

**The Connection and Use of System Code
(CUSC) under BETTA**

**Ofgem/DTI conclusions and publication of
near final legal text of the GB CUSC**

Volume 1

April 2004

Summary

This document is the conclusion of a series of consultations to develop a Connection and Use of System Code (CUSC) as part of the British Electricity Trading and Transmission Arrangements (BETTA), which are planned to be introduced in April 2005¹. It is proposed that under BETTA there will be a single CUSC for Great Britain ("the GB CUSC") which will be based on the current CUSC which applies only in England and Wales. This document consists of two volumes.

In this first volume:

- ◆ Ofgem/DTI conclude on the issues raised in the third consultation paper on a GB CUSC that was issued in December 2003 ('the third GB CUSC consultation')
- ◆ the timetable and process for the finalisation of the legal text for the GB CUSC is set out, and
- ◆ the amendments that have been introduced to the England and Wales CUSC since the version of the CUSC specified in the third GB CUSC consultation are listed, and views are invited on their inclusion in the GB CUSC.

The second volume contains near final legal text of the GB CUSC.

Ofgem/DTI's key conclusions from the third GB CUSC consultation are that:

- ◆ the GB CUSC should provide that all users whose connections were commissioned before the Transfer Date (30 March 1990) should be exempt from the provision of security cover for "Termination Amounts" in respect of connection assets
- ◆ the requirement for plant commissioned before the Transfer Date to be subject to the Connection Modification process if it seeks to remove technical facilities that existed at the Transfer Date should not automatically be applied to plant in Scotland, and each case should be considered on its merits, and

¹ Subject to Royal Assent to the Energy Bill by July 2004.

- ◆ the GB system operator should be party to Nuclear Site Licence Provisions Agreements (NSLPAs) in relation to sites in Scotland and that the GB system operator, the Scottish transmission owners and Nuclear Site Licensees should agree the framework for these agreements.

Ofgem/DTI propose that:

- ◆ the CUSC amendments approved for England and Wales, and identified in chapter 5, should be incorporated in the GB CUSC.

It is recognised that the progress of other current or planned consultations may also impact upon the drafting of the GB CUSC. Should the results of these other consultations have an impact upon the GB CUSC, such impacts will be addressed in separate future consultations on the GB CUSC.

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1. Rationale

- 1.1. The rationale for the British Electricity Trading and Transmission Arrangements (BETTA) reforms is set out in a consultation paper of December 2001² (the “December 2001 consultation”) and a report of May 2002³ (the “May 2002 report”).
- 1.2. On 30 January 2003, the DTI published the draft Electricity (Trading and Transmission) Bill (the E(TT) Bill) together with a Regulatory Impact Assessment (RIA), which explained the purpose and impact of the proposed primary legislation to enable the BETTA reforms and the expected costs and benefits of BETTA. On 27 November 2003 an Energy Bill was introduced into the House of Lords. The provisions of the draft E(TT) Bill were incorporated into this Energy Bill and are contained in Chapter 1 of part 3 of the Energy Bill (the E(TT) provisions). The Bill received its Third Reading in the House of Lords on 20 April 2004.
- 1.3. The December 2001 consultation proposed that the introduction of a single Connection and Use of System Code (CUSC) was an important part of the BETTA reforms, and sought views on whether under BETTA it was appropriate to adopt a single CUSC using the arrangements applying in England and Wales as a basis for consultation.
- 1.4. The May 2002 report noted that there was widespread support from respondents to the December 2001 consultation for the introduction of a CUSC to apply across GB with the attendant benefit of a single set of charging and access arrangements for connection to and use of the transmission system in GB, although it was noted that further consultation would be needed on the detailed form of the GB arrangements.

² The Development of British Electricity Trading and Transmission Arrangements (BETTA): A consultation paper, Ofgem, December 2001. Ofgem 74/01.

³ The Development of British Electricity Trading and Transmission Arrangements (BETTA): Report on consultation and next steps. Ofgem/DTI, May 2002. Ofgem38/02.

- 1.5. In December 2002 Ofgem/DTI published a consultation document⁴ on the arrangements that should be embodied in a CUSC to apply across GB (“the GB CUSC”). That consultation is referred to in this document as “the first GB CUSC consultation”.
- 1.6. In June 2003 Ofgem/DTI published conclusions⁵ on the issues raised in the first GB CUSC consultation and proposed a first draft for the legal text of a GB CUSC. That publication is referred to in this document as “the second GB CUSC consultation”.
- 1.7. In December 2003 Ofgem/DTI published conclusions⁶ from the second GB CUSC consultation and a second draft of proposed legal text for the GB CUSC. That publication is referred to in this document as the “third GB CUSC consultation”.
- 1.8. The rationale for this document is to consider the responses received to the third GB CUSC consultation, to reach conclusions on the issues raised in that document and to present a near final draft of the GB CUSC legal text.

⁴ The Connection and Use of System Code under BETTA, Ofgem/DTI consultation on a CUSC to apply throughout GB, Ofgem/DTI, December 2002. Ofgem 79/02.

⁵ Volumes 1 and 2 of “The Connection and Use of System Code under BETTA. Ofgem/DTI conclusions and consultation on the legal text of a CUSC to apply throughout GB, June 2003”, Ofgem 45 and 46/03.

⁶ Volumes 1 and 2 of “The Connection and Use of System Code under BETTA, Ofgem/DTI conclusions and second consultation on the legal text of a CUSC to apply throughout GB, November 2003”, Ofgem 167a and 167b/03.

2. Timetable

2.1. The proposed timetable for the development of the GB CUSC is now as follows:

- ◆ this paper sets out Ofgem/DTI's conclusions on the issues raised in the third GB CUSC consultation. Ofgem/DTI believe that the issues on which they are concluding have been adequately addressed and are not seeking further views. This document also considers each of the CUSC amendments that have been approved by the Authority since the issue of the second proposal for legal text for a GB CUSC and sets out proposals for whether such amendments should be incorporated into the GB CUSC. This paper also sets out near final legal text for the GB CUSC, together with an explanation of the derivation of that text
- ◆ it is anticipated that the GB CUSC will be created by designating changes to the prevailing CUSC that are considered necessary for it to apply across GB, through the use of powers provided in the E(TT) provisions of the Energy Bill
- ◆ further changes to the GB CUSC may be required in the run-up to BETTA go-live. For example, amendments may have been made to the current CUSC (which is in operation in England and Wales) which may need to be reflected in the GB CUSC that exists at BETTA go-live. Should such changes arise, their inclusion in the GB CUSC will be consulted upon at that time. In the main the form of such consultations is likely to be an open letter rather than a full consultation document
- ◆ in addition, Ofgem/DTI will be undertaking consistency checks between the documents that form the elements of the BETTA legal framework in addition to a legal review of the documents. Such reviews may lead to some changes to the legal texts, and
- ◆ it is expected that pre-designation text for the GB CUSC will be published, together with a rationale for its derivation, at the end of July 2004.

- 2.2. Views are sought on the applicability of recently implemented amendments to the CUSC which applies in England and Wales, as described in chapter 5. Any responses should be provided by Friday 28 May 2004 and will be reflected in the next version of the legal text for the CUSC unless they are such that they need to be consulted upon separately. All responses will normally be published on the Ofgem website and held electronically in Ofgem's Research and Information Centre unless there are good reasons why they must remain confidential. Respondents should try to put any confidential material in appendices to their responses. Ofgem prefers to receive responses in an electronic form so they can easily be placed on the Ofgem website.
- 2.3. Any responses should be sent by Friday 28 May 2004 to:
- David Halldearn
BETTA Project
Office of Gas and Electricity Markets (Ofgem)
9 Millbank
London
SW1P 3GE
Fax: 020 7901 7479
- 2.4. Please e-mail responses to BETTA.consultationresponse@ofgem.gov.uk marked "Response to GB CUSC conclusion". Any consultation responses will be forwarded to the DTI.
- 2.5. If you wish to discuss any aspect of this document, please contact Lesley Nugent, e-mail lesley.nugent@ofgem.gov.uk , telephone 0141 331 2012 or Owain Service at DTI, email owain.service@dti.gov.uk , telephone 020 7215 2779.

3. Background

- 3.1. In the December 2001 consultation Ofgem set out its vision of a model that would enable all consumers in Great Britain to benefit from more competitive wholesale markets. The set of proposed reforms outlined in that paper is termed BETTA.
- 3.2. On 15 April 2002, the Government announced its intention to bring forward legislation to implement BETTA when Parliamentary time allows⁷. As noted in chapter 1, this legislation is included in the Energy Bill.
- 3.3. The requirement for a GB CUSC under BETTA was discussed in the December 2001 consultation paper and the May 2002 report. In December 2002, the first consultation on a GB CUSC was published.
- 3.4. Also in December 2002, Ofgem/DTI published consultation documents on the regulatory framework for transmission licensees⁸, on the GB Balancing and Settlement Code (BSC)⁹, and on the GB Grid Code¹⁰.
- 3.5. On 30 January 2003, the DTI published a draft of the Electricity (Trading and Transmission) Bill¹¹ (the E(TT) Bill). This was subject to pre-legislative scrutiny by the Trade and Industry Committee (TIC) and the TIC published a report¹² on 8 April 2003. The committee published the Government's response¹³ to its report on 2 July 2003.

⁷ See Hansard, 15th April 2002 Official Report Column 748W.

⁸ "Regulatory framework for transmission licensees under BETTA, An Ofgem/DTI consultation", December 2002. Ofgem 88/02.

⁹ 'The Balancing and Settlement Code under BETTA, Ofgem/DTI consultation on a BSC to apply throughout GB', Ofgem/DTI, December 2002. Ofgem 80/02.

¹⁰ "The Grid Code under BETTA, Ofgem/DTI consultation on the development of a Grid Code to apply under BETTA", December 2002. Ofgem 78/02.

¹¹ See DTI press notice P/2003/60 published 30 January 2003 on www.dti.gov.uk follow 'Press Notices'.

¹² 'The British Electricity Trading and Transmission Arrangements: Pre-legislative scrutiny of the draft Electricity (Trading and Transmission) Bill. Fifth report of session 2002-3. Volumes 1 and 2.' See www.parliament.uk/parliamentary_committees/trade_and_industry.cfm.

¹³ "Government response to the Trade and Industry Committee's Fifth Report of Session 2002-03" (HC 468-I), available at www.parliament.uk and follow Committees to the Trade and Industry Committee, Tenth The CUSC under BETTA Conclusions Volume 1
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- 3.6. On 31 January 2003, Ofgem/DTI published a consultation on changes to electricity generation, distribution and supply licences under BETTA¹⁴. That consultation proposed that all licensees in GB would be required to comply with the GB CUSC and accede to the GB CUSC Framework Agreement.
- 3.7. On 13 June 2003, Ofgem/DTI published the second consultation on a GB CUSC, containing a first proposal for legal text of the GB CUSC¹⁵. In June, Ofgem/DTI also published a first proposal for the legal text of the GB BSC¹⁶ and the first consultation on a System Operator – Transmission Owner Code (SO-TO Code)¹⁷ or STC to apply between the GB system operator and transmission owners.
- 3.8. Also in June 2003, Ofgem/DTI published a second consultation on the regulatory framework for transmission licensees¹⁸.
- 3.9. On 30 September 2003, Ofgem/DTI published the second consultation on the Grid Code under BETTA¹⁹ and a second consultation on the changes to generation, distribution and supply licences under BETTA²⁰.
- 3.10. On 20 November 2003, Ofgem/DTI published a consultation on smaller generator issues under BETTA²¹.

Report for 2002-03

¹⁴ "Changes to electricity generation, distribution and supply licences under BETTA, An Ofgem/DTI consultation", January 2003, Ofgem 04/03

¹⁵ "The Connection and Use of System Code under BETTA, Ofgem/DTI Conclusions and Consultation on the legal text of a CUSC to apply throughout GB", June 2003, Ofgem 46/03.

¹⁶ "The Balancing and Settlement Code under BETTA, Ofgem/DTI Conclusions and Consultation on the legal text of a GB BSC", June 2003, Ofgem 40/03.

¹⁷ "The SO-TO Code under BETTA, Summary of responses and conclusions on Volumes 3 and 4 of the December 2002 consultation on the regulatory framework for transmission licensees under BETTA, and further consultation on content of the SO-TO Code", Ofgem/DTI, June 2003, Ofgem 41/03

¹⁸ "Regulatory framework for transmission licensees under BETTA – Second consultation on electricity transmission licences under BETTA: An Ofgem/DTI consultation", June 2003, Ofgem 59/03

¹⁹ "The Grid Code under BETTA, Ofgem/DTI conclusions and consultation on the text of a GB Grid Code and consultation on change co-ordination between the STC and user-facing industry codes", September 2003, Ofgem 111/03.

²⁰ "Changes to generation, distribution and supply licences under BETTA, A second Ofgem/DTI consultation", September 2003, Ofgem 114/03.

- 3.11. On 26 November 2003, the Government announced its intention to bring forward an Energy Bill. On 27 November 2003 the Energy Bill was introduced into the House of Lords. This Bill incorporates the provisions previously presented in the draft E(TT) Bill. Such legislation is referred to in this document as the E(TT) provisions of the Bill or, based upon an assumption of Royal assent to such a Bill, as the E(TT) provisions of the Act. The Energy Bill received its Third Reading in the House of Lords on 20 April 2004.
- 3.12. On 28 November 2003 Ofgem/DTI published the third consultation on the GB BSC²² together with a second draft of legal text for the BSC to apply GB-wide.
- 3.13. On 16 December 2003, Ofgem/DTI published the third consultation on the GB CUSC²³ together with a second draft of the legal text for the CUSC to apply GB-wide, and on 19 December 2003 a third consultation on the regulatory framework for transmission licensees under BETTA²⁴.
- 3.14. On 14 January 2004 Ofgem/DTI published a third consultation on the impact of BETTA on electricity generation, distribution and supply licences²⁵ and on 24 February 2004 a consultation on the establishment of GB panels²⁶ for the BSC, CUSC and Grid Code.
- 3.15. Ofgem/DTI have also recently published a second document on the position of smaller generators under BETTA²⁷, a third consultation on the GB Grid Code²⁸,

²¹ "Smaller generator issues under BETTA: An Ofgem/DTI consultation document", November 2003, Ofgem 145/03

²² "The Balancing and Settlement Code under BETTA, Ofgem/DTI conclusions and second consultation on the legal text of a GB BSC", November 2003, Ofgem 152/03

²³ "The Connection and Use of System Code under BETTA, Ofgem/DTI conclusions and second consultation on the legal text of a CUSC to apply throughout GB", December 2003, Ofgem 167/03

²⁴ "Regulatory framework for transmission licensees under BETTA, Third consultation on electricity transmission licences under BETTA, An Ofgem/DTI consultation", December 2003, Ofgem 178/03

²⁵ "Changes to the electricity generation, distribution and supply licences under BETTA, A third Ofgem/DTI consultation", January 2004, Ofgem 06/04

²⁶ "Establishing GB panels for the CUSC, the Grid Code and the BSC under BETTA, Ofgem/DTI consultation", February 2004, Ofgem 38/04

²⁷ "Smaller generator issues under BETTA: An Ofgem/DTI conclusions document", April 2004

²⁸ "The Grid Code under BETTA: Ofgem/DTI conclusions and second consultation on the text of a GB Grid Code and conclusions on change management between the STC and each of the GB CUSC, GB BSC and GB Grid Code", April 2004

together with a second draft of the legal text for the Grid Code to apply GB-wide and a second full consultation on the SO-TO code²⁹, together with a further draft of the legal text for the STC.

- 3.16. All of the consultation papers mentioned, together with others which have less relevance to the GB CUSC can be found on the Ofgem web-site at www.ofgem.gov.uk (select 'BETTA Publications').
- 3.17. Although Ofgem/DTI believe that the legal text for the GB CUSC shown in volume 2 of this document is close to its final form, work that is ongoing in other areas of the BETTA project, such as the changes required to transmission licences under BETTA, the drafting of the STC, and the development of the GB Grid Code could result in the need to make changes. If, as a result of work in these other areas, changes to the GB CUSC seem necessary, Ofgem/DTI will consult upon such changes at that time. In addition, in respect of any changes which are approved by the Authority to the CUSC which is currently operational in England and Wales, Ofgem/DTI will consult on whether such changes should be incorporated in the GB CUSC. As mentioned in chapter 2, such consultations are likely to take the form of an open letter rather than a full consultation paper.
- 3.18. This document does not consider the arrangements necessary to make the legal transition to a CUSC to apply it across GB. This document makes proposals only in respect of the enduring arrangements. The legal transition to a GB CUSC and other practical transitional issues will be consulted upon at a later date in the context of implementation and transitional issues.

²⁹"The SO-TO Code under BETTA: Ofgem/DTI summary of responses and conclusions on the June 2003 document and subsequent mini consultations, and further consultation on the draft legal text; proposals for CUSC changes in relation to limitation of liability; and matters relating to the timescales for processing new connection applications." April 2004

4. Summary of responses and Ofgem/DTI views

- 4.1. Seven responses were received to the third GB CUSC consultation. A list of respondents is shown in Appendix 1. The responses are available on the Ofgem website at www.ofgem.gov.uk.
- 4.2. This document considers responses to Ofgem/DTI's third consultation on a GB CUSC. This chapter therefore sets out respondents' views only where disagreements or new information in relation to Ofgem/DTI's conclusions were brought forward. Ofgem/DTI is grateful for respondents' support in other areas. The full text of responses received to the third consultation on the GB CUSC can be found on Ofgem's website. The matters raised in the third GB CUSC consultation and Ofgem/DTI's conclusions are considered in the order that those matters were addressed in that document. Matters raised on other issues by respondents are also addressed at the end of this chapter.

GB System Operator contracting with users

- 4.3. In the third GB CUSC consultation Ofgem/DTI restated their previous conclusion that the GB system operator should be responsible for contracting with users for connection to and use of the transmission system, but that some form of limited contractual relationship between users and transmission owners will be desirable under BETTA.
- 4.4. One respondent refuted Ofgem/DTI's statement that the model proposed (where users contract with a system operator independent of generation and supply interests) is consistent with best practice.
- 4.5. Ofgem/DTI stated in the third GB CUSC consultation that a fundamental part of the delivery of BETTA is that generators and suppliers can gain contractual access to the GB transmission system from an entity that is itself independent of generation and supply interests. Ofgem/DTI also stated that they consider that to place connection agreements with transmission owners would significantly undermine this objective. Ofgem/DTI further noted that the proposed contractual model is consistent with best practice in this area, citing as an example the United States of America.

- 4.6. The respondent that did not agree with this argument stated that Ofgem/DTI's proposed model is not consistent with the model of best practice as in the best practice model, the independent system operator is independent of transmission ownership interests.
- 4.7. Ofgem/DTI understand that the key driver behind the establishment of independent system operators in the United States is the desire to provide independent access to transmission. In most cases in the US, transmission owners have affiliated generation and supply interests. It is the requirement to ensure that the system operator is independent of generation and supply interests that leads to the appointment of an independent system operator with no transmission ownership interests, as there are few (if any) parties with transmission ownership interests that do not also have generation and supply interests in the US.
- 4.8. Ofgem/DTI therefore continue to believe that the model proposed is consistent with best practice in this area.
- 4.9. As noted above, Ofgem/DTI also stated in the third GB CUSC consultation that some form of limited contractual relationship between users and transmission owners will be desirable under BETTA. The June 2003 STC consultation proposed that it may be appropriate that the Interface Agreement should be an agreement between a user and a transmission owner and that the standard form on which the agreements should be based would be set out as exhibits in both the STC and the GB CUSC. The draft GB CUSC legal text published as volume 2 of the third GB CUSC consultation therefore contained amendments to the CUSC to reflect that in relation to connection sites in England and Wales, the Interface Agreement will be between the user and NGC, and in relation to connection sites in Scotland, between the user and the Relevant Transmission Licensee. It also contained amendments to Exhibit O (Interface Agreement) to reflect this.
- 4.10. Five respondents commented on this issue. One respondent agreed that it was appropriate for the Interface Agreement to be between the user and the transmission owner, and considered the drafting adequate.
- 4.11. Two considered that under BETTA, the majority of obligations in the Interface Agreement should be in the body of the CUSC, as they are not relevant to

transmission owners. For example, it noted that the Interface Agreement provides for transmission owners to move assets to a different place on site. The respondent considered that if a transmission owner wants to move assets, and such relocation would ultimately and commercially affect a user's operation, then the transmission owner should arrange such relocation through the GB system operator.

- 4.12. Ofgem/DTI note that where the relocation of an asset could commercially affect a user's operation, such relocation will require a planned outage on the transmission system and as such, the decision to relocate can only be made by the GB system operator and the transmission owner concerned after they have followed the outage planning process in the STC. The provisions within the Interface Agreement relating to relocation set out the processes to be followed by the relevant parties, with the assumption that all parties have taken into account their broader statutory and licence obligations.
- 4.13. Two respondents considered that the Scots Law changes made to the Interface Agreement were not sufficient to ensure that these agreements are satisfactory for Scotland and one of these two considered that in any event, it is not appropriate to use a standard form for existing Scottish agreements - the existing agreements should be modified where necessary. Both respondents provided specific drafting comments on the draft legal text, and these are discussed later in this chapter, as are the respondents' comments in relation to Scots law.
- 4.14. With regard to the respondent's comment that the existing agreements in Scotland should be modified, as opposed to adopting a standard form, Ofgem/DTI consider that it is an important aspect of BETTA that market participants enter into agreements for connection and use of system, together with the other agreements (such as Interface Agreements) that must be entered into pursuant to this process, that are in a form set out in a document which is transparent to the whole market (that is, the CUSC). If agreements, including existing Interface Agreements in Scotland, are not in a form prescribed by the CUSC, Ofgem/DTI consider that potentially BETTA will not be delivered for existing users in Scotland.
- 4.15. In addition, the CUSC currently requires users in England and Wales to enter into Interface Agreements "based substantially on the forms set out in Exhibit O

to the CUSC". If this was not also to be an obligation on users in relation to connection sites in Scotland, the CUSC obligations on users in Scotland would differ from the obligation on parties in England and Wales. Ofgem/DTI have previously concluded that the GB CUSC will be based on the existing CUSC, introducing changes only where necessary for the CUSC to apply GB wide. Ofgem/DTI do not consider that it is either necessary or appropriate to change the current CUSC obligation on parties in England and Wales in order for the CUSC to apply GB wide under BETTA, and consider that it is therefore appropriate that the obligation should apply to all CUSC parties under BETTA.

- 4.16. Ofgem/DTI therefore consider that it is appropriate that Interface Agreements between users and transmission owners should be based substantially on the forms set out in Exhibit O to the CUSC. However, in view of the differences between Scots and English law which need to be reflected in the Interface Agreements, Ofgem/DTI are persuaded that it is better to have a separate pro forma Interface Agreement for sites in Scotland. This is discussed further in chapter six.
- 4.17. As noted above, Ofgem/DTI have previously proposed that the standard form on which Interface Agreements should be based should be set out as exhibits to both the STC and the GB CUSC under BETTA. Ofgem/DTI have given further thought to this, and a number of other related areas of code drafting (most notable, OC8, sections 6.1-6.3 of the Connection Conditions of the Grid Code and potentially the General Conditions in relation to the governance arrangements applying in relation to a defined set of electrical standards that have recently been introduced to NGC's Grid Code) and believe that it is appropriate to adopt a different approach to code drafting in these areas. The common feature of these provisions is that they address matters which need to apply to transmission owners in an identical form to the way in which they appear in the user facing code. Were the usual drafting approach to be adopted, the text would be reproduced in the STC for the purpose of placing the necessary obligations upon transmission owners. To minimise the problems associated with having what needs to be duplicate text appearing in both sets of codes, Ofgem/DTI consider that the provisions should only be set down in one place (ie where they currently arise, the user-facing code). Ofgem/DTI therefore propose that where such instances occur, transmission owners should be

obliged under the STC to comply with the relevant text that appears in the user-facing code.

- 4.18. For example, as described above, in the case of the pro forma Interface Agreement, it is proposed, under the CUSC to develop a separate Exhibit O applying in relation to sites in Scotland. It is envisaged that transmission owners would be required by the STC to enter into agreements (essentially in the form of the pro forma) with users. Previously Ofgem/DTI proposed to duplicate the interface agreement pro forma in the STC. However, Ofgem/DTI are now of the view that it would be more appropriate, from the point of view of drafting simplicity and ease of change coordination, to simply refer to the relevant CUSC Exhibit O drafting in the STC. This approach has also been adopted in relation to Grid Code OC8 (Safety Co-ordination) through an obligation in the STC that requires transmission owners to comply with OC8 of the Grid Code. It should be noted that adopting this drafting approach means that, whilst contractual obligations are owed between the GB system operator and transmission owners on the one hand (under the STC) and the GB system operator and users on the other hand (under the Grid Code or CUSC), when considering changes to these obligations only one set of text is considered rather than two sets of text. Ofgem/DTI consider it is appropriate to adopt this approach in relation to the pro forma interface agreements as the pro forma interface agreements in Scotland for the Relevant Transmission Licensee would be identical were it to be placed under both the STC and CUSC.
- 4.19. Ofgem/DTI therefore consider that the standard forms on which Interface Agreements should be based under BETTA should be set out as an exhibit to the GB CUSC. The STC should require transmission owners to enter into an Interface Agreement in the form set out in the CUSC exhibit that relates to them. This has implications for CUSC governance provisions, as transmission owners will have an interest in changes to this exhibit and may wish to propose changes themselves. Ofgem/DTI therefore consider it is appropriate that the CUSC Amendments Panel can consider proposed amendments from a Relevant Transmission Licensee, in relation to the pro forma Interface Agreement for sites in Scotland only. Legal drafting is contained in volume 2 of this document to reflect this.

- 4.20. In addition, Ofgem/DTI have made further changes to the draft Interface Agreement legal text published in December 2003 as a result of responses to the third GB CUSC consultation and progress in other areas of BETTA such as the development of the STC. These changes are described in chapter 6, and reflected in the draft text in volume 2 of this document.

Governing law and jurisdiction

- 4.21. In the second GB CUSC consultation, Ofgem/DTI concluded that the governing law of the GB CUSC should be English law and that jurisdiction should be conferred exclusively on the courts of England and Wales. Ofgem/DTI also concluded that the GB CUSC should be implemented by modifying the current CUSC.
- 4.22. In light of one respondent's comments regarding the exclusion of the jurisdiction of Scottish courts, Ofgem/DTI stated in the third GB CUSC consultation their belief that their proposals for legal jurisdiction do not discriminate against Scottish participants, arguing that the circumstances where a party to the CUSC finds it necessary to take an issue to the courts are likely to be very rare given the dispute resolution processes built into the CUSC. Ofgem/DTI also stated their belief that the proposed arrangements for the GB CUSC are consistent with the Network Code, which also has a GB scope and provides for the exclusive jurisdiction of English courts.
- 4.23. This respondent commented on this issue again, in its response to the third GB CUSC consultation, maintaining its previously stated view that it saw no reason why the governing law should be that of England and Wales and even less reason to exclude the jurisdiction of the Scottish Courts. The respondent maintained that even if the governing law is to be that of England and Wales, there is no reason to exclude the jurisdiction of the Scottish courts to decide a matter using English law.
- 4.24. Ofgem/DTI note this respondent's views, and note also that similar views were expressed in relation to this issue in the context of the consultation on a GB BSC. Ofgem/DTI have previously argued that it is more efficient to introduce the GB CUSC (and the GB BSC) as an amendment to the existing code. Such a move would avoid the need for introduction of a new CUSC and the need to

run-off the old CUSC. Ofgem/DTI's expectation was that, if it were necessary to change the jurisdiction provisions in the CUSC Framework Agreement, this could not be done without introducing a new agreement. Thus the balance to be struck was one between significant disruption of England and Wales CUSC parties (albeit as a one-off event) and a small risk of some disruption for a future Scottish party forced to take action in an English or Welsh court.

- 4.25. However, Ofgem/DTI have considered further the powers in the E(TT) provisions in the Energy Bill and believe that these would give the Secretary of State the ability to amend the legal jurisdiction provisions in the CUSC to include Scottish courts as well as the courts of England and Wales (through the power to make a licensing scheme). Ofgem/DTI therefore conclude that the governing law should remain English law, but that the provisions of the CUSC, including its Framework Agreement, should be altered to allow for jurisdiction to be extended to Scottish courts, as well as the courts of England and Wales. The legal drafting included in volume 2 has been altered to reflect this conclusion.

Governance

- 4.26. Two respondents commented on governance of the GB CUSC. One noted that governance arrangements will need to be such as to prevent the contractual chain between the Scottish user and the transmission owner from being broken by changes to one of the codes in the chain. Another respondent stated that while it maintained the view that transmission owners should be represented on the GB CUSC Amendments Panel, as a minimum there should be well considered cross code amendment provisions to ensure cross code consistency and coordinated, practical implementation of changes.
- 4.27. Ofgem/DTI stated in the third GB CUSC consultation the reasons why it considered that transmission owners should have no role in the amendment or modification process under the GB CUSC. As noted above, further thinking in relation Interface Agreements under BETTA has implications for CUSC governance provisions, and Ofgem/DTI consider it is appropriate that the CUSC Amendments Panel should be able to consider proposed amendments from any Relevant Transmission Licensee, only in relation to the proforma Interface

Agreement for sites in Scotland. Legal drafting is contained in volume 2 of this document to reflect this.

4.28. In relation to respondents' comments on consistency of changes between codes, Ofgem/DTI have recently published a third consultation on the GB Grid Code³⁰, which concluded on the issue of change co-ordination between codes. The conclusion in relation to the CUSC is that Section 8 of the CUSC should be amended to:

- ◆ oblige the CUSC Panel to establish joint working arrangements with the STC Committee (in the same way that they are currently obligated in respect of Core Industry Documents in Section 8.14), and
- ◆ enable the Panel, when setting up a working group to consider a Proposed Amendment which the Panel believes may impact upon the STC (and only under such circumstances), to invite representatives of the STC committee to become members of the working group for the consideration of such a proposed Amendment, such membership to be subject to all the other provisions of working group membership.

4.29. This conclusion is reflected in the draft legal text in volume 2 of this document.

Election of panel members and structure of Amendments Panel

4.30. In the third GB CUSC consultation, Ofgem/DTI concluded that there is no need to alter the role or constitution of the CUSC Amendments Panel, but recognised that there is an argument for further consideration of a process of re-election of elected Panel members to recognise the wider scope of the GB CUSC.

4.31. Four respondents commented on this issue. Three respondents agreed with Ofgem/DTI's conclusion in relation to the role and constitution of the CUSC Amendments Panel and the need to consider further a process of re-election. One respondent argued that the re-election of the Panel is not necessary as the

³⁰ "The Grid Code under BETTA: Ofgem/DTI conclusions and second consultation on the text of a GB Grid Code and conclusions on change management between the STC and each of the GB CUSC, GB BSC and GB Grid Code", April 2004

key Scottish Participants are already CUSC signatories and had the opportunity to vote in the last CUSC Panel elections. It noted that at BETTA go-live, Ofgem/DTI can use the existing CUSC provisions to nominate an additional CUSC member, and also noted that the current CUSC Panel expires within a matter of months after BETTA go-live.

- 4.32. Ofgem/DTI are grateful for respondents' comments on this issue. As Ofgem/DTI have previously stated, the introduction of BETTA will widen the scope of the CUSC to include a new potential electorate (and indeed potential candidates) for Panel members. Ofgem/DTI believe that it is right to recognise this change by providing an opportunity for the re-election of the Panel members who are elected by CUSC users. This issue is considered further in the consultation on the establishment of GB panels³¹ for the BSC, CUSC and Grid Code. The conclusions in relation to this consultation will be published shortly.

Mandatory Ancillary Services

- 4.33. In the third GB CUSC consultation, Ofgem/DTI concluded that, subject to the outcome of the consultation on small generator issues, there is no need to make any changes to the arrangements for mandatory ancillary services in the CUSC for the CUSC to apply throughout GB.
- 4.34. Ofgem/DTI have recently issued a second document on small generator issues under BETTA which proposes changes which will impact upon the GB CUSC. Should it be concluded that such changes are required to the GB CUSC legal text relating to mandatory ancillary services, these changes will be consulted on separately.

Small generators

- 4.35. In the light of the recent publication of Ofgem/DTI's second document on small generator issues under BETTA, Ofgem/DTI do not intend to address in this GB CUSC document the matters that have been raised in the past in relation to the

³¹ "Establishing GB panels for the CUSC, the Grid Code and the BSC under BETTA, Ofgem/DTI consultation", February 2004, Ofgem 38/04

CUSC that are relevant to small generators. Ofgem/DTI note that should the changes to the GB CUSC that have been proposed in the Small generators document be concluded to require any changes to the GB CUSC legal drafting, these will be consulted upon separately.

“Transfer Date” under the CUSC

- 4.36. The third GB CUSC consultation proposed that the GB CUSC should provide that all users in Scotland and England and Wales whose connections were commissioned before the Transfer Date (30 March 1990) should be exempt from the provision of security cover for “Termination Amounts” in respect of connection assets. It also proposed that the requirement for plant commissioned before the Transfer Date to be subject to the Connection Modification process if it seeks to remove technical facilities that existed at the Transfer Date should not automatically be applied to plant in Scotland, and each case should be considered on its merits.
- 4.37. Four respondents commented on these proposals. One noted that Scottish users will not be obliged to make technical facilities available as a Transfer Date provision, and sought clarity as to how the process of treating each case on its merits will be performed.
- 4.38. Two respondents agreed with both proposals, although one noted that it should be clarified that the exemption from the provision of security cover for “Termination Amounts” is in respect of connection assets and not connection sites.
- 4.39. Another respondent also agreed with both proposals and stated that if the GB system operator requires technical facilities beyond those in the Grid Code, then providers should receive appropriate remuneration.
- 4.40. In light of this respondent’s comment, Ofgem/DTI consider it is appropriate to clarify that the process of treating each case on its merits may mean that where connectees currently provide technical facilities beyond those contained in the Grid Code, as part of their connection, it may be that they will be requested to continue to provide these facilities to the GB system operator. In addition, there may be occasions where a user is providing certain technical facilities for which

it is appropriate that the user will be remunerated. These matters will need to be the subject of discussion between the GB system operator and users and it would be inappropriate for Ofgem/DTI to anticipate in which cases remuneration may be appropriate.

- 4.41. Ofgem/DTI welcome the support for these proposals and conclude that the GB CUSC should provide that all users in Scotland and England and Wales whose connections were commissioned before the Transfer Date (30 March 1990) should be exempt from the provision of security cover for “Termination Amounts” in respect of connection assets. In addition, Ofgem/DTI conclude that the requirement for plant commissioned before the Transfer Date to be subject to the Connection Modification process if it seeks to remove technical facilities that existed at the Transfer Date should not automatically be applied to plant in Scotland, and each case should be considered on its merits.

Transitional issues

- 4.42. The third GB CUSC consultation noted that comments from respondents on transitional issues would be used to inform the development of proposals for transitional arrangements.
- 4.43. Five respondents provided further comment in relation to transitional issues. One was concerned that the scope of transitional issues remains undefined, and another commented that work is needed in the short term to establish how transitional arrangements will work. Another respondent was concerned that, once the CUSC framework itself has been established, the process by which a working set of arrangements under the CUSC would be established was not yet clear. It considered this to be a task of significant magnitude.
- 4.44. One respondent stated that it considered that phased transition to the new charging regime is necessary, and also expressed concern regarding transmission access as it considered that it is important to give assurance of access to existing and future users. Another respondent considered that early debate is required to establish if there is to be a cut-off date when offers will cease to be processed by the transmission owners.

4.45. Ofgem/DTI welcome these further comments on transition which, as noted above, will be used to inform the development of proposals for transitional arrangements. Ofgem/DTI also note respondents' concerns regarding the timetable in relation to establishing transitional arrangements. The transitional arrangements are currently being developed by Ofgem/DTI in conjunction with the transmission licensees and ELEXON and a group has been established to take forward such arrangements. The first meeting of the Transition and Implementation Group (TIG) was held on 11 March 2004, and since then the group has met several times to discuss the approach to transition and to develop a framework in which to take forward transition and implementation issues. Ofgem/DTI are aware that the transitional arrangements will impact on a number of parties and ELEXON and NGC have been communicating with such parties to provide early indications of the activities that need to be undertaken during the transition period. It is the intention to communicate the approach to impacted parties in May with supporting transitional text being issued in the following weeks.

Nuclear Site Licences

4.46. The third GB CUSC consultation stated that Ofgem/DTI consider that BETTA should not require any change to any Nuclear Site Licence and that BETTA should seek to put in place arrangements which have exactly the same effect on such licences as current arrangements. Ofgem/DTI noted that agreements equivalent to the two Nuclear Site Licence Provisions Agreements (NSLPAs) currently referred to in the CUSC, exist in relation to sites in Scotland and it will therefore be necessary to ensure that the provisions of these agreements take precedence over the provisions of the GB CUSC in relation to modifications (as currently provided for in England and Wales by clause 6.9.4 of the CUSC). Ofgem/DTI also noted that the GB system operator and transmission owners will have a role to play in the satisfaction of provisions under these agreements under BETTA. Ofgem/DTI proposed that the GB system operator should be party to NSLPAs in relation to sites in Scotland and that the GB system operator, Scottish transmission owners and Nuclear Site Licensees should agree the framework for these agreements.

- 4.47. Three respondents commented on this issue. All supported Ofgem/DTI's proposed approach. One noted that STC back-off obligations on transmission owners will have to be developed as transmission owners will have an integral role in NSLPAs, and another stated that NSLPAs will predominantly apply to transmission owner activities. The third respondent commented that the minimum change required for BETTA would be the addition of the GB System operator as a party to the existing NSLPAs in Scotland.
- 4.48. Ofgem/DTI are grateful for these comments and note that NGC and the Scottish transmission owners have initiated discussion of these agreements and will progress the matter in order that appropriate agreements are in place for BETTA. Ofgem/DTI note that minor CUSC drafting changes will be required at the end of this process to identify specific additional NSLPAs in Section 11 of the CUSC, where existing NSLPAs are listed.

Approved CUSC Amendments

- 4.49. The third GB CUSC consultation sought views on the inclusion in the GB CUSC of CAP044, an approved amendment to the England and Wales CUSC, the purpose of which is to amend the CUSC election arrangements to provide for and define Resigning Alternate Members.
- 4.50. Two respondents commented on approved CUSC Amendments. One stated that it could see no reason why this amendment should not be incorporated in the GB CUSC, and another restated its view that in principle all approved Amendments to the England and Wales CUSC should be incorporated in the GB CUSC unless there is a strong reason why this would not be appropriate.
- 4.51. Ofgem/DTI conclude that CAP 044 should be incorporated in the GB CUSC.

Comments on legal drafting

- 4.52. A number of respondents provided specific comments on the proposed legal drafting of the GB CUSC, published as volume 2 of the third GB CUSC consultation.

Use of the term "NGC"

- 4.53. In the draft legal text published in December 2003, Ofgem/DTI reinstated references to NGC (which had been replaced in the draft text published in June 2003 as volume 2 to the second GB CUSC consultation with the term 'GB system operator') in order to ensure that the GB CUSC obligations applying to NGC apply to NGC in its full capacity as both GB system operator and owner of transmission assets in England and Wales.
- 4.54. Three respondents commented on this change. Two considered that references to NGC should be replaced with references to the GB system operator or a similar term which demonstrates the capacity in which NGC is acting. One respondent disagreed strongly with the approach of referring to NGC. It considered that this confuses the role being undertaken with the party discharging that role. It noted that the relationship between the GB system operator and each transmission owner should be equitable and open to scrutiny and considered that using the term "NGC" makes it harder to separate NGC's system operator and transmission owner activities, and therefore difficult to scrutinise that separation.
- 4.55. Ofgem/DTI note that NGC is providing a service to users under the CUSC as an entity that undertakes transmission owner and system operator activities. In some instances, the obligations it will be fulfilling will be those related to system operator activities, and in other cases it will be fulfilling transmission ownership activities or procuring that another transmission owner fulfils this role. NGC is therefore acting under the CUSC in its capacity as both GB system operator and owner of transmission assets in England and Wales, and not solely in its capacity as GB system operator, and it is for this reason that Ofgem/DTI consider it appropriate to refer to NGC and not to the GB system operator in the GB CUSC. The need to ensure that NGC does not discriminate against or between transmission owners has been considered in the development of licence obligations for NGC and Ofgem/DTI is proposing a licence condition that requires this to be the case. Ofgem/DTI therefore continue to consider that the CUSC should refer specifically to NGC.

Scots law changes

- 4.56. The draft legal text published in December 2003 also contained a number of changes to take account of Scots law issues, which were identified as a result of a legal review of the CUSC from a Scots law perspective.
- 4.57. Three respondents commented on this review and the resultant changes. One reserved its position pending further review. Another respondent welcomed the review but considered that further changes are required. The third respondent considered that the Scots law changes to the draft Interface Agreement were insufficient. This respondent provided a detailed review of the draft Interface Agreement from a Scots law perspective. The respondent reviewed Exhibit O, Part I only (transmission assets on user land) as it noted that there are few examples, if any, of user assets on transmission land in Scotland (to which Exhibit O Part II relates). This respondent's comments are set out in the table below, together with Ofgem/DTI's response to each comment.

Section	Respondent's comments	Ofgem/DTI's view
Exhibit O, Part I	Under Scots law, most Transmission connection Assets on sites in Scotland would be classed as heritable by reason of their affixation to the land, their connection to the User's plant and equipment and the function they perform. The consequence of this is: - title automatically accedes to the owner of the land (in this case the user) unless the transmission owner retains a freehold or leasehold interest - a third party creditor could attach to the Transmission Connection	Ofgem/DTI note that the issue raised by the respondent is an issue that also exists in England and Wales under the current arrangements, and is not unique to connections in Scotland and Scots law. Ofgem/DTI do not therefore consider that it is appropriate to use the powers provided by the E(TT) provisions of the Energy Act to address this issue.

	Assets - transmission owners have no right to sever the transmission Connection assets and remove them unless that right is specifically reserved to them. Transmission Owners therefore need to retain a freehold or leasehold title and there needs to be a clear right to remove Transmission Connection Assets “notwithstanding the degree of affixation and any rule of law to the contrary”.	
Exhibit O, Part I	At common law in Scotland where subjects are held on lease and those subjects are damaged or destroyed the lease comes to an end unless there is provision to the contrary. The Interface Agreement will need to address circumstances where Transmission Connection Assets or the User’s premises or both are damaged beyond repair.	Ofgem/DTI note that the respondent’s suggestion that more specific obligations should be included in the Interface Agreement is not a course of action required as a result of Scots law, but is an operational/commercial issue as to how the Interface Agreement is intended to function. Ofgem/DTI do not therefore consider it is appropriate to make these changes to the pro forma Interface Agreement using the powers in the E(TT) provisions of the Energy Act.
Exhibit O, Part	The Interface Agreement makes no mention of Electricity Lines and	Ofgem/DTI note that while the respondent may consider it is

I	Electricity Cables. It is appropriate for the agreement to make provision for the rights required in respect of both, either in the form of servitude/wayleave rights within the agreement or a contractual commitment to separately grant an appropriate wayleave/servitude.	appropriate for the Interface Agreement to make such provision, this is not required to reflect Scots law and is not required as a consequence of BETTA. Ofgem/DTI do not therefore consider it is appropriate to make these changes using the powers in the E(TT) provisions of the Energy Act.
Exhibit O, Part I, Preamble, paragraph 2 and clause 21.1	"assigns" - the corresponding Scottish term is "assignees" and at 21.1, references to assignments should be to assignation.	Ofgem/DTI note that, while the principle of lex situs will apply, the CUSC (of which the Interface Agreement is a part) will be governed by English law. It is therefore appropriate to use English law terminology.
Exhibit O, Part I Definition and Interpretation	The Electricity Act 1989 should be extended to make reference to "as amended by the Utilities Act 2000"	Ofgem/DTI have made this housekeeping amendment to the new pro forma to apply in Scotland.
Exhibit O, Part I Definition and Interpretation	In the definition of "Competent Authority" the reference should be to "the Scottish Ministers"	Ofgem/DTI have made this change, and note that the reference to "Scottish ministers" in the text published in December 2003 was a typographical error.
Exhibit O, Part	The definitions in respect of Electricity Lines and cables should	As noted above, this is not required to reflect Scots law and

I Definition and Interpretation	be inserted	is not required as a consequence of BETTA. Ofgem/DTI therefore do not consider that it is appropriate to introduce such a change using the powers in the E(TT) provisions of the Energy Act.
Exhibit O, Part I Definition and Interpretation	The definition of "Transmission Licence" and reference to NGC should be replaced with "RTL"	Ofgem/DTI note that a definition of Relevant Transmission Licensee and Relevant Transmission Licensee's Licence has been included in the pro forma to apply in Scotland.
Exhibit O, Part I Definition and Interpretation	The definition of "Permitted Purpose" is circuitous in that it refers to the purpose specified in the clause granting the Right of Access, when the clause concerned refers back to the definition of permitted purpose.	Ofgem/DTI note that this is not a change required as a consequence of BETTA. Ofgem/DTI therefore do not consider it is appropriate to introduce a change using the powers provided by the E(TT) provisions of the Energy Act.
Exhibit O, Part I Definition and Interpretation	The definition of "Right of Access" refers to "any part of the User's land". A general right of access creates difficulties of enforcement in the Scottish courts and gives rise to practical difficulties as between the parties.	Ofgem/DTI note that the Interface Agreement does not purport to create a real right in relation to Scottish heritable property, rather a contractual right of access personal to the parties to the Interface Agreement. Ofgem/DTI also note that it should be possible to define

		"User's land" in any given Interface Agreement in such a way that access is only to a clearly defined area of the user's land.
Exhibit O, Part I, clause 2.1	Right to Install and retain Asset. This does not address Transmission Connection Assets which are in situ. The right secured needs to give the transmission owner exclusivity in relation to the area occupied by the Transmission Connection Assets and a degree of freedom as to the operation carried out within that area. Further thought needs to be given to reflect practical issues such as health and safety and maintenance issue.	Ofgem/DTI note that this is not required to reflect Scots law and is not required as a consequence of BETTA. Therefore, Ofgem/DTI do not believe that it would be appropriate to introduce such a change using the powers in the E(TT) provisions of the Energy Act.
Exhibit O, Part I, clause 3.4	Modifications Replacements and Alterations. Clause 3.4 does not make clear whether the test of "operationally practicable, desirable and reasonably economic" applies to the transmission owner's or the user's interests. There should be a presumption that Transmission Connection Assets remain in situ unless the Transmission Owner decides for the considerations stated that the	Ofgem/DTI note that in giving consideration as to whether it shall be "operationally practicable, desirable and reasonably economic" to remove assets, the RTL will be obliged to take into account all the interests of all parties concerned, together with its broader statutory and licence obligations. Ofgem/DTI consider that there is no need for the Interface Agreement to contain a

	assets should be moved to land which it owns.	presumption that the assets will remain in situ. Such a presumption does not exist in the existing England and Wales pro forma Interface Agreement, and Ofgem/DTI do not consider that the introduction of this presumption is required as a consequence of BETTA.
Exhibit O, Part I, clause 6.2	Clause 6.2 gives the user rights of removal. It would only be appropriate to exercise such rights in a default situation where the transmission owner has failed to remove the asset within a reasonable period of time.	Ofgem/DTI note that this is not required to reflect Scots law and is not required as a consequence of BETTA. Therefore, Ofgem/DTI do not believe that it would be appropriate to introduce such a change using the powers in the E(TT) provisions of the Energy Act.
Exhibit O, Part I, clauses 7.3 and 7.4.1	In qualifying the Rights of Access under Scots law, the benchmark would be minimum inconvenience and annoyance (as opposed to “minimum of disruption, disturbance or inconvenience”). Retaining for the user a right to make directions or regulations from time to time creates a measure of uncertainty.	Ofgem/DTI note that the difference between “minimum of disruption, disturbance or inconvenience” and “minimum inconvenience or annoyance” is stylistic. Ofgem/DTI therefore consider that the existing wording is preferable. Ofgem/DTI also note that the issue of whether or not retaining for the user a right to make directions or regulations from time to time creates a measure of uncertainty is not an issue that

		arises as a result of Scots law or as a consequence of BETTA. Therefore, Ofgem/DTI do not believe that it would be appropriate to introduce any change here using the powers in the E(TT) provisions of the Energy Act.
Exhibit O, Part I, clause 7.5	The respondent does not understand the presumption in favour of prior notice. There should be no notice in respect of transmission assets which are classed as “manned” and where access is required for operational purposes.	Ofgem/DTI note that this is not required to reflect Scots law and is not required as a consequence of BETTA. Therefore, Ofgem/DTI do not believe that it would be appropriate to introduce such a change using the powers in the E(TT) provisions of the Energy Act.
Exhibit O, Part I, clause 8	The scope of the services should be specified. Consideration also needs to be given to the rights of termination and the prospect of the assets remaining in situ without facility assets and/or services being available.	Ofgem/DTI note that this is not required to reflect Scots law and is not required as a consequence of BETTA. Therefore, Ofgem/DTI do not believe that it would be appropriate to introduce such a change using the powers in the E(TT) provisions of the Energy Act.
Exhibit O, Part I, clause 9.1	The “non-interference” restrictions should be extended to include the standard provisions which relate	Ofgem/DTI note that this is not required to reflect Scots law and is not required as a consequence

	to the planting of trees, alteration of ground levels etc.	of BETTA. Therefore, Ofgem/DTI do not believe that it would be appropriate to introduce such a change using the powers in the E(TT) provisions of the Energy Act.
Exhibit O, Part I, clauses 10.3, 11.1 and 11.2	Imports the law of England in relation to arbitration proceedings. Should reflect the law of Scotland as to Scottish Arbitration proceedings.	Ofgem/DTI note that, consistent with the rest of the CUSC, the Interface Agreement under BETTA is to be governed in accordance with English law. Accordingly it is appropriate that the pro forma Interface Agreement refers to English arbitration proceedings. As Ofgem/DTI have noted in previous consultations on the GB CUSC, certain fundamental rights in immoveable property located in Scotland will always be governed by Scots law as the lex situs and in such instances Scottish arbitration proceedings will apply.
Exhibit O, Part I, clause 12.4.1	Refers to subsidiaries of the transmission owner and needs to extend to companies within the same group.	Ofgem/DTI do not consider that it is appropriate to extend this to companies within the same group, as this could potentially provide for the dissemination of information to companies within the same group which may hold electricity licences which

		prohibit them from receiving such information.
Exhibit O, Part I, clause 13	Title to Assets. Requires substantial amendment to reflect the points set out above.	As noted above in relation to the first comment addressed in this table, this is an issue that exists currently under both English and Scots law. Ofgem/DTI do not therefore consider that it is appropriate to use the powers provided by the E(TT) provisions of the Energy Act to address this issue.
Exhibit O, Part I, clause 21.2	The user's rights should not be capable of delegation and any delegation to a sub-contractor should be the subject of notice.	Ofgem/DTI note that this is not required to reflect Scots law and is not required as a consequence of BETTA. Therefore, Ofgem/DTI do not believe that it would be appropriate to introduce such a change using the powers in the E(TT) provisions of the Energy Act.
Exhibit O, Part I, clause 24	The respondent does not believe this clause is correct and the agreement as drafted creates rights which are incapable of registration with the Scottish Land register. Reference to feuhold interest should be replaced by reference to "heritable interest", as the feudal system is abolished from	Ofgem/DTI note that this point is related to the respondent's comment that transmission owners need to retain a freehold or leasehold title and there needs to be a clear right to remove assets "notwithstanding the degree of affixation and any rule of law to the contrary". As noted above, this is an issue that

	November 2004.	also exists in England and Wales under the current arrangements, and is not unique to connections in Scotland and Scots law. Ofgem/DTI do not therefore consider that it is appropriate to use the powers provided by the E(TT) provisions of the Energy Act to address this issue. Reference to feuhold interest has been replaced by reference to “heritable interest” in the pro forma to apply in Scotland.
	The signing page follows an English format and will require amendment to create a document executed in accordance with Scots law.	The Interface Agreement will be governed in accordance with English law. It is therefore appropriate that the signing page follows an English format.

- 4.58. Ofgem/DTI consider that, to the extent that provisions of the CUSC are dependent upon Scots law for interpretation and enforceability, a further legal review will be undertaken along with other consistency reviews prior to designation. Any changes which result from any of these reviews will be consulted on as appropriate.

Other drafting comments

- 4.59. The following table sets out the further comments of respondents in relation to specific clauses of the draft legal text published in December 2003, together with Ofgem/DTI’s view as to whether or not changes proposed by respondents are appropriate for inclusion in the draft GB CUSC.

Section	Respondents' Comments	Ofgem/DTI's view
2.12	The definition of "Bilateral Agreement" is insufficiently wide to capture agreements about ownership contained in the Interface Agreement and specific reference should therefore be made to the Interface Agreement.	Ofgem/DTI do not agree that Interface Agreements need to be captured here. The definition of Bilateral Agreement does not currently (and should not therefore under BETTA) cover Interface Agreements. In addition, 2.12.1 refers to Bilateral Agreement "or any other agreement". This drafting is sufficient to cover Interface Agreements.
2.17.7	Line 3. The words "its licence" should be deleted and reference made to the transmission licences of NGC and the Relevant Transmission Licensees.	Ofgem/DTI agree that change is needed to this, and other sections of the CUSC, where NGC is providing a service to the user according to its statutory and licence duties, and it may be necessary to recognise other transmission licensees' statutory and licence duties. These changes are identified and discussed in more detail in chapter 6.

Section	Respondents' Comments	Ofgem/DTI's view
2.18	Termination Amounts – Re-use. This paragraph should be reviewed in its entirety to take account of the assets owned by the Relevant Transmission Licensees.	This clause relates to reuse of Transmission Connection Assets, and decisions relating to this will be the responsibility of NGC under the CUSC, irrespective of who owns the assets. However, the right for the transmission owner to determine the re-use of the connection assets that it owns will be backed off in STC, so the CUSC does not need to take account of who owns these assets.
5.2.1	Provision should be made to recognise that the transmission owner will have rights to de-energise for safety reasons. Accordingly the sixth line thereof should insert “or the Relevant Transmission Licensees” between “NGC” and “shall”.	Under the CUSC, the user will give the GB system operator a right to de-energise. Separately, the STC will set out the circumstances in which transmission owners will be entitled to withdraw assets from service, including for safety reasons, (which might result in deenergisation of the user). Ofgem/DTI therefore do not consider it appropriate to make the change suggested.

Section	Respondents' Comments	Ofgem/DTI's view
5.3.1(b)(i)	The inclusion of orders of the Sheriff Courts is worthy of note given that orders of the County Courts of England and Wales are not included. For the sake of consistency either the reference to Sheriff Courts should be deleted or reference to County Courts should be inserted.	Ofgem/DTI agree that the reference to the Sheriff Courts should be removed. This change is made to the text published in volume 2.
6.10	General Provisions concerning modifications and new connection sites – The question of whether it is appropriate for NGC to reserve to itself all consultancy and advice and assistance in respect of modifications and new connection sites is still to be fully addressed by the Development Working Groups, but should there be a role for the Relevant Transmission Licensees in this area, then appropriate drafting to reflect that role will require to be inserted here.	Ofgem/DTI note that this issue is being considered by the STC Development Working Groups. However, Ofgem/DTI do not consider that the outcome of that consideration will require the CUSC drafting to reflect a potential role for Relevant Transmission Licensees in this area. Should the Development Working Group conclude it is appropriate that Relevant Transmission Licensees should have a role in this process, this will be reflected in the STC.
6.12	Limitation of liability – The necessary back-off provisions being discussed in relation to the STC will require to be inserted in this section.	Detailed consideration of limitation of liability is being taken forward as part of the development of the STC, and once conclusions are reached in this area,

Section	Respondents' Comments	Ofgem/DTI's view
		any necessary changes to the CUSC will be consulted upon if required.
6.22	Third Party Rights - If necessary the back-off provisions currently being discussed in relation to the STC will require to be inserted in this section.	As for 6.12 above.
8.14	Change co-ordination – It should be clear that there is a duty to establish joint working and change co-ordination roles with the STC.	Ofgem/DTI have recently concluded on this issue in the third consultation on the GB Grid Code. This is discussed in more detail in chapter 4 of this document, and the required changes to the CUSC are identified in chapter 6.
9.16	The definition of “Bilateral Connection Agreement” is insufficiently wide to capture agreements about ownership contained in the Interface Agreement and specific reference should therefore be made to the Interface Agreement.	As per Ofgem/DTI's comment on 2.12 above, Ofgem/DTI consider that here the reference “or elsewhere” is sufficient to cover Interface Agreements.
Section 11, definition of “Relevant Transmission	This should refer to “SP Transmission Ltd” and its successor or successors.	Ofgem/DTI note that the CUSC does not currently provide for NGC's successor or successors, and were NGC's role to change such that certain of its transmission ownership

Section	Respondents' Comments	Ofgem/DTI's view
Licensee"		activities or system operator activities were to be undertaken by a successor company, this would require that the CUSC is amended. For consistency, it is therefore appropriate that the CUSC should not refer to the successor or successors of a Relevant Transmission Licensee. Should a successor to SP Transmission Limited or Scottish Hydro Electric Transmission Limited be appointed, the GB CUSC will be required to be amended to reflect this.
Sch 2, Exhibit 3, para 2.4.1	Scots law references require to be inserted to refer to wayleaves or servitudes (line 4) the term "or other rights" after the English terms is insufficient.	Ofgem/DTI consider that the difference is stylistic and that the reference to "other rights" is sufficiently broad to cover wayleaves and servitudes.
Sch 2, Exhibit 3, para 2.7	The phrase within brackets in the first sentence should be extended so that it reads: "(which in the case of NGC shall include work carried out by a Relevant Transmission Licensee or their contractors or sub-contractors)". This is necessary to reflect the references to NGC's contractor or sub-	Ofgem/DTI agree that this change is appropriate. It is consistent to refer to the contractors or sub-contractors of a Relevant Transmission Licensee, as the same reference

Section	Respondents' Comments	Ofgem/DTI's view
	contractor	currently exists in respect of NGC.
Sch 2, Exhibit 3, para 5.5	Approval to Connect/Energise/Become Operational. As the Relevant Transmission Licensee will be required to consent to the connection in terms of the Electricity Safety, Quality and Continuity Regulations, should this not be reflected in the drafting?	Ofgem/DTI consider that this is an issue to be addressed in the context of the development of the STC.
Sch 2, Exhibit 3, para 9A and 9B	Provision of Security. The fact that the assets will be owned by the Relevant Transmission Licensee and not NGC should be reflected throughout this paragraph, but in particular paragraphs 9A.2, 9A.3.1 and 9A.3.2, and similarly in 9B.	Ofgem/DTI do not consider that it is necessary to refer to the Relevant Transmission Licensee here. In relation to 9A.2, Ofgem/DTI consider that as far as the CUSC is concerned, the appropriate cost to refer to is the cost to NGC, and the fact that the asset may be owned by a Relevant Transmission Licensee is not required to be reflected here. In relation to 9A.3.1, the decision to retain or dispose of assets should correctly be characterised as a right of NGC under the CUSC. Ofgem/DTI recognise that in practice the decision may be taken by a Relevant Transmission Licensee, but it is not

Section	Respondents' Comments	Ofgem/DTI's view
		necessary to reflect this in the CUSC as the users contractual relationship is with NGC.
Exhibit B	The exhibit states that it may be necessary to consult with the transmission owner. We believe it would always be necessary to consult with the transmission owner. The Exhibit goes on to state that the cost of such consultation will be recharged to the applicant. Given the complex route by which connection applications are now to be handled we seek assurance from Ofgem/DTI that these costs will be kept to a minimum.	Ofgem/DTI consider that it may not always be necessary to consult with the transmission owner in relation to connections in England and Wales and so remain of the view that the amendment proposed in December is appropriate. Ofgem/DTI also note that the charges that the GB system operator and transmission owners can apply to connections will be regulated, as is currently the case in both England and Wales and Scotland. In addition, the STC will set out the process to be followed in relation to application fee charges applied by transmission owners and the GB system operator, and this will ensure transparency in relation to these charges.
Exhibit J	We believe paragraph 3 should specify, for the avoidance of doubt, who the interface	Ofgem/DTI do not agree that this change is

Section	Respondents' Comments	Ofgem/DTI's view
	agreement will be with.	necessary, as the body of the CUSC (paragraph 2.11 and 9.14) is clear on this point.
Exhibit O, Part I*	We would prefer that the company name was used, rather than "RTL".	Ofgem/DTI note that Exhibit O is a pro forma only, and note that when the actual agreement between parties is agreed, the company name will be inserted.
Exhibit O, Part I	"NGC" will need to be a defined term if it is not party to the agreement.	Ofgem/DTI agree that this is appropriate in relation to the Interface Agreement proforma to apply in Scotland and this change is reflected in the draft legal text in volume 2.
Exhibit O, Part I	The definition of "Transmission Licence" is incorrect as it retains a reference to NGC.	Ofgem/DTI note that throughout the draft GB CUSC legal text, the term "Transmission Licence" is used to refer to NGC's licence and is defined as such. In addition, the Interface Agreement pro forma to apply in Scotland includes a definition of a Relevant Transmission Licensee's Licence.
Exhibit O,	The reference in 4.2 is out of date; the 1988	Ofgem/DTI note that this is

Section	Respondents' Comments	Ofgem/DTI's view
Part I	Regulations have been replaced by the ESQ&C Regulations 2002.	not a change required as a consequence of BETTA, and is a reference which could be amended according to the existing CUSC Amendment provisions. Ofgem/DTI have, however, made this change to the pro forma to apply in Scotland because, as described in chapter 6, this is a new pro forma and not an amended, existing pro forma.
Exhibit O, Part I	Given that the transmission owner is not a party to either the CUSC or the bilateral agreement it is not clear how paragraph 6.1 will work. There appears to be text missing from 6.2.	Ofgem/DTI note that this will be backed of in the STC, as there will be an obligation on NGC under the STC to inform the Relevant Transmission Licensee if there ceases to be a Bilateral Connection Agreement, and this will trigger the removal of assets by Relevant Transmission Licensees where appropriate. Ofgem/DTI have identified no text missing from 6.2.
Exhibit O, Part I	The definition of services required to be provided (8.2) seems very vague.	Ofgem/DTI note that the services to be provided are to be set out in Schedule 5

Section	Respondents' Comments	Ofgem/DTI's view
		to the Interface Agreement, and are agreed between parties to the Interface Agreement. Ofgem/DTI therefore consider that no change is required.
Exhibit O, Part I	"Line Manager" (10.1) does not appear to be defined. There is an incorrect reference in 10.2.	Ofgem/DTI note that these changes are not required as a consequence of BETTA, and could be amended according to the existing CUSC Amendment provisions.
Exhibit O, Part I	It is not clear that 10.4 – 10.6 are still required given that the reference clause no longer exists.	Ofgem/DTI note that this is not a change required as a consequence of BETTA, and could be amended according to the existing CUSC Amendment provisions. Ofgem/DTI have, however, made this change to the pro forma to apply in Scotland because, as described in chapter 6, this is a new pro forma and not an amended, existing pro forma.
Exhibit O, Part I	The reference to "NGC or the RTL" in 12.1.6 should be "[NGC\the RTL]", and all after "authorised" can be deleted.	The change to Exhibit O, to have separate pro forma for Scotland and for England and Wales, addresses this,

Section	Respondents' Comments	Ofgem/DTI's view
		as the reference in the England and Wales pro forma is to NGC and in the Scotland pro forma is to the RTL.
Exhibit O, Part I	The Monopolies and Mergers Commission has been replaced by the Competition Commission.	Ofgem/DTI note that this is not a change required as a consequence of BETTA, and could be amended according to the existing CUSC Amendment provisions. Ofgem/DTI have, however, made this change to the pro forma to apply in Scotland because, as noted above, this is a new pro forma and not an amended, existing pro forma.
Exhibit O, Part I	Believe it will be better to modify the existing Scottish interface agreements than use the draft standard agreement. The "Entire Agreement" may therefore need to include a reference to existing interface agreements.	Chapter 4 sets out Ofgem/DTI's views as to why it is appropriate under BETTA that Interface Agreements for all users in GB should be based on the standard CUSC pro forma.
Exhibit O, Part I	Use of "Common Seal" (Schedule 6) is out of date and unnecessary.	Ofgem/DTI note that this is not a change required as a consequence of BETTA, and could be amended according to the existing

Section	Respondents' Comments	Ofgem/DTI's view
		CUSC Amendment provisions.
Exhibit O, Part I	It is not clear in clause 6.3 why the user needs to give notice to the transmission owner of notice of termination from NGC.	The clause was inserted in the draft text published in December as Ofgem/DTI considered that as transmission owners are not party to the agreements referenced in 6.1 (including the bilateral connection agreement), it would be necessary for users to inform the transmission owner if this agreement ceased. However, as noted in chapters 4 and 6 of this document, Ofgem/DTI have given further consideration to the draft legal text of the Interface Agreement for the GB CUSC. As a consequence of this, the suggested change has been removed, as Ofgem/DTI note that there will be an obligation in the STC for the GB system operator to inform the transmission owner if such an agreement ceases to exist.

Section	Respondents' Comments	Ofgem/DTI's view
Exhibit O Part II	Clause 12.1.6 retains the word "Main" which should be deleted.	Ofgem/DTI agree that this change is required for the Scottish pro forma, in order that Part II is consistent with Part I
Exhibit O Part II	We doubt that "distress execution" has a meaning in Scotland (clause 13.2)	Ofgem/DTI note that the reference to distress execution is followed by reference to "or other legal process" and consider that this is sufficient to cover Scotland.
2.6	Line 4 should state "or" Transmission Plant	Ofgem/DTI agree that this change is appropriate in order that the change proposed at line 4 (relating to NGC's obligations) is consistent with the current text in the final line of 2.6 (relating to a user's obligations).
2.12.1	Reference to usage of the transformers that are part of the GB Transmission System should make clear that the transformers are not owned by the User.	Ofgem/DTI agree that it is appropriate to make this clarification to the proposed text issued in December 2003 , and this change has been made in the legal text in volume 2 of this document.
2.11.1 and	Should be made clear in the draft text that, in Scotland, NGC shall procure only the	Ofgem/DTI agree that this clarification is appropriate

Section	Respondents' Comments	Ofgem/DTI's view
9.15.1	Relevant Transmission Licensee to enter into Interface Agreements with the Users.	to the proposed text issued in December 2003, and this change has been made in the legal text in volume 2 of this document.
5.7.3	The reference to "parties" should be clarified in relation to Scotland, so that it makes reference that the date for removal in Scotland is that date agreed between the Relevant Transmission Licensee and the User in Scotland rather than between the User and NGC.	Ofgem/DTI agree that this clarification is appropriate to the proposed text issued in December, and this change has been made in the legal text in volume 2 of this document.

* The respondent that provided comments in relation to Exhibit O Part 1 noted that, to the extent that Parts 1 and 2 use common text, many of the comments on Part 1 apply equally to Part 2.

Other issues

4.60. Respondents raised a number of other issues.

England and Wales modifications

4.61. One respondent commented that the large number of issues raised by respondents to the third GB CUSC consultation underline the complexity of the task ahead and confirm this respondent's view that major changes to the existing England and Wales CUSC should not be attempted until it is possible for them to be fully considered and understood in the context of the finalised GB arrangements.

4.62. Another respondent also considered that code modifications which propose significant reform to the existing England and Wales codes in the period before designation should be halted to reduce the threat to timely implementation.

This respondent also commented that the consultation process on the implications of modifications being applied on a GB basis rather than being limited to England and Wales, is not as comprehensive as the England and Wales process.

- 4.63. As noted in the second consultation on electricity transmission licences under BETTA³², Ofgem/DTI do not think it is appropriate or indeed consistent with the statutory duties placed on the Gas and Electricity Markets Authority (“the Authority”) under the Electricity Act, to refrain from taking forward changes to the existing arrangements in advance of BETTA.
- 4.64. Ofgem/DTI also note that there are currently three separate consultation processes before any proposed modification can be included in the GB CUSC. First the proposal is subject to consultation by the CUSC Panel within the current CUSC process. Secondly, since the Second Reading of the Energy Bill in the House of Lords it is generally considered appropriate by Ofgem to consult on the further implications of modification proposals being applied on a GB basis. Finally, for all modifications which are put forward to the Authority for approval, Ofgem/DTI consult upon the inclusion of the modification in the GB CUSC. Ofgem/DTI believe that such a process provides sufficient opportunity for all interested parties to make their views known.

Consultation process

- 4.65. One respondent commented that it believed that a further round of consultation will be required to take account of conclusions arising from the consultation on small generators. As noted above, Ofgem/DTI have recently issued a second document on small generator issues under BETTA and should any of the proposed changes to the CUSC identified in that document be required, changes to the GB CUSC legal text will be consulted on separately.
- 4.66. One respondent was concerned that the staggered consultation period between the CUSC and the STC reduces the time available for parallel study of the two documents which have a strong interaction with each other. It considered that it is imperative that sufficient time is available during the development process

³² “Regulatory framework for transmission licensees under BETTA, Second consultation on electricity

to allow industry to scrutinise these documents as a set. Another respondent noted that it was keen to understand at what point Ofgem/DTI anticipate it will be possible for interested parties to review the BETTA Legal framework and codes in the round.

- 4.67. Ofgem/DTI are conscious that industry participants will require time to consider the interaction between all GB codes. Ofgem/DTI note that the near final text of the BSC and CUSC are now published, and well developed drafts of the GB Grid Code and STC have also been published recently. Ofgem/DTI consider that this provides sufficient time for parties to consider these documents as a set prior to their designation by the Secretary of State. Ofgem/DTI further note that before go-live, in the period prior to designation and post designation, further changes may be required to these documents as a result of changes to England and Wales documents or to ensure consistency between the codes, and Ofgem/DTI will consult on any changes should they arise.
- 4.68. Another respondent considered that the outcome of other consultations could impact on the GB CUSC drafting and sought further clarity in relation to the CUSC consultation process going forward, given that the third GB CUSC consultation was the last planned publication prior to “final” text. This respondent was concerned about what it considered to be lack of progress since the June 2003 GB CUSC consultation.
- 4.69. This conclusions document and the near final draft of the GB CUSC in volume 2, incorporate relevant conclusions from all the previously published Ofgem/DTI BETTA documents. The level of change to the operational CUSC to produce the GB CUSC is relatively limited. Ofgem/DTI therefore do not believe that a further consultation on the full text of the GB CUSC is required. However, Ofgem/DTI will consult separately on any further areas of change if and when required. As noted in chapter 2, such consultation is likely to take the form of an open letter.

Charging reforms

- 4.70. One respondent was concerned that the existing England and Wales use of system charging methodology may not be applicable to the full GB system, and that this is not the only methodology which could be said to be cost reflective. It considered that Ofgem's analysis of the total impact of transmission charging on generators under BETTA, published on 5 February 2004, whilst contributing to the debate, does not give a fully balanced picture.
- 4.71. Ofgem/DTI consulted on using the England and Wales model as the basis of a GB charging model in its August transmission charging paper³³. This approach was widely supported by responses to that paper on the basis that it would be the simplest, least disruptive approach and would provide a solid basis with which the market is familiar. At the same time Ofgem/DTI recognised that specific parameters of the model may have to change to reflect existing differences between the three transmission systems. NGC is currently consulting on the form of its GB Transmission Charging Methodology. By participating in the consultation process parties have the opportunity to identify how the model should be developed to ensure the specific characteristics of the Scottish network are reflected in the model.
- 4.72. In relation to Ofgem's analysis of the impact on generators under BETTA, Ofgem believes that the analysis it presented in February, including in relation to the treatment of interconnector costs, represents a reasonable basis for the impact of BETTA on Scottish generators. The actual impact will vary by generator and will depend on the outcome of NGC's consultation.

Deenergisation

- 4.73. Two responses contained the same comments in respect of the requirements of section 5, Deenergisation. These respondents considered that deenergisation should only be reserved for those breaches of the CUSC which place, or seriously threaten to place, NGC or a Relevant Transmission Licensee in 'serious and material' breach (as opposed to some minor technical breach) of their transmission licences.

³³"Transmission charging and the GB wholesale electricity market", August 2003, Ofgem 86/03
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- 4.74. Ofgem/DTI note that this is not an issue that has arisen as a result of BETTA, and therefore do not believe it would be appropriate to use the powers provided by the E(TT) provisions to change the provisions of section 5. The provisions relating to deenergisation in section 5 exist today, and any CUSC party can propose an amendment to these provisions, should they consider it appropriate.

Moyle Interconnector

- 4.75. One respondent welcomed Ofgem/DTI's statement regarding dialogue in relation to the Moyle Interconnector, and sought clarity regarding the plans relating to the Moyle Interconnector.
- 4.76. Ofgem/DTI have concluded in previous consultations that they have identified no need to alter the existing interconnector arrangements in either the CUSC or the BSC for BETTA, and that the Moyle Interconnector can operate within the existing provisions of these codes. Accordingly, Ofgem/DTI note that as far as the CUSC is concerned, it is for the GB system operator and Moyle Interconnector Limited, the owner of the Moyle Interconnector, to put in place appropriate connection and use of system arrangements under BETTA. As for the BSC requirements, Ofgem/DTI note that the BSC requires that a party is appointed to act as the Interconnector Administrator and Interconnector Error Administrator in respect of any interconnector, the underlying assumption being that parties with an interest in trading over an interconnector will ensure these roles are filled. Ofgem has discussed the CUSC and BSC requirements with Moyle Interconnector Limited and Ofreg, and anticipate that those parties with an interest in the Moyle Interconnector will work with ELEXON and NGC to put in place appropriate arrangements for BETTA.

BETTA Transfer Date

- 4.77. One respondent stated that it considers that a "BETTA Transfer Date" is required to facilitate differential treatment under the CUSC where necessary. It did not believe that this was a transitional issue, and considered it should appear on the face of the code.
- 4.78. As stated in the third GB CUSC consultation, Ofgem/DTI have identified no requirement for a BETTA transfer date on an enduring basis in the GB CUSC. Ofgem/DTI do not think it is appropriate to introduce within the enduring GB

arrangements new areas of differential treatment. Ofgem/DTI recognise that the CUSC currently provides for differential treatment in some instances in respect of generators commissioned before 30 March 1990, and propose to extend to generators in Scotland the exemption that currently applies to equivalent generators in England and Wales relating to the requirement to pay Termination Amounts in respect of connection assets. However, Ofgem/DTI do not consider it appropriate to enshrine new areas of differential treatment within the enduring codes supporting the GB market arrangements, as one of the key objectives of BETTA is to provide a single set of contractual arrangements for access to the transmission system. Ofgem/DTI do not consider that the introduction of a BETTA transfer date into the GB CUSC would be consistent with that objective.

- 4.79. Ofgem/DTI have stated that there may be a requirement for the concept of a BETTA transfer date on a transitional basis, and this will be considered in the context of the development of transitional arrangements for BETTA.

Go-live date

- 4.80. One respondent considered that the BETTA go-live date seems an increasingly challenging target, given the nature and extent of progress to date on BETTA issues and other market and government initiatives. It considered, for example, that the current status of fundamental England and Wales charging reforms and their application across GB, and the potential impact and interaction of government policy objectives for renewables are potentially incompatible.
- 4.81. Ofgem/DTI continue to believe that a BETTA go-live date of April 2005 is achievable, assuming Royal Assent to the Energy Bill by July 2004. The process for putting in place cost reflective GB charging arrangements in time for BETTA is entirely separate to any other initiatives in relation to renewables, and Ofgem/DTI are content that the current process will ensure GB charging arrangements are established to enable BETTA go-live in April 2005.

5. Amendments to the England and Wales CUSC

- 5.1. This chapter describes the CUSC amendments that have been approved by the Authority or implemented since those listed in the third GB CUSC consultation. This chapter considers whether implemented amendments should be included in the legal text of the GB CUSC which is shown in volume 2 of this consultation.
- 5.2. In volume 2 of this document the legal text of the GB CUSC is presented change marked against the operational version of the CUSC. The changes to the GB CUSC text since version 2 of the draft GB CUSC published in volume 2 of the third GB CUSC consultation are highlighted in appendix 2.

Approved amendments

Housekeeping amendments

- 5.3. The following housekeeping amendments have been approved by the Authority and have been implemented in the England and Wales CUSC.

Number	Effect of Amendment
CAP056	Correction to definition of Operational Metering equipment
CAP058	Reinstatement of Connection Site Demand Capability to Section 2, paragraph 2.5
CAP059	Minor text amendment to Section 2, paragraph 2.17.8
CAP060	Minor text amendment to Section 6, paragraph 6.6.4
CAP062	Amendment of contact details in Exhibit B, D, I and F
CAP063	Amendment of contact address in Exhibit O
CAP064	Minor reference error in Schedule 2, Exhibit 3
CAP065	Removal of provisions relating to NETA go live
CAP066	Removal of historic transitional provisions for Section 10

- 5.4. Ofgem/DTI propose that these amendments should be incorporated into the GB CUSC and the drafting of the GB CUSC in volume 2 of this document includes them.

Other Amendments

CAP045 – Cost reflective reactive default payment rate indexation

- 5.5. This amendment introduces a new methodology for indexing default reactive power payments. The original Amendment Proposal set out an index derived from a composite of indices reflecting the costs associated with reactive power provision, applied monthly rather than annually and calculated ex-post rather than ex-ante. Alternative Amendment (B) was approved by the Authority, the only difference from the original Amendment Proposal being that the RPI element of the index is calculated on an ex-ante rather than an ex-post basis. In approving Alternative Amendment (B), the Authority's decision letter noted that in the absence of a fully market based approach to reactive power provision, it would be desirable to have in place some form of indexation of the default payment rate for the service to ensure that service providers are remunerated for the costs they incur. The letter stated that Ofgem considers this amendment leads to a more cost reflective remuneration of the mandatory reactive power service compared to the current indexation method which is based purely on an annual RPI indexation.
- 5.6. Ofgem/DTI believe that this amendment does not give rise to any additional specific GB issues and therefore propose that this amendment should be incorporated into the GB CUSC. It is incorporated into the proposed legal text shown in volume 2 of this consultation document.

CAP048 – Firm access and temporary physical disconnection

- 5.7. Amendment CAP048 establishes firm financial rights for generators to use NGC's transmission system by requiring NGC to pay compensation in the event that a generator is temporarily physically disconnected from the transmission system.
- 5.8. In addition to the consultation on this Proposed Amendment undertaken in accordance with the CUSC Amendment Procedures, Ofgem also carried out a

GB consultation in order to assess the impact that the code change may have on a GB wide basis compared to the impact it would have in England and Wales³⁴.

Ofgem considered the likely costs of compensation in Scotland as well as in England and Wales. The information provided by the Scottish transmission licensees to Ofgem on the likely cost of compensation in Scotland indicated that, consistent with the situation in England and Wales, there are only a very small number of incidents that would be eligible for compensation.

- 5.9. Ofgem noted the respondents' view that implementation of CAP048 on a GB basis could lead to differing treatment of 132kV connected generators in England and Wales and in Scotland, as generators connected at 132 kV in Scotland are transmission connected and those in England and Wales are distribution connected. The question of the treatment of generators connected at 132kV in Scotland is addressed in Ofgem/DTI's consultation on small generator issues under BETTA. CAP048 addresses the provision of compensation payments to generators connected to the transmission system and does not consider the issue of compensation to generators connected to distribution networks.
- 5.10. Ofgem/DTI believe that this amendment does not give rise to any additional specific GB issues, and therefore propose that this amendment should be incorporated into the GB CUSC. It is incorporated into the proposed legal text shown in volume 2 of this consultation document.

CAP049 – Alternative Amendments

- 5.11. CAP049 amends the definition of Alternative Amendments contained in the CUSC to make clear that Alternative Amendments may be developed by a Working Group as well as being put forward by respondents during industry consultation, and adds two new definitions to Section 11 – a "Working Group Alternative Amendment" and a "Consultation Alternative Amendment". CAP049 also enables CUSC Parties to consider and comment on Alternative Amendments put forward by individual CUSC Parties at the end of the consultation period, prior to the Amendment Report stage, whilst also restricting

³⁴ In accordance with the procedure set out in Ofgem's letter of 5 December 2003 to the CUSC Panel Chairman.
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the number of Consultation Amendment Proposals that CUSC Parties are able to put forward to the first consultation phase enabling the process not to be prolonged indefinitely.

- 5.12. Ofgem/DTI believe that this amendment does not give rise to any additional specific GB issues, and therefore propose that this amendment should be incorporated into the GB CUSC. It is incorporated into the proposed legal text shown in volume 2 of this consultation document.

CAP050 – Review process for implemented alternative amendments

- 5.13. CAP050 introduces a process for the review of Implemented Urgent Amendment Proposals where this is deemed necessary by the Amendments Panel in accordance with Paragraph 8.21.8 of the CUSC. CAP050 amends the CUSC such that it is clear that the Amendments Panel should establish a Standing Group (or use an appropriate existing StandingGroup) as a body to review an Implemented Urgent Amendment Proposal.

- 5.14. Ofgem/DTI believe that this amendment does not give rise to any additional specific GB issues, and therefore propose that this amendment should be incorporated into the GB CUSC. It is incorporated into the proposed legal text shown in volume 2 of this consultation document.

CAP051 – Initiation of the Amendment Procedures by the Amendments Panel

- 5.15. CAP051 clarifies the process for the review of Amendments made to the CUSC under Paragraph 8.23.5 where such a review is deemed necessary by the Amendments Panel. The amendment suggests that the Panel may establish a Standing Group (or use an appropriate existing Standing Group) as a body to consider whether another solution might better facilitate achievement of the Applicable CUSC Objectives in respect of the subject matter being proposed.
- 5.16. Ofgem/DTI believe that this amendment does not give rise to any additional specific GB issues, and therefore propose that this amendment should be incorporated into the GB CUSC. It is incorporated into the proposed legal text shown in volume 2 of this consultation document.

CAP052 – Removal of Land charges

- 5.17. CAP052 removes text relating to Land Charges from the CUSC. The England and Wales charging methodology is amended from 1 April 2004, and as a result of this Land Charges are no longer charged as an element of users' connection charges. Removing the text relating to Land Charges from the CUSC ensures that the CUSC is aligned with the current NGC Connection Charging Methodology for England and Wales.
- 5.18. Ofgem/DTI consider that it is appropriate to include this amendment in the GB CUSC and it is included in the legal drafting contained in volume 2 of this document. Ofgem/DTI consider the inclusion of this amendment is appropriate, as the GB CUSC will be based on the CUSC that is operational in England and Wales at the point at which the changes to the CUSC to enable it to apply to GB are designated by the Secretary of State.
- 5.19. Ofgem/DTI note that NGC is in the process of consulting on a charging methodology to apply GB wide under BETTA. As concluded in Ofgem/DTI's December 2003 proposals paper on transmission charging³⁵, the basis of NGC's consultation is the charging methodology applying in England and Wales from 1 April 2004. The charging methodology developed as a result of this consultation is subject to the Authority's approval. Should the GB charging methodology approved by the Authority to apply from 1 April 2005 include Land Charges as an element of users' connection charges, Ofgem/DTI will consult on amendments to the draft GB CUSC to reflect this.

CAP053 – Reconciliation of site specific maintenance charges

- 5.20. CAP053 removes the CUSC text relating to Site Specific Maintenance charges. The England and Wales charging methodology is amended from 1 April 2004 and as a result of this, these charges are no longer charged as an element of users' connection charges. Removing the text relating to Site Specific Maintenance charges from the CUSC ensures that the CUSC is aligned with NGC's current Connection Charging Methodology in England and Wales.

³⁵ 'Transmission charging and the GB wholesale electricity market', Ofgem/DTI, December 2003
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- 5.21. Ofgem/DTI consider that it is appropriate to include this amendment in the GB CUSC and it is included in the legal drafting contained in volume 2 of this document. Ofgem/DTI consider the inclusion of this amendment is appropriate, as the GB CUSC will be based on the CUSC that is operational in England and Wales at the point at which the changes to the CUSC to enable it to apply to GB are designated by the Secretary of State.
- 5.22. Ofgem/DTI note that NGC is in the process of consulting on a charging methodology to apply GB wide under BETTA. As concluded in Ofgem/DTI's December 2003 proposals paper on transmission charging, the basis of NGC's consultation is the charging methodology applying in England and Wales from 1 April 2004. The charging methodology developed as a result of this consultation is subject to the Authority's approval. Should the GB charging methodology approved by the Authority to apply from 1 April 2005 include Site Specific Maintenance Charges as an element of users' connection charges, Ofgem/DTI will consult on amendments to the draft GB CUSC to reflect this.

CAP055 - Users' Demand Forecasts TNUoS Charging

- 5.23. CAP055 clarifies the obligations of CUSC Users regarding the quality and accuracy of demand forecast data supplied for Transmission Network Use of System (TNUoS) Charging purposes. The CUSC requires Suppliers to provide NGC with demand forecasts to enable NGC to calculate monthly Transmission Network Use of System (TNUoS) charges, but contains no requirements relating to the quality of these forecasts. This amendment makes it clear that these forecasts should be reasonable, and, if they are deemed unreasonable by NGC, NGC will instead be entitled to use its own fair and reasonable estimates.
- 5.24. In approving this amendment for England and Wales, the Authority considered that efficiency gains and improved cost reflectivity would be gained if NGC could expect reasonably accurate Demand Forecast Data from Users for the purposes of NGC calculating TNUoS tariffs and Users specific demand charges.
- 5.25. Ofgem/DTI believe that this amendment does not give rise to any additional specific GB issues, and therefore propose that this amendment should be incorporated into the GB CUSC. It is incorporated into the proposed legal text shown in volume 2 of this consultation document.

Views invited

- 5.26. Views are invited on the proposal to include all of the approved CUSC Amendments identified above in the GB CUSC.

6. Proposed draft text for the GB CUSC

- 6.1. The third GB CUSC consultation attached a draft of certain proposed changes to the CUSC (this draft is hereinafter called “GB CUSC version 2”). The further revised proposed draft text for the GB CUSC is provided in volume 2 of this consultation document (hereinafter called “the draft GB CUSC”). The draft GB CUSC is, for ease of reference, change marked against the operational England and Wales CUSC as implemented at 30 April 2004. The draft GB CUSC contains all amendments implemented as at that date. The purpose of this Chapter 6 is to identify and explain the changes contained within the draft GB CUSC .
- 6.2. Appendix 3 shows in tabular form the version of each Section of the operational CUSC against which the draft GB CUSC contained in volume 2 is change marked. For further ease of reference, Appendix 2 hereto sets out a brief description of the differences between the draft GB CUSC and GB CUSC version2.

STC

- 6.3. Ofgem/DTI note that work is still ongoing in the development of the STC, and a further consultation on the STC, together with further draft STC legal text has recently been published. Ofgem/DTI note that amendments may be required to the draft GB CUSC as conclusions are reached following that consultation, and these changes will be consulted on as appropriate.

Generic changes

- 6.4. The third GB CUSC consultation identified and discussed the reasons for the following generic changes:
- ◆ reinstating references to “NGC”, as opposed to the “GB System operator” and the inclusion of the term “Relevant Transmission Licensee”
 - ◆ replacing “transmission system” with “GB transmission system”

- ◆ prefixing a number of terms with “Transmission” (which is a defined term in the GB CUSC)
 - ◆ the distinction between connection sites in Scotland and those in England and Wales, where appropriate.
- 6.5. Ofgem/DTI continue to believe that these generic changes are appropriate and they are reflected in the draft text published in volume 2. Further generic changes are set out below.
- 6.6. NGC currently provides services to users in England and Wales according to the obligations set out in the CUSC, and in some instances the CUSC specifies that NGC must act in accordance with its statutory and licence obligations. Under BETTA, NGC will have statutory and licence obligations to carry out system operator activities for GB, and transmission ownership activities only in relation to England and Wales. In addition, the Scottish transmission owners will have statutory and licence obligations to carry out transmission ownership activities in relation to their respective transmission areas in Scotland.
- 6.7. In order to ensure that the service to the user does not change as a result of the new structure under BETTA, Ofgem/DTI consider that it will be necessary to amend the CUSC to ensure that, where appropriate, the statutory and licence obligations of the Scottish transmission owners are referred to, in addition to NGC’s statutory and licence obligations. The specific changes proposed are identified below under the individual section headings, and reflected in the draft text in volume 2 of this document.
- 6.8. Changes have been made to references to safety rules in the CUSC, in order that the GB CUSC is consistent in this regard with the approach taken in respect of the GB Grid Code. The specific changes are identified below under the individual section headings, and reflected in the draft text in volume 2 of this document.

Scots law

- 6.9. The third GB CUSC consultation identified a number of changes to the CUSC required to take account of Scots law issues in the GB CUSC. Unless otherwise specified in chapter 4, these changes are retained in the draft text in volume 2 of

this document. These changes are identified below, where specific changes are identified in relation to individual sections, schedules and exhibits.

- 6.10. To the extent that provisions of the CUSC are dependent upon Scots law for interpretation and enforceability, a further review will be undertaken along with other consistency reviews prior to designation. Any changes which result from any of these reviews will be consulted on as appropriate.

Specific changes

- 6.11. In the remainder of this chapter the sections of the draft GB CUSC are considered in turn as against the current operational CUSC and the proposed changes explained.

Section 1 – Applicability of Sections and Related Agreements Structure

- 6.12. No specific changes have been made.

Section 2 – Connection

- 6.13. To reflect Ofgem/DTI's conclusion (in chapter 4 of this document) that the requirement in relation to the provision of the additional technical facilities listed in 2.9.4. should not be automatically extended to Scotland, this paragraph has been amended to limit its applicability to generators in England and Wales commissioned prior to the Transfer Date.
- 6.14. As noted in the third GB CUSC consultation, Section 2.11, relating to Interface Agreements, has been amended to take account of the proposal put forward in the June consultation on the STC, that Interface Agreements should be between the user and NGC in relation to connection sites in England and Wales, and between the user and the Relevant Transmission Licensee in relation to sites in Scotland.
- 6.15. Section 2.6 has been amended to reflect that the system, plant and apparatus referred to, in the case of NGC, may not be owned by NGC, but is the GB Transmission System, and Transmission Plant and Transmission Apparatus. In addition, as described in the table set out in chapter 4, a further amendment has

been made since the text published in December to replace “and” with “or” in line 4, in order that the text relating to the user mirrors that relating to NGC and reflects the current drafting.

- 6.16. As noted above, section 2.10, Safety Rules, has been amended to reflect the GB Grid Code approach in relation to safety.
- 6.17. Section 2.12.1(c) has been amended to reflect that 132kV is transmission in Scotland.
- 6.18. As noted in chapter 4, Section 2.12.2 has been amended to clarify that the transformers referred to are not owned by the user.
- 6.19. Also as noted above, section 2.17.2 has been amended to reflect the statutory and licence obligations of a Relevant Transmission Licensee, to ensure that the service provided to the user is not changed as a result of changes to the transmission licensing structure under BETTA.

Section 3 – Use of System

- 6.20. In order to reflect Ofgem/DTI’s conclusion set out in chapter 4 of this document that the requirement in relation to the provision of the additional technical facilities listed at 3.3.3. should not be automatically extended to generators in Scotland, this paragraph has been amended to limit its applicability to generators in England and Wales commissioned prior to the Transfer Date.
- 6.21. Section 3.2.4 has been amended to reflect that the system, plant and apparatus referred to, in the case of NGC, may not be owned by NGC, but is the GB Transmission System, and Transmission Plant and Transmission Apparatus

Section 4 – Balancing Services

- 6.22. As noted in the third GB CUSC consultation, section 4.1.2.5 has been amended to reflect that the operational metering equipment may be owned by NGC or a Relevant Transmission Licensee.

Section 5 – Events of Default, Deenergisation, Disconnection and Decommissioning

- 6.23. As noted in the third GB CUSC consultation, references to the Insolvency Act in clause 5.3.1(b) have been amended to cover Scotland. However, the reference to the Sheriff Courts in the amendment to 5.3.1(b)(i) has been removed, as noted in chapter 4.
- 6.24. Also as noted in the third GB CUSC consultation, sections 5.4.4, 5.4.5 and 5.9.5 have been amended to capture potential breaches that threaten to put NGC in breach of its transmission licence, or a Relevant Transmission Licensee in breach of its licence.
- 6.25. The third GB CUSC consultation also identified the requirement to change certain sections of the CUSC to distinguish between connection sites in England and Wales and those in Scotland, and changes were made to 5.3.4, 5.4.7, 5.5.5 and 5.7.3 to reflect that, in the event of disconnection, NGC shall remove assets in relation to Connection Sites in England and Wales and procure that a Relevant Transmission Licensee removes assets in relation to Connection Sites in Scotland.

Section 6 – General Provisions

- 6.26. The third GB CUSC consultation noted that clause 6.9.4 has been amended to refer to “any” Nuclear Site Licence Provisions Agreement, and a new definition of Nuclear Site Licence Provisions Agreement has been added in section 11, in order that the provisions of all existing NSLPAs in both England and Wales and Scotland take precedence over the provisions of the CUSC in relation to modification.
- 6.27. The third GB CUSC consultation also identified the requirement to change certain sections of the CUSC to distinguish between connection sites in England and Wales and those in Scotland and section 6.7.8 has been amended to reflect that NGC shall give the user access in relation to Connection Sites in England and Wales and procure that a Relevant Transmission Licensee gives the user access in relation to Connection Sites in Scotland.

- 6.28. Section 6.2 has been amended to reflect the statutory and licence obligations of a Relevant Transmission Licensee, to ensure that the service provided to the user is not changed as a result of changes to the transmission licensing structure under BETTA.
- 6.29. Section 6.23 has been amended to reflect Ofgem/DTI's conclusion, set out in chapter 4 of this document, that jurisdiction is extended to include Scottish courts.

Section 7 – CUSC Dispute Resolution

- 6.30. Because of the close relationship between the CUSC and the STC, it is possible that disputes under one code will be associated with a dispute on the same overall topic under the other code. Ofgem/DTI have recently published a further consultation on the STC, which contains proposals in relation disputes. Should the outcome of that consultation require any changes to the draft GB CUSC legal text, these will be consulted on separately.
- 6.31. As noted in the third GB CUSC consultation, the references to the Civil Procedure Rules in 7.3.2 and 7.5 have been removed, as these do not apply to Scotland.

Section 8 – CUSC Amendment

- 6.32. As noted in the third GB CUSC consultation, section 8.5.1(b)(iii) has been amended to include a reference to the appropriate legislation for Scotland, the Mental Health (Scotland) Act 1960.
- 6.33. This section has been amended to reflect Ofgem/DTI's conclusion in the recently published third GB Grid Code consultation (and discussed in chapter 4 of this document) in relation to change coordination between codes.

Section 9 – Interconnectors

- 6.34. Amendments were proposed to this section in a previous consultation to remove the references to the England – Scotland interconnector. This applies to changes in paragraphs 9.2, 9.23.2 and 9.23.5.

- 6.35. Section 9.8 has been amended to reflect that the system, plant and apparatus referred to, in the case of NGC, may not be owned by NGC, but is the GB Transmission System, and Transmission Plant and Transmission Apparatus.
- 6.36. In order to reflect Ofgem/DTI's conclusion set out chapter 4 of this document that the provision of the technical facilities listed at 9.13.4 should not be automatically extended to generators in Scotland, this paragraph has been amended to limit its applicability to generators in England and Wales commissioned prior to the Transfer Date.
- 6.37. Section 9.15 (Interface Agreements) has been amended to reflect that these agreements will be between the user and NGC in relation to connection sites in England and Wales, and a user and a Relevant Transmission Licensee in relation to connection sites in Scotland.
- 6.38. As noted above, section 9.14, Safety Rules, has been amended to reflect the GB Grid Code approach in relation to safety.

Section 10 – Transitional Issues

- 6.39. No specific changes have been made.

Section 11 – Interpretation and Definitions

- 6.40. A definition of Relevant Transmission Licensee has been included in the GB CUSC Version2. This is required when referring to a transmission licensee other than NGC.
- 6.41. The definition of CUSC Implementation Date now refers to the specific date on which the CUSC was first implemented (18th September 2001) as a new CUSC standard licence condition will be determined and brought into effect for BETTA and leaving the definition unamended could be confusing.
- 6.42. A definition of "Great Britain" has been included in the legal text in volume 2 of this document, as the scope of the CUSC will be GB wide under BETTA.
- 6.43. The definitions of "Safety Coordinator" and "Safety Rules" have been amended to reflect the GB Grid Code approach in relation to safety (see above).

- 6.44. All the other changes proposed are the consequence generic changes and issues previously concluded upon.

Schedules and Exhibits

Schedule 1 – List of Users

- 6.45. The Schedule is not included in the draft legal text at this time.

Schedule 2 Exhibit 1 – Bilateral Connection Agreement

- 6.46. No specific changes have been made.

Schedule 2 Exhibit 2 – Bilateral Embedded Generation Agreement

- 6.47. No specific changes have been made.

Schedule 2 Exhibit 3 – Construction Agreement

- 6.48. As noted in the second GB CUSC consultation, changes have been necessary in paragraphs 2.2, 2.4, 2.5, 2.6, 4.8 and 11.1 to allow for the fact that the land may belong to a transmission licensee other than NGC. This also requires a change to the definition of “Construction Site”.
- 6.49. Changes have been necessary in paragraph 2.7 to allow for work carried out by a Relevant Transmission Licensee on behalf of NGC and in paragraph 2.9 to enable access to the construction site for the necessary personnel.
- 6.50. 2.13 has been amended to ensure it applies to any nuclear generator and any NSLPA.
- 6.51. As noted above, amendments have been made to reflect the statutory or licence obligations of a Relevant Transmission Licensee where appropriate. 9A.3.2 and 9B.7.1 have been amended to reflect that in addition to NGC obtaining the consent of the Authority under its licence, there may also be occasion when it is necessary for a Relevant Transmission Licensee to obtain the consent of the Authority under its licence.
- 6.52. Also, as noted in the third GB CUSC consultation, clauses 2.2 and 2.41 have been amended to reflect differences in Scots law.

Schedule 2 Exhibit 4 – Mandatory Services Agreement

- 6.53. No specific changes have been made.

Schedule 3 – Balancing Services Market Mechanism

- 6.54. No specific changes have been made.

Exhibit A – Accession Agreement

- 6.55. Paragraph 9 has been amended to reflect that parties will provide to NGC an address in Great Britain, and not just England and Wales.
- 6.56. Paragraph 8 has been amended to extend jurisdiction to the courts of Scotland, as well as the courts of England and Wales.

Exhibit B – Connection Application

- 6.57. In paragraph 8, NGC is permitted to consult with other Relevant Transmission Licensees on the information contained in the application.
- 6.58. Paragraph 11 has been amended to reflect that NGC may not own the plant and apparatus referred to.
- 6.59. The Application for a New Connection in Exhibit B has been amended at paragraphs 6 and 7 to distinguish between Connection Sites in Scotland and those in England and Wales.

Exhibit C – Connection Offer

- 6.60. No specific changes have been made.

Exhibit D – Use of System Application (for embedded generators etc.)

- 6.61. In paragraph 9 NGC is permitted to consult with other Relevant Transmission Licensees.

Exhibit E – Use of System Offer (for embedded generators etc.)

- 6.62. No specific changes have been made.

Exhibit F – Use of System Application (for suppliers etc.)

6.63. No specific changes have been made.

Exhibit G – Use of System Offer (for suppliers)

6.64. No specific changes have been made.

Exhibit H – Use of System Offer (for interconnectors)

6.65. No specific changes have been made.

Exhibit I – Modification Application

6.66. In paragraph 8, NGC is permitted to consult with other Relevant Transmission Licensees.

6.67. The Modification Application in Exhibit I has been amended at paragraph B3 to distinguish between Connection Sites in Scotland and those in England and Wales.

Exhibit J – Modification Offer

6.68. Paragraph 2 has been amended to reflect that NGC may not own the plant and apparatus referred to.

Exhibit K – Modification Notification

6.69. No specific changes have been made.

Exhibit L – Bi-Annual Estimate for Bilateral Agreement

6.70. No specific changes have been made.

Exhibit M – Secured Amount Statement

6.71. No specific changes have been made.

Exhibit N – Notice of Drawing

6.72. No specific changes have been made.

Exhibit O – Interface Agreements

- 6.73. In the draft legal text published in December 2003, Exhibit O was amended to take account of Ofgem/DTI's proposal that Interface Agreements are between the user and NGC in relation to connection sites in England and Wales and between the user and a Relevant Transmission Licensee in relation to connection sites in Scotland. As a result of further consideration of this issue, Ofgem/DTI consider that rather than Exhibit O being comprised of two GB pro forma Interface Agreements for BETTA (based on the existing two CUSC pro forma), a further two new pro forma should be added for sites in Scotland. This means that the pro forma for England and Wales will remain largely unchanged, and this is consistent with the approach of minimum change for BETTA. The new pro forma for Scotland will be based on the existing pro forma, but amended in order that they can apply in Scotland between a Relevant Transmission Licensee and a user and not NGC and a user.
- 6.74. Volume 2 of this document contains amended legal drafting to reflect this, and Exhibit O is now comprised of the following 4 pro forma:
- ◆ Exhibit O, Part IA: NGC Assets on User Land in England and Wales (existing pro forma)
 - ◆ Exhibit O, Part IB: Relevant Transmission Licensee Assets on User Land in Scotland (new pro forma)
 - ◆ Exhibit O, Part IIA: User Assets on NGC Land (existing pro forma), and
 - ◆ Exhibit O, Part IIB: User Assets on Relevant Transmission Licensee's Land (new pro forma).
- 6.75. Exhibit O, Part IB and Part IIB are based on the exiting CUSC pro forma, but amended to reflect that the agreement will be between a user and a relevant transmission licensee. Therefore, for example, references to NGC have been replaced by references to a Relevant Transmission Licensee, and references to NGC Assets have been replaced by reference to Relevant Transmission Licensee Assets. A number of amendments have also been made to take account of Scots Law issues (in particular in relation to property law) in order that these pro forma are appropriate for application in Scotland. In addition, as Parts 1B and IIB will be new pro forma, Ofgem/DTI consider it appropriate to amend

incorrect or out of date references where these occur in the text on which the new pro forma is based.

- 6.76. Exhibit O, Part IA and Part IIA are amended only to reflect the new definition of GB transmission system and to reflect that jurisdiction provisions in the GB CUSC are extended to cover the courts of Scotland as well as those in England and Wales.

Appendix 1 : List of respondents

The following responses to the consultation paper were received:

BETTA Review Group³⁶

British Energy

Grangemouth CHP Ltd

National Grid Transco

Scottish Power UK Division

SP Transmission and Distribution

Scottish and Southern Energy

³⁶ Representing the views of British Energy plc, EDF Energy plc, Powergen UK plc, Centrica plc and RWE Innogy plc.
The CUSC under BETTA Conclusions Volume 1
Ofgem/DTI

Appendix 2 : Changes between the draft GB CUSC and GB CUSC version 2

Approved Amendments

The draft GB CUSC includes the following Approved Amendments, all of which have been implemented into the CUSC prior to 30 April 2004:

Number	Effect of Amendment
CAP045	Cost Reflective Reactive Power Default Payment Rate Indexation
CAP048	Firm Access and Physical Temporary Disconnection
CAP049	Alternative Amendments
CAP050	Review Process for Implemented Alternative Amendments
CAP051	Initiation of the Amendment Procedures
CAP052	Removal of Land Charges
CAP053	Reconciliation of Site Maintenance Charges
CAP 055	Users' Demand Forecasts TNUoS Charging
CAP056	Correction of Definition of Operational Metering System
CAP058	Reinstatement of Connection Site Demand Capability
CAP059	Minor Text Amendment to Section 2
CAP060	Minor Text Amendment to Section 6
CAP062	Amendment of Contact Address and addition of title of person to contact in Exhibit F
CAP063	Amendment of Contact Address in Exhibit O Part I and Exhibit O Part II
CAP064	Minor Reference Error in Schedule 2, Exhibit 3
CAP065	Removal of Provisions Relating to NETA Go-live
CAP066	Removal of Historic Transitional Provisions for Section 10

Other Specific Amendments

The following table sets out the main changes between GB CUSC version 2 and the draft GB CUSC published in volume 2 of this document. These changes are discussed in more detail in chapter 6.

Proposed Change	Sections Changed
Reference to the statutory and licence duties of a Relevant Transmission Licensee.	Generic change
Jurisdiction is extended to the courts of Scotland in addition to the courts of England and Wales.	Generic change
Changes to CUSC safety provisions, to reflect GB Grid Code approach in relation to safety.	2.10, 9.14 and Section 11
Changes to governance provisions to reflect requirement for change-coordination with STC and to reflect that the Amendments Panel can consider Amendments from Relevant Transmission Licensees in relation to Exhibit O Parts IB and IIB only.	Section 8
Definition of "Great Britain" has been included.	Section 11
Changes to reflect that separate Interface Agreement pro forma will exist in relation to Scotland and England and Wales.	Exhibit O

Appendix 3 : Statement of CUSC Version

This table identifies the version of the CUSC used to generate the draft legal text for GB CUSC version 2 (published in December) and the draft GB CUSC shown in volume 2 of this consultation. The version numbers can be related to the baseline information displayed on the NGC's website (www.nationalgrid.com).

GB CUSC Section	GB CUSC version 2	draft GB CUSC
	E&W Version	E&W Version
Section 1	V1.1	V1.1
Section 2	V1.1	V1.3
Section 3	V1.3	V1.4
Section 4	V1.7	V1.7
Section 5	V1.1	V1.2
Section 6	V1.3	V1.5
Section 7	V1.0	V1.0
Section 8	V1.5	V1.6
Section 9	V1.3	V1.4
Section 10	V1.0	V1.1
Section 11	V1.8	V1.11
Schedule 2 Exhibit 1	V1.1	V1.2
Schedule 2 Exhibit 2	V1.1	V1.1
Schedule 2 Exhibit 3	V1.1	V1.3
Schedule 2 Exhibit 4	V1.1	V1.1
Schedule 3	V1.3	V1.4
Exhibit A	V1.0	V1.0
Exhibit B	V1.2	V1.3
Exhibit C	V1.0	V1.0
Exhibit D	V1.1	V1.2
Exhibit E	V1.0	V1.0
Exhibit F	V1.1	V1.3
Exhibit G	V1.0	V1.0
Exhibit H	V1.0	V1.0
Exhibit I	V1.0	V1.1

Exhibit J	V1.0	V1.0
Exhibit K	V1.0	V1.0
Exhibit L	V1.0	V1.0
Exhibit M	V1.0	V1.0
Exhibit N	V1.0	V1.0
Exhibit O Part IA	V1.1	V1.2
Exhibit O Part IB		new exhibit
Exhibit O Part IIA	V1.0	V1.1
Exhibit O Part IIB		new exhibit