

SCHEDULE 2: Conditions of the Appointment

Condition A: Interpretation and Construction

"**Periodic Review**" means a review of the Appointed Business carried out under paragraph 10 or 12 of Condition B, [and as more particularly described in paragraph 1.2 of condition B](#), but so that references in Part IV of Condition B to a Periodic Review shall exclude any review carried out under paragraph 12 of that Condition and shall include the determination by the Competition Commission of the disputed determination referred to it under paragraph 17 of Condition B following the giving of Information to the Authority in accordance with paragraph 10;

Condition B: Charges

Part I. *Explanatory Provisions*

1. Introduction

The purposes of this Condition are set out in the following subparagraphs.

- 1.1 To limit the revenue receivable by the Appointee in respect of Standard Charges for the supply of water, the provision of sewerage services and the reception, treatment and disposal of trade effluent in the first three Charging Years commencing on 1st April 2007 and to limit increases in Standard Charges for the supply of water, the provision of sewerage services and the reception, treatment and disposal of trade effluent in the fourth Charging Year (commencing on 1st April 2010) and in subsequent Charging Years.

The limit on the revenue receivable in each of the first three Charging Years commencing on 1st April 2007 will be set initially by the Department for Regional Development on the basis of key data assumptions. This limit on the revenue receivable does not include any subsidy payable to the Appointee by the Department for Regional Development in respect of the phasing-in of charges or to prevent average charges for the supply of water and provision of sewerage services to domestic customers from exceeding a maximum amount determined by the Department. Any variance between certain assumed and outturn figures for key data will result in an adjustment to the limit on revenue receivable in the Charging Year concerned or in subsequent Charging Years, as the case may be. An estimate of the outturn figure may be used initially where the final outturn figure is not available in time to set prices for a particular Charging Year. In cases where the outturn data is not available in sufficient time to be taken into account for the third Charging Year, any variance between certain assumed and outturn figures will be taken into account in determining the limit on increases in Standard Charges for the fourth Charging Year or

subsequent Charging Years. In each of the first three Charging Years, the Department for Regional Development may act to prevent average charges for the supply of water and provision of sewerage services to domestic customers from exceeding a maximum amount determined by the Department provided that any shortfall in the Appointee's revenue that would result from such action is met by the Department.

The weighted average increase in the fourth Charging Year and subsequent Charging Years is limited to the sum of the movement in the Retail Prices Index, an Adjustment Factor, called K, and a Subsidy Factor, called S. The Subsidy Factor is intended to compensate the Appointee for any revenue shortfall that results from non-payment of any subsidy in respect of customers for whom special provision is made and the payment of which has been taken into account by the Authority in determining the Adjustment Factor.

Changes in metered charges are calculated by reference to actual consumption in respect of 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 1st 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 "Maximum Allowable Controlled Revenue and control of Standard Charges."

1.2 To provide for Periodic Reviews of the Appointed Business to be carried out by the Authority in respect of the following periods:
(i) 1st April 2010 to 31st March 2013;
(ii) 1st April 2013 to 31st March 2018; and
(iii) thereafter at five-yearly intervals, so that the Authority can determine the Adjustment Factor for the periods referred to in (i) and (ii) above and thereafter whether the Adjustment Factor should be changed in relation to (iii) above. Except where expressly provided in this Instrument of Appointment all such 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) [Removed]
- (2) to refer to the Authority for determination from time to time the question of (i) modifying either or both of the Domestic Base Allowed Revenue and the Non-Domestic Base Allowed Revenue or (ii) modifying the Adjustment Factor (as appropriate), to allow for Notified Items and Relevant Changes of Circumstance;
- (3) to refer to the Authority for determination at any time the question of (i) modifying either or both of the Domestic Base Allowed Revenue and the Non-Domestic Base Allowed Revenue or (ii) modifying the Adjustment Factor (as appropriate), where circumstances have a substantial adverse effect on the Appointed Business; and
- (4) where notice to terminate either or both of the Appointments has been given, to refer to the Authority for determination the question of what (i) the Domestic Base Allowed Revenue and the Non-Domestic Base Allowed Revenue or (ii) the Adjustment Factor (as

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appropriate) should be in the future, on the assumption that the relevant Appointment or, as the case may be, the Appointments were 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 Article 16(4) of the Order.

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

- 1.4 To enable the Authority to initiate changes to (i) the Domestic Base Allowed Revenue and the Non-Domestic Base Allowed Revenue or (ii) the Adjustment Factor (as appropriate), 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 Authority to refer to the Competition Commission matters arising out of determinations by the Authority referred to in subparagraphs 1.2 and 1.4 and references referred to in subparagraph 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 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 Authority."

Proposed Modifications Continued...

- 10. *Periodic Reviews of the Appointed Business ~~at Regular~~ Intervals*
- 10.1 The Appointee shall furnish to the Authority such Information as the Authority may reasonably require to enable it to carry out a Periodic Review for the purpose of determining:
 - (i) ~~the~~ Adjustment Factor for each of the ~~three~~ consecutive Charging Years commencing on 1st April 2010; ~~v~~
 - (ii) ~~the Adjustment Factor for each of the five consecutive Charging Years commencing on 1st April 2013; and~~
 - (iii) ~~in~~ relation to ~~consecutive Charging Years in any~~ successive five-year periods, the question whether the Adjustment Factor should be changed (and if so, what change should be made to it),

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in each case having regard to all the circumstances which are relevant in the light of the principles which apply by virtue of Part II of the Order in relation to the Authority's determination, including, without limitation, any change in circumstance which has occurred since the transfer date or last Periodic Review (as appropriate) or which is to occur.

10.2 The Appointee shall furnish to the Authority such Information (including further detail about or explanation of Information previously supplied, whether or not under this subparagraph 10.2) as the Authority may by notice reasonably require to enable it to carry out the Periodic Review.

11. *[Removed]*

12. *Periodic Reviews of the Appointed Business where a Termination Notice has been given*

12.1 Where a Termination Notice has been given by the Department to the Appointee, the Appointee may refer to the Authority for determination by it the question, on the assumption that such a Termination Notice had not been given, of what the Adjustment Factor should be for the ten consecutive Charging Years starting with the Charging Year commencing on 1st April last before the Termination Notice is to expire.

12.2 A reference to the Authority under this paragraph 12 shall be made by notice given to the Authority not earlier than 1st July and not later than 14th July in the Charging Year next but one before that commencing on the said 1st April.

13. *Effect of Termination of the Appointments (or either of them) on Periodic Reviews*

Subject to paragraph 12, if the Department for Regional Development shall have served a Termination Notice on the Appointee then this Condition shall have effect as though, in the case of the Appointment in respect of which the Termination Notice has been given, references to a Periodic Review being carried out in respect of an initial three consecutive charging years or subsequently 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) In the case of a Termination Notice which is to expire on or before 31 March 2010, three years or in any other case five years; 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.

Condition C: Infrastructure Charges

12.2 In subparagraph 12.1:

(1) the **Subsequent Period** means the period from 1st April immediately following the Charging Year in which the reference is made until 31st March 2010, unless the reference is made after 1st January 2009, in which case the Subsequent Period means the period from 1st April immediately following the Charging Year in which the reference is made until 31st March ~~2013~~; and

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(2) the **Prior Period** means the period from 1st April 2007 until the end of the Charging Year in which the reference is made.

Condition K : Ring Fencing and Disposals of Land

5. Estate Management Plan and Annual Land Disposal Return

5.1 The Appointee shall prepare and not later than 1 April 2009 furnish to the Authority an Estate Management Plan:

- (i) identifying land which the Appointee considers likely to be surplus to its operational requirements within the period commencing 1 April 2010 and ending on 31st March 2018, comprising the two Periodic Review periods as described in subparagraph 1.2 (i) and (ii) of Condition B ("Surplus Land");
- (ii) setting out the Appointee's proposals in respect of the disposal or development of Surplus Land; and
- (iii) providing the Appointee's estimate, to be prepared with reasonable diligence and with the benefit of such professional advice as is appropriate in the circumstances, of the likely proceeds of disposal or return on development (as the case may be) of Surplus Land.

5.2 The Appointee shall keep the Estate Management Plan prepared under subparagraph 5.1 under review and shall prepare a revised Estate Management Plan from time to time and in any event by each Review Date and shall furnish to the Authority any such revised Estate Management Plan.

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