

NATIONAL QUALITY MARK SCHEME FOR LAND AFFECTED BY CONTAMINATION

Introduction

Past economic activities have left the UK with a substantial legacy of land which is contaminated, for example by past industrial, mining and waste disposal activities. Unless adequately addressed, this contamination can pose unacceptable risks to both people and the environment.

It has been estimated that there may be between 50,000 and 100,000 potentially contaminated sites across the UK affecting over 300,000 hectares of land.

The problems of historical contamination are most commonly dealt with via a combination of actions required by either the Town and Country planning or the Part2A Contaminated land regimes.

Town & Country Planning Regime

Land contamination, or the possibility of it, is a material consideration for the purposes of town and country planning. This means that a planning authority has to consider the potential implications of contamination both when developing plans and when it is considering individual applications for planning permission. The regime itself places the responsibility for securing a safe development upon the developer and/or landowner.

The National Planning Policy Framework (NPPF) says that planning policies and decisions should ensure that:

- The site is suitable for its new use taking account of ground conditions and land instability, including from natural hazards or former activities such as mining, pollution arising from previous uses and any proposals for mitigation including land remediation or impacts on the natural environment arising from that remediation;
- After remediation, as a minimum, land should not be capable of being determined as contaminated land under Part2A of the Environmental Protection Act 1990; and
- Adequate site investigation information prepared by a competent person is presented

In addition to the planning system, the Building Regulations (made under the Building Act 1984) requires measures to be taken to protect new buildings, and their future occupants, from the effects of contamination.

The Planning and Building Control regimes ensure that land is made suitable for any future use.

Part2A Contaminated Land Regime

The main objective underlying the introduction of the Part2a contaminated land regime was to provide an improved system for the identification and remediation of land where contamination is causing unacceptable risks to human health, assessed in the context of the current use and circumstances of the land. The regime places a responsibility upon the polluter, or if they cannot be found the owner/occupier of the land to address any problems.

The Part2A regime ensures that land is suitable for its current use.

The proposed “National Quality Mark Scheme” (Overview)

Both the Planning & Contaminated Land Regimes require information to be prepared by competent people.

The purpose of the “National Quality Mark Scheme” (QMLC) is to provide assurance to regulators (Local Authorities and the Environment Agency/NRW/SEPA) and to Clients (who retain responsibility or liability for land contamination problems) that the risks arising from land contamination have been adequately assessed and dealt with by competent people.

The key features of the scheme are as follows:

1. Land contamination and the risks that it poses are managed in line with established good practice procedures (CLR11) using competent people:

Reports prepared in line with good practice such as risk assessments, remediation option appraisals or remediation verification reports are signed off by a Suitably Qualified Person (SQP) who checks and ensures that:

- a. The underlying data has been collected in line with established good practice procedures and its collection has been subject to control via established quality management systems.
- b. The data has been processed and any interpretations made by competent people who have relevant experience and/or qualifications in their respective disciplines.
- c. The product of the work whether a risk assessment, remedial options appraisal or remediation verification report sets out conclusions or recommendations that are substantiated by the underlying data and are based upon reasonable interpretations in line with established approaches, guidance and advice provided by the relevant regulatory authorities.
- d. Any limitations in the data or uncertainties in the analysis are clearly identified along with the possible consequences to the conclusions or recommendations set out in the report.

The scheme should ensure that all legislative requirements connected to the management of land contamination have been met. Work carried out under the scheme should ensure that regulatory intervention to protect both the public and the environment under either the Planning or Part2A regimes is avoided.

The “National Quality Mark Scheme” in detail

What does the scheme mean for the Regulator(s)?

The purpose of the scheme is to improve the quality of land contamination work delivered by the Environment Industry to a level whereby the Regulator(s) can rely upon the conclusions / recommendations or proposal put forward without the need for routine detailed auditing or third party peer review. This saves both the Client and the taxpayer significant cost.

For a Planning Authority a report accompanied by a quality mark should mean that land contamination risks (to people, property, habitats and the water environment) have been dealt with adequately so that a site is “suitable for use” and does not need to be determined as “contaminated land”. The work in question (and accompanying land contamination management actions) may have been done in preparation for a planning application or in compliance with planning conditions.

For an Environmental Regulator a report accompanied by a quality mark means that risks to controlled waters have been adequately assessed and dealt with so that enforcement action using instruments such as Anti-Pollution Works Notices will not be required.

All regulators will naturally reserve the right to scrutinise submissions for the highest risk cases but compliance with the requirements of the QMLC scheme should ensure that any sites will pass such scrutiny with the minimum amount of delay or additional cost/expense.

What does the scheme mean for subscribing Companies?

The QMLC scheme is aimed at companies operating in the field of environmental consultancy and remediation contracting. The administering body for the scheme will hold a register of SQPs and their employing Companies. Although the “quality mark” itself will be held by the suitably qualified person(s) the Company employing such persons will have the right to use the Quality Mark logo on any relevant reports it submits to Clients & Regulators. In participating in the scheme the Company is effectively committing to:

- Operating in line with an established quality management system
- Ensuring that it employs at least one “suitably qualified person” to act in the capacity of signatory for relevant pieces of work.
- Supporting the continuing professional development of its staff so as to ensure they remain capable of performing their duties in line with the latest good practice applying to their respective specialist fields/disciplines

What does the scheme mean for the Client?

If a client engages a company who employs a named individual who is registered with the QMLC scheme as a SQP to oversee the project they can be assured that the relevant work will be carried out to a standard sufficient to pass regulatory scrutiny. In the context of land contamination risks this means that any liabilities will be successfully managed.

A client may also engage such a company for an SQP to review/audit a product.

Any submissions made under the QMLC scheme will be expected to incur less delay in processing and be subject to less unforeseen liability management costs.

What are the responsibilities of the Suitably Qualified Person (SQP)?

The SQP will:

- a. Assess the capability of the Team responsible for gathering, processing or interpreting the data with reference to any measures set out in the Brownfield Skills Framework. In doing so the qualified person may rely upon any relevant capability assessments that may have been performed and verified by recognised institutions or organisations (e.g. SiLC, ROGEP, SoBRA, CL:AIRE).
- b. Ensure that key aspects of the relevant reports are checked/audited by either themselves **OR** other delegated individuals at the requisite level of capability within the team.
- c. Ensure that any conclusions or recommendations made within the reports are in line with and comply with the requirements of the QMLC scheme regarding accuracy and reasonableness.
- d. Sign a declaration form for each product to confirm that the relevant aspects of the scheme have been complied with. The declaration form should accompany and form part of the report in question.

What is a Suitably Qualified Person (SQP)?

This is the person who fulfils the ultimate role of sign-off for the product in question.

The minimum requirements for fulfilling this role are currently being debated and will be consulted upon. However the Land Forum professional standards working group is proposing that a SQP should be:

- A Chartered person bound by a professional code of conduct
- Of sufficient experience in the sector to have a good overview of what is required to obtain regulatory signoff
- Capable of recognising their own limitations and those specialist skills required of others in a multidisciplinary industry
- Aware of the requirements of the regulatory regimes under which the work is being undertaken.

The SQP should ideally have been assessed by a suitably robust process of examination and interview as recognised by relevant professional bodies/institutions. It also follows that they must have received sufficient training to be aware of and comply with the requirements of the QMLC scheme.

It should be noted that the Suitably Qualified Person must have an awareness of, but does not have to be an expert in all aspects of Land Contamination Management work. Although they must be capable of assessing whether the product as a whole and particularly its conclusions are “fit for

purpose” they can delegate the peer review process of individual components of the work to others. However they retain the responsibility for ensuring that those individuals used within the team are capable to undertake those tasks.

What are the regulatory standards, guidance or advice referred to within the scheme?

The overarching framework for Land Contamination Management work is provided by CLR11.

What key aspects of reports need to be audited as part of the QMLC process?

The aim of the scheme is to ensure that any data collection, analysis and interpretation carried out as part of Land Contamination Management work is of sufficient quality to be relied upon for the purposes of reasoned decision making.

The nature and degree of any checks being carried out are currently being formulated but the following key lines of evidence have been identified to date.

Scoping:

- Is the scope of the investigation appropriate given the size and nature of the development?

Preliminary Assessment / Phase 1 - Desk Study:

- Has the history of the site been established and a conceptual model produced which identifies likely contaminants, pathways and receptors.

Phase 2 - Site Investigation:

- Has the investigation been driven by the conceptual model to look for the right things, in the right places using appropriate detection methods with adequate quality control measures?
- Has enough data been gathered to be representative of site conditions?
- Have the appropriate standards been identified to assess the significance of any risks
- Have appropriate methods, tools, models and parameters been used as part of either generic or detailed quantitative risk assessment.
- Have relevant uncertainties been highlighted together with their implications for any conclusions drawn?
- Are the recommendations justified by the data collected, risk assessment and conclusions drawn?

Phase 3 – Remediation:

- Have appropriate remedial objectives been identified linked back to the conceptual model and the proposed land use?
- Have appropriate compliance points been identified?
- Have appropriate remediation methods been considered along with the need for any regulatory permissions?

Phase 4 – Verification:

- Has the remediation been undertaken in line with the approved remediation methodology?
- Is there sufficient evidence to demonstrate that remediation is completed and has fulfilled the defined remedial objectives?

What might the Declaration look like?

An example/draft of the potential form and content of the Declaration is attached for information.

What can be expected of the Environment Agency?

The Environment Agency will issue a Regulatory Position Statement similar to that produced for the Development Industry Definition of Waste Code of Practice. The essence of this will be that if work is undertaken in line with the QMLC scheme the EA will assume that all relevant legislative requirements for environmental protection have been met.

Limited Funds will be made available to contribute towards the costs of setting up the scheme and of updating any regulatory guidance to ensure that it is accurate, focussed and suitable for the purposes of reference within the QMLC scheme.

The Environment Agency will use its network of contacts with NRW, SEPA, Local Planning Authorities, Local Government Association and others to introduce and raise awareness of the scheme.

What can be expected of Local Planning Authorities?

Individual Local Planning Authorities can choose to adopt Position Statements similar to those proposed by the Environment Agency. Reference to the scheme can be made in any guidance to developers or at pre-application discussion stage as either desirable or essential components of any work undertaken under planning to deal with land contamination issues.

SUPPLEMENTARY INFORMATION / QUESTIONS AND ANSWERS**Is the scheme designed to be used in England only or throughout the UK?**

The scheme is being proposed and will be trialled in England, but we would commend its use (with suitable modifications regarding applicability of legislation and guidance etc.) to Scotland, Wales and Northern Ireland.

What are the costs and benefits to Industry?

The scheme is voluntary and the rules are simple. It has been designed to operate alongside and within existing quality management systems. It places reliance upon guidance that has already been produced and adopted by Industry. It relies upon the capability of individuals whose status has already been assessed by other professional bodies. By removing the need for independent third party review (by the regulator) it reduces rather than imposes costs.

If this scheme is voluntary how can it drive improvements across the Sector?

The economic advantages to the developer of getting their proposals “right first time” will create the driver to use Companies who subscribe to the scheme. The more projects that use the scheme, the more time will be freed up for regulators. This enables adequate scrutiny and challenge or substandard applications. This in turn creates the incentive for Companies to employ the scheme next time.

What might be involved in administering the scheme?

A basic description of the scheme and how it works would need to be produced along with any templates for declarations. Individuals acting in the capacity of suitably qualified persons would have to undergo induction/training and be registered as would Companies subscribing to the scheme.

Updates to any core references to good practice may also need to be maintained/kept up to date.

Some form of audit and complaints procedures would also have to be put in place by the administering body, although the liability for production of products lies with registering Companies and with either Companies or individuals for professional indemnity insurance.

How would a scheme cover its costs?

The main costs of maintaining a scheme would be minimal providing that the assessment and registration of SQPs could be aligned with existing programmes of professional recognition and membership (with annual subscription fees). Registered SQPs would be bound by their professional bodies to undertake continuing professional development (CPD) and hence maintain awareness of changing legislation, guidance and standards.

The alternative would be to levy a nominal fee on Companies subscribing to the scheme. However this runs contrary to the concept of the individual holding the quality mark.

Can it be expanded to cover other legislative regimes?

The principles of the scheme could be expanded to include remediation work carried out under the Environmental Permitting Regime or to cover soil and groundwater monitoring/baseline surveys (as required by Industrial Emissions Directive).

What are the safeguards in the system from a regulatory perspective?

- The technical standards to which work must be performed will be set with clear reference to compliance with current established guidance. This creates a clear expectation as to the standard of work to be performed.

- The capability of individuals undertaking the respective diverse tasks within the project will have been checked. This ensures that individuals do not inadvertently undertake responsibilities for which they are not fit to perform.
- The factual information and interpretations of the data will have been critically assessed and audited using an agreed and defined checklist/audit process. This ensures that any deficiencies can be clearly identified and challenged.
- The SQP signing off the work is required to make a clear declaration of compliance. This is significant as the signatory is “vouching” for the suitability of the product which has implications for both “professional status” and “professional indemnity insurance”.
- Liability for any residual environmental problems will always remain legally with the problem holder and in the unlikely event that regulatory intervention is still required all powers of enforcement are retained.

Why do suitably qualified persons need to be Chartered & why does the scheme require the backing of the Professional Bodies/Institutions?

With professional status comes a commitment to an ethical code of conduct and the ability for a respective professional body to take action against those who behave inappropriately. For any scheme to be trusted by the regulators there must be a credible threat of sanctions against those who may be tempted to abuse the system.

In stepping back from scrutinising individual projects for regulatory compliance the regulator should be assured that the work will have been carried out to appropriate standards and that those checking or auditing the products can be trusted.

Why is the Quality Mark proposed to be held by the SQP rather than the Company?

As the scheme relies upon the integrity of an individual to operate (and the sanctions associated with their professional institutions) it makes sense for them to hold the quality mark. This also avoids the potential difficulties and costs which might be involved in auditing Companies.

How would this scheme fit in with other existing registers/initiatives?

The QMLC scheme focuses on the concept of using capable individuals to provide defined products that are fit for purpose. It then places the responsibility for the adequacy of that product on the Company employing those individuals. Such products are produced by multi-disciplinary teams.

There are a number of existing or proposed registers of individuals, the purpose of which is to enable the consumer to identify capable people in different fields. The QMLC Scheme provides an umbrella under which professionals from all these different fields can operate together as part of a team either in the capacity of technical experts in a particular specialism (SOBRA), topic (CL:AIRE) or wider field (SiLC & ROGEP). A person registered for a particular purpose can be regarded as being pre-assessed by their peers (and the SQP) as being “capable” of performing in a particular field.

Why do we need the Quality Mark scheme if we already have the SiLC register?

The SiLC register provides a list of pre-assessed “capable” individuals who would be well placed to fulfil the role of SQPs under the Quality Mark scheme. However the scheme goes well beyond accreditation of an individual and imposes specific tasks (auditing and verification) which are necessary to ensure that individual products are fit for purpose.

Why do we need the Quality Mark scheme if SoBRA are proposing a register of Risk Assessors?

Depending upon the final form of the SoBRA scheme it is envisaged that any proposed register of risk assessors would provide an ideal source of pre-assessed “capable” individuals for undertaking tasks associated with risk assessment under the scheme and that some of those individuals will also be capable of performing the role of SQP. However the scheme goes well beyond accreditation of an individual and imposes specific tasks (auditing and verification) which are necessary to ensure that individual products are fit for purpose.

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