

WATER INDUSTRY ACT 1991: SECTION 208

THE SECURITY AND EMERGENCY MEASURES (WATER SUPPLY LICENSEES) DIRECTION 2017

The Welsh Ministers, in relation to licensed activities using the supply system of any water undertaker whose area is wholly or mainly in Wales (“Welsh licensed activities”), and the Secretary of State, in relation to licensed activities using the supply system of any other water undertaker (“English licensed activities”), give the following Direction in exercise of the powers conferred by section 208(1) and (2) of the Water Industry Act 1991(a).

It appears to the Welsh Ministers, in relation to Welsh licensed activities, and to the Secretary of State, in relation to 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 Welsh Ministers, in relation to Welsh licensed activities, and the Secretary of State, in relation to English licensed activities, have each consulted the relevant water supply licensees.

Citation, commencement and application

1.—(1) This Direction may be cited as the Security and Emergency Measures (Water Supply Licensees) Direction 2017 and comes into force on 2 January 2018.

(2) This Direction applies to all water supply licensees(b) in England and Wales with a wholesale authorisation or supplementary authorisation(c).

(3) This Direction does not apply to licensees in England and Wales holding only a retail authorisation or a restricted retail authorisation(d).

Interpretation

2. In this Direction—

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

“appropriate authority” means the Welsh Ministers in relation to a Welsh water undertaker or to licensed activities using the supply system(f) of a Welsh water undertaker, and the

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- (a) 1991 c. 56; section 208 was amended by paragraph 27 of Schedule 7 to, and paragraph 48 of Schedule 8 to the Water Act 2003 (c. 37) and paragraph 117 of Schedule 7 to the Water Act 2014 (c.21). 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, were transferred to the Welsh Government 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 Schedule 1 to the Water 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).
- (b) As to the meaning of “water supply licensee”, see section 219(1) of the Water Industry Act 1991 as amended by paragraph 120(2)(f) of Schedule 7 to the Water Act 2014.
- (c) As to the meaning of “wholesale authorisation” and “supplementary authorisation”, see section 17A (as substituted by section 1(1) of the Water Act 2014) and paragraphs 1, 2, 3, 4, 6 and 8 of Schedule 2A to the Water Industry Act 1991, as inserted by section 1(2) of, and Schedule 1 to, the Water Act 2014.
- (d) As to the meaning of “retail authorisation” and “restricted retail authorisation”, see section 17A (as substituted by section 1(1) of the Water Act 2014) and paragraphs 1, 2, 3, 4, 6 and 7 of Schedule 2A to the Water Industry Act 1991, as inserted by section 1(2) of, and Schedule 1 to, the Water Act 2014.
- (e) Section 66D was substituted by paragraph 3 of Schedule 2 to the Water Act 2014.
- (f) As to the meaning of “supply system”, see section 17B of the Water Industry Act 1991.

Secretary of State in relation to an English water undertaker or to licensed activities using the supply system of an English water undertaker;

“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;

“licensed activities” means the activities authorised in a water supply licence(b);

“licensee” means a water supply licensee with a wholesale authorisation or supplementary authorisation;

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

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

“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 a 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 paragraph applies, the licensee must 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).

(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 means it is not reasonably practicable to give instructions to the licensee under paragraph 5(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 5(2)(b) of those 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 treatment works.

Planning

4.—(1) A licensee must 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 or treatment works(d) 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 or treatment works.

(2) The plan must 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;

(a) As to the meaning of “civil emergency” see section 208(7) of the Water Industry Act 1991.

(b) As to the meaning of “water supply licence”, see section 17A of the Water Industry Act 1991.

(c) The Standard Conditions of Water Supply Licences for all licences and those with retail and restricted retail authorisations were published by the Secretary of State, having consulted where appropriate with the Welsh Ministers, under section 17H of the Water Industry Act 1991 on 17 March 2016. A copy may be obtained from the Department for Environment, Food and Rural Affairs, Nobel House, 17 Smith Square, London SW1P 3JR or from www.defra.gov.uk.

(d) As to the meaning of “treatment works”, see section 17B of the Water Industry Act 1991.

- (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, a licensee must—
- (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 (3)(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 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.
- (4) In complying with sub-paragraph (3), a licensee must have regard to any guidance, procedures and requirements, and any policies relating to civil emergencies and national security, as may have been notified to the licensee by the appropriate authority, so far as they relate to the licensee.
- (5) A licensee must 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) A licensee must 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) A licensee must send to the appropriate authority—
- (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. A licensee must 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).

Implementation of plans

6. A licensee must take action to put the plan into operation, 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. A licensee must, in complying with the requirements imposed on it by or under paragraphs 4 to 6, 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.

Duty to notify

8. A licensee must, 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, where appropriate in accordance with any relevant code made under section 66DA of the Water Industry Act 1991.

Reports and statements

9.—(1) A licensee must, on or before 1st April in each year following the year in which its first plan was made, provide the appropriate authority with a statement confirming—

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

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

(3) A licensee must, 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.

Revocation

10. All previous Directions given to licensees under section 208 of the Water Industry Act 1991 are revoked.

Under the authority of the Secretary of State for Environment, Food and Rural Affairs



Date 22 December 2017

Name: Georgina Collins
Title: Deputy Director, Defra

(a) As to the meaning of "relevant undertaker" see section 219(1) of the Water Industry Act 1991.

Under the authority of the Cabinet Secretary for Energy, Planning and Rural Affairs, one of the Welsh Ministers

Jasper Roberts

Name: Jasper Roberts

Title: An official in the Welsh Government

Date 22 December 2017

