

**WATER INDUSTRY ACT 1991, SECTION 13(1)
MODIFICATION OF THE CONDITIONS OF APPOINTMENT OF
SOUTH EAST WATER LIMITED**

Made on 16 February 2012

Coming into effect on 27 February 2012

The Water Services Regulation Authority, in exercise of the power conferred on it by section 13(1) of the Water Industry Act 1991 (the "Act"), after giving notice as required by section 13(2) of the Act, hereby makes the modifications described in the Schedule attached hereto to the Conditions of the Appointment of South East Water Limited (the "Appointee") as a water undertaker under Chapter I of Part II of the Act, the Appointee having consented to these modifications.

Signed for and on behalf of the

Water Services Regulation Authority

Regina Finn

Chief Executive

Schedule

Condition B is deleted and replaced with the following text:

"Condition B: Charges

Part I. Explanatory Provisions

1 Introduction

The purposes of this Condition are set out in the following sub-paragraphs.

- 1.1 To limit increases in standard charges made by the Appointee for the supply of water. The weighted average increase is limited to the sum of the movement in the Retail Prices Index and an Adjustment Factor, called K.

Changes in metered charges are calculated by reference to actual consumption in a Weighting Year (a financial year of the Appointee). Changes in unmetered charges are calculated by reference to changes in average revenue per chargeable supply calculated on the customer base as at the preceding 1 December. Changes are weighted in proportion to the contribution which each type of charge makes to total revenue in the Weighting Year.

These matters are dealt with in Part II under the heading "Restriction of Standard Charges for Basket Items".

- 1.2 To provide for a review of the Appointed Business to be carried out by the Water Services Regulation Authority at five-yearly intervals, so that the Water Services Regulation Authority can determine whether the Adjustment Factor should be changed. Except where expressly provided in this Condition all reviews will cover periods of five consecutive years. This is dealt with in Part III under the heading "Periodic Reviews".

- 1.3 To enable the Appointee:

- (1) to refer to the Water Services Regulation Authority for determination from time to time the question of changing the Adjustment Factor to allow for Notified Items and Relevant Changes of Circumstance;
- (2) to refer to the Water Services Regulation Authority for determination at any time the question of changing the Adjustment Factor where circumstances have a substantial adverse effect on the Appointed Business; and
- (3) where notice to terminate the Appointment has been given, to refer to the Water Services Regulation Authority for determination the question what the Adjustment Factor should be in the future, on the assumption that the Appointment was to continue in force, for the purpose of facilitating consideration of the terms on which a new appointee could accept transfers of property, rights and liabilities from the Appointee, as provided in section 9(4) of the Act.

These matters are dealt with in Part IV under the heading "Interim Determinations".

- 1.4 To provide for the Water Services Regulation Authority to initiate changes to the Adjustment Factor to allow for Notified Items and Relevant Changes of Circumstance. This is also dealt with in Part IV.
- 1.5 To enable the Appointee to require the Water Services Regulation Authority to refer to the Competition Commission matters arising out of determinations by the Water Services Regulation Authority referred to in sub-paragraphs 1.2 and 1.4 and references referred to in sub-paragraph 1.3. These matters are dealt with in Part V under the heading "References to the Competition Commission and Modification of this Condition".
- 1.6 To require the Appointee to give Information to the Water Services Regulation Authority to enable it to make determinations under this Condition. This is

dealt with in Part VI under the heading "Provision of Information to the Water Services Regulation Authority".

2 **Defined Terms which apply for the purpose of all parts of this Condition**

In this Condition:

references to "**the Appointed Business**" shall be construed as if the Appointed Business included the management and holding by the Appointee of any protected land;

"**Average Charge per Chargeable Supply**" means, in respect of a specified Unmeasured Basket Item for a specified year, the amount $\frac{R}{N}$ where:

R is the annual revenue (exclusive of VAT) which would accrue to the Appointee in respect of the specified Unmeasured Basket Item if all Standard Charges (other than Excluded Charges) made or to be made in respect of that Unmeasured Basket Item in the specified year were applied to all Chargeable Supplies of the Appointee which would have been subject to those Standard Charges as at 1 December preceding the specified year; and

N is the number of Chargeable Supplies as at such 1 December for which the Appointee would have been entitled to make those Standard Charges, provided that, where the specified year is a Prior Year,

- (a) there shall be included in N the number of any additional Chargeable Supplies which the Appointee would have made as at such 1 December if the Standard Charges to be made in respect of the Unmeasured Basket Item in the relevant Charging Year had applied; and
- (b) there shall be excluded from N the number of any Chargeable Supplies which the Appointee would not have been entitled to

make as at such 1 December if the Standard Charges to be made in respect of the Unmeasured Basket Item in the relevant Charging Year had applied.

"Basket Items" means the Measured Basket Item and the Unmeasured Basket Item;

"Chargeable Supply" means any supply of water for which charges are payable;

"Excluded Charges" unless and until otherwise agreed between the Water Services Regulation Authority and the Appointee, are

- (1) amounts payable in respect of an unmeasured supply of water by means of stand-pipes or water tanks and in respect of the erection or maintenance of stand-pipes or water tanks;
- (2) charges for a supply of water provided by the Appointee under section 59 of the Act;
- (3) charges for unmeasured supplies of water to cattle troughs;
- (4) charges for unmeasured building water supplies;
- (5) amounts payable in respect of an unmeasured supply of water by means of bowsers or water tankers;
- (6) charges for unmeasured supplies of water to farm taps and other agricultural water points; and
- (6A) Charges in any Charging Year for supplies of water (or for the provision of sewerage services or for the reception, treatment and disposal of trade effluent) to premises where the premises were supplied in the relevant Weighting Year with not less than such quantity of water as is specified from time to time under section 7(5)(a) of the Act

AND, for the avoidance of doubt, but without prejudice to the meaning of Standard Charges in respect of Basket Items, shall also include:

- (7) charges payable for any such connection as is described in section 146(2)(a) of the Act;
- (8) charges for a supply of water in bulk to another water undertaker;
- (9) amounts payable under any such agreement as is described in section 20(1)(b) of the Water Resources Act 1991; and
- (10) charges payable under any agreement for any unmeasured supply of water which are calculated by reference to the rateable value of hereditaments, occupied by the person to whom the supply is provided, fixed in accordance with section 32, 33 or, as the case may be, 34 of the General Rate Act 1967 or, as the case may be, fixed in accordance with section 54 of the Local Government Finance Act 1988

but so that where this Condition requires reference to be made to Excluded Charges in a Charging Year prior to that starting on 1 April 1990 the expression "Excluded Charges" shall be read and construed as though:

- (a) there were added to sub-paragraph (2) of this definition the words "and charges for a supply of water provided by the Water Authority under section 37 of Schedule 3 to the 1945 Act";
- (b) there were added to sub-paragraph (9) of this definition the words "and any agreement entered into by the Water Authority under section 158 of the Water Resources Act 1963 with respect to any of the matters referred to in sections 158(1)(b) and 158(1)(d) of the Water Resources Act 1991";

"The Initial Determination" means the determination by the Secretary of State after the transfer date and before 1 April 1990 of the Adjustment Factor

for each Charging Year starting with the Charging Year starting on the 1st April 1990;

"Measured Basket Items" means measured water supply;

a **"measured supply"** is one where all or some of the charges for that supply are based on measured quantities of volume and an "unmeasured supply" is any other;

"Non-volumetric Charge" is a charge which is not based on measured quantities of volume;

"the Relevant Charging Year" means a Charging Year starting on 1 April 1995 or on the fifth anniversary of the first day of the first of the Charging Years in respect of which the last Periodic Review was carried out;

"Standard Charges" means

- (1) charges fixed under any such charges scheme as is referred to in section 143 of the Act;
- (2) charges payable under any such agreement as is referred to in section 142 of the Act, under or for which all the charges payable are in accordance with standard charges published or fixed by the Appointee;
- (3) charges determined by agreement in respect of a supply of water provided by the Appointee for non-domestic purposes where all the charges so determined in respect of that supply are in accordance with standard charges published or fixed by the Appointee;
- (4) charges fixed under any such charges scheme made by the Appointee under section 31 of the 1973 Act as, by virtue of paragraph 16(1) of Schedule 26 to the Water Act 1989, has effect on and after the transfer date as if it were a charges scheme made under section 143 of the Act, by the Appointee;

- (5) charges in respect of any such supply which the Appointee was under a duty to make under section 27 of the 1945 Act as, by virtue of paragraph 8 of Schedule 26 to the Water Act 1989, is a supply which the Appointee is under a duty to make on and after the transfer date where all charges in respect of such supply are in accordance with standard charges published or fixed by the Appointee; and
- (6) charges payable under any agreement made or entered into by the Appointee under any local statutory provision or under any other power conferred upon the Appointee otherwise than by virtue of the Act, under which all the charges payable are in accordance with standard charges published or fixed by the Appointee; and

Provided that no part of this definition shall apply to any charge which is for the time being an Excluded Charge by virtue of (6A) of the definition of Excluded Charges;

but so that where this Condition requires reference to be made to Standard Charges in a Charging Year prior to that starting on 1 April 1990 the expression "Standard Charges" shall be read and construed as though:

- (a) there were added to sub-paragraph (4) of this definition the words "and any charges scheme made by the Appointee under section 31 of the 1973 Act";
- (b) there were added to sub-paragraph (5) of this definition the words "and any such supply which the Appointee was under a duty to make under section 27 of the 1945 Act, where all the charges in respect of such supply were in accordance with standard charges published or fixed by the Appointee".

In this definition references to standard charges published or fixed by the Appointee are to such charges, where published or fixed under a charges scheme or otherwise;

"**Termination Notice**" means a notice given in accordance with Condition O;

"**the Unmeasured Basket Item**" means unmeasured water supply;

"**Weighted Average Charges Increase**" means the sum calculated as follows:

$$W_t = \left(\frac{A_t(i)}{A_{t-1}(i)} \cdot r(i) \right) + \left(\frac{B_t(j)}{B_{t-1}(j)} \cdot r(j) \right) - 1$$

where

W_t is the Weighted Average Charges Increase for the Charging Year

i identifies the Unmeasured Basket Item

j identifies the Measured Basket Item

$A_t(i)$ is the Average Charge Per Chargeable Supply in respect of Unmeasured Basket Item i for the Charging Year

$A_{t-1}(i)$ is the Average Charge Per Chargeable Supply in respect of Unmeasured Basket Item i for the Prior Year

$B_t(j)$ is the Weighting Year Revenue in respect of Measured Basket Item j for the Charging Year

$B_{t-1}(j)$ is the Weighting Year Revenue in respect of Measured Basket Item j for the Prior Year

$r(i)$ or $r(j)$ is the revenue (exclusive of VAT) which accrued to the Appointee in the Weighting Year from all Standard Charges other than Excluded Charges (including, in the case of the Measured Basket Item, any Non-volumetric Charge) in respect of Unmeasured Basket Item i or Measured Basket Item j

(as the case may be), divided by the aggregate of such revenues for both Basket Items;

"Weighting Year" means the financial year of the Appointee ended last before 7 October in the Prior Year;

"Weighting Year Revenue" means the revenue (exclusive of VAT) which would have accrued to the Appointee in the Weighting Year in respect of the Measured Basket Item, if all Standard Charges other than Excluded Charges (including any Non-volumetric Charge) made or to be made in respect of the Measured Basket Item in the Charging Year or, as the case may be, the Prior Year had applied.

Part II. Restriction of Standard Charges for Basket Items

3 The Charges Limit

3.1 Subject to paragraph 3A, the Appointee shall ensure that the Weighted Average Charges Increase in any Charging Year (beginning with the Charging Year starting on 1 April 1990) when expressed as a percentage does not exceed the Charges Limit.

3.2 The Charges Limit is the percentage calculated as $RPI + K$, where

RPI is the percentage change (expressed, in the case of an increase, as a positive number, in the case of a decrease, as a negative number and, in the case of no change, as zero) in the Retail Prices Index between that published for the month of November in the Prior Year and that published for the immediately preceding November.

K is the Adjustment Factor.

3.3 **[Not used]**

3.4 The Adjustment Factor shall be:

- (1) for each of the Charging Years starting on 1 April in the year specified in Column 1 of the table below, the number set opposite that Charging Year in Column 2 of the said table (or such other number as shall from time to time be determined under this Condition);

Column 1 (Year)	Column 2 (Adjustment Factor)
2008	1.1
2009	-0.3

- (2) for each subsequent Charging Year, such number as shall from time to time have been determined under this Condition or, if none, zero.

and the Adjustment Factor may be a different number for any Charging Year and may be a positive or negative number, or zero.

3.5 If the Weighted Average Charges Increase in any Charging Year is less than the Charges Limit then the Charges Limit for the following Charging Year shall be increased by the amount of such deficiency.

3.6 The Charges Limit for the Charging Year started on 1 April 1992 and each subsequent Charging Year shall only be increased by virtue of sub-paragraph 3.5 to the extent that such deficiency is not attributable to any Charging Year ended three or more years previously.

3A Transitional Adjustment

Notwithstanding the provisions of paragraph 3 above, the Appointee shall ensure that the Weighted Average Charges Increase in the Charging Year starting on 1st April 2013, when expressed as a percentage, does not exceed the Charges Limit plus 3.

4 Matters affecting the Charges Limit and the calculation of the Weighted Average Charges Increase

4.1 Where the Appointee determines:

- (1) to make a material change (other than one which relates solely to the amount of a charge) to the basis on which it makes or calculates any Standard Charge, or Standard Charges taken as a whole, (other than Excluded Charges) for the supply of water;
- (2) to make a material change to the scope of any such scheme, agreement or consent as is referred to in the definition of "Standard Charges" (insofar as such change relates to charges for the supply of water, other than Excluded Charges); or
- (3) to change the basis on which the Appointee treats supplies of water as separate supplies for the purpose of making Standard Charges (other than Excluded Charges) which affects the calculation of Average Charge Per Chargeable Supply it shall:
 - (a) notify the Water Services Regulation Authority; and
 - (b) furnish to the Water Services Regulation Authority such explanations and Information relating to such change as the Water Services Regulation Authority considers requisite or expedient having regard to the purposes of this Condition.

4.2 Where there is a material change to the basis of compiling the Retail Prices Index this Condition, insofar as it relates to that part of the calculation of the Charges Limit to which the Retail Prices Index is relevant, shall be modified in such manner as the Water Services Regulation Authority, after prior consultation with the Appointee, may determine to be appropriate to take account of such change.

5 Verification of Compliance with the Charges Limit

5.1 Statements

The Appointee shall deliver to the Water Services Regulation Authority the following statements:

- (1) not later than the relevant date specified in sub-paragraph 5.2, a statement in writing (a "**Principal Statement**") of:
 - (a) the revenue which accrued in the Weighting Year from all Standard Charges (including, in the case of the Measured Basket Item, any Non-volumetric Charge), other than Excluded Charges, in respect of the Unmeasured Basket Item i and the Measured Basket Item j;
 - (b) the aggregate revenue which accrued in the Weighting Year from all such Standard Charges; and
 - (c) the amount of each and every type or category of charge for the supply of water which the Appointee proposes to make of a kind specified in the definition of "Standard Charges" as at the commencement of that Charging Year which are not Excluded Charges (and for this purpose where the Appointee proposes to charge different prices per cubic metre of water supplied depending upon the volume of water supplied or the time of supply or the category of customer or any other variable factor then each such price shall be treated as a different type or category of charge); and
- (2) not later than two months, or such later date as the Water Services Regulation Authority may allow, before the date during any Charging Year as from which the Appointee proposes to make or fix a new Standard Charge (which is not an Excluded Charge) for the supply of water or to increase or decrease the amount of any such charge a statement in writing (a "**Supplemental Statement**") of the new charge or the amount by which the Appointee proposes to increase or decrease the amount of that charge.

Any Principal Statement or Supplemental Statement shall be accompanied by the information necessary to calculate $A_t(i)$ and $A_{t-1}(i)$ and $B_t(j)$ and $B_{t-1}(j)$ in the definition of Weighted Average Charges Increase and a written statement of those calculations.

5.2 The relevant date for the purpose of sub-paragraphs 5.1(1) is:

- (1) in the case of the Principal Statement required to be delivered in respect of the Charging Year starting on 1 April 1990, the latter of:
 - (a) the date which is one month from the date of the Secretary of State's determination under sub-paragraph 3.3; and
 - (b) 1 February 1990;
- (2) in the case of the Principal Statement required to be delivered in respect of all subsequent Charging years, the date which is two months before the start of the relevant Charging Year.

4.3 Auditor's Report

Any Principal Statement shall be accompanied by a report by the Auditors as to whether, in their opinion, the information included in that Principal Statement under sub-paragraphs 5.1(1)(a) and (b) has been properly extracted from the relevant accounting statements prepared and delivered by the Appointee under paragraph 4 of Condition F and from the Appointee's accounting records and such other records of the Appointee as the Auditors consider relevant for the purpose of making their report and as to whether, in their opinion, the calculations delivered by the Appointee with that Principal Statement are in accordance with this Condition and with the Appointee's accounting and such other relevant records.

6 [Not used]

Part III. Periodic Reviews

7 [Not used]

8 Periodic Reviews of the Appointed Business at Regular Five yearly intervals

8.1 The Appointee shall furnish to the Water Services Regulation Authority such Information as the Water Services Regulation Authority may reasonably require to enable it to carry out a Periodic Review for the purpose of determining the question whether (having regard to all the circumstances which are relevant in the light of the principles which apply by virtue of Part I of the Act in relation to the Water Services Regulation Authority's determination including, without limitation, any change in circumstance which has occurred since the last Periodic Review or which is to occur) the Adjustment Factor should be changed (and if so what change should be made to the Adjustment Factor) for:

- (1) the five consecutive Charging Years starting on 1 April 2005; and
- (2) each period of five consecutive Charging Years starting on the fifth anniversary of the first day of the period in respect of which the immediately preceding Periodic Review was carried out.

8.2 The Appointee shall furnish to the Water Services Regulation Authority such Information (including further detail about or explanation of Information previously supplied, whether or not under this sub-paragraph 8.2) as the Water Services Regulation Authority may by notice reasonably require to enable it to carry out the Periodic Review.

9 [Not used]

10 Periodic Reviews of the Appointed Business where a Termination Notice has been given

- 10.1 Where a Termination Notice has been given by the Secretary of State to the Appointee, the Appointee may refer to the Water Services Regulation Authority for determination by it the question whether, on the assumption that such a Termination Notice had not been given, (but subject thereto, having regard to all the circumstances which are relevant in the light of the principles which apply by virtue of Part I of the Act in relation to the Water Services Regulation Authority's determination, including, without limitation, any change in circumstance which has occurred since the Initial Determination or, as the case may be, the last Periodic Review or which is to occur) the Adjustment Factor should be changed (and if so what change should be made to the Adjustment Factor) for the five consecutive Charging Years starting with the Charging Year starting 1 April last before the Termination Notice is to expire.
- 10.2 A reference to the Water Services Regulation Authority under this paragraph 10 shall be made by notice given to the Water Services Regulation Authority not earlier than 1 July and not later than 14 July in the Charging Year next but one before that commencing on the said 1 April.

11 Effect of Termination of the Appointment on Periodic Reviews

Subject to paragraph 10, if the Secretary of State shall have served a Termination Notice on the Appointee then this Condition shall have effect as though, references to a Periodic Review being carried out in respect of a period of five consecutive Charging Years were references to a Periodic Review being carried out in respect of the relevant Appointment in respect of a period of that number of consecutive Charging Years which is the lesser of:

- (1) five; and
- (2) the number of consecutive Charging Years (including that in which the day on which the Termination Notice is to take effect falls) in the period starting on the first day of the first of the Charging Years in respect of which that Periodic Review is to be carried out and ending on the day on which the Termination Notice is to expire.

Part IV: Interim Determinations

12 Matters of Interpretation and Construction which apply for the purposes of this Part IV

12.1 In this Part of this Condition:

"the Appropriate Discount Rate" means such rate of return as, at the time at which the Appropriate Discount Rate falls to be applied from time to time under this Condition, investors and creditors would reasonably expect of a properly managed company holding the Appointments whose sole business consists of being a water undertaker and, without excluding other considerations which may also be relevant, having its equity share capital listed on the London Stock Exchange plc, and the same Appropriate Discount Rate shall be applied for all purposes in determining questions the subject of the same reference (including questions determined by the Water Services Regulation Authority under paragraph 14 when it determines questions referred to it by the Appointee under paragraph 13);

"equity share capital" has the same meaning as in the Companies Act 2006;

"Interim Determination" means the determination by the Water Services Regulation Authority of the relevant questions the subject of a reference by the Appointee under paragraph 13 or pursuant to paragraph 14 or, as the case may be, the determination by the Competition Commission of the relevant questions or of the disputed determinations the subject of a reference to it pursuant to sub-paragraph 15(2) or 15(3), which relates to a reference by the Appointee under paragraph 13 or a determination pursuant to paragraph 14;

"making a Relevant Determination" means determining the Adjustment factor initially or determining, in carrying out the most recent Periodic Review, or making any subsequent Interim Determination (or, where there has been no Periodic Review, in making any Interim Determination) whether the adjustment factor should be changed (and if so, what change should be made

to the Adjustment Factor), and "**Relevant Determination**" shall be construed accordingly;

"**Net Present Value**" means the net present value calculated as at 30 September in the year in which the relevant Reference Notice is given or, where in any year no Reference Notice is given under paragraph 13 but the Water Services Regulation Authority gives a notice to the Appointee under paragraph 14, as at 30 September in the year in which the Water Services Regulation Authority gives the notice, by discounting subsequent cash flows and inflating earlier cash flows at the Appropriate Discount Rate, assuming all cash flows in any Charging Year occur on 30 September in that Charging Year;

a "**Notified Item**" is any item notified by the Water Services Regulation Authority to the Appointee as not having been allowed for (either in full or at all) in making a Relevant Determination; and for the purpose of this definition:

- (a) where any such item was not allowed for in full then it shall only be a Notified Item to the extent that it was not allowed for; and
- (b) where, in determining whether the Adjustment Factor should be changed (and if so what change should be made to the Adjustment Factor), the Water Services Regulation Authority, or, as the case may be, the Competition Commission, allows for any such item as was previously so notified by the Water Services Regulation Authority then references in this Condition to Notified Items and Relevant Items shall be taken, for the purposes of any subsequent Interim Determination, to exclude such item to the extent that the Water Services Regulation Authority, or, as the case may be, the Competition Commission, allowed for it as aforesaid;

a "**Relevant Change of Circumstance**" is any of the following:

- (1) (a) the application to the Appointee of any legal requirement; and

- (b) any change to any legal requirement which applies to the Appointee (including any legal requirement ceasing to apply, being withdrawn or not being renewed);

- (2) either of the following circumstances for any Charging Year in respect of which the Secretary of State, or, as the case may be, the Water Services Regulation Authority, notified the Appointee that variations in value received or expected to be received from Relevant Disposals of Land shall constitute a Relevant Change of Circumstance:
 - (a) where for any Charging Year the value received or expected to be received from a Relevant Disposal of any Identified Land is, or is expected to be, different from the value which the Secretary of State, or, as the case may be, the Water Services Regulation Authority, notified the Appointee was the value attributable to a Relevant Disposal of that Identified Land for that Charging Year which had been allowed for in determining the Adjustment Factor initially or whether the Adjustment Factor should be changed (and if so what change should be made to the Adjustment Factor); or

 - (b) where for any Charging Year, and to the extent not taken into account under (a) above, the aggregate value received or expected to be received from Relevant Disposals of Non-Identified Land is, or is expected to be, different from the value which the Secretary of State, or, as the case may be, the Water Services Regulation Authority notified the Appointee was the value attributable to Relevant Disposals of Non-identified Land for that Charging Year which had been allowed for in determining the Adjustment Factor or whether the Adjustment Factor should be changed (and if so what change should be made to the Adjustment Factor)

and so that any notification by the Water Services Regulation Authority for purposes of this sub-paragraph (2) shall be relevant for the purposes of this sub-paragraph (2) to the exclusion of any earlier notification by the Secretary of State or the Water Services Regulation Authority for the purposes of this sub-paragraph (2) to the extent that the first-mentioned notification is made in respect of matters in respect of which that earlier notification was made.

For the purposes of this sub-paragraph (2):

- (i) "**Identified Land**" means any piece or parcel of protected land identified in any such notification referred to in (a) above as is relevant for the time being for the purposes of this sub-paragraph as being included in that notification;
- (ii) "**land**" includes any interest or right in or over land;
- (iii) "**Non-identified Land**" means any piece or parcel of protected land, not being, or being part of a piece or parcel of protected land identified in any such notification referred to in (a) above as is relevant for the time being for the purposes of this sub-paragraph (2);
- (iv) "**protected land**" and "**disposal**" have the meanings respectively given to them in section 219 of the Act;
- (v) a "**Relevant Disposal**" means and includes any disposal by the Appointee;
- (vi) a "**Relevant Disposal of Land**" means and includes a Relevant Disposal of Identified Land and a Relevant Disposal of Non-identified Land;
- (vii) "**value**" includes value of any kind including, without limitation, cash, the value of real or personal property or any interest in

such property, the value of any right or benefit (actual or prospective) and the value of any release, in whole or in part, of any obligation or claim, provided that to the extent that any property, right or benefit shall consist of a right to receive cash or any other asset then no value shall be attributed to that property, right or benefit but the cash or other asset the subject thereof shall be included and treated as value received or expected to be received in the Charging Year in which it is received or expected to be received;

(viii) references to "**value received or expected to be received**" shall be construed so as to include receipts by, and grants to, the Appointee, any Associated Company or any other business in which either the Appointee or any Associated Company has a material direct or indirect interest;

(ix) **[Not used]**;

(x) in the case of a right or benefit, but subject to the proviso to (vii) above, value shall be deemed to have been received at the time the right is granted or the benefit arises;

(3) where:

(i) in making a Relevant Determination, an amount has been allowed for on account of steps taken or to be taken for the purpose of securing or facilitating compliance with a legal requirement (not being one to comply with which the Appointee has determined to make a change to the basis on which it charges customers for water supply services) or achieving a service standard adopted or to be adopted by the Appointee; and

(ii) in any such case:

- (A) the Appointee has not taken (by the date from which it was assumed for the purposes of assessing the amount allowed for as aforesaid it would take those steps) any or all of those steps which, for the purpose of assessing the amount allowed for as aforesaid, it was assumed it would take; and
- (B) as a result, the amount allowed for as aforesaid is substantially greater than the sum of (a) the costs (if any) actually incurred by the Appointee for the relevant purpose specified in (i) above and (b) so much (if any) of that amount as has been otherwise offset by prudent management of the capital programme; and
- (C) that purpose has not been otherwise achieved;

a "**Relevant Item**" is any of the following:

- (1) a Relevant Change of Circumstance (other than a Relevant Change of Circumstance falling within sub-paragraph (2) of the definition);
- (2) a Notified Item; and
- (3) a Relevant Disposal of Land and references to a Relevant Item are to a Relevant Change of Circumstance (other than a Relevant Change of Circumstance falling within sub-paragraph (2) of the definition), a Notified Item or a Relevant Disposal of Land as the context may require.

12.2 In the definition of a "Relevant Change of Circumstance" and for the purpose of that definition:

- (1) a "**legal requirement**" is any of the following:

- (a) any enactment or subordinate legislation to the extent that it applies to the Appointee in its capacity as a water undertaker (and for this purpose, but without prejudice to the generality of the foregoing, "subordinate legislation" includes any order made under section 18 of the Act, and any authorisation granted, approval given, or prohibition imposed, by the Secretary of State under The Water Supply (Water Quality) Regulations 2000);
- (b) any regulation made by the Council or the Commission of the European Communities to the extent that it applies to the Appointee in its capacity as a water undertaker, or decision taken by the said Commission which is binding on the Appointee in its capacity as a water undertaker and to the extent that it is so binding;
- (c) any licence, consent or authorisation given or to be given by the Secretary of State, the Authority or other body of competent jurisdiction to the Appointee for the purpose of carrying on any of the functions of a water undertaker;
- (d) any undertaking given by the Appointee to, and accepted by, the Secretary of State or, as the case may be, the Water Services Regulation Authority for the purposes of section 19(1)(b) of the Act;
- (e) other than any such undertaking as is referred to in (d), any undertaking given by the Appointee to any enforcement authority, and accepted by that enforcement authority, to take all such steps:
 - (i) as are specified by that enforcement authority to be necessary or appropriate for the Appointee to take for the purpose of securing or facilitating compliance with any

legal requirement in relation to which that enforcement authority is the enforcement authority; or

- (ii) the taking of which is specified by that enforcement authority to be a condition or requirement of granting or renewing any such licence, consent or authorisation as is referred to in (c) or agreeing not to withdraw the same;
- (f) the Conditions of these Appointments; and
- (g) any interpretation of law, or finding, contained in any judgment given by a court or tribunal of competent jurisdiction in respect of which the period for making an appeal has expired which requires any legal requirement falling within (a) to (f) above to have effect in a way:
- (i) different to that in which it previously had effect; or
 - (ii) different to that in which it was taken to have effect:
 - (A) for the purpose of determining the Adjustment Factor; or, as the case may be,
 - (B) in determining whether the Adjustment Factor should be changed (and if so what change should be made to the Adjustment Factor)

but so that nothing in sub-paragraphs (a) to (g) above shall apply so as to include:

- (i) any such legal requirement as is referred to in section 41 of the Environment Act 1995.
- (ii) that section

to the extent in either case that they require the Appointee to pay fees or charges to the relevant enforcement authority; and

- (2) "**enforcement authority**" means any person or body having jurisdiction to enforce or to take action under or in respect of the relevant legal requirement.

12.3 In paragraph 13 and in the definition of a "Relevant Change of Circumstance":

- (1) references to costs include references to expenditure and loss of revenue and references to costs being incurred include references to expenditure being made and loss of revenue being suffered; and
- (2) references to receipts include references to receipts, cash or other assets of any sort, whether of a capital or revenue nature and including receipts of grants, contributions, gifts and loans and
- (3) without prejudice to sub-paragraph (1) above, "Operating Expenditure" in sub-paragraph 14.2(6) includes those items currently so identified in Regulatory Accounting Guidelines 3 and 4 and in the June Return 1999 Reporting Requirement, line 22 in table 21 and line 23 in table 22. For the avoidance of doubt, depreciation, the write-down/off of assets, the profits/loss on disposal of assets and infrastructure renewals expenditure or charges are excluded.

12.4 (1) For the purposes of sub-paragraphs 13.2(1) costs, receipts and savings shall be ascertained at the general price level prevailing, or expected to prevail, on 30 September in the year in which the Appointee gives notice under sub-paragraph 13.1, or the Water Services Regulation Authority gives notice under paragraph 14.1(1).

- (2) In sub-paragraphs 13.2(8) and 13.2(9) and sub-paragraph (3) below "**Outturn Prices**", in relation to the amount of any Base Cash Flow or depreciation, means that amount as adjusted to take account of the actual or expected cumulative percentage change in the Retail Prices

Index from that prevailing, or expected to prevail, on 30 September in the year in which the Appointee gives notice under sub-paragraph 13.1 or the Water Services Regulation Authority gives notice under paragraph 14.1(1), up to and including that prevailing, or expected to prevail, on 30 September in the year in which the Base Cash Flow or depreciation occurred, or is expected to occur.

- (3) In sub-paragraph 13.2(8) "**Current Value**", in relation to any Base Cash Flow or depreciation at Outturn Prices, means that amount, as adjusted to take account of the actual or expected cumulative percentage change in the Retail Prices Index from 30 September in the year in which that Base Cash Flow or depreciation occurred or is expected to occur, up to and including 30 September in the relevant year.

12.5 For the purpose of section 13(5)(b) of the Act, the provisions of this Condition, to the extent that they relate to a Relevant Change of Circumstance falling within sub-paragraph (2) of that definition, are provisions of the Appointments which cannot be modified. This sub-paragraph shall cease to have effect if, but only if, this Condition ceases to contain any provision relating to changes to the Adjustment Factor to allow for Notified Items and Relevant Changes of Circumstance.

13 References to the Water Services Regulation Authority relating to Notified Items and Relevant Changes of Circumstance and circumstances having a substantial effect on the Appointed Business

13.1 The Appointee may from time to time refer to the Water Services Regulation Authority for determination by it (having considered the proposals of the Appointee) the questions set out in sub-paragraph 13.2. or as the case may be, sub-paragraph 13.3. Such reference shall be made by notice given to the Water Services Regulation Authority, which, in the case of the questions set out in sub-paragraph 13.2, shall be given in accordance with sub-paragraph 13.4. For the purposes of sub-paragraph 13.2 a single reference may be

made in respect of any number of Notified Items and Relevant Changes of Circumstance and sub-paragraph 13.2 shall be construed accordingly.

13.2 In the case of a Notified Item or where there has been or is to be a Relevant Change of Circumstance all of the following:

- (1) what are, or are likely to be, the costs, receipts and savings reasonably attributable to the Relevant Item and also, in the case of a Relevant Change of Circumstance falling within sub-paragraph (2) of the definition, the costs, receipts and savings reasonably connected with the Relevant Disposal of Land;
- (2) except in the case of a Relevant Change of Circumstance falling within sub-paragraph (2) of the definition, to what extent:
 - (a) are the costs determined under (1) reasonably recoverable through charges for services provided, functions carried out by, and other activities of, the Appointee in its capacity as a water undertaker which are not Standard Charges for Basket Items (not being Excluded Charges);
 - (b) in the case of receipts and savings, is the Relevant Item relevant to services provided, functions carried out by, and other activities of, the Appointee as a water undertaker which are not Basket Items in respect of which the Appointee makes Standard Charges (not being Excluded Charges)

and where it is determined that such costs are reasonably recoverable as aforesaid or, as the case may be, that the Relevant Item is relevant as aforesaid, either in full or to an extent, then references hereafter to costs, receipts and savings reasonably attributable to a Relevant Item are to those costs, receipts and savings except to that extent;

- (3) both of the following:

(a) what costs reasonably attributable to, or connected with, the Relevant Item as determined under (1) and what timing of incurring of such costs are appropriate and reasonable for the Appointee in all the circumstances to incur and programme, or, as the case may be to have incurred and programmed, by reason of the Relevant Item; and (b) what receipts and savings reasonably attributable to, or connected with, the Relevant Item as determined under (1) and what timing of such receipts and savings is appropriate and reasonable for the Appointee in all the circumstances to achieve and programme or, as the case may be, to have achieved and programmed, by reason of the Relevant Item and for the purpose of determining the separate amounts under (a) and (b), but without prejudice to the generality of the foregoing:

(i) no account shall be taken of:

(A) any trivial amounts;

(B) any costs, to the extent that they would have been, or would be, avoided by prudent management action taken since the transfer date (and for this purpose what constitutes "prudent management action" shall be assessed by reference to the circumstances which were known or which ought reasonably to have been known to the Appointee at the relevant time);

(C) any savings achieved by management action taken since the transfer date over and above those which would have been achieved by prudent management action (and for this purpose what constitutes "prudent management action" shall be

assessed by reference to the circumstances at the relevant time); or

- (D) any amounts attributable to matters allowed for in making a Relevant Determination, except to the extent that such amounts otherwise fall to be taken into account as amounts reasonably attributable to, or connected with, the Relevant Item under this sub-paragraph (3) and sub-paragraph (1) by virtue of the definition of a Notified Item and a Relevant Change of Circumstance; and
- (ii) in the case of a Relevant Change of Circumstance falling within sub-paragraph (1) of the definition, regard shall be had to whether either:
 - (a) the Secretary of State has notified the Water Services Regulation Authority of any change of policy, concerning any environmental or water quality standard, which has been made since Adjustment Factor was last determined or
 - (b) the Appointee has itself given notice to the Water Services Regulation Authority of the application to it of, or any change to, any legal requirement, before referring that legal requirement to the Water Services Regulation Authority under sub-paragraph 13.1;
- (4) having determined under (3) the separate amounts of costs and of receipts and savings in respect of each Relevant Item, what are the annual cash flows thereof (costs being netted off against the amount of receipts and savings for this purpose) over each Charging year

included in the timing determined under (3) (those annual cash flows being hereinafter referred to as "**the Base Cash Flows**");

- (5) what is the annual aggregate of:
 - (a) one half of the Base Cash Flows in respect of Relevant Changes of Circumstance falling within sub-paragraph (2) of that definition; and
 - (b) the Base Cash Flows in respect of all other Relevant Changes of Circumstance and Notified Items in both cases the subject of the notice or notices under sub-paragraph 13.4 or paragraph 14.1;
- (6)
 - (a) where any part of an annual aggregate derived under sub-paragraph (5) consists of items to which (b) below does not apply, what is the Net Present Value of that part of the annual aggregate, calculated up to the start of the first of the Charging Years for which the next Periodic Review falls to be carried out;
 - (b) where any part of the annual aggregate derived under sub-paragraph (5) consists of revenue and/or Operating Expenditure, what is the Net Present Value of that part of the annual aggregate, calculated over 15 years ; and
 - (c) what is the aggregate of the Net Present Values calculated under (a) and (b) ("**the Materiality Amount**");
- (7) is the Materiality Amount equal to or does it exceed ten per cent of the turnover attributable to the Appointed Business in the latest financial year for which accounting statements have been prepared and delivered to the Water Services Regulation Authority under Condition F, as shown by those accounting statements, and for this purpose where the Materiality Amount is a negative figure it shall be treated as though it were a positive figure;

- (8) if so, for each year ("the relevant year") until the first of the Charging Years for which the next Periodic Review falls to be carried out (having regard to any Review Notice or Reference Notice which has been given at the time when the reference is made),
- (a) what are the following amounts:
- (i) all Base Cash Flows at Outturn Prices attributable to the creation or acquisition of depreciable assets ("**Allowable Capital Expenditure**");
 - (ii) all the Base Cash Flows at Outturn Prices (save in respect of Relevant Changes of Circumstance falling within sub-paragraph (2) of that definition, where one half of the Base Cash Flow at Outturn Prices shall be used) attributable to the creation, acquisition or disposal of non-depreciable assets ("**Allowable Infrastructure Asset Expenditure**");
 - (iii) all other Base Cash Flows at Outturn Prices ("**Other Allowable Expenditure**");
 - (iv) the sum of the Current Value of all Allowable Capital Expenditure occurring up to and including the relevant year, divided by the weighted average expected life of the assets attributable to that Allowable Capital Expenditure at the time those assets were or are expected to be created or acquired ("**Allowable Depreciation**");
 - (v) the sum of the Current Value of all Allowable Capital Expenditure occurring up to and including the relevant year less the sum of the Current Value of all Allowable Depreciation occurring up to and including the relevant year ("**Allowable Net Asset Value**");

- (vi) the sum of the Current Value of all Allowable Infrastructure Asset Expenditure occurring up to and including the relevant year ("**Allowable Infrastructure Asset Value**");
- (vii) the Appropriate Discount Rate, adjusted so as to exclude any allowance for changes in the Retail Price Index, multiplied by the sum of:
 - A. the Allowable Net Asset Value for the relevant year; and
 - B. the Allowable Infrastructure Asset Value for the relevant year;

(the "**Allowable Return**"); and

- (b) what is the sum of:
 - (i) Other Allowable Expenditure;
 - (ii) Allowable Depreciation; and
 - (iii) the Allowable Return;

(the "**Annual Allowable Amount**");

- (9) what change to the Adjustment Factor over the period from the beginning of the first of the Charging Years referred to in sub-paragraph 13.4(1) (in any case where a Reference Notice has been given in respect of sub-paragraph 13.2) or sub-paragraph 14.1(1) (in any other case) until the first of the Charging Years for which the next Periodic Review falls to be carried out (having regard to any Review Notice or Reference Notice which has been given at the time when the reference is made) (the "**Relevant Period**") is most likely to allow, or,

as the case may be, require, the Appointee to make such charges over the Relevant Period ("**Adjusted Charges**"), in such a manner as to secure that the increase, or, as the case may be, decrease, in revenue attributable to the making of Adjusted Charges would, in each year of the Relevant Period, be equal to

(i) the Annual Allowable Amount for that year,

plus

(ii) where Base Cash Flows at Outturn Prices have occurred prior to the first year of the Relevant Period, the amount, which, calculated as a constant annual amount over the Relevant Period, would result in the sum of the Net Present Values of these amounts equalling the sum of the Net Present Values of the Annual Allowable Amounts for each of the years prior to the Relevant Period.

13.3 All of the following:

- (1) whether any circumstance (other than a relevant Change of Circumstance) has occurred which has or will have:
 - (a) a substantial adverse effect on the Appointed Business or on its assets, liabilities, financial position, or profits or losses, not being one which would have been avoided by prudent management action taken since the transfer date; or
 - (b) a substantial favourable effect on the Appointed Business, or on its assets, liabilities, financial position, or profits or losses, being one which is [(i)] fortuitous and (ii) not attributable to prudent management action; and
- (2) if so, what change should be made to the Adjustment factor.

For this purpose:

- (i) what constitutes "prudent management action" shall be assessed by reference to the circumstances which were known or which ought reasonably to have been known to the Appointee at the relevant time;
- (ii) an effect shall not be regarded as a substantial adverse effect or a substantial favourable effect in any case unless, if the questions set out in sub-paragraph 13.2 were to be asked in relation to the circumstance giving rise to it, the answer to that in 13.2(7) (taking the reference in it to ten per cent as a reference to twenty per cent) would be in the affirmative.

13.4 A Reference Notice given to the Water Services Regulation Authority in respect of sub-paragraph 13.2 shall contain or be accompanied by reasonable details of the Relevant Item in respect of which the Reference Notice is given and, unless the Water Services Regulation Authority otherwise consents, shall be given not later than:

- (1) the fifteenth day of September immediately preceding the first of the Charging Years in respect of which the Appointee wishes the change to the Adjustment Factor to take effect; or
- (2) if later, where the Water Services Regulation Authority has given a notice to the Appointee under paragraph 14.1 in respect of the same Charging Year, within fourteen days from the receipt by the Appointee of that notice.

14 Changes to the Adjustment Factor initiated by the Water Services Regulation Authority relating to Notified Items and Relevant Changes of Circumstance and Circumstances within sub-paragraph 13.3(1)(b)

14.1 In the case of a Notified Item or where any Relevant Change of Circumstance has occurred or is to occur, the Water Services Regulation Authority may,

having given notice to the Appointee specifying the Notified Item or, as the case may be, the Relevant Change of Circumstance, of its intention so to do not later than:

- (1) the fifteenth day of September immediately preceding the first of the Charging Years in respect of which it proposes the change to the Adjustment Factor to take effect; or
- (2) if later, where the Appointee has given a Reference Notice to the Water Services Regulation Authority in respect of sub-paragraph 13.2 and falling within sub-paragraph 13.4(1) in respect of the same Charging Year, within fourteen days from the receipt by the Water Services Regulation Authority of that Reference Notice

determine the questions set out in sub-paragraph 13.2 in respect of that Notified Item or, as the case may be, that Relevant Change of Circumstance. A single notice may be given under this sub-paragraph 14.1 in respect of any number of Notified Items and Relevant Changes of Circumstance and sub-paragraph 13.2 shall be construed accordingly.

14.2 Where sub-paragraph 13.4(2) or 14.1(2) applies, the questions set out in (5) to (9) inclusive of sub-paragraph 13.2 shall be determined in respect of all Notified Items and Relevant Changes of Circumstance in respect of which the Appointee and the Water Services Regulation Authority have given notice, taken as a whole.

14.3 In the case of sub-paragraph 13.3, the Water Services Regulation Authority shall give notice to the Appointee of its intention to determine the questions set out in sub-paragraph 13.3(1)(b) and (2).

Part V References to the Competition Commission and Modification of this Condition

5 References to the Competition Commission

Where:

- (1) pursuant to paragraph 8 or following a reference under paragraph 10, the Water Services Regulation Authority has not given notice to the Appointee of its determination within one year from the Review Notice Date or, in the case of a reference under paragraph 10, within one year from the date of the relevant Reference Notice;
- (2) following a reference under paragraph 13, the Water Services Regulation Authority has not given notice to the Appointee of its determinations (including any determinations under paragraph 14 which fall to be taken into account in determining the questions the subject of the reference under paragraph 13) within 3 months from the date of the relevant Reference Notice; or
- (3) the Appointee disputes any determination made by the Water Services Regulation Authority under Part III or Part IV of this Condition,

the Appointee may, by notice given to the Water Services Regulation Authority within:

- (a) 13 months from the Review Notice Date or, in the case of a reference under paragraph 10, from the date of the relevant Reference Notice (in the cases referred to in sub-paragraph (1));
- (b) 4 months from the date of the relevant Reference Notice (in the case referred to in sub-paragraph (2)); or
- (c) 2 months from the date on which the Water Services Regulation Authority gives notice of its determination to the Appointee (in the case referred to in sub-paragraph (3))

require the Water Services Regulation Authority to refer to the Competition Commission for determination by it:

- (i) in any case referred to in sub-paragraph (1) or (2), the relevant question or questions (including, where relevant, the questions in respect of any Notified Item or Relevant Change of Circumstance the subject of a notice under paragraph 14); or
- (ii) in any case referred to in sub-paragraph (3), the disputed determination.

15 Modification of this Condition following Periodic Reviews and references to the Water Services Regulation Authority or the Competition Commission

- 15.1 Except in the case of a Periodic Review carried out under paragraph 10, this Condition shall be modified by the change (if any) to the Adjustment Factor (which may be a different number for any Charging Year and may be a positive or negative number, or zero) necessary to give effect to any determination made by the Water Services Regulation Authority or the Competition Commission under, or, as the case may be, following a reference under, Part III, Part IV or Part V of this Condition.
- 15.2 Where the Appointee requires the Water Services Regulation Authority to make a reference to the Competition Commission under paragraph 15 in the case referred to in sub-paragraph (3) of that paragraph this Condition shall be modified by the change (if any) to the Adjustment Factor necessary to give effect to the Water Services Regulation Authority's determination but so that sub-paragraph 16.1 shall then apply to the determination made by the Competition Commission following such reference.

Part VI. Provision of Information to the Water Services Regulation Authority

16 [Not used]

- 16.1 The Appointee shall furnish to the Water Services Regulation Authority:

- (1) ...
- (2) not later than 30 September immediately following the date of the Reference Notice (in the case of a reference under paragraph 10);
- (3) at the time when it gives the relevant Reference Notice to the Water Services Regulation Authority (in the case of a reference under paragraph 13 falling within sub-paragraph 13.4(1));
- (4) as soon as reasonably practicable and in any event not later than the expiry of one month from the date of the Water Services Regulation Authority's notice to the Appointee under paragraph 14 (in the case of such a notice, including the case of a reference under paragraph 13 falling within sub-paragraph 13.4(2))

such Information as the Appointee reasonably believes is necessary or, as the case may be, as the Water Services Regulation Authority may reasonably require in its said notice, to enable the Water Services Regulation Authority to make its determination. The Appointee shall also furnish to the Water Services Regulation Authority as soon as reasonably practicable such further Information as the Water Services Regulation Authority may from time to time by notice to the Appointee reasonably require to make its determination.

- 16.2 The Appointee shall also furnish to the Water Services Regulation Authority from time to time when so requested by the Water Services Regulation Authority such Information as the Water Services Regulation Authority may reasonably require to decide whether or not to make determinations under paragraph 14.
- 16.3 Any Information furnished to the Water Services Regulation Authority under this paragraph 17 or under paragraph 8 shall, if the Water Services Regulation Authority so requires to make its determination, be reported on by a person appointed by the Appointee and approved by the Water Services Regulation Authority (such approval not to be unreasonably withheld) ("the Reporter").

16.4 The Appointee shall enter into a written contract of engagement with the Reporter which shall:

- (1) where such a report is required by the Water Services Regulation Authority under sub-paragraph 17.3, require the Reporter to prepare and furnish to the Water Services Regulation Authority, and separately to the Appointee, a written report addressed jointly to the Water Services Regulation Authority and the Appointee in form and substance such as may be specified by, or consistent with any guidelines specified by, the Water Services Regulation Authority at the time when it requires the report to be furnished, the matters so specified being reasonably appropriate to enable the Water Services Regulation Authority to make its determination (to the extent that the Information in respect of which that report is required to be prepared and furnished is relevant to that determination); and
- (2) include a term that the Reporter will provide such further explanation or clarification of his report as the Water Services Regulation Authority may reasonably require and such further Information in respect of, or verification of, the matters which are the subject of his report as the Water Services Regulation Authority may reasonably require.

The contract of engagement may also include provisions requiring the Reporter, his employees and agents to keep confidential and not to disclose, except to the Water Services Regulation Authority or as required by law, any Information which the Reporter obtains in the course of preparing his report.

16.5 The Appointee shall co-operate fully with the Reporter to enable him to prepare his report, including without limitation, so far as is necessary for that purpose:

- (1) subject to reasonable prior notice to the Appointee, giving to the Reporter access at reasonable hours to any Relevant Plant and to any

premises occupied by the Appointee in relation to the Appointed Business; and

- (2) subject to reasonable prior notice to the Appointee, allowing the Reporter at reasonable hours:
 - (a) to inspect and make photocopies of, and take extracts from, any books and records of the Appointee maintained in relation to the Appointed Business;
 - (b) to carry out inspections, measurements and tests on or in relation to any such premises or Relevant Plant; and
 - (c) to take on to such premises or on to or in to any Relevant Plant such other persons and such equipment as may be necessary for the purposes of preparing and completing his report.

16.6 Nothing in sub-paragraph 17.5 shall require the Appointee:

- (1) to do anything which is outside its reasonable control; or
- (2) to do, or to allow the Reporter to do, anything which would materially disrupt the Appointee's business (unless it is essential that that thing be done to enable the Reporter to prepare his report).

16.7 In sub-paragraphs 17.4 and 17.5:

- (1) references to the Reporter include references to his employees and agents; and
- (2) "**Relevant Plant**" means any plant used by the Appointee for the purpose of carrying out the Regulated Activities including, without limitation, water mains and other pipes and their accessories."