

EXPLANATORY MEMORANDUM TO
GROUNDWATER REGULATIONS (NORTHERN IRELAND) 2009

2009 No. 254

Introduction

1. This Explanatory Memorandum has been prepared by the Department of the Environment to accompany SR 2009 No. 254 which is laid before the Northern Ireland Assembly.
2. The Statutory Rule is made under section 2(2) of the European Communities Act 1972 and is subject to the negative resolution procedure.
3. The rule is due to come into operation on 10 August 2009.

Purpose

4. The Statutory Rule will transpose Directive 2006/118/EC on the protection of groundwater against pollution and deterioration. The purpose of the rule is to prevent the entry into groundwater of hazardous substances and the pollution of groundwater by non-hazardous pollutants.

Background

5. The Directive is commonly known as the Groundwater Daughter Directive (GWDD) as it is a 'daughter' Directive to the Water Framework Directive (2000/60/EC) (WFD). It came into operation on 16 January 2007. Article 17 of the WFD requires Member States to adopt specific measures to prevent and control groundwater pollution with the aim of achieving good chemical status for bodies of groundwater.
6. The original Groundwater Directive (80/68/EEC) was transposed by the Groundwater Regulations (Northern Ireland) 1998 providing protection to groundwater by preventing the direct discharge of high priority pollutants into groundwater and subjecting the discharge of other pollutants to an authorisation procedure. The GWDD adopts a similar approach to preventing groundwater pollution but takes a slightly more comprehensive risk based approach than the 1980 Directive.
7. The new Directive introduces 3 key requirements:
 - setting threshold values and standards as triggers for investigation into whether the environmental and amenity requirements of good groundwater chemical status have been achieved;
 - identifying significant and sustained upward trends in concentrations of pollutants in groundwater and establishing starting points for their reversal;
 - preventing inputs of hazardous substances, and limiting inputs of all other substances to avoid pollution, subject to various exemptions.

Consultation

8. A consultation setting out proposals to transpose the GWDD ran from the 11 February 2009 to 6 May 2009. A total of 13 responses were received. The overall response was positive and no serious concerns were expressed about the proposed legislation.
9. Following closure of the consultation exercise a synopsis of responses was forwarded to the Environment Committee. Whilst the Committee was in broad support of the Regulations officials provided the Committee with clarification at its meeting on 25 June 2009 on 4 specific issues:
 - the possible introduction of a charging scheme,
 - the impact of the Regulations on agricultural cross-compliance,
 - the impact on consumers using septic tanks, and
 - the resource implications for NIEA in managing risk based authorisation processes and reviews.
10. While the Committee was generally satisfied with the clarification provided it expressed concern with regard to the possible introduction of a charging scheme. The NIEA will reflect on the concerns raised by the Committee on the general issue of fees. It was emphasised that any consideration of a charging scheme would be subject to Ministerial approval and a separate consultation exercise would be undertaken by the NIEA. However, it was not the Agency's intention to bring forward a charging scheme in the near future.

Equality Impact Assessment

11. Consideration has been given to equality issues and it has been determined that the proposed Regulations will have no impact in terms of the main groups relevant to the section 75 categories of the Northern Ireland Act 1998.

Regulatory Impact Assessment

12. A UK wide impact assessment was carried out in 2006 and it showed a cost neutral outcome as it does not add any burdens beyond what is already required under the WFD. An updated impact assessment was completed in May 2008 which again showed the impact to be cost neutral.

Financial Implications

13. The Regulations do not add any burdens beyond what is already required under the Water Framework Directive

Section 24 of the Northern Ireland Act 1998

14. The Rule does not discriminate on the grounds of religious belief or political opinion nor does it modify the European Communities Act, the Human Rights Act 1998 or other statutory provisions listed in section 7 of the 1998 Act.

EU Implications

15. Transposition of the Groundwater Directive is a legal requirement and therefore subject to legal challenge from the European Commission.

Parity or Replicatory Measure

16. In England, Scotland and Wales transposition of the GWDD will be achieved through a mix of Regulation and Direction to the respective Environment Agencies. Powers of Direction are not an option in Northern Ireland so transposition here will be solely by means of Regulation.
17. In principle however, the approach is consistent with the rest of the UK.

Additional Information

18. The existing regulatory system in Northern Ireland provides a good basis for a more flexible groundwater protection regime. By making new groundwater regulations incorporating the requirements of the existing Groundwater Regulations (Northern Ireland) 1998, there will be minimum change to the existing regime therefore maintaining continuity and clarity for groundwater protection.