

**Improving Transco's provision of gas
connection services**

**Consultation on revocation of the 1999 Gas
Act Enforcement Order and modification of
Transco's gas transporters licence**

April 2004

Summary

This document forms part of the statutory consultation process to revoke the section 28(1) Gas Act enforcement order (the Order) which was imposed on Transco in February 1999, and to modify Transco's gas transporters (GT) licence. Comments are invited on both the proposed revocation of the Order and the proposed licence modification. Ofgem also proposes to modify those existing overall and guaranteed standards of service (OSOS and GSOS) that apply to Transco's provision of connections. These changes are primarily being proposed to improve Transco's provision of gas connection services and enable Ofgem to better regulate this area of GT activity.

It should be noted that an enforcement order can only be imposed on a party that has breached a provision of the Gas Act or GT licence and therefore the existing Order can only apply to Transco. Any new licence condition will ensure continued protection to customers located on any part of Transco's licensed area that at some future time may become the responsibility of another GT. Transco is presently considering the sale of one or more of its gas distribution networks. In the event that Ofgem was to consent to the disposal of these distribution assets, each new network owner would be required to obtain a Gas Transporters licence.

This document follows the Ofgem November 2002 consultation 'The provision of gas connection services by Transco' and the Ofgem March 2003 update document of the same title. The update document summarised the responses to the consultation and Ofgem's further thinking on these matters. The evidence from the November 2002 consultation and associated investigation indicates that Transco's performance in the provision of connection services is poor in certain respects and that the Order no longer adequately addresses all of the areas of service which concern customers. The majority of respondents to the November 2002 consultation expressed the view that the Order drives Transco to focus on avoiding the payments for failure in the Order rather than increasing its service levels in respect of connections generally. Most respondents also stated that in the longer term the introduction of effective competition in gas connection services would alleviate the issues discussed in the consultation document. However, in the short term, most respondents requested action by Ofgem to improve Transco's connection services.

Ofgem considers it appropriate to revoke the Order and replace it with a modification to Transco's GT licence to place new standards of service on Transco with liability payments for failure in relation to timeliness and accuracy. The standards are intended

to reflect the existing state of competition in the market and to encourage the development of competition while acknowledging that Transco will remain the sole or dominant provider of some of connections work for the foreseeable future. Ofgem also requests comments on whether any new standards should also be applicable to independent gas transporters.

Comments on the revocation of the Order and the proposed licence modification should be received no later than 21 May 2004.

Table of contents

1. Rationale	1
Issue.....	1
Policy.....	3
Objective	4
Way forward	4
Regulatory Impact Assessment (RIA)	4
Structure of document	5
2. Proposed licence modification.....	6
The Standards.....	7
Implementation	9
Customer obligations under proposed condition.....	9
Exclusions where standards will not apply	9
Payments for failure.....	9
Accuracy and associated payments.....	10
Recovery of monies	10
Monitoring	11
Application to all customers	11
3. Timetable.....	13

1. Rationale

Issue

- 1.1. In response to complaints Ofgem has, since 2002, conducted an investigation of Transco's provision of gas connection services. Poor performance by a GT when providing connection services can hinder a Utility Infrastructure Provider's (UIP's) ability to compete in the connections market. Certain information necessary to provide a competitive quotation to a customer can only be obtained from a GT. Poor performance also affects those customers who currently have no realistic alternative to using Transco's connection services for all their connection requirements. If Ofgem does not take action to remedy the problems highlighted by the November 2002 consultation exercise¹ and its investigation, it is likely customers will not receive an appropriate level of service and the development of effective competition will be hindered.
- 1.2. The November 2002 consultation document² considered several issues:
- Transco's compliance with the provisions of the Order³;
 - the accuracy of quotations received from Transco for the provision of infrastructure and self lay connection services provided by Utility Infrastructure Providers (UIPs);
 - Transco's timeliness for effective response to queries from customers in respect of existing quotations;
 - timely attendance on site and effective undertaking of siteworks, and
 - non cost reflective charging.

¹ Ofgem's consultation 'The provision of gas connection services by Transco' November 2002 is available from the Ofgem website www.ofgem.gov.uk

² Please see footnote 1 above

³ For details about the Order please contact the Ofgem library at library@ofgem.gov.uk .

- 1.3. Further information about these issues can be found in the November 2002 consultation paper.⁴
- 1.4. In March 2003, Ofgem issued an update document⁵ providing a summary of the responses to the November 2002 consultation and Ofgem's views on the main issues. The majority of respondents stated that in the longer term the introduction of effective competition in gas connection services should alleviate the problems discussed in the November 2002 consultation. However, in the short term, the majority of respondents felt that action by Ofgem was required to improve Transco's connection services.
- 1.5. Following the consultation and further investigation, Ofgem is satisfied that there are shortcomings in Transco's provision of connection services and that the Order does not now adequately address all the areas of service which concern customers. In particular Ofgem has identified the following adverse impacts on customers of poor performance by Transco:
- customers being under or over charged;
 - customers incurring expense due to Transco failure to carry out siteworks as planned;
 - the gas network being extended in an inefficient manner, and
 - a negative impact on the reputation for UIP and Shipper competence which may result in customers being deterred from taking advantage of the competitive market.
- 1.6. In the long term effective competition should result in improved levels of service to customers. Ofgem has published a consultation on competition in one-off gas connections⁶ and intends to publish a follow up document during summer 2004. However, in the short term,

⁴ See footnote 1 above.

⁵ Ofgem's update document 'The provision of gas connection services by Transco' March 2003 is available from the Ofgem website www.ofgem.gov.uk

⁶ Ofgem consultation 'Competition in one-off gas connections' April 2003. Copies available on the Ofgem website www.ofgem.gov.uk

regulatory action is required to provide an ongoing incentive to Transco to improve the quality of its connection services.

Policy

- 1.7. The majority of respondents to the November 2002 consultation expressed the view that the Order had created a culture where Transco focuses on avoiding the penalties in the Order rather than increasing its service levels in respect of connections generally. Also, the connection standards of service (CSOS) introduced by the Order do not apply to customers other than shippers, shippers' agents, UIPs and GTs. Other customers are protected by the OSOS and GSOS although no liability payments are made under OSOS.
- 1.8. Ofgem considers that it is appropriate to revoke the Order and modify Transco's GT licence to include appropriate standards of service. The new licence condition may also replace those elements of Transco's existing OSOS and GSOS that relate to connections⁷.
- 1.9. Ofgem considers that all customers who receive a poor level of service in terms of timeliness and / or accuracy should be entitled to job specific compensation. One disadvantage of the existing arrangements is that customers can receive poor levels of service but still not qualify for compensation due to the majority of the existing standards allowing for a certain level of failure.
- 1.10. The new standards would be intended to ensure competition can develop while providing incentive to Transco to provide a reasonable level of service. The standards would be capable of modification in response to developments in the gas connections market.
- 1.11. The timescales and types of standard associated with Transco's provision of the different elements of connections services would vary according to whether the service provided was effectively a monopoly service or effectively a competitive service. Generally, Ofgem would expect to see

⁷ It will be necessary to obtain the consent of the Department of Trade and Industry for any GSOS changes.
Improving Transco's provision of gas connection services
Office of Gas and Electricity Markets

higher standards and liability payments associated with the provision of services where Transco is the sole or dominant provider than with services where customers can effectively choose to go elsewhere for their connection requirements.

Objective

- 1.12. This document forms part of the statutory consultation process on the revocation of the Order, the proposed modification to Transco's GT licence and if appropriate reform of the existing OSOS and GSOS. The proposed changes aim to promote effective competition in gas connections while protecting the interests of all customers for Transco's connection services by ensuring they receive a reasonable level of service in relation to Transco's duties as set out in the Gas Act. Ofgem intends to improve Transco's connections service through regulation and encouraging competition.

Way forward

- 1.13. Ofgem will consider responses to this document and then issue a further consultation document containing formal notices under section 29(5) of the Gas Act to revoke the Order and section 23(3) of the Gas Act to modify Transco's licence. This further consultation will contain a proposed draft licence modification together with any proposed changes to the relevant statutory instrument and Gas Act determination in the event that Transco's OSOS and GSOS require amendment in respect of connection activities.

Regulatory Impact Assessment (RIA)

- 1.14. Ofgem considers that an RIA is not required in this instance. The proposed way forward is intended to ensure an effective continuation and logical progression of a longstanding regulatory policy relating to the provision of connections services by Transco in its distribution networks. This situation may change in the event that respondents wish the licence condition to apply to independent gas transporters who are not currently subject to CSOS.

Structure of document

- 1.15. Chapter 2 of this document describes the proposed modification to Transco's GT Licence. Chapter 3 sets out a possible timetable to revoke the Order, amend the existing OSOS and GSOS and implement the proposed licence modification.
- 1.16. All non-confidential responses to this document will be published on the Ofgem website and held electronically in the Research and Information Centre. Any confidential material should be placed in appendices and clearly marked as confidential. If possible, please provide responses in an electronic form so they can be easily placed on the Ofgem website.
- 1.17. Responses to this document should be sent to Kiera Bower by email at kiera.bower@ofgem.gov.uk

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Responses should be received by 21 May 2004

2. Proposed licence modification

- 2.1. The proposed licence modification places duties on Transco in respect of two areas of connection activity. First, standards of service that should apply to activities where Transco is the sole or dominant provider. This includes Point of Connection (POC) information, Design Approval, and the provision of one off domestic connections within 23 metres of a relevant main⁸. Second, those other services that Transco is obliged to offer but are also effectively available from other providers, such as UIPs or other GTs. Ofgem considers that it might also be appropriate to include within the new licence condition the protection afforded to customers by the existing OSOS and GSOS where those standards apply to connections.
- 2.2. In order to facilitate a change to the GSOS, Ofgem will need to consult on an amendment to the relevant Statutory Instrument, the Gas (Standards of Performance Regulations) 2002 (as amended). Similarly, Ofgem will also need to revisit the Gas Act determination that brought into effect the OSOS.
- 2.3. All of the standards will be measured in relation to timeliness and where applicable in terms of accuracy. A financial sum paid by way of compensation for failure to meet a specified standard of performance shall be associated with all of the guaranteed type standards. Therefore, where Transco fails to provide an adequate level of service to a specific customer that customer shall be eligible for compensation. These sums paid are intended to provide an incentive to Transco to improve its performance and deliver the service requested by the customer. They are not intended to fully compensate the customer for any impact of the failure. All payments should be automatic and not require application to Transco by the customer. It should be noted that these payments bear no relation to the use of financial penalties by the Authority in respect of enforcement action.

⁸ Licence condition 4(B)(1) places a duty on a GT to give a domestic allowance which renders such jobs a

2.4. Ofgem envisages a licence condition requiring standards to be drawn up in a secondary document in order to facilitate amendment. Ofgem would be required to consult Transco and other interested parties prior to any change in this document. Possible options are listed below:

- a condition similar to the network code condition – Gas SLC9;
- a condition similar to the connection charging statement – Gas SLC4B; and
- a condition similar to special condition 36 of Transco’s licence for the LDZ incentive scheme and performance reporting.

The Standards

2.5. As mentioned above, these standards will be measured in relation to timeliness and where applicable in terms of accuracy. Details of the time scales and the associated payments for failure are a matter for consultation. Ofgem invites proposals from respondents to this consultation.

For services where Transco is the sole or dominant provider

2.6. The following areas of work are activities where it might be appropriate to put in place standards for connection services provided by Transco:

- provision of appropriate point of connection (POC) information;
- provision of design approval;
- provision of one off, domestic quotations within 23 metres of a relevant main;
- agreement of a site appointment;

- keeping a site appointment; and
 - achievement of the substantial or final completion date for siteworks.
- 2.7. Comments are invited in respect of the appropriateness of these activities as the basis for new standards and what would be appropriate timescales and associated payments for failure in each case.
- 2.8. These standards would not affect Transco's right to inspect any UIP installed infrastructure or refuse adoption of any asset if it is not fit for purpose.

For services where Transco is not the sole or dominant provider

- 2.9. These standards would cover work which is effectively open to competing providers such as UIPs and other GTs. However, Transco will continue to have a duty to provide certain connections work under the Gas Act. A balance is required to guarantee a reasonable level of service for customers requesting a connection under the Gas Act and allow customers to use other competitive connection service providers.
- 2.10. The following areas of work, in more competitive sectors of the market for connections such as new housing, might also require standards but would attract lower liabilities for failure and more relaxed timescales:
- the provision of a quotation;
 - the agreement of a site appointment;
 - the keeping of a site appointment; and
 - the achievement of the substantial or final completion date.

Comments are invited in respect of the appropriateness of these activities as the basis for standards and the appropriate timescales and associated payments for failure in each case.

Implementation

- 2.11. Transco will be required to put in place appropriate systems to enable it to calculate its performance, make appropriate payments to customers and report its performance to Ofgem.

Customer obligations under proposed condition

- 2.12. It would be necessary for the customer requesting the information from Transco to provide a defined minimum set of information appropriate to the type of connection requested. Transco should have appropriate systems to ensure that customer failure and the reason for that failure is rapidly communicated to the relevant customer.

Exclusions where standards will not apply

- 2.13. There may be a need for exclusions from the standards. These might include circumstances where Transco will not be required to make payment for failure or areas of work where the standards will not apply. Ofgem invites comments on whether there should be exclusions, what they should be and why. For information, The Gas (Standards of Performance Regulations) 2002 (as amended) already set out exemptions applicable to GSOS.

Payments for failure

- 2.14. Transco will be required to make payments where it does not meet the timescales set for each of the standards set out above. There follow a series of consultation questions on the type and level of penalty:
- a criticism of the existing CSOS standards relates to a perceived lack of incentive to perform once a standard is first breached. Ofgem therefore requests proposals as to how the new incentive regime should work. For example would it be appropriate for payments to simply increase on a daily basis by the same amount or should a

multiplier be employed to ensure that Transco was driven to resolve the longest delayed quotations?;

- comments regarding the level of daily payments are also requested. In this regard it would be useful to have suggestions as to how levels of penalty should vary between different types of job e.g. by value or class of customer (I&C/domestic), and
- at this time a capping arrangement is in place under the terms of the Order which results in Transco no longer being required to pay liabilities once it has paid out £4m in a calendar year. The capping mechanism has not been required since the Order came in to force. Ofgem invites comments on the merits of retaining a capping mechanism.

Accuracy and associated payments

- 2.15. Evidence from the investigation shows that accuracy of quotations and accuracy of records are important issues to customers. By introducing a liability payment for inaccurate information, an incentive could be placed on Transco to improve its performance and reduce the problem experienced by respondents to the November 2002 consultation in receiving inaccurate information or quotations.
- 2.16. Should the licence condition require Transco to have in place a system, similar to the one currently in place as required by the Order, to allow customers to query the accuracy of information provided under the standards? At present the accuracy of information provided can be challenged before or after the quotation/POC is accepted. Ofgem invites comments on the reform of these arrangements.

Recovery of monies

- 2.17. Ofgem considers that the cost of the payments made in respect of failure to meet the standards of service should not be passed through to customers via increased transportation or overhead charges. Paragraph 8 of standard licence condition 20 in the GT licence sets out that any

payments made under any licence condition or S33AA of the Gas Act should be made via shippers for onward transmission to customers (as long as they are aware what the payment is for). There is no such requirement in respect of payments under the existing connections standards. Ofgem invites comments as to whether such a principle should apply in respect of any payments made under the new standards.

Monitoring

- 2.18. Transco is required to report annually on its performance under the OSOS and GSOS. Ofgem considers that there will be a “bedding in” period for any new standards introduced through the licence and as such considers that Transco might reasonably be required to provide Ofgem with quarterly reports on its performance in relation to the standards of service and the amount of liability payments made.
- 2.19. At present the Order requires Transco to have in place an accuracy audit carried out by an independent body at Transco’s own cost. This audit only covers 36 jobs a quarter which is not a large sample in comparison to the number of jobs it carries out annually and therefore of limited value. Comments are invited in respect of possible amendment of the audit requirement currently in place under the Order.
- 2.20. As well as the arrangements in place in the licence condition for Transco to provide Ofgem with reports on its performance for each of the standards, developments in the connections market are regularly monitored by Ofgem through its connections industry review (CIR). Both methods of monitoring will inform Ofgem’s decisions of whether the licence condition or standards of service within the licence condition require amendment as the market develops.

Application to all customers

- 2.21. Ofgem considers that Transco should be given an incentive to perform well on behalf of all customer types including enquiries from one-off customers applying direct to Transco for a connection. Currently, the Order applies to Shippers, Shipper Agents, UIPs and GTs. One-off

domestic customers were deemed to be covered by the PSOS (public standards of service) now called OSOS which did not have specific compensation payments associated with them. These standards were recently reviewed together with GSOS which have specific compensation payments associated with them. However, of the standards of service set out in OSOS and GSOS only one, OSOS4(a) applies solely to connections work.⁹ Comments are invited in respect of the proposal to extend the scope of the existing connection standards of service to include all customers via the introduction of a new licence condition.

⁹ For more information on these standards of performance please visit the Ofgem website at www.ofgem.gov.uk and go to the Quality of Supply area of work page.
Improving Transco's provision of gas connection services
Office of Gas and Electricity Markets

3. Timetable

- 3.1. Responses due on this consultation by 21 May 2004.
- 3.2. Publication of next consultation document with draft licence condition July 2004.
- 3.3. Closing date for section 29 and 23 consultation on revocation of the Order and the proposed licence modification. Statutory Instrument amendment for GSOS and Authority direction for OSOS – End September 2004.
- 3.4. Authority to revoke Order, modify Transco's licence and amend OSOS / GSOS requirements – October / November 2004.
- 3.5. Modification of Transco's licence comes into effect removing the existing Order – November / December 2004.
- 3.6. Please note that these dates are provisional and do not take account of any delay in the event, for example, that a referral of the proposed licence condition is made to the Competition Commission.