



Water & Sewerage Services Price Control 2021-2027

Draft Determination – Annex D
Consequent Written Agreement
September 2020

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

CONSEQUENT WRITTEN AGREEMENT PC21

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 PC21 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.
4. The Department agrees the calculation of PE figures, consistent with the Draft Determination of 30 September 2020 are as follows:

Table 1 – Operating Expenditure - Nominal prices

	£million
2021-22	206.6
2022-23	207.9
2023-24	209.5
2024-25	215.5
2025-26	224.1
2026-27	235.4
PC21 Total	1299.0

Table 2 – Capital Investment Programme - Nominal prices

	£million
2021-22	214.4
2022-23	260.7
2023-24	307.2
2024-25	384.9
2025-26	412.9
2026-27	372.2
PC21 Total	1952.3

5. The Department and the Regulator agree that the figures at Table 1 do not include spend to save items such as voluntary early retirement/voluntary severance and business improvement. The Regulator and the Department agree that the undertaker should make a bid for funding for these spend to save items at the first opportunity and that they will consider¹ such a bid up to the maximum levels set out in table 3 below.

Table 3 - Spend to save funding

	VER/VS £million	BIP £million	Total £million
2021-22	0.5	1.4	1.8
2022-23	0.5	1.4	1.9
2023-24	0.5	1.1	1.5
2024-25	0.5	1.1	1.5
2025-26	0.5	0.4	0.9
2026-27	0.5	0.4	0.9
PC21 Total	2.9	5.7	8.6

¹ Allocation of funding is, ultimately, a matter for the Executive. However, DFP is keen to support invest to save bids.

Section 2 – Alterations to Funding Levels

6. This Consequent Written Agreement concerns mechanisms to make changes to the Regulator's PC21 Determination and NIW's "determined funding" and in such circumstances only bids which have been submitted for joint review by the Regulator and Department will be considered for further submission to DFP.
7. Decisions on public expenditure resulting from Executive decisions which do not involve alterations to the Regulator's Determination will be taken within the public expenditure system. The Department will keep the Regulator informed of changes both positive and negative.
8. The appropriateness of NIW's funding (and of related regulatory matters) will normally be reviewed in advance of each financial year and / or during the public expenditure monitoring rounds within each year. Indicative timetables are included below.
9. Each 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.
10. 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, where it is reasonable to do so, ask for other internal and reporter reviews of the submission. The Department and Regulator accept

the importance of such reviews and agree they should not unduly delay decisions.

11. 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

12. 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 K² 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.

² K (also known as the adjustment factor) is part of the licence mechanism for changing prices between years.

Options for Supporting a Submission

13. The Regulator and Department 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.
14. It is also assumed that the latest/revised customer data forecasts will be used to calculate the revised K factors.
15. In the circumstance were the Regulator and Department have 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 PE cut. The Regulator and NIW will work along with other stakeholders to agree changes to outputs and / or prices if appropriate.

Capital Programme

16. Where NIW's reasoned submission calls for an alteration to the scope of the Regulator's PC21 capital determination or where the Department considers that such an alteration may be required because of expected public expenditure pressures the Regulator and Department (as appropriate with input from the NIW, NIEA and the Drinking Water Inspectorate and the Consumer Council) will jointly review the position. The following principles

will be observed in making any revision to the Regulator’s capital determination:

- i. Reductions in the Regulator’s capital determination will be achieved primarily by reducing expected outputs, not by reducing capital maintenance;
 - ii. The balance of outputs removed from the determination will be prioritised with all stakeholders, considering growth and enhanced services outputs as well as quality enhancements.
17. Decisions on public expenditure resulting from Executive decisions which do not involve alterations to the Regulator’s Determination will be taken within the public expenditure system. The Department will keep the Regulator informed.
18. 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 any new priorities.
19. On receipt of the addendum to the Guidance, the Regulator will review the current Determination and consider publishing 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.
20. The Department/Regulator will advise NIW of their decisions promptly. The Department and the Regulator will adhere to the agreed position.

Indicative Steps and Timetables for Funding Review Process:

Table 4 – Review in advance of Financial Year

Step	Description	Timetable
1	NIW submit bid to both UR and DRD.	By mid February
2	UR and DRD working group consider bid and make a recommendation.	
3	UR and DRD make a joint decision on the Undertakers bid and if steps 4-6 are required.	Steps 2-3 to be complete by mid March.
4	DRD Minister approves NIW budget in advance of the financial year.	By 31 st March

Table 5 – In-Year Monitoring Rounds

Step	Description	Timetable
1	NIW submit bid to both UR and DRD.	At least 6 weeks before DRD submission to DFP ³ i.e. not later than the last week in April, August and November for the respective monitoring rounds.
2	UR and DRD working group consider bid and make a recommendation.	At least 5 weeks before DRD submission to DFP i.e. not later than the first week in May, September and December for the respective monitoring rounds (only 1 week in total for DRD/UR to consider NIW return prior to the Shareholder Unit forwarding it to DRD Finance).
3	UR and DRD make a joint decision on the Undertakers bid and if steps 4-6 are required.	Steps 2-3 to be completed in time to allow NIW to make its DRD return i.e. 5 weeks before DRD submission to DFP
4	DRD submit agreed bids to DRD Finance	5 weeks before DRD submission to DFP (i.e. end of first week in May, September and December for the respective monitoring rounds.
5	DRD Finance prepare submission for DFP, seek DRD Minister approval, share with Committee for Regional Development etc	Between receiving NIW return from Shareholder Unit and submission to DFP
6	DRD submit bid to DFP. Regulator letter of support to DFP.	Steps 4-6 to be complete by DFP deadline i.e. normally the first week in June, October and January for the respective monitoring rounds.

³ The dates of the monitoring rounds will be determined by DFP.

21. Any potential new bid items should be raised with, and submitted to, both UR and DRD at the earliest opportunity and irrespective of the above timetables.
22. NIW must fully consider the criteria set out in paragraph 12 in all submissions, to facilitate the demanding timeframe reflected above.
23. Currently there are three in-year monitoring rounds – June, October and January, with October being the main round to effect bids and reduced requirements. The in-year Monitoring round timetable may vary slightly as it is subject to DFP modifications.
24. If changes to the Scheme of Charges are recommended in any of the above monitoring rounds, the Regulator will consider the consultation on price changes in line with following timetable.

Table 6 – Price Changes / PE Cuts

2 nd week in December	DRD notify the Regulator and NIW of PE restrictions and/or deemed PE cuts 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.

25. If alterations to PE funding are notified after December then it may no longer be possible to effect a price change on 1st April.
26. 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 _____

Signed on behalf of the Northern Ireland Authority for Utility Regulation

Name _____

Position _____

Signature _____

Date _____

DRAFT