

CONTAMINATED LAND

1. The Contaminated Land Regime – Environmental Protection Act 1990, Part IIA

1.1 Under the Contaminated Land regime, (Part IIA) “contaminated land” is defined in Section 78A(2) as *‘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 either significant harm is being caused or there is a significant possibility of such harm being caused; or significant pollution of controlled waters is being or is likely to be caused’*

1.3 Section 78B(1) of Part IIA states: *‘Every local authority shall cause its area to be inspected from time to time for the purpose - (a) of identifying contaminated land; and (b) of enabling the authority to decide whether any such land is land which is required to be designated as a special site’.*

1.4 Section 78B(2) of Part IIA states: *‘In performing its functions under subsection (1) above a local authority shall act in accordance with any guidance issued for the purpose by the Secretary of State.....’*

2. Contaminated Land – Statutory Guidance

2.1 In line with the requirements of Section 78B(2), The Environmental Protection Act 1990: Part IIA Contaminated Land Statutory Guidance (Statutory Guidance), is the most recent guidance issued by DEFRA in April 2012.

2.2 Section 2.2 of the Statutory Guidance states;

‘This guidance recognises that there are two broad types of “inspection” likely to be carried out by local authorities: (a) strategic inspection, for example collecting information to make a broad assessment of land within an authority’s area and then identifying priority land for more detailed consideration; and (b) carrying out the detailed inspection of particular land to obtain information on ground conditions and carrying out the risk assessments which support decisions under the Part IIA regime relevant to that land. This Guidance refers to the former as “strategic inspection” and the latter as “detailed inspection”’.

3. National Planning Policy Framework

3.1 Paragraph 109:

“The Planning system should contribute to and enhance the local environment by:...remediating and mitigating despoiled, degraded, derelict, contaminated and unstable land, where appropriate”.

Paragraph 120:

“To prevent unacceptable risks from pollution and land instability, planning policies and decisions should ensure that new development is appropriate for its location. The effects (including cumulative effects) of pollution on health, the natural environment or general amenity, and the potential sensitivity of the area or proposed development to adverse effects from pollution, should be taken into account. Where a site is affected by contamination or land stability issues, responsibility for securing a safe development rests with the developer and/or landowner.”

3.3 Paragraph 121:

“Planning policies and decisions should also ensure that:

- *the site is suitable for its new use taking account of ground conditions and land instability, including from natural hazards or former activities such as mining, pollution arising from previous uses and any proposals for mitigation including land remediation or impacts on the natural environment arising from that remediation;*
- *after remediation, as a minimum, land should not be capable of being determined as contaminated land under Part IIA of the Environmental Protection Act 1990; and*
- *adequate site investigation information, prepared by a competent person, is presented.”*