DISUSED MINE AND QUARRY TIPS (WALES) ACT 2025

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes are for the Disused Mine and Quarry Tips (Wales) Act, that was passed by Senedd Cymru on 15 July 2025 and received Royal Assent on 11 September 2025. They have been prepared by the Climate Change and Rural Affairs Group of the Welsh Government to assist the reader of the Act. The Explanatory Notes should be read in conjunction with the Act but are not part of it.

SUMMARY AND POLICY BACKGROUND

2. There are over 2,500 disused coal tips in Wales, predominantly in the South Wales valleys. In February 2020, following storms Ciara and Dennis, a series of coal tip landslides occurred in Wales, including a major landslide of a disused tip in Tylorstown which caused over 60,000 tonnes of debris to fall into the Rhondda Fach River. These landslides illustrate the potential risks that disused tips present to communities.

3. The First Minister for Wales, Mark Drakeford MS, established the Coal Tip Safety Task Force in early 2020. It was tasked with a wide-ranging programme of works including identification of the location and status of all disused coal tips in Wales; establishment of a programme of inspection and maintenance of coal tips; ensuring legislation is fit for purpose, and development of a future programme to remediate disused coal tips to address long-term stability issues.

4. To support the coal tip safety programme the Welsh Government has allocated £102 million in capital investment during this Senedd term to support local authorities to carry out maintenance and remediation work on coal tips.

5. In October 2020, the Welsh Government invited the Law Commission to evaluate current legislation and to consider options for new legislation to ensure a robust, integrated and future proofed regulatory system, which adopts a uniform approach to inspection, maintenance and record keeping on coal tips. It reported on 24 March 2022. It made a number of recommendations including the creation of a single supervisory authority, creation of a coal tips register, and recommendations relating to inspection and on-going maintenance of coal tips.

6. The Coal Tip Safety (Wales) White Paper, which consulted on Bill proposals, was published by the Welsh Government on 12 May 2022. It drew on the recommendations of the Law Commission and further analysis undertaken by the Welsh Government. Responses to the White Paper consultation were published in November 2022. The White Paper asked whether the proposals for the Bill should apply to both coal tips and non-coal tips (for example tips containing waste from Wales's metal mining industry). The majority of responses (88%) agreed. Thus, the Act's provisions apply to both coal and non-coal tips. It should be noted that it is estimated there are over 20,000 disused tips (not coal) in Wales.

7. There was a broad consensus from the consultations undertaken that the current legislation relating to disused coal tips, the Mines and Quarries (Tips) Act 1969 ("the 1969 Act") was no longer fit for purpose. It had been enacted at a time when Wales had an active coal industry. Consequently, it was not designed for and does not adequately address, the management of disused coal tips. Consequently, the Act disapplies Part 2 of the 1969 Act to local authorities in Wales, and therefore, Part 2 does not apply in relation to disused tips that are located wholly in Wales.

8. The aim of the Act is to reduce the likelihood of landslides on disused coal and non-coal tips through the establishment of a new public body which will have functions in relation to the assessment, registration, monitoring and management of disused tips.

9. In summary, the Act:
   (a) establishes the Disused Tips Authority for Wales ("the Authority") as a body corporate. It must exercise its functions under the Act with a view to ensuring that disused tips do not threaten human welfare by reason of their instability,
   (b) makes provision for the assessment, registration and monitoring of disused tips,
   (c) contains provisions that enable the Authority to deal with tip instability and threats to tip instability. This includes powers to require an owner of land to carry out operations and for the Authority to carry out operations itself, and related provisions in respect of payments in connection with such operations,
   (d) contains supplementary provisions including powers of entry for the Authority, information sharing provisions and powers to require information, and
   (e) creates related offences to support the enforcement of the regime.

10. The Act comprises 93 sections and three Schedules.

COMMENTARY ON SECTIONS
PART 1 – THE DISUSED TIPS AUTHORITY FOR WALES.
Overview of Part 1

11. Part I of the Act is comprised of sections 1 to 5 which establishes the Authority; introduces Schedule 1, which makes further provisions about the Authority; outlines how the Authority must exercise its functions under the Act and makes provision about both the general and ancillary functions of the Authority.

Section 1 - The Disused Tips Authority for Wales

12. Section 1 establishes the Disused Tips Authority for Wales. It is established as a body corporate which means it is a body that has its own legal rights and responsibilities and is, for example, able to enter contracts. Throughout the Act, references to "the Authority" are to that body.

13. Subsection (3) introduces Schedule 1 which makes further provision about the Authority.

Schedule 1- The Disused Tips Authority for Wales

14. Schedule 1 makes provision about the Authority's constitution and operational arrangements. Under section 92, section 1 comes into force on 1 April 2027, therefore the Authority is established as a body corporate on that date. Schedule 1 comes into force on 1 April 2027 too (section 92(2)).

15. Paragraph 2 provides that the Authority will have between 4 and 6 non-executive members, appointed by the Welsh Ministers, including a chairing member. One of these members may be appointed as a deputy chairing member.

16. The Authority's membership will also include the person appointed under paragraph 6 as its chief executive. The first chief executive is to be appointed by the Welsh Ministers, with subsequent chief executives appointed by the non-executive members. In accordance with paragraph 15, the chief executive is the accounting officer for the Authority. The accounting officer's responsibilities about the accounts and finances of the Authority are as specified by the Welsh Ministers.

17. Paragraph 2(1)(d) provides that the chief executive and non-executives must appoint at least one but no more than two members to the Authority from amongst the Authority's staff. These members together with the chief executive are known as executive members (paragraph 2(3)(b)). Paragraph 2(4) gives the Welsh Ministers a regulation making power to amend the number of members appointed to the Authority, but the number of non-executive members must always exceed the number of executive members in the interests of promoting independent oversight of the exercise of the Authority's functions.

18. Among other things, the Authority will have the power under Schedule 1 to appoint staff and to establish committees and sub-committees. The Authority will be required to make rules regulating its procedure and the procedure of any of its committees or sub-committees.

19. Schedule 1 also sets out the reporting requirements for the Authority. Paragraph 19 places a duty on the Authority to prepare and publish a corporate plan for each planning period. Paragraph 19(2) requires the corporate plan to set out how the Authority intends to discharge its functions under the Act during the planning period.

20. The first planning period will be a period of 3 years beginning with 1 October 2027. Subsequent planning periods will also run in 3-year cycles. The corporate plan for a planning period must be submitted to the Welsh Ministers for approval before the planning period begins. Before submitting the corporate plan for approval, the Authority must consult such persons as it considers appropriate.

21. Paragraph 20 sets out the Authority's duties in relation to the preparation and publication of an annual report on the exercise of its functions during the preceding financial year. A copy of the report must be sent to the Welsh Ministers, and the Welsh Ministers must lay a copy before the Senedd Cymru.

22. Part 8 of the Schedule makes minor and consequential amendments to existing primary legislation in connection with the establishment of the Authority.

Section 2 - The Authority's exercise of its functions

23. Subsection (1) provides that the Authority must exercise its functions under the Act with a view to ensuring that disused tips do not threaten human welfare by reason of their instability. Subsection (2) also places a duty on the Authority to promote high standards in relation to the management of disused tips and threats to their stability in exercising its functions. What is meant by a "threat to human welfare" is defined at section 87.

24. By way of example, there could be a threat to human welfare if a disused tip located near a residential area became unstable and where any slippage resulting from instability could result in loss of human life, serious human illness or injury or serious damage to property.

25. Similarly, a threat to human welfare could exist where the failure of a disused tip, due to instability, could block a water course and result in a consequential flooding threat to human welfare.

26. Such a threat could exist where slippage of a disused tip due to instability could block a highway and cause serious disruption to facilities for transport.

27. Similarly, a threat to human welfare could exist where a disused tip located near electrical power lines and pylons becomes unstable and where any ground movement from instability could result in serious disruption to energy supply.

Section 3 - Information, advice and assistance

28. Subsection (1) requires the Authority to provide the Welsh Ministers with such information, advice or assistance about any of their functions as the Welsh Ministers may require. For example, the Welsh Ministers could ask the Authority for information relating to the number of notices under Part 3 issued by the Authority in relation to category 1 tips within a particular period. Subsection (2) provides that the Authority does not have to wait for a request from the Welsh Ministers, and may, of its own initiative, provide the Welsh Ministers with information, advice or assistance in connection with any matter relevant to their functions under this Act or any of their other functions.

29. In accordance with subsection (5), "assistance" for the purposes of this section is defined to include the carrying out of operations on land: for example, works to strengthen a retaining wall on a disused tip.

30. Subsection (3) provides that the Authority may also give any other person (other than the Welsh Ministers) information or advice on, or assistance with, any matter relating to a particular disused tip, or disused tips in general. Subsection (4) gives the Authority power to charge a fee for the provision of such support under subsection (3). This means for example that the Authority could charge a local authority in England for providing advice and assistance with matters relating to a disused tip in its area, if that tip straddles the border between Wales and England.

31. As the Authority is a public authority, the principles of public law will require any fees charged by it to be reasonable.

Section 4 – Financial assistance

32. Subsection (1) enables the Authority to give financial assistance to any person in respect of relevant expenditure. Subsection (2) defines "relevant expenditure" for the purposes of this provision.

33. Under this section, financial assistance may be given to, for example, individuals, public authorities or corporations. In practice, the types of financial assistance that it is envisaged the Authority will provide includes administration of a grant to fund safety critical maintenance and remedial works to reduce threats to human welfare.

Section 5 - Ancillary powers

34. Section 5 provides that the Authority may do anything which is calculated to facilitate, or which is conducive or incidental to, the exercise of its functions. This ensures that in addition to the specific powers the Authority is given to perform its core functions under the Act, it also has the powers it needs to be able to operate effectively, for example to enter into contracts, or to acquire land to accommodate its staff or equipment.

35. Subsection (2) places a restriction on the ability of the Authority to borrow money. It may only borrow from the Welsh Ministers.

PART 2 ASSESSMENT, REGISTRATI ON AND MONITORING OF DISUSED TIPS

CHAPTER 1– REGISTER OF DISUSED TIPS

Overview of Chapter 1

36. Chapter 1 makes provision requiring the Authority to compile and maintain a register of disused tips; setting the criteria for registration and the content of the register; giving a right of public access to the register and placing a duty on the Authority to monitor disused tips in the register.

Sections 6 and 7 – Duty to compile and maintain register and the criteria for registration

37. Section 6(1) places a duty on the Authority to compile and maintain an electronic register of disused tips that it has decided (a) pose a threat to human welfare by reason of instability, or (b) could pose such a threat in the event of instability.

38. The process for including disused tips in the register, or removing them from it, is set out in Chapter 3.

39. Section 7 sets out the criteria for registering a disused tip.

40. The criteria for registration are satisfied if either section 7(a) or (b) is satisfied in relation to a particular disused tip. Therefore, a disused tip does not need to be unstable at the time of assessment to be included in the register. It must also be included if it could pose a threat to human welfare (which is defined in section 87 and explained at paragraphs 330 - 331) if it were to become unstable.

Section 8 - Content of the register

41. Subsection (1) provides that the electronic register that the Authority is under a duty to compile and maintain under section 6, must, for each registered tip, include a map identifying the area of the tip. In addition, the register must include the information listed in subsection (2).

42. Subsection (2) sets out what must be included in an entry for a disused tip in the register. This includes a unique identifier given by the Authority to the tip (for example, this could be a reference number such as T28703). Subsection (2)(f) provides that an entry in the register must include any additional information specified in regulations made by the Welsh Ministers. Subsection (3) places a duty on the Welsh Ministers to consult with the Authority before making such regulations.

43. Subsection (4) provides that the Authority may only change the mapped area for a disused tip or change the category that has been awarded to a tip, in accordance with the provisions of Chapter 5.

Section 9 - Public access to the register

44. Section 9 requires the Authority to publish the maps and information in the register, other than information specified by regulations made under section 8(2)(f), which does not have to be published. In accordance with section 72, where the Act requires the Authority to publish anything, this means it must be published on the website (or other electronic facility) that the Authority is required to establish and maintain under section 71, and it may also be published in any other manner the Authority considers appropriate.

Section 10 - Duty to monitor registered tips

45. Subsection (1) places a duty on the Authority to monitor the stability, and threats to the stability, of each disused tip in the register.

46. To perform its monitoring duty in relation to a category 1 disused tip, subsection (2) requires the Authority to inspect the tip within 6 months of the tip being recorded in the register as a category 1 tip, and to further inspect the tip twice within the period of 12 months beginning with the day on which the first inspection is completed. Thereafter, the Authority is required to inspect the tip twice within each subsequent period of 12 months.

47. To perform its monitoring duty in relation to a category 2 disused tip, subsection (3) requires the Authority to inspect the tip within 12 months of the tip being recorded in the register as a category 2 tip, and to further inspect the tip once within the period of 12 months beginning with the day on which the first inspection is completed. Thereafter the Authority must inspect the tip once within each subsequent period of 12 months.

48. Subsection (4) provides that the Authority may carry out any other monitoring activities (including additional inspections) that it considers appropriate in relation to a category 1 or 2 disused tip. Other monitoring activities might, for example, include the use of remote sensing to detect ground movement.

49. Subsection (5) provides that in order to perform its duty under subsection (1) in relation to category 3 or category 4 disused tips, the Authority may carry out any inspections or other monitoring activities that it considers appropriate.

50. Subsection (6) provides the Welsh Ministers with the power to make regulations to amend subsection (2) or (3) to -

    (a) change any period of time, referred to in those subsections, within which an inspection or inspections (as the case may be) must be carried out;
    (b) change, in relation to any such period, the number of inspections which the Authority is required to carry out.

51. Section 74(1)(b) places Welsh Ministers under a duty to issue guidance to the Authority in relation to the exercise of its functions under section 10. In accordance with subsection (3) of that section, the Authority must have regard to such guidance in exercising its monitoring functions.

CHAPTER 2 – ASSESSMENT OF DISUSED TIPS

Section 11 - Overview

52. Section 11 provides an overview of the content of Chapter 2.

Sections 12 and 15 - Meaning of "preliminary assessment" and "full assessment"

53. Section 12 defines "preliminary assessment" for the purposes of Chapter 2. In accordance with section 74(1)(c), the Welsh Ministers must issue guidance to the Authority in relation to the exercise of its functions under Chapter 2 of Part 2 (preliminary assessments and full assessment of tips by the Authority). It is anticipated that the guidance will state that a preliminary assessment should take the form of a desktop survey that looks at matters such as the height and volume of a disused tip, its proximity to sensitive receptors (such as housing, infrastructure etc), any information about the tip's history that may be relevant to its stability and existing inspection or structural reports.

54. Section 15 defines the meaning of a "full assessment" of a disused tip for the purposes of Chapter 2. The definition refers to the criteria for registration, which are described in section 7. In accordance with section 74(1)(c), the Welsh Ministers must issue guidance to the Authority in relation to the exercise of its functions under Chapter 2 of Part 2 (preliminary assessments and full assessment of tips by the Authority). It is anticipated the guidance will state that a full assessment should involve a physical inspection of the disused tip by a suitably qualified person.

55. A full assessment may only take place after a preliminary assessment has been conducted.

Section 13 - Preliminary assessments of all disused tips

56. Subsection (1) places a duty on the Authority to (a) carry out a preliminary assessment in relation to every disused tip in Wales, and (b) produce and publish a report of each assessment.

57. Subsection (2) enables the Authority to publish a report in a redacted form if the Authority considers it necessary to do so in order to avoid disclosing information contrary to any prohibition imposed by an enactment or rule of law. Redaction could, for example, entail removing personal data such as name, address or contact details.

58. There are approximately 2,500 disused coal tips in Wales, and it is estimated there are over 20,000 other disused tips (i.e. not coal) in Wales. Not all disused tips can be assessed at once. Consequently, subsection (3) requires the Authority to prepare a programme of work setting out its proposed approach to, and a timetable for, carrying out the preliminary assessments that are required by section 13.

59. It is anticipated that the programme of works will be developed so that the disused tips (whether they be coal or not) that are currently known to present the greatest threat to human welfare will be the first to receive a preliminary assessment. In respect of disused coal tips, decisions on prioritisation for preliminary assessment will be based on existing data from the Coal Authority.

60. Subsections (4) to (9) make further provision about the programme of work the Authority is required to prepare. In particular, the Authority must send the first programme of work to the Welsh Ministers for approval within 12 months of section 13 coming into force. The Welsh Minsters may approve the programme that is submitted to them by the Authority, or they may modify it prior to approving it. The Authority must publish the programme. The Authority may revise its published programme, subject to the approval of the Welsh Ministers. If it does so, the revised programme must be published as soon as practicable.

61. In accordance with section 72, where the Act requires the Authority to publish anything, this means it must be published on the website (or other electronic facility) the Authority is required to establish and maintain under section 71, and may also be published in any other manner the Authority considers appropriate.

Section 14 – Additional preliminary assessments

62. There will be circumstances where the Authority has carried out a preliminary assessment of a disused tip and has decided it does not meet the criteria for inclusion in the register. An additional preliminary assessment must be carried out and a report of that assessment must be produced and published by the Authority, as soon as practicable, if the Authority considers such an assessment necessary in relation to the relevant tip: (a) because of a change in circumstances; or (b) because information is available that was not taken into account when the previous assessment was carried out. As is the case for preliminary assessment reports under section 13, the Authority may publish the report in a redacted form.

63. An example of a change in circumstances might be the construction of a housing estate or a highway near to a disused tip, which might threaten the stability of the disused tip. An example of new information might be information not previously made available by an owner or occupier of the disused tip that highlights, for instance, evidence of an increased water run-off from neighbouring land that might pose a threat to the stability of the disused tip.

Section 16 – Full assessment of unregistered tip

64. Subsection (1) places a duty on the Authority to carry out a full assessment of an unregistered disused tip if, based on a preliminary assessment under either section 13 or 14, it appears to the Authority that the criteria for the registration of the tip may be met. The Authority is required to produce and publish a report of the assessment.

65. Subsection (2) enables the Authority to publish a report in a redacted form if the Authority considers it necessary to do so in order to avoid disclosing information contrary to any prohibition imposed by an enactment or rule of law. Redaction could, for example, entail removing personal data such as name, address or contact details.

Section 17 - Full assessment of registered tip

66. Section 17 provides that an additional full assessment must be carried out and a report of that assessment must be produced and published by the Authority, as soon as practicable, if the Authority considers such an assessment necessary in relation to the relevant tip: (a) because of a change in circumstances; or (b) because information is available that was not taken into account when a full assessment was last carried out in relation to the tip. As is the case for full assessment reports of an unregistered tip under section 16, the Authority may publish the report in a redacted form.

67. The Authority may, for example, decide to carry out an additional full assessment of a disused tip that is already on the register if it learns that drainage infrastructure under the tip has collapsed since the tip was last subject to a full assessment. Equally, the Authority may decide to carry out a full assessment of a registered tip if it receives information that suggests the tip no longer meets the criteria for registration.

Section 18 – Notice of intention to carry out full assessment

68. Before carrying out a full assessment in relation to a disused tip, subsection (1) places a duty on the Authority to give notice to every owner and every occupier of land to which access is required for the purposes of the assessment.

69. In practice, this means every owner and every occupier of the disused tip will need to be given notice. In addition, where the disused tip cannot be accessed directly from a public highway, the owners and the occupiers of any land the Authority will be required to cross to gain access to the disused tip will also need to be notified. Notice will also be given to owners and occupiers of land near to the disused tip, if access to that land is needed as part of the full assessment: for example, to assess whether there are any interdependencies between tips or to consider whether the criteria for registration (under section 7) are met.

70. An "owner" of land is defined for the purposes of the Act in section 88 to mean the person who owns the freehold title to the land or holds a fixed term tenancy that has at least a year left to run and is not a mortgage term. This means banks and building societies that hold a mortgage on a piece of land are not considered to be owners for the purposes of the Act. Section 88(b) provides that a person who has a reversionary interest in land that will only be realised when such a tenancy comes to an end is not to be considered an owner for the purposes of the Act.

71. The "owner" of the land will, in many cases, be the occupier of the land too. However, there will be cases in which persons other than the "owner" are occupying the land: for example, persons who have a licence to occupy the land, or persons who hold periodic tenancies or tenancies which have less than a year to run. Where this is the case, notice will have to be given to those persons too.

72. Subsection (2) describes what must be included in a notice given under section 18(1). Amongst other things, the notice must specify the date on which access to the land may be needed. This must not be less than 14 days after the date on which the notice is given. So, if a notice is given on 1 November, access cannot be sought until 15 November.

73. The notice must also state that the Authority can apply for a warrant to enter land (in accordance with section 67) if access is refused. This requirement does not apply if the land in question is Crown land, as a warrant cannot be applied for to enter Crown land. Crown land is defined in section 89(2).

Section 19 – Notice of conclusions of full assessment

74. When the Authority produces a report of a full assessment in relation to a disused tip, it must, as soon as practicable, give notice of the conclusions of the report to every owner and every occupier of land on which the tip is situated.

CHAPTER 3 – REGISTERING AND DEREGISTERING DISUSED TIPS

Overview of Chapter 3

75. Chapter 3 sets out the process that the Authority must follow where it proposes to register a tip or to remove a tip from the register.

Section 20 – Proposal to register tip

76. Where the Authority concludes that the criteria for registering a tip (section 7) are met based on the report of a full assessment (section 16), section 20 places a duty on the Authority to give a "notice of proposed registration" to the persons listed in section 20(2)(a) and (b).

77. For the purposes of subsection (2)(b), persons with an estate or interest in the land who are neither owners (as defined in section 88 of the Act) nor occupiers of the land may include, for example, those with an easement over the land.

78. Subsection (3) describes what must be included in a notice given under subsection (1). For example, the notice must advise the person to whom a notice is given under subsection (2) that they may make representations to the Authority on the proposal to register the tip (including the proposed category for the tip). The notice must give the person a period of at least 30 days, beginning with the day after the day on which the notice is given, to make representations. This means for example that if a notice is given on 1 October a person must be given until at least 31 October to make the representations. The notice must also explain how a person may make representations.

79. The ways of making representations could include, for example, the making of representations by email or post to the Authority.

80. It is anticipated that the Welsh Ministers will give guidance to the Authority to make reasonable adjustments for persons who may find it difficult to make representations using traditional methods.

81. In terms of the substance of the representations, it would be for the person making the representations to determine what additional evidence they wish the Authority to consider when making a decision on registration; this might include information they believe the Authority did not consider when carrying out its assessment.

82. Subsection (4) gives the Welsh Ministers a regulation making power to change the time period for making representations. The power cannot be exercised to reduce the period for making representations to less than 14 days.

Section 21 – Decision on registration

83. Section 21 sets out the procedure that the Authority must follow once the period for making representations about a proposal to include a disused tip in the register has expired.

84. Subsections (2) and (3) set out what the Authority must decide and the specific matters to which the Authority must have regard.

85. Subsection (4) provides that the Authority may also have regard to any other information it considers relevant. This could, for example, include information relating to the history of the tip's construction, proposed development on or around a tip that will affect the tip, or changes to land use. Subsection (5) provides that where the Authority decides the criteria for registration are met, it must include the tip in the register as soon as practicable.

86. Subsection (6) provides the Authority may, if it thinks it is appropriate to do so, register a tip otherwise than in accordance with the proposal contained in the notice of proposed registration. This might occur, for example, where the Authority takes into account representations made in accordance with section 20(3) and places the tip in a different category.

87. Subsections (7) and (8) list the persons to whom the Authority must give notice of its decision and the information that must be contained in the notice.

Section 22 – Proposal to remove tip from register

88. If it appears to the Authority, on the basis of a report of a full assessment under section 17, that the criteria for registration are no longer met in relation to a tip in the register, the Authority must as soon as practicable give a "notice of proposed deregistration" to the persons listed in subsection (2)(a) and (b). The persons listed in subsection (2)(a) and (b) are the same as those required to be notified about a proposal to register a tip under section 20(2).

89. Subsection (3) sets out what a notice of proposed deregistration must contain and the minimum period for making representations.

90. Subsection (4) gives the Welsh Ministers a regulation making power to change the minimum period for making representations. The power cannot be exercised to reduce the period for making representations to less than 14 days.

Section 23 – Decision on removal of tip from register

91. Section 23 sets out the procedure that the Authority must follow once the period for making representations about a proposal to remove a disused tip from the register has expired.

92. Subsections (2) and (3) set out what the Authority must decide and the specific matters to which the Authority must have regard. Subsection (4) provides the Authority may also have regard to any other information it considers relevant.

93. Subsections (6) and (7) list the persons to whom the Authority must give notice of its decision and the information that must be contained in the notice.

CHAPTER 4 – THE CATEGORIES OF DISUSED TIP ETC

Overview of Chapter

94. All disused tips that are entered onto the register will be given a category by the Authority, based on the different degrees to which the disused tips cause the Authority concern. This Chapter explains the categories of disused tip, how the Authority will make decisions on categorisation and provides a process for review of categorisation.

Section 24 – Categories of disused tip

95. Subsection (1) provides that a disused tip may be placed in one of four categories on the register: category 1, 2, 3 or 4. The categories have a numeric descriptor as the register will be available in both English and Welsh.

96. Subsection (2) provides the four categories represent the different degrees to which disused tips cause the Authority concern. Decisions on the categorisation of a tip must be made on the basis of one or more of the factors set out in subsection (3).

Section 25 – Statement of policy on categorisation

97. Subsection (1) places a duty on the Authority to publish a statement of its policy on the categorisation of disused tips. It is anticipated that this statement will include matters such as the Authority's approach to categorisation and a description of the different categories.

98. Subsection (2) enables the Authority to revise the statement. If it does so, the Authority must publish the statement in its revised form as soon as practicable after making the revisions. It is intended the Authority will publish the statement on its website.

99. Subsection (3) places a duty on the Authority to consult such persons as it considers appropriate before publishing the statement (including in a revised form).

Section 26 – Initial categorisation of a disused tip

100. When proposing to register a tip under section 20 or deciding to register a tip under section 21, the Authority must have regard to the report of the full assessment carried out under section 16 and follow the policy in the statement published under section 25.

101. The Authority may also have regard to any other information it considers relevant in proposing or deciding on a tip's category. This might include, for example, information about the tip's history that may be relevant to its stability.

Section 27 – Reviews of categorisation

102. The Act allows the Authority to change a tip's category following a review. Subsection (1) places a duty on the Authority to review a tip's category as soon as practicable where the Authority carries out a full assessment of a disused tip that is already in the register and the report concludes the criteria for registration are still met.

103. Subsection (2) gives the Authority the power to review the category of a tip at any other time.

104. Subsection (3) provides that where the Authority considers on review that a disused tip's category should be changed, it must propose a different category for the tip as soon as practicable.

105. Subsections (4) and (5) mirror section 26(2) and (3), in that these provisions set out the information and documents that the Authority is required or permitted to have regard to in reviewing a disused tip's category and in proposing a different category. Where there has been more than one full assessment in relation to a disused tip, the Authority may have regard to all of these assessments but is only required to have regard to the report of the most recent assessment.

CHAPTER 5 – NOTIFIABLE CHANGES TO THE REGISTER

Overview of Chapter 5

106. Chapter 5 makes provision about notifiable changes to the register. It defines what is meant by notifiable change, the process that the Authority must follow if it proposes to make a notifiable change, and the process for making a decision on a notifiable change.

Section 28 – Meaning of "notifiable change"

107. For the purposes of Chapter 5, a notifiable change means a change to the area shown as the area of a disused tip on the map included in the register, or a change to the disused tip's category.

Section 29 – Proposal to make notifiable change

108. Subsection (1) describes the persons that the Authority must notify if it proposes to make a notifiable change.

109. Subsection (2) describes what a notice under subsection 1 (i.e. a "notice of a proposed change to the register") must address.

110. Amongst other things, the notice must advise the person to whom a notice is given under this section that they may make representations to the Authority about the proposal. The notice must give the person a period of at least 30 days beginning with the day after the day on which the notice is given to make representations. This means, for example, that if a notice is given on 1 October a person must be given until at least 31 October to make the representations. The notice must also explain how a person may make representations.

111. The ways of making representations could include, for example, by email or post to the Authority. It is anticipated that the Welsh Ministers will give guidance to the Authority to make reasonable adjustments for persons who may find it difficult to make a complaint using traditional methods.

112. In terms of the substance of the representations, it would be for the person making the representations to determine what additional evidence they wish the Authority to consider when making a decision, this might include information they believe the Authority has not considered or had access to.

113. Subsection (3) gives the Welsh Ministers a regulation making power to change the time period for making representations. The power cannot be exercised to reduce the period for making representations to less than 14 days.

Section 30 – Decision on notifiable change

114. The provisions in this section set out the procedure that the Authority must follow in deciding whether to make the change, once the period for making representations about a proposal to make a notifiable change has expired.

115. Subsection (5) provides that in making its decision, the Authority must have regard to any representations about the proposal by a person who was given a notice under section 29. Subsection (6) provides that the Authority may also have regard to any other information it considers relevant. This could, for example, include information relating to the history of the tip and its stability.

116. Subsection (7) provides that where the Authority decides to make a notifiable change, it must update the register as soon as practicable.

117. Subsections (8) and (9) set out the procedure that the Authority must follow to give notice of its decision.

CHAPTER 6 – SUPPLEMENTARY PROVISION

Overview

118. Chapter 6 contains provision that supplements the other provisions in Part 2. Section 31 places the Authority under a duty to compile and maintain a list of all disused tips that have had a preliminary assessment under section 13. Section 32 requires the Authority to publish specified notices. Section 33 makes provision for compensation for damage or disturbance arising as a result of specified activity carried out under Chapter 1 or 2 of this Part. It also introduces Schedule 2 - Claims for Contributions by Owners and Contributories. Section 34 makes it a criminal offence to obstruct monitoring activities or assessments under Part 2 of the Act.

Section 31 – Duty to compile and maintain list of all disused tips

119. Subsection (1) places a duty on the Authority to compile and maintain an electronic list of all disused tips which have undergone a preliminary assessment. This means that, in time, all disused tips in Wales will appear on the list, including those that do not meet the criteria for registration under section 7. In accordance with subsection (2), the Authority must include a disused tip in the list as soon as practical after completing the relevant preliminary assessment.

120. Subsection (3) prescribes that an entry in the list must include the name or names by which the tip is commonly known, the location of the tip and a unique identifier given by the Authority to the tip. Subsection (4) requires the Authority to publish the list. In accordance with section 72, where the Act requires the Authority to publish anything, this means it must be published on the Authority's website (or other electronic facility) established and maintained under section 71, and may also be published in any other manner the Authority considers appropriate.

Section 32 – Duty to publish notices

121. Section 32 provides that where a provision in Chapter 3 or 5 of Part 2 requires a notice to be given to a person, the Authority must publish the notice as soon as practicable after it is given. This means that notices given under sections 20, 21, 22, 23, 29 and 30 must be published. The Authority has the power to publish the notice in a redacted form if the conditions specified in subsection (2) are met.

122. In accordance with section 72, the notices must be published on the Authority's website (or other electronic facility) established and maintained under section 71, and may also be published in any other manner the Authority considers appropriate.

Section 33 - Compensation for damage or disturbance

123. Section 33 provides that the persons referred to in subsection (3) are entitled to recover compensation from the Authority for damage or disturbance resulting from carrying out activities listed in subsection (1).

124. Subsection (4) provides that any dispute arising out of a claim for compensation under this section is to be determined by the court. "Court" is defined in section 90 as the High Court or county court.

125. Subsection (5) provides that Schedule 2 has effect in relation to certain claims for compensation under this section.

126. Under section 74(1)(d), the Welsh Ministers must give guidance to the Authority in relation to the exercise of its functions under section 33.

Schedule 2 – Claims for compensation by owners and contributories

127. Schedule 2 makes provision in relation to claims by owners or contributories for compensation. "Contributories" are persons in relation to whom a contribution order has been made under section 48.

128. Paragraph 1(1) provides that the Schedule applies to an owner of land where the Authority has carried out operations under section 44 or investigations under section 55 that resulted in the carrying out of operations, the owner has claimed compensation under the Act and notwithstanding any contribution order that may have been made, the owner has expenses to bear in respect of those operations or investigations.

129. Paragraph 1(2) provides that the Schedule also applies to contributories if a contribution may be claimed from them in respect of expenses incurred by an owner of land in carrying out operations under section 35 or by the Authority in carrying out operations under section 44 or investigations under section 55 that resulted in the carrying out of operations, and the contributory has claimed compensation under the Act from an owner of land or the Authority.

130. Paragraph 2 makes provision that applies where an owner of land seeks to enforce a claim for compensation from the Authority under the Act and the Authority is entitled to demand a sum from the owner under section 53.

131. Paragraph 3 makes provision that applies where a contributory seeks to enforce a claim for compensation from the Authority or a landowner and the Authority or the landowner is entitled to demand a sum from the contributory (under section 51 or 53).

132. Paragraphs 2 and 3 prevent those claims for compensation from being enforced, other than by way of an offset against a demand, for a period of 12 months. The purpose of this restriction is to provide an opportunity for the relevant sums to be demanded (and potentially recovered) from the person before compensation has to be paid to the person.

133. Paragraph 4 provides that references to operations in Schedule 2 include works of reinstatement consequential on those operations.

134. Paragraph 5 makes provision relating to the time limit for bringing a claim for compensation referred to in paragraph 1. Section 9 of the Limitation Act 1980 requires the claim to be made within 6 years of the date on which the cause of action accrued, and paragraph 5 sets out when the cause of action is to be regarded as having accrued for that purpose.

Section 34 – Penalty for obstructing monitoring activities or assessments

135. Subsection (1) provides that it is an offence to intentionally obstruct or interfere with an inspection or other monitoring activity under section 10, or a preliminary or full assessment under Chapter 2.

136. Subsection (2) provides that a person who is found guilty of such an offence is liable on summary conviction to a fine.

137. Subsection (3) provides that a contravention of subsection (1) by the Crown does not make the Crown criminally liable. This is consistent with the policy expressed in section 28(3) of the Legislation (Wales) Act 2019, which provides that an Act of Senedd Cymru does not make the Crown criminally liable, but applies to persons in the service of the Crown as it applies to other persons.

PART 3 – DEALING WITH TIP INSTABILITY AND THREATS TO TIP STABILITY

CHAPTER 1 - REQUIRING AN OWNER OF LAND TO CARRY OUT OPERATIONS

Overview of Chapter

138. Chapter 1 gives the Authority a power to give an owner of land a notice to require the owner to carry out operations on that land to prevent or deal with threats to the stability of disused tips, or to stabilise disused tips or prevent them from becoming more unstable, so as to avoid or reduce threats to human welfare. It makes provision in relation to the owner's right to enter their land to carry out operations in situations where the owner is not in occupation of their land. It also makes provision requiring the Authority to give interested parties, such as occupiers of the land, copies of any notice requiring the owner to carry out operations. The Chapter also makes provision for related matters, such as rights of appeal against a notice and the imposition of a penalty for a failure to comply with a notice. It also enables the Authority to cancel a notice after it has been given and makes provision for reimbursement of expenses in such a situation.

Section 35 – Notice requiring owner of land to carry out operations

139. Section 35 gives the Authority the power by notice to require the owner of land to carry out specified operations on the land if the Authority thinks the operations are necessary to fulfil the objective set out in subsection (2).

140. Subsection (2) provides the objective is to (a) prevent or deal with threats to the stability of a disused tip, or (b) to stabilise a disused tip or prevent a disused tip from becoming more unstable, so as to avoid or reduce threats to human welfare. Therefore, the Authority has the power to intervene in the interests of the stability of disused tips at various stages, including by taking pre-emptive action.

141. "Operations" are defined in section 90 as including, but not limited to, building and engineering operations.

142. The Authority is given the power to issue notices to owners of land. This includes owners of disused tips but may also include owners of land that is not covered by a disused tip. In practice, such land is likely to be land that is immediately adjacent to a disused tip where conditions on that land are having a direct impact, or could potentially have a direct impact, on the stability of the disused tip.

143. The operations that might be required by a notice will vary in nature and degree. Some operations might be relatively minor in nature, such as clearing detritus from a culvert to allow proper drainage that might prevent a disused tip becoming unstable. Equally, a notice could require a major overhaul of a disused tip's drainage system that is no longer serviceable.

144. An example of the type of operations that might be required to be undertaken by an owner of land that is not a disused tip might include operations to capture and re-route water run-off which is uncontrollably discharging onto a disused tip from adjacent land and causing instability.

145. Subsections (3) and (4) set out the procedural requirements the Authority must follow in giving a notice under this section.

146. The Welsh Ministers intend to issue guidance to the Authority about its functions under this Chapter. This is likely to include guidance on matters such as allowing sufficient time, when setting deadlines for the completion of operations, for the owners to obtain the necessary permissions or permits to carry out the operations, so as to ensure that the timeframe given for the completion of operations is reasonable.

Section 36 – Owner's right of entry onto land etc

147. Section 36 recognises that owners who are not in occupation of their land, or any part of it, need to be able to enter their land if they receive a notice under section 35 that requires them to carry out operations on the land.

148. Subsection (1) provides that if an owner of land who is given a notice under section 35 is not in occupation of the land on which the operations specified in the notice must be carried out, and the owner's estate in the land is superior to the estate or interest of the occupier, the owner has the right to enter the land (or part of the land) to carry out the operations and any consequential works of reinstatement. Such reinstatement works might include works to reinstate agricultural land. An example where the owner's estate is superior is where the owner holds the freehold estate in the land and the occupier merely has a licence to occupy the land.

149. Subsection (2) provides that an owner exercising a right of entry under subsection (1) may take other persons, equipment or materials onto the land. This is to facilitate the carrying out of the required operations.

150. Subsection (3) gives an owner who is given a notice under section 35 the power to remove and dispose of any property situated on the land that belongs to another person, if that the removal and disposal is for the purposes of carrying out the operations required by the notice. Such property might include machinery that needs to be moved before the operations can commence or could comprise materials from the disused tip itself.

151. Subsection (4) provides that if the owner of the land disposes of such property by selling it, the owner must account to the owner of the property for the proceeds of sale. However, subsection (5) enables the owner to deduct any expenses that are reasonably incurred in selling the property and to offset the proceeds of sale against any sum the owner of the land is entitled to recover from the owner of the property under Chapter 3.

Section 37 – Duty to give interested parties copies of notice

152. Subsection (1) provides that where the Authority gives notice to an owner of land under section 35 requiring the carrying out of operations, it must also give a copy of the notice to any other person with an interest in the notice. This is to ensure that anyone who might be affected by the carrying out of operations on the land, or who might be required to contribute towards the cost of carrying out the operations, is informed about them. Subsection (4) requires the Authority to give copies of the notice within 7 days, beginning with the day on which the notice was given to the owner.

153. Subsection (2) prescribes the persons who (in addition to the owner) are persons with an interest in the notice.

154. The persons listed in subsection (2) include persons whose past conduct could have caused or contributed to the need for a notice to be served and who, in accordance with the provisions of section 48, could be required by the court to contribute to the costs of the operations under a contribution order. For example, a person who, to the Authority's knowledge, has within any time in the 12 years before the notice was given to the owner used the disused tip to deposit waste from a mine or quarry.

Section 38 – Right of owner and interested parties to appeal against notice

155. Section 38 gives an owner of land who is given a notice requiring the carrying out of operations on land pursuant to section 35, or a person who is given a copy of the notice under section 37, a right to apply to the Welsh Ministers to vary or cancel the notice.

156. Subsection (3) sets out at paragraphs (a) to (f) the grounds for an appeal under this section. Paragraph (f) enables an appeal to be brought on procedural grounds where it is contended there is a material defect or error in, or in connection with, the notice. This might include, for example, the appellant contesting that the notice provides insufficient information to enable compliance.

157. Subsection (4) also gives an owner who is served a notice under section 35 the right to apply to the Welsh Ministers to vary or cancel a notice on the grounds the owner is unable to meet the costs of the operations required by the notice.

158. An appeal might be brought on this ground where, for example, a private owner of a disused tip is faced with a notice requiring costly operations that they cannot afford. A landowner who makes a successful application under subsection (4) will not be liable for the criminal offence under section 41 of failing to comply with a notice issued under section 35. If the application succeeds and the section 35 notice is cancelled, the Authority will nonetheless be able to issue a notice under section 44 to ensure the operations are carried out.

Section 39 – Determination of appeals

159. Subsection (1) provides that an application made under section 38 to vary or cancel a notice issued under section 35 is to be determined by a person appointed by the Welsh Ministers (an "appointed person"). Section 74(4)(a) requires the Welsh Ministers to give guidance to persons appointed to determine applications under section 38. Section 74(5) requires that those persons must have regard to that guidance when exercising their functions.

160. In practice, it is intended that most applications under section 38 and 43 will be determined by Planning and Environment Decisions Wales (PEDW). PEDW carry out casework relating to the development and use of land in the public interest. They deal with, amongst other things, planning and enforcement appeals, Strategic and Local Development Plans and environment appeals. They currently have a team of 20 inspectors who make appeal decisions, supported by 25 support staff.

161. Subsection (2) allows the appointed person to vary or cancel the notice if the appointed person is satisfied that any of the grounds on which the application was made have been proven. Where a notice is varied, subsection (3) provides that the notice, and any copy of it given under section 37, is to be treated as always having effect as varied.

162. Subsection (4) provides that where an application is made under section 38 and it is not withdrawn, the period specified in the notice as the period within which operations must be completed does not expire before the application is determined. This means that the person to whom the notice has been given cannot be guilty of an offence under section 41 for failing to comply with the notice whilst the determination of the application is pending.

163. Subsection (5) provides that the appointed person may extend the time specified in the section 35 notice for completing operations. This power can be exercised whether the grounds for an application are made out or not. It may, for example, be used if, by the time an appeal is determined, the deadline for completion of the operations specified in the notice is imminent.

164. Subsections (6) and (7) set out the steps that the Welsh Ministers must take once an application under this section has been determined.

Section 40 – Supplementary provision about appeals

165. Subsection (1) places a duty on the Welsh Ministers to make regulations about the procedure to be followed in determining appeals made under section 38. For example, this could include provision conferring a discretion on the person determining the appeal to decide which way the appeal proceedings should be determined ie by written representations or a hearing. It could also include provision conferring a discretion on that person to appoint another person to advise on any technical matters arising in connection with an appeal.

166. Subsection (2) gives the Welsh Ministers the power to make regulations about any other (non-procedural) matter that is connected to the determination of appeals under section 38. For example, this might include matters that are preliminary or subsequent to the determination of an appeal, or which, for other reasons, cannot reasonably be characterised as a matter of procedure. An example might be conferring a power to enter land if that is necessary to fairly determine an appeal.

167. Regulations made under this section may cover both procedural matters and other matters connected to determining an appeal. Further detail about the type of provision that may be made in these regulations is contained in the Statement of Policy Intent that accompanied the Bill's introduction.

168. Subsection (3) sets out examples of the matters that may be included in regulations made under this section. Subsection (4) provides that regulations under this section may confer a discretion on a person. Subsection (5) provides that regulations under this section may create offences in connection with failures to comply with any requirements imposed by or under the regulations.

Section 41 – Penalty for failure to comply with notice

169. Subsection (1) provides that an owner who is given a notice under section 35 commits an offence if, without reasonable excuse, the owner fails to carry out the operations within the period specified in the notice, or, if the notice period is extended under section 39, within that extended period.

170. Subsection (2) provides that a person who is found guilty of the offence under subsection (1) is liable to a fine.

171. Subsection (3) provides that a contravention of subsection (1) by the Crown does not make the Crown criminally liable. This is consistent with the policy expressed in section 28(3) of the Legislation (Wales) Act 2019, which provides that an Act of Senedd Cymru does not make the Crown criminally liable, but applies to persons in the service of the Crown as it applies to other persons.

Section 42 – Power to cancel notice

172. Section 42 provides the Authority with a power to cancel a section 35 notice. The Authority may give a notice of cancellation to an owner of land at any time before the operations required by the section 35 notice are completed, even if works have begun or an application to vary or cancel the notice has been made under section 38.

173. The situations in which the Authority may wish to cancel a notice may include, for example, situations where circumstances change after the date on which the notice was given, and the Authority is of the view that different operations should now be performed on the land. In accordance with subsection (6)(b), cancelling a notice does not affect the Authority's power to give a further section 35 notice in relation to the land. A new notice could therefore be given requiring different operations to be carried out on the land.

Section 43 – Reimbursement of owner's expenses on cancellation of notice

174. Section 43 applies where the Authority has cancelled a section 35 notice and the owner who was given the notice has incurred expenditure in complying with it.

175. Subsection (2) gives the owner a right to apply to the Welsh Ministers to be reimbursed by the Authority for (a) any expenditure incurred by the owner as a result of them having been given the notice, and (b) any expenditure incurred by the owner that is attributable to the cancellation of the notice. For example, expenditure that has already been paid out by the owner in furtherance of the required operations, such as costs that have been paid to contractors or to hire plant or machinery or expenses incurred by the owner as a result of cancelling a contract for works or costs of reinstating the land.

176. Subsections (3) to (6) set out how an application under this section is to be determined.

177. As set out in paragraph 160 above, the intention is for PEDW to determine applications under this section on behalf of the Welsh Ministers. The person determining the application may give a direction to the Authority to reimburse the owner and the Authority must comply with this direction. Section 74(4)(b) requires the Welsh Ministers to give guidance to persons appointed to determine applications under section 43. Section 74(5) requires that those persons must have regard to that guidance when exercising their functions.

178. Subsection (7) places a duty on Welsh Ministers to make regulations about the procedure to be followed in determining applications under this section. Subsection (8) gives Welsh Ministers the power to make regulations making other provision in connection with determination of applications under this section. This means that the Welsh Ministers have the power to make regulations about any other (non-procedural matter) that is connected to the determination of applications under this section. For example, this might include matters that are preliminary or subsequent to the determination of the application that cannot reasonably be characterised as a matter of procedure.

179. Subsection (9) applies the provisions of subsections (3) to (5) of section 40 to regulations made under this section.

CHAPTER 2 – OPERATIONS CARRIED OUT BY THE AUTHORITY

Overview of Chapter

180. Chapter 2 gives the Authority a power to carry out operations on land to prevent or deal with threats to the stability of disused tips, or to stabilise disused tips or prevent them becoming more unstable, so as to avoid or reduce threats to human welfare (as defined in section 87). It gives the Authority related powers to remove and dispose of property from land. It also places a duty on the Authority to notify owners before carrying out works and requires the Authority to give interested parties a copy of the notice.

Section 44 – Authority's power to carry out operations

181. Section 44 gives the Authority the power to carry out operations on any land, if it considers it necessary to do so to achieve the objective in subparagraph (2). However, this power to carry out operations is subject to the requirement to give notice to owners set out in section 46.

182. The Authority has the power to intervene in the interests of the stability of disused tips at various stages, including by taking pre-emptive action.

183. “Operations” are defined in section 90 as including, but not limited to, building and engineering operations. Examples of such operations might include the clearing of drainage infrastructure, the removal of vegetation, the repair of retaining structures, the reinstatement of erosion features and the remediation of areas of landslip.

184. The Authority is given the power to carry out operations on any land. This includes land on which a disused tip is situated, but also includes other land. In practice this land is likely to be, land that is immediately adjacent to a disused tip where the conditions on that land are having, or have the potential to have, an impact on the stability of the disused tip.

Section 45 – Authority's right to remove and dispose of property

185. Subsection (1) provides the Authority may, for the purpose of carrying out operations or consequential works of reinstatement on land, remove and dispose of any property situated on the land that belongs to another person. Such property might include machinery that needs to be moved before the operations can commence or could, for example, comprise materials from the disused tip.

186. Subsection (2) provides that if the Authority disposes of such property by selling it, the Authority must account to the owner of the property for the proceeds of sale. However, subsection (3) enables the Authority to deduct any expenses that are reasonably incurred in selling the property and to offset the proceeds of sale against any sum the Authority is entitled to recover from the owner of the property under Chapter 3.

Section 46 – Duty to give notice to owners

187. Section 46 provides that, in most circumstances, the Authority may not carry out operations on land under section 44 unless it has given the owner of the land at least 21 clear days' notice of its intention to do so. The content of the notice is specified in subsection (2).

188. However, subsection (3) provides that if the Authority believes operations need to be carried out immediately, it may carry out those operations without giving notice or, where it has given notice, before the end of the 21-day period outlined in subsection (1). For example, the Authority may form the view that operations need to be carried out immediately following an inspection of a disused tip following a period of heavy rain which reveals the tip, or a portion of it, is at risk of imminent failure without works to stabilise it. In practice, such scenarios are likely to be relatively rare.

189. Subsection (4) provides that where the Authority starts operations on land without having given notice, it must, as soon as practicable, give the owner of the land notice that the operations have started. The content of this notice is specified in subsection (5).

Section 47 – Duty to give interested parties copies of notice

190. Section 47 provides that where the Authority gives notice to an owner of land under section 46 that it intends, or has started, to carry out operations, it must also give a copy of the notice to any other person with an interest in the notice. These persons are listed in subsection (2). This is to ensure that anyone who might be affected by the carrying out of operations on the land, or who might be required to contribute towards the cost of carrying out the operations, is informed about them. Subsection (4) requires the Authority to give copies of the notice on the day the notice is given to the owner, or as soon as practicable after that day.

CHAPTER 3 – PAYMENTS IN CONNECTION WITH OPERATIONS

Overview of Chapter

191. Chapter 3 makes provision about contribution orders, compensation and demands for the recovery of expenses by both owners of land and the Authority. Chapter 3 also sets out the rights of owners and contributories to appeal against such demands. Under section 74(1)(e), the Welsh Ministers must give guidance to the Authority in relation to the exercise of its functions under Chapter 3.

Section 48 – Contribution orders

192. Section 48 provides that where an owner of land has to bear expenses as a result of the carrying out of operations specified in a notice issued under section 35 or 46, the owner or the Authority can apply to the court for an order requiring one or more other persons to contribute towards those expenses. "Court" is defined in section 90 as the High Court or the county court.

193. An order can only be made in relation to a person listed in subsection (2).

194. Subsections (5) and (6) set out the procedural requirements that the owner or the Authority must comply with when applying for an order under this section.

195. The court must take account of all the circumstances, including all the matters listed in subsection (7), in deciding whether to make an order, and in determining the amount of any contribution. If the court decides to make an order, the order must specify the percentage of the total amount in respect of which a contribution can be claimed under Chapter 3.

Section 49 – Meaning of "contribution order", "contributory" and "the specified percentage"

196. This section contains definitions of terms used in the Act in relation to contribution orders.

Section 50 – Compensation for damage, loss or disturbance etc

197. Section 50 gives the persons listed in subsection (3) an entitlement to compensation from either the owner of the land or the Authority in certain circumstances.

198. Subsections (1) and (2) set out the circumstances in which a person is entitled to compensation. Compensation may only be claimed where operations or consequential works of reinstatement have been carried out in accordance with Part 3 or where the Authority has carried out investigations to determine whether operations are needed. If, as a result of operations under section 35 or 44 or reinstatement works carried out in consequence of such operations, land is damaged, other property is damaged, removed or disposed of or any person's enjoyment of any land is disturbed, the persons listed in subsection (3) are entitled to compensation. If as a result of investigations under section 55, land or other property is damaged or any person's enjoyment of land is disturbed, the persons listed in subsection (3) are entitled to compensation.

199. An owner of land is not entitled to compensation under this section for damage, removal, loss or disturbance resulting from operations carried out by them or by a previous owner of the land.

200. Disputes about claims for compensation under this section are to be determined by the court (defined in section 90 as the High Court or the county court).

201. Schedule 2 has effect in relation to certain claims for compensation under this section. See the notes at paragraphs 127 to 134 above in relation to Schedule 2.

Section 51 – Owner's right to receive expenses from contributory

202. Where a contribution order has been made under section 48 in relation to operations an owner carried out on their land in compliance with a notice issued under section 35, the owner is entitled to recover from the contributory the contribution specified in the order in accordance with section 51.

203. As explained in the notes for section 48, the contribution order will specify the percentage of the total amount of expenses incurred by an owner which the owner may seek as a contribution. Subsection (3) of section 51 sets out how the total amount is calculated. It is the sum of:

(a) the expenses the owner reasonably incurred in carrying out the operations required by the notice issued under section 35 and any consequential works of reinstatement that were reasonably necessary,
(b) the amount of compensation that the owner has been, or may be, required to pay under section 50, and
(c) the amount of compensation that the owner could have claimed under section 50 if the operations and works of reinstatement had been carried out by the Authority rather than by the owner.

204. Subsections (4) and (5) set out the procedural requirements an owner must follow to recover expenses from a contributory.

205. Subsection (7) provides that this section and section 52 have effect with the modifications set out in Schedule 3 in circumstances where an owner of land has carried out operations specified in a notice under section 35 and the Authority has cancelled that notice under section 42.

Schedule 3 – Modifications of sections 51 and 52 where a notice under section 35 is cancelled

206. Schedule 3 sets out the following modifications that will apply to sections 51 and 52 where the Authority cancels a notice it has given to an owner under section 35.

207. Where section 51 or 52 refers to operations carried out in compliance with a notice given under section 35, this is to be read as a reference only to operations carried out before the notice was cancelled.

208. The amount of expenses reasonably incurred by the owner in carrying out operations must be calculated for the purposes of determining the total amount in relation to which an owner is entitled to a contribution under section 51 or whether the grounds of an application to vary or cancel a demand for a contribution under section 52 are made out. Paragraph 3(1) of Schedule 3 provides that when calculating the amount of expenses reasonably incurred in carrying out operations in circumstances where the notice is cancelled, any sum that falls within paragraph 3(1)(a) and (b) must be deducted. A sum falls within paragraph 3(1)(a) and (b) if it is recoverable or has been recovered by the owner from the Authority under section 43 (see paragraphs 174 to 179 above) and relates to expenses the owner incurred in consequence of the notice given to them under section 35.

209. Under paragraph 3(2), where a notice is cancelled an owner of land is not entitled to a contribution under section 51 in respect of expenses they incur in carrying out works of reinstatement.

210. Paragraph 4 sets out modifications that apply if a direction is made under section 43 allowing the owner to recover sums from the Authority in respect of the expenditure the owner incurred in consequence of being given a notice under section 35. These include a requirement that any sums recoverable from the Authority as a result of the direction must be specified in any demand given under section 51 for a contribution towards the owner's expenses. A person who is given such a demand may apply under section 52 to vary or cancel the demand on the ground that the amount claimed in the demand does not make proper allowance for a sum that must be deducted by virtue of paragraph 3.

Section 52 – Right of contributory to appeal against owner's demand

211. Where a person is given a demand for a contribution under section 51, they can (within 6 weeks of the demand being given) apply to the court for an order varying the demand.

212. Subsection (3) sets out the grounds on which an application to vary a demand may be made. Where the court is satisfied that one or more grounds are made out the court may make an order reducing the amount recoverable from the contributory (subsection (4)).

Section 53 – Authority's right to recover certain expenses

213. Section 53 applies where the Authority has carried out operations on land under section 44. In this case, the Authority may recover from the owner of that land the expenses set out in subsection (1). The "owner" is the person who was the owner when the Authority started to carry out the operations (see subsection (9)).

214. Under subsection (2), the Authority may recover from the owner of land any expenses reasonably incurred by the Authority in carrying out investigations under section 55 that resulted in them giving the owner a notice under section 35 (see subsection (9) for an explanation of when investigations are to be treated as having resulted in the giving of a notice under section 35). The Authority may also recover the amount of any compensation recovered or recoverable under section 50 from the Authority in relation to such investigations. The "owner" is the person given the notice under section 35 (see subsection (9)).

215. Subsection (3) provides that the Authority may recover expenses from a contributory where an order has been made under section 48 in relation to expenses the owner may otherwise have to bear under subsection (1) or (2).

216. Subsections (4) and (5) set out the procedural requirements the Authority must follow in order to recover sums under this section.

217. Subsection (6) provides that a demand given by the Authority under subsection (4) is final and conclusive unless an application to vary or cancel the demand is made under section 54.

218. Interest is payable in relation to any sum recoverable under this section in accordance with subsection (7) and subsection (8) provides that any sum recoverable may be paid in instalments if agreed by the Authority.

Section 54 - Right to appeal against Authority's demand

219. Section 54 provides a person given a demand under section 53 with a right to apply to the court (as defined in section 90) for an order varying or cancelling the demand.

220. Subsections (3) and (4) of section 54 set out the grounds on which such an application may be made, and subsection (5) provides that where the court is satisfied that any of the grounds of the application are made out, the court may make an order cancelling the demand or reducing the amount that is recoverable from the person to whom the demand was given.

CHAPTER 4 – SUPPLEMENTARY PROVISION

Overview of Chapter 4

221. Chapter 4 is a short Chapter that gives the Authority the power to carry out investigations on land to determine whether specified operations on land need to be required or carried out. The Chapter also creates related offences.

Section 55 – Power to carry out investigations

222. Section 55 gives the Authority power to carry out investigations on land to determine whether operations need to be required or carried out by the Authority, or whether operations are being carried out in compliance with a notice given under section 35.

Section 56 – Penalty for obstructing operations etc

223. Subsection (1) provides that a person commits an offence if they intentionally obstruct or interfere with - (a) an investigation under section 55, (b) the carrying out of operations required by a notice under section 35, or (c) the carrying out of operations under section 44. In accordance with subsection (3), a person guilty of an offence under subsection (1) is liable on summary conviction to a fine.

224. Subsection (2) provides that a person who intentionally damages or otherwise interferes with any works completed in the course of operations required by a notice under section 35 notice or carried out by the Authority under section 44 commits an offence. In accordance with subsection (3) a person guilty of an offence under subsection (1) is liable on summary conviction to a fine.

225. Subsection (4) provides that a contravention of subsection (1) or (2) by the Crown does not make the Crown criminally liable. This is consistent with the policy expressed in section 28(3) of the Legislation (Wales) Act 2019, which provides that an Act of Senedd Cymru does not make the Crown criminally liable, but applies to persons in the service of the Crown as it applies to other persons.

PART 4 – SUPPLEMENTARY

Overview of Part 4

226. Part 4 contains provisions about management plans, information sharing, powers to require information and penalties in connection with notices requiring information. These are contained at sections 57 to 64.

227. It also makes provision about powers of entry. These include provisions in relation to the giving of notice prior to entry, the issuing of warrants conferring powers of entry, entry to land both with, and without, a warrant, penalties for obstructing entry to land and entry to Crown land. These are contained at sections 65 to 70.

228. There are also a number of miscellaneous provisions. These are a duty on the Authority to establish and maintain a website (or other electronic facility), publication requirements, provision giving the Authority the power to provide administrative, technical or professional services and provision in respect of guidance. They also include provision that makes amendments to the Mines and Quarries (Tips) Act 1969. These are contained at sections 71 to 75.

Section 57 – Management plans

229. Subsection (1) requires the Authority to prepare and maintain a management plan for every disused tip in the register which is a category 1 or category 2 tip.

230. Subsection (2) requires the Authority to prepare the management plan as soon as practicable after the tip is first recorded in the register as a category 1 tip or category 2 tip.

231. Subsection (3) provides the Authority with a power to prepare and maintain a management plan for a category 3 tip or category 4 tip.

232. Subsection (4) prescribes that a management plan must set out how the Authority intends to exercise its functions under the Act in relation to the tip (including details of any information or advice that it intends to give to owners or occupiers of land under section 3); information the Authority considers may be relevant in an emergency involving the tip; information about the roles and responsibilities of the Authority and other public authorities in such an emergency; and how the Authority intends to co-operate with those public authorities in such an emergency.

233. Subsection (5) provides that a management plan may include any other information that the Authority considers appropriate.

234. The intention is for the Authority to co-operate with other relevant public authorities in the preparation of management plans, for example, with the local authority for the area where the disused tip is situated, Natural Resources Wales, the Coal Authority and the Fire and Rescue Authority for the area. In accordance with section 74(1)(f), the Welsh Ministers must give the Authority guidance in relation to the exercise of its functions under section 57 (management plans). The Authority must have regard to that guidance in exercising its functions.

Section 58 – Meaning of "relevant public authority"

235. Section 58 defines "relevant public authority" for the purposes of Part 4 of the Act. Some of the sections in Part 4 that relate to the provision of information apply specifically to relevant public authorities whilst others do not allow for information to be requested from such authorities.

236. Subsection (1) provides that the Welsh Ministers and a number of other public authorities are "relevant public authorities" for the purposes of Part 4. Those other public authorities are: Natural Resources Wales, county councils and county borough councils in Wales, National Park Authorities in Wales, the Coal Authority, and Fire and Rescue Authorities for areas in Wales.

237. Subsection (3) provides that the Welsh Ministers may make regulations to amend the meaning of "relevant public authority" in subsection (1). In accordance with subsection (4), such regulations may not include a public authority within the definition of "relevant public authority" unless that authority is a "devolved Welsh authority" within the meaning of section 157A(1)(a) of the Government of Wales Act 2006. This means that a public authority can only be included within the definition of "relevant public authority" if its functions are exercisable only in relation to Wales and are wholly or mainly functions that do not relate to reserved matters.

Section 59 – Authority's power to require relevant public authorities to give information

238. Subsection (1) places a duty on each relevant public authority to provide the Authority with information requested by the Authority for the purpose of exercising functions conferred by or under the Act.

239. Subsection (2) provides that a relevant public authority is neither required nor permitted to give information to the Authority if that would be contrary to any prohibition contained in other legislation or imposed by another rule of law. For example, a relevant public authority would not be required to provide information if in doing so it would breach data protection legislation or breach a duty of confidence owed to a third party.

240. Subsection (3) requires a relevant public authority to give the Authority its reasons in writing where it refuses to disclose information to the Authority following a request under this section.

Section 60 – Duties of Authority and relevant public authorities to share information

241. Section 60 places a duty on a relevant public authority and the Authority, when certain circumstances are satisfied, to give information to the other party as soon as practicable.

242. Subsection (1) requires a relevant public authority, if it becomes aware of a threat to the stability of a disused tip or of evidence of a disused tip's instability, and it considers that information should be shared with the Authority in the interests of avoiding or reducing a threat to human welfare, to provide the Authority with that information as soon as practicable. For example, a local authority may become aware, as part of a planning application, of activity on or near a disused tip that it considers should be passed to the Authority in the interests of avoiding or reducing a threat to human welfare.

243. Similarly, subsection (2) requires the Authority, if it becomes aware of something that should be brought to the attention of a relevant public authority for the purpose of the public authority's exercise of its functions, to provide that information to the public authority as soon as practicable. For example, if when assessing a disused tip, the Authority becomes aware of a fire hazard on the tip or on neighbouring land, the Authority must provide that information to the Fire and Rescue Authority for that area.

244. Subsection (3) provides that the section can neither require nor permit a relevant public authority or the Authority to give information contrary to any prohibitions contained in legislation or imposed by another rule of law.

Section 61 – Information about estates or interests in land

245. Section 61 contains provisions that aim to help the Authority to obtain certain information.

246. Subsection (1) provides that the Authority may require an occupier of land, or a person who receives rent in respect of the land, to provide certain written information to the Authority: namely, the nature of their estate or interest in the land and whether they know of anyone else with an estate or interest in the land. If they are aware of any such person they must, if such information is known, provide the Authority with that person's name and contact details. Not giving such information, without reasonable excuse, or giving information which is false and misleading in a material respect, either knowing it to be false or misleading or being reckless as to whether it is so, is an offence under section 64.

247. The meaning of "contact details" is set out in subsection (2).

248. Subsection (3) provides that the Authority may not give a notice under section 60 requiring a person to provide information unless the Authority needs such information to enable it or assist it in exercising a function conferred by or under the Act. The Authority might, for example, require information in order to establish who has an estate or an interest in certain land, so that the Authority is able to comply with its duty under section 37 of the Act to give certain persons a copy of a section 35 notice.

249. Subsection (4) sets out the period within which a notice under this section may require information to be given.

250. Subsection (5) clarifies that section 61 does not require or permit information to be given contrary to any prohibitions contained in legislation or imposed by another rule of law. Subsections (6) and (7) provide, respectively, that the Authority may not give a notice under section 61 to a relevant public authority or to an appropriate Crown authority in respect of an estate or interest in Crown land which is not a private interest. "Appropriate Crown authority", "Crown land" and "private interest" are defined in section 89. This reflects the fact that there are provisions elsewhere in the Act that allow notices to be given to relevant public authorities or in respect of estates or interests in Crown land: section 59 (which enable the Authority to require relevant public authorities to give information) and section 62 (which makes provision in respect of obtaining information about estates or interests in Crown land).

Section 62 – Information about estates or interests in Crown land

251. This section makes provision in relation to obtaining information about estates or interests in Crown land.

252. Subsection (1) provides that section 62 applies to an estate or interest in Crown land that is not a private interest. "Crown land" is defined in section 89(2) and "private interest", in relation to Crown land, is defined in section 89(5).

253. Subsection (4) requires the appropriate Crown authority to provide information requested by the Authority under subsection (2), other than in the circumstances set out in subsection (4)(a) or (b).

Section 63 – Information to identify or assess threats to stability of a disused tip etc

254. Subsection (1) provides that the Authority may give an "information notice" to a person. An information notice may not be given to a relevant public authority (subsection (5)). An information notice must specify the type of information sought by the Authority, which must be information that the Authority believes will allow or help it to assess a threat to the stability of a disused tip, or to assess the stability of a disused tip. The Authority must have a reason to believe that the person to whom the information notice is given either possesses the information or has the information under their control. It is an offence, under section 64, not to give the information without reasonable excuse, or to give information in response to the information notice that is false or misleading in a material respect, either knowing that the information is false or misleading or being reckless as to whether it is so. Information that might be requested under this section could include, for example, information about historical works carried out on a disused tip.

255. Subsection (2) provides that the Authority may, in the information notice, require a person to give information in a certain way and in a particular form. For example, the information notice could specify that a person must fill out a particular form.

256. Subsection (3) sets out the period within which a notice under this section may require information to be given. Subsection (4) provides that information cannot be required or permitted contrary to any prohibitions contained in legislation or imposed by another rule of law.

257. An information notice may not be given to a relevant public authority (subsection (5)). Sections 59 and 60 deal specifically with the sharing of information between the Authority and relevant public authorities.

Section 64 - Penalties in connection with notices requiring information

258. Subsection (1) provides that a person who is required to give information in accordance with a notice under section 61 or an information notice under section 63 commits an offence if the person fails, without reasonable excuse, to provide the required information. A person might have a reasonable excuse for the failure if, for example, the person was out of the country or hospitalised during the period within which the notice required the information to be given. However, this will be a matter for the court to determine.

259. In accordance with subsection (2), this offence is punishable, following summary conviction, by a fine not exceeding level 3 on the standard scale, which is currently £1,000.

260. Subsection (3) provides that a person who is required to give information under section 61 or 63 commits an offence if they knowingly or recklessly give information which is false or misleading in a material respect, either knowing that it is false or misleading or being reckless as to whether it is so. A person who is found guilty of this offence, in either the Magistrates' Court or the Crown Court, is subject to a fine.

Section 65 – Power to enter land

261. Subsection (1) gives an authorised person the power to enter any land (not just land on which there is a disused tip) to do any of the things listed in paragraphs (a) to (f) on behalf of the Authority. Subsection (4) defines an "authorised person" to mean a person authorised in writing by the Authority to act on its behalf. This could, for example, be a member of the Authority's staff or it could be a third party. The Authority will not always be able to do the things listed in subsection (1) itself. This power could be used, for example, to allow the Authority to authorise contractors with specialist knowledge or equipment to enter land and carry out investigatory or monitoring work on behalf of the Authority.

262. Subsection (2) allows an authorised person to take other people, equipment and material onto the land that may be necessary for the purposes mentioned in subsection (1). It also gives the authorised person the ability to leave equipment and material on the land. This means, for example, that whilst operations are being carried out, tools and machinery won't need to be removed from the land at the end of each day.

263. Subsection (3) provides that an authorised person may, for the purposes set out in subsection (1), carry out inspections and examinations on the land (this includes tests and surveys); take measurements and photographs and make recordings; take and remove samples from the land. These are actions an authorised person may need to undertake when doing the things mentioned in subsection (1) on behalf of the Authority.

Section 66 – Entry to land without a warrant

264. Subsection (1) provides that an authorised person cannot demand entry to land that is occupied unless at least 48 hours' notice of the intended entry has been given to every occupier of the land. Similarly, subsection (2) provides that an authorised person may not demand to take other people, equipment or material onto land that is occupied, nor can an authorised person demand to leave material on such land, unless at least 48 hours' notice of the intention to do so has been given to every occupier of the land. A notice must include, where relevant, details of the persons, equipment and material to be taken onto, or left on, the land.

265. If the authorised person seeks entry 48 hours after giving the notice, but an occupier or owner denies the authorised person entry, the authorised person will need to apply for a warrant to enter the land under section 67.

266. An authorised person can, with agreement, enter land without giving prior notice.

267. Subsection (3) disapplies the requirement, in subsections (1) and (2), for the Authority to give at least 48 hours' notice where the Authority believes that a disused tip is unstable, and the instability poses a threat to human welfare that requires the Authority to enter the land immediately to:

(a) investigate whether operations need to be carried out under Part 3, namely investigations to determine whether the Authority needs to require an owner of land to carry out operations under section 35, or to determine whether the Authority needs to undertake the works itself under section 44, or

(b) to carry out operations on land and consequential works of reinstatement itself under section 44.

268. Where the conditions in subsection (3) are satisfied, an authorised person may demand entry as of right to land which is occupied, without giving notice, and may demand that other persons be permitted to enter the land, and that equipment or material are taken onto, and left on, the land.

269. Subsection (4) provides that an authorised person cannot demand admission as of right to residential land, although an authorised person could enter residential land with the consent of the occupier. If the occupier does not consent, the authorised person may apply for a warrant to enter. The conditions that must be satisfied to obtain a warrant are contained in section 67(3).

270. "Residential land" is defined in subsection (7). Sub-paragraph (a) of the definition captures all dwellings and parts of dwellings, including for example, a flat in a building used for other purposes, such as a caretaker's flat in a school. Sub-paragraph (c) of the definition captures, for example, communal areas in a block of flats. The Act requires a warrant to enter residential land if the occupier does not consent to entry.

271. Subsection (5) provides that an authorised person can only demand entry to land under section 65 at a reasonable time. The exception to this is where the condition in subsection (3) is met. In such an instance, the Authority may demand entry to land at any time. This recognises that where a disused tip is unstable and immediate entry is required under subsection (3), an authorised person must be able to demand entry.

272. Subsection (6) provides that before entering land, if requested by an owner or occupier, an authorised person must provide evidence of their authorisation and state the purpose of entry. They must leave the land as effectively secured against trespassers as they found it, if they leave the land at a time when no owner or occupier is present.

273. Subsection (7) provides that references to "land" in this section do not include Crown land. "Crown Land" is defined in section 89(2). There are specific provisions governing entry to Crown land at section 70.

Section 67 – Warrant to enter land

274. Subsection (1) provides that a justice of the peace may issue a warrant conferring a power to enter land, if necessary, by force. For example, the Authority may apply for a warrant where, after the expiry of the 48-hour notice period under section 66(1), an occupier refuses to allow an authorised person access to land. Similarly, the Authority will need to apply for a warrant if an occupier refuses entry to land where the conditions for immediate entry without notice (as set out in section 66(3)) are met.

275. Subsection (2) provides a justice of the peace must be satisfied that there are reasonable grounds for entering land for a purpose mentioned in section 65(1) and that one or more of the conditions in subsection (3) are met.

276. Subsection (5) provides that a justice of the peace may also allow, where it is considered necessary, an authorised person to take other persons, equipment or material onto land or to leave equipment or material on the land. The warrant will include the power for the authorised person to do this, and where this is the case, must include details of the persons, equipment or material.

277. Subsection (7) provides that a warrant remains in force until the purpose for which it was granted has been fulfilled. If, for example, the warrant was issued to allow an authorised person to enter land to carry out specified operations on a disused tip, the warrant remains in force until those operations have been completed.

278. Subsection (8) clarifies that references to "land" in this section do not include Crown land. "Crown Land" is defined in section 89(2). There are specific provisions governing entry to Crown land at section 70. "Residential land" has the meaning given in section 66(7).

Section 68 - Entry to land with a warrant

279. Subsection (1) provides that a warrant issued under section 67 can only confer a power to enter land at a reasonable time, other than where the circumstances in subsection (2) are satisfied. What is a reasonable time will depend on the circumstances. What is considered to be a reasonable time for the purposes of entering a dwelling is likely to be different to, for example, what is reasonable when entering land that is not residential land.

280. The restriction that a warrant conferring a power to enter land must be at a reasonable time does not apply if the justice of the peace is satisfied that the conditions in subsection (2) are met. Where this is the case, the warrant may confer a power to enter land at any time.

281. The conditions are that (a) a disused tip is unstable, and (b) the tip's instability poses a threat to human welfare that requires immediate entry to the land (by force if necessary) for a purpose mentioned in section 65(1)(c) or (e).

282. Where a person is authorised to enter land, subsection (3) provides that before entering land they must produce the warrant and state the purpose of entry, if asked to do so by an owner or occupier of the land. They must leave the land as effectively secured against trespassers as they found it, if they leave the land at a time when no owner or occupier is present.

Section 69 – Penalty for obstructing entry to land

283. Section 69 creates an offence where a person intentionally obstructs a person exercising a power to enter land under section 65 or under a warrant issued under section 67. Subsection (3) provides that a person found guilty of an offence under subsection (2) is liable on summary conviction to a fine not exceeding level 3 on the standard scale, which is currently £1,000.

Section 70 – Entry to Crown land

284. This section governs the authorised person's power to enter Crown land. "Crown land" is defined at section 89(2).

285. In accordance with subsection (1), an authorised person cannot enter Crown land (a) unless they have permission from the appropriate Crown authority or (b) the Authority believes a disused tip is unstable and the tip's instability poses a threat to human welfare that requires immediate entry to the land, either to investigate whether operations need to be required or carried out under Part 3 or to carry out operations under section 44. Therefore, in practical terms, entry to Crown land without consent will only be possible in circumstances where the Authority believes there is an immediate need to gain entry. This should be a rare occurrence. For example, an authorised person may need to enter Crown land without permission for the purpose of carrying out works to stabilise a disused tip if the Authority believes a tip is unstable and there is an immediate risk of a landslide that would pose a threat to human welfare. The disused tip need not be on Crown land: the authorised person might simply need to cross Crown land to gain access to the disused tip.

286. Where the Authority is of the belief, in accordance with the circumstances set out in subsection (1)(b), that immediate entry to the land is required, the authorised person may demand entry to the land and demand to take other persons, equipment or material onto the land and to leave equipment or material on the land.

287. Subsection (3) provides that the authorised person may not demand entry to any part of the Crown land that is residential land. Residential land is defined in section 66(7). Therefore, an authorised person may only enter Crown land that meets the definition of residential land with the appropriate consent.

288. Subsection (4) provides that if an authorised person enters Crown land without consent from the appropriate Crown authority because the circumstances in subsection (1)(b) apply, the Authority must inform the appropriate Crown authority as soon as reasonably practicable.

289. Subsection (5)(a) provides that if requested to do so by or on behalf of an owner or occupier of Crown land, an authorised person must provide evidence of their authorisation and state the purpose of entry before entering the land under section 64. If an authorised person leaves the land at a time when no owner or occupier is present, subsection (5)(b) places a duty on them to leave the land as effectively secured against trespassers as they found it.

Miscellaneous

Section 71 – Duty to establish and maintain a website or other electronic facility

290. Section 71 places a duty on the Authority to establish and maintain a website or other electronic facility that is free for the public to access. The reference to "other electronic facility" is intended to future proof the requirement.

Section 72 - Publication

291. Section 72 provides that where the Act requires the Authority to publish anything (for example a notice or report) it must be published on the Authority's website (or other electronic facility) established and maintained under section 71. The publication requirement applies to, for example, the Authority's annual report, corporate plan, reports of preliminary and full assessments and notices given under sections 20, 21, 22, 23, 29 and 30.

292. Section 72 also gives the Authority the power to publish documents and information subject to a publication requirement in any other way the Authority sees fit.

Section 73 – Provision of administrative, technical or professional services

293. This section gives the Authority the power to provide administrative, technical or professional services to any devolved Welsh authority within the meaning of section 157A of the Government of Wales Act 2006.

294. Administrative, technical and professional services include "back room" services such as finance, payroll, human resources and information technology. The Authority may choose to charge a fee for the provision of a service under this section.

Section 74 - Guidance

295. Subsection (1) places a duty on the Welsh Ministers to give guidance to the Authority in relation to the exercise of its functions in relation to –

(a) section 3(4) (Authority's power to charge fees);
(b) section 10 (Authority's duty to monitor registered tips);
(c) Chapter 2 of Part 2 (preliminary and full assessment of tips by the Authority);
(d) section 33 (compensation for damage or disturbance caused by monitoring or assessment activity);
(e) Chapter 3 of Part 3 (payments in connection with operations);
(f) section 57 (management plans).

296. Subsection (2) gives Welsh Ministers the power to give guidance to the Authority in relation to the exercise of any of its other functions under the Act. Subsection (3) requires the Authority to have regard to guidance given under subsection (1) or (2) in exercising its functions.

297. Subsection (4) places a duty on the Welsh Ministers to give guidance to a person appointed to determine an appeal under section 38 or section 43. In accordance with subsection (5), a person appointed to determine such an appeal must have regard to guidance issued by the Welsh Ministers under subsection (4).

298. Subsection (6) places a duty on the Welsh Ministers to consult with such persons as they consider appropriate prior to giving guidance under this section.

Section 75 – Amendments to the Mines and Quarries (Tips) Act 1969

299. Section 75 makes amendments to the Mines and Quarries (Tips) Act 1969 ("the 1969 Act"). These amendments are made in consequence of the establishment of a new regime under this Act for managing threats that disused tips may pose to human welfare by reason of their instability.

300. The main effect of the amendments is to remove the functions that Part 2 of the 1969 Act placed on local authorities in Wales for the purpose of ensuring that disused tips do not constitute a danger to members of the public. Functions relating to the oversight of disused tips in Wales will now fall, instead, to the Authority. The amendments to the 1969 Act do not impact the application of the 1969 Act to local authorities in England or Scotland, in relation to whom the current position is preserved.

301. There are a small number of disused tips that straddle the border between England and Wales. The Authority will have functions in relation to those tips under this Act, and the relevant local authorities in England will have functions in relation to those tips under the 1969 Act. The functions of the Authority, and of the English local authorities, will be exercisable in relation to those cross-border tips in their entirety (not just the parts of those tips that fall within the respective geographical areas). The powers of the Authority in the Act could also be exercised in relation to land in England for the purpose of dealing with threats to the stability of a tip situated wholly in Wales, for example, where the only threat to a tip's stability exists on the English side of the border.

302. Section 5 confers power on the Authority to do anything which is calculated to facilitate, or which is conducive or incidental to, to the exercise of its functions. In respect of a cross-border tip, the Authority could potentially rely on this power to co-operate with English local authorities where such co-operation is conducive to the exercise of the Authority's functions.

PART 5 – GENERAL

Overview of Part 5

303. Part 5 makes provision in relation to offences by bodies corporate and specifies who may bring prosecutions for offences under the Act. It makes provision about regulations made under the Act, including the Senedd procedure that applies to particular regulation-making powers.

304. Part 5 also makes general provision in relation to the giving of notices and other documents under the Act. It makes provision for special cases, including Church of England land. It provides definitions for terms used in the Act, and an index of defined terms, listing where they are to be found in the Act. It includes provision about when the provisions of the Act will come into force. It sets out the Act's short title. Part 5 comprises sections 76 to 93.

Section 76 - Offences by bodies corporate

305. This section provides that where an offence in this Act, or in regulations made under it, is committed by a body corporate, and it is proved to have been committed with the consent or connivance of a senior officer of the body, or a person purporting to be a senior officer, or to be attributable to their neglect, that person (as well as the body corporate) will be guilty of an offence and is liable to be prosecuted.

Section 77 - Bringing proceedings

306. The Authority and the Director of Public Prosecutions may bring a prosecution in respect of an offence in this Act, or in regulations made under it.

307. Third parties may also bring a private prosecution in respect of an offence in the Act, or in regulations made under it, but need the consent of the Director of Public Prosecutions to do so.

Section 78 – Power to make consequential, transitional etc, provision

308. This section enables the Welsh Ministers to make regulations that make consequential, supplementary or incidental provision, or transitional or saving provision, in the circumstances described in subsection (1). Regulations made under this section may modify, amend, revoke or repeal any enactment (including an enactment contained in this Act).

Section 79 - Regulations under this Act

309. This section provides that each power in the Act to make regulations is exercisable by statutory instrument.

310. Subsections (3), (4) and (5) provide that a statutory instrument containing regulations made under the following provisions of the Act are to be made under the affirmative procedure (i.e. a draft of the instrument must be laid before, and approved by a resolution of, Senedd Cymru):

(a) section 10(5) (change to minimum number or period of inspections for category 1 tips or category 2 tips);
(b) section 20(4), section 22(4) or section 29(3) (change to minimum period for making representations to the Authority);
(c) section 40 (Procedure etc for appeals under Chapter 1 of Part 3);
(d) section 43 (Procedure etc. for claims for reimbursement of owners' expenses under Chapter 1 of Part 3);
(e) section 58 (Change to meaning of "relevant public authority" in Part 4);
(f) section 85 (Application of Act to land owned by the Authority);
(g) section 86 (Change to meaning of "disused tip");
(h) paragraph 2(4) of Schedule 1 (change to the number of members of the Authority);
(i) paragraph 19(11) of Schedule 1 (change to the period to which the Authority's corporate plan relates);
(j) section 78 (Power to make consequential, transitional etc. provision) - where the regulations modify any primary legislation. "Primary legislation" is defined in subsection (7).

311. Subsection (6) provides that statutory instruments containing regulations made under any other power in the Act are subject to the negative procedure.

Section 80 – General provision about giving notices etc.

312. This section contains provision about how notices or other documents are to be given.

313. Subsection (8) provides that this section does not apply in relation to the Crown. See, instead, section 82.

Section 81 – Additional provision about giving notices etc. to persons occupying or interested in land

314. This section applies, in addition to section 80, where there is a requirement to give a notice or other document to a person with an estate or interest in land or to someone who is occupying land. It provides additional methods of properly giving notice to these persons. These might be relied upon when the name or address of a person cannot be discovered despite reasonable inquiries having been made.

315. Subsection (6) provides that this section does not apply to the Crown. Section 82 makes provision in respect of notices etc. that must be given to the Crown.

Section 82 – Giving notices etc. to the Crown

316. This section provides that where a notice or other document is to be given to the Crown, it must be given to the appropriate Crown authority. "Appropriate Crown authority" is defined in section 89(6).

Section 83 – Raising of money in particular cases to meet expenditure

317. This section makes provision so that the payment of "relevant expenditure" is included as an authorised purpose for the application of moneys under section 71 and 73 of the Settled Land Act 1925, section 25 of the Duchy of Lancaster Act 1817 and section 8 of the Duchy of Cornwall Management Act 1863.

318. Subsection (2) defines the term "relevant expenditure".

Section 84 – Church of England land

319. This section makes provision relevant to the way in which the Act applies to land belonging to the Church of England and reflects the unique structure of the Church of England. There are a small number of Church of England dioceses that have land in Wales.

320. Subsection (5) defines terms that are used in the section.

Section 85 – Power to modify application of Act to Authority land

321. This section provides the Welsh Ministers with a regulation-making power. Should the Authority acquire an estate or interest in land in the future, this provision enables the Welsh Ministers, by regulations, to modify the application of the Act in relation to that land.

Interpretation

Section 86 - Meaning of "tip" and "disused tip"

322. This section defines "tip" and "disused tip".

323. Both definitions encompass coal and non-coal tips. Non-coal tips (of which there are many in Wales) could, for example, include tips that are a legacy of historic metal mining and mineral quarrying in Wales.

324. Subsection (3) provides that tips that are located "wholly or partly in Wales" fall within the definition of "disused tip". The Act provides the Authority with the power to act in respect of tips that straddle the border, and the Authority is subject to duties in relation to tips that fall solely within Wales as well those that are partly in Wales and partly in England (cross- border tips). How the Act applies to cross-border tips is explained at paragraph 301 above.

325. Subsection (3) places tips that are subject to the provisions of the Quarries Regulations 1999 ("1999 Regulations") or the Mines Regulations 2014 ("2014 Regulations") outside the scope of the Act. The effect of this is that the Act does not apply to any active tips that are associated with operational mines or quarries.

326. If either the 1999 Regulations or the 2014 Regulations are revoked or amended, subsection (4) enables the Welsh Ministers, by regulations, to amend the meaning of "disused tip". This power reflects the interplay between the Act and the legislation governing active tips and the need to avoid overlap.

327. Subsection (5) gives the Welsh Ministers a regulation-making power that enables them to set out certain descriptions of tip that would fall outside the definition of a "disused tip" either altogether or for the purposes of those provisions of the Act specified in the regulations. The descriptions could refer to a tip's height, gradient, volume, surface area or the material from which it is composed, or any combination of these.

328. Regulations under subsection (5) could, for example, provide that the Authority is not under a duty to carry out its functions under Part 2 of the Act in relation to tips where there is a negligible accumulation or deposit of waste.

329. Subsection (6) requires the Welsh Ministers to consult such persons as they consider appropriate before making regulations under subsection (5).

Section 87 - Meaning of "threat to human welfare"

330. This section defines what is meant by "threat to human welfare". "Threat to human welfare" is a central concept within the Act: section 2(1) provides that the Authority must exercise its functions under the Act with a view to ensuring that disused tips do not threaten human welfare by reason of their instability. The concept arises throughout the Act, including in the provisions relating to the Authority's duty to compile and maintain a register (section 6), the criteria for registration of a disused tip (section 7), the categorisation of disused tips in the register (section 24), the issuing of notices requiring owners of land to carry out operations (section 35) and the Authority's power to carry out operations on land itself (section 44).

331. Examples of scenarios where a disused tip could pose a threat to human welfare are provided in paragraphs 24 - 27.

Section 88 – Meaning of "owner"

332. This section defines "owner", in relation to any land, to mean the person who owns the freehold title to the land or holds a fixed term tenancy that has at least one year left to run and is not a mortgage term. This means banks and building societies that hold a mortgage on a piece of land are not considered to be owners for the purposes of the Act. Section 88(b) provides that a person who has a reversionary interest in land that will only be realised when such a tenancy comes to an end is not to be considered an owner for the purposes of the Act.

Section 89 – Definitions relating to the Crown

333. This section defines certain terms used in the Act that relate to the Crown: "Crown land", "Crown interest", "Duchy interest", "private interest" and "appropriate Crown authority". It clarifies that "the Crown" is to be treated as including the Senedd Commission.

Section 90 – General interpretation

334. This section defines "the court" and "operations".

Section 91 - Index of defined terms

335. This section provides an index of the terms that are defined or otherwise explained in the Act.

Section 92 – Coming into force

336. This section makes provision about when the provisions of the Act come into force.

337. Subsection (1) provides that Part 5 will come into force on the day after the day on which this Bill receives Royal Assent.

338. Subsection (2) provides that sections 1,2 and 5 and Schedule 1 will come into force on 1 April 2027.

339. Subsection (3) provides that the other provisions of this Act will come into force on a day appointed by the Welsh Ministers in an order made by statutory instrument. Subsection (4) enables such an order to make transitional or saving provision.

Section 93 – Short title

340. Section 93 sets out the short title of the Act, by which it may be known and referred. Either the Welsh or the English language title of the Act may be used, including as a citation in other enactments.

RECORD OF PROCEEDINGS IN THE SENEDD

341. The following table sets out the dates for each stage of the Act's passage through the Senedd. The Record of Proceedings and further information on the passage of this Act can be found on the Senedd Cymru's website at: **Disused Mine and Quarry Tips (Wales) Bill**

Stage	**Date**
Introduced	9 December 2024
Stage 1 – Debate	29 April 2025
Stage 2 Scrutiny Committee – consideration of amendments	4 June 2025
Stage 3 Plenary – consideration of amendments	8 July 2025
Stage 4 – approval by Senedd	15 July 2025
Royal Assent	11 September 2025