EXPLANATORY MEMORANDUM TO

THE ENVIRONMENTAL PERMITTING (ENGLAND AND WALES) (AMENDMENT) (ENGLAND) REGULATIONS 2023

2023 No. 651

1. Introduction

1.1 This explanatory memorandum has been prepared by Department for Environment Food and Rural Affairs ("Defra") and is laid before Parliament by Command of His Majesty.

2. Purpose of the instrument

2.1 The purpose of this instrument is to make 9 amendments to the Environmental Permitting Regulations 2016. These amendments will optimise the regulatory tools available for managing and protecting groundwater quality. This will bring about benefits for groundwater quality, will reduce unnecessary costs to businesses and will also help to ensure that Government resources are being used most effectively to tackle the highest priority issues.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England and Wales.

4.2 The territorial application of this instrument is England.

5. European Convention on Human Rights

5.1 Rebecca Pow MP, Parliamentary Under Secretary of State for Defra has made the following statement regarding Human Rights:

"In my view the provisions of the Environmental Permitting (England and Wales) (Amendment) (England) Regulations 2023 are compatible with the Convention rights."

6. Legislative Context

6.1 The Secretary of State makes these Regulations in exercise of the powers conferred by section 2 of the Pollution Prevention and Control Act 1999.The regulations will amend the provisions of the Environmental Permitting (England and Wales) Regulations 2016 relating to the permitting of groundwater discharge activities.

7. Policy background

What is being done and why?

7.1 Groundwater is a critical national resource. It plays a vital role across many industry sectors, including food manufacturing, brewing, as well as the agricultural industry

where it is used for irrigation, food processing and livestock raising. It also supports important wetland ecosystem habitats and sensitive surface water environments, such as chalk streams.

7.2 Discharges into the environment that may impact groundwater quality ("groundwater activities") are controlled under the Environmental Permitting (England and Wales) Regulations 2016 ("EPR"). The EPR provides for ongoing supervision and controls by the Environment Agency (EA) as regulators of activities which could adversely impact upon groundwater quality.

7.3 In the face of growing pressures from climate change and population growth, it is important to optimise the regulatory tools available for managing and protecting groundwater quality.

7.4 The instrument identifies 9 minor amendments which can provide a more proportionate, risk-based regulatory approach – which will be in line with how other activities are regulated under the EPR.

7.5 The instrument aims to achieve the following policy objectives:

- To provide the EA with an improved hierarchy of regulatory controls for groundwater activities.
- To increase the range of pollutants that can be controlled in the groundwater environment.
- To update and clarify the existing control measures within the EPR for protecting groundwater from site-based activities.

What did any law do before the changes to be made by this instrument?

7.6 The EPR require operators of "regulated facilities" to obtain a permit or to register specific activities which would otherwise require permits, as "exempt facilities". The EPR therefore provides for ongoing supervision and controls by regulators of activities which could harm the environment or human health.

7.7 The EPR brings these regulated facilities together under a single, streamlined environmental permitting and compliance framework. It provides for a hierarchy of regulatory control which is proportionate to the risk that an activity represents to the environment. The lowest risk activities require minimal regulatory control via the use of exemptions; medium risk activities can be controlled via Standard Rule permits following a "national once" generic risk assessment approach; the highest risk activities are subject to site specific risk assessments with 'bespoke' permitting controls applied. The regulatory effort and costs to both the EA and businesses increase proportionately with the risk that an activity represents to the environment.

7.8 For groundwater activities some aspects of this hierarchy of regulatory control are currently not available under the EPR.

7.9 Under the current EPR regulatory controls are not available to protect groundwater from microbial pollution and heat pollution.

Why is it being changed?

7.10 There haven't been any significant updates to the groundwater regulatory regime within the EPR since it came into force in 2010. The EPR is, generally, an effective tool for managing groundwater activities and pollution risks. However, since 2010 several deficiencies with the way the regulations implement groundwater protection

have been identified which has led to inconsistencies in approach within the wider EPR regime. These can be resolved by these 9 amendments and will support many industries by reducing regulatory burden and costs, facilitate green energy production from geothermal and ground source heat, promote growth and accelerating permit delivery.

7.11 These amendments also create the right regulatory conditions to promote and allow innovation within the circular economy, allowing the appropriate and safe re-use of materials where environmentally acceptable with minimum regulatory burden.

What will it now do?

7.12 The amendments to the Environmental Permitting Regulations for Groundwater activities will:

7.13 Give the EA the option to issue Standard Rules Permits for groundwater activities where the generic risks are well-understood, assessed and mitigated. Currently groundwater activities can only be permitted through the use of "bespoke" environmental permits.

7.14 Give the EA the option to issue Mobile Plant Permits for groundwater activities where the generic risks are well-understood, assessed and mitigated.

7.15 Introduce exemptions from the requirement of an environmental permit for

- new cemeteries that pose a low risk of pollution to the groundwater environment
- the majority of closed-loop ground heat pump activities when heat is now included as pollutant with these amendments.

7.16 (Existing cemeteries do not require an environmental permit, but the EA may take enforcement action where harm to people or the environment is proven).

7.17 Enable the EA to apply regulatory controls and issue permits as necessary for groundwater activities that present a significant risk of introducing microbial pollution.

7.18 Enable the EA to apply regulatory controls and issue permits as necessary for groundwater activities that present a significant risk of introducing heat pollution.

7.19 Add new rules to the General Binding Rules for Small Sewage Discharges (SSDs) to reduce the risk of groundwater pollution

7.20 Require operators of Onshore Oil and Gas Facilities to apply to surrender their groundwater activity permits, rather than to provide a notification of surrender, which will allow the EA to ensure the environment is better protected.

7.21 Add to and update the list of exemptions from the prohibition on direct discharges to groundwater to bring the regulations in line with current operational practices and facilitate energy recovery and the latest green technology.

7.22 Clarify the defence for sewerage undertakers in breach of permit conditions.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 This instrument does not amend another instrument and therefore consolidation is not applicable.

10. Consultation outcome

10.1 Defra held a public consultation from 29 September 2021 to 22 December 2021 to seek views on the 9 amendments. Respondents were asked to provide views on each of the proposed groundwater EPR amendments.

10.2 These have been tested, publicly consulted on and put forward.

10.3 The consultation was hosted on the online platform Citizen Space, and responses were also obtained via email and post.

Summary of the response

10.4 The consultation was well received with 264 responses and most respondents supported the proposals in almost all the questions.

10.5 Overall, there was majority support to questions throughout the consultation, except to the proposals to mitigate potential groundwater impacts from cemeteries, which showed clear opposition.

10.6 Adjustments have been made to the cemetery specific amendments to enable greater clarity and ease implementation issues which were then tested in targeted engagement with stakeholders.

10.7 Following consultation feedback, substantive changes have been made to proposals related to cemeteries so that existing cemeteries will automatically be exempt from permitting unless the Environment Agency is made aware of proven groundwater pollution and actions to address such pollution cannot be achieved outside a permitting framework.

11. Guidance

11.1 Guidance will be available on the gov.uk site when the amendments are enacted on 2nd October 2023.

12. Impact

12.1 There is no significant impact on business, charities or voluntary bodies.

12.2 There is no significant impact on the public sector.

12.3 A full Impact Assessment has not been prepared for this instrument because the annual net direct cost to business (EDCANB) is £0.4m. The impacts of the proposed amendments are well inside the +/-£5m a year threshold for an Impact Assessment (IA) to be required.

13. Regulating small business

13.1 The legislation has minimal impact on small businesses as these are relatively minor technical changes to the existing regime. In many cases where it may apply these amendments will be beneficial to small businesses by reducing the regulatory burden.

14. Monitoring & review

14.1 The instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015. Rebecca Pow MP, Parliamentary Under Secretary of State for Defra has made the following statement:

"That a statutory review clause has not been included in this instrument, because the EPR already contains provision for a review of the regulations to take place every 5 years".

15. Contact

15.1 Atikah Moosa at the Department for Environment, Food and Rural Affairs: Telephone: 07824607189 or email (Atikah.moosa@defra.gov.uk), can be contacted with any queries regarding the instrument.

15.2 Amira Amzour, Deputy Director for Water Quality, at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.

15.3 Rebecca Pow MP, Parliamentary Under Secretary of State for Defra can confirm that this Explanatory Memorandum meets the required standard.