
STATUTORY INSTRUMENTS

1998 No. 2746

ENVIRONMENTAL PROTECTION

The Groundwater Regulations 1998

<i>Made</i>	- - - -	<i>6th November 1998</i>
<i>Laid before Parliament</i>		<i>11th November 1998</i>
<i>Coming into force</i>		
<i>regulations 1 and 16(1)</i>		<i>2nd December 1998</i>
<i>regulation 23</i>		<i>1st January 1999</i>
<i>all other provisions</i>		<i>1st April 1999</i>

The Secretary of State for the Environment, Transport and the Regions, the Secretary of State for Wales and the Secretary of State for Scotland, being Ministers designated⁽¹⁾ for the purposes of section 2(2) of the European Communities Act 1972⁽²⁾ in relation to measures relating to the prevention, reduction and elimination of pollution of water, acting jointly in exercise of the powers conferred on them by section 2(2) of that Act, hereby make the following Regulations:

Citation, extent, commencement and interpretation

1.—(1) These Regulations may be cited as the Groundwater Regulations 1998 and shall come into force—

- (a) in the case of this regulation and regulation 16(1), on 2nd December 1998;
- (b) in the case of regulation 23, on 1st January 1999;
- (c) in the case of all other provisions, on 1st April 1999.

(2) These Regulations do not extend to Northern Ireland.

(3) In these Regulations—

“the Groundwater Directive” means Council Directive [80/68/EEC](#)⁽³⁾;

“the Agency”—

- (a) in relation to England and Wales, means the Environment Agency⁽⁴⁾;

(1) S.I.1989/2393.

(2) 1972 c. 68.

(3) OJ No L 20, 26.1.1980, p.43.

(4) The Environment Agency was established by section 1 of the Environment Act [1995 \(c. 25\)](#).

- (b) in relation to Scotland, means the Scottish Environment Protection Agency⁽⁵⁾;
 “authorisation” means—
- (a) an authorisation under regulation 18 or 19;
 - (b) a discharge consent within the meaning of section 91(8) of the Water Resources Act 1991⁽⁶⁾;
 - (c) a discharge consent under Part II of the Control of Pollution Act 1974⁽⁷⁾; and
 - (d) an authorisation under Part I of the Environmental Protection Act 1990⁽⁸⁾ in relation to a process designated for central control under section 2 of that Act⁽⁹⁾;
- “direct discharge” means the introduction into groundwater of any substance in list I or II without percolation through the ground or subsoil;
- “groundwater” means all water which is below the surface of the ground in the saturation zone and in direct contact with the ground or subsoil;
- “highway drain” means a drain which a highway authority or other person is entitled to keep open by virtue of section 100 of the Highways Act 1980⁽¹⁰⁾;
- “indirect discharge” means the introduction into groundwater of any substance in list I or II after percolation through the ground or subsoil;
- “pollution” means the discharge by man, directly or indirectly, of substances or energy into groundwater, the results of which are such as to endanger human health or water supplies, harm living resources and the aquatic ecosystem or interfere with other legitimate uses of water;
- “road drain” means a drain which a roads authority is obliged or entitled to keep open by virtue of section 31 of the Roads (Scotland) Act 1984⁽¹¹⁾;
- “substance in list I” and “substance in list II” shall have the meaning given by paragraphs 1 and 2 of the Schedule to these Regulations (and paragraphs 3 and 4 of that Schedule shall have effect); and other expressions used in these Regulations which are also used in the Groundwater Directive shall have the same meaning as in that Directive.

Exclusions from these Regulations

- 2.—(1) Nothing in these Regulations shall apply in relation to—
- (a) any discharge of matter containing radioactive substances;
 - (b) any discharge of domestic effluent from an isolated dwelling which is not connected to a sewerage system and which is situated outside any area protected for the abstraction of water for human consumption;
 - (c) any discharge found by the Agency to contain substances in list I or II in a quantity and concentration so small as to obviate any present or future danger of deterioration in the quality of the receiving groundwater; or
 - (d) any activity for which a waste management licence (within the meaning of Part II of the Environmental Protection Act 1990) is required.

⁽⁵⁾ The Scottish Environment Protection Agency was established by section 20 of the Environment Act 1995.

⁽⁶⁾ 1991 c. 57; section 91(8) was amended by paragraph 143(4) of Schedule 22 to the Environment Act 1995.

⁽⁷⁾ 1974 c. 40; Part II of the Act was amended in relation to Scotland by Schedule 23 to the Water Act 1989 (c. 15) and Schedule 16 to the Environment Act 1995.

⁽⁸⁾ 1990 c. 43.

⁽⁹⁾ See S.I. 1991/472 as amended by S.I. 1991/836, 1992/614, 1993/1749, 1993/2405, 1994/1271, 1994/1329, 1995/3247, 1996/2678 and 1998/767.

⁽¹⁰⁾ 1980 c. 66.

⁽¹¹⁾ 1984 c. 54.

(2) The Agency shall from time to time publish a summary of its findings under paragraph (1) (c) above in such manner as it considers appropriate and shall make copies of any such summary available to the public free of charge.

Discharge of functions

3. The Agency and the Secretary of State shall for the purposes of implementing the Groundwater Directive discharge their respective functions under these Regulations, Part II of the Control of Pollution Act 1974 (control of water pollution—Scotland), Part III of the Water Resources Act 1991 (control of water pollution—England and Wales) and Part I of the Environmental Protection Act 1990 (integrated pollution control) in accordance with the following provisions of these Regulations.

Measures to prevent the introduction into groundwater of list I substances

4.—(1) An authorisation shall not be granted if it would permit the direct discharge of any substance in list I.

(2) An authorisation shall not be granted in relation to—

- (a) the disposal, or tipping for the purpose of disposal, of any substance in list I which might lead to an indirect discharge of that substance; or
- (b) any other activity on or in the ground which might lead to an indirect discharge of any substance in list I, unless that activity has been subjected to prior investigation.

(3) In the light of any such investigation—

- (a) an authorisation shall not be granted if it would permit the indirect discharge of any substance in list I; and
- (b) any authorisation granted must include conditions which require that all necessary technical precautions are observed to prevent an indirect discharge of any substance in list I.

(4) The following powers shall be exercised if it is necessary to do so for the purpose of preventing the introduction into groundwater of substances in list I—

- (a) in the case of any discharge from a highway drain or road drain which contains any such substance, the powers conferred by section 86(1) of the Water Resources Act 1991 or section 30G(1) of the Control of Pollution Act 1974 (prohibition of certain discharges by notice);
- (b) in the case of any activity falling within paragraph (2)(b) above and not falling within subparagraph (a) above, the powers conferred by regulation 19.

(5) However, a discharge of any substance in list I into groundwater may be authorised after prior investigation if—

- (a) the investigation reveals that the groundwater is permanently unsuitable for other uses (especially domestic or agricultural uses), presence of that substance does not impede exploitation of ground resources and conditions are imposed which require that all technical precautions are observed to prevent that substance from reaching other aquatic systems or harming other ecosystems; or
- (b) the discharge is due to the re-injection into the same aquifer of water used for geothermal purposes, water pumped out of mines and quarries or water pumped out for civil engineering works.

Measures to limit the introduction into groundwater of list II substances to avoid pollution

5.—(1) An authorisation shall not be granted in relation to—

- (a) any direct discharge of any substance in list II;
 - (b) any disposal or tipping for the purpose of disposal of any substance in list II which might lead to an indirect discharge of that substance;
 - (c) any other activity on or in the ground which might lead to an indirect discharge of any substance in list II, unless that activity has been subjected to prior investigation.
- (2) An authorisation may only be granted if, in the light of any such investigation, it includes conditions which require that all necessary technical precautions are observed to prevent groundwater pollution by any substance in list II.
- (3) The following powers shall be exercised if it is necessary to do so for the purpose of avoiding pollution of groundwater by substances in list II—
- (a) in the case of any discharge from a highway drain or road drain which contains such substances, the powers conferred by section 86(1) of the Water Resources Act 1991 or section 30G(1) of the Control of Pollution Act 1974 (prohibition of certain discharges by notice);
 - (b) in the case of any activity falling within paragraph (1)(c) above and not falling within sub-paragraph (a) above, the powers conferred by regulation 19.

Artificial recharges for the purposes of groundwater management

6. Artificial recharges may be authorised on a case by case basis for the purpose of groundwater management notwithstanding regulations 4 and 5, but such authorisation shall only be granted if there is no risk of polluting groundwater.

Examination required in prior investigation

7. Any prior investigation required by regulation 4 or 5 shall include examination of—
- (a) the hydrogeological conditions of the area concerned;
 - (b) the possible purifying powers of the soil and subsoil; and
 - (c) the risk of pollution and alteration of the quality of the groundwater from the discharge, and shall establish whether the discharge of substances into groundwater is a satisfactory solution from the point of view of the environment.

Surveillance of groundwater

8. An authorisation which is subject to any of the provisions of regulation 4, 5 or 6 may only be granted if the Agency has checked that the groundwater (and, in particular, its quality) will undergo the requisite surveillance.

Terms of authorisation of discharge of substances in list I or II

- 9.—(1) This regulation applies where—
- (a) a direct discharge of any substance in list I or II is authorised in accordance with regulation 4(5) or 5; or
 - (b) waste water disposal which inevitably causes an indirect discharge of any substance in list II is authorised in accordance with regulation 5.
- (2) In a case where this regulation applies the authorisation shall specify in particular—
- (a) the place where the discharge may be made;
 - (b) the method of discharge which may be used;

- (c) the essential precautions which must be taken, paying particular attention to the nature and concentration of any substance in list I or II present in the effluent, the characteristics of the receiving environment and the proximity of water catchment areas, in particular those for drinking, thermal and mineral water;
- (d) the maximum quantity of any such substance permissible in the effluent during one or more specified periods of time and the appropriate requirements as to the concentration of any such substance;
- (e) the arrangements for monitoring effluents discharged into groundwater;
- (f) if necessary, measures for monitoring groundwater, and in particular its quality.

Terms of authorisation for disposal or tipping for the purpose of disposal

10.—(1) This regulation applies where—

- (a) any disposal, or tipping for the purpose of disposal, of any matter which might lead to an indirect discharge of any substance in list I or II is authorised in accordance with regulation 4 or 5; and
- (b) in the case of a disposal, it is not a disposal of waste water to which regulation 9(1)(b) applies.

(2) In a case where this regulation applies the authorisation shall specify in particular—

- (a) the place where the disposal or tipping may be done;
- (b) the methods of disposal or tipping which may be used;
- (c) the essential precautions which must be taken, paying particular attention to the nature and concentration of any substance in list I or II present in the matter to be disposed of or tipped, the characteristics of the receiving environment and the proximity of water catchment areas, in particular those for drinking, thermal and mineral water;
- (d) the maximum quantity permissible, during one or more specified periods of time, of the matter containing any such substance and, where possible, of any such substance, to be tipped or disposed of and the appropriate requirements as to the concentration of any such substance;
- (e) the technical precautions to be implemented to prevent any discharge into groundwater of any substance in list I and any pollution of such water by any substance in list II,
- (f) if necessary, the measures for monitoring the groundwater, and in particular its quality.

Period and conditions of authorisation

11.—(1) An authorisation of—

- (a) a discharge of any substance in list I or II; or
- (b) any disposal, or tipping for the purpose of disposal, of any matter which might lead to an indirect discharge of any substance in list I or II, may be granted for a limited period only, and must be reviewed at least once in every four years when it may be renewed, amended or revoked.

(2) If the applicant for any such authorisation states, or it is otherwise evident, that he will be unable to comply with the conditions of the proposed authorisation, the authorisation shall not be granted.

(3) The Agency shall monitor compliance with the conditions of any such authorisation and the effects of discharges on groundwater.

(4) If the conditions of any such authorisation are not complied with, the appropriate steps shall be taken to ensure compliance and, if necessary, the revocation of the authorisation.

Inventory of authorisations

- 12.** The Agency shall keep an inventory of authorisations of—
- (a) direct or indirect discharges of any substance in list I;
 - (b) direct discharges of any substance in list II; and
 - (c) artificial recharges for the purposes of groundwater management.

Application of measures not to lead to pollution of groundwater

13. The application of the measures taken pursuant to these Regulations may on no account lead, either directly or indirectly, to pollution of groundwater.

Application of provisions of water pollution legislation

14.—(1) A person shall be treated as contravening section 85 of the Water Resources Act 1991 or, as the case may be, section 30F(12) of the Control of Pollution Act 1974 (water pollution offences) if—

- (a) he causes or knowingly permits—
 - (i) the disposal or tipping for the purposes of disposal of any substance in list I or II in circumstances which might lead to an indirect discharge of that substance into groundwater unless it is carried on under and in accordance with an authorisation granted under regulation 18; or
 - (ii) any activity to be carried on in contravention of a prohibition imposed under regulation 19 or any authorisation granted under that regulation; or
- (b) he contravenes the conditions of any authorisation under regulation 18 or 19.

(2) Section 88(1) of the Water Resources Act 1991 and section 30I(1)(13) of the Control of Pollution Act 1974 (defences to water pollution offences in respect of authorised discharges) shall apply in relation to an authorisation under regulation 18 or 19 as if the reference—

- (a) in section 88(1)(a) to a consent under Chapter II of Part III of the Water Resources Act 1991;
- (b) in section 30I(1) to a consent under Part II of the Control of Pollution Act 1974; included a reference to such an authorisation.

(3) Sections 191A and 191B of the Water Resources Act 1991(14) and sections 42A and 42B of the Control of Pollution Act 1974(15) (exclusion from registers of information affecting national security and certain confidential information) shall apply in relation to the particulars mentioned in regulation 22(1) as if information furnished for the purposes mentioned in paragraphs (a) to (c) of subsection (2) of section 191A or of section 42A included information furnished to the Agency for the purposes of regulation 18 or 19.

(4) Paragraph 11 of Schedule 10(16) to the Water Resources Act 1991 (transfer of discharge consents) shall apply in relation to an authorisation under regulation 18—

- (a) as if any reference to a consent included a reference to such an authorisation;

(12) Inserted by paragraph 2 of Schedule 16 to the Environment Act 1995.

(13) Inserted by paragraph 2 of Schedule 16 to the Environment Act 1995.

(14) Inserted by paragraph 170 of Schedule 22 to the Environment Act 1995.

(15) Inserted by paragraph 29(20) of Schedule 22 to the Environment Act 1995.

(16) Substituted by paragraph 183 of Schedule 22 to the Environment Act 1995.

- (b) as if references to paragraphs 3 and 6 of that Schedule were references to regulation 18; and
- (c) as if references to carrying on or making discharges were references to carrying on the activities regulated by the authorisation.

Application of section 71 of the Environmental Protection Act 1990

15. Section 71(17) of the Environmental Protection Act 1990 (obtaining of information) shall apply for the purposes of these Regulations as if any reference to functions under Part II of that Act included a reference to functions under these regulations.

Application of sections 41, 42 and 123 of the Environment Act 1995

16.—(1) Sections 41 and 42 of the Environment Act 1995 (charging schemes) shall apply in relation to an authorisation under regulation 18 or 19 as if any reference to an environmental licence included a reference to such an authorisation.

(2) Section 123 of the Environment Act 1995 (provisions relating to the service of documents) shall apply to the service of notices under regulation 18 or 19 as it applies to the service of documents under that Act.

Amendment of the Waste Management Licensing Regulations

17. For the last two entries in Table 5 in paragraph 3(1) of Schedule 4 to the Waste Management Licensing Regulations 1994(18), there shall be substituted—

“The Environment Agency or the Secretary of State.	Their respective functions in relation to— <ul style="list-style-type: none">(a) consents under Chapter II of Part III of the Water Resources Act 1991 (offences in relation to pollution of water resources) for any discharge of waste in liquid form other than waste waters;(b) authorisations under regulation 18 of the Groundwater Regulations 1998 (disposal or tipping of substances in list I or II); and(c) notices under regulation 19 of the Groundwater Regulations 1998 (prohibition or authorisation of activities which may result in indirect discharges of substances in list I or II).
The Scottish Environment Protection Agency or the Secretary of State.	Their respective functions in relation to— <ul style="list-style-type: none">(a) consents under Part II of the Control of Pollution Act 1974 (control of water pollution in Scotland) for any discharge of waste in liquid form other than waste waters;

(17) Section 71(2) was amended by paragraph 86(2) of Schedule 22 to the Environment Act 1995.

(18) S.I. [1994/1056](#), to which there are amendments not relevant to these Regulations.

- (b) authorisations under regulation 18 of the Groundwater Regulations 1998 (disposal or tipping of substances in list I or II); and
 - (c) notices under regulation 19 of the Groundwater Regulations 1998 (prohibition or authorisation of activities which may result in indirect discharges of substances in list I or II).”
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Authorisation of disposal or tipping of substances in list I or II

18.—(1) An application for an authorisation for the purposes of regulation 14(1)(a)(i) shall be made in writing to the Agency.

(2) If in any case the Agency considers that there are special reasons why the application should be advertised, it may by notice in writing served on the applicant require him to advertise the application in such manner as may be specified in the notice.

(3) The Agency may either—

- (a) grant an authorisation in writing subject to such conditions as it thinks fit; or
- (b) by notice in writing served on the applicant, refuse the application and the notice shall state the Agency’s reasons for refusal.

(4) The Agency may, by notice in writing served on the person holding an authorisation under this regulation, at any time vary or revoke the authorisation and a notice of variation or revocation shall state the Agency’s reasons.

Notice to prevent or control indirect discharges of substances in list I or II

19.—(1) Subject to paragraph (2), 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 an indirect discharge of any substance in list I or pollution of groundwater as a result of an indirect discharge of any substance in list II, the Agency may serve notice in writing on that person prohibiting him from carrying on that activity or authorising him to carry on that activity subject to such conditions as are specified in the notice and which are necessary to prevent an indirect discharge of any substance in list I or pollution of groundwater as a result of an indirect discharge of any substance in list II.

(2) This regulation shall not apply to the disposal, or tipping for the purpose of disposal, of any substance in list I or II except in a case falling within regulation 23(3) during the period whilst the application in question is pending.

(3) The Agency may at any time, by notice in writing served on the person on whom a notice under paragraph (1) was served, vary or revoke that notice and a notice of variation or revocation shall state the Agency’s reasons.

Appeals

20.—(1) A person may appeal by notice in writing to the Secretary of State against any decision of the Agency under regulation 18 or 19—

- (a) in the case of a decision under regulation 18, within a period of three months; or

- (b) in the case of a decision under regulation 19, within a period of 21 days, beginning in either case with the date on which he was notified of the Agency's decision, or within such longer period as the Secretary of State may allow.
- (2) Where—
 - (a) an application has been made to the Agency in accordance with regulation 18 above; and
 - (b) the Agency has not notified the applicant of its decision in relation to that application within—
 - (i) a period of four months beginning with the date on which it received the application (or, if the application must be advertised, the date on which advertising is completed); or
 - (ii) if the Agency and the applicant agree in writing to a longer period, that period, the applicant may for the purposes of this regulation treat this as a refusal by the Agency of the application and appeal to the Secretary of State.
- (3) An appeal under this regulation shall be made by the appellant serving notice in writing on the Secretary of State and the notice shall state the appellant's grounds of appeal.
- (4) Before determining an appeal under this regulation the Secretary of State shall—
 - (a) take into account any written representations of the appellant and of the Agency; and
 - (b) if requested to do so by the appellant or the Agency, afford them an opportunity of appearing before and being heard by a person appointed by the Secretary of State for the purpose.
- (5) On determining an appeal under this regulation the Secretary of State shall have power to dismiss the appeal or to direct the Agency to take such steps in exercise of its powers under regulation 18 or 19 as the Secretary of State considers appropriate to give effect to his decision on the appeal.

Codes of practice

21.—(1) The Ministers may from time to time approve for the purposes of these Regulations (or withdraw their approval of) codes of practice issued for the purpose of giving practical guidance to persons engaged in any activity falling within regulation 4(2)(b) or 5(1)(c) about the steps they should take to prevent substances in list I from entering groundwater or to avoid pollution of such water by substances in list II.

(2) In deciding whether or not it is necessary to exercise the Agency's powers under regulation 19, the Agency shall consider whether or not any guidance, which is contained in a relevant code of practice for the time being approved under paragraph (1) above, has been, or is likely to be, followed.

- (3) When the Ministers exercise their powers under paragraph (1) above they shall—
 - (a) notify the Agency of their approval (or withdrawal of their approval) of the relevant code of practice; and
 - (b) make such arrangements as they consider appropriate for publicising their approval or, as the case may be, its withdrawal.

(4) The Agency shall make appropriate arrangements for bringing each code of practice for the time being approved under paragraph (1) above to the attention of persons engaged in the relevant activity.

(5) In this regulation "the Ministers" means any Minister of the Crown within the meaning of the Ministers of the Crown Act 1975(19) acting either alone or jointly with one or more such Ministers.

Particulars to be included in registers

22.—(1) Subject to regulation 14(3) and paragraph (2) below, the Agency shall, as soon as reasonably practicable, enter on registers maintained by it under section 190 of the Water Resources Act 1991 or section 41 of the Control of Pollution Act 1974 (pollution control registers) full particulars of—

- (a) any authorisation under regulation 18;
 - (b) any application for such an authorisation;
 - (c) any variation or revocation of such an authorisation;
 - (d) any notice under regulation 19;
 - (e) any variation or revocation of any such notice;
 - (f) any information furnished to the Agency for the purposes of regulation 18 or 19;
 - (g) any monitoring information provided in connection with any authorisation under regulation 18 or 19;
 - (h) any conviction for an offence under section 85 of the Water Resources Act 1991 or section 30F of the Control of Pollution Act 1974 by virtue of regulation 14(1);
 - (i) any finding of the Agency under regulation 2(1)(c), any determination of the Agency under paragraph 1(2) or 2(2) of the Schedule to these Regulations, any notification by the Secretary of State under paragraph 3(2) of that Schedule and any summary published under regulation 2(2) or paragraph 4 of that Schedule; and
 - (j) any code of practice for the time being approved under regulation 21 above.
- (2) Nothing in paragraph (1) above shall require the Agency to keep on a register—
- (a) monitoring information more than four years after that information was entered on the register;
 - (b) other information which has been superseded by later information more than four years after that later information was entered on the register; or
 - (c) information relating to an application for an authorisation under regulation 18 after the application has been withdrawn.

Transitional provisions

23.—(1) This regulation applies where any application is made before 1st April 1999 to the Agency for an authorisation for the purposes of regulation 14(1)(a)(i).

(2) The application shall be dealt with in the same manner as an application made on or after 1st April 1999 but—

- (a) an appeal by virtue of regulation 20(2) shall not be made in relation to the application before 1st August 1999; and
- (b) an authorisation issued before 1st April 1999 in relation to the application shall have effect on and after that date as an authorisation under regulation 18.

(3) Where—

- (a) the application has not been finally disposed of before 1st April 1999; and
- (b) the application relates to an activity which is substantially the same as an activity carried on by the applicant or his predecessor before that date at the place to which the application relates; the Agency shall be deemed to have given the authorisation applied for and the deemed authorisation shall continue in force until the application is finally disposed of or, if before that date a notice under regulation 19 is served on the applicant in relation to the activity in question, until the date of service of that notice.

(4) An application shall be treated as finally disposed of for the purposes of paragraph (1)(3) above on—

- (a) the date on which the application is withdrawn;
- (b) if the Agency gives or refuses its authorisation, the expiration (without an appeal being made) of the time limit for appealing against that decision; or
- (c) if an appeal is duly made against the Agency's decision, the date on which that appeal is determined or withdrawn.

Signed by authority of the Secretary of State for the Environment

30th October 1998

Michael Meacher
Minister of State,
Department of the Environment, Transport and
the Regions

Signed by authority of the Secretary of State for Wales

6th November 1998

Jon Owen Jones
Parliamentary Under Secretary of State, Welsh
Office

Signed by authority of the Secretary of State for Scotland

5th November 1998

Sewel
Parliamentary Under Secretary of State, Scottish
Office

SCHEDULE

Regulation 1(2)

LIST 1

1.—(1) Subject to sub-paragraph (2) below, a substance is in list I if it belongs to one of the following families or groups of substances—

- (a) organohalogen compounds and substances which may form such compounds in the aquatic environment;
- (b) organophosphorus compounds;
- (c) organotin compounds;
- (d) substances which possess carcinogenic, mutagenic or teratogenic properties in or via the aquatic environment (including substances which have those properties which would otherwise be in list II);
- (e) mercury and its compounds;
- (f) cadmium and its compounds;
- (g) mineral oils and hydrocarbons;
- (h) cyanides.

(2) A substance is not in list I if it has been determined by the Agency to be inappropriate to list I on the basis of a low risk of toxicity, persistence and bioaccumulation.

LIST II

2.—(1) A substance is in list II if it could have a harmful effect on groundwater and it belongs to one of the following families or groups of substances—

- (a) the following metalloids and metals and their compounds:

Zinc	Tin
Copper	Barium
Nickel	Beryllium
Chromium	Boron
Lead	Uranium
Selenium	Vanadium
Arsenic	Cobalt
Antimony	Thallium
Molybdenum	Tellurium
Titanium	Silver.

- (b) biocides and their derivatives not appearing in list I;
- (c) substances which have a deleterious effect on the taste or odour of groundwater, and compounds liable to cause the formation of such substances in such water and to render it unfit for human consumption;

- (d) toxic or persistent organic compounds of silicon, and substances which may cause the formation of such compounds in water, excluding those which are biologically harmless or are rapidly converted in water into harmless substances;
 - (e) inorganic compounds of phosphorus and elemental phosphorus;
 - (f) fluorides;
 - (g) ammonia and nitrites.
- (2) A substance is also in list II if–
- (a) it belongs to one of the families or groups of substances set out in paragraph 1(1) above;
 - (b) it has been determined by the Agency to be inappropriate to list I under paragraph 1(2); and
 - (c) it has been determined by the Agency to be appropriate to list II having regard to toxicity, persistence and bioaccumulation.

3.—(1) The Secretary of State may review any decision of the Agency in relation to the exercise of its powers under paragraph 1(2) or 2(2).

(2) The Secretary of State shall notify the Agency of his decision following a review under subparagraph (1) above and it shall be the duty of the Agency to give effect to that decision.

4. The Agency shall from time to time publish a summary of the effect of its determinations under this Schedule in such manner as it considers appropriate and shall make copies of any such summary available to the public free of charge.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations complete the implementation of the Groundwater Directive (Council Directive [80/68/EEC](#)) for England, Wales and Scotland. They supplement regulation 15 of the Waste Management Licensing Regulations 1994 and existing water pollution legislation.

The Regulations require the Environment Agency, the Scottish Environment Protection Agency and the Secretary of State to use their new powers under the Regulations and their existing powers under Part II of the Control of Pollution Act 1974, Part III of the Water Resources Act 1991 and Part I of the Environmental Protection Act 1990 to prevent the direct or indirect discharge of list I substances to groundwater and to control pollution resulting from the direct or indirect discharge of list II substances (regulations 3 to 13).

The new powers are conferred by regulations 14 and 18 to 21 which introduce–

- (a) a new requirement for an authorisation for the disposal, or tipping for the purposes of disposal, of list I or II substances in cases where a waste management licence under Part II of the Environmental Protection Act 1990 is not already required; and
- (b) a new procedure for prohibiting or regulating by notice other activities in or on land which pose an indirect threat to groundwater from list I or II substances.

There are exclusions from the Regulations in relation to radioactive substances, domestic effluent from isolated dwellings, small quantities and concentrations of list I or II substances, and activities

Status: This is the original version (as it was originally made).

for which a waste management licence is required (regulation 2). There are also exceptions from the main controls (subject to certain safeguards) in relation to–

- (a) discharges to groundwater unsuitable for other uses;
- (b) water used for geothermal purposes or pumped out of mines, quarries or civil engineering works; and
- (c) artificial recharges of groundwater for management purposes (regulation 4(5) and 12).

The Regulations apply with modifications certain provisions of the Control of Pollution Act 1974, the Water Resources Act 1991, the Environmental Protection Act 1990 and the Environment Act 1995 and amend the Waste Management Licensing Regulations 1994 in connection with the new controls (regulations 14 to 17).

Regulation 22 deals with information to be included on water pollution registers. Regulation 23 makes transitional provisions in relation to the new authorisation procedure.

A regulatory impact appraisal in respect of these regulations may be obtained from Water Quality Division (Branch 2), Department of the Environment, Transport and the Regions, Floor 3/G17, Ashdown House, 123 Victoria Street, London SW1E 6DE. A copy has been placed in the library of each of the Houses of Parliament.