

FREETHS



LEGAL ASPECTS OF LAND CONTAMINATION

Nicola Power
Planning and Environment
Freeths LLP

Answers not options...

- Legal Framework
 - Contaminated Land Regime
 - Planning
 - Other relevant regimes
- What is your report for?

- Part IIA Environmental Protection Act 1990 (or “Part 2A”)
- Came into force 1 April 2000
- Local Authority’s duties
 - Inspect
 - Identify
 - Apportion liability
 - Secure remediation

Answers not options...

- “Contaminated land” is any land which appears to the local authority in whose area it is situated 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;
 - or
 - significant pollution of controlled waters is being caused or there is a significant possibility of such pollution being caused;

Answers not options...

- Pollutant linkages
- Suitable for current use
- Special sites
- Appropriate persons
 - Class A
 - Caused or knowingly permitted
 - Class B
 - Owners or occupiers
- Complex provisions for allocation of liability

Answers not options...

- Most land contamination addressed through planning not Part 2A
- National Planning Policy Framework (NPPF)
 - Relevant to planning policies and individual decisions
 - Site to be suitable for new use
 - After development, as a minimum, land should not be capable of being determined as contaminated land under Part 2A

Answers not options...

- Planning applications
 - Land contamination is a material consideration
 - Developer / landowner responsible for safe development
 - LPA should be satisfied development:
 - Appropriate for its location
 - Does not pose an unacceptable risk before permission granted

Answers not options...

- Pollution of controlled waters (groundwater and surface water)
- Environmental Damage Regulations
- Waste e.g. fly tipping
- Health and Safety legislation
- Common law claims (i.e. one individual / company against another)
 - personal injury claims
 - nuisance type claims
- And more!

Answers not options...

What is your environmental report for?

FREETHS

- Legal transaction
 - Sale / purchase of land
 - Lease of land
 - Corporate purchase of entity holding land
- Planning application

Answers not options...

What is your environmental report for? (cont)

FREETHS

- Part 2A e.g. voluntary remediation or site determination
- Baseline report for environmental permit
- Investigation of a pollution incident

Be clear:

- What is your report for?
- Who is your audience?
- What question are you trying to address and what is the relevant legal test?
- State the above and your scope / limitations

Remember...

FREETHS

- An environmental report is for life not just for Christmas!



Contact

FREETHS



Nicola Power

Senior Associate

T: 0845 077 9567

M: 07921 604196

E: nicola.power@freeths.co.uk