

Part 2A – the Implications of the Revised Statutory Guidance

Morwenna Carrington
Defra

- Section 78 of the Environmental Protection Act 1990 (as inserted by Section 57 of Environment Act 1995)
 - Regime for the identification and remediation of Contaminated Land in England, Scotland and Wales
- The Contaminated Land (England) (Amendment) Regulations 2012
- The Water Act 2003 (Commencement No.11) Order 2012

Revised Part 2A Statutory Guidance - process

- Subject to public consultation December 2010 – March 2011
- Draft laid in Parliament on 7 February 2012
- Amended regulations came into force on 6 April 2012
(Common Commencement Date)
- Revised Guidance issued by the Secretary of State on 10 April 2012
- Automatically supersedes previous Guidance (Defra Circular 01/2006), which is now obsolete

- Sections:
 - Broad objectives
 - LA inspection duties
 - Risk assessment
 - Definition of contaminated land
 - Determination of contaminated land
 - Remediation
 - Liability
 - Recovery of costs

- Shorter and simpler guidance
 - approx. 65 pages
- Separation of Guidance into two parts:
 - non-radioactive contamination
 - radioactive contamination
- Radioactive guidance issued by DECC

- Under Part 2A, the starting point should be that land is not contaminated unless there is reason to consider otherwise (para 1.3)
- Enforcing authorities should seek to use Part 2A where no appropriate alternative solution exists (para 1.5)

Broad objectives of the regime (para 1.4)

- 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

Broad objectives of the regime (para 1.6)

- The enforcing authority should take a precautionary approach to the risks raised by contamination, whilst avoiding a disproportionate approach given the circumstances of each case, in order to strike a reasonable balance between
 - Dealing with risks, and
 - The potential impacts of regulatory intervention

LA inspection duties (section 2)

- **Strategic inspection**
 - Broad assessment of land within LA area and identifying priority land for more detailed consideration
- **Detailed inspection**
 - Detailed inspection of particular land and risk assessments to support Part 2A decisions

- Understand the risk (probability x impact)
 - primarily a technical operation
- Decide whether the risk is sufficiently high to justify regulatory intervention
 - primarily a matter of regulatory judgement being exercised by the LA

Contaminant linkages (paras 3.8 – 3.11)

- For a relevant risk to exist under Part 2A, there needs to be one or more ‘contaminant-pathway-receptor’ linkages (para 3.8)
- All three elements of a contaminant linkage must exist in relation to particular land before the land can be considered potentially to be contaminated land under Part 2A (para 3.9)

Use of external expertise (if necessary) (paras 3.18-3.20)

- Local authorities should strive as far as possible to ensure that specialist consultants are appropriately qualified and competent
- Decisions remain the sole responsibility of the local authority

“Normal” presence of contaminants (paras 3.21 – 3.26)

- Normal levels of contaminants in soil should not be considered to cause land to qualify as contaminated, unless there is a particular reason to consider otherwise (para 3.22)
 - Natural – due to underlying geology / soil formation processes
 - Anthropogenic - due to low level diffuse pollution

Use of SGVs and GACs (paras 3.27 – 3.30)

- Local authorities may use GACs and other technical tools to inform certain decisions provided:
 - They understand how they were derived and how they can be used appropriately
 - They have been produced in an objective, scientifically robust and expert manner by reputable organisations
 - They are only used in accordance with Part 2A and the guidance
- New technical tools and advice may be developed to help regulators and others apply and conform to this Guidance

Generic Assessment Criteria (para 3.29)

- May be used to indicate when land is very unlikely to pose SPOSH to human health
- Should not be used as direct indicators of whether SPOSH to human health may exist
- Should not be seen as screening levels describing boundary between Categories 3 and 4
- Should not be viewed as indicators of levels of contamination above which detailed risk assessment would automatically be required
- Should not be used as generic remediation targets

Dealing with uncertainty (paras 3.31 – 3.32)

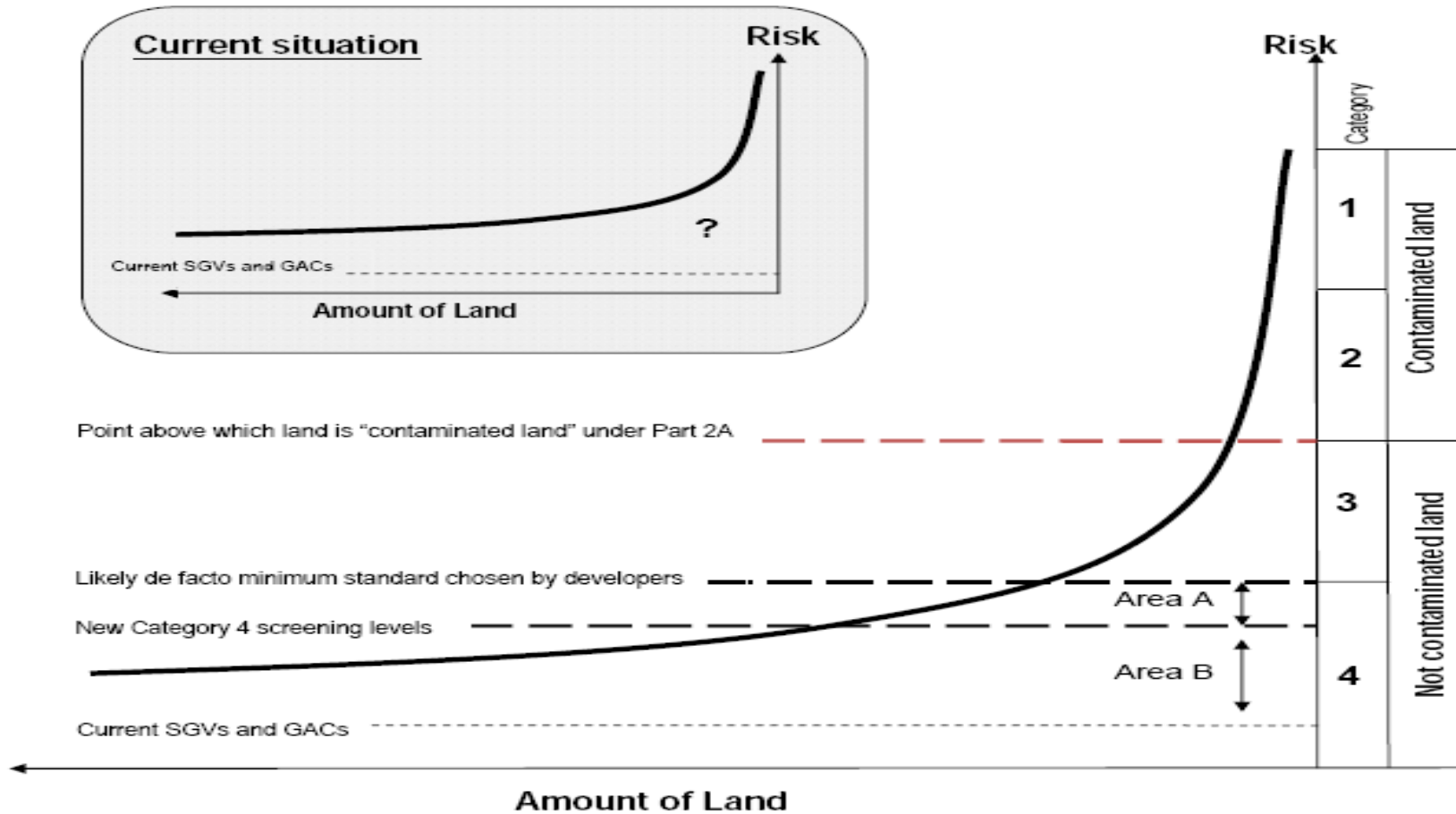
- It is for the Local Authority to use its judgement to form a reasonable view of what it considers the risks to be on the basis of a robust assessment of available evidence in line with this Guidance (para 3.32)
- Regulatory decisions should be based on what is reasonably likely, not what is hypothetically possible (para 3.16)

Risk summaries (paras 3.33 – 3.36)

- Where land may be determined as contaminated on the basis of risk assessment, the LA should produce a **risk summary**
- Should be understandable to the layperson, including the owners of the land and members of the public who may be affected by the decision

Summary of Category 1-4 system

Diagram showing the new Category 1-4 system (compared to current situation)



Determining land as contaminated

- Significant harm is being caused (to human or non-human receptor)
- Significant possibility of significant harm
- Significant pollution of controlled waters
- Significant possibility of significant pollution (of controlled waters)

Deciding land is not contaminated

- Lack of certainty should not stop the authority from deciding that land is not contaminated
- Where land is determined as not contaminated, a written statement should be issued (but may be qualified, e.g. relevant only to current use) and owners of land informed
- LA should keep a record of reasons

- Guidance does not attempt to set out detailed technical procedures or working methods
- Enforcing authority may consult relevant technical documents
- May also act on the advice of a suitably qualified experienced practitioner

Reasonableness of remediation (section 6(d))

- Enforcing authority may only require remediation action in a remediation notice if those actions are reasonable, having regard to:
 - The practicability, effectiveness and durability of remediation
 - Health and environmental impacts of chosen remedial options
 - Financial cost likely to be involved
 - Benefits of remediation with regard to the seriousness of the harm or pollution in question

- Options for a strategy for economic assessment of benefits of contaminated land remediation
 - Develop methodology for assessing economic benefits of remediation
 - To allow different sites to be compared
- Establishing data on normal / background levels of soil contamination in England
 - Define typical background concentrations of soil contaminants
 - Define significant variation of contaminants in soil

- National Expert Panel
 - Advisory group to help LAs with decision-making using the revised Guidance, with a particular focus on sites near the Category 2/3 border
- Case Studies
 - Decisions to be written up and disseminated to share best practice and ensure revised Statutory Guidance is being applied in its intended way

- **Category 4 Screening Levels (C4SLs)**
 - New R&D project to be let by Defra
 - Follows on from outputs of research project to determine normal / background levels of contaminants
 - Aim is to establish levels below which local authorities can conclude that land is definitely not contaminated (i.e. within Category 4)

Dr Morwenna Carrington
Soil Framework Directive and Contaminated Land

Department for Environment, Food and Rural Affairs (Defra)

Nobel House, 17 Smith Square, London, SW1P 3JR, UK

+44 (0)20 7238 1716 (office)

morwenna.carrington@defra.gsi.gov.uk

www.defra.gov.uk