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Stakeholder workshop on the proposed Soil Framework Directive

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Feedback report for Defra, July 2007

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EXECUTIVE SUMMARY

A stakeholder workshop was held by Defra on 17th May 2007 at the Royal Horticultural Halls Conference Centre, Greycoat Street, London, SW1P 2QD. The aims of the workshop were to obtain preliminary stakeholder views on the proposed Directive from the European Commission – the Soil Framework Directive – and to inform and support future negotiations with the European Commission. Thus, the workshop formed part of the process supporting the UK response to the proposed Directive. That process will include further wider public consultation planned for June/July 2007.

The stakeholders invited to the workshop represented a broad spectrum of representatives from government executive agencies, the devolved UK administrations, NGOs, professional bodies, trade associations, companies and academics.

Bureau Veritas provided professional independent facilitation and reporting services for the workshop, including facilitation of three separate break-out groups during each of the morning and afternoon sessions. The workshop was run under the Chatham House Rule in order to promote open discussion and debate.

The overall aims of the Directive are the protection and sustainable use of soil based on preventing further soil degradation and preserving its functions, and restoring degraded soils.

Five briefing papers had been circulated to the delegates in advance of the workshop. Paper 1 provided an overview of the proposals for a Soil Framework Directive, which identified five main elements of the proposed Directive. Each of the other papers addressed one of those areas (Paper 2 combined two of the areas); they included a summary of the content of the Article(s) concerned, Defra's initial analysis and some specific questions about the Article(s) and Defra's analysis. In each case, the Papers submitted by Defra sought to trigger discussion rather than provide a pre-determined outcome of the engagement process.

The workshop was opened and introduced by Andrew Kuyk, Head of Environmental Land Management at Defra. An overview of the proposed Directive was then presented by Andrew Dalglish, Deputy Head of Environmental Land Management at Defra.

The first plenary discussion solicited feedback from the delegates about their initial views on the proposed Directive. Extensive concerns about the scope, structure and need for

the proposed Directive were raised during that session, though some support was given for the principal of a framework Directive.

The first session of break-out groups examined General Provision Articles 3, 4 and 5. A summary of each of those break-out sessions was reported back to all delegates, following which the delegates had an opportunity to raise further points during an open plenary discussion.

In the afternoon a second round of break-out sessions considered Chapter II, Risk Areas (Articles 6 to 8), and Chapter III, Soil Contamination (Articles 9 to 14). These were once again followed by plenary reporting back and discussion sessions.

The overall conclusions from the workshop were:

1. the overall intent of the proposals in the Directive was good but the content of the proposals was poor and needed considerable thought and revision;
2. the proposals do not appear to take account of measures already in place through existing legislation at either a European level or Member State level;
3. the original intention of the proposals is understood to have been the development of a framework but the proposals as published are very prescriptive and go beyond that required of a framework;
4. the proposals contain definitions of basic items such as 'soil' that are at best open to interpretation and at worst inaccurate and misleading; unless resolved these are likely to lead to legal challenges;
5. the proposals attempt to cover two distinct activities, those of soil protection and contaminated soil remediation: the two may not be compatible and may require separate legislation;
6. the concerns discussed and summarised above have consequences for soil owners, users and regulators that could be onerous and very costly to implement.

The final section of the summing up proposed answers to the four specific questions posed in Defra Paper 1 regarding the need for a Directive and related strategic issues.

The workshop was closed with an overview of the situation from Defra's viewpoint and the likely way forward presented by Andrew Kuyk of Defra.

1.0 INTRODUCTION

1.1 Background

The background to the current proposal for a Soil Framework Directive may be summarised as follows.

The Council of Europe's European Soil Charter (1972) recognised the importance of the soil resource. Since then European countries have undertaken various activities to better protect their soil.

A workshop was held in Bonn in December 1998, to help determine the current status of soil conservation in Europe and to establish a platform for further soil protection activities. The workshop was attended by representatives from EU Member States, EU accession countries and Norway and Switzerland.

In response to concerns about the degradation of soils in the EU, the European Commission adopted a Communication "Towards a Thematic Strategy for Soil Protection" in April 2002 (COM (2002)179) and included soil protection in the Community's 6th Environmental Action Plan (Decision No 1600/2002/EC).

Five technical working groups, with representatives from Member States, were assembled to help develop the Thematic Strategy. These groups examined three of the eight identified threats to soils - erosion, decline in soil organic matter and soil contamination, and they examined two cross-cutting themes - monitoring and R&D. Working group final reports were published in April 2004.

An eight-week internet consultation open to all EU citizens on these proposals took place during summer 2005 (closed 26 September 2005). Statistical results of the consultation are summarised on the European Commission's website.

The Commission adopted the Thematic Strategy for Soil Protection on 22 September 2006. This contained a Communication, an Impact Assessment and a proposal for a Soil Framework Directive. The overall objective of the Directive is the protection and sustainable use of soil based on preventing further soil degradation and preserving its functions, and restoring degraded soils. In reality this equates to a number of detailed obligations for Member States, some of which have very serious cost implications for the UK.

1.2 Workshop Aims and Objectives

The aims and objectives of the workshop were:

- To provide an overview of the proposed Soil Framework Directive
- To obtain stakeholder views on the proposed Soil Framework Directive
- To inform and support future negotiations with the European Commission
- To understand how to effectively embed views of stakeholders in the consultation on the Directive in the UK
- To inform the wider consultation process in the UK planned for June/July

The workshop was seen by the Defra project team as an important opportunity to seek input from stakeholders to the consultation process for the proposed Directive and the formulation of a UK response to the proposals.

It was emphasised to delegates that the workshop was the first opportunity to provide views on the Directive. Email responses to the questions posed in the Defra papers could be submitted after the event and they would be able to submit further input during the future public consultation period in June/July 2007.

The workshop was run under the Chatham House Rule, so no comments have been attributed to the individual or organisation which made them.

1.3 Bureau Veritas Terms of Reference

The terms of reference for Bureau Veritas' involvement with the workshop, as set out in Defra's emails of 30th April and 1st May 2007, were to provide professional facilitation services for the Stakeholder Workshop to be held on Thursday 17 May 2007 and a report of the workshop to be completed by 1 June 2007. These services were to be provided under an existing framework contract.

These terms of reference were subsequently refined to comprise:

- To manage the flow of the event in line with the agenda
- To facilitate discussion and debate in line with the aims and objectives for the event

Specifically:

- To chair the workshop from Session 3 onwards
- To facilitate the sessions from Session 3 onwards
- To explain the arrangements for facilitation and recording the discussion
- To facilitate each of the three break out groups in the morning and afternoon sessions, ensuring the appropriate balance and focus of the discussion
- To conclude the facilitated discussions (break out groups and plenary sessions), ensuring the appropriate balance and focus of the discussion
- To record the discussion and write a short report on the outcomes of the event, including further responses by e mail after the event.

1.4 Agenda and Organisation

The agenda for the workshop is presented in Appendix A.

The Introduction (Session 1) and Concluding Remarks (Session 12) were presented by Andrew Kuyk, Head of Environmental Land Management at Defra. Session 2, an Overview of the proposed Directive, was presented by Andrew Dalglish, Deputy Head of Environmental Land Management at Defra.

The Bureau Veritas facilitation team managed the workshop from Session 3 to Session 11, including chairing the plenary sessions and facilitating three separate break-out groups during Session 5 and Session 8.

The Bureau Veritas facilitation team comprised:

Stuart Lemmon	Chair and Lead Facilitator
Richard Maggs	Facilitator
Taposh Bhattacharya	Facilitator
Keith Gabriel	Report co-ordinator

1.5 Facilities and Delegates

The workshop was held at the Royal Horticultural Halls Conference Centre, Greycoat Street, London, SW1P 2QD.

The main lecture theatre was used for the plenary sessions. For the break-out sessions two separate meeting rooms were used in addition to the lecture theatre,

so that the delegates could be split into three separate groups. These groups varied in size from approximately 20 to 30 people.

A list of delegates is presented in Appendix B. Approximately 10% did not arrive, so the total attendance was in the order of 75 persons.

The organisations represented by the delegates who booked to attend may be summarised as follows:

Category of Organisation	Number of Delegates
Academics	2
Charities - Environmental	3
Charities/Associations – Land owners	3
Contaminated land practitioners	4
Devolved administrations	6
Energy companies	2
Farming	1
Finance industry	1
Government agencies	9
Government departments	20
Industry (substantial land owners)	4
Industry bodies	2
Insurance industry	3
Law firms / bodies	3
Local authorities	3
Professional bodies	4
Research organisations	4
Trade associations	6
Facilitators – Bureau Veritas	4

2.0 SESSION FEEDBACK

2.1 Sessions 1 and 2

The workshop was opened by Andrew Kuyk, Head of Environmental Land Management at Defra, who noted that its scope had been revised from specifically contamination issues to cover the whole of the proposed Soil Framework Directive. The history of development of the proposed Directive was outlined, whilst noting that the Directive is a 'co-decision' document, so is being worked on in parallel by both the European Parliament and the European Commission.

The impact assessments carried out by the Commission and by Defra were compared, noting the greater detail in Defra's because it included consideration of regulatory impact. Defra's Initial Regulatory Impact Assessment (RIA) was still at preliminary status, and the feedback from the Workshop and subsequent public consultations were to be used to refine the RIA.

In Session 2 a factual overview of the proposed Directive and the conclusions from Defra's Initial RIA were presented by Andrew Dalgleish, Deputy Head of Environmental Land Management at Defra.

2.2 Session 4 – Plenary Discussion – Initial Views on the Proposed Directive

2.2.1 The lead facilitator reminded the delegates of the five main elements of the Directive, then asked for general comments on the scope of the Directive from the floor, under three strategic questions. The points raised and the opinions expressed are listed below.

Do you support the need for the Directive?

Opinion 1: The Directive has no central focus, and is being promoted for strategic reasons, not just tidying up as has been suggested. The contaminated land provisions are a cuckoo; The Directive concerns soil, and soil contamination has a very different scale to the much broader land contamination. Soil, in this context, is the receptor.

Opinion 2: Endorsed the first speaker's view of contaminated land as a cuckoo in this Directive. Believed that inclusion of contaminated land is misleading, includes considerable duplication and should therefore be taken out.

Opinion 3: Endorsed both of the above. Recommended that the Directive should concentrate on whether soil can perform its function. That approach would also solve the contaminated land issues.

Opinion 4: Agreed with the need for a strategy, but was concerned about the Directive¹. Also concerned that the Commission has not established the benefits that would be derived from the Directive, particularly how existing legislation fitted in, and questioned the Commission's negotiating strategy on grounds of unpredictability.

Opinion 5: Issues associated with contaminated land are quite different to those addressed by the rest of the Directive. Concerned about waste issues, and about the fact that the Directive is silent on natural contamination. Therefore wanted the Directive to take a much broader view.

Opinion 6: Do we support the Directive? We don't know, because it is not clear what it covers (because of lack of definitions). For example, where is the boundary between erosion and landslides? Soil is a 'hothouse' of natural processes, so cannot support the Directive in its current form.

Opinion 7: The proposed Directive does not take into account other Directives which cover soil (eg: mining, where soil has to be moved before the economic mineral can be extracted). Queried when 'soil' becomes something else.

Opinion 8: Very concerned about lack of proportionality in the Directive and, based on feedback at another review forum, believed that there is widespread concern within stakeholders. Shouldn't discount the take it back and start again approach.

Opinion 9: Concerned that overlapping legislation would result in double scrutiny/costs; for instance some work under IPPC permits would also fall within the remit of the proposed Directive. Also concerned that the proposed Directive has "fallen through" the Better Regulation Executive's processes. Thus, suggested that the authors should look again at the interaction of the Directive with other legislation.

Opinion 10: Considering the somewhat chequered history of UK legislation on contaminated land, concerned that the Directive might be taking us back to the same issues as were dealt with in the early 1990s relating to inventories of contaminated land and effects on property; not what we want. We therefore need the strength to reject the current proposed Directive.

Opinion 11: Suggested that guidance was required from stakeholders regarding what degree of prescription is required; in other words, what is considered to be non-negotiable.

2.2.2 What will be the benefits of the Directive?

Opinion 12: Regarding registers/inventories, has major concerns that that the Directive is resurrecting the ghost of the Section 143 registers.

(¹) Adapted to reflect notes taken by Defra's ELM representative.

Opinion 13: One of the benefits presented when working on the Thematic Strategy was the creation of a "level playing field". For instance, because some farming in other areas of the European Union is believed to damage the soil (for short-term gains) introduction of the Directive would benefit the UK farming industry. Thus, need to consider protection of soil versus the economic benefits.

Opinion 14: A level playing field would be attractive, but is not likely to happen. Thus, cannot foresee any benefit to the UK from this Directive when considering administrative burdens against current regimes.

Opinion 15: The UK believes itself to be ahead of other EU countries in environmental protection, but, with reference to agriculture, believed that IPPC is quite different. Would have liked to see a common understanding and commitment to research and new technologies.

Opinion 16: Soil includes one of three natural boundaries. However, soil does not cross national (geographic) boundaries, whereas air and water do, so does not believe it needs European protection in the same way as air and water require protection. Conflicts exist between protecting Carbon in soils versus nitrate contamination in drinking water, so should focus on areas where soils are very damaged.

2.2.3 What implications does the Directive have for you and your business?

Opinion 17: Contaminated land provisions are the main concern, in particular the disproportionate costs of the required investigations. These investigations could have a very serious impact on the UK dry cleaning industry (which comprises 6000 micro-businesses).

Opinion 18: There is "considerable unease" in the property industry because the Directive has not been adequately thought out. Implementing the Directive could lead therefore to uncertainty and blight in the property market. Thus, the result is not likely to be good.

Opinion 19: The answer is: "it depends". If sufficiently flexible it could be acceptable, but the general view is that the Directive would have considerable dis-benefits in relation to land development, waste, manufacturing, etc.

Opinion 20: Implications for the house building industry – possibly would not be able to build anything?

Opinion 21: Implications for ME, as a citizen: Benefits will accrue over a long period of time. If we do not protect soils then food production and climate change could be adversely affected. Therefore the Directive is too late and too important to put aside.

Opinion 22: Concerned about the practical aspects of the required information gathering exercises:

Access to land may be denied

Timescales are unrealistic

When remediating to current use, if looking long term what standards should be used?

Opinion 23: The implications of the Directive will not just be on our (mining) industry, they will feed into all downstream industries including building. May result in mining moving to the third world!

2.3 Session 5 – Break-out Groups – Articles 3, 4 & 5

Each group was tasked with discussing an individual paper. They were asked to comment on the analysis conducted by Defra in the papers provided and the RIA. They were then asked to respond to a specific question relating to the paper under discussion.

2.3.1 Article 3: Integration (Group A)

Content Summary (from Defra Paper 2)

In developing sectoral policies likely to affect soil degradation positively or negatively, Member States must identify, assess and report on the impacts these policies may have on soil degradation processes. Member States would be required to publish their findings.

Preliminary Defra analysis

We have concerns about the rationale for including this requirement in the Soil Framework Directive, as we believe the Strategic Environmental Assessment (SEA) Directive already largely fulfils this objective.

- The SEA Directive requires environmental (including soil) considerations to be taken into account in the development of certain plans and programmes which are likely to result in significant environmental effects. The Commission have been pressed on the apparent duplication of the SEA Directive that Article 3 would entail. Their view is that this Article fills the gaps where the SEA does not apply.

Defra Question 1: Do you consider that there are any significant gaps in the current SEA regime (in the UK) relating to soil degradation that need to be filled?

Summary of Responses:

- Much better definition of the scope of the Directive is needed, so it is difficult to compare with the SEA Directive.
- There are gaps in the SEA Directive which need to be taken into account.

Detailed Responses:

- Concerns over how SEA is implemented; provisions aren't cohesive. Is SEA functioning correctly?
- The current SEA regime does not adequately cover soil
- Soil should be considered specifically in the SEA
- SEA contains conflicting policies
- How would the framework 'interface'?
- On what basis does Defra conclude there is no need for extra legislation?
- How the SFD is implemented will make a difference.
- Would we 'work back' to modify the existing SEA Directive?

- Clearer, more specific definitions of terms in SFD are required. Consideration of soil in SEA needs to match SFD
- Should include functional requirements in the definition of soils in the SFD
- SFD: Vague policy intent, bad definitions, bad drafting
- Need to specify scale to support land use planning (SFD rather than SEA)
- How would it interface with other Directives (not just SEA) e.g. IPPC (specifically the PPC Regulations)?

Defra Question 2: What are your views on the costs and benefits of this Article?

Summary of Responses:

- Potentially substantial costs were the group's main concern.
- Benefits were considered harder to identify, especially because measuring them would be difficult (at least in part, owing to the lack of clear definitions).

Detailed Responses:

- Costs due to conflict with existing regimes
- Cost for regulating this (how would we measure with no definitions?)
- Land related investments
- How would it affect due diligence
- Regulations protecting soils do exist already but this would help improve the priority given to soils
- Lack of definitions make measuring benefits difficult
- Uncertainty: commercial because there are no clear definitions
- How do we measure the benefits?
- Need to look at socio-economic benefits v. environmental risk
- However there must be an Article on integration
- Soil considered a key intrinsic resource
- Costs and benefits would become clearer when Member State legislation answers the 'HOW'
- The 'how' will determine the net benefit.

Defra Question 3: What are your views on the inclusion of this provision in the Directive? If you believe it should NOT be included in its current form, do you think it could be improved, for example by:

- a) specifying additional sectors of policy to which the SEA requirements should apply (where soils should be an important consideration)
- b) referring to soil functions rather than soil.

Summary of Responses:

- The proposed Soil Framework Directive is not written as a framework – parts of it go into inappropriate detail
- The Directive should consider only 'what' is required, with the 'how' left to Member State regulation.
- General view was that the Directive needs to be re-drafted
- Article needed but format needs work - currently too broad in scope.

Detailed Responses:

- The 'How' is local and should NOT form part of the Directive.
- The Directive tries to 'do everything and not doing anything well'
- Needs to be thought through properly
- Needs to be written like the Water Framework Directive.
- Detail left to national codes / legislation
- Take into consideration existing legislation.

Other Issues (Article 3):

- Why is it not following the Water Framework Directive 'model'? It needs to be written as a Framework Directive, setting context, linking back to the Communication, and allowing Member States to set national legislation on detail.
- Key definitions of soil forms the basis of the Directive. Preference to functions of soil – focus definition round these.
- Archaeology not mentioned anywhere.

2.3.2 Article 4: Precautionary Measures. (Group B)

Content Summary (from Defra Paper 2)

Member States shall ensure land users whose actions can be reasonably expected to hamper significantly the soil functions take precautions to prevent or minimize the adverse effects of this.

Preliminary Defra Views

As drafted, our preliminary analysis suggests this Article could result in significant costs.

- As drafted it requires an assessment such as under the EIA Directive, but does so with no clear *de minimis* rules (it is not clear how widely the term "hamper significantly" would be interpreted) which means that the duty would affect all activities whatever their scale. This would make transposition complicated and enforcement costs would be high.
- Article 4 refers to "all land users" and potentially applies to much of the UK population, including people who use the land for recreation (gardeners for example). It may thus require complex legislation and enforcement measures and impose burdens on the state and industry, and possibly also on individual land users.

Defra Questions 1 and 2: Do you agree with our concerns regarding Article 4? And: Do you agree with our preliminary analysis of the major costs and benefits associated with this Article (see table from our initial RIA)? Can you suggest any costs and benefits that have not been covered in the initial RIA?

Summary of Responses:

Group B broadly agreed with the concerns raised. The key issues raised were;

- the poor quality of the definitions proposed,

- the range of possible interpretations of key terms that could lead to imposition, of regulatory burdens across large proportions of the UK population and the consequences that could have in terms of cost,
- the need for flexibility at a local Member State level,
- that the intention was well meaning but that the content is very poor and as such needs revision to ensure the detail in the final Directive is appropriate and accurate.

Detailed Responses:

- Legal terms with massive implications – “shall ensure” and “reasonably expected”
- Flexibility –v- prescription
- UK implementation is stringent – may be less so elsewhere
- Flexibility required given existing UK regime
- Unclear as to limits i.e. where it overlaps with other Directives and whether gaps need addressing
- Definition of “land user” is unclear and confusing
- Benefits are not assessed in impact assessment
- Risk based framework / sustainable intent (needed)
- Intent –v- content?
- Designated sites already protected
- Regulators will find ways to be proportionate (so can manage with poorly drafted regs)
- Detail of final wording will be key – could be very onerous if it is wrong

Defra Question 3: What are your views on the inclusion of this Article in the Directive? If you take the view that it should not be included in its current form, do you think it could be improved by, for example:

- a) amending the EIA Directive to cover any key types of development projects not currently covered by the Directive, but which are likely to “hamper significantly” the soil functions;
- b) requiring Member States to draw up a voluntary Code of Practice or Codes of Practice to cover different sectors?

Summary of Responses:

On balance Group B felt that the Article should be included in the Directive as there is no other provision of this principle elsewhere. However the Group expressed serious concern as to the current form of the Article and suggested additional activity required prior to inclusion. The main points proposed were;

- the Article does not take account of other Directives and as such needs to be the subject of a gap analysis before going forward,
- the definitions need revision prior to inclusion,
- the prescriptive approach would need amending to allow local flexibility as Member State level,
- an approach based on sustainability criteria needs to be embedded in the Article,

- local codes of practice or general binding rules would not be welcome due to concerns over implementation variations across the EU area.

Detailed Responses:

- No other requirement in the Directive for action to be taken
- Broad agreement with principle but detail needs refining
- Better definitions with examples to illustrate
- Clearer definitions for “Hamper significantly” and “Soil Functions”
- BEO/BPEO not considered
- Value of proposals not clear – what is not in place already?

2.3.3 Article 5: Soil Sealing (Group C)

Content Summary (from Defra Paper 3)

Member States shall take measures to limit sealing (that is, the permanent covering of the soil surface with an impermeable material) or where sealing is to be carried out, to mitigate its effects using construction techniques and products to preserve soil functions as referred to in Article 1 of the proposal.

Article 1 and Article 4 are important to the interpretation of Article 5. They suggest that Member States should prevent or minimise adverse effects on soils.

Initial Defra analysis

Initial Defra analysis of this proposal suggests that:

- This provision relates to the construction of buildings, roads, pavements and any other surfaces that cover the surface of soils. Hence, this Article relates not only to soils but to land-use planning.
- Reducing sealing of soils can have benefits in terms of sustainable urban drainage, filtering of run-off from roads, and water recharge. It can also impact on the loss of biodiversity, loss of soils for food and fibre production and loss of green space. However, the issue can be complex as developments requiring sealing can bring with them environmental benefits, for example, a sewage treatment works.
- Exactly how far Member States must go to limit soil sealing is unclear - Article 1 and Article 4, which provide the context to this provision, suggest that Member States should seek to prevent, rather than simply minimise, the loss of soil functions where possible. There is an issue therefore as to whether the Directive, as drafted, will require the protection of soils to the detriment of social and economic development (through reduced land for development, including housing, and higher construction costs). The wording suggests that Member States are required not to stop all sealing but to control further sealing and ensure that where there is sealing the effects are mitigated, for example, through the use of permeable pavements, Sustainable Urban Drainage Systems, etc.
- The provision does not clearly recognise the tension between protecting our soils for the long term to achieve important environmental outcomes with

economic and social pillars of sustainable development. Potentially, this Article, depending on how it were to be interpreted, could impact on Government policies across a range of matters, including housing and economic development.

- Recital 13 implies that construction on brownfield sites is to be preferred to sealing of greenfield sites. National planning policy in England is for local planning authorities to make effective use of land by re-using previously developed land, with a national annual target that at least 60% of new housing should be built on such land. There are concerns as to the weight that Member States will be permitted to put on important social and economic considerations, such as pressures to provide the homes and jobs needed by communities, and the essential infrastructure that underpins their sustainability, such as renewable energy infrastructure, if this Directive were to be implemented.
- As the benefits of this Article relate to environmental aims in addition to soil protection, this raises issues as to whether existing EC Directives, from the Strategic Environmental Assessment Directive (SEA) and the Environmental Impact Assessment Directive (EIA) to the Water Framework Directive (WFD) are sufficient to address concerns.
- No threshold is laid down for the scale of development captured by this provision. As drafted it may require planning applications for very small developments requiring changes in the current system of permitted development rights. In terms of keeping administrative costs to a minimum, it may assist to have a de minimis provision setting a particular level.

Defra Question 1: What are your views on Defra's initial analysis?

Defra Question 2: Have you any comments on the assessment in our initial RIA? We would welcome your views on the costs and benefits identified and any assistance you might be able to provide in relation to those areas where we have as yet been unable to quantify the risks.

Defra Question 3: What are your views on how this provision could be improved? Some examples of possible approaches include:

- making it clearer that Member States will need to decide themselves how to balance the importance of limiting soil sealing against other priorities, such as social and economic development in deciding how best to secure sustainable development (in the sense of ensuring that current needs are met);
- amendment to the SEA Directive to ensure that all projects over a particular size that will affect soils in a significant way should require an impact assessment;
- deletion of the preference for brownfield development;
- seek to negotiate this provision out of the Directive on the grounds that it is better covered by existing legislation such as the SEA and EIA.

We would welcome stakeholder suggestions on other options as well.

Summary of Responses:

Overall, Group C felt that the Article as it stood would be difficult to implement on the basis that its relation to Articles 1 and 4 confused prevention with preservation. The overall conclusion of the Group was that the Article should be re-written.

The group acknowledged that topsoil as a resource should be addressed. However, in the UK, this is largely already done where development is planned through stripping out the topsoil in order to remove the resource prior to development occurring. A number of individuals expressed concern at what the Article was trying to achieve, for example, reference to mitigation made it unclear as to what was being preserved. Soil function? Loss of land? Ground water? Given the current approach in the UK to stripping out of the topsoil then soil function would be largely maintained without the need to minimise soil sealing. Additional concern with regards to the scale of applicability was also expressed and whether policy was running ahead of available technological fixes for maintaining soil function where soil sealing was required.

The main points proposed were;

- It is unclear whether the Article attempts to prevent or preserve. If the former, then the Article is difficult to implement;
- The Article makes no reference to scale and applicability of soil sealing – whether regionally, locally, or in accordance with any specific land use activities. For example, some land uses require impermeable sealing by the nature of the operations provided for. Inclusion of further details on scale and applicability (activity data) would improve the current provision within the Article.
- The cost-benefit analysis of the Article should consider the longer-term implications;
- The current wording is emphatic on mitigation and on limiting soil sealing. The Article lacks definitions of the terms used, which would provide for further transparency on the issues included.
- The Article is required to be re-written.

Detailed Responses:

- “Prevention” was difficult to live with although the principle of the Article is good.
- Acknowledge that top soil required to be preserved as a resource
- The Article relates to land-use planning rather than soil function
- Scale is difficult to understand. Whether this Article should be applied at the regional level (through Regional Development Plans); or at the local level (through Local Development Frameworks);
- Policy running ahead of technology?
- Permeable road surfaces – what is the overseas experience?
- Information on activity data (i.e. land use) would be of benefit in aiding understanding of the applicability of the Article.

- Conflict between soil sealing and contaminated land regime in the UK whereby capping of contaminated land is seen as a reasonable approach to dealing with contaminated issues.
- The UK is producing a Soil Code of Practice for preserving topsoil as a resource
- Definition is difficult to live with in terms of legal standing
- Current wording is emphatic on mitigation
- What are we mitigating? Water? Loss of land? Soil function?
- Needs to be re-worded as it is unclear as to what is being preserved.

2.4 Session 7 – Plenary Discussion – Articles 3, 4 & 5

2.4.1 Open discussions sessions were held after the feedback reports had been presented for each of the Articles, in order to allow all delegates the opportunity to comment further. The opinions raised are recorded below. No further points were raised in relation to Article 3.

2.4.2 Article 4:

Opinion 1: Does “prevent” in Article 4 over-ride “limit” in Article 5? Experience with the Waste Framework Directive has shown that the courts refer back to the Directive’s general objectives. So, unless the proposed Directive is clear on this point, would expect the courts to consider intent in which case Article 4 is likely to override Article 5.

Opinion 2: Considered that Articles 4 and 5 are compatible because Art.4 deals with function. For instance, sealing would prevent loss of carbon.

2.4.3 Article 5:

Opinion 1: Need to consider flood planning in addition to soil’s role as a growing medium. Issues associated with run-off and lack of recharge (of rainwater to groundwater) need to be included.

Opinion 2: Suggested that the reason for including soil sealing should be clarified. Most functions are already covered, in the UK at least, by existing legislation. Believed that there is potential scope to enhance the Directive to take on board other sustainable development issues.

Opinion 3: Need to take account of the issue of stripped topsoil immediately being classified as waste. Suggested that it would therefore be good to include retention of topsoil as a specific method for avoiding creation of waste.

2.5 Session 8 – Break-out Groups – Chapter II, Articles 6 to 8 (Group D)

2.5.1 Article 6: Identification of Risk Areas

Content Summary (from Defra Paper 4)

Member States shall identify all areas in their national territory where there is decisive evidence (or legitimate grounds for suspicion) that the following soil degradation processes have occurred or are likely to occur in the near future:

- Erosion;
- Organic matter decline;
- Compaction;
- Salinisation;
- Landslides.

To identify these ‘risk areas’ Member States must conduct risk assessments against criteria listed in Annex I of the Directive. Where risk areas are identified, these must be made public and reviewed every ten years.

Initial Defra analysis

Initial Defra analysis of this proposal suggests that:

- This Article relates primarily to agricultural/rural soils.
- It adopts a risk-area based approach which would appear to be consistent with better regulation principles. The UK has carried out some such soil mapping which may assist identify these risk areas.
- However, depending on the correct interpretation of this Article, the costs of the risk area mapping required by the proposed Directive could be significant. For example, a more detailed assessment of risk areas than has previously been done, such as in relation to compaction, might be required. Annex I factors, which affect the scale of sampling required, could also add to these costs. Furthermore, definitions used, such as on soil carbon, and the inclusion of landslide and salinisation risks may mean that significant additional costs need to be incurred.
- Clarity is needed as to the level at which the obligation applies – regional or national and at what physical scale? The Commission has said the term “appropriate level” refers to regions and to the scale of the maps.
- The UK has no maps on landslide and salinisation risks but our initial view is that neither are threats of sufficient importance in the UK to justify detailed risk-mapping using Annex I guidelines. The Directive should not require a risk map in relation to those risks that are not significant for a Member State. The landslide risk relates to Article I wording which says that both natural processes and those caused by humans are a concern, and raises the issue of whether it is appropriate for a Directive to focus on this.
- It is important to ensure that managed retreat need not be stopped to address erosion/salinisation, considering the wider public gain of managed retreat.

- Annex I factors are prescriptive – it may be that they should provide an indicative list only.
- Includes areas at risk of ‘organic matter decline...excluding undecayed plant residues, their partial decomposition products...’. Is this the best definition of organic matter for climate change purposes and also for maintaining healthy soils with good soil structure?
- Further work needs to be done to ensure that this provision fits in with other Directives, such as the Water Framework Directive, that cover threats such as erosion and compaction. For example, the timing of implementation should possibly be linked in with the Water Framework Directive, so as to make the link between soil management and river basin management.
- Identification and mapping of risk areas may have an unfair effect on property prices if buyers were to respond in an overly risk-averse way.

Defra Question 1: Do you agree with our initial analysis? Do you have any views on the questions raised in the analysis?

Responses:

- Additional requirements might be placed on land users
- Edge definition (and availability of data at different scales) is the issue:
 - analysis is not communicated properly
 - Clarification of the Article’s provisions required
- Article 6 partially conflicts with Article 1. DEFRA analysis of “relates primarily to agricultural/rural soils” is not correct. E.g. source of raw materials, minerals industry affected (because they have to move soil to reach minerals)
- Where is forestry included?
- Noted that a forest certification scheme already exists which covers water and soil
- Landslides could be a threat (eg coastal) so impact of their effects is relevant
- Why are natural slides included? Agree that preventing them could be disproportionate.

Defra Question 2: What are your views on the cost and benefits as set out in our initial RIA?

Responses:

- Will require putting in place measures for monitoring
- Costs might be low if we could use existing data at a strategic level
- However, error bars are huge on carbon data (for Wales) so existing data may be inadequate
- Costs of drawing maps not significantly material in context of the Directive – need to be drawn out in RIA
- Defra assessment is incomplete (it does not included the option of not following a risk based approach)
- Rather than risk based mapping, we could provide land users with a standard and focus on awareness raising. This might be more effective using existing framework. However, without maps, a one size fits all approach is being used – inadequate. Risk mapping puts focus on areas where action is needed.

- If we raise the standard too high farmers can 'opt out'.
- Bring out more costs on climate change if data is available.

Defra Question 3: What are your views on the inclusion of this Article in its current form?

Could there be improvements?

Responses:

- Existing criteria not sensitive enough over the long term to track improvements. Need monitoring and/or more sensitive analysis
- Where do we draw the boundaries in terms of scale?
- Take out compaction from this Article. Difficult to identify risk areas (scale and costs)
- Adopt best practice method rather than risk areas for compaction. Similar approach as that taken to sealing?

2.5.2 Article 7: Risk Assessment Methodology

Content Summary (from Defra Paper 4)

Provides Member States with a choice of methodologies for identifying risk areas, using either existing empirical evidence or modelling. If modelling is used, models must be validated against empirical data separate to that used in producing the model.

Initial Defra analysis

Initial Defra analysis of this proposal suggests that:

- Much of the data required to identify risk areas is already available.
- However, it is important that Member States are able to use existing information and use their own methodologies – for example in the UK we only sample topsoil and not sub-soil. Some amendments for greater clarity may assist.

Defra Question 1: Do you agree with DEFRA's analysis?

Responses:

- DEFRA's analysis fits with the grouped view; i.e. use existing data and give Member States flexibility with method
- Depends on detail required and definition of soil: Top soil or sub soil?
- We have surface data we do not have sub soil data. Erosion, SOM relate to topsoil; landslides (subsoil), compaction (both). Contamination also relates to both.
- Should bio-diversity be included in risk area data collection?
- Need for strategy/communication to direct investment of resources into better understanding biodiversity.

Defra Question 2: Do you agree that Member States should be allowed to use their own methods and utilise existing information?

Responses:

- Covered by answer to Q1

2.5.3 Article 8: Programmes of measures to combat soil erosion, organic matter decline, compaction, salinisation and landslides

Content Summary (from Defra Paper 4)

Requires Member States to draw up a programme of measures to address threats to soils, based on risk assessments conducted under Article 6. The programme of measures should include:

- risk reduction targets,
- appropriate measures for reaching these targets,
- an implementation timetable,
- estimates of the allocation of private and public means of funding the measures.

Member States are free to set these measures at a level which they deem to be appropriate. Measures must be cost effective and feasible, and should not be implemented until an impact assessment has been carried out. The programme of measures should include details of how measures are to be carried out, and how they will contribute to the achievement of risk reduction targets. The programme must be made public and reviewed every five years.

Initial Defra analysis

Initial Defra analysis of this proposal suggests that:

- Some flexibility is given to Member States to establish their own risk-based and cost-effective programme of measures “at an appropriate level” and to develop a suitable timetable for implementing these measures. However, the provisions could state even more clearly that the decision as to the risk areas that require attention, risk reduction targets, the geographical scale of a programme, and the timescales for addressing these risks, are for Member States to decide.
- It would assist in terms of reducing burdens on farmers if Member States were able to use existing programme of measures such as cross-compliance and agri-environment schemes to tackle the risks outlined in Article 6. The Directive, as drafted, does not make it clear whether only addressing rural areas where farmers are in receipt of CAP payments would be sufficient. It may be that further measures are required to cover other rural land.
- Is it appropriate to require Member States to declare the amount of funding allocated to its programme?
- Concern about Article 22 (penalties) and its bearing for the type of measures such as voluntary codes of practise that can be chosen. Clarity has been sought from the Commission.
- A 5 year review period is short considering that soils take a long time to change.
- There is potential for property blight if farmers are risk averse.

- Will risk reduction targets need to relate to reductions in the degree of risk, or would reduction in risk areas be sufficient? Clarity is needed.

Question 1: Do you agree with DEFRA's analysis?

Responses:

- Broadly correct, existing measures need to be checked and brought to together
- Take account of what's already there
- Some existing measures tends to be focussed on water. Some analysis of gaps required.
- Cross compliance covers agriculture and horticulture only, not forestry, mining etc, though there are measures in place that cover beyond agriculture e.g. Mining Waste Directive, Landfill Directive.
- Are measures already in place on the ground?

Question 2: What are your views on the assessment in our initial RIA?

Responses:

- Might be significant cost to collect new data to model against
- RIA suggests level playing field but if Member States can choose their standards then how is this the case?
- Can Annex I be incorporated into the main RIA? Why are some, but not all, costs given in the main RIA?

Question 3: What are your views on the inclusion of this Article? Could it be improved?

Responses:

- It's the key Article to include
- Rationale for funding unclear (why do the Commission want to know sources of private funding?)
- How should landslides be dealt with in the Directive for the UK? Are landslides relevant to soil?
- Use of existing measures important for the success of the Directive.
- Needs to link with Article 6 more – recognise that measures are already taking place to address risk.

2.6 Session 8 – Break-out Groups – Chapter III, Soil Contamination, Articles 9 to 14

2.6.1 Two of the break-out groups considered Chapter III and the associated Defra paper (Paper 5) in parallel. In Paper 5, a single set of four questions was posed in relation to all five Articles 9 to 14 (rather than separate questions specific to each Article). The responses to these questions from the two groups were very similar, so have been amalgamated in section 2.6.2 below. The detailed responses from each break-out group are presented separately in sections 2.6.3 and 2.6.4.

2.6.2 Overview of responses to questions

Defra Question 1: Do you share Defra's concerns as presented in Paper 5?

The groups strongly agreed with the concerns raised by Defra. Additional comments were proposed to reiterate the lack of links to existing legislation and the lack of account of the already comprehensive UK regulatory regime with regard to contaminated land.

It was agreed that the prescriptive approach would not allow flexibility and would undermine the existing regime if not addressed.

Defra Question 2: Do you have additional concerns/comments?

The majority of the discussion related to detailed concerns which are listed in the transcribed flip charts below. Within the UK, concern was expressed with regards to the Article not recognising the constraints imposed through the high level of personal wealth embodied in land ownership and the difficulties that this can bring in respect of remediation.

One additional comment from Group E was that the remediation goals stated in the proposals were ambitious and their ambition was to be applauded.

Defra Question 3: Do you think the proposed obligations are better or worse than our existing regime?

The Groups were unanimous in thinking the proposals were worse than the current regime. They felt it was worse in terms of cost, the clarity of the approach, the potential for blight, the lack of a risk based methodology and the lack of clarity of the proposals.

Defra Question 4: Do you think we should make significant amendments to the proposed obligations?

The inclusion of the Chapter was discussed and it was felt that it could be removed without detrimental impact to the process of addressing soil contamination in the UK. This was seen as the ideal situation. However it was acknowledged that removal may not be possible and it was felt that a secondary approach would be drastic revision to address the concerns expressed. These were summarised as an alteration from a defined prescriptive approach to one of a framework approach.

2.6.3 Specific issues and concerns raised by Group E (from flip charts):

(Art.x – refers to the Article number)

- Art.9 – preserving “soil functions” needs a better definition and clarification
- Art.9 – allows substances on to land – has large implications
- Art.10 – unclear process for prioritisation of sites (there is none up front) and mechanism for selection and measurement.
- Art.11 – ‘significant risk to human health’ removes need for a receptor.
- Art.11 – onus is on competent authority for investigation of Annex ii land – may alter the focus.
- Art.11 – annex listed status could lead to blight on sites and activities described
- Art.12 – no de minimus – triggered by sale of site
- Art.13 – no ‘any’- a significant risk?
- Art.13 – limited to soil but needs to include water and gas within ground
- Need clarification and possible separation of protection and pollution issues
- Objective is a systematic approach – outcome is prescriptive
- Do we need it ?
Flux in sites listed on inventory – not net reduction
- Will we have to live with it ?
Remediation strategy is ambitious and that is to be applauded
- Prescribed timescale goes beyond UK regime
- Mechanisms need clarity and strong negotiation to bring in line with UK
- Not necessarily a receptor view – soil in isolation i.e. on/off presence/absence of pollutant
- Risk assessment methodology requires harmonisation
- Should refer to ‘concentrations’ not ‘levels’
- Unclear what ‘Dangerous Substances’ relates to and whether absolute concentrations will apply to all sites – will it be use dependent
- Authorised body may not be a regulatory body and may require existing qualifications (SiLC etc) to be recognised.
- Approach is too prescriptive and not appropriate
- Definitions are unclear – ‘human health’ and ‘environment’
- 5 year cycle for entry exit from the list
- Remediation – links to environmental liabilities Directive
- Should be about managing risk not just remediation for the sake of it
- Costs/benefits not assessed
- Sustainability – not clear if it is included in assessment?
- Definition of soil is ambiguous and does not help with intent towards protection of functions and addressing contamination
- Prescriptive approach, lacks balance and proportionality

- Soil status report – does it add value? It is an obligation but may not be necessary and could be onerous for individuals?

2.6.4 Specific issues and concerns raised by Group F (from flip charts):

- Art.9 – Prevention
 - Definitions of terms is required in order to magnitude of contamination
 - Does contamination include radioactivity?
- Art.10 – Inventory of contaminated sites
 - Is the approach to confirming the presence of contaminants a risk-based approach? Absence / Presence or Absence / Presence – Pathway – Receptor approach?
 - The Article has potential inconsistencies with the Environmental Liability Directive
 - Inventories may not necessarily increase the public understanding of soil contamination
 - Drivers for provision of an inventory ignore the economic need to remediate land in the UK due to land ownership / personal wealth issues
 - Once remediation has taken place what is the mechanism of being removed from the inventory?
- Art.11 – Identification procedure
 - The regime is completely unworkable and ignores economic drivers
 - The regime is likely to cause problems where the deadline for remediation comes into force and the site is occupied. Any existing tenant would be required to be compensated for loss of earnings (where such sites are occupied by the businesses)
 - The proposals take the UK back to the early negotiations on the existing Part IIA regime already in place
- Art.12 – Soil Status Reports
 - The transactional nature of the requirement should be emphasised more
 - In the UK , the due diligence process already covers this provision through the legal system of land transactions
 - Concern over the liability provision of third party reports
 - Consistency in chemical analysis and reporting across providers – how will this be guaranteed?
- Art.13 – Remediation
 - The Article provides no further benefits to the UK above and beyond what is already done
- Art.14 – National Remediation Strategy
 - This Article covers provisions already made through the existing contaminated land regime in the UK
- Art.15 – Awareness and public participation

- General agreement with the provisions within the Article [as recorded through general discussion]

2.7 Session 10 – Plenary Discussion – Chapters II and III

2.7.1 Two further open discussion sessions were offered after the feedback reports had been presented for each of the Chapters, in order to allow all delegates the opportunity to comment further. In the event, there were no further points raised in relation to Chapter II, and only a single point on Chapter III, as follows:

Opinion 1: Questioned whether, following introduction of the proposed Directive, there would be a barrier to Annex II activities taking place in the future i.e. would anyone be able to open a dry cleaning operation? In other words, expected that the proposed Directive would both be restrictive and would cause blight.

3.0 SUMMING UP

3.1 Session 11 - Concluding remarks by lead facilitator

The conclusions of the open plenary sessions and the feedback from the group sessions (as reported) were summarised and presented to the delegates. The workshop concluded that:

1. the overall intent of the proposals was good but that the content of the proposals was poor and needed considerable thought and revision;
2. the proposals do not appear to take account of measures already in place through existing legislation at either a European level or Member State level;
3. the original intention of the proposals is understood to have been the development of a framework but the proposals as published are very prescriptive and go beyond that required of a framework;
4. the proposals contain definitions of basic items such as 'soil' that are at best open to interpretation and at worst inaccurate and misleading; unless resolved these are likely to lead to legal challenges;
5. the proposals attempt to cover two distinct activities, those of soil protection and contaminated soil remediation: the two may not be compatible and may require separate legislation;
6. the concerns discussed and summarised above have consequences for soil owners, users and regulators that could be onerous and very costly to implement.

The final section of the summing up proposed answers to the Specific Questions posed in Defra Paper 1. The answers are provided below in the order in which they were presented.

Q2. Do we need more flexibility for Member States?

Although flexibility was felt to be important it was not deemed appropriate to comment in detail as the proposals require substantial redrafting before they can be considered workable.

Q3. What amendments are needed to make the Directive more proportionate with lower costs on government and business?

The detailed feedback from the breakout sessions was referenced as the answer to this question.

Q4. How could the Directive be modified so it does not impact on incentives to remediate sites voluntarily?

The detailed responses from the breakout sessions were referenced with the key point being that the proposals need to take better account of existing EU and UK legislation. Voluntary codes were generally not considered to offer a level playing field.

Q1. Do we need a legally binding Directive at all? Does existing legislation cover the field.

The overall feeling of the delegates was that the intention to protect soils and remediate damaged soils was welcome. However the proposals contain many items that give rise to concern amongst stakeholders. As such it was felt that the proposals would be unworkable unless they were rewritten to take account of the concerns raised during the breakout sessions.

3.2 Administrative Matters

The delegates were reminded that the Devolved Administrations will be running separate consultation exercises in due course and delegates were encouraged to participate in those as appropriate.

The e-mail address for final responses (soils@defra.gsi.gov.uk) was provided. Four such emails were received and these are presented in Appendix C (with the sender's details removed, for consistency with use of the Chatham House Rule during the workshop).

The delegates were thanked for their attendance and excellent participation, both at strategic and detailed levels. The meeting was then handed over to Andrew Kuyk to conclude.

3.3 Session 12 – Concluding Remarks by Defra

Andrew Kuyk drew the workshop to a close with an overview of the situation from Defra's viewpoint. The salient points were:

- Acknowledged the feedback from the workshop, and in particular the concerns about the technical merit of the Directive.
- With reference to the question “Do we need a legally binding Directive at all?” noted that the Commission were proceeding in compliance with a formal request for a Directive to protect soil.
- Where do we go from here? The reaction has been much more positive from the newer European states, who see the Directive as bringing environmental

benefits. However, EU funding is not being offered, so extensive further negotiations are expected.

- The full implications are unclear of current political factors, including the transfer of the Presidency from Germany to Portugal, the new administration in France and the change of Prime Minister in the UK. The implications also remain to be seen from the new devolved UK administrations.
- Defra will pass their views to Ministers:
 - Stage 1 – The Directive needs amending
 - Stage 2 – How to amend itA more detailed position will be worked up by Defra between now and the autumn.
- The Regulatory Impact Assessment will be amended to include ranges of costs, to reflect the uncertainties over definitions expressed during the workshop.
- The European Parliament, who are considering the Directive in parallel because it is a co-decision document, are currently ahead of the Commission and are expected to adopt the report in September.

Defra concluded finally by stating that the day had been very useful. The delegates were also reminded of the opportunity for further lobbying through other channels, including trade associations and MEPs (Members of the European Parliament).

APPENDIX A

Agenda

SOIL FRAMEWORK DIRECTIVE STAKEHOLDER WORKSHOP

Thursday 17 May 2007, 09.30-17.00

Royal Horticultural Halls Conference Centre, Greycoat Street, London, SW1P 2QD

AGENDA

- 09.30 – 10.00** Registration and Coffee
- 10.00 – 10.15** Session 1: Introduction and aims of the workshop
- 10.15 – 10.30** Session 2: Overview of proposed Directive and current state of play
- 10.30 – 10.45** Session 3: Facilitators introduction and background
- 10.45 – 11.15** Session 4: Plenary discussion - initial views on the proposed Directive
- 11.15 – 11.30** Coffee
- 11.30 – 12.15** Session 5: Break-out groups
- 12.15 – 12.30** Session 6: Reports back from groups
- 12.30 – 13.00** Session 7: Plenary discussion
- 13.00 – 13.45** Lunch
- 13.45 – 15.30** Session 8: Break-out groups
- Risk areas (Articles 6-8)
 - Soil contamination (Articles 9-14) – two groups
- 15.30 – 15.45** Coffee
- 15.45 – 16.00** Session 9: Reports back from groups
- 16.00 – 16.30** Session 10: Plenary discussion
- 16.30 – 16.45** Session 11: Concluding remarks
- 16.45 – 17.00** Session 12: Next steps and close

APPENDIX B

Delegate List

SOIL FRAMEWORK DIRECTIVE

Stakeholder Workshop, 17 May 2007: Attendees

1	Phil Murray (Institute of Grassland and Environmental Research)
2	Alice Hume (Confederation of British Industry)
3	Stephen Nortcliff (Reading University)
4	Howard Price (Chartered Institute of Environmental Health)
5	Jonquil Maudlin (Bristol City Council)
6	Bob Cuthbertson (Scottish Executive Environment and Rural Affairs Department)
7	Antje Branding (Scottish Executive Environment and Rural Affairs Department)
8	Vanessa Fandrich (EEF The Manufacturers' Organisation)
9	Mark Dredge (Ford)
10	Tony Osborne (Ford)
11	Andy Limbrick (Association of Electricity Producers)
12	Ann Barrett (Marsh)
13	Alexander Pohl (HSBC)
14	Brian Chambers (ADAS)
15	Matthew Young (Association of British Insurers)
16	Rob Creed (Environment Agency)
17	Sheena Engineer (Environment Agency)
18	John Newman (Department of Trade and Industry)
19	Andrew Wiseman (Trowers & Hamlins)
20	Matt Winter (Highways Agency)
21	Havard Prosser (Welsh Assembly Government)
22	Peter Dower (Zurich Insurance)
23	Karl Beattie (Department Of Environment for Northern Ireland)
24	Sarah Bull (Health Protection Agency)
25	Paul Walker (Soil and Groundwater Technology Association)
26	David Rudland (National Society for Clean Air and Environmental Protection)
27	Peter Witherington (House Builders Federation)
28	Christopher Norton (Baker & McKenzie LLP)
29	Karen Lawrence (Local Authorities Coordinators of Regulatory Services)
30	Graeme Willis (Campaign to Protect Rural England)
31	Ray Dickinson (Defence Estates, Ministry of Defence)
32	Paul Nathanail (Land Quality Management Ltd)
33	Michael Shanks (RWE npower)
34	Diane Mitchell (National Farmers Union)
35	Joanne Kwan (Construction Industry Research and Information Association)
36	Jane Forshaw (Contaminated Land: Applications In Real Environments)
37	Mark Kibblewhite (National Soil Resources Institute)
38	Rachel Fisher (Royal Institution of Chartered Surveyors)
39	Tim Elliott ((Royal Institution of Chartered Surveyors)
40	Bob Fenton (Mining Association of the UK)
41	Kara Thomas (Food Standards Agency)
42	Valerie Fogleman (City of London Law Society)
43	Mike Porembar (Gateshead Council)
44	Andrew Hursthouse (University of Paisley)
45	Russell Williams (Welsh Assembly Government)

46	Matthew Payne (Rolls Royce plc)
47	Anne-Gaelle Collot (Chemical Industries Association)
48	David Withinshaw (ExxonMobil)
49	Adrian Rochford (Natural England)
50	Phil Crowcroft (Environmental Resources Management)
51	Toby Uppington (URS Corporation Ltd)
52	Mark Aitken (Scottish Environment Protection Agency)
53	John Mullet (Chartered Institution of Wastes Management)
54	Murray Simpson (Textile Services Association)
55	Sebastian Payne (English Heritage)
56	Peter Ogden (Defra)
57	Mavis McInnes (Defra)
58	James LePage (Defra)
59	Richard Findon (Defra)
60	Phil Goodliffe (Defra)
61	Rosie Oliver (Defra)
62	Peter Ellis (Communities and Local Government)
63	James Henderson (Communities and Local Government)
64	Mark Rolls (Communities and Local Government)
65	Tracey Ware (Pesticides Safety Directorate)
66	Leslie Heasman (M J Carter Associates)
67	Paul Syms (English Partnerships)
68	Jamie Roberts (Buglife / Wildlife and Countryside Link)
69	Dan Houseago (National Trust)
70	Tanya Olmeda-Hodge (Country Land and Business Association)
71	Christopher Price (Country Land and Business Association)
72	Andrew Kuyk (Defra)
73	Maya de Souza (Defra)
74	Paul Davenport (Defra)
75	John Hodgson (Defra)
76	Becca Taylor (Defra)
77	Judith Stuart (Defra)
78	Sue Ellis (Defra)
79	Seth Davies (Defra)
80	Steve Griffiths (Defra)
81	Stuart Lemmon (Bureau Veritas)
82	Richard Maggs (Bureau Veritas)
83	Taposh Bhattacharya (Bureau Veritas)
84	Keith Gabriel (Bureau Veritas)
85	Matt Smith (British Property Federation)
86	Nick Barber (Nexia Solutions)

APPENDIX C

Post-Workshop Email Feedback to Defra

Text from four emails (sender's details removed)

APPENDIX C

First Email

I attended yesterday's Soil Framework Directive Stakeholder workshop, representing XXX. I found this very useful and it was helpful to debate the issues involved - the day was well managed too.

The DEFRA analysis papers were helpful however I think I must bring your attention to one matter that was not discussed yesterday. The DEFRA analysis as presented to the Stakeholders does not cover Chapter V Article 18, which concerns the "need to harmonise risk assessment methodologies for soil contamination". I read this as implying a need for new EU-wide approaches to risk assessment and thus the need for new detailed technical procedures to enable this to happen. Currently across the EU, those countries that currently undertake a risk-based approach to assessing land contamination have individual methodologies (and indeed varying approaches to what constitutes "suitable for use"). Of course the detailed approach to human health risk assessment in the UK is being revised now following the work of the SGV Taskforce and its approach may differ in some aspects from other EU states. Thus any harmonisation of risk assessment practices is likely to require changes in established UK technical practice to form common ground and by implication much existing guidance (and there are at least 200 publications on contaminated land in the UK - cf the CIRIA contaminated land website) will become obsolete. There will no doubt be a cost implication for UK industry and regulators from this also, not least on central government that has previously sponsored much of the existing guidance.

I'm enquiring whether DEFRA has considered the impact of this aspect of the Directive and to request that it be considered and included in the forthcoming discussions at EU level.

APPENDIX C
Second Email

Dear Soils Team

I attended the workshop last week and was reassured by the widespread unease at the current shape of the Soil Framework Directive. I do not believe that the proposals know what they are supposed to be doing – better coordination of land remediation? Gap filling? Developing alternatives to soil sealing? – but my greatest concern is the absence of biodiversity from the Directive. Any Framework Directive whose main objective is the protection and sustainable use of the soil cannot hope to succeed without explicitly including measures that aim to protect and enhance the biodiversity found in soil. This omission genuinely came as a surprise to me, after the Thematic Strategy for Soil Protection (22.9.2006) had identified biodiversity decline as a key issue, and also within the context of the Convention on Biological Diversity (CBD), which highlights soil biodiversity as an area requiring particular attention.

Although decline in biodiversity is listed as a major threat in the draft Directive, it is not explicitly covered in the five main threat areas prioritised for action: *Erosion, organic matter decline, salinisation, compaction and landslides + contamination, sealing*. Measures to combat the decline in soil organic matter will not directly address the decline in soil biodiversity. Other references to biodiversity in the document text seem to reinforce the feeling that soil biodiversity – so integral to the function and environmental quality of soil – has been marginalised as an issue, apparently on the grounds that we don't yet know enough to take action:

'The Directive does not cover soil biodiversity directly. Biodiversity will generally benefit from the action proposed on other threats. This will contribute to achieving the objective of halting the decline of biodiversity by 2010.' (p9) I do not believe that this indirect approach to conserving soil biodiversity is likely to succeed.

Soil biodiversity is a very significant part of the UK's biodiversity resource. All the available evidence indicates that it is undergoing serious and sustained decline. A species such as the Lob worm *Lumbricus terrestris* is a good indicator of how well we are looking after our soil biodiversity and health. Estimates of the species decline range between 25-35% in the past 40 years. While it is true that long-term measurement of trends in the status of subterranean species has not been undertaken for any group, given the dramatic intensification of agricultural practices - particularly cultivation, inorganic fertilisation, liming and pesticide use - in the last 40 years it would be perverse if this had not had a major impact on soil biodiversity. Furthermore, if lack of knowledge is the cause for excluding biodiversity from the Framework Directive, shouldn't that be evidence that a great deal more effort and resources must be put into finding out the causes of biodiversity decline in soil?

I strongly urge that greater weight is given to biodiversity in the Soil Framework Directive. The Directive is the best opportunity we have to improve the levels of protection afforded

to soil biodiversity – if we don't include it at this stage, it could be another decade before we start to make meaningful progress on halting the worrying decline in species beneath the surface. If the Water Framework Directive can include an aspirational target for attaining 'good ecological status' (including quality of the biological community) it would be perverse for the Soil Framework Directive were to sideline the issue of ecological quality and biodiversity altogether.

APPENDIX C

Third Email

Following on from the workshop last Thursday (17th May), below are a few points which I did not fully convey during the workshop, but were I think mostly fairly well covered by the consensus views.

Summary of initial comments/concerns from members of the XXX Team.

General

A focused EU soil protection framework (as proposed) is preferable to reliance on parts of other legislation, which may have different objectives, in order to protect soils and the essential functions they provide. In the past this approach has led to soils not receiving the attention or wider understanding they deserve.

The Commission's Impact Assessment is based on poor or inadequate data (acknowledged in the IA) and evaluation of on-site losses due to soil degradation tend to concentrate on one soil function (the soils productive potential); offsite losses do not give sufficient weight to nutrient and other polluting compounds attached to eroded soil particles, together with biodiversity and amenity impacts. Soil Biodiversity – note point about lack of knowledge on soil biodiversity and its behaviour and hence Commission's proposal not to have provisions aimed at its protection. However, this key soil function should be addressed, not ignored; for example including firmer proposals on how this lack of knowledge could be addressed.

Article 1 Subject Matter and Scope-

Emphasis on preserving soil functions fits with current 'Soil Action Plan for England:2004-2006'

Definition of 'soil' (and therefore the scope of the Directive) is crucial.

Danger that 'natural' geomorphological processes (landslides or coastal erosion) or background levels of naturally occurring compounds (e.g. arsenic) could be seen as 'problems' and that measures proposed to address them are disproportionate or work against natural processes. (note several landslides are Geological Conservation Review sites and SSSIs)

Article 2 Definitions

Good definition of soil required – need to ensure organic or peat soils are included. Clarification required about man-induced threats and those which are natural processes. (see last bullet point above)

Article 3 Integration

Requirement to consider and report on impacts of other policies on soil degradation is already covered by the SEA Directive?

Article 4 Precautionary Measures

Some of these already in place (e.g. EIA (Agriculture) Regs, cross-compliance, Agri-env Schemes.)

Article 5 Soil Sealing

Improves potential for soils to be better protected within the planning system (loss of soil functionality due to development is rarely properly accounted for)

Rehabilitation of brownfield sites protects soil functionality of greenfield land, but care needed to ensure end uses are appropriate and include recognition of the biodiversity, landscape and amenity value of brownfield land.

Mitigation of impacts of soil sealing by appropriate construction techniques or products is an extension of work already carried out by Natural England.

No guidance on how Article to be applied (e.g. size thresholds, application to different types of development etc).

Article 6 Identification of risk areas for erosion, organic matter decline, compaction, salinisation, landslides; Article 7 Methodology

Much data already available at national scale (e.g. from National Soil Resources Institute) or could be assembled from existing datasets using GIS techniques (possible role for Natural England for some datasets?);

Defining 'levels' of risk may be a problem.

?Exclude coastal erosion from definition of erosion – see previous comment on natural processes re Articles 1 and 2.

Presume organic matter as defined in para 1b will include peat and organic mineral soils – need to ensure loss of peat depth and functionality is taken into account.

Clarification needed about soils at risk of salinisation i.e. would this include marine derived sodium dominated soils in England (e.g. North Kent), salt marshes, salt affected soils created by managed retreat, those at risk of inundation due to sea level rise etc?

Article 8 Programmes of measures to combat erosion, organic matter decline, compaction, salinisation and landslides.

Many measures already in place (e.g. cross compliance, Environmental Stewardship, Catchment Sensitive Farming)

Landslides – concern that this may imply that measures might be adopted which would adversely impact on those landslides notified as SSSIs, including those notified for the landscape feature in its own right under the Geological Conservation Review.

Articles 9 Prevention of soil contamination

Contamination from air deposition is excluded – what is the reasoning?

Article 10 Inventory of contaminated sites

Reference to risks to the environment (as well as human health) ties up with Part IIA requirements (Env Protection Act 1990) which includes eco-receptors. This is significant as eco-receptors, as defined by Part IIA, are predominantly designated sites.

Article 13 Remediation

Rare Species/habitats may occur on contaminated land (e.g. by former mining activities such as lead rakes) or on naturally contaminated land. Remediation can have impacts on eco-receptors.

Article 15 Awareness raising and public participation

Requiring Member States to raise awareness about the importance of soils for human and ecosystem survival and promoting the sustainable use of soil is welcome (Natural England is already doing some of this, albeit rather limited). There is a big educational role here; Defra has made good progress in raising the profile of soils through its Soil Action Plan, for example SoilNet, an educational resource for schools, but more is needed.

Definition of "soil".

The definition in Article 1(2) which I believe describes soil as "the top layer of the earth's crust between bedrock and the surface" seems to be very unspecific and would incorrectly include much non soil material e.g. sand and gravel deposits.

The following text drafted by XXX may be useful:

"The word 'soil' means different things to different audiences. For most people it is just dirt or mud under their feet; for the farming communities it is the basis for their livelihoods; for planners and developers it can be overburden or spoil; for engineers it forms the physical foundation for buildings and infrastructure. In practical terms, soil is generally defined as the top layer of the Earth's crust. It is formed by mineral particles, organic matter, water, air and living organisms. Soil is an extremely complex, variable and living medium. It forms a complex habitat for macro- and micro-organisms and there is more biodiversity in soils than in any other terrestrial ecosystems. "

The important thing is that the definition should recognise the living nature, the diversity and complexity of soil. Appropriate words should also be included in the definition to ensure organic and peat soils are not overlooked.

APPENDIX C

Fourth Email

Further to the Soil Framework Directive Workshop event held on Thursday 17th May, will you please note the following comment:

Regarding the issue of "contaminated land" and its inclusion within the context of the proposed Soil Framework Directive, while echoing the concerns surrounding the necessity either to include or deviate from domestic land contamination policy (Part 2A); the issue of source contaminant/pollutants with intervention or trigger values must be addressed.

Clarity is required, regarding the definition(s) likely to be applied re what constitutes a contaminant/pollutant (consistent or akin to the Dangerous Substances Directive Priority List etc?). The development of the Environmental Liability Directive with its broadening of land contaminant sources to include biological agents in addition to conventional "chemical" contaminants must be considered.

Attention must also be directed at determining respective "trigger values" in the context of contaminants/pollutants together with consideration applied to factors such as background contamination, the rate of natural attenuation/degradation related to potential soil contaminants.

The above are fundamental (albeit problematic) given both the current progress regarding Soil Guideline Values in the light of the Directive's ambitious aspirations.

A risk-based approach reflecting the above issues I suggest must provide the steer/ explored in the likely event that soil contamination/contaminated land be retained within the Framework Directive. Clarity is crucial in order to scope out the proposed Directive's objectives in order to evaluate its effectiveness and consistency. This is paramount given the broad legislative framework that either exists or is being developed particularly with regard to other parallel legislation.