

**WATER SERVICES REGULATION AUTHORITY
WATER INDUSTRY ACT 1991, SECTION 13(1)**

**Modification of the Conditions of Appointment of
South East Water Limited**

**Made on 18 July 2013
Coming into effect on 22 July 2013**

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**

**Keith Mason
Senior Director of Finance and Networks**

Schedule

Conditions A, B and C are deleted and replaced with the following text:

“Condition A: Interpretation and Construction

1 Unless the contrary intention appears:

- (1) words and expressions used in these Conditions and references in these Conditions to enactments shall be construed as if they were in an Act of Parliament and the Interpretation Act 1978 applied to them;
- (2) references in these Conditions to enactments shall include any statutory modification thereof after the Appointment Date;
- (3) words and expressions used in these Conditions shall have the same meaning as in any provision of the Water Industry Act 1991;
- (4) references in these Conditions to sections and Schedules are references to sections of, and Schedules to, the Water Act 1989; and
- (5) references in these Conditions to paragraphs are references to paragraphs of the Condition in which the reference appears and references to sub-paragraphs are references to sub-paragraphs of the paragraph in which the reference appears.

2 In construing these Conditions:

- (1) the heading or title of any Condition or of any paragraph of any Condition shall be disregarded; and
- (2) any description of the purposes of a Condition shall be construed subject to the provisions of the rest of the Condition in which that description appears.

3 Unless the context otherwise requires, in these Conditions:

"the Act" means the Water Industry Act 1991;

"the 1945 Act" means the Water Act 1945;

"**the 1973 Act**" means the Water Act 1973;

"**the Appointed Business**" means the business consisting of the carrying out by the Appointee of the Regulated Activities;

"**the Area**" means the area for which for the time being the Appointee holds the appointment as water undertaker;

"**Associated Company**" means any Group Company or Related Company;

"**the Auditors**" means the Appointee's auditors for the time being appointed in accordance with the Companies Act 2006;

"**books and records**" means any and all books, records, files, maps, plans, documents, papers, accounts, estimates, returns and other data of whatsoever nature and whether or not created, recorded or maintained in a document;

"**Charging Year**" means a year commencing on 1 April;

"**domestic customer**" means the occupier of domestic premises;

"**domestic premises**" means any premises used wholly or partly as a dwelling or intended for such use;

"**financial year**" means a financial year of the Appointee beginning and ending on the respective dates referred to in section 390 of the Companies Act 2006;

"**Group Company**" means any subsidiary or holding company of the Appointee and any subsidiary of any holding company of the Appointee (other than the Appointee);

"**Information**" means information which is in the possession of the person required to furnish it or which it can reasonably obtain or which it can reasonably prepare from information which is in its possession or which it can reasonably obtain, and information which is required to be furnished under any of these Conditions shall be furnished, subject to the provisions of the Condition under which that information is required to be furnished, in such form and manner as the Water Services Regulation Authority may reasonably require;

"Periodic Review" means a review conducted by the Water Services Regulation Authority for the purpose of determining one or more Price Controls in accordance with Part III of Condition B, but so that references in Part IV of Condition B to a Periodic Review shall exclude any review carried out under paragraph 10 of that Condition and shall include the determination by the Competition Commission of the relevant questions or, as the case may be, the disputed determination referred to it under paragraph 15 of Condition B;

"Prior Year" means the year commencing 1 April immediately prior to the relevant Charging Year;

"Reference Notice" means a notice given to the Water Services Regulation Authority under paragraph 10 or 13 of Condition B;

"Regional Committee" means the regional committee to which the Appointee is allocated under section 27A of the Act;

"the Regulated Activities" means the functions of a water undertaker and, for the avoidance of doubt, references to the functions of a water undertaker shall include references to the duties imposed on a water undertaker;

"Related Company" means any body corporate in which the Appointee or any Group Company has a participating interest within the meaning of paragraph 11 of Schedule 10 to the Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008 or which has such a participating interest in the Appointee or any Group Company;

"Relevant Premises" means any office premises occupied by the Appointee in relation to the Appointed Business and to which members of the public have access;

"the Retail Prices Index" means the Retail Prices Index published by the Statistics Board each month in respect of all items or, if the said index for the month of November is not published by 31 December next following, such index for such month as the Water Services Regulation Authority may not later than 7 January next following determine to be appropriate in the circumstances, after such consultation with the Appointee as is reasonably practicable, and in such a case references to the

Retail Prices Index shall be construed for the purpose of all subsequent calculations for which the value of the Retail Prices Index for that year is relevant as references to that other index;

"Review Charging Year" means the first of the Charging Years in respect of which any Periodic Review is carried out;

"the Review Notice Date" means the first day of January which is fifteen months before the first day of the Review Charging Year;

"the transfer date" means 1 September 1989;

"Water Infrastructure Charge" means such a charge as is described in section 146(2)(a) of the Act.

- 4 Any notification required or permitted to be given under any Condition shall be given in writing and cognate expressions shall be construed accordingly.
- 5 The Appointee may refer to the Water Services Regulation Authority for determination by it (having considered any representations by the Appointee and any other water undertaker) any question arising as to whether any area, island, premises or installation is, or, as the case may be, are, comprised within the Water Supply Area as that expression is defined in Schedule 1 to this instrument.

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 empower the Water Services Regulation Authority to make determinations setting controls in respect of the charges to be levied by and/or revenue allowed to the Appointee or to any part of the Appointee's business (having regard to its costs) for the supply of water services.
- 1.2 To provide for reviews of the Appointed Business to be carried out by the Water Services Regulation Authority, so that the Water Services Regulation Authority can determine whether one or more Price Controls should be changed. 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 Price Control or Price Controls 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 Price Control or Price Controls 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 Price Control or Price Controls 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 Price Control or Price Controls 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".
 - 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;

"**End-User**" means a person who, otherwise than as a person holding an appointment or a licence under the Act or under other legislation in respect of the supply of water or sewerage services enacted from time to time, is a customer of the Appointee or a user of the goods or services concerned;

"**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) at any time before (but not including) 1 April 2015, 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 Prior 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 water supply, shall also include:

- (7) at any time before (but not including) 1 April 2015, 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 Appointee 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 Appointee under section 81 of the Water Resources Act 1963 with respect to any of the matters referred to in sections 81(1)(b) and 81(1)(d) of that Act.

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

"Price Control" means a control set by the Water Services Regulation Authority, pursuant to a Periodic Review or an Interim Determination, or deemed to be so set by virtue of sub-paragraph 15.2, in respect of the charges to be levied by and/or revenue allowed to an Appointed Business or any part thereof (having regard to its costs) and such matters ancillary to the said control, by way of a determination pursuant to this Condition. The appropriate nature and form of each control for Retail Activities will depend on the circumstances of each case;

"Retail Activities" means such activities that constitute the provision of goods or services by the Appointee directly to one or more End-Users, and such activities ancillary to such provision including ownership of meters, and that are so designated from time to time (which designation, for the avoidance of doubt, shall be reversible) by the Water Services Regulation Authority or by such person or persons as may be nominated by the Water Services Regulation Authority to do so, but for the avoidance of doubt shall not include the following:

- (a) water resources, raw water distribution, water treatment or treated water distribution (as each of those is defined in the Water Services Regulation Authority's Regulatory Accounting Guideline 4.04); or
- (b) in so far as the ownership of meters is so designated, the ownership of meters that were installed at, or in order to measure supplies to, End-Users' premises on or before the date of such designation;

"Standard Charges" means

- (1) charges fixed under any such charges scheme as is referred to in section 143 of the Act;
- (2) charges fixed by the Appointee in respect of its Wholesale Activities;
- (3) 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;
- (4) 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;
- (5) 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, had effect on and after the transfer date as if it were a charges scheme made under section 76 of the Water Act 1989, by the Appointee;
- (6) 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

(7) 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 (5) 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 (6) 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;

an **"unmeasured supply"** is one where none of the charges for that supply is based on measured quantities of volume;

"Wholesale Activities" means all activities undertaken as part of the Appointed Business apart from Retail Activities.

3 [Not used]

4 [Not used]

5 [Not used]

6 [Not used]

Part III. Periodic Reviews

7 [Not used]

8 Periodic Reviews of the Appointed Business

8.1 The Appointee shall levy charges in a way best calculated to comply with the Price Control or Price Controls determined by the Water Services Regulation Authority pursuant to sub-paragraph 8.3 or sub-paragraph 8.4.

8.2 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 pursuant to sub-paragraph 8.3 or sub-paragraph 8.4.

8.3 In respect of the Appointed Business's Retail Activities, the Water Services Regulation Authority shall determine (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 determinations including, without limitation, any change in circumstance which has occurred since the last Periodic Review or which is to occur):

- (1) what is the appropriate nature, form and level of one or more Price Controls in respect of the relevant part or parts of the Appointed Business;
- (2) how the Appointee shall, in respect of each such Price Control applicable to it, demonstrate the compliance referred to in sub-paragraph 8.1; and
- (3) for how long each such Price Control in respect of the Appointee shall last (being a period of consecutive Charging Years).

8.4 In respect of the Appointed Business's Wholesale Activities except those activities for which there are Excluded Charges, the Water Services Regulation Authority shall

determine (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 determinations including, without limitation, any change in circumstance which has occurred since the last Periodic Review or which is to occur):

- (1) one single Price Control, such Price Control consisting of, in each Charging Year:
 - (a) 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; and
 - (b) a number, "**K**", which may be a positive number or a negative number or zero

which together shall be expressed as a percentage, and which shall limit the change in the charges to be levied by and/or revenue allowed to the Appointed Business in each Charging Year in respect of the Wholesale Activities concerned; and

- (2) how the Appointee shall, in respect of each such Price Control applicable to it, demonstrate the compliance referred to in sub-paragraph 8.1.

8.5 Each Price Control determined under sub-paragraph 8.3 pursuant to a Periodic Review shall be set for a period which shall be a number of Charging Years to be determined by the Water Services Regulation Authority, in conjunction with its determination pursuant to sub-paragraph 8.3, in each case starting on 1 April, with the first such period starting on 1 April 2015, provided that no such period shall exceed five consecutive Charging Years.

8.6 Each Price Control determined under sub-paragraph 8.4 pursuant to a Periodic Review shall be set:

- (1) for the five consecutive Charging Years starting on 1 April 2015; and

- (2) thereafter, for 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.

8.7 If, at any time after 1 April 2015, the Water Services Regulation Authority is unable to conduct a Periodic Review by 31 December in the Charging Year before the Review Charging Year, then:

- (1) in respect of Retail Activities, the previous determination pursuant to sub-paragraph 8.3 – in so far as that determination includes the matters decided under sub-paragraphs 8.3(1) and (2) – in respect of the final Charging Year of the period that was set in that previous determination pursuant to sub-paragraph 8.3(3), shall continue to apply for consecutive Charging Years until the next relevant determination under sub-paragraph 8.3 (or equivalent determination by the Competition Commission pursuant to paragraph 15) or the next relevant Interim Determination becomes effective;
- (2) in respect of Wholesale Activities, the previous determination pursuant to sub-paragraph 8.4 in respect of the final Charging Year of the period that was set in that previous determination shall continue to apply for consecutive Charging Years until the next relevant determination under sub-paragraph 8.4 (or equivalent determination by the Competition Commission pursuant to paragraph 15) or the next relevant Interim Determination becomes effective;
- (3) the Water Services Regulation Authority shall conduct a Periodic Review as soon as reasonably practicable thereafter, provided that the Appointee has not given a relevant notice under paragraph 15.

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

8.9 The Water Services Regulation Authority (or such person or persons as may be nominated by the Water Services Regulation Authority to do so) may at its discretion from time to time (whether pursuant to a Periodic Review in conjunction with a determination pursuant to sub-paragraph 8.3 or sub-paragraph 8.4, or at other times) designate any activity that constitutes the provision of goods or services by the Appointee directly to one or more End-Users or that are ancillary to such provision

- (i) as a Retail Activity where previously and until that designation it had been designated as a Wholesale Activity; and
- (ii) as a Wholesale Activity where previously and until that designation it had been designated as a Retail Activity,

provided that, for the avoidance of doubt, none of the following shall be designated as a Retail Activity:

- (a) water resources, raw water distribution, water treatment or treated water distribution (as each of those is defined in the Water Services Regulation Authority's Regulatory Accounting Guideline 4.04); or
- (b) in so far as the ownership of meters is so designated, the ownership of meters that were installed at, or in order to measure supplies to, End-Users' premises on or before the date of such designation.

8.10 Where a designation is made under sub-paragraph 8.9 pursuant to a Periodic Review in conjunction with a determination pursuant to sub-paragraph 8.3 or sub-paragraph 8.4, that designation shall be treated for the purposes of sub-paragraph 15.1 as part of the determination.

8.11 Where a designation is made under sub-paragraph 8.9 otherwise than pursuant to a Periodic Review in conjunction with a determination pursuant to sub-paragraph 8.3 or sub-paragraph 8.4, that designation shall be treated for the purposes of sub-paragraph 15.1 as part of the next following determination in respect of the activity concerned.

9 Wholesale Charges Publication

9.1 The Appointee may from time to time be required to publish charges fixed for the purposes of demonstrating compliance with the Price Controls determined in respect of its Wholesale Activities. Such requirement shall be made by way of a notice from the Water Services Regulation Authority to the Appointee specifying the information to be provided, the method of publication, the time by which publication is required (being a reasonable period of time) and the period for which the published charges are to be effective. The Appointee shall comply with the said requirement by notice and adhere to the charges accordingly published.

10 Periodic Reviews relating to 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 or determinations, including, without limitation, any change in circumstance which has occurred since the most recent one or more Periodic Reviews or which is to occur), the Price Controls, and in the case of Retail Activities the nature, form and level of one or more Price Controls should be changed (and if so what change should be made to the relevant Price Control or Price Controls and, in the case of Retail Activities, to the nature, form and level of the relevant Price Control or Price Controls) for one or more periods (as decided by the Water Services Regulation Authority) of 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 [Not used]

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 Appointment 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, 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;

"**making a Relevant Determination**" means as regards each Price Control to which an Interim Determination relates or is to relate, making one or more determinations pursuant to sub-paragraph 8.3 or sub-paragraph 8.4, pursuant to a Periodic Review, as to that Price Control, or making any subsequent Interim Determination as to whether the level of that Price Control should be changed (and if so, what change should be made to the level of the Price Control or Price Controls), 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 Relevant Determination should be changed (and if so what change should be made to it), 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 making a Relevant Determination; 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 making a Relevant Determination

and so that any notification by the Water Services Regulation Authority for the 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) 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 by 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 Environment Agency 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 making a Relevant Determination; or, as the case may be,
 - (B) in determining whether a Relevant Determination should be changed

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;
- (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 13.2(6) includes third party services as defined in pro forma A7 and A8 of the Water Services Regulation Authority's Regulatory Accounting Guideline 3.07. 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-paragraph 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 sub-paragraph 14.1.

(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 sub-paragraph 14.1, 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 Relevant Determination-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 water supply (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 water supply 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 the last Relevant Determination 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 sub-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 subparagraph (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 level of Price Control or Price Controls over the period beginning from 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 level of Price Control or Price Controls.

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 level of Price Control or Price Controls to take effect; or
- (2) if later, where the Water Services Regulation Authority has given a notice to the Appointee under sub-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 level of a Price Control or Price Controls 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 level of a Price Control or Price Controls 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

15 References to the Competition Commission

15.1 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 or determinations within one year from the relevant Review

Notice Date(s) 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 sub-paragraph 8.3 or sub-paragraph 8.4 or any Interim Determination made by the Water Services Regulation Authority under 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 relevant determination or determinations 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 (such determination to be effective as if made by the Water Services Regulation Authority) 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.

15.2 Where the Appointee requires the Water Services Regulation Authority to make a reference to the Competition Commission under sub-paragraph 15.1 in the case referred to in section (3) of that sub-paragraph, the Appointee shall levy charges in a way best calculated to comply with the Price Control or Price Controls determined by the Water Services Regulation Authority as if a reference had not been made until the Competition Commission makes its determination following such reference. The determination made by the Competition Commission shall then take effect as if it had been made by the Water Services Regulation Authority.

16 [Not used]

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

17

17.1 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.

- 17.2 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.
- 17.3 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**").
- 17.4 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.

17.5 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.

17.6 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).

17.7 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.

Part VII. Developing the Price Controls

18

18.1 The Appointee will use all reasonable endeavours to work with the Water Services Regulation Authority, subject to the Appointee's legal duties and obligations, in a constructive and cooperative manner on the development of the Price Controls so that they might be appropriately targeted or operated more effectively in respect of specific activities undertaken as part of the Appointed Business.

Part VIII. Price Controls in effect before 1 April 2015

19

19.1 The provisions of Condition B of this instrument in the form that had effect immediately prior to 22 July 2013 shall continue to have effect in respect of the Price Control set for a period ending before 1 April 2015 and in respect of the making of any Interim Determinations to set any such Price Controls.

19.2 In the event that the Water Services Regulation Authority is, in respect of the Appointed Business, unable to determine Price Controls, for the period or periods starting on 1 April 2015, under sub-paragraph 8.3 and sub-paragraph 8.4 of this Condition B by 31 December 2014, the provisions of Condition B in the form that had effect immediately prior to 22 July 2013 shall continue to have effect in respect of the Price Control until such time as a determination under sub-paragraph 8.3 and sub-

paragraph 8.4 of the current Condition B is made and takes effect.

Condition C: Infrastructure Charges

1 Interpretation

In this Condition:

- 1.1 "**Infrastructure Charge**" means a Water Infrastructure Charge or a Sewerage Infrastructure Charge;
- 1.2 "**House**" means any building or part of a building which is occupied as a private dwelling house or which, if unoccupied, is likely to be so occupied and, accordingly, includes a flat;
- 1.3 "**Common Billing Agreement**" means an agreement between the Appointee and any other person under which that person has undertaken to pay, on terms agreed between them, charges for water supply or sewerage services, or both, in respect of two or more Houses which have a common Supply Pipe and which, in any case where that agreement relates to one of those services only, are also subject to a similar agreement for common billing between that person and the undertaker providing the other service;
- 1.4 "**Relevant Multiplier**" means a number (which may be one or more or less than one) calculated in the manner set out in the Appendix to this Condition;
- 1.5 "**Standard Amount**", in relation to any Infrastructure Charge, means the amount of that charge specified in sub-paragraph 2.1.3, as adjusted pursuant to sub-paragraph 2.2 (in respect of any Charging Year starting on or after 1 April 1996);
- 1.6 "**Supply Pipe**" means any part of a service pipe which a water undertaker could not be, or have been, required to lay under section 46 of the Act; and
- 1.7 references to a connection are to such a connection as is mentioned in section 146(2)(a) of the Act.

2 Level of Infrastructure Charges

2.1 Subject to the following provisions of this Condition, in respect of each Charging Year starting on or after 1 April 1995, the amount of any Infrastructure Charge shall be -

2.1.1 in the case of a House subject to a Common Billing Agreement, the Standard Amount multiplied by the Relevant Multiplier for that house;

2.1.2 in the case of premises which do not consist in a House or Houses and to which water is provided by a Supply Pipe with an internal diameter larger than the standard size for the time being adopted by the Appointee for new connections of Houses, the Standard Amount multiplied by the Relevant Multiplier for those premises; and

2.1.3 in the case of any other premises -

Water Infrastructure Charge £200

Sewerage Infrastructure Charge £200

2.2 In respect of each Charging Year starting on or after 1 April 1996 -

2.2.1 the amounts specified in sub-paragraph 2.1.3 shall be adjusted by the percentage of any change in the Retail Prices Index between that published for the month of November in the Prior Year and that published for November 1994; and

2.2.2 where there is a material change to the basis of compiling the Retail Prices Index this Condition, in so far as it relates to that part of the calculation of the Standard Amount 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.

3

3.1 Subject to sub-paragraph 3.2, where an amount has been paid or agreed to be paid to the Appointee on account of works which have been allowed for in determining the limits on Infrastructure Charges under the Appointment, that amount shall, to the

extent that it is actually paid and is referable to a connection, count towards the level of charge for that connection under paragraph 2.

3.2 Where any such amount referable to a connection is greater than the level of charge for that connection under paragraph 2, nothing in this Condition shall preclude the Appointee from retaining or recovering the greater amount.

4 Where, prior to 1 April 1990 the Appointee has entered into an agreement under which a person has agreed to pay an amount in respect of works referable to a connection and that amount is greater than the amount which would otherwise be charged pursuant to paragraph 2, nothing in this Condition shall preclude the Appointee from recovering the greater amount.

5

5.1 Subject to sub-paragraph 5.2, where a site is developed or redeveloped (including by means of conversion of a building or buildings on it) the total amount of Water Infrastructure Charges or, as the case may be, Sewerage Infrastructure Charges which may be recovered in respect of Houses and other premises on the site resulting from the development or redevelopment shall not exceed the Standard Amount multiplied by X, where X equals -

- (1) the aggregate of the Relevant Multipliers for all those premises less
- (2) the maximum number of premises with water or, as the case may be, sewerage connections on the site at any time in the period of 5 years before the development or redevelopment began.

5.2 For the purpose of calculating the amount of the limit imposed by this paragraph -

- (a) each premises to which sub-paragraph 2.1.3 applies shall be deemed to have a Relevant Multiplier of 1; and
- (b) where, by virtue of paragraph 3 or 4 of this Condition, the Appointee would be permitted to charge more in respect of any premises resulting from the development or redevelopment than the level otherwise applying under paragraph 2, the limit shall be increased by the amount of the excess.

6

6.1 Subject to sub-paragraph 6.2, where -

- (a) a person who has received a demand, or undertaken, to pay Infrastructure Charges in respect of 2 or more Houses subject to a Common Billing Agreement fails to pay them, or any part of them, within 14 days of the date of connection; or
- (b) a Common Billing Agreement is terminated otherwise than in accordance with its terms by the person who has undertaken to pay charges under it, nothing in this Condition shall preclude the Appointee from recovering, whether from that person or from the occupier of each House subject to the agreement, Infrastructure Charges in respect of that House at the Standard Amount.

6.2 Whenever it takes advantage of sub-paragraph 6.1, the Appointee shall give credit for any amount already paid by way of Infrastructure Charges in respect of that House for the connection concerned.

7 Paragraph 2 does not apply to the interest element of any Instalment Amount payable in accordance with Condition D.

8

8.1 Nothing in this Condition precludes the Appointee from charging less in any particular case than the level of Infrastructure Charge applying under paragraph 2.

8.2 Nothing in this Condition restricts the recovery or amount of any expenses or charges recoverable otherwise than under section 146 of the Act or (except if and to the extent that sub-paragraph 3.1 applies to the amount) restricts the recovery or level of any Infrastructure Charge by reference to any such amount.

9 Notification to Sewerage Undertakers

Where the Appointee makes a connection or connections to premises in respect of water supply services, it shall as soon as reasonably practicable inform any sewerage undertaker which provides services to those premises of the number of premises

connected, the date or dates of connection, the address(es) of the premises, the name and address of the person(s) responsible for payment of charges for the supply of water to the premises and (if different) of the person(s) responsible for payment of Infrastructure Charges in respect of the premises and (where appropriate) the Relevant Multiplier(s) for the premises.

10 Arbitration

If, in any case to which a Relevant Multiplier applies, there is any dispute between the Appointee and the person on whom any Infrastructure Charge has been levied about the calculation of the Relevant Multiplier, or the number or type of fittings on which that calculation is based, it may be referred by either party for determination by the Water Services Regulation Authority.

11 Periodic Review of Level of Infrastructure Charges

11.1 Where a Periodic Review is to be carried out under paragraph 8 of Condition B, the Appointee may, by notice given to the Water Services Regulation Authority in relation to water or sewerage connections or both, refer to the Water Services Regulation Authority, for determination by it, the question whether any (and if so, what) change to the Standard Amount or the manner of calculation of any Relevant Multiplier should be made for the period or periods to which that review relates.

11.2 Where a Periodic Review is to be carried out under paragraph 8 of Condition B, the Water Services Regulation Authority may, after giving notice to the Appointee in relation to water or sewerage connections or both, determine the question specified in sub-paragraph 11.1.

11.3 Notice under sub-paragraph 11.1 or 11.2 shall be given not later than 30 days after the Review Notice Date for the Periodic Review concerned.

12 Interim Review of Level of Infrastructure Charges

12.1 The Appointee may, by notice given to the Water Services Regulation Authority in relation to water or sewerage connections or both, refer to the Water Services Regulation Authority, for determination by it, the question whether any (and if so,

what) change to the Standard Amount or the manner of calculation of any Relevant Multiplier should be made, in respect of the Subsequent Period, in order to ensure that:

- (a) in each Charging Year in that period, the aggregate number of water, or as the case may be, sewerage connections made by the Appointee bears the same proportion to its aggregate revenue from Water Infrastructure Charges or, as the case may be, Sewerage Infrastructure Charges as the aggregate number of such connections assumed by the Secretary of State for that year in setting the initial level of those charges under this Condition bears to the aggregate revenue so assumed by him; and
- (b) over the Subsequent Period any shortfall in (or excess of) revenue from Infrastructure Charges in any Charging Year in the Prior Period, compared with the revenue so assumed for that year, is recovered (or, as the case may be, carried forward as a credit) to the extent attributable to any difference in those proportions in respect of that year.

12.2 In sub-paragraph 12.1 "the Subsequent Period" means the period from 1 April immediately following the Charging Year in which the reference is made until 31 March 1995 (or, if there is no Periodic Review at the first 5-yearly interval, 31 March 2000) and "the Prior Period" means the period from 1 April 1991 until the end of the Charging Year in which the reference is made.

12.3 The Water Services Regulation Authority may, after giving notice to the Appointee in relation to water or sewerage connections or both, determine the question specified in sub-paragraph 12.1.

12.4 Notice under sub-paragraph 12.1 or 12.3 may be given not more than once in any Charging Year and not later than 31 December.

13 Information

13.1 The Appointee shall furnish to the Water Services Regulation Authority, at the time when it gives notice to the Water Services Regulation Authority under sub-paragraph 11.1 or 12.1, such Information as the Appointee reasonably believes is necessary to

enable the Water Services Regulation Authority to make its determination. The Appointee shall also furnish to the Water Services Regulation Authority, after receipt by it of notice given under sub-paragraph 11.2 or 12.3 or this sub-paragraph, such further Information, specified in the notice, as the Water Services Regulation Authority may reasonably require to make its determination.

- 13.2 The Appointee shall also furnish to the Water Services Regulation Authority from time to time, when so requested by it, such Information as it may reasonably require, to decide whether or not to give notice under sub-paragraph 11.2 or 12.3.
- 13.3 Any Information furnished to the Water Services Regulation Authority under this paragraph shall, if the Water Services Regulation Authority so requires to make its determination, be reported on by a person ("**the Reporter**") appointed by the Appointee and approved by the Water Services Regulation Authority (such approval not to be unreasonably withheld). The provisions of sub-paragraphs 17.4, 17.5(2), 17.6 and 17.7(1) of Condition B shall apply to the engagement and terms of reference of each Reporter appointed pursuant to this Condition as they apply to those of each Reporter appointed pursuant to that Condition, save that the reference in sub-paragraph 17.4(1) to sub-paragraph 17.3 of that Condition shall be taken as a reference to this sub-paragraph.

14 References to the Competition Commission

Where -

- (1) following the giving of notice under sub-paragraph 11.1 or 11.2, the Water Services Regulation Authority has not notified the Appointee of its determination within 1 year from the Review Notice Date; or
- (2) following the giving of notice under sub-paragraph 12.1 or 12.3, the Water Services Regulation Authority has not notified the Appointee of its determination within 1 month from the date on which the notice under that sub-paragraph is given; or
- (3) the Appointee disputes any determination made by the Water Services Regulation Authority under this Condition

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

- (a) 13 months from the Review Notice Date (in the cases referred to in (1) above);
or
- (b) 2 months from the date on which the notice under sub-paragraph 12.1 or 12.3 is given (in the cases referred to in (2) above); or
- (c) 2 months from the date on which the Water Services Regulation Authority gives notice of its determination to the Appointee (in the cases referred to in (3) above)

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

- (i) in any case referred to in (1) or (2) above, the relevant question; or
- (ii) in the case referred to in (3) above, the disputed determination.

15 Modification of this Condition

15.1 This Condition shall be modified by the change (if any) to the Standard Amount or the manner of calculation of any Relevant Multiplier, 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, this Condition.

15.2 Where the Appointee requires the Water Services Regulation Authority to make a reference to the Competition Commission under paragraph 14, this Condition shall be modified by the change (if any) to the Standard Amount or the manner of calculation of any Relevant Multiplier, necessary to give effect to the Water Services Regulation Authority's determination, but so that sub-paragraph 15.1 shall then apply to the determination made by the Competition Commission following that reference.

15.3 In this paragraph "**this Condition**" includes the Appendix to it.

APPENDIX: CALCULATION OF RELEVANT MULTIPLIER

- 1 To calculate the Relevant Multiplier for a House to which sub-paragraph 2.1.1 of Condition C applies:
 - 1.1 ascertain in respect of all the Houses subject to the Common Billing Agreement in question (eg all the flats in a block to which such an agreement applies) and all communal facilities shared by all or any of them, the total number of water fittings in all the categories specified in column 1 of the table below;
 - 1.2 calculate by reference to column 2 of the Table the aggregate loading units attributable to that total number of water fittings (and increase the aggregate, where necessary, to take account of the minimum for domestic appliances);
 - 1.3 divide that number of loading units by 24 and divide the resulting figure by the number of Houses subject to the Common Billing Agreement;
 - 1.4 the resulting number, will be the Relevant Multiplier.
- 2 To calculate the Relevant Multiplier for premises to which sub-paragraph 2.1.2 of Condition C applies, ascertain in respect of the premises the total number of water fittings in all the categories specified in column 1 of the Table below; calculate by reference to column 2 of the Table the aggregate loading units attributable to that total number of water fittings; divide the aggregate loading units by 24; and the resulting number will be the Relevant Multiplier, provided that if the resulting number is less than 1, the Relevant Multiplier will be 1.

TABLE

<u>Column 1</u>	<u>Column 2</u>
Water Fitting (note 1)	Loading Units
WC flushing cistern	2
Wash basin in a House	1.5
Wash basin elsewhere	3
Bath (tap nominal size $\frac{3}{4}$ in/20 mm) (note 2)	10
Bath (tap nominal size larger than $\frac{3}{4}$ in/20 mm (note 2)	22
Shower	3
Sink (tap nominal size $\frac{1}{2}$ in/15 mm)	3

Sink (tap nominal size larger than ½ in/15 mm)	5
Spray tap	0.5
Bidet	1.5
Domestic appliance (subject to a minimum of 6 L.U.s per House - (notes 3 & 4)	3
Communal or commercial appliance (note 3)	10
Any other water fitting or outlet (including a tap but excluding a urinal or water softener)	3

Notes to be read with the Table:

- 1 Reference to any fitting includes reference to any plumbing, outlet, dedicated space or planning or other provision for that fitting;
- 2 "**Bath**" includes a whirlpool bath and a jacuzzi;
- 3 "**Domestic appliance**" means an appliance (including a dishwasher, a washing machine and waste disposal unit) in a House and "**communal or commercial appliance**" means an appliance (including a dishwasher, a washing machine and a waste disposal unit) elsewhere than in a House (including in communal facilities);
- 4 In any calculation under paragraph 1, a minimum of six loading units shall be included, in respect of each House, for domestic appliances (whether or not the House has any such appliances) except, in the case of any House, where neither a washing machine nor a dishwasher can be provided (and there is no plumbing, outlet, dedicated space or planning or other provision for either appliance) in the House;
- 5 In the case of any premises with a sewerage only connection and no water fittings, the Relevant Multiplier will be one."