



Drought permits and drought orders

May 2019

Supplementary guidance from the Environment Agency and Department of Environment, Food and Rural Affairs.

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IMPORTANT NOTE:

This guidance supports overarching drought planning guidance on gov.uk
www.gov.uk/government/collections/apply-for-a-drought-permit-drought-order-or-emergency-drought-order

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Introduction

[Drought response: our framework for England \(June 2017\)](#) details how we respond to drought in England. One tool in managing water resources when there is an exceptional shortage of rain is to utilise the powers within drought legislation, namely applications for drought permits and orders. These are effective and flexible water resource management mechanisms that are used to help avoid risk to public water supplies whilst providing the best possible protection to the environment. This guide aims to enable water companies and the Environment Agency to effectively process applications for drought orders and permits in England.

Drought permit and drought order guideline

This guideline has been produced for England jointly by the Department for Environment, Food and Rural Affairs (Defra) and the Environment Agency. It provides information about the process for applying for drought permits and drought orders. This version was updated in 2019 and replaces (for England) previous versions published in 2011 and 2005. It takes account of changes from the Flood and Water Management Act 2010 which amends the Water Industry Act 1991 by bringing additional water use restrictions within the hosepipe ban powers of water companies.

In Wales Natural Resources Wales is responsible for determining drought permits, and Welsh Government is responsible for determining drought order applications. For information on how to apply for drought permits and drought orders in Wales, please refer to Natural Resources Wales website: [applying for drought permits or orders](#). In addition, water companies should also refer to Natural Resources Wales '[water company drought plan technical guideline \(2017\)](#)' on expectations on being application ready.

If an application in England affects Wales (i.e. impacts habitats and/or their features within Wales), Natural Resources Wales and the Welsh Government (as applicable) must be consulted in order for them to make representation to the Environment Agency or Secretary of State.

Using this guideline

The guideline is primarily for water companies (water undertakers in England) as potential applicants for drought permits and drought orders. It may also be of interest to local authorities, conservation bodies, members of the public and others. It is recommended that this guideline is read in conjunction with the relevant sections of the [water company drought plan guideline](#) produced by the Environment Agency (hosted on gov.uk).

The information contained in this guideline is not statutory guidance and does not provide an authoritative interpretation of the relevant statute. The interpretation of statute is for the courts; in case of doubt over legal interpretation, it is advisable to seek legal advice.

Structure of the guideline

The guideline is split into four parts:

Part 1 provides background to the **legislative requirements** for drought permits and drought orders. It also explains the differences between permits and orders, the requirements for environmental information to support applications and the links with water company drought plans and demand measures.

Part 2 provides detailed information on applying for **drought permits**. It sets out the timescales involved, the circumstances in which a water company can apply for a drought permit and the steps to take.

Part 3 includes more detailed information on applying for **ordinary drought orders**, which is a similar process to drought permits. This section sets out the circumstances in which a water company (or the Environment Agency) can apply for a drought order and the steps to take.

Part 4 provides additional information for **emergency drought orders**.

Part 1: General guidance on applying for drought permits and drought orders

1.1. Overview of drought permits and drought orders

This section sets out the legislative background to applying for drought permits and drought orders, the key differences between a drought permit and order and their linkages with water company drought plans.

1.1.1 Legislation

The Water Resources Act 1991¹ (from this point onwards referred to as the WRA 1991), as amended by the Environment Act 1995² and the Water Act 2003³, allows for three legislative ways for dealing with drought situations: drought permits, ordinary drought orders and emergency drought orders.

Drought permits and drought orders are drought management actions that, if granted, can allow more flexibility to manage water resources and the effects of drought on public water supply and the environment.

1.1.2 Basic criteria

In the case of drought permits, the Environment Agency must be satisfied that:

- a serious deficiency of supplies of water in any area exists or is threatened **and that**
- the reason for the deficiency is an exceptional shortage of rain⁴.

For drought orders, the Secretary of State must be satisfied that either:

- a serious deficiency of supplies of water in any area, exists or is threatened⁵
- or**
- such a deficiency in the flow or level of water in any inland waterway to pose a serious threat to any flora or fauna which are dependent on those waters⁶, exists or is threatened
- and that**
- the reason for the deficiency is an exceptional shortage of rain⁷.

¹ Sections 73-81 of and Schedules 8 and 9 to the Water Resources Act 1991.

² Paragraphs 139, 140 and 141 of Schedule 22 to the Environment Act 1995.

³ Sections 64-65 of the Water Act 2003.

⁴ Section 79A(1) of the WRA 1991 as amended by the Environment Act 1995.

⁵ Section 73(1)(a) of the WRA 1991 as amended by the Environment Act 1995

⁶ Section 73(1)(b) of the WRA 1991 as amended by the Environment Act 1995.

⁷ Section 73(1) of the WRA 1991 as amended by the Environment Act 1995.

For emergency drought orders, the Secretary of State must be satisfied both that:

- by reason of an exceptional shortage of rain, a serious deficiency of supplies of water in any area exists or is threatened

and that

- the deficiency is such as to be likely to impair the economic or social well-being of persons in the area⁸.

The Secretary of State (for drought orders) or the Environment Agency (for drought permits) must be satisfied that these conditions have been met. Otherwise, an application will not be granted. Even if a serious deficiency of supplies exists, no drought order can be made and no drought permit can be granted if the serious deficiency of supplies has not been caused by an exceptional shortage of rain. [Appendix D](#) provides additional information to help determine if lack of rainfall is 'exceptional'.

1.1.3 Main differences between drought permits and ordinary drought orders

It is very important for applicants to understand the circumstances in which they should apply for a drought permit, ordinary or emergency drought order (see Table One). An application that is incorrect will result in delays, which could have serious consequences for water supply or the environment in the area affected.

TABLE ONE: MAIN DIFFERENCES BETWEEN DROUGHT PERMITS AND DROUGHT ORDERS

	Drought Permit	Ordinary Drought Order	Emergency Drought Order
Legislation (see Appendix A)	WRA 1991 Section 79A	WRA 1991 Section 74	WRA 1991 Section 75
Who can apply?	Water company	Water company or Environment Agency	Water company or Environment Agency
Who authorises them?	Environment Agency	Secretary of State	Secretary of State

⁸ Section 73(2) of the WRA 1991.

<p>Available actions (subject to conditions or restrictions specified in the permit or order)</p>	<ul style="list-style-type: none"> • To take water from any source specified • To modify or suspend conditions on an abstraction licence held by the water company 	<p>For Water Company</p> <p>Same as for drought permits but also:</p> <ul style="list-style-type: none"> • To discharge water to specified places • To modify or suspend discharges or filtering/treating of water held by water company • To modify or suspend restrictions or obligations that apply to the taking, discharging, supply or filtering/treating of water held by others (including Environment Agency) <ul style="list-style-type: none"> • To authorise the Environment Agency to stop or limit the taking or discharging of water from/to specified sources or places • To prohibit or limit particular uses of water under Drought Direction 2011 (these provisions do not apply for emergency drought orders) <p>For Environment Agency</p> <ul style="list-style-type: none"> • To take water from specified sources • To discharge water to specified places • To stop or limit the taking of water from specified sources • To modify or suspend restrictions or obligations to taking, discharging, supply or filtering/ treating of water held by anyone. 	<p>For Water Company</p> <p>Same as ordinary drought order.</p> <p>Additionally:</p> <ul style="list-style-type: none"> • To prohibit or limit uses specified by water company • To set up and supply water by means of stand pipes, rota cuts or water tanks in a water company area. <p>For Environment Agency</p> <p>Same as for ordinary drought orders.</p>
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Duration	Up to 6 months	Up to 6 months	Up to 3 months
Available Extensions	For a further 6 months	For a further 6 months	For a further 2 months
Minimum time for decision	Once application received, normally within 12 calendar days of the date of publication of the last advertisement. When there is a hearing, a decision will normally be made within 7 calendar days of the receipt of the hearing report.	A decision will normally be made within 28 calendar days from date of application. When there is a hearing, a decision will normally be made within 7 calendar days of the receipt of the hearing report. Please note that this period can be longer (or in exceptional cases shorter)	Same as ordinary drought orders

1.1.4 Water company drought plans and 'application ready' principles.

Section 39B Water Industry Act 1991 makes it a statutory requirement for water companies to prepare, maintain and publish drought plans. Drought plans cover the range of actions necessary to deal with various drought situations. They set out how a water company will continue to meet its duties to supply water during drought periods with as little recourse as possible to drought permits or drought orders.

A water company is expected to identify all possible drought permits and drought orders and include details of each option in their drought plan as part of its range of supply-side management actions. The plan should include assessment of the environmental impacts of potential drought permits and drought orders and cover the arrangements for environmental monitoring and mitigation that may be required. It is also expected that during a drought, a water company will follow its drought plan.

Although legislation allows applications for drought permits and orders at 'any source', in reality it is unlikely that applications will be fit-for-purpose if the water company has not included the proposal as an option in its drought plan. This is due to historic baseline monitoring requirements and environmental assessment work required to properly determine the application.

The [Environment Agency's drought planning guidelines 2015](#) and the supporting guidance note 'drought permit and order application ready' (November 2016) sets out an expectation that drought permits and orders should be as 'application ready' as is pragmatic (the latter note is available upon request to the public and can be accessed by water companies on 'Defra's Huddle').

Although it is recognised that some of the work will need to be done at the time of application (for example a full reason of needs case), permits and orders that are application ready can often be processed and implemented swiftly, reducing delays and costs. Application ready principles enable early engagement with Environment Agency (and Natural England) specialists who can help identify environmental issues, monitoring needs and mitigation requirements. Early engagement and negotiations with possible objectors provides the opportunity to avoid hearings. Leaving engagement on permits and orders to the 'pre-application' stage is not only chargeable to the water company (upon application submission) but can increase risks associated with the late discovery of issues. Risks could include unnecessary objections and hearings, delays and even refusal of the permit or order.

If you are a water company wholly or mainly in England, and your application is in Wales, you should follow Natural Resources Wales guidance relating to being drought permit or drought order application ready.

1.2. Environmental impacts

The applicant must submit an environmental report which is based upon an environmental assessment, as well as planned monitoring and mitigation. This information will be within water company drought plans (and can often be referred to as Environmental Assessment Reports, EARs). Please refer to gov.uk pages ['before you apply for a drought permit, drought order or emergency drought order'](#) for guidance.

Water company drought plans should detail the likely environmental effects of drought permits or orders along with the anticipated monitoring and mitigation required. The Environment Agency's supplementary note 'environmental assessment for water company drought plans' (September 2017) details what should be reviewed and considered within an environmental assessment, monitoring and mitigation. Appendix 3 within this guidance note provides templates that applicant may find helpful. This guidance note is available upon request to the public, and can be accessed by water companies on 'Defra's Huddle'.

The expectation is that during the pre-application stage the environmental assessments, monitoring and mitigation detailed within drought plans are refreshed and updated to make them relevant to the current situation. These can then be submitted as an 'environmental report' with drought permit or order applications to enable a proper determination of the proposal.

For sites in, or that could affect Wales, water companies should liaise with Natural Resources Wales and refer to their environmental assessment section within ['water company drought plan technical guideline \(2017\)'](#)

1.2.1 Monitoring and mitigation

Water companies are expected to take mitigation measures (if required) to reduce any negative effects of drought permits or drought orders on the environment. Water companies must carry out careful monitoring of the impact and take post-drought remedial work where appropriate. Monitoring and

mitigation measures may be included as a condition of the drought permit or drought order.

Where possible, a water company must undertake monitoring at its own expense. However, there may be valid reasons that prevent water companies undertaking the monitoring themselves. In such cases, the company can choose to fund a third party to carry out this work and, in some exceptional cases, the Environment Agency can undertake monitoring on the company's behalf. The water company is responsible for making sure that arrangements made with any such third parties are agreed in advance to ensure that monitoring requirements are met.

Note: Monitoring and mitigation measures can also be included in a drought permit or drought order under a water resources management arrangement with the water company under Section 20 or under a works agreement under Section 158 of the WRA 1991. These arrangements are the exception rather than the rule as both Section 20 and Section 158 agreements can take time to develop. As such water companies should consider whether these agreements are appropriate and required as part of their drought plan and develop these to ensure these agreements are 'application ready' as appropriate.

1.2.2 Overriding public interest

Where a proposal is likely to damage a Habitats Regulations site or where it cannot be proven that there will be no adverse effect on the integrity of such sites, the water company will have to demonstrate that all other possible options (alternative solutions) for public water supply have been identified and used. The more environmentally damaging the impact of the proposal on the water environment is, the more stringent the measures need to be to reduce demands on water resources.

If there are no alternative solutions and all options have been exhausted, the Secretary of State (for drought orders), or Environment Agency (for drought permits) has to be satisfied that there is an imperative reason of an overriding public interest (OPI) for granting the drought order or permit, accordingly. If there is such a case, compensatory measures will have to be secured before the drought order is made or the drought permit is issued.

It should be noted that in relation to drought permit applications, it would usually be more appropriate for the water company to apply for a drought order as an alternative option where a Habitats Regulations site is impacted.

1.3. A statement of needs

The applicant must present a statement setting out the reasons why a drought permit or order is needed with the application. The statement will explain that a drought order or permit is required due to an exceptional shortage of rain and the lack of rainfall is, or has, the potential to threaten water supplies. In the statement of needs the applicant should also detail demand management measures undertaken in line with the water company's drought plan such as the implementation of Temporary Use Bans (TUBS) (where appropriate), enhanced

leakage activities and appropriate outage control. The company should detail other supply options considered with its drought plan (such as alternative supplies).

1.3.1 Exceptional shortage of rain

In cases where a water company believes there has been an exceptional shortage of rain and a serious deficiency of supplies of water in any area exists, or is threatened, guidance set out in [Appendix D](#) should be followed.

1.3.2 Measures to reduce water demand prior to drought permit and order applications

Before a water company applies for a drought permit or drought order, it is expected to have implemented measures to limit demand on the affected sources. Such measures could include publicity campaigns, leakage control, outage management, pressure reduction and temporary restrictions on water uses under the water companies' own powers. The company must also have communicated publicly its intention to reduce demand in advance.

Exceptions to the situations where demand reductions are required include:

- Where the significance of savings would be minimal even if the measure was adopted (for example water use restrictions in winter)

1.3.3 Leakage and outage information to support drought permit or order applications

A water company should provide detailed information on how it has controlled leakage and outage in the time leading up to a drought permit or order application. This information is expected to be supplied at the same time as the application, and forms part of the determination process to assess whether a water company has taken sufficient action to reduce leakage and manage outage (as detailed with company's drought plan). This information provides assurance to the Environment Agency, or Secretary of State, that the company's needs case is based upon an exceptional shortage of rain (and not driven by poor leakage or outage control).

Water companies are advised to refer to [Appendix G](#) and ([Appendix E](#)) for further information. This includes advice on concerns regarding commercially sensitive information.

1.3.4 Temporary restrictions of water use

Water companies' powers under section 76 Water Industry Act 1991 were amended by the Flood and Water Management Act 2010⁹ and allow water companies to prohibit one or more of a range of temporary uses of water when they think that a serious deficiency of water supplies exists or is threatened. The

⁹ The provisions under Flood and Water Management Act 2010 were commenced on 1 October 2010.

Water Use (Temporary Use Bans) Order 2010¹⁰ defines some words and phrases and provides clarification on activities that are, or are not, to be treated as falling within the categories of use that may be restricted. A water company can apply for additional powers under a drought order to restrict the use of water for a further range of purposes as specified in the Drought Direction 2011¹¹ (see [Appendix A4](#)).

We expect Temporary Use Bans to be in place prior to drought permit application, and to have been in place long enough to have an opportunity for a measurable impact on demand. We also expect water companies to maintain Temporary Use Bans until water storage has recovered. See [Appendix F](#) for further information.

1.3.5 Winter drought permits

A water company can apply for drought permits to reduce winter compensation discharges or increase winter abstractions in order to:

- reduce the risk of drought permits or orders in the following summer
- assist the recovery of water supply resources which have been excessively depleted as a result of drought
- assist the maintenance of water supply in drought affected areas

The basic criteria for drought permits (set out in [section 1.1.2](#)) still have to be met for winter drought permit applications. In particular, there must be a threat to public water supplies that is significantly greater than the normal risk to supplies for the time of year. A water company is also expected to take appropriate mitigation measures to support such applications (with the exception of implementation of TUBs, see [section 1.3.2](#))

Drought permits are normally granted for up to 6 months. It may be appropriate to issue shorter duration permits, particularly in winter. For example if a permit were to be issued in late winter but has the potential to operate over spring or summer months its impacts on the environment will be different, so too will demand management expectations (such as the implementation of temporary use restrictions). As such a shorter duration permit may be more appropriate. The company can reapply if needed.

1.4. Recovery of costs

The Environment Agency has powers under section 79(4) and 79A(8A) WRA 1991 to recover any expenses incurred in dealing with applications for any drought permit or drought order and the permit itself issued to the water company. This includes costs connected with any associated local inquiry or hearing. It is therefore advantageous for water companies to get 'application ready' during the development of water company drought plans as this is likely to help reduce permit and order application costs for the company (which can be significant).

¹⁰ The Water Use (Temporary Use Bans) Order 2010 – SI 2010 No. 2231 – was commenced on 1 October 2010.

¹¹ Drought Direction 2011 commenced on 31 March 2011.

The Environment Agency's main principles for cost recovery are:

- Costs must relate to the exercise of the Environment Agency's functions which are attributable to the application for the drought permit or order. For example: staff time; monitoring undertaken on behalf of the water company; overheads and equipment.
- Costs will cover all work carried out on a drought permit or order application even in the event that the application is refused.
- Costs will include work undertaken during the pre-application stage (but these costs can only be recovered if a formal application is subsequently made).

More information on how the Environment Agency recover costs can be found in [appendix H](#).

2. Applying for drought permits

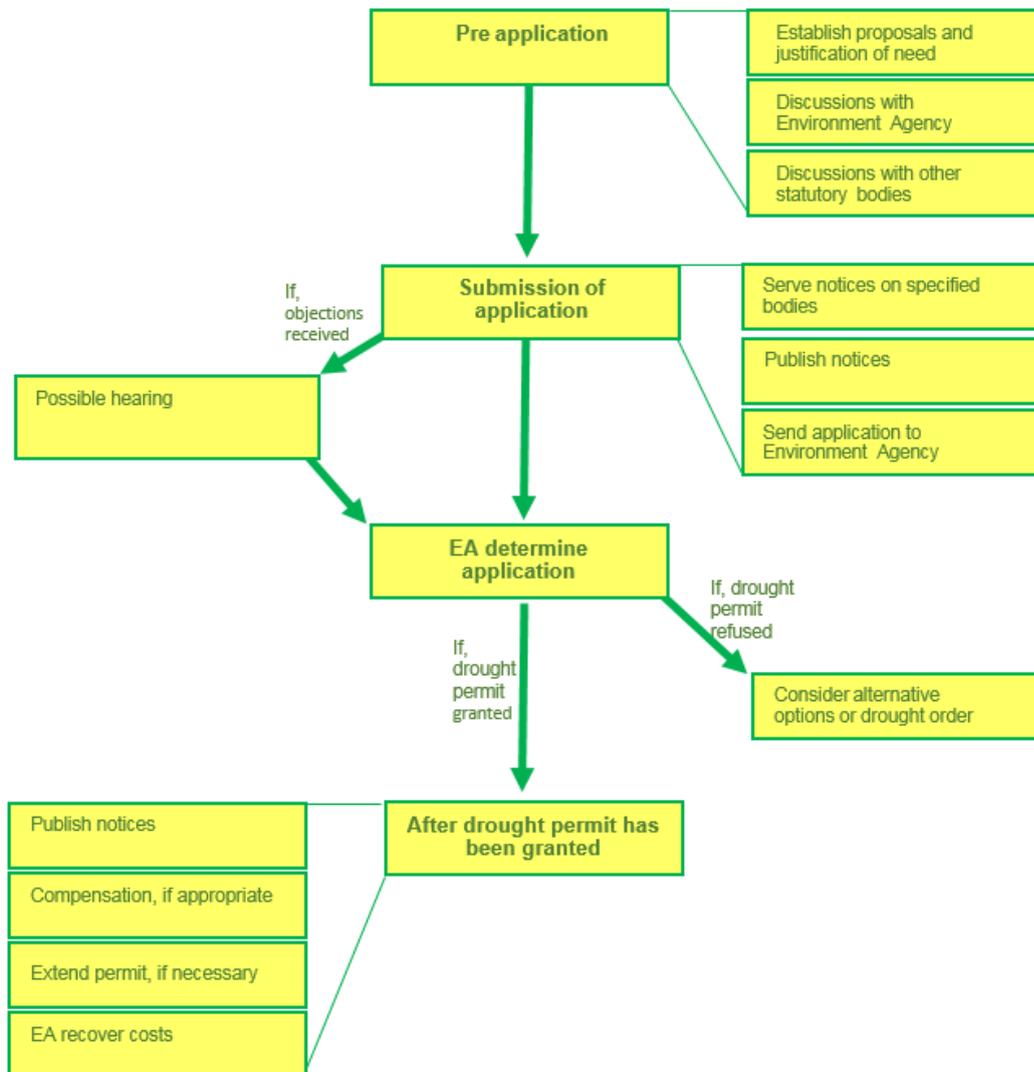


FIGURE ONE: PROCESS FOR APPLYING FOR A DROUGHT PERMIT

2.1. Scope of drought permits

The Environment Agency may, by means of a drought permit under section 79A of the WRA 1991, authorise water companies to take action.

Drought permits can:

- authorise a water company to take water from specified sources
- modify or suspend restrictions or obligations to which that water company is subject to, relating to the (existing) taking of water from any source.

The "taking" of water usually means abstraction but is widely defined in the legislation and includes the collection, impounding, diversion or appropriation of

water¹². Thus drought permits can, for example, also authorise temporary impoundments if appropriate.

2.2. Process overview

The legislative basis of the drought permit application procedure is contained in Schedule 8 to the WRA 1991¹³. Figure one (above) presents a summary of the process a water company should follow when applying for a drought permit.

2.3. Timescales

Timings to process a drought permit application will vary and will be dependent on the urgency of the situation. Once an application has been received the Environment Agency will usually make a decision within 12 calendar days of the date of the applicant's last advertisement, provided that; the applicant follow application ready principles (see [section 1.1.4](#)); the permit has been identified in company's drought plan; no objections are received, or all objections are resolved; and the applicant complies with the information in the following steps and the process goes forward with no delays whatsoever. When a hearing is held, the Environment Agency aims to make a decision within 7 calendar days of receipt of the hearing report.

In addition to the above timescales, if the application has the potential to damage the features of a statutory designated site under the Habitats Regulations or Wildlife and Countryside Act, the Environment Agency must allow Natural England, 28 days in which to respond to notification. Note, if the application affects a site in Wales, Natural Resources Wales will also have to be consulted. If water companies take steps to consult with Natural England (and Natural Resources Wales if applicable) on proposals in advance, at both the planning stage and pre-application stage, they should be able to respond to notification more promptly.

2.4. Drought permit application: A step by step guide

This section outlines the steps a water company should follow when applying for a drought permit.

2.4.1 Pre-application

– Establish proposals and justification of need

It is essential that water companies prepare thoroughly before submitting a drought permit application (see application ready principles in [section 1.1.4](#)). Water companies should undertake the following steps:

¹² Section 81 WRA 1991.

¹³ The full text of Schedule 8 to the Water Resources Act 1991 as amended by the Environment Act 1995 and Water Act 2003 is contained in Appendix A2.

1. Establish that the application meets the basic criteria for drought permits (see [section 1.1.2](#)).
2. Make early contact with the local area office of the Environment Agency (see step below) and take action to comply with Environment Agency's requirements.
3. The water company and Environment Agency should confirm the commencement of pre-application. This step is important because from this point onwards all work on the application will be chargeable to the water company.
4. Make early contact with Natural England (and if relevant Natural Resources Wales), where there may be a potential for impact on designated sites.
5. Make early contact with the relevant Navigation Authority, where the proposal may have an effect on an inland navigation.

– Discussions with Environment Agency

Drought permit applications are reviewed by the Environment Agency's local area office and processed by the Environment Agency's National Permitting Centre (see [appendix C](#) for contact details). The water company must initially discuss proposals with their local area Environment Agency team. This will have the following advantages:

- to provide an opportunity to discuss and frame the proposal in a way which is likely to satisfy the Environment Agency, subject to the consideration and resolution of third party objections
- the Environment Agency's experience may help in the identification of new issues for consideration in the application (after drought plan 'application ready' discussions), including environmental assessments that need refreshing, or reviewing early justification of the water companies needs case
- to clearly understand the timescales involved

The Environment Agency expects water companies to include details of all possible drought permit options in their drought plans. See the water company drought plan guideline for further information on how to plan and prepare options for possible drought permit applications. The water company must also prepare, in advance, an environmental report (see [section 1.2](#)) setting out the anticipated effects of the proposal, including the effect on other abstractors.

Other consents

A drought permit does not exempt the need for other consents where required under certain circumstances, for example; flood risk activity permit or land drainage consent; water discharge activity permit or planning permission. A water company must determine whether they will need to apply for other consents. This should be done as early as possible. It is recommended that water companies do this when preparing their drought permit proposals as part of its drought plan. The Environment Agency will assist and advise on consents that it would grant through its non-water resources functions.

Navigation Authority

If the drought permit application proposes actions which may affect an inland navigation, the water company must obtain the consent of the relevant navigation authority¹⁴. The water company must submit the written consent of the navigation authority with the application. If navigation authority consent does not apply, the water company must confirm this in writing on the application form.

The Environment Agency considers that consent is not necessary in such circumstances where a navigation authority is, in theory, capable of being affected by the drought permit but in practice what the permit authorises would make no significant difference to the navigation authority. This is because the navigation in question is not "affected" by the permit¹⁵.

Where a navigation authority validly withholds consent because it may be affected, the Environment Agency is unable to grant the drought permit. In such cases the water company will need to apply to the Secretary of State for a drought order. The Secretary of State will consider the interests of all parties in reaching a decision but do not need the navigation authority's consent.

Water companies are expected to have identified the relevant navigation authority before discussions with the Environment Agency commence. It is recommended water companies do this when preparing drought permit proposals as part of the company's drought plan.

Conservation bodies

Water companies must consult with Natural England and, where relevant, with National Parks authorities¹⁶ when formulating any application for a drought permit which may affect an SSSI or other designated site¹⁷. This includes any application which affects, but is not necessarily inside, such a site. Water companies must also consult with Natural Resources Wales if the application also affects designated sites or SSSIs in Wales.

¹⁴ Section 79A(6) WRA 1991. An inland navigation includes any canal or navigable river: section 77(6) WRA 1991.

¹⁵ If the navigation authority's consent is not sought, but it subsequently objects to the application, obviously the question of the need for the navigation authority's consent must be reconsidered.

¹⁶ Including the Broads Authority.

¹⁷ In the case of a drought permit being likely to affect certain sites classified under European Union legislation (Special Protection Areas under the Birds Directive and Special Areas of Conservation under the Habitats Directive 92/43/EEC) further procedures must be followed, including in some cases satisfying tests relating to public health and safety.

Others

Water companies are required to serve notice of the application on local authorities, water undertakers, internal drainage boards, and people specifically protected in legislation (see step 2.4.2 below). It is useful to consult such bodies in advance of making an application. The same applies to anyone the water company considers is likely to raise objections.

Note: Although Schedule 8 of the WRA 1991 does not specifically require water companies to notify other abstractors (with the exception of affected water undertakers) it would be beneficial to do so if the water company has relevant contact details. Alternatively affected abstractors will be notified, along with other interested parties, via the consultation process.

2.4.2 Submission of application

– Serve notice on specified bodies

Water companies must serve notices of drought permit applications on specified bodies. The legal requirements for these notices are contained in paragraph 1 of Schedule 8 to the WRA 1991.

Format of notice

Paragraph 1(3) of Schedule 8 to the WRA 1991 states that notices must:

- state the general effect of the application;
- specify where any relevant map or plan may be inspected, and that it may be inspected free of charge within 7 calendar days of the date on which the notice is served or published;
- state that objections may be made to the Environment Agency within 7 calendar days of the date on which the notice is served or published;
- specify the land to which the application relates, if the permit would authorise the occupation and use of land¹⁸.

Additionally, applicants should have regard to the following points:

- when drafting the notice, the applicant should consider the timing of its application to ensure that objectors are not unreasonably disadvantaged (e.g. by the occurrence of public holidays). Where objectors are likely to be affected in this way, the applicant should consider allowing more than 7 calendar days for these activities
- highlight the purpose of the notice by incorporating “drought permit” in both the title and text
- when drafting the notice, the applicant should consider including grid references and details of the practical measures which have been or will be taken to deal with or mitigate the effects of the drought permit

¹⁸ Paragraph 1(3) of Schedule 8 to the WRA 1991.

- state clearly in the notice that any objections should be sent to:

Water Resources Permitting Support Centre,
Environment Agency,
Quadrant 2,
99 Parkway Avenue,
Parkway Business Park,
Sheffield,
S9 4WF
Email: PSC-WaterResources@environment-agency.gov.uk

To assist with drafting, a suggested format for a notice is attached at [Appendix B](#).

Specified bodies

The table in paragraph 1(2) of Schedule 8 to the WRA 1991 as amended specifies the persons and bodies on whom notices must be served on¹⁹. Those persons and bodies on whom notices are most commonly served are:

- every local authority (except English county councils²⁰) and water companies whose area would be affected by the permit²¹
- if the drought permit is for suspending or modifying any statutory requirements (e.g. for compensation water), including any subsidiary scheme or order, then notice should be served on those specified in the enactment, order etc. and for whose protection that requirement exists²²
- where the drought permit relates to taking water from a source every local authority (except English county councils²³) and internal drainage board in whose area the source is situated
- any navigation authority exercising functions over any watercourse affected by the permit²⁴

Where applicants are unsure whether a particular public body falls within the categories specified, applicants should act as if the body does fall within the relevant category and serve notice on the body.

Section 220 of WRA 1991 sets out the requirements relating to serving notice. Schedule 8 adds a further requirement²⁵ that where the letter is sent by post, it must be sent in priority to other letters. This means it is important to use the Post Office's "Special Delivery Guaranteed" scheme or a courier service.

¹⁹ As amended by Section 79A WRA 1991.

²⁰ Although the legislation does not require a notice to be served on English county councils, we would encourage any applicant for a drought permit/order in England to serve a notice voluntarily on the county council.

²¹ Paragraphs 1(1)(a) and 1(2) of Schedule 8 to the WRA 1991 (as amended by paragraph 3(7) of Schedule 11 to the Local Government (Wales) Act 1994, which removed the exclusion relating to Welsh county councils).

²² Paragraphs 1(1)(a) and 1(2) of Schedule 8 to the WRA 1991.

²³ See footnote 21.

²⁴ Paragraphs 1(1)(a) and 1(2) of Schedule 8 to the WRA 1991.

²⁵ Paragraph 1(4) of Schedule 8 to the WRA 1991

Publish notices

As specifically detailed in Schedule 8 to the WRA 1991 water companies must publish the notice:

- in one or more local newspapers circulating within the area affected by the permit²⁶

and

- in the London Gazette²⁷. The London Gazette's address is PO Box 3584, Norwich, NR7 7WD (telephone 0333 200 2434, e-mail London@thegazette.co.uk)

The applicant must decide in which local newspapers to publish the notice. It is recommended that applicants should consider in advance which newspapers to use. Applicants may wish to bear the following points in mind:

- generally, it is better to publish notices in more newspapers rather than in fewer, to make sure that compliance with this procedural requirement cannot be questioned. The publication of notices must be seen to have been unquestionably fair and proper. Where there is more than one local paper circulating in the area, none of which has undisputed primacy, the applicant should place the notice in at least two of the papers and should consider whether it is necessary to place the notice in more
- to avoid delay, regional daily papers may be used in place of weekly ones
- "free" newspapers do not necessarily get circulated uniformly. Therefore, publication in such newspapers will not normally be considered acceptable on its own unless there is no other local newspaper circulating within the area affected by the permit.

Companies may wish to supplement notices in local newspapers with notices in local 'online' newspapers. However online notifications do not negate the need to publish notices in hardcopy local newspapers, as these enable those who do not have access to the internet to have sight of the application proposal. The only exception to this would be where local and regional newspapers are no longer circulating in a traditional format and are only available 'online'.

In addition to legal requirement stated above water companies are welcome to publish notices on their webpages and other online forums.

It is important to note that where any part of the area affected is in Wales it would be required for the applicant to publish their notices bilingually.

Note: For information that will be put on deposit for public inspection (or online such as the company website) the company should first review to ensure that it does not contain any information that would compromise national security interests. The application should be submitted with notice from the company's security manager certifying that the information being made available for public inspection has been reviewed and identifying the information in the application that is not available publically.

²⁶ Paragraph 1(1)(b) of Schedule 8 to the WRA 1991.

²⁷ Paragraph 1(1)(c) of Schedule 8 to the WRA 1991.

The company should ensure that the information that has been placed on deposit for public inspection still allows for effective consultation and satisfies the requirements under Section 79A of the Water Resources Act 1991. The documents available for inspection should include a copy of the application, including the supporting environmental report.

A full copy of the application and supporting information should be submitted to the Environment Agency, or Defra for drought order applications.

Public inspection of notices

The water company must make the drought permit application open to inspection by any person free of charge at all reasonable times within a period of 7 calendar days from the date it was served or advertised²⁸.

To minimise the possibility of procedural objections to the application, the Environment Agency requires that drought permit documents should be available for inspection for 7 calendar days at the following locations:

- an appropriate place(s) at most 8 km (or as near as possible in remote areas) by road from the point(s) of abstraction or the point(s) of compensation discharge. It may be possible to make arrangements with the local Post Office
- the water company's head office and its office most local to the relevant area
- the Environment Agency's local office

The documents available for inspection should include a complete copy of the application, including the supporting environmental report.

It is advisable that companies include a covering letter with applications available for inspection highlighting that some aspects of information supporting the drought permit application may alter during the consultation period (such as latest rainfall data). The letter should direct reviewers to contact the water company if they wish to view these alterations.

– [Send application to Environment Agency](#)

Format of application

Water companies must submit the application to the Environment Agency's Permitting Support Centre. This should be done in the following way:

- Either by letter, email or on a suitable electronic format (please liaise with PSC-WaterResources@environment-agency.gov.uk to arrange the most suitable method for electronically sharing information).
- If the application is sent in paper format, two complete sets of documents are required.
- Any electronic documents must be sent in Microsoft Office format.

²⁸ Paragraph 1(3)(b) of Schedule 8 to the WRA 1991.

- Paper copies are preferable where the size of electronic files could cause transmission problems.

Water companies should adhere to their own information security policy when sending information. All documents submitted are open to public viewing as part of the public inspection and the public hearing process. The water company must send any confidential or sensitive information separately using encryption where appropriate.

It is important that documents are submitted following these guidelines. If the water company does not enclose the required sets of documents or the correct information, this will delay progress on the application.

Content of application

Water companies can obtain a copy of the drought permit application form from the Environment Agency's Permitting Support Centre or on line on gov.uk (form WR80)²⁹.

The information which the Environment Agency need as part of a drought permit application is detailed on gov.uk (www.gov.uk/guidance/apply-for-a-drought-permit#what-to-include-in-your-application). [Appendix E](#) provides a suggested template of the content of an application which includes;

- a description of the proposals
- a statement of why a permit is necessary
- evidence that the permit need is due to an exceptional shortage of rain which is (or has the potential) to threaten supplies
- a supporting environmental report detailing impacts, monitoring and mitigation
- evidence the company is following its drought plan
- evidence that consultation has been properly undertaken

Once the application is received, the Environment Agency will aim to announce a decision normally within:

- 12 calendar days of the date of publication of the last advertisement, where no objections have been received or all objections have been resolved.
- 7 calendar days of the receipt of the hearing report.

To meet these (non-statutory) timescales, water companies must take the following steps for each application:

- supply information as outlined in [Appendix E](#)
- send proof of publication as soon as possible

²⁹ www.gov.uk/government/publications/form-wr80-application-for-a-drought-permit

- supply additional information requests by email, followed up by written confirmation, where possible
- promptly respond to queries raised by the Environment Agency

Withdrawing an application

If a water company does not want to proceed with a drought permit application, it should advise the Environment Agency immediately by telephone followed by written confirmation. The water company should also issue a press release and write to all objectors.

Objections and hearings

If there are objections to a drought permit application, a hearing will normally be held. A hearing gives objectors the opportunity to put their case before an inspector (or other relevant person) and to enable the water company to respond. It is in the best interests of water companies to make their application with reasons for it, and an assessment of the likely effects, in the clearest possible terms. If the application fails to address significant issues, it is inevitable that they will be raised by someone (including the Environment Agency). It may be possible to satisfy potential objectors simply by being entirely "up front" on these points.

The Environment Agency may appoint a Planning Inspector to hold a drought permit hearing. In certain cases (for example if there is no Planning Inspector available), it may be appropriate for the Environment Agency to appoint one of its own staff (from another region) or a suitable third party to run the hearing. The Drought Orders (Inquiries Procedure) Rules 1984, SI 1984 No 999 sets out the procedures to be followed before, at and after the hearing. The Inspector (or whoever is appointed by the Environment Agency) will be expected to operate within the framework set out in this document and within the Drought Orders (Inquiries Procedure) Rules 1984, SI 1984 No 999. Applicants can get a copy of the Drought Order Rules from the Environment Agency or Planning Inspectorate.

There is no appeal mechanism against decisions made by the Environment Agency in respect of drought permits. The water company may make an application to the Secretary of State for a drought order if it is dissatisfied with the Environment Agency's decision.

– Receive objections

Objections to drought permit applications must be made to the Environment Agency within 7 calendar days from the date on which notice is published and served³⁰. The Environment Agency will consider all objections provided all reasonable measures have been taken to comply with this timescale. There will be no question of failure to comply provided the objection is received within 7

³⁰ Paragraph 1(3)(c) of Schedule 8 to WRA 1991.

days of the last date of publication of either; the last advertisement or the day after the posting of notices.

Except in cases of extreme urgency, objectors must be given the opportunity of a hearing where³¹:

- an objection is 'duly' made (that is, clearly states the grounds for objection and is reasonable). A reasonable objection will:
 - clearly relate to the drought permit proposal
 - be about something the drought permit could affect, or
 - suggest feasible alternatives to the drought permit that the company does not seem to have considered
- an agreement between the water company and objector is not reached and
- the objection is not withdrawn.

The Environment Agency will acknowledge all objections in writing. Where the objection does not state clear grounds for objection, the Environment Agency will write to the objector to clarify the grounds for objection³². This will help to clarify whether the objection is duly made which therefore requires a hearing, or a representation of views (but not a duly made objection which does not warrant a hearing). In cases where there are multiple objections, a generic letter may be sent.

The Environment Agency will send a copy of each objection to the water company. Although the [Drought Orders \(Inquiries Procedure\) Rules 1984](#) require only the substance of each objection and other representations to be copied to the water company, for objections the Environment Agency consider to be duly made, the Environment Agency will also send to the water company objector contact details (and notify these objectors that this will be done and why). Section 8 Data Protection Act 2018 enables the Environment Agency to share personal data in 'carrying out a specific task in the public interest which is laid down by law.' In the event of a hearing or inquiry it will be necessary for the water company to contact objectors to ensure the timely production of a jointly owed 'statement of fact' (see [statement of fact section](#) below).

Upon receiving objections the water company may wish to enter into negotiations with the objectors with a view to the objectors withdrawing their objections.

The water company must send these objectors a statement of its reasons for making the application. This should include a list of any documents, maps or plans which the applicant intends to rely on at a hearing, with advice on where these can be inspected and copied. These would include the application documents and any other documents from statutory bodies such as Natural

³¹ Paragraph 2(1)(b) of Schedule 8 to WRA 1991.

³² See the power in paragraph 2(4)(a) of Schedule 8 to WRA 1991.

England, the Environment Agency itself, government departments, the navigation authority and, if relevant, Welsh Government.

Compensation

The Environment Agency may disregard an objection (and therefore not hold a hearing by reason of that objection or take it into account in determining the application) if it is satisfied that the objection relates exclusively to matters which can be dealt with via compensation. The compensation provisions are set out in Schedule 9 to the WRA 1991 and described in [section 2.4.4](#)

Withdrawing an objection

If discussions with the water company result in objections being withdrawn objectors themselves must notify the Environment Agency. Failure to do so could lead to a hearing that is not necessary.

Holding a hearing

The Environment Agency will decide whether a hearing is required based upon full assessment of objections received and evidence presented by water companies.

– Arrangements for hearing

Planning Inspectorate

As soon as a Drought Permit application is received, the Environment Agency will normally contact the Planning Inspectorate to start arrangements for a hearing. The reason for taking this step, in advance of receiving any objections, is to reduce delays should a hearing be needed.

At this stage, the Environment Agency and Planning Inspectorate will discuss timescales and the submission of documents for the hearing. The Environment Agency will send a letter to the water company explaining the hearing process and documentation requirements, should a hearing be required.

Arranging a venue

The Environment Agency will arrange a suitable venue. The venue should be a suitable hall or room in a hotel, or alternatively at the Environment Agency's local office, but not in the offices of the applicant water company.

Given the purpose of drought permits, a hearing must take place relatively quickly. In theory it can take place any time after the seven day time limit for lodging objections expires.

The Environment Agency will notify all parties of the date, time and venue for the inquiry or hearing. Normally, the Environment Agency will give 7 days notice to the applicant and to objectors. However, this may be shortened in more urgent cases.

If the Environment Agency considers that the application is of significant public interest, it will issue a press release or request the water company to provide adequate publicity.

– Holding a hearing

A hearing will always be held except where either:

- the applicant withdraws the application
- all the objectors withdraw their objections (or they are dealt with via compensation)
- all objections are not considered as duly made

or

- the Environment Agency has dispensed with the need to hold a hearing under cases of extreme urgency

Cases of extreme urgency

If there are reasons why the drought permit needs to be made urgently to enable the deficiency of supplies of water to be met effectively, the Environment Agency will refer the case to the Secretary of State to direct that the requirement to hold a hearing can be dispensed with³³. Any request for such a dispensation must be submitted with a full supporting case, as required. Objections which have not been withdrawn may not be disregarded in the determination of the drought permit³⁴.

Statement of fact

Before an inquiry or hearing is held, the water company should agree the factual basis of its case with any objectors. The water company should set out the factual basis in a document (this is known as a 'statement of fact') and send it to the Planning Inspector (as well as the Environment Agency). This is to prevent disputes during the inquiry or hearing on matters of a purely factual nature, for example rainfall data. It would be beneficial to send this in as far in advance of the hearing as possible.

The statement of fact should;

- be a single written statement (signed by the water company and the objector(s))
- contain factual information about the proposal which the applicant and objector(s) reasonably consider will not be disputed at a hearing or inquiry
- be agreed between the applicant and objector(s) to enable that evidence considered at a hearing or inquiry can focus on material differences between applicant and objector(s)

³³ Paragraph 2(2) of Schedule 8 to the WRA 1991.

³⁴ Paragraph 2(3) of Schedule 8 to the WRA 1991.

The water company should notify the Planning Inspector (and the Environment Agency) about anything that occurred after application submission that needs to be considered during the hearing (for example, a change in rainfall, environmental issues or any other new developments).

Structure of hearing

The Inspector has discretion (except as otherwise provided in the rules) over the way the hearing is run. Normally the procedure will be as follows.

1. The water company and any objectors will be allowed to speak at the hearing. The Inspector has the discretion whether to hear objectors who did not object in time, stating grounds, etc. Those appearing may do so on their own, or be represented.
2. Objectors may speak for themselves, and/or call evidence and/or ask questions. Questions will normally be channelled through the Inspector. The inspector may also ask questions of his/her own.
3. The water company speaks first, followed by the objectors, after which the water company may make closing comments. Depending on the formality of the proceedings, the hearing may involve discussion, rather like a structured meeting, although this may not always be practicable.
4. The Inspector may make an informal site visit on his/her own before the hearing to familiarise themselves with the locale.

Recovery of costs

The Environment Agency will recover its costs incurred as a result of the hearing, including any fees payable for the venue (see [section 1.4](#)). Where an Inspector is appointed the Planning Inspectorate will also charge a fee for the Inspector's preparation, sitting and reporting time and for any travel and subsistence costs incurred.

Receive hearing report

After the hearing, the Inspector (or whoever is appointed) will submit the report to the Environment Agency. The report will:

- list the parties who have objected at the hearing and summarise the nature of the objections;
- set out the response of the water company to each objection, including the results of any questioning and measures taken to withdraw objections;
- provide the Inspector's findings of fact, suggested modifications or conditions and conclusions.

The report will not make a recommendation on the determination of the application.

The Environment Agency aims to make a decision within 7 calendar days of the receipt of the hearing report. It is important to note that this period can be longer or (in exceptional cases) shorter.

2.4.3 Environment Agency determines application

If there has been no hearing, the Environment Agency will determine the application taking into account all written material it has received in connection with the application.

If there has been a hearing, the Environment Agency's decision will take into consideration the application documents, written objections received and the report of the hearing.

Whether there is a hearing or not, the Environment Agency must consider all letters of objection when determining the application³⁵.

The Environment Agency's decision will take the form of a written, reasoned determination report to which, where applicable, the hearing report will be appended, if applicable, and, if granted, a copy of the drought permit.

– Notify Water Company of decision

The Environment Agency will make a decision on the drought permit application and notify the water company by email, followed by a letter.

The Environment Agency will notify the Department for Environment, Food and Rural Affairs (and, if relevant, Natural Resources Wales and Welsh Government) by email.

Although there are provisions for the water company to advertise the grant of a drought permit³⁶, the Environment Agency will also write to all objectors advising them of the outcome of the application.

– Publish notice of drought permit

The water company must advertise the granting of the drought permit in the London Gazette and the same local newspaper(s) as it advertised the notice of the application. This notice must state that the permit has been granted and must state where it can be inspected³⁷. The notice is required in only one issue of both the London Gazette and the local newspaper.

The same arrangements for public inspection should be made as at the time of the application.

2.4.4 After the drought permit has been granted

– Compensation

³⁵ Paragraph 2(2) of Schedule 8 to WRA 1991.

³⁶ See step 13.

³⁷ Paragraph 3 of Schedule 8 to WRA 1991.

People who suffer loss or damage as a result of a drought permit are entitled to compensation. The rules are set out in Schedule 9 to the WRA 1991.

Those who may claim are:

- the owners of the source³⁸
- all other persons interested in the source or injuriously affected by the taking of the water³⁹

The water company, as applicant, is liable to pay the compensation⁴⁰. The claimant serves notice on the water company stating the grounds of the claim and the amount claimed⁴¹. The Environment Agency is not involved in the claims process.

Claims must be made within six months of the date of expiry of the permit⁴². Disputes are referred by the claimant or applicant to the Upper Tribunal⁴³, and are not a matter dealt with at the hearing. The Upper Tribunal may make an award during the duration of the permit in respect of likely damage⁴⁴, though in so doing it may have regard to the amount of water which was likely to have been available to the claimant as against others⁴⁵.

– Extending a drought permit

Drought permits may remain in force for a period of up to 6 months⁴⁶. The Environment Agency can extend an existing permit for up to a further 6 months.

The water company should contact the Environment Agency to request an extension of its drought permit as soon as possible or at least 28 days before the existing permit expires (note that re-advertising an extension is not required under WRA 1991). The company must enclose full supporting material with its extension request, including any fresh evidence for example on exceptional shortage of rainfall. The Environment Agency will process the application in the same way as the application for the original permit, except that it may disregard an objection if satisfied that it has, in substance, been made in respect of the application for the original permit⁴⁷. However, such disregard is discretionary. The Environment Agency will ensure that circumstances have not changed to give the objection more substance on the application for the extension than on the original application. If circumstances have changed, then the objection may be considered.

³⁸ Paragraph 2(2)(a) of Schedule 9 to WRA 1991.

³⁹ Paragraph 2(2)(b) of Schedule 9 to WRA 1991.

⁴⁰ See paragraph 2(2) of Schedule 9 to WRA 1991.

⁴¹ Paragraph 3(1) of Schedule 9 to WRA 1991.

⁴² Paragraph 4(1) of Schedule 9 to WRA 1991. This is taken to mean the date of expiry of the original permit or as extended, whichever is the later

⁴³ Paragraph 3(2) of Schedule 9 to WRA 1991.

⁴⁴ Paragraph 4(2) of Schedule 9 to WRA 1991. This power does not seem to prevent claims being made after the permit has expired i.e. in relation to net assessed loss.

⁴⁵ Paragraph 4(3) of Schedule 9 to WRA 1991. In other words the claimant cannot be assumed necessarily to have been able to abstract the full amount that the licence might entitle.

⁴⁶ Section 74(3) of the WRA 1991.

⁴⁷ Paragraph 2(4)(b)(ii) of Schedule 8 to the WRA 1991.

A drought permit cannot be in force for more than 12 months. A new application must be made to renew an existing drought permit which cannot be extended further. In such cases, the water company must renew the drought permit following the normal application procedure.

Variation of drought permits

A drought permit cannot be varied except by a full application. The Environment Agency may use its discretion to make minor amendments to a drought permit to which there could be no sensible objection.

Withdrawal of drought permits

A water company may at any time stop using the provisions of a drought permit relating to the taking of water, provided it complies with any conditions or restrictions set on the permit. If the water company wants the drought permit withdrawn it should write to the Environment Agency. As opposed to other changes⁴⁸, there is no legal requirement to notify a withdrawal, but it would be desirable for the water company to issue a press release to inform the public.

In circumstances where a water company continued not to comply with any conditions or restrictions specified in a drought permit the Environment Agency would, after giving a written warning to the company, revoke the permit and/or take appropriate enforcement action.

– Offences

The same applies as for ordinary drought orders (see [section 3.4.4](#)).

⁴⁸ For example withdrawal of applications or extensions.

3. Applying for ordinary drought orders

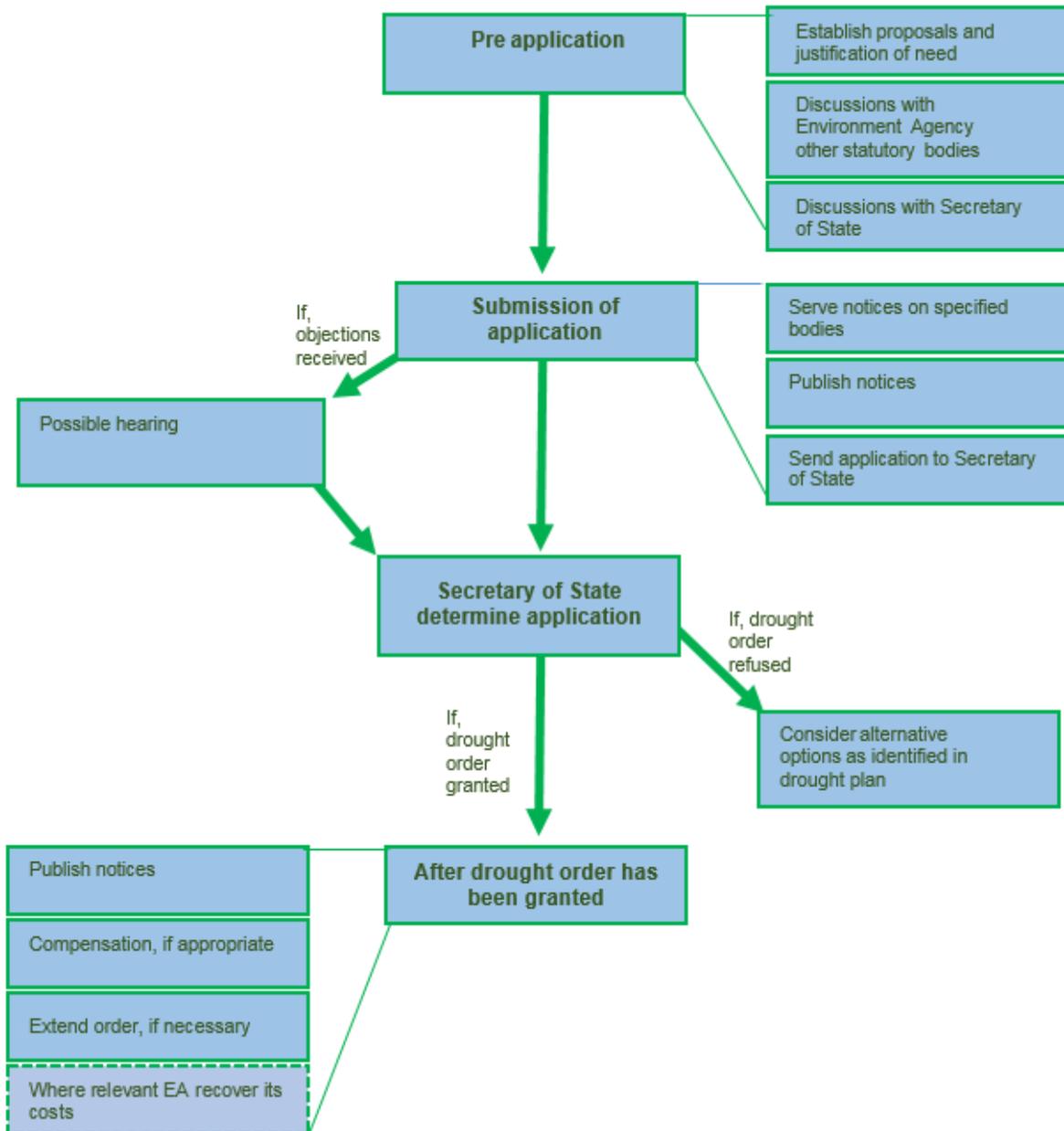


FIGURE TWO: PROCESS FOR APPLYING FOR AN ORDINARY DROUGHT ORDER

3.1. Scope of ordinary drought orders

The Secretary of State can, by an ordinary drought order, authorise the Environment Agency and water companies to take actions under section 74 of the WRA 1991.

Water companies (water and sewerage companies, and water undertakers) may take the following actions⁴⁹:

- to take water from a source specified in the order
- to prohibit or limit the use of water for any of the purposes specified in the Drought Direction 2011⁵⁰. This Drought Direction was updated to take account of the temporary bans on water use powers, enacted as part of the amendments to section 76 Water Industry Act 1991 brought about by the Flood and Water Management Act 2010⁵¹. These powers allow a water company to prohibit a wider range of non-essential water uses
- to discharge water to a place specified in the order
- to authorise the Environment Agency to prohibit or limit the taking of water from a source specified in the order
- to prohibit or limit the taking by the Environment Agency of water from a source specified in the order
- to suspend or modify restrictions or obligations to which the water undertaker or any sewerage undertaker, or anyone else is subject to the taking, discharging, supplying or filtering/treating water
- to authorise the Environment Agency to suspend, vary or attach conditions to any consent issued for the discharge of effluent by anyone

Any action to suspend or modify obligations would not affect the water companies' obligations to meet drinking water standards.

3.2. Process overview

The legislative basis of the application procedure for ordinary drought orders is contained in Schedule 8 to the WRA 1991⁵². Figure 2 (see previous page) presents a summary of the steps applicants should follow when applying for a drought order.

3.3. Timescales

Timings to process a drought order application will vary and depend on the urgency of the situation. If applicants follow and comply with the information in the following steps and if the process goes forward with no delays whatsoever, then the Secretary of State will normally make a decision within 28 days. That is when there are no objections and/or a public inquiry or hearing is held. The minimum achievable timescale for an application to which there are no objections and no public inquiry or hearing is 10 days.

In addition to the above timescales, if the application has the potential to damage the features of a statutory designated site, under the Habitats

⁴⁹ Section 74(2) of the WRA 1991

⁵⁰ Drought Direction 2011 commenced on 31 March 2011

⁵¹ Provisions under the Flood and Water Management Act 2010 were commenced on 1 October 2010.

⁵² The full text of Schedule 8 to the Water Resources Act 1991 as amended by the Environment Act 1995 and Water Act 2003 is contained in Appendix A2.

Regulations or Wildlife and Countryside Act, the Environment Agency must allow Natural England 28 days in which to respond to notification. Note, if the application affects a site in Wales, Natural Resources Wales will also have to be consulted. If water companies take steps to consult with Natural England (and Natural Resources Wales, if relevant) on proposals in advance at both the drought plan 'application ready' planning stage and pre-application stage, they should be able to respond to notification more promptly.

3.4. Drought order application: A step by step guide

This section outlines the steps a water company should follow when applying for a drought order. The scope and process for Environment Agency drought order applications is set out in [section 3.5](#).

3.4.1 Pre-application

– Establish proposals and justification of need

It is essential that applicants prepare thoroughly before submitting an application. They should:

1. Establish that the application meets the basic criteria for drought orders (see [section 1.1.2](#)).
2. Make early contact with the area office of the Environment Agency (see [appendix C](#) for contact details). This is to understand the Environment Agency's requirements for:
 - the conservation and augmentation of resources
 - demand management (for example temporary restrictions on water use)
 - publicity
3. In relation to the specific circumstances of the applicant's proposed application and their drought plan.
4. Take necessary action to comply with the Environment Agency's requirements.
5. Make early contact with the Department for Environment, Food and Rural Affairs. It is likely that the Department for Environment, Food and Rural Affairs will hold a meeting with the applicant to discuss its proposals for a drought order well before submission of an application.
6. Make early contact with Natural England where there may be a potential for impact on designated sites.

Once the applicant has established and agreed the broad proposals and need for a drought order through pre-application discussions, it must give the Department for Environment, Food & Rural Affairs and the relevant area office of the Environment Agency informal notification, by telephone, that its application for a drought order is imminent.

3.4.2 Submission of application

Serve notice on specified bodies

Applicants must serve notices of drought order applications on specified bodies. The legal requirements for these notices are contained in paragraph 1 of Schedule 8 to the WRA 1991.

Format of notice

The format of notice is the same as for drought permit applications (see [section 2.4.2](#)), except that objections should be sent to:

Department for Environment, Food and Rural Affairs
Water Resources Policy
Seacole 3rd Floor
2 Marsham Street
London
SW1P 4DF
Email address: water.resources@defra.gov.uk

Specified bodies

The table in paragraph 1(2) of Schedule 8 to the WRA 1991 as amended specifies the persons and bodies on whom notices must be served on. This will vary depending on the specific nature of the order. Those persons and bodies on whom notices are most commonly served are:

- the Environment Agency (if a water company is the applicant)
- every local authority (except English county councils⁵³) and water companies whose area would be affected by the order⁵⁴
- if the drought order is for suspending or modifying any statutory requirements (e.g. for compensation water), including any subsidiary scheme or order, then notice should be served on those specified in the enactment, order etc. and for whose protection that requirement exists⁵⁵
- where the drought order relates to taking water from a source, or discharging water or effluent, every local authority (except English county councils⁵⁶), and internal drainage board in whose area the source or discharge point is situated

and

⁵³ Although the legislation does not require a notice to be served on English county councils, we would encourage any applicant for a drought order in England to serve a notice voluntarily on the county council.

⁵⁴ Paragraphs 1(1)(a) and 1(2) of Schedule 8 to the WRA 1991 (as amended by paragraph 3(7) of Schedule 11 to the Local Government (Wales) Act 1994, which removed the exclusion relating to Welsh county councils).

⁵⁵ Paragraphs 1(1)(a) and 1(2) of Schedule 8 to the WRA 1991.

⁵⁶ See footnote 21.

- any navigation authority exercising functions over any watercourse affected by the order⁵⁷.

See [section 2.4.2](#) on drought permit applications for further information on requirements for serving notices.

– Publish notices

The applicant must publish the notice:

- in one or more local newspapers circulating within the area affected by the order⁵⁸

and

- in the London Gazette⁵⁹. The London Gazette's address is PO Box 3584, Norwich, NR7 7WD (telephone 0333 200 2434, e-mail London@thegazette.co.uk)

See [section 2.4.2](#) on submission of drought permit applications for further information on requirements for publishing the notices (including online).

Public inspection of notices

See [section 2.4.2](#) on submission of drought permit applications for further information on requirements in regard to public inspection of notices (including guidance on national security).

– Send application

Format of application

The applicant must submit the application to the Secretary of State for the Department of Environment, Fisheries and Rural Affairs. This should be done in the following way:

- Either by letter, email or on suitable electronic format (please liaise with water.resources@defra.gov.uk to arrange the most suitable method for electronically sharing information).
- If the application is sent in paper format, two complete sets of documents are required.
- Any electronic documents must be sent in Microsoft Office format.
- Paper copies are preferable where the size of electronic files could cause transmission problems.

⁵⁷ Paragraphs 1(1)(a) and 1(2) of Schedule 8 to the WRA 1991.

⁵⁸ Paragraph 1(1)(b) of Schedule 8 to the WRA 1991.

⁵⁹ Paragraph 1(1)(c) of Schedule 8 to the WRA 1991.

Water companies should adhere to their own information security policy when sending information. All documents submitted are open to public viewing as part of the public inspection or the public hearing process. The water company must send any confidential or sensitive information separately using encryption where appropriate.

It is important that documents are submitted following these guidelines. If the water company does not enclose the required sets of documents or the correct information, this will delay progress on the application.

Content of application

Drought order applications submitted to the Secretary of State must include the same supporting information that is required for drought permits (detailed in [Appendix E](#)). This is to be supplemented with relevant information from Table two below.

TABLE 2: CONTENT OF APPLICATION FOR DROUGHT ORDERS

Application contents	Additional information
A draft of the proposed order	Include an electronic copy in a format which is compatible with Microsoft Word.
For an Order restricting non-essential uses of water	
1. Drought Direction information	1. A note of which purposes in Drought Direction 2011 are to be specified in the order, and whether a class of consumer is to be restricted under that order (section 74(2)(b) of WRA 1991)
2. Details of applicants plan for dealing with water shortage in alignment with its drought plan	2. Information is needed on: <ul style="list-style-type: none"> ▪ strategic steps and timings; ▪ publicity ▪ liaison with, as appropriate, customers, water companies, Natural England, local authorities, health authorities, emergency services, other organisations such as NFU, CBI and trade unions.
3. An assessment of the costs and benefits should be submitted.	3. Include an estimate of the water savings that would be achieved as a result of proposed measures and an assessment of the impacts as a result of the measures. For example, the number of households or businesses affected and how they are affected. The applicant should indicate how they will monitor and evaluate the impact of an order, if granted.

A copy of any existing abstraction licence and any statutory instrument or Local Act governing the abstraction, or discharge relating to the order	Append document(s)
An assessment of the expected effects on the quality of the river as well as on other licensed abstractions	This is for orders which will reduce residual river flows by reason of reduced compensation water or regulated discharges, or by new or increased abstractions. Where applicant proposes to use water from a new source, it should be confirmed that its quality (after treatment if necessary) is suitable for public supply.
Comments from specified bodies, where appropriate: Environment Agency (where applicant is water company) Water company affected (where Environment Agency is applicant); any Navigation Authority affected	Include where relevant
A copy of any water resource management arrangements	This means any relevant arrangements with the Environment Agency under Section 20 of the WRA 1991.

Once the application is sent to the Secretary of State, officials at the Department for Environment Food and Rural Affairs will normally process applications within 28 days from the date of application.

To meet this timetable, applicants must take the following steps for each application:

- nominate a contact to liaise with officials
- supply full information as outlined in Table 2 above and [Appendix E](#)
- send proof of publication as soon as possible
- supply information by telephone or email, followed up by written confirmation, wherever possible
- promptly respond to queries raised by officials

Withdrawing an application

If an applicant does not want to proceed with a drought order application, it should advise the officials at the Department for Environment Food and Rural Affairs immediately by telephone followed by written confirmation within three days. The applicant should also issue a press release and write to all objectors.

Objections and public inquiries and hearings

The Secretary of State may hold a public inquiry, or hearing, whether or not there are objections to the drought order application⁶⁰. Where there are objections, a hearing is normally held in preference to a public inquiry. The Drought Orders (Inquiries Procedure) Rules 1984, SI 1984 No 999 set out the procedures to be followed before, at and after the hearing or inquiry. The rules intend to strike a balance between the interests of those affected by the drought order.

In addition to the above, section 65 of the Water Act 2003 amended Schedule 8 to the Water Resources Act 1991. In accordance with the amended schedule, the Public Inquiry process is to be based on the rules contained within Section 250, subsections (2) to (5) of the Local Government Act 1972.

– Receive objections

Objections to drought order applications must be made to the Secretary of State within seven days from the date on which the notice is published and served⁶¹.

Officials at the Department for Environment Food and Rural Affairs will send a copy of each objection to the applicant. Although the [Drought Orders \(Inquiries Procedure\) Rules 1984](#) require only the substance of each objection and other representations to be copied to the applicant, for objections the Department for Environment Food and Rural Affairs consider to be duly made, the Department for Environment Food and Rural Affairs will also send to the applicant the objectors contact details (and notify these objectors that this will be done and why). Section 8 Data Protection Act 2018 enables the Department for Environment Food and Rural Affairs to share personal data in 'carrying out a specific task in the public interest which is laid down by law.' In the event of a hearing or inquiry it will be necessary for the applicant to contact objectors to ensure the timely production of a jointly owed 'statement of fact' ([see statement of fact section](#) below).

Upon receiving objections the applicant may wish to enter into negotiations with the objectors with a view to the objectors withdrawing their objections.

The Secretary of State may disregard an objection if satisfied⁶² that:

- it relates exclusively to financial compensation
- or
- the order would merely extend the period specified in a previous order and the objection has, in substance, been made in respect of the application for that previous order

⁶⁰ Paragraph 2(6) of Schedule 8 to the WRA 1991.

⁶¹ Paragraph 1(3)(c) of Schedule 8 to the WRA 1991.

⁶² Paragraph 2(4)(b) of Schedule 8 to the WRA 1991.

Cases of extreme urgency

If the Secretary of State agrees with an applicant that an order needs to be made urgently to enable the deficiency of supplies of water to be effectively met, the Secretary of State has the power to dispense with the requirement to hold a hearing or inquiry⁶³. Objections which have not been withdrawn may not be disregarded⁶⁴ and any request for such a dispensation must be submitted with a full supporting case.

– Arrangements for inquiry or hearing

Planning Inspectorate

As soon as a drought order application is received, officials at the Department for Environment, Food and Rural Affairs will normally contact the Planning Inspectorate to start arrangements for an inquiry or hearing. The reason for taking this step in advance of receiving any objections is to reduce delays should an inquiry or hearing be needed.

At this stage, officials at the Department for Environment, Food and Rural Affairs and the Planning Inspectorate will discuss timescales and the submission of documents for the inquiry or hearing. A letter will be sent to the applicant explaining the process and documentation requirements, should an inquiry or hearing be required.

Arranging a venue

Officials at the Department for Environment Food and Rural Affairs will ask the applicant to arrange a venue. This should be a suitable hall or room in a hotel, or alternatively at the applicant's own offices. The applicant must inform officials once a venue is confirmed.

Officials will notify all parties of the date, time and venue for the inquiry or hearing.

Withdrawal of objections

The applicant should advise officials at the Department for Environment, Food and Rural Affairs immediately when any objection is withdrawn, and copy the relevant correspondence to officials. When the Secretary of State is advised of the withdrawal of an objection, officials will notify the applicant and forward a copy of the objector's letter. As a result of the withdrawal of objections, officials will cancel arrangements made for a hearing and notify all parties by letter.

⁶³ Paragraph 2(2) of Schedule 8 to the WRA 1991.

⁶⁴ Paragraph 2(3) of Schedule 8 to the WRA 1991.

Holding an inquiry or hearing

An inquiry or hearing will be held except where:

- the applicant withdraws the application
- all the objectors withdraw their objections
- the Secretary of State has dispensed with the need to hold a hearing or inquiry

Statement of fact

Before an inquiry or hearing is held, the applicant (the water company or the Environment Agency) should agree the factual basis of its case with any objectors. The applicant should set out the factual basis in a document (this is known as a 'statement of fact') and send it to the Planning Inspector (and the Department for the Environment, Food and Rural Affairs). This is to prevent disputes during the inquiry or hearing on matters of a purely factual nature, for example rainfall data. It would be beneficial to send this in as far in advance of the hearing as possible.

The statement of fact should;

- be a single written statement (signed by the applicant and the objector(s))
- contain factual information about the proposal which the applicant and objector(s) reasonably consider will not be disputed at a hearing or inquiry
- be agreed between the applicant and objector(s) to enable that evidence considered at a hearing or inquiry to focus on material differences between applicant and objector(s)

The applicant should notify the Planning Inspector (and the Department for the Environment, Food and Rural Affairs) about anything that occurred after application submission that needs to be considered during the hearing (for example, a change in rainfall, environmental issues or any other new developments).

Structure of inquiry or hearing

The Inspector has discretion (except as otherwise provided in the rules) over the way an inquiry or hearing is run. Normally the procedure will be as follows.

1. The applicant and any objectors will be allowed to speak. The Inspector has the discretion to decide whether to hear objectors who did not object in time, stating grounds, etc. Those appearing may do so on their own or be represented.
2. Objectors may speak for themselves, and/or call evidence and/or ask questions. Questions will normally be channelled through the Inspector. The Inspector may also ask questions of his/her own.
3. The applicant speaks first, followed by the objectors, after which the applicant may make closing comments.
4. The Inspector may make an informal site visit on his/her own before the inquiry or hearing to familiarise them self with the locale.

– Receive Inspector’s report

After the hearing or inquiry, the Inspector will submit the report and recommendations to the Secretary of State. The report will:

- list the parties who have objected at the hearing and summarise the nature of the objections
- set out the response of the water company to each objection, including the results of any questioning and measures taken to withdraw objections
- provide the Inspector’s findings of fact, suggested modifications or conditions and conclusions

The period between receipt of the Inspector’s report and the issue of the Secretary of State’s decision will vary between drought orders, depending on the complexity of each application.

Normally, the Department for Environment, Food and Rural Affairs expects the time from receipt of the Inspector’s report to the issue of the Secretary of State’s decision to be 7 calendar days. It is important to note that this period can be longer or (in exceptional cases) shorter.

3.4.3 Secretary of State determines application

When considering a drought order application, the Secretary of State will have regard to the practicability and effectiveness of the proposals and their effects on:

- individuals
- the public and the environment
- the economic and social well-being of the area
- any other factors relevant to the application.

All applications are dealt with on their individual merits.

The Secretary of State will decide if it is appropriate to make the drought order in respect of the application, with or without modifications⁶⁵. Alternatively, the Secretary of State may decide that it is not appropriate to make the order and accordingly decline to do so. Once the Secretary of State makes a decision, they are unable to make any changes or add further to the decision.

– Notify Water Company of decision

The Secretary of State will notify the applicant by email on a decision on the drought order application, followed by a letter.

⁶⁵ Paragraph 2(5) of Schedule 8 to the WRA 1991.

Officials will notify the relevant area office of the Environment Agency (and if relevant Natural Resources Wales and Welsh Government) by e-mail, followed by letter. Officials will also send a copy of the decision letter to each objector.

Publish notice of order made

The applicant must publish a notice, in the same way it published the earlier notices (see [section 3.4.2](#)), stating that the order has been made and naming a place where a copy of it can be inspected⁶⁶.

3.4.4 After the drought order has been made

Compensation

People who suffer loss or damage as a result of a drought order are entitled to compensation. The rules are set out in Schedule 9 to the WRA 1991.

Those who may claim are:

- the owners of the source⁶⁷
- all other persons interested in the source or adversely affected by the taking of the water⁶⁸

The applicant for the drought order is liable to pay the compensation⁶⁹. The claimant serves notice on the applicant stating the grounds of the claim and the amount claimed⁷⁰. The Secretary of State is not involved in the claims process.

Claims must be made within six months of the date of expiry of the order⁷¹. Disputes are referred by the claimant or applicant to the Upper Tribunal⁷², and are not a matter dealt with at the inquiry or hearing. The Upper Tribunal may make an award during the duration of the order in respect of likely damage⁷³, in

⁶⁶ Paragraph 3 of Schedule 8 to the WRA 1991.

⁶⁷ Paragraph 2(2)(a) of Schedule 9 to WRA 1991.

⁶⁸ Paragraph 2(2)(b) of Schedule 9 to WRA 1991.

⁶⁹ See Paragraph 2(2) of Schedule 9 to WRA 1991.

⁷⁰ Paragraph 3(1) of Schedule 9 to WRA 1991

⁷¹ Paragraph 4(1) of Schedule 9 to WRA 1991. This is taken to mean the date of expiry of the original order or as extended, whichever is the later. However the legislation is not as clear as it might be on this point and potential claimants would be well advised to make claims within six months of the expiry of the original order

⁷² Paragraph 3(2) of Schedule 9 to WRA 1991.

⁷³ Paragraph 4(2) of Schedule 9 to WRA 1991. This power does not seem to prevent claims being made after the order has expired i.e. in relation to net assessed loss.

so doing it may have regard to the amount of water which would likely to have been available to the claimant as against others⁷⁴.

Water company customers

Under the WRA 1991, water company customers have no entitlement to compensation from water companies in respect of loss or damage sustained as a result of the implementation of drought orders. The circumstances under which payments may be made to customers are set out in the conditions attached to water undertakers' Instruments of Appointment.

Offences

There are a number of actions in respect of drought orders which constitute an offence:

- taking or using water in contravention of a prohibition or limitation imposed by or under a drought order⁷⁵
- taking or using water otherwise than in accordance with any condition or restriction imposed by or under a drought order⁷⁶
- discharging water otherwise than in accordance with any condition or restriction imposed by or under a drought order⁷⁷
- failing to construct or maintain apparatus for measuring the flow of water required to be constructed or maintained by a drought order⁷⁸
- failing to allow an authorised person to examine such apparatus, or records made by it or kept in connection with it⁷⁹
- failing to allow an authorised person to take copies of such records⁸⁰

Reasonable precautions and due diligence

It is a defence against these offences for accused person to show that they took all reasonable precautions and exercised all due diligence to avoid the commission of the offence⁸¹.

⁷⁴ Paragraph 4(3) of Schedule 9 to WRA 1991. In other words the claimant cannot be assumed necessarily to have been able to abstract the full amount that the licence might entitle.

⁷⁵ Section 80(1)(a) of the WRA 1991.

⁷⁶ Section 80(1)(a) of the WRA 1991.

⁷⁷ Section 80(1)(b) of the WRA 1991.

⁷⁸ Section 80(2)(a) of the WRA 1991.

⁷⁹ Section 80(2)(b) of the WRA 1991.

⁸⁰ Section 80(2)(b) of the WRA 1991.

⁸¹ Section 80(3) of the WRA 1991.

Penalties

These offences are punishable on summary conviction, by a fine not exceeding the statutory maximum⁸² and on conviction of an indictment by an unlimited fine⁸³.

Other relevant offences

Abstraction or impoundment for public water supply without a licence is an offence unless otherwise authorised, for example by a drought order, or if the quantity or (exceptionally) location of an abstraction renders it exempt from the licensing requirement⁸⁴. If the drought order does not cover the water company's activity and it is not authorised in any other way, then an offence will be committed and the Environment Agency will act on the matter in the normal way.

Knowingly or recklessly making false statements for the purpose of, for example, obtaining a drought order is an offence⁸⁵.

– Cease to need the drought order

There are instances where drought orders are issued and then circumstances change to such an extent that the order is no longer needed. Sections 74 and 75 of the WRA 1991 confirm that drought orders are designed to enable, not to require, the water company (or Environment Agency) to take certain types of action.

Accordingly, where the water company recognises that there is no further need for actions, prohibitions or restrictions provided for by the drought order, it has discretion under the order to cease actions and to remove prohibitions and restrictions.

– Extending a drought order

Ordinary drought orders may remain in force for a period of up to 6 months⁸⁶. The Secretary of State can extend an existing permit for up to a further 6 months⁸⁷. The applicant should contact the Secretary of State to request an extension of its drought order as soon as possible or at least 28 days before the existing permit expires (note that re-advertising an extension is not required under WRA 1991). The applicant must enclose full supporting material, including any fresh evidence, with an extension request. The Secretary of State will process the application in the same way as the application for the original order,

⁸² Section 80(4)(a) of the WRA 1991.

⁸³ Section 80(4)(b) of the WRA 1991.

⁸⁴ Section 27 of the WRA 1991.

⁸⁵ Section 206 of the WRA 1991.

⁸⁶ Section 74(3) of the WRA 1991.

⁸⁷ Section 74(4) of the WRA 1991.

except that the Secretary of State may disregard an objection if satisfied that it has, in substance, been made in respect of the application for the original order⁸⁸.

3.5. Ordinary drought orders: The Environment Agency

3.5.1 Scope of Environment Agency ordinary drought orders

By means of an ordinary drought order, the Environment Agency may take the following actions⁸⁹:

- to take water from a source specified in the order
- to discharge water to a place specified in the order
- to prohibit or limit the taking of water from a source specified in the order
- to suspend or modify restrictions or obligations to which the Environment Agency, any water or sewerage undertaker, or anyone else is subject to the taking, discharging, supplying or filtering/treating of water
- to suspend, vary or attach conditions to any consent issued for the discharge of effluent by anyone

The Secretary of State must be satisfied that there is:

- such a deficiency in the flow or level of water in any inland waterway to pose a serious threat to any flora or fauna which are dependent on those waters⁹⁰, exists or is threatened

and that

- the reason for the deficiency is an exceptional shortage of rain.

3.5.2 Process

The process for Environment Agency drought orders is the same as that under [sections 3.2](#) to [3.4](#) for water company ordinary drought orders.

⁸⁸ Paragraph 2(4)(b)(ii) of Schedule 8 to the WRA 1991.

⁸⁹ Section 74(1) of the WRA 1991.

⁹⁰ Section 73(1)(b) of the WRA 1991 as amended by the Environment Act 1995.

4. Applying for emergency drought orders

4.1. Scope of emergency drought orders

By means of an emergency drought order, water companies may take the following actions⁹¹:

- any provision included under the scope of ordinary drought order except provisions under the Drought Direction 2011
- to prohibit or limit the use of water for any purposes the water company considers appropriate
- set up and supply water by means of stand-pipes, rota cuts or water tanks within its water supply area

An emergency drought order for the Environment Agency can authorise any action included under the scope of an ordinary drought order.

4.2. Process

The process for emergency drought orders is similar to ordinary drought orders. Applicants should follow the process under [Section 3: applying for ordinary drought orders](#), except for the following steps.

– Establish proposal and justification of need

Before applying for an emergency drought order, the applicant should take the necessary action in respect of:

- conservation and augmentation of resources
- demand management
- publicity

The applicant should additionally make suitable use of ordinary drought orders and if appropriate, drought permits.

The Secretary of State will ask for information to show that before applying for an emergency drought order the applicant has taken the necessary action in respect of the above.

However, should the need for an emergency drought order arise and the applicant can demonstrate that they did not have the time to take all of these steps, this will not prevent the Secretary of State making the order.

⁹¹ Section 75 of the WRA 1991

– Send application to Secretary of State

The information an applicant must supply for emergency drought orders is the same as that for ordinary drought orders ([section 3.4.2](#)), but with the following additional items.

1. An analysis of average daily consumption broken down by type and consumer (where the applicant is a water company).
 2. Information supporting the contention that economic and social well-being could be impaired. This should deal with the implications of the order for all or any of the following:
 - domestic life
 - elderly and disabled people
 - hospitals and health services
 - schools
 - public services
 - industry
 - agriculture and food production
 - commerce
 - research establishments
 - tourism, sport and recreation.
 3. For an order under section 75(2)(b) to prohibit or limit the use of water, the reasons why a section 74(2)(b) drought order will not suffice
 4. For an order under section 75(2)(c) allowing the supply of water by means of stand-pipes, rota cuts or water tanks, details of:
 - the proposed scheme including the number of persons per stand-pipe, rota cuts or water tank
 - the manpower implications for implementing and operating the scheme
- and
- the means by which non-domestic users will be supplied.
5. Details of any drought order already in force that affects the area under consideration, and whether it is to be revoked or modified
 6. A draft of the emergency drought order in a format which can be read and manipulated by Microsoft Word.

– Extending an emergency drought order

Emergency drought orders may remain in force for a period of up to 3 months⁹² and they can be extended for up to a further 2 months⁹³.

⁹² Section 75(3) of the WRA 1991.

⁹³ Section 75(4) of the WRA 1991.

5. APPENDICES

- a. Drought order and drought permit legislation:**
 - A1. Sections 73 to 81 of the Water Resources Act 1991 (as amended)
 - A2. Schedule 8 to the Water Resources Act 1991 (as amended)
 - A3. Schedule 9 to the Water Resources Act 1991
 - A4. The Drought Direction 2011

- b. Draft Statutory Notice for drought order or drought permit applications**
 - i. For Appendix B, refer to main text for advice on what must be in the notice and when it is or is not required before preparing the notice.

- c. Contact points in the Department for Environment, Food and Rural Affairs, the Environment Agency and Natural England**

- d. Supplementary guidance on exceptional shortage of rain (updated February 2019)**

- e. Content of application for drought permit (template)**

- f. Supplementary guidance on use of Temporary Use Bans during dry weather (and drought)**

- g. Supplementary note on applying for a drought permit and demonstrating control of demand through leakage.**

- h. Supplementary guidance on cost recovery**

APPENDIX A - Drought order and drought permit legislation (composed of appendices A1-A4)

APPENDIX A1

Sections 73 to 81 of the Water Resources Act 1991 (as amended)

Chapter III Drought

73 Power to make ordinary and emergency drought orders

(1) If the Secretary of State is satisfied that, by reason of an exceptional shortage of rain, there exists or is threatened—

(a) a serious deficiency of supplies of water in any area, or

(b) such a deficiency in the flow or level of water in any inland waters as to pose a serious threat to any of the flora or fauna which are dependent on those waters,

then, subject to the following provisions of this Chapter, he may by order (in this Chapter referred to as an “ordinary drought order”) make such provision authorised by this Chapter as appears to him to be expedient with a view to meeting the deficiency.

(2) If the Secretary of State—

(a) is satisfied that, by reason of an exceptional shortage of rain, a serious deficiency of supplies of water in any area exists or is threatened; and

(b) is further satisfied that the deficiency is such as to be likely to impair the economic or social well-being of persons in the area,

then, subject to the following provisions of this Chapter, he may by order (in this Chapter referred to as an “emergency drought order”) make such provision authorised by this Chapter as appears to him to be expedient with a view to meeting the deficiency.

(3) Subject to section 76(3) below, the power to make a drought order in relation to any area shall not be exercisable unless an application is made to the Secretary of State—

(a) by the appropriate agency; or

(b) except in the case of an ordinary drought order by virtue of subsection (1)(b) above, by a water undertaker which supplies water to premises in that area.

(4) The power to make a drought order shall be exercisable by statutory instrument; and Schedule 8 to this Act shall have effect with respect to the procedure on an application for such an order.

74 Provisions and duration of ordinary drought order

(1) An ordinary drought order made on the application of the appropriate agency may contain any of the following provisions, that is to say—

(a) provision authorising the appropriate agency (or persons authorised to do so by the appropriate agency) to take water from any source specified in the order subject to any conditions or restrictions so specified;

(b) provision authorising the appropriate agency (or persons authorised to do so by the appropriate agency) to discharge water to any place specified in the order subject to any conditions or restrictions so specified;

(c) provision authorising the appropriate agency to prohibit or limit the taking by any person (including a water undertaker) of water from a source specified in the order if the appropriate agency is satisfied that the taking of water from that source seriously affects the supplies available to the appropriate agency, any water undertaker or any other person;

(d) provision suspending or modifying, subject to any conditions specified in the order, any restriction or obligation to which the appropriate agency, any water undertaker or sewerage undertaker or any other person is subject as respects—

(i) the taking of water from any source;

(ii) the discharge of water;

(iii) the supply of water (whether in point of quantity, pressure, quality, means of supply or otherwise); or

(iv) the filtration or other treatment of water;

(e) provision authorising the appropriate agency to suspend or vary, or attach conditions to, any environmental permit specified in the order for the discharge of any effluent by any person, including any sewerage undertaker or water undertaker.

(2) An ordinary drought order made on the application of a water undertaker may contain any of the following provisions, that is to say—

(a) provision authorising the water undertaker to take water from any source specified in the order subject to any conditions or restrictions so specified;

(b) provision authorising the water undertaker to prohibit or limit the use of water for any purpose specified in the order, being a purpose for the time being set out in a direction given by the Secretary of State to water undertakers generally as a purpose which may be specified by virtue of this paragraph in any ordinary drought order;

(c) provision authorising the water undertaker to discharge water to any place specified in the order subject to any conditions or restrictions so specified;

(d) provision authorising the appropriate agency to prohibit or limit the taking by any person of water from a source specified in the order if the appropriate agency is satisfied that the taking of water from that source seriously affects the supplies available to the water undertaker;

(e) provision prohibiting or limiting the taking by the appropriate agency of water from a source specified in the order if the taking of water from that source is

determined, in accordance with provision made by the order, seriously to affect the supplies available to the water undertaker;

(f) provision suspending or modifying, subject to any conditions specified in the order, any restriction or obligation to which the water undertaker or any sewerage undertaker or other person is subject as respects

(i) the taking of water from any source;

(ii) the discharge of water;

(iii) the supply of water (whether in point of quantity, pressure, quality, means of supply or otherwise); or

(iv) the filtration or other treatment of water;

(g) provision authorising the appropriate agency to suspend or vary, or attach conditions to, any environmental permit specified in the order for the discharge of any effluent by any person, including the company which applied for the order (whether in the capacity in which it made the application, in its capacity as a sewerage undertaker or in any other capacity).

(3) The period for which—

(a) an authorisation given by or under an ordinary drought order;

(b) a prohibition or limitation imposed by or under any such order; or

(c) a suspension or modification effected by or under any such order,

has effect shall expire before the end of the period of six months beginning with the day on which the order comes into force, unless that period of six months is extended, in relation to that order, by virtue of the exercise by the Secretary of State of his power (subject to subsection (4) below) to amend the order.

(4) The power of the Secretary of State to amend an ordinary drought order shall not be exercised so as to extend the period of six months mentioned in subsection (3) above beyond the end of the period of one year beginning with the day on which that order came into force.

(5) Without prejudice to the following provisions of this Chapter, an ordinary drought order may—

(a) make different provision for different cases, including different provision in relation to different persons, circumstances or localities; and

(b) contain such supplemental, consequential and transitional provision as the Secretary of State considers appropriate.

75 Provisions and duration of emergency drought order

(1) An emergency drought order made on the application of the appropriate agency may contain any of the provisions which could be included, by virtue of section 74(1) above, in an ordinary drought order made on the application of the appropriate agency.

(2) An emergency drought order made on the application of a water undertaker may contain any of the following provisions, that is to say—

- (a) any provision which could be included, by virtue of subsection (2) of section 74 above, in an ordinary drought order made on the application of a water undertaker, except provision authorised by paragraph (b) of that subsection;
 - (b) provision authorising the water undertaker to prohibit or limit the use of water for such purposes as the water undertaker thinks fit;
 - (c) provision authorising the water undertaker—
 - (i) to supply water in its area, or in any place within its area, by means of stand-pipes or water tanks; and
 - (ii) to erect or set up and maintain stand-pipes or water tanks in any street in that area.
- (3) The period for which—
- (a) an authorisation given by or under an emergency drought order;
 - (b) a prohibition or limitation imposed by or under any such order; or
 - (c) a suspension or modification effected by or under any such order,
- has effect shall expire before the end of the period of three months beginning with the day on which the order comes into force unless that period of three months is extended, in relation to that order, by virtue of the exercise by the Secretary of State of his power (subject to subsection (4) below) to amend the order.
- (4) The power of the Secretary of State to amend an emergency drought order shall not be exercised so as to extend the period of three months mentioned in subsection (3) above beyond the end of the period of five months beginning with the day on which that order came into force.
- (5) Where powers have been conferred by an emergency drought order on any person—
- (a) the Secretary of State may give to that person such directions as he considers necessary or expedient as to the manner in which, or the circumstances in which, any of those powers is or is not to be exercised;
 - (b) it shall be the duty of that person to comply with any such direction; and
 - (c) where that person is a water undertaker or sewerage undertaker, the duty to comply with any such direction shall be enforceable under section 18 of the Water Industry Act 1991 by the Secretary of State.
- (6) The giving of a direction under subsection (5) above in relation to any power shall not affect—
- (a) the validity of anything done in the exercise of that power before the giving of the direction; or
 - (b) any obligation or liability incurred before the giving of the direction.
- (7) Without prejudice to the following provisions of this Chapter, an emergency drought order may—
- (a) make different provision for different cases, including different provision in relation to different persons, circumstances or localities; and
 - (b) contain such supplemental, consequential and transitional provision as the Secretary of State considers appropriate.

76 Provisions of drought order restricting use of water

(1) The following provisions apply where a drought order contains a provision authorising a water undertaker to prohibit or limit the use of water, that is to say—

(a) the power may be exercised in relation to consumers generally, a class of consumer or a particular consumer;

(b) the water undertaker shall take such steps as it thinks appropriate for bringing the prohibition or limitation to the attention of the persons to whom the prohibition or limitation will apply and, in particular, shall (as the undertaker thinks appropriate)—

(i) cause notice of the prohibition or limitation to be published in one or more local newspapers circulating within that part of the water undertaker's area which would be affected by the provision of the order; or

(ii) send notice of the prohibition or limitation to the persons to whom the prohibition or limitation will apply;

(c) the prohibition or limitation shall not come into operation until the end of the period of seventy-two hours beginning with the day on which the notice is published or, as the case may be, sent to the person in question.

(2) The Secretary of State may revoke or vary any direction given by him for the purposes of section 74(2)(b) above by a further direction for those purposes.

(3) Where any purpose set out in a direction given for the purposes of section 74(2)(b) above will cease, by virtue of the variation or revocation of the direction, to be one which may be specified in an ordinary drought order, the Secretary of State shall (without an application having been made to him) exercise his power to vary or revoke ordinary drought orders, in so far as any orders in force will be affected by the variation or revocation of the direction, so as to make those orders conform to the variation or reflect the revocation.

(4) The revocation or variation of a direction under subsection (3) above shall not affect either—

(a) the validity of anything done in pursuance of an order before the giving of the further direction; or

(b) any obligation or liability accrued or incurred before the giving of the further direction.

77 Provisions of drought order with respect to abstractions and discharges

(1) Any drought order which—

(a) authorises the taking of water from a source from which water is supplied to an inland navigation; or

(b) suspends or modifies—

(i) a restriction as respects the taking of water from a source from which water is supplied to an inland navigation; or

(ii) an obligation to discharge compensation water into a canal or into any river or stream which forms part of, or from which water is supplied to, an inland navigation,

may include provision for prohibiting or imposing limitations on the taking of water from the inland navigation or for the suspension or modification of any obligation to which a navigation authority are subject as respects the discharge of water from the inland navigation.

(2) A prohibition or limitation by or under a drought order on the taking of water from any source may be imposed so as to have effect in relation to a source from which a person to whom the prohibition or limitation applies has a right to take water whether by virtue of an enactment or instrument, an agreement or the ownership of land.

(3) Where a drought order made on the application of a water undertaker confers power on the [appropriate agency]—

(a) to prohibit or limit the taking of water from any source; or

(b) to suspend or vary, or attach conditions to, any environmental permit for the discharge of any effluent,

the appropriate agency shall exercise that power in such manner as will ensure, so far as reasonably practicable, that the supplies of water available to the water undertaker are not seriously affected.

(4) . . .

(5) Where—

(a) any drought order confers power on the appropriate agency to suspend or vary, or attach conditions to, any environmental permit for the discharge of any effluent;

(b) the appropriate agency exercises that power so as to restrict the discharge of effluent by a sewerage undertaker,

the sewerage undertaker may so modify any consents or agreements relating to the discharge by other persons of trade effluent as to enable it to comply with any requirements or conditions imposed on it by or under the order with respect to discharges from sewers or works of the undertaker.

(6) In this section—

“compensation water” means water which a water undertaker or the appropriate agency is under an obligation to discharge—

(a) in accordance with the provisions of a licence under Chapter II of this Part into a source of supply; or

(b) under any local statutory provision, into any river, stream, brook or other running water or into a canal;

and

“inland navigation” includes any canal or navigable river.

78 Works under drought orders

(1) A drought order may authorise the appropriate agency or a water undertaker, subject to any conditions and restrictions specified in the order, to carry out any works required for the performance of any duty or the exercise of any power which is imposed or conferred by or under the order.

(2) A drought order authorising the appropriate agency or a water undertaker to carry out any works—

(a) may authorise the appropriate agency or that undertaker for that purpose to enter upon any land specified in the order and to occupy and use the land to such extent and in such manner as may be requisite for the carrying out and maintenance of the works; and

(b) may apply in relation to the carrying out of the works such of the provisions of Part VII of this Act or Part VI of the Water Industry Act 1991 as appear to the Secretary of State to be appropriate, subject to such modifications as may be specified in the order.

(3) The Secretary of State shall include in any drought order authorising the appropriate agency or a water undertaker to enter any land provisions requiring the appropriate agency or that undertaker to give to the occupier of the land and to such other persons concerned with the land as may be specified in the order not less than twenty-four hours' notice of any intended entry.

(4) Subject to subsection (3) above, a drought order may make any such provision in relation to provisions of the order authorising any person to enter any land as corresponds to provision having effect by virtue of section 173 below or to provision contained in Part II of Schedule 6 to the Water Industry Act 1991.

(5) Any works to be carried out under the authority of an emergency drought order shall be included in the definition of emergency works in section 52 of the New Roads and Street Works Act 1991.

(6) Until the coming into force of section 52 of the New Roads and Street Works Act 1991, subsection (5) above shall have effect as if the reference to that section were a reference to section 39(1) of the Public Utilities Street Works Act 1950; but nothing in this section shall be taken to prejudice the power of the Secretary of State under that Act of 1991 to make an order bringing that section 52 into force on different days for different purposes (including the purposes of this section).

79 Compensation and charges where drought order made

(1) Schedule 9 to this Act shall have effect with respect to the payment of compensation where a drought order has been made.

(2) Except as provided by Schedule 9 to this Act, neither the appropriate agency nor any water undertaker or sewerage undertaker shall incur any liability to any person for loss or damage sustained by reason of anything done in pursuance of any drought order or of any omission in pursuance of such an order.

(3) Nothing in any drought order shall affect the right of the appropriate agency, a water undertaker or a sewerage undertaker, in the event of an interruption or diminution of the supply of water, to recover any fixed or minimum charge which might have been recovered from any person by the appropriate agency or that undertaker if there had been no such interruption or diminution.

[(4) Where a water undertaker makes an application for a drought order, the appropriate agency may recover from the water undertaker any expenses it incurs (whether of a revenue or capital nature)—

- (a) in connection with any local inquiry held in respect of the application;
 - (b) in the exercise of the appropriate agency's functions so far as their exercise is attributable to the application and (if the order is made) to the order, in so far as those expenses have not been recovered (whether from the water undertaker or not) under or by virtue of any other enactment.
- (5) Sections 125 to 129 below shall not apply in respect of any charges which may be made under subsection (4) above.

79A Drought permits

(1) If the appropriate agency is satisfied that, by reason of an exceptional shortage of rain, a serious deficiency of supplies of water in any area exists or is threatened then, subject to the following provisions of this section, it may, upon the application of a water undertaker which supplies water to premises in that area, issue to that undertaker a drought permit making such provision authorised by this section as appears to the appropriate agency to be expedient with a view to meeting the deficiency.

(2) A drought permit may contain any of the following provisions, that is to say—

- (a) provision authorising the water undertaker to which it is issued to take water from any source specified in the permit subject to any conditions or restrictions so specified;
- (b) provision suspending or modifying, subject to any conditions specified in the permit, any restriction or obligation to which that undertaker is subject as respects the taking of water from any source.

(3) A drought permit shall specify—

- (a) the day on which it comes into force; and
- (b) the period for which, subject to subsections (4) and (5) below, any authorisation given, or suspension or modification effected, by the permit is to have effect.

(4) Subject to subsection (5) below, the period for which—

- (a) an authorisation given by a drought permit, or
- (b) a suspension or modification effected by such a permit,

has effect shall expire before the end of the period of six months beginning with the day on which the permit comes into force.

(5) At any time before the expiration of the period for which such an authorisation, suspension or modification has effect, the appropriate agency may, by giving notice to the water undertaker to which the permit in question was issued, extend that period, but not so as to extend it beyond the end of the period of one year beginning with the day on which the permit came into force.

(6) A drought permit which—

- (a) authorises the taking of water from a source from which water is supplied to an inland navigation; or

(b) suspends or modifies—

(i) a restriction as respects the taking of water from a source from which water is supplied to an inland navigation; or

(ii) an obligation to discharge compensation water into a canal or into any river or stream which forms part of, or from which water is supplied to, an inland navigation,

shall not be issued without the consent of every navigation authority exercising functions over any or all of the parts of the canal or inland navigation in question which are affected by the permit.

(7) Schedule 8 to this Act shall have effect with respect to the procedure on an application for a drought permit as it has effect with respect to the procedure on an application for a drought order, but with the following modifications, that is to say—

(a) with the substitution for any reference to a drought order of a reference to a drought permit;

(b) with the substitution for any reference to the Secretary of State of a reference to the appropriate agency;

(c) . . .

(d) with the insertion, in paragraph 1(3)(c), of a requirement that the notice in question shall specify the address at which any objections are to be made to the appropriate agency; and

(e) with the omission—

(i) of paragraph 2(1)(a) and the word —eitherll immediately preceding it, and

(ii) of paragraph 2(6).

(8) . . .

(8A) Where a water undertaker makes an application for a drought permit, the appropriate agency may recover from the water undertaker any expenses it incurs (whether of a revenue or capital nature) in the exercise of its functions so far as their exercise is attributable to—

(a) the application;

(b) (if the permit is issued) the permit,

in so far as those expenses have not been recovered (whether from the water undertaker or not) under or by virtue of any other enactment.

(8B) Sections 125 to 129 below shall not apply in respect of any charges which may be made under subsection (8A) above.

(9) Section 79 above and Schedule 9 to this Act shall apply in relation to drought permits and their issue as they apply in relation to ordinary drought orders and their making.

(10) A drought permit may—

(a) make different provision for different cases, including different provision in relation to different persons, circumstances or localities; and

(b) contain such supplemental, consequential and transitional provisions as the [appropriate agency] considers appropriate.

(11) In this section—

“compensation water” has the same meaning as in section 77 above;

“drought permit” means a drought permit under this section;

“inland navigation” has the same meaning as in section 77 above.

80 Offences against drought order

(1) If any person—

(a) takes or uses water in contravention of a prohibition or limitation imposed by or under any drought order or takes or uses water otherwise than in accordance with any condition or restriction [imposed by or under any drought order or by any drought permit; or

(b) discharges water otherwise than in accordance with any condition or restriction imposed by or under such an order,

he shall be guilty of an offence under this section.

(2) If any person— (a) fails to construct or maintain in good order a gauge, weir or other apparatus for measuring the flow of water which he was required to construct or maintain by any drought order [or drought permit]; or

(b) fails to allow some person authorised for the purpose by or under any such order [or by virtue of any such permit] to inspect and examine any such apparatus or any records made thereby or kept by that person in connection therewith or to take copies of any such records,

he shall be guilty of an offence under this section.

(3) In any proceedings against any person for an offence under this section it shall be a defence for that person to show that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

(4) A person who is guilty of an offence under this section shall be liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum;

(b) on conviction on indictment, to a fine.

81 Interpretation of Chapter III

In this Chapter—

(a) references to the taking of water include references to the collection, impounding, diversion or appropriation of water; and

(b) references to an obligation or to a restriction include references to an obligation or, as the case may be, to a restriction which is imposed by or under any enactment or agreement.

APPENDIX A2

Schedule 8 to Water Resources Act 1991

PROCEEDINGS ON APPLICATIONS FOR DROUGHT ORDERS

Section 73

1

(1) The applicant for a drought order shall—

(a) cause notice of the application to be served on the persons specified in the Table set out in sub-paragraph (2) below;

(b) cause a notice of the application to be published in one or more local newspapers circulating within the area affected by the order; and

(c) cause a notice of the application to be published in the London Gazette.

(2) The said Table is as follows—

Table

All orders

(a) The Agency (where it is not the applicant).

applicant)

(aa) The NRBW (where it is not the

an English county council) and water undertaker (not being the applicant) whose area would be affected by the order.

(b) Every local authority (not being

Orders which suspend or modify any enactment or any order or scheme made or confirmed under any enactment.

Such persons (if any) as are specified by name in the enactment, order or scheme as being persons for whose protection it was enacted or made.

Orders concerning the taking of water from a source or the discharge of water or effluent to a place.

(a) Every local authority (not being an English county] council) in whose area the source, or the place at which water or effluent is to be discharged, is situated.

internal district in which the source, or the place at which water or effluent is to be discharged, is situated.

(b) Every drainage board for an

(c) Every navigation authority exercising functions over any watercourse affected by the order.

(d) If the order concerns any environmental permit relating to the discharge of sewage effluent or trade effluent, the person to whom the consent was given.

Orders which authorise the carrying out of any works. (a) Every local authority (not being an English county council) within whose area the works are situated.

(b) If the order authorises the carrying out of works in, under or over a watercourse, every drainage board for an internal drainage district within which the works, or any part of the works, are situated.

Orders which authorise the occupation and use of land. Every owner, lessee and occupier of the land.

Orders which prohibit or limit the taking of water. Every named person to whom the prohibition or limitation applies.

(3) A notice for the purposes of this paragraph of an application for a drought order—

(a) shall state the general effect of the application;

(b) shall specify a place within the area affected by the order where a copy of any relevant map or plan may be inspected by any person free of charge at all reasonable times within a period of seven days from the date on which it is served or, as the case may be, published;

(c) shall state that objections to the application may be made to the Secretary of State within seven days from the date on which it is served or, as the case may be, published; and

(d) in the case of an application for an order authorising the occupation and use of land, shall specify the land to which the application relates.

(4) A notice sent in a letter in pursuance of section 220 of this Act to an address to which it may be sent in pursuance of that section shall not be treated as having been properly served for the purposes of this paragraph unless the sender takes such steps as are for the time being required to secure that the letter is transmitted in priority to letters of other descriptions.

Objections to and making of orders

2

(1) If any objection is duly made with respect to an application for a drought order and is not withdrawn, then, subject to the provisions of this paragraph, the Secretary of State shall, before making the order, either—

(a) cause a local inquiry to be held; or

(b) afford an opportunity—

(i) to the objector; and

(ii) if the objector avails himself of the opportunity, to the applicant and to any other persons to whom it appears to the Secretary of State expedient to afford the opportunity,

of appearing before and being heard by a person appointed by the Secretary of State for the purpose.

(2) Subject to sub-paragraph (3) below, where, on an application for a drought order, it appears to the Secretary of State that a drought order is required to be made urgently if it is to enable the deficiency of supplies of water to be effectively met, he may direct that the requirements of sub-paragraph (1) above shall be dispensed with in relation to the application.

(3) Nothing in sub-paragraph (2) above shall authorise the Secretary of State to fail to consider any objection to a proposed drought order which has been duly made and not withdrawn.

(4) Notwithstanding anything in sub-paragraph (1) above, the Secretary of State may—

(a) require any person who has made an objection to a proposed drought order to state in writing the grounds of his objection; and

(b) disregard the objection for the purposes of this paragraph if the Secretary of State is satisfied—

(i) that the objection relates exclusively to matters which can be dealt with on a reference under Schedule 9 to this Act or by any person by whom compensation is to be assessed; or

(ii) in a case where the order is one confined to the extension of a period specified in a previous order, that the objection is one that has in substance been made with respect to the application for that previous order.

(5) Subject to the requirements of this paragraph, the Secretary of State, upon being satisfied that the proper notices have been published and served, may, if he thinks fit, make the order in respect of which the application is made with or without modifications.

(6) The Secretary of State may hold a local inquiry on any application for a drought order notwithstanding that he is not required to do so by this paragraph.

(7) For the purposes of subsection (2) of section 53 of the 1995 Act (which applies subsections (2) to (5) of section 250 of the Local Government Act 1972 to inquiries in connection with functions of or in relation to the Agency or in connection with relevant environmental functions of or in relation to the NRBW) as modified by subsection (4) of that section, a local inquiry held under this paragraph with respect to an application by a water undertaker for a drought order, if it would not otherwise fall within paragraph (a) or (b) of that subsection, is to be treated as one which falls within paragraph (b).

Notice after making of order

3

After a drought order has been made, the person on whose application it was made shall cause to be published (in the manner in which notice of the application was required under paragraph 1 above to be published) a notice—

- (a) stating that the order has been made; and
- (b) naming a place where a copy of it may be inspected.

APPENDIX A3

Schedule 9 to the Water Resources Act 1991

COMPENSATION IN RESPECT OF DROUGHT ORDERS
Section 79

Compensation to be made in the case of all drought orders

1

Where a drought order has been made, compensation in respect of the entry upon or occupation or use of land shall be made by the applicant for the order to—

- (a) the owners and occupiers of the land; and
- (b) all other persons interested in the land or injuriously affected by the entry upon, occupation or use of the land,

for loss or damage sustained by reason of the entry upon, occupation or use of the land.

Compensation to be made in the case of ordinary orders only

2

(1) This paragraph shall apply for determining the compensation to be made, in addition to any made under paragraph 1 above, where an ordinary drought order has been made.

(2) Compensation in respect of the taking of water from a source or its taking from a source otherwise than in accordance with a restriction or obligation which has been suspended or modified shall be made by the applicant for the order to—

- (a) the owners of the source of water; and
- (b) all other persons interested in the source of water or injuriously affected by the taking of the water,

for loss or damage sustained by reason of the taking of the water.

(3) Compensation in respect of water's being discharged or not discharged to any place or its being discharged otherwise than in accordance with a restriction or obligation (whether relating to the treatment or discharge of the water) which has been suspended or modified shall be made by the applicant for the order to—

- (a) the owners of the place of discharge; and

(b) all other persons interested in the place of discharge or injuriously affected by the discharge or lack of discharge,
for loss or damage sustained by reason of the water being discharged or not discharged or being discharged otherwise than in accordance with the restriction or obligation.

(4) Compensation in respect of the imposition of a prohibition or limitation on the taking of water from a source shall be made by the applicant for the order, to any persons to whom the prohibition or limitation applies, for loss or damage sustained by reason of the prohibition or limitation.

(5) Compensation in respect of a power to make discharges of sewage effluent or trade effluent in pursuance of any environmental permit shall be made by the applicant for the order, to any person who has been exercising that power, for loss or damage sustained by reason of the suspension or variation of the environmental permit or the attachment of conditions to the environmental permit.

Claims for compensation: general

3

(1) A claim for compensation under this Schedule shall be made by serving upon the applicant a notice stating the grounds of the claim and the amount claimed.

(2) Any question as to the right of a claimant to recover compensation, or as to the amount of compensation recoverable, shall, in default of agreement, be referred to, and determined by, the Upper Tribunal.

Claims for compensation under paragraph 2

4

(1) A claim for compensation under paragraph 2 above may be made at any time not later than six months after the end of the period for which the order authorises, as the case may be—

(a) the taking or discharge of water;

(b) the imposition of a prohibition or limitation on the taking of water;

(c) the suspension or modification of any restriction or obligation; or

(d) the suspension or variation of, or attachment of conditions to, any environmental permit relating to the discharge of sewage effluent or trade effluent.

(2) Where a claim for compensation under paragraph 2 above is made during the continuance of the ordinary drought order, the [Upper Tribunal] may, if it thinks fit, award a sum representing the loss or damage which is likely to be sustained by the claimant in respect of each day on which, as the case may be—

(a) water is taken or discharged;

(b) water is not discharged or is discharged otherwise than in accordance with an obligation or restriction; or

(c) sewage effluent or trade effluent is discharged otherwise than in accordance with an environmental permit originally given.

(3) In assessing the compensation to be made under paragraph 2(2) above the Upper Tribunal may, if it thinks fit, have regard to the amount of water which, on an equitable apportionment of the water available from the source between the claimant, the applicant and other persons taking water from the source, may fairly be apportioned to the claimant.

(4) In assessing the compensation to be made under paragraph 2(3) above in respect of the lack of discharge of compensation water, the Upper Tribunal may, if it thinks fit, have regard to the amount of water which, under the conditions existing by reason of the shortage of rain, would have been available to the claimant during the period during which the deficiency of supplies of water is continued, if the applicant in relation to whom the obligation was imposed had never carried on its undertaking.

(5) In sub-paragraph (4) above “compensation water” has the same meaning as in section 77 of this Act.

APPENDIX A4

The Drought Direction 2011

The Secretary of State, in relation to England, and the Welsh Ministers, in relation to Wales, in exercise of the powers conferred by sections 74(2)(b) and 76(2) of the Water Resources Act 1991(a), give the following Direction to water undertakers generally.

Citation and commencement

1. This Direction may be cited as the Drought Direction 2011 and comes into force on 31st March 2011.

Purposes which may be specified by virtue of section 74(2)(b) of the Water Resources Act 1991

2. The purposes set out in paragraphs 2 to 11 of the Schedule may be specified in any ordinary drought order by virtue of section 74(2)(b) of the Water Resources Act 1991.

Revocation of the Drought Direction 1991

3. The Drought Direction 1991(b) is revoked.

John Bourne

Head of Water Supply and Regulation Division, 29th March 2011 for and on behalf of the Department for Environment, Food and Rural Affairs

Claire Bennett

Deputy Director, Climate Change and Water Division, 29th March 2011 for and on behalf of the Welsh Ministers

- a. 1991 c. 57. The functions of the Secretary of State under sections 74(2)(b) and 76(2) of the Water Resources Act 1991, so far as they are exercisable in relation to Wales, were transferred to the National Assembly for Wales by virtue of article 2 of, and Schedule 1 to, the National Assembly for Wales (Transfer of Functions) Order 1991 (S.I. 1999/672). The functions of the National Assembly for Wales were subsequently transferred to the Welsh Ministers by virtue of section 162 of, and paragraph 30 of Schedule 11, to the Government of Wales Act 2006 (c. 32).
- b. The Drought Direction 1991 was made on 18th April 1991. It was made by the Secretary of State for the Environment, in relation to England, and the Secretary of State for Wales, in relation to Wales, in exercise of their powers under section 131(4)(b) of the Water Act 1989 (c. 15). Section 131(4)(b) of the Water Act 1989 was repealed by section 3 of, and Schedule 3 to, the Water Consolidation (Consequential Provisions) Act

1991 (c. 60) and replaced by section 74(2)(b) of the Water Resources Act 199

SCHEDULE

Paragraph 2

Interpretation

1. .—(1) In this Schedule—

“the Act” means the Water Industry Act 1991(a); “health or safety reasons” includes—

- a. removing or minimising any risk to human or animal health or safety; and
- b. preventing or controlling the spread of causative agents of disease; “hosepipe” has the same meaning as in section 76 of the Act(b); and

“non-domestic building” means any of the following not being domestic premises within the meaning of section 76(2)(i) of the Act(c)—

- a. a building that is not used principally as a dwelling or dwellings;
- b. any other structure.

(2) Using a hosepipe, in relation to a purpose set out in paragraphs 2 to 11 of this Schedule, includes the following—

- a. drawing relevant water through a hosepipe from a container and applying it for the purpose;
- b. filling or partly filling a container with relevant water by means of a hosepipe and applying it for the purpose.

(3) In sub-paragraph (2), “relevant water” does not include water supplied by a water undertaker before the use of water to which the purpose relates was prohibited under an ordinary drought order.

Purpose 1: watering outdoor plants on commercial premises

2. .—(1) Watering the following plants on commercial premises using a hosepipe—

- a. plants which are in a pot or other container that is outdoors or under cover;
- b. plants which are in the ground under cover.

(2) The purpose specified in sub-paragraph (1) does not include watering plants that are—

- a. grown or kept for sale or commercial use; or
- b. part of a National Plant Collection or temporary garden or flower display.

(3) In this paragraph—

“commercial premises” means any land, building, other structure or premises not being domestic or other non-commercial premises within the meaning of section 76(2)(c) of the Act(d);

“grown” includes cultivated or propagated;

- a. 1991 c. 56.
- b. Section 76 of the Water Industry Act 1991 was substituted by section 36 of the Flood and Water Management Act 2010 (c. 29). Section 76A(5) of the Water Industry Act 1991 provides that, subject to provision under section 76A(2) of the Water Industry Act 1991, a reference to a hosepipe in section 76 includes a reference to anything designed, adapted or used to serve the same purpose as a hosepipe.
- c. The meaning of “domestic premises” in section 76(2)(i) of the Water Industry Act 1991 is set out in article 12(3) of the Water Use (Temporary Bans) Order 2010 (S.I. 2010/2231).
- d. The meaning of “domestic or other non-commercial premises” in section 76(2)(c) of the Water Industry Act 1991 is set out in article 6(2) of the Water Use (Temporary Bans) Order 2010.
- e. “National Plant Collection” means a plant collection which is part of the National Council for the Conservation of Plants and Gardens’ National Plant Collection scheme;

“plants” includes plant organs, seeds, crops and trees;

“temporary garden or flower display” means a garden or flower display that is—

- a. at a show or exhibition; and
- b. on public display for a period not exceeding 7 days; and

“under cover” means in a greenhouse or outbuilding or under a permanent canopy.

Purpose 2: filling or maintaining a non-domestic swimming or paddling pool

- 3. .—(1) Filling or maintaining a swimming or paddling pool other than a domestic swimming or paddling pool within the meaning of section 76(2)(e) of the Act(a).
- (2) The purpose specified in sub-paragraph (1) does not include—
 - a. filling or maintaining a pool that is open to the public;
 - b. filling or maintaining a pool where necessary in the course of its construction;
 - c. filling or maintaining a pool using a hand-held container which is filled with water drawn directly from a tap;
 - d. filling or maintaining a pool that is designed, constructed or adapted for use in the course of a programme of medical treatment;
 - e. filling or maintaining a pool that is used for the purpose of decontaminating animals from infections or disease;
 - f. filling or maintaining a pool that is used in the course of a programme of veterinary treatment;

- g. filling or maintaining a pool in which fish or other aquatic animals are being reared or kept in captivity;
- h. filling or maintaining a pool that is for use by pupils of a school for school swimming lessons.

(3) For the purposes of paragraph 3(2)(a), a pool is not open to the public if it may only be used by paying members of an affiliated club or organisation.

Purpose 3: filling or maintaining a pond 4.—

(1) Filling or maintaining—

- a. a non-domestic pond; or
- b. a domestic pond within the meaning of section 76(2)(g) of the Act(b).

(2) The purpose specified in sub-paragraph (1) does not include—

- a. filling or maintaining a pond in which fish or other aquatic animals are being reared or kept in captivity;
- b. filling or maintaining a pond using a hand-held container which is filled with water drawn directly from a tap.

(3) The purpose specified in sub-paragraph (1)(b) does not include filling or maintaining a domestic pond using a hosepipe.

a. The definition of “domestic swimming or paddling pool” in section 76(2)(e) of the Water Industry Act 1991 is set out in article 8(2) of the Water Use (Temporary Bans) Order 2010.

b. The definition of “domestic pond” in section 76(2)(g) of the Water Industry Act 1991 is set out in article 10(2) of the Water Use (Temporary Bans) Order 2010

Purpose 4: operating a mechanical vehicle-washer

5. Operating a mechanical vehicle-washer, whether automatic or not.

Purpose 5: cleaning any vehicle, boat, aircraft or railway rolling stock

6. —(1) Cleaning any vehicle, boat, aircraft or railway rolling stock using a hosepipe.

(2) The purpose specified in sub-paragraph (1) does not include cleaning any vehicle, boat, aircraft or railway rolling stock for health or safety reasons.

(3) In this paragraph—

“boat” means a vessel or other thing which—

- a. is designed, constructed or adapted to move through, in, on or over water; and
- b. is not a private leisure boat within the meaning of section 76(2)(d) of the Act(a); and

“vehicle” means any of the following not being a private motor-vehicle within the meaning of section 76(2)(b) of the Act(b)—

- a. a vehicle designed, constructed or adapted for use on roads; or
- b. a trailer or other thing designed, constructed or adapted for attachment to a vehicle falling within paragraph (a) of this definition.

Purpose 6: cleaning non-domestic premises

.7. —(1) Cleaning any of the following using a hosepipe—

- a. any exterior part of a non-domestic building other than a window;
- b. a non-domestic wall.

(2) The purpose specified in sub-paragraph (1) does not include the cleaning of any exterior part of a non-domestic building or a non-domestic wall for health or safety reasons.

(3) In this paragraph, “non-domestic wall” means a wall or any other enclosing structure or partition which—

- a. does not form part of a non-domestic building; and
- b. is not within the curtilage of a domestic building.

Purpose 7: cleaning a window of a non-domestic building

8. Cleaning a window of a non-domestic building using a hosepipe other than for health or safety reasons.

Purpose 8: cleaning industrial plant

9. Cleaning industrial plant using a hosepipe other than for health or safety reasons.

Purpose 9: suppressing dust

10. Suppressing dust using a hosepipe other than for health or safety reasons.

Purpose 10: operating cisterns

11.—(1) Operating a cistern in any building that is unoccupied and closed.

- a. The definition of “private leisure boat” in section 76(2)(d) of the Water Industry Act 1991 is set out in article 7(3) of the Water Use (Temporary Bans) Order 2010.
- b. The definition of “private motor-vehicle” in section 76(2)(b) of the Water Industry Act 1991 is set out in article 5 of the Water Use (Temporary Bans) Order 2010.

(2) In this paragraph, “cistern” means an automatically-operated flushing cistern which services a water closet pan or urinal.

APPENDIX B - Draft Statutory Notice for drought order or drought permit applications

Notes

1. The following is suitable to serve on organisations (such as local authorities, navigation authorities, IDBs) and for publication.
2. This is a suggested format, it should be followed as closely as possible.
3. Remember the object is to give those reading it a clear idea of what is proposed so they can make an informed decision whether to inspect the application further.
4. See joint guidelines from Defra and Environment Agency on drought permits and orders for whom the notice must be served on, how it must be served, and so on.

Example

TAKE NOTICE that due to [the threat of] a serious water shortage in (specify approximate area) caused by an exceptional shortage of rain, (name of water company) of (registered office) is applying to the (Environment Agency / Secretary of State for a drought (permit / order) under (specify relevant section) Water Resources Act 1991.

The proposed drought (permit / order) will involve (outline proposals).

The anticipated effect of the drought (permit / order) , if granted, will be (describe in brief outline expected effects, both on water supply situation and on water environment, other users, and so on).

Anyone may inspect the proposals, free of charge, at (full addresses of places where application may be inspected) [(between the hours of) or (during normal working hours)] until (specify date, at least seven days from latest of last date of publication of advertisement and of expected date of receipt by those sent notices individually).

Objections may be made to the (Environment Agency / Secretary of State) at:

(Specify postal address and email address at Environment Agency / Secretary of State)

Objections should be made by (specify date, at least seven days from latest of last date of publication of advertisement or receipt of notice).

(Name of water company official)

(Date)

APPENDIX C - Contact points in the Department for Environment, Food and Rural Affairs, and the Environment Agency

CONTACT POINTS

Any enquiries concerning drought orders or drought permits should be addressed as follows:

Drought orders (England)

Department for Environment, Food and Rural Affairs
Water Resources Policy
Seacole 3rd Floor
2 Marsham Street
London
SW1P 4DF
Email address: water.resources@defra.gov.uk

Drought permits (England)

Environment Agency Water Resources Permitting Support Centre (for receiving applications):
Water Resources Permitting Support Centre
Environment Agency
Quadrant 2
99 Parkway Avenue
Parkway Business Park
Sheffield
S9 4WF
Email address: PSC-WaterResources@environment-agency.gov.uk

Local Environment Agency Offices (for local/technical application discussions)

Our areas



North

- 1 North East (NEA)
- 2 Cumbria and Lancashire (CLA)
- 3 Yorkshire (YOR)
- 4 Greater Manchester, Merseyside and Cheshire (GMC)

West and Central

- 5 Lincolnshire and Northamptonshire (LNA)
- 6 East Midlands (EMD)
- 7 West Midlands (WMD)
- 8 Wessex (WSX)
- 9 Devon, Cornwall and the Isles of Scilly (DCS)

South East

- 10 East Anglia (EAN)
- 11 Thames (THM)
- 12 Hertfordshire and North London (HNL)
- 13 Kent, South London and East Sussex (KSL)
- 14 Solent and South Downs (SSD)

NB: Greater London Environment Team operates as part of the South East



North

1. North East: Tyneside House, Skinnerburn Road, Newcastle Business Park, Newcastle upon Tyne, NE4 7AR
2. Cumbria and Lancashire: Lutra House, Dodd Way Off Seedlee Road, Walton Summit Centre, Bamber Bridge, Preston, Lancashire, PR5 8BX
3. Yorkshire: Lateral House, 8 City Walk, Leeds, LS11 9AT
4. Greater Manchester, Merseyside and Cheshire: Richard Fairclough House, Knutsford Road, Latchford, Warrington, Cheshire, WA4 1HT

West and Central

5. Lincolnshire and Northamptonshire: Anglian contact: Ceres House, Searby Road, Lincoln, LN2 4DW
6. East Midlands: Trentside office, Scarrington Road, West Bridgford, Nottingham, NG2 5BR
7. West Midlands: Litchfield, Sentinel House, 9 Wellington Crescent, Fradley Park, Lichfield, Staffordshire, WS13 8RR
8. Wessex: Rivers House, Sunrise Business Park, Higher Shaftesbury Road, Blandford Forum, DT11 8ST
9. Devon, Cornwall and the Isles of Scilly: Manley House, Kestrel Way, Exeter, EX2 7LQ

South East

10. East Anglia (Cambridge and Bedfordshire): Brampton Office, Bromholme Lane, Brampton, Huntingdon, PE28 4NE And/or (ENS) Essex and Suffolk Water contact, Anglian and Affinity: Icen House, Cobham Road, Ipswich, Suffolk, IP3 9JD
11. Thames: Red Kite House, Howbery Park, Crowmarsh Gifford, Wallingford, OX10 8BD
12. Hertfordshire and North London: Alchemy, Bessemer Road, Welwyn Garden City, AL7 1HE
13. Kent, South London and East Sussex: Orchard House, Endeavour Park, London Road, Addington, West Malling, Kent, ME19 5SH
14. Solent and South Downs: Canal Walk, Romsey, Hampshire, SO51 8DU

Environment Agency (for any other queries)

National Customer Contact Centre

PO Box 544

Rotherham

S60 1BY

Telephone: 03708 506 506

Email: enquiries@environment-agency.gov.uk

Natural England

County Hall, Spetchley Road

Worcester

WR5 2NP

United Kingdom

Telephone 0300 060 3900

Email enquiries@naturalengland.org.uk

Natural Resources Wales

Please contact customer Care Centre in the first instance.

Natural Resources Wales

Customer Care Centre

Ty Cambria

29 Newport Rd

Cardiff

CF24 0TP

Telephone: 0300 065 3000

Email: enquiries@naturalresourceswales.gov.uk

APPENDIX D - Supplementary guidance on exceptional shortage of rain (updated February 2019)

Principles for Exceptional Shortage of Rain assessments

This Appendix sets out the principles that water companies and the Environment Agency should consider in their assessment of whether there has been an exceptional shortage of rain as part of an application for a drought permit or drought order.

The legal criteria that must be met in granting a drought permit or order include: 'If the Secretary of State / Agency is satisfied that, by reason of an exceptional shortage of rain, a serious deficiency of supplies of water in any area exists or is threatened...'

It is not appropriate to set a prescriptive approach to assessing the exceptional shortage of rain. Each drought and each situation is unique. Previous drought order and permit hearings and inquiries have confirmed that there should be no set definition of exceptional shortage of rain.

Early engagement with Environment Agency hydrologists in the relevant Area is essential to discuss and agree the case for an exceptional shortage of rain and the technical approach to be taken in the assessment.

Matters to consider in the assessment

– Rainfall datasets

Assessment of the rainfall deficit should be undertaken using areal rainfall data for the catchment or area of interest. This will provide an assessment with less uncertainty than using a single site rain gauge. The Environment Agency uses quality controlled historical gridded rainfall datasets produced by the Met Office, together with in-house calculated gridded data, as its source of areal rainfall data. Water companies can request access to this data from the Environment Agency under Section 197 of the Water Resources Act 1991. If water companies wish to use their own rain gauges then these must be operated in accordance with BS7843–2:201294 and BS7843–3:201295 and areal rainfall calculated in accordance with the BS 7843-4:201296.

– Technical analysis methods

Methods to assess the severity of the rainfall deficit can include calculating cumulative rainfall as a percentage of the long term average, historic ranking of single and cumulative monthly rainfall totals, Standardised Precipitation Index analysis and frequency analysis. Comparisons may be made to other drought events and pattern, timing and effectiveness of rainfall may all feature.

– Period of analysis

The period of analysis of the rainfall deficit should reflect the conditions that have led to the supply shortfall. It should take into consideration the starting point at which the resource situation is no longer normal for the time of year and its effects on the water

⁹⁴ BS7843–2:2012 Code of practice for operating rain gauges and managing precipitation data

⁹⁵ BS7843 – 2:2012: Code of practice for the design and manufacture of storage and automatic collecting rain gauges

⁹⁶BS7843-4:2012 British Standard Institution's Guide to Estimating Areal Rainfall

supply situation. This could include distinct periods within the longer timescale of the event. The end date of the rainfall deficit analysis period could be considered as the point at which the drought triggers that are linked to the need for a drought permit/order are crossed or the period to which the supply zone is vulnerable, as identified in the water company's drought plan. In some cases, it may be appropriate to extend the analysis period using weather forecasts for the areas of interest and 15-day ahead ensemble forecasts are available from the Met Office and other providers for this purpose.

Water companies should be proactive in submitting their permit/order application as soon as possible after the end of the period over which they believe an exceptional shortage of rain has occurred or is threatened and use data up to, and as close to, the application submission date as possible.

- **Geographic extent of analysis**

The rainfall deficit must be relevant to the catchment area of the public supply source(s) or if the source forms part of a larger integrated water resource zone then the deficit across the wider zone can also be considered. If however the serious deficiency of supplies exists or is threatened across only a sub unit of a larger integrated water resource zone then it would be more appropriate to consider this specific sub unit rather than the whole zone. The proposed approach should be outlined in the water company's drought plan.

- **Other meteorological and hydrometric measures**

Whilst the reason for the serious deficiency of supplies must be shown to be an exceptional shortage of rain, secondary measures such as temperature, soil moisture deficit, effective rainfall, river flows and groundwater levels can also be relevant. Analysis should clearly make the link between the two, for example: winter rainfall deficits leading to exceptionally low groundwater levels; high winter temperatures leading to dry soils and lack of runoff for reservoir refill. However these measures must not detract from deciding that the reason for serious deficiency is an exceptional shortage of rain.

- **Relationship to the threat of a serious deficiency**

Where a deficiency of supplies does not yet exist but is threatened and the exceptional shortage of rain is marginal, an assessment of the risk of supplies worsening can form part of the case but should not be the primary consideration. An assessment of the risk to supplies under different scenarios can be considered in the justification of need within a pre-emptive application, this should also outline the impact of these upon the environment. The water company should outline this approach together with the sequencing of drought options within its drought plan. Information from the Met Office's 30 day weather forecast and 3 month outlook for temperature and rainfall can be used to inform the assessment.

- **Relationship to water company system**

The period over which the rainfall is analysed should be considered in the context of the company's supply system critical period, for example; a period of 3 months may be considered to be shorter than a company's supply system critical period. The rainfall analysis should be appropriate to the type of system, seasonality and deployable output as outlined in the company's water resources management plan and drought plan.

- **Other sources of information**

Consider previous Inspector's decisions, advice from technical colleagues and neighbouring regions/companies.

- **Presentation**

The analysis should be technically rigorous. A 'plain English' summary and explanation of the case that can be understood by third party interests is desirable.

APPENDIX E - Content of application for drought permits

www.gov.uk/guidance/apply-for-a-drought-permit#what-to-include-in-your-application details what information is needed for a drought permit [application](#). The table below is a supplementary template aimed to help companies compile the relevant information used by the Environment Agency to determine a drought permit application.

It is recommended a significant proportion of drought permit information is gathered during the development of water companies' drought plans and that the company is permit or order application ready. In the event that an exceptional shortage of rain triggers the need for drought permit(s) and/ or order(s) the company should liaise early with the Environment Agency to review and update their draft permit application(s) and supporting environmental report.

It is also recommended that a draft permit and supporting information during the pre-application stage is sent to the Environment Agency to enable any issues to be identified and resolved ahead of formal permit application.

Table 3 - Content of application for drought permits

Application contents	Additional supporting information
A draft permit	<p>The applicant should provide a draft permit with its application that details the proposed schedule of conditions. This should:</p> <ul style="list-style-type: none"> – List the condition(s) on the applicant's licence(s) and/or obligations under legislation (Statutory Instrument/Act) that the applicant wishes to modify and how the applicant proposes to modify them. – If any monitoring and/or mitigation is proposed as part of the application, the applicant should list what the applicant intends to monitor/mitigate.
A description of the proposals	<ul style="list-style-type: none"> – A description of the proposed drought permit, how it will operate and what will it enable the company to do. – A location map. This should be of large enough scale to identify the position of sources and affected water courses and suitable to attach to the permit. IMPORTANT Please follow national security rules detailed in section 2.4.2 – If permit is to support an integrated zones a description of how the zone(s) operate. – The conditions of the current abstraction licence (if applicable) including flow constraints, which should include current maximum abstraction volumes of water (hourly, daily and annually). – Proposed start and expiry date for permit. <p>Summary of impacts;</p> <ul style="list-style-type: none"> – If applicable compare the current abstraction licence with proposed drought permit conditions highlighting any changes – If applicable the impact of the proposed permit on other abstractors

	– Summary of conclusions from Environmental Report (see below)
An Environmental Report	
Assessment of environmental impacts and monitoring and mitigation needs	– An updated report which makes an assessment of the proposed permit upon the environment, along with monitoring and mitigation requirements (see section 1.2)
A Statement of Needs	
Reasons of why the permit is necessary (including threat to customer supplies)	<p>– A brief description of events and conditions that have led to the need for the drought permit (full details to be provided in ESoR case below)</p> <p>The company must detail why the lack of rainfall is a threat (or potential threat) to water supplies. As such the company should detail:</p> <ul style="list-style-type: none"> – What supply area(s), and respective population(s), are affected by the current water shortage. – What is the daily water demand and how this is met from the available source. Please note if the drought permit is in a different operating area this needs to be detailed, including why this particular permit is the best option to benefit supply area identified. – The forecast effects of continued dry weather on customer supplies <p>The company should detail why this particular drought permit is the best option for the current situation</p>
The case for an exceptional shortage of rain (ESoR)	A drought permit can only be issued in the event of an ‘exceptional shortage of rain’. The company should refer to Appendix D in developing its case.
Evidence the company has followed its drought plan	
Evidence the company has followed its drought plan	<p>The company should detail how it has operated in accordance with its own drought plan and detail how it:</p> <ul style="list-style-type: none"> – Has followed and acted upon triggers. – Has acted early and proactively (if appropriate). – Has altered operations during periods of high demands/low rainfall to minimise impacts on supply or demand. – Has made any further changes to operational practices or policies that will help avoid or reduce the likelihood of future drought related problems.
Measures undertaken to reduce demand and conserve supplies in-line with drought plan;	
1. Customer engagement on	The company should;

<p>enhanced water efficiency</p>	<ul style="list-style-type: none"> – Explain what enhanced water efficiency activities it has undertaken during the lead up to the permit application. – How it has engaged with its customers to raise awareness of lack of rainfall and the need of enhanced water efficiency. – Describe the effectiveness of these activities in reducing demand.
<p>2. Implementation of Temporary Use Ban (TUB)</p>	<p>The company should have implemented a TUB before formal drought permit application. If TUB implementation is not appropriate (due to time of year) this needs to be justified. See Appendix F.</p> <p>Distribution Input (DI) data for the appropriate scale (resource zone and/or company) can be provided to demonstrate the effects of TUBs from start of ESoR to time of application. If no measureable impact is identified the company should provide an explanation as to why.</p>
<p>3. Enhanced Leakage control</p>	<p>The company should provide an estimation of how much water has been saved from enhanced control of leakage upon the onset of dry weather (please refer to Appendix G).</p>
<p>4. Effective management of outage</p>	<p>The company should provide current information on outage (planned and unplanned). The company should provide:</p> <ul style="list-style-type: none"> – Actual outage data (MI/d) since the beginning of the period since the ESoR began, up to the date of application for the permit/order in the relevant water resource zone(s). – Details of which sources in the relevant water resource zone(s) have been affected by outage. – The effect of outage on supplies in the relevant water resource zone(s) and how this effects the supply demand balance. The supply demand balance including outage should be presented for the relevant zone(s). – A description of any decisions made either to fast track getting sources back into supply following outage and/or to delay planned outage recovery until after the drought. – Details of any increase in resources involved or planned in recovering outage since the beginning of the period since the ESoR began.
<p>Other options considered and risks if permit is refused</p>	<p>The company should detail other options considered and reasons for rejection.</p> <p>The company should also explain the consequences if the drought permit is not granted.</p>
<p>Consultation process. The company should provide:</p>	
<p>The written consent from the Navigation Authority</p>	<p>If the proposal affects an inland navigation.</p>
<p>A copy of the notices and advertisements required under</p>	<p>Copies of both served and published notices must be sent as quickly as possible.</p>

paragraph 1 of Schedule 8 to the WRA 1991.	<p>The company does not have to send the complete newspaper or copy of the London Gazette containing the published notice. The relevant page will suffice, provided that it bears the advertisement, title of the paper and the date. A scanned version is acceptable provided the notice, the title of the paper and date are contained on a single page.</p> <p>Alternatively, certification by a solicitor that the notice appeared on a specified date will be acceptable.</p>
Description of the public inspection arrangements	To include where and when this took place.
A copy of any existing abstraction licence and any statutory instrument or Local Act governing the abstraction, or discharge of compensation water relating to the permit	Append relevant document(s)
Water quality details	For proposed new sources of water
Comments from any consultees	Include where relevant
Details of any objections	These can be objections already received and/or any agreements made with objectors or people who might otherwise have objected.

APPENDIX F - Supplementary guidance on use of Temporary Use Bans during dry weather and drought.

The Environment Agency expects a water company to demonstrate significant demand reductions through additional leakage control, customer reductions in response to media campaigns and customer restrictions (Temporary Use Bans (TUBs)) before allowing the company to take additional water from the environment by means of a drought permit, as outlined in our [drought permit guidance](#) on gov.uk.

If a water company does not want to implement TUBs they must have the reasons why outlined clearly in their drought plan and within the drought permit application. It must take appropriate measures to reduce demand before a drought permit is applied for. In many cases, using a drought permit has environmental (and other) impacts so it is very important that other measures to reduce demand are implemented, when effective, before we allow this to happen.

Exceptions

Each water company can make discretionary exceptions to certain activities from the TUB. We encourage all water companies to align exceptions with each other before applying to ensure the messages are clear to customers and it is easy for them to adhere to TUBs for most impact on demand. In 2018, water companies in the south east of England aligned exceptions to ensure that what they did there was fair and equitable for all their customers.

How and when should a company implement TUBs?

A water company decides when it should implement a TUB. The legislation (Water Industry Act 1991, as amended in the Water Use (Temporary Use Bans) Order 2010) includes a test that TUBs should be used if a serious deficiency of water available for distribution exists or is threatened.

Water companies should implement TUBs as set out in their drought plans. However water companies can decide to:

1. bring in TUBs earlier than is outlined in the drought plan.
2. delay TUBs. Where a water company deviates from its drought plan and decides not to implement TUBs it will be asked to review its plan (at an appropriate time) as per our guidance.

Autumn/Winter Position

In most cases we would not expect water companies to begin implementing TUBs during the cooler months of late autumn and winter. We say in our drought permit guidance that, if the company can demonstrate that these measures will only result in minimal savings it may not be necessary to use them as the effectiveness reduces.

However we still do expect water companies to assess the full range of their TUBs powers as some may still be effective during the cooler months. Companies should also explore other demand saving measures (such as water efficiency, pressure management, more leakage control). We would expect evidence of the demand restraints to be provided in all drought permit applications, along with the impacts of any reductions in demand on distribution input. The company must also explain why restrictions were not put in place earlier in the summer if there are risks in the autumn.

The water company will need to justify its decision whether to implement TUBs and it must make an assessment of whether TUBs are needed based on the current and forecast weather and the water resources benefits TUBs might have.

Advertising

The water company does not need to have a long lead-in to implementing TUBs. Its communications must be clear and this is detailed in the company's drought plan. [The Water UK and UKWIR 2013 Code of Practice](#) states 'when a company intends to implement water use restrictions it will, as a minimum, meet the legislative requirements for giving notice to its customers. It will also clearly set out the terms of any discretionary exceptions'. The Water Industry Act 1991 says that the water company must give public notice of the prohibition and its terms on its website and, in two or more newspapers circulating in the locality affected by the restriction. We agree with the code of practice that a week or two would be sufficient for this to take place.

APPENDIX G - Supplementary guidance on applying for a drought permit and demonstrating control of demand through leakage.

This briefing note covers our requirements for water companies to provide leakage information as part of a drought permit application.

Drought permit introduction

A drought permit is a part of the response a water company can take to a drought that threatens the supply of water to its customers. A water company should list all possible situations where drought permits might be applied for in its drought plan. As each drought is different there will very occasionally be exceptions when locations have not been pre-identified. In these cases it is likely that the drought permit may take longer to grant but this will be explored at pre-application stage.

A drought permit can allow a water company either:

- to take water from specified sources;
- to modify or suspend conditions on an abstraction licence held by the water company.

In both cases, additional pressure will be put on the environment. Due to this, a water company must take early action by reducing demand for water. These actions include:

- carry out a publicity campaign to let the public know what it will do to reduce demand (i.e. asking customers to save water)
- temporarily restrict water use by applying temporary use bans (TUBs) when appropriate
- control leaks
- reduce water pressure in water company network

Applying for a drought permit

A water company should follow gov.uk guidelines; ['apply for a drought permit, drought order or emergency drought order'](#). These guidelines provide the fundamentals to making an application and outlines the actions that must be taken before a drought permit can be applied for.

Leakage control to manage demand for water

A water company has an ability to control demand for water by effective leakage control. During a normal year, a water company would be expected to achieve leakage targets set by Ofwat. During a year when there is prolonged dry weather, leading to a drought, the water company is expected to follow its published drought plan and change its operations. This change should reflect the need to conserve water. The first triggers in all water company drought plans are for the company to conserve water through:

- raising awareness via public communication campaigns;
- increasing work to reduce the amount of water lost via leakage;
- other network operational changes such as pressure management.

Controlling leakage is very important both as a mechanism to conserve water before looking to the environment for more and encouraging customers to save water.

Leakage information to support a drought permit application

A water company should provide detailed information on how it has controlled leakage in the period of time before submitting a drought permit application together with details of how it has controlled demand. A water company will need to determine the period of time during pre-application talks with the Environment Agency. We consider, as part of the determination process, whether a company has taken sufficient action to reduce demand in appropriate time to reduce the need for a permit and/or reduce its impact on the environment. This information is an important part of communications with customers as they will need to see evidence that the water company is taking action to save water. We encourage companies to be open and transparent with the information.

The information on leakage that should be provided as part of a **drought permit application**:

- An estimation in megalitres per day (Ml/d) of how much water the company has saved or leakage has been reduced since changing its operations to improve the control of leakage due to the drought (e.g. activation of the trigger). This should be provided at company level, resource zone and at district monitoring area (DMA) level with reference to any targets set. A weekly chart showing control of leakage volumes would be good evidence. This should have a recent benchmark of a non-drought period for comparison e.g. previous year if not a drought year.
- Increases in resources involved in leakage control, expressed as number of people and money spent. A benchmark should be provided to compare with the previous 'normal' year as above.
- Details of find and fix rates and again benchmarked with the previous year and same time period.
- Any information on underground supply pipe leakage (USPL) and fixes, again benchmarked with previous year, however we understand this is slightly outside of company control. This should include any changes to a company's policy on fixing customers' supply pipes.
- Details of any changes in public awareness campaigns about reporting leakage both USPL and network leakage.

We do not need long historic information (except recent year information) outlining either adherence to previous Ofwat leakage targets (unless the company has failed to achieve), or reductions over a long time series (e.g. the past 10 reporting years).

In the event that leakage data submitted with drought permit or order application is a higher level than planned and/or higher than a non-drought year, the company should provide an explanation of why and explain what extra efforts it has deployed to control leakage prior to application. The company should also set out its plans to improve leakage performance during the duration of the permit.

Lack of information on leakage

We expect the leakage data to be supplied at the same time as the application. If this is not possible then there may be a delay in determining the drought permit application as it will be required for final determination.

Failure to provide information on leakage control as part of the drought permit application may result in rejection or reduced permit time length or volume being imposed. A company can resubmit a drought permit application with the correct information or submit the information when looking to extend a drought permit.

Commercially sensitive information

We acknowledge that the level of information that may be provided to support a drought permit application on leakage control may be deemed as 'commercially sensitive'. In this case, a strong and valid reason must be presented at the pre-application stage, stating how releasing the information could affect the business. If agreed at the pre-application stage, the information can be submitted as a separate supporting Appendix with appropriate security rating and necessary controls to access this in accordance with government guidelines. However summary information about leakage control must be in the public domain and be part of the application showing how a water company has managed demand leading up to and over the drought event.

We will not agree to a marking of commercially sensitive if we deem this is being used to mask poor performance.

APPENDIX H - Supplementary guidance on cost recovery

Drought permit and order costs can be, in some cases, considerable. Costs can vary and are likely to be more expensive when an application is complex. Pre-emptive preparatory work during drought plan production should help companies reduce their costs.

The Environment Agency can recover all costs for doing the following drought related activities:

- Processing and assessing a drought permit application and issuing a drought permit. This includes analysing evidence provided to support the application, giving evidence at a hearing if required, and administrative tasks to issue the drought permit.
- Increased monitoring associated with the drought permit or order. This can include; an increase in routine monitoring to establish a baseline against which the permit or order can be measured; more detailed monitoring required once the permit or order has been issued to measure the impact of the permit or order against the baseline; or additional monitoring after the permit or order has expired to establish the extent of the recovery after the drought.
- Any mitigation and restoration activities to be carried out to protect the environment against the effects of the drought permit or order,
- Carrying out of any inspection or enforcement associated with the drought permit or order.
- Providing a formal response to the Secretary of State on a drought order application. This includes any analysis and assessment of evidence provided to support the drought order application, preparing for and giving evidence at a local inquiry or hearing and any analysis carried out at the pre-application stage

The main stages for the cost recovery process are:

1. The Environment Agency will send the water company an email to confirm the date they consider the pre-application stage to have started.
2. The Environment Agency will record its time allocated to each individual drought order or permit to enable appropriate charges to be calculated.
3. Once the water company has made a formal application for a drought permit or order then the Environment Agency will send a formal letter to the water company's managing director notifying them of their intent to recover costs. This letter will give details of the activities the Environment Agency can recover costs for, and the time scales over which costs can be recovered.
4. Once the drought permit or order has expired the Environment Agency will recover costs from the water company within 12 months. The Environment Agency will gain agreement from the water company if cost recovery is being implemented beyond this 12 month period.
5. The Environment Agency will send a letter itemising the costs associated with the drought permit or order, including the invoice. Following principles detailed in [The Environment Agency \(Environmental Permitting\) \(England\) Charging Scheme 2018](#) charging is based on an hourly rate. This hourly rate represents all the technical staff involved in the work irrespective of their pay grade. It assumes the majority of the work is done by technical staff with some involvement from managers and administrative staff (and also builds in the costs of associated support areas such as finance and legal) so this represents the true cost to the Environment Agency.

Would you like to find out more about us or your environment?

Then call us on

03708 506 506 (Monday to Friday, 8am to 6pm)

email

enquiries@environment-agency.gov.uk

or visit our website

www.gov.uk/environment-agency

incident hotline

0800 807060 (24 hours)

floodline

0345 988 1188 (24 hours)

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