

WATER INDUSTRY ACT 1991: SECTION 208

THE SECURITY AND EMERGENCY MEASURES (WATER AND SEWERAGE UNDERTAKERS AND WATER SUPPLY LICENSEES) (AMENDMENT AND REVOCATION) DIRECTION 2024

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

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

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

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

Citation, commencement and application

1.—(1) This Direction may be cited as the Security and Emergency Measures (Water and Sewerage Undertakers and Water Supply Licensees) (Amendment and Revocation) Direction 2024 and comes into force on 5th December 2024.

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

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

(a) 1991 c. 56; section 208 was amended by paragraph 27 of Schedule 7 to, and paragraph 48 of Schedule 8 to, the Water Act 2003 (c. 37) and paragraph 117 of Schedule 7 to the Water Act 2014 (c. 21). The functions of the Secretary of State were transferred to the National Assembly for Wales in relation to any water undertaker whose area is wholly or mainly in Wales, and, in relation to any licensed water supplier, so far as relating to licensed activities using the supply system of any such water undertaker: see article 2 of the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672) and Schedule 1 to the Order, as substituted by section 100(2)(i) of the Water Act 2003 and as amended by paragraph 127(b) of Schedule 7 to the Water Act 2014; there are other amending instruments but none is relevant. Those functions are now exercisable by the Welsh Ministers by virtue of section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006.

(b) As to the meaning of “English water undertakers”, “English sewerage undertakers”, “English water supply licensees”, “Welsh water undertakers”, “Welsh sewerage undertakers” and “Welsh water supply licensees”, see paragraph 2 of The Security and Emergency Measures (Water and Sewerage Undertakers and Water Supply Licensees) Direction 2022. See also sections 6 and 17A of the Water Industry Act 1991.

(c) As to the meaning of “wholesale authorisation” and “supplementary authorisation”, see section 17A (as substituted by section 1(1) of the Water Act 2014) of, and paragraphs 1, 2, 5 and 8 of Schedule 2A to, the Water Industry Act 1991 (as inserted by Schedule 1 to the Water Act 2014).

(d) As to the meaning of “retail authorisation” and “restricted retail authorisation”, see section 17A (as substituted by section 1(1) of the Water Act 2014) of, and paragraphs 1, 2, 3, 4, 6 and 7 of Schedule 2A to, the Water Industry Act 1991 (as inserted by Schedule 1 to the Water Act 2014).

Amendment of the Security and Emergency Measures (Water and Sewerage Undertakers and Water Supply Licensees) Direction 2022

2.—(1) The Security and Emergency Measures (Water and Sewerage Undertakers and Water Supply Licensees) Direction 2022(a) is amended as follows.

(2) In paragraph 4 (Planning)—

(a) in sub-paragraph (6)(a), after “the carrying out of functions by” insert “a sufficient number of”;

(b) in sub-paragraph (7), after “and put in place” insert “reasonable”.

(3) After paragraph 5 (Provision of Facilities) insert—

“Access agreements

5A.—(1) Where—

(a) a water undertaker has an access agreement(b) with a water supply licensee; and

(b) the water supply licensee requests the water undertaker to provide it with a supply of water in the event that the water supply licensee is unable to provide a supply to its customers due to an emergency or security event,

the water undertaker must, in accordance with the access agreement, provide a supply during such an event.

(2) The duty in sub-paragraph (1) is subject to any limit on the quantities of water available to the water undertaker, taking account of the needs of the other persons to whom the water undertaker provides supplies.”

(4) In paragraph 6(1) (Use of Facilities), after “must allow the water undertaker” insert “without prior authorisation”.

(5) In paragraph 7(b) (Identification of Security Risks), after “put in place” insert “reasonable”.

(6) In paragraph 8(1)(c) (Assets and Supporting Infrastructure), after “put in place” insert “reasonable”.

(7) For paragraph 9 (Recording Assessment of Risks) substitute—

“Recording Assessment of Risks

9. The company must—

(a) maintain records of its assessments of risk undertaken in accordance with paragraphs 7 and 8; and

(b) review these assessments to ensure they remain appropriate to the risks posed—

(i) annually for assessments that relate to critical national infrastructure; and

(ii) at such intervals as may be notified to the company by the appropriate authority(c) for assessments other than those referred to in paragraph (b)(i).”

(8) In paragraph 16 (Duty to Notify)—

(a) for sub-paragraph (1)(b) substitute—

“(b) such bodies and persons affected by any actual or likely emergency or security event affecting that company’s water supply or sewerage functions as may be notified to the company by the appropriate authority;”;

(b) for sub-paragraph (2) substitute—

(a) The Security and Emergency Measures (Water and Sewerage Undertakers and Water Supply Licensees) Direction 2022.

(b) As to the meaning of “access agreement”, see paragraph 2 of The Security and Emergency Measures (Water and Sewerage Undertakers and Water Supply Licensees) Direction 2022.

(c) As to the meaning of “appropriate authority”, see paragraph 2 of The Security and Emergency Measures (Water and Sewerage Undertakers and Water Supply Licensees) Direction 2022.

“(2) The company must provide in such form as the appropriate authority may prescribe—

- (a) a report to the appropriate authority setting out its response to an emergency or security event within three days of becoming aware of the emergency or security event; and
- (b) if requested by the appropriate authority, a further report setting out the company’s response to the emergency or security event within 20 days of becoming aware of the emergency or security event.”

(9) For paragraph 18 (Critical National Infrastructure) substitute—

“**18.**—(1) The company must—

- (a) undertake an annual audit of each of those assets which have been notified to it as being critical national infrastructure^(a) by the appropriate authority; and
- (b) provide a copy of the annual audits required by paragraph (a) to the appropriate authority as soon as reasonably practicable after it has been requested to do so.

(2) The annual audits required by sub-paragraph (1)(a) may be carried out externally.

(3) Where annual audits required by sub-paragraph (1)(a) are carried out externally, this must be by persons who satisfy criteria specified by the appropriate authority.

(4) Where annual audits required by paragraph (1)(a) are not carried out externally, the company must—

- (a) when notified by the appropriate authority that it is required to do so, send any of those annual audits as may be required by the appropriate authority for external review by a person referred to in sub-paragraph (3); and
- (b) provide a copy of the external review of the annual audits to the appropriate authority when requested to do so.”.

Revocation

3. The Security and Emergency Measures (Water Undertakers) Direction 2017 is revoked.

Emma Hardy
Parliamentary Under-Secretary of State
Department for Environment, Food and Rural Affairs

4 December 2024

Huw Irranca-Davies
Deputy First Minister and Cabinet Secretary for Climate Change and Rural Affairs,
one of the Welsh Ministers

4 December 2024

(a) As to the meaning of “critical national infrastructure”, see paragraph 2 of The Security and Emergency Measures (Water and Sewerage Undertakers and Water Supply Licensees) Direction 2022.