

## SCHEDULE 22

Regulation 35(1)

### Groundwater activities

#### Application

1. This Schedule applies in relation to every groundwater activity.

#### Interpretation

2. In this Schedule—
  - “body of groundwater” has the same meaning as in the Water Framework Directive;
  - “direct input” in relation to groundwater means the introduction of a pollutant to groundwater without percolation through soil or subsoil;
  - “indirect input” in relation to groundwater means the introduction of a pollutant to groundwater after percolation through soil or subsoil;
  - “surface waters” has the same meaning as in the Water Framework Directive.

#### Meaning of “groundwater activity”

3.—(1) Subject to sub-paragraphs (2) and (3), “groundwater activity” means any of the following—

- (a) the discharge of a pollutant that results in the direct input of that pollutant to groundwater;
- (b) the discharge of a pollutant in circumstances that might lead to an indirect input of that pollutant to groundwater;
- (c) any other discharge that might lead to the direct or indirect input of a pollutant to groundwater;
- (d) an activity in respect of which a notice under paragraph 10 has been served and has taken effect;
- (e) an activity that might lead to a discharge mentioned in paragraph (a), (b) or (c), where that activity is carried on as part of the operation of a regulated facility of another class.

(2) A discharge or an activity that might lead to a discharge is not a “groundwater activity” if the discharge is—

- (a) made, or authorised to be made, by or under any prescribed statutory provision, or
- (b) of trade effluent or sewage effluent from a vessel.

(3) The regulator may determine that a discharge, or an activity that might lead to a discharge, is not a groundwater activity if the input of the pollutant—

- (a) is the consequence of an accident or exceptional circumstances of natural cause that could not reasonably have been foreseen, avoided or mitigated,
- (b) is or would be of a quantity and concentration so small as to obviate any present or future danger of deterioration in the quality of the receiving groundwater, or
- (c) is or would be incapable, for technical reasons, of being prevented or limited without using—
  - (i) measures that would increase risks to human health or to the quality of the environment as a whole, or
  - (ii) disproportionately costly measures to remove quantities of pollutants from, or otherwise control their percolation in, contaminated ground or subsoil.

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**Changes to legislation:** The Environmental Permitting (England and Wales) Regulations 2016, SCHEDULE 22 is up to date with all changes known to be in force on or before 11 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (4) The regulator must keep a record of all determinations under sub-paragraph (3).

#### Meaning of “hazardous substance”

4.—(1) A hazardous substance is any substance or group of substances that are toxic, persistent and liable to bio-accumulate, or that give rise to an equivalent level of concern.

(2) This includes in particular the following when they meet the criteria in sub-paragraph (1)—

- (a) organohalogen compounds and substances which may form such compounds in the aquatic environment;
- (b) organophosphorous compounds;
- (c) organotin compounds;
- (d) substances and preparations, or the breakdown products of such, which have been proved to possess carcinogenic or mutagenic properties or properties which may affect steroidogenic, thyroid, reproduction or other endocrine-related functions in or via the aquatic environment;
- (e) hydrocarbons and organic substances;
- (f) cyanides;
- (g) metals (in particular, cadmium and mercury) and their compounds;
- (h) arsenic and its compounds;
- (i) biocides and plant protection products.

(3) The regulator must publish a list of substances that it considers to be hazardous substances.

#### Meaning of “non-hazardous pollutant”

5. A non-hazardous pollutant is any pollutant other than a hazardous substance.

#### Exercise of relevant functions

6. For the <sup>F1</sup>purpose of the duties in regulation 3 of the WFD Regulations], the regulator must, in exercising its relevant functions, take all necessary measures—

- (a) to prevent the input of any hazardous substance to groundwater, and
- (b) to limit the input of non-hazardous pollutants to groundwater so as to ensure that such inputs do not cause pollution of groundwater.

#### Textual Amendments

**F1** Words in Sch. 22 para. 6 substituted (31.12.2020) by [The Environmental Permitting \(England and Wales\) \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/39\)](#), regs. 1, **2(24)(a)**; 2020 c. 1, Sch. 5 para. 1(1)

#### Applications for grant of environmental permit

7.—(1) This paragraph applies to an application for the grant of an environmental permit relating to—

- (a) a discharge mentioned in paragraph 3(1)(a), (b) or (c), or
- (b) an activity that might lead to such a discharge.

(2) When the regulator receives an application, it must ensure that all necessary investigations have been carried out to ensure that it grants any permit in accordance with paragraph 6.

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(3) If it grants the permit, it must include conditions requiring all necessary technical precautions to be observed to ensure the objectives of paragraph 6 are achieved.

(4) A permit may not be granted [<sup>F2</sup>in relation to Wales]—

(a) without examination of—

- (i) the hydrogeological conditions of the area concerned,
- (ii) the possible purifying powers of the 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.

[<sup>F3</sup>(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.]

(5) A permit may only be granted if the regulator has checked that the groundwater (and, in particular, its quality) will undergo the requisite surveillance.

#### Textual Amendments

**F2** Words in Sch. 22 para. 7(4) inserted (2.10.2023) by The Environmental Permitting (England and Wales) (Amendment) (England) Regulations 2023 (S.I. 2023/651), regs. 1(2), 7(a)(i)

**F3** Sch. 22 para. 7(4A) inserted (2.10.2023) by The Environmental Permitting (England and Wales) (Amendment) (England) Regulations 2023 (S.I. 2023/651), regs. 1(2), 7(a)(ii)

#### Groundwater activities for which a permit may be granted

8.—[<sup>F4</sup>(1)] Despite paragraph 6, provided it does not compromise the achievement of any of the environmental objectives relating to groundwater in [<sup>F5</sup>relation to a river basin district], the regulator may grant an environmental permit for—

- (a) the injection of water containing substances resulting from the operations for exploration and extraction of hydrocarbons or mining activities, and injection of water for technical reasons, into geological formations from which hydrocarbons or other substances have been extracted or into geological formations which for natural reasons are permanently unsuitable for other purposes, provided that the injection does not contain substances other than those resulting from the above operations;
- (b) the reinjection of pumped groundwater from mines and quarries or associated with the construction or maintenance of civil engineering works;
- (c) the injection of natural gas or liquefied petroleum gas for storage purposes into geological formations which for natural reasons are permanently unsuitable for other purposes;
- (d) the injection of carbon dioxide streams for storage purposes into geological formations which for natural reasons are permanently unsuitable for other purposes, provided that such injection is made in accordance with [<sup>F6</sup>Chapter 3 of Part 1 of the Energy Act 2008

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and other EU-derived domestic legislation which transposed Directive 2009/31/EC on the geological storage of carbon dioxide in relation to England and Wales];

- (e) the injection of natural gas or liquefied petroleum gas for storage purposes into other geological formations where there is an overriding need for security of gas supply, and where the injection is such as to prevent any present or future danger of deterioration in the quality of any receiving groundwater;
- (f) construction, civil engineering and building works and similar activities on or in the ground which come into contact with groundwater;
- (g) discharges of small quantities of substances for scientific purposes for characterisation, protection or remediation of bodies of water limited to the amount strictly necessary for the purposes concerned;
- (h) interventions in surface waters for the purposes, amongst others, of mitigating the effects of floods and droughts, and for the management of waters and waterways;
- (i) the artificial recharge or augmentation of a body of groundwater for the purposes of groundwater management;
- (j) reinjection into the same aquifer of water used for geothermal purposes.
- [<sup>F7</sup>(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.]
- [<sup>F8</sup>(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.]

#### Textual Amendments

- F4** Sch. 22 para. 8 renumbered as Sch. 22 para. 8(1) (2.10.2023) by The Environmental Permitting (England and Wales) (Amendment) (England) Regulations 2023 (S.I. 2023/651), regs. 1(2), **7(b)(i)**
- F5** Words in Sch. 22 para. 8 substituted (31.12.2020) by The Environmental Permitting (England and Wales) (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/39), regs. 1, **2(24)(b)(i)**; 2020 c. 1, Sch. 5 para. 1(1)
- F6** Words in Sch. 22 para. 8(d) substituted (31.12.2020) by The Environmental Permitting (England and Wales) (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/39), regs. 1, **2(24)(b)(ii)**; 2020 c. 1, Sch. 5 para. 1(1)
- F7** Sch. 22 para. 8(1)(k)(l) inserted (2.10.2023) by The Environmental Permitting (England and Wales) (Amendment) (England) Regulations 2023 (S.I. 2023/651), regs. 1(2), **7(b)(ii)**
- F8** Sch. 22 para. 8(2) inserted (2.10.2023) by The Environmental Permitting (England and Wales) (Amendment) (England) Regulations 2023 (S.I. 2023/651), regs. 1(2), **7(b)(iii)**

#### Prohibition notice

- 9.—(1) This paragraph applies where—
- (a) any person is carrying on, or proposing to carry on, any activity on or in the ground, and
  - (b) that activity might lead to a discharge mentioned in paragraph 3(1)(a), (b) or (c).
- (2) The regulator may serve a notice on the person prohibiting the carrying on of the activity.

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(3) The regulator may withdraw a prohibition notice at any time by further notice served on the person.

### Notice requiring environmental permit

**10.**—(1) This paragraph applies where—

- (a) any person is carrying on, or proposing to carry on, any activity on or in the ground, and
- (b) that activity might lead to a discharge mentioned in paragraph 3(1)(a), (b) or (c).

(2) The regulator may serve a notice on the person requiring the person, from the date the notice takes effect, to hold an environmental permit authorising the carrying on of the activity.

(3) A notice under sub-paragraph (2) takes effect on the date specified in it, but—

- (a) a notice served for the purpose of paragraph 11 must not take effect until at least 6 months after it is served, and
- (b) a notice served for the purpose of paragraph 12, or for any other purpose, must not take effect until at least 3 months after it is served.

### Notice in relation to a highway drain

**11.** A highway authority or other person entitled to keep open a highway drain by virtue of section 100 of the 1980 Act <sup>M1</sup> who operates a highway drain other than under and in accordance with an environmental permit is not guilty of an offence under regulation 38(1) unless—

- (a) the regulator has served a notice on that person under paragraph 10 of this Schedule, and
- (b) the notice has taken effect.

#### Marginal Citations

**M1** Section 100 was amended by paragraph 21 of Schedule 4 to the [Local Government Act 1985 \(c. 51\)](#), [paragraph 62](#) of Schedule 25 to the [Water Act 1989 \(c. 15\)](#), [paragraph 36\(1\)](#) of Schedule 1 to the [Water Consolidation \(Consequential Provisions\) Act 1991 \(c. 60\)](#) and paragraph 9 of Schedule 7 to the [Local Government \(Wales\) Act 1994 \(c. 19\)](#).

### Guidance

**12.**—(1) The appropriate authority may issue guidance to persons causing or liable to cause inputs of pollutants to groundwater with respect to the steps they must take to prevent or limit those pollutants from entering groundwater.

(2) The regulator must take into account whether or not such guidance is or is likely to be complied with before taking any enforcement action under these Regulations.

(3) Guidance must be publicised as the appropriate authority sees fit.

### Liability resulting from discharge of sewage effluent from public sewer

**13.**—(1) This paragraph applies for the purpose of determining liability for a groundwater activity that consists of a discharge of sewage effluent from a discharging sewer vested in a discharging undertaker.

(2) A discharging undertaker causes a discharge of sewage effluent if—

- (a) matter included in the discharge is received by the discharging undertaker into the discharging sewer or into any other sewer or works vested in it,

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- (b) the discharging undertaker was bound (either unconditionally or subject to conditions which were observed) to receive the matter into the discharging sewer or other sewer or works, and
  - (c) sub-paragraph (3) does not apply.
- (3) This sub-paragraph applies if, before the discharging undertaker discharges the sewage effluent from the discharging sewer, the sending undertaker, under an agreement with the discharging undertaker under section 110A of the Water Industry Act 1991 <sup>M2</sup>, discharges the sewage effluent through a main connection into—
- (a) the discharging sewer, or
  - (b) any other sewer or works vested in the discharging undertaker.
- (4) If sub-paragraph (3) applies, the sending undertaker causes the discharge if—
- (a) matter included in the discharge was received by the sending undertaker into a sewer or works vested in it, and
  - (b) it was bound (either conditionally or subject to conditions which were observed) to receive that matter into that sewer or works.
- (5) [<sup>F9</sup>In relation to Wales, a sewerage undertaker] is not guilty of an offence under regulation 38(1) 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.
- [<sup>F10</sup>(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.]
- (6) A person is not guilty of an offence under regulation 38(1) in relation to a discharge which the person caused or knowingly permitted to be made into a sewer or works vested in a sewerage undertaker if that undertaker was bound to receive the discharge, either unconditionally or subject to conditions which were observed.

#### Textual Amendments

- F9** Words in Sch. 22 para. 13(5) substituted (2.10.2023) by [The Environmental Permitting \(England and Wales\) \(Amendment\) \(England\) Regulations 2023 \(S.I. 2023/651\)](#), regs. 1(2), **7(c)(i)**
- F10** Sch. 22 para. 13(5A) inserted (2.10.2023) by [The Environmental Permitting \(England and Wales\) \(Amendment\) \(England\) Regulations 2023 \(S.I. 2023/651\)](#), regs. 1(2), **7(c)(ii)**

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#### **Marginal Citations**

**M2** 1991 c. 56; section 110A was inserted by section 45 of the [Competition and Service \(Utilities\) Act 1992](#) (c. 43) and substituted by section 9(1) of the [Water Act 2014](#) (c. 21).

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