

## Appendix 9.1

### Legislation, Policy and Guidance

#### *Legislative Framework*

Geological sites of national importance are principally afforded protection under the Wildlife and Countryside Act 1981 (as amended) or the National Parks and Access to the Countryside Act 1949 by designation as a Site of Special Scientific Interest (SSSI) or National Nature Reserve (NNR).

Environmental legislation implemented as either Acts or Regulations provide separate legislative drivers to manage contamination. The main legislative drivers for managing risks to human health and the environment from land contamination are:

- Part IIA of the Environmental Protection Act 1990;
- Environment Act 1995;
- Environment (Wales) Act 2016; and
- Contaminated Land (Wales) Regulations 2006 as amended in 2012.

In Wales, Part IIA of the Environmental Protection Act 1990, as introduced by Section 57 of the Environment Act 1995, came into effect in September 2001 with the implementation of the Contaminated Land Regulations 2000 (now superseded by The Contaminated Land Regulations 2006/2012). Under Part IIA of the Environmental Protection Act, sites are identified as 'contaminated land' if they are causing, or if there is a significant possibility of causing significant harm to human health or significant pollution of controlled waters (as defined by Section 104 of the Water Resources Act 1991).

The Environment (Wales) Act 2016 sets out a framework for the sustainable management of natural resources. The accompanying Natural Resources Policy (2017) focuses on the delivery of the Well-being Goals and is aimed at improving the environment and delivering economic objectives (as set out by the Well-being of Future Generation Act 2015).

In general terms the legislation advocates the use of a risk assessment approach to the assessment of contamination and any remedial requirements.

The Environment (Amendment etc.) (EU Exit) Regulations 2019 These came into force in accordance with the European Union (Withdrawal) Act 2018 on 31<sup>st</sup> December 2020. Part 2 amends the following primary legislation of relevance to the water environment:

- Environmental Protection Act 1990

The Environmental Protection Act 1990 makes provision to control pollution arising from industrial and other processes. Under Part 2A of the Environmental Protection Act 1990, sites are identified as 'contaminated land' if they are causing, or if there is a significant possibility of causing significant harm to human health or significant pollution of controlled waters, as defined by Section 104 of the Water Resources Act 1991. In general terms, the legislation advocates the use of a risk assessment approach for the assessment of contamination and remedial requirements. The Act is amended by The Environment (Amendment etc.) (EU Exit) Regulations 2019.

- Environment Act 1995

The Environment Act 1995 sets new standards for environmental management, such as requiring national strategies for air quality and waste. It also deals with the establishment of the EA. It is amended by The Environment (Amendment etc.) (EU Exit) Regulations 2019.

- The Contaminated Land (Wales) Regulations 2006

The Contaminated Land (Wales) Regulations 2006 (as amended in 2012) define a special site, which includes contaminated land impacting the quality of controlled waters. The regulations also set out provisions for remediation notices. It is amended by Part 3 of the Environment (Amendment etc.) (EU Exit) Regulations 2019.

A list of additional legislation and guidance considered within the Ground Conditions assessment and relating to contamination and water environment includes:

- Water Resources Act 1991 as amended in Wales by the Water Resources Act 1991 (Amendment) (England and Wales) Regulations 2009; In England and Wales, The Water Resources Act 1991 established the Environment Agency's powers and duties for the protection of water resources, which since 2013 have been devolved to Natural Resources Wales (NRW). NRW is a key statutory consultee responsible for ensuring that the Proposed Development does not adversely affect groundwater resources.
- EU Water Framework Directive (WFD) 2000/60/EC (as amended by supplementary directives and decisions); The Water Environment (Water Framework Directive) (England and Wales) Regulations 2017 aim to provide an integrated framework for the protection and restoration of the water environment through the delivery of actions set out in 11 River Basin Management Plans (RBMPs). Each River Basin District (RBD) comprises smaller management units known as water bodies, including all river, lake, groundwater, coastal and transitional waters located within that RBD.

- The Water Environment (Water Framework Directive) (England and Wales) Regulations 2017 which implement Water Framework Directive (2000/60/EC), and transpose aspects of the Groundwater Directive (2006/118/EEC) and the Priority Substances Directive (2008/105/EC).
- The Environmental Permitting (England and Wales) (Amendment) (EU Exit) Regulations 2019 These came into force in accordance with the European Union (Withdrawal) Act 2018 on 31<sup>st</sup> December 2020, to ensure that The Environmental Permitting Regulations 2016 for England and Wales can continue to function. The Environmental Permitting Regulations 2016 are summarised below.
- The Environmental Permitting Regulations 2016 (as amended in 2018 and 2019), which amend the Environmental Permitting (England and Wales) Regulations SI 2010/675. The 2010 Regulations revoked the Groundwater Regulations (England and Wales) 2009, which originally implemented in the Groundwater Directive; The Environmental Permitting (England and Wales) Regulations 2016 were amended in order to extend the requirement for an environmental permit to flood risk activities, in addition to polluting activities included under the previous regulations. The 2010 regulations revoked the 2009 Groundwater Regulations, which originally implemented the Groundwater Directive. It is amended by The Environmental Permitting (England and Wales) (Amendment) (EU Exit) Regulations 2019.
- Groundwater Daughter Directive (GWDD) (2006/118/EC).
- The Environmental Damage (Prevention and Remediation) (Wales) Regulations 2009. These regulations are based on the ‘polluter pays’ principle and impose obligations on operators of economic activities requiring them to prevent, limit or remediate environmental damage. They apply to damage to protected species, natural habitats, Sites of Special Scientific Interest (SSSI), water and land and implement Directive 2004/35/EC, on environmental liability. Environmental damage to groundwater would result in its conductivity, level or concentration of pollutants changes sufficiently to lower its Water Framework Directive (WFD) status. It is amended by Part 3 of the Environment (Amendment etc.) (EU Exit) Regulations 2019.
- The Water Framework Directive (Standards and Classification) Directions (England and Wales) 2015. The WFD Directions present the updated environmental standards to be used in the second cycle of the WFD (2000/60/EC) river basin management planning process in England and Wales. Environmental standards help assess risks to ecological quality of the water environment.

- The Groundwater (Water Framework Directive) (Wales) Direction 2016. The direction sets out instructions to NRW on obligations to protect groundwater, including requirements to monitor and set thresholds for pollutants, add new pollutants to the monitoring list and change the information reported to the European Commission.

### ***National Planning Policy***

The applicable planning policy is summarised as follows:

- Future Wales: The National Plan 2040 (February 2021)

The National Plan promotes sustainable development with an ambition for Wales' natural resources, including its minerals, soils and geodiversity, and water, to support a range of activities and sectors and are assets of great value in their own right. The environmental, social and cultural value of water resources will be managed, maintained and enhanced, while economic benefits will be utilised sustainably and appropriately by promoting nature-based solutions and a circular economy. This will be reflected in more sustainable places, which benefit from reductions in levels of pollution, and be healthier and more liveable.

- Planning Policy Wales (Edition 11, February 2021)

Planning Policy Wales Edition 11 (2021) (PPW11), Section 6.3 highlights the importance that geological features have in the natural environment. Specific reference is made to the protection, conservation and enhancement of:

- UNESCO Global Geoparks;
- Regionally Important Geological and Geomorphological Sites (RIGS); and
- Sites of Special Scientific Interest (SSSIs).

In addition, PPW11 encourages planning authorities to promote opportunities for the incorporation of geological features within the design of development.

PPW11, Section 6.9 covers both development on contaminated land and developments which may pose risks to health and the environment. Physical ground conditions and land instability are also considered within this section.

PPW11 also requires the planning system to ensure the protection of the quantity and quality of groundwater supplies is taken into account as part of development proposals.

### ***Local Planning Policy***

- Cardiff Local Development Plan 2006 – 2026 (Adopted January 2016)

The Cardiff Local Development Plan (Cardiff LDP) 2006 – 2026, was adopted in January 2016. In the interest of sustainable development, the Key Policy KP18: Natural Resources requires development proposals to take full account of the need to minimise impacts on the natural resources and minimise pollution, including the requirement to protect the water resources and remediate land contamination. Developments will only be allowed where there would not be unacceptable harm to the quality or quantity of water resources and these water resources are safeguarded. Land impacted by contamination would require remediation to ensure it is suitable for the proposed development.

The Cardiff LDP provides a range of Detailed Policies focusing on Designated Sites (EN5), Protection of Water Resources (EN11) and Air, Noise, Light Pollution and Land Contamination (EN13):

- EN5 protects statutory and non-statutory geological and geomorphological sites of importance. Where the development may affect such a site in cases, the need for the development needs to outweigh the conservation importance and it must be shown that there is no alternative location and compensation measures would need to be provided.
- EN11 confirms no development will be allowed if it poses an unacceptable risk to water resources unless appropriate measures to prevent pollution can be incorporated into the development proposals.
- Under EN13 where significant contamination is likely to be present, the local planning authority will require evidence of a detailed investigation and risk assessment prior to determination of the application to enable beneficial use of land. Where necessary, remedial measures will be required.
- Developers need to ensure that the development of a site will not result in designation as a site with land contamination under Part 2A of the Environmental Protection Act 1990 and ensure the land is suitable for development.

### **Guidance**

The assessment methodology is based upon Design Manual for Roads and Bridges (DMRB) Guidance LA 104 Environmental assessment and monitoring (referred to hereafter as 'LA 104').

DMRB LA 109 Geology and soils guidance provides the methodology and criteria for identifying likely impacts of the proposed development on land contamination by either disturbing historical contamination or introducing new sources of contamination.

The assessment will be undertaken with due consideration of the following topic specific guidance:

- ‘Land contamination: risk management’ (LCRM) guidance;
- Development of Land Affected by Contamination: A Guide for Developers;
- Construction Industry Research and Information Association (CIRIA) R132: A Guide for Safe Working on Contaminated Sites;
- CIRIA SP73: Roles and Responsibility in Site Investigations;
- BS5930: 2015: Code of Practice for Site Investigations including Amendment 2;
- BS10175:2011 + A1 2013: Code of Practice for Investigation of Potentially Contaminated Sites;
- Groundwater protection guidance, including the Environment Agency’s approach to groundwater protection;
- CIRIA 552: Contaminated Land Risk Assessment, A guide to good practice;
- CIRIA 681: Unexploded ordnance (UXO) A guide for the construction industry;
- CIRIA 733: Asbestos in soil and made ground: a guide to understanding and managing risks;
- CIRIA 765: Asbestos in soil and made ground: good practice site guide;
- Definition of Waste: Development Industry Code of Practice sets out a framework for management of materials during construction. This is currently not obligatory for use in Wales, and therefore has not been referenced as a requirement that will be followed.;
- Eurocode 7 (BS EN 1997-1 & EN 1997-2) and all relevant normatives; and
- NRW Guidance for Pollution Prevention (these replace the withdrawn Pollution Prevention Guidance (PPG)) of relevance in relation to protection of soils and waters.