

February 2022

Statutory consultation on proposed changes to our Eligibility Guidance and Supplementary Eligibility Guidance

Ofwat

About this document

This consultation document summarises the changes we propose to make to our [Eligibility guidance on whether non-household customers in England and Wales are eligible to switch their retailer](#) (**Eligibility Guidance**) and [Supplementary Guidance on whether non-household customers in England and Wales are eligible to switch their retailer](#) (**Supplementary Eligibility Guidance**), together referred to as "guidance" or "eligibility guidance" in this document. The proposed updated guidance document is published alongside this consultation document.

[Section 1](#) provides some background to our guidance and proposed changes.

[Section 2](#) provides a summary of our proposed changes

[Section 3](#) sets out our next steps.

This document sets out that we are seeking views on our proposed changes. In accordance with section 17DA of the Water Industry Act 1991 (**the Act**), we are required to consult on the extent of premises and the threshold requirement sections of our guidance. The remaining sections in the guidance are non-statutory.

Responding to this consultation

We would welcome any comments on this document. Please email them to Eligibility.Consulta@ofwat.gov.uk. The closing date for responding to this consultation is **28 February 2022**.

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this consultation on our website at www.ofwat.gov.uk, unless you indicate that you would like your response to remain unpublished.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 General Data Protection Regulation 2016, the Data Protection Act 2018, and the Environmental Information Regulations 2004. For further information on how we process personal data please see our [privacy policy](#).

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. Background

In April 2017, the largest competitive water retail market in the world opened for business, bringing the biggest change to the water sector since privatisation. This market means 1.2 million businesses, charities and public sector organisations in England can choose who provides their water and sewerage retail services. They can shop around, negotiate and find the right deal for them. If customers don't like the service they get, they can take their business elsewhere. This market can help to deliver lower bills; help people use less water; lead to improved services; and see new offers and bundles emerge.

In Wales, business customers who use more than 50 megalitres (**ML**) of water per year can currently switch their water supplier. However, all other business customers in Wales are not able to choose their retailer and continue to receive their retail services from their existing regional water supplier.

The market works through retail suppliers (**retailers**) buying wholesale services (the physical supply of water and/or removal of wastewater) from the regional monopoly water and sewerage companies (**wholesalers**) and offering a package to sell these services to eligible customers. These retailers hold a water supply and sewerage licence (**WSSL**) granted by Ofwat. In practice, this means eligible business, charity and public sector customers can choose their water and wastewater retailer. Regional water companies continue to serve non-eligible and household customers.

In terms of who is eligible for this market, we refer to eligible customers. But, as a result of the legal framework for the market, it is actually individual premises that are eligible. Generally, premises are eligible where their primary use is for non-domestic purposes. Our eligibility guidance sets out whether businesses, charities and public sector organisations are eligible to switch their retailer.

In July 2016, we issue [guidance](#) on eligibility alongside [supplementary guidance](#) following requests from stakeholders for additional clarity and examples. In March 2020, we reissued our guidance documents to confirm that from 1 April 2020, our guidance would also apply to premises on the Isles of Scilly.

Where there are issues with the eligibility of premises, certain matters can be referred to us for determination. Since the market opened, we have issued four [eligibility determinations](#). In addition, we have received, and responded, to complaints and disputes that have subsequently been resolved between the parties. The types of concerns we see are typically focused on whether or not a particular customer premises is eligible, and this will often be determined by the principal use of that premises. Examples of such issues that we have dealt with since market opening include amongst others the eligibility of holiday lets, student accommodation and shared supplies.

2. Summary of proposed changes

We have not substantially updated our guidance since 2016. This means we have over four years of knowledge of how the business retail market works and where common concerns are.

We propose to update the guidance document to reflect this learning and to simplify with guidance where possible. The proposed, updated guidance document is published alongside this consultation document. The first main proposal is to merge our Eligibility Guidance and Supplementary Eligibility Guidance into one document. We consider this will make it easier for readers to find the right information. We are also proposing to separate the guidance into two parts. Part A being applicable in England with Part B being applicable in Wales. We propose doing this to make it clearer the distinction between England and Wales.

We are also proposing to remove references to Water Supply Licences (**WSLs**). This is to reflect that this type of retail licence was discontinued in April 2017 and replaced with WSSLs.

In addition to the above, we are also proposing to refresh the scenarios, which we originally provided in our Eligibility Supplementary Guidance to help market participants establish the eligibility of particular types of premises, and provide some more detail on how to resolve disputes and issues.

Questions

We would welcome your thoughts on the following questions:

1. Do you have any concerns about our proposed changes?
2. Is there anything in respect of eligibility for the business retail market that the proposed updated guidance does not cover that you consider would be useful? If so, please provide details of why this would be useful.
3. Are the scenarios provided in the updated guidance comprehensive enough? Are there any missing that would be helpful, or are there some scenarios that are no longer required? If so, please provide details of why you believe this to be the case.

3. Next steps

The closing date for this consultation is **28 February 2022** and we will consider all responses carefully before making our decision on the proposed changes. Please email us at Eligibility.Consulta@ofwat.gov.uk with your response.

This consultation is the formal step before issuing final guidance. As set out above, we are required by the Act to consult on certain sections of our guidance. This includes the sections on the extent of premises and the threshold requirement. Once we have fully considered responses to the consultation, we will also seek approval from the Secretary of State and the Welsh Ministers on these sections before publishing our final guidance.

**Ofwat (The Water Services Regulation Authority)
is a non-ministerial government department.
We regulate the water sector in England and Wales.**

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