

South East Water's
response to Ofwat's
consultation on
supplementary
eligibility guidance

7 April 2016

1 INTRODUCTION

This is South East Water's response to Ofwat's consultation on supplementary guidance: assessing whether non-household customers in England and Wales are eligible to switch their water and wastewater retailer.

2 GENERAL COMMENTS ON THE APPROACH

To prepare this response, we have compared the examples in the supplementary guidance (SG) with the principles of the main guidance (MG) and of the SG relating to the extent of premises and the provisions of s17C on principal use. We have also compared the approach followed for each of these examples to determine whether the SG provides stable and consistent principles that can be used by companies to determine the eligibility of premises.

We summarise below a number of inconsistencies we identified. A more detailed review of each of the examples is included in section 1 of our response to question 2. In section 2, we comment in more detail on the use of dependency and how in our view this criteria may be used to resolve several of the inconsistencies we identified. In section 3, we present a summary of how premises would be classified for each of the examples provided in the SG applying the additional principles we suggest.

Our main concern is that the SG introduces more complexity to eligibility compared with the stand alone guidance previously published. Although the MG needs clarification, the way this is attempted in the SG does not achieve the goal of providing clarity and simplicity. We set out suggestions for an alternative approach in sections 2 and 3 of our response to question 2.

3 ANSWERS TO SPECIFIC CONSULTATION QUESTIONS:

Below are responses to the specific questions in the consultation.

Q1. Whether respondents consider the descriptions in the examples not to be reflective of the types of issues encountered

The issues considered are generally of the types encountered. Where relevant we have highlighted similar examples that may also be mentioned as part of our response to question 2.

Q2. Whether respondents consider there may be inconsistency between our draft supplementary guidance and the relevant legislation

Review of the examples of the supplementary guidance

In reviewing the examples in the SG we have followed a two stage process to determine first the extent of the premises following the statutory part of the guidance and then we have considered the principal use of these premises.

In respect of the extent of premises we refer to principle 1 and principle 2 as follows.

Principle 1: Each entity which is assessed separately for the purpose of council tax and business rate (or would be if it was not exempt) constitutes separate premises.

Principle 2: Several entities supplied through a single supply point constitute a single set of premises (i.e. they need to be grouped.) This is an exception to principle 1 when several entities are on a shared service pipe or private distribution network.

Our assessment of the principal use of premises is based on section 17C of the Water Industry Act 1991 (referred to in this document as “s17C”). Non-household premises are premises which are not household premises. Household premises are premises in which or in any part of which a person has his home, and the principal use of which is as a home. Eligibility follows principal use as determined in accordance with s17C.

Summary of inconsistencies identified

- The general definition of dependency in the MG and the definition of dependency for halls of residence in the SG would lead to different classifications of the same premises.
- Dependency as defined both in the MG and the SG is said to apply to mixed-use premises but dependency as defined in the SG in relation to halls of residence is applied to premises that are not mixed-use premises. (There is inconsistency between section 1.3.1 and section 1.4.1 of the SG.)
- Classifying a hall of residence with its own supply pipe that is not “self-contained” (as defined in the SG) as non-household is in our view contrary to s17C.
- The MG and the SG both state that the classification in the Local Government Finance Act 1988 (“LGFA88”) should be used as a first approximation but the treatment of garages is inconsistent with the approach in the LGFA88.
- The MG and SG do not refer to the concept of appurtenance which is key in the LGFA88 to the definition of the extent of certain premises despite the general presumption that the classification of the LGFA88 should be followed as set out in the MG.
- Some examples refer to the approach followed in the LGFA88 whilst others ignore the approach in the LGFA88 without providing explanations for the difference.
- The dependency criteria is applied to a set of premises where it is not relevant to determining the principal use in the example relating to nursing/care homes whilst in respect of a similar example relating to a hall of residence on a campus with a shared supply point the classification seems to be correctly based only on the principal use.
- There is confusion in the use of the dependency criteria which is used in the SG in respect of principal use but should be used to determine the extent of premises. The dependency criteria is applied in such a way that it operate as an exception to principle 1 of the statutory guidance but is not set out in the statutory guidance as an exception to that principle resulting in an approach contrary to the statutory guidance itself.

Our main concern is that the SG introduces more complexity to eligibility compared with the stand alone guidance previously published. Although the MG needs clarification, the way this is attempted in the SG does not achieve the goal of providing clarity and simplicity. We set out suggestions for an alternative approach in section 2 and 3 below.

1. Detailed review of examples in the SG

1.1. University hall of residence and accommodation

No	Scenarios	Extent of premises (statutory guidance under 17A(9))	Principal use (section 17C)	Comments
	Single Supply Point to campus			
1	Hall is self-contained	Principle 2 applies – the campus is a single set of premises	<p>SG: Non-household</p> <p>The principal use of the campus is non-household and this extends to all buildings on the campus</p> <ul style="list-style-type: none"> In our view, this is consistent with the test in s17C 	<p>The MG uses the example of a hall of residence being dependent on the university (MG p24). However, it does not expressly state whether the criteria of dependency only applies in cases where there is more than one connection (i.e. principal 2 does not apply).</p> <p>In scenarios 1 and 2, as principle 2 applies, the campus is a single set of premises and we agree that the concept of “dependency” is not relevant to determine the principal use of the campus (s17C is enough).</p>
2	Hall is not self-contained (External facilities are provided by the university)	Principle 2 applies – the campus is a single set of premises	<p>SG: Non-household</p> <p>The principal use of the campus is non-household and this extends to all buildings on the campus</p> <ul style="list-style-type: none"> In our view, this is consistent with the test in s17C 	<ul style="list-style-type: none"> The MG should be amended to clarify when the criteria of dependency applies especially whether it is only relevant when principle 1 applies.
	Separate supply point to the hall (on or off campus) and to other building or group of buildings on campus			
3	Hall is self-contained (on or off campus)	Principle 1 applies – the hall is a single premises	<p>SG: Household</p> <p>The hall is used as a home or permanent residence (sleeping, living and catering)</p> <ul style="list-style-type: none"> In our view, this is consistent with the test in s17C (applied to the hall as a 	<p>It is difficult to find a practical justification for treating a self-contained hall differently on the basis of its connection to the network (as in the case in scenarios 1 and 3).</p> <p>In scenario 3, according to the definition of “dependency” in the SG (§1.3.1), the hall is not dependent on the university. However, still in</p>

			single premises)	scenario 3, according to the definition of “dependency” in the MG (§4.1 p24) the hall is dependent on the university and this would result in the classification of the hall to be non-household. (The definition of the MG is also silent on the location (on or off campus) and distance of the hall from the campus which is also a source of ambiguity.)
4	Hall is not self-contained and dependent on the university (based on the definition in the SG) (on or off campus)	Principle 1 applies – the hall is a single premises	<p>SG: Non-household</p> <p>The hall is used for sleeping and living even if catering facilities are available in another building and irrespective of how it is paid for. Once it has been determined that the hall is a single set of premises (applying principle 1), the principal use must be determined as required by s17C. The test in s17C does not make reference to the specific characteristics of the premises but to their use as a home or not. Students sleep, work and live in their accommodation and for all practical purposes this is their home for the academic year. Their stay is much longer than a hotel stay and of a different nature. The stay in this hall of residence is not fundamentally different from a stay in privately rented accommodation. We do not agree that the analogy with a hotel is a valid one. In our view, because the hall is a single premises and it is only used as accommodation (even if it is not self-contained) it follows that the principal use of the hall is as a home, and the premises are household in accordance with s17C.</p> <ul style="list-style-type: none"> We do not believe this to be in accordance with the test in s17C 	<p>➤ The two definitions of “dependency” in the MG and SG are inconsistent and lead to different categorisations of exactly the same type of premises. The guidance needs to be amended to achieve consistency. However, it is likely that changes to the definition of dependency only would not be sufficient.</p> <p>Both the MG (§4.1 p24) and the SG (§1.3.1) provide that “dependency” is a criteria used in relation to mixed-used premises. However, in scenarios 3 and 4 the hall is a single premises (as principle 1 applies) and it is only used as accommodation; the hall does not have a mixed-used but the examples in the SG (§1.4.1 p10) still use the “dependency” criteria. This issue is also related to our comment on the use of the “self-contained” criteria in respect of the principal use for scenario 4 in respect of principal use on the left. (See our response on how the dependency criteria could be used to define the extent of the premises.)</p> <p>➤ If the dependency criteria applies in cases where the premises are mixed-used premises then it does not apply to scenarios 3 and 4, if dependency applies to scenarios 3 and 4 then it does not apply only to mixed-used premises.</p> <p>Our comments in this table lead us to think that the way the criteria for categorisation (both regarding the extent of the premises and their principal use) are articulated in the MG and SG needs to be reviewed. Using dependency and mixed-use necessarily means that a wider set of premises is being considered despite the initial definition of the extent of the premises e.g. in scenario 4, the hall is considered to be a single premises applying principle 1, but it is still considered to be somehow part of the campus. It is either a single premises or it is part of a wider premises, it can't be both at the same time. Dependency is in our view a criteria to determine the extent of premises.</p>

1.2. Housing Association and local authority housing

No	Scenarios	Extent of premises (statutory guidance under 17A(9))	Principal use (section 17C)	Comments
1	Shared supply point	Principle 2 – the buildings form a set of premises	<p>SG: Household</p> <p>The principal use is as a home, this is consistent with the test in s17.</p>	We agree with the classification which is consistent with the principles in the guidance and s17C.
2	Single supply point	Principle 1 – the building is the premises	<p>SG: Household</p> <p>The principal use is as a home, this is consistent with the test in s17.</p>	

1.3. Serviced Apartments

No	Scenarios	Extent of premises (statutory guidance under 17A(9))	Principal use (section 17C)	Comments
1	Shared supply point	Principle 2 – the buildings form a set of premises	<p>SG: Household or Non-household</p> <p>The distinction is based on the use i.e. whether as a permanent residence or as a temporary residence similar to a hotel is consistent with s17C in our view.</p>	We agree with the classification which is consistent with the principles in the guidance and s17C.
2	Single supply point	Principle 1 – the building is the premises (or each flat)		The SG refers to the distinction made in the LGFA88 between serviced apartments. However, in section 1.4.8 relating to garages the SG ignores the approach in s66 of the LGFA88 without any reason given and despite the fact that s66 is included in Appendix 1 of the MG and that the MG on p23 provide that companies should use the classification in the LGFA88 as a first approximation of eligibility.

1.4. Residential properties with management companies

No	Scenarios	Extent of premises (statutory guidance under 17A(9))	Principal use (section 17C)	Comments
1	Shared supply point	Principle 2 – the buildings form a set of premises	SG: Household The principal use is as a home, this is consistent with the test in s17.	We agree with the classification which is consistent with the principles in the guidance and s17C.
2	Single supply point	Principle 1 – the building is the premises (or each flat)	SG: Household The principal use is as a home, this is consistent with the test in s17.	

1.5. Nursing homes and care homes (Also teachers accommodation provided by schools and staff accommodation provided by hospitals)

No	Scenarios	Extent of premises (statutory guidance under 17A(9))	Principal use (section 17C)	Comments
	Nursing/Care Home only			
1	Single supply point	Principle 1 – the building is the premises	SG: Non-household The principal use is not as a home, this is consistent with the test in s17.	We agree with the classification which is consistent with the principles in the guidance and s17C.
1a	Shared supply point	Principle 2 – the buildings form	SG: Non-household	We agree with the classification which is consistent with the principles in

		a set of premises	The principal use is not as a home, this is consistent with the test in s17.	the guidance and s17C.
	Staff accommodation provided by the nursing/care home			
2	Shared supply point	Principle 2 – all the relevant buildings constitute a single set of premises (including the staff accommodation)	<p>SG: Non-household</p> <p>The principal use of the premises is non-household and this extends to all buildings on the premises.</p> <ul style="list-style-type: none"> In our view, this is consistent with the test in s17C 	<p>We agree with this classification as it is consistent with (i) the definition of the extent of the premises under principle 2 and (ii) s17C based on the assumption that the principal use for these types of premises will be non-household.</p> <p>The SG (§1.4.6 p12) states that the classification of the staff accommodation as non-household is based on “dependency” (following the general definition of dependency not the definition for halls of residence in the SG). However, as principle 2 applies and a single set of premises is being considered (which includes both the nursing/care home and the staff accommodation), referring to dependency is unnecessary; it is enough to determine the principal use of the entire set of premises as required under s17C.</p> <p>This is different from the explanations provided in section 1.4.1 on p 10 in relation to a university campus where the SG correctly only refer to principal use of the set of premises and not to dependency which is irrelevant in these cases.</p> <p>See also our general comments on why dependency is in our view incorrectly defined in the MG.</p> <ul style="list-style-type: none"> ➤ The reference to dependency should be removed ➤ If dependency is used then the concept needs to be redefined and further explanation should be given to demonstrate (i) that the concept is not contrary to s17C and (ii) that its used is consistent in the different examples described in the SG
3	Single supply point for the staff accommodation	Principle 1 – the building is the premises	<p>SG: Household</p> <p>The principal use of the staff accommodation is as a home</p> <ul style="list-style-type: none"> In our view, this is consistent with the test in s17C 	<p>We would agree in principle with this classification (if the premises are defined as suggested using principle 1) and with the fact that any repairs or maintenance carried out by the nursing/care home is irrelevant to determining the use of the premises (similar to the approach followed in the SG relating to services provided to serviced apartments and residential properties with management companies). However, see our comment below in relation to the definition of the extent of the premises.</p>

				<p>In addition, the approach for classification of staff accommodation provided by nursing/care homes should also be consistent with the approach in other examples.</p> <p>Paragraph 1.4.6 of the SG does not distinguish between staff accommodation that is self-contained or not. As set out above, we do not support this distinction, but if it applied to halls of residence then it should also apply to staff accommodation (and to teachers accommodation provided by schools.)</p> <p>It is difficult to find a practical justification for treating staff accommodation differently on the basis of the connection to the network (as is the case in scenario 3 and 4). We recognise that this is the result of defining the extent of the premises using principle 1 but we question the appropriateness of this approach as it results in a different outcome where there is no difference in the nature and crucially the use of the premises between scenario 3 and 4. We believe that a better defined dependency criterion could be used to determine the <u>extent</u> of the premises. In the case of scenario 4 this would mean that because the staff accommodation is dependent on the nursing/care home the entire premises operated by the care home including the staff accommodation are considered a single set of premises and therefore scenario 4 would be identical to scenario 3 (eligibility would simply follow principal use as required under s17C). This would be simpler for non-household customers, wholesalers and retailers and would in our view be what non-household customers expect to be able to do when market opens.</p> <p>The approach in the SG as currently drafted would mean that the nursing/care home would still have to have two suppliers for the same site when in fact the principal use of all the premises they managed taken as a whole is non-household.</p> <p>Our suggested approach would be an exception to principle 1 but is very similar to the exception already provided in principle 2 (principle 2 uses the shared connection as a proxy to define the extent of the premises but another, and additional, dependency criteria based on general purpose, ownership or management would be as valid.)</p>
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1.6. Assisted living or sheltered housing

No	Scenarios	Extent of premises (statutory guidance under 17A(9))	Principal use (section 17C)	Comments
1	Shared supply point	Principle 2 – the buildings form a set of premises	<p>SG: Household</p> <p>The principal use is as a home, this is consistent with the test in s17C.</p>	<p>We agree with the classification which is consistent with the principles in the guidance and s17C.</p> <p>We also agree with the fact that the support and assistance is ancillary to the main purpose of the premises which is to be used as permanent residence.</p>
2	Single supply point	Principle 1 – the building is the premises	<p>SG: Household</p> <p>The principal use is as a home, this is consistent with the test in s17C.</p>	<p>We note that this example specifically refers to the fact that a particular use of the premises is ancillary to the other main use of the premises. This criterion is also used in respect of serviced apartments, residences with management companies and the staff accommodation of nursing/care homes. We believe this criterion should be used when assessing the principal use of premises and that it should be stated as a general principle in the guidance.</p>

1.7. Car parks and garages

No	Scenarios	Extent of premises (statutory guidance under 17A(9))	Principal use (section 17C)	Comments
1	Shared supply point	Principle 2 – the garage and building(s) form a set of premises	<p>SG: Household</p> <p>The principal use is as a home, this is consistent with the test in s17C. (Assuming the building(s) to which the garage relates is household)</p>	<p>It is difficult to find a practical reason to treat the garage of a house being differently on the basis of how it is connected when its use is strictly the same. Common sense would suggest that a garage is ancillary to the house and part of the same set of premises.</p> <p>A supply point to a garage will normally have a very small consumption</p>

2	Single supply point to the garage or car park	Principle 1 – the building is the premises	<p>SG: Non-household</p> <p>The principal use is not as a home, this is consistent with the test in s17C.</p>	<p>which leads to question the interest for retailers to supply these premises if they were included in the market.</p> <p>This categorisation is not consistent with the approach followed in the LGFA88 which treats private garages as part of a domestic property (i.e. an ancillary to the main premises). This categorisation would also be inconsistent with the general presumption set out in the MG and SG that premises subject to council tax would be household premises.</p> <p>The LGFA88 also uses the concept of appurtenance in respect of a yard, garden or other appurtenance belonging to or enjoyed with domestic properties. This same concept of appurtenance seems to be used in respect of troughs but the equivalent approach of the LGFA88 in respect of garages is not followed. In respect of services apartments, reference is made to the LGFA88 to justify the approach in the guidance, but in this case the approach in the LGFA88 is not followed without any justification for such a difference.</p> <ul style="list-style-type: none"> ➤ The approach in the guidance should be consistent across the various examples considered. <p>The MG on p23 and the SG on p8 provide that companies should use the classification of the LGFA88 as a first approximation to determine eligibility but in the case of garages another approach is followed.</p> <ul style="list-style-type: none"> ➤ There is inconsistency between the MG and the SG and between section 1.3.1 and section 1.4.8 of the SG. <p>We also believe that premises in this case should be defined as the set of premises comprising the house and the garage. There could be a different treatment of garages that are not on the same grounds of the house but this should be dealt with in the criteria to determine the extent of premises. Please see our general comments on appurtenance in section 2 of this response.</p>
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1.8. Animal troughs

No	Scenarios	Extent of premises (statutory guidance under 17A(9))	Principal use (section 17C)	Comments
1	Shared supply point	Principle 2 – the land supplied by the trough and building(s) form a set of premises	<p>SG: Household or non-household</p> <p>This would be consistent with the test in s17C but we do not agree that the explanations provided in s1.4.9 of the SG to support this classification are correct.</p>	<p>The SG provides that the categorisation of a trough on a shared supply point should be based on dependency.</p> <p>Where there is a shared supply point principle 2 applies and the land supplied by the trough and the other premises on the shared supply will be treated as a single set of premises. In that case “dependency” is irrelevant as the only test to apply is the principal use of the premises. In addition, based on the definition of dependency in the MG (which would apply in this case) the classification would be non-household (see section 2 of this response for further details on this) whilst section 1.4.9 on p13 suggests it could be either household or non-household.</p>
2	Single supply point	Principle 1 – the land supplied by the trough is the premises	<p>SG: Non-household</p> <p>The principal use is not as a home, this is consistent with the test in s17C.</p>	<p>We agree that if the land supplied by the trough is considered in isolation based purely on principle 1 this classification is correct.</p> <p>However, this would not be consistent with the approach set out in the LGFA88 (see s66(1)) and with the general statement in the MG on p23 and the SG on p8 that companies should use the classification of the LGFA88 as a first approximation to determine eligibility.</p> <p>Please see our general comments on appurtenance in section 2 of this response.</p>

1.9. Allotments

No	Scenarios	Extent of premises (statutory guidance under 17A(9))	Principal use (section 17C)	Comments
1	Shared supply point	Principle 2 – the plots (and possibly building(s)) form a set of premises	<p>SG: Non-household</p> <p>The principal use is not as a home, this is consistent with the test in s17.</p>	<p>We agree with the classification which is consistent with the principles in the guidance and s17C.</p> <p>We assume that allotments are distinct from gardens of private properties which for example in case of a shared supply would be part of wider a set of premises which would be classified as household.</p>
2	Single supply point	Principle 1 – the plot is the premises	<p>SG: Non-household</p> <p>The principal use is not as a home, this is consistent with the test in s17.</p>	<p>Similarly in our view the garden of a domestic property with its own supply point should be considered an appurtenance of that property and part of a wider set of premises which would be classified as household. See our comments in section 2 on appurtenance.</p>

1.10. Temporary supply for developers

We note that some work is ongoing about whether and how building supplies and supplies on new development sites should be dealt with in the wholesale retail code. The guidance should take care to reflect the final position in the wholesale retail code.

1.11. Zero rated and exempt properties

We agree with eligibility can only be determined by reference to the principal use as required by s17C.

1.12. Vacant properties/premises

We agree with the general approach to follow the council tax or business rate liability as a first approximation for classification where no other information is available.

2. Main issues with current approach in the guidance

In this section we provide our detailed comments on the key issues identified above.

2.1. General definition of dependency in the MG and SG

The MG and the SG both describe composite hereditaments under the LGFA88 (i.e. when premises are subject to both council tax and business rates) as mixed-use premises (see second bullet point on p24 of the MG and sub-paragraph 4 on p8 of the SG). Mixed-use premises may be a single building with separately occupied parts or any combination of premises which are considered as a single set of premises and have different parts used for different purposes.

The eligibility of mixed-use premises should follow the principal use as set out in s17C. In fact the legislation defines the principal use test in s17C in order to be able to deal with mixed-use premises. It follows that the principal use test is the test that must be applied to determine the eligibility of mixed-use premises and that it is not necessary for Ofwat to create additional tests in its guidance (which we distinguish from providing guidance on how to apply the principal use test).

The MG also provides that “mixed-use premises are non-household premises in the sense of the WIA91 if the household part of the premises is dependent in some way upon the non-household part. We define “dependent” as meaning that the existence of the household part is linked to the function of the non-household part of the premises.”(Please see the note in section 4.1 on p24.)

This is repeated in the SG (sub-paragraph 4 on p8) as follows: “We suggested in our eligibility guidance 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.”

These statements start from the premise that it has already been established that the premises are mixed-use and therefore that the extent of the premises has already been determined.

Limiting our examples to premises comprised only of buildings for simplicity, this must mean that either (a) the premises are a single building with different parts being used for different purposes, or (b) a set of several buildings used for different purposes or where parts are used for different purposes.

This building or group of building constitutes the premises the principal use of which must be determined in order to conclude on eligibility (as eligibility follows principal use). The test to do this is set out in s17C. The issue is whether the “dependency” criteria set out in the MG and SG is consistent with the test in s17C.

The MG states that if the household part is dependent on the non-household part then the whole premises are non-household. It also states that the household part is dependent if its existence is linked to the function of the non-household part. As this criterion is currently drafted, this means that any household premises which has a link to

the function of the non-household part of mixed-use premises is dependent and that the entire premises must be classified as non-household. However, this approach fails to determine what the principal use of the premises is despite the fact that the dependency criteria cannot be substituted for the legal test in s17C. If we assume that the principal use of the premises is non-household (irrespective of whether or not there is dependency between the household part and the non-household part) then applying the dependency test would happen to give the correct classification. If we assume that the principal use of the premises is household then applying the dependency criteria in the MG and SG would be contrary to s17C. This is because the principal use of the entire premises may be household and the household part may be linked to the function of the non-household part. When that is the case the dependency criteria in the MG is contrary to the legislation and in particular the principle that eligibility follows principal use. This could be the case of a site predominantly occupied with student accommodation but with some teaching facilities. The principal use of the entire site would be household but the household parts of the premises would still be linked to the general purpose of the university and therefore also to the teaching facilities on the site.

The “dependency” test above is therefore not consistent with legislation and cannot be used by companies for the purpose of loading data on the market operator’s systems and cannot be used by retailers to determine eligibility of premises and crucially whether or not they would be committing an offence if they supplied the premises.

2.2. Dependency for Halls of residence

The SG introduces additional criteria relevant to determine whether the hall of residence of a university with its own supply point is dependent on the university or not.

If food and/or other services are provided by or through the university (but presumably not within the hall of residence) a hall of residence with its own supply point is deemed to be dependent on the university and therefore classified a non-household. However in this same example, in accordance with principle 1, the hall of residence constitutes the relevant premises. This would mean that, applying the test in s17C, the principal use of the hall of residence is non-household. However, the hall of residence (even where there are no catering facilities) is only used as a sleeping and living accommodation and not for any non-household purpose. Therefore there is no basis to conclude that the principal use of the hall of residence is non-household and this categorisation is contrary to s17C.

The new criteria in the SG seek to qualify the hall of residence as non-household on the basis that it is linked to the university despite the fact that it is at the same time supposed to be a self-standing premises applying principle 1. In our view these two logics are incompatible.

For the reasons set out above we do not believe that the approach proposed is practical or consistent with s17C. There could be even more complex arrangements where one group (or more) of buildings on the same campus share the same supply points and one other building (or more) has its own supply point(s). In such cases, two or more self-

contained halls of residence could be treated differently for eligibility despite the fact that they are identical and both on the campus. This combined with possible different treatment of halls of residence off campus creates an eligibility patchwork which will be difficult to read for customers and market participants alike.

2.3. Alternative definition of dependency

In our view the dependency of a hall of residence would be relevant to the definition of the extent of the premises (which would then comprise both the university buildings and the hall of residence) but should not be used when dealing with the principal use. Dependency should be an exception to principle 1 and would need to be added to principle 2. This new principle 3 would not be based on how premises are connected but on whether they are dependent or not. This approach would in our view resolve many of the inconsistencies we highlight in this response and also simplify the approach to eligibility.

Dependent premises could be defined as premises which are ancillary to (or even related to) the main purpose of non-household premises. If this was the case the household premises and the dependent premises would be treated as a single set of premises and then the principal use test applied. The issue of proximity would remain and could be addressed in the definition of dependency even fairly generally by reference to ownership or management of a site or group of buildings by a same entity. Depending on how the issue of proximity is dealt with, some premises off the main non-household site under consideration may be categorised independently. For example, a hall of residence off campus could be considered to be single premises and categorised based on its own characteristics. However, a wider definition of dependency could result in all the premises operated by a university being treated as a single set of premises.

This dependency criterion could be applied to halls of residence, staff accommodation of nursing/care homes, hospitals, or schools, or barracks on MOD bases.

This would be simpler for non-household customers, wholesalers and retailers and would in our view be what non-household customers expect to be able to do when market opens. It would also avoid situations where the same entity would have to have two suppliers for the same site or set of premises based on artificial criteria that do not reflect the actual use of the premises which taken as a whole would be non-household.

Once several premises have been classified as forming a single set of premises the only question remaining is to determine the principal use under s17C based on how much of it is used as a home.

2.4. Definition of appurtenance and joint use

A general criteria similar to the criteria described in section 66(1)(a), (b) and (c) could also be used to determine whether premises should be considered to be part of a set of premises and be considered together to determine the principal use.

Appurtenance could be defined using an approach similar to the approach set out in s66(1) LGFA88. Any land or structure belonging to a property or enjoyed with a property could be classified as an appurtenance and this would apply to yards, garden, outbuildings, garages, private storage units, outside taps or supplies, trough even when there is a separate connection to the main building or premises. This criterion would also be used to determine the extent of premises.

3. Possible alternative classifications

3.1. Suggested additional principles to determine the extent of premises

Principle 1: Except as set out in principle 2 to 4, each entity which is assessed separately for the purpose of council tax and business rate (or would be if it was not exempt) constitutes separate premises.

Principle 2: Several entities supplied through a single supply point constitute a single set of premises (i.e. they need to be grouped).

Principle 3: Where a building or other structure or a part thereof that is used for household purposes (the “Household Part”) is dependent on other premises, the Household Part and the other relevant premises will form a single set of premises. Whether or not it is connected through a single supply point, any of the following buildings or structures will be a dependent Household Part if it is operated by or is under the management of the same entity as the other premises in connection with the main activity of that entity [and the proximity of the Household Part to the other premises is sufficient to allow it to be operated jointly]:

- (a) A hall of residence of a university,
- (b) Staff accommodation of a nursing home, care home, hospital or school; or
- (c) A barrack of a MOD base.

[Any of the buildings or other structures listed above will not be a dependent Household Part if due to its distance from the other premises it cannot reasonably be said to be operated jointly.]

Principle 4: Any yard, garden, outbuilding, plot, storage, garage (including any external tap or trough used to supply any of them) which belong to or is enjoyed with a property will form a single set of premises with that property.

Principle 3 and 4 do not apply in respect of premises which form a single set of premises by virtue of principle 2.

3.2. Review of specific examples

In this section we review how premises would be categorised for the main examples set out in the SG following the alternative principles set out above. The examples below include the same scenarios as in section 1 above even if we have explained that certain criteria such as whether a hall of residence is self-contained or not should not be used.

This approach has only been followed to make the comparison between section 1 and this section easier.

3.2.1. University hall of residence and accommodation

No	Scenarios	Extent of premises (statutory guidance under 17A(9))	Principal use (section 17C)
Single Supply Point to campus			
1	Hall is self-contained	Principle 2 applies - the campus is a single set of premises	Non-household: The principal use of the campus is non-household and this extends to all buildings on the campus
2	Hall is not self-contained (External facilities are provided by the university)	Principle 2 applies - the campus is a single set of premises	Non-household: The principal use of the campus is non-household and this extends to all buildings on the campus
Separate supply point to the hall (on or off campus) and to other building or group of buildings on campus			
3	Hall is self-contained (on or off campus)	Principle 3 applies	Non-household: As the principal use test is applied to all the buildings managed/ operated by the University and not the hall in isolation
4	Hall is not self-contained and dependent on the university (based on the definition in the SG) (on or off campus)	Principle 3 applies	Non-household: As the principal use test is applied to all the buildings managed/ operated by the University and not the hall in isolation

3.2.2. Housing Association and local authority housing

No	Scenarios	Extent of premises (statutory guidance under 17A(9))	Principal use (section 17C)
1	Shared supply point	Principle 2 applies -The buildings form the premises	Household: The principal use is as a home
2	Single supply point	Principle 1 applies - The building forms the premises	Household: The principal use is as a home

3.2.3. Serviced Apartments

No	Scenarios	Extent of premises (statutory guidance under 17A(9))	Principal use (section 17C)
1	Shared supply point	Principle 2 applies	Household: If used as a permanent residence Non-household: if used as short term accommodation like a hotel
2	Single supply point	Principle 1 applies	Household: If used as a permanent residence Non-household: if used as short term accommodation like a hotel

3.2.4. Residential properties with management companies

No	Scenarios	Extent of premises (statutory guidance under 17A(9))	Principal use (section 17C)
1	Shared supply point	Principle 2 applies - The buildings form the premises	Household: The principal use is as a home
2	Single supply point	Principle 1 applies -The building forms the premises	Household: The principal use is as a home

3.2.5. Nursing homes and care homes (Also teachers accommodation provided by schools and staff accommodation provided by hospitals)

No	Scenarios	Extent of premises (statutory guidance under 17A(9))	Principal use (section 17C)
Nursing/Care Home only			
1	Single supply point	Principle 1 – the building is the premises	Non-household: The principal use is not as a home, this is consistent with the test in s17.
1a	Shared supply point	Principle 2 – the buildings form a set of premises	Non-household: The principal use is not as a home, this is consistent with the test in s17.

Staff accommodation provided by the nursing/care home			
2	Shared supply point	Principle 2 applies	Non-household: The principal use of the premises is non-household and this extends to all buildings on the premises.
3	Single supply point for the staff accommodation	Principle 3 applies - The premises includes the care home and staff accommodation	Non-household: The principal use of the premises is non-household and this extends to all buildings on the premises.

3.2.6. Assisted living or sheltered housing

No	Scenarios	Extent of premises (statutory guidance under 17A(9))	Principal use (section 17C)
1	Shared supply point	Principle 2 applies - The buildings form the premises	Household: The principal use of the premises is as a home
2	Single supply point	Principle 1 applies - The building forms the premises	Household: The principal use of the premises is as a home

3.2.7. Car parks and garages

No	Scenarios	Extent of premises (statutory guidance under 17A(9))	Principal use (section 17C)
1	Shared supply point	Principle 2 applies – The garage or car park and building(s) form the premises	Household or non-household: Depending on the principal use test
2	Single supply point to the garage or car park	Principle 1 applies if the garage or car park is not an appurtenance; or Principle 4 applies if the garage or car park is an appurtenance	Household or non-household: Depending on the principal use test

3.2.8. Animal troughs

No	Scenarios	Extent of premises (statutory guidance under 17A(9))	Principal use (section 17C)
1	Shared supply point	Principle 2 applies - The land supplied by the trough and building(s) form the premises	Household or non-household: Depending on the principal use test
2	Single supply point	Principle 1 applies if the land is not an appurtenance; or Principle 4 applies if the land is an appurtenance	Non-household: If the land is not an appurtenance Household or non-household: If the land is an appurtenance depending on the principal use test

3.2.9. Allotments

No	Scenarios	Extent of premises (statutory guidance under 17A(9))	Principal use (section 17C)
1	Shared supply point	Principle 2 applies - the allotment plots form the premises	Non-household: if the premises are only made up of allotments plots.
2	Single supply point	Principle 1 applies if the plot is not an appurtenance; or Principle 4 applies if the plot is an appurtenance	Non-household: Depending on the principal use test Household or non-household: Depending on the principal use

Q3. Whether respondents consider the proposals in our supplementary guidance are unreasonable.

We do not consider the proposals to be unreasonable, but we have highlighted in our response to question 2 a number of issues relating to the definition of the principles and criteria set out in the main guidance and supplementary guidance which must be resolved in order to allow companies and retailers to be able to make consistent decision on eligibility. As they stand the main guidance and the supplementary guidance do not provide the accuracy and certainty that will allow market participants to share a precise and consistent definition of eligible premises.