

## *Groundwater and Surface Water Discharge Activities - Consultation Response*

The government's response to the consultation on amendments to the [Environmental Permitting \(England and Wales\) Regulations 2016](#) as applied to groundwater activities and related surface water discharge activities has been published today. A full copy of the response document can be read [here](#).

The purpose of the consultation was to gather views on the proposed amendments to help Defra shape the final version before laying them before parliament. The proposed amendments included provisions for new and existing cemeteries, so members were encouraged to provide their feedback during the consultation process. The responses received have helped to change the proposals.

The relevant parts of the consultation document are:

Q3a: To what extent do you agree with the proposal to make General Binding Rules available for small-scale cemetery developments in low-environmental risk settings?

The EA apply a risk based and proportionate approach to environmental regulation and only permit the highest risk cemeteries. The consultation proposed that the EA should be able to issue General Binding Rules (an exemption from permitting) for small-scale cemeteries in low-environmental risk settings. These rules set out the circumstances (or exemption conditions) where cemeteries are considered very low risk to the environment, and therefore are exempt from needing a groundwater activity permit.

There were 178 responses to this question:

- 18 strongly agreed
- 64 agreed
- 29 neither agreed nor disagreed
- 12 disagreed
- 55 strongly disagreed

### *Key themes and response*

Overall respondents supported the proposal with 46% of respondents either agreeing or strongly agreeing, while 38% disagreed due to concerns around the proposed exemption conditions set out in Annex B. These concerns have been addressed within the response to question 3b. Some respondents were unsure about the proposal due to concerns that it applies a blanket approach to cemeteries which can be quite varied in terms of size and location. Exemption conditions are not intended to take site-specific conditions into account. Rather, they set generalised minimum conditions that must be met for a cemetery or burial site to be exempt from requiring a groundwater activity permit. Considering these responses, we have amended our proposals as detailed below.

Q3b: To what extent do you agree that the draft exemption conditions for small-scale cemetery developments in low-environmental risk settings in Annex B are appropriate? If this question is not applicable to you, please select N/A.

Annex B to the consultation document set out 15 proposed exemptions that defined the circumstances where a cemetery does not need a permit.

There were 233 responses to this question:

- 4 strongly agreed
- 17 agreed
- 11 neither agreed nor disagreed
- 36 disagreed
- 165 strongly disagreed

### *Key themes and response*

Respondents objected to the proposed exemption conditions for cemeteries with 86% disagreeing or strongly disagreeing. Although some respondents commented that exemption conditions for existing sites represented good practice, the primary objection was that one or more of the conditions would be too difficult for existing cemeteries to comply with.

Most respondents disagreed with exemption condition: 'A grave plot must not be less than 5m<sup>2</sup> in area'. Concerns were primarily raised in relation to its impact on existing cemeteries, so removing its application to existing cemeteries will address these concerns but existing cemeteries should still aim to use the guidance for 'Minimum good practice groundwater protection requirements' on Gov.UK but it won't be a legal requirement. By aiming to meet the guidance for good practice existing operators can play an important role in helping to protect our groundwater quality and preserve its use for future generations. The approach of using a grave area has also been reassessed in the exemption conditions for new or extended cemeteries in favour of a density figure of 2500 burials per hectare or pro rata, which will give operators the freedom to determine the spacing within their cemetery. Existing cemeteries will remain within the current standards and have no exemption conditions applying to them.

Many respondents disagreed with exemption condition: 'A grave must be deep enough so at least 1 metre of soil will cover any part of the coffin or body'. This is considered good practice and similar depths of soil cover may be needed for other purposes. However, we have reconsidered this approach and removed it on the basis that its inclusion would not make a significant difference to groundwater protection outcomes.

Many respondents disagreed with exemption condition: 'A burial within a cemetery must not be within 10 metres of any field drain, including any dry ditch' on the basis that many existing cemeteries are in proximity to multiple field drains and ditches. This feedback has been addressed by applying the exemption conditions to only new cemeteries or new extensions because this a reasonable expectation for the planning process. Existing cemeteries should still aim to use the guidance for 'Minimum good practice groundwater protection requirements' on GOV.UK but it won't be a legal requirement to operate without a permit and will have no exemption conditions applying to them.

Many respondents disagreed with exemption condition: 'A grave must have at least 1 metre clearance between the base of the grave and the top of the water table and must not have any standing water in it when dug' on the basis that many existing cemeteries are located in areas where the water table is high, variable or hard to locate, or that it is hard to determine whether standing water is groundwater or surface water runoff during wet weather events. This concern has also been addressed by applying the exemption conditions to only new cemeteries or new extensions because this a reasonable expectation for the planning process. Existing cemeteries should still aim to use the guidance for 'Minimum good practice groundwater protection requirements' on Gov.UK but it won't be a legal requirement.

Considering these responses, the proposed approach has been reassessed and the exemption conditions will only apply to new cemetery developments (including extensions) that are granted planning permission on or after the date that the updated regulations come into force. The updated proposed amendments will therefore not affect existing cemeteries who will not need to abide by the exemption conditions to operate without a permit. Existing cemeteries should still aim to use the guidance for 'Minimum good practice groundwater protection requirements' on GOV.UK but it won't be a legal requirement.

These proposals will bring in a tier of proportionate regulation for most new cemetery developments which itself can help to 'free-up' cemetery space for future developments by significantly reducing the regulatory and permitting costs. Groundwater quality will be protected and preserved by this proportionate regulatory approach.

Under the amended proposals, existing cemeteries won't be affected, although they will be expected to follow the current [Minimum Good Practice Groundwater Protection Requirements](#). New cemetery developments and cemetery extensions that require planning permission on or after the date on which the updated regulations come into force will have to comply with the amended regulations. This means that they will require either a bespoke permit if they are deemed high risk, a standard rules permit if they are deemed medium risk, or no permit if they can comply with the exemption conditions and are deemed low risk.