



environmental protection, improvement, innovation

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Dear Sir/Madam

NSCA Response to the Consultation on Proposed EU Soil Framework Directive and Initial Regulatory Impact Assessment

I am writing to you on behalf of NSCA's Land Quality Committee in response to the consultation on the proposed EU Soil Framework Directive and initial regulatory impact assessment.

The NSCA's Land Quality Committee have considered the consultation document and welcomes the opportunity to comment on the proposals. Our full comments are as follows:

Summary of Main Points

We agree that there is a need for a Directive which aims to ensure the protection and sustainable use of soil, prevent degradation, preserve it's functions and restore degraded soil. However we have a number of concerns about the specific proposals:

- The Directive is too prescriptive – common and binding guiding principles are needed but they should allow for local variations amongst member states.
- There are tensions between this Directive and the development processes in relation to land use and soil function.
- The definition of soil is not clear - It is a dynamic system that means different things to different users and there is difficulty in requiring a generic definition.
- Member states should only be required to address natural soil degradation where it is linked to human activity.
- The definition of Sealing needs to be clarified in relation to its role in affecting soil function
- The definition of dangerous substances do not include all contaminants as far as risk assessment is concerned.
- Historical soil sealing should be addressed as well as new sealing, and a strategy should be developed to reduce and remove historical soil sealing.

- The Directive should be aligned with existing EU Directives as there are some conflicts and overlaps. If a polluting activity is already adequately covered by existing legislation, it should be excluded from the requirements of the Directive.
- Clarification is needed in relation to the application of appropriate and proportionate measures to limit the intentional or unintentional introduction of dangerous substances.
- Member states should be allowed to retain their existing national approaches to identifying contaminated sites, however a basic risk based approach and a common set of EU standards should be developed, including toxicology, suitable investigation methods and quality control.
- The Commissions definition of contaminated land is too prescriptive and should be amended to cover sites where there are concentrations of contaminating chemicals from human activities, which present a risk to human health or the environment.
- It should not be a requirement to test for dangerous substances at all potentially polluted sites - the Directive should allow for proportionate and non-invasive risk assessment approaches.
- The proposed timescales for compiling an inventory will place further pressure on existing resource shortages and will be particularly difficult for members states who do not already have legislation in place.
- It is not clear how sites included on the inventory will be removed if contamination is not actually found to be present.
- Soils status reports would ensure issues of contaminated land are addressed when a property is sold. However, the wording of the proposals imply that investigations would be repeated every time a sale takes place.
- To minimise the impacts of soil status report, domestic householders should be exempt from the significant costs that the process is likely to incur.
- It is essential that the work currently carried out under the planning system is not compromised or even halted, and overall we are concerned about the apparent drift away from voluntary remediation as is encouraged under the present UK regime.
- The establishment of an EU platform for exchanging information is essential to ensuring a consistent approach on levels of contaminants, sampling protocols and site investigation methodologies.
- A consistent approach to preparation of National Remediation Strategies would be essential.
- We agree that action should be taken to raise awareness about the importance of soil for human and ecosystem survival.
- We are particularly concerned about proposals to “harmonise risk assessment methodologies for soil contamination” as they are likely to require changes to established UK technical practice, and would make most of the existing guidance obsolete.

About NSCA

NSCA (National Society for Clean Air and Environmental Protection) is the environmental protection charity that brings together organisations across the public, private and voluntary sectors to promote a balanced and innovative approach to understanding and solving environmental problems, through policy development and education. We are a registered charity with over 100 years experience of environmental campaigning, public information provision, producing educational resources and policy formulation.

NSCA's Land Quality Committee brings together policy makers, regulators and practitioners from central and national Government, local authorities, consultants, developers, academics, the Environment Agencies, industry, interested NGOs, as well as members from the NSCA regional divisions. As such it is able to draw on a wide range of expertise and views from representatives of the entire land quality community.

The main focus of the Committee is on issues relating to quality of the environment, and the development of and contamination of land. However, we have provided some comments relating to soil quality where appropriate.

Further details are available at www.nasca.org.uk

Please note that from 18th October 2007 NSCA will be know as Environmental Protection UK.

Full Response

General Questions:

• A. What are your views on the current level of soil protection measures in the UK considering the risks and threats faced by soils, including those identified by the Commission?

A very broad coverage exists, with varying depth of detail (agricultural process/land management for agricultural production v mitigation of environmental pollution and support for residential/industrial activity), with specific use focus rather than the soil as a functioning medium. This often leads to contradicting use in terms of preserving and enhancing soil function. Therefore a focus on soil function rather than land use is needed to maintain/enhance soil status amongst environmental media.

• B. If you consider these measures to be inadequate, do you believe that any gaps are best dealt with on a common basis across the EU, for example to avoid distortion in competition, or better dealt with at a domestic level?

Common and binding guiding principles – at the level of a Framework approach to ensure action towards preservation and enhancement of soil function goals. However, they must recognise different social and cultural activities within the dynamics of soil systems to allow local variation, but ensure progress to bring soil up to common level of protection.

• C. What, if any, gaps exist in terms of addressing soil protection at an EU level in particular the risks identified by the Commission?

Contamination is not managed on the basis of soil function. Remediation is often contrary to protection of soil function i.e. remedial processes focus on human health risk, and soil function can be degraded/impeded as a result of treatment to address primary aim.

• D. Does the solution to these gaps lie in amending existing EU Directives, or in introducing a new overarching framework for soil protection?

If we accept the principle that good soil function promotes more sustainable ecosystems and enhances quality of life then there is plenty of scope (and need?) for framework which looks on the basis of soil function. Other legislation is focused on different objectives. There is tension between development processes, re use of land etc and soil function.

• E. Are there any existing EU provisions that give some protection to soils which, in your view, do not work or which could do with simplification?

No comment

• F. In terms of the risks and threats identified by the Commission, how urgent are these problems? Is there sufficient evidence to tackle them now?

Current and therefore urgent, particularly given the changes in land use created by rate of change in climate. The scale of impact is highly variable but it is important we start the ball rolling. Nearly all threats to soil function are identifiable across the UK. Erosion and loss of organic matter in some parts of upland UK, the burden of contaminated land and development of urban environments provides inevitable recycling/reuse of land and exposure of the population.

• G. Who should bear the costs involved in any new obligations? Should we follow a polluter pays approach, a market-based system where, for example, a property developer pays the cost of remediation, or should these costs fall to taxpayers?

A mix of all aspects depending on the state and intended use of the land. Highly desired or polluted land should be the domain of polluter and developer to "fix", the taxpayer taking longer term responsibility for any strategic changes in land use practice to enhance soil function. Any new scheme must carefully consider the regulatory burden, complexity and resource required for implementation otherwise implementation will be difficult.

Detailed questions:

Q.1 Article 1: What are your views on the scope of the proposed Directive, in particular the definition of soil and the soil functions which are listed?

Definition of soil not clear – functional or spatial dimensions to it cause difficulty in interpretation. It is a dynamic system that means different things to different users. We have a difficulty in requiring a generic definition and never getting one! Soil functions seem to be all encompassing and feel appropriate to the job soil does for society.

Q.2 Article 1: Do you think the proposed Directive seeks the right level of protection for our soils?

Yes in principle the concern for function under threats identified is an appropriate aim. The use of a Framework Directive is also realistic, however under the detail of the draft is overly prescriptive in places.

Q.3 Article 1: Do you think it is important for Member States to address natural degradation as well as that caused by human activity?

Only where these are exacerbated or linked to human impacts on soil function. We cannot be responsible for “how the earth works” but there is a question as to intervention where human activities are influential – e.g. consequences of climate change.

Q.4 Article 2: Do you have any comments on these definitions? Do you think it is important to clarify any other terms in the proposed Directive?

Sealing: need more explanation in relation to its role in affecting soil function. Not clear what “permanent” relates to – time for migration of gas/liquid, duration of segregation of soil from atmosphere.

Dangerous substances: do not include all contaminants as far as risk assessment is concerned.

Q.5 Article 3: Do you consider there is a significant benefit in expanding the duty, as provided by the proposed Directive, to carry out an environmental assessment in so far as soil is concerned, so that it covers all other sectoral policies which may have a significant impact on soil? If so, which particular sectors of policy do you think impact on soil and need to be covered? And what are your views on leaving out the duty to consult in relation to these additional sectors?

Surely the implication is for MS to modify what is in place to improve consideration of soil function. So updating relevant policies at a MS level to meet with higher level aims of SFD is valid and expected.

Q.6 Article 3: What are your views on how this provision could be improved, for example, should it instead only refer to the SEA Directive in the recitals and include this additional duty in respect of soils only in respect of policies not already covered by the SEA Directive?

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Does not the SEA directive give this level of protection for soil? Presumably all aspects of soil function covered. We feel that there is merit in expanding the duty of the Directive ensuring soil function protection at appropriate levels (MS to decide).

Q.7 Article 4: There are a number of ways in which this proposed Article could be adapted. Please let us have your views on how this provision could be amended. Some possibilities you may wish to consider are:

- **inclusion of an appropriate de minimis threshold, in terms of area of land affected.**

Certainly something for MS to decide – is likely to vary from threat to threat and across MS in line with local practice.

- **leaving it to individual Member States to decide which land-users are covered and which activities should be regarded as likely to result in significant harm. This may mean differing levels of care in different Member States but with more flexibility to deal with relevant local issues that may change with time.**

Yes, but this might need some compromise depending on ability of MS to deal with particular threats.

- **leaving this outcome to be achieved by the EIA and other Directives, and simply requiring Member States to encourage action by landusers more generally to minimise their impact on soil functions.**

Difficulty in that soil function might not be a direct component of sectoral policy and needs to be included.

- **exceptions or limits to the duty to prevent or minimise, for example, because some uses serve important social or economic needs, and minimising adverse effects may be technically infeasible or involve excessive cost?**

This seems a reasonable approach but surely the role of the MS is in implementing the SFD?

Q.8 Article 4: What activities, which are not already regulated in the UK, if any, do you consider may have a significant adverse impact on soils?

This is hard to define. Potentially in response to climate change – e.g. quality of any irrigation water with respect to emerging pollutants and diffuse pollution.

Q.9 Article 4: Do you have any comments on the issues we have raised, and on our initial analysis of costs and benefits?

No comment

Q.10 Article 5: Do you consider there to be significant benefits in having new EC legislation that deals with soil sealing? If so, what are the benefits and do they in your view exceed the potential costs?

Likely to be benefits in particular for future urban environments. The inclusion of unsealed surfaces regulating urban runoff and heat balance in urban centres in particular. Degree of sealing and the incorporation of sealed surfaces in developments must have some limit/direction.

Q.11 Article 5: Do you think there would be value in amending the draft Directive, for example, to:

- a) make it clear that Member States in considering the need to limit soil sealing should do this as part of their overall consideration of a proposed development's environmental, social and economic impacts;**

Yes, likely to add to “well being” in developments.

b) provide for exceptions to the requirement to limit sealing, for example, where the proposed development/sealing serves an overriding public interest;

Yes – an obvious exclusion. So long as the “test” of the public interest is fair and open.

c) insert de minimis provisions in line with the thresholds in the Environmental Impact Assessment Directive?

Yes – would seem ridiculous to take it to property level. However, might be worth encouraging (awareness raising) general public/developers of the potential benefits.

Q.12 Article 5: What are your views on amending this provision so that it only requires mitigation of new soil sealing through use of permeable construction materials?

No. It seems that historical soil sealing has created issues with respect to soil function. Need to look at a strategy to reduce and remove (main focus of de-sealing in the SFD!). Provision of examples of construction methods and alternatives urgently needed.

Q.13 Article 5: Do you agree with our concerns and our assessment of the costs and benefits as set out in our initial RIA?

Generally, but many of the assumption are not backed up by evidence.

Q.14 Articles 6-7: Do you consider that this risk area/ programme of measures approach is appropriate? How do you consider that this provision could be improved, for example, what are your views on requiring Member States to put in place programmes of measures to address degradation processes with an adequate focus on higher risk areas and higher risk activities (but without requiring formal identification of risk areas) or requiring more clearly harmonised standards?

No comment

Q.15 Articles 6-7: Is there a significant benefit, in your view, in having a common EU-wide framework in place?

No comment

Q.16 Articles 6-7: Do you consider that the correct degradation processes have been listed for the purpose of identifying risk areas? What are your views on seeking to have compaction removed from this list so that it is dealt with only under the proposed Article 4?

No comment

Q.17 Articles 6-7: Do you consider that the definitions of soil erosion, soil carbon and the other degradation processes are correct considering the range of soil functions which the proposed Directive seeks to protect?

No comment

Q.18 Articles 6-7: What are your views on the inclusion of salinisation as a threat – do you consider that it should be defined to exclude managed retreat?

No comment

Q.19 Articles 6-7: If the proposed Directive were to require detailed risk-mapping, is it important for it to require Member States to use all the Annex I factors or could the methodology be left to individual Member States?

No comment

Q.20 Articles 6-7: Do you agree with our concerns and our estimate of the costs and benefits of this provision?

No comment

Q.21 Article 8: How important do you think it is for us to be permitted to continue to use existing CAP measures (cross-compliance and agri-environment) to deliver the required Programme of Measures? Do you think such existing measures in their current form are adequate for addressing soils issues in high risk areas?

No comment

Q.22 Article 8: Would you like the Government to be able to use a range of measures, from guidance and codes of practice to regulations, to implement this proposed Article?

No comment

Q.23 Article 8: Do you agree with our concerns and our estimate of costs and benefits?

No comment

Q24 (Article 9) Are there any benefits in having this provision?

There may be some benefits, but the Directive as is, does not clearly articulate these. As the consultation document already indicates, the UK already has significant legislation to prevent new contamination.

Careful wording is needed to ensure that responsibility for preventing new contamination does not fall disproportionately to the Regulator.

Q25 How do you think this proposed Article could be amended to improve it?

It is clear that there is no benefit in double regulation. If a polluting activity is adequately covered by existing legislation, it should be excluded from the requirements of the directive. If this directive is to be introduced at all, it must be clear to both the regulator & the regulated what is and is not covered.

Addressing the specific examples:

- **So the proposed Directive states that full implementation of existing pollution prevention and waste legislation might be sufficient for implementation.**

Unlikely to be effective as historical issues are not considered. Remediation would not meet soil function preservation/enhancement requirements of directive, so high level aims of the directive would not be met?..

- **So the proposed Directive states specifically what risks or activities must be addressed.**

Yes, if on a risk basis – how does it “future proof” the assessment with new substances and activities likely. An industrial activity basis might not be inclusive enough and “fit for purpose” must drive the context of the provision.

The legislation should be careful not to specifically address specific processes or activities, rather should indicate the damaging release of harmful or potentially harmful/ polluting substances should be prevented.

A particular concern is the application of “appropriate and proportionate measures to limit the intentional or unintentional introduction of dangerous substances”. This implies that there is a cost-benefit type relationship such that there will be circumstances where a test of significance will be applied. This should be clarified within the Directive.

Q26. (Article 11) Do you agree with the costs and benefits identified in our preliminary analysis? How do you think the proposed Directive could be amended to reduce the costs involved whilst achieving the same benefits?

This would seem a reasonable assessment of costs. We would add that, assuming that the “competent authority” designated for this task was the local authorities in the UK, as now, and assuming that each has around 600 sites each, then each authority would have to find £10-12M each for the preliminary sampling alone. This is based on the DEFRA sampling costs given.

We believe that the UK model – a risk based prioritisation approach - should be adopted. This would allow realistic progress to address historical CL and place a sequential burden on the MS. Investigation costs are high and should be minimised where possible. The provision of trained technical expertise within the regulatory regime is likely to be a severe limitation to implementation.

Q27 Should the proposed Directive enable Member States to retain their existing national approaches to the identification of contaminated land, provided these deliver some basic common requirements, or should they be required to follow a common detailed procedure? If so, what are the basic common requirements that can in your view reasonably be included in the proposed Directive?

Yes, but these do not necessarily consider soil function in its broadest sense. A basic approach – risk based - should be identified and then left to each MS to develop (using shared experience by all means), whilst maintaining the cultural and social differences of MS.

It is important that the existing UK system is not made more onerous. Thus the Directive should allow for the existing Member States’ approaches to be maintained where possible. A test of reasonableness and proportion, as at present in the Part IIa regime, must be included in the Directive. Minimum basic requirements should be incorporated and where possible incorporated with a common set of EU standards – from toxicological data to risk assessment methods, with suitable investigation methods and quality control.

Q28 Articles 10-11: What are your views on the Commission’s definition of contaminated sites? Is it appropriate?

The EU directive makes a subtle but significant change to the existing UK regime by concentrating on man-made contamination. This ignores the contribution made by unacceptably high natural contamination, and we suggest that this definition needs further consideration.

This definition is perhaps too restrictive and may be difficult to implement. Definition of significant possibility of significant harm to a receptor provides more flexibility in the identification process and

a sequence of tiered assessments provides a reasonable approach to dealing with the process. Requiring measurement of all sites for a fixed range of substances is overly prescriptive and immediately creates a scheduling problem. UK approach shows progress and has produced a pragmatic means to address difficulties and manage sites.

The definition of contaminated ground seems to concentrate on soils. However soils contamination normally leads to a degree of water pollution, whether on a micro level, by soil pore water contamination to a macro scale by pollution of aquifers and surface watercourses.

Q29 What are your views on the list of potentially polluting activities set out in Annex II?

We question whether they can ever be comprehensive. This is a fairly comprehensive list, but if there is not a true risk based methodology, the directive will establish an unworkable regime – potentially missing sites of concern.

The Commission's present definition of contaminated sites is too narrow and incomplete. A full and comprehensive indicative list should be compiled similar to the DoE Industry Profiles, allowing for flexibility.

Each Member State should be allowed to compile lists of “potentially polluting activities” based on its land use history and traditional means of usage.

Q30 Articles 10-11: Do you consider that it is necessary to test for dangerous substances at all sites on which potentially polluting activities have taken place or do you think testing should be targeted based on a risk assessment?

It is not currently necessary in the UK to test for “dangerous substances” at all sites where past contaminative uses have led to contamination for a variety of reasons. Key amongst these is the recognition that the absence of a source, pathway or receptor is sufficient grounds to conclude that a site poses minimal risk. The Directive as worded appears to require invasive site testing as a minimum requirement. It should be reworded to allow for proportionate and non-invasive assessment approaches to be valid in assessing risk.

We believe that this principle should be incorporated within the SFD. It is possible that a standard suite of analytes (modified if evidence suggests others) might be presented when introducing intrusive investigations (and be guided by industry specific publications such as the DoE Industry Profiles). However, if it can be shown without testing, there is no risk, why test at all?

Q31 Do you think the timescales given in the draft Directive for compiling and reviewing the inventory are reasonable?

The timescales given in the draft Directive will probably compound the existing significant resource shortages in the contaminated land industry (particularly for skilled staff). Moreover, those Member States which have little indigenous skill base of their own, such as where existing legislative provisions are minimal, will find the timetable especially difficult to meet.

The training of skilled assessors will not be a quick process and will take many years. There will be a case for new government funding to support existing voluntary training schemes and qualifications, eg SiLC to help meet the shortfall.

Q32 Articles 10-11: How do you think this requirement will affect land values?

The issue of land blight was raised in the early 1990's when section 143 of the Environmental Protection Act was about to be enacted. This of course was abandoned in 1993 primarily because of blight concerns. There is no reason to assume that the current position would be any different.

We would add that it is not clear how sites identified and listed by preliminary assessment (Article 11/2) may be removed from the list when it is found by sampling (A11/3) that contamination is not in fact actually present. This must be addressed to make any inventory relevant.

Q33 Article 12: How do you think this provision could best be amended to minimise any possible negative impacts that this proposed Article may have in Great Britain?

It will be very difficult to fully characterise ground during a property transaction for various reasons. It requires open and honest assistance of the vendor, especially where it is the vendor's activities that may have lead to contamination. The vendor's assistance with identification of substances used (and thus sampled for in ground) is vital and where this is not forthcoming, perhaps due to commercially sensitivity surrounding a manufacturing or development process, a transaction report is unlikely to be complete. On the other hand the purchaser will need to satisfy themselves that the site has been fully characterised. On balance it is perhaps preferable that the vendor takes responsibility for this obligation.

To minimise effects in the UK, domestic householders must be exempted from the very significant costs that this process is likely to incur.

It is difficult to see how this Article contributes a direct benefit to the environment. Article 12 will create an exceptionally large administrative burden on regulators whatever way it is amended. The only possibility may be that a regulatory body provides a soil status report for all land in their administrative area. This will involve enormous effort and may open the regulator to action for compensation if contamination is subsequently found that was not identified on the soil status report.

Q34 Article 12: What are your views on the costs and benefits of this provision? What effect do you think this will have on land prices?

On the basis of "caveat emptor" or "buyer beware", it is usual for land assessment reports to be central to financial decisions on land transactions. This part of the Directive probably adds little to the current system other than to make land assessment information publicly available (which is implied by the requirement that the report is made available to the Competent Authority). All information on land contamination is time related, especially with unstable substances and where water pollution has occurred, and making these reports widely available might compound the blight issue (Q32).

The benefit of the proposal would be that many of the issues on land contamination were specifically addressed each time a site was sold. The problem would be that, for investigated and/or remediated sites this work will have been done already and will be repeated each time a 'site' was sold. At the very least the cost of this work will have to be accounted for each time a 'site' is sold. Note: see below for comments on the definition of 'site'

Q35 Article 12: What do you think are the public health/environmental benefits of the requirement to produce Soil Status Reports? Do you consider that they will benefit business activity?

In relation to public benefit it may speed up the assessments required by Article 11 by allowing the information from transactions to support the information gathering activities of Article 11.

In relation to business, its probable main benefit will be to concentrate minds in relation to contamination and support those organisations otherwise tardy when it comes to consideration of contamination in relation to land purchases.

Again, it is difficult to see how this Article contributes a direct benefit to the environment as using the current UK regime, risk will have been assessed through planning or Part IIa. The wording of the directive suggests that each time there is sale or transfer investigation is required – even for individual flat dwellings within a site. This is potentially a burden and may even disturb previously remediated contamination.

Q36 Articles 13-14: Do you agree that contaminated sites as defined should be remediated? Do you think these provisions could be amended to make them more proportionate? If so, how?

If sites are to be remediated then this must be based on risk. It is essential that the work currently carried out under the planning system is not compromised or even halted, and overall we are concerned about the apparent drift away from voluntary remediation as is encouraged under the present UK regime.

To make the response more proportionate the definition of remediation must be further defined, and focus less on the management of contaminants. It should make clear that management measures, rather than just treatment of contaminants would be acceptable. This would allow approaches such as isolation (ie restricting access) instead of or in addition to treatment of the contaminant.

There is the difficulty of what the definition of 'contamination' actually is. At what level does the presence of a contaminating toxin on a site present a risk? Is that level for all land uses or for specific land uses? If the remediation is removal, presumably the contaminated material is emplaced elsewhere - does this introduce 'new' contamination? See also the response to Q27 for comments on problems with deciding whether a site is 'contaminated' according to the Directive. Again, the UK approach through the planning system and Part IIa of the EPA already addresses these issues.

Q37 Should this provision be aligned with existing European Directives (as outlined in paragraph 5.2), so that where they apply, those Directives' arrangements concerning remedies will operate as now?

Yes. There is some conflict as this directive overlaps with other EU legislation (as set out in 5.2) that requires clean-up to return land to its previous state (IPPC, waste legislation), whereas SFD requirements are for the land to be subjected to risk-based cleanup.

Q38 Do you agree with the costs and benefits identified in our preliminary analysis? How do you consider these costs could be reduced whilst achieving the same or similar benefits?

Yes. The problem is the apportionment of costs, and the means where some landowners may seek to shift their responsibilities on to the public purse. There appears to be an incentive against voluntary remediation by landowners/developers.

There may need to be a mechanism for the public purse to reclaim the benefits of any subsequent development of publicly funded remediation.

Q.39 What are your views on requiring Member States to put in place appropriate mechanisms to fund remediation of orphan sites?

As now there must be a means by which any land, for which no-one other than regulatory authorities can be found to take management responsibility, can benefit from publicly funded remediation as a last resort.

It is difficult to see how the mechanism for this will work as the process for most land is presently primarily driven by developers. Will development be held back if a public programme is in place? The profits of development should obscure this for all but marginal land.

Provided the definition of contaminated includes an assessment of risk to health or the environment, the requirements would not be significantly different from those under Part IIa of the EPA

Q.40 What are your views on requiring Member States to have a public 'National Remediation Strategy' in place? Do you think this will affect existing national approaches such as remediation by developers?

One of the biggest problems with developing a national strategy (especially in a buoyant property market) is keeping the information up to date. In particular progress with individual sites will have to be monitored to ensure that remediated sites are recognised as such and do not contribute unnecessary ongoing blight to neighbourhoods and regions.

If left to the MS to develop, the NRS might provide less specific detail for national progress through development. The collection of data to show the progress through development might be wise.

There may be difficulties if 'National Remediation Strategies' are significantly different between member states.

Q.41 Do you agree with our concerns and the costs and benefits identified?

Yes – not a major consideration given the relative magnitude of others!

Q.42 Article 15: What are your views on this provision and how could it could be improved?

An important component, as this is essential to ensure delivery of strategy – many barriers to overcome from individual perception of soil. Improvement in communication through common stakeholder forum and engage with wide community established during eg the SFD development working groups.

Q.43 Article 16: What are your views on this provision and how could it be improved?

Yes, agree but ensure links to article 17 and across the environmental directives – common data sets are essential but difficult to deliver. The directive as it stands provides very little comfort that reporting is feasible. Modified, the Directive might provide satisfactory requirements.

Q.44 Article 17: Do you consider that this platform for the exchange of information would be useful for the Government and stakeholders?

Yes

If the EU wide approach to the protection of soils is to be adopted, there must be agreement on levels of contamination, sampling protocols and site investigation methodologies. These must be in place before the directive is implemented.

Q.45 Article 17: Is this too narrow a range of information? If so, what else should be included?

As much as is feasible – exchange of information within and between MS would benefit from a common shared format – seen in the difficulty with provision of BPPI in CL in E&W.

Presumably in due course there will be forums for the exchange of experience in enacting the regime, but especially in the management of blight and apportionment of liability, both of which may affect individual MS's relative competitiveness.

There must be agreement on the way articles 10 to 13 are to be implemented otherwise there are likely to be different 'standards' within the EU.

Q46 What are your views on these provisions?

Article 18:

If this is to succeed as an EU wide directive, there must be a common approach as set out in article 18. This is not the case at present.

We have particular concerns about Article 18 and the "need to harmonise risk assessment methodologies for soil contamination". We read this as implying a need for new EU-wide approaches to risk assessment and thus the need for new detailed technical procedures to enable this to happen. Currently across the EU, those countries that currently undertake a risk-based approach to assessing land contamination have individual methodologies (and indeed varying approaches to what constitutes "suitable for use"). Of course the detailed approach to human health risk assessment in the UK is being revised now following the work of the SGV Taskforce and its approach may differ in some aspects from other EU states. Thus any harmonisation of risk assessment practices is likely to require changes in established UK technical practice to form common ground and by implication, much existing guidance (and there are at least 200 publications on contaminated land in the UK - cf the CIRIA contaminated land website) will become obsolete. There will no doubt be a cost implication for UK industry and regulators from this also, not least on central government that has previously sponsored much of the existing guidance.

Other comments:

Any transposition time for this Directive will need to take into account the availability of professional resources to complete the demanding programmes involved.