

Policy for the recovery of remediation costs for contaminated land

1. Introduction

- 1.1 This statement of policy sets out the council's position for dealing with remediation costs associated with contaminated land.
- 1.2 The policy is based on the relevant sections of the primary legislation¹ and associated statutory guidance. However, because the council recognises that there is a wide variation in the circumstances associated with land contamination (including its history, ownership and liability for its remediation). its approach is to view nationally published guidance in terms of *principles* and *approaches* rather than rigid rules. This policy defines how the council will apply these principles and approaches.
- 1.3 In the first instance the person(s) that caused or knowingly permitted an area of land to be contaminated (Class A persons) will be required to rectify the situation. Only in cases where the council cannot pursue Class A persons will the current owners of contaminated land (Class B persons) be responsible for the remediation of the contamination.
- 1.4 The statutory guidance identifies Class B Persons as appropriate persons who, due to the absence of a Class A person and solely due to their ownership of the land, are deemed responsible for the contamination.²

2. Purpose

- 2.1 To ensure that the council's policy on cost recovery from Class B persons is clearly set out.
- 2.2 To provide a consistent and transparent approach that is as fair and equitable as possible to all who have to meet the costs of remediation, including national and local taxpayers.
- 2.3 To ensure that, wherever possible, the costs of remediating contaminated land are to be borne by the polluter (Class A person). In this regard the council will consider the degree and nature of responsibility of the appropriate person for the creation, or continued existence, of the circumstances which led to the land in question being identified as contaminated.
- 2.4 To make clear that the council will normally seek to recover in full all reasonable costs incurred for remediating contaminated land where:
 - the residents were aware of the contamination at the time they purchased the property or
 - undue financial burden would be placed on national and local taxpayers and financial hardship would not be caused by the recovery of these costs from the Class B person.

1. Environmental Protection Act 1990 Part IIA

2. DEFRA Circular 01/2006 Environmental Protection Act 1990: Part IIA

3. Background

- 3.1 The council has a statutory duty under the provisions of the primary legislation to investigate its district for contamination.
- 3.2 The council has a statutory duty under Part 2A (Section 78) of the Environmental Protection Act 1990 to identify and remediate land where contamination is causing unacceptable risks to human health or the wider environment.
- 3.3 Where the council has determined that land is contaminated land, it has a duty to require appropriate remediation. The Government has issued statutory guidance to assist councils in undertaking their statutory duties relating to contaminated land.

4. Policy

- 4.1 In the first instance, liability for remediation is with a Class A person. Government guidance defines a Class A person as a person who actually caused or knowingly permitted the land to be contaminated. Where available, any Class A persons will be responsible for the contamination and pay for any remediation.
- 4.2 If after reasonable inquiry the council cannot identify a Class A person then the responsibility for meeting the costs of remediation fall to relevant Class B persons.
- 4.3 The council as the enforcing authority will consider assuming responsibility to undertake remediation works in default for Class B persons in the situations defined in the statutory guidance.
- 4.4 Chapter E of Annex 3 to statutory guidance¹ describes the matters the council will take into consideration in the recovery of remediation costs.
- 4.5 Where the council has powers to undertake contaminated land remediation and a Class B person is liable for the costs the council will make decisions as to whether those costs should be waived, reduced or recovered in full.
- 4.6 The decision to waive or reduce any cost to the Class B person will be to the extent needed to ensure that the Class B person in question bears no more of the cost of remediation than it appears reasonable to impose and is based on a three stage assessment:
 1. that the Class B person was not aware that the land was contaminated at the time of purchase
 2. that requiring the Class B person to meet the costs of remediation would cause them financial hardship
 3. that the cost of remediation does not place an undue financial burden on local or national tax payers

- 4.7 Where the council decides not to recover its remediation costs from the Class B person, it will seek external sources of finance.
- 4.8 Where the council decides that a Class B person should contribute to the costs of remediation it will determine an appropriate means to assess the extent of the contribution such that it does not cause undue financial hardship.
- 4.9 This policy shall be reviewed periodically. The first review will take place in two years time. The council may decide to review the policy sooner should changes in statutory guidance, statutory legislation or external/ internal funding occur.