



Updated Eligibility Guidance Consultation
Retail Market Opening Programme
Ofwat
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Dear Sir/ Madam

UPDATED ELGIBILITY GUIDANCE CONSULTATION

Thank you for the opportunity to comment on Ofwat's Updated Eligibility Guidance. For ease of reference, we have structured our response under the questions posed in Ofwat's consultation. Before that, however, we have included some general observations.

General observations

We recognise that Ofwat has undertaken significant work to set out clear eligibility guidelines for the industry. There is, however, more to do. Given the tight timeline leading to market opening in April 2017, we would encourage Ofwat to consider including a general rule that, where there is significant uncertainty surrounding the eligibility of a premises, or where Ofwat has not provided guidance on whether it should be eligible, that the premises is not included in the market at this stage. The inclusion of such a principle would reduce the time and cost associated with debate over a number of borderline cases. In addition, such a rule would mean that there is less confusion and disruption for end customers, some of which may move in and out of the market as the specific details of the guidance change. We would envisage that once the market has opened in April 2017 work could begin on identifying any excluded premises and, if appropriate, moving them into the market in a controlled manner.

We would like to understand how Ofwat will view erroneous classification of households and non-households. At the MOSL workshop in December 2015, Ofwat suggested that in marginal cases it may be better to put a customer in the market than to leave the customer out. We agree that it would be sensible and pragmatic for there to be a default position for marginal cases set out in the guidance. As we set out above we believe that in order to facilitate a smooth and efficient market opening it would be sensible if the general rule was that customers were not included in the market. It would also be helpful if the guidance provided assurance that, where a premises has been incorrectly classified, companies will be given a reasonable period of time to rectify the situation before enforcement action can be taken.

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Finally, we note that the current draft does not provide a glossary or list of defined terms, and that, as a consequence, a given term may be used with different meanings at different points in the guidance. We propose, therefore, that Ofwat introduces a standard glossary of terms to be used for all of its documents relating to premises and eligibility.

Responses to specific questions

1. Whether any of the updates are not consistent to: a. commencements of the relevant provision of the Water Act;

In our response to Ofwat's consultation on Supplementary Eligibility Guidance we identified two areas where there appeared to us to be inconsistencies between Ofwat's draft guidance and the relevant legislation. These were:

- the treatment of vacant premises; and
- the eligibility of cross-border sites.

We assume that our previous comments in these two important areas were sufficient to allow Ofwat to identify the extent of any inconsistencies between the draft guidance and the legislation, so we have not repeated them here.

b. the development of Ofwat's thinking on the transition from the water supply licence regime to the water and sewerage supply regime; and

We have a few detailed comments on the drafting of section 1.1 which we set out below. First, however, we would like to draw Ofwat's attention to a material inconsistency, between the regulatory accounting guidelines and the eligibility guidance.

We note that in the recently published regulatory accounting guidelines 4.05 Ofwat states that the "*definition [of households and non-households] is therefore different to that set out in section 4 (Household and non-household premises) of 'Guidance on assessing whether customers in England and Wales are eligible to switch their water and waste water retailer'*".¹ We assume that Ofwat adopted this approach to ensure that the accounting guidelines could be published while the guidelines on eligibility were still being developed. Whilst there may not be any single definition that is ideal for all purposes, we feel that it would be beneficial to ensure that the definitions of non-household used for regulatory accounting, price controls and eligibility were consistent, at least in the medium term. However, without appropriate mitigation, a change in the definition of eligibility in the accounting guidelines is unlikely to leave companies revenue neutral. It would therefore be helpful if Ofwat could provide a commitment that companies are held

¹ p.43 RAG 4.05 – Guidance for the table definitions in the annual performance report

to a revenue neutral change between household retail and non-household retail price controls. As companies have the option to undergo retail exit it would be advisable if this was done through the household retail control.

In terms of more detailed points, we note the following:

- p.10 – the “restricted retail authorisation for water supply licences” should state that this is only for customers that use more than 50 ML/year;
- p.10/11 – “the supply to that customer will use the supply system of the relevant appointed water company” is stated twice in the list of bullets under ‘a wholesale authorisation for water supply licences’ (once on p.10 and once on p.11);
- p.10/11 – under the “retail authorisation for water supply” and the “retail authorisation for sewerage licences” the guidance states that the holder may supply eligible customers and “persons associated with the licensee, or the licensee”. It is not clear what Ofwat is trying to achieve with its statement about “persons associated with the licensee”. We presume that this is to allow Retailers associated with an incumbent water company to ‘self-supply’ that water companies premises, however the current drafting appears to imply that household customers associated with the licensee could be supplied. We suggest that Ofwat amends the statement to read “persons associated with the licensee to the extent eligible, or the licensee”; and
- in section 4.1 the second paragraph has been amended to delete reference to the (now deleted) appendix which contained an extract from the Local Government Finance Act 1988 (“LGFA88”). However, section 4.1 still refers to the LGFA88 to provide definitions of domestic and non-domestic properties. For transparency, it would be helpful if the LGFA88 reference pointed the reader to Section 66 of the LGFA88 where the definitions can be found.

c. the position reflected in Ofwat’s Supplementary Eligibility Guidance

There are a few places where we consider that further clarity in the Supplementary Eligibility Guidance would be beneficial.

In section 3.1, in cases where several properties are served through one supply point, it is not clear whether being assess separately for the purposes of Council Tax and Business Rates or whether being served through a single supply point takes priority. Currently we intend to classify a property, which has one supply point and one bill, as a single premises. Where we currently send separate bills, even if they are supplied through one supply point, we will put them into the market as separate premises. This categorisation will cause the least disruption for our customers. We would be grateful if Ofwat could reflect this in its guidance.

We note that the second paragraph of Section 4.1 on principle use states that “as a first approximation, market participants can rely on classifications made to

administer Council Tax and business rates". This implies that, even where recognised sources of information confirm that a premises is paying business rates, further work should still be done to determine the principle use. It would be more efficient if companies were allowed use "liability for business rates or council tax" as the main proxy for determining the principal use of the premises. In our response to Ofwat's Supplementary Eligibility Guidance we suggested that the "hierarchy of considerations" is updated to facilitate this. If Ofwat makes this change to the Supplementary Eligibility Guidance it should state in the Updated Eligibility Guidance that "as [the primary proxy](#), market participants can rely on classifications made to administer Council Tax and business rates".

Finally we would suggest that the Supplementary Eligibility Guidance should be an appendix to the Updated Eligibility Guidance. This will ensure that it is clear to all stakeholders that both documents should be considered when making decisions on eligibility. Relevant sections within the Updated Eligibility Guidance should make reference to the Supplementary Eligibility Guidance.

I hope the above comments are helpful, please feel free to contact us if you would like to discuss any of these points further.

Yours faithfully

A handwritten signature in black ink, appearing to read "Nick Fincham". The signature is written in a cursive, slightly slanted style.

Nick Fincham
Director of Strategy & Regulation