

## SEMG (7)

### SECURITY AND EMERGENCY MEASURES DIRECTIONS FOR LICENSED WATER SUPPLIERS: NOTIFICATION AND GUIDANCE

[Note: Each will have a different title and will be made when the licence is issued.]

#### NOTIFICATION

##### Paragraph 4(2)(b)

*The Secretary of State and the National Assembly for Wales ('the Assembly') hereby notifies licensed water suppliers ('licensees') that the supply required by paragraph 4(2)(b) of the Direction is not less than 10 litres of drinking water per person per day. In the event of a prolonged incident this is increased to not less than 20 litres of drinking water per person per day.*

#### GUIDANCE

This Guidance is issued in accordance with paragraph 4(4) of the Direction. It also contains the Secretary of State and Assembly's requirements under paragraph 9(2).

##### Paragraph 1

The Direction is enforceable under section 18 of the Water Industry Act 1991.

##### Paragraph 3

This provision is to ensure that, where a water undertaker is providing water to the licensee's customers in an emergency situation, it has all the licensee's facilities and resources available to it. This may be under an access agreement or under a separate agreement with a neighbouring water undertaker. The access or other agreement will cover the question of any payments or indemnities owed to the water undertaker or to the licensee. Ofwat will determine any disputes on the amount of compensation payable where this is covered in an access agreement under section 66D Water Industry Act 1991 (sections 66A to 66C: determinations and agreements).

Paragraph 3 of the Security and Emergency Measures (Water Undertakers) Direction 2006 places a duty on water undertakers if requested by a licensee to make provision in an access agreement for the supply of water to the licensee's customers in an emergency situation.

##### Paragraph 4(1)

Although all licensees are responsible for complying with the Direction, retail licensees may take a view that the requirement to make an emergency plan would be best dealt with by including their operations within the plan of the relevant water undertaker in whose area they are supplying. This would be a matter for negotiation as part of their access agreements. A separate plan would be required for each water company area in which it operated. The plan should be such that they mitigate the likely or actual disruption to the

water supply arising from any civil emergency as described in section 208(7) of the Water Industry Act 1991 or national security event. They should be based on the guidance requirements set out in the Advice Notes produced by the Security Service, in particular Advice Note 9. The planning assumptions should be drawn and prioritised on the basis of risk analysis taking into account the latest advice available and the probability of the disruptions and their consequences for the licensee's customer(s) and others supplied using the same supply system.

#### Paragraph 4(2)(a)

In the first instance, the licensee should endeavour to continue to supply water in accordance with the agreements which they have with their respective customers under the Water Industry Act 1991. The plans should be drawn to reflect this but may also include provision to maintain a piped water supply as long as possible, by any means considered to be reasonable and practicable, for example by the relevant undertaker securing temporary supplies from neighbouring systems possibly at a pressure lower than normal with due regard to the need to ensure that any potable water supplied remains wholesome and fit for human consumption. Generally, this will be a matter for licensees to negotiate with water undertakers.

#### Paragraph 4(2)(b)

The piped supply will be considered to have failed unavoidably if:

- a) there has been a breakdown of the physical water systems (installation) to the extent that it is not possible for the relevant water undertaker to keep the water mains in use, or
- b) that the quality of potable water is such that it is considered unfit for human consumption even if it was boiled.

The legally enforceable quantity of drinking water prescribed in the notification paragraph above refers to supplies by any one or more suitable alternative means such as bowsers, tanks and bottled water ensuring always that the quality of water is wholesome and fit for human consumption at the point of supply, issuing boil notices if necessary.

Provisions for vulnerable sector customers are referred to in paragraph 4(2)(c).

The plans should aim at commencing the distribution of water by alternative means as soon as possible after the failure has occurred with a view to providing at least 10 litres of water per person per day to all those of the licensee's customers affected within the first 24 hours and maintaining this supply until the piped supply is restored.

Whilst the licensee must plan for not less than 10 litres per head per day in accordance with the notification, there may be emergencies where logistical problems prevent this being achieved in the first 24 hours. It is also recognised that for a Major Incident (Advice Note 9 (paragraph 1.4 – Part 2)), the 10 litre requirement may not be achievable until the numbers affected are reduced to a level within the Local Response Plan. Where such

emergencies arise, and a licensee finds that it is unable to meet the requirement in the first 24 hours, then it should inform the Department. In doing so, it should explain why it was unable to supply the minimum requirement of 10 litres and say how much it can provide. The amount will be a matter for the licensee to decide as the Department may take action against the licensee after the incident if it failed to meet the planning requirement. It is important that the licensee keeps in close contact with the Department by telephone and/or e-mail about the situation and the Department will also ask for regular reports on the amount being provided.

In the event of a prolonged incident, the licensee must plan for alternative water supplies of not less than 20 litres per person per day in order to provide customers with some scope to address broader hygiene and other needs, when there is total failure of the piped supply. A prolonged incident is defined as 5 days after a Major Incident is declared. Escalation to a Major Incident invokes a multi-agency response, as provided for in Advice Note 9, paragraph 1.4 – Part 2. In such incidents, the licensee can engage multi-agency responders to provide assistance. In the event of multi-agency responders being unable to deliver an appropriate level of assistance 20 litres per person per day of drinking water will be expected on a best endeavours basis.

In preparing a report on the emergency, the licensee will need to justify to the Department, and any subsequent formal inquiry, why an amount lower than 10 litres or an amount lower than the 20 litres was provided.

#### Paragraph 4(2)(c)

In addition to the provisions of paragraph 4(2)(b), the licensee's plans should take into account the possible higher than average quantities of water needed for those referred to in this paragraph, such as those with kidney dialysis machines at home. Licensees must make plans and arrangements with their customers and respective water undertaker to obtain information available to them about vulnerable people in the premises that licensees are supplying.

#### Paragraph 4(2)(d)

When considering the non-domestic users referred to in this sub paragraph, each licensee needs to look at its own customers to identify the nature of non-domestic users it supplies such as essential food industries, and give due regard to their requirements.

#### Paragraph 4(3)

The ability of the licensee to provide water in an emergency will depend on the resources available. If the licensee's supply fails, it should have agreed arrangements for a water undertaker to make the necessary supply to its customers as referred to in paragraph 4(3)(b). Such an agreement will need to meet the requirements of paragraphs 4(2)(b)-(d).

The relevant access agreement with a water undertaker will cover the question of any payments or compensation payable by or to the water undertaker or by or to the licensee as a result of any emergency or security event. Ofwat will determine under section 66D

Water Industry Act 1991 any disputes on the terms and conditions and any amounts payable under access agreements. Alternatively, the licensee may make arrangements with a different undertaker for supplies of water during an emergency or security event. The terms of those arrangements will have to be agreed between the licensee and the undertaker in question.

#### Paragraph 4(5)

The list contained in this paragraph should not be considered exhaustive. Licensees may include any additional provisions deemed necessary to complete their plans.

#### Paragraph 4(7)

Licensees should submit their plans to the Secretary of State and the Assembly as the licences will apply throughout England and Wales. The plans submitted should be of a generic nature and provide an overview of the contents of the full plans, together with the certified statement referred to in paragraph 9. The Secretary of State and/or the Assembly may ask for further details such as the full certified plans or details of certain aspects of them for example, those points qualified by the certifier. Each subsequent year, on or before 1 April, the Secretary of State and Assembly should be sent a certified statement together with notification of any revision to the plans and if major changes have been made, a revised copy of the generic plans. If no changes have been made, reference to this fact should be made in the certified statement. The timetable inserted under this paragraph takes account of the lead time required to develop plans.

#### Paragraph 5

Whilst licensees may have regard to, and take into account, facilities which they can secure from outside sources to complement their own resources, the onus is nevertheless upon them to ensure they have sufficient equipment in place taking into account the fact that these additional facilities may not always be available, or available in sufficient numbers, in the event of a regional/widescale emergency. If difficulties are encountered in getting additional help from other agencies or the armed forces, Defra or Welsh Assembly Government may be able to facilitate.

#### Paragraph 7

The requirement to consult includes secondary undertakers within the meaning of section 66C of the Water Industry Act 1991.

As part of the consultation and implementation of their plans, licensees may wish to enter into bi-lateral or multi-lateral Memoranda of Understanding as a means of ensuring that their plans and actions are properly co-ordinated with others such as local authorities, health authorities, Environment Agency, blue light services and Consumer Council for Water.

## Paragraph 8

The first notification to the Secretary of State or the Assembly of an actual or likely emergency should initially be by telephone using the contact list in the Emergency Telephone Directory (issued by Defra). This should be followed, if necessary, by further reports in such form as may be requested. This notification will not be necessary if notification has been made under any Direction issued under section 202 of the Water Industry Act 1991.

Where an incident is declared as a Major Incident, the Secretary of State is to be informed without delay.

## Paragraph 9(1)

The date inserted under this paragraph (together with the dates inserted in paragraphs 4(6) and (7)) takes account of the lead time required to develop plans.

## Paragraph 9(2)

This guidance sets out the matters which the licensee and certifier should take into account when preparing and certifying the statement required in paragraph 9(1) of the Direction. In essence, the licensee's statement and the certifier's endorsement should confirm that all the requirements of the Direction are being met. This should be achieved in two stages. Firstly, the licensee should produce a statement confirming that in its opinion, the plans and any revision to them accord with paragraph 4 of the Direction and that all necessary facilities required under paragraph 5 are available. Secondly, the certifier should endorse the statement to the effect that the licensee's reasonable interpretation of the requirements of the Direction have been met.

He should do this after he has:

- a) checked that the licensee's planning is based on reasonable assumptions;
- b) looked at the strategies included in the plans to see if they are practicable and accord with the planning assumptions in paragraph 4(2);
- c) assessed that the facilities required under paragraph 5 and the provisions it has available, such as those listed in paragraph 4(5) of the Direction, are sufficient; and
- d) carried out a physical check of the facilities and provisions including the security of installations on a random basis.

**The certifier's endorsement should confirm that he has carried out the actions in (a) to (d) above and indicate what physical checks have been made. He may also add any other comments, for example any reservations he may have on the plans to which he considers the licensee's, Secretary of State's or Assembly's particular attention should be drawn.**

**The licensee should submit details of the person they wish to appoint as certifier (ie. qualifications, experience and reasons why they wish to appoint that person) to the Secretary of State or the Assembly (as appropriate) for approval. The person should be totally independent of the licensee and not involved in any way with the preparation of the plans. Defra and the Assembly will not be maintaining a register of people who can act as certifiers. The licensee should check the credentials of any person who it wishes to engage as a certifier to ensure their reliability as regards access to sensitive information and sites. The licensee should seek security clearance of the person via Defra. Defra will usually act on behalf of the Assembly for this.**

**Where a licensee outsources its emergency planning to a water undertaker (see paragraph 4(1) above), it may also wish to see whether the undertaker would be willing to incorporate its plan in with the undertaker's to ensure all aspects are covered including certification.**

#### Paragraph 9(3)

In addition to any reports submitted to the Secretary of State and/or the Assembly under paragraph 9(1), licensees shall, if requested, report by letter and/or by other means as directed on the actions taken on the specific matter.

Further information on any aspect in the Guidance can be obtained from Water Supply and Regulation Division, Defra, Area 2C, Ergon House, Horseferry Road London, SW1P 2AL or from the Welsh Assembly Government, Environment: Protection and Quality Division, Cathays Park, Cardiff CF10 3NQ.

Defra/Welsh Assembly Government: December 2009.