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## Guidance on Eligibility for Non-Household Competition NWL Response to the Ofwat Consultation April 2014

### General comments

We welcome the proposed guidance on eligibility and agree with the three main principles set out in the consultation overview – that the guidance must be clear, simple and consistent. The guidance will be key in both helping customers to understand if they are able to switch and also in reducing the degree of challenge from stakeholders.

Although mentioned later in the document we feel that Section 1.2 of the Introduction “Purpose of this guidance” should reiterate that the guidance is about eligibility and not the manner in which a customer is charged and billed.

The guidance will be a key reference document moving forward and we are very supportive of concept of drawing assistance from rating and council tax legislation which has substantially evolved since the introduction of Council Tax and Business Rates. Currently we feel the guidance is still open to interpretation in some areas, and that more detailed definitions should be provided; hopefully our response to this guidance will assist you.

We see this guidance as an evolving document, which could be updated as lessons are learnt to clarify best practice as time passes.

Our response to the consultation questions are given below. We have focussed our attention on the wording of Appendix A of the consultation document which we understand will be the guidance document.

### Response to Questions

*Q1 Do you have any comments or concerns in relation to our proposed guidance on the threshold requirement?*

It is good to see confirmation that the total potable and non-potable volume of water supplied can be aggregated when considering the threshold requirement.. It is not clear what is meant by “Where a customer required a non-potable supply, it will need to be supplied from a discrete non-potable supply system in order for a licensee to be able to rely on the licensing provisions of the WIA91” (section 2.5 page 28). Please could you clarify what you mean by ‘discrete’. Is it simply a superfluous word?

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*Q2 Do you have any comments or concerns in relation to our proposed guidance on what constitutes a single set of premises?*

Our comments on question 2 deal with each section of the guidance in turn

### Section 3. Premises

We feel that the following paragraph (Page 31) is not clear:

The guidance in this document about the factors to be taken into account in determining the extent of any premises applies to the requirements in section 17A(3) WIA91. It also applies to the assessment of whether a person is prohibited from using an appointed company's supply system for the purpose of supplying water to any premises of a customer under section 66I WIA91, or using an appointed company's wastewater system for the purposes of supplying wastewater services to any premises of a customer under section 117P WIA91. These provisions need to be interpreted consistently.

We suggest the paragraph is replaced with the following:

The guidance in this document applies to the requirements in section 17A(3) WIA91:

- a) the requirement that the premises are not household
- b) the threshold requirement and
- c) the requirement that the premises are not being supplied with water by another company pursuant to a water supply licence

The guidance also advises on Sections 66I and 117P of the WIA91 which restricts the use of the water or sewerage system to an undertaker, or a licensed supplier, meaning that premises whilst connected to a private network are not eligible for competition. Premises connected to a private network can ask to be connected to the public network in the usual manner.

#### Section 3.1 The extent of premises when the threshold requirement does not apply

We support your proposal that where there is no threshold requirement, every property that is assessed separately for the purposes of council taxes and business rates – or would be if the property were not exempt – will be treated as a separate set of premises.

We feel that the following paragraph (Page 32) is not correct:

However, in cases where a company supplies several properties through a single supply point, for example because they are connected to a private network, these properties **should** be defined as a single set of premises for the purposes of the licencing regime. However, of course each of the properties connected to a private network can ask to be connected to the public network in the usual manner.

We feel that the word 'should' should be replaced with 'should not'. Premises whilst connected to a private network are not eligible for competition but can ask to be connected to the public network in the usual manner.

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### Section 3.2 The extent of premises when the threshold requirement applies

With regards to the definition of premises in section 3.2 of the guidance, we agree with the general principles of the definition, but believe more precision is required.

We would suggest the definition of when premises are aggregated together under the “common occupation co-located premises” heading is either left to companies to define in their charges scheme, or a more prescribed definition is used. Our proposed definition is as follows:

“Adjoining boundaries separated by defined transport infrastructure. Defined transport infrastructure is: any ordinary watercourse<sup>1</sup> or any public highway, except those that are part of the primary route network, as defined by the Highways Agency<sup>2</sup>. Defined transport infrastructure excludes: any public highway part of the primary road network, any main river and any railway.

#### *Q3 Which factors are relevant when deciding whether or not the principal use of mixed-use premises is as a home?*

Using the Valuation Office lists to decide if a premises is mixed use or not, is very helpful and provides consistency in the definition of household and non-household. It would be useful if the guidance clearly defined that premises exempt from business rates should be categorised as non-household. This then only leaves the composite rated premises as requiring further consideration for determining the principal use of the premises.

We believe more explicit guidance would be helpful for determining principal use in order to ensure consistency and to avoid the scenario where a type of premises is deemed eligible in one region and not in another. This would be unfair for customers, causing confusion and leading to potential challenge. We discuss this further in our response to Question 4.

Whilst we understand that the way the legislation is phrased may require individual assessment for each premises, when looking at the types of premises that have composite ratings, many are because there is a separate house or flat on the premises. While they may be occupied separately or on a permanent basis, the principal use of the premises will only be household if the proportion or intention is principally household. We believe it may be possible use the SCAT codes provided as part of the business rates to filter out many types of premises as non-household, and only leave a limited number which require individual identification. For example, something rated as “golf club and premises” is likely to have a principal use as a golf club. In contrast something categorised as “Nursing home” may require further consideration.

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<sup>1</sup> ordinary watercourse: a “watercourse” that does not form part of a “main river”. Flood and Water Management Act 2010

Watercourse: includes all rivers and streams and all ditches, drains, cuts, culverts, dikes, sluices, sewers (other than public sewers within the meaning of the Water Industry Act 1991) and passages, through which water flows. Land Drainage Act 1991 [section 72(1)]

Main river: watercourse shown as such on a main river map. Main river maps are held by Defra and Welsh Government and copies are available to LLFAs as a GIS layer on GEOSTORE. Water Resources Act 1991 [section 113] [Link to interactive map on Environment Agency website](#)

<sup>2</sup> These routes are motorways or A roads usually shown as green on an Ordnance Survey map, as opposed to red.

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*Q4 Do you have any comments on our proposed guidance on the definition of eligible non-household premises?*

Consistency - We recognise there will always be some premises for which detailed analysis may be required to determine if they are household or non-household, and one of the key issues for setting up the competitive market is a consistent interpretation of the definition nationally. We believe the only way to do this is by Ofwat providing more explicit guidance than currently set out in the consultation.

The current guidance potentially leaves premises which are exempt from business rates and those with a composite rating as difficult to classify. We believe premises which are exempt from business rates should be defined as non-household.

We see two potential approaches that could be set out in the guidance, either by producing a list of types of premises and how they should be classified, or by providing a decision tree for people to follow when making determining how to define a premises. A high level decision tree was provided on page 5 of the consultation document, but not as part of the proposed guidance, and it does not address how to determine the principal use issue, which is the area most open to interpretation. The list or decision tree could evolve as lessons are learnt.

We understand the Wholesale undertakers will provide information to the Market Operator based on their interpretation of this guidance and this will set the initial scope of the non-household retail market. Without such a list or decision tree the risk of different interpretations across different stakeholders will increase, raising the risk that in certain regions customers may be eligible to switch whilst in others they may not.

There is nothing to prevent a type of premises being reclassified should new considerations come to light. A single list will create consistency and clarity for customers and retailers, as well as undertakers, in understanding how premises currently stand and would help in deciding where challenges are required.

*Q5 Do you have any further comments on concerns in relation to the proposed changes we are making to this guidance?*

National consistency

- Establishing the non-household retail market needs similar premises to be treated consistently across England and Wales. It will be odd if a type of premises, such a university hall of residence, is defined as household and not eligible in one region, and non-household and therefore eligible in another region. Such inconsistencies would require challenges to clarify, which will incur work and cost for all stakeholders. While publication of guidance will not eliminate entirely the need to challenge, it is an opportunity to minimise the disputable areas.

Updating the guidance

- We believe this guidance should be reviewed on an evolutionary basis and not as a one off exercise. It would be useful to incorporate lessons learnt from areas where clarification is required during the process of setting up the competitive market.

#### Stand alone document

- The new eligibility guidance should be written as a completely stand alone document, with no requirement to cross reference to previous documents to clarify the guidance. Currently in Appendix A of the consultation, reference is made to the 2011 guidance standing (p32 of the consultation document). This is very confusing and it is not clear which parts of that guidance would still apply. If the previous guidance stands, we would like to see this written up in the new guidance and not cross referenced.

#### Consistency with Market Operator

- The guidance must be consistent with the way the Market Operator systems are being defined by Open Water. The definition of premises as a separately rated entity means that, for example, where there are seven premises supplied by three water connections via three meters, then the system needs to be capable of making these allocations. It is not clear if this is possible in the Initial Data Upload document published by OpenWater in April 2015.

#### Clarity on transition

- Section 4.3 (p38) on transition is not clear in its current format. It seems to say that where there is a change from the previous guidance, the previous guidance should be used to define a premises as household or non-household. This would completely invalidate the current guidance, which we do not think was the intention.