NFU Consultation Response

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Ofwat consultation: Updated Eligibility Guidance

The NFU represents more than 47,000 farming businesses in England and Wales and, in addition, some 40,000 countryside members with an interest in the countryside and rural affairs.

The overwhelming majority of our members rely wholly or partially on mains water supply to meet their domestic and 'general purpose' business needs such as cleaning processes and livestock drinking. Some horticultural producers, particularly those growing salads and fruit, rely on mains water for its quality and security of supply.

Our comments focus on section four of the revised eligibility guidance. We are particularly interested in the distinction made between household and non-household premises, and the proposed guidance on how to determine 'principal use'.

Specific reference to the nature of farms is made at section 4.1 where it states:
'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.'

We think that this is very helpful, but we are concerned about the focus later in the guidance on business rates and council tax as the main evidence to establish principal use. This process could be problematic for farmers.

The first approximation proposed to determine eligibility for switching water and wastewater retailer is classification under the relevant sections of the Local Government Finance Act 1988 (LGFA 1988). We would argue that this is inappropriate in the case of farm premises because most farms are exempt from business rates and are not shown on the non-domestic ratings list.

Non-farming activities that occur on farms are however liable for business rates; farms with rateable diversified business use and a farmhouse are shown as part-exempt (reflecting the agricultural enterprise) and composite (reflecting the house which will be subject to council tax).

The draft guidance proposes that the licensee has a duty to only supply eligible premises and explains that it would need evidence of a business rating liability to confirm business as the principal use. The licensee could do this either by accessing the online rating list, or by request to the applicant for a copy of the rating liability letter issued by the Valuations Office Agency (VOA). However, farms (unless they have diversified into non-agricultural activities) will not be entered onto the rating list and will not have a VOA letter.

In this situation, it is proposed that 'other evidence' will be required to establish non-domestic use although it is not clear what this evidence may actually consist of for premises not liable for business rates.

In our experience of other regimes where this type of approach has been implemented (the Renewable Heat Initiative, for example) it results in practical problems for farmers. This is because it is very difficult for the applicant to obtain the necessary letter from the Valuation Office Agency (VOA) or billing authority confirming that the business is exempt from rates.

If the licensee choses to search the rating list (without asking the applicant for a letter confirming no liability for business rates), then further problems may arise. This is because there will be no entry on the rating list for an (undiversified) farm and so, on the face of it, the premises may appear to only be subject to council tax and therefore ineligible because the principal use *appears* to be as a household.

Furthermore, the draft guidance suggests that in the case of mixed use premises, in order to establish eligibility, a licensee 'may' or 'might' consider using business rate liability. In situations where this information is insufficient, the company 'may' consider other forms of evidence.

To prevent problems of the type explained above, our strong recommendation is that the draft guidance should make provision for 'other forms of evidence' as an alternative rather than supplementary to evidence of business rating liability.

Our preferred approach would be for the guidance to direct the licensee to determine business as a principal use by reference to:

1. Evidence of current billing at the premises for water and sewerage. Is the premises currently recognised as domestic or non-domestic?
2. VAT registration at the premises as evidence non-domestic use as an alternative a VOA letter confirming that the premises is exempt from rates.