

DRAFT NATIONAL BY-PRODUCT CRITERIA

Reference Number: BP-N002/2024

of the 20th of February 2024

establishing detailed criteria on the application of the conditions of Regulation 27(1)(a) – (d) when making the decision that greenfield soil and stone can be regarded as a by-product under Regulation 27 of the European Union (Waste Directive) Regulations 2011 – 2020.

Section 1

Subject matter

National By-Product Criteria Reference Number BP-N002/2024 establishes detailed criteria determining when greenfield soil and stone from undeveloped land, which is destined for lawful use at another development with appropriate planning permission or exemption, is a by-product and not a waste.

Note:

- These criteria only apply to greenfield soil and stone from undeveloped land, destined for use at another development with appropriate planning permission or exemption.
- It is the end user's responsibility to ultimately ensure the by-product material sourced from the producer and used at their development is required and fit for the intended use.
- Any production residue of a production process that is not in compliance with these criteria shall be classified as waste.
- The Environmental Protection Agency (herein referred to as the Agency) accepts no responsibility for by-product material that is registered against these criteria. Any person who gives either to an authorised person, a relevant local authority or the Agency, information which to that person's knowledge is false or misleading in a material respect, shall be guilty of an offence.

Section 2

Definitions

For the purposes of these National By-Product Criteria No. BP-N002/2024, the definitions set out in the European Union (Waste Directive) Regulations 2011 – 2020 shall apply.

In addition, the following definitions/interpretations shall apply:

- (1) 'batch' means the total quantity of by-product generated from a specific production process which is destined for transfer to one specific end user. If the overall quantity of by-product being generated at the production process is destined for supply to two end users, then this production process will yield two batches of by-product with two separate Statement of Conformities which will be transferred to two separate end users.
- (2) 'by-product' means a production residue that fulfils the conditions of Regulation 27(1)(a) to (d) of the European Union (Waste Directive) Regulations 2011-2020.
- (3) 'competent authority' means an authority such as the Environmental Protection Agency, the local authorities, the Health and Safety Authority or any other National or governmental regulation body who may need to assess compliance with these criteria or any associated activity.
- (4) 'contaminated soil and stone' means soil and stone that contains anthropogenic or man-made substances (such as, but not limited to, rubble, concrete, bricks, metal, bitumen, organic compounds such as (Benzene, Toluene, Ethyl-benzene, Xylene (BTEX), Mineral Oil, Polycyclic Aromatic Hydrocarbons (PAHs), Polychlorinated Biphenyls) PCBs), Volatile Organic Compounds (VOCs) and pesticides that are not natural to the environment from which the material was extracted. Soil and stone that contains invasive alien plant species such as, but not limited to Japanese knotweed.

- (5) 'development' has the meaning assigned in the Planning and Development Act 2000, as amended.
- (6) 'exempted development' has the meaning assigned in the Planning and Development Act 2000, as amended.
- (7) 'end user' means the intended user and final holder of the greenfield soil and stone.
- (8) 'greenfield soil and stone' means soil and stone from land that has not been previously developed and is not contaminated soil and stone.
- (9) 'holder' means the natural or legal person who is in possession of the by-product e.g., the producer at the production process, the haulier, or the end user at the use location/development.
- (10) 'producer' means the holder who (i) has overall responsibility for the source development, the overall employer at the site who is responsible for the generation of the by-product material from the overall production process and (ii) transfers to another holder for the first time as a by-product material.
- (11) 'production process' means a process which deliberately produces one or more primary products e.g., a residential construction development.
- (12) 'production residue' means a material that is not deliberately produced in a production process but may or may not be a waste e.g., greenfield soil and stone generated from excavation as part of a development process.
- (13) 'qualified person' means a suitably qualified, trained and experienced person who has the requisite knowledge and experience to complete the relevant requirements of the criteria as assigned. The producer and/or the end user has ultimate responsibility for the actions completed by their delegated qualified person and in ensuring the requirements of the National criteria are fulfilled on their behalf.
- (14) 'source development' means the source of the greenfield soil and stone, where the production process occurs (e.g., ground enabling works for a construction project).
- (15) 'statement of conformity' means a statement/ declaration that the greenfield soil and stone conforms to the National By-Product Criteria including details on the intended use of the by-product and is made available for inspection upon request by the relevant authorities.
- (16) 'use development' means the final location/destination for the use for the greenfield soil and stone.

Section 3

Criteria for greenfield soil and stone.

Greenfield soil and stone shall be regarded as a by-product and not a waste where, upon transfer by the producer from the source development, all of the following conditions are demonstrated as fulfilled:

- (1) The production process which generates the greenfield soil and stone by-product complies with the criteria set out in Part 1 of Annex I;
- (2) The transfer of greenfield soil and stone by-product from the production process complies with the criteria set out in Part 2 of Annex I;
- (3) The quality of the greenfield soil and stone by-product from the production process complies with the criteria set out in Part 3 of Annex I;
- (4) The acceptance of greenfield soil and stone by-product at the use development complies with the criteria set out in Part 4 of Annex I;
- (5) The further use of the greenfield soil and stone by-product complies with the criteria set out in Part 5 of Annex I;
- (6) The submission of information is in a form and format as may be prescribed by the Agency through relevant explanatory note(s), guidance, a register, or by other means in order to establish that the criteria in the above paragraphs are met;
- (7) The producer and end user shall maintain documentary evidence, for assessment by the relevant competent authority which demonstrates compliance, where appropriate, with the provisions of the National criteria, Construction Products Regulations, relevant standards and any other legislation or technical guidance relevant to greenfield soil and stone by-product, as required;
- (8) The producer has satisfied requirements set out in Sections 4 to 6 and
- (9) The producer, holder and end user shall comply with the requirements set out in Section 8 (Compliance).

Section 4

Statement of conformity

1. The producer shall issue, for each batch of greenfield soil and stone by-product, a statement of conformity to the format set out in Annex III (including an attached End User's Declaration as described in Section 5 below).
2. The producer shall transmit a copy of the original signed statement of conformity to the next holder(s) of the greenfield soil and stone by-product load, and to the end user. The producer shall retain the original signed statement of conformity for at least 5 years, or as otherwise directed by relevant Regulation, after its date of issue and shall make it available to competent authorities and a relevant end user upon request.
3. The end user shall retain the copy of the original signed statement of conformity for at least 5 years, or as otherwise directed by relevant Regulation, after its date of issue and shall make it available to competent authorities and a relevant end user upon request.
4. The statement of conformity may be in electronic form.

Section 5

End User's Declaration

1. The end user shall complete and sign the end user's declaration described in point 2 as evidence that they consider the soil and stone suitable for further use at the use development.
2. The end user shall issue an end user's declaration specific to the source development and the use development which conforms to the format set out in Annex II.
3. The end user shall transmit a copy of the original signed end user's declaration to the producer of the greenfield soil and stone by-product. The end user shall retain the original end user's declaration for at least 5 years, or as otherwise directed by relevant Regulation, after its date of signing and shall make it available to competent authorities or a relevant producer(s) upon request.
4. The producer shall attach a copy of the completed and signed end user's declaration received from the end user to the original statement of conformity (Reference Section 5).
5. The end user's declaration may be in electronic form.

Section 6

Record Keeping

1. The producer and end user shall both establish, maintain, and implement an appropriate record keeping system that is fit for purpose and suitable to demonstrate compliance with the criteria referred to in Section 3.
2. The producer and end user shall make the record keeping system and documents associated with the system available for inspection.
3. The producer's record keeping system shall include:
 - (a) assessment of the production process and its suitability as a source of greenfield soil and stone by-product as set out in Part 1 (a) to (b) of Annex I;
 - (b) assessment that the greenfield soil and stone has not been processed, other than normal industry practice as set out in Part 1(c) of Annex I, Part 5 (a);
 - (c) control, traceability, quantification and unique identification of each load of by-product transferred to another holder for final use at the use development, as set out in Part 2 of Annex 1;
 - (d) monitoring of the quality of greenfield soil and stone resulting from the production process as set out in Part 3 (a) to (c) of Annex I;
 - (e) completion and sign-off of a statement of conformity, inclusive of the appropriate end user's declaration as set out in Part 3 (d) to (e) of Annex I;
 - (f) carrying out registration requirements.

4. The end user's record keeping system shall demonstrate each of the following aspects:
 - (a) completion, sign-off, distribution and recording of an end user's declaration as set out in Part 2(a,b) and Part 4 of Annex I;
 - (b) acceptance, control, traceability and quantification of each load of by-product transferred by the producer to the use development, as set out in Part 4 of Annex I;
 - (c) monitoring of the quality of greenfield soil and stone by-product transferred by the producer to the use development as set out in Parts 1 and 3 of Annex I;
 - (d) assessment that the greenfield soil and stone has not been processed, other than normal industry practice as set out in Part 5 of Annex I;
 - (e) quarantine, segregation, and control of non-compliant by-product.

Section 7

Registration

1. Prior to transfer from a production process, a producer of greenfield soil and stone in accordance with these criteria shall register the material on the Agency's public register, or as otherwise prescribed by the Agency. An individual registration shall be made for each batch of greenfield soil and stone produced from a specific production process which is destined for transfer to a specific use development.
2. Following the registration of the batch of by-product, the producer shall not transfer the soil and stone by-product from the site of origin for a period of no less than five working days from the date of registration.
3. The producer shall submit registration information in a form and format as may be prescribed by the Agency.

Section 8

Compliance

1. The producer, holder or end user shall comply with any request made by a competent authority and/or authorised person in relation to the provision of evidence of compliance with these criteria or any requirements associated with these criteria e.g., product, or health and safety requirements.
2. Any person who gives either to an authorised person, a relevant local authority or the Agency, information which to that person's knowledge is false or misleading in a material respect, shall be guilty of an offence.

Section 9

Entry into effect

National By-Product Criteria Reference Number BP-N002/2024 shall be available for use immediately following publication on the Agency's website.

ANNEX I

Criteria for the greenfield soil and stone by-product

Criteria	Self-monitoring requirements	
Part 1. The production process		
1(a)	The by-product material generated from the production process shall be greenfield only.	The producer, or designated qualified person, shall assess the production process and ensure criterion Annex I, Part 1(a) is satisfied
1(b)	The production process shall be a process at the source development where the primary aim is not the production of greenfield soil and stone which is a by-product of the process.	The producer, or designated qualified person, shall assess the production process and ensure criterion Annex I, Part 1(b) is satisfied.
1(c)	The greenfield soil and stone shall be a by-product from the production process.	The producer, or designated qualified person, shall assess the production process and ensure criterion Annex I, Part 1(c) is satisfied.
1(d)	The greenfield soil and stone shall be suitable for direct use at a use development and not require further processing other than normal industrial practice.	The producer, or designated qualified person, shall assess the greenfield soil and stone and processing requirements and ensure criterion Annex I, Part 1(c) is satisfied.
Part 2. Controlled transfer of the greenfield soil and stone by-product.		
2(a)	The end user shall only sign an End User's Declaration if their use development can demonstrate the fulfilment of the requirements of the End User's Declaration Form set out in Annex II.	The end user, or designated qualified person, shall complete and sign an End User's Declaration as described in criteria Annex I, Part 2(a) and (b).
2(b)	Greenfield soil and stone by-product shall only be transferred to the use development where: <ul style="list-style-type: none"> i. the producer has received a copy of a completed and signed End User's Declaration from the end user; and ii. the producer has registered the batch of by-product, to be transferred from the source development to the use development, on the Agency's register. 	The producer or designated qualified person, shall only register and transfer by-product to the end user when these criteria and the criteria set out in Sections 4 and 7 have been satisfied.
2(c)	Following the registration of the batch of by-product, the producer shall not transfer the soil and stone by-product from the site of origin for a period of no less than five working days from the date of registration.	The producer, or designated qualified person, shall only transfer by-product to the end user when these criteria and the criteria set out in Sections 3 and 5 have been satisfied.
Part 3. Quality of greenfield soil and stone by-product from the production process.		

Criteria	Self-monitoring requirements
<p>3(a) The batch of greenfield soil and stone by-product shall be free of:</p> <ul style="list-style-type: none"> i. Invasive alien plant species; ii. Anthropogenic material or substances including but not limited to: <ul style="list-style-type: none"> a. Man-made substances or objects such as concrete, bricks, metal, plastic, bituminous materials, b. organic compounds such as BTEX, mineral oil, Total Petroleum Hydrocarbons (TPHs), PAHs, PCBs; c. VOCs; d. Pesticides; iii. Perfluoroalkyl and Polyfluoroalkyl Substances (PFAS); iv. Made ground; and v. any other substance or material as may be prescribed by the Agency. 	<p>The producer, or designated qualified person, shall assess the greenfield soil and stone and ensure this criterion is satisfied.</p>
<p>3(b) Where a batch of greenfield soil and stone includes topsoil, this portion of the batch shall be segregated and managed separately and shall only be used in a final surface layer.</p>	<p>The producer or designated qualified person shall ensure the topsoil portion of the batch is appropriately labelled and segregated. The end user, or designated qualified person, shall complete the inspections required to ensure criterion 3(a) has been satisfied.</p>
<p>3(c) The batch of greenfield soil and stone by-product from the production process shall meet the end users' requirements as stated in the End Users Declaration in Annex I, Part 2(a) above.</p>	<p>The producer, or designated qualified person, shall complete the assessments required to ensure criterion 3(b) has been satisfied.</p>
<p>3(d) The Statement of Conformity in Annex III shall be fully completed for each batch of by-product and signed as approved by the producer prior to the transfer of any by-product from the production process.</p>	<p>The producer, or designated qualified person, shall complete the assessments required to ensure criterion 3(c) has been satisfied.</p>
<p>3(e) The producer shall transmit a copy of the original signed statement of conformity as described in Section 3(2) to the next holder of the greenfield soil and stone by-product. This could be:</p> <ul style="list-style-type: none"> (i) a haulier; and/or (ii) the end user. <p>The producer responsible for the transfer of the by-product to the use development shall ensure a copy of the original signed statement of conformity has been transmitted with the by-product to the end user.</p>	<p>The producer, or designated qualified person, or holder shall complete the assessments required to ensure criterion 3(d) has been satisfied.</p>

Criteria		Self-monitoring requirements
Part 4. Controlled acceptance at the use development.		
4(a)	The end user shall only accept greenfield soil and stone into their development from a producer that has registered the by-product on the Agency's register.	The end user, or designated qualified person, shall complete the inspections required to ensure criterion 4(a) has been satisfied.
4(b)	Greenfield soil and stone by-product shall only be accepted into the use development where a copy of a completed and signed Statement of Conformity has been transmitted to the end user and meets the procedural requirements for the inspection and acceptance of incoming by-product.	The end user, or designated qualified person, shall complete the inspections required to ensure criterion 4(b) has been satisfied.
4(c)	Greenfield soil and stone by-product that fail the end user's inspection described in Annex I, Part 4(a) and (b) above shall be denied entry to the use development.	The end user, or designated qualified person, shall complete the inspections required to ensure criterion 4(c) has been satisfied.
4(d)	Only greenfield soil and stone by-product which meets the requirements of Annex I, Part 4(a) and (b) shall be unloaded from a vehicle at the use development.	The end user, or designated qualified person, shall complete the inspections required to ensure criterion 4(d) has been satisfied.
4(e)	Unloaded by-product shall be inspected in accordance with a procedure for the inspection and acceptance of incoming by-product.	The end user, or designated qualified person, shall complete the inspections required to ensure criterion 4(e) has been satisfied.
4(f)	Any unloaded by-product that fails the inspection carried out in accordance with Annex I, Part 4(e) shall be quarantined and treated as a waste.	The end user is responsible for ensuring by-product which does not satisfy requirements of Annex I, Part 4(e) is handled a waste and is collected by an authorised waste collector.
Part 5. Further use of the greenfield soil and stone by-product at the Development.		
5(a)	Normal industry practice only shall be used by the end user when processing greenfield soil and stone by-product.	The producer and end user, or designated qualified person, shall ensure the requirements of criterion 5(b) have been satisfied.
5 (b)	The end user who has the intention of using the quantity of material accepted at a development, has been granted planning permission or has been issued a Section 5 Declaration of Exemption by the Planning Authority in accordance with the Planning and Development Act 2000, as amended. The end user shall only use the by-product material where this use is lawful, in that it meets the needs of the development to the satisfaction of the Planning Authority.	The producer and end user, or designated qualified person, shall ensure the requirements of criterion 5(b) have been satisfied.

ANNEX II

End User's Declaration referred to in Section 5

Sample End User's Declaration

To whom it may concern,

I declare that I am the *end user* and I require [quantity] _____ tonnes of *greenfield* soil and stone from the *producer* _____. The by-product is to be produced at [source development address] _____. I am satisfied that the *source location* from which the soil and stone is to be excavated is a greenfield site. I will use the quantity of soil and stone referenced above for [describe what the by-product material will be used for] _____ at [use development address] _____.

I am satisfied that:

- The use of this quantity of by-product soil and stone as described above is *provided for* in the planning permission *granted* for the development at the above use location.
 Planning Permission Register Reference Number: _____
 Planning Permission Expiry Date: _____
 Description of how the planning permission provides for the use of this by-product: _____

I have attached:

- Evidence of granted planning permission and a drawing which indicates the *site boundary* of the development *and* the area within the development boundary where the by-product is to be used.

OR

- The use of this quantity of by-product soil and stone was specifically set out in an application for a Section 5 Declaration of Exemption to the Planning Authority and a Section 5 Declaration of Exemption was issued by the Planning Authority.
 Section 5 Declaration of Exemption Register Reference Number: _____
 Declaration expiry date, where applicable: _____

I have attached:

- A copy of the application for Section 5 Declaration of Exemption submitted to the Planning Authority inclusive:
 - of the map of the use location which indicates its site boundary and the area within the development boundary where the by-product is to be used; and
 - the description of the use of the quantity of by-product as described above;
- A copy of the Section 5 Declaration of Exemption issued by the Planning Authority; and

I declare that I shall retain the copy of the original signed statement of conformity for at least 5 years, or as otherwise directed by relevant Regulation, after its date of issue and shall make it available to competent authorities and a relevant end user upon request, in accordance with Section 4 Part 6 of the National Criteria.

By signing this declaration, I consider this material to be suitable for certain further use at the use development listed above.

I give consent to the EPA to copy this declaration for its own use and make it available for inspection by the relevant authority.

Signed: _____

Print Name: _____

Company Name: _____

Company Address: _____

Date: _____

ANNEX III

Statement of Conformity with the by-product criteria referred to in Section 5

1	<i>Producer of the greenfield soil and stone:</i> Producer name: Address: Contact Person: Tel: E-mail:	2	Unique load identification/reference no.:
3	<i>Source Development:</i> (a) Address of the greenfield site being excavated: <hr style="border: 0; border-top: 1px dashed black; margin: 5px 0;"/> (b) Grid co-ordinates that relate to the greenfield site being excavated: Grid co-ordinates: N_____ E_____		
4	<i>Production process:</i> (a) Description of the production process: <hr style="border: 0; border-top: 1px dashed black; margin: 5px 0;"/> (b) The excavation of greenfield soil and stone is an integral part of the production process. Tick to confirm the above statement <input type="checkbox"/> (c) The greenfield soil and stone is a production residue from the above production process and <i>not</i> the primary aim(s) of the production process. Tick to confirm the above statement <input type="checkbox"/> (d) The quantity of the greenfield soil and stone load in tonnes: _____. <u>Note:</u> - This quantity relates to the maximum quantity of greenfield soil and stone that is estimated to be generated as a by-product of the overall development. - This quantity shall match the quantity recorded on the register. - Should it be the case that the production process yields in excess of this figure, another Statement of Conformity shall be completed along with another entry on the register. Tick to confirm the above statement <input type="checkbox"/> (e) The greenfield soil and stone has not undergone any processing other than normal industrial practice Tick to confirm the above statement <input type="checkbox"/>		
5	<i>Quality of Greenfield Soil and Stone:</i> (a) The substance or object being declared as by-product is <i>greenfield</i> soil and stone. Tick to confirm the above statement <input type="checkbox"/> (b) A site evaluation has been completed. No evidence of the site being contaminated or previously developed has been found. No anthropogenic materials/objects/substances or made ground have been found. No invasive alien species or vectors have been detected. I am satisfied there is no evidence to suggest the site is anything other than greenfield. Tick to confirm the above statement <input type="checkbox"/> (c) Historical aerial maps of the site have been reviewed and there is no evidence that the area of excavation has ever been partially/wholly developed. Tick to confirm the above statement <input type="checkbox"/> (d) The greenfield soil and stone is classified as engineering class (where applicable): <hr style="border: 0; border-top: 1px dashed black; margin: 5px 0;"/>		

	<p>(e) I declare that the greenfield soil and stone is suitable, from an environmental and civil perspective, for direct use at the end destination without any further processing. Tick to confirm the above statement <input type="checkbox"/></p>
<p>6</p>	<p><i>Use development:</i></p> <p>(a) Description of the overall development taking place at the use development: _____</p> <p>(b) Description of <i>the specific use</i> for the greenfield soil and stone as part of this development: _____</p> <p>(c) Address of the use development location: _____</p> <p>(d) End user contact details: End User's name: Address: Contact person: Tel. E-mail:</p> <p>(e) Grid co-ordinates that relate to the development: Grid co-ordinates: N _____ E _____</p> <p>(f) A map of the development, which indicates the site boundary and outlines the area of the site within which the greenfield soil and stone will be used, has been attached to this Statement: Tick to confirm map attachment <input type="checkbox"/></p> <p>(g) The End User's Declaration has been completed and signed <i>by the end user</i> responsible for the development of the use location. The End User's Declaration has been attached to this Statement of Conformity. Tick to confirm the above statement <input type="checkbox"/></p> <p>(h) If instructed by an end user or enforcement officer, I shall cease transfer of by-product to the development immediately. Tick to confirm the above statement <input type="checkbox"/></p> <p>(i) I shall not supply a quantity of by-product greater than that recorded on the End User's Declaration or this Statement of Conformity to the end user's use development. Tick to confirm the above statement <input type="checkbox"/></p> <p>(j) I shall not supply a quantity of by-product greater than that recorded on the End User's Declaration or this Statement of Conformity to the end user's use development. Tick to confirm the above statement <input type="checkbox"/></p> <p>(k) I declare that I shall make all relevant documents and records related to this by-product registration, including, but not limited to Statements of Conformity, end user declaration(s), maps, and logs of material dispatched from the production process as by-product, available for inspection by the relevant competent authority(s) upon request. Tick to confirm the above statement <input type="checkbox"/></p> <p>(l) I understand that failure to provide a complete statement of conformity, inclusive of end user declaration and source and use development maps (in the case of soil and stone) may result in enforcement action by the relevant authority. Tick to confirm the above statement <input type="checkbox"/></p>
<p>6</p>	<p>The greenfield soil and stone in this batch meets the requirements referred to in paragraphs 1 to 9 of Section 3 of National By-Product Criteria No. 002/2024. Tick to confirm the above statement <input type="checkbox"/></p>
<p>7</p>	<p>Producer Declaration: I certify that the above information is complete and correct to the best of my knowledge: Name: Organisation: Date: <input type="text"/> Signature:</p> <div style="border: 1px solid black; width: 150px; height: 50px; margin-left: 200px; display: flex; align-items: center; justify-content: center;"> <p>Company Seal:</p> </div>

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