

### Data Protection Impact Assessment (DPIA):

### The Disused Mine and Quarry Tips (Wales) Bill

#### Step one: Identify the need for a DPIA

##### Introduction

1. This DPIA considers the data protection implications of the introduction of new legislation - The Disused Mine and Quarry Tips (Wales) Bill (the Bill). This Bill establishes a new public body (“the Authority”) that will have functions relating to assessment, registration, monitoring and management of disused tips in Wales. The Authority will need to process personal data in order to carry out its functions, to ensure that disused tips in Wales do not threaten human welfare by reason of their instability.
2. This DPIA will consider the broad risks to the rights and freedoms of individuals resulting from the new legislation considering the likelihood and severity of impact on data subjects and assess whether those risks are justified, necessary and proportionate.
3. Completion of the Welsh Government screening tool indicated a full DPIA for the Bill is not required. However, in line with the guidance of the [Article 29 Data Protection Working Party](#), this DPIA has been carried out voluntarily to ensure the digital and data elements of the Bill comply with Data Protection laws and considers the potential privacy impacts of the legislation. It is also not believed there are “high risk processing operations” which would mandate the completion of the DPIA. These are set out in Annex 1 to this document.
4. For the avoidance of doubt, this DPIA covers the data protection impacts associated with the provisions of the Bill, not of the specific digital systems and services that the Authority will be required to operate. At this early stage, the design of these systems and services has not been started and so it is not yet possible to assess the impacts of those systems and services. These systems and services will be designed with data privacy in mind. Where this DPIA does talk about digital services, it covers only principles and generalities; a further DPIA for the digital systems and services will be produced in due course once designs are completed.
5. It is also of relevance that it will be for the Authority and any other persons who are data controllers/processors by virtue of the Bill’s provisions (for example, those who fall within the meaning of “relevant public authority” in section 55 of the Bill) to satisfy themselves of compliance with the Article 5

Principles/UK GDPR generally, in respect of the data processing they carry out.

6. We have been mindful of risk assessing the provisions as the Bill has been developed. Our risk assessment is set out at Annex 2.
7. This is a living document and all aspects will be kept under review as the Bill progresses through scrutiny and onwards as we move to implement the legislation.

## **Background**

8. 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.
9. 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.
10. To support the coal tip safety programme the Welsh Government has allocated £65m million in capital investment over three years - 2022/23 to 2024/25 - to support local authorities to carry out maintenance and remediation work on coal tips.
11. 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.
12. [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 Bill'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.

13. 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 Bill disapplies Part 2 of the 1969 Act to local authorities in Wales, and therefore, when the Bill is in force, Part 2 will not apply in relation to disused tips that are located wholly in Wales.
14. The aim of the Bill is to prevent disused tips from threatening human welfare by reason of their instability through the establishment of a new public body which will have functions in relation to assessment, registration, monitoring and management of disused tips.
15. In summary, the Bill:
  - establishes the Disused Tips Authority for Wales ("the Authority") as a body corporate. Its main objective in carrying out its functions under the Bill is to ensure that disused tips do not threaten human welfare by reason of their instability;
  - makes provision for the assessment, registration and monitoring of disused tips;
  - 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;
  - contains supplementary provisions including powers of entry for the Authority, information sharing provisions and powers to require information; and
  - creates related offences to support the enforcement of the regime.
16. As an interim measure, until the Authority becomes operational, Welsh Government have shared the location data we have on all disused coal tips on Data Map Wales. Disused tips have been given an interim category rating during this time, but will be reassessed by the new Authority when it goes live and will be subject to the appropriate monitoring and maintenance schedule as provided for by the guidance accompanying the Bill.

## **Step two: Describe the information flows**

17. Apart from the fairly limited instances where personal data is processed by virtue of it being a relevant public authority, the appellant authority for an appeal made under the relevant provisions of the Bill or where information is shared in accordance with section 3 of the Bill, the Welsh Government will not be a Controller for personal data processed in relation to the Bill. The Authority will be the responsible party for ensuring compliance with data protection legislation for processing related to its duties upon its creation.

### **Provisions within the Bill that require the processing of personal data**

18. In order to effectively discharge its duties, it is recognised that it is essential for the Authority to engage with parties that own, or have an interest in land, where that engagement is aligned with the Authority's main objective to ensure that disused tips in Wales do not threaten human welfare by reason of their instability.

19. The following outlines the main requirements placed upon the Authority within the Bill that will necessitate the processing of personal data.

20. Information held by the Authority will fall into 3 broad categories:

- Personal data about those persons with an interest in land near or containing a disused tip (e.g. landowners, land occupiers and others) – primarily contact information, but in a very small number of cases this may also include details of offences (alleged or convicted);
- Information about the disused tips themselves, including geospatial information (e.g. the plotting of the tip boundaries on a map) and inspection reports. This information will not be personal in nature but if combined with other existing publicly available data sources it may be possible to lead to the identification of landowners;
- Notices and other information that links an individual to a disused tip, for example a copy of a notice that was issued to a landowner requiring them to carry out operations, or representations from a land occupier in response to a notice of intended registration of the tip.

21. Broadly speaking, the Authority will build and maintain a stakeholder list linked to an electronic register/database of disused tips. Disused tips that pose (or could pose) a threat to human welfare by reason of instability will be assessed on a time-driven (occasionally event-driven) basis depending on the level of risk. As part of this process, owners and occupiers of land to which access is required for the purposes of the assessment will be notified of the assessment. Where the Authority produces a report, owners and occupiers of land on which the tip is situated will be notified of the conclusions of the assessment report. Representations may be made to the Authority if it proposes to register the disused tip. The elements of this high-level information flow are discussed in more detail in the next sections.

## Electronic Register

22. **Section 6 - Electronic Register** – this provision requires the Authority to compile and maintain an electronic register of disused tips in Wales that pose a threat to human welfare by reason of instability, or could pose such a threat in the event of instability. The register is a subset of a “database” of *all* identified disused tips in Wales which will be maintained by the Authority. Only those tips which are considered (on the basis of assessment) to pose a threat to human welfare will form part of the register. The Bill sets out that certain elements of the register (see paragraph 23) must be accessible to the public via an online service (section 9).
23. The Bill (section 8) sets out that the Authority must ensure that the following information can be accessed electronically by members of the public at all reasonable times:
- a map showing the area of the tip
  - the name or names by which the tip is commonly known (if any)
  - the location of the tip
  - a unique identifier given by the Authority to the tip
  - the tip’s category
  - the date of the most recent inspection of the tip (if any)
24. Although the data published will not itself contain any information that directly identifies individuals, it would provide information that could allow the sourcing of land ownership information from other existing public sources of information (e.g. HM Land Registry records) by the wider public by way of its location. It is of note that the boundary information for currently identified coal tips is already published by Welsh Government (as an interim measure until the Authority is operational). Within the Authority’s digital services, personal data of stakeholders will be linked to the disused tips they have an interest in through unique identifiers, though the data will not be held together and details of any stakeholders will not be published as part of the electronic register: although they can effectively be linked electronically via a relational database, the two datasets should be considered as separate entities.
25. The disused tip boundaries provide a spatial reference to which landowners/occupiers of land become part of the regime through the presence of tips within their land titles.
26. There is a power for the Welsh Ministers to make regulations which specify additional information that must be included on the register. The Bill does not require that any such additional information must be accessible electronically by members of the public at all reasonable times (section 9). There are no plans, at present, to make such regulations. The power has been taken should it become necessary, in light of experience or feedback, to add to the information that needs to be published. There would be consultation on any such regulations, and they would be subject to the impact assessment

process where the data protection implications of adding to the information required to be included on the register would be explored.

## Notices

**27. Sections 18, 19, 20, 21, 22, 23, 29, 30 Issuing of notices for assessment, registration, notifiable change and information** – These provisions place duties on the Authority to give landowners and others notice :

- before carrying out a full assessment of a disused tip;
- giving the conclusion of that assessment;
- of a proposal to register;
- of the decision on registration (this could be to place the disused tip on the register or a decision not to register);
- of a proposal to remove a disused tip from the register);
- of the decision on the proposal to remove a disused tip from the register;
- there is a proposal to make a notifiable change in relation to a disused tip (ie change of category or change to the area of the disused tip). There is a related notice requiring the Authority to notify the decision that has been made in relation to the notifiable change.

28. The form of the respective notices is not prescribed by the Bill, but the relevant provisions are clear in respect of the purpose of the respective notices, the information the notices must contain and who must receive them. The issuing of notices will rely upon contact information for the relevant parties sourced from HM Land Registry records by the Authority, through the data subject directly providing their contact information to the Authority, or by information being provided to the Authority by another party to enable the regime to operate. Ideally this will be digital contact information such as email, though initially the Authority will not have any electronic contact details for stakeholders. Notices can be issued via post, email or, in instances where specific individuals cannot be identified by the Authority, through notices with no named recipient being delivered to affected residences or affixed in a prominent location (similar to planning notices being affixed to a lamppost). Anonymised notices (containing no addressee) may also be published on the Authority's website and publicised by the comms team with local communities, for example via county/town councillors, community social media pages, etc.

**29. Sections 33, 35, 42, 44, 45 Serving of notices for works** – pursuant to section 33 the Authority has 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 (a) prevent or deal with threats to the stability of a disused tip; or (b) to stabilise a disused tip or prevent it from becoming more unstable, so as to avoid or reduce threats to human welfare. Pursuant to section 35, where the Authority issues a notice to a landowner under section 33 requiring operations to be carried out, the Authority must serve a

copy of the notice on any other person with an interest in the notice. Those with such an interest are prescribed in the section and include, for example, occupiers, those with an estate or interest in the land (other than as a mortgagee), persons who the Authority believes (within the 12-year period before the notice is given to the owner) have caused or contributed to the need for the relevant operations. For example if an inspection identifies a risk that threatens the stability of a disused tip, the Authority can issue a notice to the relevant land owner requiring specific actions be undertaken within a defined time period (e.g. to install a culvert from point X to point Y within 12 months of the date of the notice); a copy of this notice would also be issued to other people with an interest in the notice, for example, occupiers of land on which the operations required by the notice are to be carried out, or persons who, to the Authority's knowledge, have an estate or interest in that land.

30. Section 42 gives the Authority power to carry out operations on land itself if necessary to (a) prevent or deal with threats to the stability of a disused tip, or (b) stabilise a disused tip or prevent a disused tip from becoming more unstable, so as to avoid or reduce threats to human welfare. Section 44 places a duty on the Authority to give notice to owners and section 45 requires the Authority to give copies of the notice to interested parties. Again, the form of the notice requiring works or informing of works is not prescribed, but the relevant provisions are clear in respect of the information the notice must contain and who must receive a copy of the notice.
31. Notices are issued using contact information held by the Authority from a number of sources. The Authority will record which notices are issued to which persons as part of its administrative tasks. The serving of notices is driven by the same database of contact information which is compiled for all communications. Copies of notices will not contain personally identifiable information of the notice to the landowner, only a reference that the notice has been served on the landowner. Similarly, the notice to the landowner will contain a reference to copies being issued to occupiers and others, without containing any personally identifiable information of those recipients.
32. **Section 63 – Entry to land without a warrant** – section 62 provides that a person authorised by the Authority (an authorised person) has the power to enter land for any of the purposes listed in section 62(1). Section 63 provides that an authorised person may not demand admission as of right to land that is occupied, or take other persons or equipment onto the land, or leave equipment on the land, unless at least 48 hours' notice has been given to every occupier of the land. The requirement to give notice does not apply if the Authority believes that a disused tip is unstable and the instability poses a threat to human welfare that requires immediate entry to land for one of the purposes specified in section 62(1)(c) or (e). The form of the notice is not specified on the face of the Bill, but the authorised person would give notice of the time and date of intended entry and the reason for entry. It is considered appropriate to require notice to be given before entering land that is occupied. It is proportionate to dispense with the notice requirement in the

narrow circumstances outlined in section 63(3) where instability of a disused tip poses a threat to human welfare that requires immediate entry to the land.

33. **Section 58 - Information about interests in land** – the Bill gives the Authority the power to give a notice to an occupier of land or a person who receives rent in respect of the relevant land, requiring them to confirm the nature of their interest in the relevant land, and if they know of another person with an estate or interest in the land, that person's contact details (if known). Contact details is defined to mean the person's address and any other information about how the person might be contacted. This might include, for example, name, address, email address and telephone number. The Authority may not give such a notice unless it needs the information to assist it in carrying out its functions under the Bill. It will be important for the Authority to provide the relevant privacy information at the point it comes into contact with that individual, as that person will not necessarily be aware of how the Authority came to process their personal information. This is part of the [Right to be informed | ICO](#). The Welsh Government will not be the data controller of the personal data, but the Welsh Government will remind the Authority of this requirement in supporting guidance prepared when the Authority is established. The Welsh Government will also ensure that the template notices that are to be issued will include sections to address this (for example, “we have identified you as a person with an interest in land, and are contacting you because...”).
34. Personal data can be shared under this provision, but the Bill clearly states that information is not required to be given contrary to any prohibition proposed by any enactment or rule of law. In practice it is anticipated, for example, the Authority will use this power to try and obtain information relating to ownership of land and to identify those who have interests in land – so it may comply with the provisions of the Bill that require it to serve notices. The section 58 notices will be helpful, for example, when the Authority is seeking to identify ownership and interests in land that is unregistered.
35. **Section 59 – Information about interests in Crown Land** – The Bill gives the Authority the power, for the purpose of enabling or assisting the Authority in the exercise of a function under the Bill, to request the appropriate Crown authority to confirm in writing: (a) the nature of its interest in the Crown land; and (b) if the authority knows another person who has an estate or interest in the land, the other person's contact details (if known). The Bill requires the appropriate Crown authority to comply with the request except where the information requested is not within the knowledge of the authority or where compliance would disclose information about national security or measures to ensure the security of any land or other property.
36. **Section 60 - Information to identify or assess threats to stability of a disused tip etc.** - The Bill gives the Authority the power to issue a notice to a person requiring them to provide the information specified in the notice. The Authority may only issue such a notice if the Authority considers that the information will enable or assist the Authority to identify or assess a threat to



the stability of a disused tip, or assess the stability of a disused tip and the Authority has reason to believe the information requested is in the person's possession or under their control.

37. Whilst the Authority is not required to set out as part of the notice why they believe the person holds information of this nature, they will have assessed this before the notice is issued. The provision does not require or permit information to be given contrary to any other legislation
38. The information provided could contain personal information about the party who was issued the notice, further to that which the Authority holds already (for example, the date when their interest in the land began). Alternatively, it may identify other parties (by name or other identifying means, such as photographs / video etc) showing activities or identifying a person carrying out activities (or failing to carry out certain activities) on land which may contribute to a threat to the stability of the tip. This data would be processed in order to identify or assess threats to the stability of a disused tip and could identify the party (or parties) who would receive further notices.
39. It is an offence, under section 61, if a person who is required to give information under section 58 or section 60 fails to do so without reasonable excuse. The Authority may bring prosecutions for offences under the Bill, or they may be brought by the Director of Public Prosecutions (section 72).
40. **Section 56 - Authority's Power to require relevant public authorities to give information** – the Bill gives the Authority the power to ask relevant public authorities for information to enable it or assist it to carry out any of its functions. Section 55 of the Bill defines “relevant public authority” (RPA). The RPAs are the Welsh Ministers, Natural Resources Wales, a council for a county or county borough in Wales, a National Park Authority for a National Park in Wales, the Coal Authority and a Fire and Rescue Authority for an area in Wales. The Bill also contains a regulation making power enabling the Welsh Ministers to change the definition of RPA, so that the Welsh Ministers may include any person as an RPA, provided that person is a devolved Welsh authority within the meaning of s.157A of the Government of Wales Act 2006. If an RPA refuses to give the information following a request from the Authority, it must provide reasons in writing.
41. The nature of the information that might be required is not defined, other than it must be information that enables or assists the Authority to carry out its functions. For example, the Authority could ask for any previous reports on a disused tip, any plans of a disused tip that might, for example, show drainage channels; details of any previous incidences of movement on a disused tip etc. Such information could contain personally identifiable information. A likely scenario that would include processing of personal information would be a RPA providing details of past and current occupation of a particular tip that the public authority owns and which is unknown to the Authority.
42. RPAs will need to ensure, on a case-by-case basis, whenever any personal data is to be shared with the Authority, that the sharing is lawful, appropriate

and is required (i.e. the purposes cannot be achieved via other means without sharing personal data).

43. It is intended that the Authority will be subject to the provisions of the Digital Economy Act 2017, a key aim of which is to enable the delivery of better public services through providing powers to share data between public authorities. The intention is to make regulations that add the Authority to the bodies already covered by that Act.
44. **Section 57 - Duties of the Authority and RPAs to share information –**  
The Bill provides that if, when exercising its functions, a RPA becomes aware of a threat to the stability of a disused tip, or evidence of a disused tip's instability and considers the information ought to be shared with the Authority in the interests of avoiding or reducing a threat to human welfare, the RPA must give the Authority the information as soon as practicable.
45. The Bill places the Authority under a reciprocal duty to share information with a RPA, if the Authority becomes aware of something that it considers ought to be brought to the attention of an RPA for the purposes of that authority's functions.
46. The Bill specifies that this provision does not require information to be provided contrary to any prohibition imposed by any enactment or other rule of law.
47. The precise nature of information to be shared is not defined but it is likely to be relevant to the stability of a disused tip. Information could contain personal information relating to ownership of land associated with disused tips.
48. The Authority must satisfy itself, on a case-by-case basis, whenever any personal data is to be shared with a RPA, that the sharing is lawful, appropriate and is required (i.e. the purposes cannot be achieved via other means without sharing personal data).
49. An example of this may be where a Disused Tip Inspector, in carrying out a regular inspection, identifies a new building upon the tip area which was not present at the last inspection, which potentially could affect tip stability, and which there is no note (within the Authority's records) of planning approval being granted for. The information about the new building and the current occupier and owner of the land may then (potentially) be shared with the appropriate local authority to ensure that planning approval was in place.
50. The Authority will ensure there is a Data Sharing Agreement in place between it and the body it is due to share data with.
51. It is intended that the Authority will be subject to the provisions of the Digital Economy Act 2017 to support effective sharing of information between public bodies.

52. **Section 4 - Provision of Financial Support** – The Authority will have the power to provide financial assistance to any person towards anything the Authority considers conducive to the attainment of its main objective.
53. The provision of financial assistance may necessitate the processing of personal information in order to facilitate payment and to arrange for the making of payments. This may be details of private individuals or staff or other bodies. Information relating to payments will be subject to specific retention periods and security arrangements that will potentially differ from other information types as a result of audit requirements.
54. Information relating to financial assistance will be gathered directly from the relevant parties and will not be collected from other sources or processed for other purposes unless required by law.
55. **Section 3 - Information, advice and assistance** - The Bill places a duty on the Authority to provide the Welsh Ministers with such information, advice or assistance about any of their functions as the Welsh Ministers may require. The Authority does not have to wait for a request from Welsh Ministers and may, of its own initiative, provide the Welsh Ministers with information etc in connection with any matter relevant to their functions. In specific instances, this could require sharing personal information available to the Authority with Welsh Ministers.
56. It will be for the Authority to ensure, on a case-by-case basis, whenever any personal data is to be shared with Welsh Ministers, that the sharing is lawful, appropriate and is required (i.e. the purposes cannot be achieved via other means without sharing personal data). Support will be provided to the Authority during the implementation period to ensure they understand their obligations.
57. **Section 5 - Ancillary Powers** – The Bill gives the Authority ancillary powers to do anything calculated to facilitate, or which is conducive to or incidental to, the exercise of its functions. This could include sharing information with other bodies, for example local authorities in England in relation to land containing or near disused tips on the border between England and Wales.
58. The Authority will have to ensure, on a case-by-case basis, whenever any personal data is to be shared, that the sharing is lawful, appropriate and is required (i.e. the purposes cannot be achieved via other means without sharing personal data).
59. The Bill also provides (**section 68 - Provision of administrative, technical or professional services**) that the Authority can provide administrative, technical or professional services to any devolved Welsh authorities (within the meaning of section 157A of the Government of Wales Act 2006). This enables the Authority to provide managed digital services to other (likely smaller) public bodies in Wales in order to realise economies of scale. This

would not involve sharing of data between organisations, unless this is agreed via a Data Sharing Agreement as with other bodies.

60. Section 72 (Bringing proceedings) provides that proceedings in respect of offences under the Bill may be brought by the Authority or by or with the consent of the Director of Public Prosecutions. If the Authority brings proceedings in respect of offences under the Bill, it will likely have to process personal data. It will be for the Authority to ensure, on a case-by-case basis, whenever any personal data is processed under this provision that the sharing is lawful, appropriate and is required.

#### Data held, duration of data retention

61. In terms of personal data held by the Authority, this is expected to be limited to the following:

- Name & Title;
- Contact address;
- Phone number;
- Email address;
- Link to tip identifier(s), the type of interest in land (i.e. owner, occupier, etc), the date their interest commenced and ended (if they no longer have an interest in the land);
- Land title(s) or other documentation relating interest in land;
- Banking information for private individuals - only for those receiving financial assistance or compensation.

62. The Authority is required under the Bill to hold details of landowners and occupiers involved in disused tips for the preceding 12 years, where it is reasonably available. As noted above, part of the personal data held will include the timeframe the person has had an interest in a tip; at 12 years after this interest ended, the data will be removed (unless they continue to hold an interest in a different disused tip, or begin a new interest in the same tip – for example occupying the neighbouring title plot which also falls within the tip boundaries).

63. Incoming and outgoing correspondence related to notices (and any subsequent appeals) will also be retained, for a period to be defined within the records management policy for the Authority.

64. Correspondence and associated records for the purposes of the Authority providing financial assistance and/or compensation will be retained for audit purposes for a period to be defined within the records management policy for the Authority and within statutory norms.

65. There will also be the potential for data to be held on offences allegedly committed by persons. Offence data would be held separately but linked to the stakeholder list (as those who commit offences under the Bill might be existing stakeholders – a landowner who has not complied with a notice to undertake works, a land occupier who has not responded to a notice to

provide information, etc). Offence data will be held for a period of eleven years after the prosecution date (6 years post prosecution date during which time the data subject may lodge a potential appeal before the case can be considered closed, then 5 years beyond that date so that the records are available for a short period of time to refer back to, for example if there are subsequent alleged offences by the same person) before being disposed of. If an alleged offence does not result in a prosecution (i.e. a charge is not taken forwards to court for conviction), the records relating to that event will be held for 5 years from the date of that event before being destroyed. The retention period has also been decided upon as the information retained might be evidence of the Authority's belief that a person caused or contributed to the need for operations in the 12 years before a section 33 notice was given to an owner (section 35(2)(f)).

66. In terms of the potential data subjects, there is no targeting of particular demographics. Data subjects will have an interest in land where a particular disused tip is situated, and this will be the only commonality between them; it is expected that there may be different genders, geographic areas, races, and some may be companies within the stakeholder list. Some may be residents abroad (or companies that are based in other countries).

### **How the data will be collected, stored, used and accessed**

67. An initial data transfer (under a data transfer agreement) will take place from the interim Welsh Government service to the Authority. This will be supplemented by data from HM Land Registry based on the intersection of geospatial data relating to disused tips with digitised land title boundaries. This provides a baseline of landowners whose titles are affected by disused tips.

68. On an ongoing basis, the Authority will collect tip owner information in the first instance from HM Land Registry where their land titles overlap disused tip boundaries. This comprises of the named landowner and landowner's registered address as well as a title number for the land. It is expected that the Authority will also collect digital contact information for the landowner/occupiers/lease holders/interested parties in order to facilitate digital communication; it is not clear at this point how the digital information will be collected (this will be developed during an implementation phase over the next 2 – 3 years), but the working assumption is that it will be through a self-submission by the data subject. The Authority may also obtain stakeholder information from other public authorities and via responses to information notices served.

69. Tip boundary information for disused tips on the Authority's asset register will be published online and available to the public. All data, including personal data, processed by the Authority will be processed within the United

Kingdom. The Digital Blueprint for the Authority sets out a need for geographic resilience of data and services within the UK. Therefore, it is likely that there will be a backup of the data held at another location within the UK, to ensure the Authority can operate in the event of a primary datacentre failure (particularly in emergency scenarios).

70. Powers pertaining to the use of personal data are outlined above. The following list outlines the expected activities of the Authority:

- i. Manage/maintain the recorded boundaries of disused coal tips;
- ii. Capture data for all non-coal tips in Wales;
- iii. Manage/maintain the recorded boundaries of disused noncoal tips;
- iv. Issue notices to tip owners/occupiers/lease holders/interested parties;
- v. Issue notices to “interested” individuals who don't own land where tips are situated (e.g. adjacent landowners, owners of related infrastructure such as drainage, previous owners/occupiers in the last 12 years, etc);
- vi. Routine targeted communication, e.g. updates on the assessment process;
- vii. Issuing of non-targeted communication (where the data subjects have opted in to this);
- viii. Provision of specific advice on maintenance, monitoring etc to tip owners;
- ix. Processing of bank information (where this is provided by the data subject) for compensation or other cost reimbursement;
- x. Managing appeals (including archiving outcomes);
- xi. Managing enforcement activities, (including legal activity) such as issuing fines;
- xii. To determine potential liability related to land management causing instability (e.g. removing a retaining wall or digging into a disused tip) for historic land owners (up to 12 years);
- xiii. Verification of identity when engaging with landowners either directly or indirectly;
- xiv. Access to “personal” areas of the Authority’s digital services (e.g. the appeals portal) will be controlled via the application of Gov.UK OneLogin as the authentication service;
- xv. Use of personal information in relation to emergency response and response planning – particularly boundary information, but potentially extending to tip owner/occupier names and contact information where this is appropriate to the immediate emergency response;
- xvi. Basic functions of the Authority. (e.g. HR, payroll for its own staff etc).

71. The geospatial data describing the boundaries (location and extents) of disused tips(i.e. non identifiable data) will be kept indefinitely by the Authority for as long as it remains the lead body in co-ordinating disused tip safety

activities in Wales. The length of retention reflects the importance of understanding the location and extent of tips over time in order to enable their effective monitoring and management. Most disused tips will remain permanent parts of the Welsh landscape and their locations and extents will need to be on permanent record to ensure they are accounted for. If a tip boundary were to change as a result of management practices or removal, its original extent would be an essential component of understanding its present condition and potential affect on land use practices in that area. Historic information may inform current/future events (e.g. a landslide may be caused by historic works undertaken on a tip). Information relating directly to disused tip owner/occupiers will be kept by the Authority for audit purposes, however a retention schedule appropriate for different activities for the Authority (issuing compensation, appeals, provision of advice etc.) has yet to be determined (but will have been implemented before the Authority becomes operational and will align with the Public Records Act 1958 and the Freedom of Information Act 2000). This also includes appropriate processes for secure deletion/disposal of data (both personal and otherwise) once it has reached the end of the retention period. Welsh Government's Departmental Records Officer is aware of this work and has agreed to support (through providing advice and guidance) the definition of appropriate retention periods as the implementation plan progresses.

72. The Authority will be the data controller for all processing of personal data when carrying out its functions and duties.

### **How the data will be processed**

73. The Bill does not specify how personal data will be processed by the Authority (nor would it be expected to) but the functions and obligations of the Authority set out in the Bill make a general view of how data may be processed. During the establishment of the Authority, Welsh Government staff will provide guidance and ensure, for example, appropriate digital hardware and software is provided to support lawful processing. However, as set out above, it is for the Authority to satisfy itself of compliance with the Article 5 Principles /UK GDPR generally in respect of the data processing it carries out.
74. Personal data will be collated from four potential sources: data subjects themselves providing this information to the Authority, HMLR records, data provided by other Public Authorities, and data provided by other parties. This will be held in a stakeholder list by the Authority, which is intended to be linked to the geospatial data for individual tips (i.e. multiple stakeholders may have multiple stakeholdings in multiple tips). When the Authority is due to undertake an inspection/assessment of a disused tip, the Authority will need to contact the occupiers of the relevant land to issue relevant/appropriate notices. Any communications sent (including the issuing of notices) or received will be stored in the Document Management System. If a stakeholder submits an appeal against a notice (e.g. an appeal against a

notice under section 33 requiring a land owner to carry out operations), the data they submit will be stored in the Document Management System and used to inform a decision on the appeal.

75. Personal data will be processed when the Authority exercises its functions under the Bill. The activities carried out when the Authority exercises those functions will involve a suite of interconnected internal systems operated by the Authority. The system architecture is still being defined by Welsh Government officials at the time of writing, but will be designed within comparable internal IT security and operational frameworks as operated by Welsh Government to be adopted by the Authority when the new body comes online.
76. Data will only be held for a defined period, as set out in paragraph 72 above, the Authority will be supported during the implementation period to develop appropriate record retention policies. At the end of the retention period, data will be deleted automatically by the digital services of the Authority.

#### Criminal offence data

77. The Authority will process a small amount of criminal offence data (under section 72, 35(2)(f), 45(2)(f) and 46(2)(c)). In each case, this processing will be for law enforcement purposes. The Authority is a competent authority (within the meaning of section 30(1)(b) of the Data Protection Act 2018) because the Bill provides statutory functions to exercise public powers for law enforcement purposes (within the meaning of section 31 of the Data Protection Act 2018). When processing criminal offence data under these functions, it will be for the Authority to satisfy itself that it processes such data in accordance with Part 3 of the Data Protection Act 2018. During the establishment of the Authority the Welsh Government will provide guidance to assist the Authority with this. This provision is necessary in order to allow for effective enforcement of the new regime under the Bill.

## **Step three: Necessity and proportionality**

### Necessity

78. The provisions of the Bill listed at Step Two (Describe the Information Flows) of this document will require the processing of personal data. Some provisions require certain elements of personal data to be processed whilst other provisions are less prescriptive but nonetheless may require the processing of personal data to action. This section explains why the processing of personal data is necessary and proportionate to achieve the aims and objectives of the Bill.
79. The background section sets out why the current legislation (the 1969 Act) is no longer fit for purpose. Notably, the Law Commission's Regulating Coal Tip Safety Summary Report found that the existing legislation for regulating the



tipping of waste from coal mines no longer provides an effective management framework for disused coal tips in the twenty-first century. Existing legislation focusses mainly on tipping from operational mines and made inadequate provision for disused tips which were considered a lesser problem.

80. Since the enactment of the 1969 Act, the vast majority of operational coal mines have closed. Areas of land containing disused tips are now owned by commercial, private, and public sector interests. Often the land on which a single disused tip is situated can be subject to a complex mix of interests. Any successful management regime would need to be able to identify and engage with multiple parties effectively, in order to monitor, manage, and make safe disused tips and inform and educate landowners.
81. This extends also to being able to identify parties that may be found liable to undertake, fund, or contribute to funding of works or to be able to provide financial or other assistance in order to ensure disused tips do not threaten human welfare by reason of their instability.
82. The series of landslides on disused tips that occurred in 2020, including the major landslide of a disused tip in Tylorstown which caused over 60,000 tonnes of debris to fall into the Rhondda Fach River, illustrated the potential risks that disused tips present to communities. This combined with the conclusion that the current statutory regime is not fit for purpose, is what has driven the development of the Bill.
83. The main objective of the Authority, as set out in section 2 of the Bill, is to ensure that disused tips do not threaten human welfare by reason of their instability. Public safety is at the core of the Bill's aims and objectives and the powers and duties conferred on the Authority under the Bill are consistent with the main objective. When considering whether the powers/duties conferred on the Authority (including their powers and duties in relation to the processing of personal data and sharing of information) are necessary/proportionate, it is pertinent to consider the Authority's main objective in carrying out its functions under the Bill (i.e. ensuring that disused tips do not threaten human welfare by reason of their instability), and therefore, the connection that the Authority's functions have to ensuring public safety.
84. Improving public safety and reassuring communities living in proximity to disused tips will require communication and collaboration with landowners, land occupiers, land managers and those with other with interests in land or the disused tips themselves. Should the Authority be unable to discharge its duties effectively and administer the new disused tip management regime, the Bill may not meet its objective to ensure that disused tips do not threaten human welfare by reason of their instability.
85. The proportionality of the relevant provisions in the Bill is considered below:

## Proportionality

### **Sections 6 and 8 – Electronic Register**

86. Although the data published in the register will not itself contain any information that directly identifies individuals, it would provide information that could allow the sourcing of land ownership information from other existing public sources of information (e.g. HM Land Registry records) by the wider public by way of its location.
87. Having taken this into consideration, it is considered the information included in the electronic register is necessary and proportionate to the aim of the processing, which is to ensure that the public are aware of and informed of the nature of any disused tips in their area. Information such as the category of tip will inform the public of its potential threat level and information on the date of last inspection will provide reassurance that disused tips are regularly inspected and monitored. Help and support will be provided to the Authority on establishing the register and will, for example, mitigate against the risks of collecting excessive personal data.

### **Notices. Sections 18, 19, 20, 21, 22, 23, 29, 30 Issuing of notices for assessment, registration notifiable change and information and sections 33, 35, 42, 44, 45 serving of notices for works.**

88. The Bill introduces duties for the Authority that are necessary for the efficient running of a disused tip management regime. The issuing of notices at key points in the management process of a disused tip or when a landowner may be specifically impacted by the work of the Authority (e.g. at registration, or a notice of works) enables the Authority to keep the landowner/occupier/interested party informed of activities relating to a particular tip, whether they are included in the new regime and to afford those parties transparency, fairness and, where relevant, the right to make representations or appeal.
89. Whilst the Bill's notice provisions are not prescriptive in terms of the form of notice etc., they do specify the information a notice must contain. This helps to ensure the information contained in a notice is necessary and proportionate to achieve the aims of the notice in question which, in turn, allows the Authority to exercise its functions under the Bill.
90. The notice provisions are also prescriptive in terms of the persons who must be served a particular notice. This helps to ensure the Authority only keeps and processes personal data in respect of persons it has need to contact to satisfy the requirements of the Bill. Each of the notice provisions has been

drafted to ensure only those persons who need to be aware of the information contained within a notice are given a copy. This helps to ensure the collection and processing of personal data by the Authority is necessary and proportionate. For example, section 18 places a duty on the Authority to give notice to owners of land and any occupier of land to which access is required before carrying out a full assessment of a disused tip. It is only owners and occupiers who need to be made aware of the Authority's intention to enter the land for this purpose, not those who have other interests in land such as, for example, a right to extract minerals etc.

91. The notice requirements are broader under, for example, section 29, which places a duty on the Authority to give notifications where it proposes to make a notifiable change to an entry on the register of disused tips. As well as owners and occupiers, notice must also be given to any other person who, to the Authority's knowledge, has an estate or interest in the land otherwise than as a mortgagee. The notice requirements are broader in this instance as those with interests in the land that extend beyond ownership or occupation would have an interest in knowing if the boundary or category of a disused tip had changed.
92. The Bill provisions have also been drafted to ensure that a requirement to serve a notice (and therefore process personal data) is only placed on the Authority where the giving of notices is necessary to enable the Authority to perform its functions under the Bill and to enable it to meet its main objective of ensuring disused tips do not threaten human welfare by reason of instability.
93. For example, if an assessment of a disused tip demonstrates that work is required to stabilise a tip, the Authority has the ability to give notice to a landowner requiring them to undertake works to stabilise the disused tip (section 33). A copy of the notice must be given to the persons specified in section 35 as those persons could be impacted by the works and are given a right to appeal against the notice. Thus, the processing of personal data is necessary, and we have taken steps in the drafting to ensure the requirements are proportionate – so that only those persons who need a notice are actually given one. Again, this limits the categories and therefore number of persons in respect of whom the Authority will need to hold personal data.

#### **Information sharing – sections 55, 56, 57, 58, 59, 60 and 61.**

94. In terms of data processing and data sharing, the relevant Bill provisions at sections 55,56,57, 58, 59 and 60, create express statutory duties to share data. This assists in complying with the first of the key data protection principles at Article 5(1)(a) UK GDPR (personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject).

95. However, whilst the Bill provisions provide what we consider to be a lawful basis for data sharing, it will be for the Authority, RPAs etc as data controllers/processors of the relevant personal data to satisfy themselves of compliance with the Article 5 principles, the Data Protection Act 2018 and UK GDPR generally and as appropriate in respect of the data processing they carry out. As noted earlier in this assessment, the Welsh Government will ensure the Authority is established in such a way to enable it to comply with its legal obligations in relation to data processing.
96. In developing the Bill's provisions, we have been mindful of the requirements of Article 8 of the European Convention on Human Rights (ECHR).
97. Information to be shared under the provisions noted above will likely include personal data, such as, name, address, telephone number, email address, photographs/images (for example, indicating/evidencing that certain activities are being/have been carried out on land threatening the stability of a disused tip). It could also include other information relating to particular land or relating to activities that have or have not been carried out on land causing changes to land. It is very unlikely that commercially sensitive, confidential or special category data will be shared under these provisions.
98. Personal data shared under these provisions will be limited, for example to enable or assist the Authority to carry out its functions or to assist the Authority to identify or assess a threat to the stability of a disused tip or assess the stability of a disused tip in the interests of avoiding or reducing a threat to human welfare, or for the purpose of an RPA's functions. As noted above, the Authority or RPA will have to satisfy themselves, on a case by case basis whether they are required to share the information, taking account of their obligations under the Data Protection Act 2018.
99. The provisions of the Bill are considered necessary to ensure that the Authority can properly perform its functions and to ensure the proper functioning of the new regime under the Bill, the provisions are considered to be proportionate to that aim.

## Annex 1: Nine criteria that may require a DPIA to be completed

(As shown in Guidelines on Data Protection Impact Assessment (DPIA) (wp248rev.01))

Criteria	Response
Evaluation or Scoring	There is no evaluation or scoring of personal data undertaken by the Authority's digital and data services
Automated-decision making with legal (or similar) significant effect	There is no automated decision making based on personal data. The Authority may use workflows to assist with categorising the level of risk a particular disused tip poses, but this will not involve personal data.
Systematic Monitoring	There is no monitoring of data subjects by the Authority.
Sensitive data or data of a highly personal nature	The Authority will not collect sensitive data. However, part of their remit enables them to bring prosecutions for offences created under the Bill, and evidence of those alleged offences would need to be gathered and retained to support any potential prosecution.
Data processed on a large scale	The Authority will, in time, hold personal data for tens of thousands of data subjects. There is no clear definition of what constitutes "large-scale processing". However, it is suggested that given the remit of the Authority is to exercise functions to ensure the ongoing stability of all disused tips in Wales, the number of data subjects is potentially less than 1% of the Welsh population (not accounting for some of the "data subjects" being commercial entities rather than individuals). Therefore, the view taken is that there is no large-scale processing of personal data.
Matching or combining datasets	The only use of matching data is to reverify that the Authority holds the latest information for stakeholders of each disused tip. Once the first iteration of landowners has been stored in the stakeholder list, the Authority will (at a defined point in time before a tip is assessed) request the latest land title ownership details from HM Land Registry to verify that the owner listed by the Authority still owns a particular land title. Similarly, with manual data provision (e.g. from other public bodies or as a result of someone

	being issued a notice and providing information), this will be manually verified against the existing stakeholder list. By undertaking this, the Authority will ensure it is making all reasonable attempts to maintain its data as “current”.
Data concerning vulnerable data subjects	Personal data processed by the Authority is not focussed on vulnerable data subjects. Records of registered owners of land held by HM Land Registry are not expected to be children and no special category data is collected. Furthermore, the Authority will not discriminate between categories of disused tip owners/occupiers in any way.
Innovative use or applying new technological or organisational solutions	There is no use by the Authority of innovative or novel technologies involving personal data. The Authority may, in time, use remote monitoring devices employing “Internet of Things” technologies, and use AI to process the monitoring data from those devices, but this would not extend to any kind of personal data.
When the processing in itself “prevents data subjects from exercising a right or using a service or a contract”	The use of the personal data by the Authority will not prevent a data subject from exercising a right or using a service or a contract.

In accordance with article 35(3) of the GDPR a full DPIA is required if the proposals propose to:

- use systematic and extensive profiling with significant effects;
- process special category or criminal offence data on a large scale; or
- systematically monitor publicly accessible places on a large scale.

ICO guidance states a full DPIA will be required if processing involves any of the following:

- using new technologies;
- using profiling or special category data to decide on access to services;
- profiling individuals on a large scale;
- processing biometric data;

- processing genetic data;
- matching data or combine datasets from different sources;
- collecting personal data from a source other than the individual without providing them with a privacy notice ('invisible processing');
- tracking individuals' location or behaviour;
- profiling children or target marketing or online services at them; or
- processing data that might endanger the individual's physical health or safety in the event of a security breach.

We are satisfied the proposals will not involve such processing. In particular, even though the Authority may process criminal offence data due to its ability to bring prosecutions for offences created under the Bill, as set out in our Justice Impact Assessment, the number of offences brought under the Bill's provisions each year is anticipated to be low. Also, the Director of Public Prosecutions also has power to bring prosecutions for offences under the Bill, and so the Authority is not the sole prosecuting authority.

## **Annex 2 – Risk Assessment**

We have considered potential risks around "invisible processing" (collecting personal data from a source other than the individual without providing them with a privacy notice). There are instances where the Authority will obtain data from the Land Registry and use it without (initially) the data subjects necessarily knowing what use the Authority will put that data to.

We are of the view that:

- The Land Registry data is available to anyone for a price, and the Registry itself provides its own privacy notice to that effect.
- When the Authority does contact the data subjects, it will be issuing its own privacy notice at the time, at which point it cease to be 'invisible'.

Therefore, we are of the view that there will not be "invisible" processing of data under the Bill's provisions. The data will also be subject to the right of correction where it is incorrect.

In addition, we are also aware (as set out in paragraph 30 above) that there may be occasions where the occupier of the land (or a person who receives rent in respect of the relevant land) might be required to confirm the details of anyone else with an estate or interest in the land. Where this is the case, it's important that the Authority provides the relevant privacy information at the point they contact that individual, as they wouldn't necessarily be aware of how the Authority came to process their personal data. This is part of the [Right to be informed | ICO](#). Guidance issued to the

Authority by the Welsh Ministers will remind them of this requirement, and templates will contain appropriate statements to ensure data subjects are aware of this information and their rights.



