

MEMORANDUM OF UNDERSTANDING BETWEEN THE DEPARTMENT FOR REGIONAL DEVELOPMENT AND THE NORTHERN IRELAND AUTHORITY FOR UTILITY REGULATION

CONSEQUENT WRITTEN AGREEMENT

Introduction

1. The Memorandum of Understanding (MOU) between the Department for Regional Development ('the Department') and the Northern Ireland Authority for Utility Regulation ('the Regulator') sets out a number of matters that will be agreed between the Department and the Regulator in writing. This Consequent Written Agreement deals with these matters.
2. The MOU identifies areas which the Department and the Regulator will agree in writing. This agreement deals with the following (the numbering relates to the relevant paragraph of the MOU):

4.1.1. Price Control

The Department and the Regulator shall agree written assumptions, setting out specific points of agreement in respect of a determination.

4.1.2. Alterations to Funding Levels

The Regulator and the Department shall agree written procedures for dealing with alterations to funding.

Section 1 PC10 Agreed Approaches

3. The Department and the Regulator agree the following assumptions in respect of a determination.
 - RPI – The existing approach contained in the licence and for the use in the Scheme of charges will be maintained. RPI will also be taken into account in any bid for additional funding.
 - COPI – The impact of COPI will be noted and monitored but no account taken of it until PC13 unless NIW bring a bid forward for additional funding.
 - Correction Factor – No correction factor mechanism will be used during the PC10 period. For clarity, this means there will be no carry forward of under or over recoveries between years or into the PC13 period. There will also be no correction factor brought forward from the SBP period.
 - Ring-fencing – The Regulator agrees that there will be no ring fencing of operational expenditure during the PC10 period. This applies specifically to (a) the Business Improvement Programme (BIP) (b) the Voluntary Early

Retirement/Voluntary Severance (VER/VS) and (c) PPP operating costs. Thus, out-performance in these areas can be applied against under-performance in other areas when measuring delivery against overall opex efficiency targets.

4. The Department agrees that the baseline for NIW's funding which is consistent with the Final Determination of 3 February 2010 is as follows:

Table 1 – Total Operating Expenditure (post efficiency)

	£m 07/08 prices	£m Nominal prices ¹
2010/11	202.980	214.9
2011/12	189.074	204.8
2012/13	176.665	195.7
PC10 Total	568.719	615.4

Table 2 – Capital Investment Programme (post efficiency)

	£m 07/08 prices	£m Nominal prices ²
2010/11	193.309	193.4
2011/12	183.732	188.0
2012/13	187.308	196.1
PC10 Total	564.349	577.5

Section 2 – Alterations to Funding Levels

5. The appropriateness of NIW's funding (and of related regulatory matters) will normally be reviewed in September and December monitoring rounds of each year. Detailed timetables are included below. This review will consider issues relating to the current year and, where appropriate, future years.
6. The review will be based on a reasoned submission from NIW and present the net funding position including details of subsidy, PE accounting, statutory and regulatory accounting, and provide reconciliation between these. An assessment of the impact on outputs should be included in all submissions. The impact of RPI and COPI will also be considered in all submissions.
7. Any submission made by NI Water for an Interim Adjustment will have been reviewed and signed off by the NI Water Board. The Department and Regulator may ask for other internal and reporter reviews of the submission.

¹ Based on actual RPI to 2009/10 and an assumption of 2.3% (as per the FD) thereafter.

² Based on table 7.2 of the Final Determination.

8. The Regulator and the Department will review NIW's reasoned submission and agree proposals affecting NIW's funding, subject to the Minister's and Executive's overall decisions and to the Regulator's statutory duties.

Criteria for NIW's Submission

9. The Regulator's and Department's assessment of NIW's submission will take account of the following criteria (which are not exclusive of other considerations that might be thought relevant):
 - i. Whether the proposed interim adjustments are (individually or collectively) above the materiality threshold (as defined in the MoU).
 - ii. The extent to which the factors leading to the request were within NIW's power to control or mitigate;
 - iii. Costs associated with responding to emergencies or exceptional situations, or any pressures arising from requests for actions by NIW which fall outside Ministerial Guidance may be regarded as outside NIW's control;
 - iv. The extent to which adjustment to any of NIW's activities, outputs or targets should be made (including contingency planning to address the Executive's inability to meet approved adjustments);
 - v. The extent to which a request for alteration addresses the global or net picture i.e., gives due attention to factors that might have reduced the need for funding, as well as factors that might call for extra funding;
 - vi. The extent to which adjustments to K should be applied by the Regulator in future charging years; and
 - vii. The existence of any additional provision for agreed relevant items outside the determination for public expenditure funding.

Options for Supporting a Submission

10. The group will consider submissions and decide whether to support a PE bid for additional funding in one of three ways:
 - i. A PE funding bid with no change to subsidy or charges - Under this scenario any additional cash requirement will be met from the company's cash reserves.
 - ii. A PE funding bid and a change to subsidy only - Under this scenario any additional cash requirement will be paid for through DRD subsidy.
 - iii. A PE funding bid with a change to both subsidy and the scheme of charges - Under this scenario any additional cash requirement will be paid for by customers and the Executive through subsidy. The Scheme of Charges would be adjusted in the year following a PE bid and include any consultation necessary. Additional subsidy will be

provided in lieu of domestic payments. This may be handled in year or in the following year depending on the timing of the submission.

11. It is also assumed that the latest/revised customer data forecasts will be used to calculate the revised K factors.
12. If the group does not agree to support a PE bid, if NIW is to incur the expenditure, it must effectively achieve additional efficiencies or make savings elsewhere with no reduction in outputs.
13. In the circumstance where the group has supported a bid that is unsuccessful and/or the Department notifies the Regulator and NIW that PE is not available to support the current level of charges, this will be considered a reduction in PE. The Regulator and NIW will work along with other stakeholders to agree changes to outputs and / or prices as appropriate.
14. Where NIW's reasoned submission calls for an alteration to the scope of the programme, or where the Department considers that such an alteration may be required because of an alteration in PE funding, the programme will be reviewed jointly by the Regulator and Department (as appropriate with input from the NIW, NIEA and the Drinking Water Inspectorate and the Consumer Council). The following principles will be observed:
 - i. Reductions in the capital programme will be achieved primarily by reducing expected outputs, not by reducing capital maintenance;
 - ii. In the first instance, the capital outputs identified in the PC10 determination as "additional" (i.e. that were included in the final determination but not in NIW's Business Plan) will be considered first for removal;
 - iii. The balance of outputs removed from, or added to the programme will be prioritised with all stakeholders, considering growth and enhanced services outputs as well as quality enhancements.
15. Where changes are significant, following consultation and /or approval from the Minister, the Department will produce an addendum to the Social and Environmental Guidance setting out the new priority programme.
16. On receipt of the addendum to the Guidance, the Regulator will review the Determination and publish a revised Determination that:
 - i. Sets out revised funding levels for capital and opex (to take account of opex-from-capex);
 - ii. Sets out revised output targets.

17. The Department/Regulator will advise NIW of their decisions promptly. The Department and the Regulator will adhere to the agreed position.

Indicative Steps and Timetable for Funding Review Process:

Table 3 – September Monitoring Round

Step	Description	Timetable
1	NIW submit bid to working group.	By mid July
2	Working group consider bid.	
3	Working group make a recommendation on bid.	Steps 2-3 to be complete by early August.
4	DRD submit agreed bids to DRD Finance	
5	DRD Finance prepare bid for DFP	
6	DRD submit bid to DFP Regulator letter of support to DFP.	Steps 4-6 to be complete by early September

Table 4 – December Monitoring Round

Step	Description	Timetable
1	NIW submit bid to working group.	By mid October
2	Working group consider bid.	
3	Working group make a recommendation on bid.	Steps 2-3 to be complete by early November.
4	DRD submit agreed bids to DRD Finance	
5	DRD Finance prepare bid for DFP	
6	DRD submit bid to DFP Regulator letter of support to DFP.	Steps 4-6 to be complete by early December.

18. If changes to the Scheme of charges are recommended in either or both of the above monitoring rounds, the Regulator will consider the consultation on price changes in line with the following timetable.

Table 5 – Price Changes

2 nd week in December	DRD notifies the Regulator and NIW of PE alterations if known and/or deemed PE reductions are triggered from the bid process.
3 rd week in January	Regulator drafts consultation paper.
4 th week in January – 2 nd week in February	Consultation period.

3 rd week in February	Regulator considers consultation responses.
4 th week in February	Regulator issues price determination.
1 st week in March	NIW prepare updated Scheme of Charges submission
2 nd week in March	NIW approval process on Scheme of Charges submission
3 rd week in March	Regulator considers the Scheme of Charges submission and amended outputs
4 th week in March	Regulator approval process on Scheme of Charges.

19. If alterations to PE funding are notified after December then it may no longer be possible to effect a price change on 1st April.
20. The timetables in tables 3 – 5 are indicative in nature.
21. Consideration should be given to additional guidance from the Department to the Authority in relation to the scheme of charges in respect of any changes to PE funding and outputs under Article 201 of the Water and Sewerage Services Order 2006.

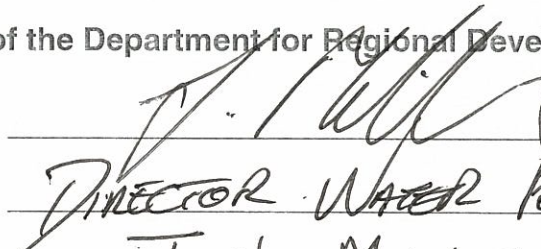
Signed on behalf of the Department for Regional Development

Name

Position

Signature

Date



 DIRECTOR WATER POLICY DRD

 JOHN MILLS

 22/11/10

Signed on behalf of the Northern Ireland Authority for Utility Regulation

Name

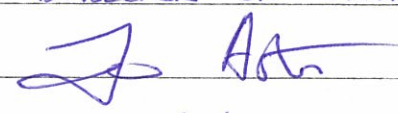
Position

Signature

Date

JO ASTON

 DIRECTOR OF WATER REGULATION



 22/11/10
