# WRITTEN STATEMENT

# BY

# THE WELSH GOVERNMENT

|  |  |
| --- | --- |
| **TITLE**  | **Statement on contaminated land**  |
| **DATE**  | **14 June 2018** |
| **BY** | **Hannah Blythyn, Minister for Environment**  |

The Cabinet Secretary for Local Government and Public Services, Alun Davies AM, informed the Chamber he would provide a Written Statement on the issue raised by Russell George AM during plenary on the 28 February concerning the contaminated land regime. I am providing this statement as contaminated land falls within my portfolio.

The Welsh Government is committed to tackling the legacy of historical land contamination in Wales and continues to help support Local Authorities with this work. Addressing its impact on the environment and the well-being of our communities remains a priority. This is why funding was allocated in 2017/18 to assist Local Authorities and Natural Resources Wales in investigating and remediating contaminated sites across Wales. Over £850,000 was allocated and this included the funding of ground-breaking work to remediate metal mine water pollution, drawing international interest.

In the case to which Russell George AM referred, (Powys County Council v Price and Hardwick (2017)), the Court found Powys County Council was not liable under the contaminated land regime for the remediation of contaminated land associated with waste deposited at a (now closed) landfill site operated by its predecessor organisation, the Borough of Brecknock.

The contaminated land regime set out in Part 2A of the Environmental Protection Act 1990 provides a means of dealing with potential risks posed by contaminated land. Local Authorities are required to inspect their areas with a view to identifying such sites. Once the enforcing authority is satisfied land meets the definition of contaminated land set out in the Act, it must consider how it should be remediated. The process of determining and discharging liabilities follows. The ‘polluter pays’ principle underpins the operation of the contaminated land regime. Any person who caused or knowingly permitted the introduction of the substances by reason of which the land becomes contaminated land is liable for its remediation (referred to as a ‘Class A’ person(s)). Where there is more than one Class A person, liability is apportioned amongst the group. It is only if a Class A person cannot be found that any current owner and/or occupier of the land becomes liable (referred to as a ‘Class B’ person(s)).

The Court case examined the effect of the legislation relating to the 1996 Local Government re-organisation. In particular, it examined the Local Government Reorganisation (Wales) (Property etc.) Order 1996, which transferred liabilities to the successor local authorities. The Court found that there was no liability under Part 2A of the Environmental Protection Act 1990 at time of the transfer (Part 2A did not come into force in relation to Wales until 2001), and so there was no liability capable of transferring to the successor authority under the 1996 Order. The case makes it clear successor organisations established by the 1996 Local Government re-organisation will not be ‘Class A’ persons in relation to contaminated land which has been identified as such because of substances introduced by the activities of their predecessors. My officials are now considering the implications of this legislative arrangement in light of the case cited by Russell George AM.

It is important to note the identification, attribution and apportionment of contaminated land liabilities is influenced by a variety of factors. Land (including legacy industrial waste disposal/landfill sites), will only become contaminated land for the purposes of Part 2A of the Environment Act 1990 if, upon investigation, it satisfies the definition set out in in the Act. Even then, there will be a number of factors which will affect the identification of the person(s) liable to remediate the land, and also the attribution and apportionment of liabilities to the liable person(s). Where land is identified as contaminated land, enforcing authorities will have regard to the circumstances of each individual case when exercising their functions in relation to remediation requirements and the associated costs (further details can be found within the Contaminated Land Statutory Guidance for Wales 2012[(1)](https://gov.wales/topics/environmentcountryside/epq/contaminatedland/guidance2012/?lang=enwintalk.status.objective)). Each case should be considered on its own facts. Anyone who is concerned about the potential implications of the Court judgment for them should consider seeking legal advice on their specific circumstances, and talking to their local authority.