

Regulatory Position Statement

Guidance on the Regulation of Greenfield Excavated Materials in Construction and Development

October 2016



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1.0 Introduction

The Northern Ireland Environment Agency (NIEA) and the Construction Employers Federation (CEF) have developed this Regulatory Position to promote the sustainable re-use of greenfield excavated material. It has been developed in collaboration with the Quarry Products Association (QPA), Agri-Food and Biosciences Institute (AFBI), the Waste and Resources Action Programme (WRAP), Strategic Planning (Department for Infrastructure) and the Geological Survey of Northern Ireland (GSNI).

Excess excavated materials from development sites are generally regarded as a waste and their end use requires a waste management licence or a registered exemption. The Waste Framework Directive (Directive 2008/98 EC) makes it clear that this is so, even if the excavated materials are uncontaminated. However, in order to promote the sustainable re-use of uncontaminated greenfield excavated materials, NIEA takes the view that if such materials are put to agreed, suitable end uses as described in this guidance, the materials will not be subject to the waste regulatory controls.

If producers and users of greenfield excavated material comply with this guidance, NIEA will not regulate its use under waste legislation. Whilst producers and users are not obliged to comply with this guidance, if they do not, the greenfield excavated material will be classified as a waste and consequently will be subject to the requirements of waste legislation. Consequently, the storage, treatment, transportation, deposit, or disposal of such material without the requisite licenses or permits may constitute an offence. Similarly, excavated materials that do not fit the description, will not be covered. This guidance applies only in Northern Ireland.

This guidance has been produced as part of NIEA's Better Regulation programme to provide light-touch, risk based regulation which helps promote the sustainable re-use of uncontaminated, greenfield excavated materials.

2.0 Scope

This guidance relates solely to excavated material from “greenfield” sites. For the purposes of this guidance “greenfield” means land that has not been previously developed and is uncontaminated. It does not apply to contaminated materials or to materials whose provenance or history is unknown or is in doubt. The onus is on landowners, persons excavating and transporting the greenfield material and on the user of the greenfield excavated material to satisfy themselves that this is the case.

Re-use of uncontaminated greenfield excavated material on the site of production is not, in most circumstances, considered a waste activity.

While this guidance seeks to provide clarity on the re-use of greenfield excavated materials, it remains the responsibility of the producers and users of this guidance to ensure and be able to demonstrate that the greenfield excavated material is certain to be used, that it is uncontaminated and that its use is lawful. Sections 3 and 4 provide illustrative examples of what are and what are not defined as greenfield excavated materials and in addition examples of compliant and non-compliant uses for greenfield excavated materials. These examples are not exhaustive.

This guidance maybe reviewed and updated at any stage based on experience of practical applications, technological developments or legislative amendments. NIEA reserves the right to depart from the position outlined in this guidance and to take appropriate action to avoid harm to human health or pollution of the environment.

3.0 Greenfield Excavated Material

As stated in section 2.0 this guidance relates solely to natural excavated material from “greenfield” sites.

Within this Regulatory Position Statement greenfield excavated material includes: topsoil, sub-soil, clay, peat, sand, gravel and underlying rock from a greenfield site.

Material covered by this guidance —

- ✔ Excavated material from undeveloped, uncontaminated land.
- ✔ Uncontaminated excavated material from agricultural and forestry land.
- ✔ Uncontaminated excavated material overburden from new mines and quarries.
- ✔ Greenfield excavated material may include vegetation removed as part of the site preparation works e.g. grass, turf, mulch and leaf debris but not tree stumps.

N.B. The excavation activity must be in accordance with planning permission, where such planning permission is required, and any other required authorisations.

Material not covered by this guidance —

- ✘ Excavated material from land which is or was occupied by a permanent structure, and/or associated fixed infrastructure. Previously developed land may occur in both built-up and rural settings.
- ✘ Excavated material from land previously classed as industrial or for military use, e.g. former mines and quarries, landfill sites, former infill sites, Ministry of Defence land.
- ✘ Excavated material contaminated by flytipping, chemicals or where invasive species listed under Part II of Schedule 9 of the Wildlife (Northern Ireland) Order 1985 (as amended) are present.
- ✘ Excavated material with naturally elevated concentrations of metals (e.g. nickel, chromium, arsenic, etc). Information about ambient levels of metals in soils can be obtained from the Geological Survey of Northern Ireland (see sections 7.0 and 8.0).
- ✘ Excavated material contaminated with any other substances including, though not restricted to, ash, asbestos, oil shale, mining spoil, plastics, glass, metals, wood and liquids.
- ✘ General construction and demolition wastes including concrete, bricks, tiles and plasterboard.
- ✘ Slurries or sewage sludge.
- ✘ Dredging spoil - European Waste Catalogue Code 17 05 05 and 17 05 06.
- ✘ Excavated material from any site containing noxious weeds or notifiable plant diseases or soil from any area that is subject to restrictions from the Department of Agriculture, Environment and Rural Affairs (DAERA). Further information and advice can be obtained from DAERA (see section 8.0 for contact details).
- ✘ Any other controlled waste or material containing any other controlled waste.

4.0 Off-site Reuse

Prior to beginning any excavation works, the person responsible for the excavation site must establish that there is an identified and certain end-use for the greenfield excavated material.

All uses must be in accordance with a current planning permission, where planning permission is required for the activity, or in the case of a road scheme permitted development rights including a Direction Order or Designation Order, incorporating approved drawings. Therefore, this guidance applies only to uses of greenfield excavated material in construction, development and restoration projects.

Off-site uses covered by the regulatory position —

- ✓ 4.1.1 Use of greenfield excavated material from one development on another development where the material is required for engineering works as per the planning permission (such uses include for front and rear gardens).
- ✓ 4.1.2 Use of greenfield excavated material in developments on brownfield land to meet site specific capping requirements for remediation.
- ✓ 4.1.3 Use of greenfield excavated material in sustainable drainage schemes (SuDS).
- ✓ 4.1.4 Use of greenfield excavated material in the construction of roads and road verges in accordance with permitted development rights including a Direction Order or Designation Order, incorporating approved drawings.
- ✓ 4.1.5 Use of greenfield excavated material in the creation, translocation or restoration of a natural habitat as per planning permission.
- ✓ 4.1.6 Use of greenfield excavated material for the improvement of agricultural land in accordance with planning permission, where such planning permission is required, and any other required authorisations.

Off-site uses not covered by the regulatory position —

- ✗ 4.1.7 Greenfield excavated material deposited in volumes exceeding those specified by the planning permission or roads Direction Order or Designation Order.
- ✗ 4.1.8 Greenfield excavated material deposited outside the boundary outlined on the planning permission or the Direction Order or Designation Order.
- ✗ 4.1.9 Backfilling disused quarries.
- ✗ 4.1.10 Any construction activity where: planning permission is required but has not been obtained (e.g. bunds, raising of levels); or the works affect any watercourse where an authorisation is required and has not been obtained.
- ✗ 4.1.11 Storage of greenfield excavated material on any third party sites pending use.

Any works carried out at or near water courses should be done in accordance with the NIEA Pollution Prevention Guidelines to prevent contamination of watercourses (PPG 5). Surface water run-off from any working areas may require consent to discharge under the terms of the Water (Northern Ireland) Order 1999.

Full details of any proposed works must be provided to NIEA's Water Management Unit (see section 8.0 for Industrial Consents Unit contact details) so that an assessment of the requirement for consent can be made.

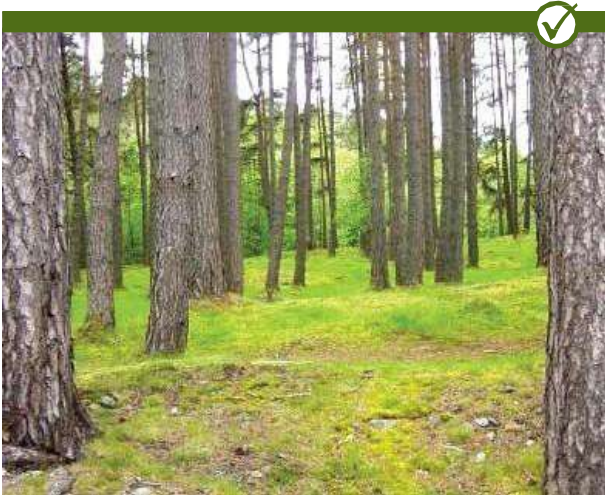
*Is it Greenfield?



Agricultural land



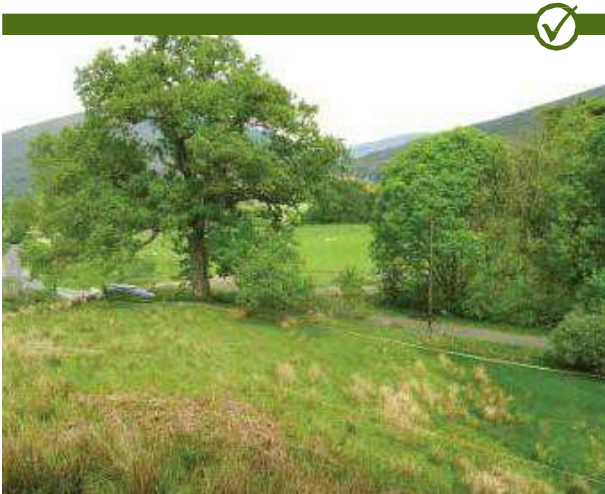
Contaminated land



Forestry land



Made ground or ground with fly tipping



Undeveloped land



Invasive species

These examples are for illustration only and do not represent an exhaustive list of what is and what is not considered to be a greenfield site.

*Is it an Approved Use?



Road and verge construction



Backfilling quarries



Landscaping



Stockpiling on third party land



Sustainable Drainage Systems or creation/maintenance of a habitat



Abandoned or flytipped soil

These examples are for illustration only and do not represent an exhaustive list of what is and what is not considered to be an approved use.

5.0 Compliance

NIEA has adopted a regulatory position where waste controls are not likely to be applied to greenfield excavated material if:

- 5.1.11.1 the excavated material is derived from a greenfield site as defined in Sections 2 and 3;
- 5.1.11.2 the excavated material is re-used off-site in one of the approved uses listed in Section 4.

This clarification enables the material to be used without a waste management licence or exemption in place. A flowchart illustrating this regulatory position is given in Appendix 1.

However the re-use of excavated material at the receiving site may require authorisation under other regulatory regimes including, but not restricted to:

- 5.1.11.3 Building Regulations and Control
- 5.1.11.4 Water Order consent
- 5.1.11.5 Consent under the Environment Order
- 5.1.11.6 Planning Permission

Where excavated material has not met the conditions set out in this guidance, or is put to uses other than those approved in this guidance, then it is likely to be subject to waste regulatory controls for its storage, carriage, use, treatment and disposal. Details of these controls can be found by following the links listed in Section 7.0.

6.0 Declaration

In order to benefit from this regulatory position, the producer or receiver of the excavated material must:

- Complete and sign the declaration form; email this declaration form to NIEA using the following email address: greenfieldsoil@daera-ni.gov.uk
- or you can submit a declaration form online at <https://www.gov.uk/greenfield-soil-declaration-northern-ireland>
- Map of the source of the greenfield excavated material outlining the area from which the greenfield excavated material will be removed (scale 1:10,000)
- Map of the destination site outlining the area where the excavated material will be deposited (scale 1:10,000)

If excavated material is delivered to more than one site, additional declaration forms must be completed for each receiving site and emailed to NIEA.

No formal response will be issued by NIEA but, the paperwork should be retained by the producer and user of the excavated material for at least two years, as it may be required for audit purposes to ensure full compliance with this guidance. In the absence of full compliance, NIEA will consider taking enforcement proceedings.

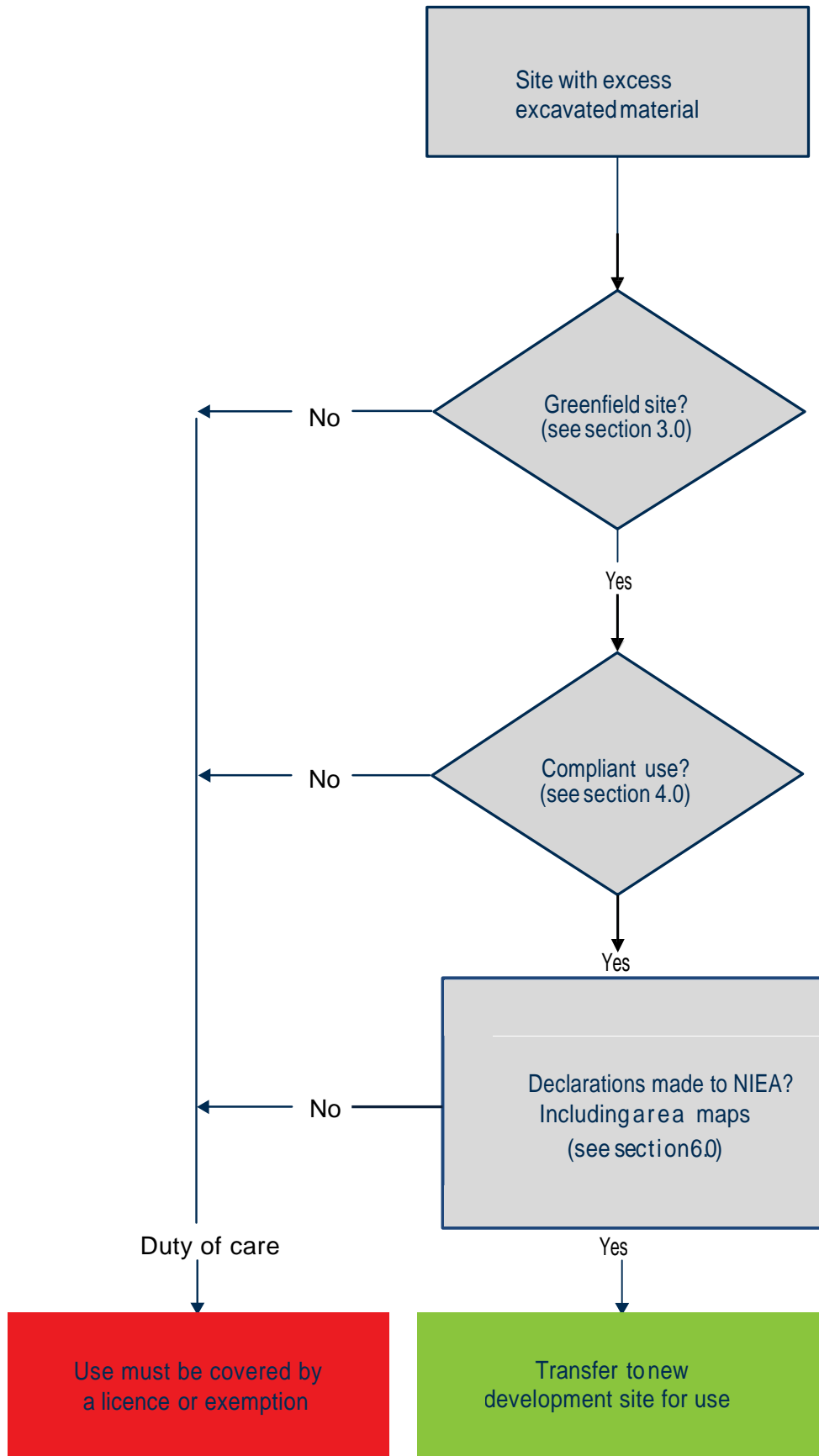
7.0 Further information

- Fully Guidance on land affected by contamination: “Model Procedures for the Management of Land Contamination (CLR11), (2004). www.environment-agency.gov.uk
- Guidance on identifying and managing invasive species: www.invasivespeciesireland.com
- Guidance on waste management requirements: <https://www.daera-ni.gov.uk/topics/waste>
- Guidance on environmental regulations: www.netregs.gov.uk
- Geological Survey of Northern Ireland Tellus Survey maps showing chemical composition of soils across Northern Ireland: <http://www.bgs.ac.uk/gsni/tellus/index.html>
- Maps showing Areas of Special Scientific Interest and information on priority habitats: <https://www.daera-ni.gov.uk/topics>

8.0 Contacts

- Fully completed declaration forms can be emailed to greenfieldsoil@daera-ni.gov.uk or they can be submitted online at <https://www.gov.uk/greenfield-soil-declaration-northern-ireland>
- General enquiries relating to the use of this guidance can be emailed to greenfieldsoil@daera-ni.gov.uk or mail@cefni.co.uk
- Emergency Pollution Hotline Tel: 0800 80 70 60 (to report a pollution incident of an urgent nature) or email: Emergency-Pollution@daera-ni.gov.uk to report incidents of a non-urgent nature
- Water Management Unit (Industrial Consents) contacts: email industrialconsents@daera-ni.gov.uk or telephone 02892 623034.
- For queries relating to contaminated soils contact the Land Quality team in NIEA on Tel 028 9056 9348 or visit www.daera-ni.gov.uk/articles/planning-and-land-contamination
- DAERA NI Helpline: 0300 200 7850 and website: www.daera-ni.gov.uk
- Planning Service (NI): www.planningni.gov.uk
- For queries relating to the geochemistry of soils contact the Geological Survey of Northern Ireland at www.bgs.ac.uk/gsni/

Appendix 1 FlowChart



Appendix 2 Declaration of Compliance with NIEA Greenfield Excavated Material Guidance

You must complete all parts the declaration and email to greenfieldsoil@daera-ni.gov.uk

Supplier Details

Name: _____
Address: _____
Contact Name and Phone Number: _____

Receiver's Details

Name: _____
Address: _____
Contact Name and Phone Number: _____

Source

From which type of greenfield site is excavated material derived? (please tick relevant box)	
Agriculture <input type="checkbox"/>	Forestry <input type="checkbox"/> Other <input type="checkbox"/> (please specify) _____
Source Site Name: _____	Irish Grid: _____
Source Site Address: _____	Postcode: _____

Destination/Use

Which use(s) will the material be put to? Construction <input type="checkbox"/> Roads <input type="checkbox"/> Landscaping <input type="checkbox"/>	
Other <input type="checkbox"/> (please specify) _____	
Destination Site Name: _____	Irish Grid: _____
Destination Site Address: _____	Postcode: _____
Quantity of material transferred (tonnes) _____	
Estimated Completion Date: _____	
You must provide at least one of the following: Planning reference number or, for a Roads Scheme a Direction Order or Roads Designation Order reference number: _____	

Declaration

I certify that I have complied with this guidance -	
Full Name: _____	
Position: _____	
Signature: _____	Date: _____

No formal response will be issued by NIEA but, the activity and paperwork should be retained by the producer of the greenfield excavated material for at least two years, as it may be audited to ensure full compliance with this guidance.

Before proceeding to dispatch any greenfield excavated material, you must submit a fully completed declaration by email to NIEA, at the email address listed in section 8.0 or, submit it online at <https://www.gov.uk/greenfield-soil-declaration-northern-ireland> and attach maps indicating source and destination sites as described in Section 6.0



Acknowledgements:

This regulatory guidance has been produced in partnership by the Northern Ireland Environment Agency (NIEA) and the Construction Employers Federation (CEF). Thanks are also extended to the following organisations: The Quarry Products Association (QPANI), The Agri-food and Biosciences Institute (AFBI), The Waste and Resources Action Plan (WRAP), The Northern Ireland Planning Service and the Geological Survey of Northern Ireland (GSNI).

Our aim is to protect, conserve and promote the natural environment and built heritage for the benefit and future generations.

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