



# Security and Emergency Measures Direction (SEMD)

## Enforcement Policy

Published by  
Drinking Water Inspectorate  
Area 1A  
Nobel House  
17 Smith Square  
London  
SW1P 3JR

Tel: 0300 068 6400  
Website: [www.dwi.gov.uk](http://www.dwi.gov.uk)  
© Crown Copyright 2022

Copyright in the typographical arrangement and design rests with the Crown.  
This publication (excluding the logo) may be reproduced free of charge in any format or medium provided that it is reproduced accurately and not used in a misleading context. The material must be acknowledged as Crown copyright with the title and source of the publication specified.

# Contents

## SEMD Enforcement Policy

Introduction	4
Better Regulation	4
Enforcement and Information Sharing	5
Principles of Enforcement	5
Enforcement and Penalties	7
Enforcement Options	7
Advisory letters	7
Enforcement Orders	7
Financial Penalties	8
Representation and appeals	9

## Introduction

The Drinking Water Inspectorate is the independent regulator of drinking water in England and Wales. The Inspectorate provides independent assurance that the privatised water industry delivers and maintains safe, clean drinking water to consumers.

The Security and Emergency Measures (Water and Sewerage Undertakers and Water Supply Licensees) Direction 2022 (SEMD) is the principal general direction issued by the Secretary of State and Welsh Ministers under Section 208 of the Water Industry Act 1991 (the Act). Undertakers and licensees are required to maintain a water supply and/or sewerage system in the interests of national security, or to mitigate the effects of any civil emergency which may occur.

The Inspectorate, on behalf of the Secretary of State and Welsh Ministers, are responsible for the regulation of SEMD for water companies who are wholly or mainly in England, or wholly or mainly in Wales. This includes reviewing companies' annual self-assessments and Critical National Infrastructure (CNI) audits (where required), and any necessary compliance and enforcement actions. A company's failure to comply with the direction is enforceable under section 18 of the Act. It is in this respect that this policy outlines the principles which will be followed in relation to our powers of enforcement in regulating SEMD in the water sector in England and Wales. This policy will be kept under review and updated as necessary to reflect changes in law and practice in consultation with DEFRA, the Welsh Government and the Industry it seeks to regulate.

## Better Regulation

The Inspectorate recognises that the best way to achieve compliance with the law is to ensure, by issuing guidance and advice, that those carrying out regulated activities understand the nature and extent of their responsibilities and comply voluntarily.

However, there are times when conformity with the law needs to be sought by formal enforcement action. Formal enforcement is about securing compliance with regulatory requirements. To this end section 18 of the Act provides for the Inspectorate (exercising the functions of the Secretary of State and Welsh Ministers) to make enforcement orders, either final or provisional requiring the water company to take remedial activity necessary to ensure compliance with SEMD. Water undertakers and water supply licensees may offer an undertaking in accordance with section 19 of the Act specifying such steps that are appropriate to comply with those requirements, which if acceptable would negate the need to proceed with enforcement. The Inspectorate may also impose a financial penalty under section 22A of the Act. This policy will guide our decision making as to the most appropriate choice of enforcement in any particular case.

The Legislative and Regulatory Reform Act 2006 (“the Reform Act”) and the Legislative and Regulatory Reform (Regulatory Functions) Order 2007 require that regulatory functions under legislation enforced by the Inspectorate are carried out in a way which is transparent, accountable, proportionate and consistent, and that regulatory activities should be targeted only at cases in which action is needed. The Reform Act provides for a code of practice for regulators known as the Regulators’ Code (“the Code”).

The Code, which came into effect on 6 April 2014, requires that those carrying out regulatory functions under the Act must have regard to the Code when developing policies and operational procedures that guide their regulatory activities, as well as when setting standards or giving guidance which will guide the regulatory activities of their regulated community.

The effective use of enforcement powers in regulatory schemes is important to secure compliance with the law and, where necessary, to ensure that those who have not complied may be held to account. Enforcing authorities need to consider the need to maintain the balance between enforcement and other advisory activities when allocating resources.

## Enforcement and Information Sharing

The Inspectorate may share information with the Water Security and Resilience team within Defra and other Government departments as appropriate. The Inspectorate may also share information with law enforcement authorities, should it be necessary for the investigation of an offence or for the investigation of the conduct of a prosecution. Only information which is relevant and proportionate to the above situations will be shared. Information shared is bound to the same strict information handling policy as deemed by its classification and will not be shared further, unless deemed appropriate by the Inspectorate.

## Principles of Enforcement

The Inspectorate believes in firm and fair regulation of the matters for which it has responsibility and follows five principles.

### i) Accountability

The Inspectorate is accountable for the efficiency and effectiveness of the activities undertaken, in this case section 18 of the Act. The Inspectorate will identify and explain with the regulated entities the principal risks against which any action is taken. Regulatory outcomes will be measured through a summarised overview of all companies risks and outcomes. However, information on any proposed enforcement or details of resulting enforcement including the delivery of

actions to secure compliance or mitigate risks will not be published on the Inspectorate's website but will be made available to Defra. Regulated entities may make representations as explained in the relevant section below where a cause for complaint may arise under this section.

## ii) Proportionality

Proportionality in securing compliance with SEMD will generally involve taking account of the degree of the risk of adverse consequences resulting from non-compliance; for example, inadequate security measures risking interruption, loss of supply or contamination of drinking water. Sometimes, however, the precautionary principle will require enforcement action to be taken, even though the risks may be uncertain, in which case our decisions will be guided by the best available evidence as to the likelihood of the realisation of those risks in the relatively near future.

## iii) Consistency

Consistency means taking a similar approach in similar cases to achieve similar outcomes within which a degree of discretion is available. There are many variables to be considered in using discretion to decide on the most appropriate course of action, such as the attitude and level of competence of the water supply licensee in bringing about the outcome sought. A specific tenet of consistency is that of disgorgement, where a supplier shall not benefit from any failure to implement the SEMD.

## iv) Transparency

Transparency means helping those regulated to comprehend what is required of them at the outset and setting out what they may expect from the Inspectorate in return. It also involves making clear what remedial action is required from the regulated person or business and providing details of any rights of appeal.

## v) Targeting

Targeting of enforcement action means prioritising and directing regulatory effort effectively. This means concentrating on the activities which create the most significant risk, either because the nature of the activity is inherently high-risk or, despite being less high-risk, because of a lack of appropriate controls or appropriate attitude on the part of a particular business. It also involves identifying and focusing on evidence of systemic risk or behaviour not conducive to effective risk management, including timeliness of response.

## Enforcement and Penalties

The Inspectorate exercises the functions of the Secretary of State and Welsh Ministers to:

- Serve an enforcement order under section 18 of the Act, provisional or final dependent on the severity of the non-compliance and the risk to water supplies
- Accept an undertaking under section 19 of the Act when appropriate in place of an enforcement order, if the steps proposed will ensure compliance
- Impose a financial penalty under section 22A of the Act on a water undertaker or water supply licensee.

## Enforcement Options

The Inspectorate will seek a resolution of matters prior to taking formal action. Where outcomes may be improved to mitigate risks, the most appropriate option in the circumstances of the particular case will be taken as follows:

### 3.1 Advisory Letters

The Inspectorate may decide that circumstances do not warrant formal enforcement action, and in such cases, the Inspectorate will send an advisory letter or report, which may include suggestions or recommendations (for example, an audit inspection letter and report; an incident assessment letter) for the regulated business to take certain specified actions. Failure to take action in response or where risks, despite repeat recommendations, remain unmitigated may result in enforcement action being considered by the Inspectorate.

### 3.2 Orders for securing compliance and undertakings

Where circumstances are not trivial and/or the regulated business has not responded to recommendations in an advisory letter and/or an audit report, or where securing compliance requires a planned and staged response to achieve compliance, an undertaking under section 19 of the Act may be offered as an agreement between the Inspectorate and the regulated business, requiring the company to take appropriate action and the milestones required to achieve

compliance. Where it seems to the Inspectorate that a company is complying with an undertaking, further enforcement action will be stayed.

Should circumstances require further enforcement, such as when milestones are not being complied with, a Mind to Enforce letter will be sent to the nominated working level contact in the regulated business, prior to serving a statutory enforcement order under section 18 of the Act. Subsequent enforcement documents will be addressed to the nominated Board Level contact in the regulated business.

Where the Inspectorate proposes to take any of the above actions, it will offer a period within which the company may make informal representations to it. The Board Level contact may take the opportunity of a meeting with a Deputy Chief Inspector to discuss the matter, including any alternative remedies permitted by law. After any such meeting and once the Inspectorate has decided on the most appropriate enforcement action, the Inspectorate will explain the consequences to the regulated business of any enforcement measure the Inspectorate takes.

However, if there is evidence of an immediate risk to the interests of national security, enforcement action may be initiated without a period for representations.

Failure to comply with undertakings, or orders may result in further enforcement action being taken by the Inspectorate.

In the case of failure to comply with an enforcement order, the company will be given notice if the Inspectorate decides to either impose a fine under section 22A or apply for a court injunction for non-compliance. Failure to comply with a court injunction may result in the imposition of a period of imprisonment and/or a fine for contempt of court.

The Inspectorates commitment to hearing representations does not displace the statutory right of a company aggrieved by an enforcement order who desires to question its validity on the specified grounds in section 21(1) of the Act to make an application to the High Court.

### **3.3 Financial penalties under section 22A of the Water Industry Act 1991**

Before imposing a penalty on the regulated business where it has contravened or is contravening any statutory or other requirement which is enforceable under section 18, the Inspectorate will give notice stating that it proposes to impose a penalty and the amount of the penalty proposed to be imposed; setting out the condition, requirement or standard of performance in question; specifying the acts or omissions which, in the opinion of the Inspectorate, constitute the contravention or failure in question and the other facts which, in the opinion of the Inspectorate, justify the imposition of a penalty and the amount of the penalty proposed; and specifying the period (not being less than twenty-one days from the date of publication of the



notice) within which representations or objections with respect to the proposed penalty may be made.

Any penalty subsequently imposed may be up to 10% of the turnover of the company. The size of the penalty will be based upon the consideration of seriousness, culpability and where applicable, potential impact or impact seen on the essential service. The Inspectorate will start in the middle of bands in determining penalties. Mitigating or aggravating circumstances will determine where in the band the penalty will ultimately sit. The Inspectorate will follow the methodology used in the Environmental Sentencing Guidelines, historically used to set fines when a water supplies licensee has been convicted of an offence under the Water Industry Act 1991 or the Water Supply (Water Quality) Regulations 2016 (as amended) (England) and the Water Supply (Water Quality) Regulations 2018 (Wales). Penalties will be paid into the relevant Consolidated Fund, this will be outlined in each case in the penalty notice.

Companies may make representations and objections following being given notice of intention to impose a penalty, and appeal any decision as described in the relevant sections below.

## Representations and Appeals

### Representations

As explained above, if the Inspectorate is considering any type of enforcement action, the Inspectorate will explain the situation to the nominated working level contact in the regulated business, unless there is evidence of an immediate risk to health or to the availability, integrity or delivery of essential services. If following discussion the Inspectorate decides to initiate enforcement then a Deputy Chief Inspector will write to the nominated Board Level contact of the regulated business, to notify them formally and explain the matter.

If, after full participation in the above enforcement arrangements, the nominated Board Level contact in the regulated business feels that the final approach to enforcement has been unfair or there are important matters which have not previously been brought to our attention, then the Chief Executive Officer (or equivalent) may make non-statutory representations to the Chief Inspector in writing. On receipt of representations, the Chief Inspector will discuss the matter with the Chief Executive Officer of the regulated business as soon as practicable, normally within seven days. Following discussion and, where appropriate, submission of further information by the regulated business, the Chief Inspector will reach a final

decision on the appropriate enforcement action as soon as practicable, normally within 30 days.

## Appeals

### Enforcement orders

A water undertaker or water supply licensee may make an application to the High court if it considers that the enforcement authority didn't give the power to make the section 18 order, or that the statutory requirements were not complied with.

### Financial Penalties

A water undertaker or water supply licensee may make an application to the High Court if it disputes the imposition of the penalty, the amount or the date for payment, within 42 days of the date of the penalty.