

EXPLANATORY MEMORANDUM TO
THE ENVIRONMENTAL PERMITTING (ENGLAND AND WALES) (AMENDMENT)
(ENGLAND) REGULATIONS 2014

2014 No. 2852

1. This explanatory memorandum has been prepared by the Department for Environment Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Purpose of the instrument**

- 2.1 The instrument amends the Environmental Permitting (England and Wales) Regulations 2010 (S.I 2010/675).

- 2.2 The amendments are deregulatory and simplify how exemptions from the requirement for an environmental permit are managed for small sewage discharges. The amendments remove three requirements on operators of small sewage discharges: registration of a septic tank or sewage treatment plant; keeping records of maintenance for five years; and notifying the Environment Agency if the small sewage discharge ceases.

- 2.3 The existing requirements to protect the environment and prevent and control pollution from small sewage discharges are restated (including the definition of a small sewage discharge) and updated.

- 2.4 This instrument makes changes to the regulation of small sewage discharges in England. In Wales the existing regulations will continue. We have consulted the Welsh Government and agreed how regulations apply in each country.

- 2.5 The amendments make the Environment Agency the Regulatory Authority (referred to as the Exemption Authority) for exempt facilities that make small sewage discharges (i.e. exempt water discharge activities and exempt groundwater activities). The Environment Agency's enforcement powers are not altered by the amendments. The Regulations continue to give the Regulatory Authority the power to specify technical requirements necessary to control and prevent pollution in guidance for operators. The guidance reflects the Regulator's duties and responsibilities set in other legislation protecting the environment, water resources and biodiversity.

- 2.6 Discharges and systems that do not meet the exemption conditions will be treated as regulated facilities and will be required to have an environmental permit.

2.7 The Regulations maintain the distinction between discharges to surface water (known as water discharge activities to inland fresh waters, coastal waters or relevant territorial waters), which can be made by sewage treatment plants only, and discharges to groundwater (known as groundwater activities), which can be made by either a septic tank with an infiltration system or a sewage treatment plant with an infiltration system.

2.8 The Regulations clarify the responsibility of an “operator” for an exempt facility activity, and no longer refer to “occupiers”. An “operator” is a person who has control over the operation of the septic tank or sewage treatment plant. An “operator” may be an owner of the system, someone who uses it even though the system itself or part of it may be located on neighbouring land or another person e.g. a tenant or leaseholder who agrees to be responsible for the operation and maintenance of the system, through a written agreement with the owner of the land or part of the land. Any written agreement should explain what maintenance means in practice for the facility.

2.9 The Regulations will come into force on 1 January 2015. The instrument has been laid with more than the minimum required time before coming into force to give time to communicate the changes.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 The EU Water Framework Directive (2000/60/EC) includes requirements on Member States to prevent and control pollution of water bodies through prior regulation. The Groundwater Directive (2006/118/EC) requires that inputs of pollutants, including sewage discharges, into groundwater are prevented or limited so as to control pollution. The Environmental Permitting (England and Wales) Regulations 2010 (EPR) transpose these requirements.

4.2 The EPR work in conjunction with the Building Regulations 2010 (SI 2010/2214) (the Building Regulations govern wastewater disposal), and with Regulations which control drinking water quality.

4.3 When this instrument comes into force the following exemption requirements will **stop** in England:

- a) Registration of exempt facilities that make small sewage discharges.
- b) Keeping records of maintenance in relation to small sewage discharges for at least five years after the work is carried out.
- c) Notification to the Environment Agency if an exempt facility making a small sewage discharge ceases to be in operation.

5. Territorial Extent and Application

5.1 This instrument applies to England only.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 It is essential to have a clean and healthy water environment and to protect our health. This includes preventing contamination of drinking water supplies and pollution of the environment from septic tanks and sewage treatment plants. The amendments are part of the Government's commitments to better regulation and are to implement a simpler regulatory framework to control small sewage discharges, whilst ensuring that the environment and drinking water supplies continue to be protected from the impacts caused by poorly installed and maintained septic tanks or sewage treatment plants. The regulations principally apply to rural households and businesses who are not connected to mains sewerage and who instead use a septic tank or sewage treatment plant for their domestic wastewater system. An impact assessment estimates possible savings per household or business.

7.2 In the new approach the registration scheme is replaced with conditions that septic tanks and sewage treatment plants need to meet in order to be used without an environmental permit. They will apply to people who have a septic tank or sewage treatment plant for their domestic wastewater system that makes a small discharge of sewage in England. The conditions work with the technical requirements specified by the Environment Agency in guidance to operators, compliance with which is part of the conditions. The conditions together with the technical requirements will be known as general binding rules. The technical requirements for which guidance can be provided still include: the design and manufacturing standards; construction, installation and operation specifications; siting and installation of infiltration systems for discharges to ground, and have been revised to include the capacity of the works and equipment. The rules aim to ensure septic tanks and sewage treatment plants are well maintained and do not cause pollution or ill health by contaminating water used for human consumption.

7.3 The amendments in this instrument restate the exemption conditions that apply in England to water discharge activities and groundwater activities for them to be considered to be **small sewage discharges and exempt facilities**. The exemption conditions no longer rely on operators registering their septic tank or sewage treatment plant.

7.4 Other exemptions (i.e. vegetation management activities, discharge of small quantities of substances for scientific purposes, open-loop ground source heating and cooling systems) are not changed and will continue to be managed by the Environment Agency, as the Exemption Registration Authority through registration schemes.

7.5 The amendments do not alter the requirements for larger systems and discharges, which continue to need permits.

7.6 These amendments are expected to be consolidated with a number of other amendments to the EPR as soon as is practicable.

8. Consultation outcome

8.1 A public consultation on deregulatory proposals to reform the regulatory framework for small sewage discharges was held online from 30 April to 10 June 2014. Discussions with stakeholders were also held. 120 responses were received. Respondents broadly supported the proposals for a simpler regulatory framework, providing that measures remained in place to protect water resources, drinking water supplies, sensitive areas and protected species. The Government's response to the consultation (published 9 October 2014 on Gov.uk), set out that the new approach will replace the registration scheme with general binding rules and establish a more risk-based approach to permitting in sensitive areas.

9. Guidance

9.1 The guidance for operators of exempt facilities will be published on Gov.uk when the Regulations come into force and will be periodically reviewed.

9.2 The guidance will explain what people need to do. Defra and the Environment Agency will work with partner organisations to help engage rural communities about the changes.

9.2 The Minister will write to the Environment Agency about the regulatory framework and how it is to be managed and applied.

10. Impact

10.1 The new Regulations will reduce the administrative burden on many rural households, business, and others who have small sewage discharges. People will no longer need to register their septic tank or sewage treatment plant, or keep records of maintenance, or notify the Environment Agency if they permanently stop using a septic tank or sewage treatment plant. There will also be benefits from a simpler regulatory framework, which will be easier to comply with.

10.2 An Impact Assessment will be published alongside the Explanatory Memorandum on www.legislation.gov.uk.

11. Regulating small business

11.1 The legislation applies to small businesses and others who have either a septic tank or sewage treatment plant for their domestic waste water system that meets the conditions to be an exempt facility, and is therefore able to be used without an environmental permit.

12. Monitoring & review

12.1 The effectiveness of these regulations will be reviewed in 2017.

13. Contact

Jan Kiernan at the Department for Environment Food and Rural Affairs email: jan.kiernan@defra.gsi.gov.uk can answer any queries regarding the instrument.