

Drought permits and drought orders

Information from the Department of Environment, Food and Rural Affairs, Welsh Assembly Government and the Environment Agency

May 2011

This information is out of date and has been withdrawn. Search GOV.UK for "drought orders" to read the current guidance.



**Environment
Agency**



Llywodraeth Cynulliad Cymru
Welsh Assembly Government



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Introduction

Drought permit and drought order guideline

This guideline has been produced jointly by the Department for Environment, Food and Rural Affairs, the Welsh Assembly Government and the Environment Agency. It provides information about the process for applying for drought permits and drought orders. This version was updated in 2011 and replaces the previous version published in 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.

Using this guideline

The guideline is primarily for water companies (such as the water and sewerage companies and water undertakers in England and Wales) 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.

The information contained in this guideline is not statutory guidance and does not provide an authoritative version 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 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 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 or 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 or the Welsh Ministers, as appropriate, must be satisfied that either:

- a serious deficiency of supplies of water in any area, exists or is threatened⁵;

or

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.

- 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.

For emergency drought orders, the Secretary of State or the Welsh Ministers, as appropriate, 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 or the Welsh Ministers, as appropriate (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.

The Ministerial functions relating to drought in the Water Resources Act 1991 (as amended) are exercisable, in relation to Wales, by the Welsh Assembly Government.

Consequently, ordinary drought orders and emergency drought orders are made in England by the Secretary of State and in Wales by the Welsh Ministers. The location of the activity (for example abstraction or discharge) which the proposed order seeks to authorise or control will determine the identity of the body to which the application should be made. For example, if the application seeks to authorise abstraction from a point source in Wales, the application should be sent by the relevant water company to the Welsh Ministers. If the abstraction point of the source to which the application for a drought order refers is in England then the application should be sent by the water company to the Secretary of State.

Drought permits are granted by the Environment Agency in relation to both England and Wales.

1.1.3 Main differences between drought permits and ordinary drought orders

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.

⁸ Section 73(2) of the WRA 1991.

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

*This information is out of date and has been withdrawn.
Search GOV.UK for "drought orders" to read the current guidance.*

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 (as amended by EA 1995)	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 or Welsh Ministers	Secretary of State or Welsh Ministers
Available actions (subject to conditions or restrictions specified on the permit or order)	<p>To take water from specified sources;</p> <p>To modify or suspend conditions on an abstraction licence held by the water company.</p>	<p>For Water Company Same as for drought permits but also:</p> <p>To discharge water to specified places;</p> <p>To modify or suspend discharges or filtering/treating of water held by water company;</p> <p>To modify or suspend restrictions or obligations to taking, discharging, supply or filtering/treating of water held by others (including Environment Agency);</p> <p>To authorise the Environment Agency to stop or limit the taking or discharging of water from/to specified sources or places;</p> <p>To prohibit or limit particular uses of water under Drought Direction 2011 (these provisions do not apply for emergency drought orders).</p> <p>For Environment Agency</p> <p>To take water from specified sources;</p> <p>To discharge water to specified places;</p> <p>To stop or limit the taking of water from specified sources;</p> <p>To modify or suspend</p>	<p>For Water Company Same as ordinary drought order,.</p> <p>Additionally:</p> <p>To prohibit or limit uses specified by water company;</p> <p>To set up and supply water by means of stand pipes or water tanks in a water company area.</p> <p>For Environment Agency</p> <p>Same as for ordinary drought orders.</p>

		restrictions or obligations to taking, discharging, supply or filtering/treating of water held by anyone.	
Duration	Up to six months	Up to six months	Up to three months
Available Extensions	For a further six months	For a further six months	For a further two months
Minimum time for decision	Normally within 12 calendar days from date of application When there is a hearing, a decision will normally be made within seven calendar days of the receipt of the hearing report.	A decision will normally be made within 28 calendar days from date of application.	Same as ordinary drought orders

1.1.4 Water company drought plans

The Water Act 2003⁹ made 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 unlikely that an application for a drought permit or drought order will be accepted if the water company has not included the proposal as an option in its drought plan. It is also expected that during a drought, a water company will follow its drought plan.

1.2 Environmental impacts

Drought permits and drought orders are part of effective water resources management and help to avoid risk to public water supplies whilst providing the best possible protection to the environment. The applicant must submit an environmental report which assesses the expected environmental effects of the proposal with any application for a drought permit or drought order.

⁹ Section 39B of Water Industry Act, as inserted by Section 63 of the Water Act 2003.

1.2.1 Environmental assessments

A water company is expected to complete an assessment of likely environmental impacts relating to possible drought permits and drought orders as part of the water company's drought plan. An adequate environmental assessment will help identify any potential issues in advance and allow time for these to be addressed. This will help towards reducing the amount of work required and the time needed to produce a full environmental report, if it becomes necessary during a drought to make an application for a permit or order. The environmental assessment should include the following:

1. the likely changes in flow/level regime due to implementing the proposed drought permit or order;
2. the features that are sensitive to these changes;
3. the likely impacts on sensitive features;
4. mitigation that may be required to prevent or reduce impacts on sensitive features;
5. in-drought and post-drought monitoring requirements.

It is very important that applicants consult with the Environment Agency, Natural England and/or the Countryside Council for Wales on proposals at the drought plan stage. Early resolution of gaps in information and other issues will enable a prompt response on applications during drought. For further information on water company environmental assessment requirements, refer to section 7 and appendix H of the [water company drought plan guideline](#) produced by the Environment Agency.

1.2.2 Monitoring and mitigation

Water companies are expected to take mitigation measures to reduce the effect 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 by a legal arrangement with the water company under section 20 or section 158 of the WRA 1991.

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

1.2.3 Content of environmental reports

Information from the water company drought plan on environmental assessments, details from the environmental monitoring plan and mitigation actions will form the basis of the environmental report. This report must accompany all applications for drought permits and drought orders.

The exact content of an environmental report will vary depending on the circumstances. The Environment Agency can advise on the content of individual reports. Generally, the environmental report should include the following:

Table two: Content of environmental report

Environmental report contents	Additional information notes
A summary of the main environmental report using non-technical language.	This should include a synopsis of major conclusions, controversial issues, unresolved issues and options selected.
A description of the proposal including details of the site, location and duration.	Include maps and plans.
A statement of need for water	This can be kept brief as the detail will be elsewhere in application.
Details of alternative sources considered	This should demonstrate justification for the proposed option.
Description of the current environment (such as the aquatic and physical environment and associated habitats) and its setting in a national/regional/local context.	This should include existing features and, if already in a prolonged drought, whether there are any recognised impacts. Key information includes: <ol style="list-style-type: none"> 1. the importance of the site (international and domestic designations) 2. Water Framework Directive classification status and any associated issues relating to the site 3. surface flow and groundwater data 4. ecological and habitat sensitivity to flow / level changes and supporting data 5. heritage/culture value 6. current abstractions.
Identification and prediction of impacts on the current environment.	This should include short and long term (acute and chronic) direct and indirect, cumulative, and permanent and temporary effects. It should be at the point of change and downstream and include water quality, in-river needs, associated wetlands, other water users and navigation and recreation. The assessment should focus on the features sensitive to flow/level alteration and should be quantified where possible, showing change from base level. Details on the quality of the data used, analysis/ modelling and interpretation methods and the range of uncertainty should be included as well as appendices to present data and references to date source.
Mitigation measures	Where significant effects are identified, a description of the measures to be taken to avoid, reduce or remedy these effects should be included. Any proposed or actual agreements to minimise impacts on other users (for example lawful abstractors) should also be included.
Additional information to enable an	The scope and content of this assessment will

appropriate assessment of environmental impacts, where a proposal could have an adverse impact on a Habitats Directive site.	vary depending on the case but it must relate to the specific site and its conservation objectives. See box one for further information.
Additional information to enable the authority under section 28G of Wildlife and Countryside Act 1981 (as amended by the Countryside and Rights of Way Act 2000) to fulfil its duties, where a proposal can affect a SSSI site.	The scope and content of this assessment will vary depending on the case but it must relate to the specific site and its conservation objectives. See box two for further information.
Monitoring plan, where proposed	This should include details of what evidence/data collection will be undertaken including locations, timings and frequency.
Any further information relevant to impact on water users and environment	
Conclusions	This should draw together and summarise the reasoning (for and against) the proposals.
Appendices	Such as methodologies used, data/evidence and surveys taken or planned.

1.2.4 Statutory designated sites

For applications that may affect any Habitat Directive sites (Special Areas of Conservation (SAC) or Special Protection Areas (SPA)), Ramsar sites and Sites of Special Scientific Interest (SSSIs), applicants must submit sufficient detail for the Secretary of State or the Welsh Ministers (for drought orders) or the Environment Agency (for drought permits) to assess likely significant effects or damage to features within these sites. Boxes 1 and 2 below set out the requirements for environmental assessments for any Habitats Directive sites or SSSIs.

It is important that applicants make early contact with Natural England and/or the Countryside Council for Wales. This is to ensure environmental impacts are fully identified and addressed within the environmental report and an appropriate assessment can be carried out adequately. This is critical if reasonable timescales for determining the application are to be achieved.

Box one: Conservation of Habitats and Species Regulations 2010

A water company is a competent authority under Regulation 7(1) of the Conservation of Habitats and Species Regulations 2010 (which replaced the Conservation (Natural habitats &c.) Regulations 1994) known as the 'Habitats Regulations'. Under Regulation 9(5) a competent authority, in exercising any of its functions, must have regard to the requirements of the Habitats Directive. This includes activities authorised by a drought order or permit.

Before submitting an application, water companies must determine and be satisfied that:

- there is no likely significant effect on a SAC, SPA or Ramsar site (known as Habitats Directive sites) or;
- a conclusion of no adverse effect on the integrity of the Habitats Directive site can be ascertained from the environmental assessment for the drought order or permit. This assessment must be made alone and in combination with other plans, permissions or projects, including other drought management actions. The water company should agree the scope of the assessment with the Environment Agency and Natural England or Countryside Council for Wales.

The water company should update the environmental assessment when it applies for a drought permit or drought order and include this as part of the environmental report accompanying the application. For further information on assessing likely significant effect and making a decision on no adverse effect for Habitats Directive sites, refer to Appendix H of the [water company drought plan guideline](#).

Once the application is received, the Environment Agency or Secretary of State or Welsh Ministers, as appropriate, as competent authorities under the Habitats Regulations (under Article 6(3)) will carry out an appropriate assessment of the drought permit or order, to assess if it is likely to have an adverse affect on the features of the site. Unless the competent authority ascertains, as a result of the assessment, that the proposed order or permit will not have an adverse effect upon the integrity of the site, it may only authorise the order or permit if there are no alternative solutions and there are imperative reasons of overriding public interest for carrying out the activity.

1.2.5 Overriding public interest

Where the proposal is likely to damage a Habitats Directive site or where it cannot be proven there will be no adverse effect, the water company will have to demonstrate that all other possible options (or alternative solutions) for public water supply have been identified and used. The more environmentally damaging the impact 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 or all options have been exhausted, the Secretary of State or Welsh Ministers (for drought orders), as appropriate, or Environment Agency (for drought permits) has to be satisfied that there is an imperative reason of 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 Directive site is impacted.

This information is out of date and has been withdrawn. Search GOV.UK for "drought orders" to read the current guidance.

Box two: Wildlife and Countryside Act 1981 & Countryside and Rights of Way Act 2000

Under the terms of the Wildlife and Countryside Act 1981 (as amended by the Countryside and Rights of Way Act 2000) (known as the CRoW Act) a water company is a 'Section 28G' authority and will need to have regard to the requirements of the CRoW Act, in particular Sections 28G and Section 28H. These duties require the company to take reasonable steps, consistent with the proper exercise of its functions, to further the conservation and enhancement of SSSI features. The company must give notice to Natural England and/or Countryside Council for Wales if a drought permit or drought order proposal is likely to damage features of the SSSI. This includes actions which are outside of the boundaries of the site but could affect the site.

The water company should update the environmental assessment when it applies for a drought permit or drought order and include this as part of the environmental report accompanying the application. For further information on assessing likely damage to SSSI sites, refer to Appendix H of the water company drought plan guideline.

The Environment Agency or Secretary of State or the Welsh Ministers, as appropriate, are section 28G authorities under the Wildlife and Countryside Act 1981 and must give notice to Natural England and/or Countryside Council for Wales before authorising proposals likely to cause damage, and must take their advice into account.

If the water company proceeds with a drought permit or order, which is likely to damage, against the advice of Natural England/Countryside Council for Wales and damage to the site occurs, the water company may be required to restore the SSSI to its former condition.

1.3 Measures to reduce demand

Before a water company applies for a drought permit or drought order, it is expected to have taken the necessary measures to limit demand on the affected sources. In particular such actions include publicity campaigns, temporary restrictions on water uses under water companies' own powers, leakage control and pressure reduction. 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).
- where no significant environmental impacts are expected.

1.3.1 Temporary restriction of water use

Water companies' powers under the Water Industry Act 1991 were updated by the Flood and Water Management Act 2010¹⁰ 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 Water Use (Temporary Bans) Order 2010¹¹ 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 2011¹² (see Appendix A4). Water companies should check the new powers under the Flood and Water Management Act 2010 to ensure that restrictions on water uses that previously required a drought order do not fall within their new powers.

1.3.2 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) 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.

1.4 Recovery of costs

The Environment Agency has powers under section 64 of Water Act 2003 to recover all significant costs 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.

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

- all significant costs incurred by the Environment Agency, including those where it undertakes monitoring on behalf of the company, will be recovered;

¹⁰ Section 76 Flood and Water Management Act 2010. The provisions under Flood and Water Management Act 2010 were commenced on 1 October 2010.

¹¹ The Water Use (Temporary Bans) Order 2010 – SI 2010 No. 2231 – was commenced on 1 October 2010.

¹² Drought Direction 2011 commenced on 31 March 2011.

- costs must relate to the exercise of the Environment Agency's functions which are attributable to the application for the permit or order for example staff time, overheads and equipment;
- the Environment Agency will aim to identify in advance the items that it perceives as being recoverable;
- the Environment Agency will communicate with water companies at an early stage so that appropriate financial planning can take place;
- the Environment Agency will record its time allocated to each individual drought order or permit to enable appropriate charges to be calculated;
- the bill will be itemised (or a covering letter sent which identifies the elements of the charge) to ensure that the cost recovery is transparent.

This information is out of date and has been withdrawn.
Search GOV.UK for "drought orders" to read the current guidance.

Part 2: Applying for Drought Permits

2.1 Scope of drought permits

The Environment Agency may, by means of a drought permit, authorise water companies to take action under section 79A of the WRA 1991 as amended by the Environment Act 1995.

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 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 water¹³. Thus drought permits can, for example, also authorise temporary impoundments if appropriate.

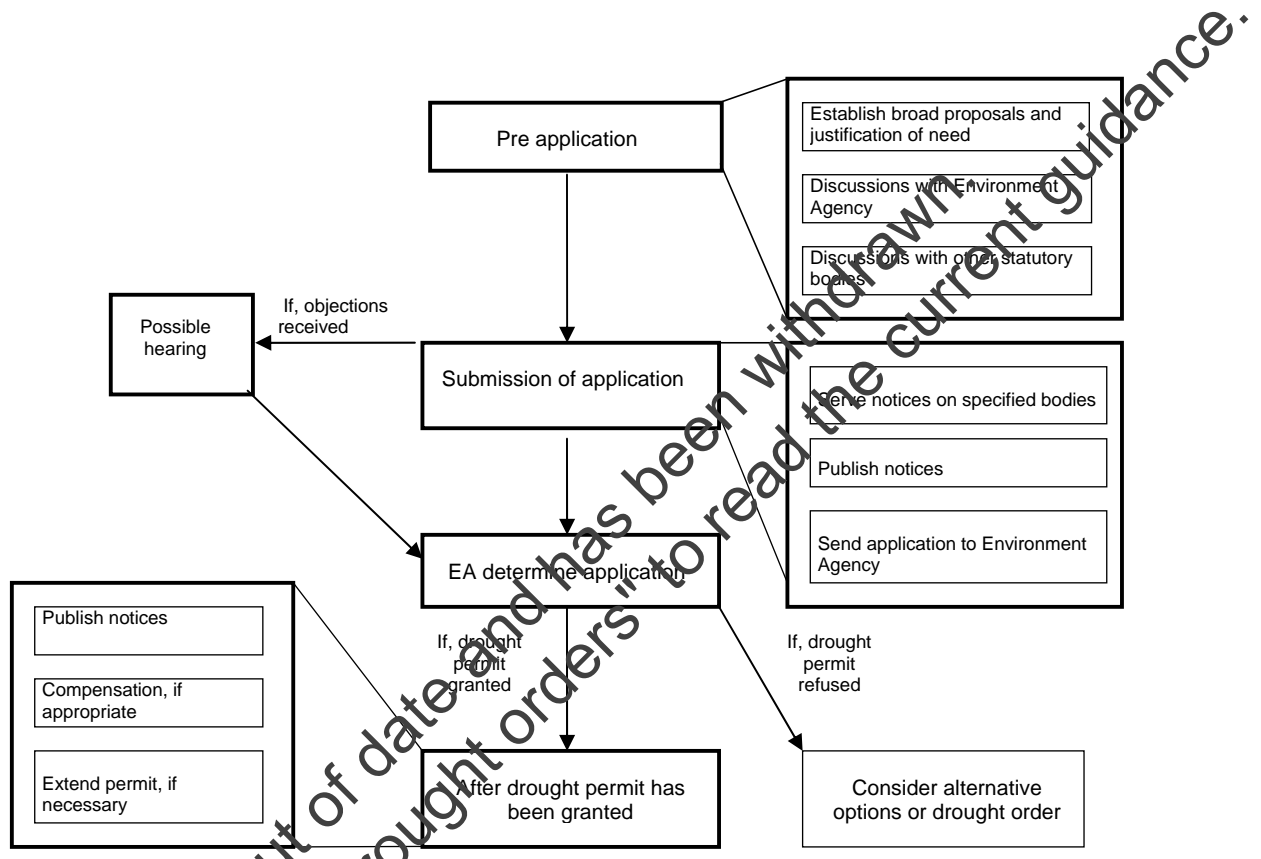
This information is out of date and has been withdrawn.
Search GOV.UK for "drought orders" to read the current guidance.

¹³ Section 81 WRA 1991.

2.2 Process overview

The legislative basis of the drought permit application procedure is contained in Schedule 8 to the WRA 1991¹⁴. Figure 1 presents a summary of the process a water company should follow when applying for a drought permit.

Figure one: Process for 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. If applicants follow and comply with the information in the following steps and if the process goes forward with no delays whatsoever, then the Environment Agency will normally determine an application within 12 days. That is when there are no objections or all objections are resolved. When a hearing is held, the Environment Agency aims to make a decision within seven 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

¹⁴ 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 or Countryside Council for Wales, 28 days in which to respond to notification. If water companies take steps to consult with Natural England or Countryside Council for Wales 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 broad proposals and justification of need

It is essential that water companies prepare the ground thoroughly before submitting a drought permit application. They should undertake the following steps.

1. Establish that the application meets the basic criteria for drought permits (see section 1.1.2).
2. Make early contact with the local regional office of the Environment Agency (see step below) and take action to comply with Environment Agency's requirements.
3. Make early contact with Natural England and/or the Countryside Council for Wales, as appropriate, where there may be a potential for impact on designated sites.
4. Make early contact with the relevant Navigation Authority, where the proposal may have an effect on an inland navigation.

Initial discussions with Environment Agency

Drought permits are dealt with by the Environment Agency's local regional office with support from national permitting teams (see [appendix C](#) for contact details). The water company must initially discuss proposals with their local regional 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 developing a better proposal;
- 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 setting out the anticipated effects of the proposal, including the effect on other abstractors. (See section 1.2.3 for information on the content of an environmental report.)

Other consents

A drought permit does not exempt the need for other consents where required under certain circumstances, for example land drainage consent, discharge consent 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 in the pre-application stage. The Environment Agency will assist and advise on consents that it would grant through its non-water resources functions.

Discussions with other statutory bodies and likely objectors

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 authority¹⁵. 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 permit¹⁶.

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 or

¹⁵ Section 79A(6) WRA 1991. An inland navigation includes any canal or navigable river: section 77(6) WRA 1991.

¹⁶ 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.

the Welsh Ministers for a drought order. The Secretary of State or the Welsh Ministers 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 they do this when preparing their drought permit proposals as part of their drought plan.

Conservation bodies

Water companies must consult with Natural England in England and the Countryside Council in Wales, and, where relevant, with National Parks authorities¹⁷ when formulating any application for a drought permit which may affect an SSSI or other designated site¹⁸. This includes any application which affects, but is not necessarily inside, such a site.

Others

Water companies are required to serve notice of the application on local authorities, 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.

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 seven days of the date on which the notice is served or published;

¹⁷ Including the Broads Authority.

¹⁸ 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 79/409/EEC 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.

- state that objections may be made to the Environment Agency within seven 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 land¹⁹.

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

psc-waterresources@environment-agency.gov.uk

OR

WR Permitting Support Centre
 Quadrant two
 99 Parkway Avenue
 Parkway Business Park
 Sheffield
 S9 4WF

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 on²⁰.

Those persons and bodies on whom notices are most commonly served are:

- every local authority (except English county councils²¹) and water company whose area would be affected by the permit²²;

¹⁹ Paragraph 1(3) of Schedule 8 to the WRA 1991.

²⁰ As amended by Section 79a WRA 1991.

²¹ 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.

- 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 exists²³;
- where the drought permit relates to taking water from a source every local authority (except English county councils²⁴) and internal drainage board in whose area the source is situated,
- and any navigation authority exercising functions over any watercourse affected by the permit²⁵.

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 requirement²⁶ 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 "Guaranteed next-day delivery" scheme or a courier service.

Publish notices

Water companies must publish the notice:

- in one or more local newspapers circulating within the area affected by the permit²⁷ and;
- in the London Gazette²⁸. The London Gazette's address is PO Box 7923, London SE1 5ZH (telephone 020 7394 4517, e-mail gazette-comments@tso.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

²² 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).

²³ Paragraphs 1(1)(a) and 1(2) of Schedule 8 to the WRA 1991.

²⁴ See footnote 21.

²⁵ Paragraphs 1(1)(a) and 1(2) of Schedule 8 to the WRA 1991.

²⁶ Paragraph 1(4) of Schedule 8 to the WRA 1991.

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

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

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.

Where any part of the area affected is in Wales it would be required for the applicant to publish their notices bilingually. Those water companies which have Welsh language schemes in place should comply with the requirements of their scheme.

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 seven days from the date it was served or advertised²⁹.

To minimise the possibility of procedural objections to the application, the Environment Agency requires that drought permit documents should be available for inspection for seven 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 any supporting environmental reports.

Send application to Environment Agency

Format of application

²⁹ Paragraph 1(3)(b) of Schedule 8 to the WRA 1991.

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 CD-ROM/DVD.
- 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.

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.

This information is out of date and has been withdrawn.
Search GOV.UK for "drought orders" to read the current guidance.

Content of application

Water companies can obtain a copy of the drought permit application form from the Environment Agency's Permitting Support Centre or at the [Environment Agency's drought internet page](#)³⁰.

The information which the Environment Agency must have is as follows:

Table three: Content of application for drought permits

Application contents	Additional information
A description of the proposals	This should include what the water company proposes to do and how. It is recommended the proposals are framed in a drought permit.
A statement of reasons why the permit is necessary	To include information on: <ul style="list-style-type: none"> • monthly rainfall figures compared to long term average figures for the period concerned, to show how exceptional the event is; • effect of shortage of rain on relevant source, on water levels in boreholes and reservoirs and on river flows; • population affected; • daily water demand and how it is met from the available source; • steps taken to reduce demand (e.g. temporary water use restrictions, pressure reductions, publicity) and the effect they have had; • evidence that the water company has operated in accordance with any water resource management arrangements relating to the application; • any changes to operational practices or policies that will help avoid or reduce the likelihood of future drought related problems; • information on other steps taken to conserve supplies; • other options considered and reasons for rejection; • the consequences if the drought permit is not granted.
A location map	It should be of large enough scale to identify the position of sources and affected water courses and suitable to attach to the permit.
The written consent from the Navigation Authority	If the proposal affects an inland navigation.
A copy of the notices and	Copies of both served and published notices

³⁰ Environment Agency drought page

<http://www.environment-agency.gov.uk/homeandleisure/drought/31749.aspx>

advertisements required under paragraph 1 of Schedule 8 to the WRA 1991	<p>must be sent as quickly as possible.</p> <p>The applicant 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	
Details of the water company's plan for dealing with the water shortage	<p>This should cover the area covered by the permit but also the Environment Agency's area/region or water company's supply area. Information is needed on:</p> <ul style="list-style-type: none"> • strategic steps and timings; • publicity • liaison with, as appropriate, customers, water companies, Natural England and/or CCW, local authorities, health authorities, emergency services, other organisations such as NFU, CBI and trades unions.
An environmental report	See section 1.2.3 for more information on contents of this report.
Comments from any consultees	
Details of any objections	These can be objections already received and/or any agreements made with objectors or people who might otherwise have objected.
Details of the water quality for proposed new sources	This is for any proposal to use water from a new source to confirm that the water quality (after treatment) is suitable for public supply.

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

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

To meet this timescale, water companies must take the following steps for each application:

- supply full information as outlined in Table three above;
- send proof of publication as soon as possible;
- 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.

2.4.3 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, 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 or Welsh Ministers 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 seven days from the date on which notice is published and served³¹. 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 seven days of the later of either the publication date of 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 where³²:

- an objection is 'duly' made (that is, clearly states the grounds for objection and is reasonable);
- 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 objection³³. 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. The Drought Orders (Inquiries Procedure) Rules 1984 require only the substance of each objection and other representations to be copied to the water company. The water company may then wish to enter into negotiations with the objectors with a view to the objectors withdrawing their objections.

The water company must then 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 England, Countryside Council for Wales, the Environment Agency itself, government departments, Welsh Assembly Government and the navigation authority.

Compensation

The Environment Agency may disregard an objection (and therefore will 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 2.4.5.

³¹ Paragraph 1(3)(c) of Schedule 8 to the WRA 1991.

³² Paragraph 2(1)(b) of Schedule 8 to WRA 1991.

³³ See the power in paragraph 2(4)(a) of Schedule 8 to WRA 1991.

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 seven 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

An inquiry or 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 effectively met, the Environment Agency will refer the case to the Secretary of State or the Welsh Ministers to direct that the requirement to hold a hearing can be dispensed with³⁴. 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 permit³⁵.

Statement of fact

Before a hearing is held, the main parties should aim to agree the factual basis of their cases and submit the agreed factual basis as a document to the appointed person in advance of the hearing. This is to prevent disputes during the hearing on matters of a purely factual nature for example rainfall data.

The water company is responsible for submitting the necessary documentation to the Planning Inspector as far in advance of the hearing. The Planning Inspector should also be made aware of any developments following the submission of the application which the Inspector will need to take into account in reaching their conclusions.

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

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

³⁵ Paragraph 2(3) of Schedule 8 to the WRA 1991.

The Environment Agency will recover its costs 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.³⁶

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 seven 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.

2.4.4 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 application³⁷.

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

³⁶ The power to do this is in section 43 Environment Act 1995.

³⁷ Paragraph 2(2) of Schedule 8 to WRA 1991.

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 or Welsh Assembly Government by email.

Although there are provisions for the water company to advertise the grant of a drought permit³⁸, 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 inspected³⁹. The advertisement 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.

2.4.5 After the drought permit has been granted

Compensation

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 source⁴⁰.
- all other persons interested in the source or injuriously affected by the taking of the water⁴¹.

The water company, as applicant, is liable to pay the compensation⁴². The claimant serves notice on the water company stating the grounds of the claim

³⁸ See step 13.

³⁹ Paragraph 3 of Schedule 8 to WRA 1991.

⁴⁰ Paragraph 2(2)(a) of Schedule 9 to WRA 1991.

⁴¹ Paragraph 2(2)(b) of Schedule 9 to WRA 1991.

⁴² See paragraph 2(2) of Schedule 9 to WRA 1991.

and the amount claimed⁴³. The Environment Agency is not involved in the claims process.

Claims must be made within six months of the date of expiry of the permit⁴⁴. Disputes are referred by the claimant or applicant to the Lands Tribunal⁴⁵, and are not a matter dealt with at the hearing. The Lands Tribunal may make an award during the duration of the permit in respect of likely damage⁴⁶, 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 others⁴⁷.

Extending a drought permit

Drought permits may remain in force for a period of up to six months⁴⁸. An applicant can apply to extend an existing drought permit for up to a further six months⁴⁹.

The water company must notify the Environment Agency as soon as possible or at least 28 days before the existing permit expires if it wishes to extend the permit. It must enclose full supporting material including any fresh evidence for example on exceptional rainfall, with its application. 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 permit⁵⁰. 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.

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

⁴³ Paragraph 3(1) of Schedule 9 to WRA 1991.

⁴⁴ 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.

⁴⁵ Paragraph 3(2) of Schedule 9 to WRA 1991.

⁴⁶ 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.

⁴⁷ 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.

⁴⁸ Section 74(3) of the WRA 1991.

⁴⁹ Section 74(4) of the WRA 1991.

⁵⁰ Paragraph 2(4)(b)(ii) of Schedule 8 to the WRA 1991.

drought permit to which there could be no sensible objection, for example to change the precise wording of the permit.

Revocation 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 to revoke the drought permit it should write to the Environment Agency. As opposed to other changes⁵¹, there is no legal requirement to advertise a revocation, 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 part 3.4.5).

⁵¹ For example withdrawal of applications or extensions.

Part 3: Applying for ordinary drought orders

3.1 Scope of ordinary drought orders

The Secretary of State or the Welsh Ministers, as appropriate 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 actions⁵²:

- 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 2011⁵³. This Drought Direction has been updated to take account of the new temporary bans on water use powers, enacted as part of the Flood and Water Management Act 2010⁵⁴. 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 the drinking water standards.

⁵² Section 74(2) of the WRA 1991.

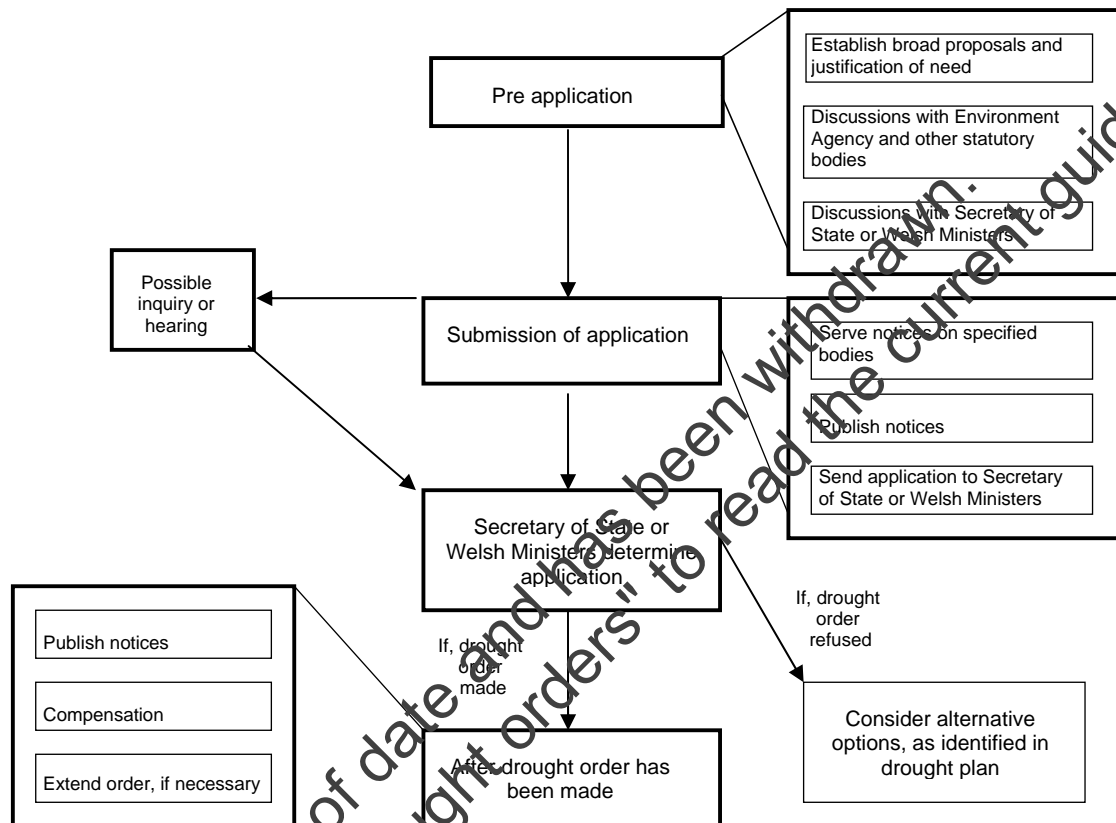
⁵³ Drought Direction 2011 commenced on 31 March 2011.

⁵⁴ Provisions under the Flood and Water Management Act 2010 were commenced on 1 October 2010.

3.2 Process overview

The legislative basis of the application procedure for ordinary drought orders is contained in Schedule 8 to the WRA 1991⁵⁵. Figure 2 presents a summary of the steps applicants should follow when applying for a drought order.

Figure 2: Process for applying for an ordinary 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 or Welsh Ministers will normally make a decision within 28 days. That is when there are 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 ten 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

⁵⁵ 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 or Countryside Council for Wales, 28 days in which to respond to notification. If water companies take steps to consult with Natural England or Countryside Council for Wales on proposals in advance, at both the 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 the ground 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 regional 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;

in relation to the specific circumstances of the applicant's proposed application and their drought plan.

3. Take necessary action to comply with the Environment Agency's requirements.
4. Make early contact with the Department for Environment, Food and Rural Affairs or the Welsh Assembly Government, as appropriate. It is likely that the Department for Environment, Food and Rural Affairs or the Welsh Assembly Government will hold a meeting with the applicant to discuss its proposals for a drought order well before submission of an application.
5. Make early contact with Natural England and/or the Countryside Council for Wales, as appropriate, 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 (for England), or the Welsh Assembly Government (for Wales) and the relevant regional 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:

in England, to:

water.resources@defra.gsi.gov.uk

or

The Secretary of State for Environment, Food & Rural Affairs, c/o Water Supply and Regulation Division, Area 2C, Ergon House, Horseferry Road, London. SW1P 2AL;

In Wales, to:

water@wales.gsi.gov.uk

or

Welsh Assembly Government, Department for the Environment and Sustainability, Climate Change and Water Division, Water Policy Branch, Cathays Park, Cardiff CF10 3NQ..

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 councils⁵⁶) and water company whose area would be affected by the order⁵⁷;
- 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 exists⁵⁸;
- where the drought order relates to taking water from a source, or discharging water or effluent, every local authority (except English county councils⁵⁹) and internal drainage board in whose area the source or discharge point is situated,
- and any navigation authority exercising functions over any water course affected by the order⁶⁰.

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 order⁶¹ and;
- in the London Gazette⁶². The London Gazette's address is PO Box 7923, London SE1 1JZH (telephone 020 7394 4517, e-mail gazette-comments@tso.co.uk).

See section 2.4.2 on submission of drought permit applications for further information on requirements for publishing the notices.

Public inspection of notices

The applicant must make the drought order application open to inspection by any person free of charge at all reasonable times within a period of seven

⁵⁶ 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.

⁵⁷ 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).

⁵⁸ Paragraphs 1(1)(a) and 1(2) of Schedule 8 to the WRA 1991.

⁵⁹ See footnote 21.

⁶⁰ Paragraphs 1(1)(a) and 1(2) of Schedule 8 to the WRA 1991.

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

⁶² Paragraph 1(1)(c) of Schedule 8 to the WRA 1991.

days from the date it was served or advertised⁶³. The documents available for inspection should include a complete copy of the application, including any supporting environmental reports.

The purpose for public inspection is to allow the public to consider the proposals, both for information and to assess whether they want to object to the application.

Send application

Format of application

The applicant must submit the application to the Secretary of State for Environment, Fisheries and Rural Affairs or Welsh Ministers (see section 1.1.2 for guidance on applications in Wales). This should be done in the following way:

- Either by letter, email or on CD-ROM/DVD
- 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.

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

The information which the Secretary of State or the Welsh Ministers must have is as follows:

Table four: Content of application for drought orders

Application contents	Additional information
A copy of the notices required under paragraph 1 of Schedule	Copies of both served and published notices must be sent as quickly as possible.

⁶³ Paragraph 1(3)(b) of Schedule 8 to the WRA 1991.

8 to the WRA 1991	<p>The applicant 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>
A technical brief describing the proposals or the works to be carried out	Where specific works are required in association with implementation of the drought order, the brief should present full details.
A statement of reasons why the order is necessary	<p>To include information on:</p> <ul style="list-style-type: none"> • monthly rainfall figures compared to long term average figures for the period concerned, to show how exceptional the event is; • effect on relevant source works; whether on water levels in boreholes and reservoirs and on river flows; • population affected; • daily water demand and how it is met from the available source; • steps taken to reduce demand (e.g. temporary water use restrictions, pressure reductions, publicity) and the effect they have had; • information on number and type of drought measures imposed during the last five years; • for 'non essential use' drought order (under section 74(2)(b) of WRA 1991), 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 order⁶⁴.
A location map (except in cases of orders restricting non essential use)	It should be of large enough scale to identify the position of sources and affected water courses and suitable to attach to the order. Where a deposited map is required by the order, two clean copies should be provided.
A copy of any existing abstraction licence and any statutory instrument or Local Act governing the abstraction, or discharge relating to the order	
Details of the applicant's plan	This should cover the area covered by the order but

⁶⁴ See section 76(1) of the WRA 1991.

for dealing with the water shortage	also the Environment Agency's area/region or water company's supply area. Information is needed on: <ul style="list-style-type: none"> • strategic steps and timings; • publicity • liaison with, as appropriate, customers, water companies, Natural England and/or CCW, local authorities, health authorities, emergency services, other organisations such as NFU, CBI and trades unions.
Information on leakage reduction over past five years	This should be the measures taken by the company over the previous five years to reduce leakage from the distribution system, and how effective those measures have been. Also what plans the company has to improve their leakage reduction targets.
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 it is proposed to use water from a new source, it should be confirmed that its quality (after treatment if necessary) is suitable for public supply.
An environmental report giving an assessment of the expected effects on the quality of the river, on other licensed abstractions and other protected rights, and any other environmental impacts	See section 2 for more information on contents of this report.
Comments from specified bodies, where appropriate: <ul style="list-style-type: none"> • Environment Agency (where applicant is water company) • Water company affected (where EA is applicant); • any Navigation Authority affected 	
A copy of any water resource management arrangements	This means any relevant arrangements with the Environment Agency under Section 20 of the WRA 1991.
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 an assessment of the costs and benefits should be submitted.	This should include an estimate of the water savings that would be achieved as a result of these 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.

Once the application is sent to the Secretary of State or the Welsh Ministers, officials in the Department for Environment Food and Rural Affairs or the Welsh Assembly Government will normally process applications within 28 days from 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 four above;
- 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 or the Welsh Assembly Government immediately by telephone followed by written confirmation within three days. The water company should also issue a press release and write to all objectors.

3.4.3 Objections and Public local inquiries and hearings

The Secretary of State or the Welsh Ministers may hold a public inquiry or hearing whether or not there are objections to the drought order application⁶⁵. 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 introduced an additional element to Schedule 8 of 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 or the Welsh Ministers within seven days from the date on which the notice is published and served⁶⁶.

⁶⁵ Paragraph 2(6) of Schedule 8 to the WRA 1991.

⁶⁶ Paragraph 1(3)(c) of Schedule 8 to the WRA 1991.

Officials at the Department for Environment Food and Rural Affairs or Welsh Assembly Government will send a copy of each objection to the applicant. The Drought Orders (Inquiries Procedure) Rules 1984 require only the substance of each objection and other representations to be copied to the applicant. The applicant may then wish to enter into negotiations with the objectors with a view to the objectors withdrawing their objections.

The Secretary of State or the Welsh Ministers may disregard an objection if satisfied⁶⁷ 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.

Cases of extreme urgency

If the Secretary of State or the Welsh Ministers agree 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 or the Welsh Ministers have the power to dispense with the requirement to hold a hearing or inquiry⁶⁸. Objections which have not been withdrawn may not be disregarded⁶⁹ 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 or the Welsh Assembly Government 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 or the Welsh Assembly Government Agency 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 or the Welsh Assembly Government will ask the applicant to arrange a venue. This

⁶⁷ Paragraph 2(4)(b) of Schedule 8 to the WRA 1991.

⁶⁸ Paragraph 2(2) of Schedule 8 to the WRA 1991.

⁶⁹ Paragraph 2(3) of Schedule 8 to the WRA 1991.

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 or the Welsh Assembly Government immediately when any objection is withdrawn, and copy the relevant correspondence to officials. When the Secretary of State or the Welsh Ministers 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.

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 or Welsh Ministers have dispensed with the need to hold a hearing or inquiry.

Statement of fact

Before an inquiry or hearing is held, the main parties should aim to agree the factual basis of their cases and submit this as a document to the appointed person in advance of the hearing or inquiry. This is to prevent disputes during the inquiry or hearing on matters of a purely factual nature, for example rainfall data.

The main parties should submit the necessary documentation to the Planning Inspector as far in advance of the inquiry or hearing. The Planning Inspector should also be made aware of any developments since the submission of the application which the Inspector will need to take into account in reaching his or her conclusions.

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 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 or the Welsh Ministers. 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 or the Welsh Minister's decision will vary between drought orders, depending on the complexity of each application.

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

3.4.4 Secretary of State's or Welsh Minister's determine application

When considering a drought order application, the Secretary of State or the Welsh Ministers 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 or the Welsh Ministers will decide if it is appropriate to make the drought order in respect of the application, with or without

modifications⁷⁰. Alternatively, the Secretary of State or the Welsh Ministers may decide that it is not appropriate to make the order and accordingly decline to do so. Once the Secretary of State or the Welsh Ministers make a decision, they are unable to make any changes or add further to the decision.

Notify water company of decision

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

Officials will notify the relevant regional office of the Environment Agency or Environment Agency Wales 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 as 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 inspected.

3.4.5 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 owners⁷²;
- all other persons interested in the source or adversely affected by the taking of the water⁷³.

The applicant for the drought order is liable to pay the compensation⁷⁴. The claimant serves notice on the applicant stating the grounds of the claim and the amount claimed⁷⁵. The Secretary of State or the Welsh Ministers are not involved in the claims process.

⁷⁰ Paragraph 2(5) of Schedule 8 to the WRA 1991.

⁷¹ Paragraph 3 of Schedule 8 to the WRA 1991.

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

⁷³ Paragraph 2(2)(b) of Schedule 9 to WRA 1991.

⁷⁴ See Paragraph 2(2) of Schedule 9 to WRA 1991.

⁷⁵ Paragraph 3(1) of Schedule 9 to WRA 1991.

Claims must be made within six months of the date of expiry of the order⁷⁶. Disputes are referred by the claimant or applicant to the Lands Tribunal⁷⁷, and are not a matter dealt with at the inquiry or hearing. The Lands Tribunal may make an award during the duration of the order in respect of likely damage⁷⁸, in so doing it may have regard to the amount of water which would likely to have been available to the claimant as against others⁷⁹.

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 order⁸⁰;
- taking or using water otherwise than in accordance with any condition or restriction imposed by or under a drought order⁸¹;
- discharging water otherwise than in accordance with any condition or restriction imposed by or under a drought order⁸²;
- failing to construct or maintain apparatus for measuring the flow of water required to be constructed or maintained by a drought order⁸³;
- failing to allow an authorised person to examine such apparatus, or records made by it or kept in connection with it⁸⁴;

⁷⁶ 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.

⁷⁷ Paragraph 3(2) of Schedule 9 to WRA 1991.

⁷⁸ 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.

⁷⁹ 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.

⁸⁰ Section 80(1)(a) of the WRA 1991.

⁸¹ Section 80(1)(a) of the WRA 1991.

⁸² Section 80(1)(b) of the WRA 1991.

⁸³ Section 80(2)(a) of the WRA 1991.

⁸⁴ Section 80(2)(b) of the WRA 1991.

- failing to allow an authorised person to take copies of such records⁸⁵.

Reasonable precautions and due diligence

It is a defence against these offences for the accused to show that they took all reasonable precautions and exercised all due diligence to avoid the commission of the offence⁸⁶.

Penalties

These offences are punishable on summary conviction, by a fine not exceeding the statutory maximum⁸⁷ and on conviction of an indictment by an unlimited fine⁸⁸.

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 requirement⁸⁹. 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 offence⁹⁰.

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

⁸⁵ Section 80(2)(b) of the WRA 1991.

⁸⁶ Section 80(3) of the WRA 1991.

⁸⁷ Section 80(4)(a) of the WRA 1991.

⁸⁸ Section 80(4)(b) of the WRA 1991.

⁸⁹ Section 27 of the WRA 1991.

⁹⁰ Section 206 of the WRA 1991.

Ordinary drought orders may remain in force for a period of up to six months⁹¹. An applicant can apply to extend an existing drought order for up to a further six months⁹².

The applicant must notify the Secretary of State or the Welsh Ministers as soon as possible or at least 28 days before the existing order expires. It must enclose full supporting material, including any fresh evidence, with its application. The Secretary of State or the Welsh Ministers will process the application in the same way as the application for the original order, except that the Secretary of State or the Welsh Ministers may disregard an objection if satisfied that it has, in substance, been made in respect of the application for the original order⁹³.

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 actions⁹⁴:

- 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 or the Welsh Ministers, as appropriate, must be satisfied that there is:

⁹¹ Section 74(3) of the WRA 1991.

⁹² Section 74(4) of the WRA 1991.

⁹³ Paragraph 2(4)(b)(ii) of Schedule 8 to the WRA 1991.

⁹⁴ Section 74(1) of the WRA 1991.

- 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 waters⁹⁵, exists or is threatened;

and that

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

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.

This information is out of date and has been withdrawn.
Search GOV.UK for "drought orders" to read the current guidance.

⁹⁵ Section 73(1)(b) of the WRA 1991 as amended by the Environment Act 1995.

Part 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 actions⁹⁶:

- 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 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 [Part 3: applying for ordinary drought orders](#), except for the following steps.

Establish broad 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 or the Welsh Ministers 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 or the Welsh Ministers making the order.

⁹⁶ Section 75 of the WRA 1991

Send application to Secretary of State or Welsh Ministers

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.

- a. An analysis of average daily consumption broken down by type and consumer (where the applicant is a water company).
- b. 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.
- c. 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.
- d. For an order under section 75(2)(c) allowing the supply of water by means of stand-pipes or water tanks, details of:
 - the proposed scheme including the number of persons per stand-pipe or water tank;
 - the manpower implications for implementing and operating the scheme; and
 - the means by which non-domestic users will be supplied.
- e. Details of any drought order already in force that affects the area under consideration, and whether it is to be revoked or modified.
- f. 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 three months⁹⁷ and they can be extended for up to a further two months⁹⁸.

This information is out of date and has been withdrawn.
Search GOV.UK for "drought orders" to read the current guidance.

⁹⁷ Section 75(3) of the WRA 1991.

⁹⁸ Section 75(4) of the WRA 1991.

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

C. Contact points in the Department for Environment, Food and Rural Affairs, the Welsh Assembly Government, the Environment Agency, Natural England [and the Countryside Council for Wales]

Please note that for the purposes of Appendix A, references to the Secretary of State are to be interpreted, in relation to Wales, as references to the Welsh Ministers⁹⁹.

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.

⁹⁹ See the National Assembly for Wales (Transfer of Functions) Order 1999, as amended by the Water Act 2003, which transfers to the Welsh Assembly Government all Ministerial functions under Chapter III (Drought) of Part II of the Water Resources Act 1991.

APPENDIX A Drought order and drought permit legislation

APPENDIX A1

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

WATER RESOURCES ACT 1991 (as amended) CHAPTER III DROUGHT

Power to make ordinary and emergency drought orders

73.-[(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 Authority; 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.

Provisions and duration of ordinary drought order

74.-(1) An ordinary drought order made on the application of the Authority may contain any of the following provisions, that is to say-

- (a) provision authorising the Authority (or persons authorised to do so by the Authority) to take water from any source specified in the order subject to any conditions or restrictions so specified;
 - (b) provision authorising the Authority (or persons authorised to do so by the Authority) to discharge water to any place specified in the order subject to any conditions or restrictions so specified;
 - (c) provision authorising the Authority to prohibit or limit the taking by any person (including a water undertaker) of water from a source specified in the order if the Authority is satisfied that the taking of water from that source seriously affects the supplies available to the Authority, 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 Authority, 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 Authority to suspend or vary, or attach conditions to, any consent 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 Authority to prohibit or limit the taking by any person of water from a source specified in the order if the Authority 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 Authority 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 Authority to suspend or vary, or attach conditions to, any consent 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.

Provisions and duration of emergency drought order

75. (1) An emergency drought order made on the application of the Authority 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 Authority.

- (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.

Provisions of drought order restricting use of water

76.-(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.

(5) 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 Authority—
 - (a) to prohibit or limit the taking of water from any source; or
 - (b) to suspend or vary, or attach conditions to, any consent for the discharge of any effluent,

the Authority 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) For the purposes of sections 125 to 129 below any water authorised by a drought order to be abstracted from a source of supply shall be treated as if it had been authorised to be so abstracted by a licence granted under Chapter II of this Part, whether the water undertaker to which the order relates is the holder of such a licence or not¹⁰⁰~~
- (5) Where—
 - (a) any drought order confers power on the Authority to suspend or vary, or attach conditions to, any consent for the discharge of any effluent; and
 - (b) the Authority 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 Authority is under an obligation to discharge—

¹⁰⁰ Deleted by s64(1) Drought orders and drought permits: charges

- (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.

Works under drought orders

78.-(1) A drought order may authorise the Authority 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 Authority or a water undertaker to carry out any works-
 - (a) may authorise the Authority 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 VII 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 Authority or a water undertaker to enter any land provisions requiring the Authority 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 Authority 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 Authority, 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 Authority 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 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 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.¹⁰¹

79A Drought permits

- (1) If the 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 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

¹⁰¹ Inserted by s64(2) Drought orders and drought permits: charges

- (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 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 Agency;
- (c) with the omission of the reference to the Agency in the Table in paragraph 1;
- (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 Agency; and
- (e) with the omission—
- (i) of paragraph 2(1)(a) and the word “either” immediately preceding it, and

(ii) of paragraph 2(6).

- ~~(8) For the purposes of sections 125 to 129 below any water authorised by a drought permit to be abstracted from a source of supply shall be treated as if it had been authorised to be so abstracted by a licence granted under Chapter II of this Part, whether the water undertaker to which the permit is issued is the holder of such a licence or not.~~¹⁰²
- (8A) Where a water undertaker makes an application for a drought permit, the 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 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.

Offences against drought order

- 80 (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—

¹⁰² Deleted by s64(3)(a) Drought orders and drought permits: charges

¹⁰³ Inserted by s64(3)(b) Drought orders and drought permits: charges

- (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.

Interpretation of Chapter III

81. 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, as the case may be, to a restriction which is imposed by or under any enactment or agreement.

APPENDIX A2

Schedule 8 to the Water Resources Act 1991 (as amended)

WATER RESOURCES ACT 1991 SCHEDULE 8

1 Proceedings on applications for Drought Orders

- (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—

All orders	(a) The Authority (where it is not the applicant). (b) Every local authority (not being a county council) and water undertaker (not being the applicant) whose area would be affected by the order.
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 a county council) in whose area the source, or the place at which water or effluent is to be discharged, is situated. (b) Every drainage board for an internal district in which the source, or the place at which water or effluent is to be discharged, is situated. (c) Every navigation authority exercising functions over any watercourse affected by the order. (d) If the order concerns any consent 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 a 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 Every owner, lessee and occupier of the land.
the occupation and use
of land.

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

- (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.

2 Objections to and making of orders

- (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 Environment Act 1995 (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 Environment Agency), 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).¹⁰⁴

3 Notice after making of order

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.

¹⁰⁴ Inserted by s65 Procedure at local inquiries

APPENDIX A3

Schedule 9 to the Water Resources Act 1991

WATER RESOURCES ACT 1991
SCHEDULE 9
COMPENSATION IN RESPECT OF DROUGHT ORDERS

(Section 19)

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 consent 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 consent or the attachment of conditions to the consent.

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 Lands 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 consent 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 Lands 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 a consent originally given.

(3) In assessing the compensation to be made under paragraph 2(2) above the Lands 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 Lands 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.

This information is out of date and has been withdrawn.
Search GOV.UK for "drought orders" to read the current guidance.

APPENDIX A4

The Drought Direction 2011

The version of the Drought Direction 2011 on the next page was exported from a pdf document and is therefore not a exact copy.

*This information is out of date and has been withdrawn.
Search GOV.UK for "drought orders" to read the current guidance.*

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,
for and on behalf of the
29th March 2011 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 1991.

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 9 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.

“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.

This information is out of date and has been withdrawn.
Search GOV.UK for "drought orders" to read the current guidance.

APPENDIX B

Draft Statutory Notice for drought order or drought permit applications

Draft statutory notice for drought (permit / order) 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/Welsh Assembly Government/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 / Welsh Ministers) 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 / Welsh Ministers) at:

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

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)

*This information is out of date and has been withdrawn.
Search GOV.UK for "drought orders" to read the current guidance.*

APPENDIX C

Contact points in the Department for Environment, Food and Rural Affairs, the Welsh Assembly Government, the Environment Agency, Natural England [and the Countryside Council for Wales]

CONTACT POINTS

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

Drought orders:

England	Water Supply and Regulation Division, Department for Environment, Food and Rural Affairs, Area 2C, Ergon House, Horseferry Road, London, SW1P 2AL.
Wales	Welsh Assembly Government, Department for the Environment and Sustainability, Climate Change and Water Division, Water Policy Branch, Cathays Park, Cardiff CF10 3NQ.

Drought permits:

Environment Agency Permitting Support Centre (for receiving applications):

WR Permitting Support
PO Box 4209
Sheffield
S9 9BS

Email address psc-waterresources@environment-agency.gov.uk

Environment Agency Regional Offices (for application discussions):

Anglian Kingfisher House, Goldhay Way, Orton Goldhay, Peterborough PE2 5ZR

South East Kings Meadow Road, Reading, RG1 8DQ

Yorkshire and North East Rivers House, 21 Park Square South, Leeds LS1 2QG

South West Manley House, Kestrel Way, Exeter, Devon EX2 7LQ

North West Richard Fairclough House, Knutsford Road, Latchford, Warrington WA4 1HT

Midlands Sapphire East, 550 Streetsbrook Road, Solihull, West Midlands, B91 1QT

**Environment
Agency**

Wales Cambria House, 29 Newport Road, Cardiff, CF24 0TP

Central contact points for drought orders and drought permits within Natural England and the Countryside Council for Wales are:

England Land, Air & Freshwater Team, Natural England, Northminster House, Northminster Rd, Peterborough, PE1 1UA

Wales Countryside Council for Wales, Maes-y-Ffynnon, Penrhosgarnedd, Bangor, Gwynedd LL57 2DW

This information is out of date and has been withdrawn.
Search GOV.UK for "drought orders" to read the current guidance.