

WG22-05

WATER INDUSTRY ACT 1991: SECTION 208

THE SECURITY AND EMERGENCY MEASURES (WATER AND SEWERAGE UNDERTAKERS AND WATER SUPPLY LICENSEES) DIRECTION 2022

It appears to the Secretary of State in relation to English water and sewerage undertakers and English water supply licensees that it is requisite and expedient in the interest of national security and for the purpose of mitigating the effects of any civil emergency to give them directions, 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 water and sewerage undertakers and Welsh water supply licensees that it is requisite and expedient in the interest of national security and for the purpose of mitigating the effects of any civil emergency to give them directions, in exercise of the powers conferred by section 208(1) and (2) of the Water Industry Act 1991.

“English water and sewerage undertakers”, “English water supply licensees”, “Welsh water and sewerage undertakers” and “Welsh water supply licensees” have their meaning in paragraph 2 of this Direction.

The Secretary of State has consulted the water undertakers and sewerage undertakers appointed by him, and English water supply licensees, and the Welsh Ministers have consulted the water undertakers and sewerage undertakers appointed by them, and Welsh water supply licensees;

The Secretary of State directs English water and sewerage undertakers and English water supply licensees and the Welsh Ministers direct Welsh water and sewerage undertakers and Welsh water supply licensees as follows:

Citation, commencement and application

1.—(1) This Direction may be cited as the Security and Emergency Measures (Water and Sewerage Undertakers and Water Supply Licensees) Direction 2022 and comes into force on 1st March 2022.

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

(3) This Direction does not apply to companies operating only under a retail authorisation or a restricted retail authorisation(a).

(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 were 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 Schedule 1 to the Order, 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). Those functions are now exercisable by the Welsh Ministers by virtue of section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006.

(b) As to the meaning of “wholesale authorisation” and “supplementary authorisation”, see section 17A (as substituted by section 1(1) of the Water Act 2014) of, and paragraphs 1, 2, 5 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).

Interpretation

2. In this Direction—

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

“appropriate authority” means the Secretary of State in relation to an English water or sewerage undertaker or an English water supply licensee and the Welsh Ministers in relation to a Welsh water or sewerage undertaker or a Welsh water supply licensee;

“company” means a limited company which is a water undertaker, sewerage undertaker or water supply licensee;

“critical national infrastructure” means those elements of infrastructure, including assets, facilities, systems, networks and processes and the essential workers that operate and facilitate them, the loss or compromise of which could result in—

(a) a major detrimental impact on the availability, integrity or delivery of essential services including those services which, if compromised, could result in a civil emergency, or

(b) a significant impact on national security;

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

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

“English water supply licensee” means a water supply licensee who carries out licensed activities using the supply system of any English water undertaker and who is not a Welsh water supply licensee;

“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**(d)**;

“plan” means a plan prepared by a water undertaker or sewerage undertaker or water supply licensee in accordance with the requirements of paragraph 4;

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

“Welsh sewerage undertaker” means a sewerage undertaker whose area is wholly or mainly in Wales;

“Welsh water supply licensee” means a water supply licensee who carries out licensed activities using the supply system of any Welsh water undertaker and who is not an English water supply licensee;

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

General Duty

3. The company must, in complying with this Direction, have regard to any relevant guidance, procedures, requirements, best practice and any risks, including long term risks, relating to civil emergencies and national security.

Planning

4.—(1) The company must make, keep under review and revise such plans as it considers necessary to ensure, during any civil emergency or event threatening national security—

(a) 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) of, 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).

(b) Section 66D was substituted by paragraph 3 of Schedule 2 to the Water Act 2014.

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

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

- (a) the continued exercise of all of its water supply or sewerage functions; and
 - (b) the continued exercise of such of those functions as it can continue to exercise if the nature of the civil emergency or security event is such that not all those functions can be exercised.
- (2) In the case of a water supply licensee, such plans must be prepared—
- (a) with respect to each water undertaker’s supply system or treatment works^(a) which the licensee uses for the purposes of supplying water to the premises of customers; and
 - (b) in each case, before any such use of each supply system or treatment works.
- (3) Plans must be developed with appropriate oversight and be signed off by the senior person responsible for emergency and security planning appointed by the company.
- (4) Plans for water supply must be prepared on the basis that the company must—
- (a) continue to carry out—
 - (i) all of its water supply functions; or
 - (ii) where the nature of the civil emergency or security event is such that this is not possible, those functions which it can continue to exercise;
 - (b) in the event of an unavoidable failure of piped water supply, ensure that such minimum supply is provided by alternative means, as may be notified to the company by the appropriate authority;
 - (c) in the case of a water supply licensee which cannot provide a supply to its customers, enter into an agreement with each of its customers and a water undertaker or undertakers for the supply of water by the water undertaker (taking account of the risk that the quantity of water available to a water undertaker or undertakers may be limited because of the needs of other persons to whom the water undertaker provides supplies);
 - (d) identify and prioritise—
 - (i) its vulnerable customers; and
 - (ii) in the case of a water undertaker, its vulnerable sites within its area;
 - (e) have regard to—
 - (i) the needs of non-domestic users as well as domestic users; and
 - (ii) sites designated as critical national infrastructure as notified to the company by the appropriate authority.
- (5) In relation to the continued exercise of sewerage functions, plans must be prepared on the basis that the company must guard against and deal with discharges from sewers into water which may be abstracted or where aquatic life may be adversely affected, or onto land where such discharge may cause pollution or affect the amenities of the area.
- (6) Plans must make provision for—
- (a) the carrying out of functions by appropriately trained personnel and the training of relevant members of staff;
 - (b) strategically stored reserves of sufficient types and quantities of equipment and materials necessary to enable the company to continue to carry out its water supply or sewerage functions;
 - (c) appropriate emergency communication facilities and procedures for managing and maintaining communications and support to customers throughout an emergency or security event;
 - (d) analytical services, dissemination of information and other supporting services;
 - (e) the establishment of appropriate command and control arrangements to manage an emergency or security event; and

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

- (f) in the case of a water supply licensee, informing the water undertaker whose supply system the water supply licensee uses of the identity and supply requirements of the water supply licensee’s vulnerable customers.

(7) Where the company has in place arrangements with an external supplier or provider for the supply of additional water to supplement its water supply resources, the company must identify and assess any risks that may arise due to such dependencies to maintain its water supply during a civil emergency or event affecting national security and put in place measures to avoid or, if this is not possible, mitigate the risks.

(8) The company must—

- (a) regularly test the effectiveness of its plans to ensure they remain appropriate; and
- (b) take steps to address any vulnerabilities identified.

(9) The company must, if requested to do so by the appropriate authority, and as soon as reasonably practicable after any such request, send to the appropriate authority—

- (a) a copy of its plan; and
- (b) in the case of a revision of its plan, an updated version of the plan with details of any changes.

(10) The company must review or revise the plan made in accordance with this paragraph if so directed by the appropriate authority.

(11) In this paragraph—

“trained” means trained in procedures and actions required in an emergency or security event; “water supply and sewerage functions” means those functions, including sewerage services functions, that—

- (a) a water undertaker must carry out in accordance with its supply duties under the Water Industry Act 1991;
- (b) a water supply licensee must carry out in accordance with—
 - (i) the conditions of its licence;
 - (ii) the statutory requirements imposed on it in consequence of its licence;
 - (iii) supply agreements with customers; and
 - (iv) the access agreements made for the purposes of such agreements;
- (c) a sewerage undertaker must carry out in accordance with the undertaker’s duties under Part IV of the Water Industry Act 1991, as supplemented by regulation 4 of the Urban Waste Water Treatment (England and Wales) Regulations 1994(a);

Provision of Facilities

5. The company must take such steps as it deems necessary to ensure that it has the capability, capacity and facilities required to implement as appropriate—

- (a) its plan; and
- (b) any agreement entered into under paragraph 4(4)(c).

Use of Facilities

6.—(1) If a water undertaker provides a supply of water to a water supply licensee who is unable to provide a supply to its customers due to an emergency or security event and in relevant circumstances, the water supply licensee must allow the water undertaker to use its facilities for the purposes of that supply.

(2) In this paragraph—

(a) S.I. 1994/2841 as amended by paragraph 40(2)(a) and (b) of Schedule 4 to the Natural Resources Body for Wales (Functions) Order 2013/755.

“relevant circumstances” means—

- (a) 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 water supply licensee under paragraph 5(1)(b) of the Standard Conditions of Water Supply Licences(a) so as to achieve an objective for one of the relevant purposes specified in paragraph 5(2)(b) of those conditions for which those instructions would otherwise be required; and
- (b) in all other cases, circumstances where the need to act urgently requires it;

“facilities” includes equipment and resources used for the introduction of water into the water undertaker’s supply system or treatment works.

Identification of Security Risks

General

7. The company must—

- (a) identify and assess any security risks (including long term risks) to the provision of its water supply or sewerage functions, including security risks that may arise through dependencies on external suppliers; and
- (b) put in place measures to avoid or, if this is not possible, mitigate those risks.

Assets and Supporting Infrastructure

8.—(1) The company must—

- (a) identify the parts of its asset base and supporting infrastructure that are necessary for the carrying out of its water supply or sewerage functions during a civil emergency or event threatening national security;
- (b) identify and assess security risks, including long term risks, to and the impact of any security event on—
 - (i) those identified assets and supporting infrastructure; and
 - (ii) the activities and processes needed to ensure its water supply or sewerage functions are carried out;
- (c) put in place measures to avoid or, if this is not possible, mitigate such risks and the impact of a security event;
- (d) use such up-to-date technology and systems as are appropriate to ensure the ongoing security of relevant assets, supporting infrastructure and their operations.

(2) In this paragraph—

“asset base” means all the things or entities, both tangible and intangible, that add potential or actual value to a company and which enable it to deliver its functions.

Recording Assessment of Risks

9. The company must maintain records of its assessments of risk undertaken in accordance with paragraphs 7 and 8 and must review these assessments annually to ensure they remain appropriate to the risks posed.

(a) 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 March 2016. A copy may be obtained from the Department for Environment, Food and Rural Affairs, 2 Marsham Street, London, SW1P 4DF or from Water supply and sewerage licencing regime: standard licence conditions (<https://www.gov.uk/government/publications/water-supply-and-sewerage-licencing-regime-standard-licence-conditions>).

Personnel and Incident Reporting

- 10.** The company must have the following security measures in place in respect of personnel—
- (a) personnel security practices appropriate to the security risks it has identified;
 - (b) processes for personnel to report security event risks and incidents;
 - (c) robust security incident response processes; and
 - (d) measures to ensure that staff have the appropriate level of security clearance.

Security Governance

11.—(1) At all times, the company must have appropriate and proportionate security measures in place so that it is ready to respond to a civil emergency or event threatening national security in accordance with its plan.

(2) Such measures must be signed off by the senior person responsible for security measures as appointed by the company.

Policies, Practices and Procedures

12. The company must ensure that policies, practices, and procedures to implement identified security measures and manage risks to security are—

- (a) developed and maintained across all levels of the company and with other persons involved in the delivery of the company's functions;
- (b) documented;
- (c) kept under review; and
- (d) where necessary, communicated to and accessible by all relevant personnel and outside contractors.

Testing and Exercising

13. The company must—

- (a) regularly test the effectiveness of its security measures, policies and practices to ensure they remain appropriate to manage risks posed to security;
- (b) take steps to address any further security risks or vulnerabilities that are identified.

Co-operation and Information Sharing

14.—(1) When required by the appropriate authority, or such persons as may be notified to it by the appropriate authority, the company must—

- (a) comply with requests for information or assistance to prevent or mitigate the effects of a civil emergency or security event; and
- (b) contribute to national plans—
 - (i) for the mitigation of civil emergencies; or
 - (ii) that are in the interests of national security.

(2) A water supply licensee must, in complying with the requirements imposed on it under this Direction, consult to such extent as may be necessary—

- (a) any water undertaker whose supply system the water supply licensee uses for its licensed activities; and

- (b) any other person whom the water supply licensee considers appropriate in order to ensure that the water supply licensee's and any relevant undertaker's^(a) plans, operations, facilities and services are complementary and co-ordinated.

(3) The company must make available such of its employees as may be required by the appropriate authority to act in such capacity as the appropriate authority may require.

Responding to an Incident

15. The company must—

- (a) react promptly to incidents;
- (b) put the plan, or relevant part of the plan, into operation as the need arises or as may from time to time be required by the appropriate authority;
- (c) review the plan following an incident to ensure the plan remains appropriate and addresses any vulnerabilities that are identified.

Duty to Notify

16.—(1) The company must, as soon as it becomes aware of any actual or likely emergency or security event affecting its water supply or sewerage functions, notify—

- (a) the appropriate authority;
- (b) all such bodies and persons as may be affected by any actual or likely emergency or security event affecting that company's water supply or sewerage functions;
- (c) where appropriate, the water undertaker in accordance with any relevant code made under section 66DA of the Water Industry Act 1991; and
- (d) any other persons the appropriate authority requires the company to notify.

(2) The company must provide a report to the appropriate authority setting out its response to an emergency or security event within 20 days of being requested to do so by the appropriate authority and the report must be in such form as the appropriate authority may prescribe.

Reports and Statements

17.—(1) The company must, on or before 1st June 2022 and on or before 1st April in each following year, provide the appropriate authority with a statement confirming that it is complying with this Direction and that all facilities required to comply with it are available to the company.

(2) If the company cannot provide the statement required by sub-paragraph (1), it must provide the appropriate authority with a statement giving details of any requirements which it is not complying with and of any facilities which are not yet available to the company.

(3) The statements required by sub-paragraphs (1) and (2) must be in such form as the appropriate authority may prescribe.

(4) The company must, at such time and in such form as the appropriate authority may specify, report to the appropriate authority on the action taken by the company pursuant to this Direction.

(5) The company must provide information to the appropriate authority, at such intervals and in such form as they may prescribe, on the financial costs it has incurred in complying with this Direction.

Critical National Infrastructure

18.—(1) The company must—

- (a) undertake an annual audit of those assets which have been notified to it as being critical national infrastructure by the appropriate authority;

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

- (b) provide a copy of that annual audit to the appropriate authority as soon as reasonably practicable after it has been requested to do so.
- (2) The company must—
 - (a) send a copy of this annual audit for external review by such persons as may be approved by the appropriate authority—
 - (i) when directed to do so by the appropriate authority; and
 - (ii) in any event, no later than the end of the period of 5 calendar years beginning with the date of the first annual audit undertaken under sub-paragraph (1)(a) and, subsequent to that, every 5th calendar year;
 - (b) provide a copy of the external review of the annual audit to the appropriate authority when requested to do so.

Revocation

19. The Security and Emergency Measures (Water and Sewerage Undertakers) Direction 1998 and the Security and Emergency Measures (Water Supply Licensees) Direction 2017 are revoked.

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

*Rebecca Pow MP
Parliamentary Under Secretary of State
Department for Environment, Food and Rural Affairs*

28 February 2022

*Julie James
Minister for Climate Change, one of the Welsh Ministers*

25 February 2022