

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

NOVEMBER 2010

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1. INTRODUCTION

1.1 Background and Definitions

This Memorandum of Understanding (the Memorandum) documents the agreement between the Northern Ireland Authority for Utility Regulation (the Regulator) and the Department for Regional Development (the Department) with regard to their functions set out in the Water and Sewerage Services (Northern Ireland) Order 2006 (the Order) for regulating water and sewerage service undertakers.

Article 11 of the Order places a duty on the Regulator and the Department to make arrangements with a view to promoting:

- (a) co-operation and the exchange of information between them; and
- (b) the consistent treatment of matters which affect both of them.

1.2 Review of Memorandum

The Memorandum will be kept under review. Amendments to this Memorandum may be made at any time by agreement of both parties. Both parties will take account of Executive policy decisions and reflect them. Before any changes are implemented, the Department will consult the Consumer Council, Northern Ireland Water and DOE Environment Agency.

1.3 Publication of Memorandum

The Department is required to lay a copy of this Memorandum and any revised Memorandum before the Assembly. The Department will send a copy of this Memorandum and any revised versions to the DOE Environment Agency, the Consumer Council, Northern Ireland Water and the Regulator.

An up to date version of this Memorandum will be placed on the Regulator's website (www.uregni.gov.uk) and the Department's website (www.drdni.gov.uk).

1.4 Definitions

The "Initial Period"

The initial period, for the purposes of this Memorandum, is the period during which the majority of the Undertaker's revenue is provided by subsidy under Article 213 of the Water and Sewerage Services (NI) Order 2006.

"Undertaker's Business Plan"

The Undertaker's Business Plan means a written document setting out funding and associated outputs for a period of at least three years (in respect of some of which years the plan might be indicative in character) and includes a monitoring or operating plan, or similarly styled document.

“Materiality threshold”

Materiality threshold means alterations to agreed funding levels greater than £0.5 million including bids of a novel or contentious nature.

“Alterations of Funding”

Alterations of funding means any alterations from agreed overall, determined funding above the materiality threshold, whether increases or reductions.

2. ROLES AND RESPONSIBILITIES

2.1 Department for Regional Development

The Minister for Regional Development has overall policy and legislative responsibility for water and sewerage services (responsibility for environmental policy matters lies, principally, with the Minister for the Department of the Environment). The Department is also the shareholder of NI Water.

The Regulator is the independent economic regulator of the water and sewerage industry in Northern Ireland. The Regulator is responsible for regulating water and sewerage undertakers, acting independently of the industry, Government and other stakeholders, while working within the Government policy framework.

3. AGREEMENT ON PRINCIPLES

3.1 The common objective of the Department and the Regulator is to “get water and sewerage services right for today’s and tomorrow’s consumer and taxpayer through good governance, that achieves the right balance of efficiencies, fairness, affordability, sustainability, value and quality”.

3.2 The principles agreed by the Department and the Regulator in drawing up this agreement are:

- to foster mutual understanding and effective relations (as set out in the Partnership Agreement of October 2008) generally between the two bodies;
- to work together pragmatically to ensure effective and efficient support and oversight of the Undertaker’s delivery of water and sewerage services;
- to ensure the ability to fulfil respective statutory functions is not hampered through action, or inaction by the other body.
- to ensure that information is shared as appropriate to enable both bodies to carry out their respective functions in an efficient manner while minimising duplication of effort and reducing regulatory burdens on the Undertaker.
- to notify each other, when possible, in advance where there is a likelihood of significant announcements and developments in policy.

4. AREAS OF INTERACTION

4.1 Funding

Under Article 6 of the Order, the Department and the Regulator are required to carry out their functions in a manner that they consider best calculated to ensure that an Undertaker is able to finance the proper carrying out of its function.

4.1.1 Price Control

The Regulator and the Department recognise the treatment of the Undertaker as both a regulated utility and an NDPB for public expenditure purposes.

The Regulator and the Department will agree proposals affecting the Undertaker's funding, subject to the Minister's and Executive's overall decisions and to the Regulator's statutory duties. This means that

- The Department agrees that the Price Control process will be the methodology for determining the funding bids which will be made on behalf of the Undertaker.
- The Regulator recognises that its determination of future prices/spending should be based on agreed public expenditure levels, or where this is not possible, will be subject to review when public expenditure is confirmed.
- Once public expenditure funding is confirmed, the Department will approve an Undertaker's business plan which is in line with a determination.

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

4.1.2 Alterations to Funding Levels

The Regulator and Department recognise the constraints that the public expenditure system imposes upon them in respect of the Undertaker's funding. In particular:

- Lack of flexibility between funding years;
- The requirement for expenditure by the Undertaker to conform to available budget cover;
- The annual basis for funding control; and therefore
- The need to allow for funding alterations in-year.

Accordingly, the Regulator and Department agree that any request for alteration of funding by the Undertaker will be referred to them for joint review. Alterations to

public expenditure will be subject to final Ministerial or Executive decision, while alterations to customer charges will be subject to Regulator approval.

Before agreeing material variations to the Capital Programme, the Regulator will consult the Environment Agency, the Drinking Water Inspectorate and the Consumer Council.

Requests for alteration by the Undertaker must be above the materiality threshold.

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

4.1.3 Management of the Undertaker's Budget

The Regulator and the Department agree that the Undertaker will have freedom to manage its budget within its approved Business Plan, except where an alteration to overall determined funding is requested.

4.1.4 Relevant Items

In carrying out their functions under Article 6 of the Order, the Regulator and the Department acknowledge that mitigation measures normally available under regulation (e.g. Reserves, IDOKs) cannot be used in the initial period. The Regulator and the Department will therefore agree relevant items for which some provision, outside a determination, should be made.

Where the Department and the Regulator have agreed additional provision for relevant items they will agree that such expenditure should be included in a bid for public expenditure resources in addition to determined expenditure. However, any such additional provision must be held by the Department and only made available to the Undertaker in accordance with agreed written procedures for dealing with alterations to funding.

4.2 Water and Sewerage Service Objectives

In concluding the capital programme and service targets on which a determination is based, the Regulator will agree objectives with the Department based on the Minister's Social and Environmental Guidance.

4.3 Provision of Information

4.3.1 Monitoring of Undertaker etc

The Department and the Regulator agree (as far as is consistent with requirements to carry out their own specific duties) to create an integrated suite of standards,

measures, procedures, targets and reports to assess the performance of the Undertaker.

The Output Review Group will receive such reports from the Undertaker, notwithstanding the Regulator's requirements (e.g., the Annual Information Return).

4.3.2 Provision of information and standards of communication in relation to the Undertaker's performance

The Regulator and the Department will endeavour to provide information to each other to enable each to fulfil its functions efficiently. Where the information cannot be provided reasons will be given.

The Department and the Regulator will have regard to a shared aim to gather information in a way that minimises the administrative and cost burden for the Undertaker.

Requests for information by either body will be confirmed in writing, unless otherwise agreed. The Department's standard for answering correspondence is 15 working days and both parties will endeavour to adhere to this standard as a joint measure of good practice. Both parties agree to make every effort to meet shorter deadlines when they are reasonably requested.

4.3.3 Financial Information

In presenting financial information the Regulator and the Department will use best endeavours to ensure that it is set out in a consistent way or highlight where this may not be the case – for example, whether figures are real or nominal or include or exclude unregulated costs.

The Department and the Regulator will aim to monitor the Undertaker's financial position in a way that enables reconciliation between subsidy, public expenditure accounts, regulatory accounts and statutory accounts.

In responding to external requests, the Regulator and the Department will attempt to present information in a consistent way.

4.3.4 Meeting Arrangements between the Department and the Regulator

The Department and the Regulator agree to meet regularly to review matters of mutual interest and responsibility:

Both bodies agree to identify contact points within their organisations to be responsible for the exchange of information and communication links.

Formal contact between the Department and the Regulator will be through:

- **Water Stakeholder Steering Group (WSSG)**

The WSSG is comprised of a senior representative from each organisation, and provides a forum for discussion of strategic planning and funding, governance, policy and major operational issues.

- **Output Review Group (ORG)**

The ORG's role is for stakeholders to inform and to be informed on progress on key outputs for water and sewerage services.

The above is without prejudice to any other arrangements agreed between the Regulator and the Department.

4.3.5 Handling Consumer Correspondence

The Department and the Regulator have a duty to ensure that the interests of consumers of water and sewerage services are protected. Roles and responsibilities in handling consumer correspondence should be clearly defined to avoid confusion for consumers, the industry and other interested parties about who will respond to correspondence, including in relation to complaints and appeals. The Regulator and the Department will endeavour to make clear their roles in relation to correspondence at Ministerial, Departmental, and regulatory levels, and will ensure clarity with respect to complaints is outlined within relevant Codes of Practice or any published guidance material.

4.4 Forward Work Programmes and Budgets

In accordance with Article 4 of the Order, the Regulator will consult with the Department on its forward work programme (FWP) as it relates to water and sewerage services. The FWP will contain a general description of the projects which it plans to undertake during the year and the objectives of each project. It must by statute also include an estimate of the overall expenditure which the Regulator expects to incur. The Regulator further agrees to include in this consultation information about the budget requirements of the Water Directorate.

The Regulator will provide sufficient time for the Department and other consultees to consider and make representations before finalising its FWP. It will also notify the Department in advance of publishing the final FWP.

The Department and the Regulator will use all reasonable endeavours to avoid duplication and inconsistency between their forward work programmes.

In accordance with Article 5 of the Order, the Regulator will forward a copy of each annual report prepared in accordance with that provision.

4.5 Licence

In addition to its statutory obligations, the Regulator will propose changes to the Licence that reflect the 2006 Order (as amended) or any other relevant change to

primary or secondary legislation and the governance arrangements as agreed in this Memorandum.

The Regulator will engage with the Department to ensure the proposals for amendments to the Licence accurately reflect this Memorandum.

The Department may from time to time assess the legislative framework, and will consult the Regulator in respect of any conclusions for changes to the legislative framework in this area.

4.6 Enforcement

Both bodies agree that duplication of enforcement action including inquiries or reviews are not in interests of the efficient and effective delivery of water and sewerage services to customers, and agree not to conduct such a review where this can best be addressed under the other's statutory remit. Both bodies agree to give the other appropriate warning of enforcement action to avoid duplication of enforcement processes. Both bodies agree to exchange the information necessary to allow the other to carry out enforcement action. To assist these aims, the Department and the Regulator will agree in writing which body is responsible for ensuring control.

Signed by:-

Iain Osborne
Chief Executive



Authorised for and on behalf of the Northern Ireland Authority for Utility Regulation

Date: 22 November 2010

Malcolm McKibbin
Permanent Secretary



Authorised for and on behalf of the Department for Regional Development

Date: 23rd November 2010

