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Trust in water

**Supplementary guidance on
whether non-household customers
in England and Wales are eligible
to switch their retailer:
consultation responses and
decisions**

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About this document

This document sets out our conclusions following a consultation on 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.

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 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 MI/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.

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. Executive summary

Supplementary guidance

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 supplied with water using the supply system of an undertaker whose area is wholly or mainly in England, there is a particular focus on whether the premises are non-household premises and are eligible for the retail market.

Ofwat is empowered under the WIA91 to provide guidance for both WSLs and WSSLs on certain matters relevant to eligibility¹.

This document summarises and sets out our conclusions in relation to the responses we received as part of the consultation on the draft supplementary guidance for assessing whether customers in England and Wales are currently eligible to switch to a WSL and will be eligible to switch to a WSSL in April 2017, which is enclosed as Appendix A.

The supplementary guidance focuses on how suppliers should determine whether premises are household premises under section 17C of the Water Industry Act 1991 (**WIA91**) and so are ineligible to switch supplier.

We have also consulted on and revised our eligibility guidance to account for legislative updates, given our supplementary guidance also comments to some degree on the extent of premises for which the household/non-household assessment is to be made, under section 17A(9) and paragraphs 4 and 7 of Schedule 2A and Paragraph 2 of Schedule 2B to the WIA91, both documents require the approval of the Secretary of State, having consulted Welsh Ministers².

¹ Ofwat is empowered under section 17A(9) of the WIA91 to provide guidance for WSLs and under Schedules 2A and 2B to the WIA91 to provide guidance for WSSLs on certain matters relevant to eligibility.

² For guidance issued under section 17A(9) the Secretary of State must first consult the National Assembly for Wales. For guidance issued under Paragraphs 4 and 7 of Schedule 2A and Paragraph 2 of Schedule 2B of the WIA91, the Secretary of State must first consult the Welsh Ministers.

Consultation process

In December 2015, Market Operator Services Limited (**MOSL**) facilitated a workshop with water companies, government departments and retailers to discuss the eligibility principles for premises in relation to the non-household market. MOSL requested comments on a list of issues that required clarification. These issues were subsequently submitted to Ofwat for feedback and next steps. We prepared a working paper based on the discussion at the MOSL workshop and subsequently held our own workshop with the industry in January 2016. The draft supplementary guidance built on the outcome of those discussions and reflected further development of our thinking thereafter.

Draft supplementary guidance was produced and consulted on between 10 March 2016 and 7 April 2016.

In total we had responses from 17 stakeholders. There was general support from stakeholders for the supplementary guidance and the issues it sought to address.

There were, however, a number of points that were raised which we outline below and address in more detail in this response document which relate to:

- Universities and their eligibility for the market;
- additional examples for sites such as caravan parks and small domestic dwellings with a shop attached;
- cross border issues;
- addition of example process/flow diagrams;
- issues on temporary supply; and
- issues with regards to vacant properties.

Having considered responses on the draft supplementary guidance and revised eligibility guidance from stakeholders, we have developed the final supplementary guidance and eligibility guidance and have gained approval from Defra before publication.

The revised version of the supplementary guidance is included in this publication with tracked changes so stakeholders can see and reference how their comments have influenced the final publication.

Key points to note.

- If a premises principal use is not as a home it is eligible for the non-household market.

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- We have significantly extended historical guidance as required by legislation to aid stakeholders.
 - If wider eligibility criteria are required it is likely to be necessary to consult directly with Defra about revising legislation.

While we have provided further clarity on eligibility we note that, as with many of the scenarios, market participants will need to engage with customers to obtain information to enable them to determine whether or not certain premises are being used principally as homes. Premises are eligible unless they are a household.

We have published the following.

- Response document from consultation on draft supplementary guidance (this document).
- Response document from consultation on revised eligibility guidance.
- Final supplementary guidance document.
- Final eligibility guidance document.

2. Our considerations and responses

This chapter summarises the position we outlined in our consultation,³ the comments received and our final position having considered these comments.

Responses have been grouped in two areas. The first summarises general feedback (also sorted in alphabetical order) and the second summarises feedback on examples (sorted in alphabetical order).

The examples in the revised supplementary guidance will also be sorted in this way to ensure consistency between the documents.

2.1 General stakeholder feedback

2.1.1 Appointed companies premises

Ofwat position in consultation

Appointed water company premises did not feature in the supplementary guidance and has been added following responses.

Stakeholder comments

Two stakeholders queried whether appointed companies' premises should be considered eligible for the non-household market. The eligibility of different types of premises were raised, including offices, co-located offices and operational premises and purely operational premises (for example water treatment works and pumping stations).

Our conclusions

Assuming the threshold requirement has been met (50 megalitres/year in Wales), or does not apply as will be the case in England, principal use is the determining factor

³ Consultation on supplementary guidance: assessing whether non-household customers in England and Wales are eligible to switch their water and wastewater retailer

of eligibility for the market. As the principal use of an office would be non-household, these premises would be eligible for the non-household market. Equally, the principal use of operational premises would be non-household, meaning that these premises would 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 provides for an exception to the prohibition on appointed companies from supplying water or providing sewerage services to non-household premises in retail exit areas, 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.

2.1.2 Council tax and business rates

Ofwat position in consultation

In our supplementary guidance we suggested that council tax and business rates can be used to help stakeholders determine eligibility.

Stakeholder comments

One participant suggested that business rate liability should be the first determining factor of a site with council tax liability considered only in the instance where this was not applicable.

Our conclusions

Assuming the threshold requirement has been met (50 megalitres/year in Wales), or does not apply as will be the case in England, the statutory test of eligibility for the market is principal use. Market participants can use business rate liability and council tax liability to assist in their determination of principal use.

Where there is liability for business rates it would be important to consider if there is also liability for council tax as the premises could then be considered mixed use. Therefore one should not take precedent over the other.

2.1.3 Complexity

Ofwat position in consultation

We produced further guidance to help stakeholders given complications that were raised as part of an industry workshop.

Stakeholder comments

One stakeholder expressed concern that the supplementary guidance introduces more complexity to eligibility compared with the stand alone guidance previously published.

Our conclusions

The supplementary guidance has been broadly welcomed by market participants and is based on extensive discussions, a stakeholder workshop and a consultation.

We consider that the approach taken reflects the issues participants are having in assessing eligibility and in developing the guidance we have continually tried to make the approach as clear and simple as possible.

2.1.4 Cross border issues across company and wholesale boundaries

Stakeholder comments

One stakeholder raised the question of how WIA91 section 17A appears to allow WSSL licences to be granted to supply a subset of non-household premises: namely those connected to the supply system of an undertaker but stated it does not appear to allow those customers connected to parts of the network outside of the statutory definition of supply system. This, they suggested, potentially leaves a number of customers that are connected outside of the wholesalers supply system, out of the market, as they may not fit within this definition.

Our conclusions

The cross border issue has a potential impact across a number of areas and so is being considered more widely. As it is not specifically about the extent of premises or their classification as household or non-household, this issue has not been addressed specifically our eligibility guidance. This issue has, however, been addressed as part of the Government's response to its retail exit consultation.

2.1.5 Eligibility, timescales and engagement

Ofwat position in consultation

Ofwat is continuing to engage with stakeholders and will produce guidance in a timeframe consistent with its plan and the goal of market opening in April 2017.

Stakeholder comments

Comments were received that eligibility needed considering further in relation to the provision of a flow chart, expanding some of the examples, adding further examples and considering the possibility and practicality of separating supplies. One stakeholder felt an additional workshop may be beneficial.

Our conclusions

Ofwat has engaged with participants including water companies, consumer groups, customers and possible new entrants as part of this process and it is vital retailers determine the eligibility of premises in time for the opening of the non-household market.

We consider that further workshops would not necessarily lead to further clarity and we have engaged on the more complex issues raised as part of this consultation directly with the respondents involved. Consistent with our wider strategy, enabling greater company/industry ownership and innovation, we consider that the sector should take a leading role in working collaboratively to resolve eligibility issues where they occur.

Following the formal consultation process we have held further additional meetings with some stakeholders where further exploration of the issues raised in the consultation would improve the supplementary guidance published.

We consider that further engagement on eligibility at this stage would only delay market participants' ability to classify data and not necessarily lead to improvements in the guidance documents already provided. The assessment of eligibility and bodies with a role in determining eligibility is set out in the WIA91. Ofwat's role is to provide guidance in relation to the specific issue of the extent of premises and to determine individual cases referred to it. Defra and the Welsh Ministers also have a role, specifically in relation to the definition of household premises (see section 17C(3) WIA91).

We consider that by issuing updated eligibility guidance and supplementary guidance we have fulfilled our role as far as possible.

2.1.6 Further examples for future reference

Ofwat position in consultation

Where appropriate we included examples discussed with stakeholders within the supplementary guidance.

Stakeholder comments

Stakeholders generally felt that we had included relevant examples covering the issues that they were facing. One respondent suggested that, over time, it would be useful for additional examples to be added to the guidance to aid companies in making their eligibility decisions. Stakeholders was also asked if Ofwat envisaged the supplementary guidance being reviewed on a regular basis.

Our conclusions

Over time it may be helpful to add additional examples. However if the guidance becomes too long it may only serve to further complicate and place additional administrative burdens on market participants. We will consider this balance when considering whether to update the guidance in the future.

2.1.7 Glossary of terms

Ofwat position in consultation

Ofwat did not include a glossary of terms within the supplementary guidance.

Stakeholder comments

Two participants suggested the guidance would benefit from the addition of a glossary or the definition of key terms.

Our conclusions

Where possible, we have clarified the terms within both the eligibility guidance and supplementary guidance. We do not consider that the addition of a glossary will further aid understanding.

2.1.8 Local Government Finance Acts

Ofwat position in consultation

We suggested in our original guidance that the LGFA88⁴ may be useful in helping to determine the extent of premises and eligibility as it contains information on the liability of premises and related buildings and persons in relation to council tax.

Stakeholder comments

Two respondents commented on our guidance and its alignment with the LGFA92 and LGFA88 and how appurtenance⁵ should be applied to our various scenarios. Specifically, car parks and garages were mentioned to be inconsistent with the approach taken in the LGFA92⁶

Our conclusions

We flagged the potential use of the LGFA88 to aid participants. It is not intended as a blanket tool for defining eligibility. We have, however, updated the supplementary guidance to be clear on why we have suggested the proposed approach.

2.1.9 Principal use

Ofwat position in consultation

Principal use is the determining factor for eligibility in the market.

Stakeholder comments

⁴ Local Government Finance Act 1988 - <http://www.legislation.gov.uk/ukpga/1988/41/contents>

⁵ Appurtenance is effectively a relationship between two entities that belong to and go with each other with one being considered less significant than the item to which it belongs.

⁶ Local Government Finance Act 1992 - <http://www.legislation.gov.uk/ukpga/1992/14/contents>

One stakeholder commented that there was confusion in the use of the dependency criteria which was used in the supplementary guidance in respect of principal use but should be used to determine the extent of premises.

Our conclusions

Principal use is the statutory test for eligibility. Before this the extent of the premises needs to be determined. The, legislation does not mention dependency. Therefore dependency is not a relevant criterion unless the use of the premises is mixed and further considerations are necessary to consider which use is the principal one.

2.1.10 Separating supplies

Ofwat position in consultation

Ofwat did not take a position with regards to the separation of supplies as this was not considered relevant for assessing eligibility.

Stakeholder comments

A stakeholder asked commented on the issue of separating supplies and how the Ofwat classification of a premises may protect commercial aspects of a mixed use premises if the principal use is considered as a home.

Our conclusions

It is a commercial decision for owners of premises to consider if they want to separate supplies which could potentially alter eligibility affect whether the premises were eligible for the market.

2.1.11 Water supplier and eligibility

Ofwat position in consultation

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.

Stakeholder comments

One stakeholder commented that while providers should be responsible for making their own assessments they believed that it was in the customer's interest for a consistent approach to eligibility assessment. As such, they proposed that the water service provider should take priority.

Our conclusions

While we consider that a consistent approach is in customers interests. Retailers have a responsibility to determine eligibility, and in the event of a challenge on eligibility, which they are unable to resolve the parties involved can come to Ofwat for a determination.

Consequently we do not consider that we can provide further guidance apart from restating that where supplies are provided by different companies, they should work together to try and ensure consistency.

2.1.12 Single eligibility document

Ofwat position in consultation

Ofwat originally produced eligibility guidance and following feedback was asked to produce additional supplementary guidance to further aid stakeholders.

Stakeholder comments

Some stakeholders highlighted how a single document may be useful, they also felt that this may also be beneficial to customers as there was a single document to refer to.

Our conclusions

We consider that the documents should be kept separate. The original eligibility guidance has greater emphasis on identifying the extent of premises and broader issues when considering eligibility. Whereas the supplementary guidance builds on this to aid participants in determining eligibility.

We consulted on the original eligibility guidance in 2015, which was built on guidance issued in 2011 and published the final guidance, taking into account stakeholder views in August 2015.

Since then, Ofwat is now required to produce guidance on eligibility and is required to get approval from the Secretary of State for section 4 of the original guidance. We are keen to maximise the certainty for stakeholders in assessing whether premises would be in the market, when we consulted on the supplementary guidance we were clear that we would update the original guidance to ensure consistency and ensure its legal accuracy given legislative changes.

Keeping the documents separate removes potential uncertainty that there could be significant changes to the original eligibility guidance for market participants and customers.

The additional supplementary guidance is intended to provide further clarity on a more specific set of examples where stakeholders have identified issues.

As part of the consultations, we have also developed flow charts/decision trees to aid participants in both documents and are exploring ways in which we could make these process/flow diagram more readily available for customer.

2.2 Stakeholder feedback on examples

2.2.1 Allotments

Ofwat position in consultation

If an allotment is a distinct set of premises, the principal use of an allotment is not as a home and so it is not a household and so such premises should be included in the non-household market.

Stakeholder comments

There were three responses about allotments. One respondent agreed with the proposals; one asked if private gardens attached to dwellings they would be treated under the appurtenance concept within the 1992 Local Government Finance Act (LGFA)); and one stated that the Valuations Office Agency (VOA) does not put a rateable value on allotments and so they should not be eligible for the non-household market.

Our conclusions

Determining the extent of premises is important for the assessment of eligibility. As stated in our eligibility guidance 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. As such, even if there is no rateable value, this should not prevent an assessment of the extent of premises, following which eligibility is based on principal use.

To assist stakeholders we have included a flow chart on determining the extent of premises which has been included in the eligibility guidance document.

2.2.2 Animal Troughs

Ofwat position in consultation

Identifying the extent of premises is important as this is the premises that will be evaluated as to its principal use and subsequent eligibility for the non-household market. For example if an animal trough appears likely to form part of a farm premises, which would be classified for eligibility as an entire set of premises.

Consistent with the approach we have adopted for other mixed use premises, an animal trough which forms part of a set of premises with other building or is dependent on those buildings and should be in the same market as the premises/property on which it is dependent.

Stakeholder comments

One respondent questioned whether principal use will always be evident and would welcome further consideration of this scenario, another suggested that we further take into account the LGFA88 and appurtenance to clarify principal use.

Our conclusions

In defining the extent of premises and determining eligibility we have stated that the LGFA88 could be useful in helping stakeholders to perform this task. We therefore consider that the principles in the LGFA88 are consistent with our approach.

2.2.3 Assisted living or sheltered housing

Ofwat position in consultation

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. The principal use of assisted living premises is as a home and so would therefore be considered a household.

In this instance the support functions are considered ancillary to the self-contained accommodation available, which is usually liable for council tax and is often owned separately from the provider of care services. These types of premises should not therefore be included in the non-household market.

Stakeholder comments

We had two comments in support of our approach in this area. One stakeholder also suggested that the criteria for ancillary use should also be added to the more general criteria.

Our conclusions

We agree with market participants and have highlighted that ancillary services should be considered within the context of principal use within our hierarchy. We have also clarified what happens where ancillary services occur in such a way that the extent of premises could be identified separately.

2.2.4 Barracks and married quarters

Ofwat position in consultation

This example did not feature in the supplementary guidance that was consulted on and has been added following feedback.

Stakeholder comments

One respondent asked how married quarters should be treated, given that some can be off site and independent to the barracks and others will form part of the barracks and wider military site.

Our conclusions

Barracks and married quarters have now been included as examples in the supplementary guidance. Stakeholders should follow the process for determining the extent of the premises after which principal use should be used to determine eligibility.

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.

2.2.5 Bed and breakfast and guesthouses

Ofwat position in consultation

This example did not feature in the supplementary guidance that was consulted on and has been added following feedback.

Stakeholder comments

One respondent asked for guidance on the eligibility of bed and breakfast accommodation and guesthouses.

Our conclusions

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.

2.2.6 Car Parks and Garages

Ofwat position in consultation

Where a car park or garage is on household premises and served by the same supply point as those premises i.e. the extent of the premises includes both a home and a car park or garage, it is considered part of that household premises' principal use as a home. If, however, the car park or garage is served by a separate supply point from the household its principal use will not be considered as a household and so should be included in the non-household market.

Stakeholder comments

Five respondents commented on car parks and garages. One agreed with our proposal but believed it would add clarity to consider the impact of dependency; two commented on how our proposals aligned with the LGFA; and another two commented on the impact of capturing a large number of small garages and how these rules were affected by car parks and garages that do not have water or sewerage services (i.e. are drainage only). There was also a comment on the small consumption of small sites and the potential viability of including these sites in the market.

Our conclusions

We have updated the section on car parks and garages to reflect the LGFA88 and LGFA92 and the concept of appurtenance.

On the comment raised about garages and car parks that are drainage only, we would like to highlight that if the car park or garage utilised the public sewer system those premises will be receiving sewerage services. Where a car park or garage does not utilise the public sewer (such as grey water harvesting) it would not be receiving sewerage services.

Whilst there may be some small sites identified, eligibility is determined by the extent of the premises and principal use; regardless of consumption if a premises is eligible for the market it should be included in the market. The legislation does not allow premises not to be included in the market due to low consumption.

2.2.7 Caravan sites/parks

Ofwat position in consultation

This example did not feature in the supplementary guidance that was consulted on and has been added following feedback.

Stakeholder comments

One respondent commented that our proposals should include a scenario for caravan parks, especially where there are a majority of live-in residents.

Our conclusions

Caravan parks have now been added as an example in the supplementary guidance.

Holiday parks which provide 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 provide permanent residency, and/or the principal use of a multi-use premises would be as homes, they **should not** be included in the non-household market.

2.2.8 Care homes & nursing homes

Ofwat position in consultation

The principal use of a nursing or care home (which we consider to be any institution providing residential accommodation for the purposes of providing residents with continued health care or other support upon which they are reliant) is the provision of continued care, with the residential element a requirement of the nature of the care being provided. We therefore consider that these premises **should** be included in the non-household market.

Stakeholder comments

Of the four respondents who mentioned care homes, two agreed with our proposals, while two queried our use of dependency and asked that it should be clarified further. There were also a few comments regarding our position on staff accommodation.

Our conclusions

We have been clear that we consider the principal use of a care home is the provision of care.

The residents at care homes are there for continued care provided at the same set of premises. As such the residential element is not the principal use of the property, and so it is considered a non-household.

To avoid possible confusion in the definition of these two types of premises, we have separated the nursing and care homes guidance into two distinct examples in the supplementary guidance.

2.2.9 Exempt Properties

Ofwat position in consultation

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.

Stakeholder comments

We had two comments on exempt properties, one agreed with our proposals, one commented that our proposals may make it difficult to identify principal use and that the guidance would benefit from exploring this difficulty further.

Our conclusions

We accept that exempt properties in some situations may be hard to classify, however principal use is the statutory test of eligibility. Given this test we consider that we have provided as much guidance as possible and set out several ways (council tax, business rates, and previous use) that market participants can use to determine principal use and eligibility.

2.2.10 Self-catering holiday units

Ofwat position in consultation

This example did not feature in the supplementary guidance that was consulted on and has been added following feedback.

Stakeholder comments

Several respondents felt that adding an example and clarification on self-catering holiday units would be beneficial.

Our conclusions

We have added an example in this area to clarify the position regarding the eligibility of these premises.

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.

2.2.11 Housing associations

Ofwat position in consultation

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

Stakeholder comments

Three stakeholders commented on our housing association guidance, one agreed with the principles and two raised questions about the commercial activities housing associations performed and how these could be separated.

Our conclusions

The eligibility of premises is based on principal use. If a housing association has non-household premises connected to a separate supply these premises should be included in the non-household market. Where mixed use premises are supplied through a shared supply point the non-household activity has to be of sufficient proportion that the household element is dependent on this activity for it to be included in the non-household market. The supplementary guidance has been updated to reflect this.

2.2.12 Local authority housing

Ofwat position in consultation

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

Stakeholder comments

We received one comment that agreed with our position that local authority housing should be treated the same as housing associations.

Our conclusions

We have maintained our position on local authority housing.

2.2.13 Serviced apartments

Ofwat position in consultation

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.

Stakeholder comments

Three stakeholders responded to our proposals on services apartments, one agreed with the approach, and while the other two stakeholders agreed in principle, they highlighted that it may be difficult to identify the type of serviced apartment that is being operated and so it may be difficult to assess eligibility.

Our conclusions

We have provided some further clarity in the guidance but note that, as with many of the scenarios, market participants will need to engage with customers to obtain sufficient information to enable them to determine whether or not serviced apartments are being used principally as homes. Premises are eligible unless they are a household.

2.2.14 Shops and domestic accommodation – mixed premises

Ofwat position in consultation

This example did not feature in the supplementary guidance that was consulted on and has been added following feedback.

Stakeholder comments

Stakeholders considered that adding an example and clarification on the eligibility of shops with domestic accommodation would be beneficial.

Our conclusions

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.

2.2.15 Temporary supply for developers

Ofwat position in consultation

The current principal use of the relevant premises determines its eligibility. This means that where a house has not been completed, its current principal use cannot be as a home.

Stakeholder comments

Four stakeholders commented in this area, two agreed with the approach but believed there was still uncertainty on the transition period and what was meant by

terminology such as completed and one of these asked if development plans could be used to infer principal use. One believed principal use was sufficient for classification and another commented on how the guidance needed to align with work on the Wholesale-retail code.

Our conclusions

The legislation is clear that premises are non-households unless their principal use is as a home. 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.

When considering how these premises should be treated, as stated in the part three of the Wholesale-Retail Code operational terms⁷:

“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 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.).

Site development plans may be useful in assisting stakeholder to anticipate changes in principal use. When looking at sites in their entirety we have clarified that, when a

⁷ <http://www.open-water.org.uk/media/1907/3a-postvendormap-appendix2-wrc-part3-operationalterms.pdf>

property's principal use becomes a home it is excluded from the market. Completed would refer to the individual units that are occupied.

We will continue to co-ordinate across the various parts of market architecture to ensure consistency as far as possible.

2.2.16 University

Ofwat position in consultation

In our supplementary guidance we sought to provide additional guidance on eligibility by making a distinction between university halls of residence, where food and wider services can sometimes be provided by the university or its service provider as part of the accommodation cost, and other university accommodation, which is self-contained and self-catered.

Stakeholder comments

Twelve stakeholder responded to our proposals on universities, accommodation and eligibility. One stakeholder believed that all accommodation should be classified as a household, a few participants preferred a blanket rule to include accommodation in the market and other participants raised various concerns about how identification of various premises would be possible without further investigation and knowledge.

Several stakeholders also felt that a distinction based on food and wider services was not necessarily helpful and easy to measure, with two participants suggesting we used the ability to be a resident for a whole year as a criterion.

Our conclusions

Universities are one of the more complex areas of eligibility given they can be campus based, non-campus based and contain various types of accommodation.

Given stakeholder feedback we have revised our guidance to place less emphasis on food and wider services as this was causing confusion.

We continue to maintain that, in accordance with the WIA91, where the principal use of the premises is as a home it should not be included in the non-household market.

Given this, where premises are distinct from wider university premises and have their principal use as a home, it cannot be considered a non-household.

Guidance by the VOA on the treatment of rateable properties such as universities within section 1110⁸: Universities and university colleges and the associated practice note outline that university halls of residence are considered domestic where they are wholly used for domestic purposes and so would not be rated. Appendix 5⁹ of this document provides some exceptions to this rule where university halls are let out or used for conferences and other non-household (commercial) purposes etc. in which case these premises would be rated and considered non-domestic.

We have amended our guidance to account for the extent of a premises, the term of the accommodation provided (i.e. term time only), the type of accommodation and the services provided.

We consider that in the majority of cases the identification of the extent of the premises together with appropriate customer engagement will make principal use more apparent. If the use of a property is not principally as a home it is eligible for the market.

2.2.17 Vacant properties

Ofwat position in consultation

We consider that the principal use of vacant premises may not be straightforward. In the supplementary guidance we noted how 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.

Stakeholder comments

Five stakeholders responded to this area of the consultation. Two agreed with the proposal and two considered that our previous proposal of using the last

⁸

http://manuals.voa.gov.uk/corporate/Publications/Manuals/RatingManual/RatingManualVolume5/sect1110/b-rat-man-vol5-s1110.html#P76_2027

⁹

<http://cti.voa.gov.uk/corporate/publications/Manuals/RatingManual/RatingManualVolume5/NotToConvert/c-rat-man-vol5-sec1110-app1.pdf>

classification as the simplest and most stable way of determining eligibility. The other respondent was concerned about the definition of principal use where it is in which, or in any part of which a person has his home, and how this aligns with using factors which do not relate directly to the current use of the property.

Our conclusions

We have provided various factors that could be used to aid stakeholders in assessing principal use. If the use of the premises is not as a home it would be eligible for the market.

2.2.18 Wales

Stakeholder comments

One respondent reiterated that in Wales, where the 50 MI per year threshold will continue and how this would affect the extent of a premises and that therefore, situations such as a self-catered hall of residence within a wider campus will not be eligible does not apply in Wales.

Our conclusions

For retailers with a restricted retail licence who operate wholly or mainly in Wales the threshold requirement will still apply. As set out in the updated eligibility guidance the definition of the boundaries for premises is consistent with that set out in the 2011 guidance. This is wider than the extent of premises for where the threshold requirement does not apply. Consequently, given the higher threshold for eligibility and the greater extent of premises, many of the detailed examples included in the supplementary guidance will not apply for retailers operating wholly or mainly in Wales.