



Justice System Impact Identification

Form

Overview

Welsh Government officials are submitting this form

- ~~For information and discussion about the implications~~
- For assessment by the Ministry of Justice

(Delete the statement which does not apply)

The Welsh Government's assessment of the impacts of this legislation on the justice system is that it has

- ~~No or negligible potential impact~~ (in this case complete the JSII form only up to and including question 4.5)
- Low potential impact
- ~~Medium or High potential impact~~

(Delete those which do not apply)

This is because:

The Mines and Quarries (Disused Tips) (Wales) Bill ("the Bill") is part of a package of mechanisms aligned with the coal tip safety work programme, developed in 2020 to deliver the objectives of the First Minister's Task Force on coal tip safety. The programme was triggered by a significant landside on a disused coal tip in Tylorstown, South Wales. [A review](#) by the [Law Commission on Regulating Coal Tip Safety in Wales](#) concluded the current legislation relating to coal tips (the Mines and Quarries (Tips) Act 1969 ("the 1969 Act")) does not effectively address the management of disused coal tips. The Bill implements a number of the Law Commission's recommendations and takes account of responses to the Coal Tip Safety (Wales) White Paper ("the White Paper").

The Bill provides for a new system of regulation for disused spoil tips in Wales ("disused tips"), delivering a consistent approach to the management, monitoring and oversight of disused tips. This Bill is part of a wider programme of work relating to disused tip safety in Wales.

In summary, the Bill makes provision for the establishment of a new supervisory authority ("the Authority"), a Welsh Government Sponsored Body, to oversee the new regime, and the conferral of appropriate powers and duties on the Authority in relation to the new regime. This includes regulatory, compliance and advisory functions in its

oversight of a new tip management regime. A new enforcement regime is proposed to ensure and encourage compliance with the new regime. This includes:

- civil enforcement powers, including powers allowing the Authority to require information and documents, and to access and inspect disused tips;
- enforcement powers for the management of disused tips; and
- criminal enforcement powers.

The impact of the Bill on the justice system is assessed as being low. Many of the offences, appeal rights, provision for applications to the Court etc are based on the existing provisions in Part 2 of the 1969 Act. The Bill will disapply Part 2 of the 1969 Act to local authorities in Wales, and therefore, Part 2 will not apply in relation to disused tips that are located wholly in Wales. There are a very small number of disused tips that straddle the border between England and Wales. For these tips, both the 1969 Act and the Bill will apply. English local authorities will exercise powers under the 1969 Act and the Authority will exercise powers conferred on it by the Bill. Powers under the respective regimes will be exercisable in relation to the whole of the cross-border disused tip (not just the part of the tip that falls within the respective geographical jurisdictions).

The reason we are assessing the impact as low rather than “no impact” or “negligible” is because the Bill has a lower threshold for taking action in relation to ensuring the safety of disused tips than the 1969 Act and the powers in the Bill apply to all land not just disused tips and neighbouring land where the disused tip owner has an interest. The Authority has the function of providing advice and assistance to persons in connection with disused tips and it is anticipated that the Authority will work with landowners to ensure safe management of disused tips without, in the vast majority of cases, the need to use notice provisions etc in the Bill.

1. General information

- 1.1. Please provide a) contact details of your lead official for the appraisal of costs or savings and;
b) the Justice Policy lead if known.

a)

- 1.2. Have you notified the judicial office of your proposals by completing Desk Instruction 7? (please seek advice from your legal advisors)

Yes

No (please explain why)

Our colleagues in Legal Services are currently in the process of preparing the required notification and it will be issued shortly.

- 1.3. In brief, what is your proposal? (no more than half a page) (*This information is provided to help MoJ officials to understand the intent of the proposed change in order to be able to comment as fully as possible on its potential impacts*).

The existing disused tip regime is provided for in Part 2 of the 1969 Act. It sets out the purpose for which local authorities exercise their functions under the Act: ensuring that disused tips do not, by reason of instability, constitute a danger to members of the public. The Bill will disapply the 1969 Act to all disused tips wholly in Wales. As set out above, for the very small number of disused tips that straddle the England/Wales border, both the 1969 Act and the provisions in the Bill will apply

The policy intent in making new legislation, as described in the White Paper, has been to broaden the scope of the regulatory regime so that it protects human welfare by creating a proportionate and risk-based management regime to reduce the threats posed by disused tips. The White Paper set out our aims to address the gaps in the existing regime for disused tips, as provided in the 1969 Act. The paper set out legislative proposals for the introduction of a new statutory management framework to support tip safety and help mitigate the potential impacts from climate change.

In summary, the Bill:

- (a) establishes the Disused Tips Authority for Wales, a Welsh Government Sponsored Body to oversee the regime. It's 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.
- (b) makes provision for the assessment, registration and monitoring of disused tips.
- (c) contains provisions that enable the Disused Tips 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) allows the Disused Tips Authority to provide advice and guidance on the recommended actions to maintain tip stability and protect human welfare.
- (e) contains supplementary provisions including powers of entry for the Disused Tips Authority, information sharing provisions and powers to require information.
- (f) creates related offences to support the enforcement of the regime.
- (g) makes provision to develop and maintain a national register of disused tips.

The design of the new regime is human rights compliant, operable system, in which the Disused Tips Authority for Wales not only plays an advisory role to encourage the owners

of the tips to meet their responsibilities but also can effectively use its powers to step in where those with responsibility cannot or will not do so.

To give an indication of scale, there are approximately 2,500 disused coal tips in Wales. The table below indicates their categorisation level. Category 1 represents the disused tips with the highest level of potential threat – more likely to require action to be taken under the regime. Category 4 represents disused tips with the lowest potential threat – that are unlikely to require action.

Disused Coal Tips

Category	Number
1	83
2	267
3	706
4	1209

It is estimated that there are over 20,000 disused non-coal tips in Wales.

The table below summarises our assumptions relating to the assessment and categorisation of non-coal disused tips:

	Non-coal disused tips
Estimated non-coal <u>disused</u> tips	20,000+
Preliminary assessments undertaken on x non-coal <u>disused</u> tips up to 2039-40	4,000
Of which, added to regime	480
Of which, as Category 1	14
Category 2	58

Category 3	154
Category 4	254

1.4. Please indicate when you will be undertaking a post-implementation review of this legislation and the enforcement actions arising from it.

No decision has yet been made. Further consideration of any potential need for a post-implementation review of this legislation will take place in due course in the context of Programme for Government commitments and other Ministerial priorities.

1.5. Is this legislative proposal similar in any way to legislation being brought forward in England? If so, please name that legislation and identify below any ways in which the legislation brought forward in Wales will differ.

If the legislation has no substantive difference from that in England, there may be no need to complete all parts of the JSII form.

The 1969 Act will remain in force for England.

1.6. Please specify the name of any other related legislation. How do you expect the relevant provisions of this (new) legislation to be enacted?

See above

1.7. Please indicate the anticipated date when a) the legislative changes are expected to come into force and b) the date when the first anticipated impact on the justice system will arise.

a) The Bill will be introduced in November 2024; we anticipate it will receive Royal Assent in August 2025. These dates are not in the public domain.

b) The anticipated implementation date for the new regime is 1 April 2027. It will take a period for the Authority to become fully operational. The date of the first impact on the Justice system is unknown as this will depend on a number of factors including compliance with the notices etc that the new Authority will have the power to issue, but would not be before the regime established under the Bill is operational.

1.8. If altering or introducing an offence, sanction or penalty, which of the following groups will the proposal affect and in what circumstances? (Tick all that apply)

- Individuals
- Private Institutions (e.g. Businesses)
- Public Institutions (e.g. Government Departments)

The persons affected by these provisions will primarily be the owners and occupiers of land on which disused tips are situated. However, several offences in the Bill may affect any person.

The Bill contains offences in relation to:

- Intentionally obstructing or interfering with the Authority carrying out inspections of, or monitoring activity on, disused tips;
- A landowner failing to comply with a notice issued by the Authority requiring them to carry out works on the land necessary to prevent or deal with threats to the stability of a disused tip or to stabilise a disused tip or prevent a disused tip becoming more unstable so as to avoid or reduce threats to human welfare;
- Intentionally obstructing or interfering with an investigation into whether operations on land are needed or the carrying out of operations;
- Intentionally damaging or otherwise interfering with works completed in the course of operations required under the Bill;
- Failing to give information required by the Authority or knowingly or recklessly providing information which is false and misleading in a material respect;
- Intentionally obstructing a person exercising a power of entry under the Bill

- 1.9. Does your legislation only have impact in Wales or are you working jointly with other administrations? Tick all that apply and provide brief details as appropriate, including whether your proposal will create different laws in Wales compared to England, Scotland and / or Northern Ireland.

Please note that, with the exception of the devolved tribunals, the MoJ administers the justice system in England and Wales only. Please talk directly to the MoJ devolution unit if you anticipate your proposal could have an impact on courts or prisons in Scotland or Northern Ireland.

- Wales only
- England
- Scotland
- Northern Ireland
- Other (Please Specify)

The overarching aim of this Bill is to create a system of regulation for disused tips in Wales.

The proposed scope of the new legislative regime should.

- apply to all types of spoil tip, regardless of their composition.
- only apply to disused, and not active, tips; and
- only apply to tips that are wholly or partly in Wales.

It should be noted there are a very small number of cross border disused tips that straddle the England/Wales border. The Bill will disapply Part 2 of the 1969 Act to local authorities in Wales, and therefore, Part 2 will not apply in relation to disused tips that are

located wholly in Wales. There are a very small number of disused tips that straddle the border between England and Wales. For these tips, both the 1969 Act and the Bill will apply. English local authorities will exercise powers under the 1969 Act and the Authority will exercise powers conferred on it by the Bill. Powers under the respective regimes will be exercisable in relation to the whole of the cross-border disused tip (not just the part of the tip that falls within the respective geographical jurisdictions).

1.10. If your legislation could directly impact visitors to Wales or other people not normally resident in Wales, or if your legislation is significantly different from elsewhere in England, Scotland or Northern Ireland;-

- a) what arrangements have you made to ensure ongoing awareness raising of the different legislative approach on this issue in Wales?
- b) what will be the implications on the enforcement agencies of taking forward action against individuals not usually resident in Wales?

Our proposals could affect a non-Welsh resident if they own or have an interest in land affected by the Bill. They will not impact on visitors to Wales.

There was wide reaching consultation on the White Paper that contained the Bill proposals. A summary of responses was prepared and published on the Welsh Government website on 9 November 2022.

We have communicated directly with owners and occupiers of disused coal tips during a direct mail exercise which took place in November 2023. All owners and occupiers of land with a C or D category disused coal tip within the boundary of their property (which are the higher risk tips) have been contacted.

The data on the category C and D tips was released to the public in November 2023, and published on the Welsh Government website. The data confirms the location and boundaries of the disused coal tips.

The data on the A, B & R disused coal tips (ie lower risk tips) was released in March 2024 and again published on the Welsh Government website.

From November 2023 to January 2024 we undertook 3 public awareness online events, and 6 in-person engagement sessions within the affected areas of the disused tips ahead of the publication of the data relating to disused tips.

A communications plan supporting the Bill outlines the various methods to ensure relevant stakeholders are aware of the legislation and its implications for them.

There are not considered to be any adverse implications for enforcement agencies in terms of taking forward action against individuals who are not ordinarily resident in Wales.

1.11. What are the options under consideration and how does this change the existing situation?

Consider:-

Option 1

Do Nothing – not legislating is not an option. The Tylorstown slip in 2020 has shown us what can happen if disused tips are not monitored and managed properly, and the Law Commission review was clear that legislative change is required (see below). To do nothing will have no impact on the Justice System.

Option 2

Legislate - New legislation to deal with Coal Tip Safety in Wales is essential. The Law Commission was asked to review the current legislation in the 1969 Act. Their report highlights significant gaps in existing legislation for the management, monitoring and oversight of disused tips. It proposed a new regulatory framework to promote consistency in the management of disused coal tips across the country and avert danger by adopting a proactive approach.

The proposals in the Bill give effect to many of the Law Commission's recommendations, including the setting up of a new regulatory Authority. That Authority is given effective and proportionate enforcement powers to ensure the regulatory regime is effective. It is proposed these would cover powers to access land to undertake inspections and urgent maintenance, potential criminal sanctions in circumstances where owners do not comply with tip notices requiring owners to undertake necessary works. Notice to access private land will not be required in an emergency.

As explained in more detail in later paragraphs, the scale of impact is anticipated to be low, due to the enforcement proposals in the Bill being mainly reflective of what is in Part 2 of the 1969 Act. Part 2 of that 1969 Act will be revoked in relation to Wales.

1.12. If you are creating a new civil sanction or penalty which court or tribunal, in your opinion, should deal with it?

N/A – no new civil sanctions being created in the Bill

1.13. Which of the following are you creating / amending? (Tick all that apply)

- Civil Sanctions
- Fixed Penalties
- Civil Orders
- Criminal Sanctions
- Criminal Offences
- Other (Please Specify)

1.14. If you are creating a criminal offence, is it:

- Summary Only (heard before a bench of lay magistrates / judge only)
- Triable Either Way
- Indictable Only (heard before a judge and jury)

In cases where the maximum penalty is to be an unlimited fine, and a triable either way offence is warranted, please explain why a summary only offence is not considered appropriate. This is especially relevant if few, if any, cases are anticipated.

Our proposal creates 3 offences which are liable on summary conviction to a fine. These are:

- Penalty for obstructing monitoring activities or assessments [s.32];
- Penalty for failure to comply with a notice [s.39];
- Penalty for obstructing operations [s.54].

Our proposal also creates 2 offences which are liable on summary conviction to a fine not exceeding level 3 on the standard scale.

- Penalty in connection with notices requiring information [s.61(1)] – where a person fails, without reasonable excuse to give that information.
- Penalty for obstructing entry to land [s.66]

Finally, our proposal creates 1 offence which is liable on summary conviction, or on conviction on indictment, to a fine.

This offence is in connection with notices requiring information, where the person who gives information which is false and misleading in a material respect and either (i) knows that the information is false and misleading, or (ii) is reckless as to whether information is false or misleading. [s.61(3)]

A summary only offence is not considered appropriate for this specific offence due to the element of recklessness or knowledge that is needed to satisfy it. It is deliberately a more serious offence than the related offence of failing without reasonable excuse to provide the information required by a notice. In addition, the commission of the offence has the potential to cause delays to necessary works being carried out in an emergency situation.

We don't anticipate many cases (if any) relating to this offence, as it could have serious consequences for any party providing false or misleading information to the Authority. Estimates of the number of offences are set out at paragraph 4.16 below.

1.15. Who will be responsible for the enforcement of your legislative proposal and how will they take this role forward? Will there be an increased / reduced need for enforcement action? Please also include the anticipated costs of enforcement and how it will be funded. (Please also consider the principles outlined in the Regulatory Delivery Model presentation slides available on the Justice pages on the intranet.

The Authority (the Disused Tips Authority for Wales), a new body that will be established under the Bill, will be responsible for enforcement action. This is a change as under the current regime in the 1969 Act, local authorities are responsible for enforcement action. However, as set out in later paragraphs, the offences and methods of enforcement in the Bill are very closely modelled on those in the 1969 Act.

The Authority will have broader powers than those currently available to local authorities. It will have powers to gather information and to assess and monitor all disused tips in Wales. These functions will be supported by a right of entry to land to enable it to carry out its functions and criminal offences where owners refuse to provide information or access to land amongst other offences.

The Authority will be funded by the Welsh Ministers to perform its functions – including its enforcement functions.

1.16. What is the anticipated number of cases per year? Please provide details of any evidence of assumptions on which estimates are based.

We anticipate that the numbers will be very low, if any cases at all, due to the nature of the working relationship the Authority will have with its stakeholders which will minimise the need for applications for warrants to enter land, notices requiring operations on land to be served and information to be formally requested. The Authority is being established to work closely with the stakeholders, providing advice on the maintenance of the land etc, and we think that these good relationships will enable any issues to be resolved between the parties and avoid the need for any court action.

We have also made enquiries with local authorities in Wales and anecdotal evidence is that no prosecutions have been brought in relation to related/similar offences under the 1969 Act. We have submitted a request to HMCTS, asking for any relevant data on prosecutions for similar offences under the 1969 Act to inform our thinking and assumptions. We have not yet had a response, but can forward on when received.

Estimates of numbers of cases (expressed as a range):

- Penalty for obstructing monitoring activities or assessments [s.32] – **0 - 5**
- Penalty for failure to comply with a notice [s.39] - **0 - 5**
- Penalty for obstructing operations [s.54] - **0 - 5**
- Penalty in connection with notices requiring information [s.61(1)] – where a person fails, without reasonable excuse to give that information. - **0 - 5**
- Penalty for obstructing entry to land [s.66] - **0 - 5**
- Penalty in connection with notices requiring information [s.61(3)] – where a person knowingly or recklessly provides false or misleading information. **0 - 5**

1.17. Do you expect proceedings to be heard in the Magistrates' Court, the Crown Court, or a Civil Court? What will the proportions be?

Most of the offences are summary only, to be heard by the Magistrates' Court. One offence is triable either way and so may be heard either by the Magistrates or Crown Courts, however we anticipate most cases (if they do go Court) would be heard in the Magistrates' Court.

1.18. Please state the maximum associated fine and/or custodial penalties. In the case of offences involving penalties of a fine or custody, please indicate and explain the circumstances which would result in a custodial sentence upon conviction and the proportion of custodial penalties which will be at the maximum level.

None of the offences attract a custodial sentence.

S.32 - Penalty for obstructing monitoring activities or assessments

A person guilty of an offence under subsection (1) is liable on summary conviction to a fine.

S.39 - Penalty for failure to comply with notice

A person who is guilty of an offence under subsection (1) is liable on summary conviction to a fine.

S.54 - Penalty for obstructing operations etc.

A person guilty of an offence under subsection (1) or (2) is liable on summary conviction to a fine.

S.61 - Penalties in connection with notices requiring information

A person who is guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

S.61 - Penalties in connection with notices requiring information

A person who is guilty of an offence under subsection (3) is liable on summary conviction, or on conviction on indictment, to a fine.

S.66 - Penalty for obstructing entry to land

A person guilty of an offence under subsection (2) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

1.19. Please itemise details of any proxy or current offences and / or penalties on which the proposed penalties are based. If mirroring / comparing existing legislation, ensure that reference is made to the most recent versions of the legislation (via Westlaw, the online legal research service) as this is not always available online. Please refer to page 8 of the JSII guidance on how to obtain data relating to the number of cases brought forward under the legislation you have identified.

Proposed Legislation / Section	Existing Legislation Mines and Quarries (Tips) Act 1969	Offence
S.61(2) and (4)	s.12(2)	Offences relating to information provisions
S.66	s. 13(6) and s.18(6)	Offences relating to obstructing entry to land
S.39(1)	s.14(8)	Offence for not complying with a notice requiring works
S.32	s.26(1)	Offence of obstructing monitoring activities or assessments
S.54(1)	s.26(1)	Offence of obstructing operations
S.54(2)	s.26(2)	Offence of wilfully damaging completed works

1.20. Please Provide details of the relevant legislation (where appropriate) and confirm whether the creation or amendment of criminal offences and penalties has been agreed in line with the guidance available at <https://www.gov.uk/government/publications/making-new-criminal-offences>.

Creation of the offences is considered to be both proportionate and necessary to deliver the Mines and Quarries (Disused Tips) (Wales) Bill objectives.

1.21. What will be the short, medium and lifelong implications for an individual found guilty of this offence, and how is this proportionate to the offence created?

The impact on an individual found guilty of any offences within this Bill will result in a criminal record based on the current system and liability to pay a fine. In terms of the impact on the life of an individual who is convicted of an offence, this could, foreseeably, have an impact on that person's employment prospects. However, as set out below, the impact would be relatively short lived given the relevant provisions in the Rehabilitation of Offenders Act 1974.

The Rehabilitation of Offenders Act 1974 will apply to an individual convicted of an offence under the Bill in the usual way. The conviction of person found guilty of an offence and issued with a fine under the Bill will become spent either at the end of the period of 12 months beginning with the date of the conviction if they are over the age of 18, or the end of the period of 6 months beginning with the date of the conviction if they are under 18.

1.22. Does this legislation impose any duty on the public sector? If so, please provide your assessment of the likelihood of individuals or businesses taking action against the public sector for non-compliance with this legislation.

The Bill primarily places duties on the Authority and Welsh Ministers.

The Bill also places duties on relevant public authorities (as defined in the Bill) to give information to the Authority.

Decisions made by public bodies are subject to judicial review.

We are not aware of any judicial review actions being taken against local authorities in exercise of their equivalent functions under the 1969 Act. Therefore, the risk of judicial review action being brought against the Authority, whilst possible, is low.

The Bill provides that Welsh Ministers may determine appeals themselves or appoint a third party to determine. In practice, appeals will be heard by PEDW (Planning and Environment Decisions Wales). PEDW are civil servants and so Welsh Ministers will remain responsible for the decision. PEDW is extremely experienced in handling appeals (it currently deals with planning appeals, marine licensing etc). Therefore, it is anticipated the number of judicial review actions will be low.

In relation to duties placed on relevant public authorities to provide information to the Authority, the prospect of the Authority bringing proceedings against such a public

authority is extremely low. Members of the public would not be expected to institute judicial review proceedings in such instances.

2. HM Courts & Tribunals Service and the Welsh Tribunals Service

Estimating the change to caseload of the Courts and Tribunals Service (including devolved tribunals)

- 2.1. Do you expect there to be a change in Court or Tribunals process or an increase / decrease in applications / cases to HM Courts and Tribunals Service and / or the Welsh Tribunals through the creation or amendment of this law? Please provide an estimate of the change to volumes of cases going through the court system as a whole, explain any changes in process and outline the evidence and sources that support these estimates.

There are a number of provisions in the Bill that enable an application to be made to the Court. These are summarised below. They are primarily based on existing provisions in the 1969 Act that enable applications to be made to the Court. Comparison tables showing the equivalent provisions are provided.

Policy leads have held discussions with local authorities and the Coal Authority and anecdotal evidence is that there has not been any Court action taken in relation to any of the relevant provisions in the 1969 Act. The service of notices requiring operations etc that could set in motion the circumstances that might trigger applications to the Court, has been avoided by working with disused tip owners to agree works that are required to ensure the ongoing stability of disused tips. Similarly, there has only been one known case where a local authority has, initially, been refused entry to land to carry out an inspection, in that case the threat of an application for a warrant to enter the land was sufficient to enable access.

The regulatory regime to be established under the Bill will be more pro-active (the threshold for the Authority issuing a notice to require works to be carried out will be lowered and the breadth of the power will be extended to cover all land – not just disused tips and adjacent land where the tip owner has an interest in the land). However, the Authority will perform its functions in the same collaborative manner, with formal notices to require works only being used as a last resort. In addition, strong working relationships – which are already in place with landowners through their work with local authorities and the Coal Authority - means warrants to enter land are unlikely to be required.

Consequently, we assess the impact of the Bill's provisions as being low. For each of the potential Court applications listed below, we estimate a range of between 0-5 applications per year.

Tables showing the Bill provisions and the equivalent provisions under the 1969 Act are set out below:

Warrant

The Bill contains provisions allowing the Authority to apply for a warrant to enter land for specified purposes connected with the exercise of the Authority's functions. There are equivalent powers to apply for a warrant under the 1969 Act.

Bill	1969 Act
S.64 – warrant to enter land for a purpose mentioned in s.62(1) – e.g. assessment, monitoring, carrying out works etc.	s.13 and 18 – warrant to enter land to carry out exploratory tests etc. and to carry out remedial operations and works of reinstatement

Contribution Orders – applications

The Bill also contains provisions that allow an owner of land who has been served a notice requiring works to be carried out to apply to the Court for a Contribution Order. Such an Order will require third parties to make a contribution towards the costs of the works. The Bill also enables the Authority when it carries out works itself on land to make an application to the Court requesting a Contribution Order be made. There are equivalent provisions enabling owners and local authorities to apply to the Court for Contribution Orders under the 1969 Act.

Bill	1969 Act
S.46 – provides that (i) the Authority that has carried out works on land or (ii) an owner of land served with a notice to carry out works on land, may apply to the Court for a contribution order to be made against specified persons to contribute to the cost of works.	Section 19 – an owner of land served a notice or a local authority that has carried out works on land may apply to the Court for a contribution order requiring specified persons to contribute to the costs of works.

Compensation for damage or disturbance

The Bill also makes provision that enables specified persons to claim compensation from an owner of land or the Authority where land or property is damaged or a person's enjoyment of land is disturbed as a result of operations being carried out on the land by the owner or Authority.

There is an additional right for specified persons to make a claim for compensation for damage or disturbance against the Authority where land or property is damaged or enjoyment of land is disturbed as a result of inspection, monitoring or assessment activity carried out by the Authority.

If compensation cannot be agreed by the parties, a dispute is determined by the court.

Bill	1969 Act
<p>S.48 - where land or property is damaged or any person's enjoyment of land is disturbed as a result of inspection, other monitoring activity, preliminary or full assessments specified persons are entitled to recover compensation from the Authority. Any dispute about compensation is to be determined by the Court.</p>	<p>Section 20 – where land is damaged or a person's enjoyment of their land is disturbed by remedial works carried out on land or exploratory operations, specified persons are able to recover compensation from the owner of land who carried out the operations or from the local authority that carried out the operations or exploratory tests. Any dispute about compensation is to be determined by the Court.</p>
<p>S.48 – where land is damaged or any other property is damaged, removed or disposed of (i) by an owner or the Authority carrying out operations or consequential works of reinstatement on land, or (ii) the Authority investigating whether operations on land are required, the specified persons are able to claim compensation from the owner or Authority as applicable. Any dispute about compensation is to be determined by the Court.</p>	<p>Section 20 – please see above.</p>

5.2 Please confirm if the courts / tribunals would be under any duty to inform any regulatory authorities of any convictions made under this offence.

- No
 Yes (please provide details)

Appeal Rights

2.2. Does your proposal create a new right of appeal, onward appeal, or route to judicial review? If so, how do you expect these to be handled (i.e. administered by HM Courts & Tribunals Service or Welsh Tribunals and will the appeals be suitable for a virtual hearing)?

No

Yes (please provide details)

The appeal rights which we are proposing are similar to those in the 1969 Act, therefore most of the appeals are not 'new' to the system. Most of the appeals will be determined by a person appointed by the Welsh Ministers rather than the Courts as in the 1969 Act.

As mentioned above, there are a number of appeal rights in the Bill which are very similar to, and based on, the equivalent appeal rights in the 1969 Act. However, certain appeals under the Bill will be heard by the Welsh Ministers rather than the Court. A table showing the appeal rights under the Bill compared to the equivalent appeal rights under the 1969 Act is below. The determinant of appeals is in bold for each.

Bill	1969 Act
S.36 – right of owner/interested parties to appeal against notice requiring operations on land. Welsh Ministers	Section 15 – Appeals against notices under section 14 requiring operations on land. Court
S.50 – a contributory given a demand for contribution towards works by an owner of land may apply to the Court for an order varying the demand. Court	Section 22 – Contributory can appeal against a demand for a contribution towards costs of works made under section 21 by an owner. Court
S.52 – a contributory given a demand for contribution towards works by the Authority can apply to the Court for an order cancelling or varying the demand. Court.	Section 24 – Owner/contributory can appeal against a demand under section 23 from the local authority seeking to recover expenses. Court

We expect such appeals to be suitable for a virtual hearing.

Again, anecdotal evidence from local authorities is that they are not aware of any appeals to the court having been made under the 1969 Act.

Under the Bill, appeals in respect of a notice requiring operations on land will be heard by the Welsh Ministers (the equivalent appeal right under the 1969 Act is to the Court). This results in a theoretical reduction in the number of appeals that could be made to the Court.

In respect of the two remaining rights of appeal, given the new regime will be more proactive, we estimate **the number of appeals, for each of the appeal rights, will be in the range of 0-5.**

Where Welsh Ministers make determinations, their decisions will be subject to judicial review. It is not possible to estimate the number of such judicial review actions, but they are anticipated to be very low – less than 1 per year.

In addition to appeal rights, there are other instances where applications may be made to the Court. A comparison of the applications that may be made under the Bill compared to those that may be made under the 1969 Act are set out at paragraph 5.1 above.

2.3. Who will hear appeals arising from any enforcement action undertaken under the proposed legislation?

- UK First-Tier Tribunal
- UK Upper Tribunal
- Welsh First-Tier Tribunal
- Welsh Appeal Tribunal
- Magistrates Court
- Crown Court
- Other (please provide details)

“Court” is defined in the Bill as meaning the High Court or County Court.

2.4. Do you expect to expand and existing jurisdiction or establish a new tribunal jurisdiction? If so, has this been discussed with the Welsh Tribunals Unit / Ministry of Justice?

We will not be required to create a new Tribunal for the purposes of our Bill.

2.5. What costs do you anticipate will be incurred and does your policy division have the necessary funding in place to set up the proposed enforcement regime and appeal mechanisms within the Welsh Tribunal structure?

N/A

2.6. When do you anticipate your proposed legislation will be implemented and the first appeal hearings will be heard?

We anticipate the proposed legislation will be commenced on 1 April 2027. The Authority will take some time to become fully operational and it will take some time before any appeals start to be made against notices etc. issued by the Authority.

2.7. To what extent could the use of alternative dispute resolution (ADR) procedures (including mediation) be appropriate? How will success in ADR be measured?

It is envisaged that the Authority will have a strong relationship with a range of stakeholders, but in particular with owners of disused tips in Wales. This will be a particularly important part of the Authority's responsibilities and it is hoped that closer / stronger relationships will mean that any areas of disagreement can be discussed and, in some cases, resolved prior to any written representations, the issuing of notices and/or the submission of a formal appeal.

Prosecution and Enforcement

2.8. If the proposal is to add a new offence, will the Crown Prosecution Service act to prosecute defendants? If not, please identify who will prosecute.

It is anticipated the Authority will bring the majority of any prosecutions brought under the Bill. However, the DPP may also bring prosecutions. Private prosecutions may be brought with the permission of the DPP.

This reflects the position under the 1969 Act (section 27(1)), except local authorities (rather than the Authority) were empowered by that Act to bring prosecutions.

2.9. Will the proposal require enforcement mechanisms for civil debts, civil sanctions or criminal penalties? If yes, who do you expect to enforce these?

Yes, criminal penalties will be enforced by the Court.

HMCTS Procedural Rules, Sentencing and Penalty Guidelines

2.10. Do you anticipate that Court and/or Tribunal procedural rules will have to be amended? If so, when is the likely date for the changes?

N/A

2.11. Will the proposals require sentencing and / or penalty guidelines to be amended?

N/A



3. Legal Aid and Court Fees

- 3.1. What evidence is there that individuals affected by your proposal will be able to secure and afford:
- legal representation and legal advice in order to secure a fair hearing of their case
 - associated court fees

What legal costs for a typical case could each party bear and what provisions exist for a party found innocent to recover all or any of their legal costs?

Having considered the guidance provided by the Legal Aid Agency on the [Interests of Justice](#) and the Widgery criteria as set out in section 17(2) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012, it is unlikely that criminal Legal Aid would be available for representation in relation to any of the offences under the Bill. However, this would depend on the complexity of the case.

As is currently the case under the broadly equivalent provisions in the 1969 Act, individuals will need to secure and pay for their own legal advice, if required. Following proceedings, the award of costs would be issued by a judge. Estimates of complexity, length and costs of cases are not possible due to the current understanding that there have been no equivalent prosecutions or enforcement in relation to the matters within the scope of our Bill.

In regard to Civil Claims, the types of applications that might be made under the Bill are not likely to fall within the list in Schedule 1 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012.

- 3.2. Once implemented, is your proposal likely to require individuals to seek legal advice and to apply for legal aid in any of the following areas? In each case please provide supporting evidence.

- Criminal
- Civil (including Family)
- Asylum
- Legal aid not available (please provide supporting evidence)

As set out above, legal aid is unlikely to be available for offences under the Act nor for any civil proceedings.

- 3.3. If legal aid may be affected, would legal aid costs increase or be reduced (and by what margin)?

N/A

4. Prisons and Offender Management Services

Impact on HM Prison Services

- 4.1. Will the proposals result in a change in the number of offenders being committed to custody (including on remand) or probation (including community sentences)? If so, please provide an estimate and reasoning behind it, an estimated timeframe to reach this number of sentences, what evidence this is based on, and the source for your information.

No

- 4.2. Does the proposal create, remove or change an existing offence with a custodial or probationary sentence, or change the way offenders go through the prison / probation service? If so, please provide details, including the expected impact on probationary services.

No

5. Main Justice System Impacts Identified

5.1. Volumes (please lengthen if necessary):-

NB in all cases, assume an average annual figure or make clear if a different timespan is being considered. Where there may be significance variance from average in the first years of implementation, please add additional information in the notes below.

Identify the court or tribunal or MoJ service that will be affected by this proposal?	Volumes (please provide both numeric estimates and min-max ranges)	Type (e.g. prison place, tribunal hearing, fixed penalty, etc.)	Additional Information
Criminal Offences and Sanctions			
Civil Penalties			

Identify the court or tribunal or MoJ service that will be affected by this proposal?	Volumes (please provide both numeric estimates and min-max ranges)	Type (e.g. prison place, tribunal hearing, fixed penalty, etc.)	Additional Information
HM Courts & Tribunals Services			
Welsh Tribunals			
Legat Aid			

Identify the court or tribunal or MoJ service that will be affected by this proposal?	Volumes (please provide both numeric estimates and min-max ranges)	Type (e.g. prison place, tribunal hearing, fixed penalty, etc.)	Additional Information

5.2. Prisons and Offender Management Services (lengthen if necessary, only complete if maximum penalty is something other than a fine): N/A

Offence	Maximum Penalty	No. of prosecutions brought per annum (numeric estimate and min-max range)	Likely proportion sentenced to immediate custody	Likely average custodial sentence length given
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
Notes:				

Please be aware that any costs or savings identified as a result of any changes to the justice system /additional work must be factored in to the financial assessment of your legislation.