EXPLANATORY MEMORANDUM TO

GROUNDWATER (AMENDMENT) REGULATIONS (NORTHERN IRELAND) 2011

2011 No. 211

1. Introduction

1.1. This Explanatory Memorandum has been prepared by the Department of the Environment to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.

1.2. The Statutory Rule is made under section 2(2) of the European Communities Act 1972 and is subject to the negative resolution procedure.

2. Purpose

2.1. The Statutory Rule implements a technical amendment to regulation 16 of the Groundwater Regulations (Northern Ireland) 2009 (the Principal Regulations) to allow the storage of carbon dioxide in geological formations which for natural reasons are permanently unsuitable for other purposes.

3. Background

3.1. The Principal Regulations were made on 2 July 2009 and came into operation on 10 August 2009. They transposed Directive 2006/118/EC on the protection of groundwater against pollution and deterioration (commonly known as the Groundwater Daughter Directive) into domestic legislation.

3.2. Directive 2009/31/EC on the geological storage of carbon dioxide, commonly known as the Carbon Capture and Storage (CCS) Directive, entered into force on 5 June 2009. While the CCS Directive is largely implemented at UK level by amending the Energy Act 2008, the CCS Directive also amends a number of other European Directives which are implemented through domestic legislation.

3.3. With regard to groundwater, Article 32 of the CCS Directive amends the Water Framework Directive (WFD) 2000/60/EC by an insertion to Article 11(3)(j) which requires a prohibition of direct discharges of pollutants into groundwater subject to certain exceptions (such as discharges from certain mining or civil engineering operations). The insertion required by Article 32 of the CCS Directive adds to those exceptions the injection of carbon dioxide streams into geological formations which for natural reasons are permanently unsuitable for other purposes.

3.4. Regulation 16 of the Principal Regulations (which details discharges to groundwater that may be authorised) is amended by the Groundwater (Amendment) Regulations (Northern Ireland) 2011 (the amending Regulations) to allow the storage of carbon dioxide in geological formations. This transposes Article 32 of the CCS Directive.

4. Consultation

4.1. A consultation on amendments to be made to domestic legislation as a result of the CCS Directive ran from 28 February 2011 until 22 April 2011. No concerns were expressed with regard to the amending Regulations and as such a synopsis of responses in this regard was not completed.

5. Equality Impact

5.1. A screening analysis of the amending Regulations indicated there would be no impact in terms of the main groups relevant to the section 75 categories of the Northern Ireland Act 1998.

5.2. The amending Regulations implement a technical change with no change to policy therefore a full Equality Impact Assessment is not required.

6. Regulatory Impact

6.1. An impact assessment was not carried out in Northern Ireland as we are not currently aware of any individual or organisation planning to undertake carbon capture and storage in Northern Ireland. Therefore there is no immediate impact on businesses or the voluntary sector.

6.2. The Department for Environment, Food and Rural Affairs (Defra) completed an impact assessment in January 2011. It showed a cost neutral outcome for implementing Article 32 of the CCS Directive.

7. Financial Implications

7.1. The amending Regulations do not add any burdens beyond what is already required under the WFD.

8. Section 24 of the Northern Ireland Act 1998

8.1. The amending Regulations do not discriminate on the grounds of religious belief or political opinion nor do they modify the European Communities Act, the Human Rights Act 1998 or other statutory provisions listed in section 7 of the 1998 Act.

9. EU Implications

9.1. The amending Regulations transpose Article 32 of the CCS Directive.

10. Parity or Replicatory Measure

10.1. Similar action has been taken in Great Britain to amend their corresponding legislation.

11. Additional Information

11.1. N/A.