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Trust in water

Supplementary guidance on whether non-household customers in England and Wales are eligible to switch their retailer

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About this document

This document sets out our supplementary guidance for assessing whether customers in England and Wales:

- are eligible to be supplied by a licensed water supplier (**WSL**); and/or
- will be eligible to be provided with water and/or sewerage services by a water and sewerage licensee (such licensees are referred to as **WSSLs**) when the new retail market opens in April 2017. The supplementary guidance focuses on whether or not premises should be treated as household premises under section 17C of the Water Industry Act 1991 (**WIA91**) and so are/or will be ineligible to switch supplier.

This follows requests from stakeholders such as undertakers, potential licensees, current WSLs and customer groups for additional clarity and examples following our publication of the “Guidance on assessing whether customers in England and Wales are eligible to switch their water and wastewater retailer”, which we released in August 2015 (the **eligibility guidance**).

Ofwat has engaged with many participants as part of this process and it is vital companies determine the eligibility of premises in time for the opening of the non-household market. We consider that this guidance provides relevant participants with sufficient information to determine eligibility.

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

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1. Introduction

1.1 Purpose of this supplementary guidance

The supplementary guidance applies the general principles contained in our eligibility guidance on assessing whether customers in England and Wales are eligible to switch their water and wastewater retailer (the eligibility guidance), to specific scenarios not addressed, or not addressed in sufficient detail, in that document. It also suggests some additional criteria which may be considered where the application of our general principles do not result in a clear conclusion on eligibility.

Consistent with the eligibility guidance, this supplementary guidance will apply to both England and Wales (where the threshold requirement is met) and to WSLs and WSSLs. We note that, as set out in the eligibility guidance, the factors to be taken into account in determining the **extent** of premises will be different where the threshold limit applies. This will mean that the boundaries of premises will be more widely drawn for licensees operating in accordance with a water supply licence with a restricted retail authorisation (i.e. using the supply system of an undertaker whose area is wholly or mainly in Wales). This, together with the 50 Ml/year threshold limit which has to be met in order for premises to be eligible to be supplied by a water supply licensee with a restricted retail authorisation, is likely to limit the relevance of some of the examples set out in this guidance.

1.2 Important information

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

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

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

2. Principles for assessing eligibility

2.1 General Considerations

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

Our eligibility guidance, also sets out that dependency means the existence of the household part of the premises is linked to or is reliant upon the function of the non-household part of the premises. This document provides more general guidance on applying these principles.

This document is provided as a guide for market participants in assessing eligibility. As part of this assessment market participants should use reasonable endeavours to gather any available data and consider relevant factors to reach a judgement on eligibility. To aid with these judgements the following hierarchy of considerations applies when determining the eligibility of premises:

1. **Determine the extent of the premises.** Chapter 3 of our eligibility guidance provides more details, but in relation to some of the examples considered in this supplementary guidance we would draw attention to our guidance on single supply points and single sets of premises.
2. **Determine the principal use of the premises.** In the majority of instances this should be sufficiently clear to allow premises to be placed within the household or non-household market. Market participants should consider if any ancillary services to the main purpose of the premises can assist in the identification of principal use.

Ancillary services should be considered in light of the principal use of a premises and are part of the various determining factors for mixed use premises. For further clarification please refer to the examples in this document and figure 1.

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3. **Where is it not readily apparent whether the principal use of the premises is household or non-household, liability for business rates or council tax may provide a first approximation.** Generally, if the premises are liable for business rates only, the premises will be eligible to participate in the non-household market. If the premises are liable for council tax only, the property would generally be considered a household. Principal use, however, takes precedence before considering the incidence of liability for council tax and business rates.
 4. **Where the premises are liable for neither council tax nor business rates, or where the premises are liable for both (i.e. the premises are mixed use), it is important to determine which use is the ‘principal’ one.** Our eligibility guidance suggests that if the ‘household’ part of a single set of premises is **dependent** on the ‘non-household’ part, the premises would generally be considered non-household.

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

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

Figure 1 provides a diagram showing an example process for determining principal use. The eligibility guidance provides a similar diagram for extent of premises.

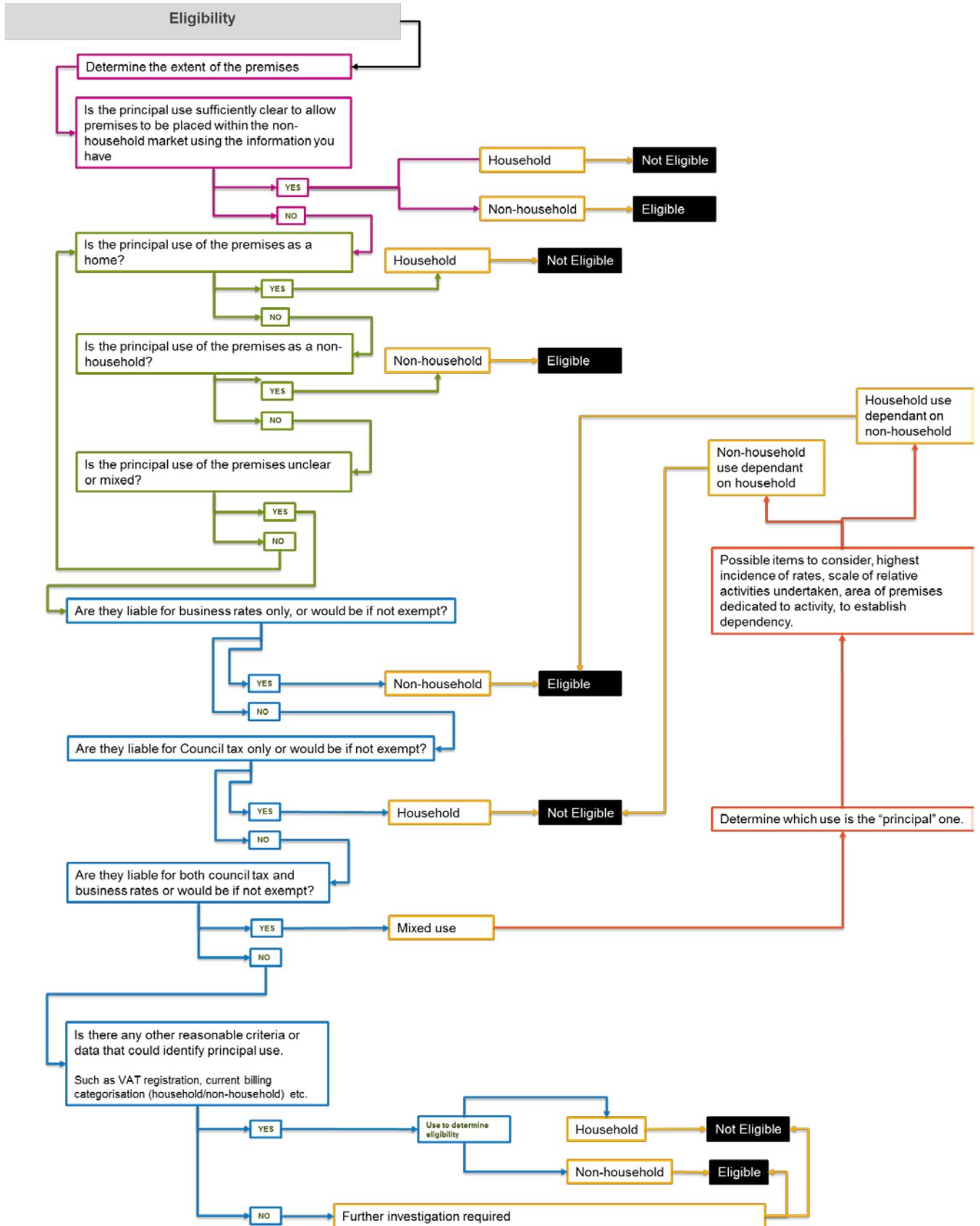
2.2 Determining eligibility in relation to premises with separate water and sewerage services providers

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

In the majority of cases both service providers are likely to come to the same conclusion about eligibility. But there may be instances where water supply and sewerage supply systems operate differently for the household and non-household elements. For example, for customer ease of understanding, we encourage retailers

to take a consistent approach where possible, although we accept it may be possible for a single premises to be considered household in relation to one service and non-household in relation to the other, (based on the circumstances of their principal use and the configuration of the relevant infrastructure).

Figure 1: Eligibility – example process



3. Scenarios

The following scenarios have been provided (in alphabetical order) to help participants determine eligibility. While these scenarios apply to both England and Wales we note that, as set out in the eligibility guidance, the factors to be taken into account in determining the extent of premises will be different where the threshold limit applies. This will mean that the boundaries of premises will be more widely drawn for companies operating in accordance with a water supply licence with a restricted retail authorisation (i.e. using the supply system of an undertaker whose area is wholly or mainly in Wales. This, together with the 50 Ml/year threshold limit which has to be met in order for premises to be eligible to be supplied by a water supply licensee with a restricted retail authorisation, is likely to limit the relevance of some of the examples set out in this guidance.

3.1.1 Allotments

Principle

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

Examples

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

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

3.1.2 Animal troughs

Principle

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

Consistent with the approach we have adopted for other mixed use premises, where an animal trough shares a supply point with another building or buildings and is dependent on those buildings, it should be categorised in the same market as the premises on which it is dependent. In defining the extent of premises and therefore eligibility stakeholders may find LGFA88 useful.

Example

If the animal trough is on the farm it is dependent upon the farm it would be classified under the principal use of the farm as a whole.

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

3.1.3 Appointed companies premises

Principal use is the determining factor of eligibility for the market. As the principal use of an office would be not as a home (non-household), these premises would be eligible for the non-household market. Equally, the principal use of operational premises would not be as a home (non-household), meaning that these premises **should** be eligible for the non-household market.

However, where these premises form part of the supply system, the Water and Sewerage Undertakers (Exit from Non-household Retail Market) Regulations 2016, provide for an exception to the prohibition on appointed companies from supplying water or providing sewerage services to non-household premises in retail exit areas. This meaning that if an appointed company exits it is still permitted to provide services to premises which are owned by it and which form part of the supply or sewerage system. If an appointed company decides not to exit, they will not be required to be supplied other than by themselves. Where premises are part of the supply system we do not envisage that registration of that site is required on the market operators system.

3.1.4 Assisted living or sheltered housing

Principle

Assisted living properties are housing with limited care/intervention for individuals who may at times require assistance but do not require active care such as a nursing or care home.

In assessing the eligibility of assisted living housing it is important that the extent of premises are identified. This is because there may be instances where a non-household office can be considered as a separate premises (with its own supply) or as part of a wider set of premises where the principal use of the premises will include both household and non-household activities.

In general the principal use of assisted living properties is as a home. In assisted living accommodation the support functions are considered ancillary to the accommodation, it is usually liable for council tax and is often owned separately from the provider of care services. Consequently these types of premises **should not** be included in the non-household market.

Where a separate distinct set of non-household premises is identified, for example an office, this would be eligible and so **should be** included in the non-household market.

3.1.5 Barracks and married quarters

Principle

The principal use of barracks can be as a home but to determine the principal use of the premises it is important to first determine the extent of the premises.

Example

Where married quarters are provided within the community. The extent of premises would be considered separately. The principal use of those premises would be likely to be a home and so **should not** be included in the non-household market.

Where barracks or married quarters are provided but form part of a single set of premises (based on the extent of premises) the principal use of these premises is likely to be non-household and so **should** be included in the non-household market.

3.1.6 Bed and breakfast accommodation and guesthouses

Principle

Bed and breakfast and guesthouse eligibility will be based on the extent of the premises and the principal use of that premises.

Where the extent of the premises includes both a household and a non-household element the premises would be considered mixed use and so the eligibility of that premises should be based upon its principal use.

Where the bed and breakfast or guesthouse is separate from the main residence and has its own supply, it would not have its principal use as a home and so would be considered a non-household and so **should** be included in the market.

Example

If the premises is liable for council tax only it would be considered a household and so **should not** be included in the non-household market.

If the premises is liable for business rates only it would be considered a non-household and so **should** be included in the non-household market.

If the premises pays business rates and council tax it is considered mixed use. The premises will be considered a non-household if the overall principal use is not as a home and therefore **should** be included in the non-household market.

3.1.7 Car parks and garages

Principle

To aid participants in identifying the extent of a premises and possible dependency of a car park or garage, we suggest participants refer to the Local Government Finance Act 1992. This Act outlines instances where a property forms part of a larger premises, including:

- a yard, garden, outhouse or other appurtenance belonging to or enjoyed with property used wholly for the purposes of living accommodation;
- a private garage which either has a floor area of not more than 25 square metres or is used wholly or mainly for the accommodation of a private motor vehicle; and
- private storage premises used wholly or mainly for the storage of articles of domestic use.

This means private garages that either have a floor area of not more than 25 square metres or are used wholly or mainly for the accommodation of a private motor vehicle being within the extent of the premises. Principal use will therefore be based on the classification of these wider set of premises.

Where a car park or garage is on household premises and served by the same supply point as those premises, it is considered part of that household premises' principal use as a home and so **should not** be eligible for the non-household market.

If, however, the car park or garage is served by a separate supply point and is not within the extent of premises as discussed above, its principal use will not be considered as a household and so **should** be included in the non-household market.

3.1.8 Caravan sites/parks

Principle

Holiday parks which provide temporary accommodation via caravans would not have a principal use as a home and so it **should** be included in the non-household market.

Where premises are principally used as a home and the principal use of a multi-use premises would be as a home, premises would be considered households and so they **should not** be included in the non-household market.

3.1.9 Care homes

Principle

The principal use of a care home (which we consider to be any institution providing residential accommodation for the purposes of providing residents with continued health care) is considered to be the provision of continued care.

The residential element is a requirement of the nature of the care being provided and so these premises **should** be included in the non-household.

Where staff are provided accommodation as part of their employment, the eligibility of those premises will depend on the identification of the extent of premises and the principal use of those premises.

Example

The principal use of a care home is considered to be the provision of continued care and so **should** be included in the non-household market.

Where a care provider leases properties to staff, (even if repair and maintenance are provided by the care home), the principal use of those leased properties should be considered to be a home unless the leased property shares a single supply point with the larger care home.

In this instance the non-household status takes precedence based on the premises wider principal use (including the staff accommodation) and so the premises **should** be included in the non-household market.

Where staff accommodation is provided but is on separate premises, the principal use of these premises must be considered separately. In this case, the principal use of the premises would be as a home and so **should not** be included in the non-household market.

We note that the extent of premises will differ for companies whose areas are wholly or mainly in Wales where the threshold requirement exists.

3.1.10 Farms

Principle

A farm may serve both as the farmer's home and the farmer's place of business, but ordinarily its principal use will be as a business as the majority of activity will be related to the non-household element. If this is the case the farm will not be household premises. To determine the principal use of the premises we have suggested the use of council tax and business rates to aid stakeholders in determining eligibility. It has been highlighted, however, that farms (unless they have diversified into non-agricultural activities) may not have a VOA letter confirming that the business is exempt from rates.

Other reasonable criteria or data that could identify principal use can be considered, such as VAT registration.

3.1.11 Housing associations

The Gov.UK website¹ defines housing associations as:

“.... independent societies, bodies of trustees or companies established for the purpose of providing low-cost social housing for people in housing need on a non-profit-making basis. Any trading surplus is used to maintain existing homes and to help finance new ones. They are now England’s major providers of new homes for rent, while many also run shared ownership schemes to help people who cannot afford to buy their own homes outright.”

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

Principle

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

Example

The principal use of a tenanted property with its own supply point is as a home (household) and so **should not** be included in the non-household market.

The principal use of tenanted properties which receive a communal supply is as a home and so these **should not** be included in the non-household market. However, if there is a sufficiently large non-household element on the premises this may change its principal use. In such circumstances, it is possible that the premises **should** be included in the non-household market.

¹ As at March 2016.

3.1.12 Household premises with management companies

Principle

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

Example

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

3.1.13 Local authority housing

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

3.1.14 Nursing homes

Principle

The principal use of a nursing home (which we consider to be any institution providing residential accommodation and other care/support upon which they are reliant) is considered to be the provision of continued care/support.

The residential element is a requirement of the nature of the care being provided and so these premises **should** be included in the non-household.

Where staff are provided accommodation as part of their employment, the eligibility of those premises will depend on the identification of the extent of premises and the principal use of those premises.

Example

The principal use of a nursing home is considered to be the provision of continued care and so **should** be included in the non-household market.

Where a nursing homes provider leases properties to staff, (even if repair and maintenance are provided by the nursing home), the principal use of those leased properties should be considered to be as a home unless the leased property shares a single supply point with the larger care home.

In this instance the non-household status takes precedence based on the premises wider principal use (including the staff accommodation) and so the premises **should** be included in the non-household market.

Where staff accommodation is provided but is on separate premises, the principal use of these premises must be considered separately. In this case, the principal use of the premises would be as a home and so **should not** be included in the non-household market.

We note that the extent of premises will differ for retailers whose areas are wholly or mainly in Wales where the threshold requirement exists.

3.1.15 Self-catering holiday units

Principle

Holiday units are not used principally as a permanent residence. As such, these premises' principal use is not as a home and so they **should** be eligible for the non-household market.

3.1.16 Serviced apartments

Principle

Serviced apartments (fully furnished living quarters for short or long term stay) need to be considered in the context of the services being provided and the nature of the accommodation to determine their principal use. Some serviced apartments are similar to residential properties with management companies (which are considered below) and, therefore, have a principal use as a home and **should not** be included in the non-household market.

However, other serviced apartments are commercial premises run for the purposes of providing short term accommodation for holidays and business travellers as an alternative to a hotel. These premises **should** be included in the non-household market.

We understand that the Local Government Finance Act makes a similar distinction for the purposes of assessing council tax liability and therefore liability for council tax may be a useful indicator in relation to such premises.

3.1.17 Shop and domestic accommodation – mixed premises

Principle

Where a shop and household form part of the same premises and share a supply point it would be considered mixed use. Reviewing the liability of the premises for both business rates and council tax can therefore help a company determine eligibility.

Where the premises is liable for both council tax and business rates there is a need to determine which use is principal.

If the household part is dependent upon the non-household part, then the premises **should** be included in the non-household market.

If there is a shared supply to the premises the use would be mixed and so the eligibility of the property is dependent on the principal use of that premises.

3.1.18 Temporary supply for developers

Principle

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

Examples

Where developers use premises for purposes such as show homes, these premises remain part of the development process (the sales process) until such time as a

householder moves in (i.e. until a premises is being used as a home). The principal use of such a premises is therefore not as a home until it is occupied as such.

As stated in the part three of the Wholesale-Retail Code operational terms²:

“The Wholesaler and Retailer shall also apply these processes in respect of a new connection for Building Water in the same way as for any other connection. This will include Building Water for the construction of premises which will ultimately become either Eligible Premises or other premises, including Household Premises, or a combination of both (Process 3). In any event, any New Supply Point having Building Water will be Registered in accordance with the Market Terms.”

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

As the development progresses and parts become separate premises which become occupied and used as a home and/or non-household these will be registered and classified depending on their principal use(s).

Site development plans may be useful in assisting stakeholder to anticipate changes in principal use but not in the assessment of current principal use.

² <http://www.open-water.org.uk/media/1907/3a-postvendormap-appendix2-wrc-part3-operationalterms.pdf>

3.1.19 University halls of residence and accommodation

Principle

We have sought to provide additional guidance on eligibility by making a distinction between different kinds of university halls of residence as there is the possibility that these premises may act principally as a home.

As per our hierarchy of considerations, firstly it is important to define the extent of the premises (see section 2.3.1).

So, for example:

- where a number of university premises are served through a single supply point this will constitute a single set of premises; and
- where university premises are served through multiple supply points, the principal use of the premises supplied by each supply point is to be considered independently.

We consider that in the majority of cases the correct identification of the extent of the premises will make principal use more apparent.

Once the extent of premises has been determined, retailers must then determine the principal use of the premises. This may not always be apparent as some premises could be considered as a home for students whereas others could more accurately resemble hotels.

We suggest that companies obtain additional information about the relevant premises and the services provided at them and then consider the following (depending on available data) in determining principal use.

- Premises with a primary use for non-household activity both on campus and off campus, **should be** included in the non-household market.
- Premises would not be considered a home where the accommodation does not have all the facilities usually found within a home and instead the use of that accommodation is reliant upon other facilities being provided by the university or its service provider. In this case the premises **should be** included in the non-household market.
- If students cannot remain in the accommodation during university holidays, and so are required to return to their permanent “home” then the principal use of the accommodation is not as a home, and so the premises **should** be eligible for the non-household market.

Examples

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

Where premises (halls of residence or accommodation) are separate from the rest of the university, these premises have their own supply and students cannot remain all year the principal use is not as a home and so it **should** be included in the non-household retail market.

Where premises (halls of residence or accommodation) are separate from the rest of the university, these premises have their own supply and are wholly used for domestic purposes that is to say that the premises are not used for no other non-domestic purposes such as for out of term lettings or conferences the principal use is as a home and so it **should not** be included in the non-household market.

3.1.20 Vacant property/premises

Principle

We consider that the principal use of vacant premises may not be straightforward. Factors such as the length of time for which the premises have been vacant, whether or not they are capable of being used as a home (e.g. because the property is unfurnished or derelict), council tax/business rate liability and whether or not a person lists the property as their residence may all be relevant.

Some vacant premises may be gap sites where the principal use could be assessed once a new owner/occupier selects a retailer. In 2006, Ofwat provided guidance in RD 02/06 (Charges to vacant properties), in which we considered it reasonable for companies not to charge for unfurnished vacant premises because those premises were not ready for occupation (and therefore may be regarded as not being used or

being ready to be used as a home)³. As vacant properties will, in the majority of cases, still be liable for either council tax or business rates (or both), we consider that such liability would be a reasonable approximation of principal use in the absence of other evidence.

Another possible source of evidence when considering eligibility, is to consider the property's previous use alongside the incidence of business rates and/or council tax.

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

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

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

3.1.21 Youth hostels

The principal use of a youth hostel is not as a home and so they **should be** included in the non-household market.

3.1.22 Zero rated and exempt properties (council and business rates)

Principle

³ RD 02/06: Charges to vacant properties: Conclusions, March 2006. This document can be accessed at:
http://webarchive.nationalarchives.gov.uk/20150624091829/https://www.ofwat.gov.uk/regulating/charges/ltr_rd0206_chngvacpropconc

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