

**Consultation on supplementary guidance:  
assessing whether non-household customers  
in England and Wales are eligible to switch  
their water and wastewater retailer**

## About this consultation

This document consults on our supplementary guidance for assessing whether customers in England and Wales are eligible to be supplied by a licensed water supplier (**WSL**) and/or will be eligible to be supplied with water by a water supply licensee and/or provided with water and/or sewerage services by a water and sewerage licensee (such licensees are referred to as (**WSSLs**) when the new retail market opens in April 2017.

The supplementary guidance focuses on whether or not premises should be treated as household premises under section 17C of the Water Industry Act 1991 (**WIA91**) and so ineligible to switch supplier. This follows requests from companies operating in the market for additional clarity for some customer groups following the consultation and publication of our revised “Guidance on assessing whether customers in England and Wales are eligible to switch their water and wastewater retailer”, which we published in August 2015 (the **eligibility guidance**).

Consistent with the eligibility guidance, this supplementary guidance, in terms of its guidance on defining household premises, will apply to both England and Wales and to WSLs and WSSLs.

Stakeholders should also note that as well as issuing the supplementary guidance, we also intend to update our eligibility guidance to take into account commencement of relevant provisions of the Water Act 2014, development of our thinking on the transition from the water supply licence regime to the water and sewerage supply licence regime, and the position reflected in our supplementary guidance. However, we do not intend to change the focus or direction of policy when we update our eligibility guidance.

We propose to consult on these updates to the eligibility guidance to give respondents an opportunity consider both the revised eligibility guidance alongside our supplementary guidance. We will be consulting on our revised eligibility guidance shortly.

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## Responding to this consultation

We welcome your comments on the draft supplementary guidance by **Thursday 7 April 2016**.

Please submit email responses to [retailmarketopening@ofwat.gsi.gov.uk](mailto:retailmarketopening@ofwat.gsi.gov.uk), with the subject “**Supplementary Guidance Consultation**” or post them to:

Supplementary Guidance Consultation  
Retail Market Opening Programme  
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We will publish responses to this consultation on our website at [www.ofwat.gov.uk](http://www.ofwat.gov.uk), unless you indicate that you would like your response to remain unpublished. 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 1998 and the Environmental Information Regulations 2004.

If you would like the information that you provide to be treated as confidential, please be aware that, under the FoIA, there is a statutory ‘Code of Practice’ 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.

## 1. Overview

### 1.1 Background

Ofwat has previously published eligibility guidance for assessing whether customers in England and Wales are eligible to be supplied with water by a licensed water supplier (**WSL**) and/or will be eligible to be supplied with water by a water supply licensee and/or provided with sewerage services by a water and sewerage licensee (such licensees are referred to as **WSSLS**) when the new retail market opens in April 2017.

In December 2015, Market Operator Services Limited (**MOSL**) facilitated a workshop with the industry to discuss the eligibility principles for premises in relation to the non-household market. MOSL then sought comment on a list of issues that required clarification. These issues were subsequently submitted to Ofwat for feedback and next steps. We prepared a working paper based on the discussion at the MOSL workshop and subsequently held our own workshop with the industry in January 2016. The draft supplementary guidance builds on the outcome of those discussions and reflects further development of our thinking since then.

The draft supplementary guidance – appended to this document as Appendix A – seeks to apply the general principles contained in our eligibility guidance to specific scenarios not addressed, or not addressed in detail, in that document.

We propose that the supplementary guidance, in terms of its guidance on household premises, will apply to both England and Wales and to both WSLs and WSSLS. This is because neither WSLs nor WSSLS are (or will be) authorised to supply household premises, whether or not they are using the supply system (or sewerage system) of an undertaker whose area is wholly or mainly in England or wholly or mainly in Wales.

### 1.2 Purpose of this consultation

One of the main reasons for publishing this new guidance is that the introduction of the new non-household retail market under the Water Act 2014 (**WA14**) requires companies to examine whether previously ineligible customers are now eligible. As the threshold requirement will no longer apply to premises being supplied by a WSSL which is using the supply system of an undertaker whose area is wholly or mainly in England, there is now a particular focus on whether the premises are household premises.

This document consults on our supplementary guidance for assessing whether customers in England and Wales are currently eligible to switch WSL and will be eligible to switch WSSL in April 2017, which is enclosed as Appendix A. The supplementary guidance focuses on how suppliers should determine whether premises are household premises under section 17C of the Water Industry Act 1991 (**WIA91**) and so ineligible to switch supplier.

The supplementary guidance is intended to apply to holders of both WSL and WSSL. Ofwat is required under the WIA91 to provide guidance for both WSLs and WSSLs on certain matters relevant to eligibility<sup>1</sup>. As our supplementary guidance comments to some degree on the extent of premises for which the household/non-household assessment is to be made, under section 17A(9) and Paragraphs 4 and 7 of Schedule 2A to the WIA91, it will require the approval of both the Secretary of State and Welsh Ministers.

### **1.3 Consultation on our draft supplementary guidance**

Appendix A to this document sets out our draft supplementary guidance.

#### **Consultation Question**

We would be grateful for consultation responses on the draft supplementary guidance. In particular, we would welcome responses on whether respondents consider:

1. the descriptions in the examples not to be reflective of the types of issues encountered; and/or
2. there may be any inconsistency between our draft supplementary guidance and the relevant legislation; and/or
3. the proposals in our supplementary guidance are unreasonable.

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<sup>1</sup> Ofwat is required under section 17A(9) of the WIA91 to provide guidance for WSLs and under Schedules 2A and 2B to the WIA91 to provide guidance for WSSLs on certain matters relevant to eligibility.

If stakeholders do answer 'yes' to any of the questions above, we would also welcome what alternative interpretation should be made and why?

## 1.4 Next steps

We welcome responses to the proposals set out in the draft supplementary guidance from stakeholders. This will help us to refine our proposed approach to guidance.

**The deadline for responses is 7 April 2016.**

Once we have considered responses to the consultation, we plan to develop final supplementary guidance and seek approval from the Secretary of State and the Welsh Ministers before publication.

Stakeholders should also note that as well as issuing the supplementary guidance, we also intend to update our eligibility guidance to take into account commencement of relevant provisions of the Water Act 2014, development of our thinking on the transition from the water supply licence regime to the water and sewerage supply licence regime, and the position reflected in our supplementary guidance.

Stakeholders should note, however, that it is not our intention to change the focus or direction of policy when we update our eligibility guidance.

We propose to consult on these updates to the eligibility guidance to give respondents an opportunity consider both the revised eligibility guidance alongside our supplementary guidance. We will be consulting on our revised eligibility guidance shortly. We plan to publish the final supplementary guidance, together with the updated eligibility guidance as soon as we can.

## **Appendix A: Draft supplementary guidance**

### **1.1 Purpose of this supplementary guidance**

The supplementary guidance seeks to apply the general principles contained in our eligibility guidance on assessing whether customers in England and Wales are eligible to switch their water and wastewater retailer, to specific scenarios not addressed, or not addressed in detail, in that document. In addition, it suggests some other criteria which may be considered where the application of our general principles does not result in a clear conclusion.

### **1.2 Important information**

This supplementary guidance represents our interpretation of the law in light of the circumstances described in this document at the time it was prepared and whilst it has been carefully compiled, we do not guarantee the completeness or accuracy of the information provided to us in outlining these scenarios.

From time to time the contents may be revised in the light of changes in legislation and decisions of the courts or to reflect changing policy or practice as we use our powers of determination in the new market.

Each licensee is responsible for assessing the eligibility of premises/properties it supplies. Where a household has been incorrectly placed into the market and then attempts to switch supplier, the onus is on the receiving supplier to assess the premises/property and refuse the transfer if the premises/property is not eligible.

### **1.3 Principles for assessing eligibility**

#### **1.3.1 General Considerations**

Under section 17C of the Water Industry Act 1991 (WIA91), household premises are those in which, or in any part of which, a person has her home. However, the fact that a person has her home in or in any part of any premises does not mean that the premises are household premises unless the principal use of the premises is as a home. In our eligibility guidance we set out that classifications for Council Tax and business rate purposes may be a useful first approximation of principal use. We also suggested that "dependency" should be one of the principles in determining the

principal use of premises where the use of such premises is mixed and it is not readily apparent which element is the “principal” one.

We set out in our eligibility guidance that dependency means the existence of the household part of the premises is linked to or reliant upon the function of the non-household part of the premises. This supplementary guidance provides more general guidance on applying these principles. The following hierarchy of considerations applies when determining the eligibility of premises:

1. **Determine the extent of the premises.** Chapter 3 of our eligibility guidance provides more details, but in relation to some of the examples considered in this supplementary guidance we would draw attention to our guidance on single supply points and single sets of premises. Paragraph 3.1 of the eligibility guidance provides that **“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 licensing framework.”**
2. **Determine the principal use of the premises.** In the majority of instances this should be sufficiently clear to allow premises to be placed within the household or non-household market.
3. **Where is it not readily apparent whether the principal use of the premises is household or non-household, liability for business rates or council tax may provide a first approximation.** Generally, if the premises are liable for business rates only, the site will be eligible to participate in the non-household market. If the premises are liable for council tax only, the property would generally be considered a household. Principal use, however, takes precedence before considering the incidence of liability for council tax and business rates.
4. **Where the premises are liable for neither Council Tax nor Business Rates, or where the premises are liable for both (i.e. the premises are mixed use), it is important to determine which use is the “principal” one.** We suggested in our eligibility guidance that if the ‘household’ part of a single set of premises is **dependent** on the ‘non-household’ part, the premises would generally be considered non-household.

The following sections of the document set out the practical application of the above principles across a range of alternative situations. We consider that companies can use these principles and examples to identify the appropriate eligibility of customers across a wide range of situations without the need to revert to Ofwat on a case by case basis.

We note that in certain circumstances, the application of the eligibility guidance may result in some very small sites becoming eligible for the market. We consider these sites should be eligible for the market, but generally, that priority in the identification of eligibility and uploading of data should be guided by those sites which have the greatest potential to benefit from competition.

### **1.3.2 Determining eligibility in relation to premises with separate water and sewerage services providers**

In the event of a multi-supply situation (different water and sewerage suppliers) for a single premises, the water services provider and sewerage services provider should assess eligibility separately.

In the majority of cases we consider that both services providers are likely to come to the same conclusion about eligibility, but there may be examples where water supply and sewerage supply systems operate differently. For customer ease of understanding, we encourage companies to take a consistent approach where possible, although we accept it may be possible for a site to be considered household in relation to one service and non-household in relation to the other based on the circumstances of their principal use and the configuration of the relevant infrastructure.

## **1.4 Additional scenarios**

### **1.4.1 University halls of residence and accommodation**

#### **Principle**

We have sought to provide additional guidance on eligibility by making a distinction between university halls of residence, where food and wider services can sometimes be provided by the university or its service provider as part of the accommodation cost, and other university accommodation, which is self-contained and self-catered.

Generally, we consider that where food and wider services are provided as part of accommodation costs, the building would not be considered a home (as the sleeping and living accommodation does not have all the facilities to be a home and are reliant upon other facilities being provided by the university or its service provider). Therefore such premises **should** be included in the non-household market.

Where university accommodation is self-contained/self-catered, for example through shared kitchen and other facilities, the principal use is a home and **should not** be included in the non-household market.

## Examples

A single supply point: Where a number of university buildings are served through a single supply point which supplies the wider university campus, this will constitute a single set of premises according to the eligibility guidance. The principal use is therefore the principal use of all of the buildings, taken as a whole. In the case of a university campus the principal use of the overall campus is likely to be non-household (i.e. it is an educational establishment) and **should** therefore be included in the retail market. We used this as an example in our eligibility guidance.

Halls of residence both on or off campus: If a university hall of residence has its own supply point, we consider that where the accommodation is dependent upon the provision of external facilities provided by the university or its service provider the principal use is not a home as this situation is similar to hotel accommodation. This type of premises **should** therefore be considered to be non-household and included in the retail market.

University accommodation both on or off campus: Where university accommodation has its own supply point and is self-catered, for example through shared kitchen and other facilities, and so is not dependent on external facilities provided by the university or its service provider, the principal use is as a home and so it is not considered part of the non-household market

### 1.4.2 Housing associations

The Gov.UK website<sup>2</sup> defines housing associations as:

.... independent societies, bodies of trustees or companies established for the purpose of providing low-cost social housing for people in housing need on a non-profit-making basis. Any trading surplus is used to maintain existing homes and to help finance new ones. They are now England's major providers of new homes for rent, while many also

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<sup>2</sup> As at March 2016.

run shared ownership schemes to help people who cannot afford to buy their own homes outright.

Guidance was requested on whether housing available through housing associations should be included in the non-household market.

## Principle

We believe that a housing association is comparable to a landlord who undertakes some service/operation and maintenance activities in relation to the premises. Regardless of the number of units served by the same supply point, the primary use of premises run by a housing association as a home and so that premises **should not** be included in the non-household market.

### 1.4.3 Local authority housing

Local authorities are registered providers of housing with the Homes and Communities Agency and so should be treated in the same way as housing associations and so **should not** be in the non-household market.

### 1.4.4 Serviced apartments

#### Principle

Serviced apartments (fully furnished living quarters for short or long term stay) need to be considered in the context of the services being provided and the nature of the accommodation to determine their principal use. Some serviced apartments are similar to residential properties with management companies (which are considered below) and, therefore, have a principal use as a home and **should not** be included in the non-household market. However, other serviced apartments are commercial premises run for the purposes of providing short term accommodation for holidays and business travellers as an alternative to a hotel. These premises **should** be included in the non-household market. We understand that the Local Government Finance Act makes a similar distinction for the purposes of assessing Council Tax liability and therefore liability for Council Tax may be a useful indicator in relation to such premises.

### 1.4.5 Residential properties with management companies

#### Principle

The principal use of residential properties, even with management company arrangements in place, is as a home and so **should not** be included in the non-household market.

#### Example

In some instances, residents pay a management company or a service fee or may have a shared supply for water or gas, or services such as gyms etc. included within the management fee. Despite the management company initially carrying this liability and then charging residents as part of their service fee for such items, we consider that these are ancillary services to the principal use of the property which is as a home. This use should take precedence and the property **should not** therefore be included in the non-household market.

### 1.4.6 Nursing homes and care homes

#### Principle

The principal use of a nursing or care home (which we consider to be any institution providing residential accommodation for the purposes of providing residents with continued health care or other support upon which they are reliant) is considered to be the provision of continued care, with the residential element a requirement of the nature of the care being provided and so these premises **should** be included in the non-household.

#### Example

Where a care provider leases properties to staff, even if repair and maintenance are provided by the nursing home, the principal use of those leased properties is considered to be as a home unless the leased property shares a single supply point with the larger care home in which case the non-household status takes precedence based on dependency and the premises (including the staff accommodation) **should** be included in the non-household market.

### 1.4.7 Assisted living or sheltered housing

#### Principle

The principal use of assisted living properties (considered as housing with limited care/intervention for individuals who may at times require assistance but do not require active care such as a nursing or care home) is as a home. In this instance the support functions are considered ancillary to the self-contained accommodation available, which is usually liable for council tax and is often owned separately from the provider of care services. These types of premises **should not** therefore be included in the non-household market.

### 1.4.8 Car parks and garages

#### Principle

Where a car park or garage is on household premises and served by the same supply point as those premises, it is considered part of that household premises' principal use as a home. If, however, the car park or garage is served by a separate supply point from the household its principal use will not be considered as a household and so **should** be included in the non-household market.

### 1.4.9 Animal troughs

#### Principle

While principal use determines whether or not a farm is in the non-household market, dependency should determine if an animal trough (or similar) which shares its supply point with another property should be in the non-household market.

Consistent with the approach we have adopted for other mixed use premises, an animal trough which shares a supply point with another building or buildings is dependent on those buildings and should be in the same market as the premises/property on which it is dependent.

#### Example

If the animal trough is on the farm site it is dependent upon a farm/stable, and as such there would be classified under the principal use of the farm as a whole.

If the animal trough is a separate and distinct premises its principal use is not as a home and so it **should** be included in the non-household market.

#### **1.4.10 Treatment of allotments**

##### **Principle**

The principal use of an allotment is not as a home and so such premises **should** be included in the non-household market.

##### **Examples**

Individually rented allotments would not be considered to have a principal use as a home and so **should** be included in the non-household market.

Allotment societies or association that operates multiple allotments on behalf of their members **should** generally be eligible to participate in the non-household market.

#### **1.4.11 Temporary supply for developers**

##### **Principle**

The current principal use of the relevant premises is used to determine its eligibility. This means that where a house has not been completed, its current principal use cannot be as a home and so it **should** be in the non-household market.

##### **Examples**

Where developers use premises for purposes such as show homes, these properties remain part of the development process (the sales process) until such time as a householder moves in (i.e. until a property is being used as a home). The principal use of such a property is therefore not as a home until it is occupied as such. Dependency on the developer and the non-household remains and these properties **should** therefore be included in the non-household market.

If the development is being progressed by a self-builder (not a business), we consider that the principal use of the new property cannot be established as a household until the point where the property is complete and so **should** be included in the non-household market. However, a property being constructed on an existing household premises (for example, in the garden) which is supplied from the same

supply point as those premises, would be dependent on those premises and **should not** be included in the non-household market.

Under the proposed Wholesale Retail Code it will be possible for a retailer to apply to a wholesaler for a temporary connection. This may be an appropriate process for a construction site where a supply point will be required by the developer during construction (when premises are non-household), but different supply points may be required on completion of construction (for example when houses are complete and become used as homes). Such temporary supply would be considered to be for non-household premises where temporary supplies for building sites are used solely for the purposes of constructing premises (i.e. building water used for washing down sites, mixing cement, etc.).

In either case, once the development has been completed there is scope that the premises contained within the development may have to be reclassified depending on their principal use(s).

#### **1.4.12 Zero rated and exempt properties (council and business rates)**

##### **Principle**

There are instances in which households and/or businesses can be exempt from various rates by virtue of the usage “class” into which the premises fall. Such exemptions may make principal use more difficult to identify, however the application of these exemptions does not alter the principal use of the exempt property, and so will not affect its eligibility for inclusion within the non-household market.

#### **1.4.13 Treatment of vacant property/premises**

##### **Principle**

We consider that the principal use of vacant premises may not be straightforward. Factors such as the length of time for which the premises have been vacant, whether or not they are capable of being used as a home (e.g. because the property is unfurnished or derelict), Council Tax/business rate liability and whether or not a person lists the property as their residence may all be relevant. Some vacant premises may be gap sites where the principal use could be assessed once a new owner/occupier selects a retailer. In 2006, Ofwat provided guidance in RD 02/06 (Charges to vacant properties), in which we considered it reasonable for companies

not to charge for unfurnished vacant premises because those premises were not ready for occupation (and therefore may be regarded as not being used or being ready to be used as a home)<sup>3</sup>. As vacant properties will, in the majority of cases, still be liable for either Council Tax or business rates (or both), we consider that such liability would be a reasonable approximation of principal use in the absence of other evidence.

As set out above, if the property is liable for Council Tax it will normally be considered a household and not part of the non-household market. If the property is liable for business rates it will normally be classified as eligible for the non-household market.

If the property is liable for business rates and Council Tax it will be considered mixed use and its eligibility for the non-household market will be guided by reference to other factors which may indicate which of these uses is its principal use.

We accept that a vacant property once brought back into use may have its eligibility changed. For example, an unused office building being converted into residential flats will become ineligible for the non-household market.

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<sup>3</sup> RD 02/06: Charges to vacant properties: Conclusions, March 2006.

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 trusted and respected regulator, working at the leading edge, challenging ourselves and others to build trust and confidence in water.

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