IN THE MATTER OF THE PROPOSED COAL LICENCE BAN

Re: Proposed amendments to the Coal Industry Act 1994 and how to ensure they are effective

---

ADVICE

INTRODUCTION AND SUMMARY

1. We are asked by Coal Action Network to advise as to the language which may be adopted in forthcoming amendments to the Coal Industry Act 1994 (**"1994 Act"**) to ensure that the Government's intention to ban new coal mining licences may be given full effect. In particular, we are asked how the statutory language may be amended to ensure that coal extraction from 'coal tips' is a.) confirmed to be an activity for which a licence is required, and b.) an activity for which the provision of a licence is prohibited, meaning that c.) the use of coal from tips will not be obtained for use in subsequent combustive processes.

2. For the reasons given in detail below, our advice is that:

   2.1 Despite the view of the Mining Remediation Authority (**"MRA"**), we consider that it is arguable that a licence under the Coal Industry Act 1994 (**"the 1994 Act"**) is currently required for the extraction of coal from coal tips on the basis that the same is a *"coal-mining operation"* per s.65(1), although we recognise that the relevant provisions in the 1994 Act would benefit from greater clarity.

   2.2 The suggestion the coal tip extraction is not a *"coal-mining operation"* jars with the classification of such projects in the planning system under the relevant provisions of the Town and Country Planning Act 1990 (**"the 1990 Act"**).

   2.3 There is thus clear justification for statutory amendments to clarify the position in respect of coal tip extraction.

2.4 The perpetuation of coal tip extraction would allow for the continued supply in the UK of coal for combustion, which is the practice the proposed ban on coal licences seeks to prevent.

2.5 The 1994 Act should be amended, either to clarify that coal tip extraction has always been a licensable activity, or to include coal tip extraction as a licensable activity that is consequently banned.

2.6 This may be achieved by relatively minor amendments to s.65(1) and s.25(2) of the 1994 Act.

REASONS

FACTUAL BACKGROUND

Commitment to ban coal licensing in UK

3. Giving effect to a manifesto commitment,[1] on 14 November 2024 in a written ministerial statement titled 'Prohibition on new coal extraction licences' (**"the WMS"**), Ed Miliband, Secretary of State for Energy Security and Net Zero confirmed it was *"the right time to take further steps to move away from coal by restricting its future supply,"* continuing:

> *"It is our intention to change coal extraction policy through primary legislation to restrict future licensing of all new coal mines. We anticipate this will involve measures to amend the Coal Industry Act 1994 to prevent the prospective granting of licences. We will examine what limited exceptions may be required, for example, for safety or restoration purposes, and there are a small number of licensed operational coal mines that will be unaffected by the measures and can continue coal mining in accordance with their current licences and consents.*

[1] Change: Labour Party Manifesto 2024, *"We will not issue new licences to explore new fields because they will not take a penny off bills, cannot make us energy secure and will only accelerate the worsening climate crisis. In addition, we will not grant new coal licences and will ban fracking for good"* (https://labour.org.uk/wp-content/uploads/2024/06/Change-Labour-Party-Manifesto-2024-large-print.pdf (p.52))

> *The measures we will bring forward, when timing allows, mean we will be one of the first countries in the world to ban new coal mines, allowing us to focus our efforts on revitalising our industrial heartlands, supporting the transition to new jobs in clean energy across the United Kingdom and creating industries of the future. It marks a clear signal to industry, markets and the world that coal mining in the United Kingdom does not have a long-term future"* (emp. add.).[2]

4. On the same day the Government issued a press release[3] (**"the Press Release"**) stating *"New coal mining licences will be banned"* and that it would introduce *"new legislation as soon as possible to restrict the future licensing of new coal mines."* The Press Release also confirmed *"Coal power remains the largest source of energy related CO2 emissions globally"* and that *"phasing it out is a crucial step to tackling climate change and limiting global temperature rises to 1.5C, while providing important health benefits through improved air quality."* The phase-out of coal is also a dimension of the UK's climate strategy which *"receives worldwide interest"* as recognised by the Climate Change Committee in their most recent progress report of 25 June 2025.[4]

5. The justification for the above measures is obvious: the UK has been in a declared state of climate and ecological emergency since 1 May 2019.[5] It has also embedded climate impact targets and goals into domestic legislation[6] and policy[7] in a context where the Intergovernmental Panel on Climate Change warns *"further delay in concerted global action will miss a brief and rapidly closing window to secure a liveable future*".[8]

---

2 Written Ministerial Statement of 14 November 2024: Prohibition on new coal extraction licences (https://questions-statements.parliament.uk/written-statements/detail/2024-11-14/hcws215)

3 Press Release: New Coal Mining Licences Will Be Banned (https://www.gov.uk/government/news/new-coal-mining-licences-will-be-banned#:~:text=Licensing%20of%20new%20coal%20mines,licensing%20of%20new%20coal%20mines).

4 Progress in reducing emissions – 2025 report to Parliament (https://www.theccc.org.uk/publication/progress-in-reducing-emissions-2025-report-to-parliament/), §1.5.4

5 Hansard, Vol. 659, ! May 2019 (https://hansard.parliament.uk/commons/2019-05-01/debates/3C133E25-D670-4F2B-B245-33968D0228D2/EnvironmentAndClimateChange?).

6 s.1 of the Climate Change Act 2008.

7 See broadly Chapter 14 of the National Planning Policy Framework.

8 Press Release Accompanying the IPCC's Sixth Assessment report. (https://www.ipcc.ch/report/ar6/wg2/resources/press/press-release/).

Coal tips, and the regulation of coal tip extraction

6. A coal tip (also known as a spoil tip or slag heap) is a collection of waste material removed as part of the mining process and accumulated on or above ground. Such tips may include mined coal abandoned on the basis that it is (or was at the time it was deposited) of lower quality than conventional saleable coal. There are more than 5,000 coal tips in Great Britain,[9] of which more than 2,500 are in Wales.[10] It is understood there are formative proposals (e.g the Bedwas Tips Reclamation project) for the extraction of significant amounts of material, including coal, from coal tips as part of the remediation of former coal projects, with a view to selling the extracted coal on for use in industry, including in energy production.[11] There is plainly an industry for the extraction of coal from coal tips, with applications for the same being made across England[12], Wales[13] and Scotland.[14]

7. At present, the prevailing view as expressed by the MRA in its letter of 5 December 2024 (annexed to this advice) is that extracting coal from a coal tip is not an activity for which a licence is required under the 1994 Act because, essentially, that extraction does not meet the definition of a 'coal mining operation' under s.65(1) of the 1994 Act (set out below), and therefore cannot comprise a kind of 'coal mining operation' for which a licence is required (per ss.25(1)-(2) of the 1994 Act).

8. The use and extraction of coal tips is therefore governed by the planning regime, with a coal tip apparently meeting the definition of a 'mineral working deposit'

---

[9] Maps of Colliery tips owned and inspected by the Mining Remediation Authority (see 'details' section) (https://www.gov.uk/government/publications/disused-colliery-tips-owned-and-inspected-by-the-coal-authority).

[10] Welsh Minister for Climate Change, Written Statement: Coal Tip Safety: Category A, B and R disused coal tips (https://www.gov.wales/written-statement-coal-tip-safety-category-b-and-r-disused-coal-tips).

[11] See e.g. Information Paper for the proposed Bedwas Tips Reclamation Project at §1.23: *'ERI's proposal is to sell on these stockpiles of coal to heavy industry, the cement manufacturing industry and potentially energy production industry to help contribute to carbon reduction in the medium term'* (emp. add.) (https://erireclamation.co.uk/wp-content/uploads/2024/02/ERI_IP1_Project-Principles-and-Access-Roads_v1_with-Appendices.pdf).

[12] See, for example, the applications bearing the references 14/02187/WCCC, 11/02305/MINA, and 97/08/48/P in Doncaster.

[13] See, for example, the applications bearing the references 2/06304 and P/98/05156 in Caerphilly.

[14] See, for example, application reference 88/00507/DC in Glasgow.

under s.336 of the 1990 Act,[15] and removal of material from the coal tip being a 'mining operation' (in line with s.55(4)(a)(i) of the 1990 Act) and therefore comprising 'development' (per s.55(1) the 1990 Act) for which permission is needed (per s.57 of the 1990 Act).

9. An Incidental Coal Agreement (**"ICA"**) is a form of authorisation from the MRA authorising the extraction of coal *"where the removal of the coal is necessary but its removal is incidental to the main purpose of that activity."*[16] Such agreements may be considered necessary by the MRA in circumstances in which the requirement for a licence under s.25 of the 1994 Act does not apply (see s.25(2)(c)).

10. There is a concern that those looking to extract coal from coal tips may seek ICAs in addition to planning permission to authorise such schemes. The primary purpose of the enterprise would be claimed to be the remediation of a coal tip, with coal extraction being an incidental and subordinate activity to that primary purpose.

11. Those instructing have received advice as to whether such operations should fall within the scope of the ICA regime. We do not intend to rehearse that advice here, although for completeness, we agree that:

    a. In many cases, the scale of coal being removed as part of an 'incidental' operation undermines the claim that extraction or removal is really a subordinate activity. The guidance on application fees for ICAs includes bands of 0-100, 100-1,000, and over 1,000 tonnes, for example, whilst most extractive projects will seek extraction of over 100 times that highest band.[17] In short, large scale coal extraction is development of a different order to that which the ICA regime covers.

---

[15] *"any deposit of material remaining after minerals have been extracted from land or otherwise deriving from the carrying out of operations for the winning and working of minerals in, on or under land"*.

[16] See the Guidance notes for applicants for incidental coal agreements, §1 (https://www.gov.uk/government/publications/incidental-coal-agreement/guidance-notes-for-applicants-for-incidental-coal-agreements).

[17] See the Guidance notes for applicants for incidental coal agreements, §3 (https://www.gov.uk/government/publications/incidental-coal-agreement/guidance-notes-for-applicants-for-incidental-coal-agreements).

b. Proposed remediation schemes which involve the extraction of substantial amounts of coal are more aptly (at best) dual purpose schemes, and it is difficult to see how coal extraction could be genuinely considered to be a subordinate or incidental activity, particularly where the remediation would likely not be pursued absent the opportunity to extract and sell that coal.

12. We add, however, that the MRA has stated that it does not consider coal tip extraction to be a 'coal mining operation' at all because coal tip extraction does not, in its view, meet the definition within s.65(1) of the 1994 Act. It is therefore unclear whether the MRA would consider that an ICA would be necessary to authorise such activity.

13. Accordingly, the extraction of coal from coal tips is, at least in the understanding of the MRA, not an activity for which a licence under s.25 of the 1994 Act is required. It appears that the MRA's position is that such extraction is not an activity which should or can be regulated via the ICA regime. This is despite the fact that the extraction of coal from coal tips is plainly a process by which very substantial volumes of coal may be supplied to market for use in combustive processes, contrary to the stated aims of the WMS and Press Release.

LEGAL FRAMEWORK

14. Section 65 of the 1994 Act provides the following definitions:

> *"'the Authority' means the Coal Authority;*
>
> *[…]*
>
> *'coal' means bituminous coal, cannel coal and anthracite;*
>
> *'coal mine' <u>includes</u>—*
>
> > *(a) any space excavated underground for the purpose of coal-mining operations and any shaft or adit made for those purposes;*
> > *(b) any space occupied by unworked coal and;*
> > *(c) a coal quarry and opencast workings of coal;*
>
> *'coal-mining operations' <u>includes</u>—*
>
> > *(a) searching for coal and boring for it,*
> > *(b) winning, working and getting it (whether underground or in the course of opencast operations),*

(c) bringing underground coal to the surface, treating coal and rendering it saleable,
(d) treating coal in the strata for the purpose of winning any product of coal and winning, working or getting any product of coal resulting from such treatment, and
(e) depositing spoil from any activities carried on in the course of any coal-mining operations and draining coal mines,

and an operation carried on in relation to minerals other than coal is a coal-mining operation in so far as it is carried on in relation to those minerals as part of, or is ancillary to, operations carried on in relation to coal" (emp. add.)

15. Pursuant to section 25(1) of the 1994 Act, *"coal-mining operations"* to which that section applies are not to be carried out without a licence:

"(1) Subject to subsection (3) below, coal-mining operations to which this section applies shall not, at any time on or after the restructuring date, be carried on by any person except under and in accordance with a licence under this Part." (emp. add.)

16. Section 25(2) of the 1994 Act then provides for the kinds of 'coal mining operations' that will require a licence under s.25:

"(2) This section applies to any coal-mining operations in so far as they—

(a) consist in the winning, working or getting (with or without other minerals) of any coal, in the treatment of coal in the strata for the purpose of winning any product of coal or in the winning, working or getting of any product of coal resulting from such treatment;

(b) are carried on in relation to coal in any part of Great Britain, in relation to coal under the territorial sea adjacent to Great Britain or in relation to coal in any designated area; and

(c) are neither carried on exclusively for the purpose of exploring for coal nor confined to the digging or carrying away of coal that it is necessary to dig or carry away in the course of activities carried on for purposes which do not include the getting of coal or any product of coal." (emp. add.)

ANALYSIS

17. In understanding how appropriate legislative amendments may be enacted, it is useful to understand the extent to which the extraction of coal from coal tips is

presently regulated, by both the coal licensing and the planning systems. As such, we therefore address those regimes first below and then move onto proposed amendments to the 1994 Act in the following section, having identified some key issues within the existing statutory framework.

Is the extraction of coal tips a licensable activity under the 1994 Act?

18. As set out above, the present view of the MRA (articulated in its letter of 5 December 2024) is that coal tip extraction does not comprise a coal mining operation under s.65(1) of the 1994 Act, essentially because none of the criteria within (a)-(e) of that definition is satisfied. It follows, in the MRA's view, that such activities cannot fall to be licensed under s.25 of the 1994 Act.

19. We do not consider that it is clear cut that coal tip extraction falls outside of the definition of "*coal mining operations*" in s.65(1). The following factors provide support for a contrary view to that espoused by the MRA.

20. **First**, the MRA fails to address the fact that the definitions of both *"coal mine"* and *"coal mining activities"* in s.65(1) of the 1994 Act are inclusive rather than exclusive definitions. That is a deliberate legislative choice: where a word is defined exclusively to mean a closed list (for example, the definition of *"coal"*), that is achieved through specifying the word "*means*" the particular thing. A number of terms are not defined in this exclusive way. They are instead defined to "*include*" particular things (another example is that "'*'business' includes any trade or profession*"). In light of the definition being inclusive, "*coal-mining operations*" could additionally include operations encompassing coal tip extraction, given the matters that are expressly included.

21. **Second**, "*coal mining operations*" are not specifically limited to operations that are undertaken in a "*coal mine*", although that could plainly have been done. That may be because secondary operations, such as "*depositing spoil from any activities carried on in the course of coal-mining operations*", described in (e), are included in the definition. This shows that the definition of "*coal-mining operations*" is not just limited to extractive operations from a coal mine. As a matter of principle,

therefore, there is no difficulty with operations such as the reprocessing of spoil (and thus coal tip extraction) being included.

22. **Third**, focusing on the elements within the definition of "*coal mining operations*", coal tip extraction plainly amounts to the "*getting*" of coal. Criterion (b) of the definition of "*coal mining operations*" in s.65(1) encompasses the "*winning, working and getting*" of coal. We set out below why, in our view, case law supports that coal tip extraction falls within all of the elements of (b), but concentrating first on "*getting*", it is unclear why the MRA considers coal tip extraction would fall outside of "*getting*" coal. In our view, coal tip extraction plainly amount to "*getting*" coal.

23. The MRA perhaps understands the criteria within the definition of "*coal mining operations*" to be conjunctive, such that a process needs to include *"winning"* and *"working"* and *"getting"* coal in order for it to fall within (b). There are two answers to this: (1) as set out below, it appears coal tip extraction does amount to all the processes in (b), but, even if that is wrong, (2) it is not clear cut that all three elements must be fulfilled for the extraction to fall within (b).

24. Each of (a)-(e) of the definition of "*coal mining operations*" are linked by the conjunctive "*and*", but plainly (and rightly) are not treated as all needing to be fulfilled together in order for the definition to apply. The use of "*and*" is possibly one of the results of the definition being inclusive rather than exclusive. It is arguable that although (b) uses the conjunctive "*and*", that should be read as a disjunctive "*or*". It is not uncommon for Courts to hold that a conjunctive *"and"* should be interpreted in this disjunctive way. As a recent example, see *New Forest National Park Authority v Secretary of State for Housing, Communities and Local Government* [2025] EWHC 726 at [78]-[86] (holding that a duty to *"conserve and enhance"* National Parks is disjunctive and means *"or"* and citing another case holding the same in relation to other similar legislation[18]).

[18] See *R(Great Trippetts Estate Limited) v SSCLG* [2010] EWHC 1677 (Admin) at §10 in which the conjunctive *"and"* was interpreted as the disjunctive *"or"* in the context of the duty under s.85(1) of the Countryside and Rights of Way Act 200 to *"conserve and enhance"* the natural beauty of an area of outstanding natural beauty (referenced in *New Forest* at §78).

25. Furthermore, the disjunctive interpretation fits best with other aspects of the 1994 Act. We note that under s.25(2)(a), a *"coal-mining operation"* which requires a licence may be one which consists in the *"winning, working or getting* […] *of any coal."* If (b) is read conjunctively, that results in an inconsistency in the statutory language. On that reading, the 1994 Act purports to allow for the possibility of a coal-mining operation for 'getting' coal, for which a licence is required, in circumstances where – at least on the MRA's potential reading of s.65 – merely getting (and not also winning and working) coal is not a coal-mining operation at all.

26. It may be that the MRA considers that coal tip extraction falls outside of the bracketed text in (b) – "*whether underground or in the course of opencast operations*" – and reads this to limit the working, winning and getting of coal to just those two circumstances. That is not the necessary implication of the bracketed words. The phrase could equally be read as providing examples of where the winning, working and getting might take place, but not as exclusive.

27. Accordingly, in our view, it is sufficient for coal tip extraction to fall within (b) of the definition of "*coal mining operations*" for it to amount to the "*getting*" of coal.

28. **Fourth**, even if (b) of the definition is conjunctive, coal tip extraction is arguably the "*winning, working and getting*" of coal, in light of case law interpreting the terms *"winning"* and *"working"* in cases concerning mineral extraction. In *English Clays Lovering Pochin Ltd v Plymouth Corporation* [1974] 27 P&CR 447 at 450-451, Russel LJ held that to *"'win' a mineral is to make it available or accessible to be removed from the land, and to 'work' a mineral is (at least initially) to remove it from its position in the land."* That analysis built on the earlier interpretation of the term "*winning*" in *Lewis v Forthergill* [1869] 5 Ch D103, in which Lord Hatherley, LC confirmed that such an activity arose where *"you have got the coal in such a state that you can go on working on it"*, which was itself approved in *Lord Rokeby v Elliott* [1879] 13 Ch D 277 at 279. The analysis in *English Clays*, drawing on that in *Lord Rokeby*, was approved by the Court of Appeal in *Beakflow Industries Ltd v SSCLG* [2009] EWCA (Civ) 206 at §29. It is not clear whether the MRA is aware of this case law.

29. Whilst these cases were not specifically concerned with interpreting the words *"winning"* and *"working"* in the 1994 Act, they are nevertheless relevant. In each instance the Court sought to clarify the plain meaning of those terms in the context of the extractive processes with which they were concerned. It is thus likely a Court interpreting the 1994 Act would consider those authorities to provide helpful guidance as to how the relevant terms should be interpreted in the context of the 1994 Act.

30. Applying such guidance, it is obvious that coal tip extraction comprises both winning and working: that process involves the coal within a coal tip being separated from other waste product therein to be made available (winning), and also later removal of coal from its position on the land (working). It also plainly amounts to "*getting*" coal. Accordingly, the 'test' for whether coal tip extraction is a "*coal mining operation*" under s.65(1) of the 1994 Act is met, as it falls within (b) of the definition.

31. **Fifth**, there is no technical difficulty with coal tip extraction falling within the meaning of *"winning, working and getting*" of coal, given that the Welsh Government's *Minerals technical advice note (MTAN) Wales 2: coal* (January 2009)[19] defines the term "*coal working*" as "*development consisting of the winning and working of minerals, and includes surface coal working, recovery of coal from tips and underground coal working*" (emp. add.).[20] This is in line with the settled case law discussed above.

32. In all the circumstances, it is thus arguable that interpreting s.65(1) in context it would be appropriate to consider an operation such as recovery of coal from tips, which at the very least results in "*getting*" coal, is a *"coal-mining operation"* and that a licence is accordingly required for such recovery/extraction under s.25(2). Such an approach has intuitive appeal and would give effect to the language of s.25(2)(a) of the 1994 Act. The purported classification of coal tip extraction as

[19] https://www.gov.wales/sites/default/files/publications/2018-11/minerals-technical-advice-note-mtan-wales-2-coal.pdf.

[20] It is unfortunate that the definition of "*coal-mining operations*" is circular, in that it includes that very phrase within the definition.

not being a *"coal-mining operation"* is itself unintuitive given the essential nature of such an enterprise (e.g. the proposed Bedwas Tips Reclamation Project, which proposes to remove 468,000 tonnes of coal from the coal tip there[21]).

33. **Sixth**, that unintuitive impression is amplified when the regulation of coal tip extraction by the planning system is considered.

34. Coal tip extraction falls within the definition of a 'mining operation' within the 1990 Act (per s.55(4)(a)(i) of the 1990 Act) Act because it involves the *"removal of material [...] from a mineral-working deposit."* Obviously, the material being removed here includes coal, so under the 1990 Act, planning permission would be required because coal is extracted as part of a 'mining operation'. As mentioned at §31 above, this is also reflected in the Welsh Technical Advice Note. As understood by the MRA, however, this would not be considered a *"coal-mining operation"* under the 1994, meaning the planning and licensing regimes appear to reach different conclusions as to whether coal tip extraction is a coal-mining operation.

35. These competing interpretations have not, as far as we are aware, been tested in the courts in the context of the 1994 Act. Given this advice is aimed at the question of what statutory amendments should be proposed to give effect to the WMS and the Press Release, further discussion of the ambiguities and oddities in the 1994 Act is unhelpful. It provides important context, however, that on one view coal tip extraction is already a licensable activity. It also shows that there is a need to improve the clarity of the legislation.

Should the licensing regime extend to the extraction of coal tips, with the effect that such licences may be 'banned' thereby preventing coal tip extraction?

36. It is arguable that a coal licence is already required for coal tip extraction. In any event, it is obvious that the extraction of coal tips may result in the supply of substantial amounts of coal. This is precisely the issue that the Government has repeatedly committed to tackling.

[21] See the Information Paper at §3.5 (p.10) (https://erireclamation.co.uk/wp-content/uploads/2024/02/ERI_IP1_Project-Principles-and-Access-Roads_v1_with-Appendices.pdf).

37. As such, the forthcoming amendment to the 1994 Act presents either an opportunity for the Government to clarify the position that coal tip extraction was always intended to be an activity for which a coal licence is required, or a chance to avoid a 'loophole' whereby substantial amounts of coal could be supplied in the UK if coal tip extraction is not included in the forthcoming ban on coal licences.

38. Were coal tip extraction to be permitted to take place as an unlicensed activity, an extractive coal industry in the UK could continue, thereby frustrating the Government's net zero ambitions and the desire to focus on the transition to jobs in clean energy (per the WMS). That is contrary to the Government's intention.

39. There is a relatively simple mechanism by which this issue can be addressed: the Government can amend the licensing regime to clarify that coal tip extraction requires a licence, and then (as with proposed with 'ordinary' coal extraction) ban the provision of such licences.

How the Coal Industry Act 1994 could be amended

40. The following relatively minor changes in the 1994 Act would result in coal tip extraction being expressly confirmed as an activity for which a licence is required. Insertions are underlined and text to be removed is struck through:

    a. The definition of *"coal mining operations"* within s.65 of the 1994 Act should expressly include coal tip extraction in the following way:

    ""coal-mining operations" includes—

    […]

    (b) winning, working ~~and~~ or otherwise getting ~~it~~ coal (whether underground, ~~or~~ in the course of opencast operations, or in the course of obtaining coal deposited as or as part of waste material from coal mining operations)

    […]"

b. The scope of a 'coal operation to be licensed' should explicitly include coal tip extraction within s.25 of the 1994 Act as follows:

> *"(2) This section applies to any coal-mining operations in so far as they—*
>
> *(a) consist in the winning, working or getting (with or without other minerals) of any coal (including coal deposited as or as part of waste material from coal mining operations), in the treatment of any such coal in the strata for the purpose of winning any product of coal or in the winning, working or getting of any product of any such coal resulting from such treatment*
>
> […]"

41. If the above changes were adopted then coal tip extraction would expressly and unarguably comprise a coal mining operation to which s.25 applies, meaning that it is an activity that *"shall not, at any time on or after the restructuring date, be carried on by any person except under and in accordance with a licence under this Part"* (s.25(1) of the 1994 Act).

42. A ban on the issue of licences under the 1994 Act would therefore prevent the extraction of coal tips from continuing. This may be effected by amendment to s.26 (e.g. *"the Authority[22] shall not grant a licence under this Part"*) or by other means.

43. Many of the coal tips are found in Wales, it is therefore important to ensure that any amendment to the licensing regime covers licences in that area. To that end, it is worth highlighting that s. 26A of the 1994 Act provides for a two-stage licence approval process in Wales, where any licence issued by the Authority concerning territory in Wales will only have effect once approved by the Welsh Ministers:

> *"(1) If or to the extent that a licence under this Part authorises coal-mining operations in relation to coal in Wales, it shall have effect only if the Welsh Ministers notify the Authority that they approve the authorisation"* (emp. add.)

[22] The relevant *"Authority"* is now the MRA and not the Coal Authority. The definition within s.65 of the 1994 Act should be updated accordingly.

44. In essence, as proposed above, the second stage of the approval process in Wales would never be reached on the basis that the first stage (approval of a licence by the Authority) would be prohibited. In our assessment this does not impinge on the authority conferred to the Welsh Ministers by s.26A of the 1994 because the power to exercise the 'final say' on an application is expressly provided to be contingent on a licence being granted by the Authority in the first instance.

45. In practice, this is a position which is likely to be received favourably by the Welsh Ministers, given it is in line with their existing policy. Paragraph 5.10.14 of Planning Policy Wales (ed. 12) provides that *"proposals for opencast, deep-mine development or colliery spoil disposal should not be permitted*," (emp. add.) admitting of the possibility of such permissions only in *"wholly exceptional circumstances."*[23]

46. Further, the Senedd is currently considering the Disused Mine and Quarry Tips (Wales) Bill, which includes provisions concerning the remediation and stability of coal tips. A criticism of the Bill has been that it may inadvertently stimulate re-mining of coal.[24] The Welsh Ministers' response confirms that the Bill *"does not include any proposals that would allow for or enable generic remediation or the recovery of coal for commercial purposes,"*[25] and that extraction for commercial combustion purposes should be avoided.[26]

47. Similarly, the Deputy First Minister has confirmed that a recommendation that *"the Welsh Government's coal policy will prevent any coal extracted during remediation work from being sold for the purposes of burning"* should be accepted in principle, noting that Welsh policy *"presumes against combustion, and I cannot*

---

[23] Planning Policy Wales, Edition 12 (Feb. 2024) (https://www.gov.wales/sites/default/files/publications/2024-07/planning-policy-wales-edition-12.pdf)
[24] Question of Janet Finch-Saunders at [53] (https://record.senedd.wales/Committee/15219#C661457).
[25] Answer of Huw Irranca-Davies at [54] (https://record.senedd.wales/Committee/15219#C661457).
[26] Answer of Huw Irranca-Davies at [61] (https://record.senedd.wales/Committee/15219#C661457).

envisage a scenario in which the extraction and burning of coal will arise as a result of the Bill."[27]

48. Allowing for the proposed amendments to the licensing regime as set out above would provide further comfort that coal extraction from coal tips will not take place (as per accepted Recommendation 4 of the Climate Change, Environment and Infrastructure Committee in Wales) and meet the concerns raised about the forthcoming Bill.

Alternative approach but fundamental issue

49. There are, of course, other legislative measures that could be adopted via amendment to the 1994 Act (including more broad repeal and replacement) or otherwise to achieve the Government's stated goal of banning coal licences (as expressed in the WMS and press release above). This advice has focussed on potential amendments to the 1994 Act on the basis that that is how the Government indicated it would enact the proposed ban. The most important thing to emphasise, as we have above, however, is that for such a ban to be truly effective in restricting the availability of coal and thereby promoting the Government's environmental objectives, coal tip extraction should expressly be included as a banned practice.

CONCLUSION

50. A summary of our advice is given in §2 above. Please do not hesitate to contact us if anything requires clarification, or if we can be of further assistance.

31 July 2025

ESTELLE DEHON KC and ROWAN CLAPP

cornerstone barristers

2-3 GRAY'S INN SQUARE
LONDON, WC1R 5JH
estelled@cornerstonebarristers.com
rclapp@cornerstonebarristers.com

[27] See the response of the Deputy First Minister to the Stage 1 Report on the Disused Mine and Quarry Tips (Wales) Bill, Recommendation 4 (p.2).

Mining Remediation Authority

200 Lichfield Lane
Mansfield
Nottinghamshire
NG18 4RG

T: 01623 637246

E: [redacted]

W: www.gov.uk/miningremediationauthority

[redacted]

Response sent via email [redacted]

5 December 2024

Dear [redacted]

Thank you for your email of 7 November following our reply to your query regarding Bedwas Tips. I am sorry that you didn't find our last response adequately answered your questions, specifically your query around the legalisation we operate within when a coal mining licence is required.

Before answering your points, I would like to advise you that on 28 November, we changed our name to the Mining Remediation Authority to better recognise our work.

The licensing of coal mining operations is detailed under Part II of the Coal Industry Act 1994 and I have referred to sections 25 and 26 in my response as these being particularly relevant to your query.

The Coal Industry Act 1994 does not directly state that a coal mining licence is needed to recover coal from tipped mining waste. However, sections 25 and 26 are significant because they deal with licensing for coal-mining operations, as well as the underpinning definitions in section 65 which is important when interpreting the legislation.

Within section 65 it does state the definition of coal-mining operations, which is referred to in both sections 25 and 26, but also the licensing duties within section 2, which are:

"coal-mining operations" includes—
(a) searching for coal and boring for it,
(b) winning, working and getting it (whether underground or in the course of opencast operations),
(c) bringing underground coal to the surface, treating coal and rendering it saleable,
(d) treating coal in the strata for the purpose of winning any product of coal and winning, working or getting any product of coal resulting from such treatment, and

(e) depositing spoil from any activities carried on in the course of any coal-mining operations and draining coal mines.

The recovery of coal from tipped mining waste does not fulfil any of the definitions of a coal-mining operation, referred to above, and therefore the application of section 25 or 26 does not apply. This is also supported by the definition of a coal mine which is:

"coal mine" includes—
(a) any space excavated underground for the purposes of coal-mining operations and any shaft or adit made for those purposes,
(b) any space occupied by unworked coal, and
(c) a coal quarry and opencast workings of coal.

As the recovery of coal from tipped mining waste does not satisfy the definitions of a coal-mining operation and it is not supported by the definition of a coal mine, insofar as tip washing does not constitute a space excavated underground, a space occupied by unworked coal or a coal quarry or opencast working of coal, we do not have any power to grant a coal mining licence for such an activity.

As the tip is mining waste it is covered under the Mines and Quarries (Tips) Act 1969. A tip was classed as a "disused tip" if it was no longer active and the colliery with which it was associated had been abandoned. Disused tips are now termed abandoned tips under The Mines Regulations 2014.

Local Authorities have powers under the Mines and Quarries (Tips) Act 1969 (as amended by The Mines Regulations 2014) to undertake inspections of any tip within their area, and to carry out (or serve notice on tip owners to carry out) remedial works where any instability, constitutes or is likely to constitute a danger to members of the public.

The local authority can serve notice to the owner (section 14 (b)) to any other person who has an estate or interest, in the land on which the tip is situated, or had such an estate or interest at any time within the period of 12 years immediately preceding the date of the service of the notice on the owner of the tip.

British Coal sold off various parcels of land prior to 1994. This included Bedwas Tip. This was more than 12 years ago and the Mining Remediation Authority has no legal or property responsibility for the tip.

Local authorities are the primary authority for tip washing schemes through planning permission and enforcement, other environmental permits will be required from Natural Resource Wales. The Mining Remediation Authority will, if requested by the local authority or Welsh Government, provide advice on the proposed scheme but we have no statutory role from a licencing or planning position.

We appreciate that this is an important issue and that a planning application is due to be submitted by the developers. I would suggest that if you have concerns or objections about the developer's plans that you raise them with the Local Planning Authority who are the decision maker in this process.

I hope this clarifies our position on the points you have raised and thank you for contacting us again, please do get in touch if you have any further questions.

Yours sincerely

[redacted]

[redacted]

Operations and Sustainability Director