

The new Statutory Guidance

YCLF
February 2012

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Part 2A - The Legal Risks



- Introduction
- The new Guidance – a legal perspective
 - What is new
- Taking decisions
- Where next

The Legislation

- This has not changed
 - Environmental Protection Act 1990 Part 2A
 - Environment Act 1995 s78
 - In particular Contaminated Land is still:
“.... any land which appears to the local authority to be in such a condition, by reason of substances in, on or under the land, that significant harm is being caused or there is a significant possibility of such harm being caused”

Statutory Guidance

- This is what will change
 - The Contaminated Land (England) (Amendment) Regulations 2012
 - The Water Act 2003 (Commencement No.11) Order 2012
 - Was (and is) DEFRA Circular 01/2006
 - Will be DEFRA Circular xx/2012
 - And a new DECC Circular xx/2012
- April 6th 2012

Why change

- A complex and confusing document
- Not really reviewed since first issued in 2000 (save for radioactivity in 2006)
- “Unjustified regulatory intervention”
- “Inefficient remediation of land”
- SG did not really help in deciding what was contaminated land

The consultation

- Pre consultation in 2010
- Formal consultation Dec 2010 to March 2011
 - 4 EPUK workshops
 - 25 stakeholder meetings
 - 111 responses from a wide range of organisations & individuals
 - Regulators
 - Consultants
 - Lawyers
 - Academics
 - Learned Societies

Post consultation



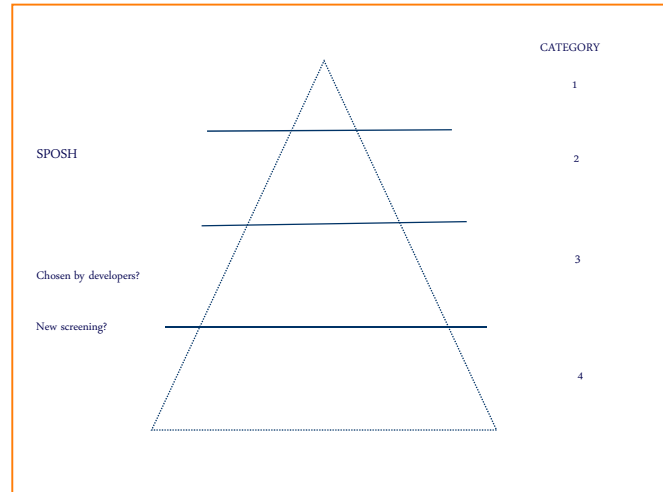
- The general election
- The coalition
- June 2011 onwards latest draft(s) of Guidance commented on by "13 leading experts" (*the good, the bad and the ugly*)
- Real changes from the consultation draft
- Laid before Parliament 7th February 2012

What's new



- Shorter and easier to understand
- A four category test to help decide when land is and is not contaminated land
- Clarification of the status of technical screening levels ("SGVs and GACs") and how to use them
- Clarification that "normal" background levels of contamination would not be contaminated land
- Clarification of what would constitute a "reasonable" level of remediation.

Category 1 - 4



Controlled Waters & radioactively contaminated land

- Welcome to Part 2A – Controlled Waters
 - Is there:
 - significant pollution of controlled waters
 - significant possibility of significant pollution of controlled waters
- New, separate SG for radioactively contaminated land

Taking Decisions

- Updated rules on inspection duties and strategies
- Regulatory certainty – Category 1 & 4
- Local discretion – ‘localism with guidance’
- Shorter and simpler to understand
- POSH followed by SPOSH
- Risk summaries
 - Understandable to the non expert, used to help decision making but available afterwards
- Changing your mind

Liability

- No real change
 - Identify
 - Exclude
 - Apportion

Where next



- Guidance issued
- Work on background levels
- Category 4 screening levels
- Land Forum
 - Part 2A sub group
- An expert group

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