



Llywodraeth Cymru
Welsh Government

Guidance

The Welsh Government Guiding Principles for Developing Water Undertaker Drought Plans 2020

October 2017

The Welsh Government Guiding Principles for Developing Water Undertaker Drought Plans for 2020

These guiding principles apply to water undertakers (referred to throughout as “undertakers”) whose area is wholly or mainly in Wales. It provides an overview of the Welsh Government policy, the legal requirements that must be met and the role and responsibilities of Government, regulators, undertakers and their customers.

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1. Guiding Principles

Drought plans set out how an undertaker will supply water to its customers during periods of low rainfall when water supply becomes depleted, whilst minimising any negative impacts, (including on customers, businesses and the environment) of its actions during a drought. They should set out the short-term operational steps an undertaker will take before, during and after a drought. The Water Industry Act 1991 defines a drought plan as ‘a plan for how the water undertaker will continue, during a period of drought, to discharge its duties to supply adequate quantities of wholesome water, with as little recourse as reasonably possible to drought orders or drought permits’.

Drought plans should demonstrate how they have taken into account the Welsh Government’s priorities, principles and policy commitments set out in the Well-being of Future Generations (Wales) Act (2015), the Environment (Wales) Act 2016 and the Water Strategy for Wales.

NRW published the Drought Plan Technical Guideline which is a framework for undertakers to follow when developing and presenting their drought plans. It sets out good practice in developing a plan with reference to approaches to follow, the scope for flexibility within the plan, and the information that a plan should contain. Undertakers should follow the guiding principles, in conjunction with the technical guideline, and make sure that their plans cover the requirements specified by the Water Industry Act 1991.

The Water Strategy for Wales makes clear the importance the Welsh Government attaches to adopting an integrated and sustainable approach to maintaining resilient water resources. Drought plans must set out how water supplies will be maintained in the event of a drought. Undertakers are expected to plan against more challenging but plausible droughts beyond the capabilities of their current supply system. For further guidance as set out in NRW’s Technical Guideline it is recommended that undertakers follow the processes set out in the UKWIR publication Risk Based Planning Methodology (16/WR/02/11) to develop drought scenarios.

Drought plans should include environmental assessments and environmental monitoring plans for all supply-side drought measures. The information for drought permits and orders included in a drought plan is to be ‘as close’ to application ready as possible, especially for those sites that have been identified as causing significant impact to the environment or are most likely to be required in a drought. For more information refer to NRW’s technical guideline.

The Water Strategy for Wales highlights the importance of ensuring a strong customer focus at the heart of the delivery of water and sewerage services in Wales. This requires both a sound understanding of existing and future customer needs, and a strong voice for consumer representation.

Undertakers should proactively engage with their customers, the Consumer Council for Water and NRW through direct engagement and consultation early in the process of plan development and maintain an ongoing dialogue throughout the entire process. They should seek to integrate this engagement with that being undertaken for the next price review to help ensure consistency with business plans. For example, customers may take a view on the levels of service (in terms of frequency of restrictions on use).

Temporary customer restrictions in terms of temporary use bans (TUBs), and non-essential use bans (NEUBs) can form part of the group of drought management actions an undertaker could take to reduce demand. The frequency of these restrictions corresponds to customer levels of service, Undertakers should engage with customers on their preferences, with the scrutiny of the independent Customer Challenge Groups. The planned levels of service should be in-line with a company's Water Resources Management Plan (WRMP). If there are any changes or differences in levels of service the undertaker should review and revise its statutory plans as necessary to ensure its level of service aligns.

Drought plans should set out how undertakers will engage with any small undertakers or water supply & sewerage licensees (WSSLs) operating in their supply area in order for them to comply with any drought management actions (e.g. TUBs) that they may implement.

New appointments and variations (NAVS) made under Water Industry Act 1991 (S7) enable Ofwat to replace the appointed water supply or sewerage undertaker by another for a specific area within the appointed undertaker's licence area. NAVs have the same duties and responsibilities as other undertakers to produce drought plans.

Where NAVs operate under a bulk supply agreement(s) with another undertaker(s), some parts of their plan may be proportionate to reflect this. They should produce drought plans that demonstrate that all the statutory requirements have been met, but the level of detail within the plan may be relative to the customer base and on how they obtain their water supplies. They should set out how the NAV will engage with the supplier to continue to maintain water supplies, feed into the development of the suppliers' planned levels of service and to take account of donor/neighbouring undertaker's data and information when preparing plans. NAVs should discuss the requirements for their plan with NRW at an early stage in the process.

2. Legislative framework

The legislative requirements for undertakers to prepare and maintain a drought plan are set out under Sections 39B and 39C of the Water Industry Act 1991, as amended by the Water Act 2003. These provisions set out the procedures undertakers must follow when developing their drought plans.

The Drought Plan Regulations 2005 provide further detail on the process, particularly around:

- handling representations and the statement of response to representations
- the power of the Welsh Ministers to hold an inquiry or hearing
- publication requirements.

In preparing and publishing a drought plan undertakers must also take account of current legislation and Government policies which include:

- The Drought Plan Direction 2017 and any further Directions given by the Government.
- Flood and Water Management Act 2010, s36
- Water Use (Temporary Bans) Order 2010
- Water Act 2014, s28
- Water Framework Directive (WFD)
- Habitats Directive
- Drinking Water Directive
- The Eels (England and Wales) Regulations 2009
- EU Regulation (1143/2014) on invasive alien (non-native) species (2015)
- Wildlife and Countryside Act 1981
- Countryside and Rights of Way Act 2000
- Natural Environment and Rural Communities Act 2006
- Well-being of Future Generations (Wales) Act 2015
- Environment (Wales) Act 2016
- Water Strategy for Wales (Welsh Government 2015)

Note: this list may not be exhaustive.

Undertakers should carry out a Strategic Environmental Assessment (SEA) and Habitats Regulations Assessment (HRA) of their drought plan. These should also incorporate any additional requirements under the Environment (Wales) Act 2016 and Wellbeing of Future Generations (Wales) Act 2015 (where appropriate). The conclusions from the environmental assessments should be used to inform both the SEA and HRA, as appropriate.

Undertakers must submit their drought plans to the Welsh Ministers and undertakers whose supply area includes part of England must also send their draft plans to the Secretary of State when they are submitted to the Welsh Ministers.

Undertakers must ensure that they provide services to the public, including in accordance with their statutory requirements under their Welsh Language Schemes, as agreed under the Welsh Language Act 1993, and the Welsh Language Standards, as provided by the Welsh Language (Wales) Measure 2011. Accordingly, undertakers operating wholly or mainly in Wales should publish both Welsh and English language versions of non-technical summaries of their drought plan.

3. Roles and responsibilities

3.1 Water Undertakers

Every undertaker must prepare and maintain drought plans with the involvement of their customers. They must set out the short-term operational steps they will take before, during and after a drought to supply water to its customers, whilst minimising any negative impacts of its actions.

Undertakers with water supply & sewerage licences (WSSLs) can supply water to large non-domestic customers using public water supply networks of water incumbents. WSSLs are not required to prepare their own drought plans. However, they must under terms of their special licence conditions provide undertakers with any relevant information they request to inform their plans.

The information undertakers are required to provide with their drought plan should be proportionate to their size, their customer base and on how they obtain their water supplies. They should take account of donor/neighbouring undertaker's data, information and drought management actions when preparing their drought plan. They should discuss with NRW the requirements for their drought plan at an early stage in the process.

For more information about other undertakers, refer to Ofwat's website:

<http://www.ofwat.gov.uk/regulated-companies/licences/>

3.2 Welsh Government

The Welsh Government is responsible for water policy in Wales and provides the statutory framework and policy guidance for drought plans within which undertakers must operate.

The Welsh Government issues the guiding principles, setting out what is required in a drought plan. Following the publication of the draft drought plan, interested groups send representations to the Welsh Ministers and these are forwarded to the appropriate undertaker.

The Welsh Government will consider the draft drought plan and statement of response to determine whether there should be a public hearing or an inquiry and it will seek advice from NRW before making a decision.

The Welsh Ministers may direct undertakers to make changes or to publish a new plan.

3.3 Natural Resources Wales

NRW has a major role in the drought planning process and advises the Welsh Ministers in respect of plans submitted by undertakers that are wholly or mainly in Wales. The Environment (Wales) Act 2016 prescribes NRW a new general purpose to pursue the sustainable management of natural resources (SMNR) and to apply the principles of SMNR in the exercise of all of its functions. It will provide advice in a manner which will apply these principles which include consequences of actions in the short, medium and long-term, the services provided by ecosystems, public participation and the resilience of ecosystems.

NRW publishes technical guidelines for undertakers to follow when developing and presenting their drought plans.

Section 39B of the Water Industry Act 1991 requires an undertaker to consult NRW before preparing its plan. NRW provides advice to undertakers throughout the planning process to help undertakers understand what they need to do to comply with the undertaker technical drought plan guidelines and government guiding principles.

Once the draft drought plan is published, NRW will make representations to the Welsh Ministers on the content of the draft plan. This will cover any issues it considers relevant and will be set against the context of the Welsh Government's policy position for managing water resources.

Once the statement of response is published NRW provides technical advice to the Welsh Ministers to help them decide on the next steps. The evidence requested is likely to cover:

- whether the plan meets the statutory requirements
- whether the undertaker has properly addressed the representations received
- whether or not the changes proposed to the plan in the statement of response are significantly different to the draft on which the undertaker consulted and
- improvements it advises should be made to the plan.

When the Welsh Government considers whether an undertaker should publish its plan, NRW will advise if the published plan meets any Directions or guidance made by the Welsh Ministers. NRW will then provide advice to the undertaker on implementing their plans and preparations for the next round of plans.

If the Welsh Government asks an undertaker for further information, the undertaker may request the help of NRW in responding to that request. NRW may be asked to provide advice to Welsh Ministers once the additional information is submitted.

3.4 The Water Services Regulation Authority (Ofwat)

Ofwat is the economic regulator of the water industry. Its functions include setting price limits for water and sewerage undertakers. Its main statutory duties are to:

- further the consumer objective to protect the interests of consumers, wherever appropriate by promoting effective competition
- ensure that the undertakers and licensed water suppliers properly carry out their activities and functions
- ensure that the undertakers can (in particular through securing reasonable returns on their capital) finance the proper carrying out of their functions; and
- further the resilience objective to secure the long-term resilience of undertakers' systems and services to consumers.

Ofwat must carry out its functions in accordance with the Statement of strategic priorities and objectives it receives from the Welsh Government as well as other statutory guidance on specific issues such as charging.

Undertakers have a statutory obligation to consult Ofwat before preparing their plans (pre-consultation phase). Once the draft plan is published, Ofwat may make representations to the Welsh Ministers on the content of the draft plan.

3.5 Environment Agency, Department for Environment, Food and Rural Affairs (Defra) and Natural England

Undertakers should engage with these organisations in respect of any part of their drought plans in England. The Environment Agency and Defra are both statutory consultees.

Natural England is responsible for protecting habitats, species and ecosystems that depend on water, in particular European sites, Ramsar sites and Sites of Special Scientific Interest (SSSIs) in England.

4. National security and commercial confidentiality

Drought plans may contain information that could be considered sensitive on grounds of national security.

When submitting plans to the Welsh Ministers for agreement to publish the draft plan for consultation, undertakers should submit a statement from the undertaker's Security Manager, certifying that the plan has been reviewed and that it does not contain any information that would compromise national security interests. The statement must also say whether the plan contains any information that may be considered to be commercially confidential. Where information has been edited out, the undertaker should indicate the nature of the information that has been removed.

The Welsh Ministers may also direct an undertaker to leave out any information from its plans that would be contrary to the interests of national security or would be considered commercially confidential. (Section 37B(10)(a) and (b) of the Water Industry Act 1991, as amended by the Water Act 2003).

The drought plan technical guideline that is supplementary to the guiding principles covers some areas that are sensitive and an undertaker will need to decide whether to exclude this from the public version of the drought plan.

5. The process for developing a drought plan

The diagram below gives an overview of the statutory process for developing a drought plan.



6. Early engagement prior to publication of draft plan (2017 – 2018)

6.1 Proactive Engagement

This is an important element in the process of preparing a draft drought plan. Before writing a draft plan, undertakers should carry out pre-consultation discussions with the following statutory consultees:

- Natural Resources Wales and the Welsh Ministers
- the Environment Agency and the Secretary of State for Environment, Food and Rural Affairs if the plan affects sites or customers in England
- Ofwat
- any water supply licensee that supplies water to premises in their operational area via the undertaker's supply system.

For the preparation of the Strategic Environmental Assessment, undertakers must consult NRW and Cadw. If the plan is likely to affect parts of England, undertakers must also consult with the Environment Agency.

If the plan is likely to affect a designated conservation site, then undertakers must also consult with NRW and/or Natural England (as relevant) at the earliest opportunity. Undertakers should also consider if their plan is likely to affect any local wildlife sites that have been designated by the local authority and consult with the managers of these sites.

Designated sites include:

- Special Areas of Conservation (SACs, including candidate areas)
- Special Protection Areas (SPAs, including potential areas)
- Ramsar sites (including proposed sites)
- Sites of Special Scientific Interest (SSSIs)
- National Nature Reserves (NNR)
- Local Nature Reserves (LNR) (contact local councils)
- local wildlife sites (contact local councils or wildlife trusts)
- Marine Conservation Zones (MCZs)
- landscapes including World Heritage sites, European Landscape Convention, National Parks, Areas of Outstanding Natural Beauty (AONB)

6.2 Early engagement with customers and other interested parties

Undertakers should consult as widely as possible on the preparation of their plan. They should engage early with their customers and other interested parties and undertake pre-consultation engagement with other consultees, for example:

- any water supplier affected by their supply system
- any undertakers they have bulk supply or shared resource agreements with
- neighbouring undertakers

- Consumer Council for Water
- Public Services Boards and other public service providers
- customer challenge groups or their equivalent
- any other groups or organisations that the plan is likely to affect (e.g. power plant operators or the Canal & River Trust)

Customer and stakeholder engagement on the drought plan should, as far as possible, align with customer engagement on their WRMP and business plan.

6.3 What to discuss

Undertakers should discuss:

- what they intend to include in their new plan
- what they intend to do differently from their existing drought plan
- previous recommendations from statutory consultees
- any advice issued by the Welsh Government
- lessons they have learned from any recent experiences of drought
- the views of customers, statutory consultees and other interested parties

Undertakers should use this early development phase to discuss the methods and approaches they will take, with NRW and/or Environment Agency (as relevant). This discussion will allow a structured dialogue between the undertaker and the regulators, which should reduce the need for changes later in the process.

Undertakers should consult with NRW and the Welsh Government on how their drought plan helps deliver towards improving the social, economic, environmental and cultural well-being of Wales as reflected in the seven well-being goals provided in the Well-being of Future Generations (Wales) Act 2015, as they will be expected to support other organisations to meet their statutory requirements under that Act. Undertakers should also discuss how the plan will help deliver their specific duties under the Environment (Wales) Act 2016.

Undertakers must start these discussions as early as possible in order to reduce the need for changes later in the process. There is no limit to how far in advance they hold these discussions. However, NRW will not make a binding determination on any parts of the draft plan approach in advance of the public consultation as they will need to assess the plan as a whole and offer impartial advice to the Welsh Government.

Undertakers should seek initial views on temporary restrictions of water use from Consumer Council for Water, their customers and interested groups, whilst preparing their draft plan, they can provide undertakers with views on the priorities, sequencing and potential exceptions for restrictions. They can also advise on communications during a drought regarding restrictions, notice periods and how customers would want comments to be dealt with. This could help undertakers to identify interests and issues that they can then take into account when preparing their draft plans for full consultation.

7. Preparation of the draft drought plan (Ongoing 2017 – 2019)

7.1 The Draft Plan

The draft plan should use the feedback from the engagement with stakeholders. Undertakers must also follow any statutory Directions they receive from the Welsh Ministers about the content of their draft plan. They may receive further Directions throughout the process.

The draft plan should have an easy to read non-technical summary that helps bring together their drought plan and other linked plans such as their WRMP and business plan. This would sit alongside a more detailed technical document that regulators and interested parties will review to understand how they plan to manage a drought. Undertakers may also provide supporting information in appendices.

The draft plan should aim to be as close to the final plan as possible, with the minimum of changes between the two. However, where changes are necessary these should be clearly and comprehensively explained in the statement of response.

Drought plans will have links with other plans and should be consistent with them. Undertakers must demonstrate a link to the;

- Water Resources Management Plan
- Business and emergency plans
- Drought plans by Natural Resources Wales and Environment Agency (as relevant)
- Other undertaker drought plans (as relevant)
- River basin management plans

During the process of preparing the plan, undertakers should ensure the views of customers are properly taken into account particularly on levels of service.

7.2 Submission of the draft drought plan to the Welsh Ministers (March 2019)

The Welsh Ministers specify the latest date by which undertakers will need to make the submission. If the plan also affects sites and/or customers in England, undertakers must send it to the Secretary of State in addition to the Welsh Ministers.

The Welsh Government will provide instructions for submitting electronic copies of the plan to them. If applicable, the Welsh Government will provide undertakers with instructions about sending electronic copies of their plan to the Secretary of State via a secure transfer site.

When undertakers submit their draft plan to the Welsh Ministers for agreement to publish it for consultation they should:

- Submit a statement from their security manager, certifying that the plan has been reviewed and that it does not contain any information that would compromise national security interests. The statement must also say whether the plan contains any information that may be considered to be commercially confidential.
- Highlight the information they propose to redact or edit out in the published version, so that the Welsh Ministers may confirm whether it is to be removed on grounds of national security.

If undertakers believe a draft plan should not be published because it contains commercially sensitive information, they must tell the Welsh Ministers when it is submitted.

7.3 Publish and consult on the draft drought plan (June / July 2019)

The Welsh Ministers will tell undertakers when to publish their draft drought plan for consultation. They must make it available on their undertaker website and in paper form at one of their main offices. Undertakers must send copies of the draft plan to all consultees listed in the Drought Plan Regulations 2005 and all other organisations involved in the pre consultation discussions including NRW and/or Environment Agency (as relevant). They must also publish a statement with the draft plan that:

- specifies whether they have left out any commercially confidential information
- describes the process for providing comments (also known as representations) on the draft plan to the Welsh Ministers
- states when any comments must be received by and where they should be sent

As a matter of good practice undertakers should consider:

- offering to explain the draft plan to established groups, known interested parties or undertakers within their area
- using social media to highlight the consultation

These are only suggestions and the approach undertakers take will depend on their circumstances and the issues they are facing in the future.

Undertakers have 15 weeks (unless specified differently in a new ministerial Direction) to consult on their draft plan and produce a statement of response from date of publication of the draft plan. It is their responsibility to decide how long they will take to carry out the public consultation. Previously, the consultation period has been around 8 weeks. However, this will depend on their situation.

Undertakers should allow enough time:

- for consultees to make comments on the plan – allow more time for more complex draft plans
- to produce a statement of response based on the comments they receive

Undertakers must state within their consultation that all responses should be sent to the Welsh Ministers, using the email or postal address below:

Water Branch
Welsh Government
Cathays Park
Cardiff CF10 3NQ
Water@wales.gsi.gov.uk

The Welsh Ministers will forward copies of any comments received to undertakers and to NRW for review, in its regulatory role as technical advisor to the Welsh Government.

7.4 Publish a statement of response within 15 weeks after publication of draft plan (September 2019)

Undertakers must produce and publish a statement of response after completing the public consultation (within 15 weeks of publishing their draft plan unless stated differently in a Direction from the Welsh Ministers). The statement of response must:

- show that the undertaker has considered the comments they have received
- clearly and comprehensively set out any changes they have made to the draft plan (including those as a result of the comments they have received) and the reasons for making them
- say if they have not made changes as a result of comments

Undertakers should decide whether the statement of response alone allows people to understand clearly and easily the changes they have made. If not they may wish to publish a revised plan alongside it with changes highlighted.

Undertakers must publish the statement of response as per the drought plan Directions and the regulations, and tell anyone who has made comments that they have published it.

Once completed undertakers must send their statement of response to the Welsh Ministers along with their revised plan if they have prepared one, any other information that they have requested or that they have been advised to send by NRW. They must notify the Ministers of any further information that may be commercially confidential or which has been, or they consider should be, removed for reasons of national security.

The Welsh Government will review their revised plan (if prepared), the comments made and statement of response, along with technical advice from NRW. There may need to be a public hearing, inquiry or an examination in public if there are unresolved issues with their draft plan. The Welsh Government will decide if a hearing or inquiry is needed and will inform the undertaker.

7.5 Preparation and publication of the final drought plan (2020)

Undertakers must prepare a final drought plan (“final plan”) and submit this to the Welsh Ministers who will advise them of the timescales for submission and any changes (through Directions) that need to be made to the plan as a result of

comments received, statement of response or the outcome of any hearings or inquiries.

Undertakers cannot publish their final plan until they have received a Direction to publish from the Welsh Ministers. Therefore, before publishing their final plan they must:

- follow any Directions from the Welsh Ministers
- give themselves enough time to make final checks - this will depend on what kind of changes they need to make and whether they have received any written Directions

Undertakers must publish the final plan on their website and in accordance with the drought plan regulations 2005. They should send electronic copies of the final plan to anyone they have consulted including, NRW. If the plan affects England, they should send this to the Secretary of State for Environment, Food & Rural Affairs and the Environment Agency.

They should also:

- make paper copies available at their main office
- advertise the availability of paper copies on their website
- bring it to the attention of anyone else that it is likely to affect

8. Review and revising drought plans

Undertakers should review their drought plan every year, regardless of whether or not there has been a drought. They should also review their environmental assessments and environmental monitoring plans to ensure they are kept up-to-date and account for any new data or information that has become available since their last review.

Undertakers are required to revise their drought plan when:

- there is a material change of circumstances as determined by the undertaker or the Welsh Ministers
- where experience during a drought event has revealed inaccuracies in their plan
- if directed to do so by the Welsh Ministers
- in any event, not later than 5 years after publication of their previous plan

Undertakers must consult with the Welsh Ministers and NRW on any material changes that they wish to make to their plan. In some cases if the changes are deemed 'material' they may be required to amend and re-consult on their plan. The Welsh Government will advise them of the process if this is necessary.

Undertakers should also periodically run exercises to test their drought plan. They should contact NRW and/or Environment Agency about taking part in joint drought exercises.