

4 April 2016

Trust in water

Updated Eligibility Guidance Consultation

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About this consultation

This document consults on our proposed updates to ‘Guidance on assessing whether customers in England and Wales are eligible to switch their water and wastewater retailer’ (eligibility guidance).

At the moment only a small number of business, charity and public sector organisation (non-household) customers across England and Wales can choose their retailer. Most customers must use services provided by monopoly companies. The Water Act 2014 will allow eligible non-household customers of companies whose areas are wholly or mainly in England to choose their supplier of water and wastewater retail services from April 2017. Retail services include activities such as billing and customer services. For non-household customers of companies based wholly or mainly in Wales, only those customers using more than 50 million litres of water each year are able to choose their water supplier, and this will continue. The new market will be the largest retail water market in the world and deliver about £200 million of overall benefit to customers and the UK economy and research shows that seven out of ten of non-household customers want this choice.

The Open Water Programme brings together the key organisations to design and deliver the new retail market by April 2017. These organisations include the Department for Environment, Food and Rural Affairs (Defra), Ofwat and Market Operator Services Ltd (MOSL) - a private company owned by market participants. Opening the new market requires DEFRA, Ofwat, MOSL and companies to each do their part but the market is on track to open in April 2017. The design is almost complete and work is now being carried out to deliver the technical systems, checks and ways of working that are needed to get the market right for customers. A key element of this will be providing guidance on determining which customers are eligible to switch retailer.

Our eligibility guidance was issued in August 2015 and provides guidance for companies on whether customers in England and Wales are eligible to switch their water and wastewater supplier. The Water Act 2014 (WA14) makes significant changes to the water supply licensing regime, but assessments as to the eligibility of customers to switch supplier is relevant to both the pre-WA14 regime (‘WSL’) and the post-WA14 regime (‘WSSL’), and therefore we provide guidance for both regimes within this document.

On the 10 March 2016 we issued a [‘Consultation on supplementary guidance: assessing whether non-household customers in England and Wales are eligible to switch their water and wastewater retailer’](#) (our supplementary guidance).

As part of this consultation we stated that we intended to update our eligibility guidance to take into account commencement of relevant provisions of the Water Act 2014. The 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.

As such, this document and the updated eligibility guidance (appendix A) should be considered alongside the recently released Supplementary Guidance which 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.

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Responding to this consultation

We welcome your comments on the updated Eligibility Guidance by **2 May 2016**.

Please submit email responses to retailmarketopening@ofwat.gsi.gov.uk, with the subject **“Updated Eligibility Guidance Consultation”** or post them to:

Eligibility Guidance Consultation
Retail Market Opening Programme
Ofwat
21 Bloomsbury Street
London
WC1B 3HF

We will publish responses to this consultation on our website at 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.

Overview

1.1 Background

On the 10 March 2016 we issued a 'Consultation on supplementary guidance: assessing whether non-household customers in England and Wales are eligible to switch their water and wastewater retailer'.

This guidance sets out 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.

This followed requests from companies operating in the market for additional clarity for some customer groups.

As part of this consultation we stated that we intended to update our eligibility guidance to take into account the commencement of relevant provisions of the Water Act 2014, the 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.

Updates to the eligibility guidance are not intended to change the focus or direction of policy. As promised, we attach the revised eligibility guidance for consultation.

1.2 Purpose of this consultation

One of the main reasons for publishing this updated 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 the updated Eligibility Guidance which is enclosed as Appendix A. The 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.

1.3 Updates to the guidance

To aid stakeholders, below we outline the changes that have been made to the eligibility guidance document.

- The document has been updated to reflect the progress made on the various forms of licence regimes (WSL and WSSL), to ensure that the language remains up to date and accurate;
- The eligibility guidance has been updated to ensure that any references to companies whose areas are wholly or mainly in Wales are accurate;
- The document has been amended to avoid duplication between the eligibility guidance and supplementary guidance; and
- The updated eligibility guidance now makes reference to Ofwat being empowered to issue with the approval of the Secretary of State (having consulted with Welsh Ministers) as to the factors that are, or are not, to be taken into account in determining the extent of any premises.

1.4 Consultation on the revised guidance

Appendix A to this document sets out the changes to the Eligibility Guidance.

Consultation Question

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

1. Whether any of the updates are not either consistent to commencements of the relevant provisions of the Water Act, the 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?
2. If there are any inconsistencies between the eligibility guidance and the Supplementary Guidance what are they?

1.5 Next steps

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

The deadline for responses is 2 May 2016.

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

Appendix A: Revised Eligibility Guidance

About this document

This document sets out our guidance for assessing whether customers in England and Wales are eligible to switch water and wastewater supplier. The Water Act 2014 (WA14) makes significant changes to the water supply licensing regime, but assessments as to the eligibility of customers to switch supplier is relevant to both the pre-WA14 regime ('WSL') and the post-WA14 regime ('WSSL'), and therefore we provide guidance for both regimes within this document.

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Deleted: We have published 'Response to Ofwat consultation on guidance on eligibility' alongside this document that sets out our reasoning behind our development of this new guidance and a summary of the comments we received to our consultation.¶ One of the main reasons for changing the guidance is that the Water Act 2014 will allow 1.2 million businesses and other non-household customers of providers based mainly or wholly in England to choose their supplier of water and wastewater retail services from April 2017. Retail services include things like billing and customer services.¶ The Welsh Government Water Strategy for Wales set out that market reform proposals will not apply to those relevant water and wastewater providers operating wholly or mainly in Wales. The Welsh Government will monitor the costs and benefits of market reform, which will apply to water companies operating wholly or mainly in England from April 2017. This will inform our future policy in Wales about services for non-household customers served by water companies located wholly or mainly in Wales. This will mean that the existing regulatory approach will apply to these undertakers.¶ The new market will be the largest retail water market in the world and deliver about £200 million of overall benefit to the UK economy. Customers will be able to shop around and switch to the best deal. Investors and retailers will have new opportunities for growth. And the environment will benefit from customers using new water efficient services.¶ The UK Government is committed to delivering the new market. It set up 'Open Water', a single programme of work that brings together all of the key organisations to design and deliver the new market. These include the Department for Environment Food and Rural Affairs, Ofwat and Market Operator Services Limited – a private company owned by market participants.¶ Opening the new market is a complex challenge but it is on track to open in April 2017. The design is almost complete and work is now being carried out to deliver the technical systems, checks and ways of working that are needed to get the market right for customers.¶ One of these areas of work is providing guidance on determining which customers are eligible to switch retailer.

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1. Introduction

1.1 Background

This document covers both WSL and WSSLs.

WSL

The Water Industry Act 1991 (WIA91), prior to amendments by the WA14 permits a person that holds a water supply licence ('WSL licensee') to have access to an appointed water company's supply system to enable the WSL licensee to supply water to its customers at eligible premises.

The threshold requirement for customers of WSL licensees whose premises are supplied with water using the supply system of an appointed water company whose area is wholly or mainly in England is 5 megalitres/year¹; and for those whose premises are supplied with water using the supply system of an appointed water company whose area is wholly or mainly in Wales is 50 megalitres/year.

A WSL may be granted with just a retail authorisation, or as a retail authorisation with a supplementary authorisation. WSLs with a retail authorisation are referred to as retail licences and allow the licensee to use an appointed water company's supply system for the purpose of supplying water to premises of customers of the company. WSLs with retail and supplementary authorisations are referred to as combined licences and allow the licensee to supply customers (as detailed above) and introduce water into an appointed water company's supply system, by means of which any particular supply of water in accordance with the retail authorisation is to take place, in connection with that supply and in accordance with Chapter 3 of Part 2A of the WIA91.

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¹ 5million litres, or 5,000 cubic metres (m³).

WSSL

The WIA91, as amended by the WA14, permits a person that holds a water supply and/or sewerage licence ('WSSL licensee') to have access to an appointed water and/or wastewater company's supply / sewerage system to enable the WSSL licensee to supply water / provide wastewater services to its customers at eligible premises.

There will be no threshold requirement for customers of a WSSL licensee who use the supply system of an appointed company whose area is wholly or mainly in England i.e. those who hold a WSSL with a retail authorisation. The threshold for customers of a WSSL licensee who use the supply system of an appointed company whose area is wholly or mainly in Wales (i.e. those who hold a WSSL with a restricted retail authorisation) will remain at 50MI/year. To operate in the retail market after 2017, licensees should hold one, or more, water supply licences with a retail authorisation or a restricted retail authorisation or sewerage licences with a retail authorisation. We include below further details of the authorisations that the WA14 introduces:

- **A retail authorisation for water supply licences.** This is a water supply licence that authorises the holder to use the supply system of an appointed water company whose area is wholly or mainly in England to supply the eligible premises of its customers, persons associated with the licensee, or the licensee itself.
- **A restricted retail authorisation for water supply licences.** This is a water supply licence that authorises the holder to use the supply system of an appointed water company whose area is wholly or mainly in Wales to supply the eligible premises of its customers only.
- **A wholesale authorisation for water supply licences.** This is a water supply licence that authorises the holder to introduce water into the supply system of an appointed water company whose area is wholly or mainly in England provided that:
 - the supply to that customer will use the supply system of the relevant appointed water company;
 - the supply is in accordance with a retail authorisation (whether the licensee's authorisation or another licensee); and

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- the introduction is made in connection with that intended supply.
- the supply to that customer will use the supply system of the relevant appointed water company;
- The supply is accordance with that licensee's restricted retail authorisation; and

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- **A retail authorisation for sewerage licences².** This is a sewerage licence that authorises the holder to use the sewerage system of an appointed wastewater company whose area is wholly or mainly in England for the purpose of enabling the licensee to provide wastewater services in respect of the eligible premises of its customers, persons associated with the licensee, or the licensee, itself. Ordinarily, we would expect a licensee to apply for water supply and sewerage licences simultaneously.

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A disposal authorisation for sewerage licences. Subject to specific restrictions this is a sewerage licence that authorises the holder to remove matter from the sewerage system of an appointed wastewater company whose area is wholly or mainly in England. This document offers guidance on the types of premises that are

Deleted: 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. These are equivalent to what is described as a restricted retail licence above, and supplementary authorisations, which are currently called combined licences.¶

² The references to sewerage licences, sewerage systems and sewerage services relate to those terms as defined in the Water Industry Act 1991 (as amended). We are aware that, in practice, these are sometimes referred to as "wastewater" licences, systems and services.

or are not eligible to be supplied by licensees holding a WSL or as WSSL with one or more of these types of authorisation.

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1.2 Purpose of this guidance

Following the commencement of the relevant sections of the WA14, the WIA91 sets out the following requirements which must be satisfied in relation to each of the premises supplied by a WSSL licensee³.

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- The customer's premises are not household premises.
- With regard to premises which use the supply system of an appointed company whose area is 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 megalitres⁴ – Ml.

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For WSL licensees the latter requirement also applies to premises which use the supply system of an appointed company whose area is wholly or mainly in England, albeit with a threshold of five megalitres a year. In addition, premises must not be supplied with water by another water supply licensee

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We refer to the "threshold requirement" in this document to refer both to the thresholds which are applicable to the premises supplied by WSLs and the threshold which is applicable to the premises supplied by WSSLs with a restricted retail authorisation.

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In all cases and for all aspects of eligibility, the licensee rather than the appointed company must ensure that the premises of a potential customer are eligible. Unless doing so in pursuance of an appropriate licence, it is a criminal offence for a person to:

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⁴ 50 million litres, or 50,000 cubic metres (m³).

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- use an appointed water company's supply system for the purpose of supplying water to any premises of a customer; or
- introduce water into an appointed water company's supply system⁵.

Therefore, it is a criminal offence under section 66I and 66J WIA91 for a person to breach any of the statutory eligibility requirements set out above. Similar offences will be introduced [under s. 117P and 117Q WIA91](#) for the illegal use of wastewater systems without an appropriate sewerage licence.

Furthermore, any licensee that provides services to non-eligible premises could face enforcement action by us under section 18 WIA91 and may incur financial penalties under section 22A WIA91. Ultimately, a licensee could face having its licence revoked under the terms of its licence.

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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; and
- how to decide whether the threshold requirement is met.

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It is important to note that premises may change in such a way as to make them 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.

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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

⁵ See sections 66I and 66J WIA91.

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 companies should consult this guidance when assessing whether a customer's premises is eligible.

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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.
- 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.

It includes:

- a) statutory guidance that we are empowered to issue with the approval of the Secretary of State (having consulted the Welsh Ministers) 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(9) WIA91;
- b) statutory guidance that we are required to issue with the approval of the Secretary of State (having consulted the Welsh Ministers) 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;
- c) statutory guidance that we are empowered to issue with the approval of the Secretary of State (having consulted with Welsh Ministers) as to the factors that are, or are not, to be taken into account in determining the extent of any premises for the purposes of Schedule 2A paragraphs 4 and 7; and
- d) statutory guidance that we are empowered to issue with the approval of the Secretary of State 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 Schedule 2B paragraph 2

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This document also sets out our understanding of provisions of the WIA91 – both before and after the entry into force of the WA14 – and of relevant regulations and orders. It is not a substitute for the WIA91 or the regulations and orders made under

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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.

2. The threshold requirement

This chapter includes statutory guidance which has received approval from the UK Government Secretary of State for Environment, Food and Rural Affairs, and the Welsh Ministers.⁷

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This chapter is only relevant to licensees holding WSLs and those licensees that will hold a WSSL with a restricted retail authorisation.

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.⁸

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For licensees holding a WSL 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 MI for customers, in the case of premises supplied with water using the supply system of an appointed water company whose area is wholly or mainly in England or 50 MI for customers, in the case of premises supplied with water using the supply system of an appointed water company whose area is wholly or mainly in Wales.

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For licensees holding a WSSL with a restricted retail authorisation, 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 50 MI.

⁷ For illustrative purposes only. Approval of this guidance will be sought once the consultation period is complete and representations have been considered.

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, 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 means that customers will not be penalised if their demand falls after they have switched supplier – 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 **a substantial period of time**, 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.

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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 premises⁹.
- There is a temporary closure of premises owing to expected or unexpected circumstances.

⁹ 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.

- 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

Section 17D(7) WIA91 provides for the Secretary of State and, for whose areas are wholly or mainly in Wales, Welsh Ministers¹⁰ 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.

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This offers protection to customers where there has been no change to the current supply arrangement but which 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. Therefore, the New Customer Exception Regulations 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** apply.

- 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

¹⁰ After the entry into force of the relevant sections of the Water Act 2014, this power will be exercisable only by Welsh Ministers.

Deleted: 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.

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 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. We can make determinations 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 ~~relates to~~ 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).

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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 that wish to move from unmetered to metered charging. Others 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

Premises which are served by more than one appointed water company, each of which supplies a volume below the threshold, may nonetheless meet the threshold requirement allowing a licensee to supply the premises if the threshold requirement is satisfied. The threshold requirement is based on the total quantity of water to be supplied to the premises under a single agreement with a single licensee. For example, if a factory in Wales takes a supply of 30 MI/year from one appointed water company and 20 MI/year from another, it will meet the threshold requirement if both

supplies are taken over by a single licensee which will, on aggregate, supply the premises with 50 Ml/year from the supply systems of those appointed water companies.

2.5 Potable and non-potable supplies

Some premises currently receive both a potable¹¹ and a non-potable¹² water supply. 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.

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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, although 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. And there are 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.

¹¹ 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.

¹² Water that is not intended for domestic or food production purposes.

A [WSL licensee with a combined licence](#) 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, it is unlikely that a customer with its own on-site private water 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 as it presently stands, water can be supplied to premises by a [WSL](#) licensee acting under both its retail and supplementary authorisations (i.e. its combined licence). Provided the total volume of water estimated to be supplied to the premises under a single agreement is not less than the threshold, it is irrelevant whether the supply by the licensee under this agreement is by means of a retail supply, a supplementary authorisation 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 a supplementary authorisation 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. [Guidance on how this will be affected by transition to the new regime will be issued in due course.](#)

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Commented [A6]: Transition of combined licences is now being dealt with by Water 2020 and the associated impact on eligibility guidance is more appropriately dealt with at that time.

Deleted: As part of the transition to the new regime, the supplementary authorisation will be phased out. At that point it is anticipated that the threshold requirement under section 17D WIA91 will be amended so that the threshold will have to be satisfied by a licensee acting only under its restricted retail authorisation.¶

3. Premises

This part of the guidance is made under section 17A(9) and Schedules 2A and 2B of the WIA91, and has received approval from the Secretary of State and the Welsh Ministers.¹⁴

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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.

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 (for WSLs) and Schedules 2A and 2B WIA91 (for WSSLs). This is relevant both to the assessment of principal use (see Chapter 4) and, in the case of WSLs and WSSLs with a restricted retail authorisation, to the assessment of the threshold requirement. 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. 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.

Deleted: 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

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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 (i.e. when the premises are to be supplied by a WSL licensee or a WSSL licensee with a restricted retail authorisation), and premises where it does not (i.e. when the premises are to be supplied by a WSSL licensee with a retail authorisation).

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¹⁴ ¹⁴ For illustrative purposes only. Approval of this guidance will be sought once the consultation period is complete and representations have been considered.

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

To ensure that competition works as effectively as possible in the interest of customers, it is necessary that the extent of a set of premises should be defined as straightforwardly as possible. Where premises are to be supplied by a WSSL licensee with a retail authorisation, there is no threshold requirement. We consider that every property that is assessed separately for the purposes of Council Tax and business rates – or that would be if the property were not exempt – should be treated as a separate set of premises for the purpose of assessing eligibility, even if the separate premises are billed on a different basis. However, 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 treated as a single set of premises. Of course, each of the properties connected to a private network can ask to be connected to the public network in the usual manner.

This rule represents a change in our guidance compared with that issued in 2011. 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, which is 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, bearing in mind any obligations under the WSSL.

3.2 The extent of premises when the threshold requirement applies

In relation to supply by a WSL licensee or a WSSL licensee with a restricted retail authorisation (i.e. a WSSL licensee who uses the supply system of an appointed water company whose area is wholly or mainly in Wales), 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.

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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 that have adjoining boundaries or that 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).
- 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.
 - 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 a single set of premises 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.

Commented [A8]: Clarification to improve understanding

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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 a single set of premises. For example, co-located premises separated by common land are not a single set of premises. Likewise, co-located premises that are separated by a combination of common land and transport infrastructure are not a single set of premises, because of the existence of common land (that is something 'other than transport infrastructure').

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iii) Common management co-located premises

A set of co-located premises can be treated as a single set of premises, when occupied by several persons that 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 a single set of premises, if one organisation, which is liable for water bills for all sites, manages the sites and the self-contained water distribution system.

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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 premises¹⁵ 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 a single set of 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. Second, in many situations the businesses will not have adjoining boundaries or be separated only by transport infrastructure. Third, in some cases it will not be possible to join the two water pipe networks without using the appointed water company's supply system.

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¹⁵ See section 17C WIA91.

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.

Deleted: 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.

Once the extent of premises to be supplied has been assessed in accordance with our guidance in chapter 3, those premises must also satisfy the requirement set out in section 17A(3)(a) WIA91 (as regards supply by WSL licensees) and Schedule 2A, paragraphs 4 and 7 WIA91 and Schedule 2B paragraph 2 WIA91 (as regards supply by WSSL licensees) that the premises are not household premises in order to be eligible.

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4.1 Principal use

For the purposes of section 17C WIA91, household premises are 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 the premises are household premises unless 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, ordinarily, the farm will, not be household premises.

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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. The LGFA88 gives the definitions of domestic and non-domestic properties.

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- **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, other information will be required in order to assess principal use.

Note: We consider that where mixed-use premises are involved and it is not readily apparent which use is the "principal" use, they may be appropriately considered to be non-household premises 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. 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.

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Deleted: 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

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4.2 Recommended steps to take for 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 where available – for example, in the form of photographs or floor plans. 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, having considered our eligibility guidance we would expect the parties to make reasonable efforts to resolve the dispute by other means but may, ultimately refer the matter to the Authority for determination (see chapter 5 below).

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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 and, in particular those who have selected a licensee to supply them, reasonably expect to continue to be able to do so in the future. Companies should avoid this wherever possible.

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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.

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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

WSL

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.

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WSSL¹⁶

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Section 17E(1) WIA91 allows us to determine, in a case referred to us by:

- (a) a water supply licensee or a potential customer of a water supply licensee, or
- (b) a sewerage licensee or a potential customer of a sewerage licensee

whether a proposed supply of water to, or proposed sewerage services for, the customer would be in accordance with what is authorised by the licensee's licence.

Section 17E(2) WIA91 provides that the matters that we may determine include:

- the extent of the premises to be supplied or served;
- whether the premises to be supplied or served are household premises;
- in the case of supply by a WSSL licensee with a restricted retail authorisation whether the threshold requirement is satisfied in relation to premises to be supplied; and
- any other matter the determination of which is relevant to those matters.

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5.1 Use of independent advice

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

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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

¹⁶ The amendments to these provisions of the Water Industry Act 1991 by the Water Act 2014 are due to come into force on 1 April 2016.

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.

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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. ¶