



**Land Contamination and Development Management
Summary Guidance and Checklists**



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Contents

INTRODUCTION.....1

DEVELOPMENT MANAGEMENT.....2

RISK ASSESSMENT FRAMEWORK.....3

PHASE 1 HAZARD IDENTIFICATION AND ASSESSMENT.....4

PHASE 2 RISK ESTIMATION AND EVALUATION6

Generic Quantitative Risk Assessment6

Detailed Quantitative Risk Assessment8

PHASE 3 REMEDIATION; DESIGN, IMPLEMENTATION & VERIFICATION.....9

Remediation9

Completion Reporting11

PART IIA12

FURTHER GUIDANCE PUBLICATIONS13



Land Contamination and Development Management

Guidance for assessing and addressing land contamination issues to meet the requirements of the local planning authority

INTRODUCTION

Land that has been previously occupied by or situated adjacent to industrial, commercial or agricultural activities may be affected by contamination from chemicals and ground gas generation. Sometimes contaminants may even be present naturally.

Land contamination is addressed voluntarily by landowners or regulated by the Local Authority through development management and under Part IIA of the Environmental Protection Act 1990 (Part IIA)¹.

Failure to identify and remediate significant pollutant linkages whilst developing a site may result in its determination as Contaminated Land under Part IIA¹ and remediation actions will be enforced by the Local Authority.

This guide is intended to provide planning agents, developers and consultants with advice on what information is required, so that the Local Authority can discharge its statutory responsibilities relating to Planning Applications and Building Standards.

“The responsibility for the safe development of a site rests with the developer”

Planning Advice Note 33 (PAN33)²



This summary guidance and checklists should be read in conjunction with PAN 33², the Building (Scotland) Regulations Technical Handbook³ and the Model Procedures for the Management of Land Contamination (CLR 11)⁴.

These checklists indicate the minimum level of reporting required by contaminated land regulators

DEVELOPMENT MANAGEMENT

A key role of development management with regard to land contamination is to ensure that land is made suitable for its intended use.

Scotland's policy for managing the development of land applies the **suitable for use** approach to address our historic legacy of land contamination. Risks therefore need to be assessed on a site-by-site basis and each phase of assessment should be site specific.

The **suitable for use** approach, defined by PAN33² consists of three elements:

- i. Ensuring that land is suitable for its current use;**
- ii. Ensuring that land is made suitable for any new use, as planning permission is given for that new use; and**
- iii. Limiting 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.**

It is important to consider potential contamination risks that may impact upon water and the wider environment, irrespective of the proposed development land use.

Building (Scotland) Regulations 2004³ requires every building to be designed and constructed in such a way that there will not be a threat to the building or the health of people in or around the building due to the presence of harmful or dangerous substances.

The applicant needs to satisfy the Planning Authority that unacceptable risk from contamination will be successfully addressed through remedial action without undue environmental impact during and following the development.

Where an agreed remediation scheme includes future monitoring and maintenance schemes, arrangements will need to be made to ensure that any subsequent owner is fully aware of these requirements and assumes ongoing responsibilities that are tied to the land.

In the course of considering site investigation, assessment, remediation and completion reports issued as part of a planning application submission, the contaminated land regulator may consult with Scottish Environment Protection Agency (SEPA) for technical advice.

RISK ASSESSMENT FRAMEWORK

A risk assessment is a process that considers all the pollutant linkages and evaluates the likelihood or probability of harm being caused to the identified receptors.

A good environmental risk assessment can transform what may sometimes appear to be an extremely detailed, complex and resource-intensive process into a practical aid to decision-making.

Information for potential contaminative sources present within a site may be limited or unavailable, but these potential contamination sources should not then be disregarded.

The UK risk assessment framework is based on a phased approach (PAN33² and R&D 66⁶):

- Phase 1** Hazard identification and assessment (desk study)
- Phase 2** Risk estimation and evaluation (Generic and Detailed)
- Phase 3** Remediation; design, implementation & verification

The site assessment comprises the following key components (PAN 33², R&D 66⁶);



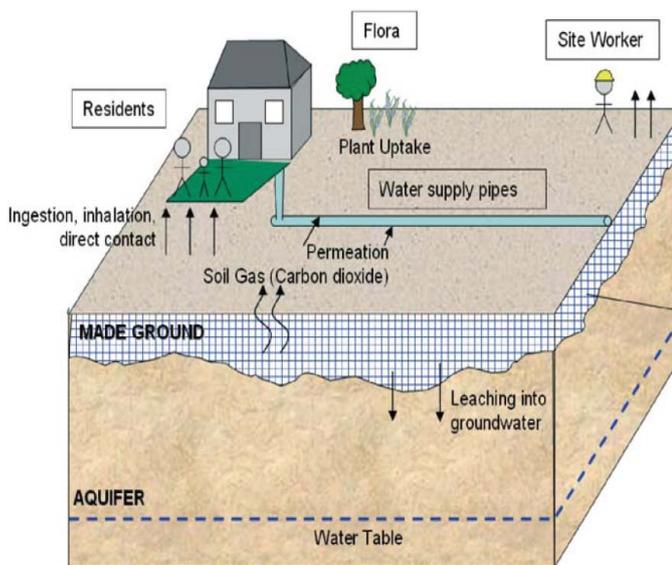
Competent and experienced persons must carry out all elements of the site assessment. Usually, this would mean commissioning consultants or specialists. These persons must be familiar with all elements of modern risk assessment and site investigation techniques. They should also be familiar with current UK policy and the legislative framework surrounding land affected by contamination.

All risks must be fully evaluated, to ensure that justifiable conclusions about the nature and level of risk have been drawn.

All recommendations must be defensible and any uncertainties of the risk evaluation process must be identified and recorded.

PHASE 1 HAZARD IDENTIFICATION AND ASSESSMENT

This initial phase comprises preliminary investigations, also known as a desktop study. This is because the majority of the investigations comprise office based research. The aim of this phase is to identify and assess the potential risks that could be present at a particular site.



Conceptual site models are an essential element of the assessment and present the possible relationships between identified potential **pollutant linkages**.

A **pollutant linkage** is the relationship between **source**, **pathway** and **receptor**. The potential for harm only occurs when the linkage between all three elements is complete.

For further information on creating a **conceptual site model** and carrying out a preliminary qualitative risk assessment please refer to CLR 11⁴ and R&D 66⁶.

Understanding the history of a site is crucial to understanding the potential for source

contaminants to be present. It is important that low risks identified through screening processes are not discarded entirely from the remainder of the assessment process.

A site containing contaminants may not cause significant harm to a receptor in its existing use, but where a development is proposed there is the possibility that significant pollutant linkages will be created.

The types of receptor to be protected are defined within statutory guidance⁵ as;

Human Beings;

The Water Environment includes all surface waters (rivers, lochs, canals, transitional waters and coastal waters), groundwater and wetlands;

Ecological systems that are designated protected areas, such as Sites of Special Scientific Interest, land declared a national nature reserve, etc; *and*

Property in the form of buildings, services, domestically grown produce, crops, livestock, owned or domesticated animals including wild animals that are the subject of shooting and fishing rights.

Land contamination may present a risk to human health and the environment through various pathways (PAN 33²);

- Direct uptake of contaminants into the food chain or ecosystems;
- Direct ingestion or inhalation of, or contact with, contaminants;
- Contamination of water resources;
- Fire and explosion of combustible contaminants; and
- Attack on building materials and services by corrosive contaminants.

A **walkover survey** should be carried out by a competent person to identify or confirm land use, potential receptors, obvious contamination, evidence of harm, access constraints and the presence of **invasive species** such as Japanese Knotweed, which should be treated or fenced off prior to investigation equipment entering the site.

The contaminated land regulator should be contacted at this initial phase to highlight any known issues associated with the site

The following checklist is indicative and is only to be used as a guideline for some of the key requirements.

Phase 1 Checklist (minimum requirements)



	<p>Purpose and Aims of the Study</p> <p>Include details of the proposed development.</p>
	<p>Site Location Plans</p> <p>And other supporting plans i.e. current, proposed, historical, environmental.</p>
	<p>Historical Background</p> <p>Previous land uses and potentially contaminative activities within the site and surrounding area.</p>
	<p>Consultations</p> <p>Local Authority Services, SEPA, SNH, Archaeologist, Utilities, Anecdotal etc.</p>
	<p>Environmental Setting</p> <p>Topography, Hydrology, Geology, Hydrogeology, Archaeological and Ecological considerations.</p>
	<p>Reconnaissance/ walkover survey</p> <p>Include survey records and consideration of invasive species (this may impact on future investigation design and remediation plans).</p>
	<p>Conceptual Site Model</p> <p>Identification and description of potential pollutant linkages associated with the proposed development.</p>
	<p>Qualitative Risk Assessment</p> <p>Subjective evaluation on the level of risk associated with each identified potential pollutant linkage.</p>
	<p>Conclusions & Recommendations</p> <p>Consider if further assessment is required and provide outline investigation proposals to complete gaps in the conceptual site model.</p>

PHASE 2 RISK ESTIMATION AND EVALUATION

Generic Quantitative Risk Assessment

At this level, risk assessment criteria are derived using generic assumptions about the characteristics and behaviour of sources, pathways and receptors within the site.

Where conservative assumptions have been made, it may be possible to apply the resulting criteria as a preliminary screening tool.

Intrusive investigation, sampling, analysis and monitoring are usually required at this phase. The site investigation design should be based on the **conceptual site model** established in Phase 1, to gain more information about pollutant linkages.



The intrusive investigation must be carried out by suitably competent and experienced contractors. Investigation design, logging and sampling techniques should be carried out in accordance with current codes of practice, such as BS10175:2001⁷.

There are a number of risk assessment models available. It is important to understand the limitations of the risk assessment tools and to

ensure that the methodology selected is authoritative, scientifically based and appropriate for the proposed scenario. The following risk assessment models lists are not exhaustive.

Human Health Assessment:

- CLEA
- Risk Based Corrective Action (RBCA) Toolkit
- RISC Human (RIVM)
- SNIFFER Worksheets

Water Environment Assessment:

- Remedial Targets Methodology (RTM)
- ConSim
- ESI RAM Framework
- Risk Based Corrective Action (RBCA) Toolkit

Ground Gas Assessment:

Where there is a potential for the presence or migration of ground gases, further investigations will be required. This type of investigation will need to be carried out in accordance with suitable risk assessment methods. Available guidance include:

- Various CIRIA publications, such as the CIRIA Guide C665⁸ 'Assessing risks posed by hazardous ground gases to buildings'
- NHBC Guidance on evaluation of development proposals on sites where methane and carbon dioxide are present.
- CIEH Ground Gas Handbook

It is the responsibility of the appointed specialist undertaking the risk assessment to ensure that the most appropriate risk assessment tool is used and that it is the current version.

Developers should note that while generic criteria or models developed in other countries, for example the Netherlands or the USA, could potentially be appropriate, it is essential to critically examine the assumptions built into the criteria or models and determine if they are applicable to the site conditions, UK policy and good practice.

Risks to groundwater and surface waters should be assessed with reference to current guidance publications available from SEPAs website¹⁰.

The nature and extent of contaminant concentration at the site (or part of the site) can be derived from the statistical analysis of the chemical analytical data obtained from the investigation. However, this is not always appropriate. For example where investigations are targeted or where there is insufficient representative sample data.

R&D Publication 66⁶ issued in 2008 provides a more detailed Guidance for the Safe Development of Housing on Land Affected by Contamination

GQRA Checklist (minimum requirements)



Purpose and Aims of the Study To identify contaminants of concern.	
Site Investigation Strategy Justification and methodology.	
Sampling and Analysis Strategy Justification, methodology and quality assurance procedures.	
Accurate Site Investigation Plans Plans summarising findings of investigation can also be informative.	
Environmental Monitoring Soil, ground gas, vapour & water environment.	
Environmental Setting Interpretation of ground investigation data (any variation from researches).	
Justification for model selection & parameters Usually tabular form, justifying the selection of parameters with respect to the site conditions, citing the reference source and limitations of the data.	
Site Specific Generic Quantitative Risk Assessment The application of generic criteria with respect to the proposed end use and protection of the water environment.	
Identification of Contaminants of Concern Interpretation of chemical analysis and environmental monitoring data.	
Revised Conceptual Site Model Identification and description of identified pollutant linkages that require remediation or further assessment.	
Conclusions & Recommendations Consider requirement of further targeted investigations & more detailed risk assessment.	

Detailed Quantitative Risk Assessment

A detailed risk assessment takes into account characteristics of the site and specific characteristics of the source, pathway and receptor relationships.

Whilst generic criteria can be used to eliminate pollutant linkages from further assessment, it is inappropriate to apply generic criteria to justify remediation unless the developers have specifically chosen to adopt a conservative approach.

In some instances generic guideline criteria are either unsuitable, unavailable or exceeded. In these cases it will be necessary to calculate site specific assessment criteria, based on toxicity data and calculated exposure.



All risk assessments should be site specific. The regulatory authorities will need to be satisfied with the proposed site-specific criteria and the approach used in their derivation. The risk assessor should therefore produce a documented assessment which can be evaluated by the regulator, who will be looking for transparency in deriving values, evidence of sound science and clarity in any assumptions made.

DQRA Checklist (minimum requirements)



<p>Purpose and Aims of the Study To identify and delineate contamination requiring remediation.</p>	
<p>Site Investigation Strategy Delineation of contamination sources, additional information to address uncertainties.</p>	
<p>Sampling and Analysis Strategy Consideration of analysis parameters for design of remediation scheme.</p>	
<p>Site Investigation Plans Plan indicating delineation of contamination sources. Cross-sections through site.</p>	
<p>Environmental Monitoring Tidal variations, soil, dust, ground gas, vapour, ground & surface water.</p>	
<p>Environmental Setting Interpretation of ground investigation data (any variation from previous).</p>	
<p>Site Specific Detailed Quantitative Risk Assessment The application of detailed quantitative risk assessment criteria with respect to the proposed end use conceptual site model.</p>	
<p>Justification for DQRA model & parameters Usually tabular form, indicating reference source, limitations of the data, sensitivity analysis and justifying the selection of parameters with respect to the site conditions.</p>	
<p>Identification of Contaminants Requiring Remediation Interpretation of chemical analysis and environmental monitoring data.</p>	
<p>Revised Conceptual Site Model Indicating pollutant linkages that require remediation.</p>	
<p>Conclusions & Recommendations</p>	

PHASE 3 REMEDIATION; DESIGN, IMPLEMENTATION & VERIFICATION

Remediation

Where the assessment identifies unacceptable risks to human health, property or the environment, a suitable remediation scheme must be developed and implemented.

Remediation scheme objectives must be based on the conceptual site model and address the identified unacceptable risks. Further investigations may be necessary to delineate and characterise contamination.

The proposed scheme should also be demonstrated to be suitable to deal with these risks in a manner which is protective to people and the wider environment.

Where ground works require the importation of materials for soil or fill onto the site, these must be suitable for use and depending on the origins of the material it may be necessary to comply with criteria for registering an exemption from waste management licensing with SEPA. The appropriate supporting documentation should be provided to the regulators **before** importation of such materials.

Consultation with the contaminated land regulator should take place prior to the importation of soils so that the details can be agreed.

It should be noted that whilst the Planning Authority may agree on remediation objectives, these objectives may also be

subject to review by SEPA on application for a mobile plant licence or exemption to waste management licences for the reuse of treated material on-site. Other activities affecting the water environment may also require authorisation from SEPA.



Compliance with the Construction (Design and Management) Regulations and appropriate health and safety procedures must be in place before work commences.

Adequate insurances must be in place including professional indemnity and public liability.

The development team should consult the SEPA local team directly during the design stages of the remediation scheme; where treatment of soils or the groundwater is required, where soil is to be disposed off-site or where the water environment may be affected by the remediation actions.

Previously unrecorded contamination may be encountered during site works and a revised risk assessment and remediation scheme may be required.



“Where new development is taking place, it will be the responsibility of the developer to ensure the required and necessary remediation is carried out. In many cases, the enforcement of any remediation requirements will be through compliance with planning conditions and building standards requirements, rather than through a remediation notice issued under Part IIA.”

Contaminated Land Statutory Guidance (Annex 1, Paragraph 44)⁵

More detailed checklists can be obtained from the Environment Agency publication, Guidance on Requirements for Land Contamination Reports (2005)⁹, and is available to download from the Environment Agency website.

Any changes made to the agreed Remediation Scheme must be approved by the regulators before being implemented

Remediation Checklist (minimum requirements)



<p>Purpose and Aims of the Works To break pollutant linkages. Refer to the conceptual site model.</p>	
<p>Site Plans Before, during and after.</p>	
<p>Appraisal of Remediation Options May include cost-benefit analysis.</p>	
<p>Consultations Summary of agreements, who, when and correspondence reference if available.</p>	
<p>Remediation Targets Requires appropriate consultation with regulators.</p>	
<p>Specification and Methodology details for Remediation Scheme</p>	
<p>Outline of Validation Strategy What validation works will be required, who will provide certification.</p>	
<p>Environmental Monitoring During site works and if required following remediation works.</p>	
<p>Maintenance Plan Lifespan of remediation work and any maintenance requirements.</p>	
<p>Contingency Plan What happens if remediation fails? Contact information for development parties should be supplied.</p>	

Completion Reporting

After completion of the remediation works, a completion report must be submitted to the Planning Authority for approval **before construction begins** (unless the remediation forms part of the construction). The report should include validation and verification, which demonstrate that the agreed remediation objectives have been met.

Verification – do the works comply with the remediation scheme design?

Validation – does the remediation scheme design successfully remove or break the significant pollutant linkages?

For large remediation schemes, interim reports may be acceptable with the final completion report submitted to the regulators prior to the site being occupied.

The purpose of these interim reports is to ensure that the work is verified while the development progresses rather than waiting until the site development is complete. This should ensure that issues can be resolved earlier therefore avoiding unnecessary delay on completion of the development. These interim reports must be collated and submitted with the final completion report.

Subject to the findings of the verification work, the regulators may require additional investigation and remediation work to be undertaken. Acceptance of a building standards completion certificate (required to legally occupy a new building) may be

dependant on this completion report being satisfactory.

There may be a requirement for future monitoring of the site, to verify whether the remediation has been successful, particularly where on-site treatment processes have been used.

Completion Reporting Checklist (minimum requirements)



<p>Overview of Works A summary of all works carried out.</p>	
<p>Purpose and Aims of the Study To demonstrate that remediation objectives have been achieved.</p>	
<p>Site Plans Appropriate site plans indicating location of validation / verification works.</p>	
<p>Finalised Specification of Works Detailing any changes made to the Remediation Scheme design. Must be prior approved by the planning authority before implementation.</p>	
<p>Waste Transfer Certificates Final excavation plan, destination, quality and quantity.</p>	
<p>Imported materials Final deposition plan, quality data, quantity and source.</p>	
<p>Collated Inspection Certificates For capping layers, ground gas mitigation measures and other supervised works.</p>	
<p>Revised Conceptual Site Model Showing the broken pollutant linkages.</p>	
<p>Any further analysis or monitoring results for verification and validation</p>	

PART IIA

For the purposes of Part IIA¹, a site can only be formally identified as “Contaminated Land” if it meets the following criteria as defined under Section 78A(2) of the Act:

“any land which appears to the Local Authority to be in such a condition, by reason of substances in, on, or under the land, that significant harm is being caused, or there is a significant possibility of such harm being caused; or significant pollution of the water environment is being caused or there is significant possibility of such pollution being caused.”

‘Harm’ is subsequently defined as:

“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.”

While these definitions are specific to the Part IIA¹ regime, it is important to consider that if significant pollutant linkages are not appropriately addressed as part of a site development, formal action may be taken post development, at the expense of those persons deemed ‘appropriate’ at the time, as defined by the Act¹.



Section 78F(2) of the Environmental Protection Act 1990¹ defines ‘appropriate persons’ as those who have caused or knowingly permitted a pollutant to be in, or under the land. As such they may be liable for the remediation of the site if it is subsequently determined as contaminated land by the Local Authority. However, there are also circumstances under which the current owner or occupier of the land contaminated is the appropriate person.

Failure to identify and remediate significant pollutant linkages whilst developing a site may result in its determination as Contaminated Land under Part IIA¹

FURTHER GUIDANCE PUBLICATIONS

1	<p>Part IIA of the Environmental Protection Act 1990 as inserted by Section 57 Environment Act 1995 and subsequently amended by;</p> <ul style="list-style-type: none"> • The Contaminated Land (Scotland) Regulations 2000 (SSI 2000/178) • The Contaminated Land (Scotland) Regulations 2005 (SSI 2005/658). <p>http://www.opsi.gov.uk/ and http://www.netregs.gov.uk</p>
2	<p>Planning Advice Note 33: Development of Contaminated Land. Revised October 2000.</p> <p>http://www.scotland.gov.uk/Topics/Built-Environment/planning/publications/pans</p>
3	<p>The Building (Scotland) Regulations 2004. Technical Handbooks - Section 3: Environment.</p> <p>http://www.opsi.gov.uk/legislation/ http://www.sbsa.gov.uk/tech_handbooks/tbooks2009.htm</p>
4	<p>Model Procedures for the Management of Land Contamination (CLR 11).</p> <p>http://publications.environment-agency.gov.uk/pdf/SCHO0804BIBR-e-e.pdf</p>
5	<p>Environmental Protection Act 1990: Part IIA Contaminated Land - Statutory Guidance: Edition 2. May 2006 [Ref:SE/2006/44].</p> <p>http://www.scotland.gov.uk/Publications/2006/06/05131212/0</p>
6	<p>EA/NHBC/CIEH Guidance for the Safe Development of Housing on Land Affected by Contamination (2008) R&D Publication 66. Volume 1 and 2.</p> <p>http://www.nhbc.co.uk/Builders/Technicaladviceandsupport/Publications/ContaminatedLandDevelopment/ http://www.environment-agency.gov.uk/static/documents/SR-DPUB66-e-e.pdf</p>
7	<p>BS 10175:2001 Investigation of potentially contaminated sites - Code of practice.</p> <p>http://www.bsi-global.com</p>
8	<p>CIRIA C659/C665 - Assessing risks posed by hazardous ground gases to buildings (revised).</p> <p>http://www.ciria.org/</p>
9	<p>Environment Agency. Guidance on Requirements for Land Contamination Reports. July 2005.</p> <p>http://www.environment-agency.gov.uk/static/documents/Research/devguidev1_1155225.pdf</p>
10	<p>The Scottish Environment Protection Agency</p> <p>http://www.sepa.org.uk</p>

A **Glossary of Terms** can be found in Annex 6 of Part IIA Contaminated Land Statutory Guidance⁵ and R&D 66⁶



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