

# Environmental risks for commercial properties

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Every transaction for property carries with it the risk of some environmental liability to be transferred to the buyer. It is therefore important that buyers are aware of the potential risk and are able to inform themselves specifically about any particular land they are interested in buying.

## In a nutshell

Unfortunately there is no single source to refer to for environmental law. Environmental law, as far as it exists, is made up from a body of case law, statutes, and UK and European regulations.

## What sort of legal problems could I inherit when I buy a property?

The potential environmental risks relating to any land depend on the use of the land, either past, present or planned. The law controlling the use of land in this context can be that classified into a number of categories:

### Nuisance

Somebody can bring a private claim for damages against an owner of land if they think the use of the land has been a nuisance and caused them harm. The nuisance could have been a one off event, a series of events or an ongoing continuous activity.

### Statutory nuisance

A statutory nuisance is an activity or matter that is prejudicial to health or a nuisance and the current law is set out in the Environmental Protection Act 1990 ('the EPA'). Local authorities are responsible for enforcement and usually do so in a reactive manner, responding to complaints from the public.

Statutory nuisance is normally used in relation to noise, smells, fumes, gases and other air pollutants.



### Water pollution

The Water Industry Act 1991 makes it a criminal offence to cause or knowingly permit any poisonous, noxious or polluting matter or solid waste to enter controlled waters such as rivers and streams without consent.

It is also an offence to discharge trade effluent into sewers without a consent, or in breach of a condition in a consent, from the statutory sewerage undertaker.

### Waste

It is an offence under the EPA to dispose of certain waste products without, or in breach of a condition in, a licence.

### Integrated pollution, prevention and control

IPPC is a regulatory system derived under European directive to ensure that industry adopts an integrated approach to pollution control to achieve a high level of protection for the environment and human health. Under the regulations it is an offence to carry out certain processes without, or in breach of, a license.

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## Contaminated land

### What is contaminated land?

Contaminated land is defined by the EPA as: any land which appears to the local authority in whose area it is situated, to be in such a condition, by reason of substances in on or under the land, that:

- significant harm is being caused or there is a significant possibility of significant harm being caused; or
- pollution of controlled waters is being, or is likely to be, caused

The mere presence of contamination on a site will not necessarily make it contaminated land for the purposes of the EPA. There must be what is termed a pollutant linkage.

A pollutant linkage consists of three elements, all of which must be present. These are a source (the contaminating substance or pollutant), a receptor (something or someone that can be harmed by the source) and a pathway (a means for the source to reach the receptor. Therefore, for example, even if a contaminant exists, if there is no means for it to 'leak off' the land and harm other land or people the land would not be 'contaminated land'.

### Whose responsibility is it to identify contaminated land?

The EPA places a statutory duty on local

authorities to inspect all the land in their area in the search for problem sites.

Once land has been identified as contaminated either the local authority or the environment agency will be responsible for enforcement.

### What form does enforcement take?

The enforcing authority must identify the persons responsible for cleaning up the site and serve a remediation notice on them. This would be either:

- the person or persons who caused or knowingly permitted substances to be in, on or under the land: or
- if no such person has been found after reasonable enquiry, the owner or occupier for the time being of the contaminated land

So if you purchase contaminated land and the original polluter cannot be traced you will be responsible for cleaning up the contamination.

### What happens if I ignore a remediation notice?

If you do not clean up the contamination the enforcing body will carry out a cleanup operation at your expense.

When purchasing a property you must be aware of the potential environmental issues and regulations governing them. Your first action should be to commission an environmental report. Your solicitor can do this on your behalf.

The environmental report results will allow your solicitor to make rigorous pre-purchase enquiries into the usage and history of the land and to check that all appropriate licences are in order.

If there is any doubt concerning the environmental impact you should consider insurance protection.

This is just a very brief summary of the regulations. If you feel you have any issues arising out of the 2007 regulations you should seek further, more detailed advice at [www.gardandco.com](http://www.gardandco.com).

