

WATER INDUSTRY ACT 1991: SECTION 208

THE SECURITY AND EMERGENCY MEASURES (WATER UNDERTAKERS) DIRECTION 2006

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

It appears to the National Assembly for Wales (“the Assembly”), in relation to all water undertakers whose areas are wholly or mainly in Wales (“Welsh water undertakers”), and to the Secretary of State, in relation to all other water undertakers (“English water undertakers”), 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 has consulted all Welsh water undertakers and the Secretary of State has consulted all English water undertakers.

The Assembly, in relation to Welsh water undertakers, and the Secretary of State, in relation to English water undertakers, give the following direction:

Citation, commencement and application

1.—(1) This Direction may be cited as the Security and Emergency Measures (Water Undertakers) Direction 2006 and shall come into force on 20th February 2006.

(2) This Direction applies to water undertakers.

Interpretation

2. In this Direction—

“1998 Direction” means the Security and Emergency Measures (Water and Sewerage Undertakers) Direction 1998;

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

(a) 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.

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

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

“the Assembly” means the National Assembly for Wales;

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

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

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

Access agreements

3. Where—

- (a) a water undertaker has an access agreement with a licensed water supplier(b), and
- (b) the licensed water supplier requests the water undertaker to provide it with a supply of water in the event that the licensed water supplier is unable to provide a supply to its customers due to an emergency or security event,

the water undertaker shall, pursuant to the access agreement, provide a supply during such an event, subject to any limit on 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.

Use of facilities

4.—(1) Where providing a supply—

- (a) in accordance with the duty in paragraph 3 above, or
- (b) under an agreement between the water undertaker and a licensed water supplier in the event that the licensed water supplier is unable to provide a supply to its customers due to an emergency or security event,

the water undertaker shall make it a condition of its supply that it may, in relevant circumstances, without the prior authorisation of the licensed water supplier, make use of the licensed water supplier’s facilities for the purposes of that supply.

(2) For the purposes of sub-paragraph (1)—

- (a) “relevant circumstances” means—
 - (i) where providing a supply in accordance with paragraph 3 above, circumstances where the need to act urgently makes it not reasonably practicable to give instructions to the licensed water supplier under paragraph 4(1)(b) of the Standard Conditions of Water Supply Licences(c) 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

(a) See section 208(7) of the Water Industry Act 1991 as to the meaning of “civil emergency”.
(b) 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.
(c) The Standard Conditions of Water Supply Licences were determined by the Secretary of State under section 17H of the Water Industry Act 1991 on 7 November 2005. A copy may be obtained from www.defra.gov.uk.

- (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.

Duty to notify

5. Without prejudice to the generality of paragraph 1(4)(b)(ii) of the 1998 Direction, when notified by a licensed water supplier of an actual or likely emergency or security event affecting water supply, a water undertaker shall notify all such persons as may be affected.

Reports

6. A water undertaker 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 water undertaker pursuant to this Direction.

Authorised to sign on behalf of the
Secretary of State for Environment,
Food and Rural Affairs

Authorised to sign on behalf of
the National Assembly for Wales

Richard Wood
Head of Water Supply & Regulation Division

Philip Bishop
An official in the Welsh Assembly
Government

17 February 2006

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