

2005 No. 477

WATER INDUSTRY, ENGLAND AND WALES

**The Water Industry (Determination of Turnover for Penalties)
Order 2005**

<i>Made</i> - - - -	<i>3rd March 2005</i>
<i>Laid before Parliament</i>	<i>7th March 2005</i>
<i>Coming into force</i> - -	<i>1st April 2005</i>

The Secretary of State, in exercise of the powers conferred upon her by section 22A(11) of the Water Industry Act 1991(a), having consulted the National Assembly for Wales, hereby makes the following Order:

Citation and commencement

1. This Order may be cited as the Water Industry (Determination of Turnover for Penalties) Order 2005 and shall come into force on 1st April 2005.

Interpretation

2.—(1) In this Order—

“the Act” means the Water Industry Act 1991;

“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);

“the Authority” means, until the coming fully into force of section 36(1) of the Water Act 2003(b) (transfer to the Water Services Regulation Authority and the Consumer Council for Water of functions, property etc) the Director, and thereafter, the Water Services Regulation Authority;

“business year” means a period of more than six months in respect of which—

(a) a relevant undertaker prepares a single set of regulatory accounts; or

(b) a licensed water supplier publishes a single set of accounts or, if no such accounts have been published for the period, prepares a single set of accounts;

“company” means a relevant undertaker or a licensed water supplier;

“date of the notice” means the date on which the enforcement authority gives notice under section 22A(4) of the Act;

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

“regulated activities” means—

(a) 1991 c. 56; section 22A was inserted by section 48 of the Water Act 2003 (c. 37).
(b) 2003 c. 37.

- (a) in the case of a company holding an appointment as a water undertaker, its functions as a water undertaker;
- (b) in the case of a company holding an appointment as a sewerage undertaker, its functions as a sewerage undertaker; or
- (c) in the case of a licensed water supplier, the activities authorised by its water supply licence;

“regulatory accounts” means regular accounting and other information which the undertaker is required by its instrument of appointment to supply to the Authority to enable the Authority to compare the financial position and performance of relevant undertakers; and

“water supply licence” shall be construed in accordance with section 17A(1) of the Act.

(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 section 22A(11) of the Act, 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—

- (a) an appointment as a relevant undertaker, or
- (b) a water supply licence,

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.

3rd March 2005

Elliot Morley
Minister of State,
Department for Environment, Food and Rural Affairs

EXPLANATORY NOTE

(This note is not part of the Order)

Section 22A of the Water Industry Act 1991 provides that, in certain circumstances, the Water Services Regulation Authority (and until it is fully established, the Director General of Water Services), the National Assembly for Wales or the Secretary of State may impose a financial penalty for certain regulatory infringements. Financial penalties may be imposed on a company appointed as a relevant undertaker or a licensed water supplier and must be reasonable in all the circumstances of the case. 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 or a licensed water supplier for the purposes of financial penalties.

No regulatory impact assessment has been prepared in respect of this Order. A regulatory impact assessment in respect of the Water Act 2003 was prepared and placed in the library of each House of Parliament during the passage of the Water Bill. This included an assessment of the financial penalties provisions. Copies can be obtained from Water Supply and Regulation Division, Department for Environment, Food and Rural Affairs, Ashdown House, 123 Victoria Street, London SW1E 6DE or from the Department's website at www.defra.gov.uk/environment/water/legislation.

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