



Law Society  
of Scotland

# Consultation response

Protecting Scotland's groundwaters from pollution -  
Improving the way we protect groundwater from  
pollution

March 2021



## Introduction

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The Law Society of Scotland is the professional body for over 12,000 Scottish solicitors.

We are a regulator that sets and enforces standards for the solicitor profession which helps people in need and supports business in Scotland, the UK and overseas. We support solicitors and drive change to ensure Scotland has a strong, successful and diverse legal profession. We represent our members and wider society when speaking out on human rights and the rule of law. We also seek to influence changes to legislation and the operation of our justice system as part of our work towards a fairer and more just society.

Our Environmental Law Sub-committee welcome the opportunity to respond to Scottish Government and SEPA's consultation on *Protecting Scotland's groundwaters from pollution: Improving the way we protect groundwater from pollution*<sup>1</sup>. We have the following comments to put forward for consideration.

## General comments

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On the whole, we support the proposed approach - we consider that this offers of an opportunity to improve the current approach. The current approach can result in perverse outcomes and therefore, there have been challenges with this regime in the past.

## Response

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### **1. Do you agree with the criteria we propose to use to determine whether groundwater has future resource potential?**

We broadly agree with the criteria, however, we note that even when the adjusted criteria are applied, there remains a question as to whether it is appropriate for a drinking water standard to be used, particularly in circumstances where there is no drinking water extraction point within a significant distance of the groundwater in question. We understand that in Scotland, there is very little groundwater extracted for this purpose and drinking water is mainly taken from above ground sources. We note that the consultation document refers to there being "over 22,000 private drinking water supplies in Scotland" but no further detail is provided. Using this standard could lead to a perverse outcome where groundwater is not being used to extract drinking water and there is no prospect of it being used in the future. The justifications for this approach should be set out more clearly.

<sup>1</sup> <https://consultation.sepa.org.uk/circular-economy/protecting-scotlands-groundwaters-from-pollution/>

**2. Do you agree that the standards to assess pollution of future groundwater should be based on an area of impacted groundwater rather than the current distance-based approach?**

We consider that this seems to be an appropriate basis, however, it remains a fairly blunt approach. We suggest that consideration be given to basing the standards on the proportion of hazardous substances within the impacted body of groundwater.

**3. Do you agree that we should take into account any existing contamination present in the groundwater when making an assessment of pollution?**

Yes, we consider that this is a sensible approach.

**4. Do you agree that the trigger for determining that a groundwater body is considered to be at poor status should be based on a 20ha plume of hazardous substances rather than a 200ha plume of any contaminants?**

See our comments at question 2. We consider that appropriate assessment would be based on the proportion of hazardous substance to the size of the body of groundwater.

**5. Do you agree that when assessing if a groundwater body is at poor status we should only consider impacts on nationally important groundwater dependant wetlands?**

Yes.

**6. Do you agree that we should update our list of hazardous substances in line with the JAGDAG recommendations?**

We have no comment.

**7. Do you agree that we should introduce standards for hazardous substances which identify the point at which there is a risk of groundwater deterioration, in order to ensure consistency and certainty?**

Yes, we support consistency and certainty within this regime.

**8. Do you agree that our proposed hazardous substance standards should be based on drinking water standards and surface water environmental standards?**

See our comments at question 1. We question how this works in instances where there is little, or no prospect of drinking water being extracted.

**9. Do you agree that issues of taste and odour should be taken into account in determining hazardous substance standards, in order to protect the future use of groundwater?**

We do not favour this approach. Taking into account issues of taste and odour is likely to be challenging as these are subjective measures and are likely to vary between individuals. Geography is also likely to be a factor impacting taste and odour. This approach moves away from an objective standard and therefore has the potential to create less certainty and consistency in the regime.

**10. Do you agree with our proposal to keep a record of any residual land contamination, where an exemption from the relevant groundwater standards has been applied to remediation work? How do you think this should be done, via legislation or by partnership working?**

The proposals concern a register of land which potentially remains contaminated but has been granted an exemption. We consider that it seems appropriate to have a record of land which has been assessed and actions taken. This is likely to be of particular practical benefit for areas of land where there are no concerns regarding drinking water and therefore, it is suitable for the land to be used despite the residual contamination.

It will be important for marketability of land that the specific terms of exemptions, including the duration, are clear, as well as an understanding of the potential for the status of the land in question to change.

In the interests of clarity, certainty and access to environmental information, the register should be kept fully up to date, particularly in light of monitoring obligations.

**11. Do you agree we should raise the bar at which significant pollution is considered to occur in relation to the future groundwater resource?**

We have no comment.

**12. Do you agree that we should change the criteria for defining “special sites” from one impacting on a Devonian or Permian aquifer to one that is causing a water body to be less than good status or is posing a risk of deterioration in status?**

We have no comment.

**For further information, please contact:**

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