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Consultation – Summary of Responses

Scoping Paper

A Strategic Overview of Contaminated Land in Wales

Introduction

1. On 21 June 2013, the Welsh Government launched a consultation on a scoping paper entitled “*A Strategic Overview of Contaminated Land in Wales*”¹.
2. The scoping paper provided a brief review of the issues relating to contaminated land in Wales and focussed on the risks, the legislation and other drivers for dealing with it at a strategic level. The consultation aimed to obtain the views of key stakeholders to help shape the future policy direction of the Welsh Government.
3. The consultation ran for 12 weeks and closed on 13 September 2013. This document provides a broad summary of the responses to the consultation questions, comments from the Welsh Government and planned next steps.

Consultation Process

4. The consultation document was published on the Welsh Government’s consultation website and was also emailed directly to representatives in the contaminated land sector.
5. The Welsh Government received 23 responses from a range of organisations and individuals, which have been summarised in the table below. For a full list of respondents, please see Annex 1.

Type of Respondent	Number of Responses
Local authorities	9
Individuals	3
Third Sector Organisations	3
Environmental and Public Health Organisations	3
Advisory Groups	2
British Geological Survey	1
Law Society of England & Wales	1
Undisclosed	1

¹ <http://wales.gov.uk/consultations/environmentandcountryside/contaminated-land/?status=closed&lang=en>

Key Findings

6. The responses varied in depth and emphasis on various points, however there was high level consensus on the following:
 - i. **Funding** – The most prevalent issues raised by respondents (22 out of 23) was the lack of funding available to local authorities (LAs) and the impact this was having on their ability to implement the contaminated land regime under Part 2A of the Environmental Protection Act 1990 in Wales. Respondents noted that, following the withdrawal of the Welsh Government's Contaminated Land Capital fund in 2011, LAs had made limited progress with detailed site investigations and that only a small percentage had budgets dedicated to contaminated land. Responses either advocated the return of capital funding or made suggestions for new funding mechanisms.
 - ii. **Public Health** – The majority of responses (20 out of 23) referred to the complexities and uncertainties involved in determining whether contaminated land posed an unacceptable risk to public health. Whilst there was acknowledgement that these issues were not unique to Wales, respondents put forward a number of proposals for the Welsh Government to consider taking forward.
 - iii. **Guidance** – Whilst there was some recognition from respondents that the publication of the revised Statutory Guidance in 2012 had provided clarification on certain aspects of the regime, a large number of responses suggested that additional support for LAs was required. New guidance was requested for a variety of subject areas, ranging from the provision of legal advice, for example the procedures around determining liability, to the development of new health assessment criteria.
 - iv. **Data** – The lack of data at a National level was considered to be significantly hindering the Welsh Government's ability to understand the extent and nature of contaminated land across Wales. A number of suggestions as to how to address these issues were proposed by respondents. However, it is apparent from the responses provided that LAs are aware of the issues in their particular boundary area and strategic decisions are being made at a local level.
 - v. **Inconsistency across Welsh local authorities** – A number of respondents raised concerns about the apparent inconsistency in the implementation of the Part 2A regime that has developed across LAs in Wales. Collaborative working, standardised templates and all Wales guidance were just a selection of ideas put forward to ensure a greater degree of uniformity.

Summary of overall consultation responses

7. From the 23 respondents, 21 answered each question or the majority of questions as set out in the consultation document. One respondent answered one question and provided reference material. One individual provided comments about land contamination issues in their locality and not on the actual consultation document. Only four respondents provided additional comments outside of the questions provided.

Question 1 – Wales Specific Data

Responses

8. 20 respondents provided answers to this question, the majority of which provided overarching answers to the issue of Wales specific data rather than addressing the three separate questions presented in the document. However, common themes have been identified and, to assist with the analysis process, these have been grouped together when more than one respondent has raised a particular issue.

(a) Is the lack of Wales specific data making strategic decision making more difficult?

9. There is a clear consensus amongst respondents (14 out of 20) that the lack of specific data was having an impact on strategic decision making in Wales, however, it was considered that this more of an issue at a national level rather than a local one. Five LAs, the Chartered Institute of Environmental Health (CIEH) and the Welsh Land Contamination Working Group (Welsh LCWG) noted it was a necessity for LAs to collect and collate data to help inform strategic decisions at a local level. However, respondents questioned whether this information was being effectively captured at a national level and agreed that, without this information, it was unlikely that the full extent and nature of contaminated land in Wales was known.
10. One respondent (Undisclosed) noted that the lack of specific data (for example Normal Background Concentrations) in some parts of the country not only affected the decision making process, but also made it difficult to defend any decisions made by LAs in relation to site determinations.

(b) If so, what do you think can be done to improve the situation?

11. Several respondents provided suggestions as to how the current situation in Wales could be improved and these included:

- Acquiring more **national geochemical and geological data**. The British Geological Survey (BGS) commented that this would include developing national-scale geo-environmental datasets in order to create a critical baseline from which any changes could be measured.
- Both Rhondda Cynon Taff County Borough Council (RCT CBC) and the UK Environmental Law Association (UKELA) noted that current contaminated land data could be acquired by the Welsh Government by requesting NRW to publish a new **State of Contaminated Land Report for Wales**.
- The development of a “**library**” of **site investigation reports** to assist regulators. However, both the Welsh Pollution Technical Panel (WPTP) and the City & Council of Swansea (CCS) noted that this could result in potential conflicts between Environmental Information Regulation data rights and ownership of Site Investigation reports.
- Developing a **centralised database of past land use records** that could be used at a strategic level and on a daily basis e.g. for use by NRW as a statutory consultee during the planning process (RCT CBC).
- The Welsh Government to develop a more **strategic and human health focused approach to inspections**. Newport City Council (NCC) suggested that this should be cascaded down to LAs.
- **Welsh Government to provide funding**. UKLEA commented that “*there seems relatively little point in discussing the finer points of site designation or risk ranking if there are no resources to fund any intervention*”. The respondent suggested that the lack of progress currently being experienced with Part 2A could be addressed by developing a Wales wide or regional contaminated land register and setting up a fund from “*top sliced*” local authority resources, which could be allocated against set criteria.
- **Transfer of all functions under Part 2A of the Environmental Protection Act 1990 to NRW**. UKLEA propose that one organisation would be better able to establish priorities for site remediation across Wales as a whole; and
- Welsh LAs to access the Department for Environment, Food and Rural Affairs (Defra) established **Expert Panel** to help assist with complex cases – Cardiff Council (CC).

(c) Are there any Wales specific issues that need to be addressed?

12. Seven respondents identified several areas where they believed gaps currently existed in Wales and suggested a number of potential solutions:

- Build upon the **Normal Background Concentrations (NBCs)** data already published by the BGS, particularly for the mineralisation zone 1 in North Wales – Public Health Wales (PHW), Public Health England’s Centre for Radiation, Chemical and Environmental Hazards (Wales) (PHE CRCE Wales), RCT CBC and Wrexham County Borough Council (WCBC).
- Collect data on the **potential health impacts** from contaminated land in Wales, for example health statistics around known sites of concern compared with national rates (PHW and PHE CRCE Wales).
- Collect LA/NRW data on Part 2A sites investigated and determined to identify decisions on significant possibility of significant harm (SPOSH) (PHW and PHE CRCE Wales).
- Identify the key contaminants of concern and the concentrations at which sites are being determined (PHW and PHE CRCE Wales).
- Develop a **single GIS layer** of potentially contaminated sites across all 22 LA areas as identified in terms of economic/resource costs that would also provide an estimate of potentially exposed populations (PHW and PHE CRCE Wales).
- Two respondents – Neath Port Talbot County Borough Council (NPT CBC) and RCT CBC - noted that there was a need to address the **inconsistencies between LAs**, in particular how site data was managed, how proactive they were in implementing their strategies and the assessment of sites.
- One respondent (KWT) noted that any remediation of sites in Wales should also take into account whether the site contains any **ecologically sensitive or important habitats** that required protecting.

13. Two respondents – Environmental Protection UK (EP UK) and the Law Society for England & Wales (LS E&W) – commented there were unlikely to be any issues specific to Wales in relation to contaminated land as there were no contaminants unique to Wales. Instead it was noted that “*advancement in the understanding of the behaviour of contamination in the environment*” was required on a UK wide level.

Welsh Government Comments

14. From the consultation responses provided, it is apparent that the majority of LAs have access to the necessary data required to make strategic decisions at a local level. However, it is evident that this information is currently not being effectively captured at a national level.
15. In light of this information, the Minister for Natural Resources and Food has requested that NRW collects data from Welsh LAs and publishes their findings in a new *State of Contaminated Land Report for Wales* in 2014. The results of this survey will help develop a baseline from which the Welsh Government can shape future policy.
16. It should be noted that some aspects of the consultation responses are currently being considered by the Welsh Government, for example extending the current NBC dataset in North Wales. The Welsh Government will establish a working group to examine the feasibility/practicality of the various other proposals put forward by respondents.

Question 2 (Guidance and Research):

“The revised Statutory Guidance is intended to be clearer and simpler, focus more effectively on higher risk sites and reduce the burden on regulators”.

17. 21 respondents answered this question. The majority of respondents did not specify as to which of the three questions they were addressing but clear themes did emerge that enabled the following categorisation.

(a) Can more be done to assist regulators in administering Part 2A and, if so, are further technical tools/guidance required?

18. 16 of the 21 respondents made suggestions as to how Welsh Government could help regulators administer Part 2A in Wales. The following issues were discussed by more than one respondent:

- **Assessment criteria**

19. One respondent – Conwy County Borough Council (CCBC) – advocated that the Statutory Guidance could be amended to suggest “a higher appropriate intervention”. It was noted that *“this could apply should certain concentrations of contaminants be encountered for substances with known significant toxicological or carcinogenic properties, in prescribed circumstances for which an exceedence would pose an unacceptable risk”*.

20. WCBC commented that assessment criteria that would place sites clearly as contaminated land had not been developed and, therefore, the identification of levels *“that would be categorically unacceptable”* would prove helpful. Blaenau Gwent County Borough Council (BGCBC) supported the development of *“definitive guideline values based on expert agreement at a national level”*.

21. One respondent (UKELA) shared the sentiment of developing risk categorisations but noted that *“there seems little point in pursuing technical and administrative revisions if there is simply no enforcement of the regime”*.

- **Simplification of existing material/Withdrawal of previous guidance**

22. Five respondents – Pembrokeshire County Council (PCC), CCS, WPTP, NCC and CIEH – all supported any move to make the current guidance clearer and simpler for regulators to use. It was noted that the quality of the guidance was more important than the quantity and that any further guidance should focus on dealing with high risk sites.

23. In addition to the above point, two respondents (WPTP and CIEH) suggested that the withdrawal of previous guidance would help remove confusion amongst regulators and reduce complexity.

- **Legal issues around Bawtry Gasworks Case**

24. Two respondents (RCT CBC and CIEH) commented that LA's confidence in recovering remediation costs and determining liability had been affected by the House of Lords ruling in 2007 in relation to the Bawtry Gasworks case (*R. (National Grid Gas Plc (Formerly Transco plc) v Environment Agency*)²). Both responses suggested that it was essential for the Welsh Government to address the implications from this ruling and to provide support through new guidance, for example additional advice to help LAs in identifying appropriate persons when recouping remediation costs.

- **Other suggestions**

25. The BGS advocated for the development of “*consistent, objective national scale datasets on indicators of, and evidence for, land contamination*” to help facilitate regulators and LAs with Part 2A administration and compliance. It was noted that this would require a national scale audit of available data.

26. NPT CBC recommended the development of **best practice documents/ templates** to ensure a consistent approach was being taken across Wales.

27. One respondent noted that there was a need to encourage more **collaboration** in the public sector in Wales along with seminars on best practice to ensure a consistent and focused approach.

28. PHW and PHE CRCE Wales put forward a proposal to develop a “**process flow chart** that clearly identifies, when dealing with potentially contaminated land matter who does what and when”. This would enable an agreed framework to be developed for Wales and would define the roles of the different agencies involved.

29. NCC recommended that a **dedicated contaminated land help desk** be developed to provide personalised guidance to LAs when making difficult decisions. The respondent also noted that whilst LAs can approach the HPA (now PHE CRCE Wales) and PHW for advice, a purpose **built guidance/ advice system** would prove beneficial.

30. Two respondents (PHW and PHE CRCE Wales) put forward the suggestion of establishing an **oversight group** in order to independently review the first set of assessments under the new statutory guidance and provide feedback to LAs and partners.

31. One respondent (CCBC) suggested that the Welsh Government and NRW could develop a document that would draw together appropriate authoritative sources of **reference information** and which, in turn, could be adopted by LAs, for example “*the LQM/CIEH Generic Assessment Criteria for Human Health Risk Assessment which could assist both regulators and developers alike*”.

² <http://www.publications.parliament.uk/pa/ld200607/ldjudgmt/jd070627/grid-1.htm>

(b) What key piece of R&D is missing that would allow local authorities to make progress with dealing with land contamination issues?

- **Collect Health data/establish benchmarks for health risks**

32. Two respondents (PHW and PHE CRCE Wales) indicated that there was a need to collect more data around the health aspects of land contamination, for example the exposure of lead in soil and neurological damage in children. CC suggested that the Welsh Government work in partnership with Defra in order to establish a research/working group to devise benchmark limits above which there is an unacceptable risk to human health. They stated that this would make any legal challenges to decisions under Part 2A far more defensible.

- **Normal Background Concentrations (NBCs)**

33. Four respondents (BGS, CC, BGCBC and Welsh LCWG) commented on the need to build upon data collected for the NBC report that was published by the BGS in 2012. Two areas in particular were identified as requiring additional work - the need to extend the current datasets to cover a larger range of contaminants and for improved data collection in the mineralisation zones of North Wales.

34. One respondent noted that there was an observable difference in opinion between how regulators and stakeholders should interpret NBC documentation, stating that commonly encountered concentrations of contaminants are considered “acceptable” and may be dismissed as “normal”. It is suggested that a detailed assessment of the levels of lead and heavy metals, specifically in metal mining areas, would help address this issue.

- **Further research around contaminants/toxicology**

35. Four respondents (EP UK, NCC, CC and CIEH) recommended that further research was required to help support the use of Category 4 Screening Level (C4SL) assessment criteria and other risk assessment decisions. In particular it was noted that additional work was required in key areas such as the toxicology and bioavailability of contaminants.

- **Insurance Recovery**

36. RCT CBC suggested that further research/investigation be undertaken into the feasibility of using the Insurance Recovery process mechanism to fund remediation and in particular for orphan sites with historic contamination issues. It is noted that whilst the method had been successful in the US, there is still some uncertainty as to whether it represents a realistic source of funds in the UK.

(c) Is there a requirement for any further guidance? If so, please explain what guidance is needed, why it is needed, including what current problems it would address and how it would address them.

- **Category Screening Levels/SPOSH**

37. Several respondents proposed that further guidance be developed to help LAs use the new 4 category system. Two respondents (Welsh LCWG and RCT CBC) requested further guidance or workshops on the upcoming publication of C4SL figures. However, three respondents (NPT CBC, RCT CBC and Welsh LCWG) also recommended that additional guidance should be developed for category screening levels 2/3 as it was noted these sites were proving difficult for LAs to determine.
38. In addition to this, five respondents (PHW, CRCE Wales, NPT CBC, RCT CBC and BG CBC) felt there was a need for greater clarity around the definition of SPOSH and to develop links with other UK departments to ensure a consistent UK approach (PHW and PHE CRCE Wales).
39. BG CBC recommended that guidance be developed, along with a legal basis for advice based “remediation”, where contamination may be above acceptable NBCs and potentially SPOSH, but exposure could be reduced to a safe level by behavioural changes of the receptors. This would, therefore, remove the need for expensive and significant engineering works to be undertaken for remediation.

- **TAN guidance specific for land contamination**

40. The need for a Technical Advice Note (TAN) specifically for land contamination was suggested by two respondents (Welsh LCWG and one undisclosed). It was felt that there was currently a gap in the guidance available to support the planning regime and a TAN document that has legal status would help address this. PHW and PHE CRCE Wales suggest that a TAN be developed on the use of C4SLs and/or the differences between planning and Part 2A and what constitutes SPOSH.

- **Cost recovery/hardship funding**

41. The Welsh LCWG put forward the suggestion that additional guidance was required on cost recovery and in particular in relation to hardship funding. It was noted that there were a number of inconsistencies across LAs as to how hardship funding was determined and national guidance would help tackle this. WCBC suggested that an all Wales Cost Recovery and Hardship Policy would resolve the problem of inconsistencies.

- **Against further guidance**

42. One respondent (LS E&W) stated that they did not support the need for any more guidance over and above the existing Statutory Guidance. However, it was added that this would not preclude more technical guidance for regulators.

- **Other**

43. UKLEA commented that providing additional technical guidance would not resolve the current problems facing LAs and only financial and staff resources would help address the issue.

Welsh Government Comments

44. The Welsh Government welcomes the suggestions put forward by respondents and has identified several potential areas for further consideration. It is intended that the proposals identified in this document will also be discussed with colleagues internally in the Welsh Government and with other UK Government Departments and partner organisations. A working group will then be set-up to discuss how best to implement any agreed recommendations.

Question 3 (Resources)

“Funding to deal with the contaminated land regime at the local authority level has often been an issue. Each authority has taken a different approach to how it resources local delivery and in practice this often means allocated funding for this specialist area of work is not ring fenced. Subsequently some authorities have limited or no staff dedicated to this work and this has resulted in an uneven approach as different local authorities place very different priorities on delivering their published strategies. This makes the assessment of land contamination at an all Wales level extremely difficult”.

(a) What can Welsh Government/local authorities do to ensure a more consistent approach?

45. 21 of the 23 respondents answered this question, with 20 providing suggestions as to how the Welsh Government and/or LAs could help ensure a consistent approach was adopted throughout Wales. Several respondents touched common themes in their responses and these have been summarised as follows:

- **Adoption of a collaborative approach**

46. Two respondents (PCC and one individual) outlined proposals for LAs to “pool” together expertise and resources to ensure greater consistency. One suggestion was for this to operate on a regional group level and to enable LAs without dedicated specialist staff or resources to request help from those who did. However, it was noted that this would require funding from either a central source or via a new grant system. The CIEH also suggested that this collaborative approach could be extended to include drawing upon legal and planning expertise.

- **Additional Funding/Re-instate Welsh Government Contaminated Land Capital Fund**

47. Six respondents (WPTP, RCT CBC, CC, Welsh LCWG, CCS & one undisclosed) made direct reference for the need to either a) ring-fence current funding to LAs, b) develop a new or alternative source of funding or c) re-instate the Welsh Government’s Contaminated Land Capital budget that was withdrawn in 2011.

a) *Ring fencing* – Three respondents proposed that the funding allocated to LAs via the RSG mechanism should be ring fenced for the specific purpose of contaminated land. Several other respondents expressed a preference for this approach but acknowledged that this was not possible under the current funding arrangements.

- b) *New/alternative funding mechanism* – One respondent (CCBC) suggested that a funding mechanism could be developed whereupon remedial funding could be “reserved” for each LA in Wales and this would be derived through a simple funding formula. RCT CBC suggested an alternative would be to change primary legislation to allow LAs to serve notices requiring appropriate persons to fund the investigation/provide information to determine if the site is SPOSH.
- c) *Reinstate capital funding* – Three respondents requested that the Welsh Government reinstate the capital funding that was initially available to LAs prior to its withdrawal in 2011. Several respondents criticised the Welsh Government’s decision, noting that only one LA had progressed the assessment of new sites under Part 2A since 2011 and that a number of sites that had received funding for investigative work were not progressed beyond that stage.

- **All Wales approach/reporting mechanisms**

48. Several respondents recommended that the Welsh Government develop an all Wales approach to help tackle inconsistencies amongst LAs and made the following suggestions:

- a) NPT CBC noted that the priority individual LAs gave to contaminated land and how proactive they were delivering their contaminated land strategies, varied significantly across Wales. In order to address this NPT CBC suggested that “*an all Wales approach to the assessment and prioritisation of land should be outlined in the statutory guidance for inclusion within each local authority strategy*”. It is proposed that this would “*provide measurable targets for local authorities to work towards and report back to Welsh Government*”.
- b) LS E&W advocated the provision of guidance to LAs on “*standard or model conditions relating to remediation*” and that these would be attached to planning consents where historic contamination had been identified.
- c) BG CBC proposed that “*definitive guideline values based on expert agreement*” be developed at a national level, stating that this would assist “*in giving confidence*” to LAs on Part 2A contamination levels.

- **Reporting/accountability**

49. The need for the Welsh Government to hold LAs to account was raised by three respondents (WCBC, CIEH and NCC) and proposals were put forward as to how this could be achieved.

50. Both WCBC and NCC advocated the use of a monitoring programme or the introduction of performance indicators in order to hold LAs to account and encourage a greater allocation of resources to contaminated land work. This information would be based on the progress made in implementing their strategies and would ensure that at least the minimum requirements were being

undertaken. CIEH expressed a similar sentiment with regards to holding LAs to account for any failure to take action.

- **Support for the Welsh Land Contamination Working Group (WCBC)**

51. Five respondents (PCC, WPTP, RCT CBC, CIEH and WCBC) welcomed the role the Welsh LCWG and its regional groups had played in developing a more consistent approach across Wales. Reference was made to several guidance documents the Group had produced to help with site investigations/remediation and also the numerous training events that had been held for both LA and NRW officers. Respondents reiterated the importance for Welsh Government to continue funding the training programmes that were organised by the Group.

- **Other suggestions/comments**

52. One respondent (EP UK) recommended that the Welsh Government develop an **information and advice sharing system** to help keep local authority officers informed of any procedural changes or emerging practices. Reference was made to a system already being operated by Defra in relation to the Pollution Prevention Control Regime and which involved targeted updates and a dedicated online forum for knowledge exchange.

(b) How can we ensure that orphan sites are dealt with appropriately?

53. Only five respondents referred to the issue of orphan sites. Three respondents (NPT CBC, NCBC and WCC) noted that since the withdrawal of the Welsh Government's Contaminated Land Capital fund, orphan sites posed a significant threat of being a large financial burden on LA resources and, therefore, had stifled the progress of implementing strategies.

54. To address this issue one respondent (PCC) suggested that a loans scheme like those operated for empty homes and grants should be considered. Another (NCC) advocated the availability of a financial contingency fund or insurance policy, whilst CIEH suggested that the Welsh Government should take a strategic view in such cases and take on the management of the site. It is suggested that remediation costs would then be recovered from the subsequent sale and/or development of the land where appropriate.

Welsh Government Comments

55. The evidence submitted by respondents indicates that, following the withdrawal of capital funding in 2011, LAs in Wales have found it difficult to secure the financial resources required to undertake detailed site investigations and remedial work. Consideration will be given to the various funding mechanisms suggested by respondents and these will be examined in greater detail by the Welsh Government.

56. Proposals to adopt a more collaborative approach to addressing contaminated land issues may offer a sustainable way forward, with some councils in England

and Scotland already sharing expertise and resources. The Welsh Government will work with colleagues in LAs and the Welsh Local Government Association (WLGA) to determine the feasibility of this method of working and identify best practices that can be adopted.

57. The Welsh Government has already taken steps to improve ways of communicating new policies/best practice with LA officers through the publication of a new *Land Contamination Issues in Wales Bulletin*.

58. The Welsh Government intends to establish a working group to examine the feasibility/practicality of the suggestions put forward by respondents.

Question 4: (Communities)

59.21 respondents provided an answer to this question.

(a) Is land contamination and perceived land contamination a key issue affecting the quality of where people live and in extreme cases people's health and well being?

60. Eight respondents (PHE CRCE Wales, PHW, CCBC, AWG, NPT CBC, RCT CBC, CC, BG CBC) thought that land contamination or perceived contamination was only an issue with communities when faced with the stress of investigation, determination or through the sale of a property. NPT CBC commented that "*in our experience, a Part 2A investigation can seem more detrimental to health than the contamination itself*".

61. One respondent (CCBC) reported that they had relatively few referrals, whilst three (WPTP, CCS and CIEH) stated that when queries were received, these tended to be about the detrimental visual and amenity impact of derelict sites. CCS and WPTP also noted that the perception of contaminated land can differ amongst the general public.

62. One respondent (BGS) commented on the potential beneficial environmental effects of contaminated land. This could include the presence of rare species and the preservation of open space in areas that would otherwise become dense housing. It was noted that this should be taken into account when understanding the benefits and disadvantages of what it means to be living near to a contaminated site.

(b) What more can be done to raise awareness of the issues around contaminated land and perceived contamination to engage communities?

63. In terms of what more could be done to raise awareness; two respondents (PHW and PHE CRCE Wales) thought that contaminated land should be seen as part of a wider public health agenda that should include issues such as sustainability and healthy lifestyles (e.g. allotments, locally grown food). Others (CCBC and WCBC) noted that early engagement with local communities and good quality site specific information can often resolve genuine concerns. Another (CIEH) suggested that great care should be taken not to promote fear and that the issue of engaging the public in relation to contamination should be handled with great care.

64. Two respondents said that knowing the purpose of the awareness raising was an important factor, whilst other respondents (WPTP, PCC, CCS and CIEH) suggested that raising awareness of contaminated land issues should be targeted at community groups with a vested interest (e.g. allotment societies).

65. One respondent (NCC) stated that contaminated land information, such as basic information concerning potential risks to health and the wider environment, and the history of developed sites should be made more accessible to the public. RCT CBC commented that LAs are unlikely to want to promote their strategies without the means to fund investigations. A similar sentiment was shared by the Welsh LCWG, who noted that raising awareness amongst communities should not occur unless adequate funding arrangements were in place.

Other issues

66. It was suggested (CIEH and UKELA) that an up-to-date public register could be effective in heightening awareness, although it was noted that this could be opposed by financial institutions and members of the public as it could potentially impact on property prices.

67. One respondent (an individual) noted that there currently appeared to be limited public health/epidemiological data for populations living on or near brownfield sites, with the exception of perhaps landfill sites. The respondent also raised the issue of an increase in “failed” environmental searches during property conveyance and that this was often the result of the property being built upon a brownfield site rather than the actual presence of contaminants.

Welsh Government Comments

68. The Welsh Government welcomes the suggestions put forward by respondents and intends that the upcoming *State of Contaminated Land in Wales* will examine further the issue of property, or perceived property, blight. Other issues identified in the consultation, such as the communication of risks to the public, will be discussed with colleagues internally and with other UK Government Departments and external partner organisations such as Public Health Wales. A working group will then be set-up to discuss how best to implement any agreed recommendations.

Question 5 (Other Issues)

Q. What do you see as being the main strategic objective for contaminated land under Part 2A?

69. 21 of the 23 respondents answered this question, with 20 providing views on what the strategic objective should be and one respondent provided general comments.

- **Use objectives from Statutory Guidance**

70. Five respondents felt that the existing overarching objectives, as outlined in the revised Contaminated Land Statutory Guidance (2012), were sufficient and did not require re-interpretation. These objectives 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;*
and

(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.*

71. However, four of the five respondents questioned whether these objectives were currently being met, with the lack of funding (CIEH) and previous court decisions (WPTP/CCS) being given as two of the principle reasons for this. With regards to the later point, the WPTP and CCS go as far as to say that the enforcement aspect of Part 2A had been “*fatally damaged*” by court decisions.

72. UKLEA suggested that the three Statutory Guidance objectives should be replaced by one strategic aim and provided a form of wording:

“To ensure that all potentially contaminated land is assessed so that sites presenting risks to human health and the environment are remediated on the basis of the polluter pays principle and in a way that contributes to the sustainable development of Wales and ensures a cleaner legacy for future generations”

UKLEA noted that this would be in line with the stated purpose of sub-section 78B-E of Part 2A of the EPA 1990³.

³ <http://www.legislation.gov.uk/ukpga/1990/43/part/IIA>

- **Other interpretations/suggested objectives**

73. Of the remaining 17 respondents to this question, each one provided differing views as to what the overall strategic objective for Part 2A contaminated land in Wales should be. However, common themes were identifiable in these responses:

- **To bring Brownfield/problem sites back into use**

74. Five respondents (One individual, BGS, EP UK, PCC and one undisclosed) referred to the need to bring brownfield/problem land back into beneficial use, with one respondent noting that it should not only be for the benefit of developers i.e. creation of green spaces. However, one respondent (PCC) noted that consideration should be given to the needs of the particular area of Wales i.e. green space would not be an issue for rural LAs and so focus should be on revitalising brownfield sites to avoid over development of greenfield land. The respondent also noted that engagement with community groups, along with LA regeneration and planning teams, was important to not only raise awareness of the issues around land contamination, but also to highlight the potential benefits to communities.

- **Identify and remediate sites posing a risk to human health/environment**

75. Five respondents (NPT CBC, RCT CBC, CC, BG CBC and Undisclosed) commented that the primary aim of the Part 2A regime should be to identify and remove unacceptable risks to human health and/or the environment. However, three respondents (NPT CBC, RCT CBC and BC CBC) felt that this objective was currently not being met. Reasons for this included a lack of funding, lack of clarity over SPOSH and the “fear” of not being able to retrieve costs from appropriate persons.

- **Other suggestions**

76. BGS commented that there was a need for a “**robust evidence-based regime for decision making**” and that decisions around the future use and management of sites needed to be clearly communicated to stakeholders.

77. KWT noted that any future strategy should identify and prioritise which contaminated sites should be dealt with, provide additional guidance/tools to LAs and find solutions that complied with the **eco-system approach**.

78. RCT CBC suggested that the lack of an **accrediting body** for land contamination consultants/consultancy firms was an obstacle in progressing Part 2A. It was noted that this was because LAs “*need to be confident that consultants carrying out investigations and contaminated land risk assessments are fully conversant with best practice*” plus “*have the necessary skills to undertake an appropriate risk assessment*”.

79. “*To build upon the positive outcomes achieved to date and enabling Local Authorities to further identify, document and refine the information that is*

known and recorded regarding the location of potential contaminated land” (CCBC).

80. “To provide a **statutory framework** for addressing the problem of historic contamination of land and water” (LS E&W).
81. To deal with contaminated sites comprehensively and quickly without having a detrimental effect of the lives of those living on or nearby (NPT CBC and WCBC).
82. PHW and PHE CRCE Wales suggested that evaluation should be undertaken on the impact of other legislation on contaminated land e.g. Water Framework Directive, Environmental Damage Regulations, Waste Strategy and Nuisance.

Welsh Government Comments

83. Whilst there were differing interpretations amongst respondents as to what the main strategic objectives for contaminated land under Part 2A should be, the majority supported the use of the current objectives or variations of them. The Welsh Government notes the support for these objectives and intends to continue using the principles that they embody to guide the development of new policies. However, the Welsh Government recognises the concerns raised by some respondents that these objectives were not currently being met and we will work with key partners to identify a way forward.

General comments

84. Four respondents provided additional comments, however both PHE CRCE Wales and PHW addressed the same issues. One member of the public contacted the Welsh Government to complain about contaminated land issues in their locality, but did not provide any specific response to the questions raised. These comments have been officially recorded but not included in this report for reasons of confidentiality.
85. PHW and PHE CRCE Wales commented that whilst *“the intentions of new legislation and initiatives appear to be in the right direction there is still uncertainty such as actual links between health and contaminated land, and the definition of SPOSH, which could benefit from further policy decisions”*. It was also noted that risks from contaminated land were not as obvious as other issues like air quality or flooding. The lack of adequate financial support was also limiting LAs ability to undertake investigation and remediation work.
86. PHW and PHE CRCE Wales disagreed with the comments on Page 6 of the Scoping Paper which stated that *“risks to health from contaminated land sites can be demonstrated”*.
87. PHW and PHE CRCE Wales also stated that whilst the revised Statutory Guidance published in 2012 aimed to improve risk assessments, there was still *“a great deal of confusion around contaminated land-related processes of investigating, assessing risk, reporting, consulting, formally declaring and remediating”*. It was felt that further work and guidance was needed to help clarify issues.
88. PHW and PHE CRCE Wales noted that the scoping paper failed to mention the need for effective communication of the risks involved in contaminated land and also the indirect effects e.g. anxiety and impact on quality of life.
89. UKLEA expressed disappointment that whilst the Scoping Paper drew attention to a number of key issues around contaminated land, no proposals had been put forward to how these could be addressed. The respondent also noted that it had proved difficult in accessing LA Contaminated Land Strategies online.

Overall Welsh Government Response

90. The Welsh Government would like to thank all respondents for taking the time to respond in the consultation and for the comprehensive information included in the returns. In total we received 23 responses from a range of organisations and individuals.
91. We welcome your responses and these will provide us with an excellent starting point for developing our strategic policy direction for dealing with contaminated land in Wales. We also welcome the fact that a wide range of organisations are prepared to be involved in assisting the Welsh Government in developing the actions needed to achieve results in this area.
92. The Welsh Government recognises the difficulties local authorities face in dealing with our extensive industrial past and takes the issues associated with contaminated land very seriously. This scoping exercise has provided the first step in the process of addressing these issues.
93. To further explore and develop the ideas proposed in the consultation responses the Welsh Government will establish working groups to discuss these ideas with a range of stakeholders. Where appropriate the ideas will then be developed into actions that will help shape the Welsh Government's future policy direction.

List of Respondents

Organisation/ Individual	Address	Reference number	Response (Available or Confidential)
Andrew Kibble Public Health England, Centre for Radiation, Chemical and Environmental Hazards (Wales)	Cardiff Metropolitan University Western Avenue Cardiff CF5 2YB	1	Available
Huw Brunt Public Health Wales	Health Protection Team Public Health Wales Temple of Peace and Health Cathays Park Cardiff CF10 3NW	2	Available
Dr David Schofield British Geological Survey (NERC)	British Geological Survey Columbus House Greenmeadow Springs Tongwylais Cardiff CF15 7NE	3	Available
Jeanie Gray Keep Wales Tidy	33-35 Cathedral Road Cardiff CF11 9HB	4	Available
David Rudland & Rob Bell Environmental Protection UK	c/o Oakwood House 11 Wingle Tye Road Burgess Hill West Sussex RH15 9HR	5	Available
Rachel Kershaw Pembrokeshire County Council	Public Protection Pembrokeshire County Council Freemans Way Haverfordwest Pembrokeshire SA61 1TP	6	Available
Simon Cottrill Conwy County Borough Council	Conwy County Borough Council Regulatory Services & Housing Civic Offices Colwyn Bay LL29 8AR	7	Available

Organisation/ Individual	Address	Reference number	Response (Available or Confidential)
Huw Morgan Welsh Pollution Technical Panel	Pollution Control Division Housing and Public Protection Civic Centre Oystermouth Road Swansea SA1 3SN	8	Available
Simon Clark City & Council of Swansea	Pollution Control Division Housing and Public Protection Civic Centre Oystermouth Road Swansea SA1 3SN	9	Available
Emma Jones Neath Port Talbot County Borough Council	The Quays Brunel Way Baglan Energy Park SA11 2GG	10	Available
Neil Pilliner Rhondda Cynon Taff County Borough Council	Ty Elai Williamstown Tonypany Rhondda Cynon Taf CF40 1NY	11	Available
Steven Durno Law Society of England & Wales	Capital Tower Greyfriars Road Cardiff CF10 3AG	12	Available
Andy Williams Newport City Council	Newport City Council Environmental Health Telford Depot Telford Street Newport NP19 0ES	13	Available
Dr Norma Barry UK Environmental Law Association	UKELA Wales 8 Heol Wilf Wooller Pontcanna Cardiff CF11 9JL	14	Available
Jason Bale Cardiff Council	Cardiff Council Room 206 City Hall Cardiff CF10 3ND	15	Available
Andrew Long Blaenau Gwent County Borough Council	E.H. Anvil Court Church Street Abertillery NP13 1DB	16	Available

Organisation/ Individual	Address	Reference number	Response (Available or Confidential)
Welsh Land Contamination Working Group		17	Available
Confidential	Confidential	18	Confidential
Julie Barrett Chartered Institute of Environment & Health	Lakeside Court Llantarnam Park Cwmbran NP44 3GA	19	Available
Angela Guy Wrexham County Borough Council	Housing & Public Protection Department Ruthin Road Wrexham LL13 7TU	20	Available
Kristian James	Civic Offices Holton Road Barry CF63 4RU	21	Available
Confidential	Confidential	22	Confidential
Dr Bill Baker Independent Environmental Consultant	33 Ledwych Gardens Droitwich Worcs WR9 9LL	23	Available