

Final draft for publication

WATER INDUSTRY ACT 1991: SECTION 208

THE SECURITY AND EMERGENCY MEASURES ([])(a) (LICENSED WATER SUPPLIERS) DIRECTION [](b)

This Direction is given in exercise of the powers conferred by section 208(1) and (2) of the Water Industry Act 1991 (“the Act”)(c).

In relation to [](d), a licensed water supplier(e) (“the Licensee”), it appears to the National Assembly for Wales (“the Assembly”), so far as relating to licensed activities using the supply system of any water undertaker whose area is wholly or mainly in Wales (“Welsh licensed activities”), and to the Secretary of State, so far as relating to licensed activities using the supply system of any other water undertaker (“English licensed activities”), that it is requisite and expedient in the interests of national security or for the purpose of mitigating the effects of any civil emergency to give this Direction.

The Assembly, so far as relating to Welsh licensed activities, and the Secretary of State, so far as relating to English licensed activities, have each consulted the Licensee.

The Assembly, so far as relating to Welsh licensed activities, and the Secretary of State, so far as relating to English licensed activities, give the following direction:

Citation, commencement and application

1.—(1) This Direction may be cited as the Security and Emergency Measures ([])(f) (Licensed Water Suppliers) Direction [](g) and shall come into force on [](h).

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- (a) Insert Licensee’s name.
(b) Insert year direction given.
(c) 1991 c. 56, as amended by section 101(1) of, paragraph 27(6) of Schedule 7 to, and paragraph 48 of Schedule 8 to, the Water Act 2003 (c. 37). The functions of the Secretary of State under section 208 of the Water Industry Act 1991, of giving directions for the purpose of mitigating the effects of any civil emergency, are transferred to the National Assembly for Wales in relation to any water or sewerage undertaker whose area is wholly or mainly in Wales, and, in relation to any licensed water supplier, so far as relating to licensed activities using the supply system of any such water undertaker. See article 2 of the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672) and the entry in Schedule 1 for the Water Industry Act 1991 as substituted by article 4 of, and paragraph (e) of Schedule 3 to, the National Assembly for Wales (Transfer of Functions) Order 2000 (S.I. 2000/253) and amended by section 100(2)(i) of the Water Act 2003. This entry was also amended by Schedule 2 to the National Assembly for Wales (Transfer of Functions) Order 2004 (S.I. 2004/3044) but not so as to affect section 208.
(d) Insert Licensee’s name.
(e) As to the meaning of “licensed water supplier”, see section 219(1) of the Water Industry Act 1991 as amended by section 101(1) of, and paragraph 50(2)(c) of Schedule 8 to, the Water Act 2003. This definition refers to section 17B(9), inserted by section 56 of, and paragraphs 1 and 2 of Schedule 4 to, the Water Act 2003.
(f) Insert Licensee’s name.
(g) Insert year direction given.
(h) Insert commencement date being, at the earliest, the day after the Direction is made.

(2) This Direction applies to the Licensee.

Interpretation

2. In this Direction—

“access agreement” means an agreement made or determined under section 66D(2) of the Water Industry Act 1991(a);

“the Act” means the Water Industry Act 1991;

“appropriate authority” means, in relation to Welsh licensed activities or a Welsh water undertaker, the Assembly, and in relation to English licensed activities or an English water undertaker, the Secretary of State;

“the Assembly” means the National Assembly for Wales;

“combined licence” shall be construed in accordance with section 17A(5) and (6) of the Act(b);

“emergency or security event” means a civil emergency(c) or an event affecting national security;

“English licensed activities” means licensed activities using the supply system of an English water undertaker;

“English water undertaker” means a water undertaker who is not a Welsh water undertaker;

“licensed activities” means the activities authorised by a retail licence or a combined licence;

“the Licensee” means [](d), a licensed water supplier;

“plan” means a plan prepared by the Licensee in accordance with the requirements of paragraph 4 below;

“retail licence” shall be construed in accordance with section 17A(2) and (4) of the Act(e);

“supply system” shall be construed in accordance with section 17B(5) of the Act(f);

“trained” means trained and experienced in procedures and action required in an emergency or security event;

“Welsh licensed activities” means licensed activities using the supply system of any Welsh water undertaker; and

“Welsh water undertaker” means a water undertaker whose area is wholly or mainly in Wales.

Use of facilities

3.—(1) Sub-paragraph (2) applies where a water undertaker provides the Licensee with a supply of water in the event that the Licensee is unable to provide a supply to its customers due to an emergency or security event.

(2) Where this sub-paragraph applies, the Licensee shall permit the water undertaker, in relevant circumstances, without the prior authorisation of the Licensee, to make use of the Licensee’s facilities for the purposes of the supply described in sub-paragraph (1) by the water undertaker to the Licensee.

(a) Inserted by section 56 of, and paragraphs 1 and 3 of Schedule 4 to, the Water Act 2003.

(b) Inserted by section 56 of, and paragraphs 1 and 2 of Schedule 4 to, the Water Act 2003.

(c) See section 208(7) of the Act as to the meaning of “civil emergency”.

(d) Insert Licensee’s name.

(e) Inserted by section 56 of, and paragraphs 1 and 2 of Schedule 4 to, the Water Act 2003.

(f) Inserted by section 56 of, and paragraphs 1 and 2 of Schedule 4 to, the Water Act 2003.

(3) For the purposes of sub-paragraph (2)—

(a) “relevant circumstances” means—

(i) where the supply is pursuant to an access agreement, circumstances where the need to act urgently makes it not reasonably practicable to give instructions to the Licensee under paragraph 4(1)(b) of the Standard Conditions of Water Supply Licences^(a) so as to achieve an objective which is one of the relevant purposes specified in paragraph 4(2)(b) of those Standard Conditions for which those instructions would otherwise be given; and

(ii) in all other cases, circumstances where the need to act urgently requires it; and

(b) “facilities” includes equipment and resources used for the introduction of water into the water undertaker’s supply system or for any other purpose in relation to the supply of water.

Planning

4.—(1) The Licensee shall make a plan for the provision of a supply of water during an emergency or security event—

(a) with respect to each water undertaker’s supply system which the Licensee uses for the purpose of supplying water to the premises of customers; and

(b) in each case, before so using each such supply system.

(2) A plan shall be prepared on the following assumptions—

(a) that water is to be supplied to the Licensee’s customers in accordance with—

(i) the conditions of the Licensee’s licence;

(ii) the statutory requirements imposed on the Licensee in consequence of its licence;

(iii) the respective supply agreements with each customer; and

(iv) the access agreements made for the purposes of such supplies;

(b) that, in the event of an unavoidable failure of piped supply, such minimum supply will be provided by alternative means as may be notified to the Licensee by the appropriate authority;

(c) that priority will be given to the domestic needs of the sick, the elderly, the disabled, hospitals, schools and other vulnerable sectors of the population; and

(d) that regard is had for the needs of non-domestic users as well as domestic users.

(3) In relation to each of its customers the Licensee shall—

(a) include in its plan provision to ensure that it supplies the customer with the same quantity of water as it would provide irrespective of the emergency or security event; or

(b) in the event that the Licensee is unable to provide a supply in accordance with sub-paragraph (a) due to an emergency or security event, enter into an agreement with the customer and a water undertaker for the water undertaker to provide a supply during such an event, subject to any limit of the quantities of water available to the water undertaker taking account of the needs of the other persons to whom the water undertaker provides supplies.

(4) In complying with sub-paragraph (3), the Licensee shall have regard to any guidance, procedures and requirements, and any policies relating to civil emergencies

^(a) The Standard Conditions of Water Supply Licences were determined by the Secretary of State under section 17H of the Act on 7 November 2005. A copy may be obtained from www.defra.gov.uk.

and national security, as may have been notified to the Licensee by the appropriate authority, so far as they relate to the Licensee.

- (5) The Licensee shall ensure that its plan includes provision for—
- (a) trained personnel;
 - (b) dedicated emergency communication facilities, including telephone and electronic hardware and software;
 - (c) analytical services, dissemination of information and other supporting services;
 - (d) carrying out security work on vital installations;
 - (e) carrying out the protection and surveillance of other installations or facilities;
 - (f) suitably equipped permanent or mobile accommodation to act as command and control centres; and
 - (g) informing the water undertaker whose supply system the Licensee uses of the identity and supply requirements of the Licensee's vulnerable customers to whom priority is given under sub-paragraph (2)(c).
- (6) The Licensee shall review and, if necessary, revise its plan—
- (a) if so required by the appropriate authority, in such manner as may be required by the appropriate authority; and
 - (b) in any event, before 1st April in each year following the year in which the plan was made.
- (7) The Licensee shall send to the Assembly and to the Secretary of State—
- (a) as soon as reasonably practicable a copy of its plan; and
 - (b) in the case of a revision of its plan, on or before 1st April in each year following the year in which the plan was made, an updated version of the plan with details of any revision.

Facilities

5. The Licensee shall ensure that it has available to it all facilities required for the purpose of implementing the plan or agreement entered into in accordance with paragraph 4(3)(b) above.

Implementation of plans

6. The Licensee shall take action to put into operation the plan, including in relation to any facility, operation, or service to which the plan relates—

- (a) in such events, to such extent and within such period as may from time to time be required by the appropriate authority; and
- (b) in any event, as the need arises.

Co-operation

7. The Licensee shall, in complying with the requirements imposed on it by or under paragraphs 4 to 6 above, consult—

- (a) any water undertaker whose supply system the Licensee uses for its licensed activities; and
- (b) any other person whom the Licensee considers appropriate, in order to ensure that the Licensee's and any relevant undertaker's(a) plans, operations, facilities and services are complementary and coordinated.

(a) See section 219(1) of the Act as to the meaning of "relevant undertaker".

Duty to notify

8. The Licensee shall, as soon as it becomes aware of any actual or likely emergency or security event affecting water supply in any water undertaker's area, notify—

- (a) the appropriate authority; and
- (b) the water undertaker.

Reports and statements

9.—(1) The Licensee shall, on or before 1st April in each year following the year in which its first plan was made, furnish the appropriate authority with a statement confirming—

- (a) that it has complied with the requirements of paragraph 4 above; and
- (b) that all facilities required by paragraph 5 above are available to it.

(2) The statement required by sub-paragraph (1) shall be in such form as the appropriate authority may require, and shall be certified on behalf of the Licensee by such person as may be approved by the appropriate authority.

(3) The Licensee shall, at such times and in such form as the appropriate authority may specify, report to the appropriate authority on the action taken by the Licensee pursuant to this Direction.

Authorised to sign on behalf of the National Assembly for Wales

[Date] *[Name]*
An official in the Welsh Assembly Government

[Date] *[Name]*
Head of Water Supply & Regulation Division
for and on behalf of the Secretary of State for Environment, Food and Rural Affairs