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Legislation Update

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Content

- Overview of Environmental Protection Act 1990: Part 2A Contaminated Land
- Recent case law
- Implications

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Government Policy

- Sustainable Development
 - Preventing New Contamination
 - Our Inherited Legacy of Contaminated Land
 - “Suitable for use”
 - Voluntary Remediation Action
 - Regulatory Action

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The Contaminated Land Regime – Environmental Protection Act 1990 and DEFRA 01/2006

Objectives

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A. Definition of Contaminated Land

“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 –

- (a) Significant harm is being caused or there is a significant possibility of such harm being caused; or
- (b) Pollution of controlled waters is being, or is likely to be caused;...

Section 78 A(2)

- Modification of definition in relation to harm so far as attributable to radioactivity

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- Risk assessment
 - The combination of
 - (a) the probability, or frequency, of occurrence of a defined hazard – exposure to a property of a substance with the potential to cause harm; and
 - (b) the magnitude of the consequences
- Pollutant Linkage
- Significant harm and the significant possibility of significant harm

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B. The Identification of Contaminated Land

- “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”

Section 78 B(2)
- Strategic Approach – periodic review
- Special Sites – Environment Agency

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C. The Remediation of Contaminated Land

- Reasonableness – costs likely to be involved and seriousness of the harm, or, pollution of controlled waters

Section 78 E
- Overarching principle – suitable for use
- Best practicable technique – consider adverse environmental impacts
- Innovation

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D. Exclusion from, and Apportionment of Liability for Remediation

- Identifying Potential Appropriate Persons and Liability Groups
 - Class A
 - Class B
- Characterising Remediation Actions
- Attributing Responsibility Between Liability Groups
- Excluding Members of a Class A Liability Group –
 - Excluded Activities
 - Payments made for Remediation
 - Sold with information
 - Changes to Substances
 - Escaped Substances
 - Introduction of Pathways or Receptors
- Apportioning Liability between members of a Class A Liability Group
- Excluding Members of a Class B Liability Group
- Apportioning Liability between members of a Class B Liability Group

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E. The Recovery of the Costs of Remediation

- General principles
 - Commercial Enterprises – Threat of Business Closure or Insolvency
 - Trusts
 - Charities
 - Social Housing Landlords
- Specific Considerations
 - Class A
 - Class B

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Case Law

- Circular facilities (London) Limited v Sevenoaks District Council (2005) EWHC 865
- R (on the application of National Grid Gas plc) v The Environment Agency
House of Lords 27 June 2007

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Implications

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