



**HM Revenue  
& Customs**

---

**Land Remediation Relief**

---

Technical Note  
24 November 2008

---

## Contents

		<b>Page</b>
	Foreword	3
Chapter 1	Background	4
Chapter 2	HMRC Change of view on Japanese Knotweed	5
Chapter 3	Land Remediation Relief – extension to derelict land	7
Chapter 4	Land Remediation Relief – contaminated land	9
Chapter 5	Land Remediation Relief – Statutory obligations	13
Annex A	Draft legislation	15
Annex B	Draft Explanatory Note	24

## Foreword

---

Draft legislation published here extends Land Remediation Relief, providing relief for expenditure on specified work on long term derelict land. It also refocuses the relief on contamination by industrial activity.

Comments on the draft legislation should be submitted by 27 February 2009 to:

Brian Stokes

Room 3/36

100 Parliament Street

London

SW1A 2BQ

Telephone: 020 7147 2546

E-mail: [brian.stokes@hmrc.gsi.gov.uk](mailto:brian.stokes@hmrc.gsi.gov.uk)

## Chapter 1 - Background

---

- 1.1. Land Remediation Relief (LRR) was introduced in 2001 as part of the Government's response to Lord Rogers' Urban Task Force in 1999.
- 1.2. LRR was designed to address issues of market failure relating to the bringing back into use of land that had been blighted by previous use for industrial purposes.
- 1.3. On 21 March 2007 the Government launched a consultation on tax incentives for the development of brown-field land. The consultation sought views on whether the scope of LRR should be extended to provide relief for the costs of remediating long term derelict land and of clearing Japanese Knotweed infestation. One problem highlighted was that companies were uncertain as to whether they would qualify for the relief.
- 1.4. In December 2007, the Government published its response to the consultation in "Tax incentives for development of brownfield land: a consultation response".
- 1.5. In this response, the Government announced that it intended to extend LRR from 1 April 2009 to provide an incentive to bring long term derelict land back into productive use and that it had decided to extend the scope of the existing LRR to cover the costs of removal of Japanese Knotweed.
- 1.6. The Government also recognised the need to give companies greater certainty about the circumstances in which they would qualify for the relief.
- 1.7. The extension of land remediation relief is intended to recycle the revenue raised by the withdrawal of the exemption from landfill tax of waste from the clean up of contaminated land.
- 1.8. HMRC have estimated the receipts from the ending of the exemption and the cost of the extended LRR on the basis of the best available data and on the economic circumstances at the time. This analysis indicates that the two measures, taken together, are broadly revenue-neutral.

## Chapter 2

---

### HMRC Change of view on Japanese Knotweed

- 2.1. Japanese Knotweed (“Fallopia japonica”) was introduced to the UK in Victorian times both as an ornamental garden plant and also to stabilize embankments along railways and canals. Lacking natural predators in the UK and capable of regenerating from a small piece of rhizome, it is especially difficult to eradicate. It is also unusually invasive and destructive: for example, it is capable of pushing through tarmac.
- 2.2. Japanese Knotweed is listed on Schedule 9 and subject to section 14 of the Wildlife and Countryside Act 1981. It is an offence to plant, or cause Japanese Knotweed to grow, in the wild.
- 2.3. Under the existing legislation, land is contaminated for the purposes of LRR if there is a substance present that is causing, or has the potential to cause, harm.
- 2.4. The term substance is defined at Paragraph 31 (1) of Schedule 22 to the Finance Act 2001, which states that:

*“substance” means any natural or artificial substance, whether in solid or liquid form or in the form of a gas or vapour.*
- 2.5. In the Corporate Intangibles, Research and Development Manual, HMRC states at CIR60135 that it interprets this as meaning that that:

*“A substance is matter having uniform properties. So, for example, asbestos is a substance but life forms are not.”*
- 2.6. HMRC now accepts that Japanese Knotweed is sufficiently invasive and destructive that it satisfies the “harm” test and that land infested with Japanese Knotweed is contaminated for the purposes of LRR.
- 2.7. The Government has previously announced its intention to extend the scope of LRR to provide relief for expenditure incurred on clearing Japanese Knotweed, excluding clearance by removal to landfill sites.

- 2.8. HMRC now accepts that the costs of clearing Japanese Knotweed will qualify for relief. However, the Government believes that it should legislate to provide greater certainty about the circumstances in which LRR can be claimed.
- 2.9. Under the existing LRR there is no restriction on the method of remediation and currently the costs of removal to a landfill site qualify for LRR.
- 2.10. As with any contaminant, claims for relief in respect of clearing Japanese Knotweed must satisfy all of the other legislative tests. For example, relief is not available where the Japanese Knotweed was planted by the claimant (or a connected party) or where it spread to the site during the period of ownership, for instance by fly-tipping.
- 2.11. HMRC will settle any open claims for LRR in respect of Japanese Knotweed on this basis. It will approach any new claims for in-date years on the same basis.

## Chapter 3 – Land Remediation Relief: Derelict Land

---

- 3.1. The legislation extending LRR to long term derelict land follows closely the scheme outlined by the Government in the response to consultation published on 14 December 2007.
- 3.2. As the policy intention is to bring back into use derelict land that would not otherwise be remediated, the relief is limited to land that was derelict on 1 April 1998 and that has been continuously derelict since that date.
- 3.3. The Government is taking powers to amend this date by Treasury Order. This will allow the Government to review the qualifying date – as and when necessary – in light of the amount and location of additional land that would qualify for the relief as a result of the change.
- 3.4. In keeping with the “Polluter Pays” principle, the legislation excludes from the relief land that did not fall within the statutory definition of dereliction when it was first acquired by the present owner or a connected party.
- 3.5. Because planning is a devolved matter, “derelict” is defined in different ways in different parts of the UK. The definition of “derelict” used in the draft legislation approximates to those used in the English National Land Use Database (NLUD) and the Scottish Vacant & Derelict Land Survey (SVDLS). HMRC will be publishing guidance on the use of the NLUD or SVDLS as evidence that a particular project satisfies this test. This will reduce the administrative burden for companies wishing to claim the relief.
- 3.6. There is no requirement in the draft legislation that land has to have been recorded on a land use database as derelict and HMRC will also be publishing guidance on cases where the land is not on a database. This will be particularly relevant in Wales and Northern Ireland, which do not currently have data bases like those which exist for England and Scotland.
- 3.7. The list of types of expenditure qualifying for the relief will be created by secondary legislation. In December 2007, following the consultation, the Government published a list of the expenditure that it proposed to include in the relief:

- Removal of post tensioned concrete heavyweight construction (post tensioning is usually employed where stressing is to be carried out on site after casting an in-situ component, or where a series of pre-cast concrete units are to be cast together to form the required member);
- Removal of building foundations and machinery bases;
- Removal of reinforced concrete pilecaps (piles are long slender columns composed of solidified concrete grout constructed in the ground to carry a vertical load and pilecaps are structures, normally square or rectangular, of a thickness which combine piles in groups to support singular columns above);
- Removal of reinforced concrete basements (removal can require significant and expensive stability works such as underpinning and propping); and
- Below ground demolition of redundant services;

3.8. The cost of relevant preparatory activity related to the above items of expenditure will also qualify for the relief.

## Chapter 4 – Land Remediation Relief: Contaminated Land

---

- 4.1. The Government continues to encourage the remediation of land contaminated by former industrial use. To that end, it is making a number of changes to provide clarity to taxpayers about the types of expenditure which qualify for Land Remediation Relief, and thus to provide greater certainty as to whether or not work being carried out will qualify for LRR. The question of certainty was highlighted in some of the responses to the consultation.
- 4.2. The changes are also intended to ensure that polluters do not benefit directly or indirectly from the relief.
- 4.3. The Government has sought to align the statutory tests with the work that developers are required to do as part of the planning process to establish whether or not a site is contaminated.
- 4.4. HMRC will therefore publish guidance on how the revised tests in LRR relate to the risk assessments carried out as good practice by those re-developing contaminated land. This guidance will be published in draft to enable interested parties to comment.
- 4.5. For example, the guidance will set out the circumstances in which HMRC will accept that a risk assessment, carried out as part of the planning process, showing that the amount of a contaminant present in the soil exceeds the “Soil Guideline Value” is sufficient to show that the “harm” element has been satisfied. Soil Guideline Values are assessment criteria used to help evaluate the long-term risks to human health from chemical contamination in soil.
- 4.6. The intention is that because developers will be able to see whether or not they will qualify for LRR at an early stage in a project then they can factor LRR into their calculations with greater certainty before they decide to proceed with the development and carry out the remedial work. This will mean that LRR will more often fulfil its intended role as an incentive for companies to bring brown-field sites back into productive use.
- 4.7. In addition to giving increased certainty, this will also reduce the administrative burden as, in the event of any query, companies will be able

to use the evidence and reports already prepared as part of the planning process to substantiate the claim.

- 4.8. HMRC recognise that the evaluation of the level of risk as part of the planning process is a developing area. HMRC also recognise that there is also no single appropriate method of evaluating risk.
- 4.9. HMRC are not concerned with the specific methodology used; only that it is an appropriate one for the contaminant and site in question.
- 4.10. To give companies greater certainty, HMRC regard an appropriate methodology as one that was regarded as an appropriate methodology by industry/planning authorities for that type of contaminant and site at the time the work was carried out. If, for example, a more refined methodology is published before the claim is submitted that means that the risk on a site would have been down-graded, then HMRC will still accept that the test has been satisfied as, at the time the work was carried out, the level of risk calculated under an acceptable methodology was high enough to qualify for relief.
- 4.11. The legislation clarifies the type of expenditure qualifying for relief. Relief will be given for the cost of removing the contamination, not for any subsequent works. HMRC has received a number of claims where the meaning of “restoring the land or waters to their former state” (at what is currently Paragraph 4 (3)(b) of Schedule 22 to the Finance Act 2001) is under dispute. The purpose of the amendment is to clarify and put beyond doubt the part of any work on the site that qualifies for the relief.
- 4.12. Currently the legislation allows relief for the costs of removing contaminants that are present by natural process as well as contaminants that are present as a result of former industrial activity.
- 4.13. This has the result that expenditure may currently qualify for relief even though it will not bring any brown-field land back into productive use.
- 4.14. LRR is being amended so that only costs of removing contaminants that are present as the result of industrial activity qualify for the relief.

- 4.15. HMRC do not believe that this will create an additional administrative burden for developers bringing contaminated land back into use. Developers will have established the probable causes of contamination in a “desk study” at an early stage of the development.
- 4.16. The Government is taking powers to extend LRR to cover the costs of removing contaminants that are not present as a result of industrial activity. For example where there is evidence that a particular plant or natural contaminant is causing a market failure.
- 4.17. Currently the Government proposes to allow claims for LRR in respect of expenditure on removing Japanese Knotweed, radon and arsenic.
- 4.18. The Government is taking powers to remove the requirement that the land was contaminated on acquisition for specified contaminants. This power does not remove the “polluter pays” principle. The party responsible for the pollution will still be unable to claim the relief.
- 4.19. However, the Government recognises that Japanese Knotweed is unusual in that infestations can occur through no fault of the landowner or occupier. In view of this, it has been decided that the requirement that the site was contaminated at acquisition should not apply in the case of Japanese Knotweed.
- 4.20. The “Polluter Pays” principle still applies. This means that a company that was responsible (or a connected party of which was responsible) for planting Japanese Knotweed will not qualify for relief.
- 4.21. The legislation allows the Government to exclude specific methods of remediation from qualifying for LRR. The underlying policy is to exclude methods that are considered to be environmentally less attractive.
- 4.22. As set out in the response to the consultation, the Government proposes initially to exclude the removal of Japanese Knotweed to landfill.
- 4.23. The responses to the consultation indicated that on-site or off-site treatment is the most sustainable and effective approach to the removal of Japanese Knotweed. It ensures that all of the weed is killed and unable to return thus

reducing longer-term costs. In addition it does not encourage the unsustainable use of landfill.

4.24. The responses to the consultation showed that, although on-site or off-site treatment takes longer than physical removal to an authorised landfill site, these methods also offer the most cost effective way of removing Japanese Knotweed.

4.25. The Government intends to exclude the costs of removal to landfill from the relief from 1 April 2009.

## Chapter 5 – Expenditure Incurred Under Statutory Obligations

---

5.1. In the response to the Consultation, the Government stated that it wished to improve the targeting of the relief by excluding from the relief expenditure that companies are required by law to incur.

5.2. The Government is therefore taking powers to exclude from LRR (both the existing LRR and the extension to derelict land) expenditure incurred in fulfilment of a statutory obligation.

5.3. The Government initially proposes to exclude from LRR the cost of work required on land/buildings adversely affecting the amenity of neighbourhood. This would include work under

- section 215 of the Town and Country Planning Act 1990
- Section 179 of the Town and Country Planning (Scotland) Act 1997
- Paragraph 39, Planning (Northern Ireland) Order 1991

5.4. Expenditure incurred on work required on defective premises, dangerous buildings, ruinous and dilapidated buildings and neglected sites would also be excluded. This would include work under:

- sections 76 – 79 of the Building Act 1984
- Section 66 Pollution Control and Local Government (Northern Ireland) Order 1978 (No. 1049 (N.I. 19))
- Section 28 Building (Scotland) Act 2003

5.5. Expenditure on work required for the abatement or prohibition of a nuisance would also be excluded. This would include work under:

- sections 79-82 of the Environment Protection Act 1990 for (England Scotland & Wales); and
- Section 65 Pollution Control and Local Government (Northern Ireland) Order 1978 (No. 1049 (N.I. 19))

5.6. Expenditure on work on a listed building under a repairs notice would also be excluded. This would include:

- Section 43 Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997
- Section 48 Planning (Listed Buildings and Conservation Areas) Act 1990
- Article 109, Planning (NI) Order 1991

5.7. Where the obligation only arises once a notice has been issued, then the exclusion will only apply where a notice has actually been served. Expenditure on any work carried out that could have been the subject of a notice, but which was carried out before a notice has been issued, will still qualify for the relief, subject to meeting the other conditions.

5.8. Where work is carried out by a local authority, who then recover their costs from the landowner, the payment to the local authority does not qualify for the relief.

## **Annex A – Draft Legislation**

---

Some aspects of this legislation repeal or amend provisions that are currently being rewritten as part of the Tax Law Rewrite Programme's Corporation Tax Bill, drafts of which have been released for comment. These measures have been included within the rewrite process for reasons of continuity and certainty, and any changes to the legislation will be drafted in the appropriate style so as to align with the remainder of that Bill. The paragraph numbers included in the draft legislation and explanatory notes reflect the most up to date version of the Corporation Tax Bill and may differ from the version currently in the public domain.

**1 Contaminated and derelict land**

- (1) The Schedule contains provision extending Part 14 of CTA 2009 (remediation of contaminated land) to derelict land and other provision amending that Part of that Act.
- (2) The amendments made by the Schedule have effect in relation to expenditure incurred on or after 1 April 2009; and for this purpose no account is to be taken of section 61 of CTA 2009 (earlier expenditure treated as incurred when trade started).

## SCHEDULE

Section 1

## CONTAMINATED AND DERELICT LAND

- 1 Part 14 of CTA 2009 (remediation of contaminated land) is amended as follows.
- 2 In the heading of the Part, after “CONTAMINATED” insert “OR DERELICT”.
- 3 (1) Section 1143 (overview of Part) is amended as follows.
- (2) In subsection (1), after “contamination” insert “or dereliction”.
- (3) In subsection (7), after “contaminated” insert “or derelict”.
- 4 (1) Section 1144 (“qualifying land remediation expenditure”) is amended as follows.
- (2) In subsection (1), for “E” substitute “F”.
- (3) In subsection (2), insert at the end “or a derelict state (see section 1145A)”.
- (4) In subsection (3), after “contaminated” insert “or derelict”.
- (5) For subsection (4) substitute –
- “(4) Condition C is that it is –
- (a) in the case of land in a contaminated state, expenditure on relevant contaminated land remediation undertaken by the company (see section 1146), or
- (b) in the case of land in a derelict state, expenditure on relevant derelict land remediation so undertaken (see section 1146A).”
- (6) In subsection (5), for paragraph (c) and the “or” before it substitute –
- “(c) incurred in respect of relevant land remediation contracted out by the company to another person with whom the company is not connected, or
- (d) qualifying expenditure on connected sub-contracted land remediation (see section 1175).”
- (7) After subsection (6) insert –
- “(6A) Condition F is that the expenditure is not incurred on landfill tax.”
- 5 For section 1145 substitute –
- “1145 Land “in a contaminated state”**
- (1) For the purposes of this Part land is in a contaminated state if (and only if), because of something in, on or under the land, the land is in a condition such that –
- (a) relevant harm is being caused, or
- (b) there is a serious possibility that relevant harm will be caused.

- (2) But land is not in a contaminated state by reason of the presence in, on or under it of—
  - (a) living organisms or decaying matter deriving from living organisms, air or water, or
  - (b) anything present otherwise than as a result of industrial activity.
- (3) The Treasury may by order specify circumstances in which subsection (2) is not to apply to the extent specified in the order; and an order under this subsection may contain incidental, supplemental, consequential and transitional provision and savings.
- (4) In this section “relevant harm” means—
  - (a) death of living organisms or significant injury or damage to living organisms,
  - (b) significant pollution of controlled waters,
  - (c) a significant adverse impact on the ecosystem, or
  - (d) structural or other significant damage to buildings or other structures or interference with buildings or other structures that significantly compromises their use.

#### **1145A Land “in a derelict state”**

For the purposes of this Part land is in a derelict state if (and only if) the land—

- (a) is not in productive use, and
- (b) cannot be put into productive use without the removal of buildings or other structures.

#### **1145B Exclusion of nuclear sites**

- (1) A nuclear site is not land in a contaminated state or land in a derelict state for the purposes of this Part.
  - (2) “Nuclear site” means—
    - (a) any site in respect of which a nuclear site licence is for the time being in force, or
    - (b) any site in respect of which, after the revocation or surrender of a nuclear site licence, the period of responsibility of the licensee has not yet come to an end.
  - (3) In subsection (2) “nuclear site licence”, “licensee” and “period of responsibility” have the same meaning as in the Nuclear Installations Act 1965.”
- 6 (1) Section 1146 (“relevant land remediation”) is amended as follows.
- (2) In subsection (1)—
    - (a) for “land remediation”, in relation to land” substitute “contaminated land remediation”, in relation to land which is in a contaminated state and in which a major interest has been”, and
    - (b) for “and B” substitute “to C”.
  - (3) In subsection (3)—
    - (a) in paragraph (a), for “harm, or any pollution of controlled waters,” substitute “relevant harm”, and

- (b) omit paragraph (b) (and the “or” before it).
- (4) After that subsection insert –
- “(3A) Condition C is that the activities are not –
- (a) activities of a description specified by order made by the Treasury, or
  - (b) activities required by or by virtue of any enactment specified by such an order.”
- (5) In subsection (5), for the words after “(and only if)” substitute “because of something in, on or under the land by virtue of which it is contaminated land, the land is in a condition such that –
- (a) significant pollution of those waters is being caused, or
  - (b) there is a serious possibility that significant pollution of those waters will be caused.”
- (6) In the heading, after “**relevant**” insert “**contaminated**”.
- 7 After that section insert –
- “1146A “Relevant derelict land remediation”**
- (1) For the purposes of this Part “relevant derelict land remediation”, in relation to land which is in a derelict state and in which a major interest has been acquired by a company, means –
    - (a) activities in relation to which conditions A and B are met, and
    - (b) if there are such activities, relevant preparatory activity.
  - (2) Condition A is that the activities comprise the doing of any works, the carrying out of any operations or the taking of any steps in relation to the land in question.
  - (3) Condition B is that the purpose of the activities is a purpose specified by order made by the Treasury.
  - (4) An order under subsection (3) may contain incidental, supplemental, consequential and transitional provision and savings.
  - (5) For the purposes of subsection (1)(b) “relevant preparatory activity” has the same meaning as for the purposes of subsection (1)(b) of section 1146 (see subsection (4) of that section, but reading the reference to subsection (1)(a) of that section as a reference to subsection (1)(a) of this section).”
- 8 In the heading of Chapter 2, after “CONTAMINATED” insert “OR DERELICT”.
- 9 (1) Section 1147 (deduction for capital expenditure) is amended as follows.
- (2) In subsection (2), after “that” insert “a major interest in”.
  - (3) In subsection (3), after “contaminated” insert “or derelict”.
- 10 (1) Section 1149 (additional deduction for qualifying land remediation expenditure) is amended as follows.
- (2) In subsection (2), after “that” insert “a major interest in”.

- (3) For subsection (3) substitute –
- “(3) Condition B is that –
- (a) in the case of land in a contaminated state, the land was in a contaminated state at the time of the acquisition, and
  - (b) in the case of land in a derelict state, the land was in a derelict state throughout the period beginning with the earlier of –
    - (i) 1 April 1998, and
    - (ii) the date on which a major interest in the land was first acquired by the company or a person who was connected with the company.
- (3A) The Treasury may by order –
- (a) specify circumstances in which the condition in paragraph (a) of subsection (3) need not be met, or
  - (b) replace the date for the time being specified in paragraph (b)(i) of that subsection with a later date;
- and an order under this subsection may contain incidental, supplemental, consequential and transitional provision and savings.”
- 11 (1) Section 1150 (no relief if company responsible for contamination) is amended as follows.
- (2) The existing provision becomes subsection (1) of that section.
- (3) In that subsection, for “state if the land is in that” substitute “or derelict state if the land is in a contaminated or derelict”.
- (4) After that subsection insert –
- “(2) A company is not entitled to relief under this Chapter in respect of expenditure on land all or part of which is in a contaminated or derelict state if –
- (a) the land is in that state wholly or partly as a result of any thing done, or omitted to be done, by a person not within subsection (1), and
  - (b) that person, or a person connected with that person, has a relevant interest in the land.
- (3) For the purposes of subsection (2) a person has a relevant interest in land if –
- (a) the person holds any interest in, right over or licence to occupy the land (including an option to acquire any such interest, right or licence in any circumstances), or
  - (b) has disposed of any estate or interest in the land for a consideration that to any extent reflects the impact, or likely impact, on the value of the land of the remediation of its contamination or dereliction.”

(5) In the heading, insert at the end “**or dereliction or polluter has interest**”.

12 (1) Section 1161 (relief in respect of I minus E basis: enhanced expenses payable) is amended as follows.

(2) In subsection (2), after “that” insert “a major interest in”.

- (3) For subsection (3) substitute –
- “(3) Condition B is that –
- (a) in the case of land in a contaminated state, the land was in a contaminated state at the time of the acquisition, and
  - (b) in the case of land in a derelict state, the land was in a derelict state throughout the period beginning with the earlier of –
    - (i) 1 April 1998, and
    - (ii) the date on which a major interest in the land was first acquired by the company or a person who was connected with the company.
- (3A) The Treasury may by order –
- (a) specify circumstances in which the condition in paragraph (a) of subsection (3) need not be met, or
  - (b) replace the date for the time being specified in paragraph (b)(i) of that subsection with a later date;
- and an order under this subsection may contain incidental, supplemental, consequential and transitional provision and savings.”
- 13 (1) Section 1163 (no relief if company responsible for contamination) is amended as follows.
- (2) The existing provision becomes subsection (1) of that section.
  - (3) In that subsection, for “state if the land is in that” substitute “or derelict state if the land is in a contaminated or derelict”.
  - (4) After that subsection insert –
 

“(2) A company is not entitled to relief under this Chapter in respect of expenditure on land all or part of which is in a contaminated or derelict state if –

    - (a) the land is in that state wholly or partly as a result of any thing done, or omitted to be done, by a person not within subsection (1), and
    - (b) that person, or a person connected with that person, has a relevant interest in the land.

(3) For the purposes of subsection (2) a person has a relevant interest in land if –

    - (a) the person holds any interest in, right over or licence to occupy the land (including an option to acquire any such interest, right or licence in any circumstances), or
    - (b) has disposed of any estate or interest in the land for a consideration that to any extent reflects the impact, or likely impact, on the value of the land of the remediation of its contamination or dereliction.”
    - (5) In the heading, insert at the end “**or dereliction or polluter has interest**”.

14 (1) Section 1173 (expenditure incurred because of contamination) is amended as follows.

    - (2) In subsections (1) and (2), after “contaminated” insert “or derelict”.

- (3) For subsection (3) substitute –
- “(3) Subsection (4) applies –
- (a) in the case of land in a contaminated state, if the main purpose of any activities is any of those specified in section 1146(3), or
- (b) in the case of land in a derelict state, if the main purpose of any activities is any of those specified in section 1146A(3).”
- (4) In the heading, insert at the end “**or dereliction**”.
- 15 Omit section 1174 (sub-contractor payments: introductory).
- 16 (1) Section 1175 (“qualifying expenditure on sub-contracted land remediation”: connected persons) is amended as follows.
- (2) After subsection (1) insert –
- “(1A) In this section, a “sub-contractor payment” means a payment made by the company to the sub-contractor in respect of relevant land remediation contracted out by the company to the sub-contractor.”
- (3) In subsection (2), for “sub-contractor payment” substitute “connected sub-contractor payment for the purposes of section 1144(5)”.
- (4) In subsection (3) –
- (a) in paragraph (a), after “carrying on” insert “or arranging for carrying on”, and
- (b) in paragraph (c) for “incurred on” substitute “in respect of”.
- (5) For the heading substitute “**Connected sub-contractors**”.
- 17 Omit section 1176 (“qualifying expenditure on sub-contracted land remediation”: other cases).
- 18 In section 1178 (persons having a “relevant connection” to a company) –
- (a) after “contaminated” insert “or derelict”, and
- (b) in paragraph (b), after “when” insert “a major interest in”.
- 19 After section 1178 insert –
- “1178A “Major interest in land”**
- (1) References in this Part to the acquisition of a major interest in land are to the acquisition of a freehold interest in the land or of a relevant leasehold interest in the land.
- (2) The reference in subsection (1) to the acquisition of a freehold interest in land is –
- (a) in relation to land in England and Wales, to the acquisition of an estate in fee simple absolute (whether subsisting at law or in equity),
- (b) in relation to land in Scotland, to the acquisition of the interest of an owner of land, and
- (c) in relation to land in Northern Ireland, to the acquisition of any freehold estate (whether subsisting at law or in equity).

- (3) The reference in subsection (1) to the acquisition of a relevant leasehold interest in land is to the acquisition by grant or assignment (or assignation) of –
- (a) in relation to land in England and Wales, a term of years absolute (whether subsisting at law or in equity), or
  - (b) in relation to land in Scotland, the tenant’s right over or interest in a property subject to a lease, or
  - (c) in relation to land in Northern Ireland, any leasehold estate (whether subsisting at law or in equity),
- in relation to which the condition in subsection (4) is met.
- (4) That condition is that –
- (a) in the case of a grant, the term of years or period of the lease is at least 7 years, and
  - (b) in the case of an assignment (or assignation) the unexpired portion of the term or period is at least 7 years.”
- 20 In section 1179 (definitions), omit the definitions of “harm” and “land” and the definition of “substance” (apart from the “and” at the end).
- 21 (1) Schedule 4 to CTA 2009 (index of expressions) is amended as follows.
- (2) After the entry relating to “deposit back arrangements” insert –
- “derelict state (in relation to land) | section 1145A”.  
(in Part 14)
- (3) Omit the entries relating to “harm (in Part 14)” and “land (in Part 14)”.
- (4) After the entry relating to “major interest (in Chapter 12 of Part 8)” insert –
- “major interest in land (in Part 14) | section 1178A”.
- (5) After the entry relating to “relevant consortium creditor relationship (in Chapter 7 of Part 5)” insert –
- “relevant contaminated land | section 1146”.  
remediation (in Part 14)
- (6) After the entry relating to “relevant debits (in Part 8)” insert –
- “relevant derelict land | section 1146A”.  
remediation (in Part 14)
- (7) Omit the references relating to “relevant land remediation (in Part 14)”, “sub-contractor payment (and sub-contractor) (in Chapter 6 of Part 14)” and “substance (in Part 14)”.

## Annex B: Draft Explanatory Notes

---

These draft explanatory notes reflect the current draft legislation amending the Land Remediation Relief regime.

### SUMMARY

1. The clause and Schedule amend Part 14 of Corporation Tax Act 2009 (CTA 2009) (remediation of contaminated land). The amendments extend the scope of the relief to provide relief for expenditure on bringing derelict land back into productive use and to refocus the existing relief on bringing land contaminated by previous industrial use back into productive use.

### DETAILS OF THE CLAUSE

2. Clause 1 introduces Schedule 1 (Contaminated and Derelict Land).
3. Subsection (1) explains that Schedule 1 applies to amend Part 14 of CTA 2009 (remediation of contaminated land).
4. Subsection (2) provides that the amendments made by Schedule 1 shall have effect in relation to expenditure incurred on or after 1 April 2009. It also excludes from the scope of the amended Land Remediation Relief expenditure actually incurred before 1 April 2009, but deemed to have been incurred on or after 1 April 2009 under section 61 CTA 2009 (pre-trading expenditure).

### Details of the Schedule:

5. Paragraph 1 provides that Part 14 of CTA 2009 is amended as set out in the Schedule.
6. Paragraph 2 amends the heading of Part 14 of CTA 2009 to reflect the extension of the relief.
7. Paragraph 3 amends subsections 1143 (1) & (7) to reflect the extension of the relief.

#### Paragraph 4

8. Sub-paragraph (1) explains that paragraph 4 amends section 1144, which defines "qualifying land remediation expenditure".
9. Sub-paragraph (2) amends section 1144(1) to insert an additional condition for qualifying expenditure ("Condition F").
10. Sub-paragraph (3) amends section 1144(2) ("Condition A"), to reflect the extension of the relief.
11. Sub-paragraph (4) amends section 1144(3), ("Condition B"), to reflect the extension of the relief.
12. Sub-paragraph (5) introduces a new "Condition C" in section 1244(4) to replace the existing "Condition C". The new Condition C reflects the extension of the relief and contains cross-references to the definitions of "contaminated

land remediation” in section 1146 and “relevant derelict land remediation” in section 1146A.

13. Sub-paragraph (6) amends section 1144(5), (“Condition D”), to reflect the changes to the rules on payments to sub-contractors. New section 1144(5)(c) provides for relief for qualifying land remediation expenditure paid to sub-contractors unconnected with the claimant. New section 1144(5)(d) provides for relief for qualifying land remediation expenditure paid to sub-contractors connected with the claimant, and contains a cross-reference to section 1175.
14. Sub-paragraph (7) inserts a new section 1144(6A) with a new “Condition F”. This condition provides that qualifying expenditure does not include expenditure incurred on paying landfill tax.
15. Paragraph 5 replaces the existing section 1145 with a new section 1145, which defines land “in a contaminated state”, section 1145A, which defines land “in a derelict state” and section 1145B, which excludes nuclear sites.

#### New section 1145

16. Subsection (1) states that land is in a contaminated state for the purposes of the relief if there is something present that is causing “relevant harm”, or there is a serious possibility that “relevant harm” will be caused.
17. Subsection (2)(a) states that land is not in a contaminated state for the purposes of the relief by reason of the presence in, on or under it of living organisms, decaying matter deriving from living organisms, air or water.
18. Subsection (2)(b) states that land is not in a contaminated state for the purposes of the relief if the “contaminant” is present other than as a result of industrial activity.
19. Subsection (3) gives the Treasury a power to make an order specifying those circumstances in which subsection (2) is not to apply.
20. Subsection (4) defines “relevant harm” for the purposes of the relief.
21. New section 1145A defines what is meant by land “in a derelict state”.
22. Subsection (1) provides that land is derelict for the purposes of the relief only if it is not in productive use.
23. Subsection (2) provides that land is only derelict for the purposes of the relief if buildings or structures have to be removed before it can be returned to productive use.
24. New section 1145B excludes nuclear sites from the definition of land in a “contaminated” or “derelict” state in Part 14 of CTA 2009. The section was previously subsections 1145 (2)-(5).
25. Paragraph 6
26. Sub-paragraph (1) explains that the paragraph amends section 1146, which sets out the definition of “relevant land remediation”.

27. Sub-paragraph (2)(a) amends section 1146(1) to make it clear that section 1146 applies only to “relevant contaminated land remediation”.
28. Sub-paragraph (2)(b) amends subsection 1146(1)(a) to reflect the addition (at subsection 1146(3A)), of a new condition C which must also be met if works are to qualify as “relevant land remediation”.
29. Sub-paragraph (3) amends section 1146(3)(a) to reflect the concept of “relevant harm” as defined in new section 1145(4). The sub-paragraph also deletes section 1146(3)(b).
30. Sub-paragraph (4) inserts new section 1146(3A), which imposes a new condition (“Condition C”). The effect of Condition C is that relief is not available in respect of expenditure on activities specified in an order made by the Treasury, or required by or by virtue of any enactment specified in a Treasury order.
31. Sub-paragraph (5) amends section 1146(5) to reflect the changes in what constitutes contaminated land.
32. Sub-paragraph (6) amends the heading of section 1146 to incorporate the word “contaminated”.
33. Paragraph 7 adds a new section 1146A “Relevant derelict land remediation”, which defines the activities that qualify as relevant derelict land remediation.

#### Section 1146A

34. Subsection (1) defines “relevant derelict land remediation” as being work which satisfies Conditions A and B or relevant preparatory activity.
35. Subsection (2) imposes Condition A. This provides that the activities carried out must comprise the doing of any works, the carrying out of any operations or the taking of any steps in relation to the land in question.
36. Subsections (3) and (4) impose Condition B. This requires that to qualify, the purpose of the activities must be those specified by Treasury Order. These subsections allow the Treasury to set out by Order, a list of the types of work that qualify for the relief and to amend that list as appropriate.
37. Subsection (5) provides that “relevant preparatory activity” for the purposes of subsection (1)(b) takes the meaning it has in section 1146(1)(b).
38. Paragraph 8 amends the heading of chapter 2 of Part 14, by inserting “OR DERELICT” after “CONTAMINATED”.

#### Paragraph 9

39. Sub-paragraph (1) explains that Paragraph 9 amends section 1147 (deduction for capital expenditure).
40. Sub-paragraph (2) amends subsection 1147(2), (“Condition A”) to reflect the introduction of the rule that to qualify a company must hold a major interest in the land.

41. Sub-paragraph (3) amends section 1147(3), (“Condition B”) to reflect the extension of the relief.

#### Paragraph 10

42. Sub-paragraph (1) explains that paragraph 10 amends section 1149 “additional deduction for qualifying land remediation expenditure”.
43. Sub-paragraph (2) amends section 1149(2) (“Condition A”) to reflect the introduction of the rule that to qualify a company must hold a major interest in the land.
44. Sub-paragraph (3) introduces a replacement section 1149(3) that reflects the extension of the relief.
45. New section 1149(3)(b) provides that, to qualify, derelict land has to have been derelict throughout the period from 1 April 1998, or acquisition (if earlier).
46. New section 1149(3A)(a) gives the Treasury a power to specify, by order, circumstances in which work may be qualifying expenditure for the purposes of Part 14 of CTA 2009 even though the contamination occurred during the claimant’s period of ownership.
47. New section 1149(3A)(b) gives the Treasury a power to amend by order the date set out in section 1149(3)(b)(ii) (currently 1 April 1998).

#### Paragraph 11

48. Sub-paragraph (1) explains that the provisions of paragraph 11 amend section 1150, (“no relief if the company responsible for contamination”).
49. Sub-paragraph (2) provides that the existing section 1150 becomes new section 1150(1).
50. Sub-paragraph (3) amends section 1150(1) to reflect the extension of the relief.
51. Sub-paragraph (4) introduces new sections 1150(2) and (3).
52. Subsection (2) denies relief if the person responsible, whether wholly or in part, for the land being in a contaminated or derelict state, or a person connected with that person has a “relevant interest in the land”.
53. Subsection (3) defines “relevant interest in the land”. Its effect is that relief is not available under Part 14 of CTA 2009 if the polluter, or a person connected to the polluter, retains an interest in the land such as a licence to occupy. It excludes from the relief cases where the polluter sells the land, with an option to re-acquire the land after it has been cleaned up. Subsection (3)(b) excludes cases where the consideration received by the polluter reflects, the value of the land after remediation.
54. Sub-paragraph (5) amends the heading of section 1150 to reflect the extension of the relief and the exclusion of cases where the polluter may indirectly benefit from the relief.

### Paragraph 12

55. Sub-paragraph (1) explains that paragraph 12 amends section 1161 (relief in respect of I minus E basis: enhanced expenses payable), which applies to life assurance companies.
56. Sub-paragraph (2) amends section 1161(2) ("Condition A") to reflect the introduction of the rule that to qualify a company must hold a major interest in the land.
57. Sub-paragraph (3) introduces a replacement section 1161(3) that reflects the extension of the relief, and introduces section 1161(3A).
58. Section 1161(3)(b) provides that, to qualify, derelict land has to have been derelict throughout the period from 1 April 1998, or acquisition (if earlier).
59. Section 1161(3A)(a) gives the Treasury a power to specify, by order, circumstances in which work may be qualifying expenditure for the purposes of Part 14 of CTA 2009 even though the contamination occurred during the claimant's period of ownership.
60. Section 1161(3A)(b) gives the Treasury a power to amend by order the date set out in section 1161(3)(b)(ii) (currently 1 April 1998).

### Paragraph 13

61. Sub-paragraph (1) explains that paragraph 13 amends section 1163 ("no relief if the company responsible for contamination").
62. Sub-paragraph (2) provides that the existing section 1163 becomes new section 1163(1).
63. Sub-paragraph (3) amends section 1163(1) to reflect the extension of the relief.
64. Sub-paragraph (4) introduces new section 1163(2) and (3).
65. Section 1163(2) denies relief if the person responsible, whether wholly or in part, for the land being in a contaminated or derelict state, or a person connected with that person, has a "relevant interest in the land".
66. Section 1163(3) defines "relevant interest in the land". It means that relief is not available under Part 14 of CTA 2009 if the polluter, or a person connected to the polluter, retains an interest in the land such as a licence to occupy. It excludes cases where the polluter sells the land, with an option to re-acquire the land after it has been cleaned up. Section 1163(3)(b) excludes cases where the consideration received by the polluter reflects, the value of the land after remediation.
67. Sub-paragraph (5) amends the heading of section 1163 to reflect the extension of the relief and the exclusion of cases where the polluter may indirectly benefit from the relief.

### Paragraph 14

68. Sub-paragraph (1) explains that paragraph 14 amends section 1173 (“expenditure incurred because of contamination”).
69. Sub-paragraph (2) amends sections 1173(1) and (2) to reflect the extension of the relief.
70. Sub-paragraph (3) substitutes, for the existing section 1173(3), a new provision that reflects the extension of the relief.
71. Sub-paragraph (4) amends the heading of section 1173 to reflect the extension of the relief.
72. Paragraph 15 deletes section 1174.

#### Paragraph 16

73. Sub-paragraph (1) explains that paragraph 16 amends section 1175 (“qualifying expenditure on sub-contracted land remediation: connected persons”).
74. Sub-paragraph (2) inserts a new subsection (1A) which defines a “sub-contractor payment” as a payment made by the company to the sub-contractor in respect of relevant land remediation contracted out by the company to the sub-contractor.
75. Sub-paragraph (3) amends section 1175(2) to define the amount of “qualifying expenditure on sub-contracted land remediation” in cases where the sub-contractor is connected to the claimant.
76. Sub-paragraph (4) amends sections 1175(3)(a) and (b) to include expenditure incurred both by the sub-contractor and by another person to whom the sub-contractor further sub-contracts the work.
77. Sub-paragraph (5) amends the heading of section 1175.
78. Paragraph 17 deletes section 1176 (“qualifying expenditure on sub-contracted land remediation: other cases”).
79. Paragraph 18 amends section 1178 (“persons having a “relevant connection” to a company”) to reflect the extension of the relief and the introduction of the rule that to qualify a company must hold a major interest in the land.
80. Paragraph 19 inserts a new section 1178A which introduces and defines a “major interest in land”.
81. Section 1178A(1) provides that references in Part 14 to the acquisition of a major interest in land are to the acquisition of a freehold interest in the land or of a relevant leasehold interest in the land.
82. Section 1178A(2) defines “a freehold interest in the land” by reference to land law in England and Wales, Scotland and Northern Ireland.
83. Section 1178A(3) defines “the acquisition of a relevant leasehold interest in land” by reference to land law in England and Wales, Scotland and Northern Ireland.

84. Section 1178(4) sets out the minimum length of a lease qualifying as a major interest in land for the purposes of Part 14 of CTA 2009.
85. Paragraph 20 amends section 1179 (definitions) to delete the references to "harm", "Land" and "substance" which are now defined elsewhere in Part 14 of CTA 2009.
86. Paragraph 21 makes various consequential amendments to Schedule 4 (index of expressions) CTA 2009.

#### **BACKGROUND NOTE**

87. In 2004 the Barker Review of Housing Supply recommended that Land Remediation Relief should be extended to promote the remediation of long-term derelict sites.
88. The Government published its response to the consultation "Tax incentives for development of brown-field land: a consultation response", in December 2007. In this the Government announced its intention to extend Land Remediation Relief to provide an incentive to bring long term derelict land back into productive use.
89. The Government has therefore decided to provide additional clarity to Land Remediation Relief for the remediation of land contaminated by previous industrial activity, and also to give relief for the cost of removing Japanese Knotweed and some other naturally occurring contaminants. These changes will take effect from 1 April 2009.