

INTERNATIONAL COMMITTEE ON CONTAMINATED LAND

QUESTIONNAIRE ABOUT LEGAL FRAMEWORK FOR SOIL/SITE CONTAMINATION MANAGEMENT

COUNTRY: UNITED / KINGDOM - ENGLAND

CONTACT FOR FURTHER INFORMATION: (Name / Email address)

Morwenna Carrington (morwenna.carrington@defra.gsi.gov.uk)

David Middleton (david.middleton@defra.gsi.gov.uk)

OVERALL CONTEXT

1. Does your national policy have a specific definition of “contaminated site”, “contaminated soil”? If yes, please provide the definition.

England has a definition of contaminated land: contaminated land is any land which appears to the Local Authority in whose area it is situated to be in such a condition, by reasons of substances in, on or under the land 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 caused, or there is a significant possibility of such pollution being caused.

2. Is Groundwater included in this definition?

Yes – controlled waters include groundwater

3. Does your policy on contaminated sites/land/soil include other definitions (i.e. brownfield, sediment)?

It defines remediation and unacceptable risk for use within the Environmental Protection Act 1990

4. Which sources are you considering? Industrial operations? Transport? Urban contamination? Etc.

Natural and anthropogenic

LEGAL FRAMEWOK

5. Does your country have legislation with respect to contaminated land management?

Yes



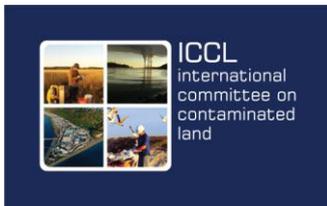
- a. Whatever the situation is, please be precise if it's a specific or a common legislation, if integrated in a more general one (including prevention of emissions, soil protection, land planning, environment & health, etc.)

Part 2A of the Environmental Protection Act 1990 deals specifically with contaminated land. Other legislation deals with contamination more generally – e.g. Planning. Environmental Permitting Regulations regulate ongoing pollution activity and Environmental Damage Regulations are used to deal with imminent threat and actual cases of environmental damage

- b. If there is no legislation, please be precise how you tackle the problem.
Not applicable.
- c. What are the main policy objectives?
To return contaminated land back into beneficial use
- d. What are the foundational principles on which the national policy is based? (e.g., polluter pays, risk-based, fit-for-use, stand-still, transparency, ...).
Polluter pays; to identify and remove unacceptable risks to human health and the environment; to seek to ensure that contaminated land is made suitable for its current use; to ensure that the burdens faced by individuals, companies and society as a whole are proportionate, manageable and compatible with the principles of sustainable development.

6. What is the Chain of Liability for the management of contaminated land?

- a. Polluter? Land owner? Last operator? Occupier?
The liability hierarchy is Class A (caused or knowingly permitted); Class B (current owner or occupier) or for orphan sites, the state.
- b. Is there any difference between new and historic contamination?
Post March 2009 contamination could be dealt with under the Environmental Damage Regulations
- c. Can a responsible party pass on the liability to a purchaser? (under statutory law? Contractually?)
Yes contractually – a normal form of risk transfer.
- d. Do you separate the obligation to remediate soil pollution and the liability regarding the damage caused by soil pollution and the related remediation measures?
No but liability to make good any harm suffered can also be the subject of civil action under common law.
- e. Are you facing specific situations (e.g. privatization of the industrial activities, war impacted areas, ...) needing special programme?
There is a national contaminated land grant scheme administered by the Environment Agency that provides assistance to Local Authorities to inspect land and where relevant to remediate it. The Environment Agency are also designated as principal regulators under the Act for Special Sites, as defined by the Contaminated Land (England) Regulations 2006. Such sites include land which is contaminated by radioactivity.



7. Are there any specifications at regional / local level?

The law is different in Scotland, Wales and Northern Ireland – all answers apply to England only.

8. Are there specifications for site closure?

The term site closure is not used in the UK. If it means accepting that remediation has been satisfactorily concluded then it would be either through the discharge of a planning condition (under planning) or a remediation statement showing the significant contaminant linkages had been demonstrably broken (Part 2A).

9. Is there any legal requirement to conduct investigation for potential contamination in the sale of the property?

No. Site investigation information including risk assessment is required under the National Planning Policy Framework at the time of obtaining planning permission for a change of use. Property purchases operate under a “buyer beware” principle whereby the potential buyer has to satisfy himself that there are no contamination risks from the property they intend to purchase.

10. Does your national policy have any kind of inventories/registers? If yes, please be precise regarding which sites are registered, how the data are collected and if the databases are public.

Local Authorities are required to keep a written record of any determination that land is contaminated land. The record is made publicly available by means determined by the Authority. A public register of remediation notices is also required. Under the Act the EA have a duty to periodically produce and publish reports on the “state of contaminated land” using their own data and data collected from Local Authorities.

11. What are the strong, weak points and the major bottlenecks with respect to the current regulations in your country?

Strong points: risk-based approach to decision making which means that the riskiest sites are prioritised.

Weak points: public sector procurement rules mean much work produced by consultants for regulators does not help them decide if land is contaminated.

Bottlenecks: poor quality work submitted to planning authorities can make gaining planning permission a lengthy process.

TECHNICAL ISSUES RELATED TO THE LEGAL FRAMEWORK

12. Are there site investigation requirements?

Yes – site investigations have to be carried out by competent persons.

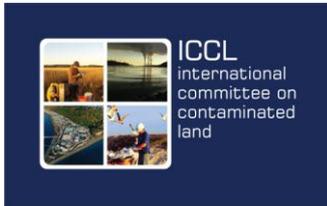
13. Are Risk Assessment & Management the main tools?

Yes and sustainability appraisal is becoming part of the remediation option appraisal process.

14. Are there specific technical approaches used?



- a. For Human Health (HH), Ecosystems, Groundwater (GW), Surface waters (SW), other targets (i.e. buildings, infrastructures, ...please be precise).
Yes.
 - b. On a site by site specific approach, or by derivation of guideline values? If possible, please detail your answer.
Generic assessment criteria are used and supplemented by detailed quantitative risk assessment to derive site specific assessment criteria.
 - c. Do you take into consideration others sources of pollution in the risk assessment?
Sites are assessed and determined on individual and multiple contaminant linkages.
15. If the national policy uses guideline values, please be precise in describing the following points:
- a. Reasons for derivation of generic values – to simplify the generic risk assessment process. SGVs and GAC are screening values. England is also developing new screening levels (so-called Category 4 Screening Levels, not yet published)
 - b. Objectives / levels of implementation (investigation, risk assessment, remediation)
 - c. Priority substances – CLR8 did list priority substances for research purposes but there is no prioritisation of contaminants from a regulatory perspective. Their hazardous nature and nature of risk they pose on a site specific scale will determine priorities.
 - d. Protocols of derivation (including acceptable risk levels used).
All the technical frameworks are published and the private sector has used these to derive generic assessment criteria.
16. What are the drivers for remediation?
- a. To what level is clean-up required? (i.e. acceptable risk, land use values, ...)
Planning: to ensure the site is safe and, as a minimum, that the site cannot be defined as contaminated under Part 2A after remediation
Part 2A to prevent significant harm/ pollution or to remove a significant possibility of significant harm/ pollution
 - b. Does your national policy use cost-benefits analysis for the choice of the remedial solution?
Yes for Part 2A
17. What are the main remediation strategies or treatment techniques used in your countries (including Natural Attenuation)?
- a. Distribution of techniques? Mainly off-site disposal or on site containment/ capping
 - b. Evolution in time? Over the last 15 years process based technologies have become mainstream and are widely used.
 - c. Acceptance of innovative treatment techniques? Yes; over the past 15 years many techniques have become accepted and established.



18. Are you considering sustainability in the national approach?
- If yes, how? In particular, how the three pillars of sustainability are considered and balanced.
The planning regime has a presumption in favour of *sustainable* development. Part 2A focuses on removing high levels of risk in a manner which is compatible with the principles of sustainable development. There is a small section of sites where broader socio-economic factors can be considered under Part 2A.
 - If no, explain the reasons and the future challenges.
19. How does your country bridge the CLM approach with:
- Land planning programmes? By integrating the need to consider land contamination within the planning system.
 - Public health programmes (aggregation of impacts on surrounding populations) Public Health England is widely consulted and seen as a reliable source of advice by stakeholders and the public.

FINANCIAL ISSUES

20. What are the specific practices with respect to “Orphan sites”?
The liability passes to the public purse.
21. Do you have an idea of the annual budget allocated to Soil Contamination Management? No
- How is it divided between public, private and others?
 - What are the main financial / funding systems in place in your country? (e.g. Financial guarantees, insurance, public – private partnerships, special foundation, industrial consortium, enforcement, ...).
 - Between the different steps of management (investigation, remediation, monitoring...)?

ORGANISATIONAL ISSUES

22. How are stakeholders and in particular communities involved in the approach?
Local Authorities are required to have in place Inspection Strategies for identifying and prioritising potentially contaminated sites in their areas. As part of remediation where members of the public are affected, Local Authorities will usually have a communications strategy in place in order to inform the local community.
23. Is there a specific approach for:
- Brownfields? No



- b. Megasites? No
- c. Widespread pollutions? No
- d. Reuse of excavated soils? (e.g., in relation to their quality) Yes, an industry code of practice produced under the auspices of CL:AIRE is used to permit reuse of materials on site and in clusters of sites.

24. Does your national policy include any accreditation system for consultants or service providers? If yes, please provide some details.

Such schemes exist but are not required by policy. The Specialist in Land Condition and the Register of Ground Engineering Professional schemes are for senior practitioners with experience beyond chartered status.

25. Do you have any training / capacity building programme, any management accountability and performance measurement?

There is no national programme. Training is provided by independent organisations such as CIRIA, CL:AIRE and CIEH and private companies such as Atkins and LQM. Universities such as Nottingham and Portsmouth run masters courses in contaminated land management.

26. How is the necessary inter-governmental coordination for CLM organized? (e.g. with Health Protection Department, with the public site owners, with state or local public sector environmental organizations, with special interest advocacy groups,)

Regulation of contaminated land is devolved to Local Authorities who have specialist consortiums in place to share best practice, etc. There is also a Land Forum group which bring together stakeholders, government and agencies.

CRUCIAL DEVELOPMENTS IN THE FUTURE

Are there any additional issues to be further developed in the following months/years whatever they are (Research and Development needs, organisational issues, ...)?

Unofficially or officially, do you see any opportunities for collaboration in the coming months or years that may improve overall coordination among international organizations? (e.g., conferences, workshops, international (technical or policy) initiatives, growing alliances (e.g., in support of redevelopment /reuse of contaminated lands, etc.).

REFERENCES

Please give most important references (documents, website, projects, and case studies) that could be relevant for explaining your national approach