

The CUSC under BETTA

**Ofgem/DTI conclusions and publication of
proposed designation text**

August 2004

Summary

This document marks the end of a process of consultation on the Connection and Use of System Code (CUSC) under BETTA, which commenced in December 2002. Ofgem/DTI have separately published the legal text to give effect to the changes to the CUSC for BETTA. This document explains the changes to the legal text of the CUSC that is to apply GB wide, which have been made to the text since the near final legal text was published in April 2004.

These changes have arisen as a result of conclusions reached following responses to the text published in April 2004 and other Ofgem/DTI consultations on the text of the GB CUSC and transition to the GB CUSC. One change has also arisen as a result of an amendment to the England and Wales CUSC that has been implemented since the publication of the near final legal text in April.

This document is published together with the legal text for the changes to the CUSC. The changes to the CUSC are to be designated by the Secretary of State and the CUSC will be amended to reflect those changes from 1 September 2004.

Ofgem/DTI have also published a complete version of the CUSC (the version operational on 13 August 2004) change-marked to show all the changes which are incorporated in the document to be designated.

Table of contents

1. Background.....	3
2. Publication of documents	6
Designation text	6
Change-marked CUSC.....	7
3. Conclusions on previous consultations	8
Near final legal text	8
Amendments to the England and Wales CUSC	22
Conclusions on CUSC on legal text for transition.....	23
Consultation on CUSC and Connections licence conditions.....	33
Consultation on limitation of liability and disputes provisions.....	39
Mini-consultations	40
4. Outstanding issues	44
Appendix 1 Respondents to publication of near final text of the GB CUSC	46
Appendix 2 Respondents to consultation on the transition to the GB CUSC and GB Grid Code.....	47
Appendix 3 Respondents to mini consultations on GB CUSC legal text	48

1. Background

- 1.1. The rationale for the British Electricity Trading and Transmission Arrangements (BETTA) reforms is set out in a consultation paper of December 2001¹ ('the December 2001 consultation paper') and a report of May 2002² ('the May 2002 report'). These reforms are planned to be introduced in April 2005.
- 1.2. Since May 2002, Ofgem/DTI have published a number of consultation and conclusions documents on BETTA and its component parts. Copies of these papers and non-confidential responses to them can be found on the Ofgem website³.
- 1.3. On 30 January 2003 the DTI published a draft of the Electricity (Trading and Transmission) Bill (the E(TT) Bill) together with a Regulatory Impact Assessment (RIA), which explains the purpose and impact as well as the expected costs and benefits of the proposed primary legislation to enable the BETTA reforms. The E(TT) provisions of that draft Bill have now been incorporated into the Energy Act which received Royal Assent on 22 July 2004.
- 1.4. Ofgem/DTI have published a number of documents related to the Connection and Use of System Code (CUSC) which is to apply throughout GB. On 6 December 2002, Ofgem/DTI published the first consultation on the CUSC under BETTA⁴.
- 1.5. On 13 June 2003, Ofgem/DTI published a second consultation on the CUSC under BETTA⁵ together with a first draft of the legal text for the GB CUSC and

¹ 'The Development of British Electricity Trading and Transmission Arrangements (BETTA): A consultation paper', Ofgem, December 2001. Ofgem 74/01.

² 'The Development of British Electricity Trading and Transmission Arrangements (BETTA): Report on consultation and next steps' Ofgem/DTI, May 2002. Ofgem 38/02.

³ www.ofgem.gov.uk (see "BETTA publications").

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

⁵ "The Connection and Use of System Code Under BETTA: Ofgem/DTI conclusions and consultation on a CUSC to apply throughout GB", June 2003, Ofgem 46/03

on 16 December 2003, Ofgem/DTI published the third consultation on the CUSC under BETTA⁶ together with a second draft of the proposed legal text for the GB CUSC.

- 1.6. On 30 April 2004, Ofgem/DTI published their conclusions on the CUSC under BETTA together with near final text for the GB CUSC⁷ (the 'April 2004 conclusions document').
- 1.7. On 17 June 2004 Ofgem/DTI published a document⁸ on the approach to the transition to BETTA. That document described the approach being adopted to the development of transitional legal drafting that comprised the legal framework for the transition to BETTA, and on 7 July 2004, Ofgem/DTI published a consultation on the transition to the GB CUSC and GB Grid Code⁹, together with legal text to effect such transition.
- 1.8. On 1 July 2004 Ofgem/DTI consulted on changes to the CUSC provisions relating to limitation of liability and coordination of disputes, as part of a consultation on the legal text of the STC¹⁰.
- 1.9. On 13 July 2004¹¹ and 23 July 2004¹², Ofgem/DTI published open letter consultations which contained proposals for changes to the CUSC to apply as a result of conclusions on small generator issues.

⁶ "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

⁷ "The Connection and Use of System Code under BETTA, Ofgem/DTI conclusions and publication of near final legal text for the GB CUSC", April 2004, Ofgem 91/04

⁸ "Legal arrangements for the transition to and implementation of the British Electricity Trading and Transmission Arrangements, Ofgem/DTI Statement of approach", May 2004, Ofgem 137/04

⁹ "Provisions for the transition to the GB CUSC, the GB Grid Code, and GB Connection and Use of System Code agreements under BETTA", July 2004, Ofgem 152/04

¹⁰ "The SO-TO Code under BETTA: Draft text in progress and CUSC provisions relating to disputes and limitation of liability, An Ofgem/DTI mini consultation document", July 2004, 148/04

¹¹ "BETTA consultation on legal drafting for the GB CUSC", Ofgem/DTI, 13 July 2004, Ofgem 157/04

¹² "BETTA consultation on draft licence condition to implement a proposed interim charging measure for small, transmission connected generators", Ofgem/DTI, 23 July 2004, 173/04

- 1.10. On 27 July 2004, Ofgem/DTI issued an open letter consultation on the inclusion of CUSC Amendment CAP 072 in the GB CUSC¹³.
- 1.11. The purpose of this document is to explain the derivation of the legal text for the proposed changes to the CUSC which have been published ready for designation by the Secretary of State in order that the GB CUSC may come into effect on 1 September 2004.

¹³ "BETTA consultation on the inclusion of an approved amendment in the GB CUSC", July 2004, Ofgem 175/04

2. Publication of documents

- 2.1. In addition to this document, Ofgem/DTI are publishing two documents which contain legal text for the CUSC: the designation text and a change marked version of the CUSC.

Designation text

- 2.2. The document to be designated by the Secretary of State identifies the changes to be made to the existing CUSC to form the code which will come into effect GB-wide on 1 September 2004. It is expected that the designation will take the form of a direction from the Secretary of State to NGC to modify the CUSC. The power to make such a direction is provided for in the transitional changes to the CUSC licence condition contained within NGC's licence (Standard Licence Condition C10). NGC will then publish the modified CUSC.
- 2.3. The changes to be made to the CUSC are derived from a number of sources as follows:
- ◆ the near-final CUSC legal text published on 30 April 2004, adjusted where appropriate to reflect comments made by parties on that text
 - ◆ a Proposed Amendment to the CUSC which is currently operational in England and Wales that has been approved by the Authority since the version which was published on 30 April 2004
 - ◆ the legal text contained within the document published on 17 June 2004 regarding the transition to a GB CUSC, again amended where appropriate to take account of comments made by parties on that text
 - ◆ an STC consultation issued on 1 July 2004 Ofgem/DTI which consulted on changes to the CUSC provisions relating to limitation of liability and coordination of dispute, and

- ◆ Ofgem/DTI mini-consultations in the form of open letters published on 13 July 2004¹⁴ and 23 July 2004¹⁵ on changes to the CUSC to give effect to Ofgem/DTI's conclusions¹⁶ following the consultation on small generators under BETTA¹⁷.

2.4. Each of these areas of change is discussed in chapter 3.

Change-marked CUSC

- 2.5. In addition to the designation text, Ofgem/DTI are publishing a complete version of the CUSC text, change marked to show all the changes that the designation text requires should be made to the CUSC. The version of the CUSC against which the changes are marked is that which was in operation on 13 August 2004. It therefore includes approved amendments since the version of the CUSC used to produce the near final legal text for the GB CUSC in April 2004.
- 2.6. It should be noted that this recently published complete version of the CUSC text includes changes which will come into effect at different times (some at go-active and some at BETTA go-live). It should not, therefore, be relied upon as the 'operational' version of the CUSC. This publication is purely to enable participants to understand the context within which the changes to the text designated by the Secretary of State are being made.
- 2.7. As usual, NGC should be contacted for an operational version of the CUSC as it exists at any given point in time.

¹⁴ See footnote 11

¹⁵ See footnote 12

¹⁶ "Small generator issues under BETTA: An Ofgem/DTI conclusions document", May 2004, Ofgem 96/04

¹⁷ "Small generator issues under BETTA: An Ofgem/DTI consultation document", November 2003, Ofgem 145/03

3. Conclusions on previous consultations

Near final legal text

- 3.1. As mentioned in chapter 1, near-final legal text for the GB CUSC was published on 30 April 2004.

Summary of responses and Ofgem/DTI's Views

- 3.2. Seven responses were received to the April 2004 conclusions document. A list of respondents is shown in Appendix 1. The responses are available on the Ofgem website at www.ofgem.gov.uk.
- 3.3. This chapter sets out respondents' views only where new issues or new information in relation to Ofgem/DTI's conclusions were brought forward. Where respondents have commented on issues and these comments have previously been addressed by Ofgem/DTI, and the respondent is not raising a new issue or providing new information, these comments are not considered again. The full text of responses received to the April 2004 conclusions document can be found on Ofgem's website.

Governance and Panel election

- 3.4. One respondent commented on CUSC governance arrangements and the process of electing a CUSC Panel to recognise the wider scope of the GB CUSC.
- 3.5. In relation to governance, the respondent considered that joint working arrangements would be best supported by an obligation on the CUSC Panel to invite representatives of the STC committee to become members of a working group when the Panel believes that a Proposed Amendment may impact on the STC. The respondent considered that the current proposal was arguably not sufficiently strong as it was merely enabling.
- 3.6. Ofgem/DTI note that the change to the CUSC to enable the Panel to invite the STC committee to appoint a representative if appropriate, is not intended to prescribe how the joint working arrangements that the GB CUSC requires NGC

to establish will operate. The purpose of this change is to release the Panel from a restriction that might otherwise apply, if such an enabling provision was not included. Ofgem/DTI therefore remain of the view that it is not necessary to place an obligation on the CUSC Amendments Panel and this would imply a level of prescription over how joint working arrangements should operate that Ofgem/DTI do not consider to be appropriate.

- 3.7. This respondent also sought clarity regarding the reference to Panel 're-election' in the April 2004 conclusions document, as it considered that this suggests reappointment or an uncontested process, which the respondent was not in favour of. In May 2004, Ofgem/DTI published their conclusions on establishing panels for the CUSC, BSC and Grid Code for BETTA¹⁸. This document explained the process for establishing the GB CUSC panel, which involved an election process, and this election is now being undertaken by NGC.
- 3.8. One respondent commented that cross code procedures should not be necessary between the STC and the CUSC, as the risk and responsibility of the codes being in conflict should lie with the GB system operator.
- 3.9. Ofgem/DTI note that the change coordination arrangements put in place between the CUSC and the STC are designed to ensure that, in consideration of proposed changes to any code, the impact of such changes on the other code may be taken into account. Ofgem/DTI consider it is appropriate that the cross code procedures that will apply between the CUSC and other industry code, should also apply between the CUSC and the STC.

Mandatory Ancillary Services

- 3.10. One respondent was concerned that Ofgem had not concluded on the ancillary service obligations of small generators, or on the contractual route by which these will be imposed. In May 2004 Ofgem/DTI published their conclusions on

¹⁸ "Establishing GB Panels for the CUSC, the Grid Code and the BSC under BETTA: Ofgem/DTI conclusions", May 2004, Ofgem 95/04

small generator issues under BETTA¹⁹, and this issue was addressed in that document.

- 3.11. One respondent commented on the opportunities for generators to offer commercial ancillary services. This respondent stated that fast reserve can only be tendered in 50MW blocks, and while this may be appropriate where the directly connected generators are large, it is unreasonable to exclude small 132kV connected generators in Scotland from offering services which other larger generators are able to offer. Ofgem/DTI note that NGC is responsible for putting in place arrangements regarding the tender process for commercial ancillary services, and would expect that NGC will consider the suitability of any existing arrangements in the context of the GB market.
- 3.12. One respondent commented that there has been no progress to date on establishing mandatory and commercial ancillary service agreements with the GB system operator, and said it trusted that this is a transitional issue. Ofgem/DTI have recently published a number of documents on the transitional arrangements for BETTA, and note that the GB system operator will be required to negotiate these, and other agreements with users in order that appropriate arrangements are in place for BETTA go-live.

“Transfer Date” under the CUSC

- 3.13. In the April 2004 conclusions document, Ofgem/DTI concluded 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. Two respondents commented on this conclusion.
- 3.14. One respondent was still unclear as to how Scottish users will be obliged or otherwise to make technical facilities available as a Transfer Date provision, on a case by case basis. Another respondent stated that it considered that if a user currently provides technical facilities without remuneration, as part of the

¹⁹ See footnote 16

technical requirements of connecting to the system they should continue to be provided on this basis. Ofgem/DTI continue to be of the view that the provision of technical facilities in relation to individual connections is a matter to be considered and negotiated on a case by case basis between the individual connectee and the GB system operator, in agreeing the connection agreements to apply between these parties for connection to the GB transmission system. Where the connectee and the GB system operator cannot agree, they will be able to seek a determination from the Authority.

Transitional issues

- 3.15. One respondent commented on transitional issues, noting that the indicative timetable suggested that there was a significant amount of work to be taken forward in the next two months. Ofgem/DTI note that this comment was made at a time when there was significant work to be done in the lead up to go-active but that the majority of this work is now complete.

Interface Agreements

- 3.16. One respondent provided comments in addition to its original comments on Exhibit O, as the respondent considered that Ofgem/DTI's response had not addressed the respondent's concerns that further changes were required to the draft Scottish Interface Agreement pro forma to take account of Scots law or to deal with the practical implications of BETTA. This respondent considered that it was inappropriate to impose on users in Scotland a statutory form of Interface Agreement which the respondent considered ignored the practicalities and relationships between the user and the asset owner, particularly when the practical implications were dealt with in existing industry standard form agreements in Scotland.
- 3.17. This respondent requested that Ofgem/DTI provide detailed comments on each of the issues the respondent had identified in its response, or alternatively requested a meeting to discuss this further. In order to ensure Ofgem/DTI fully understood this respondent's particular concerns, Ofgem met with

representatives of this respondent (and a representative of another respondent) in July 2004.

- 3.18. Following the discussion at this meeting, and the further comments provided by this respondent in its response to the April 2004 document (which is published in full on the Ofgem website), Ofgem/DTI remain of the view that it is not appropriate to use the powers provided by the E(TT) provisions of the Energy Act 2004 to make changes other than those that are necessary or expedient for the purposes of implementing BETTA.
- 3.19. Ofgem/DTI recognise that a number of the changes the respondent suggests may be desirable from the perspective of some parties, but note that where these are not required in order to extend the provisions of the CUSC to apply to GB, then these changes cannot be made for BETTA. Ofgem is continuing to discuss the individual concerns of this respondent, and should the outcome of that discussion identify changes that are required for BETTA, and that can therefore be made using the powers provided by the Energy Act 2004, these changes will be consulted upon as required. In order to ensure that, subject to such consultation, it will be possible to make any necessary changes to the CUSC (or to Exhibit O), Ofgem/DTI have added the area of Interface Agreements to the topics for further work listed in the new transitional Section 12 of the CUSC.
- 3.20. Ofgem/DTI further note that after 1 September 2004, this respondent (or any other CUSC party) can choose to propose amendments to the enduring GB CUSC, according to the CUSC amendment procedures that will then apply to CUSC parties in GB.
- 3.21. One other respondent continued to disagree that existing users should be obliged to prepare new interface agreements based on a standard form that currently applies in England and Wales. This respondent stated that it could see no commercial advantage (or disadvantage) in these users retaining their existing agreements, which combine the elements of interface and lease agreements and are governed by Scots law, and have been drawn up to reflect the circumstances of the particular site and the party concerned. The respondent considered that termination of the existing agreements and their replacement with the form of interface agreement suggested would be a

reduction of the existing rights of the parties to those agreements and could not be justified.

- 3.22. Ofgem/DTI note that while existing users will be required to enter into an interface agreement substantially in the form set out in Exhibit O, there will be no centrally imposed requirement to terminate agreements that are in place, in so far as these agreements do not conflict with the statutory and licence obligations of the user and the counterparty to the Interface Agreement.
- 3.23. One respondent said that it is important to clearly define the limited circumstance in which transmission owners can propose amendments to the pro forma interface agreements for sites in Scotland, in order that other unrelated parts of the CUSC are not affected.
- 3.24. Ofgem/DTI note that 8.15.1 of the CUSC recognises that a proposal to modify the CUSC may be made by a Relevant Transmission Licensee in relation to Exhibit O Part IB and Exhibit B Part IIB only. Ofgem/DTI do not think it is appropriate to define or limit the circumstances in which transmission owners can propose amendments to the pro forma interface agreement for Scotland, and do not consider that changes to this pro forma will affect other unrelated parts of the CUSC. Any consideration of proposals for a change to any of the four Exhibit O agreements would have to include consideration of the impact on the other such agreements.

CAP 048 (Firm Access and Temporary Physical Disconnection)

- 3.25. The April 2004 conclusions document sought views on the inclusion in the GB CUSC of a number of approved CUSC amendments. Two respondents commented on one of these amendments, CAP 048.
- 3.26. One respondent considered that different definitions of transmission and network topology in Scotland need to be taken into account when considering the application of CAP 048 in Scotland, as CAP 048 was developed with the definition of a connection boundary as set out in the England and Wales CUSC in mind. Ofgem/DTI do not agree that the extension of the CUSC to GB will require the CAP 048 CUSC amendments to change. CAP 048 provides for payments to transmission connected generators in England and Wales in the

event that the generator is temporarily physically disconnected from the transmission system. The extension of the CUSC to GB will result in this provision being extended to transmission connected generators in Scotland. Ofgem/DTI do not consider that the different definition of transmission and network topology in Scotland will have any impact on this, or prevent the extension of this CUSC provision to GB.

- 3.27. Another respondent commented that the funding of the compensation payments that are introduced as a result of CAP048 may be complicated by the separation of system operator and transmission owner in Scotland.
- 3.28. Ofgem/DTI note that CAP 048 provides for payments from the GB system operator to a user as compensation for removal of access rights in certain circumstances. To the extent that any issues were to arise regarding compensation to be provided to the GB system operator by a transmission owner for withdrawal of transmission services, this is a matter that would be progressed under the STC.

Limitation of liability

- 3.29. One respondent commented, in respect of the legal drafting in Section 6 of the GB CUSC, that after 6.12.1.2 a new line should be created to say - "Provided that in respect of an incident taking place causing physical damage to property situated in Scotland the total liability of any Party in respect of all claims for such loss shall not exceed five million Pounds Sterling (£5,000,000) per incident or series of related incidents."
- 3.30. Ofgem/DTI are aware that this issue has been raised separately in discussions with the transmission licensees on the development of the STC and is the subject of ongoing discussions. Ofgem/DTI will consult separately on this change if necessary. At this time, this change has not been included in the proposed GB CUSC designation text.

Comments on draft legal text

- 3.31. A number of respondents provided specific comments on draft legal text. These comments are set out in the table below, together with Ofgem/DTI's response.

CUSC Section	Respondent's comment	Ofgem/DTI's view
Section 11	The definition of Nuclear Site Licence Provisions Agreement should include the words "as amended from time to time" to 'future-proof'.	Ofgem/DTI are aware that discussion continue on the topic of such agreements in Scotland and do not propose to make any changes until such discussions are completed. For the present (as now) no definition will appear in Section 11. Ofgem/DTI have allowed for future changes in their proposed drafting for Section 12.
5.3.4(a), 5.4.7(a)(ii), 5.5.5.1(aa), 5.7.3 introduction and (a)	For consistency with 5.3.4(b), 5.4.7(a)(iii), 5.5.5.1(bb) and 5.7.3(b), the wording "in relation to" should be changed to "in the case of".	Ofgem/DTI agree that this change is appropriate as using "in the case of" is consistent with existing CUSC drafting. This change has been made to the clauses identified by the respondent.
Section 11	Should it be "and" rather than "and/or" in the definition of "Safety Coordinator(s)"?	Ofgem/DTI have given further consideration to this definition and consider that for clarity, and in order for the definition to apply as it is intended under BETTA, the correct reference is "or". This change has been made to this definition in section 11 of the proposed GB CUSC designation text.
Section 11	Should the definition of "GB Transmission System" refer to Remote Transmission Assets?	Ofgem/DTI agree that the definition should include this, and have added the words "but shall not include Remote Transmission Assets" to the

CUSC Section	Respondent's comment	Ofgem/DTI's view
		definition o GB Transmission System in the GB CUSC.
2.17.7	Line 2. The words "or the Relevant Transmission Licensee" should be inserted.	Ofgem/DTI agree that it is appropriate to refer to a Relevant Transmission Licensee in this clause, but consider that in order that the intention behind this clause is consistent with that in clause 2.17.2, the words "or the statutory and licence duties of a Relevant Transmission Licensee" should be inserted at line 4, after the word "duties". This change has been made in clause 2.17.7 of the proposed GB CUSC designation text.
5.2.1	Provision should be made to recognise that the transmission owner will have rights to deenergise for safety reasons. Accordingly, the sixth line thereof should insert "or the Relevant Transmission Licensee" between "NGC" and "shall".	As Ofgem/DTI noted in the April 2004 conclusions document and the December 2003 GB CUSC consultation, 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.
6.12	Limitation of liability. The necessary back-off provisions being discussed in	Ofgem/DTI consulted on changes to the CUSC provisions in relation to

CUSC Section	Respondent's comment	Ofgem/DTI's view
	relation to the STC will require to be inserted. In particular, the application of Contracts (rights of Third Parties) Act 1999 will have to be considered.	limitation of liability ²⁰ , and the text that has been developed as an outcome of that consultation is included in the proposed GB CUSC designation text.
6.22	Third Party Rights – This clause requires to be amended in light of the liability drafting suggested in the STC consultation.	The proposed GB CUSC designation text includes the CUSC text developed as part of the STC consultation on limitation of liability and third party rights.
8.14	It should be clear that there is a duty to establish joint working and change-coordination roles with the STC	Ofgem/DTI consider that this is sufficiently clear from the wording proposed in clause 8.14.1 of the April 2004 near final legal text. Ofgem/DTI do not consider that any further changes are required.
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. The argument used in respect of 2.12 was that the words "or other agreement" could be used to bring in the Interface Agreement. This is not the case in 9.16.	As Ofgem/DTI noted in the April 2004 conclusions document, the words "or elsewhere" at 9.16 cover this.

²⁰ See footnote 10
CUSC proposed designation text
Ofgem/DTI

CUSC Section	Respondent's comment	Ofgem/DTI's view
Section 11	The use of the capitalised term "Transmission Licensees" will have to be considered, given that the definition of "Transmission Licence" refers only to that licence issued to NGC.	It is not intended that the GB CUSC should use the capitalised term "Transmission Licensee". Ofgem/DTI note that this term has, however, been used in the definition of GB Transmission System. This is an error, and the lower case term is used in this definition in the proposed GB CUSC designation text.
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. Line 9 should in addition refer to the feu or the ownership of land.	As Ofgem/DTI noted in the April 2004 conclusions document, Ofgem/DTI consider that the reference to "other rights" is sufficiently broad to cover wayleaves and servitudes. Ofgem/DTI have amended line 9 to include feuhold.
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.	As Ofgem/DTI noted in the April 2004 conclusions document, this is a matter to be addressed in the relationship between the transmission owner and system operator, and is not required to be reflected in the GB CUSC.
	Inconsistency in the drafting in the treatment of actions which need to be taken by a RTL. e.g. 2.5 and 2.17, NGC takes action without any qualification as to the location of the connection. But in Schedule 2,	Ofgem/DTI do not consider that the drafting approach is inconsistent. The reference to a RTL in Schedule 2, exhibit 3, paragraphs 2.5 and 2.6 is used to identify the geographic location of the site in question in

CUSC Section	Respondent's comment	Ofgem/DTI's view
	exhibit 3, paragraphs 2.5 and 2.6 NGC shall procure that the RTL takes action for sites in Scotland.	order to identify for the user the actions it is required to take and does not refer to any actions to be taken by a RTL.
6.23.1 and Ex O Parts 1B and 2B, paragraph 11.2.	Should the reference be to "or Scotland" rather than "and the courts of Scotland" to be consistent with STC drafting?	The drafting in respect of legal jurisdiction achieves the desired result. Any necessary issues of consistency will be considered after go-active.
5.4.4 and 5.4.5	Inconsistency in the terminology regarding potential breaches of the transmission licence: <ul style="list-style-type: none"> - In 5.4.4, the test for NGC is that it "places or seriously threatens to place . . . NGC in breach", whereas the test for the RTL is that it would be placed "in breach". - In 5.4.5 the test for NGC is material breach but only "in breach" for the RTL. 	Ofgem/DTI agree that it is appropriate to make the changes suggested, in order that the test applied by NGC in respect of its own licence is consistent with the test NGC applies in respect of potential breaches by a RTL of its licence. The same test for RTLs has therefore been applied as currently applies for NGC. This change has been included in the proposed GB CUSC designation text.
6.2	Appears to be inconsistency between use of "transmission licence" and the defined term "Transmission Licence".	Ofgem/DTI do not agree that the drafting is inconsistent. The reference to transmission licence in 6.2 is to any transmission licence, whereas the defined term "Transmission Licence" is NGC's transmission licence.
6.8.3(b)(iii) and (iv)	These paragraphs appear to use substation as a defined term, although there is no definition of this in Section	Ofgem/DTI note this formatting error (and note that this is not an existing CUSC formatting error), and have

CUSC Section	Respondent's comment	Ofgem/DTI's view
	11.	amended this in the proposed GB CUSC designation text.
6.15	Seek assurance that sufficient standards are in place to ensure that information relating to the activities of Scottish users cannot be supplied to NGC's transmission owner function to any greater extent than information relating to the activities of users in England and Wales can be supplied to Scottish TOs.	Ofgem/DTI note that NGC receives information under the CUSC relating to the activities of Scottish users in order that it can carry out the activities involved in being the GB system operator. As a result of this, it may be that NGC receives information relating to the activities of Scottish users to a greater extent than the Scottish transmission licensees receive information relating to the activities of users in England and Wales. This is appropriate, given that Scottish transmission licensees are not carrying out system operator activities. Ofgem/DTI do not consider that the receipt of this information under the CUSC puts NGC in an advantageous position relative to the Scottish transmission licensees. Ofgem/DTI further note that under Special Condition NGC G, NGC will be prohibited from engaging in preferential or discriminatory behaviour. This will prohibit NGC from using the information it receives under the GB CUSC (or elsewhere in carrying out the system operator role) to put itself at an advantage relative to

CUSC Section	Respondent's comment	Ofgem/DTI's view
		other transmission licensees.
8.18.2	Appears to confuse Standing Groups with Working Groups. A Standing Group which is considering an Amendment Proposal is effectively a Working Group and it may be that the provision in para 8.17.3 to appoint an STC representative to the Working Group is sufficient. There should be a similar obligation on the Amendments Panel in relation to the referral of an issue to a Standing Group as there is in relation to the referral of an Amendment Proposal to Working Group.	<p>With regard to the first comment, Ofgem/DTI consider that there may be circumstances where it is appropriate for the Amendments Panel to be enabled to invite the STC Committee to appoint a representative to become a member of a Standing Group, and therefore consider it is appropriate to amend both 8.17.3 and 8.18.2.</p> <p>With regard to the respondent's second comment, Ofgem/DTI consider that this change is not required for BETTA, and it would not therefore be appropriate to use the powers provided by the E(TT) provisions of the Energy Act to make such a change.</p>
Section 11	Definition in Section 11 of "Great Britain" refers to Schedule 1 of the transmission licence. The near-final legal text of the transmission licence does not include (nor make any reference to) a Schedule 1.	Ofgem/DTI note that Schedule 1 is a schedule to the licence itself, and not a schedule to the licence conditions which were published in the near final legal text. Schedule 1 of each the existing transmission licensees' transmission licences will be amended by the Licensing Scheme to refer to Great Britain.

CUSC Section	Respondent's comment	Ofgem/DTI's view
Section 11	The interrelated and interdependent definitions of "GB Transmission System", "Transmission Licensee" (used but not defined), "Transmission Licence", "Transmission", "System" and "Transmission System" are very confusing and confused.	<p>Ofgem/DTI note that the terms "GB Transmission System", "Transmission Licence", "Transmission" and "System" are defined in Section 11 of the CUSC and where these appear in bold, and capitalised in the body of the CUSC users can refer to the definition.</p> <p>As noted above, it is not the intention that the capitalised term "Transmission Licensee" should be used, and references to a transmission licensee will be lower case (other than where the reference is to a "Relevant Transmission Licensee", which is a defined term).</p> <p>Ofgem/DTI note that the term "Transmission System" is not used within the CUSC (as it has been replaced with the defined term "GB Transmission System"), and have therefore removed this as a defined term from Section 11.</p>

Amendments to the England and Wales CUSC

3.32. Since the publication of the near final legal text of the GB CUSC in April 2004, one amendment to the England and Wales CUSC has been approved by the Authority and implemented. CAP 072 is a housekeeping amendment which

reinstates at clause 3.13.2 the clause that was previously clause 3.12.2 of the CUSC, which was erroneously deleted as a result of another housekeeping amendment (CAP 065 – Removal of provisions relating to BETTA go-live).

- 3.33. On 27 July 2004, Ofgem/DTI issued an open letter consultation on the inclusion of this amendment in the GB CUSC²¹.
- 3.34. One response was received, from EDF energy, who agreed with Ofgem/DTI's assessment that this approved CUSC amendment did not raise any additional issues for GB and should therefore be included unchanged in the GB CUSC. The response is available on the Ofgem website.
- 3.35. Ofgem/DTI conclude that this amendment should be included in the GB CUSC, and it is contained in the proposed GB CUSC designation text.

Conclusions on CUSC on legal text for transition

- 3.36. A consultation on the transition to the GB CUSC and GB Grid Code was published on 6 July 2004²².
- 3.37. Six responses were received to the GB CUSC and GB Grid Code transition consultation. A list of respondents is shown in Appendix 2. The responses are available on the Ofgem website at www.ofgem.gov.uk.
- 3.38. Respondents' comments in relation to transition to the GB CUSC are set out below, together with Ofgem/DTI's response. Respondents' comments on transition to the GB Grid Code and the transitional Grid Code licence condition are considered in the Ofgem/DTI publication of proposed designation text for the GB Grid Code, which is published alongside this document. A number of respondents also provided comments in relation to the CUSC and Connections licence conditions. These comments and the Ofgem/DTI further consideration of the Connections licence condition are considered in a separate section of this chapter below.

²¹ see footnote 13

²² see footnote 9

Summary of responses and Ofgem/DTI's views

Application of CUSC

- 3.39. One respondent considered that there is merit in bringing the enduring GB CUSC provisions into effect at BETTA go-active and then limiting their scope through section 12. Section 12 would need to be amended to reflect this “reverse” approach, but it would be simpler in that a number of definitions would no longer be required and the definitions in section 11 could be relied upon.
- 3.40. Ofgem/DTI have considered further the position on the form of the transition drafting for the CUSC. Noting that it will be necessary to align the changes to the CUSC Framework Agreement, which will be effected through the Secretary of State’s licensing scheme, with changes to the CUSC definitions, Ofgem/DTI are persuaded that the transitional drafting for the CUSC will be more effective and more easily understood if the approach for the CUSC is aligned with that for the Grid Code and BSC. Ofgem/DTI have therefore proposed transitional drafting for the CUSC which will put the GB elements into effect at BETTA go-active and disable the necessary elements through the transitional drafting in Section 12.

GB CUSC provisions for transition

- 3.41. One respondent considered that the transitional provisions in Section 12 of the CUSC should be time limited so that at the end of the transitional period, parties to the CUSC will revert to the normal consultation arrangements provided for under the code.
- 3.42. Ofgem/DTI note that the transitional provisions of the GB CUSC have been introduced for the narrow purpose of enabling the effective implementation of BETTA and in particular to provide for any further amendments to be made to the GB CUSC prior to BETTA go-live and to provide for the introduction of the full provisions of the GB CUSC to all users in GB (referred to as ‘cut-over’). Ofgem/DTI note that the licence condition which enables the Authority to direct change to the CUSC (licence condition C10), where such change is necessary or

expedient for the purposes of implementing BETTA, is only active during the transition period. Ofgem/DTI further note that most of the provisions of Section 12 specifically apply only to the transition period and that any user could propose changes to Section 12 after the transition period. Ofgem/DTI further note that the provisions of Section 12 of the CUSC which limit the application of the amendments processes (Section 8) so that they do not apply to Section 12, are limited to the transition period (see Section 12.2.14 (d)).

- 3.43. One respondent considered that despite extensive drafting to deal with the transition from individual network access to GB network access, the respondent was not reassured that the potential problems of precedence and interactive applications have been addressed. This respondent considered that in the absence of conclusions on the conversion of Scottish access rights to GB access rights it was difficult to know if the proposed transitional provisions were satisfactory.
- 3.44. Ofgem/DTI have recently published a consultation on draft legal text to give effect to Ofgem/DTI's proposals in relation to the initial allocation of GB transmission system access rights under BETTA²³ and have since published proposed designation text for licence condition drafting relating to the initial allocation of GB transmission system access rights (contained within SLC C18 of the transmission licence). Should changes be required to the GB CUSC legal text as a result of the outcome of this consultation, these will be consulted upon after designation.

Changes to bilateral agreements with users in England and Wales

- 3.45. One respondent considered that it would be preferable for those generic changes required to the existing England and Wales arrangements to be addressed by provisions in section 12, rather than by requiring NGC and each user to enter into, in all cases, an agreement to vary. It noted that this recognises that a number of changes will be changes in the "form" of the documents as a result of changing definitions. This respondent considered that

²³ "The initial allocation of GB transmission system rights under BETTA: A consultation on draft legal text", Ofgem/DTI, July 2004, Ofgem 174/04
CUSC proposed designation text

the drafting to achieve this could be robust and clear, and any agreements to vary or modifications raised after go-live could be used to “tidy up” and put individual agreements into a GB form if users wished. The respondent considered that the transitional licence condition should recognise this “as required” approach, in obliging NGC to amend agreements with existing users in England and Wales. This respondent welcomed the failsafe provided by the obligation on parties to sign any referred agreement pending the Authority’s determination.

- 3.46. Ofgem/DTI agree that it would be preferable on efficiency grounds for those generic changes required to existing agreements to be progressed by provisions in Section 12, and that this should be reflected in NGC’s transitional licence condition, which would oblige NGC to propose a variation to connection agreements where necessary. The proposed legal text for changes to the CUSC has been appropriately amended.
- 3.47. One respondent considered that in order to reduce the likelihood of determinations in respect of agreements or modification offers signed for BETTA go-live, NGC’s agreement modifications should only reflect those changes which represent the minimum alteration necessary, and NGC’s licence condition should reflect the responsibility of NGC only to amend agreements in a manner which is both expedient and necessary.
- 3.48. Ofgem/DTI note that the approach to amending existing agreements discussed in the preceding paragraphs, means that it may not be necessary in all instances for NGC and users to modify individual agreements, as many changes to these agreements may be changes to the ‘form’ of the agreement. Ofgem/DTI note that in instances where NGC or a user consider it is necessary to amend an existing agreement, 12.2.6(e) reflects that the test for this is whether NGC and the User consider that the modification is required in order that the agreement will comply and be consistent with the requirements of NGC’s licence condition C18 (Requirement to offer terms for connection or use of the GB transmission system during the transition period). NGC’s licence condition and Section 12 also sets out the process to be followed when NGC and users fail to agree. This question is further discussed in the section on draft licence conditions below.

Putting in place bilateral agreements with users in Scotland

- 3.49. One respondent was concerned that the timetable for putting in place agreements will adversely affect the GB transmission charge setting process, as neither the total Transmission Entry Capacity (TEC) nor the total connection charge revenue will be known until the agreements are in place. Ofgem/DTI note that the proposed designation connections licence condition (C18) provides for offers to be made on the basis of an estimate of the GB charging methodology and to update offers when the actual methodology is known and that the same licence condition provides a process for the allocation of access rights to users. Ofgem/DTI believe that these facilities will enable the GB system operator to align offers of connection to and use of the GB transmission system to its charging methodology during the transition to BETTA.
- 3.50. This respondent was also concerned that the period of one month allowed for agreement by existing Scottish users may be inadequate. Given that users will have been in communication with NGC for several months during the process of developing the detail of the agreement which becomes a formal proposal, Ofgem/DTI anticipate that one month should be adequate for most users to reach agreement with NGC, however, should this not be the case, the Authority may allow further time for the user to consider an offer and, as explained in paragraph 3.84, drafting changes have been made to licence conditions to provide for this. Further, provision has been made in licence condition drafting for agreements to be signed if users have not reached agreement by a month prior to BETTA go-live, pending the Authority's determination.

Putting in place Scottish Interface Agreements

- 3.51. One respondent considered that there may be scope for continuing the current interface arrangements where these are already in place. The respondent considered that this approach would be more efficient and cost effective and noted that it may require 12.2.8 to be amended.
- 3.52. Ofgem/DTI have set out in previous consultations on the GB CUSC and at paragraphs 2.17 to 2.23 above, their views on Scottish Interface Agreements and why it is appropriate that parties enter into an Interface Agreement based

substantially on the pro forma contained in Exhibit O to the CUSC. Ofgem/DTI continue to consider this appropriate, and have no views on whether or not parties wish to continue any existing interface agreements that they may have in place, to the extent that these do not conflict with the parties' statutory and licence duties. Ofgem/DTI however, continue in discussion with one respondent on particular it has identified issues with Scottish interface agreements.

Balancing Services

- 3.53. One respondent considered it essential that NGC has in place balancing services contracts prior to go live, ready to be called on as required.
- 3.54. Ofgem/DTI note that NGC will be required by licence (licence condition C16) to coordinate and direct the flow of electricity over the GB transmission system and to put in place a statement of the kinds of balancing services which it may be interested in purchasing, and it is anticipated that this condition will apply to NGC in its role of GB system operator from BETTA go-live. Ofgem/DTI anticipate that NGC will put in place appropriate arrangements in order that it is in a position to comply with its licence obligations in relation to coordination and directing the flow of electricity over the GB transmission system, from BETTA go-live.

Provision of data

- 3.55. One respondent noted that, given the confidentiality provisions in the licences of the transmission owners, it may be quicker if data to be provided to NGC during the transitional period was to be sourced directly from the user by NGC, rather than NGC seeking this data through the transmission owner.
- 3.56. Ofgem/DTI note that NGC, the Scottish transmission licensees and licensed users will be obliged by their licences to undertake the steps necessary to prepare for the timely implementation of BETTA. Ofgem/DTI note that the approach set out by the respondent may result in NGC receiving data more quickly than if it was to request this information from the transmission owner, and NGC may wish to follow this course of action. However, Ofgem/DTI consider that greater flexibility is provided at the current time through not

prescribing how NGC should source the data it will require during the transitional period. Instead provision has been made in legal drafting for either users to provide data to NGC or to enable transmission owners to do so.

- 3.57. One respondent considered that the transitional provisions needed to be amended so that Scottish users had an obligation to provide or to enable the Relevant Transmission Licensee to provide to NGC three years historic data for the purposes of investment planning and generation scheduling.
- 3.58. Ofgem/DTI note that data provision is still a matter of ongoing discussion in the context of the work that the licensees are undertaking on the transition to and implementation of BETTA. Should any changes be required to the provisions of section 12 as a result of this, these will be consulted on after BETTA go-active.

Uncompleted requirements for transition and uncompleted enduring requirements

- 3.59. One respondent sought assurance that the power to amend the GB CUSC to take account of the consultation on embedded exemptable large power stations should not be used to circumvent the continuing consultations on these issues.
- 3.60. Another respondent stated that any consultation on uncompleted requirements for transition to be carried out by NGC, and the timetable for such consultation, should be approved by Ofgem. This respondent also commented that the failure to determine rights of access to the GB transmission system is blighting the development of its business and it considered that a speedy and equitable resolution was urgently required to minimise further loss.
- 3.61. Ofgem/DTI note that the transitional provisions of the CUSC (see 12.1.8) require that NGC consult on requirements in accordance with the instructions of the Authority. In relation to the respondent's point on rights of access, and as noted above, Ofgem/DTI have consulted upon draft legal text to give effect to Ofgem/DTI's proposals in relation to the initial allocation of GB transmission system rights under BETTA and have recently published proposed licence condition text (contained within transmission SLC 18) to be designated by the Secretary of State which sets down the rules for the initial allocation of GB transmission system access rights.

Other issues

- 3.62. One respondent stated that since the publication of the near final GB CUSC in April, the Authority had approved a number of amendments to the CUSC, but Ofgem had not consulted on all of these amendments. This respondent considered that a mini consultation on these amendments was a necessary pre-condition for due process to have been followed.
- 3.63. Ofgem/DTI note that, as discussed above (see paragraph 2.30 to 2.34), one housekeeping amendment has been made to the England and Wales CUSC since April 2004, CAP 072. Ofgem/DTI consulted on the inclusion of this amendment in the GB CUSC in July 2004, and conclude above that this amendment should be included in the GB CUSC.
- 3.64. One respondent requested that the difficulties which parties might experience in accommodating changes to user codes before or soon after BETTA go-live should be recognised in any code change decisions which Ofgem may make.
- 3.65. Ofgem/DTI note that the CUSC amendments process includes procedures through which the Amendments Panel can be made aware of any particular implementation problem, which must be included in NGC's report to the Authority and which the Authority will take account of in reaching its decision on whether and when such a proposal should be implemented.

Detailed drafting comments

- 3.66. A number of respondents provided comments on the legal drafting contained in the appendices to the GB CUSC and GB Grid Code transition consultation. The comments provided on Section 12 of the GB CUSC, together with Ofgem/DTI's response, are set out in the table below.

	Respondent's comment	Ofgem/DTI's view
Comments on GB CUSC	The text of CUSC 12.2.6(h) does not appear to reflect the drafting	In line with the further consideration of licence condition

	Respondent's comment	Ofgem/DTI's view
Section 12	<p>of paragraph 14 of NGC's Transitional Licence Condition²⁴. In particular, there is no mention of the dead-line of two weeks before BETTA go-live.</p> <p>[It should be noted that what was paragraph 12.2.6(h) in the version of section 12 issued in July 2004, is now paragraph 12.2.6(g).]</p>	C18, Ofgem/DTI have amended the proposed designation text for section 12.2.6.
	The appendix set out at the end of section 12 should contain a statement that these are the matters known to require amendments to the GB CUSC, but that other areas may require amendment or insertion following the outcome of ongoing consultation.	Ofgem/DTI do not agree that this change is appropriate, as it would leave undefined the scope of changes that may be made during the transitional period but note that transmission licence condition C10 provides for other circumstances when the Authority may approve changes to the CUSC during the transition period.
	Drafting needs to be amended to reflect GB CUSC being in effect as at BETTA go-active, rather than BETTA go-live, making the approach for the CUSC consistent with Grid Code/BSC.	Ofgem/DTI agree that this is appropriate , as noted in paragraph 2.38 above.

²⁴ Appendix 4 of the GB CUSC and GB Grid Code transition consultation.

	Respondent's comment	Ofgem/DTI's view
	Further consideration to be given to the precise language describing the rights and obligations of NGC and users, to reflect more accurately what is practically happening in that period e.g. 12.2.2 to 12.2.4.	Ofgem/DTI have given further consideration to the draft text issued in the GB CUSC and GB Grid Code transition consultation, and minor wording changes have been made to 12.2.2 to 12.2.4 to reflect that parties are both obliged to comply with the CUSC and are subject to the provisions of the CUSC, subject to the provisions of Section 12. This has been achieved by the inclusion of the words ". . . shall comply with and be subject to it subject to this Section 12 . . .".
	Concept of existing CUSC agreements being read and construed as though certain generic amendments have been made to them to be introduced into section 12 (will result in amendments to 12.2.6 and creation of a new appendix). The drafting of the transitional licence condition will have to be consistent with the approach taken in respect of the amendment of existing CUSC agreements.	Ofgem/DTI agree with this approach, and have amended section 12 to reflect this.
Comment on CUSC	Clause 9. There may be issues with reference to exclusive	Ofgem/DTI are have given further consideration to this question and

	Respondent's comment	Ofgem/DTI's view
Framework Agreement	jurisdiction but to two areas.	have determined that the wording of the jurisdiction should be "... the jurisdiction of the courts of England and Wales and the courts of Scotland only."

3.67. In addition, Ofgem/DTI have made a number of clarificatory drafting changes to the provisions of Section 12, including where some provisions will have to endure beyond the transition period. These changes are reflected in the published proposed designation text.

Consultation on CUSC and Connections licence conditions

3.68. As mentioned in 3.38 above, respondents to the consultation on the transition to the GB CUSC and GB Grid code provided comments on the transitional CUSC licence condition (C10) and on the transitional licence condition on connections (C18). These responses, together with Ofgem/DTI's views and further consideration leading to the publication on 16 August 2004 of Ofgem/DTI's proposed designation text for these licence conditions and for proposed licence conditions on connections for inclusion within generation, supply and distribution licences are set out below.

CUSC transitional licence condition (C10)

3.69. One respondent commented that in its view the powers provided to the Authority to modify the CUSC during the transitional period did not appear to be modified by any test of reasonableness. The respondent noted that the power was modified by the obligation to consult on any changes that the Authority deems to be necessary but felt that there should be a test of reasonableness in exercising this power. Another respondent suggested that the power of the Secretary of State to make transitional and enduring changes to the CUSC

should only be exercised for the narrow purpose of implementing BETTA and should be time limited.

- 3.70. The test that is applied in the licence condition drafting to the exercise of the power by the Authority is one where the Authority considers it necessary or expedient to direct a revision to the CUSC (in the circumstances specified) for the purposes of implementing BETTA. Ofgem/DTI note that the test of 'necessary or expedient' is the same test as that set out in the Energy Act in relation to the exercise of the powers provided under Part 3, Chapter 1 (Electricity Trading and Transmission) by the Secretary of State. Ofgem/DTI consider that it is inappropriate to constrain the power to make amendments to a narrower test than the one provided for in the Energy Act. Ofgem/DTI do not consider that it is necessary to apply a test of 'reasonableness' in this regard. The Authority and the Secretary of State are required by general public law principles to act reasonably. Ofgem/DTI further note that the relevant powers available to the Secretary of State under the Energy Act 2004 expire 18 months after they are commenced, and that the power for the Authority to direct amendments to the CUSC in the transitional period expires at BETTA go-live.
- 3.71. One respondent considered that certain of the circumstances in which the Authority could direct changes to the CUSC in the transitional period (for example where necessary to correct inconsistencies with the STC or consequent upon a change being made to the STC) were inconsistent with the proposition that the STC will not be able to drive changes to the CUSC.
- 3.72. It is not Ofgem/DTI's intention that the STC would 'drive' change to the CUSC, nor is it the intention that the CUSC would 'drive' change to the STC. To the extent that a change is required which could affect both documents, the need for that change will be considered having regard to all relevant factors. For example, it would not be appropriate to make a change to the CUSC purely because there was an inconsistency with a provision in the STC (or vice-versa). The Authority would consider the effect of the inconsistency and how the inconsistency should be rectified. This may give rise to a change to the STC, a change to the CUSC or a change to both. Ofgem/DTI do not consider that the drafting presented suggests that one document could 'drive' change to another document, it simply ensures that powers are available to change the documents

in either direction, should the Authority consider that such a change is necessary or expedient for the purposes of implementing BETTA.

- 3.73. The enduring CUSC licence condition (SLC C10) and the transitional changes to this licence condition (contained within Section E of the transmission SLCs) proposed for designation by the Secretary of State were published on the Ofgem website on 16 August 2004.

Connections transitional licence condition for NGC (C18)

- 3.74. One respondent commented that in paragraphs 5(a) and 6(a) Ofgem recognises that TO input to the NGC offers will be required. That respondent believed that it would be particularly important that the information supplied by the transmission owner in relation to ownership boundaries is reflected in the offer, consistent with the principle that the assets comprising the GB transmission system at go-live are the same as those at present.
- 3.75. Ofgem/DTI have considered this issue in the context of a similar comment received in response to the consultation on the allocation of GB transmission system access rights under BETTA²⁵. Ofgem/DTI agree that it is desirable that offers made by NGC in relation to connection to the GB transmission system should reflect ownership boundaries that exist in relation to existing agreements or existing offers made for connection to NGC's, SPT's or SHETL's transmission systems as the case may be. Provision has been made in paragraphs 5(f) and 6(f) of the proposed designation text for C18 to reflect this.
- 3.76. One respondent commented that the provision requiring NGC to reflect rights and restrictions in existing agreements in new GB agreements 'only to the extent that NGC is able and willing to continue to offer such rights and impose such restrictions' should start with the opposite presumption. In its view the onus should be on NGC to accept the content of existing agreements unless they can demonstrate to Ofgem/DTI that they should not do so. The respondent noted that based on current drafting, the rights and restrictions in existing Scottish

²⁵ The initial allocation of GB transmission system access rights under BETTA – A consultation on draft legal text. Ofgem/DTI consultation paper reference 175/04.
CUSC proposed designation text

connection agreements are only to be recognised in the new GB agreements after that agreement has been drawn up in a standard form and only to the extent NGC is able to offer such rights and impose such restrictions.

- 3.77. Ofgem/DTI note that one of the objectives of BETTA is to put in place agreements for connection to the GB transmission system that reflect the BETTA principles. Ofgem/DTI have previously concluded that it is appropriate for all users under BETTA to enter into standard CUSC agreements. Otherwise, potentially, BETTA may not be delivered for existing users in Scotland. Ofgem/DTI continue to believe that it is appropriate that new GB agreements should be in the standard form. However, Ofgem/DTI also recognise that it may be appropriate in certain circumstances for rights and/or restrictions which are specific to certain existing agreements (and would not otherwise be reflected in the standard form agreements) to be reflected in the GB connection and/or use of system agreement between NGC and a user. The wording in paragraphs 5(g) and 6(g) has therefore been amended to require NGC to reflect such existing rights and restrictions in its offer for connection to or use of the GB transmission system where it is able to do so and where there are no grounds upon which NGC might reasonably object to such rights or restrictions being reflected in the offer.
- 3.78. One respondent commented that paragraph 5(e) of the licence condition requires NGC to make connection offers consistent with the GB connection charging methodology, noting that 5(a) would take precedence if the ownership boundary is different to that in the standard methodology.
- 3.79. Ofgem/DTI note that the GB connection charging methodology will set down the boundary between connection and use of system assets for charging purposes, whereas TO offers to NGC would reflect the boundary between transmission and generation, distribution or a demand site, as the case may be. As such Ofgem/DTI do not consider that there could be a conflict between the provision of 5(a) and 5(e) to which the respondent refers.
- 3.80. The same respondent commented that it believed that it is essential for NGC to be obliged to make use of system offers consistent with the GB use of system charging methodology. Ofgem/DTI note that on an enduring basis NGC is not

obliged to make offers consistent with the GB use of system methodology, instead it is obliged to charge for use of system in accordance with the use of system charging statement. As such Ofgem/DTI do not consider that the provision suggested by the respondent is necessary or appropriate in relation to offers made by NGC for use of the GB transmission system in the transitional period.

- 3.81. One respondent considered that, in order to reduce the likelihood of disputes being referred to Ofgem and to maximise a smooth transition to BETTA, that NGC should be required to reflect in their offers for connection to or use of the GB transmission system amendments to existing agreements which are both expedient and necessary for BETTA. Ofgem/DTI do not consider that it would be appropriate to place such a requirement on NGC. Furthermore, Ofgem/DTI do not consider that such a requirement would necessarily reduce the likelihood of disputes or maximise a smooth transition to BETTA. To the extent that a user disagreed with NGC's view and did not wish to accept the offer, disputes would be referred to the Authority for determination.
- 3.82. Another respondent commented that the requirement on NGC to amend GB agreements in England & Wales should only be 'where necessary' ie where GB amendments have not already been made by using variation provisions in the transitional section (Section 12) of the GB CUSC. Ofgem/DTI agree with this comment and amendments have been made in the drafting of the licence condition to reflect this.
- 3.83. Two respondents noted that even though the definition of existing other applicant and existing Scottish applicant are by reference to a date of 1 January 2005, the timescale for the production of the offers set out in paragraph 7(b) and (c) for issuing offers to existing other applicants and existing Scottish applicants differs. One of those two respondents noted that as drafted, this could provide for offers to be made to applicants before being made to existing users. Ofgem/DTI agree with these comments and the timescales in paragraph 7(b) and (c) now provide that offers to existing applicants must be made within 3 months of the later of 1 January 2005 and the earliest date upon which the application for connection to NGC, SPT or SHETL's transmission system, as the case may be, was made.

- 3.84. One respondent commented that it was concerned that a period of one month allowed for agreement by existing Scottish users may be inadequate unless NGC agrees to accept the content of the existing connection agreements. It is Ofgem/DTI's understanding that NGC will have been in discussion with users for some time prior to issuing an offer for connection to the GB transmission system. As such Ofgem/DTI consider that one month should be a sufficient period of time in which the user can decide whether or not to accept such an offer, as the user should have received advance warning of the likely terms of the offer in its discussions with NGC. However Ofgem/DTI recognise that this might not be the case in all instances. Therefore, provision has been included for the period of one month to be extended where the Authority so directs.
- 3.85. Ofgem/DTI received a number of drafting comments on the draft transitional licence condition for NGC and these comments have been considered and taken on board, where appropriate, in the revised drafting.
- 3.86. The transitional licence condition (SLC C18) for NGC relating to offers for connection to or use of the GB transmission system during the transitional period (contained within Section E of the transmission SLCs) which is proposed for designation by the Secretary of State was published on the Ofgem website on 16 August 2004. The changes made to this condition since the version included within the GB Grid Code and GB CUSC transition consultation have been made to:
- reflect, where appropriate, the comments received on the condition that are outlined above
 - to reflect the drafting of a transitional licence condition for transmission owners requiring them to provide 'TO offers' to NGC where necessary in the transitional period, and
 - to make any further drafting changes considered necessary by Ofgem/DTI.
- 3.87. The provisions contained within Schedule 1 to this licence condition were the subject of a separate consultation on the allocation of GB transmission system

access rights under BETTA²⁶. Conclusions on that consultation and associated conclusions on the legal drafting contained within Schedule 1 (including the additional drafting included within paragraphs 5(c) and 6(c) of the licence condition) are to be published by Ofgem/DTI shortly.

Connections transitional licence condition for generation, supply and distribution licence holders

- 3.88. No comments were received from respondents on this draft licence condition. The only substantive change that Ofgem/DTI have made to this condition is to provide that the offer made to NGC must be accepted by a user (except where it is disputing the terms of the offer) within one month *or such longer period as the Authority directs*. This change has been made in response to comments received on C18 by a respondent who expressed concern that a period of one month allowed for agreement by existing Scottish users might be inadequate.
- 3.89. The transitional standard licence conditions relating to offers for connection which is proposed for designation by the Secretary of State (Conditions 31C in supply licences, Condition 30C in distribution licences and Condition 19C in generation licences) were published on the Ofgem website on 16 August 2004.

Consultation on limitation of liability and disputes provisions

- 3.90. As noted above, on 1 July 2004 Ofgem/DTI issued a consultation on the proposed draft legal text for the GB CUSC on limitation of liability and coordination of disputes with the STC. The responses to that consultation are considered in the recently published conclusions document that accompanied publication of the proposed designation text of the STC²⁷. The legal text developed as a result of that consultation is contained in the proposed GB CUSC designation text.

²⁶ See previous footnote.

²⁷ "The SO-TO Code under BETTA, An Ofgem/DTI Conclusion on the Proposed Designation Text ", August 2004

Mini-consultations

- 3.91. As mentioned in 2.2. above, on 13 July 2004²⁸ and 23 July 2004²⁹ Ofgem/DTI published mini-consultations on changes to the CUSC to put in place their conclusions following the consultation on small generator issues.

Summary of responses and Ofgem/DTI's Views

- 3.92. Four responses were received to the mini-consultation published on 13 July 2004, and seven non-confidential responses were received to the mini consultation published on 23 July 2004. A list of respondents is shown in Appendix 3. The responses are available on the Ofgem website at www.ofgem.gov.uk.

Mini-consultation issued on 13 July 2004

- 3.93. One respondent to the 13 July 2004 mini-consultation supported in principle the proposal to amend the GB CUSC to remove the requirement for licence exempt transmission connected generators to be a party to the BSC, but considered that it did not harmonise the arrangements for small generators across GB, and conferred no Balancing Services Use of System (BSUoS) or transmission losses benefit on these generators.
- 3.94. Ofgem/DTI note that the purpose of this change in CUSC legal drafting is to put in place their conclusion in relation to small generators³⁰ that the obligation to be a party to the BSC should be removed from exemptable generators. Their reasons for reaching this conclusion are laid out in that document.
- 3.95. Another respondent supported this amendment but considered that, as currently drafted, the text would only apply to exemptable generating plant where the responsible party is exempt from holding a generation licence. The respondent believed that this would discriminate against licensed generators who own

²⁸ See footnote 11

²⁹ See footnote 12

³⁰ See footnote 16

exemptable plant and could result in these generators establishing unlicensed subsidiaries to assume the responsibilities of their exemptable plant, to take advantage of the provisions as drafted.

- 3.96. Ofgem/DTI note that the amendment proposed to CUSC 6.29 removes the CUSC requirement for a licence exempt generator to be a party to the BSC. Licensed generators are required by their licence to be a party to the BSC, so that the removal of the CUSC obligation to be a BSC Party in respect of exemptable generation would have no effect on licensed generators. Further, the fact that licensed generators are required to be BSC Parties will not disable such generators from taking advantage of the BSC provisions which enable another party to be responsible for the out put from any exemptable plant belonging to that generator.
- 3.97. Another respondent supported the proposal, but was concerned about the potential avoidance of generation charges and said that the respondent would expect an alteration to NGC's use of system charging methodology to ensure that parties pay the charges for which they were liable. A separate respondent commented that it would be extremely concerned if such changes attempted to redefine the charging base to capture exempt generators connected other than to the transmission system.
- 3.98. Ofgem/DTI note these respondents' concerns and, as noted in the 13 July 2004 mini consultation, continue to consider that in order to ensure that NGC continues to be in a position under BETTA to charge directly connected exempt generators in accordance with relevant CUSC provisions it may be appropriate for NGC to propose an adjustment to its use of system charging methodology. Ofgem/DTI understand that NGC intends to consider this issue as part of its consultation on the GB charging methodology.
- 3.99. One respondent considered that it may be appropriate to add a reference in CUSC 6.29 to import, as well as export, such that there is a party responsible under the BSC for the import to such Exempt Power Stations.
- 3.100. Ofgem/DTI note that the purpose of the change to CUSC 6.29 is not to require another party to be responsible under the BSC for the output of an Exempt

Power Station, but is rather to remove the obligation on licence exempt generators to be a party to the BSC, where another party is responsible under the BSC for the output from an Exempt Power Station. The proposed text contains no obligations requiring another party to be responsible under the BSC for the export from such Exempt Power Stations, and it is not therefore appropriate to include an obligation in the CUSC such that a party is responsible for the import under the BSC to such Exempt Power Stations.

- 3.101. Another respondent was concerned that the proposed change introduces ambiguities in relation to the obligations placed upon licence exempt transmission connected generators by the Grid Code, as it may not be clear on which party the obligations placed upon a BM Participant under the Grid Code will fall. It therefore considered that further code changes may be required, to the Grid Code or to the BSC.
- 3.102. Ofgem/DTI do not consider that the issue raised by this respondent is affected by the proposed CUSC change, and that currently a BSC party can arrange that any of its exemptable generators are registered by another BSC party under the existing arrangements in England and Wales. If the respondent considers that the existing BSC or Grid Code arrangements are ambiguous, it can choose to propose a modification to the BSC and/or request a review of the Grid Code to address these issues.
- 3.103. Ofgem/DTI conclude that it is appropriate amend CUSC 6.29 to remove the requirement for licence exempt transmission connected generators to be a party to the BSC.

Mini-consultation issued on 23 July 2004

- 3.104. The mini-consultation issued on 23 July 2004 contained draft licence conditions to implement a proposed interim charging measure for small, transmission connected generators, as well as draft legal text to reflect consequential CUSC amendments that arise as a result of this proposed interim charging measure. Of the six non-confidential responses received to this consultation, only one respondent commented specifically on the proposed CUSC amendments. This respondent's comments are set out below, together with Ofgem/DTI's views.

- 3.105. The respondent that commented on the CUSC considered that any disputes regarding the intended mechanism to introduce interim charging measures for small, transmission connected, generators should be treated as CUSC “Charging Disputes” and therefore be referable to the Authority. It also consider that it was unclear whether the new charges were Use of System Charges or Transmission Network Use of System Charges as defined in the CUSC, and considered that the definition of Use of System needs to be amended.
- 3.106. Ofgem/DTI agree that it is appropriate to amend the CUSC definition of Use of System to include a reference to the new licence condition C13 that adjusts the charges payable by small transmission connected generators. Ofgem/DTI also conclude that it is appropriate to amend CUSC 3.9.1 and 3.9.2 to reflect the proposed interim charging measure to apply to small, transmission connected generators. Ofgem/DTI further note that the CUSC defines a “Charging Dispute” as one which relates to the question whether charges have been calculated in accordance with the charging statements and expect that the “designated sum” referred to in SLC C13 will be reflected in the relevant charging statement.

4. Outstanding issues

4.1. The GB CUSC and GB Grid Code transition consultation identified a number of issues which were to be addressed during the transitional period, and the draft CUSC Section 12 that was published with that consultation listed in an appendix the following as matters potentially requiring amendments to the GB CUSC:

- ◆ the specific detail of the obligations needed to manage implementation in the period up to and following (for a temporary period) Go-Live to achieve the change to operation under the GB CUSC
- ◆ conclusions of Ofgem/DTI in relation to small and/or embedded generator issues under BETTA and allocation of access rights on a GB basis
- ◆ the introduction of the GB Charging Statements
- ◆ issues arising out of the process to create the CUSC Agreements, and
- ◆ any arrangements to enable NGC to shadow applications to and offers by Relevant Transmission Licensees.

4.2. As discussed in chapter 2, an addition has been made to this list to include as one of the matters potentially requiring amendment to the GB CUSC the outcome of Ofgem's ongoing consideration of the applicability of the proposed Interface Agreement pro forma to connection sites located in Scotland.

4.3. CUSC Section 12 places an obligation on NGC to develop detailed requirements for the matters identified and to consult interested parties upon the requirements and the legal drafting for the GB CUSC to deliver such requirements. Such legal drafting will, subject to the approval of the Authority, be added to the relevant section of the GB CUSC and, as a result, parties will be obliged to comply with those additional requirements. Transitional provisions contained in the CUSC licence condition (C10) in NGC's licence give the Authority the power to make changes to the GB CUSC under such circumstances. Once NGC has produced and consulted upon legal drafting to

the satisfaction of the Authority, and to the extent that the Authority considers that such drafting should be included within the GB CUSC, the Authority will issue a notice to NGC requiring the GB CUSC to be so amended. In certain circumstances the Authority might also choose to conduct its own consultation prior to taking a decision on whether or not to direct an amendment to the GB CUSC.

Appendix 1 Respondents to publication of near final text of the GB CUSC

1.1 The seven parties who responded to the Ofgem/DTI publication³¹, on 30 April 2004, of near final legal text for the GB CUSC were:

- ◆ British Energy
- ◆ EDF Energy
- ◆ National Grid Transco
- ◆ Powergen
- ◆ Scottish and Southern Energy
- ◆ ScottishPower energy management
- ◆ SP Transmission & Distribution

³¹ See footnote 7
CUSC proposed designation text
Ofgem/DTI

Appendix 2 Respondents to consultation on the transition to the GB CUSC and GB Grid Code

2.1 The six parties who responded to the Ofgem/DTI publication³², on 6 July 2004, of a consultation on the transition to the GB CUSC and GB Grid Code were:

- ◆ BETTA Review Group
- ◆ E.ON UK
- ◆ National Grid Transco
- ◆ Scottish and Southern Energy
- ◆ ScottishPower energy management
- ◆ SP Transmission & Distribution

³² See footnote 9
CUSC proposed designation text
Ofgem/DTI

Appendix 3 Respondents to mini consultations on GB CUSC legal text

3.1 The five parties that responded to the Ofgem/DTI mini consultation³³ issued on 13 July 2004 were:

- ◆ ELEXON
- ◆ E.ON UK plc
- ◆ National Grid Transco
- ◆ RWE Innogy
- ◆ Scottish and Southern Energy

3.2 The seven parties that provided non-confidential responses to the Ofgem/DTI mini consultation³⁴ issued on 23 July 2004 were:

- ◆ Centrica
- ◆ E.ON UK plc
- ◆ Fred. Olsen Renewables Ltd
- ◆ NaREC
- ◆ National Grid Transco
- ◆ SP UK Division
- ◆ Scottish and Southern Energy plc

³³ See footnote 11

³⁴ See footnote 12