August 2015

Trust in water

Response to Ofwat consultation on guidance on eligibility

www.ofwat.gov.uk

About this document

This document sets out the changes we have made to our 2011 guidance on assessing whether customers in England and Wales are eligible to switch their water and wastewater supplier of retail services. It includes changes we have made in response to 'Guidance on eligibility – a consultation', which we published in March 2015. We have published our revised eligibility guidance separately in 'Guidance on assessing whether customers in England and Wales are eligible to switch their water and wastewater retailer'.

One of the main reasons for changing the guidance is that the Water Act 2014 will allow 1.2 million businesses and other non-household customers of providers based mainly or wholly in England to choose their supplier of water and wastewater retail services from April 2017. Retail services include things like billing and customer services.

The Welsh Government Water Strategy for Wales set out that market reform proposals will not apply to those relevant providers operating wholly or mainly in Wales. The Welsh Government will monitor the costs and benefits of market reform, which will apply to providers operating wholly or mainly in England from April 2017. This will inform our future policy in Wales about services for non-household customers served by water companies located wholly or mainly in Wales. This will mean that the existing regulatory approach will apply to these undertakers.

The new market will be the largest retail water market in the world and deliver about £200 million of overall benefit to the UK economy. Customers will be able to shop around and switch to the best deal. Investors and retailers will have new opportunities for growth. And the environment will benefit from customers using new water efficient services.

The UK Government is committed to delivering the new market. It set up 'Open Water', a single programme of work that brings together all of the key organisations to design and deliver the new market. These include the Department for Environment, Food and Rural Affairs, Ofwat and Market Operator Services Limited – a private company owned by market participants.

Opening the new market is a complex challenge but it is on track to open in April 2017. The design is almost complete and work is now being carried out to deliver the technical systems, checks and ways of working that are needed to get the market right for customers.

One of these areas of work is providing guidance on determining which customers are eligible to switch retailer.

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Overview

Non-household customers served by providers based wholly or mainly in England that currently use more than five million litres (megalitres – or Ml) of water a year, and those using more than 50Ml of water a year served by providers based wholly or mainly in Wales are currently able to switch from their existing supplier of water retail services. But from April 2017 any non-household customer served by water or wastewater provider based wholly or mainly in England will be able to switch from their existing retailer.

In developing our proposed guidance we have followed our statutory duties and considered the strategic policy guidance from both the UK and Welsh Governments. We consulted with stakeholders in spring 2015 and have amended our guidance to reflect the responses we received.

There are three main principles which we consider are important in developing this guidance. In particular, we consider that the guidance should be:

- **clear** – customers should be able to intuitively understand whether they are eligible and wherever possible customers that expect to be able to switch should be able to;
- **simple** – companies will need clear rules to apply to get on with the work with preparing their databases for 2017 and customers will benefit from an easy-to-follow process; and
- **consistent** – an assessment of eligibility should ideally be the same for customers of different providers based wholly or mainly in England and, as much as possible, the same for customers in England and in Scotland.

The legislation defines the boundary of a household or non-household premise based on the 'principal use' of the property. We propose that in the first instance market participants rely on the classifications made to administer council tax and the business rates to define principal use.

- **Domestic properties** – those that are liable for Council Tax only – will ordinarily be household premises in the sense of the Water Industry Act 1991 (WIA91).

- **Non-domestic properties** – those that are liable for business rates only – will ordinarily be non-household premises in the sense of the WIA91.

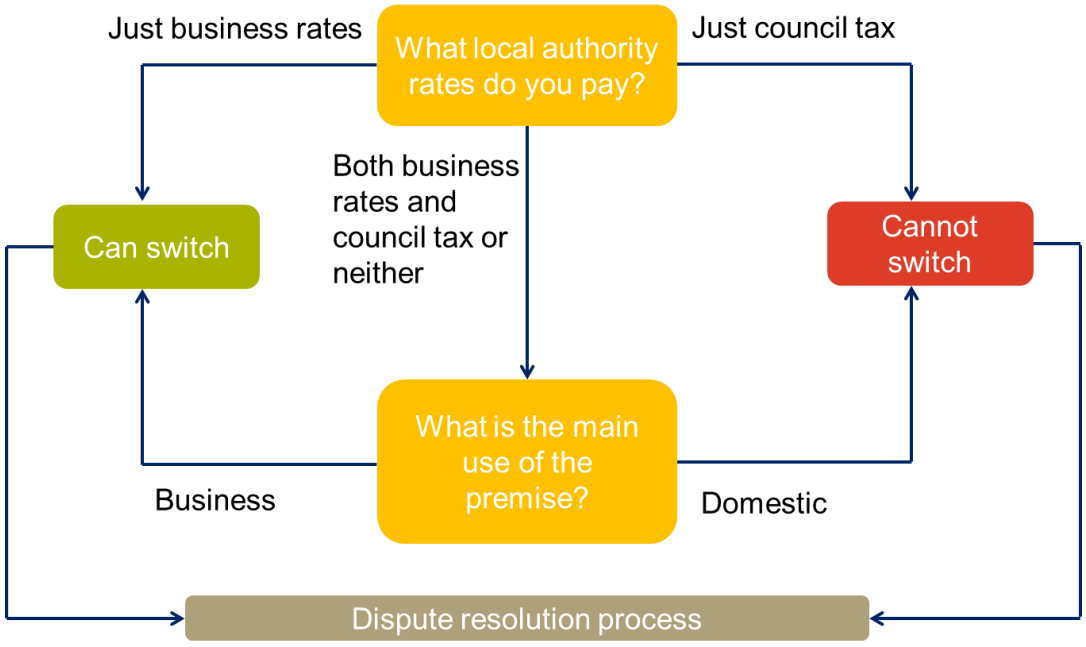
- **Mixed-use premises**, which are referred to in the Local Government Finance Act 1988 as composite hereditaments and are liable for both Council Tax and

business rates, will normally be classified by companies as non-household premises, unless there are grounds to consider that their principal use is as a home.

Where there are premises that are not liable for either Council Tax or business rates, as a first approximation these would ordinarily be non-household premises.

We recognise that there will still be some difficult cases that cannot be resolved through simple rules. However, for most cases we expect that customers and companies will be able to understand if they are able to switch based on their status for local authority rates and their consideration of the main use of their premises, as figure 1 sets out.

Figure 1 Flow chart of customer eligibility for switching



For those difficult to define cases that emerge as companies are cleaning up their data ahead of market opening, companies can notify us of classes of customers they are having difficulty assessing by emailing eligibilityconsultation@ofwat.gsi.gov.uk.

Periodically, we will review the submissions to us and issue a notice on our website that will provide greater clarity to companies on how to make their own assessments. Depending on the nature of the customers and the scale of requests, we may also convene a working group of market participants to consider these particularly difficult-to-define customer groups. In line with our strategy we want companies to own the relationship with their customers and they should be taking forward work to

validate their own data and engage with their customers in the first instance. They should not use this opportunity as a shortcut to data validation and we will not review instances where companies appear to be looking for case-by-case assessments to avoid engaging with their customers directly.

Once the market is open, disputes about the eligibility of a customer for switching can be referred to Ofwat for resolution. But we expect existing providers to manage their customer relationships in the first instance. We also expect the outcomes of this process to help to create precedents in hard-to-define cases. This is instead of us setting out a standard list of expected eligibility of a particular premises in general terms, which would not account for the customer's specific circumstances.

Once issued, we expect the new guidance to be sufficient to operate both in the period up to the full opening of the market in April 2017 and beyond that date.

1. Introduction

Since December 2005, the water supply licensing (WSL) framework has allowed some large non-household customers in England and Wales to choose their retail supplier for water services. Holders of these licences could originally only seek to switch those non-household customers that were likely to use more than 50 Ml of water a year.

We are currently working with the UK Government's Department for Environment, Food and Rural Affairs (Defra) and industry stakeholders to plan for the opening of the market to all non-household customers in of providers based mainly or wholly in England. This market will also include retail wastewater services. We expect that market opening will increase the number of eligible customers to about 1.2 million. For non-household customers of providers based wholly or mainly in Wales, and for household customers in both England and Wales there should be no discernible change.

When the WSL market opened in 2005, we issued guidance to help market participants decide which premises were eligible to switch. We updated that guidance in 2011 when the eligibility threshold relating to providers based wholly or mainly in England was dropped to 5Ml. We have reviewed the guidance, consulted stakeholders and amended it to make sure that it is effective for a market that covers all non-household customers.

1.1 Interactions of this work

The Open Water programme is currently leading the work to develop the market codes (the 'rule book') for the retail market. These codes were substantively published in the MAP 3 appendices in May 2015, and are being finalised ahead of the publication of MAP 4 in September. These codes will only cover arrangements entered into with eligible customers, so it is very important that there is a clear definition of which customers are in the market. We expect this guidance to continue to sit alongside the other codes and market documents once the market is open.

Defra is currently developing its approach to 'retail exit', which would allow appointed water companies to exit the non-household retail market. It published 'Retail exits reform: draft regulations' in July 2015. Since appointed water companies will only be able to exit the non-household retail market, it is non-household customers that will need to be protected by the regulations that will be put in place to govern the retail exit process. Therefore, both the design and the implementation of these regulations

will require a careful understanding of which types of customers will or will not be eligible to choose their retailer and participate in the new market arrangements.

Finally, we are carrying out work on the necessary revisions to the existing licensing arrangements for 'appointed' undertakers in the sector, and any new licences that need to be introduced for retail water and wastewater supply licensees (WSSLs). It is important that the same definition of customers in the retail market is used in relation to the conditions within those licences – and how they define 'customers'.

1.2 The guidance

The current guidance covers the following three areas.

- Threshold requirement.
- Definition of a premises.
- Household and non-household premises.

We discuss each of these in more detail below.

1.2.1 Threshold requirement

For non-household customers of providers based wholly or mainly in Wales, the 50 Ml/year volumetric usage threshold requirement will continue to apply. This reflects the different policy position of the Welsh Government in this area. For customers of providers based wholly or mainly in England, we expect the 5 Ml/year threshold will continue to apply until full market opening takes place in 2017. This means that we will need to continue to keep under review the guidance we issued to clarify how this threshold requirement is to be applied. We consider that our guidance in this area is still adequate, except that there is a need to clarify the position of water and wastewater supplies wholly or mainly in Wales, and feedback to our recent consultation has supported this view.

1.2.2 Definition of premises

Section 17A of the Water Industry Act 1991 (WIA91) empowers us to issue guidance on the 'extent' of premises. Under the law, it is individual premises that are eligible (or not) to switch supplier, rather than customers.

Most often, a non-household customer will only occupy a single building and that building will be the premises that is eligible to switch. However, there may be situations in which the same customer occupies multiple buildings. Our current

guidance gives examples of when we consider it would be reasonable for multiple buildings to be considered as single premises for the purposes of eligibility. We consider that there is no reason at this time to change our guidance in this area, and feedback to our recent consultation has not altered our view in this regard.

1.2.3 Household and non-household premises

The WIA91 says that for premises to switch supplier, it cannot be a household premises. This definition is clarified by stating that premises will not be considered household unless the principal use of the premises is as a home.

In many cases, the principal use of premises – and hence whether it is considered household or non-household – will be obvious. The current guidance focuses on 'mixed-use' premises where there may be household and non-household parts of the same premises – such as hospitals that include accommodation for healthcare staff. The guidance sets out how various types of premises should be viewed.

1.2.4 Updating the guidance

We consulted on our revised eligibility guidance in March 2015.

We received 23 responses to our consultation – 16 appointed water companies provided a response; one appointed water company provided two responses (one from its wholesale regulatory team and one from its non-household team). We also received responses from:

- two new entrants;
- the Consumer Council for Water (CCWater);
- the Open Water programme; and
- the Environment Agency.

Finally, we received a response from the London Fire and Emergency Planning Authority, which we did not consider was relevant to address in our eligibility guidance, and which we are dealing with separately.

Broadly, the responses supported our proposed revisions to the eligibility guidance and welcomed the greater clarity provided in light of the removal of the 5 Ml threshold in England. Below, we summarise the key issues that respondents raised.

Categorisation of hard-to-define cases

Several companies requested that we provide more detail on how to assess particularly difficult cases. A common request was for us to specify whether different categories of customers should be defined as household or non-household. This reflected a concern, which was also highlighted through the data pilot (the assessment by companies of the practical barriers to preparing data for market opening) work, that not all premises could be 'matched' against the external datasets proposed in the guidance.

Through the data pilot work, it was possible to match 68% of premises within the companies' geographic areas from the external data sources, but 32% could not be matched. The pilot noted that:

"…

- **the outcome was not validated using consistent criteria so the figures may be over or under-stated; and**
- **a 100% match would not have been feasible. There will inevitably be legitimate reasons why two datasets will not match.**

"On the latter point, some of the pilot companies did explore in more detail the reasons why remaining premises could not be matched. There could have been a number of reasons for this, for example, premises being business rated on the VOA dataset but not being in receipt of water or sewerage services. Further analysis would help to provide more insight as to why premises remained unmatched and if there were any industry-wide implications."[1]

We consider that our revised guidance is a significant step forward in helping companies to understand how to assess whether customers are eligible to switch retail provider and should provide a high degree of certainty. While we appreciate that providing a list of customer types and their presumed status along the lines requested could expedite the companies' task of preparing their data for market opening, we do not consider that we can, or that it would be appropriate to, develop one ourselves at this point in time.

[1] Open Water, Data Pilot Report, 2015.

A list of customer types could never provide absolute certainty to companies. This is because hard-to-define customers are difficult to categorise specifically as a result of their particular individual circumstances – which may go beyond simply what type of business they are involved in. So, for example, defining all nursing homes as 'in' or 'out' of the market would not take account of the specific circumstances of individual nursing homes, where different forms of care and or services may be provided. Therefore, we consider that such a list could never pre-empt an individual case-by-case assessment. We also think it may mislead both companies and customers about their status were it to be legally challenged at a later date.

We also support the findings of the data pilot work, which highlighted the importance of companies owning their own relationships with their customers and understanding those customers better and reflecting that in the data. The data pilot report said:

"Whilst the matching exercise has been helpful – third party sources are important sources of information and validation in competitive markets – it is not a substitute for companies carrying out robust and thorough validation of their data. Indeed, during the pilot exercise companies engaged on the subject of reviewing the data themselves and that process was reported to be very helpful."[2]

However, we recognise that companies are likely to need help to make their initial assessments on classes of customers for the purpose of preparing their data for market opening. We expect them to carry out their own assessments of customers. But we recognise that a company may have a significant proportion of its customer base that it is not able to classify as eligible or not, or there may there be a lack of consensus across the sector about how to classify a particular class of customer.

As they work through their categorisation of customers through the cleaning of their data for the opening of the market, companies can notify us of classes of customers they are having difficulty assessing. We will be looking for companies to take forward the work to validate their own data and engage with their customers. They should not use this opportunity as a shortcut to data validation – the cases they submit must therefore affect a significant proportion of their customer base. We will not review instances where companies appear to be looking for case-by-case assessments to avoid engaging with these customers directly.

[2] Open Water, Data Pilot Report, 2015.

Periodically, we will review the submissions to us and issue a notice on our website that will provide greater clarity to companies on how to make their own assessments. Depending on the nature of the customers and the scale of requests, we may also convene a working group of market participants to consider these particularly difficult-to-define customer groups. Our notice may direct companies to assign customers to one category or another, or to carry out specific analysis in order to make an assessment. Any notice we provide cannot replace a case-by-case assessment. Nor should companies use any assistance we provide to as a reason not to carry out their own case-by-case assessment where disputes arise. Crucially, in examining individual disputes that arise, we will apply the guidance we have issued, which may result in a different outcome than that implied by any notice we issue.

To submit a case for us to review, please send an email to eligibilityconsultation@ofwat.gsi.gov.uk setting out:

- the type of customer you are having difficulty categorising;
- the number of customers you consider are affected;
- the steps you have taken to perform your own categorisation; and
- whether you consider there are any cross-company issues to consider.

For the same reason that we have will not maintain a list of customer types, we have removed references to customer types in the guidance whose status may be ambiguous.

VOA data may not map to billing data

Similarly, several companies noted that Valuation Office Agency (VOA) data will not match perfectly with their data. As a result, there will be customers that may need to be classified by other means. These companies requested that we set out how they should go about that classification.

Open Water's data pilot recognised that VOA data and companies' own data will never match perfectly. There will always remain customers where it is not possible to match VOA data, and customer records that will match multiple VOA data.

The data pilot identified the need for manual investigations to understand why multiple matches occurred and to understand on a case-by-case basis how customers should be classified. It highlighted that there may be a number of reasons why some customer records might not match VOA data, and suggested that further analysis is required to understand better why some records could not be matched.

Guidance inconsistent with tariffs

Both companies and CC Water raised a concern that if companies had to disaggregate premises in line with VOA data, this might mean that customers that currently benefit from volume discounts – for example, large user tariffs – would no longer qualify for those tariffs that would lead to higher bills for those customers.

The purpose of the eligibility guidance is to identify which customers are able to switch, not necessarily the basis on which they are charged. This is a different issue and better dealt with through charging rules. While it is conceivable that a large customer may want to switch only some of their connections – and, in principle, they should be able to do so – there is no requirement for companies to disaggregate customers' supply points. Therefore, there is no reason why those customers currently enjoying large user discounts should not be able to continue to do so.

Treatment of customers on private networks

Some respondents thought we were proposing that individual customers on private networks would be eligible to switch retailer.

Technically, customers on private networks would be eligible to switch provider if a regulated water company provided their supply. If a non-household customer on a private network requested a direct supply, that supply would be eligible to be switched, but the supply from the private network would not. Similarly if a wholesaler acquired a private network then the end customers on that network, if they are non-households, would be eligible to switch retailer.

More accessible customer information

Several respondents commented the guidance was not easily digestible for people not in, or familiar with, the water sector.

The 5 Ml threshold meant that customers that met the threshold requirement would almost certainly be relatively large non-household customers. Therefore, we considered that there was no need to explain to customers how to determine if they would be eligible. But we recognise that removing the 5 Ml threshold for customers of providers based wholly or mainly in England has introduced uncertainty for small customers that may not understand their eligibility status. So, we will produce more customer-friendly information to help those customers understand whether they are eligible to switch before the threshold is lowered ahead of the opening of the market in 2017, including the outcome from any additional work on hard to define cases.

We want companies to own and be responsible for the relationships with their customers. We would also expect them to communicate this information on eligibility clearly with their customers. And we would expect existing retailers to consider how they can best support their customers in deciding if they are eligible to switch. Finally, we expect that potential new retailers would also look to identify potential customers, and support them through any potential assessment of their eligibility status.

Non-compliance a criminal offence

One respondent questioned whether non-compliance with the statutory eligibility requirements would constitute a criminal offence. While there is nothing explicit in the WIA91 that makes breach of the statutory eligibility requirements a criminal offence, the supply of water to premises that do not meet them is.

1.2.5 Changes to the guidance

The issues outlined above are closely related, and we think it is appropriate to continue to treat them in a single guidance document. In 'Guidance on assessing whether customers in England and Wales are eligible to switch their water and wastewater retailer', we set out an updated version of our 2011 guidance based on the feedback to the consultation.

In the following chapters, we briefly discuss the changes we have made since the guidance was last updated in 2011, including the feedback to the consultation.

2. Threshold requirement

At the moment, the law requires that a prospective customer of a licensee must have a forecast demand of at least 5 Ml a year if the customer is served by a company wholly or mainly in England, or 50 Ml a year if the customer is served by a company wholly or mainly in Wales. Following market opening, the threshold requirement will apply only to non-household customers served by companies operating wholly or mainly in Wales. There will no longer be a threshold requirement for non-household customers served by companies wholly or mainly in England.

Following the review of our current guidance, we consider that the methods and approaches that we set out in 2011 still represent our best view of how to determine whether a premises is above the threshold. The responses we received to this consultation have not altered this view.

2.1 Supply areas

One issue that required additional clarification is the application of the threshold requirement to customers with different appointed water and wastewater companies. For example, there are a number of customers whose appointed water company is Dee Valley Water, while their appointed wastewater company is United Utilities or Severn Trent Water. We consider that it follows from the system of the WIA91 that for such customers, from April 2017, the threshold requirement must only be applied to water services provided by Welsh water companies. This means that, for example, there will be some customers that will be able to switch their wastewater services supplier, because that supplier's service area is 'wholly or mainly' in England, but not their water supplier because that supplier's service area is 'wholly or mainly' in Wales.

3. Extent of the premises

The definition of premises affects eligibility in two distinct ways.

- First, the decision around how the boundary for a single set of premises should be drawn affects the question of whether, when someone has their home on the premises, the principal use of the premises is as a home and therefore ineligible to switch to an alternative retail supplier. For example, defining a farm as a single set of premises would probably mean that it is a non-household set of premises and eligible to switch. However, if the farmhouse and the farm are defined as separate premises, the farmhouse would be household premises and therefore ineligible. We discuss this issue further in section 3.1 below and in chapter 4 of our guidance.

- Second, the definition of the extent of the premises affects the calculation of the forecast water demand of the customer, and, as a result, the question of whether the customer meets the minimum demand threshold to be eligible. In some cases, it would be reasonable to allow the consumption across multiple buildings to be aggregated for the purposes of satisfying the volume threshold requirement. As we discuss in chapter 2, after the repeal of the threshold for customers of providers based wholly or mainly in England this will only be a consideration in areas served by a company that is wholly or mainly in Wales.

We will provide different guidance depending on whether a threshold requirement applies. Where it does not, our rule is that the definition of a property that the Valuation Office uses to create the ratings lists for the purposes of local taxation should be followed. Where a threshold requirement continues to apply, we will use the approach outlined in our 2011 guidance. This will make little or no difference for most premises. But after market opening, it will mean that existing premises for some sites of customers of providers based wholly or mainly in England could potentially be disaggregated into smaller switchable units if the customer chooses to switch some but not all of their supply points. However, there is no requirement to do this, for example, if the customer is on aggregated site and enjoying a large user tariff discount.

3.1 Disaggregation

Our previous guidance included a rule that a set of premises may not be disaggregated into smaller separate premises if the whole already meets the requirements to qualify as a single set of premises. We put this rule in place in 2005,

partly because of concerns about the possibility of appointed companies seeking to split up multi-building premises to prevent the eligibility threshold being reached.

In England following market opening, we propose that each property that is eligible to be rated separately by the Valuation Office for the purposes of local taxation should be treated as a separate set of premises. This should ensure that our policy is better aligned with customer expectations, minimising the risk that a customer unexpectedly finds itself unable to switch because of a legal technicality. For the avoidance of doubt, this does not necessitate that customers currently benefiting from volume discounts have individual premises separated for the purpose of billing unless they choose to do so. Companies will also have to be mindful of their duties under competition law when making wholesale tariffs available for such customers and in providing information on such customers so that alternative providers are able to compete on a level playing field.

We consider that this approach better meets our objectives than other definitions that we might adopt. A definition based on property limits that are used in other contexts will be easy to communicate to customers. It will also allow companies to use data produced by others – particularly by the Valuation Office – to prepare their databases of eligible customers.

In Wales, and in England until the full market opening in 2017, we continue to consider that premises should not be disaggregated if the larger unit qualifies as a single set of premises under our guidance.

4. Household and non-household premises

The WIA91 says – and will continue to say after the commencement of the Water Act 2014 – that a licensee may only supply premises that are not household premises. Section 17C defines household premises as premises whose 'principal use' is as a home. In addition, by law any licensee or potential customer may ask Ofwat to determine whether a given premises is eligible to switch to a licensee, which would require us to decide whether the premises are household or non-household premises. We understand that the exit regulations currently being prepared by Defra will include a similar power for Ofwat to make determinations around whether premises should be transferred to a licensee as part of an undertaker's exit of the retail market.

The question of whether a set of premises is household or non-household is distinct from the question of whether the premises can be disconnected for non-payment of bills. Under Schedule 4A WIA91, whether a set of premises can be disconnected does not depend on its principal use, but on whether it is a person's only or principal home. The law also lists a number of categories of premises that are clearly non-household premises but that are, however, not to be disconnected. Examples include:

- police stations;
- hospitals; and
- schools.

Similarly, when section 66A(4)(b)[3] describes water used for "domestic purposes", in defining whether an appointee can refuse to supply a water supply licensee, the definition of domestic purposes is given separately – in section 218 of the Act – and is unrelated to the distinction between household and non-household premises. In addition "non-domestic" supplies can be made to households (e.g. for filling swimming pools or ponds in private houses, etc).

Our guidance in this area is not explicitly authorised or required by statute, but our intention is that it will prevent unnecessary references to Ofwat for a determination under section 17E WIA91 and the forthcoming exit regulations. Instead, we have

[3] After the commencement of the relevant section of the Water Act 2014: section 66AA(5)(b).

chosen to issue non-statutory guidance, including a discussion of some of the factors that we would take into account when asked to decide whether a given customer is eligible to switch. However, this guidance is without prejudice to our responsibility under the law to make each determination on its merits.

4.1 Approach

In light of our objectives for this guidance, we consider that the default criterion for assessing whether a set of premises is principally used as a home is whether it is a domestic or a non-domestic property for the purposes of Council Tax and business rates[4].

We consider that, as a starting point and for the purpose of enabling water companies to expediently develop their customer databases, the default position should be that:

- premises liable for Council Tax only = household;
- premises liable for business rates only = non-household;
- premises liable for both Council Tax and business rates = non-household; and
- premises not liable for either council tax or business rates = non-household

As we set out above, for premises that are liable for both Council Tax and business rates, or neither, customers and water companies are more likely to need to consider the principal use. As we discuss below, all of these would be subject to making sure that principal use is established where there is uncertainty, particularly for mixed-use premises.

This rule is similar to the definition given by section 27 Water Services etc. (Scotland) Act 2005 for eligibility to switch in Scotland, which says that all dwellings in the sense of the relevant Council Tax legislation are not eligible to switch suppliers. Our rule allows companies, when compiling their databases of eligible customers, to rely on publicly available data as a check, making sure that the databases will be as complete and correct as possible. We also consider that using the distinctions made by the Valuation Office as a starting point will tend to align with customers' intuition about their status.

[4] See section 66 of the Local Government Finance Act 1988, which is quoted in the annex to the proposed guidance.

However, using the Valuation Office distinction between domestic and non-domestic properties as a starting point does not resolve the question of what to do with so-called “mixed-use premises”, which are premises that are partly household and partly non-household. While we expect that our changed guidance on the definition of the extent of a premises – see chapter 3 – will reduce the number of mixed-use premises, clearly these premises will be the ones that cause the greatest difficulty for companies.

4.2.1 Mixed-use premises

For mixed-use premises, we will maintain the rule that a set of premises is non-household if the household part of the premises is dependent in some way upon the non-household part. Where this rule is not applicable, we expect that companies will assign their customers’ premises to the household or non-household categories in a number of steps. While companies have to decide for themselves how to do this, our guidance seeks to promote consistency throughout England and Wales by making some recommendations.

Simply put, we recommend that companies begin by assigning all mixed-use premises to the non-household category. Using desk-based research, some subsets of mixed-used premises can then be assigned back to the household category.

For some customers, it might be reasonable to ask them to provide evidence to the company. While the company may not have access to floor plans for the premises, showing which areas are used for household and non-household purposes, this is something the customer might reasonably provide. If the customer is unable or unwilling to provide sufficient evidence to establish the principal use of a set of premises, it might be appropriate for the company to gather evidence on site – for example, when visiting the premises to read the meter.

Throughout, there are a number of different types of evidence that can be taken into account in order to establish principal use. While companies are entitled to place some reliance on the assessment the Valuation Office makes even for mixed-use premises, it may not be sufficient to follow this categorisation because it is made under a different statutory framework, and for a different purpose. Particularly when the customer disputes the categorisation of a given set of premises as household premises – a reasonable company will gather additional evidence about the use of the premises.

In England and Wales it will continue to be possible for a property that is liable for Council Tax to be classified as non-household. No single rule can be applied in England and Wales without exceptions, as there will always be cases where a

proposed rule will be inconsistent with the statutory definition of household premises. When a customer or a licensee and an appointee are seeking to make a determination of eligibility under section 17E WIA91, it is likely that the principal use of the premises will have to be established without relying solely on any one factor.

5. Conclusion

We hope that our revised guidance provides a clear and workable definition of the market in England and Wales after market opening. Both suppliers and customers need to be able to ascertain whether a given set of premises is eligible to switch without resorting to legal advice or a determination by Ofwat. In addition, appointed water companies need to be able to generate a reliable list of eligible customers at the lowest possible cost.

We consider that the best way to achieve these goals is to seek consistency with Scottish practice whenever possible. This ensures that both companies and customers will find it as easy as possible to be active in the market on both sides of the border. Scottish practice, which relies on Council Tax registers, will tend to be intuitive for customers, and will offer companies a reliable source of data to compile their databases of eligible customers.

However, our guidance does not follow Scottish practice completely. As discussed in the previous chapters, we have deviated from the rules in place in Scotland where this is necessary in order to ensure compliance with the legislative framework in England and Wales, as is the case with the definition of household premises, or where this is necessary in order to safeguard customers' interests.

Ofwat (The Water Services Regulation Authority) is a non-ministerial government department. We regulate the water sector in England and Wales. Our vision is to be a leading economic regulator, trusted and respected, challenging ourselves and others to build trust and confidence in water.

Ofwat
Centre City Tower
7 Hill Street
Birmingham B5 4UA

Phone: 0121 644 7500
Fax: 0121 644 7533
Website: www.ofwat.gov.uk
Email: mailbox@ofwat.gsi.gov.uk

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