

Contaminated Land Strategy

Part IIA Environmental Protection Act 1990

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Executive summary

This strategy supports and drives the regeneration and development of land in South Lakeland.

Contamination of land has the ability to affect the mental and physical health and wellbeing of the local community. South Lakeland District Council is committed to improving the Health and Wellbeing of those who visit and live in our District.

In 2000, the contaminated land legislation came into force (Part IIA of the Environmental Protection Act 1990). It established a new, statutory regime for the identification, investigation and remediation of contaminated land.

The regime requires each Local Authority to prepare, adopt and publish a strategy which explains how it carries out this duty. South Lakeland District Council published its first Contaminated Land Inspection Strategy in July 2001, with revisions in 2003 and 2006. In April 2012, new Statutory Guidance on contaminated land was issued by Department for Environment Food and Rural Affairs and South Lakeland District Council's inspection strategy has been updated again to reflect this.

The objectives of the contaminated land regime are:

- 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

Under Part IIA, the starting point should always be that land is not contaminated unless there is reason to consider otherwise. For a relevant risk to exist, at least one 'contaminant linkage' must be present. This is the term used to identify the relationship between a contaminant, a pathway and a receptor.

- A 'contaminant' is a substance which is in, on or under the land, and which has a potential to cause significant harm to a relevant receptor, or to cause significant pollution of controlled waters
- A 'receptor' is something that could be adversely affected by a contaminant; for example a person, an organism, an ecosystem, property, or controlled waters
- A 'pathway' is a route by which a receptor is or might be affected by a contaminant

All three elements of a contaminant linkage must exist in relation to a particular site before the land can be determined as 'contaminated land'.

The overall aim of this strategy is to ensure a rational, ordered, timely, efficient and consistent approach to dealing with potentially contaminated sites throughout the area.

The following actions are considered a priority for South Lakeland District Council:



- To update, consult and adopt a revised contaminated land strategy which details how South Lakeland District Council will fulfil all of its ongoing statutory duties
- To ensure that investigations are concentrated on areas of land where there is the greatest risk of a contaminant linkage being present
- To determine whether any land identified as potentially contaminated land falls within the definition of a 'special site' and, if so, refer it to the Environment Agency (EA) as the enforcing authority for 'special sites'
- To ensure that all new development is suitable for its use. Potential land contamination issues should be considered in strategic planning and development control decisions
- To encourage, where practicable, redevelopment of brownfield sites within South Lakeland District Council's area. Under the planning system, where land is affected by contamination it is the developers' responsibility to satisfy the council that the development is suitable for its proposed use
- To ensure that procedures are in place for the open provision of information to the public, developers and any other interested parties
- To prevent, as far as is reasonably practicable, any further contamination of land within the district, including land owned or leased by South Lakeland District Council
- To encourage voluntary remediation of contaminated land, either through Part IIA or the planning system

The Public Protection Group at South Lakeland District Council undertakes the duties imposed on South Lakeland District Council by legislation and Statutory Guidance.

1.0 Introduction

South Lakeland District Council is committed to improving the Health and Wellbeing of those who live work and explore our District. It is recognised that the contamination of land has the ability to affect the mental and physical health and wellbeing of our community.

The industrial history of South Lakeland has left a legacy of land that may be contaminated due to the accidental or deliberate release of substances that are potentially harmful to human health into the environment. Unacceptable levels of naturally occurring substances may also be present.

Part IIA of the Environmental Protection Act 1990 came into force on 1 April 2000. This established a regime for the identification and remediation of Contaminated Land. This legislation requires that each authority prepare, implement and keep under periodic review a Contaminated Land Inspection Strategy.

The overarching objectives of the Government's policy on contaminated land and the Part IIA regime are:

- (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

Central to the regime is risk assessment and risk management. Consultation, co-operation and partnership between all involved is the councils desired option for achieving successful outcomes.

1.1 General policy of South Lakeland District Council

South Lakeland District Councils vision is **“Making South Lakeland the best place to live, work and explore”**.

The council is committed to working with, and on behalf of, the people of South Lakeland to provide sustainable improvements to the quality of life for all.

The Council Plan (2014-2019) has four priority themes for realising its vision. All four relate directly to the objectives of the Contaminated Land regime, they are:

- **Economy** – “Enabling and delivering opportunities for sustainable economic growth”
- **Housing** – “Providing homes to meet need”
- **Environment** – “Protecting our environment”
- **Health and Wellbeing** – “Improving health and reducing health inequalities”



1.2 Regulatory context

The contaminated land regime is set out in Part IIA of the Environmental Protection Act 1990. It was introduced in April 2000, and gives specific legal powers to local authorities to identify and deal with contaminated land. The regulations were widened in 2006 to include land contaminated by radioactivity.

Part IIA provides a means of investigating and, if necessary, remediating land to ensure that it is suitable for its current use and does not present an unacceptable risk to human health, controlled waters, ecological systems, crops, livestock, buildings and property.

The government has produced statutory guidance, in accordance with Section 782A of the Environmental Protection Act 1990, which is legally binding and must be followed by enforcing authorities. In April 2012, the Secretary of State for Environment, Food and Rural Affairs issued new contaminated land statutory guidance to explain how Part IIA should be implemented and the legal tests for when land is considered to be contaminated land. The guidance requested that local authorities revise their contaminated land strategy to reflect new guidance. This document was written in accordance with the new statutory guidance and replaces the original version dated 2001.

Radioactive contaminated land is covered by separate statutory guidance.

1.3 The definition of contaminated land

The legal definition of contaminated land, as defined in Section 78A (2) (as modified) of the Environmental Protection Act 1990, is:

“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) Significant pollution of the water environment is being caused or there is a significant possibility of such pollution being caused.”

Where “harm” means harm to the health of living organisms or other interference with the ecological systems of which they form part and, in the case of man, includes harm to his property.

1.4 Contaminant linkages

The guidance follows established principles of risk assessment, including the concept of a ‘contaminant linkage’, i.e. a linkage between a contaminant and a receptor by means of a pathway



A **'contaminant'** is a substance which is in, on or under the land and which has the potential to cause significant harm to a relevant receptor, significant pollution of controlled waters, or harm attributable to radioactivity. For example petrol, tar, metals, ground gas.

A **'receptor'** is something that could be adversely affected by a contaminant e.g. a person, an organism, an ecosystem, property, or controlled waters. For example human health, surface water, ground water, built environment, eco systems.

A **'pathway'** is a route by which a receptor is or might be affected by a contaminant. For example groundwater, airbourne, surface water, vapour gas, oil, soil, ingestion, direct contact

All three elements of a contaminant linkage must exist in relation to a particular site and a 'significant contaminant linkage' must be identified for any land to be regarded as 'Contaminated Land'

1.5 The polluter pays principle

An important task of the enforcing authority under the Part IIA regime is to establish who should bear responsibility for remediating a site where there are unacceptable risks from land contamination. In general, this will follow the 'polluter pays' principle, where the person who caused or knowingly permitted the contamination will be the appropriate person to cover the cost of remediation. However, if it is not possible to find such a person, the statutory guidance states that the cost may fall to the owner or occupier of the land. In most cases, contaminated land will be voluntarily remediated through the planning system by developers and landowners looking to bring a contaminated site back into beneficial use.

1.6 Planning regime and Building Regulations

All planning applications have to be considered for potential contamination issues to ensure compliance with the Town and Country Planning Act 1990, the National Planning Policy Framework and the council's Local Development Framework. Contaminated land issues that arise through planning applications will be controlled through the planning regime, as opposed to Part IIA.

It is the responsibility of the developer to ensure that a site can and will be made suitable for its proposed future use and that there are no unacceptable risks to human health, the environment, property and/or controlled waters. The developer must carry out a site investigation and remediation works as necessary, and the council will impose planning conditions to this effect. The councils Essential Guide for Developers (Development of Potentially Contaminated Land and Sensitive End Uses) produced by the Cumbria Councils, provides guidance in this area.

The vast majority of contaminated land issues in the district are currently dealt with through the planning regime. Many sites have already been investigated and remediated through this route, so no further action should be required with regard to these sites under Part IIA.



In addition to the planning regime, building regulations (made under the Building Act 1984) require developers to take measures to protect new buildings and their future residents from the effects of contamination. An example of this would be the installation of ground source gas protection measures into properties.

1.7 Other regulatory regimes

Although the Part IIA regime is the main driver for addressing contaminated land, there are other legislative regimes. These include Environmental Damage (Prevention and Remediation) Regulations 2009, Environmental Permitting (England and Wales) Regulations 2010, Water Resources Act 1991 (Amendment) (England and Wales) Regulations 2009, and Statutory Nuisance (Environmental Protection Act 1990).

The statutory guidance states that enforcing authorities should seek to use Part IIA only where no appropriate alternative solution exists. Therefore, Part IIA should not be used where existing legislation may be enforced or where contamination has arisen due to a breach of an existing license or permit.

1.8 Enforcement

In relation to contaminated land the council will promote the concept of voluntary remediation as specified in the legislation. However, where necessary the council will be prepared to take legal proceedings to enforce the regime following the service of a Remediation Notice.

1.9 The role of the Environment Agency

The Environment Agency provides support to the council in identifying contaminated land, in particular where water pollution is involved. In regards to sites designated as 'Special Sites' they will be the enforcing authority. Special Sites are certain water pollution cases, and specific sites, such as nuclear sites and Ministry of Defence usage.

1.10 The Public Register

The council is required to maintain a public register that provides a full and permanent record of all regulatory action taken by the council in respect of remediation of contaminated land. The Environment Agency will hold a similar register for Special Sites.

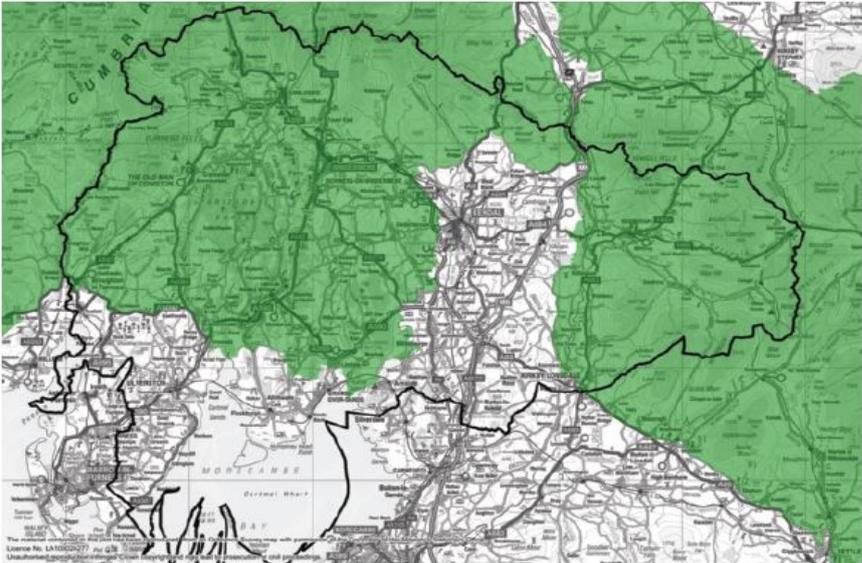
2.0 Characteristics of the local authority

South Lakeland is an area situated in the North West region of England, which covers an area of 1,551 square kilometres (600 square miles) in the southern portion of Cumbria, including major parts of both the Lake District and Yorkshire Dales National Parks. The District is largely rural with a varied landscape including coastline, woodland, rolling



countryside, lakes and mountains and is recognised as one of the country’s finest areas for its quality of life and areas of outstanding natural beauty.

Figure 2.1: Map showing South Lakeland District Council Boundary, including Lake District National Park and Yorkshire Dales National Park within South Lakeland



2.1 Population

The resident population of South Lakeland is in the region of 103,500, but this is increased considerably by national and international visitors. In 2013 South Lakeland attracted 15.63 million visitors. (Cumbria Tourism).

2.2 Brief history of South Lakeland

Farming has traditionally been and remains one of the principle industries in much of South Lakeland. However abundant natural resources such as slate, limestone, iron ore, coppice wood, and water power were essential ingredients for the historic industrial growth of the South Lakeland communities.

The 19th century is regarded as the age of the steam engine, however in South Lakeland water power played an important role in the location of industry. In fact the abundant supply of water gave power to such industries as the bobbin industry, sawmills, the manufacture of gunpowder, and the manufacture of woollen goods.

The production of charcoal from coppice woods also supported other industries such as the iron ore industry. Backbarrow Furnace continued to smelt iron using charcoal until the early 20th century.

The leather trade and Kendal’s famously named shoe company K Shoes, resulted in many leather tanneries throughout the district.



Quarrying and mining for limestone, slate, lead, copper and gritstone have also long been a part of the culture and landscape of South Lakeland. Whilst mining has now ceased in the district, active quarries still scatter the landscape. Sites used for mineral extraction were often utilised as waste disposal sites, with varying degrees of encapsulation.

Gasworks for the manufacture of 'town' gas from coal were also a common site in the towns and villages from the mid-19th to the mid-20th centuries.

2.3 Current land use characteristics and economy

Kendal

Kendal is the administrative centre for the District and the largest town in South Lakeland. Kendal is also the southern gateway to the Lake District and still retains much of the character of a small market town. Kendal is home to a wide variety of industry including engineering, paper making and food products. However, strong links with rural traditions and industry continues.

Ulverston and Furness

Ulverston is a market centre for Furness and claims a sound technological base, including pharmaceutical manufacture, electronics, and technology and enjoys growing links with the offshore oil and gas industry.

Lake District National Park

The area of South Lakeland within the National Park includes the well-known centres of Bowness, Windermere and Ambleside. Tourism, leisure and the arts are the dominant elements of the economy for this area, along with Grasmere and Coniston. The former industries and mineral extraction continue to provide associated employment opportunities, with forestry and agriculture remaining an important and integral feature.

Yorkshire Dales National Park

Farming, tourism and recreation opportunities remain the predominant focus for the dales economy.

2.4 Broad geological and hydrogeological characteristics

South Lakeland encompasses rock of diverse age and type. It is situated on the Southern flank of the Lake District dome, the core of which is formed by volcanic and low grade metamorphic rocks of Ordovician age. These are overlain by a wide tract of Silurian rocks (the Windermere Group) comprising of slates and grits. The pre-Carboniferous basement bed from the Lakeland Fells, being generally hard and resistant to erosion. In hydrogeological terms they may be considered to be effectively impermeable, except for some limited groundwater storage and movement. They are classed as non-aquifer.



Younger carboniferous rocks, represented predominately by thick (Dinantian) limestones are present to the south, overlooking Morecambe Bay. Groundwater movement is by fissure flow. The limestones are often considered as minor aquifers.

Localised deposits of the Namurian (Millstone Grit Series) strata of the Carboniferous age occur in the south of the district around Grange act as a minor aquifer.

Permo-Triassic Sherwood Sandstones in a localised deposit around Grange act as a major aquifer.

2.5 Natural habitats

South Lakeland has some of the most beautiful and spectacular scenery in Britain. The District falls within two National Parks and Morecambe Bay is classified as a Special Protection Area (SPA). Within South Lakeland there are many Sites of Special Scientific Limestone Pavement Orders, regionally important Geological and Geomorphological Sites, and County Wildlife Sites. Further information is available from Natural England:

www.gov.uk/government/organisations/natural-england

2.6 Water resource and protection issues

Groundwater Vulnerability maps for the district will be examined to identify areas which act as major and minor aquifers. Vulnerability depends upon the natural characteristics of a site and is assessed on the physical, chemical and biological properties of the soil and rocks beneath the site which determine the ease with which an unprotected hazard can affect ground water. Further information on licenced abstraction sites is available:

www.gov.uk/topic/environmental-management/water

There are also approximately 1880 private water supplies within the district, covering single properties to multiple and commercial properties. Further details are available at:

www.southlakeland.gov.uk/your-environment/private-water-supplies/

2.7 Known information on contamination and redevelopment

Prior to the introduction of the Contaminated Land strategy in 2001, little information was known on potentially contaminated sites within the District. Since the introduction of this strategy information has been collated to form a database of land potentially affected by contamination which has also aided the regeneration of brownfield sites through the development process. Our database is a working document and is updated at regular intervals.



3.0 Aims and objectives

3.1 Aims of the strategy

The overall aim of this strategy is to ensure that no land in the District of South Lakeland is creating an unacceptable risk to human health or the environment by reason of contamination in relation to its current use.

South Lakeland District Council seeks to ensure that contaminated sites are assessed, categorised and dealt with in a consistently proficient, professional and timely manner. The authority seeks to ensure that the process follows the principles of the DEFRA Contaminated Land Statutory Guidance 2012.

More specifically the aims are:

- To protect the condition of the environment and the health of residents in the district
- To meet the statutory obligation placed on the council to produce a written strategy under Part IIA
- To encourage the redevelopment of brownfield sites
- Prevent further Contamination of Land
- To ensure that a strategic risk based approach is used for dealing with contaminated land
- To ensure that remedial action is reasonable, practicable, effective and durable
- To encourage voluntary remediation

However, South Lakeland District Council acknowledges that it may not be possible to reach the expectations of all interested parties while providing a service and executing powers provided to the local authority under Part IIA.

3.2 Objectives

The objectives of this strategy are:

- To provide a strategic framework which the council will use to identify, inspect and determine contaminated land
- To ensure that development on potentially contaminated land will not be permitted unless evidence has been submitted to show that the possibility, nature and extent of contamination has been properly investigated and assessed and that any remediation measures necessary to deal with the contamination are effective
- To inspect any sites that come to light as a matter of urgency where there is a significant risk to human health
- To outline the council's procedures regarding powers of entry, liability, cost recovery, special sites and enforcement
- To prepare written records of determination and risk summaries for land that is found to be contaminated



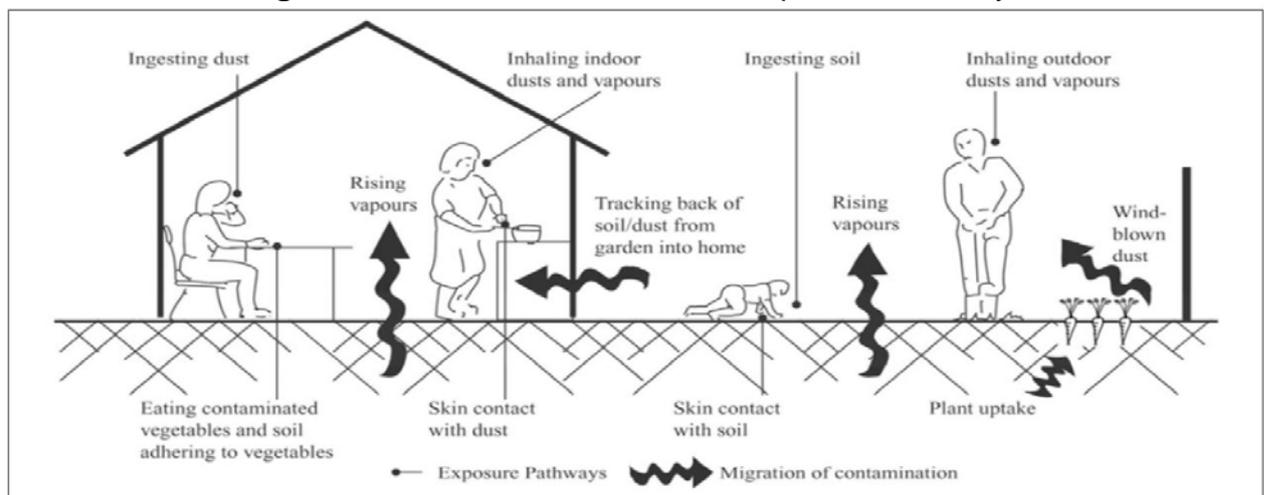
- To prepare written statements for land that is not found to be contaminated
- To maintain a public register of contaminated land
- To inform the public and stakeholders of the council's intentions in relation to contaminated land

4.0 Risk assessment process

4.1 Contaminant linkage

Contaminated land is assessed on the principles of risk assessment and the concept of contaminant linkages (Contaminant, pathway, receptor). All three elements of a contaminant linkage must exist in relation to a particular site and a 'significant contaminant linkage' must be identified for any land to be regarded as 'Contaminated Land' on the basis that significant harm is being caused, or that there is a significant possibility of such harm being caused. The mere presence of a contaminant on a site will not be sufficient to determine the land as contaminated land. More than one contaminant linkage may exist on a site and each linkage will be reviewed separately to ascertain its potential to cause harm and determine who may be liable for its remediation.

Figure 4.2: Illustration of Potential Exposure Pathways



Source: Environment Agency (2009b) Updated Technical background to the CLEA Model .E.A. Bristol

4.2 Risk

The definition of contaminated land explained in Section 1.3 reflects the 'suitable for use' approach and, as previously stated, is underpinned by the principles of risk assessment. Risk is taken to mean the combination of:

- The likelihood that harm, or pollution of controlled waters will occur as a result of contaminants in, on or under the land; and
- The scale and seriousness of such harm or pollution if it did occur

The above diagram means that contamination must be having, or be very likely to have, a significant detrimental impact on humans or the environment before a site can be classed as contaminated land.

4.3 The process of risk assessment

The process of risk assessment involves understanding the risks presented by land, and the associated uncertainties. The understanding of the risks is developed through a staged approach to risk assessment, as detailed in The Model Procedures for the Management of Contaminated Land (CLR 11), which requires:

- Preliminary risk assessment informed by a desk-based study
- Site visit and walkover
- Generic quantitative risk assessment
- Various stages of more detailed qualitative risk assessment

This process will continue until South Lakeland District Council decide that: (a) there is insufficient evidence that the land might be contaminated land to justify further inspection and assessment; and/or (b) whether or not the land is contaminated land.

For land to proceed to the next stage of risk assessment there should be evidence that an unacceptable risk could reasonably exist. If South Lakeland District Council believes there is little reason to consider that the land might pose an unacceptable risk, inspection activities should stop at that point. This decision will be based on information that is:

- Scientifically based
- Authoritative
- Appropriate to inform regulatory decisions in accordance with Part IIA and the revised guidance

4.4 Using external expertise during risk assessment

The council recognises that there will be occasions where the specialist knowledge and technical expertise of consultants will be required in implementing the strategy. When choosing specialist consultants the council will ensure that they are appropriately qualified and competent to undertake the work.

Whilst experts may advise the council on regulatory decisions under the Part IIA regime, the decisions themselves remain the sole responsibility of South Lakeland District Council.

4.5 Normal background concentrations of contaminants

The revised Statutory Guidance indicates that normal background concentrations (NBCs) should be taken into account when assessing the potential for a site to be considered as contaminated land under Part IIA. NBC's should not be considered to cause land to qualify as contaminated land unless there is a particular reason to consider otherwise.



The Statutory Guidance states that “normal” levels of contaminants in soil may arise from:

- The natural presence of contaminants (e.g. caused by soil formation processes and underlying geology) at levels that might reasonably be considered typical in a given area and have not been shown to pose an unacceptable risk to human health or the environment
- The presence of contaminants caused by low level diffuse pollution and common human activity other than specific industrial processes. For example, this would include the spreading of domestic ash in gardens that results in the presence of benzo(a)pyrene at levels that might reasonably be considered typical

4.6 Generic Assessment Criteria (GAC)

It is common practice in contaminated land risk assessment to use “generic assessment criteria” as a screening tool to help assessors decide whether land can be excluded from the need for further inspection and assessment, or whether further work may be warranted. GACs represent cautious estimates of levels of contaminants in soil at which there is considered to be no risk to health or, at most, a minimal risk.

South Lakeland District Council may use GACs, and other technical tools to inform decisions under Part IIA only where:

- They have been appropriately derived and used
- They have been produced in an objective, scientifically robust and expert manner by a reputable organisation
- They are used in a manner that is in accordance with Part IIA and the revised Statutory Guidance (April 2012)

However, GACs should not be used as:

- Direct indicators of whether Significant Possibility of Significant Harm (SPOSH) to human health exists
- Screening levels to decide whether land would be classified as Category 3 or 4
- Indicators of levels of contamination above which detailed risk assessment would automatically be required under Part IIA
- Generic remediation targets, under Part IIA or the planning system

Where possible South Lakeland District Council will utilise the Soil Guideline Values (SGVs) generated by the Environment Agency using the most up-to-date version of CLEA UK (Contaminated Land Exposure Assessment). Other published GACs produced on a similar basis by LQM/CIEH, utilising CLEA methodology, may also be used if no SGVs are available. Other GACs, derived by reputable organisations and competent practitioners in the contaminated land sector, are also available for the most commonly occurring contaminants in soil.



4.7 Risk assessments

All risk assessments will involve uncertainty, and there is unlikely to be any single correct conclusion on precisely what is the level of risk posed by land. It is for the council to use its judgement to form a reasonable view of what it considers the risk to be - on the basis of robust assessment of available evidence in line with the guidance.

4.8 Significant Harm and Significant Possibility of Significant Harm to Human Health (SPOSH)

Section 78A(4) defines harm as meaning harm to the health of living organisms or other interference with the ecological systems of which they form part and, in the case of man, includes harm to his property. The following health effects should always be considered to constitute significant harm to human health:

- Death
- Life threatening diseases (e.g cancers)
- Other diseases likely to have serious impacts on health
- Serious injury
- Birth defects
- Impairment of reproductive functions

If South Lakeland District Council decides that harm is occurring but it is not 'Significant Harm', it should decide whether the land poses a 'Significant Possibility of Significant Harm' (SPOSH). These terms are defined further in Section 4 of the 2012 Statutory Guidance.

The revised Statutory Guidance also subdivides sites into four categories based upon the likelihood of Significant Harm or Significant Possibility of Significant Harm:

Category 1 – Human health

These sites are those where South Lakeland District Council considers that there is an unacceptably high probability, supported by robust scientific based evidence that significant harm would occur if no action is taken to stop it.

Category 2 – Human health

These are sites where there is a strong case for considering that the risks from the land are of sufficient concern in respect of a significant possibility of significant harm, with all that this might involve. Category 2 may include land where there is little or no direct evidence that similar land, situations or levels of exposure have caused harm before, but nonetheless South Lakeland District Council considers on the basis of the available evidence, including expert opinion, that there is a strong case for taking action under Part IIA on a precautionary basis.



Category 3 – Human health

These are sites where the strong case described in Category 2 does not exist, and therefore the legal test for significant possibility of significant harm is not met. This may include land where the risks are not low, but nonetheless South Lakeland District Council considers that regulatory intervention under Part IIA is not warranted as it is recognised that placing land in Category 3 would not stop others, such as the owner or occupier of the land, from taking action to reduce risks outside of the Part IIA regime if they choose.

Category 4 – Human health

These sites are those where there is no or low risk that the land poses a significant possibility of significant harm. This would include land where no relevant contaminant linkage has been established, where there are only normal levels of contaminants in soil, where contaminant levels do not exceed relevant generic assessment criteria (GAC's), or other relevant technical tools or advice that may be developed in the future.

'Generic Assessment Criteria, as referred to above, are an integral part of the risk assessment process for land affected by contamination and are a useful starting point for assessing unacceptable intake of contaminants in the context of Part IIA.

For land that cannot be placed in either Categories 1 or 4, South Lakeland District Council will consider whether the land should be placed in Category 2 (i.e. where SPOSH exists), or Category 3 (in which case the land would not be capable of being determined as contaminated land). South Lakeland District Council must consider a number of factors when making this decision, including: the estimated likelihood of such harm; the estimated impact if it did occur; the timescales over which it might occur; and the levels of certainty attached to these estimates. If there is not a strong case for SPOSH, it should also consider other factors including: the likely direct and indirect health benefits and impact of regulatory intervention; an initial estimate of what remediation would involve; how long it would take; what benefit it would be likely to bring; whether the benefits would outweigh the financial and economic costs; and any impacts on local society or the environment.

If, having taken the above factors into account, South Lakeland District Council still cannot decide whether or not SPOSH exists, it should conclude that the legal test has not been met and the land should be placed in Category 3.

4.9 Significant harm and significant possibility of such harm (non-human receptors)

In considering non-human receptors, South Lakeland District Council should only regard receptors described in Tables 1 and 2 as being relevant for the purposes of Part IIA, (i.e. ecological systems and property).



Table 1: Ecological system effects

Relevant types of receptor	Significant harm	Significant possibility of significant harm
<p>Any ecological system, or living organism forming part of such a system, within a location which is:</p> <ul style="list-style-type: none"> • A site of Special Scientific Interest (under s.28 of the Wildlife and Countryside Act 1981) • A National Nature Reserve (under s.35 of the 1981 Act) • A Marine Nature Reserve (under s.36 of the 1981 Act) • An area of special protection for birds (under s.3 of the 1981 Act) • A “European site” within the meaning of regulation 8 of the Conservation of Habitats and Special Regulations 2010 • Any habitat or site afforded policy protection under paragraph 6 of Planning Policy Statement (PPS9) on nature conservation (i.e. candidate Special Areas of Conservation, potential Special Protection Areas and listed Ramsar sites); or any nature reserve established under s.21 of the National Parks and Access to the Countryside Act 1949 	<p>The following types of harm should be considered as significant harm:</p> <ul style="list-style-type: none"> • Harm which results in an irreversible adverse change, or in some other substantial adverse change, in the functioning of the ecological system within any substantial part of that location; or • Harm which significantly affects any species of special interest within that location and which endangers the long-term maintenance of the population of that species at that location <p>In the case of European sites, harm should also be considered to be significant harm if it endangers the favourable conservation status of natural habitats at such locations or species typically found there. In deciding what constitutes such harm, we will have regard to the advice of Natural England and the requirements of the Conservation of Habitats and Species Regulations 2010</p>	<p>Conditions would exist for considering that significant possibility of significant harm exists to a relevant ecological receptor where we consider that;</p> <ul style="list-style-type: none"> • Significant harm of that description is more likely than not to result from the contaminant linkage in question; or • There is a reasonable possibility of significant harm of that description being caused, and if that harm were to occur, it would result in such a degree of damage to features of special interest at the location in question that they would be beyond any practicable possibility of restoration. <p>Any assessment made for these purposes should take into account relevant information for that type of contaminant linkage, particularly in relation to the ecotoxicological effects of the contaminant.</p>

We will always consult with Natural England when considering the “ecological system effects” described in Table 1 and will have regard to its comments before deciding whether or not to make a determination.

Table 2: Property effects

Relevant types of receptor	Significant harm	Significant possibility of significant harm
<p>Property in the form of:</p> <ul style="list-style-type: none"> • Crops, including timber; • Produce grown domestically, or on allotments, for consumption; • Livestock; • Other owned or domesticated animals; • Wild animals which are subject of shooting or fishing rights 	<p>For crops, a substantial diminution in yield or other substantial loss in their value resulting from death, disease or other physical damage. For domestic pets, death, serious disease or serious physical damage. For other property on this category, a substantial loss in its value resulting from death, disease or other serious physical damage.</p> <p>We should regard substantial loss in value as occurring only when a substantial proportion of the animals or crops are dead or otherwise no longer fit for their intended purpose. Food should be regarded as no longer fit for purpose when it fails to comply with the provisions of the Food Safety Act 1990. Where a diminution in yield or loss in value is caused by a contaminant linkage, a 20% diminution or loss should be regarded as a benchmark for what constitutes substantial diminution or loss.</p> <p>Referred to in the revised statutory guidance as “animal or crop effect”.</p>	<p>Conditions would exist for considering that a significant possibility of significant harm exists to the relevant type of receptor where we consider that significant harm is more likely than not to result from the contaminant linkage in question, taking into account relevant information for that type of contaminant linkage, particularly in relation to the ecotoxicological effects of the contaminant.</p>

Table 2 continued: Property effects

Relevant types of receptor	Significant harm	Significant possibility of significant harm
<p>Property in the form of buildings. For this purpose, “building” means any structure or erection, and any part of a building including any part below ground level, but does not include plant or machinery comprised in a building, or buried services such as sewers, water pipes or electricity cables.</p>	<p>Structural failure, substantial damage or substantial interference with any right of occupation. We will regard substantial damage or substantial interference as occurring when any part of the building ceases to be capable of being used for the purpose for which it is or was intended.</p> <p>In the case of a scheduled Ancient Monument, substantial damage should also be regarded as occurring when the damage significantly impairs the historic, architectural, traditional, artistic or archaeological interest by reason of which the monument was scheduled.</p> <p>Referred to in the revised statutory guidance as “building effect”</p>	<p>Conditions would exist for considering that a significant possibility of significant harm exists to the relevant types of receptor where we consider that significant harm is more likely than not to result from the contaminant linkage in question during the expected economic life of the building (or in the case of a scheduled Ancient Monument the foreseeable future), taking into account relevant information for that type of contaminant linkage.</p>

4.10 Significant Pollution of controlled waters and Significant Possibility of Significant Pollution of controlled waters (SPOSP)

The following types of pollution should be considered to constitute significant pollution of controlled waters:

- Pollution equivalent to “environmental damage” to surface water or groundwater as defined by The Environmental Damage (Prevention and Remediation) Regulations 2009, but which cannot be dealt with under those Regulations;
- Inputs resulting in deterioration of the quality of water abstracted, or intended to be used in the future, for human consumption such that additional treatment would be required to enable its use
- A breach of the statutory surface water Environmental Quality Standards, either directly or via a groundwater pathway

- Input of a substance into groundwater resulting in a significant and sustained upward trend in concentration of contaminants (as defined in Article 2(3) of the Groundwater Daughter Directive (2006/118/EC))

If South Lakeland District Council considers it likely that contamination, such as that listed above, is occurring we will consult with the Environment Agency and have strong regard to their advice.

The revised Statutory Guidance also subdivides controlled waters into four categories based upon the likelihood of Significant Possibility of Significant Pollution of controlled waters existing.

Category 1 – Water

This covers land where South Lakeland District Council considers that there is a strong and compelling case for considering that a Significant Possibility of Significant Pollution of controlled waters exists. In particular, this would include cases where there is robust science-based evidence for considering that it is likely that high impact pollution, such as that mentioned above, would occur if nothing were done to stop it.

Category 2 - Water

This covers land where: (i) South Lakeland District Council consider that the strength of evidence to put the land into Category 1 does not exist; but (ii) nevertheless, on the basis of the available scientific evidence and expert opinion, the authority considers the risks posed by the land are of sufficient concern that the land should be considered to pose a Significant Possibility of Significant Pollution of controlled waters on a precautionary basis. This category may include land where there is a relatively low likelihood that the most serious types of significant pollution might occur.

Category 3 – Water

This covers land where the tests set out in Categories 1 and 2 are not met, and therefore regulatory intervention under Part IIA is not required. This category should include land where South Lakeland District Council considers that it is very unlikely that serious pollution would occur or where there is a low likelihood that less serious types of significant pollution might occur.

Category 4 – Water

This covers land where South Lakeland District Council considers that there is no risk, or that the level of risk is very low. Examples include where: no contaminant linkage has been established in which controlled waters is the ‘receptor’; the type of pollution occurring is not considered to be Significant Pollution; or the possibility of water pollution is similar to that which might be caused by ‘background’ contamination.

4.11 Special sites

Any land falling under the description of a 'Special Site', as defined by the Contaminated Land (England) Regulations 2006; will be referred to the Environment Agency, who are the enforcing authority. These include:

- Certain water pollution cases
- Industrial cases
 - Waste acid tar lagoons
 - Oil refining
 - Explosives
 - Certain IPPC sites
 - Nuclear sites
- All land owned or occupied by the Ministry of Defence
- All radioactive Contaminated Land

4.12 Radioactivity

The historical use of radioactive materials in a wide variety of industries has led to a legacy of contamination by radioactive substances, primarily due to a lack of effective regulation or understanding of the hazards. The Part IIA regime was therefore extended in 2006 to include contamination of land by radioactivity. As stated above, such sites fall under the definition of a 'Special Site' and are regulated by the Environment Agency.

However, the 2012 revised statutory guidance does not apply to radioactive contamination of land and it is therefore covered by separate guidance. In the event that land is affected by both radioactive and non-radioactive contaminants both sets of guidance will apply and South Lakeland District Council should decide what is a reasonable course of action, having due regard to both the relevant primary legislation and advice from the Environment Agency.

4.13 Interaction with other regulatory regimes

In addition to its Part IIA powers, South Lakeland District Council may also address contaminated land issues using other regulatory powers, as outlined in the following sections.

4.14 Contaminated land and the planning process

It is the councils policy to encourage, where practicable, redevelopment of brownfield sites within the District.

The National Planning Policy Framework (NPPF) (DCLG, 2012) seeks to prevent unacceptable risks from pollution. Planning decisions should ensure that all new

development is appropriate for its location and that potential land contamination issues are considered in strategic planning and development control decisions.

Paragraph 121 of the NPPF states that planning decisions should ensure that:

The site is suitable for its new use taking account of ground conditions, including 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.

Unlike Part IIA, where a site is affected by contamination, responsibility for securing a safe development rests with the developer and/or landowner and not the original polluter

See the Councils Essential Guide for Developers.

4.15 Building Regulations

Compliance with Building Regulations is a separate issue from the planning regime and approval may also be required. The developer/applicant must therefore ensure that the Building Control Officer is aware of any contamination issues and that the appropriate requirements are met under 'Approved Document C - Site preparation and resistance to contaminants and moisture'. The aforementioned document provides practical guidance for ensuring that new buildings are protected from contaminants.

Requirements under C1 include:

The ground to be covered by the building shall be reasonably free from any material that might damage the building or affect its stability, including vegetable matter, topsoil and pre-existing foundations.

Adequate subsoil drainage shall be provided if it is needed to avoid: the passage of ground moisture to the interior of the building; damage to the building, including damage through the transport of water-borne contaminants to the foundations of the building.

For the purpose of this requirement, 'contaminant' means any substance which is or may become harmful to persons or buildings including substances which are corrosive, explosive, flammable, radioactive or toxic.

Approved Document C has been revised to reflect changes arising as a result of the Building Regulations 2010 and the revisions came into force during 2013.

4.16 Environmental permitting

Some industrial installations have the potential to cause pollution. Since 1990 many of these installations have required an 'authorisation' from South Lakeland District Council or the Environment Agency to operate.

The Environmental Permitting Regulations (England and Wales) 2010 prescribe which industrial installations need to hold permits. The Regulations are designed to minimize the impact from potentially polluting activities and combine the previous Pollution Prevention and Control (PPC) and Waste management Licensing (WML) Regulations. They also include water discharge and groundwater activities, radioactive substances and provision for a number of Directives, including the Mining Waste Directive

There are currently three types of installation classification:

Part A1: All environmental emissions and impacts considered, including air pollution, water pollution, noise, land contamination, energy consumption waste minimization and environmental accident prevention. A1 installations are regulated by the Environment Agency

Part A2: As above but regulated by South Lakeland District Council

Part B: Required to control air pollution and are regulated by South Lakeland District Council

Prior to commencing an operation of a prescribed installation the operator must submit an application to South Lakeland District Council or Environment Agency. The relevant regulatory authority will then consult with statutory bodies for any comments on the application. A permit, containing numerous operating conditions in accordance with government guidance must then be issued or refused. The operator of the prescribed installation must comply with the conditions of the permit or the relevant regulatory authority may take action against them. Operators are also subject to routine inspections to check compliance with conditions.

4.17 Water resources

The Environment Agency deals with possible pollution of controlled waters from historical contamination. They have powers under s161A of the Water Resources Act 1991 and the Antipollution Works Regulations 1999 to ensure action is taken to prevent or remedy pollution of controlled waters. The EA also have powers under the Groundwater Regulations 1998 to prevent pollution of groundwater.

Under the Water Framework Directive the EA must characterise each of the eleven River Basin Districts in England and Wales and assess the impact of human activity on the water bodies within those districts, including rivers, lakes, estuaries, coastal waters and groundwater. The provisions of the Directive have implications for contaminated land as it

may affect the levels of certain pollutants that are likely to be considered as harmful to controlled waters.

4.18 The Environmental Damage (Prevention and Remediation) Regulations 2009

The Environmental Damage (Prevention and Remediation) Regulations 2009 were introduced on 1 March 2009 to implement the provisions of the European Commission's Environmental Liability Directive into law in England.

The Regulations aim to prevent and remedy damage to land, water and biodiversity. They are based on the 'polluter pays principle', i.e. those responsible for environmental damage are required to prevent or remedy damage, rather than the taxpayer. Obligations are placed on businesses (or 'operators' of commercial 'activities' in the words of the Regulations) to put in place precautionary measures to avoid environmental damage and to take remedial action if it occurs.

The Regulations aim to create an incentive to operators of activities that are likely to cause environmental damage to take steps to avoid environmental damage, and to possess adequate funds (e.g. insurance) to pay for the remediation or clean up of any environmental damage they cause. 'Environmental damage' has a specific meaning in the Regulations, and covers only the most severe cases. Existing legislation with provisions for environmental liability remains in place.

5.0 Identification and prioritisation of sites

5.1 Information on the possible presence of contamination

In carrying out its Part IIA duties in a strategic manner, South Lakeland District Council has to date paid due regard to: its own local circumstances; the level of detailed information on the district currently available; and the accessibility of internal/external funding. This facilitates a rational, ordered, efficient and consistent approach to Part IIA, as specified by the Statutory Guidance.

The following aspects have all been considered during implementation of the Part IIA regime:

- Available evidence that significant harm/significant possibility of significant harm or pollution of controlled waters is occurring
- The extent to which human receptors, ecological receptors and controlled waters are distributed across the District
- The history, scale and nature of previous industrial activity within the District which may have given rise to potential contamination
- The extent to which the above receptors are likely to be exposed to a contaminant as a result of previous/current use of the land or its geology/hydrogeology



5.2 Development of key datasets

Since the first Strategy was adopted in 2001, we have identified over 6,000 potentially contaminated land sites. Initial information from external organisations and the councils own records were used to inform of the potential extent of land contamination.

A specialist contaminated land module was later purchased from STM Environmental in order to manage and manipulate the information required to support the inspection process. Following preliminary screening of the key relevant datasets nearly 6,000 potential sites were initially identified. It was important to recognise that the screening tool could only identify potential sites of concern requiring further investigation, and could not be used to provide an indication of the extent of contaminated land throughout South Lakeland. The database is updated as and when new relevant information is received, meaning the prioritisation is subject to change at short notice and the number of sites may also fluctuate as other sites are added or removed from the database.

5.3 Prioritisation of detailed inspection activity

South Lakeland District Council has adopted the following approach to prioritising sites for detailed inspection:

- 1) Identify the location and nature of potential contaminant sources
- 2) Identify the location and nature of receptors
- 3) Find sites where both contaminants and receptors are present
- 4) Score sites according to potential risk
- 5) Prioritise sites for inspection
- 6) Refine prioritisation, where necessary

A wide range of industries may historically have contaminated, or have the potential to contaminate, the land they are sited upon and/or neighbouring land. The Department of Environment (DOE) Industry Profiles provide further information on the processes, materials and wastes associated with individual industries for contaminated land risk assessment.

The sites identified from the preliminary screening were ranked according to potential risk and given an initial prioritisation score in order to determine their priority for inspection. In theory, the sites with the top scores following the preliminary screening were subject to detailed inspection first. However, from time to time other sites have also come to the councils attention and re-prioritisation has taken place. This can occur at any stage during detailed inspection as further information is acquired and evaluated.

6.0 Detailed inspection of contaminated land

6.1 Detailed inspection

Detailed inspection initially involves the collation and assessment of further information through desk study and site reconnaissance. If this preliminary risk assessment identifies that a potentially unacceptable risk from contamination is present, further intrusive field investigation will be required to determine the existence of contaminant linkages and to ultimately decide whether or not the site meets the definition of contaminated land.

6.2 Overview of procedures

The Model Procedures for the Management of Contaminated Land (CLR 11) explains the risk assessment procedure when dealing with potentially contaminated land; it is recommended that a tiered approach be adopted and investigations undertaken in accordance with 'BS10175 (2011) Investigations of Potentially Contaminated Sites – Code of Practice'. The main stages involved in assessment, determination and remediation of contaminated land under Part IIA are outlined overleaf.

Stage 1: Preliminary investigation

(desk study, site reconnaissance and preliminary risk assessment) Consider whether Special Site (is so, contact Environment Agency)

Stage 2: Field investigation and risk assessment

(including collection of soil, water and leachate samples etc)

Following robust, appropriate, scientific and technical assessment, if evidence suggests that the site poses an unacceptable risk from contamination the site should be determined as 'Contaminated Land'. Where there is little or no evidence to suggest that it is contaminated land the council should issue a written statement to that effect to minimise unwarranted blight.

Stage 3: Determination

Identify all Appropriate Persons of the councils intention to determine the land unless the authority considers there is an overriding reason for not doing so.

Provide the aforementioned parties, and the Environment Agency, with a written copy of the 'Record of Determination'

Stage 4: Identification of liable persons

The council should make an initial identification of persons who may be responsible for paying for the remediation actions



Stage 5: Establish remediation actions

Identify Appropriate remediation

Apportion liability between liability groups

Serve Remediation Notices where works haven't been carried out voluntarily

Stage 6: Remediation and verification

Secure compliance and verify remedial works

Where the Council has remediated the land seek to recover costs

Further information on the desk studies, intrusive field investigations and Risk Assessment can be found in our Essential Guide for Developers. Please contact the public protection team for a copy.

6.3 Powers of entry

Under Section 108 of the Environment Act 1995, South Lakeland District Council has been granted statutory powers of entry to gain access to any land for the purpose of implementing their duties under Part IIA. At least seven days notice of proposed entry will be given to the owner/occupier, unless there is an immediate risk to human health.

The council can only exercise these powers if it is already satisfied that;

- there is a reasonable possibility that a contaminant linkage exists; and
- for cases involving intrusive site investigation, it is likely that a contaminant is actually present and a receptor exists (or is likely to exist) given the current land use

Section 108 powers cannot be exercised for intrusive site investigation:

- when the council already has the information it needs to decide whether or not the site appears to be contaminated land
- if a person provides the necessary information within a reasonable and specified timescale

7.0 Determination and remediation of contaminated land

7.1 Determination of contaminated land

There are four possible grounds for the determination of land as contaminated land:

- Significant harm is being caused to a human, or relevant non-human receptor (e.g. crops, livestock, domestic animals, wild animals subject to shooting or fishing)



- There is a significant possibility of significant harm being caused to a human, or relevant non-human receptor
- Significant pollution of controlled waters is being caused
- There is a significant possibility of significant pollution of controlled waters being caused

7.2 Deciding that land is not contaminated land

In carrying out its Part IIA duties, South Lakeland District Council is likely to inspect land that it then considers is not contaminated land (e.g. because there is little or no evidence following inspection and assessment). In such cases the council will issue a written statement to that effect, thereby minimising unwarranted blight. The statement will make clear why the land does not meet the definition of contaminated land under Part IIA. We may choose to qualify the statement (e.g. given that its Part IIA risk assessment may only be relevant to the current use of the land).

It is appreciated that, given the nature of soil contamination and that scientific understanding of risks may evolve over time, it is never possible to know the exact contamination status of any land with absolute certainty. However, as previously stated, the starting assumption of Part IIA is that land is not contaminated land unless there is reason to consider otherwise.

A record of the councils decision, including the reasons for it, will be kept within the Public Protection service. We will also notify the owners of the land and provide them with a copy of the written statement. If appropriate, other interested parties may also be notified of our decision.

7.3 Informing interested parties

Before making a determination, South Lakeland District Council will inform the owners and occupiers of the land, and any other person who appears to the authority to be liable to pay for remediation, of its intention to determine the land (to the extent that we are aware of these parties at the time), unless there is an overriding reason for not doing so.

South Lakeland District Council will also consider whether to give the aforementioned persons time to make representations or to propose solutions that might avoid the need for formal determination. In the spirit of the Part IIA regime, South Lakeland District Council may decide to postpone determination if voluntary remediation is agreed, and the council is satisfied with the measures and timescales proposed. The council may also decide to keep the status of any land under review, in the event that a change of circumstances in the future, may cause the land to be determined as contaminated land.

Once determination as contaminated land has occurred South Lakeland District Council are legally required to give notice of that fact to: the Environment Agency; the owner of the land; any person who appears to the council to be in occupation of the whole or any part of the land; and each person who appears to the council to be an appropriate person.



South Lakeland District Council will prepare a written 'Record of Determination of Contaminated Land' (see also S7.4 on Risk Summaries). As a minimum the document will include: a brief description of the site history; details on all 'contaminant linkages' identified on the site; a summary of the works carried out to date; and confirmation that the requirements of the statutory guidance have been satisfied. This record will also be available to the public.

The 'Determination' process will involve a formal three month consultation period, during which time the council will discuss with all of the Appropriate Persons how the site can be remediated.

There are a number of possible outcomes to the consultation:

1. the Appropriate Persons may agree to undertake remediation themselves (in full consultation with the council) and issue a remediation statement
2. where remediation is not voluntarily undertaken the council will serve a remediation notice on the relevant Appropriate Person(s)
3. if no action is taken the council may use its powers to undertake remediation itself and issue a remediation statement

7.4 Risk summaries

For those sites which are likely to be determined as contaminated land, following full detailed inspection and assessment, South Lakeland District Council will produce a 'risk summary', in a simple and easy format, which will form part of the 'Record of Determination'. This will include:

- A summary of the councils understanding of the risks posed by the site, including all identified contaminant linkages, the potential impacts and the timescale over which the risk may manifest itself
- A description of the uncertainties behind the risk assessment
- A description of the local and/or national context. This must be done in such a way so as to be understandable and relevant to the layperson
- Initial views on possible remediation options, including a brief description of what the remediation might entail, how long it will take, the likely effects on local people/businesses and the net benefits
- Any other factors which may be relevant and support the councils decision making process
- Where the land is likely to be a 'Special Site', the council will seek the views of the Environment Agency and take them into account

Local Authorities will not produce risk summaries:

- For land which will not be determined as contaminated land (e.g. Categories 3 and 4)
- For land which has been prioritised for detailed inspection but which has not yet been subject to risk assessment
- For land determined as contaminated prior to publication of the revised guidance

7.5 Reconsideration, revocation and variation of determinations

If we become aware of further information which we consider significantly alters the basis for the original decision, we may decide to retain, vary or revoke the determination. This may include situations where:

- New information about the land has come to light
- There has been significant changes in legislation
- The establishment of significant case law or precedent
- Revision of guideline values for contaminants

South Lakeland District Council will record its reasons for varying or revoking its determination, alongside the original determination. It will also issue a written statement if remedial action has been taken which stops the land being contaminated land, and a copy of this will be kept with the public register (see Section 9.3).

7.6 Determining liability for remediation

South Lakeland District Council will make an initial identification of persons who may be responsible for paying for the remediation actions.

The strategic policy in respect of environmental damage is that the polluter should pay. The authority will therefore first look for the persons who caused or knowingly permitted each linkage (i.e. a “Class A Persons”).

However, if the pollution incident is historical, the original polluter may no longer be in existence. If no Class A persons can be found, we will usually seek to identify the owners or occupiers of the land (i.e. “Class B Persons”), although this step does not apply to linkages that relate solely to pollution of controlled waters.

The persons responsible for each linkage make up a ‘Liability Group’

Each significant contaminant linkage is treated separately unless it is reasonable to treat more than one linkage together because the same parties are liable. If there is more than one polluter of a site, (e.g. if the site has a long history of different contaminative uses) then South Lakeland District Council must decide what apportionment each appropriate person should pay for the remediation works.



7.7 Orphan linkages

An 'orphan linkage' may arise where:

- a) The significant contaminant linkage relates solely to the significant pollution of controlled waters (and not to human health) and no Class A person can be found
- b) No Class A or B persons can be found
- c) Those who would otherwise be liable are exempted

Liability for remediating an orphan linkage will be determined by the council according to the statutory guidance (s7.92 to s7.98)

7.8 Remediation

Once land has been determined as contaminated land, South Lakeland District Council must consider how it should be remediated and, where appropriate, it must issue a remediation notice to require such remediation. The aim of the remedial work will be to remove the contaminant linkage(s), either by breaking the pathway or by removing the receptor. The standard of remediation should be such that 'Significant Possibility Of Significant Harm' will no longer be caused.

Part IIA states that the enforcing authority may only require remedial actions which are reasonable in terms of costs and the seriousness of the pollution or harm. An appropriate person, or some other person, might choose to carry out remediation to a higher standard (e.g. to increase the value of the land or to prepare it for redevelopment) but this will not be required by the council.

In deciding what is reasonable, we must take into account a number of factors:

- The practicability, effectiveness and durability of the remediation
- The health and environmental impacts of the chosen remedial options
- The financial cost which is likely to be involved
- The benefits of the remediation with regard to seriousness of the harm or pollution of controlled waters.

The remedial action will be deemed reasonable if the benefits of the remediation are likely to outweigh the costs of remediation. Where more than one potential approach is available we will choose what is considered to be the "best practicable technique". This is likely to be the technique which achieves the required standards, to appropriate timescales, whilst imposing the least cost on the persons liable for the remediation costs.

7.9 Verification

For the purposes of remediation, Contaminated Land Remediation (CLR11) defines verification as "the process of demonstrating that the risks have been reduced to meet

remediation criteria and objectives based on a quantitative assessment of remediation performance” (EA, 2010).

The Statutory Guidance states that all remedial works carried out must be verified by a suitably qualified experienced practitioner.

Further details on ‘verification reporting and monitoring’ are contained within the Essential Guide for Developers. Please contact our Public Protection team for a copy.

7.10 Remediation notices

Wherever possible, South Lakeland District council will encourage the voluntary remediation of contaminated land. However, if appropriate remediation cannot be secured by informal agreement the council has powers to serve a remediation notice on appropriate persons. The notice will state what measures need to be carried out to remediate the land in question and the timescales for the work to be done. For sites where there are multiple appropriate persons the notice shall state what proportion of the costs each one is liable to pay. A remediation notice cannot be served within 3 months of that person being notified of the determination as contaminated land

It is an offence under Part IIA not to comply with a remediation notice without a reasonable excuse. However, any person who receives a remediation notice has 21 days from the first day of its service to appeal to the Magistrates Court.

The grounds for such as appeal are set out in the contaminated land regulations. Where an appeal has been made, the Notice is suspended until the Court determines the outcome of the appeal, or the appeal is abandoned.

7.11 Cost recovery/hardship policy

There are a number of situations where an appropriate person is exempt from paying full costs of remediation, for example where ‘hardship’ would result from meeting the costs involved. The council may decide in such cases to waive or reduce the recovery of its costs. There is also provision to place a charge on the land, to secure payment at a later date or in installments.

South Lakeland District Council will devise a ‘Cost Recovery and Hardship Policy’ which will take individual circumstances into account.

This will provide a framework for the council to apply when recovering costs for remediation. The council will promote fairness, transparency and consistency when determining financial responsibility for the remediation of contaminated land, and prevent any hardship on decisions made.

8.0 Funding for inspection and remediation

The Environment Agency historically ran the Capital Projects Programme on behalf of DEFRA. Funding bids for site investigation and remediation were submitted by the applying council and granted or rejected on a case-by-case basis. However due to current financial constraints central government funding has been withdrawn.

In the likelihood that central government funding is not reinstated, whilst South Lakeland District Council have a limited internal budget for investigation, any remediation costs will need to be met by the appropriate persons, when applicable.

9.0 Communication and information management

9.1 Liaison and consultation with other parties

South Lakeland District Council recognises that the issues relating to contaminated land are both wide ranging and complex, requiring the identification and engagement with a wide range of stakeholders. The strategy recognises the need to liaise and communicate with both internal departments (including Development Control, Asset Management etc) & external bodies (including statutory bodies, landowners and the wider general public).

Since implementation of the initial Contaminated Land Inspection Strategy in 2001 the council has established strong formal links with the following external statutory bodies:

- Environment Agency
- Public Health England (formerly Health Protection Agency)
- National Trust
- Natural England (formerly English Nature)
- Food Standards Agency
- DEFRA

Consultation with some/all of the above parties is essential prior to detailed investigation, either because they may have some responsibility for a site (as a regulator, owner or occupier) or involvement (e.g. because they have designated the site as a protected area). Experience has shown that early liaison ensures the avoidance of unnecessary duplication of investigation or overlaps in regulatory activity.

South Lakeland District Council recognises that there is significant scope for members of the public, businesses and voluntary organisations to make a valuable contribution toward the identification of contaminated land within the District. A copy of the revised strategy will therefore be available to download from the councils website and a hard copy will be available for viewing at South Lakeland House.

The contaminated land regime requires the Environment Agency to provide information and advice to Local Authorities. Where the Significant Contaminant Linkages involves controlled



waters the Environment Agency will be asked to provide site specific guidance and may become the enforcing authority if the site meets the criteria for designation as a Special Site.

We also regularly liaise with the other Cumbrian Local Authorities via the 'Cumbria Contaminated Land Officer Group', (a sub group of the Chief Officers/Pollution Group). Representatives from each authority, together with the Environment Agency and Health Protection Agency, meet approximately four times a year. The group has produced a guide to assist developers and site owners involved in the management and assessment of contaminated land and/or where development proposals include sensitive end uses, such as housing. Adherence to the recommendations within the guide ensures that a consistent approach is adopted throughout the County of Cumbria.

9.2 Risk Communication

At the outset of any significant site investigation, a communication strategy will be developed to provide clarity, and to help negate adverse publicity. All potentially interested groups will be regarded as stakeholders in the communication process.

Establishing support for the scientific evaluation may require ensuring that interested parties support the organisation conducting the scientific investigation, the body assessing results, or agreeing any alternative independent assessors.

The objective is to establish South Lakeland District Council as open, transparent, accessible, listening and responsive. An understanding of the risk assessment process will allow parties to "buy into the process".

The councils Communications Team will be engaged at an early stage, together with the participation of other relevant agencies, including the Environment Agency and Public Health England.

9.3 Part IIA Public Register

In accordance with Part IIA and the Contaminated Land (England) Regulations 2006, South Lakeland District Council is required to maintain a Public Register.

The Part IIA Public Register serves as a permanent record of all regulatory action carried out under this regime to catalogue the remediation of any site which has been determined as Contaminated Land and had enforcement notices served. Any sites which have been determined as Contaminated Land and being subject to voluntary remediation, and not requiring further formal action by the regulator, will not appear on the Register.

It is important to note that the Part IIA Public Register is not a register of:

- All sites determined as Contaminated Land
- Sites which may be Contaminated Land
- Sites which are potentially contaminated



- Sites which South Lakeland District Council has investigated as part of a detailed Inspection

The Part IIA Public Register will be kept and maintained by the Environmental Protection Group of the Public Protection Department and is available at www.southlakeland.gov.uk. The register can be viewed free of charge by prior arrangement at the main Reception of South Lakeland House, Lowther Street, Kendal, Cumbria, LA9 4UD.

9.4 Requests for information

If a member of the public requests environmental information it will be considered under the Environmental Information Regulations (EIR). Whilst the council is expected to make environmental information proactively available, there are certain exceptions to disclosure. The regulations are similar to the Freedom of Information Act (FOIA), however some of the main differences are:

- A request can be made verbally or in writing
- The EIRs allow for a 20 working-day extension to consider a large request, whereas the FOIA only allows an extension to consider the public interest test
- The EIRs have a different set of exceptions with regard to the non-disclosure of information, though many share elements with the FOIA
- Under the EIRs the council can make a reasonable charge for providing the information.

9.5 Enquiries

All information on contaminated land and potentially contaminated land is held within the Public Protection Group of the Public Protection Department. All enquiries regarding contaminated land or the revised inspection strategy should initially be directed to:

Public Protection Group, South Lakeland District Council, South Lakeland House, Lowther Street, Kendal, Cumbria LA9 4DQ

Telephone: 01539 733333

Email: info@southlakeland.gov.uk

10.0 Local authority interests in land

10.1 South Lakeland District Councils interest in land

It is recognised that some of the councils landholdings may be contaminated due to their past industrial history. These sites will be risk assessed in accordance with the prioritisation procedure and shall be treated in the same manner as any other potentially contaminated land site within the District.



10.2 Purchase/acquisition of land

Before the council commits itself to the purchase or leasing of any new land, it should consult with Public Protection to ascertain if information is available as to whether the land in question has been historically used by a potentially contaminative activity. Preliminary Investigations, Field Investigations and Risk Assessment may be required.

Once a comprehensive risk assessment has been completed and we are in full possession of information on the contamination status of a site consideration can be given to any future liabilities and cost implications.

10.3 Council leased property

South Lakeland District Council lease sites to organisations who may undertake potentially contaminative activities. In view of this the council must take steps as landowner to ensure that any land which is leased does not become contaminated during the term of the agreement.

To protect the council's interests there should be appropriate conditions included in any lease or tenancy agreements whereby:

- The occupier shall not carry out any activities which may give rise to contamination of land
- Any contamination that does occur on site during the term of the agreement, shall be dealt with in accordance with current environmental legislation
- There are provisions of indemnity by the lessee or tenant or other occupier
- Where there is a known polluting activity taking place, the council shall require a site investigation to be carried out prior to the termination of the lease

The above conditions should safeguard against the potential for future contamination and place responsibility on the tenant, lessee or other occupier to clean up any pollution which occurred during their occupation.

10.4 Selling council owned land

In the event of South Lakeland District Council selling land which has the potential to be contaminated, the local authority will provide all known information to the prospective purchaser. This information may include, but not be limited to, Stage 1: Preliminary Investigations and Stage 2: Field Investigations and Risk Assessments carried out on the councils behalf. If the land has been determined by the council as contaminated land, all reports pertinent to the site will be submitted to the purchaser.



11.0 Action to date and the future

11.1 Sites determined as contaminated land within South Lakeland

The council must focus its resources on identifying and securing remediation of those sites with the greatest potential risk to human health or the environment. As a consequence, the Part IIA approach to securing remediation should only be applied where no other alternative solution exists.

The primary mechanism for assessing and verifying the remediation of contaminated land is through Public Protection's consultation role in the planning regime. This is a major driver in ensuring development of land is made suitable for its proposed usage. The consultation role is fundamental to ensuring that all new developments considered by South Lakeland District Council, including the Lake District National Park Authority, and the Yorkshire Dales National Park Authority will be on land safe for its planned use.

To date, under Part IIA, detailed investigation and determination has occurred at 1 site within South Lakeland:

- One site has been determined as contaminated land. A subsequent and successful funding bid was secured and remediation undertaken at this site

Many additional sites of the 6,000 identified to date, have been subject to risk assessment and remediation through the voluntary, planning and building control processes.

We will continue to support the remediation of sites through the planning process. We will endeavour to proactively secure the remediation of land, and engage with owners. As part of this process, liaison with Strategic Development plays an important role. The re-issued statutory guidance provides for greater clarity in this area.

Sites which pose a significant risk will be inspected as and when they are brought to our attention, and action taken as necessary.

11.2 Review of the inspection strategy

The Authority will review the strategy document formally once every five years to ensure the effectiveness of the inspection strategy in meeting the legal requirements and, so that any new legislation or guidance can be incorporated into the strategy.

References

British Standards Institution (2011) BS 10175:2011: Investigation of Potentially Contaminated Sites – Code of Practice. London: BSI

British Standards Institution (2004) BS EN 1997-1:2004 Geotechnical design. General rules. London: BSI

British Standards Institution (2007) BS EN 1997-2:2007 Eurocode 7. Geotechnical design. Ground investigation and testing. London: BSI

CIRIA (2007) C665 Assessing risks posed by hazardous ground gases to buildings. London: Ciria

Cumbria Contaminated Land Officers Group (January 2013) Development of Potentially Contaminated Land and Sensitive End Uses: An essential guide for developers

DEFRA (2012) Contaminated Land Statutory Guidance. London: HM Government

Department for Communities and Local Government (DCLG) (2012) National Planning Policy Framework. London: DCLG

Department of the Environment (1995) DoE Industry Profiles. EA.

EA(2010) Verification of remediation of land Contamination. EA

EA(2010) Guiding Principles on Land Contamination

Glossary

Term	Meaning
The Act	Environmental Protection Act 1990
The Regulations	The Contaminated Land (England) Regulations 2006 The Contaminated Land (England) (Amendment) Regulations 2012
The Guidance	Environmental Protection Act 1990: Part IIA Contaminated Land Statutory Guidance April 2012
Apportionment	A decision by the authority dividing the costs of carrying out any remediation action between two or more appropriate persons in accordance with section 78F(7) of Part IIA
Appropriate Person	Any person who is an appropriate person, determined in accordance with section 78F of the Act, to bear responsibility for anything which is to be done by way of remediation in any particular case
Contaminant	A substance relevant to the Part IIA regime which is in, on or under the land and which has the potential to cause significant harm or to cause significant pollution of controlled waters for non-radioactive contamination (or harm for radioactive contamination). A contaminant forms part of a 'contaminant linkage'
Contaminant Linkage	The relationship between a contaminant, a pathway and a receptor
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; <ul style="list-style-type: none"> • Significant harm is being caused, or there is significant possibility of such harm being caused; or • Significant pollution of controlled waters is being caused or there is a significant possibility of such pollution being caused."
Controlled Waters	In relation to England has the same meaning as in Part 3 of the Water Resources Act 1991 (includes territorial and coastal waters, inland fresh waters and ground waters), except that "ground waters" does not include waters contained in underground strata but above the saturation zone
Current Use	<ul style="list-style-type: none"> • The use which is being made of the land currently • Reasonably likely future uses of the land that would not require a new or amended grant of planning permission • Any temporary use to which the land is put, or is likely to be put, from time to time, within the bounds of the current planning permission • Likely informal use of the land (e.g. children playing on a site), whether authorized by the owners/occupiers or not • In the case of agricultural land, the current use does not extend beyond the growing or rearing of crops and animals which are habitually grown or reared on the land
Orphan Linkage	Is a significant contaminant linkage for which no appropriate person can be found (Class A & B in relation to human health, Class B only in terms of controlled waters), or where those who would otherwise be liable are exempted by one of the relevant statutory provisions
Harm	Harm to the health of living organisms or other interference with the ecological systems of which they form part and, in the case of man, includes harm to his property

Term	Meaning
Pathway	A route by which a receptor is or might be affected by a contaminant
Pollution of controlled waters	The entry into controlled waters of any poisonous, noxious or polluting matter or any solid waste matter
Receptor	Either: <ul style="list-style-type: none"> • A living organism, a group of living organisms, an ecological system, or a piece of property that could be harmed or adversely affected by a contaminant; and/or • Controlled waters which are being, or could be polluted by a contaminant
Register	The public register, maintained by the council under section 78R of the Environmental Protection Act 1990
Remediation	As defined by section 78A(7) of the Act as: <ul style="list-style-type: none"> • the doing of anything for the purpose of assessing the condition of – (i) the contaminated land in question; or (ii) any controlled waters affected by that land; or (iii) any land adjoining or adjacent to that land; • the doing of any works, the carrying out of any operations or the taking of any steps in relation to any such land for the purpose – (i) of preventing or minimising, or remedying or mitigating the effects of, any significant harm (or significant pollution of controlled waters), by reason of which the contaminated land is such land; or (ii) of restoring the land or waters to their former state; or • the making of subsequent inspections from time to time for the purpose of keeping under review the condition of the land or waters
Remediation Statement	Defined in Section 78H(7) as a statement prepared and published by the responsible person detailing the remediation actions which are being, have been, or are expected to be done as well as the periods within which these things are being done
Risk	A combination of: <ul style="list-style-type: none"> • The likelihood that harm, or pollution of water, will occur as a result of contaminants in, on or under the land; and • The scale and seriousness of harm or pollution if it did occur
Significant harm	Any harm which is determined to be significant in accordance with the Contaminated Land Statutory Guidance
Significant Possibility of Significant Harm to Human Health (SPOSH)	Possibility of significant harm as it applies to human health, from the risk posed by one or more contamination linkages, in accordance with the Contaminated Land Statutory Guidance
Significant Contaminant Linkage	A contaminant linkage which gives rise to a level of risk sufficient to justify a piece of land being determined as contaminated land
Substance	Has the same meaning as 'pollutant' and 'contaminant'. For non-radioactive contamination, includes any natural or artificial substance, whether in solid or liquid form or in the form of a gas or vapour
Sustainable Development	Development which meets the needs of the present generation without compromising the ability of future generations to meet their own needs
Unacceptable risk	A risk of such a nature it would give grounds for land to be considered as Contaminated Land under Part IIA