

Drought orders and drought permits

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

July 2005

Department for Environment, Food & Rural Affairs
Welsh Assembly Government
Environment Agency

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Published by the Department for Environment, Food and Rural Affairs

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PART I: GENERAL

1. INTRODUCTION

1.1 Context

In 1998 the Department of the Environment, Transport and the Regions, the Welsh Office and the Environment Agency jointly produced the first version of this booklet providing information in a clear and accessible form about the process for obtaining drought permits and drought orders.

Since 1998 a wide range of measures has been taken by the water industry to improve security of supply. In addition to engineering schemes to enhance and improve the infrastructure, these measures include a more structured approach to forward planning, both for water resources and drought.

As a consequence much less reliance has been placed in the intervening years on the drought permit and order machinery and indeed this outcome was one of the principal aims of the 1997 Water Summit. Drought permits and orders remain, though, a necessary mechanism for managing water resources limited by exceptional shortage of rain. The drought of 2003 served as a reminder of the need for this mechanism at times of serious water stress. It was considered timely, therefore, to update and reissue this booklet to reflect legal and policy changes which have taken place since production of the first version.

Since the Water Summit water undertakers have produced drought contingency plans on a voluntary basis. These have been reviewed and agreed with the Environment Agency on a three year cycle. The Water Act 2003 makes it a statutory requirement for companies to prepare, maintain and publish drought plans. With the arrival of new licensed water suppliers to the competitive water supply regime, licensed suppliers will have to contribute to companies' drought plans. Drought plans cover the range of actions necessary to deal with various drought situations. They set out how a water undertaker will continue to meet its duties to supply adequate quantities of wholesome water during drought periods with as little recourse as possible to drought permits or drought orders.

During winter 2003/04 the Department for Environment, Food and Rural Affairs and the Welsh Assembly Government consulted on their proposals for implementing the drought plan provisions of the Water Act 2003. The consultation period expired on 10 March and it is anticipated that new regulations governing the production of drought plans will be made to come into force later in 2005. The regulations will deal with consultation on draft plans, how representations are taken into account, the arrangements for inquiries to be held and how final plans should be published.

1.2 Scope of this booklet

This updated booklet has been produced jointly by the Department for Environment, Food and Rural Affairs, the Welsh Assembly Government and the Environment Agency.

As with the earlier version, this booklet is primarily addressed to water undertakers (ie the water and sewerage companies and water undertakers in England and Wales), as potential applicants for drought orders and drought permits. However, it may also be of interest to local authorities, conservation bodies, members of the public and others.

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

Timescales quoted in this booklet for drought permit and drought order associated activities are calendar days and not working days, unless explicitly stated.

2. OVERVIEW OF DROUGHT ORDERS AND DROUGHT PERMITS

2.1 Introduction

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 mechanisms for dealing with drought situations: ordinary drought orders, emergency drought orders and drought permits.

It is very important for applicants to understand the circumstances in which they should apply for a drought order and those in which they should apply for a drought permit (see paragraphs 2.2 and 2.3 below, and also paragraphs 4, 14 and 24). An inappropriate application will inevitably result in a significant delay, which could have very serious implications for water supply in the area affected.

The Ministerial functions relating to drought in the Water Resources Act 1991 (as amended) are exercisable, in relation to Wales, by the National Assembly for Wales⁴.

Consequently, ordinary drought orders⁵ and emergency drought orders⁶ are made in England by the Secretary of State and in Wales by the National Assembly for Wales. The location of the activity (e.g. abstraction, use, discharge) which the proposed order seeks to authorise or control will determine the identity of the body to whom the application should be made. For example, if the application seeks to authorise

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

⁴The National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672), as amended by section 100 of the Water Act 2003.

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

⁶ Section 73(2) of the WRA 1991.

abstraction from a point source in Wales, the application should be sent by the relevant water undertaker to the National Assembly for Wales. 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 relevant water undertaker to the Secretary of State. Drought permits are granted by the Environment Agency⁷ in relation to both England and Wales.

2.2 Basic criteria for drought orders and permits

It is necessary for the Secretary of State or the National Assembly for Wales, as appropriate, (in the case of drought orders) to be satisfied both that:

- either ***a serious deficiency of supplies of water in any area⁸ or such a deficiency in the flow or level of water in any inland waterway as to pose a serious threat to any flora or fauna which are dependent on those waters⁹*** exists or is threatened,

and that:

- the reason for the deficiency is ***an exceptional shortage of rain¹⁰***.

The Environment Agency (in the case of drought permits) 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 rain¹¹***.

The Secretary of State or the National Assembly for Wales, as appropriate, (for drought orders) or the Environment Agency (for drought permits) must be satisfied that these conditions have been met. Otherwise, the application cannot go forward. 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.

Where emergency drought orders are concerned, the Secretary of State or the National Assembly for Wales, 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

⁷ Section 79A(1) of the WRA 1991 as amended by the Environment Act 1995.

⁸ Section 73(1)(a) of the WRA 1991 as amended by the Environment Act 1995.

⁹ Section 73(1)(b) of the WRA 1991 as amended by the Environment Act 1995.

¹⁰ Section 73(1) of the WRA 1991 as amended by the Environment Act 1995.

¹¹ Section 79A(1) of the WRA 1991 as amended by the Environment Act 1995

- ***the deficiency is such as to be likely to impair the economic or social well-being of persons in the area***¹².

2.3 Principal differences between drought orders and permits

Drought permits can only:

- authorise a water undertaker to take water from specified sources¹³;
- modify or suspend restrictions or obligations to which that undertaker is subject relating to the (existing) taking of water from any source¹⁴.

In practice, the “taking of water” will usually mean water abstraction, but the WRA 1991 defines it in broad terms so that it includes the collection, impounding, diversion or appropriation of water¹⁵. Thus drought permits can, for example, also authorise temporary impoundments if appropriate.

Ordinary drought orders may go further than drought permits. They can deal with discharges of water¹⁶, abstractions and discharges by people other than the undertaker affected¹⁷, supply, filtration and treatment obligations¹⁸. They can allow water undertakers to prohibit or limit particular uses of water¹⁹.

Emergency drought orders can go further still. The water undertaker has complete discretion on the uses of water that may be prohibited or limited²⁰, and it can authorise supply by stand-pipes or water tanks²¹.

Ordinary drought orders can last up to six months²², though they can be amended to last up to a total of one year²³ (see paragraph 11 below). Emergency drought orders

¹² **Section 73(2) of the WRA 1991.**

¹³ **Section 79A(2)(a) of the WRA 1991 as amended by the Environment Act 1995.**

¹⁴ **Section 79A(2)(b) of the WRA 1991 as amended by the Environment Act 1995.**

¹⁵ **Section 81(a) of the WRA 1991.**

¹⁶ **Sections 74(1)(b) and 74(2)(c) of the WRA 1991.**

¹⁷ **Sections 74(1)(c) and 74(2)(d) of the WRA 1991.**

¹⁸ **Sections 74(1)(d) and 74(2)(f) of the WRA 1991.**

¹⁹ **Section 74(2)(b) of the WRA 1991. This is an important overlap with drought permits, as often a ban on non-essential use will be a prerequisite to the Environment Agency considering an application for a drought permit (see paragraph 25).**

²⁰ **Section 75(2)(b) of the WRA 1991.**

²¹ **Section 75(2)(c) of the WRA 1991.**

²² **Section 74(3) of the WRA 1991.**

expire after three months²⁴, though they can be extended up to a total of five months²⁵ (see paragraph 21 below). Drought permits can last up to six months²⁶, though this period can be extended to last up to a total of a year²⁷ (see paragraph 31 below). The provisions for extending drought orders cannot be used to extend drought permits (and vice versa). If a water undertaker wished, for example, to extend the provisions of a drought order but to do so by means of a drought permit, the company would need to submit a new application for the drought permit which it required.

²³ Section 74(4) of the WRA 1991.

²⁴ Section 75(3) of the WRA 1991.

²⁵ Section 75(4) of the WRA 1991.

²⁶ Section 79A(4) of the WRA 1991 as amended by the Environment Act 1995.

²⁷ Technically, the Environment Agency gives notice to this effect, but in practice this would only happen if the water undertaker asked for it. See section 79A(5) of the WRA 1991 as amended by the Environment Act 1995.

3. THE ENVIRONMENT AGENCY'S APPROACH TO DEALING WITH DROUGHT PERMIT / ORDER APPLICATIONS

3.1 General principles

The Environment Agency recognises that management of water resources, even during times of exceptional drought, requires a balanced approach towards water supply, environmental and other interests. In considering whether, and if so in what form, drought permits should be issued, the risks associated with possible lack of supply must be given appropriate weight against other interests.

The Environment Agency expects water undertakers to plan and manage their need for water within the constraints of their abstraction licences. In drought situations, however, the Environment Agency recognises that water undertakers may temporarily need to abstract outside the terms of their licences. Hence the provisions for drought orders and drought permits.

Section 39B of the Water Industry Act 1991 as inserted by Section 63 of the Water Act 2003 introduces a new duty for water undertakers to submit drought plans to the Secretary of State or the National Assembly for Wales, as appropriate, and subsequently publish those plans. Until such time that it becomes a legal requirement for water undertakers to submit drought plans to the Secretary of State or the National Assembly for Wales, the Environment Agency will expect water undertakers to continue to develop and maintain drought plans according to the Environment Agency's drought plan guidelines.

All drought plans will include details of any measures such as demand reductions, drought permits or drought orders which may be needed as a drought develops. The plan should include details of sites likely to be affected by potential drought permits and drought orders and should cover arrangements for environmental monitoring and mitigation that may be required.

The Environment Agency will not normally grant requests for drought permits or support drought order applications where a company has not included the proposal as an option in its drought plan.

Drought Plans should contain preliminary site-specific assessments of environmental impact relating to likely Permits and Orders, see para. 5.3.

During droughts water undertakers may need to seek drought orders or drought permits authorising additional, temporary use of water resources. The Environment Agency expects water undertakers to:

- take action when least environmental damage will occur, e.g. in winter;
- locate sites for additional water where the minimum environmental damage will occur; and
- include measures within their drought plans to mitigate the most serious impacts.

Before a water undertaker applies for a drought permit or order, the Environment Agency may require measures to limit demand on the affected sources and mitigate environmental impact. Drought permits and drought orders are part of effective water resources management and help to avoid risk to public water supplies while providing the best possible protection for the environment. The Environment Agency will expect mitigation measures to be taken to reduce the effect of drought permits or orders. The Environment Agency will also expect careful monitoring of the impact and appropriate post-drought remediation to be carried out by the water undertaker.

The Environment Agency will therefore seek appropriate measures to monitor and mitigate the environmental effects. Monitoring and mitigation measures may be included as a condition of the drought permit/order or by a legal arrangement with the water undertaker under section 20 or section 158 of the WRA 1991. The Environment Agency will take into account the likely success of mitigation measures when determining the drought permit.

Where there is a possibility of a European site being affected by a drought permit/order the water undertaker will have to show that its proposals will not have an adverse effect on the integrity of the designated features. Drought permits and drought orders that may have an adverse effect on European sites should be avoided wherever possible. Where an adverse effect cannot be shown not to occur the water undertaker will have to demonstrate that all other possible options (alternative solutions) for public water supply have been utilised. In the absence of alternative solutions the Environment Agency has to be satisfied that there is an imperative reason of overriding public interest (OPI) for granting the drought permit. If there is such a case, compensatory measures will have to be secured before the drought permit is issued.

At the time of a drought permit application all other possible options for public water supply should have been exhausted. If other options remain, the permit will have to be refused. It is probable that all other options will be exhausted only some way into a drought, and at a stage where the additional abstraction would be required as a matter of urgency. At this stage it would usually be more appropriate for the water undertaker to apply for a drought order where a European site is affected.

The Environment Agency will normally expect to recover from any benefiting water undertaker all significant costs incurred in the exercise of the Environment Agency's functions that are attributable to applications for and the subsistence of any drought order or permit issued to the water undertaker, including costs incurred in connection with any associated local inquiry or hearing²⁸.

3.2 Calls for demand reductions

As a precondition to the granting of a drought permit or support for an application for a drought order, the Environment Agency expects the water undertaker to demonstrate that reasonable measures have been taken aimed at reducing

²⁸ Sections 79 and 79A WRA as amended by Section 64 Water Act 2003

demands on water resources. In particular such measures include publicity campaigns, hosepipe bans, bans on non-essential uses, leakage control and pressure reduction. The more environmentally damaging the impact on the water environment, the more stringent would be the expected measures to reduce demands on water resources. The company must also have communicated publicly its intention sufficiently in advance in its drought plan.

Water undertakers have powers under the Water Industry Act 1991²⁹ to prohibit or restrict the use of water drawn through a hosepipe for watering private gardens and washing private motor cars when it is the opinion of the undertaker that a serious deficiency of water supplies exists or is threatened. Water undertakers can apply for additional powers under a drought order to restrict the use of water for a range of non-essential uses as specified in the Drought Direction 1991 (see Appendix A4).

Exceptions to the situations where the Environment Agency would require demand reductions include:

- where the significance of savings would be minimal even if the measure was adopted (e.g. hosepipe bans in winter);
- where no significant environmental impacts are expected.

Bans on non-essential uses can help to manage supplies and may be an early step in drought management in some circumstances. Where the water undertaker is also seeking additional abstraction-related powers at the outset, these can be included in the drought order application. Subsequent powers (not involving amendments to the provisions of any drought order) can be applied for by drought permit when appropriate.

3.3 Winter drought permits

The Environment Agency will usually prefer water undertakers to apply for drought permits to reduce winter compensation discharges or increase winter abstractions in order to:

- reduce the risk of drought orders / permits 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 Environment Agency will normally require appropriate mitigation measures to support such applications.

It should be noted that the basic criteria for drought permits (set out in section 2.2) still have to be met for winter drought permit applications. In particular, there must

²⁹ Section 76 Water Industry Act 1991 – temporary hosepipe bans

be a threat to public water supplies that is significantly greater than the normal risk to supplies for the time of year.

PART II: ORDINARY DROUGHT ORDERS

4. SCOPE OF ORDINARY DROUGHT ORDERS

4.1 Legislative basis

Section 74 of the WRA 1991 lists the actions which the Secretary of State or the National Assembly for Wales may, by an ordinary drought order, authorise the Environment Agency and water undertakers to take.

4.2 Ordinary drought orders: The Environment Agency

The Secretary of State or the National Assembly for Wales may, by an ordinary drought order, authorise the Environment Agency to take the following actions³⁰:

- 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 as respects taking, discharging, supplying or filtering/treating water;
- to suspend, vary or attach conditions to any consent issued for the discharge of effluent by anyone.

4.3 Ordinary drought orders: Water undertakers

The Secretary of State or the National Assembly for Wales may, by an ordinary drought order, authorise water undertakers (i.e. water and sewerage companies, and water undertakers) to take the following actions³¹:

- to abstract from a source specified in the order;
- to prohibit or limit the use of water for any of the “non-essential” purposes specified in the Drought Direction 1991. (The text of the Drought Direction 1991 is set out in Appendix A4);
- to discharge water to a place specified in the order;

³⁰ **Section 74(1) of the WRA 1991.**

³¹ **Section 74(2) of the WRA 1991.**

- 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 as respects 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.

(NB Any action to suspend or modify obligations - in 4.2 and 4.3 above - would not affect the undertaker's obligations to meet the drinking water standards.)

5. PRE-APPLICATION: A STEP BY STEP GUIDE

5.1 Make early contact with Environment Agency, Central Government, the Welsh Assembly Government and statutory conservation agencies

It is essential that water undertakers prepare the ground thoroughly before submitting an application. They should:

- In the first instance determine whether the application is to be for a Drought Order or a Drought Permit,
- make early contact with the relevant Area office of the Environment Agency so as to make themselves aware of the Environment Agency's requirements for:
 - the conservation and augmentation of resources;
 - demand management (e.g. hosepipe bans, restrictions on non-essential uses of water); and
 - publicity (e.g. to make users aware of the need for economy, and to promote ways of achieving economy)

in the specific circumstances of their proposed application and within the overall context of the company's own drought plan;

- take the necessary action to comply with the Environment Agency's requirements;
- make early contact with the Department for Environment, Food & Rural

Affairs or the Welsh Assembly Government, as appropriate. It is likely that the relevant Government department will want to have a meeting with the company to discuss its proposals for a drought order well before submission of an application;

- make early contact with English Nature and/or the Countryside Council for Wales, as appropriate, where there may be a potential for impacts on designated sites of conservation interest.

5.2 Preparing draft drought orders

Potential applicants should take steps, in advance, to prepare draft drought orders as a response to specific contingencies. Applicants will need to decide how long they would need the orders to remain in force. If there is any doubt as to whether a longer or a shorter period is required, it is prudent to apply for orders to remain in force for the maximum period allowed.

5.3 Preparing environmental reports

Any application for a drought order needs to be accompanied by an environmental report providing an assessment of the expected environmental effects of the order. Obviously it takes time to prepare such a report and it is crucial that applicants start work on this well in advance of making an application for a drought order.

Preliminary site-specific assessments of environmental impacts related to likely drought orders should be prepared as part of the water undertaker's drought plan, to reduce the amount of work required and the timescale required to produce a full environmental report if it becomes necessary to apply for an order. The preliminary assessments should include the likely effects of an application, their acceptability (or otherwise), areas of uncertainty, any monitoring or mitigation that may be needed etc.

The content of a report will vary according to the circumstances and Environment Agency Area staff can advise on the content of individual reports. The important feature is that it should provide a fair and accurate description of the proposal, its likely negative and positive effects, the aspects of the environment likely to be affected, mitigation measures and possible alternatives. Early contact with English Nature and/or the Countryside Council for Wales (central contact points for which are given in Appendix D) will be necessary to ensure environmental impacts are fully identified and addressed within the environmental report. Where designated sites could be affected it is expected that a preliminary assessment of the potential impact of the drought order will have been undertaken in the drought plan in consultation with EN/CCW. The environmental report will update the conclusions of the preliminary assessment in the drought plan and be completed in the light of prevailing circumstances at the time of application.

Generally, an environmental statement should include the following:

- (a) A clear, concise summary of the environmental report using non-technical language. It should contain a synopsis of major conclusions, areas of controversy, issues to be resolved and options selected.
- (b) A scheme/proposal description. Include details of the site, exact location and duration of proposed works, means of abstraction. Include maps and plans.
- (c) A statement of need for water (brief since detailed elsewhere in submission).
- (d) Details of alternative sources considered, indicating justification of the proposed option.
- (e) Description of the current environment (i.e. the aquatic and physical environment, and associated habitats) and its setting in a local/regional context. This should include existing features and, if already in a prolonged drought, whether there are any recognised impacts. Key facts are surface flow and groundwater data, ecologically important sites (international and domestic designations), heritage/culture value and current abstractions.
- (f) 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. Assessment should be quantified where possible, showing change from base level and the range of uncertainty.
- (g) Data used in the report, any shortfalls identified and methods of modelling and interpretation. Appendices can be used to include present data and references to data source.
- (h) Interpretation:
 - Is the impact significant ?
 - What is the background to data interpretation ?
 - What are the modelling results ?
 - Outline of anticipated effects.
- (i) 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 (e.g. lawful abstractors) should also be included.
- (j) Where an order could have a significant effect upon a Natura 2000 or a proposed Natura 2000 site, the environmental report will need to be such as to enable the Secretary of State or the National Assembly for Wales to fulfil their duties as competent authorities for the purposes of

the Habitats Directive³². A 'competent authority' has a legal duty³³ to carry out an appropriate assessment of any activity that it proposes to authorise or carry out, if that activity is likely to have a significant effect on the conservation objectives of a classified Special Protection Area (SPA), an adopted Site of Community Importance (SCI) or designated Special Area of Conservation (SAC). Unless the competent authority ascertains, as a result of that assessment, that the proposed activity will not have an adverse effect upon the integrity of the site, it may authorise that activity only if (i) there are no alternative solutions and (ii) there are imperative reasons of overriding public interest for carrying out the activity.

A water undertaker is also a competent authority in its own right and has a duty (under Regulation 3(4) of the Habitats Regulations³⁴) to have regard to the requirements of the Habitats Directive in the exercise of any of its functions. This includes activities authorised by a drought order.

The environmental report should aim to include all the information necessary to allow the Secretary of State or the National Assembly for Wales to undertake an appropriate assessment and ascertain whether or not the proposal will adversely affect the integrity of the European Site. The scope and content of this assessment will depend on the circumstances of the case but must relate specifically to the site in question and to the site's conservation objectives.

If a conclusion of no adverse effect cannot be reached, then the order may only be made where there are no alternative solutions and there are imperative reasons of overriding public interest for making the order. Compensatory measures must then be secured to protect the overall coherence of the Natura 2000 network. The general principles that water undertakers should follow when assessing the effects of proposed drought orders on European sites are similar to those which local planning authorities must take into account when considering development proposals likely to have a significant effect on European sites. Water undertakers may find it useful to look at Planning Policy Guidance note 9 on Nature Conservation (PPG9³⁵), and in particular at paragraph 37 and Annex C, or at Technical Advice Note (Wales) 5 (TAN 5), as appropriate. It may also be useful to look at the guidance the Environment Agency uses for assessing its normal permissions and activities under the Habitats Regulations. Specific documents that will be useful are:

- Taking a new Environment Agency permission, plan or project through the Regulations

³² Council Directive 92/43/EEC, OJ L 206, 7-50.

³³ Article 6(3).

³⁴ The Conservation (Natural Habitats &c) Regulations 1994

³⁵ PPG9 is to be replaced by Planning Policy Statement 9 (PPS9) which was the subject of consultation by ODPM in 2004

- Water Resources: Applying the Habitats Regulations to water resource permissions and activities
- These are available on the Environment Agency's website: www.environment-agency.gov.uk

A water undertaker must be able to demonstrate that its proposal balances the risk to public water supply with the risk to the environment at the designated site. For example, it would not usually be reasonable to place the environment at a designated site at additional risk without measures that reduce customers' demand. Even for a winter drought permit or order, water saving measures such as hosepipe bans can be planned for the spring.

- (k) Similarly, when an order may result in damage to any site of special scientific interest ('SSSI') features by reason of which the SSSI has been notified or confirmed³⁶, an environmental report which will enable the Secretary of State or the National Assembly for Wales to fulfil their duties as section 28G authorities under the Wildlife and Countryside Act 1981. A "section 28G" authority must give notice to the relevant nature conservation body before permitting operations likely to cause such damage, and must take its advice into account³⁷. In addition, water undertakers have obligations, as section 28G authorities, to give notice to the relevant nature conservation bodies, and to take account of their advice, before carrying out any such damaging operations³⁸.
- (l) What monitoring is proposed. When, how and duration. Monitoring schedule for potential significant environmental impacts. How effective any mitigation will be. Details of monitoring programme, auditing, quality assurance and timetable of data assimilation should be included.

Where possible, the Environment Agency will expect the company to undertake monitoring at its own expense. However, there may be valid reasons that prevent this (e.g. lack of expertise or equipment to do the monitoring, or pragmatism - it may be that there is a requirement for an increase in the frequency of monitoring at a site already monitored by the Environment Agency). The main principles to the approach will be:

- All significant costs incurred by the Environment Agency, including those where it undertakes monitoring on behalf of the company, will be recovered
- Costs must relate to the exercise of the Environment Agency's functions in so far as they are attributable to the application for the order/permit

³⁶ Section 28 Wildlife and Countryside Act 1981, as amended by the Countryside and Rights of Way Act 2000

³⁷ Section 28I Wildlife and Countryside Act 1981, as amended by the Countryside and Rights of Way Act 2000

³⁸ Section 28H Wildlife and Countryside Act 1981, as amended by the Countryside and Rights of Way Act 2000

- The Environment Agency will aim to identify in advance the items that it perceives as being recoverable.
 - The Environment Agency will communicate with water undertakers 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.
- (m) An environmental action plan - how to put the report into practice.
- (n) Any further information considered relevant to the impact of the proposal on surrounding water users and the water environment.
- (o) Conclusion to document drawing together and summarising the threads of the preceding arguments for and against the drought order.
- (p) Appendices - baseline data, details of methodologies etc.

5.4 Informal notification that an application is imminent

As soon as the applicant knows for certain that it will apply for a drought order and has agreed this with the Environment Agency through initial pre-application discussions, it should give the Department for Environment, Food & Rural Affairs (for England), or the Welsh Assembly Government (for Wales) and the relevant Area office of the Environment Agency informal notification, by telephone, that its application for a drought order is imminent (see also paragraph 5.1).

6. APPLICATION PROCEDURE: A STEP BY STEP GUIDE

6.1 Legislative basis

The legislative basis of the application procedure for ordinary drought orders is contained in Schedule 8 to the WRA 1991³⁹.

6.2 Timing of applications

Applicants are undoubtedly aware of the difficulty that faces them, in that they may apply for a drought order only when the circumstances provide justification for doing so and not before, yet they must also ensure that they apply in time for the order to be made before the water supply position has deteriorated to the point of being untenable.

³⁹ **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.**

This means that applicants need to be vigilant (so as to be aware of changes in the resource situation at the earliest opportunity) and well prepared (so that they have draft drought orders and associated material prepared in advance). Once circumstances dictate that they should apply for a drought order, it is essential that they set the process in motion without delay. It is vitally important for applicants to achieve prompt submission of well-prepared applications if the Department for Environment, Food & Rural Affairs or the Welsh Assembly Government is to process the application speedily (see paragraph 6.5 below).

6.3 Notices

Notices of drought order applications must be served on specified bodies and published. The legal requirements for these notices are contained in paragraph 1 of Schedule 8 to the WRA 1991.

It is in the applicant's own best interests to ensure that it complies with these requirements; if it does not, it will have to publish and serve the notices all over again.

6.3.1 Format

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;
- state that objections may be made to the Secretary of State or the National Assembly for Wales within seven days of the date on which the notice is served or published;
- specify the land to which the application relates, if the order would authorise the occupation and use of land⁴⁰.

Additionally, applicants should have regard to the following points:

- when drafting the notice, the applicant should give some thought to the timing of its application - with a view to ensuring that objectors are not unreasonably disadvantaged (e.g. by the occurrence of public holidays during the normal period for inspecting the map or plan or for making objections). Where objectors are likely to be affected in this way, the applicant will do well to allow more than seven days for these activities;
- the importance of making explicit the purpose of the notice by

⁴⁰ Paragraph 1(3) of Schedule 8 to the WRA 1991.

incorporating “drought order” 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 order;
- it is highly desirable for the notice to state clearly that any objections should be sent:

In England, to:

The Secretary of State for Environment, Food & Rural Affairs, c/o Water Supply and Regulation Division, 55 Whitehall, London SW1A 2EY.

In Wales, to:

Welsh Assembly Government, Environment Protection and Quality Division, Cathays Park, Cardiff CF1 3NQ.

- an email address may also be given for objectors who can send their objections electronically. The applicant should contact the Department for Environment Food and Rural Affairs or Welsh Assembly Government for the appropriate address to be used.

To assist with drafting, a suggested format for a notice is attached at Appendix B.

6.3.2 Notifying specified bodies

Notice must be served on a range of persons and bodies, which varies depending on the specific nature of the order. Those persons and bodies on whom notices are most commonly served are:

- the Environment Agency
- every local authority (except English county councils⁴¹) and water undertaker whose area would be affected by the order⁴²;
- if the drought order is to have the effect of suspending or modifying any statutory requirements (e.g. for compensation water), including any subsidiary scheme or order, then notice should be served on those

⁴¹ **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.**

⁴² **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).**

specified in the enactment etc. and for whose protection that requirement exists⁴³;

- where the drought order relates to taking water from a source, or discharging water or effluent, every local authority (except English county councils⁴⁴) and internal drainage board in whose area the source or discharge point is situated, and any navigation authority exercising functions over any watercourse affected by the order⁴⁵.

Please note that this list is not exhaustive, and applicants should consult the Table in paragraph 1(2) of Schedule 8 to the WRA 1991 as amended. Applicants may sometimes find that they are unsure whether a particular public body falls within the categories specified in this Table. In such cases, we would encourage applicants to act as if the body does fall within the relevant category and accordingly serve notice on the body.

The WRA 1991 sets out requirements relating to the service of documents generally in section 220. Schedule 8 adds a further requirement⁴⁶, that where service is by post the letter must be “transmitted in priority to letters of other descriptions”. This means it is important to use the Post Office’s “Guaranteed next-day delivery” scheme. Alternatively, a courier service may be preferred.

6.3.3 Publication of notices

The notice must be published:

- in one or more local newspapers circulating within the area affected by the order⁴⁷. It is for the applicant to decide which newspapers to publish the notice in. However, applicants will wish to bear the following points in mind:
- generally, it is in applicants’ interests to publish notices in more newspapers rather than in fewer, to make sure that compliance with this procedural requirement cannot be questioned. The publication of notices must be seen to have been unquestionably fair and proper. Where there is more than one local paper circulating in the area, none of which has undisputed primacy, the applicant should place the notice in at least two of the papers and should consider whether it is necessary to place the notice in more;

⁴³ **Paragraphs 1(1)(a) and 1(2) of Schedule 8 to the WRA 1991.**

⁴⁴ **See footnote 37 above.**

⁴⁵ **Paragraphs 1(1)(a) and 1(2) of Schedule 8 to the WRA 1991.**

⁴⁶ **Paragraph 1(4) of Schedule 8 to the WRA 1991.**

⁴⁷ **Paragraph 1(1)(b) of Schedule 8 to the WRA 1991.**

- to avoid delay, regional daily papers may be used in default 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 Order.
- in the London Gazette⁴⁸. Published every working day, Monday to Friday, the London Gazette enables persons and bodies to monitor such notices without looking at every local newspaper. The London Gazette's address is PO Box 7923, London SE1 5ZH (telephone 020 7394 4517, e-mail gazette-comments@tso.co.uk).

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

6.3.4 Public inspection of proposals

The law requires "any relevant map or plan" to be 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 advertised⁴⁹.

The object of the opportunity for public inspection is to enable the public to make sense of the proposals, both for information and to assess whether it is appropriate to exercise the right of objection. Therefore the documents available for inspection should include a complete copy of the application, including any environmental report submitted in support of the application.

6.4 Application to the Secretary of State or the National Assembly for Wales

The way the process works is that the applicant makes its application to the Secretary of State or the National Assembly for Wales by letter. This can be by e-mail or on CD-ROM. If submitted electronically, the application and supporting documents should be provided in a format which can be read by Microsoft Word. Where an application is submitted electronically the applicant should still send the Department or the Assembly Government as appropriate two complete paper sets of the documentation. If application is made wholly or in part in paper format, *seven collated sets of documentation should be supplied*. Paper copies are preferable where the size of electronic files is such as to cause transmission problems.

⁴⁸ Paragraph 1(1)(c) of Schedule 8 to the WRA 1991.

⁴⁹ Paragraph 1(3)(b) of Schedule 8 to the WRA 1991.

The collated sets of supporting information are very important for applications submitted on paper. Officials in the Department for Environment, Food & Rural Affairs or the Welsh Assembly Government will refer them to their department's consultees, who will then comment on the order. If the applicant does not enclose seven sets of the material, or does not collate the material, this will delay progress on the drought order. Applicants must ensure that seven collated sets of supporting information accompany their applications.

The information which the Secretary of State or the Assembly Government must have is as follows:

- a. A copy of the notices required under paragraph 1 of Schedule 8 to the WRA 1991.

The Secretary of State or the Assembly Government needs to be satisfied that the proper notices have been served and published⁵⁰. Accordingly, copies of both served and published notices must be sent as quickly as possible, to enable the Secretary of State or the Assembly Government to make the order. The applicant does not have to send the Secretary of State or the Assembly Government the complete newspaper containing the published notice. The relevant page will suffice, provided that it bears the title of the paper and the date. A scanned version is acceptable provided the positioning of the notice allows the title of the paper and date to be contained on a single page. Alternatively, certification by a solicitor that the notice appeared on a specified date will be acceptable.

- b. 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.
- c. A statement of reasons why the order is necessary, including information on:
 - the monthly rainfall figures for the period concerned, with the corresponding long-term average figures to show how exceptional the event has been;
 - the effect on the relevant source works, whether on water levels in boreholes and reservoirs or on river flows;
 - the population affected;
 - the daily water demand and how it is met from the available source;

⁵⁰ Paragraph 2(5) of Schedule 8 to the WRA 1991.

- the steps taken to reduce demand (e.g. hosepipe bans, publicity campaign, pressure reductions, waste detection and prevention) and their effects so far;
 - for an order under section 74(2)(b) of the WRA 1991⁵¹, a note of which of the purposes listed in the Drought Direction 1991 are to be specified in the order, and whether the order is to specify that the prohibition is to be restricted to a class of consumer⁵²;
 - information on the number and type of drought measures including restrictions and hose-pipe bans imposed during the past five years.
- d. A location map (except in the case of orders under section 74(2)(b)⁵³ of large enough scale to enable positions of the relevant sources and any affected water courses to be identified, and suitable for attachment to the order if necessary. Where a deposited map is required by the order, two clean copies should be provided.
- e. A copy of any existing abstraction licence and any statutory instrument or local Act governing the rate of abstraction, imposing restrictions (for instance on residual minimum flows) or imposing requirements relating to the discharge of compensation water.
- f. Details of the applicant's plan for dealing with the water shortage, not only within the area covered by the order but as appropriate, throughout the Environment Agency Area/Region or the undertaker's supply area, including information as to:
- strategic steps and their timing;
 - publicity;
 - liaison with, as appropriate, consumers, water undertakers, English Nature and/or Countryside Council for Wales (as appropriate), local authorities (water quality, social services, highways), health authorities, police and fire authorities; representative bodies such as the Confederation of British Industry, National Farmers Union and trades unions.
- g. Information on 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.

⁵¹ **i.e. an order restricting non-essential uses of water.**

⁵² **See section 76(1) of the WRA 1991.**

⁵³ **i.e. an order restricting non-essential uses of water.**

- h. For orders which will reduce residual river flows by reason of reduced compensation water or regulatory discharges, or by new or increased abstractions, an assessment of the expected effects on the quality of the river as well as on other licensed abstractions should be provided. 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.
- i. 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 effects. (See paragraph 5.3 above for guidelines on the content and layout of such a report.)
- j. Comments of the following bodies on the proposals, where appropriate:
 - the Environment Agency (as controlling authority for surface and underground resources) where the applicant is a water undertaker;
 - the water undertaker(s) affected, where the applicant is the Environment Agency; and
 - any navigation authority affected.
- k. Copies of any relevant arrangements reached with the Environment Agency under section 20 of the WRA 1991.
- l. A draft of the order with an electronic copy in a format which can be read and manipulated by Microsoft Word.

6.5 Time taken to process the application

Officials in the Department for Environment, Food and Rural Affairs and the Welsh Assembly Government aim to process applications speedily, normally within 28 days from the date of the applications. However, in order to meet this timetable officials are reliant on companies taking steps to ensure that:

- a contact is nominated to liaise with the officials on individual applications;
- full information as set out in paragraph 6.4 above is supplied in support of each application, which must be self-contained;
- proof of publication of the notices is sent to the Secretary of State or the Welsh Assembly Government as quickly as possible;

- wherever possible information is supplied to officials by telephone, e-mail and followed by written confirmation; and
- there is prompt response to queries raised by officials.

If companies comply with all of the above conditions and if the process goes forward with no delays whatsoever, then the minimum achievable timescale for an application to which there are objections⁵⁴ and/or in respect of which there is a public inquiry or a hearing⁵⁵ is 26 days and the minimum achievable timescale for an application to which there are no objections and in respect of which there is no public inquiry or hearing is 10 days. It is important to note that these minimum timescales will NOT normally be achievable, because they are possible ONLY if no obstacles of any sort are encountered at any stage in the process.

In addition to the above timescales, under the Wildlife and Countryside Act⁵⁶, if the Secretary of State or the National Assembly for Wales is minded to grant permission to an application that has the potential to damage the features of a SSSI, the Secretary of State or the National Assembly for Wales must allow English Nature, or the Countryside Council for Wales as appropriate, 28 days in which to respond to this notification. As above, if English Nature and/or the Countryside Council for Wales are contacted promptly and no obstacles are encountered the response time may be reduced.

7. PUBLIC LOCAL INQUIRIES AND HEARINGS

7.1 Introduction

The Secretary of State or the National Assembly for Wales may hold a public inquiry or hearing whether or not there are objections to the drought order application⁵⁷. The Drought Orders (Inquiries Procedure) Rules 1984, SI 1984 No 999 are intended to strike a balance between the interests of those affected. These Rules set out the procedures to be followed *before*, *at* and *after* the hearing or inquiry.

As soon as they have received a drought order application, officials at the Department for Environment, Food and Rural Affairs or the Welsh Assembly Government will normally contact the Planning Inspectorate to put arrangements for an inquiry or hearing in hand. The reason for taking this step in advance of actually receiving any objections is to take the matter forward with the minimum possible delay.

⁵⁴ See paragraph 7.2 below.

⁵⁵ See paragraph 7.1 below.

⁵⁶ Section 28G of the Wildlife and Countryside Act 1981

⁵⁷ Paragraph 2(6) of Schedule 8 to the WRA 1991.

Section 65 of the Water Act 2003 introduces 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.

7.2 Objections

The legislation provides for the consideration by the Secretary of State or the National Assembly for Wales of objections to drought order applications. Objections must be made to the Secretary of State or the National Assembly for Wales within seven days from the date on which notices are published and served⁵⁸ (see paragraph 6.3.1 above). Where drought orders are concerned there is necessarily very little margin for delay (see paragraphs 6.2 and 6.5 above.) It is, therefore, very important to take applications forward as speedily as is reasonably possible because of the risk that the water supply situation will deteriorate significantly in the interim.

The Secretary of State or the National Assembly for Wales may disregard an objection if satisfied⁵⁹ 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.

When the Secretary of State or the National Assembly for Wales receives objections to a drought order application, officials will normally copy those objections 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.

7.3 Arrangements for the inquiry or hearing

Meanwhile, officials will make further progress with arrangements for an inquiry or hearing. In particular, they will invite the applicant to arrange a suitable venue. This need not be a council office - a suitable hall or room in a hotel or the applicant's own offices will suffice. When the applicant has done this, it should tell the officials.

Where there are objections, a hearing is normally held in preference to a public inquiry, although either may be dispensed with if the need for the order is sufficiently and demonstrably urgent. Should it appear to the Secretary of State or the National Assembly for Wales that an order needs to be made urgently if it is to enable the deficiency of supplies of water to be effectively met, the Secretary of State or the

⁵⁸ Paragraph 1(3)(c) of Schedule 8 to the WRA 1991.

⁵⁹ Paragraph 2(4)(b) of Schedule 8 to the WRA 1991.

National Assembly for Wales has a power to direct that the requirement to hold a hearing or inquiry be dispensed with⁶⁰, although objections which have not been withdrawn may not be disregarded⁶¹. Any request for such a dispensation must be submitted with a full supporting case.

Officials will notify all parties of the arrangements for the inquiry or hearing.

7.4 Procedure for withdrawal and cancellation

If the applicant decides to withdraw its application, it should advise officials by telephone immediately. Written confirmation of the withdrawal should be received by the Department or the Welsh Assembly Government within three days. The applicant should also advise officials immediately by telephone when any objection is withdrawn, and copy the relevant correspondence to officials. When the Secretary of State or the National Assembly for Wales is advised of the withdrawal of an objection, officials will notify the applicant and forward a copy of the objector's letter. When, as result of withdrawal of the application or of the objections to it, it is appropriate for officials to cancel arrangements made for a hearing, officials will notify all parties by letter.

7.5 During and after the inquiry or hearing

In the event that the applicant does not withdraw the application, and all the objectors do not withdraw their objections and the Secretary of State or the National Assembly for Wales does not direct that the requirement to hold a hearing or inquiry be dispensed with, the inquiry or hearing will be held by an Inspector.

Where there is an inquiry or a hearing, it is highly desirable for the main parties to agree the factual basis of their cases before the hearing and to submit the agreed factual basis as a document to the hearing. The purpose of this is to prevent disputes in the course of the hearing on matters of a purely factual nature, e.g. rainfall statistics.

The parties should ensure that the Inspector is made aware of any developments since the submission of the application which the Inspector will need to take into account in reaching their conclusions.

After the inquiry or hearing, the Inspector will submit the report and recommendations to the Secretary of State or the National Assembly for Wales.

8. THE SECRETARY OF STATE'S OR THE NATIONAL ASSEMBLY FOR WALES' DECISION

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

⁶¹ Paragraph 2(3) of Schedule 8 to the WRA 1991.

When considering a drought order application, the Secretary of State or the National Assembly for Wales will have regard to the practicability and effectiveness of the proposals, their effects on individuals, the public and the environment, the economic and social well-being of the area and any other factors relevant to the application. Cases are dealt with on their individual merits.

The period between receipt of the Inspector's report and the issue of the Secretary of State's or the National Assembly for Wales' decision will vary between Drought Orders, given that some cases will be simple and straightforward whereas others will be complex. Normally, the Department for Environment, Food and Rural Affairs and the Welsh Assembly Government might expect the time from receipt of the Inspector's report to the issue of the Secretary of State's or the National Assembly for Wales' decision to be five working days. However, it is important to note that this period can be longer or (in exceptional cases) shorter.

If the Secretary of State or the National Assembly for Wales decides that it is appropriate to do so, the order may be made in respect of which the application was made, with or without modifications⁶². Alternatively, the Secretary of State or the National Assembly for Wales may decide that it is not appropriate to make the order, and accordingly decline to do so.

After the Secretary of State or the National Assembly for Wales has made a decision, it will be notified to the applicant by letter. Having given a decision, the Secretary of State or the National Assembly for Wales is unable to add further to the decision.

9. AFTER THE ORDER HAS BEEN MADE

When the order has been signed, officials will notify the applicant and the relevant Area of the Environment Agency or Environment Agency Wales by e-mail, followed by letter. Shortly thereafter, officials will also send a copy of the decision letter to each objector.

The applicant must then publish, in the same manner as it published the earlier notices (see paragraph 6.3 above), a notice stating that the order has been made and naming a place where a copy of it may be inspected⁶³.

10. COMPENSATION

10.1 Loss or damage (other than that resulting from interruption of supply to water undertakers' customers)

⁶² Paragraph 2(5) of Schedule 8 to the WRA 1991.

⁶³ Paragraph 3 of Schedule 8 to the WRA 1991.

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

Those who may claim are-

- The owners of the source⁶⁴.
- All other persons interested in the source or injuriously affected by the taking of the water⁶⁵.

The applicant for the order is liable to pay the compensation⁶⁶. The claimant serves notice on the applicant stating the grounds of the claim and the amount claimed⁶⁷. The Secretary of State or the National Assembly for Wales is not involved in the claims process.

Claims must be made within six months of the date of expiry of the order⁶⁸. Disputes are referred to the Lands Tribunal⁶⁹, and are not a matter dealt with at the hearing. The Lands Tribunal may make an award during the currency of the order in respect of likely damage⁷⁰, though in so doing it may have regard to the amount of water which would likely to have been available to the claimant as against others⁷¹.

10.2 Water undertakers' customers

Under the WRA 1991, water undertakers' customers have no entitlement to compensation from the companies in respect of loss or damage sustained as a result of the implementation of drought orders. The circumstances under which payments

⁶⁴ Paragraph 2(2)(a) of Schedule 9 to WRA 1991.

⁶⁵ Paragraph 2(2)(b) of Schedule 9 to WRA 1991.

⁶⁶ See Paragraph 2(2) of Schedule 9 to WRA 1991.

⁶⁷ Paragraph 3(1) of Schedule 9 to WRA 1991.

⁶⁸ 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.

⁶⁹ Paragraph 3(2) of Schedule 9 to WRA 1991.

⁷⁰ 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.

⁷¹ 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.

may be made to customers are set out in the conditions attached to water undertakers' Instruments of Appointment.

11. EXTENSIONS TO ORDINARY DROUGHT ORDERS

Ordinary drought orders may remain in force for a period of up to six months⁷² and they can be extended for up to a further six months⁷³.

Where an applicant wishes to apply to extend the period of an existing order, the Secretary of State or the National Assembly for Wales should be notified as soon as possible or at least 28 days before the existing order expires (see paragraph 6.5 above). It must enclose full supporting material, including any fresh evidence, with its application. The application will be processed in the same way as the application for the original order, except that in these circumstances the Secretary of State or the National Assembly for Wales may disregard an objection if satisfied that it has, in substance, been made in respect of the application for that previous order⁷⁴.

12. DROUGHT ORDERS WHICH CEASE TO BE NEEDED

There are instances where drought orders are issued and then circumstances change to such an extent that the order is no longer needed. It is apparent from sections 74 and 75 of the WRA 1991 that drought orders are designed to enable, not to require, the undertaker to take certain types of action. Accordingly, where the undertaker 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.

13. OFFENCES

13.1 Offences in respect of drought orders

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

- taking or using water in contravention of a prohibition or limitation imposed by or under a drought order⁷⁵;
- taking or using water otherwise than in accordance with any condition or restriction imposed by or under a drought order⁷⁶;

⁷² Section 74(3) of the WRA 1991.

⁷³ Section 74(4) of the WRA 1991.

⁷⁴ Paragraph 2(4)(b)(ii) of Schedule 8 to the WRA 1991.

⁷⁵ Section 80(1)(a) of the WRA 1991.

⁷⁶ Section 80(1)(a) of the WRA 1991.

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

13.2 Reasonable precautions and due diligence

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

13.3 Penalties

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

13.4 Other relevant offences

Abstraction or impoundment for public water supply without a licence is an offence unless otherwise authorised, e.g. by a drought order or drought permit, or if the quantity or (exceptionally) location of an abstraction renders it exempt from the licensing requirement⁸⁴. If the drought order does not cover the water undertaker'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.

⁷⁷ Section 80(1)(b) of the WRA 1991.

⁷⁸ Section 80(2)(a) of the WRA 1991.

⁷⁹ Section 80(2)(b) of the WRA 1991.

⁸⁰ Section 80(2)(b) of the WRA 1991.

⁸¹ Section 80(3) of the WRA 1991.

⁸² Section 80(4)(a) of the WRA 1991.

⁸³ Section 80(4)(b) of the WRA 1991.

⁸⁴ Section 27 of the WRA 1991.

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

PART III: EMERGENCY DROUGHT ORDERS

To a very large extent, the information in Part II relating to ordinary drought orders relates also to emergency drought orders. However, there are significant differences in specific areas and these are explained in the following paragraphs.

14. SCOPE OF EMERGENCY DROUGHT ORDERS

14.1 Legislative basis

Section 73(2) of the WRA 1991 is intended to deal with a situation in which the deficiency of supplies resulting from or threatened by an exceptional shortage of rain is “likely to impair the economic or social well-being of persons in the area”.

Section 73 empowers the Secretary of State or the National Assembly for Wales to use Section 75, on application by the Environment Agency or a water undertaker, to make orders containing any of the provisions which could be included in an ordinary drought order (except, in the case of a water undertaker, provisions authorised by section 74(2)(b)) which in addition empowers the Secretary of State or the National Assembly for Wales to make provision authorising a water undertaker (but not the Environment Agency):

- to limit the use of water for such purposes as it thinks fit (ie not merely those specified in the Drought Direction 1991); and
- to set up, and supply water by means of, stand-pipes or water tanks.

The Secretary of State or the National Assembly for Wales will decide the extent of impairment of economic or social well-being on the basis of an assessment of what would be the consequences if the additional emergency restrictions were not to be authorised. For example, if the consequences were assessed as including an imminent danger of complete breakdown of normal supplies, it would almost certainly follow that the resulting effect on the community would justify the making of the emergency drought order.

15. PRE-APPLICATION: A STEP BY STEP GUIDE

⁸⁵ Section 206 of the WRA 1991.

As for ordinary drought orders (see paragraph 5 above), with one additional requirement.

Before applying for an emergency drought order the applicant should not only take the necessary action in respect of:

- conservation and augmentation of resources,
- demand management, and
- publicity (e.g. to make users aware of the need for economy, and to promote ways of achieving economy),

but also:

- make suitable use of ordinary drought orders and, if appropriate, drought permits.

16. APPLICATION PROCEDURE: A STEP BY STEP GUIDE

16.1 Legislative basis

As for ordinary drought orders. (See paragraph 6.1 above.)

16.2 Timing of applications

As for ordinary drought orders. (See paragraph 6.2 above.)

16.3 Notices

As for ordinary drought orders. (See paragraph 6.3 above.)

16.4 Application to the Secretary of State or the National Assembly for Wales

In practice, before making an emergency drought order, the Secretary of State or the National Assembly for Wales will ask for information to show that before applying for such an order the applicant has taken the necessary action in respect of conservation and augmentation of resources, demand management and publicity, and made suitable use of ordinary drought orders.

Should the situation described in section 73(2) of the WRA 1991 (see paragraph 2.2 above) come into being without the applicant having time to take any of these steps, this need not prevent the Secretary of State or the National Assembly for Wales from making an order.

The information which applicants must supply with applications for emergency drought orders is therefore the same as that for ordinary drought orders, but with the following additional items:

- a. Where the applicant is a water undertaker, an analysis of average daily consumption broken down by type and consumer;
- 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; and/or
 - tourism, sport and recreation.
- c. For an order under section 75(2)(b) to prohibit or limit the use of water, reasons why a section 74(2)(b) 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 made on the applicant's initiative that affects the area under consideration, and whether it is to be revoked or modified;
- f. A draft of the order with a copy on disk in a format which can be read and manipulated by Microsoft Word.

16.5 Time taken to process the application

As for ordinary drought orders. (See paragraph 6.5 above.)

17. PUBLIC LOCAL INQUIRIES AND HEARINGS

As for ordinary drought orders. (See paragraph 7 above.)

18. THE SECRETARY OF STATE'S OR THE NATIONAL ASSEMBLY FOR WALES' DECISION

As for ordinary drought orders. (See paragraph 8 above.)

19. AFTER THE ORDER HAS BEEN MADE

As for ordinary drought orders. (See paragraph 9 above.)

20. COMPENSATION

20.1 Loss or damage (other than that resulting from interruption of supply to water undertakers' customers)

As for ordinary drought orders. (See paragraph 10.1 above.)

20.2 Water undertakers' customers

As for ordinary drought orders. (See paragraph 10.2 above.)

21. EXTENSIONS TO EMERGENCY DROUGHT ORDERS

Emergency drought orders may remain in force for a period of up to three months⁸⁶ and they can be extended for up to a further two months⁸⁷.

22. EMERGENCY DROUGHT ORDERS WHICH CEASE TO BE NEEDED

As for ordinary drought orders. (See paragraph 12 above.)

23. OFFENCES

As for ordinary drought orders. (See paragraph 13 above.)

⁸⁶ Section 75(3) of the WRA 1991.

⁸⁷ Section 75(4) of the WRA 1991.

PART IV: DROUGHT PERMITS

24. SCOPE OF DROUGHT PERMITS

24.1 Legislative basis

The Environment Act 1995 added a new section 79A to the WRA 1991 as an additional mechanism for dealing with drought. They are an additional means for water undertakers to take water from new sources, or to alter restrictions on taking water from existing sources⁸⁸.

They are granted by the Environment Agency rather than the Secretary of State or the National Assembly for Wales. If they involve water which may affect an inland navigation, the water undertaker is required to obtain the consent of the relevant navigation authority⁸⁹.

Otherwise, from a legal point of view, the same procedures apply as with drought orders, except that there is no provision for public inquiries⁹⁰.

If there are objections to the application for a drought permit, a hearing will normally have to be held. There is no appeal mechanism against decisions made by the Agency in respect of drought permits. The water undertaker may make an application to the Secretary of State or the National Assembly for Wales for a drought order if it is dissatisfied with the Environment Agency's decision.

In contrast with drought orders, drought permits can only:

- Authorise a water undertaker to take water from specified sources.
- Modify or suspend restrictions or obligations to which that undertaker is subject relating to the (existing) taking of water from any source.

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

⁸⁸ This includes changes to compensation discharge arrangements, provided the restriction or obligation is referred to in the licence, Act etc. authorising the "taking" of the water. This would include licences etc. authorising impoundments, because for the purpose of drought permits "taking" water has a wide meaning: see section 81 WRA 1991 and para. 2.1. Other discharge obligations cannot be changed by drought permits; compare the power to do so by drought orders as per section 74(2)(f)(ii) WRA 1991.

⁸⁹ Section 79A(6) WRA 1991. A inland navigation includes any canal or navigable river: section 77(6) WRA 1991.

⁹⁰ Section 79A(7)(e) WRA 1991. This is not a material change to current procedure for drought orders, which are invariably dealt with at hearings rather than public inquiries.

water⁹¹. Thus drought permits can, for example, also authorise temporary impoundments if appropriate.

25. PRE-APPLICATION: A STEP BY STEP GUIDE

Following initial pre-application discussions with the Environment Agency Area office on whether the application should be a drought order or a drought permit it is important that water undertakers prepare the ground thoroughly before submitting an application. Specifically, they must investigate the navigation authority's position, if appropriate. Secondly, they must make sure the proposal is acceptable to the Environment Agency in principle. This will, as appropriate to the circumstances, include making vigorous efforts to:

- conserve and augment resources
- control demand
- make users aware of the need for saving water and actively protecting the environment
- assess potential environmental impacts of proposal.

25.1 Proposal and likely effects

The water undertaker must provide full details of the proposal for which permission is sought by the drought permit, and prepare an environmental report setting out the anticipated effects of the proposal, including the effect on other abstractors⁹². (See paragraph 5.3 above for guidelines on the content and layout of such a report.)

25.2 Discussion with the Environment Agency

Although in principle the Environment Agency considers that water supply arrangements should be satisfied through long-term water resources planning and the abstraction licensing system, it recognises the need for drought permits in appropriate circumstances. It will always be open minded about considering applications. However, it is in practice essential to discuss proposals with the Environment Agency first. This will have the following advantages:

- It provides an opportunity for the proposal to be framed 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.

⁹¹ **Section 81 WRA 1991.**

⁹² **See para 26.4 (j)**

The Environment Agency expects water undertakers to include details of possible drought permit options in their drought plans.

25.3 Discussion with, and consent from, navigation authorities

Where required, the Environment Agency will require the written consent of the navigation authority to be submitted with the application. If this does not apply, the water undertaker must say so in writing, on the application form or otherwise.

Difficulties may arise where a navigation authority is theoretically capable of being affected by the drought permit (i.e. the proposed drought permit relates to waters which supply an inland navigation etc.) but in practice what the permit authorises would make no significant difference to them.

The Environment Agency considers that consent in such circumstances is not necessary, because the navigation in question is not "affected" by the permit⁹³.

Where a navigation authority validly withholds consent because it may be affected, the Environment Agency has no alternative but to refuse to grant the drought permit. In such cases the applicant should apply to the Secretary of State or the National Assembly for Wales for a drought order. The Secretary of State or the National Assembly for Wales does not need the navigation authority's consent.

Water undertakers may find it helpful to contact the Environment Agency who may be able to provide details of the appropriate navigation authority on whom notice should be served.

25.4 Discussion with other statutory bodies and other likely objectors

Water undertakers should consult with English Nature (in Wales, the Countryside Council for Wales) and, where relevant, with National Parks authorities⁹⁴ when formulating any application for a drought permit which may affect an SSSI or other site⁹⁵. This includes any application which affects, but is not necessarily inside, such a site.

⁹³ **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.**

⁹⁴ **Including the Broads Authority.**

⁹⁵ **Quite apart from the Environment Agency's duties in relation to special sites, water undertakers are subject to substantially the same duties in any event: section 4 Water Industry Act 1991. 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.**

There are requirements (see below) to serve notice of the application on local authorities, internal drainage boards, and people specifically protected in legislation. It is wise to consult such bodies in advance of making an application. The same applies to anyone whom the water undertaker considers is likely to raise objections.

25.5 Other consents

A drought permit does not excuse the need for other consents if the situation so demands - for example, land drainage consent, discharge consent, or planning permission. The water undertaker should investigate the possibility of needing to deal with these requirements as early as possible in the pre-application stage. The Environment Agency will assist and advise over consents etc. that it would grant through its non-water resources functions.

26. APPLICATION PROCEDURE: A STEP BY STEP GUIDE

26.1 Legislative basis

The legislative basis of the application procedure for drought permits is contained in Schedule 8 to the WRA 1991.

26.2 Notices

As for ordinary drought orders, except that any objections must be made to the Environment Agency and not the Secretary of State or the National Assembly for Wales. (See paragraph 6.3 above.) To assist with drafting, the format of a notice is at appendix B.

26.3 Public inspection of proposals

The law requires "any relevant map or plan" to be 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 advertised⁹⁶.

The object of the opportunity for public inspection is to enable the public to make sense of the proposals, both for information and to assess whether it is appropriate to exercise the right of objection. Therefore the Environment Agency requires that the documents available for inspection include a complete copy of the application, including any environmental report submitted in support of the application.

The documents should be available at an appropriate place(s) at most 8 km by road from the point(s) of abstraction or the point(s) of compensation discharge etc. It may be possible to make arrangements with the local Post Office. In addition, the documents should be available at the water undertaker applicant's head office, its office most local to the relevant area, and the Environment Agency's local office. Again, these practical considerations will minimise the possibility of procedural objections to the application.

⁹⁶ **Paragraph 1(3)(b) of Schedule 8 to WRA 1991.**

26.4 Application to the Environment Agency

A sample application form is at appendix C. This form is essentially a checklist of the information which will be required in support of the application. The application should be made to the Environment Agency's Area office in whose area the source is situated. The addresses are given in appendix D. The application must be supported by the following information.

(a) A description of the proposals, including what the undertaker proposes to do and how (i.e. in terms of draft conditions etc.) it suggests these proposals be framed in a drought permit.

(b) A statement giving reasons why the permit is necessary, including information on:

- Monthly rainfall figures for the period concerned, with the corresponding long-term average figures and statistical analysis to show how exceptional the event has been.
- The effect of the shortage of rain on the relevant source, whether on water levels in boreholes and reservoirs or on river flows.
- The population affected by the threatened deficiency of supply.
- The daily water demand by the population affected and how it is met from the available source(s).
- The steps taken to reduce demand (publicity campaigns, hosepipe bans, pressure reductions, leakage detection and prevention, bans on non-essential use, etc.) and their effects so far.
- Demonstration that the company has operated in accordance with any water resource management agreements which relate to the application.
- Any changes to operational policies or practices which the applicant proposes to avoid or reduce the likelihood of the drought problem arising again.
- Other steps taken to conserve resources.
- Other options which have been considered and reasons for rejection.
- The consequences of the drought permit application being rejected.

(c) A location map of large enough scale to enable positions of the relevant sources and any affected watercourses and wetlands to be identified and suitable for attachment to the permit if necessary.

(d) The written consent of the navigation authority, where appropriate.

(e) Copies of the notices served on the specified bodies (see below).

(f) Copies of the advertisement of the notice (the actual page - not a copy - showing advertisement, date, and title) in the local newspaper, and detail of the date when the notice was advertised in the London Gazette.

(g) Description of the public inspection arrangements (i.e. when and where this took place).

(h) A copy of any existing abstraction or impounding licence and any statutory instrument or local Act governing the rate of abstraction imposing restrictions (e.g. on residual minimum flows) or imposing requirements relating to the discharge of compensation water.

(i) A note on the water undertaker's strategy for dealing with the water shortage, not only within the area of the affected population, but as appropriate throughout the area supplied by the undertaker, including information as to:

- Strategic steps and their timing.
- Publicity.
- Liaison with, as appropriate, consumers, other water undertakers, local authorities, health authorities, police, fire authorities, and representative bodies such as CBI, NFU, and trade unions.

(j) 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 effects. Guidance on the composition of environmental reports is given in paragraph 5.3 and the Environment Agency can give further advice where necessary. Where a drought permit would affect a Natura 2000 site or SSSI (see para 5.3), the Environment Agency is the Section 28G authority for the purpose of determining the application in the light of the implications for the site. Further information and guidance on the Environment Agency's assessment process for the Habitats Regulations and Wildlife and Countryside Act 1981 as amended by CROW Act can be found on the Environment Agency's Internet site (www.environment-agency.gov.uk). The considerations and information required by the Environment Agency will be similar to that set out in paragraph 5.3(j). Where the proposal may affect a European site the water undertaker should apply for a drought order rather than a drought permit (see paragraph 3.1).

(k) Where it is proposed to use water from a new source, confirmation that its quality (after treatment) is suitable for public supply.

(l) Comments received from any consultees.

(m) Details of any objections which the company may already have received and/or any agreements which may have been made with such objectors or people who might otherwise have objected.

It is important that all the supporting information/documentation is available for public inspection in line with the advertising of the application for a drought permit and the details for public inspection (paras. g & h above).

26.5 Time taken to process the application

The Environment Agency will normally aim to announce a decision-

- Within twelve days of the date of the last advertisement, where no objections have been received or all objections have been resolved.
- Within five working days of the receipt of the inspector's report.

26.6 Withdrawal of application

A water undertaker may not wish to proceed with its application for a drought permit. If so, it should advise the Environment Agency immediately by telephone followed by written confirmation. A water undertaker should also issue a press release and write to all objectors.

27. HEARINGS

27.1 Introduction

The purpose of a hearing is to afford objectors the opportunity to put their case before an Inspector appointed by the Environment Agency and to enable the applicant to respond to what they may say.

In principle, drought permit hearings are like any other hearing e.g. for a licence application appeal, except that the Inspector is someone appointed by the Environment Agency rather than the Secretary of State or the National Assembly for Wales. Drought permit hearings are structured but relatively informal in style. However, more formal hearings, resembling public inquiries, may occasionally be required. The Environment Agency follows the procedure in the Drought Orders (Inquiries Procedure) Rules 1984 (SI.1984/999) subject to any necessary modifications and this guidance.

27.2 Objections

Those who wish to object to an application for a drought permit have seven days in which to do so⁹⁷, from the date of service of the notice or the date of publication of the advertisement in the newspaper or London Gazette.

All objections to be "duly" made must:-

- clearly state the grounds for objection
- be reasonable

Where:

- an objection is "duly" made
- and an agreement between the water undertaker and the objector cannot be reached
- and the objection is not withdrawn

the objector must be afforded the opportunity of a hearing (except in cases of extreme urgency: see below)⁹⁸.

In practice, there are obviously a variety of dates from which the seven days can be calculated, and Environment Agency policy (subject to urgency requirements) is to ensure that all objections are taken into account provided all reasonable measures are taken to comply with the timescale. There will be no question of failure to comply provided the objection is received within seven days of whichever is the later of either, the publication date of the last advertisement, or, the day after the posting of notices.

Objections should be sent to the Environment Agency's address as indicated on the public notice.

Drought issues can be controversial and generate a wide range of objections. The Environment Agency has to determine an application for a drought permit in an objective way taking into account all material considerations⁹⁹.

It is in everyone's interests to confine any hearing to material issues. To ensure, so far as possible, that objections keep to the point—

- It is in the best interests of water undertakers to make their application with reasons for it, and assessment of the effects it is likely to have, in the

⁹⁷ Paragraph 1(3)(b) of Schedule 8 to WRA 1991.

⁹⁸ The Environment Agency must "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 Environment Agency expedient to afford the opportunity, of appearing before and being heard by a person appointed by the Environment Agency for the purpose": Paragraph 2(1)(b) of Schedule 8 to WRA 1991.

⁹⁹ For detail of the determination process, see para. 28.

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 will acknowledge all objections in writing. It will not enter into correspondence with objectors except to point out any misunderstanding the objector may appear to have about the application. In cases where there are multiple objections, a generic letter may be appropriate.
- Where an objection does not state the grounds for the objection, the Environment Agency will normally require the objector to provide such information in writing¹⁰⁰. This will help clarify issues and possibly identify objections that need not be considered by way of a hearing¹⁰¹.
- Where it appears that the objection may be capable of being resolved by payment of compensation, the Environment Agency can disregard the objection¹⁰². However, the objector should be asked whether the objection could be satisfied by compensation¹⁰³. If the objector persists, then the matter should be heard by the Inspector at the hearing; the Inspector will report as to whether the objection is one which could be resolved by compensation or goes beyond that.

Whether there is a hearing or not, the Environment Agency must consider all letters of objection when determining the application¹⁰⁴.

Although there are provisions for the water undertaker to advertise the grant of a drought permit¹⁰⁵, the Environment Agency will also write to all objectors advising them of the outcome of the application.

¹⁰⁰ See the power in paragraph 2(4)(a) of Schedule 8 to WRA 1991.

¹⁰¹ I.e. those that may be dealt with by payment of compensation: see para. 30.

¹⁰² Paragraph 2(4)(b)(i) of Schedule 8 to WRA 1991.

¹⁰³ See compensation provisions in Schedule 9 WRA 1991 and para. 30. In other words the Environment Agency should write to the objector to the effect that "the Environment Agency notes your objection but it appears to us that this can be resolved by the water undertaker paying you compensation under the provisions of Schedule 9 to the Water Resources Act 1991. Please confirm that you could be satisfied by such compensation".

¹⁰⁴ Paragraph 2(2) of Schedule 8 to WRA 1991.

¹⁰⁵ See para. 29.

The Environment Agency may disregard an objection (and therefore need not hold a hearing by reason of that objection, nor take it into account in determining the application) if it is satisfied the matter 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 paragraph 30.

An application may be made to renew an existing drought permit which as such can be extended no further. For example, the permit may have run for the maximum of 12 months, or there was no move to extend it within its original period of validity. Renewal requires going through the normal application procedure. However, where an objection to it is one that was made, in substance, on the original application, the Environment Agency may disregard the objection, both for the purposes of the need to hold a hearing and/or in determination of the application¹⁰⁶.

Such disregard is, however, discretionary; and the Environment Agency will anyway be careful to make sure that circumstances have not changed, perhaps to give the objection more substance on the application for the extension than on the original application. If circumstances have changed, then it may anyway not be possible to say that the objection was in substance made before.

27.3 Arrangements for the hearing

The Environment Agency is responsible for making the domestic arrangements for hearings. However the water undertaker will be billed for the costs in due course¹⁰⁷.

The venue should be reasonably local to the place where the proposed drought permit will take effect. The Town Hall, Magistrates Court, a hotel or the boardroom in the Environment Agency's local office (but not in the offices of the applicant water undertaker) may be suitable.

Timing will depend on the urgency of the application (which can sometimes mean the hearing is dispensed with altogether¹⁰⁸). Given the purpose of drought permits, clearly any hearing must take place relatively quickly. In theory it can take place any time after the seven day time limit for lodging objections expires¹⁰⁹.

Normally the Environment Agency should give seven days notice to the applicant and to everyone who has objected (and whose objections have not been withdrawn). This may be shorter in urgent cases and it is often desirable to try and make arrangements earlier.

The notice will advise the date, time and place of the hearing.

¹⁰⁶ **Paragraph 2(4)(b)(ii) of Schedule 8 to WRA 1991. For the simple extension procedure, see para 31.**

¹⁰⁷ **See para. 27.5.**

¹⁰⁸ **For guidance, see para 27.4.**

¹⁰⁹ **See para 27.2.**

If the Environment Agency considers there is public interest in letting others (i.e. apart from those who have objected) know about the hearing, then it may, for example, issue a press release and/or require the applicant to provide other appropriate publicity.

27.4 Dispensing with hearings

A hearing need not be held in cases of extreme urgency¹¹⁰, or where an objection can be dealt with by payment of compensation¹¹¹, or where it relates to the extension of an existing drought permit for a further period and the objection was made in substance on the application for the original permit¹¹².

The Environment Agency has power not to hold a hearing if it considers that the drought permit should be granted with extreme urgency in order to meet the deficiency in water supplies¹¹³. However, it must still consider all objections which have not been withdrawn¹¹⁴.

It is essential for public confidence in the drought permits process for the power to dispense with hearings to be exercised *sparingly*. There is thus a presumption against this dispensation. It is hard to envisage situations where the possible need for a drought permit could not be foreseen, so "emergencies" should not in fact arise. As sponsor bodies for the Environment Agency, the Secretary of State and National Assembly for Wales would expect full justification where a hearing was dispensed with in these circumstances.

27.5 Hearings procedure

The Environment Agency notifies the applicant of the substance of all objections and representations received. How this is done in practice will depend on circumstances. It may be appropriate to summarise the objections, or simply to copy them to the applicant. The point is that the applicant must be able to prepare a response to the points likely to be put to it at the hearing. The applicant may also be able to contact the objector and satisfy the objection.

The applicant must then send these objectors a statement of its reasons for making the application. This should include a list of any documents, maps, plans etc. which

¹¹⁰ Paragraph 2(2) of Schedule 8 to WRA 1991.

¹¹¹ Paragraph 2(4)(b)(i) of Schedule 8 to WRA 1991.

¹¹² Paragraph 2(4)(b)(ii) of Schedule 8 to WRA 1991. See para. 31.

¹¹³ Paragraph 2(2) of Schedule 8 to WRA 1991.

¹¹⁴ Paragraph 2(3) of Schedule 8 to WRA 1991.

the applicant intends to rely on at the hearing (i.e. the documents submitted with the application - see para. 26.4 above), with advice on where these can be inspected and copied if desired.

These would include documents e.g. from statutory bodies such as English Nature, Countryside Council for Wales, the Environment Agency itself, government departments, Welsh Assembly Government and the navigation authority.

Although the legislation gives flexibility, the Environment Agency will usually ask the Planning Inspectorate to provide an inspector to run hearings.

In certain cases, it may be appropriate for the Environment Agency to appoint one of its own staff.

The Inspector will be expected to operate within the framework set out in this document.

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.

The applicant 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.

They 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.

The applicant speaks first, followed by the objectors, after which the applicant 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.

The Inspector may make an informal site visit on his/her own before the hearing to familiarise themselves with the locale.

The Environment Agency will recover its costs of the hearing, including any fees payable to the Inspector holding it, from the water undertaker applicant¹¹⁵.

27.6 Inspector's report

The Inspector will deliver a written report to the Environment Agency. The report will-

- List the parties who have objected at the hearing and summarise the nature of their objections.

¹¹⁵ **The power to do this is in section 43 Environment Act 1995.**

- Set out the response of the water undertaker to each objection, including the results of any questioning, and measures taken to withdraw the objection.
- Include the Inspector's findings of fact and conclusions.

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

28. THE ENVIRONMENT AGENCY'S DECISION

If there has been no hearing, the Environment Agency will determine the application having taken into account all written material it has received in connection with the application. There will be a written determination report with reasoned recommendations.

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 inspector.

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

Provided the Environment Agency is satisfied that the notices have been served and advertised correctly, and in appropriate cases enabled a hearing, it may grant the drought permit in accordance with the application or in such form as it considers fit¹¹⁶.

Generally, drought permits will be dealt with at the Environment Agency's Area office unless otherwise agreed during initial discussions

29. AFTER THE PERMIT HAS BEEN GRANTED

The water undertaker 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 inspected¹¹⁷. The advertisement is only required in one issue of both the London Gazette and the local newspaper.

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

30. COMPENSATION

¹¹⁶ Paragraph 2(5) of Schedule 8 to WRA 1991.

¹¹⁷ Paragraph 3 of Schedule 8 to WRA 1991.

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

Those who may claim are-

- The owners of the source¹¹⁸.
- All other persons interested in the source or injuriously affected by the taking of the water¹¹⁹.

As applicant for the permit, the water undertaker is liable to pay the compensation¹²⁰. The claimant serves notice on the water undertaker stating the grounds of the claim and the amount claimed¹²¹. The Environment Agency is not involved in the claims process.

Claims must be made within six months of the date of expiry of the permit¹²². Disputes are referred to the Lands Tribunal¹²³, and are not a matter dealt with at the hearing. The Lands Tribunal may make an award during the currency of the permit in respect of likely damage¹²⁴, though in so doing it may have regard to the amount of water which would likely to have been available to the claimant as against others¹²⁵.

31. EXTENSIONS TO DROUGHT PERMITS

Unless extended, the maximum period for which a drought permit can have effect is six months beginning with the day on which it came into force. Provided it is done before the expiration of the period for which the permit was granted the Environment Agency may extend the drought permit for a further period but no permit may be in

¹¹⁸ Paragraph 2(2)(a) of Schedule 9 to WRA 1991.

¹¹⁹ Paragraph 2(2)(b) of Schedule 9 to WRA 1991.

¹²⁰ See paragraph 2(2) of Schedule 9 to WRA 1991.

¹²¹ Paragraph 3(1) of Schedule 9 to WRA 1991.

¹²² 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. 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 permit.

¹²³ Paragraph 3(2) of Schedule 9 to WRA 1991.

¹²⁴ 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.

¹²⁵ 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.

force beyond a total of one year beginning with the day on which it came into force¹²⁶. If it considers that an extension requested by the water undertaker is appropriate, the Environment Agency will issue an extension.

Requests for extensions do not require advertising, etc. but should be supported with a cogent statement of reasons. Extension is not automatic; it is in the Environment Agency's discretion and will depend on the Environment Agency's assessment of the position.

Although there is no legal requirement to advertise an extension to a drought permit, it is desirable for the water undertaker to issue a press release to that effect, so that the public is fully informed.

The need to extend a drought permit may not be foreseeable, but, if it is, it is desirable to state at the outset that this will be likely.

It is possible to apply for a new permit in similar terms to an existing permit that has lasted for a year and therefore cannot be extended as per above. In these cases the normal application procedure applies.

31.1 Variation of drought permits

As with abstraction licences, a drought permit cannot be varied except by a full application including advertising etc. In effect, it is necessary to apply for a new one.

Clearly, the Environment Agency will use its discretion in the case of very minor changes to which there could be no sensible objection, for example to the precise wording of the permit.

31.2 Revocation of drought permits

Provided it complies with any conditions or restrictions a water undertaker may at any time cease to take advantage of the provisions of a drought permit relating to the taking of water. If it wishes the Environment Agency to revoke the drought permit it should write to the Environment Agency. As with other changes¹²⁷, there is no legal requirement to advertise a revocation, but it would be desirable for the water undertaker to issue a press release to inform the public.

In circumstances where a water undertaker 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.

32 OFFENCES

¹²⁶ Section 79A(5) WRA 1991.

¹²⁷ E.g. withdrawal of applications (see para. 26.6) or extensions (see para. 31).

As for ordinary drought orders. (See paragraph 13 above.)

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 1991
- B. Draft Statutory Notice for drought order or drought permit applications
- C. Application for a drought permit
- D. Contact points in the Department for Environment, Food and Rural Affairs, the Welsh Assembly Government, the Environment Agency, English Nature [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 National Assembly for Wales¹²⁸.

¹²⁸ See the National Assembly for Wales (Transfer of Functions) Order 1999, as amended by the Water Act 2003, which transfers to the National Assembly all Ministerial functions under Chapter III (Drought) of Part II of the Water Resources Act 1991.

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 not¹²⁹~~

- (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,

¹²⁹ Deleted by s64(1) Drought orders and drought permits: charges

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—

- (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 VI of the Water Industry Act 1991 as appear to the Secretary of State to be appropriate, subject to such modifications as may be specified in the order.

(3) The Secretary of State shall include in any drought order authorising the 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.¹³⁰

¹³⁰ Inserted by s64(2) Drought orders and drought permits: charges

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
 - (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.¹³¹~~
- (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.¹³²
- (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.

¹³¹ Deleted by s64(3)(a) Drought orders and drought permits: charges

¹³² Inserted by s64(3)(b) Drought orders and drought permits: charges

- (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-

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

**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	<ul style="list-style-type: none"> (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.	<ul style="list-style-type: none"> (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.	<ul style="list-style-type: none"> (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 the occupation and use of land. Every owner, lessee and occupier of the land.

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

- (3) A notice for the purposes of this paragraph of an application for a drought order—
- (a) shall state the general effect of the application;
 - (b) shall specify a place within the area affected by the order where a copy of any relevant map or plan may be inspected by any person free of charge at all reasonable times within a period of seven days from the date on which it is served or, as the case may be, published;
 - (c) shall state that objections to the application may be made to the Secretary of State within seven days from the date on which it is served or, as the case may be, published; and
 - (d) in the case of an application for an order authorising the occupation and use of land, shall specify the land to which the application relates.
- (4) A notice sent in a letter in pursuance of section 220 of this Act to an address to which it may be sent in pursuance of that section shall not be treated as having been properly served for the purposes of this paragraph unless the sender takes such steps as are for the time being required to secure that the letter is transmitted in priority to letters of other descriptions.

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).¹³³

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

¹³³ **Inserted by s65 Procedure at local inquiries**

(b) naming a place where a copy of it may be inspected.

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

(Section 79)

Compensation to be made in the case of all drought orders

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

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

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

Compensation to be made in the case of ordinary orders only

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

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

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

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

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

- (a) the owners of the place of discharge; and
- (b) all other persons interested in the place of discharge or injuriously affected by the discharge or lack of discharge,

for loss or damage sustained by reason of the water being discharged or not discharged or being discharged otherwise than in accordance with the restriction or obligation.

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

(5) Compensation in respect of a power to make discharges of sewage effluent or trade effluent in pursuance of any 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.

THE DROUGHT DIRECTION 1991

The Secretary of State for the Environment as respects England, and the Secretary of State for Wales for Wales as respects Wales, in exercise of their powers under section 131 (4) (b) of the Water Act 1989, hereby give the following direction to water undertakers generally:-

1. This direction may be cited as the Drought Direction 1991.
2. The following purposes may be specified by virtue of subsection (4) (b) of section 131 of the Water Act 1989 in any order under that section:-
 - (a) the watering, by hosepipe, sprinkler or other similar apparatus, of:-
 - (i) gardens (other than market gardens), including lawns, verges and other landscaped areas;
 - (ii) allotments;
 - (iii) parks; or
 - (iv) any natural or artificial surfaces used for sport or recreation, whether publicly or privately owned;
 - (b) the filling (whether wholly or partially) of privately owned swimming pools, other than:-
 - (i) pools designed to be used in the course of a programme of medical treatment;
 - (ii) the filling of pools where necessary in the course of their construction;
 - (c) the filling (whether wholly or partially) of ornamental ponds other than fish ponds;
 - (d) the operation of mechanical vehicle washers, whether automatic or not;
 - (e) the washing of road vehicles, boats, railway rolling stock or aircraft for any reason other than safety or hygiene;
 - (f) the cleaning of the exterior of buildings, other than windows;
 - (g) the cleaning of windows by hosepipe, sprinkler or other similar apparatus

- (h) the cleaning of industrial premises or plant for any reason other than safety or hygiene;
- (i) the operation of ornamental fountains or cascades, including those where water is recycled;
- (j) the operation, in relation to any building or other premises, of any cistern which flushes automatically, during any period when those premises are wholly or substantially unoccupied.

3. The Drought Direction 1989 is hereby revoked.

Signed by authority of
the Secretary of State
Environment
18 April 1991

An Under Secretary in the
Department of the

Signed by authority of
the Secretary of State
18 April 1991

An Under Secretary in the
Welsh Office

DRAFT STATUTORY NOTICE FOR DROUGHT ORDER/PERMIT APPLICATIONS

Note

The following suggested format is suitable for service on individual organisations as well as for publication. The objective 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. It is important in this respect that reference to “drought order/permit” is incorporated in both the title and text of the notice.

Refer to section 6 of main text for guidance on notices (eg timing, who the notice must be served on, how it must be served) and appendices A1-A2 for detail of statutory requirements.

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 undertaker*) of (*registered office*) is applying to the (*Secretary of State/National Assembly for Wales/Environment Agency*) for a drought (*order/permit*) under Section (*specify relevant Section of Water Resources Act 1991*) .

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

The anticipated effect of the drought (*order/permit*), if granted, will be (*describe IN BRIEF OUTLINE expected effects, both on water supply situation and on water environment, other users, etc.*).

Anyone may inspect the proposals, free of charge, at (*full addresses of places where application may be inspected*) {between the hours of} {during normal working hours} until (*specify date 7 days from publication/serving of notice*).

Objections may be made to the (*Secretary of State/National Assembly for Wales/Environment Agency*) at (*specify address of office leading matter*) for the attention of (*name of officer responsible*) by (*specify date 7 days from publication/serving of notice*). (*An email address may also be given – see section 6.3.1*)

Name of water undertaker official

Date

WR-72

APPENDIX C

Form WR-70

Environment Agency reference:

Water Resources Act 1991, Section 79A

1. **APPLICATION FOR A DROUGHT PERMIT**

Water undertaker name:



Registered office:

Contact address if different:

Contact name:

Position:

Telephone:

Fax:

The above company is a water undertaker and hereby applies for a drought permit in the terms set out in the accompanying draft drought permit.

Tick to confirm the following accompany this application, or mark "n/a" if not applicable:

- a. Description of the proposals
- b. Draft drought permit
- c. Statement of reasons for the application
- d. Location map
- e. Consent of navigation authority
- f. Notice(s) on local authorities
- g. Notice(s) on specified protected persons
- h. Notice(s) on other water undertakers
- i. Notice(s) on navigation authorities
- j. Notice(s) on internal drainage boards
- k. Advertisement in local newspaper
- l. Advertisement in London Gazette
- m. Description of public inspection arrangements
- n. Existing abstraction licence
- o. Statutory instrument/local Act of Parliament
- p. Water shortage strategy
- q. Environmental report
- r. Quality information
- s. Comments received from any consultees
- t. Objections received, agreements with objectors

<i>Signature</i>	<i>Da te</i>
------------------	------------------

*Print name and state
position
in the company*

REFER TO MAIN TEXT FOR ADVICE ON WHAT MUST BE IN THE DOCUMENTS AND WHEN EACH IS OR IS NOT REQUIRED *BEFORE* PREPARING THE ABOVE DOCUMENTS AND SUBMITTING THE APPLICATION.

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, 55 Whitehall, London SW1A 2EY

Wales Welsh Assembly Government, Environment Protection and Quality Division, Cathays Park, Cardiff CF1 3NQ.

Drought permits:

Environment Agency Regional Offices:

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

Southern Guildbourne House, Chatsworth Road, Worthing, West Sussex BN11 1LD

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

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

North West PO Box 12, Richard Fairclough House, Knutsford Road, Latchford, Warrington WA4 1HG

Thames Kings Meadow House, Kings Meadow Road, Reading, Berkshire RG1 8DQ

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

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

Environment Agency Area Offices:

Anglian:

Northern Waterside House, Lincoln, Lincolnshire LN2 5HA

Central	Bromholme Lane, Brampton, Huntingdon, Cambridgeshire PE28 4NE
Eastern	Ipswich, Suffolk IP3 9JE
Southern:	
Hampshire & Isle of Wight	Colvedene Court, Colden Common, Hampshire SO21 1WP
Kent	Orchard House, Addington, West Malling, Kent ME19 5SH
Sussex	Saxon House, Worthing, West Sussex BN11 1DH
North East:	
Dales	Coverdale House, Clifton Moor, York YO30 4UZ
Ridings	Phoenix House, Milldhw, Beeston Ring Road, Leeds, West Yorkshire LS11 8PG
Northumbria	Tyneside House, Newcastle Upon Tyne, Tyne and Wear NE4 7AR
South West:	
Cornwall	Sir John Moore House, Bodmin, Cornwall PL31 1EB
Devon	Exminster House, Exminster, Devon EX6 8AS
North Wessex	Rivers House, Bridgwater, Somerset TA6 4YS
South Wessex	Rivers House, Blandford, Dorset DT11 8ST
North West:	
Northern	Penrith, Cumbria CA11 9BP
Central	Lutra House, Bamber Bridge, Preston, Lancashire PR5 8BX
Southern	Appleton House, Warrington, Cheshire WA3 7WD
Thames:	
North East	Apollo Court, Hatfield, Hertfordshire AL10 9EX
South East	Swift House, Camberley, Surrey GU16
5SQ	
West	Isis House, Wallingford, Oxfordshire OX10 8BD
Midlands:	
Upper Severn	Hafren House, Shrewsbury, Shropshire AY3 8BB

Lower Severn Riversmeet House, Tewkesbury, Gloucestershire
GL20 8JG

Upper Trent Sentinel House, Fradley Park, Litchfield,
Staffordshire SW13 8RR

Lower Trent Trentside Offices, West Bridgford, Nottingham
Nottinghamshire, NG2 5FA

Wales:

Northern Wales Ffordd Penian, Bangor, Gwynedd LL57
4DE

South East Wales Rivers House, St Mellons, Cardiff CF2
0EY

South West Wales Maes Newydd, Llandarcy, Neath, Glamorgan SA 10
6JQ

Central contact points for drought orders and drought permits within English Nature and the Countryside Council for Wales are:

England: Environmental Impacts Team, English Nature, 60 Bracondale, Norwich,
Norfolk NR1 2BE

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