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STATUTORY INSTRUMENTS

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**2005 No. 1905**

**WATER, ENGLAND AND WALES**

**The Drought Plan Regulations 2005**

<i>Made</i>	- - - -	<i>10th July 2005</i>
<i>Laid before Parliament</i>		<i>13th July 2005</i>
<i>Coming into force</i>	- -	<i>1st October 2005</i>

The National Assembly for Wales in relation to undertakers whose area is wholly or mainly in Wales, and the Secretary of State in relation to all other undertakers, in exercise of the powers conferred upon them by sections 37B(3),(5), (6) and (8), 39B(5), 213(2)(e) and (f) and 219 of the Water Industry Act 1991(1), and after consultation with each other(2), make the following Regulations:

**Citation, commencement, extent and interpretation**

1.—(1) These Regulations may be cited as the Drought Plan Regulations 2005 and shall come into force on 1<sup>st</sup> October 2005.

(2) These Regulations extend to England and Wales.

(3) In these Regulations—

“the Act” means the Water Industry Act 1991;

“drought plan” means a plan prepared and maintained by a water undertaker in accordance with their duty under section 39B(1) of the Act.

“draft drought plan” means a draft drought plan sent to the Secretary of State or the National Assembly for Wales in accordance with section 37B(1) of the Act.

(4) Reference in these Regulations to section 37B of the Act is a reference to that section as applied by section 39B(5) of the Act.

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(1) 1991 c. 56. Sections 37B and 39B were inserted into the Water Industry Act 1991 by sections 62 and 63 of the Water Act 2003 (c. 37). Section 39B(5) applies the provisions of section 37B to drought plans. See the definition of “prescribed” in section 219 of the Water Industry Act 1991. Functions of the Secretary of State under sections 37B and 39B(5) are transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I.1999/672) (“the Order”), as amended by section 100(2)(g) and (3) of the Water Act 2003. Functions under those provisions so far as relating to matters other than the construction or enlargement of reservoirs are transferred to the Assembly in relation to any water undertaker whose area is wholly or mainly in Wales.

(2) Article 2 of, and Schedule 1 to, the Order (as amended by section 100(3) of the Water Act 2003) provide that the functions referred to above, so far as exercisable in relation to England, shall be exercisable only after consultation with the Secretary of State. Article 5 of, and Schedule 2 to, the Order provide that, in so far as they are exercisable in relation to Wales, the functions referred to above shall be exercisable only after consultation with the Assembly.

(5) References in these Regulations to “the Secretary of State or the National Assembly for Wales” shall mean, in relation to a water undertaker whose area is wholly or mainly in Wales, the National Assembly for Wales, and in all other cases, the Secretary of State.

### **Publication of draft drought plans**

2.—(1) A draft drought plan published in accordance with section 37B(3) of the Act shall be published both in paper form and on a website.

(2) The persons to whom a water undertaker shall send a copy of the published draft drought plan and accompanying statement in accordance with sections 37B(3)(c) of the Act are—

- (a) those bodies and persons specified in section 39B(7) of the Act;
- (b) any regional development agencies, established under the Regional Development Agencies Act 1998(3), in the water undertaker’s area;
- (c) in England, any elected regional assembly, established under an enactment following a referendum held under section 1 of the Regional Assemblies (Preparations) Act 2003(4), in the water undertaker’s area;
- (d) all local authorities (except the council of any parish) as defined in section 270(1) of the Local Government Act 1972(5) in the water undertaker’s area;
- (e) any National Park Authorities, established under section 63 of the Environment Act 1995(6) for any part of the water undertaker’s area;
- (f) if the water undertaker’s area includes any part of the Broads, as defined in section 2(3) of the Norfolk and Suffolk Broads Act 1988(7), the Broads Authority;
- (g) if the water undertaker’s area includes any part of England, the Countryside Commission, English Nature and the Historic Buildings and Monuments Commission for England;
- (h) in relation to a water undertaker whose area is mainly but not wholly in Wales, the Secretary of State;
- (i) if the water undertaker’s area includes any part of Wales, the Countryside Council for Wales and Cadw, being the executive agency responsible for carrying out the functions vested in the National Assembly relating to the historic environment ;
- (j) in relation to a water undertaker whose area includes any part of Wales, but is not wholly or mainly in Wales, the National Assembly for Wales;
- (k) in relation to a water undertaker who abstracts water in Wales, but whose area does not include any part of Wales, the National Assembly for Wales;
- (l) any navigation authority, exercising functions in relation to any canal or other inland navigation which is wholly or partly in the water undertaker’s area; and
- (m) as from the coming into force of section 27A of the Act, the Consumer Council for Water.

### **Publication of statement accompanying draft drought plans**

3. Where a water undertaker publishes a statement accompanying the draft drought plan in accordance with section 37B(3)(b) of the Act, it shall specify in the statement that any person making representations—

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(3) 1998 c. 45.

(4) 2003 c. 10.

(5) 1972 c. 70. The definition of local authority in section 270(1) of the Local Government Act 1972 has been amended by the Local Government Act 1985 (1985, c. 51), section 102, Schedule 16, paragraph 8, and Schedule 17, and the Local Government (Wales) Act 1994 (1994, c. 19), section 1(5).

(6) 1995 c. 25.

(7) 1988 c. 4.

- (a) to the National Assembly for Wales, must send a copy of those representations to the Secretary of State if those representations are made in response to a draft drought plan sent to the National Assembly of Wales in accordance with regulation 2(2)(j) or (k); and
- (b) to the Secretary of State, must send a copy of those representations to the National Assembly for Wales if those representations are made in response to a draft drought plan sent to the Secretary of State in accordance with regulation 2(2)(h).

#### **Representations received by the Secretary of State or the National Assembly for Wales**

4. A water undertaker shall, in relation to any representations received by the Secretary of State or the National Assembly for Wales and sent to that undertaker in accordance with section 37B(4) of the Act, produce a statement detailing—

- (a) the consideration that it has given to those representations;
- (b) any changes that it has made to the draft drought plan as a result of consideration of those representations and its reasons for doing so; and
- (c) where no change has been made to the draft drought plan as a result of consideration of any representation, the reason for this.

#### **Inquiries**

5.—(1) The Secretary of State or the National Assembly for Wales may cause an inquiry or other hearing to be held in connection with a draft drought plan.

(2) Where the Secretary of State or the National Assembly for Wales causes an inquiry or other hearing to be held in accordance with paragraph (1), subsections (2) to (5) of section 250 of the Local Government Act 1972<sup>(8)</sup> shall apply to such inquiry or other hearing as they apply to inquiries under that section, except that for any reference in that section to a “local authority” there shall be read instead a reference to the water undertaker whose draft drought plan is the subject of the inquiry or other hearing.

#### **Publication**

6. A drought plan published in accordance with section 37B(8) of the Act shall be published both in paper form and on a website.

Signed on behalf of the National Assembly for Wales,

5th July 2005

*D.Elis-Thomas*  
The Presiding Officer of the National Assembly

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(8) 1972 c. 70. Subsection 250(2) of the Local Government Act 1972 (the “Act”) has been amended by the Statute Law (Repeals) Act 1989 (1989 c. 43), section 1 and Schedule 1, part IV; subsection 250(3) of the Act has been modified and amended by the Criminal Justice Act 1982 (c. 1982, c.48), sections 37, 38 and 46. Subsection 250(4) has been amended by the Housing and Planning Act 1986 (1986 c. 63), section 49(2), Schedule 12, Part III.

10th July 2005

*Elliot Morley*  
Minister of State,  
Department for Environment, Food and Rural  
Affairs

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations, made together by the National Assembly for Wales in relation to undertakers whose area is wholly or mainly in Wales, and the Secretary of State in relation to all other undertakers, prescribe how water undertakers are to prepare and publish drought plans.

The obligation for water undertakers to prepare and maintain a drought plan arises under section 39B(1) of the Water Industry Act 1991 (inserted by section 63 of the Water Act 2003). Section 39B(5) of this Act applies the powers to make regulations in section 37B, in relation to water resources plans, to drought plans.

Regulation 2 prescribes the method of publication of a draft drought plan and the persons to whom it and the accompanying statement must be copied. Regulation 3 prescribes what information water undertakers must specify in a statement accompanying a draft drought plan for the purpose of dealing with representations. Regulation 4 prescribes how water undertakers are to deal with representations received in relation to a draft drought plan, while regulation 5 provides that an inquiry or other hearing may be held in connection with a draft drought plan. Regulations 6 prescribes the method of publication of the water undertaker's completed drought plan.

A Regulatory Impact Assessment in relation to these Regulations has been prepared and placed in the library of each House of Parliament. Copies of this document can be obtained from the Water Supply & Regulation Division, Department for Environment, Food and Rural Affairs, Rm 3/G18, Ashdown House, 123 Victoria Street, London, SW1E 6DE.