



CIRCULAR ECONOMY PROGRAMME

The Driving Force for Ireland's Move to a Circular Economy



RECOMMENDED EXPLANATORY NOTE ON NATIONAL BY-PRODUCT CRITERIA

**FOR GREENFIELD SOIL AND STONE THAT CAN BE REGARDED AS
A BY-PRODUCT UNDER REGULATION 27 OF THE EUROPEAN
UNION (WASTE DIRECTIVE) REGULATIONS 2011 – 2020.**

CRITERIA REFERENCE NUMBER: BP-N002/2024

VERSION: 1.0

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Introduction

Background

By-products are *residues* from a production process which have been demonstrated as meeting the conditions of Regulation 27(1) of the European Union (Waste Directive) Regulations 2011-2020¹ (the Regulations/ Regulation 27). By-products are not classified as waste. Production residues achieving by-product status is a method of preventing waste from a production process.

The Agency has published Draft National By-Product Criteria BP-N002/2024 (referred to as 'the criteria' from herein) for greenfield soil and stone from undeveloped land, destined for use at another development with granted planning permission or exemption, as an alternative more efficient system to the single case notification system. By-Product status can be automatically attained through demonstrating compliance with these National By-Product Criteria without waiting on a by-product determination from the Agency.

Purpose

This note provides an explanation of the requirements of the Draft National By-Product Criteria Reference Number BP-N002/2024. This note aims to assist all parties in their understanding of the criteria, and compliance requirements of the criteria, inclusive of:

- (i) producers of greenfield soil and stone;
- (ii) holders transporting the greenfield soil and stone;
- (iii) end users of the greenfield soil and stone; and
- (iv) competent authorities overseeing various aspects of compliance with the requirements of the criteria.

This guidance is not exhaustive and does not preclude any natural or legal person from their statutory obligations. This document should be read in conjunction with the Draft *National By-Product Criteria Reference Number: BP-N002/2024 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*.

Revision

This document may be subject to change to ensure it remains reflective of current best practice, standards, and legislative requirements. Any such changes may be made without consultation or prior notice.

Please ensure you refer to the most recent version of this note, as published on the Agency's website [here](#).

Other information

General guidance in relation to by-products is available [here](#).

Where this document does not provide sufficient explanation on specific requirements of a criterion, clarification may be sought from the By-Product Team via byproduct@epa.ie.

¹ Source: [S.I. No. 323/2020 - European Union \(Waste Directive\) Regulations 2020 \(irishstatutebook.ie\)](#)

Data protection

The Agency intends to establish and maintain a live register of producers of greenfield soil and stone in accordance with National By-Product Criteria Reference Number BP-N002/2024.

The Agency intends to publish various details inclusive of:

- (i) the names of the users of the criteria (producers/holders/end users); and
- (ii) the addresses of the locations of the production process and the end use development.

The basis for this is to provide traceability for greenfield soil and stone and enable compliance monitoring, surveillance, and enforcement. This information may include personal data.

The EPA or another regulator (e.g., a local authority, HSA, etc.) may contact the primary data controllers (registered producer) or another holder such as a haulier or the end user to seek information in relation to the production movement or use of greenfield soil and stone by-product in accordance with the National criteria.

The website privacy policy is available on the EPA's website at <https://www.epa.ie/footer/privacypolicy/>. By visiting this website, you are accepting the terms of this Website Privacy Policy. Any external links to other websites are clearly identifiable as such and we are not responsible for the content or the privacy policies of these other websites.

Explanatory Notes

Explanatory notes are presented below in numerical order as per the criteria. For ease of reference the criteria are presented in blue boxed text, under which the associated explanatory note is presented.

In the case where criteria are self-explanatory, explanation notes are not provided.

Some important points to note.

- The criteria are not intended to provide for all uses of greenfield soil and stone, the criteria focus on specific use scenarios only, as prescribed in the criteria.
If your use scenario is outside the scope of these criteria, it is recommended to make a single case notification to the Agency.
- The difference between complying with the National criteria versus making a single-case notification is the National criteria relies on the holders of by-product to demonstrate that the by-product criteria have been satisfied, with associated registration requirements; whereas the notification system requires the Agency to make a determination that Regulation 27(1) has been satisfied. The National system has been created to enable more efficient by-product outcomes for the sector.
- These National criteria are required to satisfy the requirements of Regulation 27 of the European Union (Waste Directive) Regulations 2011 – 2020; however, there may be additional requirements the holder of by-product is required to meet outside the context of Regulation 27 and the satisfaction of these requirements is the responsibility of the holder (producer/haulier/end user) of the material in question.

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.

The criteria document is not a consent. It is a statement of fact that greenfield soil and stone, if produced and used in accordance with the criteria, is a by-product and not a waste.

This criteria document:

- (i) applies to greenfield soil and stone, where:
 - it is a *residue* of a production process. The production process is typically considered to be the construction works, such as earthworks, associated with a development. Such development could be from large scale residential/ commercial developments or smaller single dwelling constructions.
 - it is destined for use as at another use development with valid planning permission or Section 5 Declaration² of exemption, where this use meets the requirements of the development.
- (ii) *does not apply* to greenfield soil and stone, where:
 - the use development does not hold a valid planning permission or Section 5 Declaration of exemption;
 - The import/ intended use of the soil and stone is not clearly provided for under the planning permission or Section 5 Declaration of exemption for the use development;
 - the use development is the subject of a planning retention application associated with the import of the by-product material or planning application that have not yet been granted.

Note: In the event of a person who gives either to an authorised person, a relevant local authority or the Agency false information, the Authorised Person will be as defined in the applicable legislation.

Appendix 1, Figure 1 sets out the process flow of greenfield soil and stone by-product from the production process to the acceptance at use location.

² In accordance with Section 5 of the Planning and Development Act 2000 as amended, any person may request a declaration as to whether development is exempt.
<https://www.irishstatutebook.ie/eli/2000/act/30/section/5/enacted/en/html>

Appendix 1, Table 1 sets out the key documents required at each stage of the process.

Section 2: Definitions

'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.

In the context of this criteria, only the producer of the by-product material who has authority and responsibility of the production process can consider the material at the source development to be a by-product of the production process. As such, they are the only legal or natural person considered appropriate to be the producer and to register the by-product material on the by-product register against the national criteria.

The producer can be a site owner, development company or major contractor for the purpose of registering material as a by-product. If more than one party is involved in the ownership and development of the site, both parties have responsibility to ensure by-product material is handled and managed in accordance with the national criteria.

Should an enforcement authority upon inspection of the by-product registration consider that the material should be managed as a waste and not a by-product, they may take enforcement action under the Waste Management Act 1996, as amended. The enforcement action may involve the waste producer, and/or the waste holder as defined in the Waste Management Act³.

Note: [The Circular Economy and Miscellaneous Provisions Act 2022](#) provides powers to make regulations in respect of by-products. The Waste Management Act 1996 is amended by the insertion of Section 75A to facilitate this. Any natural or legal person utilising the by-product system should be aware of upcoming regulations in relation to by-products.

The below scenarios give practical guidance as to who can be considered a producer:

Scenario 1:

In the case of a smaller source development e.g., the construction of a domestic shed or house extension, the producer of the by-product material may well be the site owner and may be managing the full project, and therefore can be considered to be the producer. On the other hand, the site owner may not have any oversight of the production process and may have employed a construction company to deliver a turn-key completed house extension. In this case, the construction company has responsibility and oversight of the production process and may be considered a producer.

The producer may sub-contract specific elements of the construction works to other operators, for example ground works, and excavation and transfer of excess soil and stone from the source development. However, a subcontractor does not have responsibility for

³ <https://revisedacts.lawreform.ie/eli/1996/act/10/revised/en/pdf?annotations=false>

Section 2: Definitions

the source development and overall construction project. Therefore, the subcontractor does not fulfil the requirements of that of a producer and therefore may not register the material as by-product soil and stone.

Scenario 2:

In the case of a larger source development (e.g., medium to large scale residential development with amenities and infrastructure), a development company may own the site and have responsibility of the production process. In this case they can be considered the producer. On the other hand, the site owner may have employed a main contractor to deliver a finished development on their site. In this case, the main contractor has oversight of the production process and may be considered a producer for the purpose of registering a by-product.

Similar to scenario 1 above, the main contractor may sub-contract specific elements of the construction works to other operators, for example ground works, and excavation and transfer of excess soil and stone from the source development. However, a subcontractor does not have responsibility for the source development and overall construction project. Therefore, the subcontractor does not fulfil the requirements of that of a producer and therefore may not register the material as by-product soil and stone.

The producer may employ a qualified person to assist in particular aspects of fulfilling the criteria e.g., qualified scientist/ecologist/engineer. However, the producer has the overall responsibility for any qualified person they designate with responsibilities in accordance with the National criteria.

'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.

A product is the final product of a production process e.g., a newly constructed building.

A by-product is a production residue e.g., excess soil and stone generated as an integral and unavoidable part of the production process. For example, the planning permission for the source development may require the reduction of ground levels, excavation for foundations or to remove material that is not suitable due to engineering requirements. Such excavation of the soil and stone may be a necessary step to allow construction of a building (the product). As the main aim of the construction is not the generation of soil and stone, it can be considered to be a production residue.

Production residues may be considered as by-products and not waste if certain requirements are met. Requirements for greenfield soil and stone to be considered a by-product are set out in the criteria.

'Production Process'

means a process which deliberately produces one or more primary products e.g., a residential construction development.

Section 2: Definitions

The phrase 'production process' comes from Regulation 27. Construction of a building is considered a 'production process' for the purpose of this criteria. Other suitable production processes where excess soil and stone could be generated could be civil engineering projects such as road construction.

'Qualified Person'

means a qualified person(s) who is 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.

The producer can train or employ a designated qualified person(s) to demonstrate the requirements of the National criteria are satisfied; however, the producer has the overall responsibility for any qualified person they designate with responsibilities in accordance with the National criteria.

'Greenfield soil and stone'

is soil and stone from land that has not been previously developed and is not contaminated soil and stone ⁴.

Any previous use of the site which may have resulted in contamination of the soil and stone indicates the site cannot be considered as greenfield. This includes roads, hardstanding, buildings, previous earthworks, industrial activity, etc.

The presence of made ground at a potential source site can indicate previous earthworks at that site. Such earthworks may be considered as development and as such the source cannot be considered as greenfield. While some made ground may only comprise of soil and stone (i.e., be free of physical contamination), whether it was imported from a different site or reworked soil and stone from the same site, it has had potential to be contaminated.

For the purposes of this criteria, excess soil and stone material or similar made ground that originates from domestic gardens is not considered in scope for this National criteria. The facility to make a single notification to the Agency is considered the appropriate route for this type of source site.

The producer of the by-product soil and stone should satisfy themselves where there is evidence of previous intensive agriculture or food production, such as market gardens at the source site, that the land can still be considered uncontaminated i.e., that persistent pesticides/ fungicides etc. are not present.

While greenfield material may be notified from a greenfield section of a previously developed site, sufficient evidence must be available and recorded to delineate the extents of the greenfield section from developed sections. Such evidence is needed to demonstrate that the previous use or surrounding development/ activity did not give rise to contamination of the material.

It is recommended that you satisfy yourself of the previous use of the source location by reviewing current and historic aerial imagery. Free applications such as Google Maps and

⁴Source: Glossary Section of <https://www.epa.ie/publications/compliance--enforcement/waste/Guidance-on-Waste-Acceptance-Criteria-at-Authorised-Soil-Recovery-Facilities.pdf>

Section 2: Definitions

GeoHive Map Viewer may provide as useful sources. Other mapping tools are available. Refer to Annex I Part 3a below for further information on how to assess whether soil and stone is greenfield in nature.

'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.

[Ireland's Invasive Alien Species Soil and Stone Pathway Action Plan 2023 – 2027](#) outlines the general policy approach to tackling invasive alien species in soil and stone and what actions government and those involved with excavation, transportation, recovery, and disposal of material in Ireland can undertake.

A licence is required from the National Parks and Wildlife Service to remove and dispose of invasive species such as Japanese knotweed, and contractors employed to carry out this work should be aware of the requirement. For queries in relation to the transport and disposal of invasive alien species, contact the licensing unit of the National Parks and Wildlife Service at email: wildlifelicence@ahg.gov.ie.

Any treatment techniques that address waste-related characteristics of the soil and stone, such as contamination with components which are hazardous or not useful, would prevent classification as a non-waste⁵ (by-product) e.g., sorting or treatments of the material involving the removal of invasive alien species, physical or chemical contaminants.

Contamination may be physical (e.g., concrete, plastic etc.) or chemical (e.g., pesticides, organic substances, etc.).

'End user'

means the intended user and final holder of the greenfield soil and stone.

Whilst the producer or a haulier of the by-product material may be involved in sourcing potential use developments for suitable by-product material, it is the responsibility of the end user of the material to confirm directly to the producer via an End users Declaration that they are permitted by the Planning Authority to accept this material as part of the use development, or that the Planning Authority have confirmed the development is exempt for the requirement for planning permission by issuing a declaration of exemption.

⁵ Source Section 1.2.4 of the Guidelines on the interpretation of key provisions of Directive 2008/98/EC on waste (EC, June 2012).

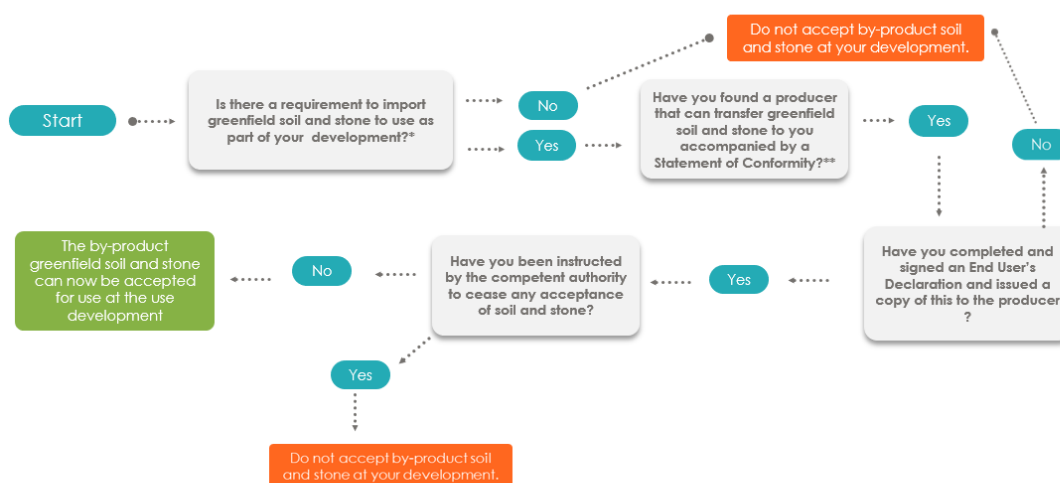
Section 2: Definitions

This end user declaration is provided directly to the producer and is essential for the producer to be able to register the by-product material. Once an end user issues the end user declaration, this is confirmation that the end user:

- is satisfied the producer can supply by-product greenfield soil and stone which meets the National By-Product Criteria;
- has valid planning permission or Section 5, or Declaration of exemption for the use of the greenfield soil and stone at their development.

Figure 2 below illustrates the role of the end user in relation to the recommended criteria.

END USER'S FLOW CHART



* Your proposed use of the greenfield soil and stone must be provided for as part of your development which has either (i) been granted planning permission or (ii) has been issued a Section 5 Declaration of Exemption by the Planning Authority.
** The Statement of Conformity is the evidence that the greenfield soil and stone meets the requirements of the National By-Product Criteria.

Section 3 & Annex 1: Criteria for greenfield soil and stone

Section 3 states that Greenfield soil and stone shall be regarded as a by-product and not a waste where, upon transfer from the producer at the source development, when Sections 3(1) to 3(9) are demonstrated as fulfilled.

Annex I - Criteria for the greenfield soil and stone by-product, are cross referenced throughout Section 3 and as such are explained together below for ease of reference.

Annex I Part 1: The production process

Part 1(a) –(c) of Annex I requires the producer to confirm that the greenfield soil and stone:

- is not a product of the production process but is a by-product integral to the production process, and unavoidable. The reason for this check is to ensure that products are not incorrectly regarded as by-products. Regulation 27(1) does not provide for products; it

Section 3 & Annex 1: Criteria for greenfield soil and stone

only provides for by-products. Refer to the definitions of 'production process', 'product', and by-product' for further detail and examples.

- is suitable for direct use by the end user without any further processing other than normal industrial practice. The reason for this check is to ensure compliance with Regulation 27(1)(b).

Normal industrial practice may include practices such as:

- grading/screening to separate soil and stone to their relevant size and properties required;
- crushing to reduce larger stone, to facilitate transport or to fulfil engineering requirements at the use development;
- Segregation of topsoil and sub soil; and
- Temporary storage at the source or use development provided the further use is certain.

Soil washing is not considered a normal industrial practice for the purposes of this National criteria. Soil washing is not typically conducted at undeveloped greenfield sites and is generally associated with the removal of contaminants. Should a producer intend on using this practice, the single case notification system is the preferred option to utilise.

Note: Temporary stockpiling of registered by-product material at the source development and use development may also be regarded as normal industry practice. However, stockpiling of soil and stone may require waste authorisation where by-product material has been stored for longer than six months and is no longer considered temporary storage and/or where there is no absolute certainty of use.

Note: Some industrial practices may be subject to an appropriate planning authorisation. The registration of the by-product material does not absolve the holder's obligations under the Planning and Development Act 2000, as amended.

<i>Annex I, Part 2 (d):</i>	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.
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This criterion facilitates a stand-still period to allow enforcement authorities to conduct desk top assessments/ on-site investigations of the source and/or destination development sites.

Note that this criterion does not change or reduce the enforcement powers of the relevant authority at this or any other stage of the process, including before or after movement, or further use of material. The relevant authority may take enforcement action at their discretion during the 5 day stand-still period, or after this period has passed.

The time at which a relevant authority decides to take enforcement action or allege an offence under their applicable legislation is at their discretion. There is no specific offence related to the stand still period in current legislation.

The relevant authority will receive an automatic alert when a registration is made in their remit. The stand-still period does not mandate a relevant authority to conduct a site visit at the source or use development.

Section 3 & Annex 1: Criteria for greenfield soil and stone

The producer may transfer the by-product material after the stand-still period, subject to the by-product material being in compliance with the criteria, and if no enforcement action has been directed to the producer from an enforcement authority.

This criterion will also serve the producer and end user in instances where the enforcement authority is unsatisfied the batch of material will fulfil the criteria, as the registration may be de-registered before transfer, avoiding possible enforcement action. Note that this criterion does not limit the investigation/ enforcement of the by-product registration. The producer may be subject to enforcement action at any time, including before and after the stand-still period.

<i>Annex I, Part 3 (a-e)</i>	Quality of greenfield soil and stone by-product from the production process.
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Part 3 (a) It is recommended that you satisfy yourself of the previous use of the source location by reviewing current and historic aerial imagery. Free applications such as Google Maps and GeoHive Map Viewer may provide as useful sources. Other mapping tools are available. Refer to definition on 'greenfield soil and stone' above for further information.

The producer should satisfy themselves that the previous use of the source location or of surrounding development/ activity (current or past) is not likely to have given rise to contamination of the by-product soil and stone. Refer to definition on 'contaminated soil and stone' above for further information. While greenfield material may be notified from a greenfield section of a previously developed site, sufficient evidence must demonstrate the appropriate delineation of the extents (boundary)of the greenfield section from developed sections. Appropriate delineation may be demonstrated through soil testing. This is particularly relevant in the case of industrial and commercial source locations. The soil trigger levels as present in the EPA Soil Recovery Facility Guidance⁶ may be used as a benchmark for equivalence to virgin soil (i.e., that the material is uncontaminated) for the purpose of delineation.

The criteria are not applicable where a potential risk for contamination of the soil and stone is identified, for example where the use of source location includes current or previous industrial activities, the source is brownfield or predominantly brownfield in nature, there is potential for persistent pesticides/ fungicides to have been used, made ground is present, etc. A single case by-product notification in this instance should be made to the Agency for determination, where appropriate.

Part 3 (b) requires that if a batch of greenfield soil and stone includes topsoil, this portion of the batch shall only be used in a final surface layer at the final use location (i.e., the development). Topsoil typically has elevated total organic carbon levels (TOC) compared to subsoil and stone. The primary concern in relation to soil and stone with elevated TOC is the potential for generation of methane gas. The purpose of this criterion is to avoid scenarios where topsoil is buried at depth where methane gas can build up and become a risk. Keeping topsoil at the surfaces allows any methane gas produced to naturally dissipate.

⁶ Guidance on waste acceptance at authorised soil recovery facilities
<https://www.epa.ie/publications/compliance--enforcement/waste/Guidance-on-Waste-Acceptance-Criteria-at-Authorised-Soil-Recovery-Facilities.pdf>

Section 3 & Annex 1: Criteria for greenfield soil and stone

Annex 1, Part 4:	The acceptance of greenfield soil and stone by-product at the use development.
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Part 4(a) –(f) of Annex I requires the End user:

- to only accept loads at their use development accompanied by a Statement of conformity, and the producer has registered the batch of by-product on the Agency’s public register.
- where the load meets the procedural by-product acceptance requirements by the End user.
- to ensure that each load accepted at the use development is recorded and this record is maintained at the use development to provide full traceability regarding the quantity of any by-product batches received from the source development.

Note: It is acknowledged that the source or use development may not have the facilities or requirement to have a weighbridge, however a full log of incoming loads and estimated tonnages to the development should be maintained on site and made available for inspection. Tonnage may be estimated by the volume capacity of the type and size of the delivery. Records of the method and conversion rate and the vehicle type should be recorded in the record keeping system.

Note: It is acknowledged that not every source or use development has the capacity to be manned at all times. It is expected however to establish, maintain, and implement an appropriate record keeping system that is fit for purpose and suitable to demonstrate compliance with the criteria. This involves the control and traceability of each load. These records should be made available for inspection in real time. It is also expected for the Producer and End user to be to be readily contactable using the contact details provided in the registration form and declarations.

Annex I, Part 5:	Further use of the greenfield soil and stone by-product.
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Part 5(a) of Annex I requires the Producer and the End user:

to only use normal industrial practice when processing greenfield soil and stone by-product accepted from the producer. The reason for this check is to ensure compliance with Regulation 27(1)(b). Refer to Annex 1, Part 1 of this explanatory note for further explanation of normal industrial practice.

Note: Where the use development is also associated with a current waste authorisation, for example a soil recovery facility, the end user must demonstrate that the original planning permission granted for the location accounts for overall volume of suitable material i.e., waste and by-product material, to be taken in for the required use. The overall volume of appropriate fill should not exceed that which is specified in the granted planning permission. In the event that the volume of tonnage of material is not specified in the planning permission, the end user must still demonstrate the intake of the material is lawful in accordance with the planning permission.

Note: The further use of the greenfield soil and stone is subject to appropriate enforcement (as deemed appropriate) action under the following Regulations, but is not limited to:

- Waste Management Act 1996, as amended.
- Planning and Development Acts 2000–2022.

Section 3 & Annex 1: Criteria for greenfield soil and stone

- EU (Planning and Development) (Environmental Impact Assessment) Regulations 2018 (S.I. No 296 of 2018)
- European Communities (Environmental Impact Assessment) (Agriculture) Regulations 2011, as amended
- European Communities (Birds and Natural Habitats) Regulations 2011, as amended.
- Roads Act 1993, as amended.

Note that the relevant authority conducting investigation may take enforcement action based on the *misuse* of the by-product, or an overall activity or project occurring at the use development that *involves* the by-product material. The enforcement action may not be based in other legislation.

For example, the National Parks and Wildlife Service could investigate a site on the basis of a complaint or routine patrol. The authorised person may find an activity occurring that is within a Special Area of Conservation (SAC)⁷ that the by-product material is involved e.g, raising ground levels. The authorised person may undertake investigations under the European Communities (Birds and Natural Habitats) Regulations related to the over activity or project for which the soil and stone is involved with .

Similarly, a scenario could arise whereby a member of staff from planning enforcement in a local authority may take enforcement action based on unauthorised development, that also involves the use of the by-product material.

Note: [The Circular Economy and Miscellaneous Provisions Act 2022](#) provides powers to make regulations in respect of by-products. The Waste Management Act 1996 is amended by the insertion of Section 75A to facilitate this. Any natural or legal person utilising the by-product system should be aware of upcoming regulations in relation to by-products.

<i>Section 3(6):</i>	<i>The submission of information 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</i>
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Section 3(6) provides the Agency with the ability to communicate the information required and the means by which that information is supplied in order to demonstrate that the requirements of the National criteria have been fulfilled. This includes the requirement for information to be submitted on the EPA public by-product register⁸. The existing by-product register for single-case notifications has been developed to facilitate registration of by-product material against a National criteria.

<i>Section 3 (7):</i>	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
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- ⁷ European Communities (Birds and Natural Habitats) Regulations 2011, as amended.

⁸ <https://www.epa.ie/byproduct/#/>

Section 3 & Annex 1: Criteria for greenfield soil and stone

other legislation or technical guidance relevant to greenfield soil and stone by-product, as required.

Competent bodies e.g., the EPA, the local authority and/or the Health and Safety Authority may request to inspect documentary evidence of compliance.

When declaring the soil and stone is suitable from a civil perspective, the material may be classified in accordance with relevant standards or technical specifications which may include, but are not limited to:

- Transport Infrastructure Ireland - CC-SPW-00600- Specification for Roads Works Series 600- Earthworks
- II- CC-SPW-00800 Specification for Road Works Series 800 – Road Pavements – Unbound and cement bound mixtures
- TII- CC-SPW-00500 - Specification for Road Works Series 500 – Drainage and Service Ducts

Note the relevant standards and/or technical standards may be subject to review by the relevant competent bodies.

Section 4: Statement of conformity

Section 4(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).

Section 4(1) requires the producer to:

- complete and sign a statement of conformity for the overall batch using the statement provided in Annex III of the criteria document.
- ensure the Statement of conformity accompanies each load of greenfield soil and stone by-product material transferred to the next holder(s).
- include a copy of the complete and signed End user’s Declaration to the Statement of conformity.

Note: A statement of conformity should have a unique identifier specific to a batch destined for use at a single use development. The unique identifier should be the by-product registration number assigned as on registration e.g., N-BP-0001 populated in Section 2 of the Statement of conformity form (Annex III). The Statement of conformity may be issued prior to registration on the Agency by-product register; however the by-product registration number should be populated on the Statement of conformity before material is transferred from the source development.

The same copy of a statement of conformity may accompany each load, however each load on transfer from the producer must be individually identifiable with a load reference no. for traceability. Load identification should be represented in the nomenclature (reference numbering) on the copy of the statement of conformity with the by-product in transit. Traceability identification systems may be generated and managed electronically or written

Section 4: Statement of conformity

on the document in hard copy but must be made available for inspection in real time in circumstances such as site inspection, or roadside inspection. The unique identifier should also be recorded as part of the traceability requirements detailed in Section 6 (Record Keeping) of the Criteria document. For example, the original statement of conformity (parent) for the batch reference no. is that as per the registration no. e.g., N-BP-0001. The batch is subsequently transferred in multiple loads. The unique identifier section of the parent statement of conformity should be replicated with the same reference number and details, adding a load reference number to the chain of custody e.g., ref: no. N-BP-0001-1. The same should be complete for any subsequent loads with reference numbers assigned in numerical order e.g., ref: no. N-BP-0001-1, N-BP-0001-2, N-BP-0001-3 and so on. The load reference should be completed for each separate load prior to transfer from the source development. Apart from the load reference number and the haulier, all other details on the chain of custody should be the same as in the parent statement of conformity.

A log of each separate load should be appended to/ filed with the original (parent) statement of conformity.

Section 4(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 <u>and</u> to the end user. The producer shall retain the original signed statement of conformity for at least five 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.
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The plural term “next holder(s)” has been used to ensure the producer transmits a copy of the statement to each holder that is responsible for the transport and end user i.e., the haulier and the final user at the use development.

The producer is required to maintain the original signed Statement of conformity as part of their records for a minimum of five years, unless an alternative period is directed via Regulation, and make this record available to competent authorities on request. The producer remains responsible for the retention of and making available of the statement of conformity to relevant authorities, regardless of instances such as project completion or change of land ownership.

Section 4(3):	<i>The end user shall retain the copy of the original signed statement of conformity for at least five 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.</i>
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The end user is required to maintain the original signed Statement of conformity as part of their records for a minimum of five years, unless an alternative period is directed via Regulation, and make this record available to competent authorities on request. The end user remains responsible for the retention of and making available of the statement of conformity to relevant authorities, regardless of instances such as project completion or change of land ownership.

Section 5: End user's Declaration	
<i>Section 5(2):</i>	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.
<p>The End user's Declaration once signed indicates the end user meets the requirements to accept greenfield soil and stone by-product.</p> <p>The end user must have been granted appropriate planning permission or have been issued a Section 5 declaration of exemption by the Planning Authority. The planning permission must be valid (i.e., not expired). The import/ intended use of the soil and stone must clearly be provided for under the planning permission or Section 5 Declaration of exemption for the use development. Examples of this may include, but are not limited to:</p> <ul style="list-style-type: none"> - Conditions of planning permissions: - Import of a specified volume of appropriate fill material; - Adjustment or restoration of contour levels; and - Detailed of ancillary works; - Landscaping; - Raising ground levels; - The development to be completed in accordance with the planning application documents and where such application documents clearly sets out the intended import/ intended use of the soil and stone, as above. This may be evident through site plans showing the requirement for raising ground levels; <p style="text-align: center;"><i>or</i></p> <p>Section 5 application documents and associated declaration clearly documenting the intention to import for the specific use of the soil and stone.</p> <p>Where you are unsure whether your planning permission or Section 5 Declaration of exemption for the use development provides for the import/ intended use of the soil and stone, the relevant planning authority should be consulted.</p>	
<i>Section 5(3):</i>	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 five 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.
<p>The end user is required to transmit (send) a copy of the signed End user's Declaration to the producer.</p> <p>The end user is required to maintain the original signed End user's Declaration as part of their records for a minimum of five years, unless an alternative period is directed via Regulation, and make this record available to competent authorities on request. The end user remains responsible for the retention of and making available of the statement of conformity to relevant authorities, regardless of instances such as project completion or change of land ownership.</p>	

Section 6: Record Keeping	
<i>Section 6 3(c) & 4 (b)</i>	<p>Producer- 3(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 I.</p> <p>End user- 4(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.</p>
<p>Both the producer and the end user respectively have a responsibility in ensuring by-product transferred from the source development and the accepted at the use development are quantified and traced. The basis for providing traceability for greenfield soil and stone is to enable transparency, compliance monitoring, and enforcement.</p> <p>To ensure the traceability, the producer shall maintain a system to record each load transferred from the source development. This record keeping system shall remain on site and be available for inspection at the source development.</p> <p>The record keeping system should include, but is not limited to, the following for each load:</p> <ul style="list-style-type: none"> a) Completed chain of custody with the original statement of conformity including unique load reference number; b) Time and date of transfer from source development; c) Vehicle type and registration number; and d) Actual or estimated tonnage. <p>The end user at the use development shall maintain a system to record each load accepted from the source development. This record keeping system should remain on site and be available for inspection at the use development.</p> <p>The record keeping system should include but not be limited to:</p> <ul style="list-style-type: none"> a) Completed chain of custody with a copy of the statement of conformity including unique load reference number; b) Time and date of transfer from source development; c) Vehicle type and registration number; and d) Actual or estimated tonnage <p>Refer to Section 4.1 above for further information on completion of the statement of conformity, chain of custody and unique load reference numbering.</p> <p>Best practice may include the use of vehicle trackers. The use of vehicle tracker system will be at the discretion of the producer and/or end user.</p>	

Section 7: Registration
<p>Section 7(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</p>

Section 7: Registration

for each batch of greenfield soil and stone produced from a specific production process which is destined for transfer to one specific end user.

Section 7(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.

Section 7(3): The producer shall submit registration information in a form and format as may be prescribed by the Agency.

The Agency will provide a public register of by-product greenfield soil and stone produced in accordance with the National criteria. The same register displays both single-case notifications and registrations against National criteria. However, each registration made against a National criteria will be identifiable under type and via their registration number e.g., N-BP-0002.

This criterion facilitates a stand-still period to allow enforcement authorities to conduct desk top assessments/ on-site investigations of the source and/or destination development sites.

The producer may transfer the by-product material after the stand-still period, subject to the by-product material being in compliance with the criteria, and if no enforcement action has been directed to the producer from an enforcement authority.

The criterion will also serve the producer and end user in instances where the enforcement authority is unsatisfied the batch of material will fulfil the criteria, as the registration may be de-registered before transfer, avoiding possible enforcement action. For example, provided there is no issue with the quality of the material, the producer could source an alternative suitable use development for the material before transfer to the next holder. Note that this criterion does not limit the investigation/ enforcement of the by-product registration. The producer may be subject to enforcement action at any time, including before and after the stand-still period at the discretion of the enforcement authority

This register will list registrations of greenfield soil and stone by-product produced in accordance with the criteria. The register will be publicly available on the Agency's website so

- that end users can check that a by-product, from a specific producer and production process, is registered; and
- to enable competent authorities to undertake compliance, monitoring and/or surveillance checks. The register will include filter and download functionality.

Where a batch of greenfield soil and stone produced under the National criteria is transferred from the source development without being registered, this is in breach of the National criteria. The batch of greenfield soil and stone may be dealt with as if it were waste and shall be presumed to be waste until the contrary is proved. The producer of the greenfield soil and stone may be subject to enforcement action if they transfer soil and stone that is not registered and in compliance with the criteria.

A producer of by-product greenfield soil and stone must register an entry for each batch of by-product greenfield soil and stone they produce i.e., the overall quantity of greenfield soil and stone by-product generated at the source development which is destined for transfer to one specific end user at one use development. The producer is required to register the

Section 7: Registration

batch of by-product produced at a source development prior to the batch of by-product being transferred to an end user.

The register may include the following details:

- The name of the producer;
- The producer's organisational email address and/or contact number;
- The location address and Eircode (if available) of the source development;
- The location address and Eircode (if available) of the use development;
- The name of the local authority with remit over the source development;
- The name of the local authority with remit over the use development;
- The name of the end user;
- The expected date of movement of the by-product material;
- The (end user's email address and/or contact number;
- The National By-Product Criteria Reference Number being utilised (in this case: BP-N002/2024); and
- The nature of the by-product material being produced (in this case: greenfield soil and stone).

The relevant local authority shall receive an automatic alert (via the EPA By-product register) when a by-product within their remit has been added to the register. The local authority may decide to undertake site visits or request records.

As no assessment of the registration will take place, once the material is registered as by-product, there will be no facility to make a submission. Any holder of the material or third party may contact the producer or the relevant local authority should they wish to correspond in relation to the registration.

The Producer has the capacity to de-register their registration provided the material has not been transferred from the source development. The relevant authorities will receive an auto alert once the de-registration is made. A Local Authority does not have permissions to de-register a registration, however they may direct the Producer to de-register under the applicable legislation. A de-registration will remain on the register for public view and will have the status 'de-registered' assigned to it.

The register will be managed and overseen by the Agency. Registration will be via the EPA EDEN portal. The registrant must complete all mandatory fields in order for the registration to be complete. The Agency will not be assessing the quality of the registration and will not be screening registrations. Guidance will be made available to producers on how to register.

Registration will include the quantity (tonnes) of by-product greenfield soil and stone per batch. This will enable collection of quantifiable data which will support the National circular economy and material statistics reporting in relation to by-products. Presently the register will not include an interactive searchable map the Currently the register system does not have the capacity to record actual or final tonnages transferred from the source development and accepted at the use development, or to provide a statement of completion once the movement of the soil and stone is complete. While there is a mandatory function for the producer to input grid co-ordinates, there is presently not an interactive searchable map.f

It is exclusively the responsibility of the producer of the by-product material to register the production of the batch on the Agency register. Only the producer of the by-product material

Section 7: Registration

has authority and responsibility of the production process at the source development, and as such is the only legal or natural person qualified to register the by-product material on the by-product register against the National criteria.

The producer is the person with overall responsibility for the source location and/or production process. This may be the source location owner, or the main contractor/developer at the source location. Where a source location is leased, the operator of the development may be the producer. Refer to Section 2, Definition of Producer above for further information.

The producer may appoint a qualified person, such as a consultant, to make the registration on their behalf, provided the registration is made under the producer's organisation EDEN account. Note, ultimate responsibility for the registration rests with the producer. It is the producer's responsibility to ensure the criteria are met.

Guidance on how to set up an EPA EDEN account is available at <https://www.edenireland.ie/help/gethelpfileforreg> and further guidance on how to use your account is available at <https://www.edenireland.ie/help/helppage> . Guidance is available on *How to Request Access to another Organisation* and *How to approve or reject a new user request* within the EPA EDEN portal for registration.

Appendix 1

Figure 1: OVERALL controls and Process flow of greenfield soil and stone by-product from the production process to transfer to the use development.

Overall Process Flow

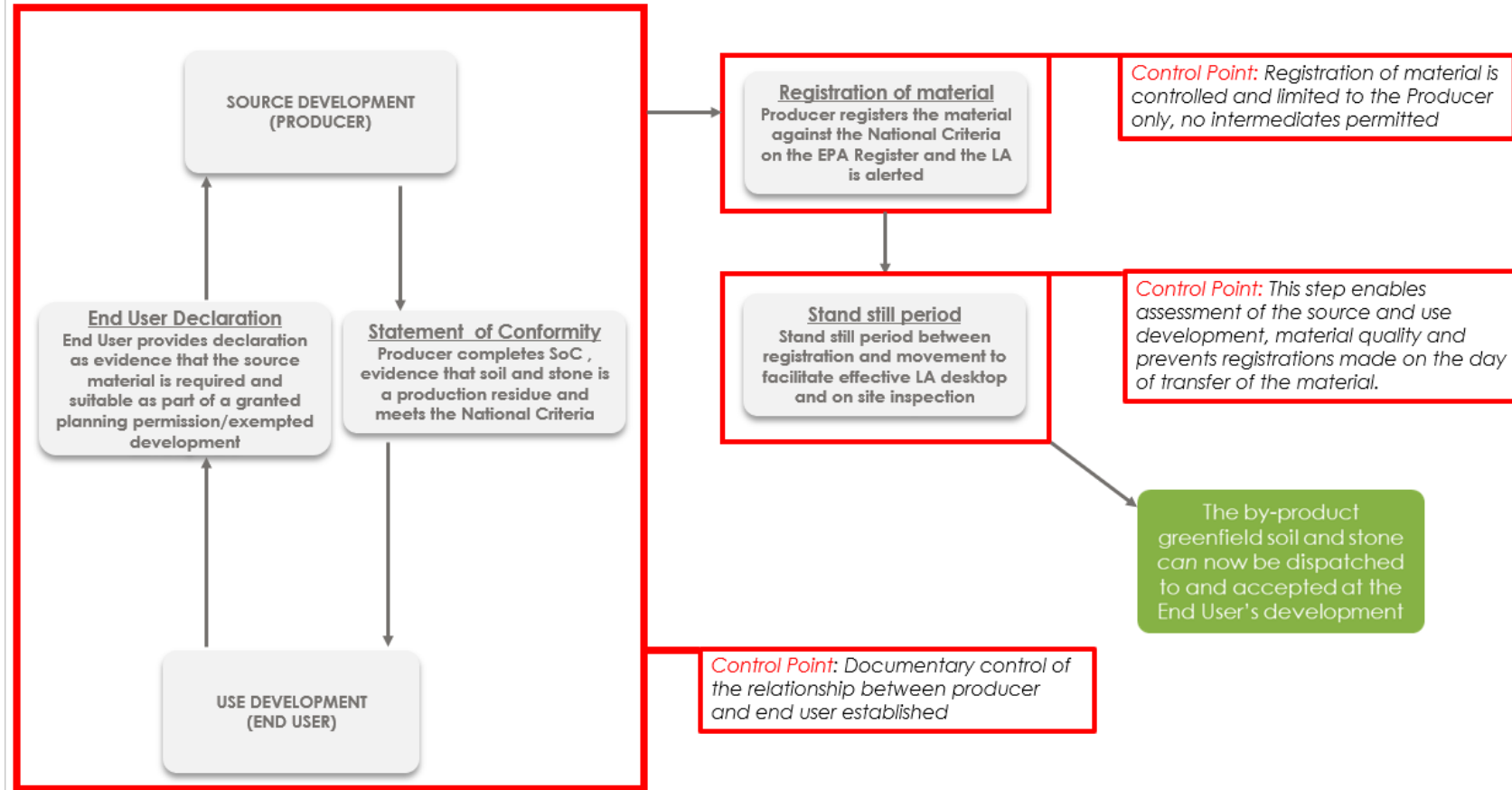


Table 1: Key control documents required at each stage of the process.

Stage in the process			
	By-Product at Source	By-Product in Transit	By-Product at End Use
	Producer	Collection and Transport, from producer to End user (Haulier)	End user
Record Management			
Document Type	Producer's records include:	Holder (in transit) records include:	End user's records include:
Statement of conformity	<input type="checkbox"/> An original Statement of conformity signed by the producer.	<input type="checkbox"/> A copy of the Statement of conformity signed by the producer. load in transit.	<input type="checkbox"/> A copy of the Statement of conformity signed by the producer. <input type="checkbox"/> For each batch of by-product load accepted.
End user's Declaration	<input type="checkbox"/> A copy of the End user's Declaration signed by the End user.	<input type="checkbox"/> A copy of the End user's Declaration signed by the End user.	<input type="checkbox"/> An original End user's Declaration signed by the End user.

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