



CONTAMINATED LAND STRATEGY 2022

Part IIA of the Environmental Protection Act 1990

Communities and Public Protection
Communities and Housing Services

March 2022

EXECUTIVE SUMMARY

Renfrewshire Council's Contaminated Land Strategy was last revised in 2010. This revision provides a brief update to clearly set out the position and demonstrate a consistent approach with other Council and Scottish Government plans and policies.

Part IIA progress to date has been reviewed in Renfrewshire, and more widely within Scotland, in considering the best way forward.

As per the 2010 strategy, it is anticipated that redevelopment and regeneration will continue to drive the investigation and remediation of potentially contaminated land across Renfrewshire.

Having reviewed the number of planning applications received on brownfield sites in recent years, it is clear that many formerly used (and potentially contaminated) sites in Renfrewshire are coming back into productive use via mechanisms other than Part IIA, in most cases without requiring significant public expenditure.

During the period of this strategy there will be a focus on re-assessing and updating the prioritisation list to ensure the best available information is being held and acted upon.

Any complaint or information received about potential land contamination on any site will continue to be investigated, in line with statutory duties.

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1 Introduction

This document updates Renfrewshire Council's Contaminated Land Inspection Strategy which was published in 2010.

There have been no changes to the overall aims and objectives of the 2010 strategy and this update is intended to compliment, rather than fully replace it. The process of redevelopment and regeneration in Renfrewshire continues to be the main driver for the investigation and remediation of potentially contaminated sites, which is consistent with local authorities across Scotland.

Where land is proposed for redevelopment, or is being redeveloped, it is always more appropriate to deal with any contamination issues via the planning regime than under Part IIA.

Where land remains undeveloped, it may not ever meet the legal definition of 'Contaminated Land' if no significant pollutant linkage (comprising a source, pathway and receptor) can be identified. Part IIA only considers whether land is suitable for its *current* use whereas the planning regime requires that land is made suitable for a *proposed* end use as permission is given for that use.

To date, no sites in Renfrewshire have been determined to meet the legal definition of 'Contaminated Land'.

2 Scottish Government Policy and Legislation

2.1 Part IIA Regulatory context

The statutory contaminated land regime came into force in Scotland on 14th July 2000.

Part IIA of the Environmental Protection Act 1990 (hereafter referred to as 'Part IIA') was inserted by Section 57 of the Environment Act 1995 and imposes a duty on each local authority to strategically inspect its area for the purpose of identifying land in their areas where historical contamination is causing unacceptable risks to human health and/or the wider environment. Local authorities are also required to produce a written strategy outlining how this duty will be fulfilled, which should be kept under periodic review.

The Part IIA legislation specifically focuses on land which has become contaminated as a result of past activity e.g. by legacy industrial, mining and waste disposal practices. The prevention of new pollution as a result of present-day activities is controlled via other regulatory regimes including (but not limited to) the following:

- Environmental Liability Directive (2004/35/EC)
- Pollution Prevention & Control (Scotland) Regulations 2000
- Control of Major Accident Hazard Regulations 2015
- Health & Safety at Work act 1974
- Water Environment (Controlled Activities) (Scotland) Regulations 2005

Regulation of 'new' pollution arising as a result of current activities is outwith the scope of Part IIA and is not discussed any further within this document.

2.1.1 The legal definition of 'Contaminated Land'

Section 78A(2) of the Environmental Protection Act 1990 gives the statutory definition of contaminated land as

"Any land which appears to the local authority in whose area it is situated to be in such a conditions, by reasons 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."*

The definition enables the identification and remediation of land on which contamination is causing unacceptable risk to human health or the wider environment.

Importantly, the definition does **NOT** include all land where contamination is present. This is explained further below.

2.1.2 Pollutant linkages and risk assessment principles

Before a Local Authority can consider whether any land meets the definition of 'Contaminated Land' it must first be satisfied that a pollutant linkage, which comprises all three of the following elements, is present on the land:

- A contaminant
- A pathway
- A relevant receptor

Unless all three elements of a pollutant linkage are present, there can be no risk and the land will not be considered as 'Contaminated Land'.

2.1.3 Defining a significant pollutant linkage

Once a pollutant linkage has been identified, the Local Authority must then consider whether that pollutant linkage is resulting in:

- a) **Significant harm** to the identified receptor
- b) **A significant possibility of significant harm** being caused to that receptor
- c) **Significant pollution of the water environment**
- d) **A significant possibility of significant pollution of the water environment**

The terminology in bold above has specific meaning, and definitions are provided within the current Statutory Guidance (SE/2006/44)¹. Whether the possibility of significant harm being caused is significant should be determined in accordance with Table B at paragraph A.31 of the statutory guidance.

2.2 Part IIA statutory guidance:

First issued in 2000 (as Scottish Executive Circular 1/2000) and revised in 2006 (SE/2006/44), the statutory guidance which accompanies Part IIA sets out the Scottish Government's objectives with respect to contaminated land and highlights the 'suitable for use' approach.

This approach recognises that the risks presented by contamination will vary greatly according to the use of the land and a wide range of other factors, such as the underlying geology. Risks therefore need to be assessed on a site-by-site basis.

The 'suitable for use' approach consists of three elements:

- Ensuring that land is suitable for its current use
- Ensuring that land is made suitable for any new use, as planning permission is given for that new use
- Limiting the requirements for remediation to the work necessary to prevent unacceptable risks to human health or the environment in relation to the current use or future use of the land for which planning permission is being sought

2.3 The role of the Scottish Environment Protection Agency (SEPA):

The primary regulatory role under Part IIA rests with Scottish local authorities, which reflects their function under the statutory nuisance regime and complements their role as planning authorities. In certain specific circumstances, SEPA is the enforcing authority for contaminated land e.g. for 'special sites' and radioactive contaminated land.

In their role as lead regulator under both the planning regime and Part IIA, local authorities may choose to consult with SEPA with regard to potential pollution of the water environment.

2.4 Part IIA progress in Scotland

Since the introduction of the contaminated land regime via Part IIA in July 2000, only 9 of the 32 Local Authorities in Scotland have determined any sites within their area to meet the legal

¹ <https://www.gov.scot/publications/environmental-protection-act-1990-part-ii-a-contaminated-land-statutory-guidance/documents/>

definition of 'Contaminated Land'. Renfrewshire Council has not identified any site to be 'Contaminated Land'.

At the time of writing there are only 20 such sites in Scotland, which demonstrates that Part IIA has not emerged as a significant driver for the regeneration of brownfield land.

The Scottish Government's website² includes the following comment about Part IIA progress:

"The amount of contaminated and polluted land in Scotland has been steadily decreasing as many high-value sites have been cleaned up as part of redevelopment projects. The regime builds on this progress by providing a route for remediation of site of low development value, or where there are other barriers to redevelopment"

2.5 Development Management

2.5.1 The planning process

Land contamination can be addressed by the planning system, and guidance to planning authorities is set out in Planning Advice Note (PAN) 33 'Development of Contaminated Land' (October 2000).³

In contrast to the limited progress made under Part IIA across Scotland, many potentially contaminated sites are currently being re-developed via the planning process – some high-profile examples in Renfrewshire include the former Royal Ordnance Factory in Bishopston, and the Ciba Geigy/BASF pigment works in Paisley.

Contamination is a 'material consideration' when planning applications are being determined and, where necessary, a planning consent can include conditions requiring investigation and remediation of the site prior to commencement of any new use.

2.5.2 Building Standards:

Regulation 3.1 of the Building (Scotland) Regulations 2004, which set out functional standards for buildings, requires that *"Every building must be designed and constructed in such a way that there will not be a danger to the building nor a threat to the health of people in and around the building due to the presence of harmful or dangerous substances"*.

2.5.3 Development on brownfield land in Renfrewshire

Between 2015 and 2021 the Environmental Improvements Team (which has responsibility within the Council for contaminated land matters) was consulted by colleagues in Development Management and Building Standards on over 700 planning applications and 400 building warrant applications on brownfield sites.

Complex technical reports have also been removed (including site investigations, remedial strategies and verification/completion reports) relating to potential contamination on more than 100 multi-unit residential development sites (totalling circa 5,500 houses and 1,250 flats) as well as around 100 commercial/industrial, education and leisure developments on formerly used land.

² <https://www.gov.scot/policies/pollution/contaminated-land/>

³ <https://www.webarchive.org.uk/wayback/archive/20150218144707/http://www.gov.scot/Publications/2000/10/pa n33>

Furthermore, since 2017, 1,422 new homes have been completed on brownfield and previously used sites, which is 85% of the total housing completions during this period.⁴

This clearly demonstrates that brownfield sites in Renfrewshire are coming forward for redevelopment and providing an opportunity for ground contamination to be addressed outwith the statutory contaminated land regime. In practice, developers tend to adopt a 'minimal risk' approach to remediation, whereas Part IIA can only require removal of 'unacceptable risks'. This means redevelopment of a site under planning invariably results in a higher standard of remediation than could be enforced under the Part IIA legislation.

⁴ Renfrewshire's Vacant and Derelict Land Strategy 2020

3 Renfrewshire Council Resourcing and Responsibilities

Since the 2010 revision to this Strategy, there have been organisational changes within Renfrewshire Council. Responsibility for contaminated land currently lies with the Communities and Public Protection service within Communities and Housing Services.

3.1 Staffing

Within Communities and Public Protection, the Environmental Improvements team includes two full-time specialist contaminated land officers. The officers' workload includes both reactive tasks (e.g. providing technical support to colleagues in Development Management and Building Standards in relations to planning and building warrant applications; responding to public and internal enquiries for information) and strategic Part IIA duties.

3.2 Duties

The majority of the contaminated land officers' workload is made up of tasks related to development management and regeneration (e.g. providing specialist technical review of reports submitted in relation to planning or building warrant applications).

In addition to advising colleagues in Planning and Building Standards, other Council services (e.g. Assets & Estates, Legal Services, Land Services) regularly request input in relation to a range of Council activities that could be impacted by the presence of historical contamination (e.g. land/asset disposals or leases, Council house building programmes, community projects, large infrastructure projects e.g. the Glasgow Region City Deal).

The officers are also responsible for responding to requests for environmental information made by members of the public, in line with the Council's obligations under the Freedom of Information (Scotland) Act 2002 and Environmental Information (Scotland) Regulations 2004.

3.3 Funding

3.3.1 Part IIA

The Scottish Government currently provides no ring-fenced funding to Local Authorities for the investigation and/or remediation of potentially contaminated land, and the costs associated with such works can be significant. As well as liabilities from former Council operations and assets, the Part IIA legislation requires local authorities to take responsibility for cleaning up other sites in certain circumstances e.g. where the original polluter no longer exists or cannot be found.

As an example of the scale of potential costs, the remediation at Royal Inch Crescent in Renfrew (a private development of 26 houses built in the 1970s on a former gasworks) was funded by a grant of £3.25 million from the Scottish Executive in 2007.

This dedicated source of central government funding is no longer available and the Council would bear the costs of any future investigation/remediation works.

3.3.2 Planning

For long-term developments on brownfield sites that require significant regulatory input over a number of years, agreements made under Section 75 of the Town and Country Planning (Scotland) Act 1997 can provide an additional funding stream. Securing a contribution from landowners can help ensure that the Council has sufficient resources to fulfil its regulatory role without causing impacts/delays to other projects. This may include the commissioning of external environmental consultants when required.

3.4 Additional activities

Officers contributed to the content of the 2019 Environmental Protection Scotland document “*Land Contamination and Development – Guidance for assessing and addressing land contamination issues to meet the requirements of contaminated land regulators in Scotland*” which provides guidance on how land contamination should be addressed as part of the development management process.

This document provides a comprehensive introduction to dealing with land contamination matters and aims to ensure consistency in dealing with land contamination across the country. It can be downloaded from the EPS website⁵ - it is also signposted from the Council’s website.

In addition, officers are active contributors to the Central and West SEPA/Local Authority Contaminated Land Liaison Group, the Environmental Protection Scotland Expert Advisory Group on Land Quality and the Scottish Contaminated Land Forum. Officers also participate in both Scotland and UK-wide email forums that promote consistency and knowledge sharing among local authorities and also good practice in the wider contaminated land industry.

⁵ <https://www.ep-scotland.org.uk/guidance/>

4 Renfrewshire Council Policy

The Council's Contaminated Land Strategy is subordinate to (but consistent with the aims, objectives, priorities and timescales of) other strategic plans and policies setting out the Council's long-term vision for Renfrewshire, as outlined within the following sections.

4.1 Council Plan 2017-2022

This plan sets out Renfrewshire Council's strategic vision of "*working together for a thriving and connected Renfrewshire, creating opportunities for all*"

The Council Plan is a "*key strategic document for the organisation, setting out for partners, elected members, employees, local people, businesses and communities the key priorities which we will focus on over the next five years*" and includes the following key outcomes:

- Reshaping our place, our economy and our future.
- Building strong, safe and resilient communities.
- Tackling inequality, ensuring opportunities for all.
- Creating a sustainable Renfrewshire for all to enjoy.
- Working together to improve outcomes.

The redevelopment of potentially contaminated land plays an important role in all of the above key outcomes.

4.2 Our Renfrewshire – Renfrewshire's Community Plan 2017-2017

The Community Plan has been developed together and signed up to by key public, private and third sector organisations. It marks a shared responsibility to work together to get things right for the people of Renfrewshire. The vision for the plan is "*Working together to make Renfrewshire a fairer, more inclusive place where all our people, communities and businesses thrive*" and its priorities are set out below:

- Our Renfrewshire is thriving: maximising economic growth, which is inclusive and sustainable
- Our Renfrewshire is well: Supporting the wellness and resilience of our citizens and communities
- Our Renfrewshire is fair: Addressing the inequalities which limit life chances
- Our Renfrewshire is safe: Protecting vulnerable people and working together to manage the risk of harm.

The redevelopment of brownfield and potentially contaminated land can play an important role in addressing these key priorities.

4.3 Adopted Renfrewshire Strategic and Local Development plan

The Development Plan for Renfrewshire consists of the Clydeplan Strategic Development Plan (2017) and the Renfrewshire Local Development Plan (2021).

The Renfrewshire Local Development Plan (2021) sets out the vision, spatial strategy, sustainable objectives and policies for Planning in Renfrewshire for the next 10 years, including "*continued focus...on the redevelopment and regeneration of brownfield and previously used sites to regenerate and enhance existing places.*".

The plan acknowledges the important role that brownfield sites play in Renfrewshire and “...promotes the delivery of sustainable mixed communities with a focus on available brownfield land and previously used land to meet the majority of Renfrewshire’s Housing Land Requirements”

4.3.1 Finalised Housing Audit 2019

Annual surveys provide an evidence base for the preparation of policies and allocation of land within the Local Development Plan. The Housing Land Audit identifies potential housing land within Renfrewshire.

Of the 113 sites identified in the 2019 audit as active land supply, 93 have been classed as brownfield.⁶ This is the most recently published audit for Renfrewshire.

4.3.2 Local housing strategy (2016-2021)

The Local Housing Strategy builds upon the Council Plan and the Local Development Plan Proposed Plan to deliver housing on brownfield and previously developed sites.

4.3.3 Strategic Housing Investment Plan 2022-2027

The Strategic Housing Investment Plan sets out how investment in affordable housing will be targeted to meet the objectives of Renfrewshire’s Local Housing Strategy whilst meeting current and future affordable housing supply targets.

Many of the sites included in this programme are vacant/derelict or brownfield.

4.4 Renfrewshire Vacant and Derelict Land Strategy 2020

The Renfrewshire Local Development Plan prioritises the redevelopment of brownfield and previously used land. However, not all vacant or derelict sites will be viable for redevelopment for residential or commercial use. This may be due to factors like economic viability, remediation requirements, site size or location.

Renfrewshire Council surveys vacant and derelict land on an annual basis to inform the mandatory return for the Scottish Government’s Vacant and Derelict Land Survey (SVDLS). This survey provides evidence of the amount of vacant and derelict land across Renfrewshire and the progress made in bringing such sites back into productive use.

The Council’s most recently published Vacant and Derelict Land Strategy (2020) aims to reduce the amount of vacant and derelict land in Renfrewshire by promoting new commercial and residential developments as well as the creation of enhanced green spaces, green corridors and linked spaces for the purpose for species dispersal.

The 2020 document states that in 2019, 149 hectares of derelict land (defined as land “...damaged by development, so that it is incapable of development for beneficial use without some remedial works”) and 91 hectares of vacant land (“land within a settlement that has been previously developed, without physical constraint, and which the planning authority has indicated is available for redevelopment”) were recorded. This is equivalent to just 0.9% of Renfrewshire’s total area. Renfrewshire has seen a reduction of 75% in the level of vacant and derelict land over the last ten years (2009-2019). Some land has been redeveloped for residential and industrial/business use, and some smaller sites have become established as open spaces, growing grounds and community spaces.

⁶ Internal resource (GIS_Content.SDE.HLAA2019_Active_Land_Supply)

In 2019, approximately 86% of vacant and derelict land across Renfrewshire was in private ownership.

This provides good evidence that formerly used sites are coming back into productive use via mechanisms other than Part IIA, in most cases without significant public expenditure.

5 Renfrewshire Council's Contaminated Land Strategy 2022

There is no to change to the approach to the physical inspection of sites, as set out in the 2010 strategy. Land redevelopment and regeneration will continue to be the principal driver for the investigation and remediation of potentially contaminated sites throughout Renfrewshire.

Any complaints or new information that comes to light regarding any site e.g. concerns raised by members of the public or other stakeholders will be responded to and investigated.

Voluntary remediation will be supported by engaging with any landowners who advise of their intention to remediate land outwith the formal development management or Part IIA enforcement processes.

5.1 Key Part IIA related practical steps

A key focus within this strategy is to re-assess and update the large amount of information currently held.

5.1.1 Reviewing the prioritisation of sites

The legislation requires local authorities to identify, in a "*rational, ordered and efficient*" manner, the land within their areas where the most pressing and serious land contamination issues are likely to be present, and to concentrate resources on those areas in the first instance.

In order to do this, all potentially contaminated sites within the council area must first be identified and then arranged in order of priority.

The model originally used by the Council to prioritise sites utilised various datasets (e.g. commercially available historic maps and geological maps) to identify the potential presence of contamination sources, pathways and receptors for each site.

There are some known issues with the current prioritisation list – for example, some sites were missed off the original list in error and now need to be added in.

In addition, new information has become available for a large number of sites (estimated at around 25% of the land parcels on our current list) since the list was originally created in the early 2000s. In many cases, records show that contamination has already been addressed as the sites have been redeveloped through the planning process. Such sites are now considered as a much lower priority for inspection as any pollutant linkage should have been removed.

The critical review of the existing prioritisation list will be a complex exercise. It will include rationalising GIS data layers, which form the basis for when and how the service has been consulted by colleagues on planning and building warrant applications and constructing a working model that can be used to maintain an improved prioritisation list going forward.

5.1.2 Work programme

A range of tasks will need to be completed including:

- Rationalising GIS data layers by merging various sets of mixed-quality and mixed-source data; removing any duplicate entries and verifying the extent of affected land parcels;
- Digitising information on historical tank licences obtained from Trading Standards and predecessor (district council era) local authorities;

- Re-assessing the scoring mechanism and the scores assigned to each site;
- Adding and scoring sites that were omitted from the original list in error (c150 identified to date);
- Removing/downgrading sites known to have been redeveloped through the Planning process; and
- Reviewing and updating GIS records of private water supplies to provide supporting information on potential pathways and receptors for contamination.

At the end of this process, the Council will have a 'reality checked' prioritisation list, which will be fit for purpose and provide support to/for the delivery of Council policies.

5.2 Workload planning

Contaminated land officers will undertake these tasks in addition to their day-to-day reactive workload. Due to the statutory timescales required for certain responses, and the Council's desire to facilitate development on brownfield sites, work relating to active planning consents, building warrants and environmental enquiries will take priority over these scheduled Part IIA tasks. As stated, any new information coming to light about any site will be investigated in terms of statutory duties and this strategy.

5.3 Interaction with other regulatory functions

5.3.1 Planning

Ground contamination will be addressed before redevelopment starts by using planning conditions requiring ground investigation and (where necessary) remediation to be undertaken. Conditions to require that documentation confirming satisfactory completion of works is submitted and approved prior to occupation of any new development will also be used.

5.3.2 Building standards

Through the building warrant consultation process, applicants will be made aware of the known/suspected presence of contamination on their site. Applicants will be advised of any remedial measures known to be present on site (e.g. clean cover layers in gardens, gas protection measures in buildings) which must not be compromised by proposed building works.

6 Timescales

The rationalisation of the prioritisation list is expected to be a lengthy and resource-intensive exercise, with a timescale to completion of 3-5 years estimated.

Revisions to this strategy document will be published as and when appropriate e.g.

- To report on completion of the tasks presented in Section 5; and/or
- Following any changes to the Scottish Government legislation and guidance that underpins our current approach (e.g. PAN33, Part IIA statutory guidance)

The above notwithstanding, it may be necessary in certain circumstances to expedite timescales for the inspection and assessment of a particular site – for example, should additional information come to light that suggests that significant harm, significant possibility of significant harm, or significant pollution of the water environment is (or may be) occurring.

7 Regeneration Case Studies

The following sections present some recent and on-going regeneration case studies on high profile brownfield sites in Renfrewshire.

7.1 Royal Ordnance Factory, Bishopton

The site comprised three separate factories engaged in the production of munitions from the early 1900s until the early 2000s. The site, comprising some 964 hectares, is currently being redeveloped as Dargavel Village and the masterplan proposals include:

- 4000 new homes.
- Infrastructure, including a new motorway junction, link roads, park and ride facilities.
- Retail and Education provision, including a new village centre and primary school.
- Community provision, including healthcare facilities.
- Recreation and open space facilities, including parks and sports pitches.
- A 450-hectare Community Woodland Park.

Contaminated land officers are working closely with the current site owners (BAE Systems) as they remediate the site in stages. Prior to handing over development platforms to new owners/developers, BAE Systems must demonstrate that the site is suitable for its proposed new use in compliance with their planning obligations.

By end-2021, some 460 acres of land had been remediated with over 1,900 new homes occupied.

7.2 Ciba-Geigy/BASF former pigment works, Paisley

A large pigment manufacturing plant operated on the site from the 1950s until 2015. Site ownership and activities varied over the years, but the main industrial process was pigment production for colouring inks, paints, paper and plastic.

The site comprises approximately 20 hectares of land and a 470-unit residential development is currently under construction.

Given the industrial nature of activities on the site, the 'in principle' planning consent (granted in 2016) placed obligations on the applicant to investigate the site and, where necessary, carry out appropriate remediation on the site.

A variety of remedial activities (e.g. removal and offsite disposal of material, bioremediation, placement of capping layers and inclusion of ground gas/radon protection measures) are being incorporated as the development progresses. Satisfactory completion of these works must be reported to the Council to satisfy planning conditions attached to the relevant consents.

8 Part IIA case studies – update since 2010

8.1 Linwood – Erskinefauld Park

At the time of the 2010 revision to the strategy, Part IIA investigations in the Erskinefauld Park area of Linwood were ongoing.

The outcome of these investigations, reported in 2014, was that no part of the investigated area was considered to meet the legal definition of 'Contaminated Land'.

9 Useful links

There are many sources of guidance regarding the investigation, assessment and remediation of potentially contaminated land.

The following web pages provide a good basic introduction to the subject:

<https://www.gov.scot/policies/pollution/contaminated-land/>

<https://www.sepa.org.uk/regulations/land/contaminated-land/>

<https://www.gov.uk/guidance/land-contamination-how-to-manage-the-risks-the-risks>

<https://www.ep-scotland.org.uk/guidance/>

Legislation relevant to Scotland can be searched and viewed here:

<http://www.legislation.gov.uk/browse/scotland>

10 Points of Contact

Further information regarding land contamination matters within Renfrewshire is available via the following points of contact:

Telephone: 0300 300 0380

Email: e-prot.es@renfrewshire.gov.uk