

# PARLIAMENTARY DEBATES

HOUSE OF COMMONS  
OFFICIAL REPORT

Third Delegated Legislation Committee

DRAFT ENVIRONMENTAL PERMITTING  
(ENGLAND AND WALES) (AMENDMENT)  
(ENGLAND) REGULATIONS 2023

*Tuesday 2 May 2023*

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*Chair:* MARTIN VICKERS

† Churchill, Jo (*Vice-Chamberlain of His Majesty's Household*)

Courts, Robert (*Witney*) (Con)

† Eustice, George (*Camborne and Redruth*) (Con)

† Glindon, Mary (*North Tyneside*) (Lab)

† Graham, Richard (*Gloucester*) (Con)

Hardy, Emma (*Kingston upon Hull West and Hessle*) (Lab)

† Hart, Sally-Ann (*Hastings and Rye*) (Con)

† Holmes, Paul (*Eastleigh*) (Con)

Johnson, Kim (*Liverpool, Riverside*) (Lab)

† Jones, Ruth (*Newport West*) (Lab)

† McDonnell, John (*Hayes and Harlington*) (Lab)

† Mayhew, Jerome (*Broadland*) (Con)

† Mills, Nigel (*Amber Valley*) (Con)

† Pow, Rebecca (*Parliamentary Under-Secretary of State for Environment, Food and Rural Affairs*)

† Spellar, John (*Warley*) (Lab)

Tarry, Sam (*Ilford South*) (Lab)

† Wheeler, Mrs Heather (*South Derbyshire*) (Con)

Jonathan Finlay, *Committee Clerk*

† **attended the Committee**

# Third Delegated Legislation Committee

Tuesday 2 May 2023

[MARTIN VICKERS *in the Chair*]

## Draft Environmental Permitting (England and Wales) (Amendment) (England) Regulations 2023

6 pm

**The Parliamentary Under-Secretary of State for Environment, Food and Rural Affairs (Rebecca Pow):** I beg to move,

That the Committee has considered the draft Environmental Permitting (England and Wales) (Amendment) (England) Regulations 2023.

It is a pleasure to have you in the Chair this evening, Mr Vickers. The draft regulations were laid before the House on 23 March. The purpose of the statutory instrument is to make nine minor amendments to the Environmental Permitting (England and Wales) Regulations 2016 as applied to groundwater activities.

Groundwater is a critical national resource. It provides a clean and reliable source of drinking water, plays a vital role across many industry sectors and supports our ecosystems. The Government are committed to ensuring that the quality of our groundwater resources is protected. In the face of growing pressures from climate change and population growth, it is important to optimise the regulatory tools available for managing and protecting groundwater.

The Environmental Permitting (England and Wales) Regulations 2016 are an effective tool for managing groundwater activities. However, several limitations with the way the regulations implement groundwater protections have been identified, and that has led to inconsistencies in approach in the wider environmental permitting regulations regime. Those limitations can be resolved by the nine amendments, which will support many industries by reducing regulatory burden and costs; facilitating green energy production from, for example, geothermal and ground source heat pumps; and promoting growth, and so they will accelerate permit delivery.

I stress in particular that the statutory instrument aims to provide the Environment Agency with what is really an improved hierarchy of regulatory controls for groundwater activities. It in no way reduces protection of groundwater. These amendments create the right regulatory conditions to promote and allow innovation in the wider circular economy, allowing the appropriate and safe re-use of materials where it is environmentally acceptable.

**Nigel Mills (Amber Valley) (Con):** The Minister will know that in former mining areas, we still have lots of former mine workings where mine water interacts with groundwater. Could she reassure us that there is no loosening of the controls here, and that stuff cannot be done to move that water around and risk having dirty water put where we do not want it? There is nothing here that changes that protection at all, is there?

**Rebecca Pow:** I thank my hon. Friend for that really important point. I stress that we are not changing the permits that are already in place and that, critically, must be in place; in fact, we are opening up the opportunity to have a better look at how the whole system works. Indeed, some things will now need to be permitted that were previously not looked at as closely as the mines, for example, so I can give my hon. Friend that reassurance.

Currently, groundwater activities can be permitted only through the use of bespoke environmental permits, which are the highest level of permits—they would relate to coal mines and so forth. My hon. Friend the Member for Amber Valley raised a good point, and that will not change. However, in many cases it can result in unnecessary costs and, in some cases, unnecessary regulatory burden to business. The statutory instrument will give the regulators the ability to grant other types of permits, such as standard rules permits and mobile plant permits. These non-bespoke permits are significantly less costly and will reduce the administrative burden on businesses while, importantly, maintaining environmental standards. The statutory instrument will also introduce exemptions from the requirement to have an environmental permit for new cemeteries that pose a low risk of pollution to the groundwater environment.

The public consultation that we conducted on all the measures that I am describing received 264 responses, and almost all the proposals received majority support. The only exception was the proposal on cemeteries, which received some significant opposition. I have engaged with our all-party parliamentary group for funerals and bereavement, and I met them to listen to all their views. The APPG, too, consulted widely in the industry, so following the feedback and further discussion with key stakeholders, adjustments have been made to the cemetery-specific amendments to enable greater clarity and ease of implementation.

Clarity has been added to the draft statutory instrument so that existing cemeteries will be exempt automatically from permitting, unless the regulators are made aware of proven groundwater pollution. The adjustments have been tested in targeted engagement with stakeholders. Controls will be applied to prevent groundwater pollution by currently uncontrolled pollutants such as heat and micro-organisms.

**Richard Graham (Gloucester) (Con):** If I understand paragraph 7.15 of the explanatory notes correctly—that is the one about exemptions for cemeteries from the requirement for an environmental permit—the draft regulations will mean that existing cemeteries do not need an environmental permit, and new cemeteries will be exempt if their risk of pollution is calculated as being low, but there will be some further explanation of that definition of low risk. Is that correct?

**Rebecca Pow:** I thank my hon. Friend for being so clear, because that is exactly what is stated. If a cemetery is in an area where there might be some implications for the groundwater, the Environment Agency will become involved and permits might be needed. I will get some clearer detail in a minute, but with particular procedures in some burials—potentially involving certain chemicals—one might want permits to be involved. I can get more clarity on that for my closing speech, if that is all right with him.

Heat is now being added as a pollutant. The majority of closed-loop ground heat pump activities will be exempt from the requirement to have an environmental permit. That is to deal with the growth in the ground source heat pump industry. The fact is that they are closed-loop systems—the water is not going into the ground, because it is in a closed loop—so they are considered to be suitable for exemption from requirements unless they are near a protected site or ancient woodland, in which case they would need a permit, just to be super-sure that there is no potential impact from any heat on the flora.

The draft statutory instrument will also help to fix a loophole in the general binding rules for small sewage discharges, which are being exploited, resulting in harm to nearby environmental habitats and local water quality. Thus, the new rules will reduce the risk of groundwater pollution. An example of that is caravan sites, where landowners might be escaping the need for any kind of regulation because each caravan gets rid of its own sewage, instead of it all coming into one area. The measure is considered necessary and was raised in the consultation.

The existing wording of the Environmental Permitting (England and Wales) Regulations 2016 is unclear about the defence that applies to the breach of permit conditions. The draft statutory instrument will help to bring clarity around the liability of sewerage undertakers for breaches of permit conditions that are due to specific circumstances beyond their control. One example of such a breach is an unlawful discharge of waste water into the sewer that breaches the chemical limits of the water company's permit. The statutory instrument clarifies all that. It does not reduce any protections; in a way, it strengthens them.

The current list of exemptions from the prohibition on direct discharges to groundwater needs to be updated to bring regulations in line with current operational practices and facilitate energy recovery and the latest green technology. The instrument updates that list. There will be a requirement for operators of onshore oil and gas facilities to apply to surrender their groundwater activity permits. They will need to satisfy the regulators that any pollution issues are remediated and that there are no ongoing risks to the groundwater environment at the point of decommissioning or that may arise in future. This measure will ensure that the environment is better protected.

The draft regulations will bring about benefits for groundwater quality, reduce unnecessary costs to businesses and help to ensure that Government resources are being used most effectively to protect and preserve groundwater quality for future generations.

6.11 pm

**Ruth Jones** (Newport West) (Lab): It is good to see you in the Chair, Mr Vickers; I think this is the first time that I have served under your chairmanship. It is good to join with the Minister and colleagues from around the House this evening. I suspect that colleagues of all parties would probably prefer to be out knocking doors as we approach Thursday, but there is no better place to be discussing the policy of the Department for Environment, Food and Rural Affairs than with you, Mr Vickers, and the Minister.

The proposed changes contained in the statutory instrument seek to improve the regulatory tools available to the Environment Agency. We therefore have no plans

to oppose the legislation this evening, but before anyone rushes to the door, there are a number of outstanding questions that I want the Minister to address now or in writing after the sitting. As colleagues will know, the regulations make amendments to the Environmental Permitting (England and Wales) Regulations 2016 in relation to the management and protection of groundwater quality in England. I note that regulation 3 makes amendments to definitions in regulation 2 of the 2016 regulations and inserts several new definitions in that provision, for example a definition of groundwater mobile plant. Will the Minister outline what engagement took place with stakeholders and experts in the drafting of those new definitions?

Regulation 4 makes amendments to regulation 24 of the 2016 regulations, to the effect that environmental permits for activities relating to hydrocarbon exploration or extraction, or that intersect a hydrocarbon formation, may be surrendered by notifying the Environment Agency. The hon. Member for Amber Valley raised that point earlier. It would be helpful to know exactly what that notification process looks like, and what discussions have taken place with the Environment Agency to ensure that there is a speedy process for receiving said notifications.

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 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. I am grateful to the hon. Member for Gloucester for asking a question about that and to the Minister for clarifying the situation. The Committee knows why cemeteries are exempt, but it would be helpful to know what the monitoring process is for those conditions and what enforcement there will be if they are not 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. The Minister will not be surprised to know that that part of the draft regulations has raised questions, not least with our constituents, who are concerned about the waste in their waters. It would be helpful to hear what recent engagement there has been between her Department and the leadership of Britain's water companies. Will she also set out what further powers the Government plan to give the Environment Agency to ensure that we can finally clean our water, as Labour will when we are in government?

The draft regulations are broadly technical, so I hope that my questions will allow for a greater dive into the detail. I look forward to a clear, detailed response from the Minister and her officials.

**The Chair:** I see no one else indicating that they wish to speak, so I call the Minister.

6.15 pm

**Rebecca Pow:** Thank you, Mr Vickers; that gives me no time to get my answers together. I thought that perhaps our former Secretary of State, my right hon. Friend the Member for Camborne and Redruth, would contribute.

**John McDonnell** (Hayes and Harlington) (Lab): Can I give the Minister some more time?

**Rebecca Pow:** No—I am fine, honestly.

**John McDonnell:** I have a question anyway.

**Rebecca Pow:** Shall I begin, and then I will be delighted to answer the right hon. Member's question? I am very grateful to the shadow Minister for her comments, and for being helpful and constructive in allowing me to say a bit more about one or two of the items that I mentioned.

The measure will optimise the regulatory tools available to us for managing and protecting groundwater quality. It will not reduce protections; indeed, it will strengthen them, giving the EA a greater range of tools. That is something that business and industry have come to us about in many different areas. The new tools will be more proportionate to the risk. If matters are deemed to be very low risk, the EA will be more generic in its approach. Other more complex areas will continue to be bespoke, as at present with the mines and so forth. Some responses will therefore be less costly, and potentially more speedily delivered. For example, if the EA has to react to a discharge, it might speed up its response. There are an awful lot of positives in improving the hierarchy of regulatory controls for groundwater. Including extra pollutants such as heat will be of great benefit.

On the mobile plant question, again, this is something that business and industry asked for particularly in the consultation. It is a well-recognised term used for waste activities. It is long established, and a lot of discussion went on with industry about it.

Reference was also made to cemeteries. Exactly as my hon. Friend the Member for Gloucester described, a new cemetery will not need to get a permit unless there are deemed to be specific reasons for one, in which case the Environment Agency will work with the cemetery operator to ensure that the right conditions are met. A permit might be needed if the cemetery were near a vulnerable aquifer, or if there were a significant number of burials. Say there was a terrible incident, or something like that—no, I will not say that. Also, if a cemetery were in close proximity to vulnerable water users, public water suppliers, private water suppliers or chalk streams, a permit would be considered. I hope that that gives a bit more clarity.

**Ruth Jones:** I am grateful to the Minister for describing and outlining examples, but the question was more about the monitoring process. How is this going to be monitored and what will the enforcement process be?

**Rebecca Pow:** We have a well-established process for the regional monitoring of groundwater. Any long-term trends in quality and in what is found in the groundwater are monitored, and we have research programmes looking into the impact at regulated facilities. I hope that helps

to clarify that that is an important part of checking that what is in place is doing the right thing. Just out of interest, areas that might not need a permit are clay areas or areas where there are very small numbers of burials. I hope that that has dealt with the death section of this SI.

The shadow Minister asked about the onshore oil and gas industry's surrendering of permits. An oil and gas operator can send a notification to the Environment Agency stating that it no longer requires a permit for its discharge. An application to surrender the environmental permit will require evidence to demonstrate that there has been no impact on the environment from that discharge at the onshore oil and gas site. This amendment will ensure that there are no ongoing risks to the groundwater environment at the point of decommissioning, or any future likelihood of pollution occurring. I hope that that answers the question.

**John McDonnell:** Before I vote on these things, I do occasionally try to understand them. Paragraph 7.22 of the explanatory notes clarifies the defence of sewerage undertakers who are in breach of permit conditions. That relates to regulation 7(c), which inserts new sub-paragraph (5A) into schedule 22 to the 2016 regulations. New sub-paragraph (5A) states that a sewerage undertaker is not guilty of an offence, first, if it did not do it—understood—and, secondly, if it

“could not reasonably have been expected to prevent the discharge into the sewer or works.”

Understood. But sub-paragraph (5A)(b) states that the undertaker is not in breach if it

“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”.

That seems to be a huge blanket exemption from the sewerage undertaker's responsibility for ensuring that discharge is leaked properly and complies with any conditions attached. If the Minister wants to clarify the answer to that question in writing, I am happy for her to do so.

**Rebecca Pow:** I thank the right hon. Gentleman for that, and he is absolutely right that it is important to understand what we are talking about. This is very detailed. I do have some notes here, but if it suits him, I will put the answer to his question in writing, and I will share it with the shadow Minister as well, because I think it is important to clarify that. We have done so, because we have updated that particular section of the explanatory notes, but I will get back to him on that.

I think that brings me to the end of my points. I thank the shadow Minister for supporting this SI, albeit with some testy questions, and I commend it to the Committee.

*Question put and agreed to.*

6.23 pm

*Committee rose.*



