

Case ID: IESS.24.012

Description: Investigation into the delivery of contaminated land duties in Scotland and the effectiveness of the regime

Environmental Standards Scotland (ESS) is investigating the delivery and effectiveness of the statutory contaminated land regime in Scotland. The investigation will consider whether local authorities are fulfilling their statutory duties, as well as the effectiveness of the wider system that supports the identification and remediation of contaminated land.

Background

Scotland has a long industrial history, which has left a legacy of land affected by contamination from past activities such as manufacturing, mining, and waste disposal. Contaminated land can pose risks to human health, the water environment, and ecosystems if not appropriately identified and managed.

Part IIA of the Environmental Protection Act 1990 establishes a statutory framework requiring local authorities to inspect their areas 'from time to time' to identify contaminated land and to ensure that remediation is undertaken where land meets the statutory definition. This framework is supported by statutory guidance issued by Scottish Ministers in 2006, which sets out expectations on inspection strategies, prioritisation, and assigning liability. Where remediation is required, the regime is intended to operate in line with the 'polluter pays' principle.

ESS received information during wider analytical work on risks to Scotland's soils suggesting that contaminated land inspection activity may have stalled across a number of local authorities, and that the Part IIA regime may not be operating as originally intended. Professional bodies and practitioners have also raised concerns about the complexity and practical effectiveness of the regime.

Reason for investigating

Accordingly, ESS undertook 'pre-investigation' work to better understand how contaminated land duties are currently being delivered across Scotland. This included reviewing published inspection strategies and contaminated land registers, issuing a formal questionnaire to all 32 Scottish local authorities, and seeking comments from the Scottish Government and the Scottish Environment Protection Agency (SEPA).

That work identified widespread issues, including limited inspection activity in recent years, outdated or unrevised inspection strategies, and a potential over-reliance on the planning system to address contamination. While efforts are ongoing to improve national technical guidance, there has been limited evidence of action to address the factors that appear to have contributed to inspection activity stalling.

The scale of the issues identified, their consistency across local authorities, and the potential implications for human health and the environment indicate that these concerns may reflect not only possible non-compliance, but also broader effectiveness and implementation challenges within the regime. Given the number of bodies involved, the complexity of the framework, and the need to engage with practitioners and experts, ESS considers that moving to full investigation is justified.

Grounds of investigation

ESS' investigation will focus on the delivery, effectiveness, and oversight of the contaminated land regime in Scotland. In particular, the investigation will consider:

- the extent to which local authorities are fulfilling their statutory duties to inspect land and maintain contaminated land inspection strategies
- whether the current system supports timely and proportionate identification of contaminated land and appropriate remediation
- the practical operation of the statutory framework, including barriers to determination and remediation
- the roles of the Scottish Government and SEPA in supporting, guiding, and overseeing the operation of the regime, including statutory guidance and national reporting

- whether the interaction between the contaminated land and planning regimes is contributing to any effectiveness issues

ESS will provide updates on this investigation on its website and will publish the outcome once the investigation is concluded.

Frequently asked questions

Who will ESS seek information from during its investigation?

Public authorities are under a duty to co-operate with ESS, and ESS has significant powers to require information from them. While local authorities, the Scottish Government, and SEPA are central to this investigation, ESS may also seek information from other public bodies that we identify as holding relevant information. We are also keen to hear from practitioners or others who believe they have information relevant to the investigation.

How will ESS carry out the investigation?

The investigation will progress through a number of stages, including planning, setting lines of enquiry, and gathering information. All information received will be carefully analysed, and ESS may seek expert advice where appropriate. ESS will draw conclusions based on the evidence gathered.

How long will the investigation take?

The duration of an investigation depends on its complexity and scope, which can only be fully understood once work is underway. ESS will aim to progress the investigation efficiently and will keep relevant parties informed as the investigation develops.

Will parties be kept informed during the investigation?

Yes. All relevant parties to an investigation will be updated on the progress of the investigation, and a named ESS contact will be available to respond to queries.

Will ESS publish the outcome of the investigation?

Yes. ESS is committed to working openly and transparently. Once the investigation is concluded, ESS will publish the outcome on its website. Where appropriate, draft findings will be shared with relevant public authorities for comment before finalisation.

What outcomes are possible following the investigation?

Our governing legislation requires us to set out how we intend to engage with the public authorities we investigate with a view to swiftly resolving matters without recourse to our formal powers (what we call 'informal resolution'). As informal resolution can be a relatively quick and efficient way of securing appropriate outcomes, we will actively consider this option throughout the life of an investigation. ESS also has significant formal enforcement powers and, where we find a public authority has not complied with environmental law, we can issue a compliance notice which the public authority must implement. We can also issue improvement reports which must be acted upon through the submission of an improvement plan to Parliament.

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