Title: Energy Bill Impact Assessment (IA) Supplementary powers for the Coal Authority to sell its IA No: DECC0022 expertise on subsidence and treatment of contaminated water regarding non-mining situations Date: 01/12/2010 Stage: Final

Lead department or agency:

Department of Energy and Climate Change

Other departments or agencies:

Source of intervention: Domestic Type of measure: primary legislation

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Summary: Intervention and Options

What is the problem under consideration? Why is government intervention necessary?

To include in the Energy Bill an extension to the Coal Authority's powers which will enable it to exploit its experience and expertise outside of its statutory functions. This proposal will enable the Coal Authority to participate in the market and charge for its services regarding subsidence damage repairs and the treatment of contaminated water in non-mining situations on a commercial basis. This may lead to a reduction in public funding for the Coal Authority as a result of increased commercial revenue.

What are the policy objectives and the intended effects?

The key to the changes in the Coal Authority's vires is to give it the opportunity to further exploit its assets and expertise beyond its existing statutory functions, on a commercial basis.

The subsidence repair and water management expertise is already provided by other organisations in the economy. This proposal will enable the Coal Authority to participate in that market and generate additional revenue. Therefore, this proposal would lead to the redistribution of already existing costs and benefits from the private sector to the public Coal Authority on the basis that the Coal Authority will provide more effective supervision of private contractors. However, for the provision of services relating to subsidence there may be a small additional benefit and cost.

What policy options have been considered? Please justify preferred option (further details in Evidence Base) The proposed changes do not fall within the statutory responsibilities of the Coal Authority and therefore Primary Legislation is the only avenue open to the Department to extend these issues.

When will the policy be reviewed to establish its impact and the extent to which the policy objectives have been achieved?	Ongoing – bimonthly
Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review?	Yes

Ministerial Sign-off For consultation stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

01/12/2010...... Date: Signed by the responsible Minister:.....

Summary: Analysis and Evidence

Policy Option 1

Description: Enabling the Coal Authority to sell its expertise on subsidence and water contamination.

Price Base	PV Base	Time Period	Net	Present Value (PV)) (£m)	
Year 2010	Year 2010	Years 10	Low: Optional	High: Optional	Best Estimate: £0

COSTS (£m)	Total Trai	nsition	Average Annual	Total Cost
` ,	(Constant Price)	2 Years	(excl. Transition) (Constant Price)	(Present Value)
Low	0		0	0
High	0		0	0
Best Estimate	0		0	0

Description and scale of key monetised costs by 'main affected groups'

This impact assessment identifies no resource costs imposed on society through the proposal for the Coal Authority to charge for its expertise in subsidence damage repairs and water treatment services.

Other key non-monetised costs by 'main affected groups'

The net cost to business is expected to be a minimum of £1.7 million as the Coal Authority competes for business with commercial providers. This cost is not the result of a new regulatory or administrative burden on business and therefore no offsetting savings need to be identified under the One-in, One-out rules. There could be additional non-monetised costs arising from exposure to commercial risks and liabilities that the Coal Authority will assume..

BENEFITS (£m)	Total Tra (Constant Price)	ansition Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional		Optional	Optional
High	Optional		Optional	Optional
Best Estimate	0		0	0

Description and scale of key monetised benefits by 'main affected groups'

This impact assessment identifies no resource savings or other wider benefits to society associated with this proposal.

Other key non-monetised benefits by 'main affected groups'

There may be a small net benefit for the provision of services regarding subsidence. This is the result of the lower marginal cost to the Coal Authority of completing a project after fulfilling its statutory obligation to make the site safe. These savings are, however, are highly uncertain and are therefore not monetised.

The additional commercial revenues may allow a reduction in the level of public funding required by the Coal Authority.

Key assumptions/sensitivities/risks

Discount rate (%) 3.5%

Impact on admin burden (AB) (£m): Impact on policy cost savings (£m): In scope

THEW AD. AD Savings. THEL. I only cost savings.	New AB:	AB savings:	Net:	Policy cost savings:	
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Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?	Great Britain					
From what date will the policy be implemented?			Royal As	sent		
Which organisation(s) will enforce the policy?			DECC w	ill mo	nitor	
What is the annual change in enforcement cost (£m)?			N/A			
Does enforcement comply with Hampton principles? Yes						
Does implementation go beyond minimum EU requirem	N/A	N/A				
What is the CO ₂ equivalent change in greenhouse gas (Million tonnes CO ₂ equivalent)	Traded:	Traded: Non-traded: 0		raded: 0		
Does the proposal have an impact on competition?	the proposal have an impact on competition?					
What proportion (%) of Total PV costs/benefits is directl primary legislation, if applicable?	y attributab	le to	Costs: Benefits: 100%			
Annual cost (£m) per organisation (excl. Transition) (Constant Price)	Micro	< 20	Small	Med	edium Large	
Are any of these organisations exempt?	N/A	N/A	N/A	N/A N/A		

Specific Impact Tests: Checklist

Set out in the table below where information on any SITs undertaken as part of the analysis of the policy options can be found in the evidence base. For guidance on how to complete each test, double-click on the link for the guidance provided by the relevant department.

Please note this checklist is not intended to list each and every statutory consideration that departments should take into account when deciding which policy option to follow. It is the responsibility of departments to make sure that their duties are complied with.

Does your policy option/proposal have an impact on?	Impact	Page ref within IA
Statutory equality duties ¹	No	7
Statutory Equality Duties Impact Test guidance		
Economic impacts		
Competition Competition Assessment Impact Test guidance	Yes	6-7
Small firms Small Firms Impact Test guidance	No	7
Environmental impacts		
Greenhouse gas assessment Greenhouse Gas Assessment Impact Test guidance	No	7
Wider environmental issues Wider Environmental Issues Impact Test guidance	No	7
Social impacts		
Health and well-being Health and Well-being Impact Test guidance	No	7
Human rights Human Rights Impact Test guidance	No	7
Justice system Justice Impact Test guidance	No	7
Rural proofing Rural Proofing Impact Test guidance	No	7
Sustainable development		
Sustainable Development Impact Test guidance	No	7

¹ Race, disability and gender Impact assessments are statutory requirements for relevant policies. Equality statutory requirements will be expanded 2011, once the Equality Bill comes into force. Statutory equality duties part of the Equality Bill apply to GB only. The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

Evidence Base (for summary sheets) – Notes

Use this space to set out the relevant references, evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Please fill in **References** section.

References

Include the links to relevant legislation and publications, such as public impact assessment of earlier stages (e.g. Consultation, Final, Enactment).

No.	Legislation or publication
1	
2	
3	
4	

⁺ Add another row

Evidence Base

Ensure that the information in this section provides clear evidence of the information provided in the summary pages of this form (recommended maximum of 30 pages). Complete the **Annual profile of monetised costs and benefits** (transition and recurring) below over the life of the preferred policy (use the spreadsheet attached if the period is longer than 10 years).

The spreadsheet also contains an emission changes table that you will need to fill in if your measure has an impact on greenhouse gas emissions.

Annual profile of monetised costs and benefits* - (£m) constant prices

	Y ₀	Y ₁	Y ₂	Y ₃	Y ₄	Y ₅	Υ ₆	Y ₇	Υ ₈	Y ₉
Transition costs										
Annual recurring cost										
Total annual costs										
Transition benefits										
Annual recurring benefits										
Total annual benefits										

^{*} For non-monetised benefits please see summary pages and main evidence base section

Evidence Base (for summary sheets)

Purpose

- 1. To include in the Energy Bill, an extension to the Coal Authority's powers which will enable it to exploit its expertise outside of its statutory functions. This proposal will encourage greater competition by enabling the Coal Authority to participate in the market and charge for its services regarding subsidence and treatment of contaminated water in mines other than coal on a commercial basis. The implication is that it may lead to a reduction in public funding for the Coal Authority because of the increase in commercial revenue.
- 2. The subsidence repair and water management expertise is already being provided by other organisations in the economy. This proposal will enable the Coal Authority to participate in that market. Therefore, this proposal would lead to the redistribution of already existing costs and benefits from the private sector to the public Coal Authority. However, for the provision of services on subsidence there may be a small additional benefit and cost.

Background:

- 3. The Coal Authority was created in 1994 to take over responsibility for the non-operational assets and certain administrative functions of the British Coal Corporation (BCC) following privatisation of the coal industry in Great Britain. It is a Non-Departmental Public Body (NDPB) that is sponsored by the Department for Energy and Climate Change (DECC) and it received £36.5m grant in aid in 2009-10. Its current statutory liability is £201.1m.
- 4. Their objectives include:
 - dealing with emergencies, such as subsidence, arising from old coal mine workings;
 - cleaning polluted mine water;
 - providing information and advice about past coal mining; and,
 - licensing private sector coal mining operations.
- 5. Sixteen years later the Authority continues to provide vital services to the public and the coal industry in Great Britain but during this period its role, experience and expertise has developed such that the Government feels changes are required to meet the challenges and opportunities facing Great Britain and the Authority in 2010 and beyond, and in particular the Water Framework Directive. One area identified to enable the Authority to meet these future challenges is to expand the Authority's Vires so that it can utilise its expertise outside coal mining.
- 6. Under the Coal industry Act 1994, the Coal Authority has responsibilities regarding coal related matters. The aim of the supplementary powers in the Energy Bill will be to allow the Coal Authority to charge on a commercial basis for its expertise on subsidence and treatment of contaminated water in non-coal mining situations.

Benefits – expertise on subsidence

7. The Coal Authority is only responsible for coal mining related subsidence where no other person (e.g a licensed operator) is liable. There is a proposal to provide them with supplementary powers in order for them to charge for their expertise on subsidence related matters where the liability for

repair rests with others. However, they are only able to do this once they have become involved in investigating a subsidence case.

- 8. The Coal Authority has established a rapid response "Surface Hazards" team to attend, investigate and deal with potential coal mining related subsidence incidences. For the Authority to go out the incident has to be in a known coal mining area or area where such mining has previously taken place. At the moment they make safe all sites free of charge but only deal with the long term consequences for those sites affected by subsidence damage from coal mining. The proposal is that, in future, they would continue to make all sites safe (usually by fencing) without charge but would also be able to offer their advice and services to deal with the long term subsidence problems of non-coal mining subsidence sites for a commercial fee.
- 9. As the Coal Authority attend the site to make it safe, the marginal cost of them undertaking the rest of the work to deal with the hazard may be lower than if another private contractor did this work. They have a fixed cost for attending the site to make it safe and then a marginal cost for doing the additional work. The Coal Authority has about 1,000 call-outs per year and they estimate that about 60% of these call-outs are non-coal mining related, so a proportion of these could potentially lead to work for them on a commercial basis. The Coal Authority has confirmed that it would charge the full cost and cover its overhead plus a percentage on the contractors' costs in order to recognise its management and risk. This benefit, which would translate into a resource saving to society, is highly uncertain and is therefore not monetised.
- 10. The Coal Authority has limited resources and use consultants and contractors to undertake this type of work. They do not envisage bidding to undertake very much additional work to their statutory obligations. They estimate undertaking a maximum of £200,000 worth of additional work per year. It comprises two elements, the first of which is £100,000 in respect of fees, based on hourly rates of £75ph, which equates to 0.7 Full Time Equivalent (FTE). Secondly, the figure assumes the utilisation of a charging mechanism that will generate a further £100,000 in management fees based on 10% of the costs of the works carried out by the private contractors. The Authority's strategy is to enable it to benefit from extending the application of its existing resources into non-coal situations where this will not detract from its core work. The Authority does not consider that its current inhouse resources will be capable of achieving any level of income beyond £200,000 per annum and the income achieved may be less.
- 11. The Coal Authority has taken advantage of a few situations to undertake investigation and repair work related to non-coal mining problems where it has rejected liability. These opportunities have provided an opportunity for the Coal Authority to be reimbursed for management time and such income has enabled it to offset a small part of grant in aid. There is a potential wider market in:
 - advising developers, local authorities and statutory undertakers on precautions to be taken to stabilise land affected by coal mining and design the construction of such precautions;
 - repairing coal mining subsidence damaged property that is statute barred;
 - carrying out repairs on behalf of licensed operators; and,
 - providing advice and carrying out construction works, including both design and build, in relation to non-coal mining subsidence repairs.

Costs – expertise on subsidence

- 12. There could be implications arising from the additional commercial revenues obtained by the Coal Authority. The Coal Authority could expect to have its public funded budget cut by Government by the amount of the additional private income. This would be a transfer between the public and private sectors, so there would not be any net costs arising from this proposal.
- 13. There needs to be agreement that any additional work undertaken by the Coal Authority does not displace its statutory work. The current Governance Arrangements mean that the Coal Authority's work is monitored on a bi-monthly basis by DECC officials and the Coal Authority senior team.

DECC will ensure that specific reference is made at future meetings to the extent of the use of the new powers and any impact they have on the Coal Authority's other areas of work.

- 14. Also, there could be a trade off between the benefit to the Coal Authority for selling its expertise and the displacement and substitution of expertise currently provided by the private sector.
- 15. There would also be some small additional administrative costs for the Coal Authority to set up commercial and billing arrangements for any additional work regarding non-coal mining subsidence cases. They have some of these arrangements already in place so it is expected that the costs would be insignificant. It would also depend on the amount of work generated and the resources available to undertake additional work.

Competition issues

- 16. This is potentially a competition issue, as the Coal Authority could have a monopoly on providing services on subsidence. Under their statutory powers, they are the first organisation to investigate a site for subsidence and must make that site safe free of charge. As the Coal Authority will already have been on site they will be well placed to offer their experience and expertise leading to a better solution. As the Coal Authority will be acting as an "expert client" it will still be using the services of contractors and other specialists.
- 17. There may be a small net cost arising from this competitive advantage which may distort competition, although given the anticipated scale of revenues this impact will be negligible. There could be additional non-monetised costs arising from exposure to commercial risks and liabilities that the Coal Authority will assume.
- 18. It is unlikely that the Coal Authority will significantly expand its operations in the short term but it could decide to do this in the medium to longer term especially if there is greater pressure to make profits because grant in aid has been reduced. Therefore there might need to be measures introduced to prevent distortion to competition.

Measures to mitigate distortion to competition

- 19. There is a competition risk with the Coal Authority gaining access to subsidence sites due to their statutory role. One way of mitigating this may be to ensure that the statutory information/report is publically available within a short-term period and that other private players can act on that information as appropriate.
- 20. There is also a competition risk that arises from the funding of the Coal Authority and the possibility of cross-subsidisation from other activities, thereby with the Coal Authority gaining an advantage over other players. To mitigate risk, it may be worth establishing separate cost accounting streams to reflect the different work carried out by the Coal Authority to ensure no cross subsidisation.
- 21. It is planned for the ongoing monitoring to be undertaken through the statutory governance arrangements, which include bi-monthly meetings between DECC and Coal Authority officials. The industry market structure could be closely monitored as the policy becomes embedded and that if the above competition issues arise, there is a specific response as to how that issue will be mitigated. DECC could play a role in establishing the rules that will be placed on the Coal Authority to ensure that they compete on a level playing field with other service providers and do not crowd out the private market.

Benefits – expertise on water treatment

22. The Coal Authority's responsibilities in relation to the treatment of water contaminated by coal mining activity are derived from the Coal Authority's property ownership and the Water Framework Directive and the River Basin Management Plans made under it rather than the Coal Industry Act 1994. There is a proposal that they can charge for their expertise on treating contaminated water from coal mining (where it is the responsibility of others) and non-coal as well as other activities

incidental to the treatment of water e.g the presence of phosphates in sewage by making ochre available on a commercial basis.

- 23. The Coal Authority has obtained an income of £395,000 in 2009-10 from the Environment Agency (Re: Saltburn Gill and other non-coal feasibility work). Only about £19,000 of this was recovery of Coal Authority staff time costs, the rest was for consultants and contractors. The hourly rates for staff ranged between £50-£75. Therefore, the Coal Authority did not make a profit from this but covered their staff costs. The profit went to consultants and contractors where appropriate. The Coal Authority intend to continue using consultants and contractors rather than employing additional staff themselves. The Coal Authority would need to consider raising their fees to include a profit on top of their costs in future.
- 24. The Environment Agency expenditure on hired and contracted services in 2009-10 was £25.6m. This could be a potential pool of funding that the Coal Authority could tap into and bid to provide services on water treatment. It is anticipated that through its experience and expertise in this area the Coal Authority could deliver better value.

Costs – expertise on water treatment

- 25. There could be implications arising from the additional commercial revenues obtained by the Coal Authority. The Coal Authority could expect to have its public funded budget cut by Government by the amount of the additional private income. However, this would be a transfer between the public and private sectors, so there would not be any net costs arising from this proposal.
- 26. Also, there could be a trade off between the benefit to the Coal Authority for selling its expertise and the displacement and substitution of expertise currently provided by the private sector.
- 27. There would also be some small additional administrative costs for the Coal Authority to set up commercial and billing arrangements for any additional work regarding the sale of their expertise on treating contaminated water. They have some of these arrangements already in place so it is expected that the costs would be insignificant. It would also depend on the amount of work generated and the resources available to undertake additional work.

Overall summary (including expected cost to business)

- 28. This impact assessment identifies no direct resource costs or benefits associated with this policy change. There may be a small resource saving if the Coal Authority can deliver the non-subsidence related work at a lower marginal cost because they have already been called out and in some instances have had to undertake some work. This benefit, however, is highly uncertain and is therefore not monetised.
- 29. The proposal does lead to a transfer from the private to the public sector, as the Coal Authority competes for contracts with commercial providers. They estimate they would undertake an additional £200,000 worth of work a year associated with their subsidence expertise. This translates into a transfer from the private to the public sector of £1.7 million in present value terms over the next ten years. As there is no mechanism limiting the amount of additional work the Coal Authority could take on and as this figure excludes work associated with their expertise in water treatment, this is a lower-bound estimate of the net cost to business of this proposal.
- 30. As these costs are not a regulatory or administrative burden on business, there is no need to identify offsetting savings under the One-in, One-out rules.

Specific Impact Tests

31. No additional impacts are expected on small firms, human rights, race equality, gender, disability, health, environment, legal aid, the judicial system, sustainable development or the rural economy. Issues on competition have been addressed in the preceding sections.

Annexes

Annex 1 should be used to set out the Post Implementation Review Plan as detailed below. Further annexes may be added where the Specific Impact Tests yield information relevant to an overall understanding of policy options.

Annex 1: Post Implementation Review (PIR) Plan

A PIR should be undertaken, usually three to five years after implementation of the policy, but exceptionally a longer period may be more appropriate. A PIR should examine the extent to which the implemented regulations have achieved their objectives, assess their costs and benefits and identify whether they are having any unintended consequences. Please set out the PIR Plan as detailed below. If there is no plan to do a PIR please provide reasons below.

Basis of the review: [The basis of the review could be statutory (forming part of the legislation), it could be to review existing policy or there could be a political commitment to review];
Review objective: [Is it intended as a proportionate check that regulation is operating as expected to tackle the problem of concern?; or as a wider exploration of the policy approach taken?; or as a link from policy objective to outcome?]
Review approach and rationale: [e.g. describe here the review approach (in-depth evaluation, scope review of monitoring data, scan of stakeholder views, etc.) and the rationale that made choosing such an approach]
Baseline: [The current (baseline) position against which the change introduced by the legislation can be measured]
Success criteria: [Criteria showing achievement of the policy objectives as set out in the final impact assessment; criteria for modifying or replacing the policy if it does not achieve its objectives]
Monitoring information arrangements: [Provide further details of the planned/existing arrangements in place that will allow a systematic collection systematic collection of monitoring information for future policy review]
Reasons for not planning a PIR: Ongoing monitoring through the statutory governance arrangements, which include bimonthly meeting between DECC and Coal Authority officials.