



Research Briefing

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TOPSOIL AND HOW ITS MOVEMENT IS CONTROLLED/REGULATED IN THE UNITED KINGDOM AND THE REPUBLIC OF IRELAND

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This paper discusses the various controls and procedures that are involved in the excavation, movement and deposition of topsoil in Great Britain, Northern Ireland and Republic of Ireland.

Research Papers are compiled for the benefit of Members of The Assembly and their personal staff. Authors are available to discuss the contents of these papers with Members and their staff but cannot advise members of the general public.

SUMMARY OF KEY POINTS

Regulating Topsoil Movement in the UK (Netregs)¹:

- In **England, Scotland and Wales**, the stripping and removal of topsoil is subject to various controls. Planning permission is required to remove for sale, more than five cubic yards of surface soil from agricultural land in any three-month period. This does not apply in **Northern Ireland**.
- In England and Wales, the highway authority can serve you with a notice that requires you to take action to prevent soil from that land being washed onto any roads next to the site.
- The movement of topsoil is regulated by the EU's *Waste Framework Directive* and the *European Landfill Directive*.
- Deciding whether soil is contaminated or not, is to be determined on a site-specific basis.
- Processing of soil is usually required – this is often a simple case of sorting the soil physically.
- Uncontaminated soil is permitted to be reused **within** the building site where it was excavated.
- Moving soil to another site will require an appropriate licence. A waste management contractor will often need to be employed which would make the process expensive.

¹ <http://www.netregs.gov.uk/netregs/businesses/construction/62377.aspx>

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Licensed Operators² in Northern Ireland:

- There are 15 landfill sites in Northern Ireland that are specifically for inactive waste including topsoil. The specified waste types for these sites include “topsoil, subsoil, clay, stone, brickwork, concrete, plaster and sand”
- It is necessary to carry out a site survey before starting work to provide a detailed record of the soils present and their locations.
- The *EHS*³ may prosecute any firm who is seen moving the surplus material off a construction site without the appropriate licences or for not taking the material to a licenced tip or waste processing facility.
- Bringing waste to these sites includes useful materials such as topsoil which the *Construction Employers Federation*⁴ (CEF) members feel is hindering effective reuse of this material. The CEF is calling for regulation of materials such as topsoil to be more workable and less bureau and less bureaucratic.

European Legislation:

Waste Framework Directive:

- The European Union defines waste as an object the holder discards, intends to discard or is required to discard under the *Waste Framework Directive 75/442/EC*⁵.
- Once substance has become waste, it will remain waste until it has been fully recovered and no longer poses a threat to the environment or to human health.
- Topsoil is usually uncontaminated although processing is sometimes required.

² <http://www.ni-environment.gov.uk/licensedwastesites.xls>

³ http://www.ni-environment.gov.uk/waste/regulation-and-legislation/regulations_license.htm

⁴ <http://www.cefni.co.uk/CMS/ShowPageContent.aspx?CODE=ENAS&LinkId=780>

⁵ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31975L0442:EN:HTML>

NB: The *Waste Framework Directive* excludes the following from its scope:
“*uncontaminated soil and other naturally occurring material excavated in the course of construction activities where it is certain that the material will be used for the purposes of construction in its natural state on the site from which it is excavated*”.

- One of the core characteristics of topsoil when compared with many other forms of waste is that it is valuable and in demand.
- Problems sometimes exist as it is not always clear whether a material is waste or not, especially for a material like topsoil. Once removed, it can often be entangled with other material. Site inspection will be necessary to decide this.

European Landfill Directive:

The Directive does not apply to the ‘*deposit of unpolluted soil or of non-hazardous inert waste resulting from prospecting and extraction, treatment and storage of mineral resources as well as from the operation of quarries*’.

Movement of Soil in Great Britain:

- It may be difficult to differentiate between unpolluted soil and soil which may be contaminated with hazardous or non-hazardous waste
- The *Environment Agency* has worked with *CL: AIRE*⁶ (*Contaminated Land: Applications in Real Environments*) to contribute to a suitable definition of waste and develop codes of practice.
- Whether soil is “contaminated” or “uncontaminated” is to be decided on a site-specific basis.
- The *Environment Agency* aims to encourage the appropriate remediation of brownfield land and the use of Cluster projects, and reduce the amount of material that is sent for disposal.
- Management of material at the site should be undertaken in accordance with the sustainable waste management principles of (in order of preference):
 - 1) waste reduction,
 - 2) re-use,
 - 3) recovery
 - 4) and finally, disposal.

Construction projects in England worth more than £300,000 must have a **Site Waste Management Plan**⁷ which outlines ways that waste can be reduced and site-gain materials can be re-used or recycled as part of the project.

⁶ http://www.claire.co.uk/index.php?option=com_adsmanager&Itemid=61

⁷ <http://www.netregs-swmp.co.uk/>

Re-Use Excavated Material:

Excavated material used in the development of land may or may not cease to be waste after treatment and no longer subject to waste regulatory control provided that the aims and objectives of the *Waste Framework Directive* are not undermined, and that its use will not harm human health or the environment.

Treatment of excavated material will normally require a *Mobile Treatment Permit*.

The *landfill Directive* requires that individual landfills accept only hazardous waste **or** non-hazardous waste **or** inert waste hence ending (since *July 2004*) the practice of co-disposal. The move to dedicated landfills for hazardous waste has dictated tighter controls over site engineering and 'quality' of the waste going into the sites.

Landfills will no longer be able to accept untreated waste from 30th October 2007. This is one of the requirements of the *European Landfill Directive*.

From *30th October 2007*, if you decide to keep sending your waste to landfill and it isn't treated, there are some simple ways to comply with the new rules:

- Try to manage individual waste streams separately. One or more of them can be sent for recycling e.g. bricks and concrete can often be recovered as aggregate. This counts as treatment.
- You can also ask your waste management contractor to take your waste and sort it for recycling.
- You should confirm with your waste management contractor whether you have treated your waste or not. You should fill out a written declaration for them, and keep a copy.

Are soils inert?

- Inert Waste is waste which is neither chemically or biologically reactive and will not decompose e.g. sand. There is typically lower disposal fees for inert waste
- The strict definition of inert and the waste acceptance criteria mean that only clean sub-soils such as sand or clay are likely to qualify as inert.
- Materials such as topsoil or soils that are mixed with vegetation are unlikely to meet the waste acceptance criteria for a landfill for inert waste. Similarly, soils that have been contaminated by chemical spills or leaks are unlikely to meet the waste acceptance criteria for a landfill for inert waste. **Treatment** for these soils is necessary.

Treatment of Soil; What Does it Mean?

To qualify as treatment, the process must pass a ‘three point test’:

- It must be a physical, thermal, chemical or biological process including sorting;
- It must change the characteristics of the waste;
- It is usually a very simple process.

Local Government in England:

Some local government councils in England have set their own regulations in addition to the European laws.

The *Lancashire County Council*⁸ has set its own strict rules on the timing of when topsoil is to be stripped and moved:

“All available topsoil and subsoil shall be stripped from any part of the site before that part is excavated or is traversed by heavy vehicles, or before plant or machinery, or roads are constructed on it. All stripped topsoil and subsoil shall be stored in separate mounds within the site for use in the restoration of the site”.

The *Lancashire County Council* has also stated that no movement of topsoil or subsoil shall occur during the period from *1st October* to the *30th November* (inclusive) without the prior written consent of the Director of Strategic Planning and Transport. At all other times the stripping, movement and re-spreading of top and subsoils shall be restricted to occasions when the soil is dry and the ground is sufficiently dry to allow the passage of heavy vehicles, plant and machinery over it without damage to the soils.

East England:

Recycling soil in the East of England has been made simpler due to a pioneering programme that which aims to cut the process’s red tape.

*Remade East*⁹, the organisation working to develop the market for recyclable materials in the East of England, is to work with the *Environment Agency* and the *Waste Resources Action Programme*¹⁰ (WRAP) to remove legislation and make it easier for sites to re-use waste topsoil.

⁸

<http://www.lancashire.gov.uk/environment/documents/DevC/decision/05.08.0571%20Midgeland%20Farm.pdf>

⁹ <http://www.eeda.org.uk/473.asp>

¹⁰ <http://www.wrap.org.uk/>

The innovative scheme is part of the **Waste Protocols Project**¹¹ which aims to simplify regulations. The ultimate objective is to remove the need for companies to obtain specialist licences, therefore making it easier making it easier for the waste product to be recycled and reused.

Remade East, which is funded by the *East of England Development Agency*¹², made an application for recycled soil to be one of five waste categories selected for the development as part of the *Waste Protocols Project*.

It will mean that once a waste protocol has been developed, uncontaminated topsoil from green fields and building development sites can be re-used on a wide range of horticultural and leisure sites, such as parks, golf courses and football pitches – and without the need for a special licence.

Republic of Ireland:

There are a number of landfills for inert waste in Ireland.

Soil and stone is frequently recovered under a **waste facility permit** from the local authority for works such as land improvement.

There is no specific legislation controlling 'topsoil' *per se*.

A person can apply to the *Environment Protection Agency*¹³ (EPA) for a decision as to whether material is waste or not and, if so, what type of waste authorisation is required.

¹¹ <http://www.morethanwaste.com/Site/Default.aspx/04AA85327B5F0BA6797C>

¹² <http://www.eeda.org.uk/>

¹³ <http://www.epa.ie/whatwedo/licensing/waste/who%20needs%20a%20waste%20licence/>

