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Lukas Santos
Deputy Clerk
Climate Change, Environment and Infrastructure Committee
Welsh Parliament

Email: seneddclimate@senedd.wales

Date : 17 January 2025

Dear Lukas,

Thank you for your invitation to the Evidence Session regarding the Disused Mine and Quarry Tips (Wales) Bill, scheduled for 30 January 2025. I am pleased to confirm that I, as Director of the Engagement and Policy Division, will attend, provide evidence, and engage with the committee.

In advance of the meeting, I believe it may be helpful to provide an overview of the Health and Safety Executive's (HSE) involvement in the current legislative framework for mines and quarries.

As Britain's national regulator for workplace health and safety, HSE is committed through its mission and strategy to protecting people and places through the enforcement of health and safety legislation across the UK. HSE collaborates closely with a broad range of stakeholders, including the Welsh Government, to address health and safety challenges across a wide range of industries. HSE is focused on tackling both traditional and new risks which guide our interventions and regulatory activity.

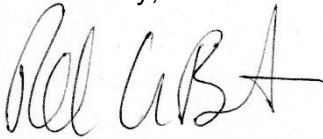
The Mines Regulations 2014 (MR2014) and the Quarries Regulations 1999 (QR1999) are HSE-owned legislation designed to safeguard the health and safety of those working in mines, quarries, and associated tips. HSE work closely with the Mine Remediation Authority (MRA) and Local Authorities (LAs) as they store abandoned mines, quarries and tips plans on HSE's behalf under MR2014 and QR1999.

HSE provided advice and support during the consultation on the Law Commission in 2021/22. HSE welcome this further opportunity to respond to the committee's call for evidence so we can provide knowledge and expertise as part of our ongoing commitment to enhancing tip safety across Wales.

HSE is supportive of the Bill and believes it provides an effective regulatory framework that aligns with the policy intention of protecting human welfare from the instability of disused tips. This supports our organisation's strategy to build and maintain trust, ensuring that people feel safe in their homes, workplaces, and environments.

We look forward to contributing to the discussion and working closely with the Welsh Senedd's Climate Change, Environment and Infrastructure Committee and other stakeholders to support the effective development and implementation of the Disused Mine and Quarry Tips (Wales) Bill.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Rick Brunt', with a stylized flourish at the end.

Rick Brunt
HSE
Director Engagement and Policy Division

DMQTWB 24 - Evidence from: Health and Safety Executive

Senedd Cymru | Welsh Parliament

Pwyllgor Newid Hinsawdd, yr Amgylchedd a Seilwaith | Climate Change, Environment, and Infrastructure Committee

Bil Tomenni Mwyngloddiau a Chwareli Nas Defnyddir (Cymru) | Disused Mine and Quarry Tips (Wales) Bill

1. What are your views on the general principles of the Bill, and is there a need for legislation to deliver the stated policy intention?

1 HSE supports the Disused Mine and Quarry Tips (Wales) Bill and believe it provides a modern effective regulatory framework for managing the legacy of disused coal (and other) tips and quarries in Wales.

2. What are your views on the Bill's provisions (set out according to Parts below), in particular are they workable and will they deliver the stated policy intention?

▪ Part 1 - The Disused Tips Authority for Wales (sections 1 to 5 and Schedule 1)

2. HSE's view is that Part 1 - The Disused Tips Authority for Wales (sections 1 to 5 and Schedule 1) is workable and delivers its policy intention.

3. HSE understand creating a new body for Wales, the 'Authority' was the Law Commission's recommendation because they held the view there wasn't a single body that currently existed which could provide a uniform approach in terms of risk assessment, inspection, prioritisation and the allocation of resources. HSE supports the Law Commission's view.

4. Clause 3 (3) states the Authority may give any person, other than the Welsh Ministers, information or advice on, or assistance with, any matter relating to a particular disused tip or to disused tips generally and,

5. Clause (4) states the Authority may charge a fee for the provision of information, advice or assistance under subsection (3). HSE understands preliminary and full assessments the Authority will undertake will take account of existing data

provided by the Mining Remediation Authority enabling an expert-driven, data-driven approach allowing technical experts to inform policy.

6. The Authority should note that HSE have regulatory ownership of (Coal and Non coal) abandoned mines, quarries and tips plans which the Mines Remediation Authority and the Local Authorities store on HSE's behalf which the Authority are likely to access in order to undertake their preliminary and full assessments.

7. Therefore, HSE would like to clarify whether regulators could be charged a fee for the provision of information advice or assistance in relation to Clause 4?

▪ **Part 2 - Assessment, registration and monitoring of disused tips (sections 6 to 32 and Schedule 2)**

8. HSE's view is that Part 2 - Assessment, registration and monitoring of disused tips (sections 6 to 32 and Schedule 2) is workable and achieves its policy intention.

9. Clause 9 - HSE notes and is pleased that members of the public will have access to the electronic register of disused tips that is compiled and maintained by the Authority at all reasonable times.

10. Clause 10 puts a new proactive duty of monitoring on the Authority; Chapter 2, Clauses 11-19 refers to preliminary and full assessments of disused tips being undertaken; and Clause 15 defines the meaning of a 'full assessment'. HSE understands the process for undertaking both preliminary and full assessments will be detailed in guidance, rather than on the face of the Bill.

11. HSE would like the committee to ensure preliminary and full assessments are defined in both the bill and supported by detailed and clear guidance. HSE would welcome sight of the guidance.

12. Does the committee envisage the Authority will approach HSE to take advantage of HSE's skills, knowledge and expertise to support completion of preliminary and full assessments? HSE reviews its current charging regime annually and this type of engagement may need some consideration.

13. Chapter 4 The Categories of Disused Tips. HSE understands the aim of the new categorisation approach is to obtain consistency, accuracy and transparency in the categorisation of all disused tips and they will enable the Bill's objectives to be met. HSE is pleased it's expected there will be a read across with categorisation used already by The Mines Remediation Authority. HSE agrees it will be beneficial for the categorisation of tips and statement of its policy to be set out in guidance

rather than on the face of the Bill as this enables them to be kept under review. Whilst HSE understands there isn't a statutory duty for the Authority to consult on guidance HSE would welcome sight of it

▪ **Part 3 - Dealing with tip instability and threats to tip stability (sections 33 to 54 and Schedule 3)**

14. HSE, view is that Part 3 - Dealing with tip instability and threats to tip stability (sections 33 to 54 and Schedule 3) is workable and achieves its policy intention.

15. Chapter 2 Operations carried out by the Authority. In managing the threat of instability, the Authority may carry out operations on any land if it considers it necessary to prevent threats of instability of a disused tip. As part of their work, the Bill states the Authority has a right to remove and dispose of 'property' and in doing so can sell it but must return any proceeds back to the owner (recouping any costs).

16. HSE understands the reference to 'property', as a result of remediation work, on disused tips, is defined as property situated on the land that belongs to another person if that removal is for the purposes of carrying out operations: (operations being that which is solely to do with human welfare and stability). HSE would like the committee to note that once a tip is being worked on, remediated or the materials rewashed etc, the tip and those undertaking the work become dutyholders under HSE regulations.

17. Depending on the circumstances, that could be the Mines Regulations 2014 or the Quarries Regulations 1999 if the disused tips contain 'minerals' which are extracted and sold and in the event of any building design and management, or even the Construction (Design and Management) Regulations 2015, CDM.

18. In summary, disused tips could come in and out of the scope of this bill and other regulations. HSE is happy to support implementation of the Bill during the course of HSE's day to day operations and engagement with dutyholders, HSE will continue to provide advice on the overall regulatory framework.

▪ **Part 4 - Supplementary (sections 55 to 70)**

19. HSE's view is that Part 4 - Supplementary (sections 55 to 70) is workable and achieves its policy intention.

▪ **Part 5 – General (sections 71 to 88)**

20. HSE's view is that Part 5 – General (sections 71 to 88) is workable and achieves its policy intention.

21. Clause 81, Meaning of “tip” and “disused tip” In the Bill “tip” means an accumulation or deposit of waste (whatever its form or composition) from a mine or quarry other than an accumulation or deposit situated underground. and it means a tip situated ‘wholly’ or ‘partly’ in Wales other than one to which the Quarries Regulations 1999 (S.I. 1999/2024) or the Mines Regulations 2014 (S.I. 2014/3248) applies.

22. HSE would like to understand why the Bill has included ‘wholly or partly’: what ‘partly’ means and what it is meant to achieve? Does this Bill place wider and more comprehensive duties on the Authority than the 1969 Act currently does for Local Authorities.

23. HSE would like the committee to note that in HSE regulations: The Mines Regulations 2014 and The Quarries Regulations 1999, there is a much broader meaning of a tip. HSE would like to ensure where possible terminology and definitions across the whole regulatory framework is aligned.

24. In MR2014 and in QR1999 tip” means an accumulation or deposit of any refuse from a mine (whether in a solid or liquid state or in solution or suspension) other than an accumulation or deposit situated underground, and includes, but is not limited to: a) overburden dumps, backfill, spoil heaps, stock piles and lagoons, and (b) any wall or other structure that retains or confines a tip.

25. When determining what a ‘lagoon’ is, consideration should be given as to whether the Reservoirs Act 1975 applies which is regulated by the Environment Agency and National Resources Wales.

26. Under Clause 81 (4) HSE note Welsh Ministers have the power by way of regulations to change the definition of a disused tip. HSE would like assurance that any change to the definition of a tip would be subject to the affirmative procedure, so HSE and others would be formally consulted so impacts on existing legislation can be considered.

27. Clause 82 Meaning of “threat to human welfare” In the bill HSE notes a threat to human welfare exists where there is a possibility of (a) loss of human life, (b) serious human illness or injury, (c) serious damage to property, (d) serious disruption of a supply of food, water, energy or fuel, (e) serious disruption of a

system of communication, (f) serious disruption of facilities for transport, or (g) serious disruption of services relating to health.

28. HSE's publicly available Enforcement Management Model (EMM) describes how HSE defines and benchmarks risk and considers the potential harm that might come to people when reviewing the consequences of an event. HSE has descriptors of a 'serious personal injury/serious health effect' and a 'significant injury/significant health effect'. HSE would like assurance that terms such as 'serious' and 'significant' used across the regulatory framework effectively mean the same thing and a similar approach is taken when assessing levels of risk.

3. What are the potential barriers to the implementation of the Bill's provisions and how does the Bill take account of them?

29. The recruitment of personnel with the appropriate level of knowledge, skills and expertise needed to implement the Bill could be a barrier. HSE noted the White Paper identified a lack of specialist skills to support the new regime, and the explanatory memorandum states that the establishment of the Authority hopes to address this. It can take a long time for individuals to acquire the appropriate level that is necessary to become fully operational.

30. HSE understand a skills survey has been undertaken with local government partners, looking at the baseline to better understand current and future demands. HSE hopes Wales will continue to engage with local authorities, skills providers, and the Mine Remediation Authority. The Bill could act as a catalyst for development and investment and growth within this sector

4. How appropriate are the powers in the Bill for Welsh Ministers to make subordinate legislation (as set out in Chapter 5 of Part 1 of the Explanatory Memorandum)

31. No comment.

5. Are any unintended consequences likely to arise from the Bill?

32. Enforcement powers and sanctions: the White Paper proposed a range of enforcement powers and civil sanctions which have not been included in the Bill. HSE understands this is because this seemed overly bureaucratic and unwieldy, but, more importantly, slow the Authorities ability to act quickly. What work has been undertaken to assess the range of civil sanctions, such as fixed monetary

penalties and compliance notices and whether they are sufficient enough in law to enable the Authority to act?

6. What are your views on the Welsh Government's assessment of the financial implications of the Bill as set out in Part 2 of the Explanatory Memorandum?

33. No comment.

7. Are there any other issues that you would like to raise about the Bill and the accompanying Explanatory Memorandum or any related matters?

34. No comment.
