

APPENDIX 10.1 LEGISLATION, POLICY & GUIDANCE

Legislation

The applicable legislative framework is summarised as follows:

Control of Pollution Act 1974 (CoPA)

The aim of CoPA is to deal with a variety of environmental issues, including waste on land, abandoned mines and noise.

Section 60 of the CoPA enables a local authority, in whose area work is going to be carried out, or is being carried out, to serve a notice of its requirements for the control of site noise on the person who appears to the local authority to be carrying out the works and on such other persons appearing to the local authority to be responsible for, or to have control over, the carrying out of the works.

Environmental Protection Act 1990: Part IIA Contaminated Land Statutory Guidance (DEFRA, 2012)

This statutory guidance was issued in April 2012 by the Department for Environment, Food and Rural Affairs in accordance with section 78YA of the Environmental Protection Act 1990. Section 57 of the Environment Act 1995 created Part IIA of the Environmental Protection Act 1990 ("Part IIA") which establishes a legal framework for dealing with contaminated land in England. This Guidance applies only in England.

This Guidance explains how local authorities should implement the contaminated land regime in England, including how they should go about deciding whether land is contaminated land in the legal sense of the term.

It also elaborates on the remediation provisions of Part IIA, such as the goals of remediation, and how regulators should ensure that remediation requirements are reasonable.

The Guidance also explains specific aspects of the Part IIA liability arrangements, and the process by which the enforcing authority may recover the costs of remediation from liable parties in certain circumstances.

Part IIA of the Environmental Protection Act 1990 provides a regime for the identification and remediation of contaminated land. This regime is designed to provide an effective statutory framework for the remediation of contaminated land and is based on a number of principles, including the 'suitable for use' approach and the assessment of contamination by a risk-based approach.

Section 78A of Part IIA of the Environmental Protection Act 1990 defines contaminated land as land that is in such a condition that: a) significant harm is being caused or there is a significant possibility of such harm being caused; or b) significant pollution of controlled waters is being or there is a significant possibility of such pollution being caused.

The assessment of contamination risks is based on the source-pathway-receptor concept (referred to as a Contaminant Linkages). These terms are defined as follows:

- **Contaminant:** A substance which is in, on or under the land and which has the potential to cause significant harm to a relevant receptor, or to cause pollution of Controlled Waters;
- **Pathway:** A route or means by which a receptor could be, or is exposed to or affected by a contaminant;
- **Receptor:** In general terms, something (e.g. people, an ecological system, property or a water body) that could be adversely affected by a contaminant.

The 'contaminant linkage' describes the relationship between a contaminant("source"), the pathway and the receptor. Each component of the pollutant linkage has to be identified as being present before land can formally be considered 'contaminated'.

Pollution Prevention and Control Act 1999

The Pollution Prevention and Control Act 1999 introduced a new consolidated regime to control industries which emit significant levels of pollution to all environmental media (air, land and water).

The Contaminated Land (England) Regulations 2006

These Regulations, which extend to England only, set out provisions relating to the identification and remediation of contaminated land under Part IIA of the Environmental Protection Act 1990. Regulations 2 and 3, and Schedule 1, identify those sites (known as "special sites") for which the Environment Agency is to be the authority responsible for enforcing the scheme. Local authorities are responsible for enforcing the scheme in the case of any other type of site. Regulations 4 and 5 provide for the content and service of copies of "remediation notices", that is, notices served by a local authority or the Environment Agency specifying what is to be done by way of remediation and the time for taking any action.

Regulation 6, and Schedule 2, make provision for the compensation which is to be paid in accordance with section 78G (5) of the Environmental Protection Act 1990 Act to a person who grants, or joins in granting, rights of entry etc. required to enable a person to comply with a remediation notice. Regulations 7 to 12 make provision with respect to appeals against

remediation notices, including the grounds of appeal and the procedure to be followed. Regulation 13, and Schedule 3, prescribe the particulars of matters which are required under section 78R of the Environmental Protection Act 1990 Act to be placed on a register maintained by local authorities or, in the case of special sites, by the Environment Agency.

The Environmental Damage (Prevention and Remediation) (England) Regulations 2015

These regulations oblige those who create environmental damage, whether by water pollution, adversely affecting protected species or sites of special scientific interest (SSSIs), or by land pollution that causes risks to human health, to not only cease the damage, but also to implement a wide variety of remedial measures to restore affected areas.

The Environmental Permitting (England and Wales) Regulations 2016

The 2016 Regulations set out an environmental permitting and compliance regime that applies to various activities and industries. They provide a consolidated system of environmental permitting for England and Wales and extend the range of activities that require an environmental permit.

These regulations affect all regulated facilities including amongst others (unless exempt or excluded) installations (a full list of installations is available in Schedule 1 of the Regulations), mobile plant, waste operations (including mining waste operations), radioactive substances activities, water discharge and groundwater activities. The regulations require that every regulated facility be operated under the authority of an environmental permit.

Health and Safety at Work Act 1974

The Health and Safety at Work Act 1974 (HASAWA) lays down wide-ranging duties on employers. Employers must protect the 'health, safety and welfare' at work of all their employees, as well as others on their premises, including temps, casual workers, the self-employed, clients, visitors and the general public.

The Health and Safety Executive, with local authorities (and other enforcing authorities) is responsible for enforcing the HASAWA.

Water Resources Act 1991

The Water Resources Act 1991 applies to England and Wales; its purpose being to consolidate previous water legislation concerning water resources.

Environment Act 1995

The Environment Act 1995 provided for the establishment of the Environment Agency, and the transfer of functions, properties, rights and liabilities to it. Part II of the Environment Act 1995 deals with Contaminated Land and Abandoned Mines.

Environment Act 2021

The Environment Act 2021 does not revoke or replace the Environment Act 1995 but it does make amendments to strengthen and enforce adoption of the environmental provisions. Key provisions within the Environment Act 2021 include the establishment of the Office for Environmental Protection; the introduction of several duties on water companies; and the introduction of the five principles to which organisations must have regard: Integration, Prevention, Precautionary, Rectification at source, and Polluter Pays.

Nitrate Pollution Prevention Regulations 2015

These Regulations provide for the designation of land as nitrate vulnerable zones. They require the Environment Agency to make recommendations to the Secretary of State about designations and for the Secretary of State to publish proposals.

Management of Health and Safety at Work Regulations 1999 (MHSWR)

The MHSWR were introduced to reinforce the Health and Safety at Work etc Act 1974. The MHSWR place duties on employers and employees.

The Control of Substances Hazardous to Health Regulations 2002

These Regulations provide a framework to help protect people in the workplace against health risks from hazardous substances. The substances may be used directly in the workplace (e.g. cleaning chemicals) or may arise from the work (e.g. dusts, fumes and waste products).

The Controls on Dangerous Substances and Preparations Regulations 2007

This regulation provides measures relating to persistent organic pollutants, dangerous substances, preparations and chemicals. This statutory instrument also places restrictions on the marketing and use of trichlorobenzene and certain polycyclic aromatic hydrocarbons in extender oils and tyres.

The Control of Dangerous Substances and Preparations (Amendment) Regulations 2007 come into force on the 30 June 2007.

The Regulations replace Schedule 1 of the Controls on Dangerous Substances and Preparations Regulations 2006, which sets out the table of substances, preparations and restrictions.

The Groundwater (England and Wales) Regulations 2009

The purpose of this regulation is to prevent the entry into groundwater of “hazardous substances” (defined as substances which are persistent, bio-accumulative or toxic) and the pollution of groundwater by “non-hazardous pollutants” (all other substances liable to cause pollution).

The offence of discharging pollutants which might lead to an indirect input of such matter to controlled waters unless carried out in accordance with an authorisation granted by the Environment Agency, originally established in the Water Resources Act 1991 and incorporated in the 1998 Groundwater Regulations, is carried over in this instrument.

Although the Regulations cover both ‘direct’ (directly into groundwater) and ‘indirect’ (after percolation through soil and strata) inputs of pollutants to groundwater, a discharge which leads to a direct input of such matter is already an offence under section 86 of the Water Resources Act 1991.

Control of Asbestos Regulations 2012

The Control of Asbestos Regulations 2012 came into force on 6th April 2012. The Regulations aim to manage the risk from asbestos in workplace premises. The Regulations further strengthen previous requirements to protect workers and others likely to be exposed to asbestos fibres arising from work with materials containing asbestos. They are also expected to reduce potential future deaths from asbestos related diseases. Most of the duties are placed on employers; for example, to assess work which could expose employees to asbestos fibres and have measures in place to prevent or reduce such exposure.

But there are duties on others, such as the duty placed on those in control of non-domestic premises to manage asbestos in those premises. The Regulations also prohibit the import, supply and use of materials containing asbestos.

Construction (Design and Management) Regulations 2015 (CDM)

The CDM are the main set of regulations for managing the health, safety and welfare of construction projects. The CDM applies to all “construction work” which refers to the carrying out of any building, civil engineering, or engineering construction work. Such work includes:

- construction, alteration, conversion, fitting out, commissioning, renovation, repair, upkeep, redecoration or the maintenance, de-commissioning, demolition or dismantling of a structure;

- the preparation of an intended structure including site clearance, exploration, investigation and excavation and the clearance or preparation of the site or structure for use or occupation;
- removal of a structure; and
- the installation, commissioning, maintenance, repair or removal of services which are normally fixed within or to a structure.

Water Environment (Water Framework Directive) (England and Wales) Regulations 2017 (WFD)

The WFD consolidated the 2003 Regulations, which had been amended a number of times, and making aspects of the Regulations more detailed and transparent. The WFD introduced a comprehensive river basin management planning system to protect and improve the ecological and chemical health of our rivers, lakes, estuaries, coastal waters and groundwater.

Water Supply (Water Quality) Regulations 2018

These Regulations implement Council Directive 98/83/EC on the quality of water intended for human consumption. Their purpose is to protect human health from the adverse effects of any contamination of water intended for human consumption by ensuring it is wholesome and clean. They also implement Council Directive 2013/51/Euratom, laying down requirements for the protection of the health of the general public with regard to radioactive substances in water intended for human consumption.

Policy

National Planning Policy Framework

The National Planning Policy Framework (NPPF) was updated on 5th September 2023, replacing the previous NPPF, which was most recently updated in July 2021. The NPPF outlines that LPAs should approach decision taking in a positive way to foster the delivery of sustainable development. The right information is crucial to good decision-taking, particularly where formal assessments such as EIAs are required. This includes the effective participation of other consenting bodies to enable early consideration of all the fundamental issues.

Intended to assist Local Planning Authorities with interpreting and applying the NPPF, Planning Practice Guidance (PPG) was published in March 2014 as an online resource. This provides planning guidance on topics including flood risk, heritage and design and should be read by practitioners in conjunction with the NPPF.

The NPPF relates to ground conditions and contaminated specifically within Section 11 ‘Making Effective Use of Land’ and Section 15 ‘Conserving and Enhancing the Natural Environment’.

The ‘Ground Conditions and Pollution’ sub-section within Section 15 outlines how policies and decisions should ensure that a site is suitable for its proposed use taking account of ground conditions and any risks arising from land instability and contamination. This includes risks arising from natural hazards or former activities such as mining, and any proposals for mitigation including land remediation (as well as potential impacts on the natural environment arising from that remediation). This section also makes reference as to how following remediation, as a minimum, land should not be capable of being determined as contaminated land under Part IIA of the Environmental Protection Act 1990, and adequate site investigation information, prepared by a competent person, should be available to inform these assessments.

Planning Policy Wales Edition 12

The Planning Policy Wales (PPW) was updated in February 2024, replacing the previous edition, and sets out the land use planning policies of the Welsh Government. The primary objective of PPW is to ensure that the planning system contributes towards the delivery of sustainable development and improves the social, economic, environmental and cultural well-being of Wales.

Paragraph 3.55 of PPW states that “*Previously developed land should, wherever possible, be used in preference to greenfield sites where it is suitable for development*”.

National Development Framework “Future Wales – the National Plan 2040”, 2021

The framework is a development plan with a strategy for addressing key national priorities through the planning system, including sustaining and developing a vibrant economy, achieving decarbonisation and climate-resilience, developing strong ecosystems and improving the health and well-being of our communities. Policy 17 and 18 of the Framework supports and details the principle of developing renewable and low carbon energy from all technologies and at all scales including development of national significance.

Caerphilly County Borough Council (CCBC) Local Development Plan, 2010

The Local Plan establishes a policy and delivery framework that provides clear and firm guidance to ensure that the Council's aims for the Borough are achieved where they relate to issues of planning and land use. The policies included within this Plan are consistent with the Council’s Corporate Strategy, the NPPF and PPW and as such go to the heart of what

sustainable development is and how good place making can be achieved. They also form the strategic context within which any neighbourhood plan should operate.

Development proposals coming forward within the area covered by the Local Plan will be expected to adhere to the Key Objectives of the Plan such as 0.94.5 *“Improve energy, waste and water efficiency while promoting environmentally acceptable renewable energy to maintain a cleaner environment and help reduce our impact on climate change”*. Furthermore, one of the eight key components detailed as part of the Development Strategy is to *“exploit brownfield opportunities where appropriate”*.

Overarching NPS for Energy (EN-1), 2024 ;

This National Policy Statement (NPS) sets out national policy for the energy infrastructure and the decisions by the Secretary of State on applications for energy developments that are nationally significant under the Planning Act 2008. For such applications this NPS, combined with any technology specific energy NPS where relevant, provides the primary policy for decisions by the Secretary of State. Paragraph 5.10.8 of EN-1 states that “for developments on previously developed land, applicants should ensure that they have considered the risk posed by land contamination”.

It additionally states in Paragraph 5.11.4 that “development of land will affect soil resources, including physical loss of and damage to soil resources, through land contamination” and in Paragraph 5.11.5 “Where pre-existing land contamination is being considered within a development, the objective is to ensure that the site is suitable for its intended use. Risks would require consideration in accordance with the contaminated land statutory guidance as a minimum”.

NPS for Renewable Energy Infrastructure (EN-3), 2024

This National Policy Statement (NPS EN-3), taken together with the Overarching National Policy Statement for Energy (EN-1), provides the primary basis for decisions previously made by the Secretary of State on applications they receive for nationally significant renewable energy infrastructure.

Paragraphs 2.10.28 and 2.10.29 summarise that “Solar is a highly flexible technology and as such can be deployed on a wide variety of land types.” and “While land type should not be a predominating factor in determining the suitability of the site location applicants should, where possible, utilise previously developed land, brownfield land, contaminated land and industrial land”.

Guidance

The applicable guidance is summarised as follows:

CIRIA C552 “Contaminated Land Risk Assessment: A Guide to Good Practice” (CIRIA, 2001)

The Contaminated Land Risk Assessment: A Guide to Good Practice book sets the context of the risk assessment process within an overall risk management approach. The overall risk management process involves identifying and making decisions concerning risks and subsequent implementation of these decisions. The report describes the stages involved in identifying risks and assessing their significance but stops short of describing remedial actions that might be taken to manage the risk.

Guidelines for Environmental Risk Assessment and Management (DEFRA, 2011)

Green Leaves III is the latest edition of the Government's Guidelines for Environmental Risk Assessment and Management. The framework provides generic guidelines to policy and regulatory staff in Government and its agencies, in the principles of managing environmental risks. The document focusses on generic principles rather than domain-specific risks, such as river flooding, animal disease or hazardous waste.

Land Contamination Risk Management (LCRM) 2023

On 8th October 2020, the Environment Agency republished Land Contamination Risk Management (LCRM) which replaced Model Procedures for the Management of Land Contamination (CLR11). On 19th April 2021, there was an update with regards to chemical testing of soils (Stage 1 risk assessment) and the CL:AIRE gas protection verification accreditation scheme. On 20th July 2023, there was a further update with regards to new pollution incidents and information on the importance of taking climate change into account.

The guidance is intended for all those responsible for managing land that is subject to contamination, not just land that falls under the contaminated land regime under Part IIA of the Environmental Protection Act 1990. It uses a three-stage approach of risk assessment, options appraisal and remediation and verification.

The updated LCRM guidance is built on the principles of CLR11 and the scope, purpose and the framework remain the same.

Groundwater Protection Technical Guidance (Environment Agency, 2017)

Up to date guidance for groundwater specialists explaining direct inputs, discernibility and permanently unsuitable.

Guiding Principles for Land Contamination (Environment Agency 2010)

The Environment Agency's publication 'Guiding Principles of Land Contamination' (2010) provides general guidance for the problem holder, expert advisors and consultants and aims to offer guidance to help them fulfil their responsibilities on contaminated land. The key aims of the guidance are to:

- Help clarify roles and responsibilities;
- Encourage good practice to promote compliance with regulatory requirements, or avoid the need for regulation; and
- Guide the reader towards authoritative guidance and advice in other documents.

British Standard 5930:2015+A1:2020 (2020) The Code of Practice for Site Investigation

The British Standard 5930:2015 (2020) provides recommendations for the investigation of sites on assessing their suitability for construction of civil engineering works and building works. The standard gives recommendations on acquiring knowledge of the characteristics of a site that could affect the design and construction of such work.

British Standard 10175:2011+A2:2017 (2017) Investigation of Potentially Contaminated Sites – Code of Practice

Contaminated land contains harmful chemicals in quantities that present a risk or a potential risk to human health or the environment. When land is legally defined as ‘contaminated’ there is a legal obligation to ensure it does not present a risk to health or the environment.

The UK Government’s long-term aim is to work towards a future where all the potentially contaminated land in England and Wales has been identified, assessed, and made safe. Therefore, this standard was created to provide recommendations and guidance on how to investigate potentially contaminated land, or land with naturally elevated concentrations of potentially harmful substances, to determine or manage any risks.

Its recommendations and guidance are intended to ensure that the objectives of an investigation are achieved and that appropriate data for risk assessment are obtained. Note though that it is not feasible to provide detailed guidance for every possible investigation scenario.

The results of the investigation also ought to delineate all known aspects of the site that could impinge upon or affect source-pathway-receptor scenarios defined within the conceptual model.

Land affected by contamination (last updated 2019)

This guidance was published by the Department for Levelling Up, Housing and Communities and the Ministry of Housing, Communities & Local Government in 2014 and last updated in 2019. It provides guiding principles on how planning can deal with land affected by contamination.

Normal Background Concentrations of Contaminants in English and Welsh Soil (BGS, 2012)

The BGS was commissioned by DEFRA to give guidance on what are normal levels of contaminants in soils in support of the revision of the Part IIA Contaminated Land Statutory Guidance. The first phase of the project gathered soil data sets that were: nationally extensive; systematically collected so a broad range of land uses were represented; and collected and analysed to demonstrably and acceptable levels of quality.

The second phase of the project explored the data, focusing on contaminant spatial variability and population distributions with the aim of investigating whether normal levels of contaminants could be quantified as normal background concentrations (NBCs). A robust statistical methodology was developed in the third phase of the project to deliver values for contaminant domain NBCs. This is based on a study of a contaminant's population distribution.

National Quality Mark Scheme (NQMS) for Land Contamination Management (2017)

The National Quality Mark Scheme for Land affected by Contamination (NQMS) is a scheme that has been developed by the National Brownfield Forum (formerly Land Forum) to provide visible identification of documents that have been checked for quality by a Suitably Qualified and experienced Person (SQP). It is intended to provide increased confidence and improved quality of submissions made under regulatory regimes, particularly planning applications, related to previously used land.

The NQMS is a system designed by the Land Forum to ensure that land contamination management work meets the necessary technical and regulatory standards. It applies in particular to the presentation of environmental information to the regulator in the form of reports setting out both factual and interpretative information.

Contaminated Land

<https://www.gov.uk/contaminated-land>

<https://www.gov.uk/government/publications/groundwater-protection-technical-guidance>

The Environment Agency's Approach to Groundwater Protection

This guidance provides an update to the Groundwater Protection: Principles and Practice (GP3) guidance document, providing information about the Environment Agency's approach to managing and protecting groundwater.

CIRIA C665 Assessing Risks Posed by Hazardous Ground Gases to Buildings (C665)

This guidance provides information to ensure a consistent approach to decision making and scope of remedial/protective design measures. Additionally, the document details good practice in the investigation and the collection of relevant data and monitoring programmes in a risk-based approach to gas contaminated land.

CIRIA C735 Good Practice on the Testing and Verification of Protection Systems for Buildings Against Hazardous Ground Gases (C735)

This publication provides good practice guidance for the designer, installer, verifier and regulator on the verification and integrity testing of gas protection systems. It sets out a flexible, risk based and practicable framework that can be adapted to provide site specific advice on the need for and scope of verification activities (including any integrity testing).

BS8485:2015+A1:2019 Code of Practice for the Design of Protective Measures for Methane and Carbon Dioxide Ground Gases for New Buildings (BS:8485:2015+A1:2019).

This British Standard gives recommendations on ground gas site characterization and the choice of solutions for the design of integral gas protective measures for new buildings to prevent entry of carbon dioxide and methane, and provide a safe internal environment.

BRE's Radon: Guidance on Protective Measures for New Buildings

BR211 (2023) includes guidance for all building types including extensions, conversions and refurbishment. The report identifies the areas of England, Wales, Scotland and Northern Ireland where measures should be taken to provide protection against radon and offers extensive guidance on the technical solutions that are required to satisfy Building Regulations requirements.