

**EXPLANATORY MEMORANDUM TO THE
DROUGHT PLAN REGULATIONS 2005**

2005 No.1905

1 This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 This Statutory Instrument sets out the steps that a statutory water undertaker must follow with respect to publication and consultation of a draft drought plan, and the publication of its final drought plan. It allows the Secretary of State or the National Assembly for Wales (as the case may be) to hold a local hearing or inquiry into a draft drought plan.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Background

4.1 This instrument is made under new powers in sections 39B and 37B of the Water Industry Act 1991 (the “1991 Act”), which were inserted into the 1991 Act by sections 62 and 63 of the Water Act 2003 (the “2003 Act”) respectively. Section 39B sets out (from a date to be announced) the statutory duty of a water undertaker in relation to preparing, maintaining and publishing a drought plan. Section 37B to the 1991 Act contains the powers to make regulations in relation to water resources plans, which are applied to drought plans under section 39B(5) of the 1991 Act. This instrument specifies further details in relation to the preparation and publication of statutory drought plans: it prescribes how water undertakers are to prepare and publish draft drought plans; how they are to consult upon them; how they deal with representations received; and how they should publish final drought plans. The Secretary of State or the National Assembly of Wales (as the case may be) also has the power under this instrument to call an inquiry or hearing in relation to a draft drought plan.

4.2 The instrument is being made jointly for England and Wales to ensure a consistent approach is applied in both countries, and in particular to those water companies that operate in both England and Wales. The instrument takes account of the devolution settlement in respect of the 1991 Act. It ensures that the Secretary of State is made aware of representations on any draft drought plan of a water undertaker whose area is mainly but not wholly in Wales, and the National Assembly of Wales of any representations on any drought plan of a water undertaker whose area is mainly but not wholly in England or who abstracts water in Wales but whose area is wholly outside Wales.

5. Extent

5.1 This instrument extends to England and Wales.

6. European Convention on Human Rights

6.1. Not applicable.

7. Policy Background

- 7.1 The ten-point plan announced at the 1997 Water Summit, which looked at key problems of water resources and supply, included a proposal that the production of drought plans by water companies should be made a statutory requirement. Under the current voluntary arrangement, water companies report to the Environment Agency on their drought plans on a three-year basis, and the Agency reports on the plans to Ministers.
- 7.2 The preparation of statutory drought plans by water companies was consulted upon in “The Review of the Water Abstraction Licensing System in England and Wales”, issued in June 1998 by DETR and the Welsh Office. In March 1999, the Government published its decisions in “Taking Water Responsibly” which confirmed that it would bring forward legislation requiring water companies to produce drought plans. This legislation was subsequently included in the Water Act 2003 (section 63, as outlined above).
- 7.3 In December 2004, the Government and Welsh Assembly Government issued a consultation paper inviting views on proposals for secondary legislation to support elements of the drought planning process introduced by the Water Act 2003. The consultation also served the purpose of informing the water industry and key stakeholders about the main steps in drought planning process. Over 75% of consultee responses to the main questions in the consultation paper supported the Government’s proposals for developing water company drought plans. On two questions only, about the time limits for consultation on water company draft drought plans and their responses to representations received, did support fall below 75%. Both issues have been addressed by allowing water companies 15 weeks from publication of the drought plan in which to publish a statement showing how it has taken representations into account.
- 7.4 Water companies take around 40% of abstracted water to provide the public water supply. They are under a duty to maintain customers with a supply of water and therefore must plan for periods of low rainfall and resulting impacts on water availability. Proper water company drought planning is therefore vital.
- 7.5 The general public, environmental non-governmental organisations and those local councils who are responsible for planning controls all have an interest in the ability of water companies to continue to supply adequate quantities of water during drought periods. As a result of this instrument, there will be, for the first time, transparency in how companies plan an appropriate balance between the essential needs of the public water supply and the environment, by ensuring wide consultation on draft drought plans.
- 7.6 This instrument is legally important as it specifies further details about how water companies will be required to prepare and publish drought plans once water companies

are under a statutory duty to prepare and maintain drought plans under section 39B of the 1991 Act.

8. Impact

8.1 A Regulatory Impact Assessment is attached to this Memorandum.

9. Contact

Mike Walker at the
Department for Environment, Food and Rural Affairs
Water Supply & Regulation Division
55 Whitehall
London
SW1A 2EY

Tel: 020 7082 8351

Email: mike.walker@defra.gsi.gov.uk

Regulatory Impact Assessment of The Drought Plan Regulations 2005

Contents	Page
1 Purpose and effect of drought plan regulations	2
1.1 Background	2
1.2 Scope of the Regulatory Impact Assessment	2
1.3 Risk assessment	2
2 Consultation	3
3 Options	4
4 Cost and benefits	5
4.1 Cost assumptions	5
4.2 Regulation 2 - Publication and consultation on draft plan	5
4.3 Regulations 3 & 4 - Taking representations into account	7
4.4 Regulation 5 - Provision for a local hearing to be held	9
4.5 Regulation 6 - Publication of the final plan	10
4.6 Overall costs and benefits	11
5 Small firm impact test	12
6 Competition assessment	13
7 Enforcement and sanctions	13
8 Implementation and delivery plan	13
9 Post-implementation review	14
10 Summary and recommendation	14
11 Ministerial declaration	15

1 Purpose and effect of drought plan regulations

1.1 Background

Currently there is no statutory provision for water companies¹ to prepare drought plans, but since the 1997 Water Summit water companies have produced plans on a voluntary basis, following Environment Agency guidelines.

The Water Act 2003 makes it a statutory requirement² for water companies to prepare, maintain and publish drought plans. The Act adds sections 37B, 39B and 39C to the Water Industry Act 1991; these govern the overall process of how a water company is to prepare a drought plan but do not specify all of the detail. The *Drought Plan Regulations 2005* are made under powers in section 37B, as applied by section 39B(5), of the Water Industry Act 1991.

The Secretary of State is empowered to make Regulations in respect of water companies whose areas are wholly or mainly in England, and the National Assembly for Wales ('the Assembly') is empowered in respect of those whose areas are wholly or mainly in Wales. These Regulations are made jointly to ensure that the same regime applies to all the water companies in England and Wales.

The Regulations specify details of how each water company should publish a draft drought plan, consult and take account of representations made upon the draft plan, and publish the final plan. The Regulations also allow the Secretary of State or National Assembly of Wales (as the case may be) to hold a hearing or inquiry into the plan.

1.2 Scope of the Regulatory Impact Assessment

This Regulatory Impact Assessment (RIA) accompanies the *Drought Plan Regulations 2005*, and updates the partial RIA that was published in a consultation on the content of the Regulations³, taking account of consultation responses. The RIA sets out the views of central Government and the Welsh Assembly Government.

It assesses the additional benefits accrued and costs that will be incurred by water companies and third parties as a result of the Regulations, over and above those costs associated with the preparation of existing, non-statutory, plans.

1.3 Risk assessment

Planning for drought will:

- ensure effective drought planning that maintains a balance between the needs of the public water supply and the environment;
- ensure consistency of drought plan information across water companies;

¹ The term 'water company' is used throughout to denote a statutory water undertaker within the meaning of the Water Industry Act 1991

² Section 63 of the Water Act 2003

³ Consultation on water company drought plan regulations, Defra and the Welsh Assembly Government, December 2004

- ensure environmental protection during times of water shortage, particularly for conservation sites designated under European legislation;
- ensure transparency of drought plan information across water companies, licensed suppliers, the general public and the Environment Agency;
- ensure that bodies with planning, conservation or regional interests are directly consulted about draft drought plans;
- enable representations to be made to water companies about proposed plans and provide a mechanism for those representations to be heard at a public inquiry, if appropriate.

The first three of these issues are associated with the duty to plan for drought. Abstraction during a period of water shortage may exacerbate local problems that may also be brought about by the drought period. Failure to ensure effective and transparent drought planning could increase pressure on sites of environmental importance or could have a detrimental effect on other businesses. In extreme cases the Environment Agency may need to give priority to water abstracted for the public water supply over other abstractors.

The last three points above are specifically addressed by the Regulations.

Some risks that could worsen if drought plans were not made mandatory, and made more transparent, include:

- inadequate provisions to manage serious droughts, with associated risks to the public water supply;
- increase in the use of potentially environmentally damaging drought orders and permits in place of effective drought planning measures;
- inadequate consultation of groups or bodies who may be affected by drought plan provisions;
- third-party financial losses arising from restrictions on other abstractions that may arise from poor drought planning by the water company;
- inadequate information for the Environment Agency to fulfil its duty to secure proper use of water resources.

2 Consultation

The overall objectives for sustainable water resources management, including the management of drought, were consulted upon on several occasions, including:

- The Review of the Water Abstraction Licensing System in England and Wales - consultation paper. DETR/Welsh Office, June 1998;
- Water Bill – Consultation on draft legislation, DETR, November 2000;
- Extending Opportunities for Competition in the Water Industry in England and Wales, Defra/Welsh Assembly Government, July 2002.

The Government's proposals for drought planning were debated in Parliament during the passage of the Water Bill, which received Royal Assent in November 2003 to become the Water Act 2003.

The content of the *Drought Plan Regulations 2005* themselves were consulted upon between December 2004 and March 2005⁴. This consultation covered all of the water supply companies, local authorities, RDAs and other interested organisations. Initial input to the partial RIA, and in particular costs, was provided by Water UK (which represents the UK Water Industry). This RIA takes account of responses to the public consultation and discussions with the water industry.

3 Options

Our objectives are that a system of statutory drought planning should deliver the level of environmental protection necessary for sustainable development and benefit water companies by the better use of water resources that results from effective planning. There are also benefits to stakeholders by increasing the transparency of the planning process and involving them in the drought planning process.

The Water Bill RIA⁵ considered high-level options to achieve the level of control over water resources and the level of environmental protection considered necessary for sustainable development, including the impacts of the new duty to plan for drought. In this RIA our options for achieving a transparent system of statutory drought planning have been refined:

- Option 1: The “do nothing” option; this represents the current situation which would rely on voluntary action by water companies to prepare drought plans consistently, in a transparent manner and with consideration of the wider views of stakeholders.
- Option 2: Using the regulation making powers conferred by the Water Act 2003 to put into place statutory requirements for the way in which water companies consult and publish their plans, as provided in the *Drought Plan Regulations 2005*.

The potential risks of Option 1 are those set out in the risk assessment above (section 1.3). This option would not reliably deliver the level of consistency considered necessary to meet sustainable development objectives, nor would it necessarily ensure that wider consultation issues are effectively implemented. To date, water companies have produced drought plans on a voluntary basis but have not consistently adhere to the drought planning requirements set out by the Environment Agency in its guidelines. It is unlikely that without regulation, water companies would carry out the additional requirements of transparency such as public consultation.

⁴ Consultation on water company drought plan regulations, Defra and the Welsh Assembly Government, December 2004

⁵ Water Bill – Regulatory Impact Assessment, Environmental and Equal Treatment Appraisals, July 2003 available from the Defra website:
http://defraweb/environment/water/legislation/pdf/riaupdate_030722.pdf

Option 2, using powers to make drought plan regulations, ensures that the statutory drought planning process results in consistency in drought plans and transparency of information. With the Regulations there will be consistent consultation, backed up by the prospect of a local inquiry or hearing into the plan. In addition, the consultation and consideration of responses will aid in meeting the requirements, where they apply, of the Strategic Environmental Assessment (SEA) Directive⁶. This option helps to meet the aims of sustainable development in an equitable and cost effective way.

4 Cost and benefits

4.1 Cost assumptions

Option 1 ('do nothing') costs are not included as this option is not expected to incur any additional costs to water companies who already do some drought planning on a voluntary basis. Some water companies may be under-spending on drought planning, as they are not fully meeting the current Environment Agency requirements. This has not been factored into this RIA, which only assesses additional costs on water companies and others brought about by the Regulations.

A range of costs is given for Option 2 for each requirement brought about by the proposed drought plan regulations. The cost ranges are derived from estimates made by the industry. Each company will have different costs depending on the level of external participation in the consultation process and the complexity of any issues that may arise. If representation on the plan leads to a hearing or inquiry this will increase the overall costs of a particular company.

The range of costs in each option 2 category is for a single cycle; they will be repeated every 3 years for a new set of drought plans. The costs and benefits of each of the key requirements of the regulations are set out separately below in sections 4.2 –4.5 and summed in section 4.6 below.

4.2 Regulation 2 - Publication and consultation on draft plan

Current practice

At present, water companies only share a draft copy of their drought plan with the Environment Agency.

Requirements of the Regulations

The draft drought plan will be published electronically on the water company's website with hard copies available (excluding any parts which may be commercially confidential or contrary to the interests of national security, as agreed by the Secretary of State or the Assembly) to be viewed at the company's offices or other appropriate location.

⁶ Draft practical guidance about the SEA Directive (2001/42/EC) has been published for consultation by the Office of the Deputy Prime Minister and is available on its website at: http://www.odpm.gov.uk/stellent/groups/odpm_planning/documents/page/odpm_plan_029817.pdf.

The water company will send a copy of the draft drought plan to specified groups or people. These groups or people will also receive the accompanying statement that explains the broad nature of any information, determined as commercially confidential or contrary to the interests of national security, that has been excluded from the draft plans.

The following organisations will receive a copy of the draft water company plans:

- (a) The Office of Water Services, the Environment Agency and the Secretary of State (for companies wholly or mainly in England) or the National Assembly for Wales (for companies wholly or mainly in Wales), plus any licensed water suppliers operating in the area covered by the plan;
- (b) any Regional Development Agencies, in the area covered by the plan;
- (c) any elected regional assembly, in the area covered by the plan;
- (d) all Local Authorities (except parish councils), in the area covered by the plan;
- (e) any National Park Authorities, in the area covered by the plan;
- (f) the Broads Authority, where the plan covers the Norfolk or Suffolk Broads;
- (g) the Countryside Commission, English Nature and the Historic Buildings and Monuments Commission for England, where a plan covers any part of England;
- (h) the Secretary of State, for those companies whose area is mainly but not wholly in Wales;
- (i) the Countryside Council for Wales and Cadw for companies whose area includes any part of Wales;
- (j) the National Assembly for Wales, for companies whose area includes any part of Wales but is not wholly or mainly in Wales;
- (k) the National Assembly for Wales, for companies that abstract water in Wales but whose operating area does not include any part of Wales;
- (l) any navigation authority, which operates in the area covered by the plan;
- (m) the Consumer Council for Water, which represents consumer interests.

Business sectors affected

Water companies will have the additional costs associated with the publication and distribution of draft drought plans to the statutory consultees.

The consultees themselves will also have some costs associated with the time that they will need to spend considering, and liaising with water companies, about their draft plans.

Benefits

It is of benefit to water companies to show that they are being open and transparent about the drought planning process from the early development of drought plans. This will have the added benefit of promoting customer confidence in water companies.

The requirement for water companies to consult specified bodies ensures that the environmental, planning, regional etc interests are taken into consideration at an early stage in the drought planning process. This advance consultation will be of benefit to the water company, as it will minimise the risk of any potential conflicts of interest that may arise later in the planning stage or when a plan is being put into action.

There will also be a benefit to the bodies consulted, as they can ensure that the drought plan can take into consideration potential requirements that would not normally come to light until the implementation of a drought plan. This helps to meet, for example, the requirements of the SEA Directive. It will also ensure that any actions that may impact on a Natura 2000 site (designated under the Habitats or Wild Birds Directives) can be scrutinised at the planning stage.

Costs

A printed copy of the draft plan will need to be sent to each of the statutory consultees. The numbers of copies will be dictated by the number of local authorities (excluding parish councils) covered by the area covered by the plan; one company has indicated that up to 80 copies will need to be provided to statutory consultees but this is likely to be a maximum, with an average of around 40.

The anticipated costs of publication are estimated to range from £2,000 - £10,000 depending on the level of publishing costs incurred by individual companies.

More substantial costs, which will be wide ranging, will relate to the time taken communicating with and resolving any issues with the specified groups. This will depend on the level of interest from specified groups and the complexity of any issues. It will also depend on whether the water company has in-house experts or requires the use of consultants. Water company costs are estimated to range from £1,000 to £10,000.

It is difficult to accurately estimate the costs that will be incurred by consultees (as specified by the Regulations) in providing an input to the drought planning process, but this could be in the region of £1,000 per consultee per plan, depending on their level of involvement and whether the body is consulted on all plans (e.g. national organisations) or only some (e.g. local authorities).

4.3 Regulations 3 & 4 - Taking representations into account

Current practice

As above, water companies are currently under no obligation to consult upon and take into consideration representations about draft drought plans.

Requirements of the Regulations

The Regulations contain provision for water companies to publish a statement about how the consultation responses have been taken into consideration, how the plan has changed as a result of the representations received, and reasons why representations have not been taken into account.

Business sectors affected

Water companies will have the administrative responsibility of taking into consideration a wide range of feedback from the wider community about drought plans and formulating a response. There will also be some publishing costs involved with placing the water company response on their website.

Considering how to respond to the draft drought plan should not produce a significant burden to consultees and is an optional process for them.

Benefits

Allowing the public to comment on draft drought plans raises awareness about potential local drought issues and helps to educate the public about efficiency measures which can help to manage water demand. Informing the public at an early stage will help the water companies receive 'buy in' of their drought planning and any subsequent implementation of plans. It also ensures that any potential problems can be raised early in the drought planning process.

Ensuring that water companies consult widely on draft drought plans and take into consideration any comments when revising their plans means that there is transparency of information and helps to meet the aims of the SEA Directive, where this applies to the plan in question.

The public availability of information should reduce the burden on the water company of dealing with *ad hoc* requests for information made under the Freedom of Information Act 2000 and the Environmental Information Regulations 2004⁷.

Costs

The costs associated with this provision will again vary between companies depending on whether they use an in-house expert or external consultant. There will be minor costs associated with publication of the water company statement on their website and more significant costs involved in the consideration of responses (again depending on the complexity and number of response) and drafting of a water company statement.

Costs are estimated to be from £2,000 (approximately 40 man working hours) to £10,000 (greater amount of working hours and specialist advice required).

⁷ Statutory instrument No 2004/3391

4.4 Regulation 5 - Provision for a local hearing to be held

Current practice

There is currently no provision for a hearing to be held in respect of a draft water company drought plan.

Requirements of the Regulations

Regulation 5 allows the Secretary of State or the Assembly to hold a local inquiry or hearing in connection with draft drought plans, using the procedures contained within subsections (2) to (5) of section 250 of the Local Government Act 1972. Such a hearing or inquiry would be used by the Secretary of State/Assembly to inform decisions about whether to direct the company to change its plan in a particular way.

Business sectors affected

The sectors affected by this provision will be:

- i) Water companies who will be required to provide evidence and attend any local inquiries. This may require the water company to buy in specialist legal advice.
- ii) Organisations (or individuals) who wish to make representations; they will probably need to have specialist or legal costs although these are likely to be related to very local issues so it is not possible to identify exactly which sectors may be affected.
- iii) Government will have an increase in casework associated with the drought inquiry procedure. This will result in an increased workload for the Planning Inspectorate, Central Government and the National Assembly for Wales. The Environment Agency will have additional burdens such as providing evidence for the local inquiry.

Benefits

As set out above, it is of benefit to ensure transparency in the drought planning process and to iron out any difficulties that may arise early in the planning process.

This is of benefit to organisations or the general public that may be adversely affected by drought plan measures. At present there is not an opportunity for representation in the drought planning process.

It could also be of benefit to water companies to resolve any general issues through a drought plan inquiry before action is taken in implementing a drought plan during periods of water shortage.

Costs

The Secretary of State or the Assembly will not wish to hold inquiries unnecessarily. A soundly based plan, addressing all the key issues in an appropriate manner should not need to be the subject of an inquiry. Plans that do not appear to properly

balance the needs of consumers with the need to adequately protect the environment may well be the subject of an inquiry.

It is, therefore, difficult to establish the likelihood of a public inquiry becoming necessary. The following cost estimates are based on assumption that one will happen for each water company. This is to allow it to be factored into the overall costs, though in reality it is unlikely that there will be many public inquiries, as in most cases issues should be able to be resolved between a water company and third party without recourse to an inquiry.

The estimated costs of an inquiry can be split between the different sectors as follows:

- i) Water companies – the estimated cost of a water company attending and providing evidence at a public inquiry is in the region of around £100,000-200,000, including legal advice (although one water company estimated that this could be as much as up to £1M).
- ii) Organisations (or individuals) who wish to give evidence at the inquiry – it is difficult to approximate costs and identify which bodies would want to use this provision, therefore an estimate is not included.
- iii) Both Governments and the Environment Agency. In the first instance it is estimated that the cost of each inquiry including the costs of the Planning Inspector and staff time to process the inquiry casework will be approximately £3,000 to £5,000 per inquiry. The estimated costs for the Environment Agency (input of specialist evidence to the inquiry) would be in the region of £50,000 per inquiry.

4.5 Regulation 6 - Publication of the final plan

Current practice

Water companies are currently expected to make their plans available to the general public although in practice only about half of companies make their plans available for inspection⁸. However most companies provide their customers with a summary document, available on request or on the water company website.

Requirements of the Regulations

Regulation 6 requires that the drought plan must be published on the water company's website (excluding any parts which may be of commercial confidence or contrary to the interests of national security, as agreed by the Secretary of State/the Assembly) and in paper form (which will be available to be viewed by the public).

Business sectors affected

Water companies will have some costs associated with the publication of the final

⁸ Environment Agency's 'Review of water company water resources plans, 2004' chapter 3 refers to the Agency's disappointment that water companies are not being more active in informing their customers about the measures they would take during a drought.

drought plans.

Benefits

As with the publication of the draft drought plans, publishing these plans helps to raise public awareness and ties in strongly with the education and water efficiency campaigns run by water companies.

Small businesses reliant upon the public water supply will also be able to see how they might be affected in the event of supply restrictions, and better able to consider any contingency planning that may be necessary. Those relying on direct abstractions will also be able gain an appreciation of the possible risk to their supplies in the event of a drought.

Costs

The estimated costs to water companies will from £1,000 to £5,000, mainly associated with the web site version of the plan.

4.6 Overall costs and benefits

Social Impacts

The main social impacts resulting from the drought planning regime, and the Regulations, will be:

- better water company drought planning, to ensure the public water supply is maintained in the event of drought;
- improved drought plan consistency and transparency, which takes into consideration relevant stakeholder and wider public interests
- greater availability of information to assist small businesses in assessing possible risks to supplies;
- reduced risk of third party losses arising from badly planned drought measures by water companies;
- raising public awareness of water resources issues (and the value of water) through the drought plan consultation process.

Environmental Impacts

The Regulations will assist environmental protection in a number of ways:

- early identification of potential problems by stakeholders, for example ensuring that drought plans will not jeopardise the requirements of the Habitats Directive;
- reduced threat to the environment in the event of a drought, through reduced reliance upon drought orders and permits;
- helping to meet any requirements of the SEA Directive, Freedom of Information Act and Environmental Information Regulations;
- better information to the Environment Agency to allow them to fulfil their duties to secure the proper use of water resources.

Economic Impacts (per three year period)

The table below summarises the anticipated costs that could be associated with the *Drought Plan Regulations 2005* over each three yearly planning cycle; these are only

the costs over and above those already incurred through the voluntary planning process.

Regulatory Requirement	Costs (£k) to				
	Single Water company	All 24 water companies	Statutory consultees	Central Government /National Assembly	Environment Agency
Publication and consultation on draft plan (Reg. 2)	3 – 20	72 – 480–	1 per plan	-	-
Dealing with representations (Reg. 3)	2 –10	48- 240	-	-	-
Publication of final plan (Reg. 6)	1 – 5	24- 120	-	-	-
Total (no hearings)	6 – 35	144 - 880	960[‡]	-	-
Discretionary hearing or inquiry (Reg. 5)	100-200	4,800 [†]	-	3 – 5 per inquiry	50 per inquiry
Total (with hearings)	106 - 235	4944 – 5680 [†]	960 [‡]	24 – 48 [†]	1200 [†]

[†] only if hearings were held on each company plan

[‡] assumes 40 consultees respond to each of 24 company plans

The costs to the water companies will be recovered from customers through water bills (see section 6 below).

Benefits such as better-informed stakeholders and reduced environmental risk are difficult to quantify and value in monetary terms.

5 Small firm impact test

The Regulations impact directly only upon the 24 water supply companies in England and Wales. Of these 7 can be classified as small businesses and one as a micro-business, based on the number of employees. Turnovers for the small businesses are in the range £13 - £470 million (2003/04), and around £100,000 for the micro-business.

The costs of consultation and publication of draft plans incurred by the 8 smallest water companies should be at the lower end of the indicated range. The companies cover relatively small geographical areas and therefore fewer local authorities will be statutory consultees.

Meeting obligations of the Regulations are a statutory requirement and therefore part of the company's operational costs that can be passed through to customers through the pricing mechanism to customers (operated by the economic regulator, the Office of Water Services).

The increased costs will therefore be passed on to small businesses through increased water prices; but these will be very small, as they will be borne by all customers in the supply area.

6 Competition assessment

As identified in previous sections, water companies will be the main sector affected. The Regulations will affect all water companies, but the total cost to any company will depend on numbers of statutory consultees within a particular water company boundary. This is not anticipated to affect the competitiveness of companies, because each is currently a regional monopoly for their own supply area. As noted in Section 5 above, the costs of meeting the requirements of the Regulation will be passed through to customers.

Separate provisions in the Water Act 2003 provide for competition for water supply to be introduced for non-household customers that use large quantities of water. As part of these provisions all new licensed suppliers will have to provide water companies with any necessary information for their drought plans.

7 Enforcement and sanctions

At present, water companies are only required to produce drought plans on a voluntary basis. The majority of companies do not fully comply with the requirements of the Environment Agency drought planning guidelines.

The new drought planning regime, including compliance with the *Drought Plan Regulations 2005*, will ensure that robust drought planning is in place.

The Secretary of State and the National Assembly have enforcement powers under section 18 of the Water Industry Act 1991. Enforcement powers could be used in cases where, for example, water companies have not met the requirements of the regulations, or have not carried out a public consultation or published the draft or final drought plans, or does not comply with directions from the Secretary of State/National Assembly.

Under section 39B(6)(b) of the Water Industry Act 1991, the Secretary of State/ National Assembly is able to direct each water company to review (or further review) its drought plan and prepare a revised plan. This can take place at any time within the three-year lifetime of the final drought plan.

8 Implementation and delivery plan

The *Drought Plan Regulations 2005* are intended to come into force on 1 October 2005. The duty on water companies to prepare drought plans will also commence on 1 October 2005.

9 Post-implementation review

There is a requirement⁹ for water companies to review their drought plans not later than every three years (from the date of publication). The Act also provides for plans to be revised if, in the judgement of the company, there is a material change in circumstances¹⁰. The Environment Agency will ask water companies to provide an annual update of their plans, although this is on a voluntary basis.

The water company reviews of drought plans will feed into the Environment Agency's review of its guidelines and help to provide an evaluation of the statutory drought planning process brought about by the Water Act 2003 and the drought plan regulations.

Defra will review the costs and benefits of the Regulations after three planning cycles have been completed.

10 Summary and recommendation

This RIA assesses the costs and benefits of *Drought Plan Regulations 2005*. These regulations will ensure that there is wide representation and input into the development of water company drought plans.

The RIA presents two options – to put in place these Regulations or not (the 'do nothing' option). It is concluded that 'do nothing' would not meet Government objectives for a transparent system of drought planning because water companies are unlikely to comply with the additional requirements on a voluntary basis. Currently not all water companies are meeting all the Environment Agency recommended drought-planning requirements. The 'do nothing' option leaves a greater risk to droughts not being managed adequately, with associated impacts on the environment and to the public water supply.

The main benefits of drought plan regulations are: better water company drought planning taking into consideration wider public interests; improved drought plan consistency and transparency; less threat to the environment through use of unnecessary drought orders and permits; and helping to meet the requirements of the SEA Directive.

The costs to water companies will vary depending on the level of participation in a drought plan consultation and whether a public inquiry is necessary. It is difficult to anticipate the likelihood of unresolved issues necessitating an inquiry, but in most cases we would not expect this to be the norm. Therefore each water company is estimated to have costs in the range of £6,000 to £35,000, depending on public participation, man-hours and publishing costs. In the event of a public inquiry being

⁹ new section 39B(6)(c) of the Water Industry Act 1991 (introduced by Water Act 2003 section 63)

¹⁰ new section 39B(6)(a) of the Water Industry Act 1991 (introduced by Water Act 2003 section 63)

necessary, these costs will increase and expected to be around £106,000 to £235,000.

Costs to the statutory consultees would be fairly small depending on the level of their involvement in the planning stage (approximately £1,000 to £5,000 per plan). The costs to both Governments and the Environment Agency are expected to be in the region of £53,000 to £55,000 per inquiry.

It is recommended that the Minister accept this assessment of the costs and benefits of the *Drought Plan Regulations 2005* on the basis that the benefits justify the costs.

11 Ministerial declaration

I have read the Regulatory Impact Assessment and am satisfied that the benefits justify the costs.

Elliot Morley

11th July 2005

Elliott Morley, Minister of State (Climate Change and the Environment)

Department for Environment, Food and Rural Affairs

Contact point: wsr.enquiries@defra.gsi.gov.uk