AMD issues in South Africa. Acid Mine Drainage The Real Cost of Gold Mining in South Africa (environment.co.za). With mines having been abandoned in and around Johannesburg, the natural water table rose. With the rising water coming into contact with the pyrites (in the rock face) the pH level of the water dropped. In places the pH is down to 1. With a lot of the mining companies, sold off their assets, closed down, left the country, the government is left with the burden of containing, controlling and ultimately neutralising the water and using what they can, considering South Africa to be a water scarce country.</p>

Philip Thomas	<p>Just make sure my additional comments are reflected.</p> <p>I also believe emergency powers should be granted to stop developments nearby these tips as you have previously mentioned the skillset required to adequately assess the impact of nearby developments has not been present. There are a number of reports in the Glamorgan Archives. A task force should be put in place to study these reports and look at the recommendations which have not always been implemented.</p> <p>In the case of Ynyshir, it was recommended a concrete steel reinforced gabion lining should be constructed around a scour channel above Ynyshir Community School. This was not undertaken. A recent hill fire to the bracken exposed this area and one could see the coal spoil cut through by the stream. This same stream (different to the [REDACTED] bridleway stream) almost flooded nearby houses and sandbags were required to protect the school. The recommendations to keep the stream clear have been forgotten and decade old trees are now blocking what was described in the 1970s as a 'scour channel'. The same area where the Local Authority has approved (subject to drainage) these industrial sized wind turbines on wet boggy gorse land - including demolishing a very large pond for the trackway. Again the Meenbog development frightens me very much so. [REDACTED]</p> <p>[REDACTED]</p> <p>[Welsh/Cymraeg] Gyda llaw - doedd 'na ddim papur i drafod yr effaith ar yr iaith Gymraeg. Bydd hwn yn cyfle gwych i hyrwyddo'r Gymraeg mewn prosiect arloesol o'r fath dynoliaeth yn erbyn natur, bydd natur wastad yn enill!</p> <p>Da boch!</p> <p>Goodbye. Feel free to get in touch. It has been quite nice to get this off my chest, but what a chore to do so. Back to business....</p>
Plaid Cymru Group, Neath Port Talbot	<p>Thank you for the opportunity to comment on the Law Commission's draft proposals, and there was a detailed discussion at a recent scrutiny meeting with a large measure of cross-party agreement.</p> <p>The report, and associated measures by Welsh Government, are an acknowledgement of a serious problem affecting Neath Port Talbot and other local authorities across the South Wales Coalfield.</p>

	<p>We welcome several of the regulatory measures recommended, but are concerned that some fundamental issues will remain unresolved or under resourced.</p> <p>Rather than answering each of the 34 consultation questions individually I am submitting a commentary on relevant sections of the report.</p> <p>Section 1.</p> <p>This recognises the scale of the task. We welcome the broad premise of the Law Commission report and the proposal to establish a single regulatory body working in conjunction with other bodies including local authorities.</p> <p>The report specifically refers to coal tips, but areas can also be affected by instability of underground working and quarries, often in proximity to the tips. Will these also be covered by the new legislation?</p> <p>Sections 2/3</p> <p>The slippage of the Tylorstown tip was the immediate impetus for this body of work, but we know from experience the impact of tips, underground working and minewater in Neath Port Talbot in landslip areas such as Pantteg and Godre'rgraig and the recent disastrous outflow of minewater at Skewen.</p> <p>The scrutiny meeting at NPT revealed over 400 identified tips in this county alone and the Law Commission report says that 2,144 tips in Wales have initially been identified as potentially coming under the new regulations.</p> <p>This is further complicated by the range of ownership. 70% are privately owned but that can range from very small owners of land parcels to the current operators of large open cast sites.</p>
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	<p>The quite large number of tips in local authority, community groups and NRW ownership are challenging for the resources of those public bodies. Some would have been acquired for previous safety or reclamation purposes or conversion into amenities such as country parks.</p> <p>Worryingly a significant number are unregistered which could present problems in implementing the new inspection and maintenance regime.</p> <p>The spread of owners reflect historic background, operational practice and the flawed privatisation of the coal industry.</p> <p>This is a huge legacy from Wales's industrial past which continues to pose a risk to communities that have also suffered economic decline after the demise of the coal industry. These valleys were the cradle of the industrial revolution. They have been exploited for their mineral wealth, but the vast profits of those industries were never invested or re-invested for the benefit of our communities.</p> <p>This is relevant to several other sections, because the potential costs of mediating or removing tips can be huge for owners, local authorities, and Welsh Government and there should be a responsibility on UK Government to resource this programme.</p> <p>One further reflection on ownership. For many smaller owners responsibility for tip inspections and maintenance are unviable, on the other hand large current operators such as Celtic Energy should meet their responsibilities and some large wealthy landowners have made profits for generations which gives them an obligation.</p> <p>Sections 4 - 7</p> <p>These sections' reviews of previous legislation dating back to the 1960s – Aberfan specifically- show how complex the current framework is, but also how ineffective it has been in keeping our communities safe because we still face these huge issues of tip instability, flooding, subsidence and landslips.</p> <p>One point which is not mentioned in the report is that the former Welsh Development Agency (WDA) had an excellent land reclamation function which was disbanded and not replaced. This has reduced the capacity for planned pro-active work on tip safety which will need to be addressed again.</p>
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	<p>It also again demonstrates that the new framework needs to be properly resourced, and the need for greater clarity as recommended in the law commission report.</p> <p>Section 5 also states the commission's view that tip safety is largely a devolved issue, but that the potentially valuable coal reserves remain the UK Government's responsibility as a Reserved Matter. This seems to perpetuate the extractive economic relationship between the UK and Wales. There is also a need to clarify the legal ownership of the underground reserves and potential royalties.</p> <p>To summarise:</p> <p>We welcome the intention of the Law Commission to establish a new and clearer regulatory framework for tip safety in Wales.</p> <p>We believe that the new framework needs to be properly funded and resourced, with an obligation on UK Government as well as Welsh Government. The UK Government should be responsible for making available the major part of the funding required to deal with this problem.</p> <p>Liability could be unaffordable to smaller landowners, and local authorities which have faced years of austerity.</p> <p>The Law Commission need to consider the potential responsibilities of current operators and wealthy profitable landowners.</p> <p>Diolch am y cyfle i ymateb i gynigion drafft Comisiwn y Gyfraith, a cafwyd trafodaeth fanwl mewn pwyllgor craffu diweddar gyda chytundeb traws-bleidiol eang.</p> <p>Mae'r adroddiad, a mesurau cysylltiedig gan Lywodraeth Cymru, yn cydnabod problem ddifrifol sy'n effeithio Castell-nedd Port Talbot ac awdurdodau lleol eraill ar hyd maes glo de Cymru.</p> <p>Croesawn nifer o'r mesurau rheoleiddio a gynigir, ond pryderwn na fydd rhai materion hanfodol yn cael eu datrys neu'n derbyadnoddau digonol.</p>
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	<p>Yn hytrach nac ateb y 34 cwestiwn ymgynghorol yn unigol, hoffwn wneud sylwadau ar rannau perthnasol o'r adroddiad.</p> <p>Adran 1.</p> <p>Mae'r adran hon yn cydnabod maint y dasg. Croesawn yr amcan gyffredinol o sefydlu corff rheoleiddio penodol a fyddai'n cydweithio gyda chyrff eraill megis cynghorau lleol.</p> <p>Cyfeiria'r adroddiad yn benodol at dipiau glo, ond mae gweithfeydd tanddaearol ansefydlog a chwarelu hefyd yn effeithio ardaloedd, yn aml yn agos iawn at tipiau. A fydd rhain hefyd o dan y ddeddfwriaeth newydd?</p> <p>Adran 2/3</p> <p>Cwmp tip Tylorstown oedd man cychwyn penodol y gwaith hwn, ond gwyddwn o brofiad effaith tipiau, gweithfeydd tanddaearol, a dŵr o lofeydd yng Nghastell-nedd Port Talbot mewn ardaloedd tirlithriad fel Pantteg a Godre'rgraig a'r llif trychinebus diweddar o'r lofa ger Sgiwen.</p> <p>Datgelwyd ym mhwyllgor craffu CNPT bod dros 400 o dipiau wedi eu cofnodi yn y sir, ac mae adroddiad y Comisiwn yn cydnabod o leiaf 2,144 o dipiau yng Nghymru allai ddod o dan y ddeddfwriaeth newydd.</p> <p>Cymhlethir ymhellach gan amrediad perchnogaeth y tipiau. Mae 70% mewn dwylo preifat ond gallai hynny olygu perchnogion parsellau bach o dir hyd at weithredwyr presennol safleoedd glo brig enfawr.</p> <p>Mae'r nifer sylweddol sydd yn eiddo i gynghorau, grwpiau cymunedol a CNC yn her i adnoddau'r cyrff cyhoeddus hyn. Byddai rhai wedi cymryd perchnogaeth am resymau diogelwch blaenorol, adnewyddu, neu troi yn fwyndearu megis parciau gwledig.</p> <p>Mae'n bryder bod nifer sylweddol heb eu cofrestru, a allai fod yn broblem wrth weithredu'r drefnu arolygu a chynnal newydd.</p> <p>Mae'r ystod o berchnogion yn adlewyrchu cefndir hanesyddol, arfer gweithredol, a phreifateiddio gwallus y diwydiant glo.</p>
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	<p>Hyn yw gwaddol enfawr gorffennol diwydiannol Cymru, sy'n dal yn fygythiad i gymunedau a ddioddefodd yn economaidd hefyd o ddirywiad y diwydiant glo. Ein cymoedd oedd crud y chwyldro diwydiannol. Manteisiwyd ar eu cyfoeth naturiol wrth fwyngloddio, ond prin y buddsoddwyd yr elw enfawr o'r diwydiannau trwm yn ein cymunedau.</p> <p>Mae hyn yn berthnasol i sawl adran arall o'r ddogfen, amd fod costau enfawr addasu neu glirio tipiau yn fwrn ar berchnogion, awdurdodau lleol, a Llywodraeth Cymru ac mae cyfrifoldeb ar Lywodraeth DU i ariannu'r rhaglen.</p> <p>Un agwedd arall ar berchnogaeth. Tra bod hi'n afresymol i nifer o berchnogion llai o faint weithredu, dylid sicrhau bod cwmnïau mawr cyfredol gel Celtic Energy yn cwrdd â'i goblygiadau, ac mae cyfrifoldeb ar nifer o dirfeddianwyr mawr cefnog sydd wedi gwneud elw o'r gweithfeydd dros genedlaethau.</p> <p>Adran 4-7</p> <p>Mae'r adolygiad o ddeddfwriaeth blaenorol, o gyfnod Aberfan yn y 1960au yn benodol, yn dangos mor gymhleth yw'r fframwaith bresennol, - ac mor aneffeithiol fu wrth amdiffyn ein cymunedau gan ein bod yn dal i wynebu pryderon enfawr o dipiau ansefydlog, llifogydd, tanseilio, a thirlithriadau.</p> <p>Ni chyfeiriwyd at un pwynt yn yr adroddiad, diddymwyd adran adennill tir ardderchog Awdurdod Datblygu Cymru (WDA) gan leihau'r capasiti l gynllunio a gweithredu gwaith ymlaen llaw.</p> <p>Mae hynny hefyd yn tanlinellu'r angen i'r fframwaith newydd gael digon o adnoddau ac am eglurdeb fel argymhellir yn adroddiad Comisiwn y gyfraith.</p> <p>Barn y Comisiwn yn Adran 5 yw bod diogelwch tipiau yn gyfrifoldeb datganoledig yn bennaf, ond bod y ffynonellau glo gwerthfawr yn dal yn eiddo i'r DU. Mae hyn i'w weld yn cynnal y berthynas economaidd anghyfartal rhwng Cymru a'r DU. Mae angen egluro'r berchnogaeth gyfreithiol o'r ffynonellau glo tanddaeraol a'r elw posib.</p> <p>I grynhoi:</p> <p>Croesawn amcan Comisiwn y Gyfraith l sefydlu fframwaith reoleiddio newydd a chliriach ar gyfer diogelwch tipiau yng Nghymru.</p>
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	<p>Credwn bod angen cyllido'r ffrmwaiath newydd yn ddigonolgyda chyfrifoldeb ar Lywodraethau DU a Chymru. Llywodraeth DU ddylai fod yn gyfrifol am ran helaeth o gyllido'r gwaith o fynd i'r afael broblem.</p> <p>Byddai'r cyfrifoldeb arianol yn anghynladwy I nifer o berchnogion llai, ac i awdurdodau lleol yn sgil blynnyddoedd o gynni.</p> <p>Mae angen i Gomisyswn y Gyfraith ystyried ymhellach cyfrifoldebau posib cwmnïau gweithredol a thirfeddianwyr cefnog a phroffidiol.</p>
Plaid Cymru Group, RCT	<p>On behalf of the Plaid Cymru Group of councillors on Rhondda Cynon Taf County Borough Council, I would like to submit the following response to the Coal Tip Consultation.</p> <p>We recognise that the legislation regarding tip maintenance currently in place is no longer fit for purpose and that it has needed changing for some time. The fact that there is currently no legal obligation on any authority to keep a regular check on the tips creates a system where, certainly in some respects, the community is the watchdog.</p> <p>We wholeheartedly agree with the recommendation to establish a new authority that will map, monitor and maintain the tips. We believe that the new single supervisory authority should be a wholly independent authority answerable to the Senedd. It should not be a part of any other authority - neither local authority, Natural Resources Wales (NRW) or British Coal. The new authority would be free to call on any other authority should the need arise, and to utilise any expertise available in other authorities. The new authority would have the resources and the expertise to carry out its functions.</p> <p>We cannot emphasise enough the point that the new authority must be funded fully in order to carry out its duties and functions efficiently. There should be an assurance to the new authority that any remedial work that needs to be done in order to maintain public safety will be funded. It would be pointless to have a new authority that is unable to perform its duties in full. We feel that the NRW's response to the recent floods proves this point perfectly, NRW has shown that being underfunded hindered their abilities to maintain a robust and effective system.</p> <p>The new authority would create a list of every tip in Wales and categorise those tips using the DCBA category system. The list, for the sake of public confidence, would be open for anyone to see. Transparency and public confidence here is paramount. Reclaimed tips should remain on the list of tips.</p>

	<p>The new authority will already be aware of the tips that are present, but there should be a duty on any landowner to report tips present on their land, and this should include any tips that have been reclaimed. The landowners, whether they be private, NRW, local authority or British Coal should be under an obligation to maintain the tips. With land ownership comes responsibility. There is a very muddy area here where some necessary remedial works would be financially far out of the reach of private owners, so there should be a system in place where the new authority could move to make a compulsory purchase of the land to enable the work to be done at public expense.</p> <p>Where ownership of land is uncertain, then the new authority should again have the legal right to take the land into public ownership in order to maintain tips that are seen as a danger to public safety.</p> <p>Officers of the new authority, or staff of a third party, should have the legal right to gain access to land in order to inspect tips at any time. Landowners should be made aware of their legal duty to allow individuals working for the authority onto their land in order to inspect tips or to carry out any maintenance work necessary to maintain public safety. Public Health can inspect a food premises at any time, the same should be true with the inspection of tips, and staff must know that they have the legal protection in pursuance of their duty to serve the public.</p> <p>In any event, whoever the new authority may be, it should be the case that a landowner can appeal any maintenance plan imposed on them. It is therefore important that a robust and independent Appeals Body forms part of any new arrangements.</p> <p>I would end by reinforcing the message that any new authority must be funded properly to ensure that the legacy of the mineral extraction in our country has no further detrimental effect on our communities.</p> <p>Ar ran Grŵp cynghorwyr Plaid Cymru ar Gyngor Bwrdeistref Sirol Rhondda Cynon Taf, hoffwn gyflwyno'r ymateb canlynol i'r Ymgynghoriad Tomenni Glo.</p> <p>Rydym yn cydnabod nad yw'r ddeddfwriaeth cynnal a chadw tomenni presennol yn addas a bod angen ei newid ers tro byd. Mae'r ffaith nad oes unrhyw rwymedigaeth gyfreithiol ar unrhyw awdurdod i gadw llygaid ar y tomenni wedi creu system lle, yn sicr mewn rhai agweddau, y gymuned sy'n arwain ar hyn.</p> <p>Cytunwn yn llwyr â'r argymhelliad i sefydlu awdurdod newydd a fydd yn mapio, monitro a chynnal y tomenni. Credwn y dylai'r awdurdod goruchwyllo newydd fod yn awdurdod cwbl annibynnol sy'n atebol i'r Senedd. Ni ddylai fod yn rhan o unrhyw awdurdod arall - ddim awdurdod lleol, Cyfoeth Naturiol Cymru (CNC) na Glo Prydain. Byddai gan yr awdurdod newydd yr hawl i</p>
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	<p>alw ar unrhyw awdurdod arall pe bai angen, gan defnyddio unrhyw arbenigedd sydd ar gael mewn awdurdodau eraill. Dylai fod gan yr awdurdod newydd yr adnoddau a'r arbenigedd i gyflawni ei ddyletswyddau.</p> <p>Allwn ni ddim pwysleisio gormod bod yn rhaid i'r awdurdod newydd gael ei ariannu'n llawn er mwyn cyflawni ei ddyletswyddau a'i swyddogaethau'n effeithiol. Dylai fod sicrwydd i'r awdurdod newydd yr ariennir yn llawn unrhyw waith adfer y mae angen ei wneud, er mwyn cynnal diogelwch y cyhoedd. Does dim pwynt sefydlu awdurdod newydd sy'n methu â chyflawni ei ddyletswyddau yn llawn. Teimlwn bod ymateb CNC i'r llifogydd diweddar yn enghraifft berffaith i brofi hyn, lle roedd yn amlwg bod cael eu tanariannu yn rhwystro eu gallu i gynnal system gadarn ac effeithiol.</p> <p>Byddai'r awdurdod newydd yn creu rhestr o bob tomen yng Nghymru ac eu categorïddio gan ddefnyddio system categori DCBA. Byddai'r rhestr, er mwyn cadw hyder y cyhoedd, yn agored i unrhyw un ei gweld. Mae tryloywder a hyder y cyhoedd yma o'r pwys mwyaf. Dylai tomenni sydd wedi eu hadfer aros ar y rhestr o domenni.</p> <p>Bydd yr awdurdod newydd eisoes yn ymwybodol o'r tomenni sy'n bresennol, ond dylai fod dyletswydd ar unrhyw dirfeddiannwr i roi gwybod am domenni sy'n bresennol ar eu tir, a dylai hyn gynnwys unrhyw domenni sydd wedi'u hadfer. Dylai'r tirfeddianwyr, boed yn breifat, CNC, awdurdod lleol neu Glo Prydain fod dan rwymedigaeth i gynnal y tomenni ar eu tir. Gyda pherchnogaeth tir daw cyfrifoldeb. Mae hyn yn faes anodd iawn mewn ambell achos e.e. lle byddai gwaith adfer angenrheidiol yn ariannol ymhell o gyrraedd perchnogion preifat; felly mae angen system lle gallai'r awdurdod newydd brynu tir yn orfodol i alluogi gwaith adfer angenrheidiol sy'n cael ei ariannu trwy arian cyhoeddus.</p> <p>Lle mae perchnogaeth y tir yn ansicr, dylai'r awdurdod newydd gael yr hawl gyfreithiol i gymryd y tir i berchnogaeth gyhoeddus er mwyn gwneud gwaith hanfodol ar domenni sy'n cael eu hystyried yn beryglus.</p> <p>Dylai fod gan swyddogion yr awdurdod newydd, neu unrhyw staff o drydydd parti, yr hawl gyfreithiol i gael mynediad i dir er mwyn archwilio tomenni ar unrhyw adeg. Dylai tirfeddianwyr fod yn ymwybodol o'u dyletswydd gyfreithiol i ganiatáu i unigolion sy'n gweithio i'r awdurdod ar eu tir er mwyn archwilio tomenni neu wneud unrhyw waith cynnal a chadw sy'n angenrheidiol i gynnal diogelwch y cyhoedd. Gall adrannau lechyd y Cyhoedd archwilio safleoedd bwyd ar unrhyw adeg, dylai'r un peth fod yn wir wrth archwilio tomenni, a rhaid i'r staff wybod bod ganddynt y gefnogaeth gyfreithiol wrth wneud eu dyletswydd i wasanaethu'r cyhoedd.</p>
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	<p>Beth bynnag ddaw, a phwy bynnag fydd yn arwain yr awdurdod newydd, dylai fod gan tîrfeddiannwr yr hawl i apelio yn erbyn unrhyw gynllun cynnal a chadw a osodir arnynt. Felly mae'n bwysig bod Corff Apeliadau cadarn ac annibynnol yn rhan o unrhyw drefniadau newydd.</p> <p>Hoffwn orffen trwy atgyfnerthu'r neges bod yn rhaid i unrhyw awdurdod newydd gael ei ariannu'n iawn i sicrhau nad yw'n etifeddiaeth mwynloddio yn cael unrhyw effaith niweidiol bellach ar ein cymunedau.</p>
Pontypool Park Estate Office	<p>Thank you for the opportunity to comment on this paper. Such consultations are a privilege, but they are also time consuming, in some cases taking up to 100 hours to complete. While I appreciate the Welsh Assembly Government's nation-building agenda, it would be hugely helpful if Wales could seek to align itself with England as much as possible. There is little which makes Wales different from England, except in so far as any part of the United Kingdom is different from another. Since tips exist in England too, I suggest a shared strategy with the relevant authorities in England.</p> <p>This estate owns or owned several coal tips around Pontypool, Abertillery and Bargoed. Such tips are only part of a complex mining and wealth-generating legacy across a number of extractive industries since the C16th. The paper is correct therefore to put coal tips in context. But it also raises the debate about the uniqueness of coal tips, their statutory base, the inherited burden, and the general duty of care. It is perhaps interesting that Mr Antoniwi, speaking for WAG in February 2020 after the Tylorstown slip, claimed that such tips occurred prior to devolution, and therefore cannot be the responsibility of WAG. This is perhaps a novel perspective on occupiers' liability.</p> <p>I find the explanation of the legislative context helpful. I sympathise with any drafter trying to align anything with the sets of principles (sic) of the Well-being and Environment Acts. I also find the list of particular, legislative and regulatory issues helpful; many of the problems ring true and are my shared experience. The analysis is generally helpful, and reads as if it were prepared by an intelligent junior in a London chambers. I am less convinced by the questions, which read as if drafted by a civil servant in Cardiff: they seem leading, and disconnected from the prior analysis.</p> <p>I am also less convinced by the claimed requirement for new legislation, and the explicit objective to appoint blame. The consultation suggest that WAG is responsible for coal tip safety. If so, given that further work is now required, this may reflect WAG's failure to meet its obligations to date. The challenge therefore is how to help WAG do its job. This is an administrative process, and requires a competent body (which the Coal Authority is, and WAG manifestly is not, otherwise it would have done</p>

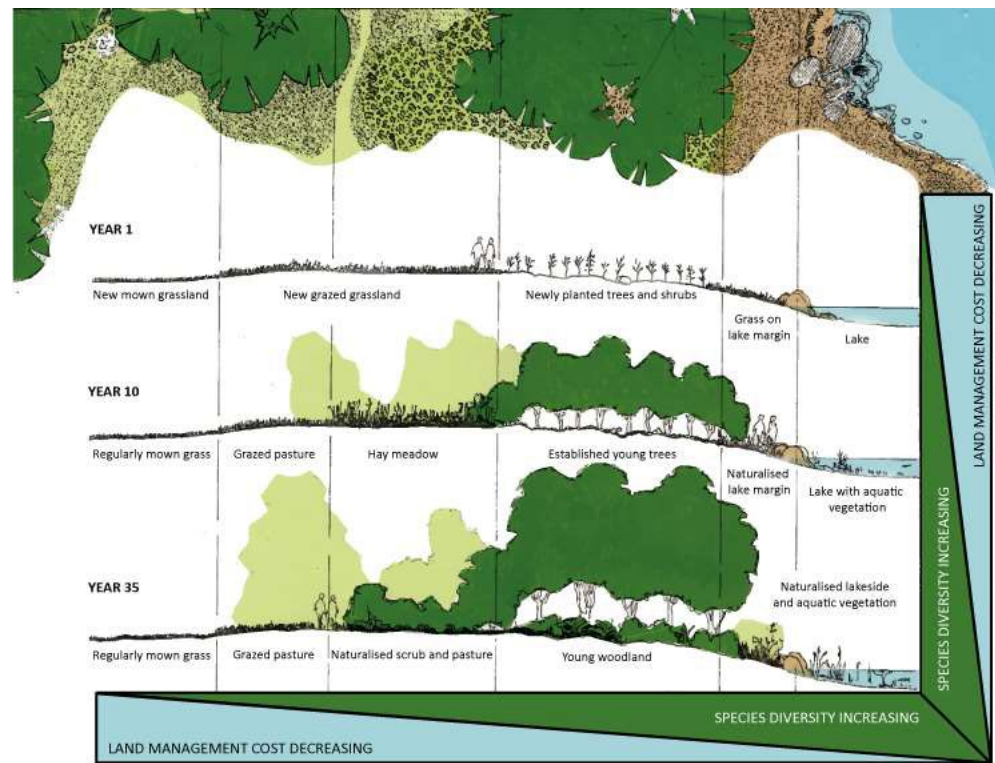
	<p>it already) to inspect and list all tips (and non-tips), and assess what safety measures are required, and when. I am unclear how new legislation is required for this.</p> <p>There is a second stage, which is how to implement and pay for the safety recommendations. The current legal and regulatory corpus seems to provide a framework for resolution. I appreciate it is complex, and that there are a number of ambiguities. But that may reflect the range of hazards, new/old, natural/artificial etc across a range of current and historic activities. I cannot see that WAG's failure to meet its obligations stems from legal ambiguity rather than implementational failure. I suggest that WAG might first try to do its job better, with the tools it already has. WAG's response to Tylerstown is perhaps predictable: pass a new law, set up a new cost centre, and blame the English. But the real issue is practical: how to make dangerous tips (inter alia) safer? These proposals may appeal to a "something must be done" rhetoric, but I am not sure they answer the practical issue.</p> <p>For the 9% of tips owned by WAG, this may be academic, since WAG is an unwilling implementer of its own rules. The objective of the paper therefore seems to be how to get the private sector to pay for its own tips? There may be a number of issues to consider, of which inter alia:</p> <ol style="list-style-type: none"> 1. How to identify and enforce against an owner? Any sensible owner of a dangerous tip may perhaps already have transferred the tip into an offshore shelf company. 2. Why should the owner be bullied about a dangerous tip (or a tip danger) which may not be of her making? A number of complexities occur to me from the experience of this estate: <ul style="list-style-type: none"> • a tip might not be dangerous per se, but might be made dangerous by criminal activities over which the owner has no control (motorbicycles etc), but which it is the duty of WAG to control; • the tip might have been made dangerous by WAG's predecessor: a long lease to a private operator might have been nationalised in 1948, and surrendered by the NCB free of the normal obligations (dilapidations, redress etc) which might have applied to the private sector lease; • Aberfan was a failure by the NCB, not (were the land owned separately) by the owner; should an hypothetical owner now be penalised for a similar historic failure by the state-owned pit operator?
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	<ul style="list-style-type: none"> • well-meaning efforts to clean and remove tips can be thwarted by local planning politics, which may be nimby, but are not necessarily unreasonable, and yet are not addressed here; • the tips may be a Scheduled Ancient Monument, and yet dangerous; • tip washing and removal was often uneconomic in the past, and subsidised by ancillary opencast; if legislation or planning politics prevent such opencast, how will the tip be reclaimed? • if there will no market for coal, again because of politics, how will tip safety be subsidised? • how can the land owner be responsible for tip safety if the tip itself belongs to another party? • any attempt to reclaim off, or enforce against, a tip or land owner could be meaningless, if the owner has already disappeared (see above). <p>What in practice will a new law, and expensive additional administration, achieve?</p> <p>A few more specific comments:</p> <p>The decline of specialist skills in Wales (7.2) is manifest generally, not just in coal safety. It would seem sensible to rely on the UK Coal Authority for monitoring and evaluation, and not seek to create a separate organisation for Wales, which would remain, like NRW, under-funded and ineffectual. It might also help to have a third party (ie the Coal Authority) responsible for implementation, since WAG gladly holds other parties to account, but rarely sees fault with its in-house incompetence.</p> <p>Existing different regulations apply to different tips, subject to history, nationalisation etc. Is it appropriate now to treat all tips equally, when the current legislation recognises the difference?</p> <p>NRW is already not a competent regulator for waste activities inter alia and, as a landowner, regulator, and arm of government, has a conflict of interest, as it does with its other property interests ie forestry. How would the obligations here proposed for NRW relate to those of the proposed new independent environmental governance body? How would its competence be assessed? NRW is currently outside public remedy generally, other than the specific remedy of a legal challenge.</p>
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	<p>The powers (10.9) should include removal of tips from the register, perhaps because they are no longer tips (ie have been washed, reprofiled etc). I am unclear how the proposals affect and accommodate tips which now have another use, and perhaps multiple ownership, resting on top of them: ie buildings, construction projects, so-called green energy developments.</p> <p>Who is the “owner” (10.11) if the owner of the tip material is different from the owner of the underlying land. The land might have been on long lease to an entity which sinned, by omission or commission, and then defaulted on its obligation, so that the liability reverted to the landowner. This was the case when the NCB, as arm of government, acted with impunity.</p> <p>Reclamation (10.34) is a rational way to seek to address the problem. But this is not always possible, for many reasons including political. Does WAG or its agent have the will or means to push through an unpopular reclamation scheme, and risk legal or fiscal challenge? If reclamation is only realistic either with cross-subsidy from mineral extraction including opencast, or public subsidy, is it realistic to expect that WAG will progress? I question if any centre of excellence as proposed would be successful in Wales. The people of Wales have not had great joy with the other super-agencies created and brought into government (CADW, NRW etc); why would a new WAG-run excellence be any better? It may be more prudent to keep the work with the Coal Authority, which seems competent, and, unlike its predecessor the NCB, is not diverted by politics from delivering public value.</p> <p>If WAG requires a landowner to carry out remedial works, or carries them out itself, and such remedial works are proved to be inappropriate or inadequate, and the tip subsequently proves a hazard, is the proposed owner’s duty of care removed by such works, however inadequate? With any reclamation, the quality of the works is critical. I saw what seemed good work at Dowlais some twenty years ago, but WAG will know better than I how well that has aged. The NCB left this estate a nasty legacy with the Glyn Colliery tips, profiled into terraces with hard engineering (as seemingly promoted in Appendix 2 of the report for National Tip); predictably it slipped into the river and this estate had to clear up NCB’s mess; our own subsequent remedies have I hope been more intelligent.</p> <p>In summary, WAG seems to view Tylertown as a legal failure, for which the answer is yet more power to WAG. I see Tylerstown as an administrative failure by WAG, to which the answer is that WAG should do its job. This is perhaps an inevitable split of views between the governing elite and the governed. I do not suppose anybody in WAG reads much de Tocqueville.</p>
Richard Arnold	Solutions should be 21st century, dynamic and efficient.

	<p>No one wants just another Government commentating body on the problems.</p> <p>The best way to predict the future of Tips - is to create it.</p>
RML	<p>We were gratified to note the several references in your report on Regulating Coal Tip Safety in Wales to our report to the European Commission on 'The rehabilitation of abandoned coalmines and steelworks'. In our 1996 guidelines on 'The Restoration & Revegetation of Colliery Spoil Tips & Lagoons' for the UK Department of the Environment, reclamation/restoration design and practice were discussed there in some detail too.</p> <p>We no longer offer engineering services but are closely involved in coordinating and supervising the environmental aspects of a wide range of construction projects. Our comments below reflect our focus on this aspect of construction in general and our 'historical' involvement in mineral waste rehabilitation in Wales.</p> <p>Since the production of our reports, referred to above, we have continued to work on environmental issues that face the construction industry especially on compliance with regulations aimed at protecting and improving the environment. Regrettably, we still find that civil engineering contractors require close monitoring in this respect and Environmental Clerks of the Works have become important members of the supervising team on site. Construction Environmental Management Plans now play an important role in construction projects. 'Working with nature - a low-cost approach to land reclamation', another of our reports, this time for the Welsh Development Agency, has long been the basis of our approach to site evaluation, design, construction, and aftercare. Vegetation is recognised by many as an element that now makes a positive contribution to the success of civil engineering projects. Public perception of civil engineering was far from positive in the 1970s and 1980s.</p> <p>Vegetation is the key element in enhancing biodiversity following construction work. Public access is important too so that communities can draw benefit from this diversity and new green spaces in general. We note that your report refers to many early reclaimed sites in Wales that offered only environmental enhancement. Many reclamation schemes reflected this, Brynbach Pond, close to the Heads of the Valleys Road, and Corris slate mine, near Machynlleth, are striking examples.</p> <p>Management of both the vegetation and access by the public are important aspects of any longterm plans. Planning and operating on a long-term basis are essential if design intent and objectives are to be achieved. Our diagram of the relationship between biodiversity and land management costs explains our approach.</p>

It is some years since we were involved in a reclamation scheme although we are currently working on a rewilding project to reclaim a former sand and gravel quarry in the Wrexham area. Our most recent reclamation projects, which were completed about 20 years ago, involved abandoned lead mines where the surface waste deposits were serious sources of heavy metal pollution. Vegetation played a key role in these projects by successfully stabilising surfaces against rainfall erosion. At Minera lead mine, near Wrexham, we used coal mine waste as a capping material over the lead waste before sowing grass seed on the prepared surface. The reclamation of Cyfarthfa-Georgetown tips and the colliery site at Merthyr Vale were our last schemes in South Wales. Vegetation, not just grass, can play an important part in improving the situations on the coal tips which are of current concern.



Principles of Landscape Management

Sioned Williams AS	<p>I welcome the opportunity to respond to the current consultation on a new regulatory framework for coal tips in Wales.</p> <p>As a Regional Member of the Senedd for South Wales West, coal tips feature within many of the communities that I represent – from the Amman Valley in the West to the Ogmore Valley in the East.</p> <p>The coal tip landslips of 2020 have brought about a clear focus on the current regulatory framework, and its deficiencies. Due to climate change, we can expect more periods of heavy rain falling across the South Wales coalfields, and our regulatory framework needs to respond to that.</p> <p>We need to ensure that the potential dangers that coal tips pose for both human life and the environment, around instability, flooding, pollution and spontaneous combustion are minimized, and I therefore welcome this review.</p> <p>Firstly, it is important to note that I fully agree with the primary recommendation of establishing a single supervisory authority with a duty to supervise the management of all disused tips in Wales. I believe that this is fundamental.</p> <p>I believe that the new supervisory authority should be a wholly independent and answerable to the Senedd.</p> <p>Importantly, the new authority must have the resources and the expertise to carry out its functions.</p> <p>The evidence that you have gathered is clear that the Mines and Quarries (Tips) Act 1969 is no longer fit for purpose and does not provide local authorities and other regulatory bodies with the necessary powers to effectively prevent tips from becoming a danger.</p> <p>It confines intervention to situations where there is a ‘perceived’ risk to the public by reason of instability.</p> <p>It is clear that the future regulatory framework needs to set out a general duty to ensure that there is regular monitoring and preventative action being taken to ensure the safety of tips across Wales.</p> <p>I therefore support the recommendations to establish 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. I also believe, in the interests of openness and transparency, that the list should be available publicly.</p>
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	<p>Landowners should also be under a duty to notify the supervisory authority of any tip on their land of which they become aware which is not on the register.</p> <p>I also support the recommendation to mandate inspections of each tip for the purpose of a risk assessment and the design of a tip management plan – to include all potential risks including the risk of tip slides but also flooding, pollution and any other risks.</p> <p>I agree that landowners, whether they be private, NRW, local authority or Coal Authority should be under an obligation to maintain the tips.</p> <p>However, we currently have a situation where over 70% of tips are owned by private owners and community groups. We may find that they do not have the financial means to satisfy any new regulatory requirements and to carry out remedial works, as required by the management plans.</p> <p>I therefore believe that there should be a system in place whereby these tips can be taken back into public ownership by compulsory purchase, to ensure public safety.</p> <p>I believe that funding for this should be made available by the UK Government, given that many of the tips were once owned and run on a nationalised basis. The tips are very often a direct result of activities undertaken in their name, and there is therefore a strong moral argument that funding to ensure public safety should now flow from the UK Government.</p> <p>In terms of inspections, I believe that officers of the new supervisory authority should have the legal right to gain access to land in order to inspect tips at any time in order to maintain public safety.</p> <p>I also believe that a clear and robust appeals process should be developed to ensure that landowners can challenge particular elements within their maintenance plan which they deem to be unreasonable or contrary to evidence.</p> <p>I would like to thank the Commission for your important work in this area and for the opportunity to contribute to the consultation.</p>
Stephen Smith	<ol style="list-style-type: none"> 1. General principles <ol style="list-style-type: none"> a. The Expert Group discussions have touched on the fundamental requirements of any legislation for coal spoil tipping (be it current provisions, amendment thereto or new legislation) and any actions pursuant to the legislation as being to prevent, as far as practically possible, significant failures that impose risks to the health and well-being of general public, to the environment or to essential infrastructure.

	<ul style="list-style-type: none"> b. In my view, the key question for the response to proposals set out in the Consultation Paper is whether they will lead to improved safety and avoidance of failures? c. The comments which follow have taken these fundamental objectives into account. They also endeavour to recognise that there seems to be a political will for change and to answer the questions posed without necessarily agreeing with the need for the proposed changes. d. The comments have been informed by professional experience from a career in civil engineering (and in particular land reclamation) spanning over 40 years. The land reclamation programme for Wales, introduced post the Aberfan disaster, encompassed stabilisation of spoil tips, remediation of contaminated land and achieved regeneration of over 1200 former industrial sites located across Wales. <p>2. Problems with the 1969 Act</p> <ul style="list-style-type: none"> a. The premise of the project and that of the consultation paper appears to be that there are significant shortcomings in the provisions of 1969 Act and delivery of the obligations placed on local authorities. b. The paper sets out, in Chapter 7, 'the problems with the 1969 Act'. These are principally based on the views of the local authorities and other regulators charged with delivering actions. Understandably, one of the major problems for them has been the loss of the essential (technical) expertise and a consequent lack of focus from the authority on their duties. This is not wholly due to the shortcomings of the Act; more than likely being due to absence of a specific funding stream. c. It is my view that the consultation paper does not set out sufficient evidence of failure of the 1969 Act to justify a wholesale change to the statutory framework under which tip safety is administered. d. There follows from this a fundamental need to ask whether the possible solutions set out in the paper will still have the same problems – both in the short term and (say) 40 years after introduction? I feel it would have been helpful to provide a table of current 'problems' with a summary of how the proposals would address or correct them. e. The value of the 1969 Act and all work of remediation on spoil tips over the past 50 years (be it by the National Coal Board (NCB) and successors, local authorities or UK wide public sector land reclamation programmes) should not be understated. It is noted that there have been very few tip incidents in Wales (either from instability, flooding or pollution) in this period. f. Before addressing the extensive questions posed in the Paper, I will provide (at Section 5 below) my views on the topic raised at Question 34 as I feel this requires more prominence than given in the Paper. <p>3. Other Regulatory Models</p>
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	<ul style="list-style-type: none"> a. Chapter 9 endeavours to assess the effectiveness of other regimes in the context of provisions which may provide a starting point for new tips legislation. Whilst some of the principles and practices of other regimes may be relevant, I do not feel the narrative fully recognises the difference in characteristics between the subject of that legislation and those of coal spoil tips. b. For instance, reservoirs are designed from the bottom up to withstand known or derived forces and are constructed in accord with that design whereas, for the majority of disused tips, the ‘design process’ had a more ‘rule of thumb’ approach – albeit based on extensive experience and (post 1970) robust technical guidance. c. The Chapter deals with some of the other regimes in reasonable detail, yet makes little reference to the more directly related regime introduced by the Mines Regulations 2014 (MR2014). <p>4. Technical issues</p> <ul style="list-style-type: none"> a. The Consultation Paper overtly shies away from consideration of technical matters as these are “outside the scope of the Law Commission remit”. However, I would suggest that the ‘solutions’ to a possible problem of tip safety need to be developed hand in hand with any changes to the technical provisions of legislation or guidance. b. At the present time, The Coal Authority (TCA) work on categorising risk from the former coal estate has not been completed and thus the ‘solutions’ cannot be informed by the assessed risks. It would seem premature to draw conclusions on legislative matters until the technical work has been completed. c. The essential need for technical expertise is acknowledged in the more recent legislation on mine safety – MR2014 – and the guidance on this issued by Health and Safety Executive. The latter includes specific topics to be included in tip inspections for active tips and could provide a useful template for disused tips. [I note here that the RML work from 1993, which is well referenced in the Paper, also includes valuable guidance on tip management] <p>5. Reclamation</p> <ul style="list-style-type: none"> a. As referenced above, tip remediation arising from requirements imposed by legislation and work under the public sector land reclamation programme has been integral to the improvements in tip safety over the past 50 years. Chapter 3 of the Paper makes reference to this programme in the context of ownership, but, other than a brief narrative at 2.69 to 2.73, does not expand on the objectives or outcomes in terms of public safety. b. Perhaps the detail of the programme was not discussed in sufficient detail whilst the Paper was being prepared, so a little more background may clarify the context. Firstly, I can advise that the land reclamation programme had
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	<p>stability and public safety as a key objective and funding was allocated to address many safety issues – either directly or as a by product of securing a beneficial new use.</p> <p>c. Delivery of the programme was based on a schedule of ‘approved projects’ with (nominally) 5 years of work identified. This ‘rolling programme’ allowed projects to be prioritised and deferred if delivery problems arose. For instance, in the same way as local authorities report struggles with implementing duties under the 1969 Act, delivery of the reclamation programme was also delayed or constrained by land ownership / acquisition problems.</p> <p>d. At 3.27, there is reference to the number of tips benefitting from the programme being relatively low. Has any assessment been made of how many – both in absolute numbers and as a proportion of high risk tips that were present in Wales?</p> <p>e. The tip sites owned by local authorities as a result of the reclamation programme will be largely reclaimed but not sold on, likely due to there being no economic use for the land. As correctly identified though, some tips remain unreclaimed due to the withdrawal of funding [NB the Tylorstown Tip was an example of this].</p> <p>f. The WDA had always managed the programme with a complement of technical staff providing advice to LAs and undertaking detailed reviews of proposed works. In my view, such a model remains critical for any future mechanism for tip safety either through a supervisory body with enhanced legislation or by adopting a reclamation approach.</p>
Steve Harford	This is an excellent process and well over due.
Steve Jones/Pembrokeshire Council	I will repeat that whilst the opportunity exists, the scope of this project should be broadened to incorporate spoil tips from all types of mines and also quarrying.
Sue Jordan	i should be happy to speak of our experiences.
The Law Society of England and Wales	Whilst welcoming the proposals contained in this consultation, we strongly believe that there is scope to go further to protect people and property against damage by extending the liability of the Coal Authority to inspect underground workings and shafts, in addition to tips.

	<p>We encourage the Welsh Government to consider the need for a more holistic approach to mitigating risks from land stability hazards.</p>
Thomas Glyn Watkin	<p>3.34 There is something not quite correct with this statement. The transfer of ownership under GoWA 1998 would have been to the Assembly, constituted as a body corporate with subordinate law-making and executive functions. Although the term 'Welsh Assembly Government' came into use shortly thereafter, it did not acquire an official, legal status until the relevant provisions of GoWA 2006 came into effect in May 2007.</p> <p>7.24 & 7.25 It is disturbing that such housing developments were permitted. In many valley mining communities, including the Rhondda, the housing was originally situated on one side of the valley while tipping took place on the other - a safer arrangement.</p> <p>This is a gem of a report. It addresses issues of considerable interest to many communities in Wales. It has the potential to increase significantly the profile of the Law Commission and its work in Wales among the general public.</p> <p>Bearing that in mind, it may well be worth revisiting a discussion which took place when the Welsh Advisory Committee was first established regarding places at which the Commission's work could be brought to the attention of a wider public. Two such events are the Royal Welsh Show and the National Eisteddfod. The Senedd, the Welsh Government and the Law Society (Wales) are regularly present at both, and it might be worth the Commission having a stand - or sharing a stand - at these events. A display featuring the excellent pictures in the report and detailing its progress, emphasizing how the public can engage with the Commission and its programmes of law reform, could substantially broaden involvement from outside the 'legal/governmental bubble' when developing future programmes of law reform. Cost aside, there is little if anything to be lost and much to be gained. The Commission has staff capable of meeting and greeting at both events in both languages. (The Royal Welsh is predominantly English in language; the Eisteddfod mainly - but by no means exclusively - Welsh). In particular, it is worth noting that the Eisteddfod will be hosted by Rhondda Cynon Taf in 2024, by which time the report may well have borne - or be bearing - legislative fruit, offering an excellent opportunity to engage with the communities most affected.</p>
Torfaen response	<p>Torfaen County Borough Council wishes to endorse the response submitted by the Welsh Local Government Association to the Law Commission's consultation on Regulating Coal Tip Safety in Wales. The only point that TCBC would wish to raise additional to the WLGA response relates to the Blaenavon Industrial Landscape World Heritage Site. The presence of the coal</p>

	<p>tips in the site contribute to its outstanding universal value, and the preservation of tips in circumstances such as this should be considered in the formation of any new regulations.</p> <p>I thank you for the opportunity for engagement in this consultation, and trust this assists. If you have any queries, please do not hesitate to contact me.</p>
Wrexham CBC	<p>The draft Impact Assessment states 70% of tips are privately owned and many are small farmers who don't have skills or resources to inspect and maintain tips. The financial burden and level of responsibility on landowners should be the same whether they own a high or low risk site.</p>
Wyn Williams	<p>Please treat this email as a supplementary response to the form which I submitted.</p> <p>I have nothing further to say about the open questions contained within Question 29. I have, however, considered the text in the Consultation Paper at pages 172 and 173 and, specifically, the issue which is flagged but not answered (for good reason) as to whether disputes or appeals should be determined by the courts of England and Wales or by some specialist forum (such as the planning Inspectorate) or tribunal.</p> <p>My starting point must be that the Commission on Justice in Wales (of which I was a member) recommended that "the Welsh tribunals should be used for dispute resolution relating to future Welsh Legislation".</p> <p>Consistent with that recommendation I am of the view that disputes and appeals arising by virtue of Welsh only legislation relating to tips should be heard in a forum or tribunal which is specific to Wales. That militates against directing disputes or appeals to the existing courts of England and Wales.</p> <p>Given the diverse nature of the expertise which may be necessary to determine the sort of disputes identified in paragraphs 10.107 et seq in the Consultation Paper I do not feel I can offer any kind of definitive view upon the precise mechanisms for dispute resolution but I take the view that WG should conduct an in depth analysis of the existing Welsh tribunals (residential property and agricultural land) so as to make a judgment about whether their jurisdiction can be extended to accommodate disputes about tips. Further, if a First Tier Tribunal and/or an Appeal Tribunal for Wales is recommended by the LC and in due course created by WG, the Government should assess whether a new body should be created to fit into those structures to deal with dispute resolution relating to tips.</p>

