

2007 No. 205

WATER AND SEWERAGE

**The Water Industry (Determination of Turnover for Penalties)
Order (Northern Ireland) 2007**

Made - - - - - *23rd March 2007*

Coming into operation - - - - - *1st April 2007*

The Department for Regional Development, in exercise of the powers conferred by Article 35(10) of the Water and Sewerage Services (Northern Ireland) Order 2006 (a) makes the following Order:

Citation and commencement

1. This Order may be cited as the Water Industry (Determination of Turnover for Penalties) Order (Northern Ireland) 2007 and shall come into operation on 1st April 2007.

Interpretation

2.—(1) In this Order—

“the Order” means the Water and Sewerage Services (Northern Ireland) Order 2006;

“aid” means state aid within the meaning of Article 87 of the Treaty establishing the European Community;

“applicable turnover” shall be construed in accordance with paragraph (2);

“business year” means a period of more than six months in respect of which relevant undertaker prepares a single set of regulatory accounts;

“company” means a relevant undertaker;

“date of the notice” means the date on which the enforcement authority gives notice under Article 35(3) of the Order;

“preceding business year” means the last business year preceding the date of the notice;

“regulated activities” means—

(a) in the case of a company holding an appointment as a water undertaker, its functions as a water undertaker; or

(b) in the case of a company holding an appointment as a sewerage undertaker, its functions as a sewerage undertaker;

“regulatory accounts” means regular accounting and other information which the undertaker is required by its instrument of appointment to supply to the Authority;

(2) “Applicable turnover” means—

- (a) the amounts, determined in conformity with normal accounting practice in the United Kingdom, which are derived by a company from the provision of goods and services in the course of the company's regulated activities in respect of which the penalty is imposed, less sales rebates, value added tax and any other taxes based on such amounts; and
- (b) payments by way of aid granted by a public body to the company, if the aid—
 - (i) facilitates or promotes the company's regulated activities; and
 - (ii) is reflected in the price charged by the company for the goods or services it provides.

Determination of turnover

3.—(1) Subject to paragraphs (2) to (4), for the purposes of Article 35(10) of the Order, the turnover of a company shall be the applicable turnover for the preceding business year.

(2) Where the preceding business year is more or less than twelve months, the turnover shall be the applicable turnover in that business year divided by the number of months in that business year and multiplied by twelve.

(3) Where there is no preceding business year, the turnover shall be the applicable turnover for the relevant year.

(4) For the purposes of paragraph (3), where the period for which the company held an appointment as a relevant undertaker during the relevant year was less than twelve months, the turnover shall be the applicable turnover in that period divided by the number of months in that period and multiplied by twelve.

(5) In paragraphs (3) and (4), "the relevant year" means the twelve months ending on the last day of the month preceding the month in which the date of the notice falls.

Sealed with the Official Seal of the Department for Regional Development on 23rd March 2007



Nigel McCormick
A senior officer of the
Department for Regional Development

EXPLANATORY NOTE

(This note is not part of the Order)

Article 35 of the Water and Sewerage Services (Northern Ireland) Order 2006 provides that, in certain circumstances, an enforcement authority may impose a financial penalty for certain regulatory infringements by a company appointed as a relevant undertaker. Financial penalties must not exceed 10 per cent of the turnover of the company in question.

This Order makes provision for the determination of the turnover of a company appointed as a relevant undertaker for the purposes of financial penalties.

No regulatory impact assessment has been prepared in respect of this Order. A regulatory impact assessment was prepared as part of the draft Integrated Impact Assessment consultation process. This included an assessment of the financial penalties provisions. Copies can be obtained from the Department's website at www.waterreformni.gov.uk/index/consultations/consultations2004.htm.