



“Contaminated land legislation affects all of those involved in the process of developing land or transferring the ownership of land.”

The Purpose of this Guide

This guide is intended to answer some of the major questions that those involved in land developments and transactions may have, and provide a brief checklist of issues that need to be considered.

Please contact our help line on **0191 243 0678** if you need specific help or guidance.

When is land classed as contaminated ?

For land to be classed as contaminated, it will need to meet the 'official definition' of contaminated land as detailed in the relevant legislation. This definition relies on terms such as 'significant possibility' of 'significant harm' being caused by substances in, on or under the land. It is therefore crucial to define what 'significant', 'possibility' and 'harm' means for a specific site and situation. Statutory guidance has been issued regarding this definition.

How can I tell if land is contaminated ?

To tell if a plot of land meets the 'official definition' requires an assessment by a professional consultant who will need to instigate a staged assessment in accordance with government guidance. Not all the stages (desktop study, Phase 1, Phase 2 etc) may be needed and as soon as sufficient information is obtained, the assessment can stop.

However, of crucial importance is the careful examination of historical maps, environmental data and survey information in order to both avoid liability and reduce assessment costs.

In addition, land which is currently classed as not contaminated with respect to its current use may be deemed contaminated by the development itself and the future use. For example, there could be land previously used by industry that only becomes regarded as 'contaminated' if it is then used for the development of residential property.

The assessment process should therefore, if required, project the current site data into future use scenarios to assess potential liability and options for remediation.

Who has a duty of care in contaminated land issues ?

The original polluter of land is officially the person responsible for liabilities relating to land contamination. This person will in many cases never be found and it is therefore the new owner who will be responsible. Consequently it is essential that the person responsible for undertaking the property purchase or development understands the degree of risks and potential financial implications.

The owner will need to assess and remediate the land if needed. The owner is responsible for ensuring the regulators receive information as required and in a format dictated by the guidance.

The local authority has a general responsibility for identifying and deciding on necessary action in relation to contaminated land in its area, but in specific cases the Contaminated Land Officer will advise the Planning Department with respect to any conditions within planning permissions.

The Environment Agency advises on issues relating to controlled waters and will act as a consultee to both the local authority and those involved in assessing land.

How can contaminated land affect the development process ?

Quite simply it can halt a project all together. Not dealing with contaminated land in accordance with the guidance will delay planning permission and could threaten the whole viability of the project.

What are the consequences of a breach of contaminated land regulations ?

Consequences of not complying with the legislation can result in serious financial costs, fines and in some cases imprisonment.

How can contaminated land be dealt with ?

Solutions to contaminated land can range from the relatively simple

- change the end use from say residential to commercial
- increase the depth of concrete in a building foundation slab
- place a fence around the site

To more complex remediation solutions

- vapour extraction of hydrocarbons
- bio-pile remediation or organics
- phyto-extraction of metals by plants

Professionals carrying out assessments will recommend the most appropriate and economic solution for the project. Contact our helpline on 0191 243 0678 for further information.

What is the legislation covering contaminated land ?

The major legislation is detailed in Part IIA of the Environmental Protection Act 1990 and the Contaminated Land Regulations 2000.



CHECKLIST of tasks when developing or transferring land whether you suspect the land is contaminated or not:

1. Talk without any obligation and in confidence to a professional consultant about your site before you order any data, maps, off the shelf reports, or talk with the regulators. Please be aware there is a strict protocol set out in the guidance on how to proceed with the assessment of contaminated land and subsequently the presentation of information to the regulators.
2. For a development project, the wording of the condition within a planning permission can be important so do study this information.
3. Subsequently if needed, commission a **desktop study** that not only includes lists of data and maps but most importantly includes a detailed examination of that data by a person who fully understands the risk assessment process and can deliver a balanced opinion tailored specifically to your sites needs.
4. If you have been asked by a purchaser, lender or local authority to undertake an assessment which in the first instance requires soil or water samples being taken from a site (i.e. a Phase 1 risk assessment), talk with us first and we will advise on the most appropriate and economical way forward.

For help on any of these issues contact Contamination Consultants on **0191 243 0678**

Further Information Contact:

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Useful web sites:

Environmental legislation and regulations:
www.netregs.gov.uk/netregs/legislation

Department for Environment, Food and Rural Affairs
www.defra.gov.uk/environment

Environment Agency
www.environment-agency.gov.uk/subjects/landquality

Scottish Environmental Protection Agency
www.sepa.org.uk/contaminated-land

A Brief Guide to Contaminated Land for Professionals in Land Development or Property Transactions

Architects

Commercial Property
Lawyers

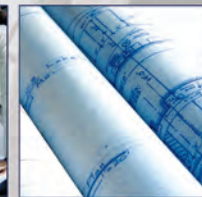
Solicitors

Civil Engineers

Environmental
Consultants

Surveyors

Landscape Architects



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