



Environmental policy, legislation and Brexit

The UK has been a member of the Europe Union (EU) since 1973 and during this time the EU has had a significant influence on the development of UK environmental legislation and government environmental policy. EU environmental legislation has played an important part in providing improvements in the quality of drinking and bathing waters, the reduction of waste to landfill, the reduction of carbon emissions and the protection of habitats. The vote by the UK to leave the EU will involve years of negotiations including the need to unravel many of the existing regulations which is likely to lead to a need to amend some environmental legislation.

Post referendum—what now?

A project funded by the Economic and Social Science Research Council (ESRC) produced a report prior to the referendum vote which comprised a review of how UK policy has been influenced by EU membership and which considered different scenarios for the future of the UK outside of the EU. The report is entitled “The EU Referendum and the UK Environment: An Expert Review. How has EU membership affected the UK and what might change in the event of a vote to Remain or Leave?” An executive summary can be downloaded from the following [link](#). The report is intended to provide impartial, research-based evidence from a range of academic experts including a review of climate change and energy, agriculture, fisheries and land use planning although there are aspects of EU environmental legislation which extend into other areas of environmental regulation in the UK such as waste management and industrial emissions.

In the UK the planning regime for land use is under overall national control generally with variations in the devolved regions of the UK. Prior to joining the EU, the UK already had a well developed planning system with legislation set out in the Town and Country Planning Act 1974. The planning regime has continued to change, with the adoption and implementation of EU policies over time, for example the Environmental Impact Assessment

Directive (85/337/EC) and subsequent amendments have proved an important part of environmental planning which have formalised and standardised the type, quantity and accessibility of information about possible impacts arising from proposed developments which have been influential in planning decisions. There are also environmental standards introduced by the EU which set the parameters within which many planning decisions are taken, notably in relation to nature conservation and habitats and air quality. These directives have led to greater transparency in planning and have promoted public participation and enhanced the provision of environmental information. The introduction of The National Planning Policy Framework (NPPF) for England in 2012 resulted in a significant reduction in planning policy guidance although in the NPPF reference is made to planning policies and decisions which must reflect and promote where appropriate relevant EU obligations and statutory requirements.

Although it is unlikely that there will be a significant change in environmental regulation in the short term and in the future negotiations with the EU there may be a need to retain much of the environmental acquis, it is unlikely that land use policy will have a significant role in the inclusion in future trade agreements. Notwithstanding the eventual change in EU

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“...MJCA will continue to follow closely developments in forthcoming negotiations between the UK and EU...”

Post referendum—what now?

membership it is likely that many of the environmental protection principles contained within EU Directives will continue to be appropriate and relevant to domestic regulation.

The framework for contaminated land assessment in the UK is underpinned by a risk based assessment both for land development under the planning regime and regulated under legislation which has been developed and implemented generally independent of the EU. It is unlikely therefore that there will be any notable changes to the development and management of land contamination as a result of leaving EU membership. For example the introduction of The Environmental Damage (Prevention and Remediation) (England) Regulations which implemented the EU Environmental Liability Directive and which is based on the ‘polluter pays principle’ has been a key driver for the management of land contamination in certain parts of Europe although it has not affected generally activities in the UK as there was

existing UK legislation which was used principally for land contamination assessment.

Technical and assessment procedures which include land investigation and assessment are often carried out to British Standards and whilst European Standards automatically become British Standards currently, future changes are unlikely to the procedures applied in the UK. The UK is not likely to cease using the European standards or to stop taking an active part in their establishment and maintenance, particular where there is a need for trade with the EU and where such standards are applicable.

Whilst the negotiations are ongoing the UK remains a member of the EU and in terms of environmental regulation and compliance it will continue to be a case of ‘business as usual’. MJCA will continue to follow closely developments in forthcoming negotiations between the UK and EU so that we are well placed to inform our clients with regard to possible future changes which may have an impact on their business.

Brownfield registers

The Department of Communities and Local Government announced recently that 73 councils across England will pilot one of the new brownfield registers. The intention of the registers is to provide housebuilders with up-to-date and publicly available information on all brownfield sites and previously developed land which is available for housing so that they can identify suitable sites quickly and speed up the development process. It is also hoped that with the development of some of these brownfield sites further investment will be attracted to the areas. It is the intention that the registers will eventually become mandatory for all councils under proposals going through Parliament in the Housing and Planning Bill.



Part 2A of the Environmental Protection Act 1990 places a responsibility on local authorities to inspect land in its district to identify contaminated land. In accordance with Section 78R of the Environmental Protection Act 1990, the Local Authority is required to maintain a public register, which serves as a permanent record of all

regulatory action undertaken to ensure the remediation of any site which has been determined as contaminated land. So what’s the difference between the register under Part 2A and the newly proposed brownfield site register? The recent initiative for a register refers to ‘brownfield land’ and not to ‘Contaminated Land’. Contaminated land has a legal definition under Part 2A of the Environmental Protection Act 1990.

So whilst Local Authorities have implemented their contaminated land statutory guidance which requires the Local Authority to publish a written strategy setting out the adopted approach to the inspection and assessment of contaminated land. Land which may have been inspected and is contaminated is not necessarily ‘Contaminated Land’. Even sites which have been determined as Contaminated Land but where no consequent action has been enforced do not appear on the contaminated land register or necessarily include contaminated sites that have been identified for detailed inspection or that have already undergone such inspection.



Brownfield registers

Consequently there are many Local Authorities who have assessed that there is no 'Contaminated Land' in their areas and therefore have no entries on their contaminated land register.

In fulfilling its duties under Part 2A of the Environmental Protection Act 1990, many local authorities hold a considerable amount of data relating to the historical land use that may have resulted in land contamination. This information is provided generally in response to requests to local authorities for

historical land use information typically associated with property transactions or the redevelopment of land although access to the entire database of information is not readily available generally. There are of course exceptions and some local authorities have uploaded the information onto their websites even available as interactive maps that can be accessed easily. It is not known if the recent initiative for brownfield site registers will mean that the database will be more readily available for public access.



The current status of contaminated land in England

In April 2016 the Environment Agency published a report entitled "Dealing with contaminated land in England. A review of progress from April 2000 to December 2013 with Part 2A of the Environmental Protection Act 1990". The report provides an overview of the findings of a survey commissioned by Defra in 2014 regrading contaminated land activity in England. Details are provided at the following [link](#). A total of 60% of local councils in England responded to the survey to provide information on how land contamination is managed in their authority and those councils with sites determined as contaminated land under Part 2A were asked to provide summary data on the inspection, determination, remediation, cost recovery and liability at those sites. The Environment Agency hold information on Special Sites and provided a full response to the survey. A separate report "The state of contaminated land in Wales" is available for Wales from Natural Resources Wales.

Under Part 2A of the Environmental Protection Act 1990, local councils are required to have a written inspection strategy that describes their strategic approach to identifying contaminated land in their authority. Although no timeframe is specified in the guidance for the review of these strategies, there is a recommendation that as good practice the strategy should be reviewed at least every 5 years. The findings of the report record that 87% of councils stated they intend to meet this target. As the inspection strategies are updated, the priorities for inspecting potentially contaminated land in the authority may change and the recent survey cites a lack of

funding, the application of a new risk analysis approach or that sites are being addressed through a greater emphasis on the planning regime for the changes in priority. The survey identified that 88% of potentially contaminated sites were identified through the process of preliminary inspection as part of the implementation of the local council inspection strategies, and that the remainder were identified through planning applications, with less than 1% identified by a property owner reporting evidence of contamination.

Since the Part 2A regime was introduced in April 2000, local councils have spent at least £32 million inspecting more than 11,000 sites, although this is estimated to be approximately half of the sites identified by preliminary assessment as those that will need further investigation to establish the risks that they may pose. These site inspections have led to the determination under Part 2A legislation of more than 511 Contaminated Land sites where remediation was needed by 66 out of the 197 local councils who responded to the survey. The main reasons cited for the determination as Contaminated Land was an unacceptable risk to human health. This number is lower than that reported in a previous State of Contaminated Land report published by the Environment Agency in January 2009 which recorded that 659 sites had been determined up to March 2007. The variation is likely to be due to a lower number of responses by councils to the recent survey. There are 54 sites determined under Part 2A which are

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regulated by the Environment Agency as designated Special Sites.

Metals/metalloid substances are the most frequently identified contaminant which are responsible for determination of the sites as Contaminated Land, followed by organics such as hydrocarbons, with asbestos listed in the determination under Part 2A for 16 sites. Remediation had begun at all 444 local council regulated sites and has been completed at 430 sites. Although statutory notices including remediation statements and notices were issued at approximately one third of these sites, the remainder were addressed by voluntary remediation work. The Environment Agency are undertaking remediation at 48 Special Sites and has completed remediation at 30 of these Special Sites. A variety of remediation options have been used to clean up contaminated land, with the most common techniques reported being excavation and disposal or capping.

Whilst the Class A polluters under Part 2A were often pursued to meet the costs of the remediation, they could either not be found or not made to pay in the majority of cases. At the majority of remediated sites, the responsibility for carrying out remediation fell to either the local council or the Environment Agency. More than £52 million has been granted for remediation by the regulators using public monies since the introduction of the contaminated land regime in 2000. Since 2009/10, over £38 million has

been made available to local authorities through the Defra Contaminated Land Capital Grants Scheme, although through significant incremental cuts it decreased to £17.5 million in 2009/10, down to £2 million in 2013/14 and from April 2014 Defra no longer supported the costs of the investigation and remediation of contaminated land under Part 2A through the Contaminated Land Capital Grants Scheme. Although a small amount of funding of £400,000 was made available in 2016/17 this is due stop entirely from next year.

Although most contaminated land sites are addressed through the planning system which deals with land development, this does not address land which has been developed previously and where there has not been a suitable assessment to identify and address the potential risk of land contamination. This assessment is only likely to be carried out where funding is made available from central government, which in the short term is unlikely to happen.

MJCA personnel have experienced a range of sites which have been issued with a determination notice or remediation notice or where voluntary remediation action has been implemented. We have prepared technical documents as part of the process, assessed remediation options and associated financial liabilities and carried out assessment and remediation works for sites under the Part 2A regime.

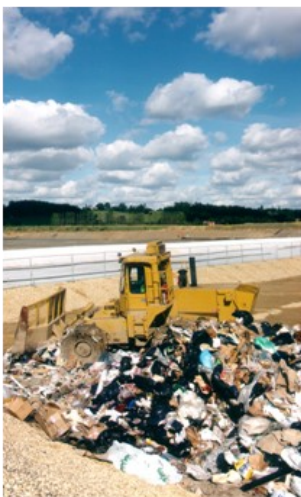
Historical landfills

Historical landfill sites that are vulnerable to erosion and flooding could become a serious source of pollution, according to a study carried out by researchers at Queen Mary's University London, on behalf of the Environment Agency (EA). The study identified 1,264 historical coastal landfill sites in England and Wales that are located wholly or partially within tidal flood zone 3. This means that they have a 0.5% or higher annual probability of flooding from the sea. This information is presented on a database map at the following [link](#)

The university made the results of first part of the study public in May 2016. The study identified that in total there are more than

21,000 historical landfills in total across England and Wales. The study focused on the 1,264 vulnerable coastal sites and work is ongoing to identify which of these sites present the most risk.

Historical landfill sites no longer receive waste and the Environment Agency defines them as sites that do not have pollution prevention and control permits or waste management licenses in force. This includes landfill sites that existed before the waste licensing regime was introduced and landfill sites that have had licenses revoked or surrendered.



National Quality Mark Scheme (NQMS) for Land Contamination Management—update

In the guidance set out in the National Planning Policy Framework (NPPF) reference is made to the need for adequate site investigation information to be prepared by a competent person when referring the assessment of land contamination. This is the only reference in the NPPF to the use of a competent person. In the glossary the definition of competent person is as follows:

“A person with a recognised relevant qualification, sufficient experience in dealing with the type(s) of pollution or land instability, and membership of a relevant professional organisation”

The definition in the NPPF covers the basic definition of competency although it does not address what is a suitable qualification and what constitutes sufficient experience and what level of membership of a relevant professional organisation is necessary. Competency includes being able to recognise and understand the boundaries of the advice provided, to know the importance of engaging with other professions and using the support of other specialist practitioners who have the appropriate skills and experience, knowledge of relevant guidance and legislation and keeping specialist technical skills up to date recorded through CPD records.

The National Quality Mark Scheme (NQMS) for Land Contamination Management supported by a register of Suitably Qualified Persons (SQP) has been established. The initiative was developed by the Land Forum which comprises representatives from a range of key government departments, public bodies and other organisations associated with land condition and land use issues. The scheme will focus on activities such as site characterisation including desk studies and site investigation together with risk assessment, remediation option appraisal and the verification of remedial works. The scheme is intended to make sure that these activities are carried out in line with established good practice procedures and to meet legislative aims. The scheme will be administered by Contaminated Land:

Applications in Real Environments (CL:AIRE) and further details are provided at the following [link](#). CL:AIRE will also keep a register of the SQP. The specific duties of the SQP are to:

- Assess the capability of the Team responsible for gathering, processing or interpreting the data with reference to the Land Condition Skills Development Framework (The Brownfield Skills Framework).
- Ensure that key aspects of the relevant reports are either checked/audited by themselves directly or to verify that these key aspects have been signed off by other delegated individuals with a requisite level of capability within the team.
- Ensure that the regime under which the report has been produced has been considered and the objectives of the report understood.
- Ensure that any conclusions or recommendations made within the reports are in line with and comply with the requirements of the NQMS scheme regarding accuracy and reasonableness and that any limitations are clearly identified.
- Sign a declaration form for each report to confirm that the relevant aspects of the scheme have been complied with. The declaration form should be incorporated into or attached to the report in question, which may then bear the Quality Mark.

The assessment process to become a register SQP will be managed by the Specialist in Land Condition Register Limited (SiLC). It is intended that the registration process will begin later in the year and therefore reports prepared under the NQMS will follow shortly thereafter. MJCA has a registered SiLC and once the SQP register is established will apply to become a registered SQP.



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New standards

ISO (the International Organization for Standardization) is a worldwide federation of national standards bodies (ISO member bodies). The work of preparing International Standards is normally carried out through ISO technical committees. ISO 18400-204 has been prepared by Technical Committee ISO/TC 190, Soil quality, Subcommittee SC 2, Sampling. These standards are adopted as British Standards (BS) and the ones published to date are as follows:

- BS ISO 18400-100 Soil quality – Sampling – Umbrella
- BS ISO 18400-101 Soil quality – Sampling – Framework for the preparation and application of a sampling plan
- BS ISO 18400-102 Soil quality – Sampling – Selection and application of sampling techniques
- BS ISO 18400-103 Soil quality – Sampling – Safety
- BS ISO 18400-105 Soil quality – Sampling - Packing, transport, storage and preservation of samples
- BS ISO 18400-106 Soil quality – Sampling - Quality control and quality assurance
- BS ISO 18400-107 Soil quality – Sampling – Recording and reporting
- BS ISO 18400-201 Soil quality – Sampling - Pre-treatment in the field

These standards are to be used in the UK in conjunction with BS 10175 Investigation of potentially contaminated sites – Code of Practice as explained in the UK forewords to each of the standards. BS ISO 18400 standards cover a wide variety of situations in which investigations including sampling to determine soil quality may be carried out.

The following parts of ISO 18400 are under preparation:

ABOUT MJCA

MJCA provides independent advice on environmental issues to the public and private sectors. Delivering our services to high technical standards and commercial awareness enables us to provide practical, cost effective advice and sustainable solutions. Further information regarding our services can be found on our website www.mjca.co.uk

CONTACT US

Please contact [Kevin Eaton](#) for more information on any of the issues raised in this newsletter, or on any other Contaminated Land issues.

- Part 104: Strategies and statistical evaluations;
- Part 202: Preliminary investigations;
- Part 203: Investigation of potentially contaminated sites;
- Part 204: Guidance on sampling of soil gas;
- Part 205: Guidance on investigation of natural, near-natural and cultivated sites.
- Part 206: Guidance on the collection, handling and storage of soil for assessment of biological functional and structural endpoints in the laboratory.

No decisions have been made as to which, if any, of these parts will be adopted as British Standards.

ISO 18400-102 and ISO 18400-103) will replace existing British Standards BS ISO 10381-2 and BS ISO 10381-3 which are normative in BS 10175. BS ISO 18400-102 Sampling - the selection and application of techniques has a considerable overlap with BS10175 ISO 18400-203 (potentially contaminated sites) and ISO 18400-204 (soil gas) overlap with standards in BS10175 and therefore will not be adopted as British Standards. ISO 18400-202 (preliminary investigations) overlaps with BS10175 and it would be a useful adjunct as a British Standard as it covers a wider range of sites.

A Drafting Panel is to be set up to consider how BS10175 should be amended, revised and rationalised to ensure compatibility to accommodate the new BS ISO 18400 standards. BS 10175 is due for review in 2016 so a decision will be made to decide whether simple amendments the present version are suitable or if a more extensive revision is necessary.

