March 2015

Trust in water

Guidance on eligibility – a consultation

www.ofwat.gov.uk

OFWAT

Contents

Responding to this consultation

We welcome your responses to this consultation by close of business on **Friday 17 April 2015.**

You can email your responses to eligibilityconsultation@ofwat.gsi.gov.uk or post them to:

Eligibility Consultation
Ofwat
Centre City Tower
7 Hill Street
Birmingham
B5 4UA

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with access to information legislation – primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1988 and the Environment Information Regulations 2004.

If you would like the information you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory 'Code of Practice' with which public authorities must comply and which deals, among other things, with obligations of confidence. In view of this, it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that we can maintain confidentiality in all circumstances.

An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on Ofwat.

Consultation questions

We invite views on our proposals to amend the water supply licensing guidance on eligibility so that it will be compatible with the opening up of the market for non-household customers in England.

In particular, we welcome your views on the following questions.

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

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

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

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

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

Overview

Non-household customers in England who currently use more than 5 million litres (megalitres – Ml) of water a year and those using more than 50Ml a year in Wales are currently able to switch from their existing supplier of water retail service . But from April 2017 any non-household customer served by an English water or wastewater provider will be able to switch from their existing retailer.

The purpose of this consultation is to allow stakeholders to comment on Ofwat's proposed guidance on how customers and companies will be able to determine which customers are eligible to switch.

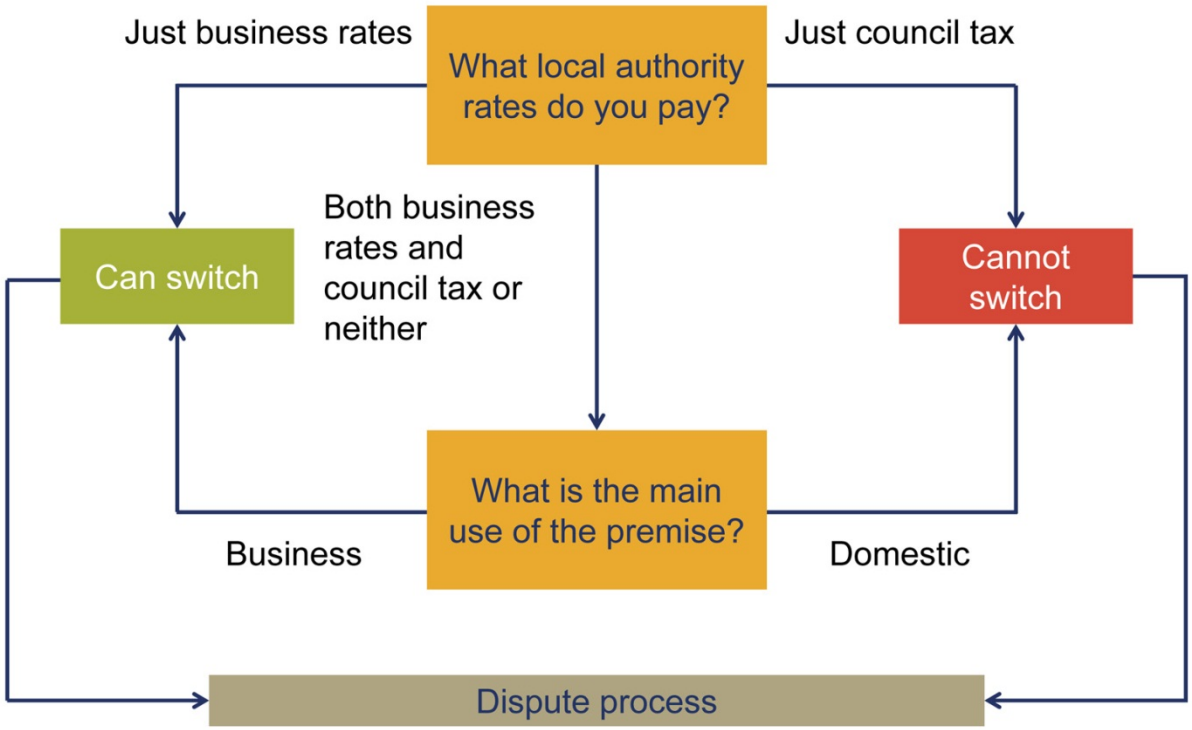
In developing our proposed guidance we have followed our statutory duties and considered the strategic policy guidance from both the UK and Welsh Governments. There are three main principles which we consider are important for customers and companies in developing this guidance. In particular we consider that the guidance should be:

- Clear – Customers should be able to intuitively understand whether they are eligible and wherever possible customers who 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 a simple-to-follow process.
- Consistent – An assessment of eligibility should ideally be the same for customers of different providers in England and, as much as possible, the same for customers in England and in Scotland.

We recognise that there will be some difficult cases which cannot be resolved through simple rules. However, for most cases we expect that customers 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 premise, as the figure below sets out. Where there is a dispute around the eligibility of a customer for switching we envisage that there will be dispute resolution process, but we expect existing providers to manage their customer relationships in the first instance.

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.

Figure 1: Flow chart of customer eligibility for switching



1. Introduction

Since December 2005, the Water Supply Licensing framework (WSLs) has allowed some large non-domestic 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 who were likely to use more than 50 million litres (Megalitres – Ml) of water a year.

In 2011, the volume usage threshold above which customers will be eligible to choose their retailer was lowered from 50Ml/yr to 5Ml/yr in areas served by water companies that were wholly or mainly in England. This increased the number of eligible customers from around 2,200 to around 26,000.

We are currently working with Defra and industry stakeholders to plan for the opening of the market to all non-household customers 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.

When the WSL market opened in 2005, we issued guidance to help market participants decide which premises were eligible to switch, guidance that we updated in 2011. We are reviewing this guidance to make sure that it is effective for a market that covers all non-household customers.

1.1 Interactions of this work

Open Water is currently leading the work to develop the market codes (the 'rule book') for the retail market. 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. Since 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. Both the design and the implementation of these regulations 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.

1.2 The guidance

The current guidance covers three different areas:

1.2.1 Threshold requirement

In Wales, the 50 Ml/year volumetric usage threshold requirement will continue to apply, reflecting the different policy position of the Welsh Government in this area and 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 clarifying how this threshold requirement is to be applied. We consider that there is no reason at this time to change our guidance in this area.

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 are 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.

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 case 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

The issues in the previous sections are closely related and we think it is appropriate to continue to treat them in a single guidance document. In appendix 1 we set out an updated version of our 2011 guidance, in the form that we propose to issue it pending responses to this consultation.

In the following chapters, we briefly discuss the changes we have made since the guidance was last updated. Stakeholders and other interested parties are invited to comment on the proposed changes.

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/year, or 50 Ml/year if the customer is served by a company wholly or mainly in Wales. Following market opening, this requirement will apply only in Wales. In England there will no longer be a threshold requirement.

Following our review of our current guidance, we consider that the methods and approaches set out in our 2011 guidance still represent our best view of how to determine whether a premise is above the threshold.

2.1 Supply areas

One issue that does require additional clarification is the application of the threshold requirement to customers whose appointed water company is a different company than its appointed wastewater company. 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 WIA that for such customers the threshold requirement must be applied for their water services and their wastewater services separately. This means that 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.

Consultation question

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

3. Extent of the premises

The definition of premises affects eligibility in two distinct ways. First, the decision as to how to draw the boundary for a single set of premises 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. This issue is discussed further in the next section, and in chapter 4 of our draft guidance.

Second, the definition of the extent of the premises affects the calculation of the forecast water demand of the customer, and therefore the question of whether the customer met 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 discussed in the previous section, after the repeal of the threshold in England this will only be a consideration in areas served by a company that is wholly or mainly in Wales.

We propose to provide different guidance depending on whether a threshold requirement applies. Where it does not, our proposed rule is that the definition of a property that is used by the Valuation Office to create the ratings lists for the purposes of local taxation should be followed. Where a threshold requirement continues to apply, we propose to maintain our 2011 guidance. For most premises, this will make little or no difference, but for some sites in England after market opening, it will mean that existing premises are disaggregated into smaller switchable units.

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 met the requirements to qualify as a single set of premises. This rule was put 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 are proposing 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.

This is consistent with the approach taken in Scotland where customers' individual buildings (where there are separate supplies) are individually identified in the market database.

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, and it will allow companies to use data produced by others – particularly by the Valuation Office – to prepare their databases of eligible customers.

However, there are other approaches that we have considered, including:

- maintaining the current definition;
- requiring companies to engage with customers on this point, so that the degree of aggregation depends on what best suits customers and companies; and
- defining premises so that, as much as possible, each customer is served on separate premises.

We invite respondents to express their views on our preferred approach and these alternatives.

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.

Our proposed formal guidance is set out in the appendix below.

Consultation question

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

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. Moreover, by law any licensee or potential customer may ask us 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.

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. Moreover, the law lists a number of categories of premises that are clearly non-household premises but that are nonetheless not to be disconnected. Examples include police stations, hospitals, and schools.

Similarly, when section 66A(4)(b)[1] 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.

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 s. 17E of the Act. Such references are costly to parties, they may involve significant delays, and reliance on determinations creates significant legal uncertainty for the market in general. Instead, we have chosen to issue non-statutory guidance discussing some 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 Interactions with other work

The repeal of the threshold requirement for England makes it even more urgent than before to make sure that our guidance is a clear as possible on this point. While under the old regime it is unlikely that any household premises would have met the threshold requirement, without this requirement the distinction between household

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

and non-household premises is the main remaining factor that determines whether a customer is eligible for switching.[2]

The distinction also has links to the 2014 price review. This price review, for the first time, contained separate retail revenue allowances for household and non-household customers. While our price control can accommodate different definitions, it is imperative that we create the greatest possible clarity about which customers fall under which control.

Similarly, until now, the Service Incentive Mechanism (SIM) applied to all customers and correspondingly relied on quantitative and survey evidence from all customers. During the PR14 price review period, the SIM will only apply to household customers in England, and to household customers and to non-household customers smaller than 50 Ml/year in Wales.

Clarity on the definition of household and non-household premises is also essential for Open Water's work on market codes, which consistently refers to eligible premises, and for the work that is being done by Defra and others on retail exit. Since 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. Both the design and the implementation of these regulations require a careful understanding of which types of customers are included in the definition of a non-household customer.

Companies – including potential entrants – are preparing for market opening. We and other partners in this programme of work are continuing to engage with companies about compiling a database of eligible customers based on existing data sources. Since it is a time consuming task to reconcile companies' existing data on customers with data they can obtain from the valuation office or from other sources, we need to clarify the distinction between household premises as soon as possible.

4.2 Proposed option

In light of our objectives for this guidance, we propose that the default criterion for assessing whether a set of premises is principally used as a home is whether it is a

[2] The other remaining statutory requirement is that the premises are not being supplied with water by another company pursuant to a water supply licence. See section 17A(3) WIA91. This requirement will be abolished for English customers when the relevant sections of the Water Act 2014 are commenced.

domestic or a non-domestic property for the purposes of council taxes and business rates.[3]

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

- premises are 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
- premises not liable for either council tax or business rates = 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 principle use. As discussed 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. Moreover, we consider that using the distinctions made by the Valuation Office as a starting point will tend to align with customers' intuition about their status.

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

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

For mixed-use premises, we propose to 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 example because the company's existing data on a given customer shows that the premises are used as a nursing home, which suggests that its principal use is as a home. There is also other evidence that can be gathered in this way.

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 made by the Valuation Office 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 dispute resolution[4], or when we are asked to make a determination of eligibility under section 17E WIA91, it

[4] See, for example, section 17 of the MAP2 Wholesale-Retail Code (Part 2: Business Terms) and section 17 of the MAP2 Market Arrangements Code.

is likely that the principal use of the premises will have to be established without relying solely on any one factor.

Consultation questions

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

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

5. Conclusion

We have provided a working **draft** of the guidance in appendix 1. This can only be a draft because several aspects of the final guidance will need to be approved by the Secretary of State following consultation with Welsh ministers. We hope that this guidance will provide 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. Moreover, appointed 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. Consistency with Scottish practice 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 England and Wales legislative framework, as is the case with the definition of household premises, or where this is necessary in order to safeguard customers' interests.

Stakeholders and other interested parties are invited to comment on these proposals.

Consultation question

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

Appendix 1: Draft proposed guidance

Contents

1. Introduction

1.1 Background

The Water Industry Act 1991 (WIA91), as amended by the Water Act 2014, permits a company that holds a water supply licence (licensee) to have access to an appointed water company's supply system to enable the licensee to supply water to its customers at eligible premises. Similarly, a company that holds a wastewater licence may use the wastewater system of an appointed wastewater company to supply wastewater services.

After market opening, prospective licensees can apply for one of the following.

- A **retail authorisation or retail licence** for water supply – a water supply licence that authorises the holder to use an appointed water company's supply system for the purpose of supplying water to the premises of its customers, or to its own or its associates' premises. Holding a retail licence entitles the supplier to request and purchase a wholesale supply of water from an appointed water company; the licence authorises that water to be moved and supplied to the licence holder's customers at eligible premises. In the area of a company wholly or mainly located in Wales, this authorisation is called a **restricted retail authorisation**, and it permits the licensee only to supply to the premises of its customers, not to itself or people associated with it.

- A **wholesale authorisation** for water supply – a water supply licence that gives the holder the authorisation to introduce water into an appointed water company's supply system by means of which any particular supply of water to the premises under a retail authorisation – the licensee's authorisation or the authorisation of another licensee – is to take place. In the area of a company wholly or mainly located in Wales, this authorisation is called a **supplementary authorisation**, and it permits the licensee to introduce water into the appointed water company's supply system only to supply premises for which it holds a retail licence.

- A **retail authorisation or retail licence** for wastewater services – a wastewater licence that authorises the holder to use the wastewater system of an appointed wastewater company for the purpose of supplying wastewater services to the premises of its customers or of itself or its associates. A retail licence for wastewater services therefore permits the licensee to do for wastewater services what the water retail licence allows a licensee to do for the water supply. Ordinarily, we would expect a licensee to apply for retail licences for water and wastewater simultaneously.

- A **wholesale authorisation** for wastewater services – a wastewater licence that authorises the holder to remove matter from the wastewater system of an appointed wastewater company where this is done in connection with premises for which the licensee holds a retail licence for wastewater services.

- A **disposal authorisation** – a wastewater licence that authorises the holder to remove matter from the wastewater system of an appointed wastewater company where this is done in respect of premises for which the licensee does not hold a retail licence for wastewater services.

Until market opening, the only types of licences are retail licences for water supply, which are equivalent to what is described as a restricted retail licence above, and supplementary authorisations, which are currently called combined licences.

This document offers guidance on the types of premises that are or are not eligible to be supplied by one or more of these types of licensees.

1.2 Purpose of this guidance

Following the commencement of the relevant sections of the Water Act 2014, the WIA91 sets out the following requirements which must be satisfied in relation to each of the premises supplied by a licensee[5]:

- The customer's premises are not household premises.
- With regard to premises in the supply area of an appointed company located wholly or mainly in Wales:
    - when the licensee first enters into an undertaking (as explained in section 2.1.1) with a customer to give the supply, the total volume of water estimated to be supplied to the premises each year by the licensee is not less than 50 megalitres (Ml)[6] (the threshold requirement).

Before market opening, the latter requirement applies to premises in the supply area of an appointed company located wholly or mainly in England as well, albeit with a threshold of 5 megalitres per year.

[5] Before the entry into force of the relevant sections of the 2014 Act, there is the additional requirement that the premises must not being supplied by another licensee (but may be supplied by a licensee and one or more appointed water companies).

[6] 50 million litres, or 50,000 cubic metres (m^3).

In all cases and for all aspects of eligibility, the licensee rather than the appointed water company must ensure that the premises of a potential customer are eligible. Unless doing so in pursuance of its licence, it is a criminal offence for a licensee to use an appointed water company's supply system for the purpose of supplying water to any premises of a customer, or for a licensee to introduce water into an appointed water company's supply system.[7] It is therefore a criminal offence for a licensee to breach any of the statutory eligibility requirements set out above. In addition, any licensee that contravenes these requirements could face enforcement action by us under section 18 WIA91 and may incur financial penalties under section 22A WIA91. Alternatively, a licensee could face revocation of its licence.

A licensee or prospective licensee should seek its own legal advice if it is unsure whether a customer's premises are eligible.

This guidance explains how to assess whether a customer's premises are eligible to be supplied by a licensee. It includes information on what constitutes a single set of premises, premises that are likely to be household premises and non-household premises for the purpose of the licensing regime, and how to decide whether the threshold requirement is met.

It is important to note that premises may change in such a way as to make the original premises no longer eligible. For example, a site that meets one of the criteria in chapter 3 might be split into separate premises, in which case the licensee will need to assess the eligibility of each separate set of premises. In other cases, the premises might change its use to become household premises.

Regarding the threshold requirement, as long as it is met at the time the licensee enters into the undertaking to supply a set of premises, and those premises do not change, the same licensee can continue to supply those premises for the duration of the undertaking, even if consumption falls below the threshold requirement.

Customers, licensees and appointed water companies should consult this guidance when assessing whether a customer's premises is eligible.

1.3 Structure of this guidance

This guidance is structured as follows.

- Chapter 2 contains guidance on the threshold requirement and explains how to assess whether it is met.

[7] See sections 66I and 66J WIA91.

- Chapter 3 contains guidance as to what constitutes a single set of premises.
- Chapter 4 describes household and non-household premises and principal use.
- Chapter 5 outlines the process to follow when requesting a determination on eligibility.

This document includes:

(a) statutory guidance that we are empowered to issue with the approval of the Secretary of State (having consulted the Welsh Assembly) as to the factors which are, or are not, to be taken into account in determining the extent of any premises for the purposes of section 17A(3) of the Water Industry Act 1991 (WIA91)[8]; and

(b) statutory guidance that we are required to issue with the approval of the Secretary of State (having consulted the Welsh Assembly) in accordance with which any estimate of the quantity of water to be supplied to any premises for the purposes of section 17D(2) WIA91 and Regulation 3 of the Water Supply Licence (New Customer Exception) Regulations 2005 (SI 2005/3076) shall be made.

This document also sets out our understanding of provisions of the WIA91– before and after the entry into force of the Water Act 2014 – and of relevant regulations and orders. It is not a substitute for the WIA91 or the regulations and orders made under the WIA91, or for any other legal provision. This document should be read in conjunction with those legal instruments and England and Wales case law. Anyone in doubt about how they may be affected should seek legal advice.

[8] After the entry into force of the relevant sections of the Water Act 2014: section 10 of Schedule 2A and section 4 of Schedule 2B WIA91.

2. The threshold requirement

[This chapter includes statutory guidance and is issued under section 17D(3) WIA91, which sets out the threshold requirement, and has been approved by the Secretary of State after consulting the Welsh Government.] Any estimate of the volume of water to be supplied to any premises for the purposes of section 17D(2) WIA91 and Regulation 3 of the Water Supply Licence (New Customer Exception) Regulations 2005 (SI 2005/3076) (the New Customer Exception Regulations) shall be made in accordance with this guidance.[9] Following the entry into force of the relevant parts of the Water Act 2014, this guidance applies only to premises supplied with water using the supply system of an appointed company operating wholly or mainly in Wales, and to premises supplied with wastewater services using the wastewater system of such a company.

At the moment, the threshold requirement is that, at the time the licensee first enters into an undertaking with a customer to supply the premises, the total quantity of water estimated to be supplied annually by the licensee is not less than 5 Ml (or 50 Ml in relation to premises supplied with water using the supply system of an appointed water company operating wholly or mainly in Wales).

2.1 When does the threshold requirement take effect?

2.1.1 Undertaking and premises

The word ‘undertaking’ has a wider meaning than the word ‘contract’ or ‘agreement’ in ordinary contract law. An undertaking may be entered into once commercial managers have agreed the principal commercial terms of an agreement, but before the legally binding contracts have been finalised and signed. However, it will be easier to demonstrate that an undertaking has been entered into once legally binding agreements have been signed. An undertaking may also encompass a number of successive agreements on similar terms.

Water use only has to be assessed at the time when the licensee first enters into an undertaking with a customer to supply any particular premises. As long as the total volume of water estimated to be supplied to the premises at that time is not less than the threshold requirement, a customer can continue to be supplied by the same licensee for the duration of the undertaking even if consumption at those premises falls below the threshold requirement, provided that the premises does not change. Where a customer reduces its demand below the threshold requirement for any reason after the licensee has entered into an undertaking with the customer,

[9] See section 17D(3) WIA91 and Regulation 4 of the New Customer Exception Regulations.

provided that the premises do not change, the customer will continue to be allowed to take supplies from the licensee for the duration of the undertaking. This is because the supply is part of the same undertaking. Alternatively, the customer could choose to be supplied by the appointed water company or another licensee. However, the customer will not be allowed to transfer to another licensee unless its premises meet the threshold requirement at that time.

This flexibility is in order not to penalise customers if their demand falls after they have switched, for example because they have implemented water efficiency measures after the licensee has first entered into the undertaking to give the supply. Indeed, offering such measures could be part of a licensee's competitive strategy. However, if there is an interruption in the supply by a licensee – for example, because a customer enters into an undertaking with a different licensee – the threshold requirement will have to be reassessed if and when the first licensee enters into another undertaking with the customer. In this regard, 'first enters into an undertaking' refers to the time at which the licensee and a customer first enter into any given undertaking. It does not simply require that the threshold requirement be satisfied at the time of entering into the first such undertaking.

In some cases, premises may close temporarily either through planned or unplanned circumstances. Where premises have a planned closure for several months in every year, and do not require a supply during that period, the threshold requirement must still be satisfied taking into account the closure period. Each time premises reopen after a planned temporary closure, there will have been no interruption in supply because the planned closure will have already been taken into account in the undertaking.

Premises may also close temporarily and unexpectedly for a short period and may not need a supply of water during that period. When the customer reopens its premises, the supply will not have been interrupted because the parties did not intend to terminate their commercial relationship. The threshold requirement will not need to be satisfied for a second time when the premises reopen.

The threshold requirement **will not** have to be satisfied a further time, and water use will not have to be reassessed against it in the following circumstances (among others).

- An agreement expires or is cancelled and is immediately renewed to ensure the ongoing supply of water at the same premises by the same licensee with the undertaking remaining in place.
- The licensee's water supply licence is varied, but the licensee continues to supply the same premises.

- The terms of the agreement to supply water at the same premises are varied, irrespective of the impact on water supplied, but the undertaking remains in place.
- The customer changes its use of the premises.[10]
- There is a temporary closure of premises owing to expected or unexpected circumstances.
- There is a temporary interruption in the supply of water owing to technical difficulties.

The threshold requirement **will** have to be satisfied a further time, and water use will have to be reassessed against it in the following circumstances (among others).

- At the same premises, a customer wishes to change its supplier from licensee A to licensee B.
- At the same premises, having been supplied by licensee A and then having been supplied by an appointed water company or licensee B, a customer wishes to revert to licensee A (in those circumstances, licensee A would not be continuing the original supply and any new supply would be pursuant to a new undertaking).
- A customer moves to new premises and wishes those new premises to be supplied by the licensee.
- A customer sells part of its premises so that the original premises is split and occupied by different customers.
- A customer buys a plot of land next to its existing premises, so that the two plots of land together form a new single set of premises.

The threshold requirement will not have to be satisfied a further time in respect of premises which always meet the common management co-located premises criteria (see section 3.2, paragraph (iii)) and which merely takes on new occupiers or creates new sites within its boundary. However, if a set of premises that meets any of the criteria in section 3.2 is divided into separate premises, the threshold requirement will have to be satisfied in respect of each of those new sets of premises. Examples of this would be where category (i) or (ii) premises are split by transfer to two separate occupiers or category (iii) premises are split such that two managing agents are liable for water bills.

2.1.2 New customer exceptions

[10] This only refers to the need to reassess the volume of water supplied; if the premises are changed from non-household to household, it will cease to be eligible and the licensee will have to stop supplying it.

Section 17D(7) WIA91 provides for the Secretary of State[11] to make provision by regulations as to the circumstances in which a licensee is not, for the purposes of section 17D(2) WIA91, to be regarded as entering into an undertaking with a new customer to give a supply of water to any premises. The relevant regulations are the New Customer Exception Regulations. Where a new customer exception applies, the threshold requirement will not have to be reapplied and the new customer can continue the current supply arrangement with the current supplier at the same premises.

This offers protection to customers where there has been no change to the current supply arrangement but who could be considered to be new customers and might otherwise be required to reapply the threshold requirement. It is particularly important for customers whose consumption has fallen below the threshold requirement, perhaps because of water efficiency measures. Without the New Customer Exception Regulations, the customer's premises would be ineligible for a supply from any licensee, including the current supplier. The New Customer Exception Regulations therefore avoid penalising the customer for any changes in its demand for water, including the effect of improvements in the efficient use of water. We would expect this situation to only apply to a small number of customers.

The New Customer Exception Regulations set out the two circumstances in which the licensee will not be regarded as entering into an undertaking with a new customer and so the threshold requirement **will not** bite.

- Regulation 3(1)(a) and (2) means that where a corporate group changes the subsidiary which contracts with a licensee, that new subsidiary is not to be treated as a new customer, provided that the whole set of premises continues to be occupied by the same corporate group as at the date of the original undertaking and the business and water consumption at those premises continues as before.
- Regulation 3(1)(b) and (3) has the effect that, where there is a change in the person occupying a set of premises, the new person is not to be treated as a new customer, provided that the whole set of premises is acquired by that person and the business and water consumption at those premises continues as before. This may be the case with certain asset acquisitions and certain structural reorganisations (including where a customer changes from being an

[11] For the purpose of this section, Secretary of State means the Welsh Ministers in relation to premises supplied with water using the supply system of an appointed water company whose area is wholly or mainly in Wales. After the entry into force of the relevant sections of the Water Act 2014, this power will be exercisable only by Welsh Ministers.

unincorporated body to an incorporated body, and changes in the way that public sector customers are legally constituted).

The New Customer Exception Regulations do not include a specific reference to change of registered, official or trading name and/or correspondence address of the customer. This is because these changes would not amount to a 'new customer' as a new contract would not be required. Therefore no exception is required.

The New Customer Exception Regulations also empower us to make determinations on whether a new contract is deemed to be an undertaking with a new customer. Determinations can be made at the request of licensees, actual customers or potential customers.

2.2 Method of assessing volume where supply is metered

The threshold requirement is forward looking. It is the total volume of water likely to be supplied to the premises every year. The assessment of the volume likely to be supplied can be made by reference to historical meter readings or evidence of likely future demand that must be justifiable in the case of a new customer. Future demand should be used where that demand is likely to be significantly different from past consumption or where no past consumption data exists. To assess a customer's likely usage, the licensee should use one of the three methods below (set out in order of precedence).

1. Premises meet the threshold requirement where, at the time the licensee first enters into an undertaking with a customer to give the supply, the volume of water supplied in the past 12 months has not been lower than the threshold and there are no material changes in a customer's demand characteristics to suggest that future demand is not going to be the same as in the past.
2. Premises meet the threshold requirement where the above requirement has not been met, but the average of the volume of water supplied in the past three years is not less than the threshold and there are no material changes in a customer's demand characteristics to suggest that future demand is not going to be the same as in the past.
3. Premises meet the threshold requirement where neither of the above requirements is met, but the customer and licensee can demonstrate objectively and can justify that the estimated volume of consumption in the next 12 months and annually thereafter will be no less than the threshold.

2.3 Method of assessing volume where supply is not metered

Where eligible premises are not supplied on a metered basis, the appointed water company can estimate the amount of water supplied and bill the customer on that basis. Licensees should apply the same methods for estimating supply used by appointed water companies. Where available, copies of the customer's bills are the easiest way of showing whether supplies to a customer's premises meet the threshold requirement. If a customer's past bills show that the eligible premises met the threshold requirement, and there is no significant change in business practices or forecast demand, it is likely to meet the threshold requirement.

Some appointed water companies provide free optional meters to non-household customers who wish to move from unmetered to metered charging. Other appointed water companies charge for that facility. The appointed water companies generally require all non-household properties to be metered and, if that is the case, they may not charge a business customer for installing the meter. However, it is not mandatory for non-household premises to have a water meter fitted. Customers should contact their appointed water company to find out the current policy.

If it is unreasonably expensive or impracticable to install a meter, appointed water companies may choose to offer an assessed charge. Appointed water companies may determine assessed charges in different ways. This could include an assessment based on the type of property, the number of occupants at a set of premises, or an appointed water company's assessment of the customer's usage.

2.4 Multiple appointed water companies

Where eligible premises are served by more than one appointed water company, each supplying less than the threshold, a licensee will only be able to supply the premises if the threshold requirement is satisfied. The threshold requirement is based on the total quantity of water to be supplied by a single licensee. For example, if a factory in Wales takes a supply of 30 Ml/year from one appointed water company and 20 Ml/year from another, it will meet the threshold requirement if a single licensee is to supply the premises with 50 Ml/year from the supply systems of both or either appointed water companies under a single agreement with the customer.

2.5 Potable and non-potable supplies

Some premises currently receive both a potable[12] and a non-potable[13] water supply. Under the licencing regime, the total potable and non-potable volume supplied can be aggregated when considering the threshold requirement. The method of assessment set out above will apply in this case. If a supply of water changes from potable to non-potable or vice versa and the premises are still non-household premises, the threshold requirement will not have to be reapplied.

Where a customer requires 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 in the WIA91.

2.6 Private supplies

Some premises receive private water supplies. These are supplies made by means other than through an appointed water company's supply system and, as such, are not regulated by us. Most private supplies are to individual houses and farms. Some hospitals and industrial premises have private supplies for their own sites. Manufacturers, power stations and farmers also directly abstract large volumes of water for various purposes. There are also some private water supply networks, including parts of the canal network. The volume of water supplied to premises by means of private supplies and direct abstractions cannot be added to the volume supplied by an appointed water company's supply system in order to satisfy the threshold requirement. This is because the supply of water by a licensee must be in pursuance of its undertaking to supply a customer using an appointed water company's supply system, as defined in section 17B(5) WIA91.

A licensee is permitted to introduce into a supply system water that is already located on a customer's site, for example from a borehole, and to retail this water back to the customer where this activity is in pursuance of its licence. However, the customer itself may not introduce its own on-site private water supply into an appointed water company's supply system in order to satisfy the threshold requirement because it is prohibited by section 66J WIA91 (unless it holds a water supply licence) from introducing water into the supply system. We consider that, in practice, however, it is unlikely that a customer with its own on-site private water

[12] Water for domestic and food production purposes which is wholesome at the time of supply. See sections 67 and 68 WIA91 and the Water Supply (Water Quality) Regulations.

[13] Water that is not intended for domestic or food production purposes.

supply would want to do this. This also applies to private supplies of potable and non-potable water.

2.7 Reservation charges and standby charges

Some customers with access to a private supply may need a back-up supply from their appointed water company. These customers may pay a reservation charge (also known as a standby charge) to reserve some system capacity from the appointed water company.

The volume of water a customer reserves cannot be included in the assessment of the quantity of water to be supplied to the premises by the licensee. This is because we do not consider the volume of water reserved by a customer to be part of the normal supply that the customer expects to consume or that will in fact be supplied to the premises. In practice, we expect this may not always be an issue because many customers who pay a reservation charge are those who take most of their water through private supplies and whose premises are therefore not likely to meet the threshold requirement.

2.8 Leakage

For the purpose of eligibility, any assessment of the amount of water supplied to a set of premises should not include the amount that is lost through leakage in the appointed water company's supply system. The threshold requirement relates to the total quantity of water that is supplied to the premises, as measured at the meter or by other appropriate means as explained above. However, the amount of water lost through leakage from the meter (or other appropriate point of measurement) to the point at which the water is used does count towards the threshold requirement. A customer's consumption would therefore include the amount of water lost through leakage through the customer's own on-site system.

2.9 Meter under-registration

Meter under-registration describes a situation where the meter that measures the volume of water used under-records the amount passing through it. This might happen when the mains water pressure is too low to allow the true volume of water to be measured accurately. For the purposes of determining eligibility, the threshold requirement relates to chargeable volume of water (that is, the volume of water as measured by the meter). It does not relate to any volume of water that the meter does not record.

2.10 Retail and combined water supply

For the purpose of satisfying the threshold requirement, water can be supplied to premises by means of both retail and combined supplies. Provided the total volume of water estimated to be supplied to the premises is not less than the threshold, it is irrelevant whether the licensee supplies the premises by means of a retail supply, a combined supply or both. For example, where a customer expects to consume 50 Ml of water a year, a licensee can supply that customer with 40 Ml through combined supply and the remaining 10 Ml by purchasing the supply of water from an appointed water company and retailing it to the customer's premises.

3. Premises

[This part of the guidance is made under section 17A(9) WIA91[14] and has been approved by the Secretary of State after consulting the Welsh Government.]

The WIA91 does not define 'premises' for the purpose of assessing eligibility. Premises can include buildings or land. Licensees can only supply customers at individual eligible premises. Each of the premises supplied must be eligible. Customers cannot aggregate consumption at more than one set of premises in order to meet the threshold requirement, although some groups of properties may constitute a single set of premises in certain circumstances. Obviously, this does not mean that licensees cannot treat groups of premises as a single entity for billing purposes, for the convenience of a customer.

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 will assess the eligibility of a customer's premises with reference to the extent of those premises in the context of the criteria set out in this section. This is a mixed question of law and fact. Moreover, where applicable the threshold requirement must be met within the boundary of a single set of premises.

In order to make sure that our guidance is tailored to the circumstances of the customer, we will distinguish between premises where the threshold requirement applies, and premises where it does not.

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

In order to ensure that competition works as effectively as possible in the interest of consumers, it is necessary that the extent of a set of premises should be defined as

[14] After commencement of the relevant sections of the Water Act 2014: Par. 10 of Schedule 2A of the Act and par. 4 of Schedule 2B.

straightforwardly as possible. Where there is no threshold requirement, this means that every property that is assessed separately for the purposes of council taxes and business rates – or that would be if the property were not exempt – will be treated as a separate set of premises.

This rule represents a change in our guidance compared with the 2011 guidance. For most premises, nothing will change, but for a minority it will mean that a single set of premises will be redefined as several premises. These premises will have been disaggregated, something that was not allowed under our 2011 guidance.

In some instances, this disaggregation will represent a problem for the appointed company or the licensee. For various reasons, it may not be possible to supply or bill each property separately.

We consider that the manner in which a customer is billed is not governed by this guidance. Whether bills should show the usage or the charge for each premises separately is something that customer and company should agree between themselves.

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.

3.2 The extent of a premises when the threshold requirement applies

Until the commencement of the relevant sections of the Water Act 2014, and in the supply areas of companies located wholly or mainly in Wales afterwards, our guidance needs to be conscious of the way our definition of the boundaries of a set of premises affects the application of the threshold requirement. For that reason, we consider that in circumstances where the threshold requirement applies, we should confirm our 2011 guidance.

That is to say, there will be a single set of premises in the following circumstances:

(i) the premises are located within a single boundary and a single customer occupies the premises and is liable for water bills in respect of those premises (single boundary premises);

(ii) the premises consist of co-located buildings, other similar structures and/or land which have adjoining boundaries or which are separated only by transport infrastructure and a single customer occupies the premises and is liable for water bills in respect of those premises (common occupation co-located premises); or

(iii) the premises consist of a single building or co-located, separately occupied buildings, other similar structures and/or land with all four of the following characteristics:

- they have a common landlord or managing agent in respect of the totality of the premises;
- they have adjoining boundaries or are separated only by transport infrastructure;
- they are served by a self-contained common water supply system that does not belong to an appointed water company; and
- a single customer is liable for water bills in respect of the totality of the premises (common management co-located premises).

If premises meet the criteria in paragraphs (ii) or (iii), the criterion in paragraph (i) cannot be applied to any part of the premises as a means of reducing the area in order to bring the reduced premises within the eligibility requirements.

i) Single boundary premises

In most cases, single boundary premises for these purposes will be the same as those that the appointed water company supplies with water. The boundary will usually be clear from the land register or from the property deeds. A single customer does not only mean a single legal or natural person. A single customer means a single economic entity or business which is liable for water bills. A single set of premises can have more than one meter and the number of meters is not necessarily a good indication of whether those premises comprise a single set of premises.

ii) Common occupation co-located premises

Premises can be eligible even if transport and major through-traffic infrastructure separate parts of those premises. Transport infrastructure includes public highways, railways, other public rights of way and watercourses. Where a customer has two sites located on both sides of a public highway, and which satisfy the common occupation co-located premises criterion (and are therefore to be regarded as a

single set of premises), the water consumption at those two sites can be added together to determine whether the threshold requirement is met.

Co-located premises with constituent parts that are separated from each other by anything other than transport infrastructure and its directly associated land are not eligible. For example, co-located premises separated by common land are not eligible. Likewise, co-located premises that are separated by a combination of common land and transport infrastructure are not eligible because of the existence of common land (that is something 'other than transport infrastructure').

iii) Common management co-located premises

A set of co-located premises can be eligible when occupied by several persons who enjoy common water distribution services with a common landlord or managing agent and a single customer is liable for water bills. For example, a developer might sell or lease plots of land to industrial and commercial users on an industrial park. The sites might together be eligible if one organisation, which is liable for water bills for all sites, manages the sites and the self-contained water distribution system.

If a development comprises co-located industrial and commercial properties and houses, the houses will only be considered part of the single set of premises if they are commonly managed with the other industrial and commercial properties and are not billed directly for water. The other criteria in category (iii) will also need to be met. It is likely that most houses would be separately managed and therefore premises in their own right. Houses that are separate premises would fall under the definition of household premises[15] described in chapter 4.

Our interpretation of 'single customer liable for water bills' does not include a billing agency arrangement under which a managing agent acts as the 'post box' for the individual occupiers of the premises and does not incur any personal liability in respect of those bills. It only applies where the managing agent is personally liable for the bills.

It will not necessarily be possible for two completely separate businesses to create eligible premises by simply joining their pipe networks together and for one of them to be solely liable to the supplier for the water bills for their premises as a whole. First, in most cases, the two businesses will not have a common landlord or managing agent. Secondly, in many situations the businesses will not have adjoining boundaries or be separated only by transport infrastructure. Thirdly, in some cases it

[15] See section 17C WIA91.

will not be possible to join the two water pipe networks without using the appointed water company's supply system.

4. Household and non-household premises

[This chapter is non-statutory and subject to any regulations the Secretary of State or the Welsh Ministers may make under the WIA91. The Secretary of State and the Welsh Ministers have no current policy intention to make regulations.]

We will take this chapter into account when making a determination under section 17E WIA91, as to whether the premises to be supplied are eligible to be supplied by a licensee. However, nothing in this guidance should be interpreted as taking away from the responsibility of licensees to satisfy themselves that they are only supplying customers that are eligible under the statutory framework, nor does it take away from our responsibility to apply the law on a case-by-case basis when asked to make a determination under section 17E WIA91.

Premises that satisfy the single set of premises eligibility requirement described in chapter 3 must also satisfy the requirement set out in section 17A(3)(a) WIA91 that the premises are not household premises in order to be eligible.

4.1 Principal use

For the purposes of the licencing regime (section 17C WIA91), household premises are those in which, or in any part of which, a person has his home, and where the **principal** use of the premises is as a home. For example, a farm serves both as the farmer's home and the farmer's place of business, but ordinarily its principal use will be as a business. So it would not be household premises.

Under the WIA91, non-household premises are premises that are not household premises.

By way of guidance, we consider that, as a first approximation, market participants can rely on the classifications made to administer the council tax and the business rates. Under the Local Government Finance Act 1988 (LGFA88), all properties are classified as domestic, non-domestic, or composite. Section 66 of the LGFA88, which gives the definitions of domestic and non-domestic properties, is set out in appendix 1.

- **Domestic properties** – those that are liable for council tax only - will ordinarily be household premises in the sense of the 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 LGFA88 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 household premises.

Note that we consider that mixed-use premises are non-household premises in the sense of the WIA91 if the household part of the premises is **dependent** in some way upon the non-household part. We define 'dependent' as meaning that the existence of the household part is linked to the function of the non-household part of the premises. For example, a university hall of residence is dependent upon the university, as there would be no need for the hall in the absence of the university. Similarly, health workers' accommodation and barracks are dependent upon the hospital and the military base respectively.

However, it must always be open to a licensee or customer to demonstrate to the appointed undertaker or to the market operator that for a particular set of premises the principal use is not as a home.

4.2 Recommended steps to take with regard to mixed-use premises

As discussed above, licensees are required to make sure that they are only supplying premises that are eligible under the statutory framework. This guidance does not replace that framework. Therefore, it may be necessary for a company to gather further evidence to establish whether for a given set of mixed-use premises the principal use is as a home or not.

We expect that companies will want to start by carrying out a relatively light-touch assessment. Where data already held by the company about the property and the customer is insufficient to establish how the property is used, the company might consider the amounts of council tax and business rates payable with respect to the premises, or use certain online tools to gather evidence on use.

We anticipate that such desk research will not always be sufficient to resolve the issue. In those cases, the company may want to invite the customer to submit evidence, for example in the form of photographs or floor plans, where available. In case the customer is unwilling or unable to provide such evidence, the company could gather evidence on site, for example when a company representative is there to read the customer's meter.

Should there be a dispute between an appointed water company, a licensee, and a customer about the eligibility of particular premises, we would expect the parties to take advantage of the dispute resolution mechanism.

4.3 Transition

In rare cases, the change in our guidance may have the effect that premises that were eligible to switch under our previous guidance are no longer allowed to do so. We consider that this would be highly undesirable. Customers that have been able to choose their own water supplier for a number of years reasonably expect to continue to be able to do so in the future. Therefore, we consider that companies should not define any premises as household premises that were defined as non-household premises under our previous guidance on eligibility. Customers that are eligible to switch should continue to be eligible to switch.

4.4 Relationship with other parts of the WIA91

The WIA91 provides for the supply of water for domestic and non-domestic purposes. The purposes refer to the primary purpose for which water is used. It does not affect the non-household requirement for eligibility.

Section 218 WIA91 clarifies that water supplied for ‘domestic purposes’ refers to water used for drinking, washing, cooking, central heating and sanitary purposes.

Section 17C WIA91 defines household premises as those in which, or in any part of which, a person has his home. The fact that a person has his home in, or in part of, any premises does not mean that all water supplied to those premises is for domestic purposes. Nor does the fact that the principal use of a set of premises is non-household mean that the water supplied to those premises is necessarily for non-domestic purposes.

Finally, it should be noted that schedule 4A WIA91, which sets out the premises that are not to be disconnected for non-payment, includes both household and non-household premises in the sense of this guidance; some premises are eligible for switching yet may not be disconnected under schedule 4A.

5. Determinations

Section 17E(1) WIA91 allows us to determine, in a case referred to us by a licensee or a potential customer of a licensee, whether a proposed supply of water by the licensee to the customer would be in accordance with the licensee's retail authorisation. Section 17E(2) WIA91 provides that the matters we may determine include:

- the extent of the premises to be supplied;
- whether the premises to be supplied are household premises;
- whether the threshold requirement is satisfied in relation to the premises to be supplied; and
- any other matter the determination of which is relevant to those matters.

Also, under Regulation 5(1) of the New Customer Exception Regulations, we may determine, in a case referred to us by a licensee or an actual or potential customer of a licensee, whether that licensee is, pursuant to Regulation 3 of the New Customer Exception Regulations, not to be treated as entering into an undertaking with a new customer to give a supply of water to any premises.

Licensees and customers should not request determinations as an alternative to following this eligibility guidance. We may reject any request for a determination where we are not satisfied that the person or persons making the request has tried to follow our eligibility guidance and has made reasonable efforts to resolve the dispute by other means.

However, we accept that there will be cases where a market participant will ask us to review the conclusion reached through the dispute resolution mechanism.

5.1 Use of independent advice

When determining eligibility issues, we may seek views from the appointed water company, licensee and customer. We may also need to engage with other parties, for example consultants, in relation to some technical or financial issues.

5.2 Publishing determinations

The text of our determinations will be published in accordance with sections 195 and 195A WIA91. We will consider on a case-by-case basis the extent to which it is

appropriate to publish the full text of a determination. We will inform all relevant parties of our proposed approach and give them an opportunity to comment.

We must maintain a register of determinations and this will be available on our website.

Annex 1: Excerpt from the Local Government Finance Act 1988

Section 66:

(1) Subject to subsections (2), (2B) and 2E below, property is domestic if— .

(a) it is used wholly for the purposes of living accommodation, .

(b) it is a yard, garden, outhouse or other appurtenance belonging to or enjoyed with property falling within paragraph (a) above, .

(c) it is a private garage which either has a floor area of 25 square metres or less or is used wholly or mainly for the accommodation of a private motor vehicle, or

(d) it is private storage premises used wholly or mainly for the storage of articles of domestic use.

(2) Property is not domestic property if it is wholly or mainly used in the course of a business for the provision of short-stay accommodation, that is to say accommodation— .

(a) which is provided for short periods to individuals whose sole or main residence is elsewhere, and .

(b) which is not self-contained self-catering accommodation provided commercially. .

(2A) Subsection (2) above does not apply if— .

(a) it is intended that within the year beginning with the end of the day in relation to which the question is being considered, short-stay accommodation will not be provided within the hereditament for more than six persons simultaneously; and .

(b) the person intending to provide such accommodation intends to have his sole or main residence within that hereditament throughout any period when such accommodation is to be provided, and that any use of living accommodation within the hereditament which would, apart from this subsection, cause any part of it to be treated as non-domestic, will be subsidiary to the use of the hereditament for, or in connection with, his sole or main residence.

(2B) A building or self-contained part of a building is not domestic property if— .

(a) the relevant person intends that, in the year beginning with the end of the day in relation to which the question is being considered, the whole of the building or self-contained part will be available for letting commercially, as self-catering accommodation, for short periods totalling 140 days or more, and

(b) on that day his interest in the building or part is such as to enable him to let it for such periods.

(2C) For the purposes of subsection (2B) the relevant person is— .

(a) where the property in question is a building and is not subject as a whole to a relevant leasehold interest, the person having the freehold interest in the whole of the building; and .

(b) in any other case, any person having a relevant leasehold interest in the building or self-contained part which is not subject (as a whole) to a single relevant leasehold interest inferior to his interest. .

(2D) Subsection (2B) above does not apply where the building or self-contained part is used as the sole or main residence of any person.

(2E) Property is not domestic property if it is timeshare accommodation within the meaning of the Timeshare Act 1992.

(3) Subsection (1) above does not apply in the case of a pitch occupied by a caravan, but if in such a case the caravan is the sole or main residence of an individual, the pitch and the caravan, together with any garden, yard, outhouse or other appurtenance belonging to or enjoyed with them, are domestic property.

(4) Subsection (1) above does not apply in the case of a mooring occupied by a boat, but if in such a case the boat is the sole or main residence of an individual, the mooring and the boat, together with any garden, yard, outhouse or other appurtenance belonging to or enjoyed with them, are domestic property. .

(4A) Subsection (3) or (4) above does not have effect in the case of a pitch occupied by a caravan, or a mooring occupied by a boat, which is an appurtenance enjoyed with other property to which subsection (1)(a) above applies.

(5) Property not in use is domestic if it appears that when next in use it will be domestic. .

(7) Whether anything is a caravan shall be construed in accordance with Part I of the Caravan Sites and Control of Development Act 1960.

(8A) In this section— .

“business” includes—

(a) any activity carried on by a body of persons, whether corporate or unincorporate, and .

(b) any activity carried on by a charity; .

“commercially” means on a commercial basis, and with a view to the realisation of profits; and

“relevant leasehold interest” means an interest under a lease or underlease which was granted for a term of 6 months or more and conferred the right to exclusive possession throughout the term.

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

Printed on 75% minimum de-inked post-consumer waste paper.
March 2015

ISBN 978-1-908116-93-2

This document is also available from our website at www.ofwat.gov.uk.

Any enquiries regarding this publication should be sent to us at mailbox@ofwat.gsi.gov.uk.