

Consultation on Ofwat's section 13 proposals to modify company licences

About this document

This document invites comments on proposals to modify the conditions of appointment (licences) of all appointed water and sewerage and water only companies in England and Wales. The current licence is not sufficiently flexible to allow the water and sewerage sectors to evolve to respond to the challenges they face.

The proposed changes retain a RPI-X form of control for the asset-intensive wholesale part of the business. But they allow for separate retail controls in whatever form is most appropriate. They will also allow some limited scope to adapt price controls over time within specified limits. Any changes will be subject to Ofwat's primary duties, including the duty to enable efficient companies to finance their functions.

Under section 13 of the Water Industry Act 1991 (WIA91), the conditions of a company's licence can be modified if the company agrees to the change being proposed. Legislation in the water and sewerage sectors means that the agreement of each company must be secured. Unfortunately, because there is no alternative, if any company does not agree, we then need to use our powers under section 14 of the WIA91 to refer the matter to the Competition Commission. The Competition Commission would then be free to decide whether the modification should be made and, if so, in what form.

This document and the attached appendix is a Notice under section 13 of the WIA91.

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Key messages

- The water and sewerage sectors need to modernise to be able to deliver for customers in the face of significant challenges. They also need to be able to meet the UK Government's policy objectives as set out in the Water White Paper and the Draft Water Bill. A key element of this is the need to update, simplify and improve the licensing framework for water companies.
- We have been working to find a method of making these changes that builds on the success of the regulatory framework so far, maintains the confidence of all stakeholders, and at the same time allows the evolutionary and measured change that is both essential and inevitable in the sectors.
- We have listened to stakeholders' concerns and made substantial changes to our proposals. Our revised proposals are for modest and evolutionary change, with essential safeguards to protect the interests of all stakeholders – customers, investors and the companies. Our proposals allow us to make changes already clearly flagged with the industry.
- Activities where these modest and evolutionary changes may be needed are not asset intensive. We estimate that about 90% of companies' assets (on a current cost basis) would remain as part of the wholesale activities even if all of these changes occurred.
- We are putting forward these proposals having consulted extensively with stakeholders and with the benefit of a number of collaborative meetings with companies. It has taken significant resources from the companies and Ofwat. We have attempted to reach a common agreement with all companies but have not been able to do so. It is now necessary for each individual company to make a decision.
- We would welcome companies' acceptance of these changes as this will allow us all to focus on the key challenges ahead and on delivery of a sustainable water sector as we move towards the next price review.

Executive summary

- The challenges facing the water and sewerage sectors in England and Wales are changing in scale and nature – and becoming more complex. Companies need to find new and more innovative ways to deliver sustainable water and sewerage services.
- Ofwat's regulatory approach needs to respond. It has delivered well on the challenges of the past, but it now needs to become more flexible, adaptable and capable of evolving while retaining the key virtues of transparency and predictability.
- Essential safeguards will remain: Ofwat has a continuing primary statutory duty to enable efficient companies to finance their functions. This duty applies to all our price setting responsibilities, including any proposals that are likely to affect companies' revenues. We will retain the key concept of regulatory capital value (RCV) to provide clarity to investors about the basis on which they are investing in line with the need for transparency and predictability. We will continue to use the Retail Price Index (RPI), as long as it is appropriate (that is, for the foreseeable future) as the basis for indexing wholesale price limits.
- But for the price setting framework to develop to meet future challenges and to support the reforms envisaged in the Water White Paper and Draft Water Bill, some changes will be needed to company licences.
- Each company has the right to reject the proposed changes. If so, we would expect to refer the proposed changes to the Competition Commission, which would look at them afresh.
- The current process for making changes to all companies' licences is burdensome for companies and for Ofwat. In other sectors – energy, for example – in the absence of unanimous agreement, if enough companies agree with the changes that the regulator is proposing, these changes can be made for all companies. We consider that there are merits in a framework such as this and will work with the UK Government to see if this is an appropriate and achievable solution for the water and sewerage sectors.
- And we are seeking some flexibility to change the way we set prices in the future without the need for further time-consuming and burdensome changes

to licences, while still retaining the importance of the licence as a key foundation document and protection for companies, investors and others on the basis of our regulation.

- This would enable the regulatory framework to incentivise the sectors more effectively to respond efficiently, innovatively and sustainably to the challenges they face. This includes the challenge of meeting UK Government policies on the development of a competitive approach (where appropriate) in the interests of customers and the environment.
- We have listened carefully to views on the original proposals to modify the licences published in December 2011, and we have taken on board these comments. To address those concerns, we have made significant changes to the earlier proposals.
- The principal concern was that the link between RPI and the price control should be retained on the face of the licence, particularly for the capital-intensive wholesale activities. This is because removing it would create a perception of uncertainty about how we will regulate these activities. That uncertainty in turn might create the impression that the sectors are more risky to invest in. Investors also wanted wholesale activities to be regulated using the familiar RCV approach.
- We understand this concern. We will continue to use tried and tested tools and mechanisms in setting the wholesale controls, including setting a return based on the RCV. In the licence, we propose to specify that the wholesale activities will be regulated using one price control each for water services and sewerage services. Both of these will be index linked to RPI. If there was a need to change this in the future, we would need to carry out a further licence modification.
- At the same time, it is essential that separate and more responsive price controls for retail activities can be set. So, the licence will not specify the detail of how we will regulate retail activities.
- It is also important that the services and activities are covered by the wholesale controls can be adjusted so that we can create the right incentives and learn from experience over time. To provide reassurance that these changes are evolutionary, we would limit the extent to which we can do this. Initially, all of companies' wholesale revenues would be safeguarded within the index-linked wholesale controls.

- In any price review period, the activities that could be moved out of the wholesale control could not amount to more than 20% of total revenues. Across multiple control periods, the activities moved from the wholesale control could not amount on a cumulative basis to more than 40%. Within these limits, we would consult appropriately on any changes and any activities affected would continue to be subject to our duty to enable efficient companies to finance their functions.
- Activities where evolutionary changes may be needed are not asset intensive. We estimate that about 90% of companies' assets (on a current cost basis) would remain as part of the wholesale activities even if all of these changes occurred.
- Companies' ability to appeal any determination to the Competition Commission would also be unchanged. So, the substance of any changes that have a revenue impact would be appealable.
- In this way, stakeholders' concerns about predictability and transparency will be reconciled with the need for a more modern, adaptable regulatory framework. The wholesale controls will be linked to RPI in the licence and any change that would affect the revenues of the company would be subject to our duties and to the appeals mechanism.
- At the same time, company management can be set targeted incentives in a way that is appropriate to specific and sometimes very different services and activities.
- Where companies accept the proposed modification, we will amend their licence in line with the proposals. Where any company does not agree to the proposals, we would expect to use our powers under section 14 of the WIA91 to refer those companies to the Competition Commission in December 2012.
- Should the Competition Commission decide on a different licence modification, we will amend the licences of those companies that were subject to the referral, in line with the Commission's decision. And we will propose amendments to the licences of all other companies to conform to the Commission's modification, so that they are not disadvantaged (or advantaged).

Responding to this consultation

We invite stakeholders to comment on our proposed modification by **23 November 2012**. Companies should also indicate their acceptance or otherwise of the proposed modification by this date. You can email your responses to keith.mason@ofwat.gsi.gov.uk or post them to:

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If you wish to discuss any aspect of this document, please direct your enquiry to Keith Mason on 0121 644 7677 or by email to keith.mason@ofwat.gsi.gov.uk.

We will publish responses to this document on our website at www.ofwat.gov.uk, unless you indicate that you would like your response to remain unpublished. Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with access to information legislation – primarily the Freedom of Information Act 2000 (FoIA), the Data Protection Act 1998 and the Environmental Information Regulations 2004.

If you would like the information that you provide to be treated as confidential, please be aware that, under the FoIA, there is a statutory 'Code of Practice' which deals, among other things, with obligations of confidence. In view of this, it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information, we will take full account of your explanation, but we cannot give an assurance that we can maintain confidentiality in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on Ofwat.

1. The proposed modifications to the licence

1.1 The principles applied in developing the licence modifications

This document proposes modifications to condition B of water companies' licences to allow a greater degree of flexibility in the way that we set price controls in future.

In developing these proposals we have applied the principles we set out in the information notice that we published in August 2012¹. The companies agreed that these principles were an appropriate basis for making changes to the licence.

The principles we outlined in the information notice were:

- protecting the financing of wholesale activities;
- flexibility to enable price controls to adapt so that the sectors can meet future challenges;
- a threshold test to make sure that evolutionary changes are consistent with our first principle (above) of protecting the financing of wholesale activities;
- certainty for all stakeholders about the price setting process; and
- transparency to make sure changes to the licence and price setting processes can be clearly understood.

1.2 The proposed modifications

The proposals have been developed from these principles. They are consistent with the approach adopted in other regulated sectors.

The proposed changes to the licence are detailed in appendix 3. The main features of the proposals are outlined below.

¹ IN 12/09: 'Update on the consultation on proposals to modify the conditions of appointment of all water and sewerage and water only companies', Ofwat, August 2012.

1.2.1 Protecting the financing of wholesale activities

The financing of the wholesale function will be protected by setting a form of price control that will continue to be index linked to RPI (while it remains the most appropriate index to use). This will be set out on the face of the licence.

We will also retain the key concept of regulatory capital value (RCV) to provide clarity to investors about the basis on which they are investing in line with the need for transparency and predictability. The RCV is a regulatory mechanism that has never been incorporated into the licence. But it has underpinned price controls since 1994.

1.2.2 Flexibility

A degree of flexibility is needed:

- to enable a number of retail price controls to be set in the most appropriate form and to allow the definition of customer-facing activities that may initially be included within the wholesale control into the retail price controls to be refined;
- to provide some limited scope (constrained by a threshold test) to allow services and activities to be transferred out of the wholesale price control and enable us to set new forms of control for those activities; and
- over the period for which price controls are set.

1.2.3 A threshold test

To provide reassurance that the flexibility we are seeking is consistent with the evolutionary development of the regulatory framework, a limit will be set to constrain the changes that we are able to make to the wholesale control. Initially, all companies' wholesale revenues would be included in the wholesale control. In any price review period, the activities that could be moved out of the wholesale control could not amount to more than 20% of total revenues. Across multiple control periods, the activities moved from the wholesale control could not amount on a cumulative basis to more than 40%.

Activities where evolutionary changes may be needed are not asset intensive. We estimate that about 90% of companies' assets (on a current cost basis) would remain as part of the wholesale activities even if all of these changes occurred.

1.2.4 Certainty and transparency

Companies would be able to appeal any price limit decisions that would have an impact on their revenues. Any such decisions will be subject to Ofwat's primary duties, including the protection of consumers' interests and enabling efficient companies to finance their functions.

The licence changes will not come into effect until 1 April 2015, the start of the next price review period.

2. The rationale for the proposed modifications

2.1 The limitations of the current licence

In common with other utilities, the water and sewerage sectors provide key services to individual customers and the UK economy as a whole.

The sectors face significant challenges in the future from:

- climate change;
- population growth;
- demographic change;
- increasing customer expectations; and
- pressure on water resources.

These may lead to a more unpredictable environment for the sectors and they will need to change to meet these challenges. They will require practical solutions at both strategic and operational levels.

The existing price setting framework is not sufficiently flexible to equip the sectors to respond to the challenges they face in the future – and to support the reforms envisaged in the Draft Water Bill, if these are subsequently passed into legislation.

The key areas of reform outlined in the Draft Water Bill include:

- allowing all non-household customers in England to switch their water and sewerage supplier;
- introducing more flexible upstream pricing arrangements and allowing increased opportunity in that area; and
- stimulating wholesale markets in water supply and sewerage services by extending opportunities to new entrants to offer alternative services and supplies.

Our approach to regulation similarly needs to respond. In particular, it needs to enable evidence-based, targeted controls that more effectively incentivise efficiency, innovation and sustainability in the sectors so that companies can meet the challenges they face, including those arising from UK Government policy objectives.

The current licence is rigid and inflexible. In its present form, the licence allows for just a single price control that is indexed to RPI and the control must be set for a period of five years. This restriction prevents reform of the price setting framework and delivery of the UK Government's policy objectives in an effective manner. Also, it does not allow regulation to be reduced or removed where it becomes appropriate to do so over time. This means that, in some important respects, we may not be able to fulfil our duties as effectively as we might otherwise.

Making changes to the licence can be time consuming and burdensome both for the regulator and for companies. It is also out of line with arrangements in other similar utility sectors. Other regulators have more discretion than we have currently when setting price limits. Used appropriately, more flexibility for a regulator over how many controls to set, and of what duration, is still consistent with operating a transparent and predictable framework.

Ofgem, for example, has significant discretion when determining price controls for the network elements of the electricity and gas sectors. It has the power to determine the nature and form (including the length) of the price control at each review. ORR has the flexibility to decide the length of the price control period and consults on the duration at the start of the price review process. Further details on other regulators' arrangements are set out in appendix 2.

So, we need the scope to change the way we set prices in the future without the need for further changes to the licence.

Stakeholders understand that there are good reasons to change the licence. But in making changes, Ofwat recognises that the sectors need to remain attractive to investors so that they can continue to fund their long-term capital expenditure requirements at a reasonable cost of finance to customers. In developing these proposals, Ofwat has listened carefully to investors and other stakeholders and has responded to their concerns.

2.2 Meeting our principles

The proposals for modifying the licence have been developed on the basis of the principles set out in section 1.1 above. We have also taken into account the comments we received from investors and other stakeholders during the extensive consultation we held earlier in the year. And we held a series of working meetings with companies during August and September.

Having reached the conclusion of this consultative process, a set of modifications has been developed that will address stakeholders' comments. These modifications represent a significant change compared with the original proposals. But we think that they are measured and reasonable. They will allow a degree of flexibility in the way that price controls are set in the future without undermining our commitment to the stability, transparency and predictability of the regulatory framework. They provide a platform that will ensure that the sectors continue to be an attractive prospect for long-term investors.

2.2.1 Protecting the financing of wholesale activities

Stakeholders have said that changing the way that we set price controls for capital-intensive wholesale activities could create an impression of increased risk in the sectors generally. They also place value on the explicit link in the current licence between the price control and RPI – particularly for the capital-intensive wholesale activities.

We recognise this and in formulating the proposals for modifying the licence, we have committed to safeguarding the form of the wholesale control and to indexing it to RPI (while it remains the most appropriate index to use). In setting the control for the wholesale element of companies' businesses, tried and trusted tools and mechanisms will continue to be used. In particular, we have previously stated that we will:

- continue to use RCV as the main mechanism for cost recovery within the wholesale function;
- allocate all of the RCV to the wholesale function; and
- continue to protect efficiently incurred capital expenditure that is in the RCV at 31 March 2015 (that is, it would be reflected in any price control we set either within or outside of the wholesale activities).

2.2.2 Flexibility

Stakeholders consider that the licence needs to provide a stable regulatory framework for the sectors. We acknowledge this, but for the reasons set out in section 2.1 above, there is a need for some scope in the way that price controls are set. So, limited provisions will be included in the licence that would allow services and activities to be moved out of the wholesale control both at a price determination and during a price control period. There may also be a need to refine the boundary between wholesale and retail activities. This flexibility will allow controls to be adjusted in the light of experience of their operation and changes would normally be made only at a price determination.

This will allow incentives to be developed and targeted on companies' management in a way that is appropriate to the specific and sometimes different services and activities they provide. Possible examples of this are:

- a different form of control for sludge treatment and disposal to reflect the impact on the market for organic waste (as identified by the OFT);
- new forms of control for network management activities; and
- incentivising water resource management.

This flexibility would only allow limited changes to the wholesale control and for this purpose, the limit would be specified in the amended licence. We discuss this limit below. We will consult appropriately on any changes we propose to make that fall below this limit.

There also needs to be a capability to set a number of retail controls in the most appropriate form. This element of the value chain is substantially less material than the wholesale function. So, the licence will not specify the detail of how we will regulate retail activities. We will consult on our proposals in the normal way.

We expect to set both wholesale and retail controls for five years at the next price review in 2014. But after that there may be a need to alter the duration of controls in subsequent periods. In the modified licence, a time period for which controls will be set will not be specified. This will allow, for example, if appropriate and after consultation, a longer control to be set for asset-intensive parts of the value chain. This could incentivise companies to outperform the control as they could retain the benefit for longer. Customers could benefit from lower bills in the longer term as efficiencies are passed back to them at subsequent price reviews.

Conversely, shorter controls periods may be appropriate where conditions in the sectors change so that companies and customers carry the associated risks for a shorter period before corrections could be made at a later price review.

2.2.3 Limits on flexibility

Protecting the financing of wholesale activities and allowing flexibility over the nature, form and duration of price controls in the licence could be viewed as opposing aims. If there is no constraint on the degree of flexibility in the licence, this could create unnecessary regulatory uncertainty.

To provide reassurance that these changes will be evolutionary, a limit will be set within the licence that constrains the flexibility available to the regulator.

The impact of any change on the wholesale control will be assessed by reference to the revenue attributable to the service or activity concerned compared with the revenue of the sectors as a whole. Using a revenue-based measure of materiality will:

- be well understood by companies and their investors;
- provide protection to capital-intensive wholesale activities; and
- be consistent with new forms of incentive – such as totex – that may be implemented in future.

Services or activities could be moved out of the wholesale control where they were less than 20% of the sectors' revenue in any control period compared with a base year and cumulatively did not exceed 40% of revenue. The revenues attributable to any activities will be identified using the familiar 'building block' approach to setting price limits.

As stated in section 2.1 above, the flexibility to change the way that prices are set in future will allow a response to emerging challenges (including meeting the UK Government's ambitions for reform) without the need for a further licence change.

Section 2.2.2 above sets out some examples of potential areas where this flexibility may be needed and the threshold has been set to accommodate this type of change.

To make a more significant change to the wholesale control (that is, with revenue impacts greater than the above), the licence would need to be modified again. A Notice under section 13 of the WIA91 would be needed and – if companies did not accept the modification – the matter could be referred to the Competition Commission.

2.2.4 Certainty

The regulatory framework is underpinned by Ofwat's statutory duties, including the duty to secure that efficient companies can finance their functions (including an appropriate return on capital).

These statutory duties are not changed by the licence proposals and price controls will continue to be set in accordance with those duties.

Under Ofwat's proposals, all future determinations will continue to be capable of being appealed to the Competition Commission. This preserves safeguards within the current licence, particularly regarding changes that have a revenue impact at a determination. Companies could also appeal the duration of the control (which will

not be specified within the licence) as part of an appeal against the relevant determination.

The licence proposals would allow particular services or activities to be moved from one form of control to another (subject to the limits described above) without needing a further licence modification. Where it forms part of a price determination, the revenue consequences of such a change can always be appealed as part of the price determination process. This provides significant reassurance for companies and investors.

We would normally expect to make changes to the form of a control at a periodic review of price limits. But, in some circumstances, it may be necessary to transfer services or activities from the wholesale to the retail control or move wholesale activities to a different form of control during a price control period.

If, in making such changes, a new price determination is set to implement a new form of control, that determination could be appealed. If, on the other hand activities are moved between existing controls, it would not be possible to appeal the transfer to the Competition Commission (reallocations cannot be appealed and no new control is being set). A retrospective 'true-up' of revenues could be made at the end of the retail control period and so these changes would have no impact on the companies' revenues.

We also remain committed to using interim and substantial effect determinations as a means of protecting companies and their investors from defined risks between price reviews.

Significant transfers of activities out of the wholesale control that exceed the limits specified above would require further licence modifications using the procedures set out in section 13 of the WIA91.

2.2.5 Transparency

This document is a part of a process of consultation and engagement with companies to develop measured proposals for modifying their licences in a transparent way.

These proposals do not change the general way we approach setting price controls. We will continue to consult on all aspects of price setting using published documents, workshops and discussion groups. This includes any proposals to set new forms of control for specific activities. In this way, we can be transparent about our proposals and understand any concerns that stakeholders may have with them.

3. Other issues

3.1 Consequential modifications

There will be some additional but more minor changes that will be required to companies' licences as a consequence of the amendments that are proposed in this document. These consequential amendments will be made to conditions B and C of the licence to adapt existing provisions to the proposed modifications and to remove provisions that will no longer be necessary. No changes are being proposed that are unrelated to the modifications described in this document. The consequential modifications are summarised in appendix 1.

3.2 Impact assessment

We do not consider that an impact assessment is required for the licence modifications. The proposed modifications will not in themselves change the way that price controls are set: they merely give us the option to set controls in different forms in future.

The precise form of future controls will be set out whenever a new determination is made. The impact of any changes we make under the revised licence will be considered as part of the relevant price review process. As an example, we will publish an impact assessment in late spring 2013 alongside our methodology for the 2014 price review.

3.3 Applicability to Wales

The proposed licence modification will apply to all water and sewerage and water only companies, including those that supply areas that are wholly or mainly in Wales. The Welsh Government is expected to publish a consultation on its water strategy in early 2013 and future developments in Wales may be different to those in England. The licence changes we are proposing provide enough flexibility to accommodate differences in policy between the Welsh and UK Governments.

3.4 Applicability to new appointments and variations

Currently, newly appointed companies have the price setting provisions of their licences suspended. We are not proposing to alter the suspended status of those provisions as part of this consultation. But the same modification to their licences is proposed so that if price limits are set for them in the future, this can be done in a way that is consistent with the incumbent companies.

4. Next steps

The deadline for responses to this consultation is **23 November 2012**.

If all companies agree with the proposed modifications set out in this document, their licences will be amended under section 13 of the WIA91.

It is possible that not all companies will agree with the proposals. In those circumstances, the licences of those companies that agree with them will be modified. In the absence of any alternatives, we will use our powers under section 14 of the WIA91 to refer those companies that disagree with the modifications to the Competition Commission. We anticipate that any such referral would be made in December 2012.

The Competition Commission would then decide whether the proposed modifications should be made in respect of the companies we refer to it. It will generally do this within six months. If it makes changes to the proposals, we will amend the licences of the companies that were subject to referral in line with its decision. We will propose amendments to the licences of all other companies to conform to the Competition Commission's changes so that they are not disadvantaged (or advantaged).

If we have to refer some companies to the Competition Commission in December, we would expect to have clarity with regard to the nature of the modifications to the licences by the summer of 2013. We do not anticipate that this process will impact on our timetable for setting price limits in November 2014. In particular, we still intend to publish our price setting methodology statement for the next price review period in the late spring of 2013.

Appendix 1: Consequential modifications to conditions B and C of the licence

Condition B – charges

From April 2015, we will remove the requirement in condition B for the preparation of an annual principal statement (and an auditor's report) to demonstrate compliance with the price control we set. Instead, we have inserted provisions in the modified licence to allow us to specify at each determination the way that companies will do so in future.

Producing a principal statement and the requirement for it to be audited is a considerable administrative burden on companies. We consider that a more targeted and proportionate approach to the information that we ask companies to provide is consistent with focused and smarter regulation.

Condition B – interim and substantial effect determinations

We are committed to the continuing use of interim and substantial effect determinations as a means of protecting the companies and their investors from defined risks between price reviews. But we consider that the wording of the current interim and substantial effect determination provisions in companies' licences is not compatible with the changes we are proposing to make to the price setting parts of the licence.

This is because the existing licence provisions relate to changing a single adjustment factor that has been determined as part of a regular five-year price setting period. These provisions would not be operable if we set multiple controls that may also run for different periods at a future price review. For example, if a company with wholesale and retail price limits applied for an interim determination, we could determine the overall materiality and the total allowable amount under the provisions as they stand. But we would not have a mechanism for formally adjusting the separate wholesale and retail price limits to give effect to the determination and allow the company to recover the allowable amount.

To ensure that the operation of the interim and substantial effect determination tools remains flexible enough to continue to provide protection to the companies and their investors under the price control framework we are proposing, we also want to modify part IV of companies' licences, which governs how these mechanisms operate.

Our proposed changes to part IV of condition B are limited to ensuring that we can adjust the level of price controls set out at a price review. The changes do not affect the following.

- Any of the relevant changes of circumstance or our ability to prescribe notified items.
- The calculation of materiality for the purposes of interim and substantial effects determinations.
- The materiality threshold – it remains at 10% of total appointed business turnover for interim determinations and 20% for substantial effect determinations.
- The calculation of the allowable amount – the companies will still recover the same amounts under the proposed modification.

Our proposed modifications to part IV of companies' licences would not come into effect until 1 April 2015. They will not affect the operation of interim and substantial effect determinations in the current period. But they will ensure that when we next set price limits, we will be doing so on the basis of licences with consistent price review and interim and substantial effect determination provisions, and that companies and their investors will continue to be protected by these tools.

Condition C – infrastructure charges

Because the length of price controls may vary in the future, we propose removing references to any specific time period from paragraph 11. Reviews of the level of infrastructure charges would, as is currently the case, be carried out at the same time as a relevant price review under condition B.

As a consequence of our proposed changes to condition B, we are also proposing to incorporate directly into condition C the existing provision in condition B that sets out what happens if there is a material change to the basis of compiling the RPI. This does not involve any change of substance, because paragraph 2.2.2 of condition C currently states that the existing provision in condition B applies to condition C.

We are also working separately with the companies to simplify and standardise their licences (our licence reform project). This proposed modification does not form part of the licence reform project and is based on companies' licences as they currently stand.

Appendix 2: The licence arrangements of other regulators

Ofgem

Ofgem has significant discretion when determining price controls for the network elements of the electricity and gas sectors. It has the power to determine the nature and form (including the length) of the price control at each review, although this is subject to complying with its principal objective and general duties as set out in the Gas Act 1986 and Electricity Act 1989. These include:

- protecting the interests of existing and future consumers in relation to gas conveyed through pipes and electricity conveyed by distribution systems;
- securing that demand for electricity and gas is met; and
- that companies can finance their activities.

Ofgem has the power to implement its final determination, for the price control framework, through a licence modification. But network companies, materially affected interested parties and Consumer Focus have 20 days to appeal these licence modifications before they take effect.

Office of Rail Regulation

The Railways Act 1993 provides the Office of Rail Regulation with the flexibility to determine the length of the period for which it sets the access charge that Network Rail can charge train operators. It makes this decision in consultation with its stakeholders. For example, for its 2008 review it consulted on this issue in September 2006. For its forthcoming 2013 review, the regulator has consulted on the duration of the next control period as part of its first consultation for that review, published in May 2011. This approach is in line with what we are proposing, should our proposed modification be made.

Civil Aviation Authority

Under section 40 of the Airports Act 1986, the Civil Aviation Authority (CAA) is constrained to setting the maximum amount that airports designated by the Secretary of State for Transport can charge operators for their services. After asking the Competition Commission to recommend what maximum price limits should be, the CAA must set limits to last for a five-year period. But the CAA does have some discretion over how it arrives at the price control.

The UK Government is currently looking at reforming the regulatory framework for airports to give the CAA more flexibility and published its 'Draft Civil Aviation Bill: An effective regulatory framework for UK aviation' on 23 November 2011. The proposed reforms include establishing a licensing framework for airports where the CAA has determined that certain tests are met, such as whether the airport had substantial market power. It also provides the CAA with more discretion about the length of the review period. The reforms provide for airports and airlines to appeal both the CAA's decision to apply a price control and the control itself.

Appendix 3: The detailed changes proposed to the licence

This draft sets out an illustrative example of what conditions B and C may look like following our proposed modifications. The purpose of this example is to help to show the effect of the proposed modifications. It does not necessarily include the exact wording that will apply for each water company, because the conditions of each company's licence are individual and may vary, or because technical errors or inconsistencies may need to be corrected without changing the substance and intended effect.

In particular, this illustrative example relates to the licence of a water only company (condition B for a water and sewerage company contains appropriate additional references to sewerage services and, apart from paragraphs 1 and 2, different paragraph numbers), except at paragraph 8.4, where the provision for Price Controls applicable to water and sewerage Wholesale Activities, where a company undertakes both, is shown in square brackets. Other variations also exist between licences. For example, this illustrative example of condition B contains three Relevant Changes of Circumstances for interim determinations, whereas some licences contain four – this consultation does not propose any changes to the number of RCCs in companies' licences.

For ease of reference, new text is underlined and deletions are shown struckthrough.

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 costs, charges to be levied by and/or revenue paid to the Appointee or to any part of the Appointee's business for the supply of water [and sewerage services]. ~~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. 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~~s 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 one or more ~~Adjustment Factor~~ Price Controls 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~~ the level of 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 Adjustment Factor~~ the level of 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 ~~Adjustment Factor~~ 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 Adjustment Factor~~ the level of 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 ~~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;~~

~~"End-User" means a person who, otherwise than as a person holding an appointment or a licence under the Act, 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) 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 water supply, 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;~~

an "In-Period Adjustment" is a determination by the Water Services Regulation Authority setting or adjusting a Price Control or Price Controls pursuant to sub-paragraph 8.10 or sub-paragraph 14A.3 that has the effect of changing the total revenue to be paid to the Appointee.

the "Materiality Ratio" is the proportion

(a) of revenues from the activities concerned, both in the Appointed Business and in the appointed business of all other relevant undertakers holding appointments under section 6 of the Act,

to

(b) all revenues from both the Appointed Business and the appointed businesses of all other relevant undertakers holding appointments under section 6 of the Act,

the revenues in each case being those in the financial year ending in the calendar year which is two years before the start of the Price Control period at that time applicable to Wholesale Activities;

~~"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-Material Activities" are activities of the Appointed Business that are not Retail Activities and that have been designated by the Water Services Regulation Authority, pursuant to paragraph 8.9, as falling outside the scope of Wholesale Activities;

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

"Periodic Review" means a review conducted by the Water Services Regulation Authority in accordance with Part III of this Condition, for the purpose of determining one or more Price Controls;

"Price Control" means a control set by the Water Services Regulation Authority, in respect of the costs, charges to be levied by and/or revenue paid to an Appointed Business or any part thereof 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 will depend on the circumstances of each case.;

~~"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;~~

"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, and that are so designated from time to time (which designation, for the avoidance of doubt, shall be reversible from time to time) 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;

"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 Items"** means unmeasured water supply;~~

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

~~**"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.~~

~~"**Wholesale Activities**" means all activities undertaken as part of the Appointed Business apart from:~~

- ~~(i) Retail Activities;~~

(ii) Non-Material Activities; and

(iii) activities having been designated as not being subject to Price Control in a Periodic Review having continuing effect in that regard or pursuant to a designation under Part IVA of this Condition having continuing effect.

~~Part II. Restriction of Standard Charges for Basket Items~~

~~3 The Charges Limit~~

~~3.1 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 On the coming into force of the Appointment there shall be referred to the Secretary of State for determination by him the question of what the Adjustment Factor for each of the 10 consecutive Charging Years starting with the Charging Year starting on the 1 April 1990 should be.~~

~~3.4 The Adjustment Factor shall be:~~

~~(1) for each of the Charging Years referred to in sub-paragraph 3.3 the number so determined by the Secretary of State (or such other number as shall from time to time be determined under this Condition);~~

~~(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 to the extent that such deficiency is not attributable to any Charging Year ended three or more years previously.~~

~~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.~~

~~5.3 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 Transitional Provisions~~

~~6.1 Save with the prior written approval of the Water Services Regulation Authority or as permitted under the terms of any agreement or arrangement entered into or made by the Appointee before the transfer date, the Appointee shall not increase the amount of any Standard Charge (other than an Excluded Charge) for any supply of water provided at any time before 1 April 1990 or in respect of any period ending before that date from the amount of such Standard Charge as at the transfer date.~~

Part III. Periodic Reviews

7 **[not used]**

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

8.1 The Appointee shall comply with any determination made by the Water Services Regulation Authority pursuant to sub-paragraph 8.3, sub-paragraph 8.10 or sub-paragraph 14A.3 and shall demonstrate to the Water Services Regulation Authority such compliance.

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 to make a determination pursuant to sub-paragraph 8.10 or sub-paragraph 14A.3.

8.3 Subject to sub-paragraph 8.4, the Water Services Regulation Authority shall determine 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 determinations 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) 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, including (pursuant to the Water Services Regulation Authority's discretion under Part IVA of this Condition) whether or not any part of the Appointed Business is to be subject to a Price Control;

(2) how the Appointee shall demonstrate compliance with those Price Control or Price Controls determined in respect of it; and

(3) for how long each of those Price Controls in respect of the Appointee shall last (being a period of consecutive Charging Years).

~~(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.~~

8.4 In respect of the Appointed Business's Wholesale Activities[,] there shall be one Price Control[or alternatively (at the discretion of the Water Services Regulation Authority) one Price Control in respect of the Appointed Business's water services and one Price Control in respect of the Appointed Business's sewerage services]. [Each such]/[Such] Price Control shall consist of a number ("K") plus 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.

8.5 The Periodic Reviews referred to in sub-paragraph 8.3 shall be conducted:

(a) for 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, starting on 1 April, with the first such period or periods starting on 1 April 2015; and

(b) thereafter, for such periods as shall be determined by the Water Services Regulation Authority, in conjunction with its determination pursuant to sub-paragraph 8.3 above.

8.6 If 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) 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) becomes effective;

(2) 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.

8.7 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.

8.8 The Water Services Regulation Authority (or such person or persons as may be nominated by the Water Services Regulation Authority to do so) may from time to time at its discretion designate as Retail Activities any activities that constitute the provision of goods or services by the Appointee directly to one or more End-Users or that are ancillary to such provision. Such designation may from time to time be reversed by the Water Services Regulation Authority at its discretion.

8.9 The Water Services Regulation Authority may from time to time, at its discretion and for the purposes of Price Controls pursuant to this Condition, designate any activity or activities of the Appointed Business as falling outside the scope of Wholesale Activities provided both:

- (a) that such a designation will not, over the duration of a Price Control applicable at that time to Wholesale Activities, entail the Materiality Ratio of the activity or activities being so designated exceeding 20 per cent; and
- (b) that such a designation will not, at any time, have the effect that, in respect of (i) the activity or activities being so designated, aggregated with (ii) the activity or activities that previously have been so designated where such designation is of continuing effect, the Materiality Ratio exceeds 40 per cent.

Any designation by the Water Services Regulation Authority of activities as falling outside the scope of Wholesale Activities, as provided for above, may from time to time be reversed by the Water Services Regulation Authority at its discretion.

8.10 Pursuant to any designation by the Water Services Regulation Authority under sub-paragraph 8.8 or sub-paragraph 8.9 of any activity in the

Appointed Business as constituting a Retail Activity or a Wholesale Activity or a Non-Material Activity, the Water Services Regulation Authority may, subject to sub-paragraph 8.4, determine in respect of that activity:

- (a) what is the appropriate nature, form and level of the Price Control or Price Controls in respect of the said activity of the Appointed Business;
- (b) how the Appointee shall demonstrate compliance with that Price Control or Price Controls; and
- (c) for how long that Price Control, or each of those Price Controls, shall last (being a period of consecutive Charging Years)

~~8.11 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 Wholesale Charges Scheme

9.1 The Water Services Regulation Authority may from time to time require by notice the Appointee to publish a scheme for the levying of charges for its Wholesale Activities. Such a notice must specify 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 scheme is to be effective. The Appointee shall comply with the said requirement by notice and adhere to the terms of the scheme 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 Initial Determination or, as the case may be, the most recent one or more~~ Periodic Reviews or which is to occur) ~~the Adjustment Factor~~ nature, form

and level of one or more Price Controls should be changed (and if so what change should be made to the Adjustment Factor nature, form and level of the relevant Price Control or Price Controls) for ~~the five~~ 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~~ 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 The International Stock Exchange of the United Kingdom and the Republic of Ireland Limited [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 paragraph 15, 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~~ making one or more determinations pursuant to paragraph 8.3 in a ~~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)~~ as to whether the Adjustment Factor level of a Price Control or Price Controls should be changed (and if so, what change should be made to the Adjustment Factor 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 ~~Adjustment Factor~~ Relevant Determination should be changed (and if so what change should be made to ~~the Adjustment Factor~~ 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 ~~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)~~ 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 ~~determining the Adjustment Factor or whether the Adjustment Factor should be changed (and if so what change should be made to the Adjustment Factor)~~ making a Relevant Determination;

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) 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~~ making a Relevant Determination; 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)~~ 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; 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 .
- (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 Relevant Determination 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 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 is 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-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 relevant 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 level of Price Control or Price Controls Adjustment Factor over the period ~~from the beginning of~~ 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 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 level of Price Control or Price Controls 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 level of a Price Control or Price Controls 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 level of a Price Control or Price Controls 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 IVA Movements out of or back into Price Controls

14A

- 14A.1 The Water Services Regulation Authority may from time to time at its discretion designate any Retail Activity or Non-Material Activity in the Appointed Business as not subject to a Price Control or Price Controls. Any such designation may from time to time be reversed by the Water Services Regulation Authority at its discretion.
- 14A.2 If pursuant to sub-paragraph 14A.1 the Water Services Regulation Authority designates an activity as subject to a Price Control or Price Controls, it shall designate whether or not that activity is a Wholesale Activity and, if it is not a Wholesale Activity, whether that is by virtue of its being a Non-Material Activity or a Retail Activity.
- 14A.3 Pursuant to any designation by the Water Services Regulation Authority under sub-paragraph 14A.1 of an activity in the Appointed Business as subject to a Price Control or Price Controls, the Water Services Regulation

Authority shall, subject to sub-paragraph 8.4, determine in respect of that activity:

- (a) what is the appropriate nature, form and level of the Price Control or Price Controls in respect of the said activity of the Appointed Business;
- (b) how the Appointee shall demonstrate compliance with that Price Control or Price Controls; and
- (c) for how long that Price Control, or each of those Price Controls, shall last (being a period of consecutive Charging Years).

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

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, any In-Period Adjustment made under sub-paragraph 8.10 or sub-paragraph 14A.3, any Interim Determination made by the Water Services Regulation Authority under Part IV of this Condition or any designation under sub-paragraph 14A.1 of any Retail Activity or Non-Material Activity in the Appointed Business as not subject to a Price Control or Price Controls,

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 comply with the Water Services Regulation Authority's determination 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 — Modification of this Condition following Periodic Reviews and references to the Water Services Regulation Authority or the Competition Commission~~

~~16.1 — 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.~~

~~16.2 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

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.

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) or (b) 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 ~~sub-paragraph 4.2 of Condition B shall apply to this Condition as if the reference in it to the Charges Limit were a reference to the Standard Amount.~~ 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 5 consecutive Charging Years 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 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 $\frac{1}{2}$ 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.



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