



Response to the Welsh Government on a Strategic Overview of Contaminated Land Consultation Paper – June 2013

Introduction

The UK Environmental Law Association aims to make the law work for a better environment and to improve understanding and awareness of environmental law. UKELA's members are involved in the practice, study or formulation of Environmental Law in the UK and the European Union. It attracts both lawyers and non-lawyers and has a broad membership from the private and public sectors.

UKELA prepares advice to UK Governments with the help of its specialist working parties, covering a range of environmental law topics. This response has been prepared jointly by UKELA's Contaminated Land Working Party and its Wales Working Party.

UKELA makes the following comments on the proposals.

General

It is disappointing that the current policy or strategy is not particularly clear in the consultation document and that the overall aim of the paper is not particularly evident. However, in the context of the consultation exercise, the Welsh Government's website refers to the basic questions as to whether Wales needs a

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contaminated land strategy or whether a different approach would be more effective.

The paper simply sets out and discusses, to a limited extent, the legislative background to the subject. It draws attention to key issues such as the absence of full, up to date information on the extent and contaminated land in Wales; the development of tools and techniques to aid assessment of potential risks to human health; the problem of abandoned mines; impacts of climate change; and community implications. It is disappointing that no proposals are put forward as to how these issues could and should be addressed.

The absence of a clear, national strategy/policy coupled with the lack of full, regularly updated data on the extent and nature of contaminated land in Wales inevitably hinders effort to deal with the problem in a strategic, structured manner that prioritises activity on the basis of the potential impact on human health and/or the environment. As noted all of the 22 local authorities' Contaminated Land strategies are out of date. Following web research, it was difficult to access these strategies for the majority of authorities. However, ones were found for Caerphilly CBC and Cardiff CC:

http://www.caerphilly.gov.uk/pdf/Environment_Planning/Pollution/Contaminated_Land_Inspection_Strategy_2010.pdf www.cardiff.gov.uk/ObjView.asp?Object_ID=434).

It appears that Natural Resources Wales ('NRW' previously the Environment Agency) has not produced a "State of the Environment Report" since 2009 primarily

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because local authorities have been unable to provide the necessary information despite having the statutory responsibility to produce Contaminated Land Inspection Strategies and the Planning Policy Wales duty to indicate known areas of contamination in their LDPs.

In terms of responses to the specific questions, we offer the following for your consideration:

(i) Wales specific data

The lack of Wales-specific data clearly makes strategic decision making at national, regional and local levels difficult. Rational, prioritised decisions in the interests of protecting human health and the environment cannot be made without fundamental information on the extent and type of contaminated land and the potential risks.

In terms of what can be done to improve the situation, it is vital to have the necessary information, available funding and a method for allocating resources to areas most at risk. The fact that the Welsh Government currently has no capital funding for projects and that money allocated to LAs for this purpose is un-hypothecated are clear barriers. There are notorious examples of sites that might well pose risks to human health or the environment but which would require funds for site investigation before any remedial action could follow. Without such funds

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many of the more problematic sites may go un-remediated. There seems relatively little point in discussing the finer points of site designation or risk ranking if there are no resources to fund any intervention.

The problems could be overcome by compilation of a Wales wide or regionally based registers of contaminated land and setting up a fund from top sliced LA resources, which would be allocated according to agreed criteria and by a committee of relevant LA representatives (however, there would be political implications). This assumes that local authorities remain the primary enforcement agency for Wales. Our view is that given the relatively low level of activity across 22 unitary local authorities in Wales, it may be better to transfer all functions under Part 2A of the Environmental Protection Act 1990 to NRW, which then would be better able to establish priorities for site remediation across Wales as a whole.

It is not particularly clear as to what views are being sought in relation to the final question. It is well known that certain areas of Wales suffer contamination from the legacy of coal and metal mining, and other heavy industries with potentially contaminative uses (such as steel making and energy generation) are well represented in Wales. Moreover, with industrial decline in Wales, many such sites have closed with relatively little attention being paid to site conditions at the time of closure. There is a need for consistency of approach and to prioritise those areas determined as presenting the highest risk, not least in respect of impact on water quality, in which Natural Resources Wales has a major regulatory role.

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(ii) Guidance and Research

In terms of what more can be done, whilst tools and techniques may be helpful, the underlying problem appears to be patchy (at best) performance amongst local authorities in carrying out their statutory responsibilities. Further technical tools and guidance may well be helpful. The type of risk categorisation adopted in England could well be useful in establishing priority sites for remediation in Wales. However, there seems little point in pursuing technical and administrative revisions if there is simply no enforcement of the regime.

In a similar vein, it is difficult to make a judgement on the need for a key piece of research and development to allow local authorities to make progress. Our view is that a good number of local authorities in Wales may lack the technical expertise necessary to deal with the legacy in Wales of contaminated land. Technical guidance of itself will not resolve this problem. Again, the main issues that need to be addressed are the availability of financial and staff resources and measures to ensure the NRW and local authorities afford prioritisation to the issue.

Although the CL:AIRE guidance being developed by Defra is meant to provide further assistance, the encouragement of more collaboration within the public sector in Wales along with seminars on best practice to ensure consistent and focused approaches to the issue could be no less helpful.

(iii) Resources

The subject of resources has been covered above in response to the earlier questions.

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(iv) Communities

There are still a number of areas of post industrial Wales where land contamination or perceived land contamination may be affecting the quality of life and, health and well being of communities. These may not only be due to a failure of local authorities to address the issues but could reflect the complex structures of liability under the regime. There are also issues here of risk communication since it appears that there are areas of housing affected by pollutants which could pose longer term risks but such issues are not always dealt with in a transparent manner given the likely lack of remedial action. Such risks may be borne by some of the least wealthy communities in Wales, raising significant issues of environmental justice.

We find the question, therefore, about what can be done to raise awareness of contaminated land and perceived contamination in order to engage communities a difficult one. The fundamental question that needs to be asked is what is the purpose of this awareness raising? Is it to change perceptions, encourage campaigning or to recruit volunteers to work on reclamation or regeneration schemes? One would need to know the actual objectives before being able to answer the question.

An up to date and widely publicised register of contaminated land in Wales would be effective in heightening awareness of the issue, but financial institutions and others might oppose such a proposal in the light of the potential impact on property

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values. Furthermore, members of the public would be wary of the effect of identification of contaminated land in a register on the value and saleability of their properties. On the other hand, there would seem little point in raising general awareness of the problem, whilst avoiding reference to specific local sites.

(v) Any other issues

It is clearly the role of Government to set out the strategic objective for contaminated land. The 2012 guidance sets out the strategic objectives for contaminated land in Wales as:

- (a) To identify and remove unacceptable risks to human health and the environment.
- (b) To seek to ensure that contaminated land is made suitable for its current use.
- (c) 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.

We are sceptical about whether these objectives are being met. They might be replaced by one strategic aim, which we would suggest could be something along the following line:

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“To ensure that all potentially contaminated land is assessed so that sites presenting risks to human health and the environment are remediated on the basis of the polluter pays principle and in a way that contributes to the sustainable development of Wales and ensure a cleaner legacy for future generations”

This is very much in line with the stated purpose of sub-section 78B-E of Part IIA of the Environmental Protection Act.

16 August 2013

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