

To: Business Committee
From: Carwyn Jones AM
Minister for Environment, Planning and Countryside

EXPLANATORY MEMORANDUM

WATER, ENGLAND AND WALES

DROUGHT PLAN REGULATIONS 2005

Summary

These Regulations make provision for implementing section 39B(1) of the Water Industry Act 1991 (inserted by section 63 of the Water Act 2003) to prescribe how water undertakers in England and Wales should produce and consult on drought plans. The Regulations are being made by the National Assembly for Wales in relation to water undertakers whose area is wholly or mainly in Wales and by the Secretary of State for Environment Food and Rural Affairs in respect of all other water undertakers.

1. This Memorandum is submitted to the Assembly's Business Committee in relation to the Drought Plan Regulations 2005, in accordance with Standing Order 25 (Section 3).
2. A copy of the instrument is submitted with this Memorandum.

Enabling Powers

3. The Regulations are being made under powers in sections 37B(3), (5), (6) and (8), 39B(5), 213(2)(e) and (f) and 219 of the Water Industry Act 1991. These Regulations are being made together by the National Assembly for Wales and the Secretary of State for Environment, Food and Rural Affairs. These powers have been transferred to the National Assembly for Wales and have, in turn, been delegated to my portfolio as Minister for Environment, Planning and Countryside.

Effect

4. Currently there is no statutory provision requiring water undertakers to prepare drought plans, but since agreement at the 1997 Water Summit (held because central Government decided there was a need to establish a Wales and England strategy for water supply and quality for the benefit of customers and the environment), undertakers have produced plans on a voluntary basis following Environment Agency guidelines. Water undertakers report to the Agency on their drought plans on a three-year basis. The Agency then reports to Ministers on the plans. The Water Act 2003 amends the Water Industry Act 1991 so as to place a duty on water undertakers to submit their drought plans to the Secretary of State or the National Assembly for Wales (as appropriate). The requirement to produce the plans is enforceable under Section 18 of the Water Industry Act 1991, by the

Secretary of State in respect of water undertakers operating wholly or mainly in England and the Assembly in respect of water undertakers operating wholly or mainly in Wales (i.e. at present Dŵr Cymru and Dee Valley). The Assembly will seek the Environment Agency Wales' views on the draft plans as the Agency has a statutory duty to manage water resources in Wales.

5. These Regulations specify details of how each water undertaker should publish a draft drought plan, consult and take account of representations made on the draft plan and publish the final plan. The bodies to whom the plans are to be copied in Wales, include: the Environment Agency; local authorities; National Park Authorities; the Countryside Council for Wales; Cadw; and the new Consumer Council for Water (to be established on 1 October 2005).
6. As well as water undertakers whose areas are wholly or mainly in Wales, the Assembly will also have an interest in the drought plans of water undertakers who may be based wholly or mainly in England but abstract some of their water supplies from Wales. As a consequence, there is a provision in these Regulations requiring any water undertaker whose area includes any part of Wales, but is not wholly or mainly in Wales (such as Severn Trent Water) or any water undertaker who abstracts water in Wales, but whose area does not include any part of Wales (such as United Utilities, who abstract water from Lake Vyrnwy) to send their draft plans to the National Assembly.
7. Representations can be made by third parties (consultees) to the National Assembly in respect of the water undertakers' draft plans; there is also an additional requirement for the Secretary of State to send copies of any representations received in respect of Wales to the National Assembly.
8. Regulation 4 contains provisions for water companies to produce a statement detailing how the consultation responses have been taken into account, any changes that have been made to the plan as a result of the representations received, and, where no such changes have been made, the reasons why the representations have not been taken into account.
9. Regulation 5 allows the Assembly to hold a local inquiry or hearing in connection with draft drought plans, using the procedures contained within subsections (2) to (5) of section 250 of the Local Government Act 1972. Such a hearing or inquiry would be used by the Assembly to inform decisions about whether to direct the company to change its plan in a particular way.

Target Implementation

10. It is intended that the proposed Instrument be made on 5 July 2005 and come into force on 1 October 2005. If these dates are not met there will not be any effective drought planning information available. Also, failure to ensure effective statutory drought planning could increase pressure on sites of environmental importance, such as those designated under the Habitats and Birds Directives.

Financial Implications

11. The main additional financial implications for the Assembly arising directly from these Regulations relate to the costs involved in holding a hearing or local inquiry, if such is required. The costs for the Assembly are estimated to be in the range of £3,000 - £5,000 for a private hearing or local inquiry and relate to the costs of the Planning Inspectorate and staff time to process the inquiry casework. As the Assembly would only be empowered to call a hearing or local inquiry in respect of Dee Valley and Dŵr Cymru's drought plans this may result in an estimated total cost of £10,000 every 3 years (drought plans are only to be produced every 3 years). The estimated cost for the Environment Agency (for specialist evidence to the inquiry) might be £50,000 per inquiry; the expectation is that these costs would (like others of the Agency's functions relating to water resources) be recovered from abstractors. However, if the drought plan is soundly based addressing all the key issues in an appropriate manner then there should be no need to hold a local inquiry.
12. As regards the implications for others, water undertakers will be the main sector affected. The Regulations will affect all water companies but the total cost to any water undertaker will depend on the number of statutory consultees within its area. The estimated costs to water undertakers from the start to end of the process, without a hearing or local inquiry, would average £6,000 to £35,000. These figures include advertising, (estimated to range from £2,000 - £10,000) dealing with representations and publication of the final plans and, with a hearing or local inquiry, £106,000 to £235,000. These costs will be borne by the water customers of the individual water undertakers.

Regulatory Appraisal

13. As this Instrument falls outside the definition of Assembly general subordinate legislation in section 58 of the Government of Wales Act a Regulatory Appraisal is not required to be undertaken. However, a Regulatory Impact Assessment of the Drought Plan Regulations 2005 (prepared by DEFRA) is attached for your information.

Consultation

With Stakeholders

14. The draft Regulations were published in a joint DEFRA/Welsh Assembly Government consultation paper issued on 17 December 2004 and ran until 10 March 2005. The consultation covered all the water supply companies, local authorities and other interested organisations including in Wales the Welsh Consumer Council, Watervoice Wales (the consumer body for Dŵr Cymru and Dee Valley) the CBI, NFU, FUW and CCW. A copy of the consultee list is at Annex 1 and a summary of the responses is at Annex 2

With Subject Committee

15. These Regulations were notified to the Environment, Planning and Countryside Committee via the list of forthcoming legislation on 13 April 2005

(EPC (2) 04-05 (p.3) Annex 2, item no, 121), but were not identified for detailed scrutiny.

Recommended Procedure

16. Subject to the views of the Business Committee, I recommend that these Regulations proceed to Plenary under the Standard procedure as they will have a significant impact on water resource planning and on all those who have an interest in the management and use of water in Wales.

Compliance

17. I confirm that the proposed legislation will (as far as applicable):

- have due regard to the principle of equality of opportunity for all people (Government of Wales Act 1998 Section 120);
- be compatible with the Assembly's scheme for sustainable development (Section 121);
- be compatible with Community law (Section 106);
- be compatible with the Assembly's human rights legislation (Section 107); and
- be compatible with any international obligations binding the UK Government and the Assembly (Section 108).

18. The information in this Memorandum has been cleared with the Directorate of Legal Services (DLS) and the Assembly Compliance Officer (ACO).

19. Drafting lawyer: Sean Bradley (Ext 3202)

20. Head of Division: June Milligan (Ext 3256)

21. Policy Drafting Official: Carys Clarke, (Ext 3168).

CARWYN JONES AM

JUNE 2005

MINISTER FOR ENVIRONMENT, PLANNING AND COUNTRYSIDE

Annex 1

List of organisations consulted

Adur District Council
Advantage West Midlands
Advisory Committee on Business and the Environment
Allerdale Borough District Council
Alnwick District Council
Amber Valley Borough Council
Anglian Water Services Ltd
Arun District Council
Ashfield District Council
Ashford Borough Council
Association of Drainage Authorities
Association of National Park Authorities
Aylesbury Vale District Council
Babergh District Council
Barking and Dagenham London Borough Council
Barnet London Borough Council
Barnsley MBC
Barrow-in-Furness Borough Council
Basildon District Council
Basingstoke & Deane Borough Council
Bassetlaw District Council
Bath and North East Somerset Unitary Authority
Bedford Borough Council
Bedfordshire County Council
Berwick upon Tweed Borough Council
Bexley London Borough Council
Birmingham City Council (MBC)
Blaby District Council
Blackburn with Darwen Unitary Council
Blackpool Unitary Council
Blaenau Gwent Council
Blyth Valley District Council
Bolsover District Council
Bolton MBC
Boston Borough Council
Bournemouth & West Hampshire Water Plc
Bournemouth Unitary Authority
Bracknell Forest Borough Council
Bradford City Council
Braintree District Council
Breckland Council
Brecon Beacons National Park Authority
Brent London Borough Council
Brentwood Borough Council
Bridgend County Borough Council

Bridgnorth District Council
Brighton & Hove Council
Bristol City Council Unitary
Bristol Water Plc
British Hydrological Society
British Hydropower Association
British Water
British Waterways
Broadland District Council
Broads Authority
Broads Authority
Bromley London Borough Council
Bromsgrove District Council
Broxbourne Borough Council
Broxtowe Borough Council
Buckinghamshire County Council
Burnley Borough Council
Bury MBC
Caerphilly County Borough Council
Calderdale MBC
Cambridge City Council
Cambridge Water Plc
Cambridgeshire County Council
Camden London Borough Council
Cannock Chase District Council
Canterbury City Council
Caradon District Council
Cardiff Bay Development Corporation
Cardiff County Council
Carlisle City District Council
Carmarthenshire County Council
Carrick District Council
Castle Morpeth Borough Council
Castle Point Borough Council
Centre for Ecology and Hydrology
Centre for the Study of Regulated Industries
Ceredigion County Council
Charnwood Borough Council
Chartered Institution of Water and Environmental Management
Chelmsford Borough Council
Cheltenham Borough Council
Cherwell District Council
Cheshire County Council
Chester City Council
Chesterfield Borough Council
Chester-le-Street District Council
Chichester District Council
Chiltern District Council
Cholderton & District Water Company
Chorley Borough Council

Christchurch Borough Council
Citizens Advice
City and Council of Swansea
Colchester Borough Council
Confederation of British Industry
Confederation of British Industry in Wales
Congleton Borough Council
Consumer Environment Forum
Conwy County Borough Council
Copeland Borough Council
Corby Borough Council
Cornwall County Council
Corporation of London
Cotswold District Council
Council for National Parks
Council for the Protection of Rural England
Council of the Isle of Scilly
Country Landowners Association
Country Landowners Association
Countryside Agency
Countryside Council for Wales
Coventry City Council (MBC)
Craven District Council
Crawley Borough Council
Crewe and Nantwich Borough Council
Croydon London Borough Council
Cumbria County Council
Dacorum Borough Council
Darlington Borough Council
Dartford Borough Council
Dartmoor National Park Authority
Daventry District Council
Dee Valley Water Plc
Denbighshire County Council
Department for Trade and Industry
Derby City Council (Unitary)
Derbyshire County Council
Derbyshire Dales District Council
Derwentside District Council
Devon County Council
Doncaster MBC
Dorset County Council
Dover District Council
Dudley MBC
Durham City Council
Durham County Council
Dwr Cymru Welsh Water
Ealing London Borough Council
Easington District Council
East Cambridge District Council

East Devon District Council
East Dorset District Council
East Hampshire District Council
East Hertfordshire District Council
East Lindsey District Council
East Midlands Development Agency
East Northamptonshire District Council
East of England Development Agency
East Riding of Yorkshire Council
East Staffordshire Borough Council
East Sussex County Council
Eastbourne Borough Council
Eastleigh Borough Council
Eden District Council
Ellesmere Port and Neston Borough Council
Elmbridge Borough Council
Enfield London Borough Council
English Nature
English Nature
Environment Agency
Environment Council
Epping Forest District Council
Epsom & Ewell Borough Council
Erewash Borough Council
Essex & Suffolk Water Plc
Essex County Council
Exeter City Council
Exmoor National Park Authority
Fareham Borough Council
Farmers' Union of Wales
Federation of Small Businesses
Fenland District Council
Flintshire County Council
Folkestone & Dover Water Services Ltd
Forest Heath District Council
Forest of Dean District Council
Foundation for Water Research
Friends of the Earth
Fylde Borough Council
Gateshead MBC
Gedling Borough Council
Gloucester City Council
Gloucestershire County Council
Gosport Borough Council
Gravesham Borough Council
Great London Authority
Great Yarmouth Borough
Greater London Authority
Green Alliance
Greenpeace UK

Greenwich London Borough Council
Guildford Borough Council
Gwynedd Council
Hackney London Borough Council
Halton Unitary Council
Hambleton District Council
Hammersmith and Fulham London Borough Council
Hampshire County Council
Harborough District Council
Haringey London Borough Council
Harlow District Council
Harrogate Borough Council
Harrow London Borough
Hart District Council
Hartlepool Borough Council
Hastings Borough Council
Havant Borough Council
Havering London Borough Council
Herefordshire Council (Unitary)
Hertfordshire County Council
Hertsmere Borough Council
High Peak Borough Council
Hillingdon London Borough Council
Hinckley & Bosworth Borough Council
Horsham District Council
Hounslow London Borough Council
Huntingdonshire District Council
Hyndburn Borough Council
Inland Waterways Association
Institute of Directors
Ipswich Borough Council
Isle of Anglesey County Council
Isle of Wight County Council
Isles of Scilly Council
Islington London Borough Council
Joint Nature Conservation Committee
Kennet District Council
Kensington and Chelsea Royal Borough of
Kent County Council
Kerrier District Council
Kettering Borough Council
King's Lynn and West Norfolk Borough
Kingston upon Hull City Council
Kingston upon Thames Royal Borough of
Kirklees MBC
Knowsley Borough MBC
Lake District National Park Authority
Lambeth London Borough Council
Lancashire County Council
Lancaster City Council

Law Society of England and Wales
Leeds City Council MBC
Leicester City Council
Leicestershire County Council
Lewes District Council
Lewisham London Borough Council
Lichfield District Council
Lincoln City Council
Lincolnshire County Council
Liverpool City MBC
Local Government Association
Loddon Farmers Ltd
London Development Agency
Luton Borough Council
Macclesfield Borough Council
Maidstone Borough Council
Maldon District Council
Malvern Hills District Council
Manchester City Council
Mansfield District Council
Medway Council (Unitary)
Melton Borough Council
Mendip District Council
Merthyr Tydfil County Borough Council
Merton London Borough Council
Met Office
Mid Beds District Council
Mid Devon District Council
Mid Kent Water Plc
Mid Suffolk District Council
Mid Sussex District Council
Middlesbrough Unitary Council
Milton Keynes Council
Mole Valley District Council
Monmouthshire County Council
National Agriculture Centre
National Association of Boat Owners
National Association of Local Councils
National Consumer Council
National Environment Research Council
National Farmers Union
National Federation for Anglers
National Trust
Neath and Port Talbot County Borough Council
New Forest Committee
New Forest District Council
Newark & Sherwood District Council
Newcastle upon Tyne City Council
Newcastle-Under-Lyme Borough Council
Newham London Borough Council

Newport City Council
Norfolk County Council
North Cornwall District Council
North Devon District Council
North Dorset District Council
North East Derbyshire District Council
North East Lincolnshire Council
North Hertsfordshire District Council
North Kesteven District Council
North Lincolnshire Council
North Norfolk District Council
North Shropshire District Council
North Somerset Unitary Council
North Tyneside MBC
North Warwickshire Borough Council
North West Development Agency
North West Leicestershire District Council
North Wiltshire District Council
North York Moors National Park Authority
North Yorkshire County Council
Northampton Borough Council
Northamptonshire County Council
Northern Ireland Assembly
Northumberland County Council
Northumberland National Park Authority
Northumbrian Water Ltd
Norwich City Council
Nottingham City Council
Nottinghamshire County Council
Nuneaton & Bedworth Borough Council
Oadby & Wigston Borough Council
OFWAT
Oldham Borough MBC
One NorthEast
Oswestry Borough Council
Oxford City Council
Oxfordshire County Council
Peak District National Park
Pembrokeshire Coast National Park
Pembrokeshire County Council
Pendle Borough Council
Penwith District Council
Peterborough City Council
Plymouth City Council
Poole Borough Council
Portsmouth City Council
Portsmouth Water Plc
Powys County Council
Preston Borough District Council
Purbeck District Council

Quarry Products Association
Reading Borough Council
Redbridge London Borough Council
Redcar and Cleveland Borough Council
Redditch Borough Council
Reigate & Banstead Borough Council
Restormel Borough Council
Rhondda Cynon Taf County Borough Council
Ribble Valley Borough Council
Richmond upon Thames London Borough
Richmondshire District Council
Rochdale Borough MBC
Rochford District Council
Rossendale Borough District Council
Rother District Council
Rotherham MBC
Royal Commission of Environmental Pollution
Royal Parks
Royal Society for the Protection of Birds
Royal Society for the Protection of Birds
Royal Society of Wildlife Trusts
Royal Yachting Association
Runnymede Borough Council
Rushcliffe Borough Council
Rushmoor Borough Council
Rutland County Council
Ryedale District Council
Salford City MBC
Salisbury District Council
Salmon and Trout Association
Sandwell MBC
Scarborough Borough Council
Scottish Environmental Protection Agency
Scottish Executive
Sedgefield Borough Council
Sedgemoor District Council
Sefton MBC
Selby District Council
Sevenoaks District Council
Severn Trent Water Plc
Sheffield City Council (MBC)
Shepway District Council
Shrewsbury & Atcham Borough Council
Shropshire County Council
Slough Borough Council
Snowdonia National Park Authority
Society of British Water & Wastewater Industries
Solihull MBC
Somerset County Council
South Beds District Council

South Bucks District Council
South Cambridgeshire District Council
South Derbyshire District Council
South East England Development Agency
South East Water plc
South Gloucestershire Unitary Authority
South Hams District Council
South Holland District Council
South Kesteven District Council
South Lakeland District Council
South Norfolk District Council
South Northants District Council
South Oxfordshire District Council
South Ribble District Council
South Shropshire District Council
South Somerset District Council
South Staffordshire Water Plc
South Straffordshire Council
South Tyneside MBC
South West England Development Agency
South West Water Services Ltd
Southampton City Council (Unitary)
Southend-on-Sea Unitary Council
Southern Water
Southwark London Borough Council
Specialist Anglers Conservation Group
Spelthorne Borough Council
St Albans City Council
St Edmundsbury Borough Council
St. Helens MBC
Stafford Borough Council
Staffordshire County Council
Staffordshire Moorlands District Council
Stevenage Borough Council
Stockport Borough MBC
Stockton on Tees Borough Council
Stoke-on-Trent City Council
Stratford-Upon-Avon District Council
Stroud District Council
Suffolk Coastal District Council
Suffolk County Council
Sunderland City Council
Surrey County Council
Surrey Heath Borough Council
Sussex Downs Conservation Board Headquarters
Sustainable Development Commission
Sutton London Borough Council
Sutton and East Surrey Water Plc
Swale Borough Council
Swindon Borough Unitary Authority

Tameside Borough MBC
Tamworth Borough Council
Tandridge District Council
Taunton Deane Borough Council
Teesdale District Council
Teignbridge District Council
Telford & Wrekin Council
Tendring District Council
Tendring Hundred Water Services Ltd
Test Valley Borough Council
Tewkesbury Borough Council
Thames Water plc
Thanet District Council
Three Rivers District Council
Three Valleys Water Plc
Thurrock Borough Council
Tonbridge & Malling Borough Council
Torbay Unitary Council
Torfaen County Borough Council
Torrige District Council
Tower Hamlets London Borough Council
Trafford MBC
Tunbridge Wells Borough Council
Tynedale District Council
UK Environmental Law Association
UK Irrigation Association Ltd
UK Water Industry Research Ltd
United Utilities plc
Uttlesford District Council
Vale of Glamorgan Council
Vale of White Horse District Council
Vale Royal Borough Council
Wakefield Met. District Council
Walsall MBC
Waltham Forest London Borough Council
Wandsworth London Borough Council
Wansbeck District Council
Warrington Unitary Council
Warwick District Council
Warwickshire County Council
Water Research Center Plc
Water UK
Watervoice
Watervoice Wales
Watford Borough Council
Waveney District Council
Waverley Borough Council
Wealden District Council
Wear Valley District Council
Wellingborough Borough Council

Welsh Consumer Council
Welsh Development Agency
Welsh Local Government Association
Welwyn Hatfield District Council
Wessex Water
West Berkshire Council
West Devon Borough Council
West Dorset District Council
West Lancashire District Council
West Lindsey District Council
West Oxford District Council
West Somerset District Council
West Sussex County Council
West Wiltshire District Council
Westminster City London Borough Council
Weymouth and Portland Borough Council
Wigan Borough MBC
Wiltshire County Council
Wiltshire Fishery Association
Winchester City Council
Windsor & Maidenhead Borough Council
Wirral Borough MBC
Woking Borough Council
Wokingham District Council
Wolverhampton MBC
Worcester City Council
Worcestershire County Council
World Wide Fund for Nature UK
Worthing Borough Council
Wrexham County Borough Council
Wychavon District Council
Wycombe District Council
Wyre Borough District Council
Wyre Forest District Council
York City Council (Unitary)
Yorkshire Dales National Park
Yorkshire Forward
Yorkshire Water Services Ltd

Annex 2

Summary of responses to the consultation on water company drought plan regulations

Introduction

In December 2004, the Government and Welsh Assembly Government issued a consultation paper¹ inviting views on proposals for secondary legislation to support elements of the drought planning process introduced by the Water Act 2003². The consultation also served the purpose of informing the water industry and key stakeholders about the main steps in drought planning process. All references in the consultation paper to "government" meant central government and the Welsh Assembly Government and all references to the "Secretary of State" also meant the National Assembly for Wales

The consultation paper was distributed to around 500 organisations with a possible interest in drought planning. It was also made available on the Defra website. A total of 44 replies were received. A partial Regulatory Impact Assessment accompanied the consultation paper and 26 consultees provided comments on this.

Most responses were received from water companies. The organisations that responded can be broken down to 17 water companies, 13 planning authorities, 8 Government bodies, 3 trade associations, 2 consumer groups and 1 research/academic body.

Each section of this Response cross-refers to the consultation question, provides a summary of responses, and a central Government and Welsh Assembly Government response, which explains what action, will be taking in light of the responses. Any references to "Government" in this report therefore mean central Government and the Welsh Assembly Government.

The summary of responses is intended to represent the main points of consultees' responses to the consultation questions. It has not been possible to address here all aspects of each, some of which were wide-ranging and closely argued. However, these will be supplied on request to personal callers³ or in response to telephone or email requests (020 72386575, defra.library@defra.gsi.gov.uk or in Wales 02920823168, env-p&Q@wales.gsi.gov.uk).

Q1 *Do you agree that the Environment Agency should maintain its current role, in keeping with its water resources duties, to provide guidance on the content of water company drought plans? (page 15 of consultation paper)*

¹ Consultation on water company drought plan regulations, Defra and the Welsh Assembly Government, December 2004

² Section 63, which introduces section 39B and 39C into the Water Industry Act 1991

³ Information Resource Centre, Defra, Nobel House, 17 Smith Square London SW1P 3JR

Summary of consultees comments

Of the 30 consultees who expressed views to this question, almost all agreed that the Environment Agency should maintain its current role in providing guidance on the content of water company drought plans.

Those that disagreed expressed concern that the Agency Guidelines focus upon protecting the environment, rather than achieving a balance between public water supplies and the environment; the role of the Agency should be to give recommendations not guidance and should not prescribe the substance of drought plans (as local circumstances determine what is relevant); and that the Agency remit should be broadened to include consideration of economic and social issues in order to produce guidance.

Others commented that in order to give stakeholders confidence in the process, provision should be made for independent appraisal of the Agency guidance to ensure it strikes a fair balance between the needs of the environment and customers.

Government response

A drought plan “is a plan for how the water undertaker will continue, during a period of drought, to discharge its duties to supply adequate quantities of wholesome water, with as little recourse as reasonably possible to drought orders or drought permits under Chapter 3 of Part 2 of the Water Resources Act 1991.” The rationale for drought planning is therefore to achieve a balance between ensuring the continuity of public water supplies but without unduly adversely impacting on the environment.

The Agency has a range of duties that mean it is well placed to provide guidance that achieves the correct balance:

- to contribute towards the achievement of sustainable development, under the Environment Act 1995. This duty ensures that the Agency must have consideration of economic and social issues in providing guidance.
- to secure the proper use of water in England and Wales and to have particular regard to the water companies' own supply duties, as set out in the Water Resources Act 1991⁴.

The Agency has successfully produced guidance for the last two sets of drought plans, in consultation with water companies. It has recently consulted water companies on its latest guidance, and it will develop the guidance taking account of comments it has received on both its own consultation and this one.

Agency guidance will need to be updated in line with relevant developments and we expect that Agency to continue to consult water companies, Water UK and Ofwat in the development of this guidance. We expect the Agency to clarify environmental monitoring provisions and ensure that there is consistency between the requirements of its own and water company drought plans.

⁴ Sections 19(b) and 15 of the Water Resources Act 1991

The Government agrees with the majority of consultees that the Agency has the required expertise and is the appropriate body to provide drought guidance to water companies.

Q2 *Do you agree with the proposals for issues to be included in the direction under s39B(4)(d)? If not, why not? What else should be considered and why? (page 15)*

Summary of consultees comments

Of 28 consultees who responded to this question, well over three quarters agreed with the proposed issues to be included in a direction.

One consultee commented that they don't see the need for these issues to be included in a direction as they are already included in the Agency's guidelines. Another set out that the conservation agencies should also be consulted as a consultant body under the Strategic Environment Assessment (SEA) Directive⁵ and where sites could impact on an SSSI. Another consultee said that they felt that the Agency should monitor droughts and that there needs to be clear definitions to determine when a drought exists and when monitoring must take place. Other comments were that funding of mitigation and compensation must be recoverable through Ofwat's price setting mechanism; the intention of the directions was unclear; that there needs to be guidance about where drought planning ends and emergency planning begins; and that the direction is expected to be appropriate, reasonable, proportionate and applied equally to all regions.

Government response

The Government agrees with the majority of consultees that the four proposed areas to be included in the direction strike the right balance between what is currently contained in water company drought plans and what is needed in order to make the plans statutory.

The Government intends to specify in a direction (The Drought Plan (England and Wales) Direction 2005) made under s39B(4)(d) of the Water Industry Act 1991, that the following matters are addressed in a drought plan:

- the management structure the undertaker will put in place during a drought;
- the permits and approvals that may be necessary to restrain demand and to obtain extra water;
- the liaison that has occurred with the bodies responsible for giving such permits and approvals ;
- the arrangements in place to liaise with such bodies during a drought; and
- any mitigation or compensation measures that may be necessary in the event of the obtaining of such approvals, and any additional permits or approvals required to carry out such measures.

⁵ EC Directive (2001/42/EC) 'on the assessment of the effects of certain plans and programmes on the environment', commonly referred to as the Strategic Environment Assessment Directive

Any company identifying drought permits or orders that affect fauna or flora will need to engage in early dialogue with bodies such as English Nature and the Countryside Council for Wales.

Q3 *Do you agree with the proposal outlined in step 8 that requires the draft plan to be made available on water company's website with hard copies available for viewing at appropriate locations? If not how would you propose that the plan is made available? (page 16)*

Summary of consultees comments

Of the 30 responses, only two consultees disagreed with the proposal. The consultees who disagreed both had concerns about providing large and technically detailed plans that may not be intelligible to the wider public. One suggested a preference for a summarised document and its content agreed with the local Environment Agency office.

There were a variety of comments from those that did agree with the proposal including a few consultees that felt it should be clearer how the public should be made aware that the draft plan is available, and that local advertising is costly and that inclusions on bills may not be practical due to timing. A few consultees also thought that to facilitate access to draft plans that they should be made available to the public at local authorities, libraries and National Park offices.

Other responses included: removal of commercial confidentiality aspects could lead to a fragmented plan; to keep costs to a minimum, information could be submitted in summary form to local authorities, councils and libraries, signposting to where full document can be seen; that consideration should be given to excluding information where public safety, civil defence or national security should not be comprised; that there is a role for WaterVoice (and its successor body) in communicating the plans; and that it would be helpful to provide copies to other specific bodies that may have an interest.

Government response

It is essential that water companies communicate their drought plans to a wide audience, to inform the public about the planned decision making process that companies utilise during a period of drought.

It will be up to the discretion of water companies as to how they make the wider public aware of the draft plans on their websites. In some cases companies may wish, as appropriate, to place hard copies of the plan in locations such as local council offices, libraries or National Parks offices in addition to the company's principal office; this might be particularly appropriate for companies operating over large areas. We have asked the Environment Agency to include guidance upon this within their Drought Plan Guideline.

Q4 *Bearing in mind that draft plans will be available to the public during the*

consultation period, are there any other parties that you feel should also be specified in the regulations? If so please include an outline of why you think that they should be specified in legislation. (page 17)

Summary of consultees comments

Of the 32 who replied to this question, 11 put forward suggestions for other bodies to be included in the regulations. 4 consultees suggested that WaterVoice should be specified in the regulations. Other suggestions included: Primary Care Trusts and Health Protection Agencies; the Drinking Water Inspectorate; the Broads Authority; Internal Drainage Boards; local wildlife trusts; Government Departments and public sector providers; and all the consultees included in the water company drought plan regulations and in particular those sensitive to drought such as fisheries organisations.

Most consultees commented that the list was sufficient and a couple of consultees thought that there should be no further additions in order to minimise the burden on water companies.

Government response

The Government agrees customer representatives should be included within the list of bodies of consultees; the final *Drought Plan (England and Wales) Regulations 2005* will therefore include the Consumer Council for Water. The Government will also include in these Regulations those bodies consulted before the company starts to draft its plan (ie Secretary of State/National Assembly for Wales Ofwat, Environment Agency and licensed suppliers).

In times of civil emergency, water companies are required to make particular provision for water supplies to hospitals and vulnerable groups. There is therefore no need for the health authorities to be specified as statutory consultees in the Regulations.

Companies can also send plans to additional stakeholders of their own choice, according to local circumstances; these may include local wildlife trusts and fisheries organisations.

Q5 Is a six-week period sufficient to allow consultation responses about water company draft drought plans? If not, what do you consider to be a suitable period and why? (page 17)

Summary of consultees comments

Of 28 consultees who responded to this question, just under three quarters agreed that six weeks was a suitable period.

5 consultees thought an 8 week period would be more suitable for larger organisations and for more complex plans. 1 consultee thought that the consultation period should be 12 weeks to match those used for statutory

purposes. 2 consultees did not agree with the six week period one of these was concerned that they would have to provide comments on all the water company plans and that there would be a need to stagger the timescales or be able to provide a holding response in order to meet the deadlines.

Other comments from consultees included: concern about overall management of process and timescales; that given the tight schedule imposed by overall planning process that longer periods would be inappropriate; and that companies should publish a timetable several months in advance, so that interested parties know the consultation is due and will be ready to respond.

Government response

Government does not consider that water companies should be obliged to meet the 12 week statutory timescale for consultation, which is used for example to determine policy and new legislation, as a longer period would put a burden on the overall drought planning timetable.

The Government does not intend now to specify a period for representations to be made to the Secretary of State/National Assembly for Wales. Instead, the Drought Plan (England and Wales) Direction 2005 will specify that companies have 15 weeks from publication of the drought plan in which to publish a statement showing how it has taken representations into account. Each company will need to set the period by which representations must be received by the Secretary of State/National Assembly for Wales to fit in with that deadline, and at the same time allowing itself sufficient time to consider the representations it receives.

Q6 *Do you agree that as part of maintaining the Environment Agency's current role in assessing water company drought plans that it should be sent representations about company draft plans? If you do not agree, can you suggest alternatives to how the Agency can maintain its current role?*
(page 17)

Summary of consultees comments

Of 28 consultees who replied to this question only 2 disagreed with the proposal.

One of the consultees who disagreed thought that the Agency should only see representations that are of material substance and that passing on all responses would create an additional administrative burden on them. The other consultee who disagreed thought that companies and interested parties should have the opportunity to have confidential consultations on the draft plan without the involvement of the Agency and that they could be sent to the Agency if both parties agree.

Consultees who agreed with the proposal provided a range of comments to this question including: that the Agency should receive representations so that they are fully aware of the issues being raised to companies; concern that the

Agency would not confine its advice to environmental and water supply matters; that the Agency must take a national overview when assessing drought plans; it should be made clear which representations the Agency considers must be acted on and which are desirable or discretionary; that there is no harm in the Agency seeing representations provided that they have no jurisdiction to then force unacceptable changes to the drought plan; and that it may be appropriate that the Agency delays its representations so that it can fully take account of third party representations.

Government response

The Government agrees with the majority of responses that it is important for the Agency to maintain their current role as environmental advisers to the Government.

The Agency will consider these representations in its advice to Ministers as to whether a hearing or inquiry should be held on a particular plan, and in advising the Secretary of State/ National Assembly for Wales on any directions to water companies to require a change to the draft plans.

Q7 Does the proposal under step 11(1) provide enough guidance to water companies about how to take representations into consideration? If not, what further detail could be added? (page 18)

Summary of consultees comments

Just under three quarters of the 26 consultees who responded to this question agreed with the proposal.

Consultees who disagreed with the proposal provided the following comments: the Agency's views must be open to challenge and if necessary resolved by some form of arbitration; need some guidance for consultees about what constitutes 'spurious representation'; where there are conflicting requirements, the guidance should indicate how different interests should be prioritised; it is unclear how companies can respond to representations that are not supported or are in conflict with water company and/or Agency position or views; there is no mechanism for resolving a situation where a company does not agree with a direction to change a drought plan and there should be an appeal process; any direction to change plans should sit with overall financial settlement agreed with Ofwat or a direction should require Ofwat to approve necessary funding.

Other comments included: the status of advice for conservation bodies should be recognised, particularly for the Countryside and Rights of Way Act, the Habitats Regulations and as consultation body under SEA; need clarification of how companies are to give particular emphasis to EA representations; and water companies should only use 'spurious representation' provision only where representation is indisputably irrelevant.

Government response

The Government has decided that water companies should take due account of any representation. The *Drought Plan (England and Wales) Regulations 2005* will require a company to publish a statement on:

- the consideration that it has given to those representations;
- any changes that it has made to the draft drought plan as a result of consideration of those representations and its reasons for doing so; and
- where no change has been made to the draft drought plan as a result of consideration of any representation, the reason for this.

If the water undertaker believes that a particular representation is spurious (for example that the representation is not relevant to the drought planning process) then it can indicate that in its statement on how it has accounted for representations. In cases where there are representations in conflict with each other then it will be a matter of the water company to evaluate how best to take this into consideration in its drought plan and provide an explanation in its statement.

In cases where a direction may be issued by the Secretary of State to revise a plan and a water company does not agree with the decision, the water company can use the Judicial Review process⁶. This will enable directions, which could be based on Environment Agency advice, to be challenged.

The financing of any extra costs from a direction (which will be driven by statutory requirements) arising will be a matter for companies and Ofwat, using existing mechanisms.

Environment Agency Guidelines will cover issues of representation, and include a reference to the role of nature conservation bodies and requirements of the SEA Directive.

Q8 Is four weeks a reasonable time for a water company to produce a response to consultation representations? If not can you suggest why another time period may be more suitable? (page 18)

Summary of consultees comments

Of the 28 consultees who responded to this question, under half agreed with the proposal.

Those consultees who did not agree that this was a reasonable period, particularly for cases where a large number or particularly complex responses were received, suggested alternative timescales. 8 thought that 6 weeks was a more suitable period, 6 suggested up to 8 weeks, 1 up to 10 weeks and 1 thought that up to 12 weeks was appropriate.

⁶ Further details of the Judicial Review process are available from the Department of Constitutional Affairs website at http://www.dca.gov.uk/civil/procrules_fin/contents/protocols/prot_jrv.htm

A number of consultees agreed with the suggestion of holding response being issued in cases where a more detailed response or investigation or modelling was required. Other comments included: don't think regulations are necessary and that Agency guideline should deal with timing; it needs to be clearer what would be acceptable circumstances for a holding response, who decides this and how long should be given until a final response; companies should not use a holding response as an unnecessary reason for delaying a response.

Government response

The Government does not intend now to specify a period in which representations must be received by the Secretary of State/National Assembly for Wales. Instead the Drought Plan (England and Wales) Direction 2005 will specify that companies have 15 weeks from publication of the drought plan in which to publish a statement showing how it has taken representations into account. Each company will need to set the period by which representations must be received by the Secretary of State/National Assembly for Wales to fit in with that deadline, and at the same time allowing itself sufficient time to consider the representations it receives.

Q9 *Do you agree with the proposals for the Secretary of State to hold local inquiries into drought plans using unmodified inquiry procedures under section 250 (2) to (5) of the Local Government Act 1972? If you do not agree, how would you propose to modify the procedures? (page 19)*

Summary of responses

25 consultees answered this question and over three quarters agreed with the proposal that the inquiry procedures should not be modified. Some consultees objected to the provision of holding an inquiry.

Comments included: that it is heavy handed approach and disproportionate in its effect on small companies; that it should be a last resort when issues can not be resolved through consultation and dialogue; that public hearing is preferable to formal public inquiry; that it is consistent with provisions currently in place for drought permit hearings; concern that the inquiry procedure under Local Government Act 1972 can be time consuming and expensive and suggest that some modification is necessary to reduce costs; and support the need for using inquiries sparingly for cost purposes.

Government response

The Government will make provisions in the *Drought Plan (England and Wales) Regulations 2005* for inquiries or other hearings to be held in connection with the draft drought plan.

The Government expects that in most instances issues between water companies and third parties will be resolved without recourse to hearings and inquiries. This flexible approach to the type of procedure to be followed,

beginning with informal discussion to resolve issues, will ensure that costs are minimised. But the Government wants to make provision for hearings or inquiries where appropriate.

The Secretary of State/ National Assembly for Wales will not wish to hold hearings or inquiries unnecessarily, in recognition of the time and cost involved, and does not expect them to be the norm. A soundly based plan, addressing all the key issues in an appropriate manner should not need to be the subject of either. Plans that do not appear to properly balance the needs of consumers with the need to adequately protect the environment may well be the subject of a hearing or inquiry.

It is anticipated that hearings would be held for cases which require detailed discussions but do not require a formal inquiry; and inquiries to be held where cases are particularly complex or controversial, or have caused particular local interest. The Secretary of State/National Assembly for Wales will decide on a case-by-case basis which the most appropriate procedure to follow.

The Government intends to apply the inquiry procedures under section 250 (2) to (5) of the Local Government Act 1972 as if the procedures referred to a water undertaker rather than a local authority, but otherwise without modification.

Q10 *Do you agree with the proposals for publication of the final plans in the same way as the publication of draft plans, and if not why not? (page 20)*

Summary of consultees comments

Of the 30 consultees that responded to this question, only two disagreed with the above proposal that publication of final plans should mirror the way draft plans are published. Many of the responses cross-referred to points they had made for question 3 in relation to how draft plans should be published.

The consultees who disagreed with the proposal thought that the proposed content could result in the need for a document that is very difficult to understand and that the purpose of the plan is to provide a decision-making framework rather than prescriptive actions; and that it is more important to engage with stakeholders rather than discourage them with a surfeit of detail.

Other comments included: it is not clear how the requirement to publish to all customers the fact that the final plan is available will be satisfied; there should be a role for WaterVoice (and its successor body) in publicising the final plans; recommend that companies also publish an accessible summary of the plan; a leaflet approach with an overview of the plan could be a more helpful approach with the full document available on request; and companies should consider market research to demonstrate the effectiveness of any publicity method that they use.

Government response

The Government agrees with the majority of consultees that it is most appropriate to publish final plans in the same way as draft plans. It will be the responsibility for water companies to ensure that the plan is presented in the most comprehensive way, and in some cases it may be appropriate to summarise the key elements in order to inform a wider audience.

As with draft plans it will be up to the company's discretion as to how it proposes to publicise the final plan in order to meet the requirements set out in s37B(8)(a), that a water company 'shall publish the water resource plan (equally applied to drought plan) in a way calculated to bring it to the attention of persons likely to be affected by it'.

As with draft plans, WaterVoice (and its successor body, the Consumer Council for Water) will be able to communicate the content of plans to the consumers it represents but Government does not see that it needs to legislate for this.

Q11 *Do you have any comments about the Regulatory Impact Assessment (Annex IV) which examines the costs and benefits of putting into place regulatory drought plan provisions? (page 46)*

Summary of responses

Over three quarters of all consultees who responded to the consultation exercise provided comments on the RIA.

A number of detailed comments were provided, many of which related to the need and cost of public inquiries. Revised estimates by consultees to the cost of public inquiries to water companies were: £200,000 taking account of legal fees and preparation of evidence and up to £2.5-2.9M.

A number of consultees provided their views on water company costs (excluding the inquiry process). These were as follows: suggest that total water company costs are more likely to be £15 – 30k; consider water company costs will be around £25,000; and cost to water companies may rise to £120,000 in certain circumstances.

A number of the consultees comments have been summarised as follows;

- Disappointing that no attempt in RIA to quantify any benefits that may offset these significant costs.
- The RIA underestimates the number of hard copies that needs to be sent, for larger companies there could be over 80 bodies to which the plan would have to be sent. This will have a significant administrative burden, suggest that to reduce administration and cost that an electronic copy is sent via e-mail.
- That there is incorrect summation, which should be 'water company costs without inquiry' £7,000 to £30,000; and 'with an inquiry' £107, 000 to £130,000, and relevant totals. It is not clear if costs of advertising are included.
- If SEA is required estimate an additional £60,000.

- Do not agree with risks (p34) – current voluntary system of drought plans is working well to date and most companies recognise that further work required, this will happen without plans becoming statutory.
- Want reassurance that costs to water companies, such as requirement to pay compensation are monitored closely to assess whether they are being passed on to customers. New process could be onerous for smaller companies.
- Option 2 suggests that aims are met in a cost effective way, however no assessment is made as to how much this process costs compared to the voluntary one or whether process allows for regional variations where flooding may be more likely to occur than drought.
- Consider that if consultation and negotiation exercises are undertaken thoroughly then an inquiry, in most cases, should not be necessary.
- Costs could be curtailed by minimising use of consultants, as companies should have sufficient expertise in house.
- Para 1.6, risk assessment, need to ensure that domestic water supplies for essential use are protected during times of water shortage.
- Page 38 – question about whether copies are provided to organisations within the water company's boundaries or within the area impacted by the drought plan
- No opportunity to fund this extra cost as part of recent Periodic Review.
- RIA only considers 2 options, a wider range should be considered.
- Proposed regulations provide a useful framework but the scale of the burden on companies is difficult to know until the process is underway. Environmental investigation costs should also be part of a full RIA.
- No direct financial incentive for Agency to be reasonable in volume and detail of information requested, it is possible that consultation time and staff costs producing the plan have been underestimated.
- RIA presents a reasonable view of the costs of the process and the benefits from statutory plans will be substantial. Better drought planning will provide benefits to both water customers and the environment.
- Section 3.3 of the Regulatory Impact Assessment (RIA) describes consultation with specified groups including English Nature, Local Authorities etc. Given that these groups have not previously been involved in the drought planning process, we would agree with the statement in the RIA that there will be substantial and wide ranging costs associated with communicating and resolving any issues with these groups. The cost estimate of £1,000 - £10,000 therefore seems low, particularly for the first cycle of the 3-year planning process under this new regulatory requirement.
- Demographic as well as possible climate changes have increased the risk of drought, that protection against these dangers will be costly must be accepted; it is the responsibility of all to carry out the necessary measures efficiently and cost effectively.
- The overall benefits are of particular importance – in particular the value of raising awareness of the general public to the need of using water efficiently.

Government response

The Government will address many of these in finalising the RIA for publication with the *Drought Plan (England and Wales) Regulations 2005*.

[Costs arising from the application of the SEA Directive to drought plans are not a cost of putting these Regulations in place. They attach to the overall process of drought planning. But as we noted in the Consultation, the Regulations put in place a process that is consistent with that is required by the SEA Directive.]