

Draft Regulations laid before Parliament under section 2(8) and (9)(d) of the Pollution Prevention and Control Act 1999, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2023 No. 0000

ENVIRONMENTAL PROTECTION

**The Environmental Permitting (England and
Wales) (Amendment) (England) Regulations 2023**

Made - - - - *****
Coming into force - - *2nd October 2023*

The Secretary of State makes these Regulations in exercise of the powers conferred by section 2 of, and Schedule 1 to, the Pollution Prevention and Control Act 1999⁽¹⁾.

In accordance with section 2(4) of that Act, the Secretary of State has consulted—

- (a) the Environment Agency,
- (b) such bodies or persons appearing to the Secretary of State to be representative of the interests of local government, industry, agriculture and small businesses as the Secretary of State considers appropriate, and
- (c) such other bodies or persons as the Secretary of State considers appropriate.

A draft of this instrument has been approved by a resolution of each House of Parliament pursuant to section 2(8) and (9)(d) of the Pollution Prevention and Control Act 1999.

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Environmental Permitting (England and Wales) (Amendment) (England) Regulations 2023.

(2) These Regulations come into force on 2nd October 2023.

(3) These Regulations extend to England and Wales.

Amendment of the Environmental Permitting (England and Wales) Regulations 2016

2. The Environmental Permitting (England and Wales) Regulations 2016⁽²⁾ are amended in accordance with regulations 3 to 7.

(1) 1999 c. 24.

(2) S.I. 2016/1154, to which there are amendments not relevant to these Regulations.

Amendment of regulation 2

3. In regulation 2, in paragraph (1)—

- (a) in the definition of “mobile plant”, in the words before sub-paragraph (a), after “mobile plant” insert “, in relation to Wales,”;
- (b) in the definition of “pollutant”, after “pollutant” insert “, in relation to Wales,”;
- (c) in the definition of “pollution”, in relation to a water discharge activity or groundwater activity, after “pollution” insert “, in relation to Wales,”;
- (d) at the appropriate places insert—

““groundwater mobile plant” means plant that is—

- (a) designed to move or be moved whether on roads or other land,
- (b) used to carry on a groundwater activity, and
- (c) not an installation or Part B mobile plant;”;

““groundwater Source Protection Zone 1” means a zone—

- (a) within 50m of a point at which water is abstracted for domestic or food production purposes from any underground strata, or
- (b) defined by a 50-day travel time for groundwater to reach a groundwater abstraction point that is used to supply water for domestic or food production purposes,
whichever is larger;”;

““mobile plant”, in relation to England, means any of the following—

- (a) Part B mobile plant;
- (b) waste mobile plant;
- (c) mobile medium combustion plant;
- (d) groundwater mobile plant;”;

““pollutant”, in relation to England, means any—

- (a) substance,
- (b) heat, or
- (c) biological entity or micro-organism,
which is liable to cause pollution;”;

““pollution”, in relation to England, in relation to a water discharge activity or groundwater activity, means the direct or indirect introduction, as a result of human activity, of substances, heat or biological entities or micro-organisms into air, water or land which may—

- (a) be harmful to human health or the quality of aquatic ecosystems or terrestrial ecosystems directly depending on aquatic ecosystems,
- (b) result in damage to material property, or
- (c) impair or interfere with amenities or other legitimate uses of the environment;”.

Amendment of regulation 24

4. In regulation 24, in paragraph (1)—

- (i) in sub-paragraph (d) before the words “a stand-alone water” insert “in relation to Wales,”;

(ii) at the end insert—

“(h) in relation to England, a stand-alone water discharge activity or stand-alone groundwater activity other than a discharge to a well or borehole—

- (i) which is used for hydrocarbon exploration or extraction, and
- (ii) which intersects a hydrocarbon formation.”.

Amendment of Schedule 3

5. In Schedule 3—

(a) in Part 2, in paragraph 3, in sub-paragraph (2)(a) for the words from “document entitled” to “updated on 21st January 2015” substitute “document entitled “General binding rules for small sewage discharges (SSDs) with effect from 2nd October 2023” published by the Agency on 23rd March 2023”(3);

(b) in Part 3—

(i) in paragraph 1, at the appropriate places insert—

““ancient woodland” means any area that has been wooded continuously since at least 1600 AD, including ancient semi-natural woodland and plantations on ancient woodland sites;”;

““protected site” means—

- (a) a wetland designated as a European site (which has the meaning given in regulation 8 of the Conservation of Habitats and Species Regulations 2017(4)),
- (b) a Ramsar site (which has the same meaning as in section 37A of the Wildlife and Countryside Act 1981(5)),
- (c) a nature reserve established by a local authority under section 21 of the National Parks and Access to the Countryside Act 1949(6), or
- (d) a site of special scientific interest (which has the meaning given in section 52(1) of the Wildlife and Countryside Act 1981);”;

(ii) in paragraph 4, in sub-paragraph (2)—

(aa) in paragraph (a) for the words from “document entitled” to “updated on 21st January 2015” substitute “document entitled “General binding rules for small sewage discharges (SSDs) with effect from 2nd October 2023” published by the Agency on 23rd March 2023”(7);

(bb) for paragraph (d) substitute—

“(d) the discharge does not result in an input of pollutants to groundwater within a groundwater Source Protection Zone 1;”;

(iii) in paragraph 5, in sub-paragraph (2)—

(3) A copy of the General binding rules for small sewage discharges (SSDs) with effect from 2nd October 2023 and the General binding rules for small sewage discharges (SSDs) with effect from 2nd October 2023 may be seen at <https://www.gov.uk/government/organisations/environment-agency> or obtained by writing to the Environment Agency at enquiries@environment-agency.gov.uk or Environment Agency, National Customer Contact Centre, PO Box 544, Rotherham, S60 1BY, United Kingdom.

(4) S.I. 2017/1012, amended by S.I. 2019/579; there are other amending instruments but none is relevant.

(5) 1981 c. 69. Section 37A was inserted by section 77 of the Countryside and Rights of Way Act 2000 (c. 37).

(6) 1949 c. 97.

(7) See footnote (a).

- (aa) in paragraph (e), in the words before sub-paragraph (i), before the words “that water” insert “in relation to Wales,”;
- (bb) after paragraph (e) insert—
 - “(ea) in relation to England, that water from the system must not be discharged within a groundwater Source Protection Zone 1,”;
- (iv) at the end insert—

“Closed-loop ground source heating and cooling systems: England

6.—(1) For the purpose of paragraph 8(a)(i) of Schedule 2, the description is a closed-loop ground source heating or cooling system—

- (a) which is fully sealed and does not take water from, or discharge water or fluids into, the environment, and
- (b) where any borehole is used, the borehole is fully sealed and does not take water from the environment.

(2) For the purpose of paragraph 8(a)(ii) of Schedule 2, the conditions in relation to a groundwater activity of that description are that an operator of the system ensures that—

- (a) the system is a closed-loop system only and that there is no discharge of pollutants other than the transfer of heat to the environment,
- (b) the system does not cause pollution of surface water or groundwater,
- (c) no part of the system is within a groundwater Source Protection Zone 1,
- (d) no part of the system is within 50m of a well, spring or borehole used to supply water for domestic or food production purposes,
- (e) no part of the system is within the following distance of a protected site or an ancient woodland—
 - (i) 20m, where the system supplies only residential premises and the maximum output of the system is 45kW or less,
 - (ii) 50m, where the system supplies—
 - (aa) only a single community building,
 - (bb) only residential premises and the maximum output of the system is more than 45kW,
 - (cc) only a single building that is not a community building or residential premises and which has a floor space of less than 1000m², or
 - (dd) subject to sub-paragraph (i), more than one building where the total floor space within those buildings combined is less than 1000m², or
 - (iii) 250m in any other case,
- (f) the installation of the system does not mobilise any contaminants present in the subsurface to the extent that the pollution of groundwater occurs,
- (g) no part of the system is adjacent to a septic tank or cesspit, including the infiltration system,

- (h) all equipment installed in relation to the system complies with the relevant design and manufacturing standards set down in—
 - (i) the relevant British Standards, and
 - (ii) the relevant Ground Source Heat Pump Association standards, and
 - (i) the system is appropriately decommissioned when it ceases to be in operation so that there is no risk of pollutants or polluting matter entering groundwater.
- (3) In this regulation—
- “community building” includes a building used as a place of worship;
- “relevant British Standards” means—
- (a) BS EN 378-1:2016+A1:2020 entitled “Refrigerating systems and heat pumps — Safety and environmental requirements, Part 1: Basic requirements, definitions, classification and selection criteria” published by the British Standards Institution on 30th November 2020,
 - (b) BS EN 378-2:2016 entitled “Refrigerating systems and heat pumps — Safety and environmental requirements, Part 2: Design, construction, testing, marking and documentation” published by the British Standards Institution on 31st December 2016,
 - (c) BS EN 378-3:2016+A1:2020 entitled “Refrigerating systems and heat pumps — Safety and environmental requirements, Part 3: Installation site and personal protection” published by the British Standards Institution on 30th November 2020,
 - (d) BS EN 378-4:2016+A1:2019 entitled “Refrigerating systems and heat pumps — Safety and environmental requirements, Part 4: Operation, maintenance, repair and recovery” published by the British Standards Institution on 31st October 2019,
 - (e) BS EN 805:2000 entitled “Water supply — Requirements for systems and components outside buildings” published by the British Standards Institution and coming into effect on 15th September 2000, and
 - (f) BS 5930:2015+A1:2020 entitled “Code of practice for ground investigations” published by the British Standards Institution on 31st May 2020;
- “relevant Ground Source Heat Pump Association standards”⁽⁸⁾ means—
- (a) the Closed-loop Vertical Borehole Design, Installation and Materials Standards, issue 1.0, dated 2020 and published by the Ground Source Heat Pump Association,
 - (b) the Shallow Ground Source Standard, Version 2, dated January 2018 and published by the Ground Source Heat Pump Association, and

⁽⁸⁾ A copy of these standards may be obtained by writing to the Ground Source Heat Pump Association, 39 Dryburgh Road, London, SW15 1BN or at <https://gshp.org.uk/resources/standards/>.

- (c) the Thermal Pile Design, Installation and Materials Standards, Version 2, dated September 2018 and published by the Ground Source Heat Pump Association.

Low-environmental-risk burials at new cemeteries or new extensions of cemeteries: England

7.—(1) For the purpose of paragraph 8(a)(i) of Schedule 2, the description is any burial of human remains, other than a burial of human ashes from crematoria, within a new cemetery or new extension of a cemetery.

(2) In sub-paragraph (1), “new cemetery or new extension of a cemetery” means a development which, by virtue of section 57 of the Town and Country Planning Act 1990⁽⁹⁾, required planning permission authorising a change of use of land to permit burials which was granted on or after 2nd October 2023.

(3) For the purpose of paragraph 8(a)(ii) of Schedule 2, the conditions in relation to a burial of that description are that the operator ensures that—

- (a) any activity relating to the burial must not cause pollution of surface water or groundwater,
- (b) the burial is not within 10m of any field drain, including any dry ditch,
- (c) the grave has at least 1m clearance between the base of the grave and the top of the water table,
- (d) the burial is not undertaken directly into groundwater,
- (e) the grave is not dug in unaltered or unweathered bedrock,
- (f) the grave is not dug in an area susceptible to groundwater flooding,
- (g) the burial is not within 30m of any spring or watercourse,
- (h) the burial is not in, or within 50m of, a protected site,
- (i) the burial is not in an ancient woodland,
- (j) the new cemetery or extension in question does not have more than 2500 burials per hectare, in proportion to the total area of the new cemetery or extension,
- (k) no part of the new cemetery or extension in question is within a groundwater Source Protection Zone 1,
- (l) no part of the new cemetery or extension in question is within 250m of any well, spring or borehole that is used to supply water for domestic drinking or food production purposes,
- (m) the new cemetery or extension is located either—
 - (i) entirely on strata which are unproductive strata,
 - (ii) entirely on strata which are a secondary B aquifer or entirely on strata which are secondary undifferentiated rocks, where the number of burials is less than 100 burials per annum,
 - (iii) entirely on a secondary A aquifer, where the number of burials is less than 50 burials per annum,

⁽⁹⁾ 1990 c. 8.

(iv) entirely on a principal aquifer and not in a groundwater Source Protection Zone 2, where the number of burials is less than 30 burials per annum, or

(v) on any combination of strata mentioned in paragraphs (i) to (iv), subject to sub-paragraph (4), and

(n) the new cemetery or extension does not need ongoing active control measures to be in place to protect the environment.

(4) Where a new cemetery or extension is, pursuant to sub-paragraph (3)(m)(v), partly located on one of the strata mentioned in sub-paragraph (3)(m)(ii), (iii) or (iv), the restriction on the numbers of burials per annum in sub-paragraph (3)(m)(ii), (iii) or (iv) (as the case may be) applies to the area of the new cemetery or extension located on that strata.

(5) In sub-paragraph (3)—

“groundwater flooding” means flooding where the water table beneath the ground rises and causes water to seep out at ground level;

“groundwater Source Protection Zone 2” means a zone—

(a) within—

(i) 250m of a point at which water is abstracted for domestic or food production purposes from underground strata where the maximum allowable annual volume as authorised by a licence under section 24 of the Water Resources Act 1991⁽¹⁰⁾ or allowed by virtue of section 27 of that Act (as the case may be) divided by 365 is less than 2,000 m³ per day, or

(ii) 500m of a point at which water is abstracted for domestic or food production purposes from underground strata where the maximum allowable annual volume as authorised by a licence under section 24 of the Water Resources Act 1991 divided by 365 is equal to or greater than 2,000 m³ per day, or

(b) defined by a 400-day travel time for groundwater to reach a groundwater abstraction point that is used to supply water for domestic or food production purposes,

whichever is larger;

“principal aquifer” means geological strata which—

(a) exhibit a high intergranular or fracture permeability, and

(b) provide a high level of water storage and support water supply or base flow to rivers, lakes and wetlands on a strategic scale;

“secondary A aquifer” means permeable strata capable of supporting water supplies at a local rather than strategic scale;

“secondary B aquifer” means predominantly lower permeability strata including where they have, in part, the ability to store and yield limited amounts of groundwater by virtue of localised features such as fissures, thin permeable horizons or weathering;

“secondary undifferentiated rocks” means rock deposits or strata with variable permeability and storage properties which are not consistently a secondary A aquifer or secondary B aquifer;

“unproductive strata” means geological strata which—

- (a) have a low permeability that has negligible significance for water supply or river base flow, and
- (b) consist of deposits that naturally offer protection to any aquifers that may be present beneath.”.

Amendment of Schedule 21

6. In Schedule 21, in paragraph 6—

- (a) in sub-paragraph (5), for the words “A sewerage undertaker” substitute “In relation to Wales, a sewerage undertaker”;
- (b) after sub-paragraph (5) insert—

“(5A) In relation to England, a sewerage undertaker is not guilty of an offence under regulation 38(1) or (2) in relation to a water discharge activity that consists of a discharge of sewage effluent from a sewer or works vested in it if—

- (a) the contravention is attributable to a discharge which another person caused or knowingly permitted to be made into the sewer or works,
- (b) the undertaker either was not bound to receive the discharge into the sewer or works or was bound to receive it there subject to conditions which were not observed, and
- (c) the undertaker could not reasonably have been expected to prevent the discharge into the sewer or works.”.

Amendment of Schedule 22

7. In Schedule 22—

(a) in paragraph 7—

- (i) in sub-paragraph (4) after “granted” insert “in relation to Wales”;
- (ii) after sub-paragraph (4) insert—

“(4A) A permit may not be granted in relation to England—

- (a) without an assessment of—
 - (i) the relevant hydrogeological conditions,
 - (ii) the possible purifying powers of soil and subsoil, and
 - (iii) the risk of pollution and alteration of the quality of the groundwater from the discharge, and
- (b) without establishing whether the input of pollutants to groundwater is a satisfactory solution from the point of view of the environment.”;

(b) in paragraph 8—

- (i) renumber the existing text as sub-paragraph (1) of that paragraph;
- (ii) in sub-paragraph (1) (as renumbered), at the end insert—

“(k) in relation to England, any groundwater activity to remediate the effects of pollution in groundwater or in the land or waters surrounding groundwater;

- (l) in relation to England, the injection of any substance into groundwater to increase the flow of fluids or gas to a well or borehole in connection with the extraction or use of any source of energy.”;
- (iii) after sub-paragraph (1) insert—
 - “(2) In sub-paragraph (1)(k), the reference to remediating the effects of pollution is—
 - (a) in the case of the groundwater in question, to doing any works, carrying out any operations or taking any steps to prevent or minimise, or remedy or mitigate the effects of pollution, or
 - (b) in the case of land or waters surrounding the groundwater in question, to restoring the land or waters to (or closer to) their former state.”;
- (c) in paragraph 13—
 - (i) in sub-paragraph (5), for the words “A sewerage undertaker” substitute “In relation to Wales, a sewerage undertaker”;
 - (ii) after sub-paragraph (5) insert—
 - “(5A) In relation to England, a sewerage undertaker is not guilty of an offence under regulation 38(1) or (2) in relation to a groundwater activity that consists of a discharge of sewage effluent from a sewer or works vested in it if—
 - (a) the contravention is attributable to a discharge which another person caused or knowingly permitted to be made into the sewer or works,
 - (b) the undertaker either was not bound to receive the discharge into the sewer or works or was bound to receive it there subject to conditions which were not observed, and
 - (c) the undertaker could not reasonably have been expected to prevent the discharge into the sewer or works.”.

Name
Parliamentary Under Secretary of State
Department for Environment, Food and Rural
Affairs

Date

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make amendments to the Environmental Permitting (England and Wales) Regulations 2016 (S.I. 2016/1154) (“the 2016 Regulations”) in relation to the management and protection of groundwater quality in England.

Regulation 3 makes amendments to definitions in regulation 2(1) of the 2016 Regulations, and inserts several new definitions in that provision, for example a definition for “groundwater mobile plant”.

Regulation 4 makes amendments to regulation 24 of the 2016 Regulations with the effect that environmental permits for activities relating to hydrocarbon exploration or extraction or which intersect a hydrocarbon formation may be surrendered by notifying the Environment Agency.

Regulation 5 makes amendments to Parts 2 and 3 of Schedule 3 to the 2016 Regulations which deals with exempt facilities and waste operations to which section 33(1)(a) of the Environmental Protection Act 1990 (c. 43) does not apply. The amendments have the effect that certain closed-loop ground source heating and cooling systems and low-environmental-risk burials at new cemeteries or new extensions of cemeteries are exempt so long as the conditions set out in the new provision are met.

Regulation 6 makes amendments to paragraph 6 of Schedule 21 to the 2016 Regulations, which deals with liability resulting from the discharge of sewage effluent from public sewers.

Regulation 7 makes amendments to Schedule 22 to the 2016 Regulations, which deals with groundwater activities.

A copy of any British Standard referred to in these Regulations may be obtained from www.bsigroup.com or by contacting British Standards Institute Customer Services at cservices@bsigroup.com or at 389 Chiswick High Road London, W4 4AL, United Kingdom or by calling telephone number 0345 086 9001.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen.