



**PROPOSED EXEMPTION FOR  
CERTAIN GAS TRANSPORTERS  
FROM A PROHIBITION ON  
CONDUCTING PARTICULAR  
SHIPPER ACTIVITIES**

Consultation on Statutory Instrument

19 NOVEMBER 2004



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## Why DTI is conducting this consultation?

In August 2004, National Grid Transco plc (NGT) reached agreement on the sale of four of its local gas distribution networks (DNs). Also in August 2004, the Gas and Electricity Markets Authority (the Authority), under which the Office for Gas and Electricity Markets (Ofgem) operates, made a decision on the offtake arrangements required to be in place in a post-sales scenario. Following publication of Ofgem's conclusions document on the offtake arrangements between the National Transmission System (NTS) and the DN's post sales, Transco, a fully owned subsidiary of NGT plc and operator of both the NTS and the DN's, became aware that all of the options considered for offtake arrangements, with the exception of a shipper booking model, would require an exemption from section 5 (1) (c) of the Gas Act 1986 (the Gas Act).

The Gas Act requires gas transporters (i.e. those involved in transporting gas around GB in pipes) and shippers (i.e. those who buy gas from producers and sell it to users and/or suppliers and who arrange for gas to be transported) to have, respectively, a gas transporter and a gas shipper licence. However, the Act also prohibits the Authority from granting both types of licence to any one company. The Secretary of State has the power to grant licence exemptions. An exemption, if granted, would allow the operators of the NTS and the DN's to enter into arrangements for gas to be taken out of the NTS and introduced into or taken out of the DN's without requiring a shipper licence.

The Secretary of State is currently minded to make the exemption order and a draft statutory instrument (SI) is provided in Annex A. In preparing the proposed draft SI the Department has aimed to meet the Secretary of State's statutory principal objective of "protecting the interests of consumers in relation to gas conveyed through pipes, wherever appropriate by promoting effective competition." Overall, the sales could facilitate competition, improve the efficiency and workings of the gas market, and deliver £332 million worth of net consumer benefits.

**In view of the number of consultations already conducted by Ofgem (see annex C) on DN sales, the technical nature of this exemption order, and the timetable NGT has agreed with its buyers, the Secretary of State has agreed that representations on the exemption order can be made up to 28 days from the publication date of this document, this is the minimum statutory requirement. The minimum period is being adopted as the exemption order has to be in place in early 2005 in order to allow the sales process to proceed according to its timetable. However, this timetable does not fetter the Secretary of State's decision with regard to the exemption order or the other decisions that the Secretary of State and the Authority must make with regard to consenting to the sales.**

**Stakeholders with an interest in this consultation were alerted on 02 November 2004 to the likely publication of this consultation document. The DTI also stands ready to hold bilateral meetings with stakeholders. The Department, with Ofgem, will table the exemption order for discussion at one of Ofgem's regular Development and Implementation Steering Group meetings which are open to all interested parties.**

<b>Issued</b>	19th November 2004.
<b>Respond by</b>	17th December 2004.
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## 1. Executive Summary

- 1.1 This consultation is concerned with whether the Secretary of State should grant, by order, an exemption from the Gas Act 1986 (the Act) so that the operators of the NTS and the DNs may undertake a limited range of shipper like activities. Granting this exemption would allow the potential DN sales process to proceed.
- 1.2 One of the key issues identified by Ofgem's consultation<sup>1</sup> process (initiated by NGT's announcement in May 2003 that it was considering selling one or more of its DNs) was the need for commercial and regulatory arrangements for the offtake of gas from the NTS. More information on offtake arrangements is provided in Annex D. Following industry consultation on an Ofgem Regulatory Impact Assessment (RIA)<sup>2</sup> on the most appropriate offtake arrangements in a post-DN sales environment, the Authority reached the decision that the arrangements adopted should give a central role to the operators of the DNs and other NTS direct connects, with the NTS obligated to provide the level of exit capacity requested (the NTS connects booking model)<sup>3</sup>. The Authority considered that this option (which was Option 2 within the Offtake Arrangements RIA) would have several advantages over the alternatives considered including the elimination of undue discrimination, promotion of competition, and the more economic and efficient development of network businesses which would ultimately lead to lower costs for customers. Option 2, as well as options 1 and 3, would require an exemption. The only option (option 4) which would not require an exemption order raised significant Health and Safety Executive concerns.
- 1.3 Section 5 (1) (c) of the Act stipulates that, subject to section 6A, a person shall be guilty of an offence if he arranges with a gas transporter for gas to be introduced into, conveyed by means of, or taken out of a pipeline system operated by that gas transporter unless he is authorised to do so by licence. In this regard, section 7A of the Gas Act defines a gas shipper as any person authorised, by licence, to arrange with any gas transporter for gas to be introduced into, conveyed by means of or taken out of a pipe-line system operated by that transporter. Section 7A (3) states that a shipper licence cannot be granted to the holder of a transporter licence. Following the Authority's decision in August 2004 on the offtake arrangements required to be in place between the NTS and the DNs in a post-sales scenario, Transco (a fully owned subsidiary of NGT) became aware that all of the options considered, with the exception of a shipper booking model, would require an exemption from section 5 (1) (c) of the Gas Act 1986.
- 1.4 Section 6A of the Act allows the Secretary of State to grant an exemption from holding a licence either to a person or to a class of persons.
- 1.5 In considering an exemption, the Secretary of State must apply the principal objective in the Gas Act which is "to protect the interests of consumers in relation to gas conveyed through pipes, wherever appropriate by promoting effective competition...." This exemption, if granted, will facilitate NGT's proposed sale of one

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<sup>1</sup> National Grid Transco-Potential Sale of network distribution businesses 77/03. A Consultation document. Ofgem, July 2003

<sup>2</sup> National Grid Transco-Potential sale of gas distribution network businesses, offtake arrangements, June 2004

<sup>3</sup> National Grid Transco- Potential sale of gas distribution network businesses, offtake arrangements, conclusion document on framework, August 2004, 199/04

or more of its DNs as it will allow the implementation of particular gas offtake arrangements between the NTS and DNs. The Department anticipates that this sale could facilitate competition, improve the efficiency and workings of the gas market, and deliver consumer benefits. The consequence of not granting an exemption is that there is a considerable risk that the sales will not proceed. Net consumer benefits of £332 million would therefore not be delivered. For further information, a partial regulatory impact assessment on the sales process is to be found in section 8.

1.6 The key proposals are to:

- (i) lay an order which would exempt the NTS and the DN operators from the requirement for a shipper licence;
- (ii) limit the shipping activities that the NTS and the DN operators can partake in;
- (iii) not undermine the overall purpose of the Act by maintaining shipping as a distinct activity;
- (iv) include a condition on the provision of information to the Authority.

## 2 How to respond

- 2.1 The DTI invites views on any aspects of this document, in particular, where views have been specifically requested.
- 2.2 Respondents should note that the consultation opened on 19 November 2004 and will close on 17 December 2004.<sup>4</sup>
- 2.3 When responding please state whether you are responding as an individual or representing the views of an organisation. A draft response form is at Annex G. If responding on behalf of an organisation, please make it clear who the organisation represents and, where applicable, how the views of the members were assembled. A written response can be submitted by post, email or fax to:

**Radhika Sriskandarajah**

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Victoria Street  
London SW1H 0ET  
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Responses can also be submitted by e-mail to:

E-mail : [Radhika.Sriskandarajah@dti.gsi.gov.uk](mailto:Radhika.Sriskandarajah@dti.gsi.gov.uk)

Questions about the policy issues raised in this document should also be sent to this address. She will be able to arrange for additional copies of the consultation document, or alternative formats, to be provided if necessary.

- 2.4 Responses to this consultation will normally be made public by DTI unless respondents request that they should remain confidential. Respondents should clearly mark any part of their response (or the entire response) which is to remain confidential. If this is the case, where possible, any confidential material should be confined to appendices. Any confidentiality disclaimer that may be generated by your organisation's IT system or included as a general statement in your fax cover sheet will be taken to apply only to information in your response for which confidentiality has been requested.
- 2.5 If you have comments or complaints about the way this consultation has been conducted, these should be sent to:

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<sup>4</sup> Respondents were made aware of this consultation in advance of publishing this document to indicate that an early response was necessary in light of the timetable pressures associated with the proposed sales of four of NGT's DNSs.



- 2.6 A list of those organisations and individuals consulted can be found at Annex G. We would welcome suggestions of others who may wish to be involved in this consultation process.

#### **Questions in the consultation document**

- 2.7 Do respondents agree with that a safety condition should not be included, if not what safety conditions should be included in the proposed order and why?
- 2.8 Do respondents agree with the conditions proposed?
- 2.9 Are there any other conditions that need to be included?
- 2.10 Do respondents agree with the list of parties to whom the exemption will apply and how?
- 2.11 Are there other parties who should be also included?
- 2.12 Do respondents agree with the list of parties excluded from the exemption?
- 2.13 What shipper-type activity a) should and b) should not be included in the exemption order?
- 2.14 Do respondents agree with paragraph 5.26?
- 2.15 Are there shipping activities that should be excluded and not considered in the above paragraph?
- 2.16 Are there any other conditions that should be included in the exemption?
- 2.17 Do respondents agree with the duration proposed? If not why not?
- 2.18 Do respondents agree with the termination provision proposed? If not why not?
- 2.19 Do respondents agree that the legal text attached in Annex A fulfils the policy objective and meets the conditions proposed? If not, to what extent does it meet the policy objective or meet the conditions?

#### **Questions in the RIA**

- 2.20 Do respondents agree with this risk assessment? How is it that these risks will materialise?
- 2.21 Are there any other significant risks which should be taken into account from the exemption not being granted?
- 2.22 Do respondents agree with this assessment of the number of firms affected?
- 2.23 Are there any other sectors which may be affected by this exemption order?

- 2.24 Do respondents agree with this assessment of relative benefits across the three options? Are respondents content with the validity of the assumptions in appendix 1?**
- 2.25 Is there any other information/data available which would improve this assessment?**
- 2.26 Are there any other benefits that should be taken into account?**
- 2.27 Do respondents agree with this assessment of relative costs across the three options? Are respondents aware of any additional cost data/estimates?**
- 2.28 Are there any other costs which should be taken into account?**
- 2.29 Do respondents agree with this assessment of costs and benefits? Is there any other information/data which could inform this analysis further and/ or place estimates of the qualitative aspects of the assessments above?**
- 2.30 Do respondents agree with the equity and fairness assessment? Are there any other aspects of equity and fairness not included in the RIA which are relevant?**
- 2.31 Do respondents agree with the assessment of the impact on small businesses as a result of the sale? Are there other small firms likely to be adversely affected?**
- 2.32 Do respondents agree with the assessment on competitiveness? Are there any other competitive implications, positive or adverse, not covered here?**

### 3 Introduction

- 3.1 In May 2003, NGT announced that it would consider the sale of one or more of its eight DNs. In the event of such a DN sale, NGT will retain responsibility for the operation of the NTS and its retained DNs (RDNs). The proposed sale would lead to a number of additional industry players being created, who would be responsible for the operation and management of the remaining, independent, DNs (IDNs)<sup>5</sup>. Following this announcement, Ofgem initiated a programme of work to explore the potential benefits that such a transaction would have for consumers. This has included six consultations, an industry workshop, bi-lateral meetings and the establishment of a number of working groups.
- 3.2 In August 2004, NGT reached conditional agreement on the sale of four of its regional gas distribution networks. During the sale process, in September 2004, Transco became aware that certain aspects of the proposed arrangements post the DN sales would require an exemption from section 5(1) (c) of the Gas Act 1986, (the Act) in order to permit their implementation.
- 3.3 The Act requires gas transporters (i.e. those involved in transporting gas around GB in pipes) and shippers (i.e. those who buy gas from producers and sell it to users and/or suppliers and who arrange for gas to be transported) to have, respectively, a gas transporter and a shipper licence. It also prohibits the Authority from granting both types of licence to any one company. This exemption, if granted, will enable the NTS and the DN operators, to undertake a very narrow range of “shipper like” activities without requiring a shipper licence.
- 3.4 The consequence of not granting an exemption is that there is a considerable risk that the sales will not proceed. Net consumer benefits of £332 million would therefore not be delivered. For further information, a partial regulatory impact assessment on the sales process is to be found in section 8.
- 3.5 The Department considers that the Secretary of State can lawfully grant an exemption under section 6A of the Act to a licensed gas transporter even though section 7A(3) prohibits the Authority from granting a shipper licence to such a transporter. The Secretary of State’s power under section 6A is not constrained on the face of the Act from granting an exemption to a gas transporter<sup>6</sup> (GT). When granting an exemption the Secretary of State must exercise her discretion in a way that promotes the policy and objectives of the Act. The NTS and the DN operators would not be permitted to undertake shipping activities other than those specifically covered by the exemption. The current functions that licensed shippers perform will therefore be maintained and shipping will continue to be a competitive and distinct activity.
- 3.6 Before making an order pursuant to section 6A (1A) of the Act, the Secretary of State has to give notice saying that she proposes to make an Order and setting out the terms of the proposed Order. She also has to give reasons why she proposes to make the Order in those terms and specify the time within which representations may be made. This consultation satisfies these requirements. Notice of the proposals has to be given the Authority and the Gas and Electricity Consumers Council.

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<sup>5</sup> In this document the RDNs and IDNS will be collectively referred to as DNs

<sup>6</sup> The Authority does not have the power to grant such exemptions.

- 3.7 It also has to be published in a manner that the Secretary of State considers appropriate for bringing it to the attention of those likely to be affected by the proposed Order. Insofar as there may be implications for safety the Secretary of State must also consult the Health and Safety Commission. The Secretary of State's power to grant an exemption must be excised in accordance with the principal objective and general duties under section 4AA of the Act.

## 4 Policy Background

- 4.1 In line with the Secretary of State's principal objective in the Act, the general policy objective is to protect the interests of consumers in relation to gas conveyed through pipes, wherever appropriate by promoting effective competition. This exemption, if granted, will facilitate NGT's proposed sale of four of its eight DNs as it will allow the implementation of particular gas offtake arrangements between the NTS and the DNs, and gas entry and offtake arrangements between the DNs themselves. The Department anticipates that this sale could facilitate competition and improve the efficiency and workings of the gas market.
- 4.2 The policy intent of an exemption is quite clear. Under current industry arrangements, the NTS / DN interface is internal within Transco. In the event of DN sales, an exemption would allow the operators of the NTS and the DNs to make arrangements to allow them to continue to meet their current pipeline system security standards in a manner at least as efficient as at present. The exemption, however, is to be drafted in a way which ensures that while the operators of the NTS and the DNs are exempt from the need to hold a shippers licence they can only conduct the essential shipper type activities required to enter into arrangements for the offtake of gas from the NTS or introduction or offtake of gas from other DNs. The proposed exemption will also allow relevant Gas Transporters (GTs) to arrange for reject and boil-off gas from Liquefied Natural Gas storage facilities to be put into the DNs. We believe this will give sufficient comfort to those who already hold a shippers licence.

## 5 The proposals

- 5.1 The aim of the exemption order is to ensure that the DN sales process continues, and with that the consequent net consumer benefits are realisable. With this in mind the Secretary of State is minded to make a class exemption related to 'relevant gas transporters' so that they can partake in very limited shipper type activities. This exemption would be for relevant gas transporters, where a relevant gas transporter is a gas transporter who operates a DN system or the NTS. **However, this will not fetter the discretion of the Secretary of State or the Authority in relation to any decisions either of them may make with regard to proposed sales of the DNs.**
- 5.2 A class exemption would cover all existing and future 'relevant gas transporters'. The Department also proposes that there be a condition on the provision of information to the Authority.

### KEY CONSIDERATIONS

- 5.3 The primary question for the Secretary of State is whether granting an exemption to relevant gas transporters would be consistent with the aims of the Act and whether the aims of the Act would be undermined.

#### Aims of the Gas Act

- 5.4 The Secretary of State's principal objective under section 4AA of the Act, is to protect the interests of consumers in relation to gas conveyed through pipes, wherever appropriate by promoting effective competition.
- 5.5 The Department considers that the proposed sale of the DNs is in keeping with the broad economic aim of the Act. In the event of DN sales, an exemption would allow the operators of the NTS and the DNs to make arrangements to allow them to continue to meet their current pipeline system security standards in an efficient manner. The DNs will not be doing anything that is currently done by shippers/suppliers. The Secretary of State has the power to grant an exemption which promotes the policy and objectives of the Act.

### SAFETY CONSIDERATIONS

- 5.6 Safety requirements are considered through the HSE's legislation, therefore a separate provision is not generally required. The Department also considers that it does not have the vires to include safety provisions in this Order. That said, the requirement to uphold the safety of the network would be captured in the safety case of each of the DNs. This also falls under the HSE's umbrella of responsibilities.
- 5.7 **Question: Do respondents agree that there should not be a safety condition, and if not, what safety conditions should be included in the exemption and why?**

### CONDITIONS

5.8 The Department is minded to include a condition on the provision of information to the Authority, so that relevant gas transporters would be required to comply with any direction given by the Authority to provide it with information concerning the limited gas shipping arrangements, authorised by the order, in such manner and at such times as the Authority requires, to facilitate the performance by it of its functions under the Gas Act, the Utilities Act 2000 or Energy Act 2004.

5.9 The Department is not minded to include the shipping activities that the relevant transporters would be excluded from partaking in as conditions in the proposed Order. The Department considers that the scope of the exemption is clear as to the particular activities which the relevant gas transporters can undertake. Furthermore, the Gas Transporter licence will prohibit GTs from undertaking excluded activities. The shipping activities included and excluded from the Order are discussed later in this document.

**5.10 Question: Do respondents agree with the conditions proposed?**

**5.11 Question: Are there any other conditions that need to be included?**

#### **Parties to whom the exemption order applies**

5.12 The exemption will apply to:

- a) the operator of the NTS, as it will be making arrangements with the operators of the DNs for the introduction of gas from the NTS into the DN;
- b) DN operators, to enable each of the DN operators to communicate and make arrangements with the NTS operator for the offtake of gas from the NTS;
- c) DN operators, to enable one DN operator to communicate and make arrangements with the other DN operators for the offtake of gas from a DN pipeline system so that it can be introduced into another DN pipeline system<sup>7</sup>;
- d) the operator of the Scotland DN, to make arrangements with the NTS operator for the offtake of gas from the NTS to be introduced into a Liquefied Natural Gas (LNG) storage facility owned by Transco e.g. Glenmavis (refer to paragraph 5.15 below)
- e) The operator of the NTS, to make arrangements with each of the DN operators to introduce reject and boil-off gas, that has been removed from LNG storage facilities, into each of the DN pipeline systems (refer to paragraph 5.17);
- f) the Scotland DN operator, to make arrangements with the NTS operator for the offtake of gas from the NTS at Moffat.

**5.13 Question: Do respondents agree with the list of parties to whom the exemption will apply and how?**

**5.14 Question: Are there other parties who should also be included?**

#### *Scottish independent undertakings (SIUs) - point*

5.15 At present, the Scotland DN operator has a responsibility to maintain supplies to the four small independent gas networks located at Thurso, Wick, Campbeltown and Oban (the SIUs). These four undertakings are supplied using LNG, which is

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<sup>7</sup> This will include the physical connections used for emergency purposes between one DN operator and the other DN operators.

transported by road tanker from the Transco LNG Storage Facility at Glenmavis. In order to manage this service, the Scotland DN operator is required to book storage capacity in Glenmavis and to take gas out of the NTS for storage. The associated arrangements to take gas out of the NTS into Glenmavis is the shipping activity covered by the exemption. The Scotland DN operator then has to withdraw the LNG from Glenmavis as and when required for delivery by road tankers to the four undertakings. This withdrawal from the LNG facility into road tanker is not covered by the exemption as it does not fall within the ambit of section 5(1) (c). If Glenmavis becomes unavailable for a long period of time, or the tanker withdrawal facilities fail for a significant period, then the tanker filling service may be provided from another Transco LNG Storage Facility. The average SIU usage per annum is 0.0143% of total system throughput on average.

- 5.16 There is a fifth SIU at Stranraer. However, this is supplied using natural gas rather than LNG. The physical method of transporting gas to Stranraer is that the gas is taken out of the NTS at Moffat, then transported through the Scotland-Republic of Ireland Interconnector (operated by BGE) via the Scotland-Northern Ireland Interconnector (operated by PTL). It is finally withdrawn from the Scotland-Northern Ireland Interconnector and introduced into the Stranraer network. Whilst the operators of both the Scotland-Republic of Ireland Interconnector and the Scotland-Northern Ireland Interconnector are not relevant to the exemption order as they are not licensed gas transporters, the Scotland DN operator will have to make an arrangement with the NTS operator to offtake gas from the NTS at Moffat. This is a shipping activity and will therefore require an exemption.

*Liquefied Natural Gas (LNG) boil-off and reject gas (waste gas)*

- 5.17 Boil-off gas and reject gas from four out of the five existing Transco LNG Storage Facilities (i.e. Glenmavis, Avonmouth, Partington and Isle of Grain) is put into the local DN. Boil-off gas is simply the gas caused by natural “evaporation” of LNG stored in the tanks. Given the low pressure of this gas, it is impossible to put it back into the NTS without a significant amount of compression, so it is put onto the local DN instead. Reject gas occurs during the liquefaction process. The liquefaction plant at each of the LNG facilities only converts a percentage of the gas taken off the NTS into LNG. The remaining gas that is not converted into LNG is known as reject gas and this is again put onto the local DN due to its low pressure. The volumes of boil-off and reject gas are not significant. As NGT is the owner of these LNG storage facilities, and is a gas transporter, it will need to make an arrangement with the relevant DN operator for the physical flow of the boil-off and reject gas onto the system. Again, an exemption is required as the operators of the NTS and the DNs are precluded from holding a shipper licence. The boil-off and reject gas from the four LNG storage facilities account for only 0.4% of total system throughput.



## **Parties who would be excluded from the exemption order**

5.18 Subject to paragraphs 5.15 and 5.17, the exemption will not apply to Independent Gas Transporters (IGTs), any customer or operator of a storage facility connected to the NTS, or any customer or operator of a storage facility connected to the DNs or to any other company, person or class of persons. If DN sales proceed they will not impact on the way in which IGTs interface with other gas transporters. At present, shippers on IGT networks directly “book” capacity and the Department is not minded to alter current arrangements should the DN sales proceed.

5.19 NTS direct connects (excluding DNs but including interconnectors, storage facility operators and large customers connected to the NTS) can also continue with current arrangements whereby capacity is booked by shippers. The Department is not minded to include direct connectees (to either the DNs or the NTS, other than the DNs themselves) within the scope of the proposed exemption because:

- shipping is a competitive business and NTS direct connects (other than the DNs) can choose which shipper to nominate; whilst
- DNs would not be able to book capacity through a shipper given the information separation requirements between monopoly and competitive business; furthermore
- granting direct connects an exemption could lead to all customers booking capacity on the DNs. This would undermine the role of the shipper and therefore the intention of the Act.

5.20 The order does not include:

- (a) The operator of the NTS making arrangements with the DN operators for the introduction of gas into the NTS;
- (b) The DN operators making arrangements for the offtake of gas from a DN (other than at a DN-DN connection);
- (c) The operator of the NTS making arrangements with a non-DN system operator for the offtake of gas from the NTS to non-DN system;
- (d) The operators of the NTS and the DNs making arrangements with directly connected supply points (such as power stations and other large loads) for the introduction of gas from the NTS and/or the DN systems).

**5.21 Question: Do respondents agree with the list of parties excluded from the exemption?**

**5.22 What shipper-type activity a) should and b) should not be included in the exemption order?**

**5.23 a) *The shipper-type activities (physical and commercial) that may take place:***

The operators of the NTS and the DNs can make arrangements for the offtake of gas from the NTS so that it can be introduced into the DNs; and DNs operators to make arrangements between themselves for the offtake of gas from a DN pipeline system so that it can be introduced into another DN pipeline system. The operator of the Scotland DN can make arrangements with the operator of the NTS for the

offtake of gas from the NTS to be stored in an LNG storage facility. The Scotland DN will also be required to make arrangements with the NTS operator for the offtake of gas from the NTS at Moffat. The NTS operator will need to make arrangements with the DN operators to introduce boil-off and reject gas from the LNG storage facilities into each of the DN pipelines. Respondents can refer to Annex B to a detailed list of the arrangements this pertains to.

**5.24 b) Physical and commercial shipper-type activities that should not take place by virtue of the Order:**

5.25 The proposed order is **not intended** to introduce an activity for gas transporters which would enable them to re-integrate the transporting and shipping functions. This would be against the policy intent of the Act. If the DN sales proceed, arrangements for offtake at the NTS / DN interface will be required. The only option for offtake arrangements that does not require an exemption is an Option 4 / shipper -led approach (from Ofgem's consultation on offtake arrangements) however this met with strong opposition from shippers during Ofgem's consultation.

5.26 The Department believes that by limiting the scope of the activities exempted in the Order, the policy intent of the Act that shipping and transporter activities should be licensed as separate activities and carried out by separate entities would not be undermined. Section 9 (2) of the Act prohibits a gas transporter from unduly discriminating in the terms in which it undertakes the conveyance of gas. In addition the current GT amended standard condition 4D prohibits any undue discrimination towards any related undertakings of the licensee, or any gas shipper or supplier. Amended Standard Condition 39 defines requirement for restriction on the use of certain information and independence of the transportation businesses. The Department considers these to be the mechanisms to prevent re-integration.

**5.27 Question: Do respondents agree with paragraph 5.26?**

5.28 The intent of the drafting of the Order is that all activities covered by the shipper licence and Network Code that refer to shipping activity directly or indirectly are excluded. Shipper type activity that involves making arrangements for the *conveyance* of gas from a) the NTS to a DN pipeline system by a gas transporter b) a DN pipeline system to another DN pipeline system are excluded from the order.

5.29 Also excluded from the scope of the exemption are any arrangements between relevant transporters in relation to (respondents can refer to Annex B for a detailed list of arrangements this pertains to):

- (a) introduction of gas into the NTS;
- (b) introduction of gas into a DN system other than from:
  - (i) the NTS;
  - (ii) an LNG storage facility connection point;
  - (iii) the gas interconnector connection point with the Stranraer pipeline system in Scotland; or

- (iv) another DN;
- (c) offtake of gas from a DN, other than at a DN/DN interface;
- (d) offtake of gas from the NTS at a point other than at:
  - (v) point at which the NTS connects with the DN pipeline systems;
  - (vi) point at which an LNG storage facility is connected to either the NTS ;or
  - (vii) the interface at which the NTS with the Scotland/Republic of Ireland (Interconnector 1) so that gas is taken out of the NTS at Moffat, introduced into Interconnector 1 and is transported via the Scotland Northern Ireland Pipeline (SNIP), which is then put into SNIP Connection Point for introduction into Stranraer.

5.30 In addition any activity that a relevant gas transporter is prohibited from undertaking by virtue of the provisions of its gas transporter licence is also excluded from the scope of the Order.

**5.31 Question: Are there other shipping activities that should be excluded and not considered in the above paragraph?**

**5.32 Question: Are there any other conditions that should be included in the exemption?**

**Duration – when should the exemption come into force and how long should it be for?**

5.33 The Order should come into force by early 2005 to meet the DN sales timetable to ensure that the relevant procedures can commence. The exemptions that are currently in place expire on 01 March 2011<sup>8</sup>. This is in keeping with the expiration of Transco's current licence. This may also be the best time to review the exemption. As this exemption has a significant impact on current and future market structures as well as market confidence the Department considers that the duration should be indefinite, although, as with other exemptions, subject to a revocation.

**5.34 Question: Do respondents agree with the duration proposed? If not why not?**

**Termination provision**

5.35 The exemptions in place at present include a four-month revocation provision. In order to be consistent with existing exemption orders the Department is minded to include this provision in the proposed order.

**5.36 Question: Do respondents agree with the termination provision proposed? If not why not?**

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<sup>8</sup> Gas Act 1986 (Exemption) Order 1999 (SI1999/2639); and Gas Act 1986 (Exemption) (No.2) Order 1996 (SI 1996/471)

## 6 Summary

6.1 The Department is minded to make an exemption under the following terms:

- Persons: to apply to a defined class of person, as at paragraph 5.1
- Scope: exemption from the requirement to hold a shipper licence so that relevant gas transporters can partake in limited shipper type activities.
- Conditions: including a condition on information disclosure to the Authority
- Duration/revocation: indefinite but subject to a four months revocation period.

6.2 The draft exemption order reflecting this policy is in Annex A. The draft partial Regulatory Impact Assessment is in section 8 of this consultation document.

**6.3 Question: Do respondents agree that the legal text attached in Annex A fulfils the policy objective and meets the conditions proposed? If not, to what extent does it not meet the policy objective or meet the conditions?**

## 7 What happens next?

7.1 The deadline for responses to the consultation is **17 December 2004**.

7.2 Responses to the consultation will be considered. Should there be a need to revise the exemption order substantially there will be another consultation.

7.3 The final version of the Order, amended in the light of the consultation responses and then laid before parliament, will be published on the DTI website.

7.4 If the order is to be made we anticipate this will happen in early 2005.

## **8 Partial Regulatory Impact Assessment (RIA)**

This Partial RIA considers the notice served by the Secretary of State in connection with a proposal to grant a limited exemption to operators of the National Transmission System (NTS) and the local gas distribution networks (DNs) in Great Britain so that they may undertake a limited range of shipper-like activities.

### **Objective**

The policy objective is to protect the interests of consumers in relation to gas conveyed through pipes, wherever appropriate by promoting effective competition. This exemption, if granted, will facilitate National Grid Transco plc's (NGT) proposed sale of one or more of its DNs as it will allow the implementation of particular gas offtake arrangements<sup>9</sup> between the gas transmission and distribution networks (i.e. the NTS and the DNs), and transfers of gas between the DNs. The Department expects that this sale would facilitate competition and improve the efficiency and workings of the gas market.

These proposals will impact on the gas sector in Great Britain (GB) i.e. in England, Wales and Scotland.

### **Background**

In May 2003, NGT announced that it would consider the sale of one or more of its DNs. In the event of such a sale, Transco would retain responsibility for the operation of the NTS and its retained DNs (RDNs). However, a number of additional industry players would also be created, responsible for the operation and management of the remaining independent DNs (IDNs).

Following this announcement, Ofgem (the Office of the Gas and Electricity Markets Authority) initiated a programme of work to explore the potential benefits that such a transaction may have for consumers. Since July 2003 it has:

- ◆ published six consultation documents which considered various aspects of the sale as well as the policy, and the costs and benefits of the sale itself;
- ◆ held an industry workshop;

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<sup>9</sup> Offtake arrangements are arrangements between the operators of the NTS and the DNs for the removal of gas from the NTS to be introduced into the DN pipeline system. Refer to: National Grid Transco-Potential sale of gas distribution network businesses, offtake arrangements, conclusion document on framework, August 2004, 199/04

- ◆ undertaken a series of meetings with industry participants; and
- ◆ established a number of working groups comprising various interested parties.

In August 2004, NGT reached conditional agreement on the sale of four of its regional gas distribution networks. NGT proposed to sell the:

- ◆ North of England distribution network to a consortium led by Cheung Kong Infrastructure Holdings Limited and including United Utilities;
- ◆ Wales & the West distribution network to a consortium led by the Macquarie European Infrastructure Fund; and
- ◆ South of England and Scotland distribution networks to a consortium comprising Scottish and Southern Energy plc, Borealis Infrastructure Management Inc and Ontario Teachers Pension Plan.

During the sales process, in September 2004, Transco became aware that certain aspects of the proposed arrangements would require an exemption from section 5 (1) (c) of the Gas Act 1986 (the Act) in order to permit their implementation. The Act requires gas transporters (i.e. those involved in transporting gas around GB in pipes) and shippers (i.e. those who buy gas from producers and sell it to users and/or suppliers and who arrange for gas to be transported) to have, respectively, a gas transporter and a shipper licence. However, the Act also prohibits the Gas and Electricity Markets Authority (the Authority) from granting both types of licence to a single company. Section 6A of the Gas Act allows the Secretary of State to grant an exemption from holding a licence. This exemption, if granted, would allow the operators of the NTS and the DNs to enter into arrangements with each other for gas to be introduced into or taken out of their respective pipeline systems without requiring a shipper licence.

### **Risk assessment**

- ◆ If an exemption is not granted there will be a significant risk that NGT's commercial transaction to sell four of its DN businesses will fail. If no exemption is granted and the DN sales process continues on the basis of (i) reconsidering the roles and responsibilities across the NTS and DNs or (ii) reconsidering the arrangements for offtake from the NTS, the transaction

timetable would be subject to significant delay. NGT have noted that any significant timetable delays would be likely to jeopardise the transaction.

- ◆ If the DN sales process continues on the basis of the “tame shipper” model i.e. a Sub-option C approach (see below), there would be an ongoing risk to the transaction, as this approach could potentially be subject to challenge.

*The DN sales process would be likely to result in significant net benefits to customers (both industrial and domestic). As such, if an exemption is not granted, there would be a significant risk that substantial customer benefits would be lost.*

**Question: Do respondents agree with this risk assessment? How likely is it that these risks will materialise?**

**Question: Are there any other significant risks which should be taken into account from the exemption not being granted?**

## **Options**

In its August 2004 decision document Ofgem considered four options<sup>10</sup> which could deliver the necessary offtake arrangements associated with DN sales. The Authority decided that option 2 was the one which best delivered their principal objective of protecting the interests of consumers, wherever appropriate by promoting effective competition.

However, the offtake arrangements associated with option 2, considered by Ofgem, will require an exemption from the Gas Act (as would option 1 and option 3). For the purpose of this consultation the Department has considered three sub-options that stem from Ofgem’s decision to opt for option 2.

### ***SUBOPTION A: NO EXEMPTION GRANTED***

Under Sub-option A, no exemption is granted and so approaches to facilitate DN sales would need to ensure that gas transporters cannot enter into arrangements to offtake or introduce gas in respect of each other’s gas transportation systems. The only two viable approaches would be to:

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<sup>10</sup> refer to Annex C for a summary for those options

- ◆ reconsider the allocation of roles and responsibilities to the NTS and the DNs, and implement a “passive DN” model such that Transco’s NTS makes all decisions with respect to the offtake / introduction of gas across the NTS and DNs; or
- ◆ reconsider the offtake arrangements, and implement a shipper-led framework for NTS offtake such that shippers arrange for gas to be offtaken/introduced at the NTS/DN interface.

### ***Consideration of Roles and Responsibilities***

A previous Ofgem consultation<sup>11</sup> described a “passive” option with respect to the allocation of roles and responsibilities between the NTS and DN businesses, where Transco’s NTS was assumed to be responsible for system operation, as well as investment and maintenance planning for both the NTS and DNs. However, the majority of respondents to Ofgem’s consultation indicated that this option was not desirable.

In addition, the Authority considered that this approach would limit benefits to customers from comparative regulation by restricting the range of activities across which DNs would have the opportunity to reduce their operational costs. Furthermore, it would cause a lack of clarity in accountability and responsibilities and hence generate a significant level of contractual complexity and potential for disputes. In addition, in order to implement this option it would be necessary for Ofgem to re-consult on this matter.

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<sup>11</sup>National Grid Transco-Potential sale of gas distribution network businesses, Allocation of roles and responsibilities between transmission and distribution networks, April 2004.



A previous Ofgem consultation<sup>12</sup> described an option with respect to the arrangements for offtake from the NTS, which placed a requirement on shippers to determine the amount of NTS exit capacity required by their customers, and book this in investment planning timescales. In addition, this option removed the “1 in 20”<sup>13</sup> security of supply obligation from the DNs, enabling the market to determine the appropriate level of security.

Most respondents to the Offtake RIA stated that they opposed this option, with many expressing security of supply concerns. As a result the Authority concluded that, as part of the DN sales process, a DN/NTS direct connectee led approach to NTS offtake would be more appropriate. Therefore, in order to implement a shipper-led approach, Ofgem would need to re-consult with industry on this matter. Furthermore, the implementation of such arrangements would involve a significant change to the management of gas network capacity, including the removal of the current 1 in 20 obligation, which would therefore require detailed discussions with the Health and Safety Executive (HSE), and subsequent HSE approval prior to implementation.

NGT have indicated that substantial delays to their commercial timetable such as this reconsideration of a shipper led approach may make the transaction undeliverable with the consequential loss of the potential net customer benefits.

### **SUBOPTION B: EXEMPTION GRANTED**

Under Sub-option B an exemption from Section 5 (1) (c) of the Gas Act would be granted. This exemption would enable the framework of arrangements proposed by the Authority, following extensive industry consultation, to be implemented and the DN sales transaction to proceed within NGT's commercial timetable.

A draft of the Statutory Instrument (SI) is provided in Annex A of the consultation document.

The Order includes a condition on information provision, so that the operators of the NTS and the DNs are required to comply with any direction given by the Authority to provide it with information concerning any relevant shipping arrangements, in such a manner and at

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<sup>12</sup> National Grid Transco – Potential sale of gas distribution network businesses, Offtake arrangements, June 2004.

<sup>13</sup> This obligation requires gas transporter to install capacity which is likely to be insufficient to meet peak aggregate daily demand (given historical weather data) in only one year out of twenty.

such times as the Authority requires, to facilitate the performance by it of its functions under the Gas Act, the Utilities Act 2000, or the Energy Act 2004.

### **SUB-OPTION C: “TAME SHIPPER” MODEL**

Under this “tame shipper” approach, DNs would be permitted to have a separately licensed shipper entity within their group that books capacity on behalf of all shippers offtaking gas from that DN. As such, in the event that four DNs are sold by NGT, three or four new tame shipper businesses would be likely to be created: one for each of the four independent networks (although if the same consortium buys two DNs as is currently planned, one fewer tame shipper may be required).

In order for this model to work, information flows would need to be permitted between the DN “network” business and the (separately licensed) tame shipper. The requirement for information sharing between the tame shipper and the DN, and the limited activities associated with the role would suggest that office space and back office support services would be shared. In contrast, if the DN group also conducts competitive shipper activities, information separation would need to be maintained between the tame shipper and these competitive shipping activities. The Gas Act, requires separation of shipper/supplier activities and gas transportation activities and this option could be seen to undermine that intent more so than Sub-option B which aims to deliver a narrow exemption for shipping activity for transporters.

Furthermore, this approach may be open to challenge under European legislation, as tame shippers would be treated differently to those undertaking competitive shipping activities:

- ◆ there would be different information separation requirements; and
- ◆ tame shippers would have rights to book NTS exit capacity, not conferred on their competitive counterparts.

### **BUSINESS SECTORS AFFECTED**

Under each of the different options considered within this Partial RIA, business sectors will be affected in different ways.

Under Sub-option A the alternatives available for the implementation of DN sales are unlikely to be consistent with NGT’s commercial timetable. As such, NGT have noted that the transaction would be jeopardised, and therefore the status quo would remain. Thus Sub-option A would not impact on businesses in Great Britain (GB).

If DN sales proceed successfully under Sub-option B or Sub-option C, then all GB customers, including businesses consuming gas, would be expected to benefit from lower gas bills than would otherwise have been the case. As shown in Table A1 below, under Sub-option B:

- ◆ the net benefits achievable, and hence the benefits to GB businesses consuming gas, would be slightly higher than under Sub-option C; and
- ◆ the probability that these benefits will be realised will be significantly higher than under Sub-option C, as the risk of challenge will be much lower.

Under Sub-options B and C there would be a change to the structure of the GB gas sector, with the separation of gas distribution from gas transmission, and the sale of four of the eight gas distribution networks. Sub-options B and C will also lead to the shipper and supplier industries and NTS direct connects incurring costs to ensure implementation of the proposed arrangements. The impact of DN sales on NTS direct connects (of which there are estimated to be 64) is estimated to be relatively small. It is estimated that more of the costs will be borne by shippers, (between 20 and 25 shippers will be affected). In addition, the competitiveness of the shipper market may be undermined by the implementation of Sub-option C.

**Question: Do respondents agree with this assessment of the number of firms affected?**

***Question: Are there any other sectors which may be affected by his exemption order?***

### **Costs and benefits**

It should be noted that, the costs and benefits given below are in general, based upon assumptions made within Ofgem's Final Impact Assessment (IA) and the associated analysis performed<sup>14</sup>. See Ofgem's Final IA for further detail.

## **BENEFITS**

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<sup>14</sup> The main difference between the costs and benefits presented within this Partial RIA, and those presented by Ofgem within its Final IA relate to a difference in the discount rate assumed. In Ofgem's Final IA, a discount rate of 6.25% is assumed. However, this Partial RIA applied a discount rate of 3.5% consistent with Treasury guidelines.

### ***Sub -option A: no exemption granted***

Under Sub-option A, it is assumed that without an exemption (or pursuit of a “tame shipper” approach as outlined in Sub-option C), the only two alternatives for the implementation of DN sales would require reconsideration of the roles and responsibilities of the NTS and the DNs or of the offtake arrangements such that either: (i) DNs have a more passive role; or (ii) there is the implementation of a shipper-led approach to NTS offtake.

It is likely that neither of these alternative routes would lead to the acceptable or successful completion of the DN sales transaction. This is because:

- ◆ re-allocation of roles and responsibilities would jeopardise customer benefits and require Ofgem to re-consult, with associated timetable delays and risks; and
- ◆ re-consideration of the offtake arrangements would lead to a significant delay to the commercial timetable, as it would be necessary for Ofgem to re-consult and undertake detailed discussions with the HSE.

As a result, the Department has assumed that, without an exemption, or the successful pursuit of a Sub-option C approach (as discussed below), the status quo will continue, and DN sales will not proceed. Therefore the benefits of Sub-option A relative to the status quo would be zero.

### ***Sub-option B: exemption granted***

If an exemption is granted, then it is assumed that NGT’s commercial timetable for DN sales would proceed as agreed.

### ***Quantifying the benefits associated with Option B***

The proposed sale of the DNs, should the transaction proceed, would lead to the creation of three additional, independently-owned comparators. DN sales could therefore generate potentially significant benefits by enabling “comparative regulation” to take place between independently owned entities, and therefore:

- ◆ provide Ofgem with valuable comparative information as to the appropriate level of costs that an efficiently run regulated gas distribution business should incur; and
- ◆ generate greater incentives for improvement amongst DNs, as they will be obliged to catch up with the benchmark efficiency level or else face shortfalls in their allowed revenue compared to their actual costs.

Customers will therefore be likely to benefit, as the allowed revenue of the regulated businesses, and thus the level of charges to customers, will be lower than would otherwise have been the case.

Furthermore, the sale of one or more DNs will result in the introduction of new management into the GB gas distribution industry. This has the potential to increase efficiency savings by:

- ◆ generating greater innovation within the industry;
- ◆ facilitating the transfer of best practice;
- ◆ allowing economies of scope to be captured with other utility networks owned by the same corporate entities; and
- ◆ removing the disincentive to adopt efficiency savings that could arise if the adoption of the efficiency saving adversely affects colleagues in other commonly owned DNs.

As such, not only could Ofgem be able to establish the “efficiency frontier”, but the efficiency frontier would be expected to shift at a faster rate as a result of the introduction of new management. This means that allowed revenues, and therefore charges to customers, could fall at a faster rate than would otherwise have been the case.

These benefits to customers of DN sales are estimated at a gross benefit of **£457 million** in present value terms<sup>15</sup>, discounted at 3.5% in line with Treasury guidelines, assessed over an 18 year period, i.e. the period to 2022/23. See Appendix 1 for assumptions used in this calculation.

### **Non-quantifiable benefits of Sub-option B**

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<sup>15</sup> All values are expressed in 2004 prices.

It is possible that the following additional (and non-quantifiable) benefits would also result:

- ◆ promotion of competition in the wholesale gas market: a clear set of offtake arrangements may enable more transparent pricing, improve investment signals and allow more efficient network development over the longer term;
- ◆ promotion of competition in the retail gas market may occur through innovative products that retailers can design, enabled by more flexible and responsive DNs; and
- ◆ security of supply: the improvement in investment signals may also have positive benefits for security of supply (although security of supply was not used by Ofgem to differentiate between the options considered).

### ***Sub-option C: “tame shipper model”***

Should DN sales successfully proceed on the basis of the “tame shipper” model, the same benefits as outlined for Sub-option B above would be realised.

However, as stated above, this approach would involve the creation of two different classes of shippers: tame shippers and competitive shippers. Under the “tame shipper” model, tame shippers would be treated differently to those undertaking competitive shipping activities as follows:

- ◆ there would be different information separation requirements; and
- ◆ tame shippers would have rights to book NTS exit capacity, not conferred on their competitive counterparts.

As such, this approach risks a challenge from competitive shippers seeking the same treatment as tame shippers. European legislation states that:

- ◆ the distribution system operator “shall not discriminate between system users or classes of system users, particularly in favour of its related undertakings”<sup>16</sup>; and
- ◆ “each distribution system operator ... shall prevent information about its own activities which may be commercially advantageous from being disclosed in a discriminatory manner.”<sup>17</sup>

Given the risk of challenge to such an approach, Sub-option C is regarded as a higher risk. A challenge of this nature, in a post DN sales environment, would mean the offtake arrangements as implemented would not be sustainable, and it would be costly to institute immediate acceptable arrangements.

Therefore, whilst benefits of the same order of magnitude and nature as those estimated for Sub-option B are theoretically achievable, the probability of achieving these, given the risk of challenge, and hence of consent, is very small.

**Question: Do respondents agree with this assessment of relative benefits across the three options? Are respondents content with the validity of the assumptions in Appendix 1?**

**Question: Is there any other information/data available which would improve this assessment?**

**Question: Are there any other benefits which should be taken into account?**

## **COSTS**

### ***Sub-option A: no exemption granted***

As noted above, in the Benefits Section for Sub-option A, NGT note that under this option the transaction would be in jeopardy and so it is assumed that the DN sales transaction will not proceed. As such, whilst no costs would be incurred per se, the customer benefits that could be achieved under DN sales (gross benefits of £457m) would be forgone.

<sup>16</sup> Directive 2003/55/EC of the European Parliament and of the Council, Article 12 (2), June 2003

<sup>17</sup> Directive 2003/55/EC of the European Parliament and of the Council, Article 14, June 2003

## ***Sub-option B: exemption granted***

### **Quantifiable costs of sales under Sub-option B**

If an exemption is granted by the Secretary of State, then it is assumed that the commercial timetable for DN sales would proceed. The costs to the following parties were considered in the event of DN sales:

- ◆ shippers / suppliers;
- ◆ NTS direct connects; and
- ◆ Ofgem and the HSE.

The costs to Transco or to the sold DNs of the sale are not included as they are deemed to be a cost of the (clearly voluntary) commercial transaction which this option would facilitate.

Of the other industry parties affected, the more significant cost impact of the proposed sale arrangements will be borne by shippers / suppliers. This is because, whilst at present shippers / suppliers are only required to interface with a single entity (Transco), in the event of DN sales, such interfaces will become more complex with interfaces with multiple parties required. Whilst the framework of arrangements proposed in the event of DN sales, seeks to mitigate the cost impact of DN sales as far as possible (for example, through the creation of an agency that will avoid duplication and retain a single interface for key activities) some costs will remain.

Whilst some costs will be incurred by NTS direct connects as a result of DN sales, these are thought to relate primarily to an increase in negotiation costs. It has been estimated that the majority of the costs will be borne by their shippers.

Furthermore, whilst Ofgem and the HSE may need to increase their resources in a post DN sales world, this increase is not deemed to be significant.

Total costs are estimated to be **£125m** in NPV terms over an 18 year period, discounted at 3.5% in line with the Treasury guidelines. See Appendix 2 for further details.

### **Non-quantifiable costs resulting from Sub-option B**



If an exemption is granted there is a risk that this exemption is mis-specified:

- ◆ if the specification of the exemption is too wide, then this could blur the boundaries between competitive and monopoly activities and have a detrimental effect on competition in the shipping market. Furthermore, this could undermine the role of a shipper, and hence undermine the intention of the Gas Act.
- ◆ if the specification of the exemption is too narrow, then future arrangements may lack the flexibility to evolve in an appropriate way, and hence the efficacy of future arrangements may be constrained.

It would therefore be necessary, when specifying the exemption, to achieve an appropriate balance between: ensuring sufficient flexibility to allow the appropriate evolution of NTS offtake arrangements, and ensuring that the key role of shippers is preserved, and not undermined in any way.

<b><i>Sub-option C: "tame shipper" model</i></b>
<b><i>Quantifiable costs of sale of Sub-option 2C</i></b>

In the event that Sub-option C was implemented, Transco would incur additional costs, over and above those associated with Sub-option B, to achieve legal separation between the tame shipper functions and other DN functions. These costs would consist of:

- ◆ the up-front costs of implementing the separation, estimated by NGT to equate to circa £0.5m of up-front costs for the five tame shipper businesses created (i.e. £0.1m per tame shipper created); and
- ◆ additional business running costs and DN running costs as a result of the Sub-option C approach, estimated by NGT to be £125,000 per annum (i.e. £25,000 per tame shipper).

With respect to the up-front costs of setting up the tame shipper model, the £0.5m of costs estimated represent:

- ◆ governance costs associated with Company House filing, board and secretariat;

- ◆ set up of regulation and compliance processes;
- ◆ operation of staff hiring and physical working environment costs;
- ◆ back office processes and systems set up; and
- ◆ tax / legal costs.

Ofgem is not proposing to allow the pass-through of Transco's up-front costs and as such Ofgem have not included these costs of £0.5m in their net benefit calculation. This exclusion does not, however, affect the overall cost benefit balance.

With respect to the on-going costs of operating the tame shipper model (over and above a Sub-option B approach), the £125,000 of annual costs estimated represent:

- ◆ Board and secretariat;
- ◆ financial reporting, licence and compliance systems;
- ◆ operational inefficiencies; and
- ◆ incremental back office processes and systems costs.

The additional annual cost equates to a net present value, over 18 years, of **£1.6 million**<sup>18</sup>.

Furthermore, the legal separation, and separate licensing of tame shipper activities would impose additional up-front costs on Ofgem over and above those associated with Sub-option B with respect to the drafting of the tame shipper licences. Ofgem has estimated that this would involve up-front costs equivalent to one FTE (cost of £80,000).

With respect to the costs incurred by shippers / suppliers, they would continue to face a single interface with respect to the booking of capacity, however, the introduction of an additional link in the chain may require them to perform greater validation of data. As such, we have estimated that the ongoing costs to shippers / suppliers of implementing the proposed framework, as estimated by Ofgem would be 20% higher than a Sub-option B approach to reflect these increased data validation requirements. Furthermore, the costs incurred by NTS direct connects are expected to be the same as under a Sub-option B approach. This is because it is expected that under either Sub-option B or Sub-option C, NTS direct connects would request capacity through the relevant competitive shipper.

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<sup>18</sup> Applying a discount rate of 3.5% to the 18 year period 2005/6 to 2022/23, and discounting to 2004.

The costs estimated to be incurred by Transco and DNs on an on-going basis, shippers / suppliers, NTS direct connects, and Ofgem are therefore circa **£148 million** (ie £23m more than the costs of Sub-option B).

### ***Non-quantifiable costs of sales resulting from Sub-option C***

As stated above, it is likely that Sub-option C would be challenged by competitive shippers because, tame shippers would receive differential treatment:

- ◆ they would be subject to different information separation requirements; and
- ◆ they would have rights to book NTS exit capacity, not conferred on their competitive counterparts.

Even if competitive shippers do not challenge the implementation of Sub-option C, this differential treatment will be likely to have the following adverse implications:

- ◆ it could introduce the scope for potentially undue discrimination between shippers, and may therefore represent a potential breach of the statutory and licence obligations of the DNs;
- ◆ it could blur the boundaries between competitive and monopoly activities;
- ◆ it could undermine the role of a shipper, as envisaged within the Gas Act; and therefore
- ◆ have potentially adverse implications for the competitive shipper sector, and for wholesale and retail gas competition in general, offsetting any potential benefits that may have arisen from new offtake arrangements that encouraged pricing transparency and innovation.

Furthermore, it is likely that the Sub-option C model would introduce additional contractual complexity, with associated operation, contractual and legal risks.

The impact of such factors is generally difficult to quantify, and as such, these factors remain a qualitative cost for the purposes of this Partial RIA.

**Question: Do respondents agree with this assessment of relative costs between the three options? Are respondents aware of any additional cost data/estimates?**

**Question: Are there any other costs which should be taken into account?**

## SUMMARY OF COSTS AND BENEFITS

Table A1 below provides a summary of the qualitative and quantitative analysis performed for Sub-options A, B and C.

**Table A1: The costs and benefits of the sales of DNs under Sub-options A to C (£m, NPV, 2004 prices)**

	Sub-option A: no exemption granted	Sub-option B: exemption granted	Sub-option C: “tame shipper” model
<b>Quantitative assessment</b>			
Customer benefits	-	£457m	£457m
Customer costs	-	£125m	£148m
<b>Net customer benefits</b>	-	<b>£332m</b>	<b>£309m</b>
<b>Qualitative assessment</b>			
Minimise risk of challenge	-	-	x
No undue discrimination between shippers	✓	✓	x
Maintain competitive / monopoly boundaries	✓	✓	x
Maintain distinct shipper role	✓	✓	x
Promote wholesale competition	-	✓	x
Promote retail competition	-	(✓)	x

Table A1 above shows that Sub-option B has clear benefits (both quantifiable and non-quantifiable) in relation to both Sub-option A and Sub-option C. The quantifiable benefits stated in this table represent the benefits estimated in the event that DN sales generates three additional comparators, and a discount rate of 3.5% is applied. In the case of Sub-option B, net benefits to customers are quantified at **£332 million**. In its Final IA, Ofgem used a discount rate 6.25% and performed further sensitivities with respect to the scale of the benefits achievable and the extent to which such benefits will vary with the number of additional comparators created by DN sales. This analysis found that the net benefits to customers decrease if fewer than four DNs are sold, or fewer than three corporate entities acquire the DNs sold. It should also be noted that the Authority has stated that it would impose a condition in the event that it consents to DN sales obliging Transco to agree to the payment of a compensation safety net if its assessment of the expected costs of DN sales outweigh its assessment of the expected benefits.<sup>19</sup>

<sup>19</sup> Ofgem press release, *Ofgem’s work on NGT’s proposed gas network sale moves to next phase*, 16 April 2004.

Given the calculated net benefits, the Department is minded to adopt Sub-option B, and grant an exemption to NGT as requested. The conditions associated with this exemption are discussed in detail in Chapter 5 of the consultation document.

**Question: Do respondents agree with this assessment of costs and benefits? Is there any other information/data which could inform this analysis further and/or place estimates of the qualitative aspects of the assessment above?**

## **EQUITY AND FAIRNESS**

In 2001 in England there were 1.2m domestic users on the gas network who were “fuel poor” i.e. have to spend at least 10% of their income on heating their home to an adequate level. Any measures that lead to a general reduction in gas bills to domestic gas customers, will therefore benefit the fuel poor.

Under Sub-option A, the status quo is assumed to be maintained, and as such, the gas bills of the fuel poor would not be impacted. However, as stated above, under Sub-option B and Sub-option C (if it is implemented successfully), gas bills to domestic gas customers, including the fuel poor, could be lower than they would have been in the absence of DN sales.

**Question: Do respondents agree with this assessment? Are there any other aspects of equity and fairness not included in this RIA which are relevant?**

## **SMALL FIRMS' IMPACT TEST**

As stated above, implementation of Sub-option A implies retention of the status quo, and as such will not impact on the gas sector, or customers. Thus small businesses will also be unaffected.

Under Sub-option B or Sub-option C (if successfully implemented), there will be an impact on small businesses in Great Britain:

- ◆ small businesses in Great Britain are expected to experience lower gas bills than they would otherwise have done had DN sales not proceeded; however

- ◆ a small number of gas shipper / supplier businesses (potentially no more than three) are small firms<sup>20</sup> and may be adversely affected by the costs of implementing the proposed framework of arrangements.

Therefore, whilst successful implementation of Sub-option B or Sub-option C would be expected to benefit the majority of small businesses, a small number (three or fewer) may be adversely affected by these proposals. Ofgem has consulted extensively on the matter of DN sales, and none of the “small” shippers identified has responded to any of the consultation documents issued to date.

**Question: Do respondents agree with the assessment of the impact on small businesses as a result of the sale? Are there other small firms likely to be adversely affected?**

## **COMPETITION ASSESSMENT**

As stated above, it is assumed that under Sub-option A there would be no impact on business sectors in Great Britain as the status quo would be retained.

However, under Sub-option B and Sub-option C (if successfully implemented), the structure of the gas sector in Great Britain would change. As stated above, in the event that DN sales proceed, it is currently expected that four gas distribution networks would be sold to four corporate entities (two of which will co-exist within the same corporate group). As such, a national monopoly for gas transmission and distribution would become a national monopoly for gas transmission, and four regional gas distribution monopolies (given the number of completely separate corporate entities as owners). Therefore, whilst gas distribution will remain a monopoly business, the creation of a number of regional comparators will allow the impact of competition to be replicated to a certain extent.

As stated in the analysis of the potential benefits of DN sales above, DN sales could generate potentially significant benefits by enabling comparative regulation to take place between independently owned entities, and therefore:

- ◆ provide Ofgem with valuable comparative information as to the appropriate level of costs that an efficiently run regulated gas distribution business should incur; and

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<sup>20</sup> As defined in Better Policy Making: A guide to regulatory impact assessment, Cabinet Office, January 2003

- ◆ generate greater incentives for improvement amongst DNs, as they will be obliged to catch up with the benchmark efficiency level or else face shortfalls in their allowed revenue compared to their actual costs.

Furthermore, in the event of DN sales, shareholders and financial analysts would have more information with which to infer the relative efficiency of each gas distribution company, and this in and of itself may stimulate companies to make improvements. In a recent report on the water sector by the Competition Commission<sup>21</sup>, the Commission stated that the advantages of comparisons in the water industry go beyond the effects of setting price caps at periodic reviews as the regular publication of tables comparing companies with respect to quality of customer service and efficiency stimulates companies (who are concerned about their position in such tables) to seek improvements.

Therefore whilst Sub-options B and C would not generate direct competition, the creation of separate gas distribution comparators would generate incentives for each gas distribution company to out-perform its peers in order that it is viewed favourably, in relative terms, by both regulators and shareholders.

However, as stated above, the specific arrangements proposed in Sub-options B and C, and the extent to which they vary, may lead to a differential impact on wholesale and retail gas competition:

- ◆ Sub-option B, if implemented, would potentially have a positive impact on wholesale and retail gas competition:
- ◆ a clear set of offtake arrangements may enable more transparent pricing, and therefore promote wholesale gas competition; whilst
- ◆ competition in the retail gas market may be positively affected if the existence of more flexible and responsive DNs allows retailers to design more innovative products.
- ◆ Sub-option C, if implemented would blur the boundaries between competitive and monopoly activities and undermine the role of a shipper, as envisaged within the Gas Act. As such, there would be potentially adverse implications for the competitive shipper sector, and for wholesale and retail gas

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<sup>21</sup> Competition Commission, Water Merger References made under Section 32 of the Water Industry Act 1991, Competition Commission Guidelines, consultation document, July 2004.



competition in general, offsetting any potential benefits that may have arisen from new offtake arrangements that encouraged pricing transparency and innovation.

The above analysis implicitly assumes that Sub-option B, by granting an exemption for DNs to conduct a small sub-set of shipper activities, will not undermine the competitive activities of shippers. The scope of the proposed exemption has been established to achieve a balance between retaining some flexibility for offtake arrangements to evolve in an appropriate way, and preserving the key aspects of a shipper's role, such that this role, and consequently wholesale and retail gas competition, would not, in the Department's view, be undermined.

**Question: Do respondents agree with this assessment? Are there any other competitive implications, positive or adverse, not covered here?**

### ***Enforcement and Sanctions***

Ofgem will continue to licence and regulate the downstream gas market and hence the transportation of gas around GB. The Order includes a four month revocation period, which can be enforced by the Department if the relevant parties are in breach on the proposed exemption order.

### ***Monitoring and Review***

Monitoring and reviewing the order will be part of the on-going regulation of the gas market. However, Transco's Gas Transporter licence will be reviewed in 2011 and this would seem an appropriate time to review this exemption.

### ***Contact point***

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November 2004

## **Appendix 1**

### **Assumptions for the calculation of the quantified benefits of Sub-option B**

The NPV for the benefits case is based on the reduction in allowed controllable operating expenditure assuming DN sales proceed, over and above the status quo quantified.

These reductions in allowed operating expenditure are assumed to pass directly through into customer charges. The assumptions made in performing this analysis are as follows:

- ◆ the 18 year period of the NPV calculation covers the remainder of the current price control period (which is scheduled to end on 31 March 2008) and the three five year price control periods that follow.
- ◆ the rate of improvement in allowed controllable operating expenditure that would be set by Ofgem for all DNs in the absence of DN sales is expected to be 3% per annum;
- ◆ the rate of improvement in allowed controllable operating expenditure that would be set by Ofgem for all DNs in the event of the sale of four DNs to three entities is expected to be 4.12% per annum during the first full regulatory period, 5.16% during the second full regulatory period, and 3.09% during the third full regulatory period;
- ◆ as Ofgem is not proposing to re-open the current price control, it is expected that no additional benefits will be passed to consumers within the current price control period;
- ◆ if DN sales proceed to the current commercial timetable, licences will be transferred to new DN gas transporter licensees at the end of April 2005. At this point, the HSE will then be able to review the DNs' safety cases. Once HSE has accepted the appropriate DN safety cases, NGT will be able to proceed towards completing the sale. DN sales may therefore take effect from the end of May 2005 onwards. The modelling works on a financial year basis, and as such, has assumed that DN sales will take effect from 1 April 2005. Though this does not fully reflect the current commercial timetable, the impact on the cost benefits calculation is negligible, and represents a conservative approach as costs are assumed to be incurred sooner whilst in either case, the benefits are not realised until 1 April 2008;

- ◆ allowed controllable operating costs from the period to 31 March 2007 are defined to be consistent with the levels allowed upon separation of Transco's distribution price control<sup>22</sup> i.e. allowed operating expenditure net of network rates. These costs have been inflated to 2004 prices, and a further adjustment has been made to net off costs associated with common "agency" services; and
- ◆ in line with Treasury guidelines, the Department has applied a discount rate of 3.5% to calculate the NPV for anticipated quantifiable benefits of this option.

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<sup>22</sup> Ofgem, Separation of Transco's distribution price control, Final proposals, June 2003, Table 2.3.

## **Appendix 2**

### **Assumptions for the calculation of the costs of Sub-option B**

In August 2004, Ofgem developed and distributed a pro forma to all gas shippers / suppliers requesting an estimate of the additional costs that they would expect to incur due to the implementation of the proposed framework of arrangements in the event that DN sales proceed. Overall, respondents to this information request accounted for approximately 21 million supply points which equates to over 99% of the market, and translates into:

- ◆ over 99% of the domestic market; and
- ◆ 81% of the industrial and commercial market

Having due regard to these responses, and given its assessment of the costs imposed on NTS direct connects Ofgem and HSE, total costs have been estimated to be circa **£125 million** in present value terms<sup>23</sup>, assessed over an 18 year period, i.e. the period to 2022/23. This is calculated by application of the following Ofgem assumptions and analysis:

- ◆ Ofgem performed clustering analysis, and excluded outliers on this basis to reflect the significant range of estimates provided; furthermore
- ◆ although respondents to the pro forma made up over 99% of the gas shipper market, Ofgem considered that some extrapolation of the figures obtained was necessary. Ofgem therefore assumed that the costs incurred by the second lowest cost respondent were representative of the costs of a non-responding shipper, and that there were eight non-responding shippers<sup>24</sup>;
- ◆ each of the 64 NTS direct connects will incur costs associated with the negotiation of contracts equal to £2,000 a year per NTS direct connect<sup>25</sup>;
- ◆ up-front costs to Ofgem of £500,000 as well as two additional regulatory employees (at a cost of £80,000 per annum each); and furthermore

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<sup>23</sup> All values are expressed in 2004 prices.

<sup>24</sup> Above a de minimus size i.e. serving over 20 supply points.

<sup>25</sup> In performing its analysis, Ofgem assumed that were NTS direct connects to incur higher costs than those estimated above, that these would be offset by an equivalent reduction in shipper / supplier costs to avoid unnecessary duplication.

- ◆ up-front costs of £200,000, to be incurred by the HSE in approving the safety cases for the DNs.

Again, in line with Treasury guidelines the Department has applied a discount rate of 3.5% to calculate the NPV of anticipated quantifiable costs for this option.

2005 No.

GAS

**The Gas Act 1986 (Exemption) Order 2005**

<i>Made</i> - - - -	2005
<i>Laid before Parliament</i>	2005
<i>Coming into force</i> - -	2005

The Secretary of State, in exercise of the powers conferred upon her by section 6A of the Gas Act 1986<sup>(26)</sup> after consulting the Health and Safety Commission in accordance with section 4A(1) of that Act and giving notice under and considering any representations in accordance with section 6A(1A) of that Act, hereby makes the following Order:

**Citation, commencement and provision for revocation**

1.—(1) This Order may be cited as the Gas Act 1986 (Exemption) Order 2005.

(2) This Order shall come into force on [*insert date*] 2005.

(3) This Order shall only be revoked with effect from a date after the expiry of the period of four months beginning with the day on which the Order providing for revocation was laid before Parliament.

**Interpretation**

2. In this Order—

“connection point” means any of the following —

- (a) any entry or offtake point on a DN where a DN is connected to another DN;
- (b) any entry point on a DN operated by a relevant gas transporter where an LNG storage facility operated by another relevant gas transporter is connected to that DN;
- (c) any offtake point on the NTS or entry point on a DN where a DN is connected to the NTS;
- (d) any offtake point on the NTS where Stranraer gas is taken out;
- (e) any offtake point on the NTS where relevant gas is taken out;

“DN” means a regional distribution pipe-line system connected to the NTS which is primarily used for the conveyance of gas to premises and which is owned and operated by Transco plc at the date hereof;

“LNG storage facility” means a storage facility<sup>(27)</sup> for the storage of liquid gas;

“relevant gas interconnectors” means the gas interconnector<sup>(28)</sup> between Stranraer in Scotland and Ballylumford in Northern Ireland and the gas interconnector between Moffat in Scotland and Loughshinny in the Republic of Ireland;

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<sup>(26)</sup> 1986 c.44. Section 4A was inserted by section 2 of the Gas Act 1995 (c.45) and substituted by section 11 of the Utilities Act 2000 (c.27). Section 6A was substituted by section 4 of the Gas Act 1995 and amended by section 86 of the Utilities Act 2000.

<sup>(27)</sup> the definition of storage facility in section 19E of the Gas Act 1986 was substituted by regulation 2(2) and paragraph 6(j) of Schedule 2 to S.I. 2004/2043.

<sup>(28)</sup> the definition of gas interconnector was inserted in section 5(8) of the Gas Act 1986 by section 149(3) of the Energy Act 2004 (c.20).

“NTS” means the high pressure pipe-line system [(excluding any DN)] which is owned and operated by Transco plc at the date hereof and which is primarily used for the conveyance of gas to other pipe-line systems;

“relevant gas” means gas which an operator of a DN arranges to take out of the NTS for introduction into an LNG storage facility;

“relevant gas shipping arrangements” means arrangements made by a relevant gas transporter with another relevant gas transporter for gas to be introduced into or taken out of a DN or taken out of the NTS operated by that relevant gas transporter at a connection point;

“relevant gas transporter” means a gas transporter who operates a DN or the NTS;

“Stranraer gas” means gas which an operator of a DN arranges to take out of the NTS at Moffat so that it may be conveyed through the relevant gas interconnectors to that DN; and

“Transco plc” means the company registered in England and Wales under number 2006000.

### **Exemption in respect of certain shipping arrangements**

3.—(1) Subject to paragraph (2), an exemption is hereby granted from section 5(1)(c) of the Gas Act 1986 (prohibition on unlicensed shipping arrangements) to a relevant gas transporter in respect of relevant gas shipping arrangements.

(2) The exemption granted by paragraph (1) shall cease to have effect in relation to a relevant gas transporter if he fails to comply with the condition specified in article 4.

### **Condition**

4.—(1) Subject to paragraph (2), a relevant gas transporter shall comply with any direction given by the Authority<sup>(29)</sup> to provide it with such information concerning any relevant gas shipping arrangements, in such manner and at such times as the Authority may reasonably require, for the purpose of facilitating the performance by it of its functions under the Gas Act 1986, the Utilities Act 2000<sup>(30)</sup> or the Energy Act 2004<sup>(31)</sup>.

(2) No relevant gas transporter shall be regarded as having failed to comply with any direction given by the Authority pursuant to paragraph (1) where that failure is attributable to an incident beyond his control.

Signatory text

Address  
[insert date]2004

*Name*  
Minister for Energy and E-Commerce  
Department of Trade and Industry

### **EXPLANATORY NOTE**

*(This note is not part of the Order)*

Section 6A of the Gas Act 1986 provides for the granting by order of exemptions from the prohibition contained in section 5(1)(c) of the Gas Act 1986 on arranging with a licensed gas transporter for gas to be introduced into, conveyed by means of or taken out of a pipe-line system operated by that transporter.

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<sup>(29)</sup> The Authority was established by section 1 of the Utilities Act 2000.

<sup>(30)</sup> c.27.

<sup>(31)</sup> c.20.



Article 3 exempts any gas transporter who operates the National Transmission System (NTS) or a regional distribution network (DN) in relation to arrangements with another such transporter for gas to be introduced into or taken out of the NTS or a DN at certain connection points. The connection points are —

- (a) any entry and offtake point on a DN where the DN is connected to another DN;
- (b) any entry point on a DN operated by a gas transporter where an LNG storage facility operated by another gas transporter is connected to that DN;
- (c) any offtake point on the NTS or entry point on a DN where a DN is connected to the NTS;
- (d) any offtake point on the NTS where gas is taken off and then conveyed via interconnectors to a pipe-line system operated by a DN; and
- (e) any offtake point on the NTS where an operator of a DN arranges for gas to be taken off for introduction into an LNG storage facility so that liquid gas is available when required to be transported to a gas pipe-line system which is not connected to the NTS or a DN and which is operated by that operator.

The exemption is subject to the condition set out in article 4 whereby the Gas and Electricity Markets Authority may direct an exempted gas transporter to provide certain information to it.

This Order applies to Great Britain.

A regulatory impact assessment is available and can be obtained from the Energy Markets Unit, Department of Trade and Industry, 1 Victoria Street, London SW1H 0ET. Copies have been placed in the libraries of both Houses of Parliament.

## **Annex B:**

### **Detailed list of shipper-type activities that may take place:**

- the procurement and acquisition of capacity rights in advance of and during the relevant day. This would cover NTS exit capacity, DN entry and exit capacity and LNG storage capacity;
- the allocation and registration of such capacity rights in advance of and during the relevant day;
- the use on the relevant day of such capacity rights for the purposes of gas flows at the points mentioned in paragraph above;
- the flow of gas in excess of allocated capacity rights during the relevant day, which would cover overruns;
- arranging for the pressure, or changes in pressure, of gas flows at the points mentioned in paragraph 5.12;
- arranging for the composition and other characteristics of gas flows at the points mentioned in paragraph 5.12;
- the acquisition, sale, assignment, surrender or disposal on the relevant day of such capacity rights for the purposes of balancing management and constraint management;
- the interruption on the relevant day of gas flows at the points mentioned in paragraph 5.12;
- arranging for the rate of change on the relevant day of the rate of offtake of gas flows at the points mentioned in paragraph 5.12;
- submission of the profile and the change in profile on the relevant day of the rate of offtake of gas flows at the points mentioned in paragraph 5.12 above;
- the variation within the relevant day of the rates of gas flows at the points mentioned in paragraph 5.12;
- the taking out of gas from, the NTS or the introduction of gas or taking out gas from a DN for the purposes of managing shrinkage (meaning loss of natural gas due to use by the relevant transporter, measurement errors, leakage or theft), in the NTS or DN (as the case may be); and the operational management of gas flows at the points mentioned in paragraph 5.12 .

### **Detail of shipper-type activities that may not take place:**

- (a) the procurement and acquisition of NTS entry capacity rights or DN exit capacity rights (other than in relation to gas flows at a DN/DN Connection Point);
- (b) the allocation and registration of NTS entry capacity rights or DN exit capacity rights (other than in relation to gas flows at a DN/DN Connection Point);
  - i) the use of NTS entry capacity rights or DN exit capacity rights (other than in relation to gas flows at a DN/DN Connection Point);

ii) any of the activities specified in paragraphs (5.22 points d to k) and paragraph (5.22 -m) which relate to any NTS entry point, any NTS exit point (other than an NTS/DN Offtake Point, a LNG Connection Point or the Interconnector Interface), or any DN exit point (other than a DN/DN interface);

## **Annex C: Ofgem consultation on DN sales**

Following Transco's announcement in May 2003, Ofgem initiated a programme of work to explore the suite of arrangements that could be implemented to accommodate a DN sale and the associated potential benefits that such a sale could yield for consumers.

### **Initial stages of the project**

In July 2003 Ofgem published a consultation document regarding the proposed sale of one or more of Transco's DNs<sup>32</sup>. This document explored the potential impact of a DN sale in terms of regulatory, commercial and operational modifications required and set out proposed options to support the operation of the market in a post-DN sales environment.

The document also included a preliminary RIA examining the potential costs and benefits associated with a DN sale. The conclusions of this RIA highlighted the potential cost savings that the independent DNs could achieve which would ultimately be passed through to consumers and, in this respect, outlined that the transaction could yield significant net consumer benefits.

In addition, the document identified a number of 'gateway issues' which would need to be resolved prior to the grant of consent from the Authority in relation to the disposal of any DN assets. The issues identified were associated with the need to establish an appropriate framework to support a divested industry structure in a post-DN sales environment. As such, these included the obligation to develop an appropriate regulatory framework to accommodate the industry following a potential DN sale, as well as, the development of arrangements with respect to the allocation of exit capacity, gas balancing and supply point administration.

### **Industry consultation and next steps**

In the second half of 2003, Ofgem engaged in a process of consultation with the industry in relation to DN sales. To facilitate this, in September 2003, Ofgem organised an industry workshop to inform interested parties of the anticipated impact that a potential sale would have and, as a follow-up activity, undertook a series of meetings with industry participants to understand their views.

Consultation with the industry highlighted that, prior to the demonstration of their support for the DN sales process, participants would require more detailed proposals to be developed regarding the arrangements to be implemented and the potential benefits to be achieved by customers.

In December 2003, Ofgem published a next steps document detailing the way in which Ofgem intended to take the DN sales project forward. It provided an overview of the responses received in relation to the July consultation document and set out the further work that Ofgem, and other industry players, had completed in relation to the analysis of costs and benefits in relation to a potential DN sale.

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<sup>32</sup> *National Grid Transco – Potential sale of network distribution businesses 77/03. A consultation document.* Ofgem, July 2003.

## Workgroup processes and the RIAs

In January 2004 Ofgem established a number of workgroups, composed of a diverse representation of interested parties to develop proposals, on a without prejudice basis, regarding the way in which a divested industry structure could operate. These workgroups allowed Ofgem to develop relevant proposals regarding the arrangements that would be implemented in the event that a DN sale takes place, in consultation with industry participants.

The workgroup discussions identified a number of areas in which significant issues may arise following a potential DN sale and highlighted the importance of these issues to the development of the commercial and regulatory framework. As such, consistent with the Authority's obligations<sup>33</sup>, Ofgem decided that it would be appropriate to develop, for consultation, separate RIAs on each of these issues.

Between April and June 2004 Ofgem consulted upon a series of RIAs. These RIAs focused upon assessing the most appropriate form of arrangements in the event that DN sales proceeded (rather than an assessment of the costs and benefits of DN sales itself).

To this end, Ofgem issued RIAs on the following areas:

- ◆ Agency and Governance Arrangements<sup>34</sup>;
- ◆ Allocation of Roles and Responsibilities between Transmission and Distribution Networks RIA<sup>35</sup>;
- ◆ Offtake Arrangements RIA<sup>36</sup>; and
- ◆ Interruptions Arrangements RIA<sup>37</sup>.

These RIAs provided industry participants and other interested parties with the opportunity to respond with their views on the options proposed. Following consideration of these responses, conclusions documents detailing Authority decisions with respect to these issues were published. The conclusions regarding the Agency & Governance and Roles & Responsibilities RIAs were issued in May 2004<sup>38</sup>, and similar documents relating to the Interruptions and Offtake arrangements were published in August 2004<sup>39</sup>.

These documents and the corresponding decisions reached by the Authority, have provided both Ofgem and industry participants with an overarching picture of the structure that the gas industry would assume in a post-DN sales environment. This, in turn, has

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<sup>33</sup> These obligations are contained in the Utilities Act, as amended by the Sustainable Energy Act 2002.

<sup>34</sup> *National Grid Transco – Potential sale of gas distribution network businesses, Agency and Governance Arrangements Ofgem*, April 2004

<sup>35</sup> *National Grid Transco – Potential sale of gas distribution network businesses, Allocation of roles and responsibilities between transmission and distribution networks*, April 2004

<sup>36</sup> *National Grid Transco – Potential sale of gas distribution network businesses, Offtake arrangements*, June 2004

<sup>37</sup> *National Grid Transco – Potential sale of gas distribution network businesses, Interruptions arrangements*, June 2004

<sup>38</sup> *National Grid Transco – Potential sale of gas distribution network businesses, Allocation of roles and responsibilities between transmission and distribution networks, Decision document*, May 2004, 119/04 and *National Grid Transco – Potential sale of gas network distribution businesses, Agency and governance arrangements, Decision document*, May 2004 120/04

<sup>39</sup> *National Grid Transco – Potential sale of gas distribution networks businesses, Offtake arrangements, Conclusion document on framework*, August 2004, 199/04

*National Grid Transco – Potential sale of gas distribution networks businesses, Interruptions arrangements, Conclusion document on framework*, August 2004, 198/04

permitted Ofgem to complete a final “overall” Impact Assessment (IA) examining the costs and benefits associated with the proposed DN sale<sup>40</sup>.

### ***The Final IA***

In **November 2004** Ofgem issued its Final IA for consultation. This document provided a summary of the programme of work undertaken by Ofgem in relation to the DN sales process, as well as an overview of the decisions reached by the Authority in this regard. As such, the document sought to provide an overall picture of the way in which the industry would function in a post-DN sales environment.

The Final IA provided an overview of the results of previous industry estimates of the potential benefits that could be achieved for customers (both domestic and industrial) through the completion of the DN sales process. As well as this, Ofgem presented the results of a cost survey conducted with shippers / suppliers, and conducted further analysis of the costs and benefits associated with the proposed DN sale. As such, Ofgem was able to present a draft final estimate of the potential net benefits that could be achieved on behalf of customers.

Using the figures achieved from this analysis, Ofgem’s base case estimated that the sale of one or more of Transco’s DNs could result in net benefits for customers in the region of [£225 million]. Ofgem’s Final IA therefore highlights that significant benefits could be achieved on behalf of customers as a result of a potential DN sale.

The Final IA also provided an overview of the conditions that the Authority may choose to attach to its consent in the event that it elects to consent to the sale of one or more of Transco’s DNs.

### **Offtake arrangements**

As part of DN sales, Ofgem considered that it was necessary to give careful consideration to the arrangements to be put in place between the NTS and its offtakes to ensure non-discrimination and efficient operation. In the Offtake Arrangements RIA, Ofgem outlined four possible proposals for such arrangements:

- ◆ Option 1 - Transco’s initial proposal. This option was proposed by NGT on the basis that it most closely reflects existing arrangements within Transco. It formalised current internal arrangements, and gave the NTS a central role in the determination of NTS exit capacity levels;
- ◆ Option 2 – NTS connects booking model. This option gave the central role in the arrangements to the DNs and NTS direct connects, with the NTS obligated to provide the level of exit capacity requested. This option had two variants, which differed in terms of payment flows between participants;
- ◆ Option 3 - Shipper booking model (with DN “top-up”). This was a hybrid model, in which exit capacity requests were made by shippers on behalf of customers on a

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<sup>40</sup> **Ofgem, Final IA, November 2004.**

DN, with DNs making additional capacity requests to ensure offtake capacity is consistent with the 1 in 20 obligation<sup>41</sup>; and

- ◆ Option 4 - Shipper booking model (without DN “top-up”). This option gave shippers on behalf of customers the responsibility for booking NTS exit capacity. In addition, the 1 in 20 obligation was removed from DNs in this option, allowing the market to determine the appropriate level of security.

The majority of respondents to the consultation document that expressed a preference favoured an Option 2 approach for the offtake approach. Almost all respondents stated that they opposed Option 4, with most expressing serious security of supply concerns.

Following industry consultation regarding the most appropriate offtake arrangements in a post-DN sales environment, the Authority reached the decision that Option 2 should be implemented. The Authority considered that this option would have several advantages over the alternatives including the elimination of undue discrimination, promotion of competition, and the more economic and efficient development of network businesses which would ultimately lead to lower costs for customers. The Authority acknowledged respondents’ concerns with respect to Option 4, and noted that the adoption of such an option would require detailed consultation with the HSE. However, the Authority stated that it remained of the opinion that investment signals from users of capacity tend to reflect more accurately the likely level of future demand for capacity than central planning models developed by network owners.

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<sup>41</sup> This obligation requires gas transporters to install capacity which is likely to be insufficient to meet peak aggregate daily demand (given historical weather data) in only one year out of twenty.

## **Annex D: Offtake arrangements**

There are 180 offtakes from the NTS. Of these offtakes, 116 directly link the DNs with the NTS, and 64 are NTS “direct connect” offtakes such as power stations, large industrial and commercial sites, interconnectors and storage facilities.

As part of DN sales, Ofgem considered that it was necessary to give careful consideration to the arrangements to be put in place in relation to the offtake of gas from the NTS to ensure non-discrimination and efficient operation. In the Offtake Arrangements RIA, Ofgem outlined four possible proposals for such arrangements, details of which are provided in Annex A.

Following industry consultation regarding the most appropriate offtake arrangements in a post-DN sales environment, the Authority reached the decision that the arrangements adopted should give a central role in the arrangements to the operators of DNs and NTS direct connects, with the NTS obligated to provide the level of exit capacity requested (the NTS connects booking model).

The Authority considered that this option (which was Option 2 within the Offtake Arrangements RIA) would have several advantages over the alternatives considered including the elimination of undue discrimination, promotion of competition, and the more economic and efficient development of network businesses which would ultimately lead to lower costs for customers.

The provisions of the Gas Act outlined above, have implications for the proposals developed by Ofgem in relation to the offtake arrangements to be implemented in the event that a DN sale takes place. Under the proposed option (Option 2), and indeed under two of the three other options considered (Option 1 and Option 3), the DNs would effectively be required to enter into arrangements with the NTS for the offtake of gas from the system. The “1 in 20 obligation”<sup>42</sup> on DNs (which would remain under Options 1 to 3 within the Offtake Arrangements RIA) implies that DNs must have an understanding of the capacity that they can offtake at any time from the NTS, and that the consequent obligations on the NTS would constitute arrangements that would place DNs and Transco’s NTS in breach of the Gas Act.

**These provisions of the Gas Act therefore have implications for the proposals developed by Ofgem in relation to the offtake arrangements to be implemented in the event that a DN sale takes place.**

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<sup>42</sup> This obligation requires gas transporters to install capacity which is likely to be insufficient to meet peak aggregate daily demand (given historical weather data) in only one year out of twenty.



## **Annex E: Gas Act 1986 as amended** <sup>43</sup>

### 5 Prohibition on unlicensed activities

(1) Subject to section 6A below and Schedule 2A to this Act, a person who—

(a) otherwise than by means of a gas interconnector conveys gas through pipes to any premises, or to a pipe-line system operated by a gas transporter;

(aa) participates in the operation of a gas interconnector;

(b) supplies to any premises gas which has been conveyed to those premises through pipes; or

(c) arranges with a gas transporter for gas to be introduced into, conveyed by means of or taken out of a pipe-line system operated by that transporter,

shall be guilty of an offence unless he is authorised to do so by a licence.

(2) The exceptions to subsection (1) above which are contained in Schedule 2A to this Act shall have effect.

(3) A person guilty of an offence under this section shall be liable—

(a) on summary conviction to a fine not exceeding the statutory maximum;

(b) on conviction on indictment, to a fine.

(4) No proceedings shall be instituted in England and Wales in respect of an offence under this section except by or on behalf of the Secretary of State or the Authority.

(5) Any reference in this Part to the conveyance by any person of gas through pipes to any premises is a reference to the conveyance by him of gas through pipes to those premises with a view to the gas being supplied to those premises by any person, or being used in those premises by the holder of a licence under section 7A(2) below.

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<sup>43</sup> Source: LexisNexis UK Publishers - Butterworth legislation Direct Service

(6) A reference in this Part to participating in the operation of a gas interconnector is a reference to—

(a) co-ordinating and directing the conveyance of gas into or through a gas interconnector; or

(b) making such an interconnector available for use for the conveyance of gas.

(7) For the purposes of subsection (6)(b) a person shall not be regarded as making something available just because he consents to its being made available by another.

(8) In this Part “gas interconnector” means so much of any pipeline system as—

(a) is situated at a place within the jurisdiction of Great Britain; and

(b) subsists wholly or primarily for the purposes of the conveyance of gas (whether in both directions or in only one) between Great Britain and another country or territory.

(9) For the purposes of this section a place is within the jurisdiction of Great Britain if it is in Great Britain, in the territorial sea adjacent to Great Britain or in an area designated under section 1(7) of the Continental Shelf Act 1964.

(10) In this section “pipe-line system” includes the pipes and any associated apparatus comprised in that system.

## 6A Exemptions from prohibition

(1) The Secretary of State may . . . by order grant exemption from paragraph (a), (aa), (b) or (c) of section 5(1) above—

(a) either to a person or to persons of a class;

(b) either generally or to such extent as may be specified in the order; and

(c) either unconditionally or subject to such conditions as may be so specified.

(1A) Before making an order under subsection (1) the Secretary of State shall give notice—

(a) stating that he proposes to make such an order and setting out the terms of the proposed order;

(b) stating the reasons why he proposes to make the order in the terms proposed; and

(c) specifying the time (not being less than 28 days from the date of publication of the notice) within which representations with respect to the proposals may be made,

and shall consider any representations which are duly made in respect of the proposals and not withdrawn.

(1B) The notice required by subsection (1A) shall be given—

(a) by serving a copy of it on the Authority and the Council; and

(b) by publishing it in such manner as the Secretary of State considers appropriate for bringing it to the attention of those likely to be affected by the proposed order.

(2) Notice of an exemption granted to a person shall be given—

(a) by serving a copy of the exemption on him; and

(b) by publishing the exemption in such manner as the Secretary of State considers appropriate for bringing it to the attention of other persons who may be affected by it.

(2A) Notice of an exemption granted to persons of a class shall be given by publishing the exemption in such manner as the Secretary of State considers appropriate for bringing it to the attention of—

(a) persons of that class; and

(b) other persons who may be affected by it.

(3) An exemption may be granted—

(a) indefinitely; or

(b) for a period specified in, or determined by or under, the exemption.

(4) Without prejudice to the generality of paragraph (c) of subsection (1) above, conditions included by virtue of that paragraph in an exemption may require any person carrying on any activity in pursuance of the exemption—

(a) to comply with any direction given by the Secretary of State or the Authority as to such matters as are specified in the exemption or are of a description so specified;

(b) except in so far as the Secretary of State or the Authority consents to his doing or not doing them, not to do or to do such things as are specified in the exemption or are of a description so specified; and

(c) to refer for determination by the Secretary of State or the Authority such questions arising under the exemption as are specified in the exemption or are of a description so specified.

(5) The Secretary of State may by order revoke an order by which an exemption was granted to a person or vary an order by which more than one exemption was so granted so as to terminate any of the exemptions—

(a) at the person's request;

(b) in accordance with any provision of the order by which the exemption was granted; or

(c) if it appears to the Secretary of State inappropriate that the exemption should continue to have effect.

(6) The Secretary of State may by order revoke an order by which an exemption was granted to persons of a class or vary an order by which more than one exemption was so granted so as to terminate any of the exemptions—

(a) in accordance with any provision of the order by which the exemption was granted; or

(b) if it appears to the Secretary of State inappropriate that the exemption should continue to have effect.

(7) The Secretary of State may by direction withdraw an exemption granted to persons of a class from any person of that class—

(a) at the person's request;

(b) in accordance with any provision of the order by which the exemption was granted; or

(c) if it appears to the Secretary of State inappropriate that the exemption should continue to have effect in the case of the person.

(8) Before—

(a) making an order under subsection (5)(b) or (c) or (6); or

(b) giving a direction under subsection (7)(b) or (c),

the Secretary of State shall consult the Authority and give notice of his proposal to do so (with reasons) and of a period within which representations may be made to him.

(9) The notice under subsection (8) shall be given—

(a) where the Secretary of State is proposing to make an order under subsection (5)(b) or (c), by serving a copy of it on the person to whom the exemption was granted;

(b) where he is proposing to make an order under subsection (6), by publishing it in such manner as the Secretary of State considers appropriate for bringing it to the attention of persons of the class of persons to whom the exemption was granted; and

(c) where he is proposing to give a direction under subsection (7)(b) or (c), by serving a copy of it on the person from whom he proposes to withdraw the exemption.

### 7A Licensing of gas suppliers and gas shippers

(1) Subject to subsection (3) below, the Authority may grant a licence authorising any person to do either or both of the following, namely—

(a) to supply, to any premises specified in the licence, gas which has been conveyed through pipes to those premises; and

(b) to supply, to any premises at a rate which, at the time when he undertakes to give the supply, he reasonably expects to exceed 2,500 therms a year, gas which has been conveyed through pipes to those premises.

(2) Subject to subsection (3) below, the Authority may grant a licence authorising any person to arrange with any gas transporter for gas to be introduced into, conveyed by means of or taken out of a pipe-line system operated by that transporter, either generally or for purposes connected with the supply of gas to any premises specified in the licence.

(3) A licence shall not be granted under this section to a person who is the holder of a licence under section 7 or 7ZA above.

(4) The Authority may, with the consent of the licence holder, direct that any licence under this section shall have effect—

(a) as if any premises specified in the direction were specified in the licence; or

(b) in the case of a licence under subsection (1)(b) above, as if it were also a licence under subsection (1)(a) above and any premises specified in the direction were specified in the licence,

and references in this Part to, or to the grant of, an extension under this section, or an extension of such a licence, shall be construed as references to, or to the giving of, such a direction.

(5) Subsection (4) above shall not apply in relation to a licence under subsection (1) above which authorises only the supply to premises of gas which has been conveyed to the premises otherwise than by a gas transporter.

(6) The Authority may, with the consent of the licence holder, direct that any licence under this section shall have effect as if any premises specified in the direction were not specified in the licence; and references in this Part to, or to the grant of, a restriction under this section, or a restriction of such a licence, shall be construed as references to, or to the giving of, such a direction.

(7) In this section references to premises specified in a licence or direction include references to premises of a description, or situated in an area, so specified.

(8) The Authority shall not, in any licence under subsection (1) above, or in any extension or restriction of such a licence, specify any premises by description or area if it is of the opinion that the description or area has been so framed as—

(a) in the case of a licence or extension, artificially to exclude from the licence or extension; or

(b) in the case of a restriction, artificially to include in the restriction,

premises likely to be owned or occupied by persons who are chronically sick, disabled or of pensionable age, or who are likely to default in the payment of charges.

(9) If the holder of a licence under subsection (1) above applies to the Authority for a restriction of the licence, or for the revocation of the licence in accordance with any term contained in it, the Authority shall, subject to subsection (8) above, accede to the application if it is satisfied that such arrangements have been made as—

(a) will secure continuity of supply for all relevant consumers; and

(b) in the case of each such consumer who is supplied with gas in pursuance of a contract, will secure such continuity on the same terms as nearly as may be as the terms of the contract.

(10) A person is a relevant consumer for the purposes of subsection (9) above if—

(a) immediately before the restriction or revocation takes effect, he is being supplied with gas by the holder of the licence; and

(b) in the case of a restriction, his premises are excluded from the licence by the restriction;

and in that subsection “contract” does not include any contract which, by virtue of paragraph 8 of Schedule 2B to this Act, is deemed to have been made.

(11) In this Part “gas supplier” and “gas shipper” mean respectively the holder of a licence under subsection (1) above, and the holder of a licence under subsection (2) above, except (in either case) where the holder is acting otherwise than for purposes connected with the carrying on of activities authorised by the licence.

(12) Any reference in this Part (however expressed) to activities authorised by a licence under subsection (1) above shall be construed without regard to any exception contained in Schedule 2A to this Act.

#### 7B Licences: general

(1) An application for a licence or an extension or restriction of a licence shall be made in such form and manner, and shall contain, or be accompanied by, such information and documents and such fee (if any), as may be prescribed.

(2) Within the prescribed period after the making of an application for a licence or an extension or restriction of a licence, the applicant shall—

(a) publish a notice of the application in the prescribed manner; and

(b) in the case of an application for a licence or extension under section 7 above, give notice of the application to any gas transporter whose authorised area includes the whole or any part of the area to which the application relates.

(2A) Where the Authority proposes to refuse the application, it shall give to the applicant a notice—



- (a) stating that it proposes to refuse the application;
- (b) stating the reasons why it proposes to refuse the application; and
- (c) specifying the time within which representations with respect to the proposed refusal may be made,

and shall consider any representations which are duly made and not withdrawn.

(3) A licence or an extension or restriction of a licence shall be in writing and, unless revoked or suspended in accordance with any term contained in it, a licence shall continue in force for such period as may be specified in or determined by or under the licence.

(4) A licence may include—

(a) such conditions (whether or not relating to the activities authorised by the licence) as appear to the Authority to be requisite or expedient having regard to the duties imposed by sections 4AA, 4AB and 4A;

(b) . . .

(c) conditions requiring the rendering to the Authority of a payment on the grant of the licence or payments during the currency of the licence or both of such amount or amounts as may be determined by or under the licence; . . .

(d) . . . .

(4A) Without prejudice to the generality of paragraph (a) of subsection (4), conditions included in a licence under section 7 by virtue of that paragraph—

(a) may require the licence holder to enter into agreements with other persons for the use of any pipe-line system of his (wherever situated and whether or not used for the purpose of carrying on the activities authorised by the licence) for such purposes as may be specified in the conditions;

(b) may include provision for determining the terms on which such agreements are to be entered into.

(5) Without prejudice to the generality of paragraph (a) of subsection (4) above—

(a) conditions included by virtue of that paragraph in a licence may—

(i) require the holder to comply with any direction given by the Authority or the Secretary of State as to such matters as are specified in the licence or are of a description so specified;

(ii) require the holder, except in so far as the Authority or the Secretary of State consents to his doing or not doing them, not to do or to do such things as are specified in the licence or are of a description so specified; and

(iii) provide for the determination by the Authority, the Secretary of State or the Health and Safety Executive of such questions arising under the licence, or under any document referred to in the licence, as are specified in the licence or are of a description so specified; and

(b) conditions included by virtue of that paragraph in a licence under section 7 above may require the holder, in such circumstances as are specified in the licence—

(i) so to increase his charges for the conveyance of gas as to raise such amounts as may be determined by or under the conditions; and

(ii) to pay the amounts so raised to such holders of licences under section 7A above as may be so determined.

(6) Conditions included in a licence may—

(a) impose requirements by reference to designation, acceptance or approval by the Authority, the Secretary of State or the Health and Safety Executive; and

(b) provide for references in the conditions to any document . . . to operate as references to that document as revised or re-issued from time to time.

(7) Conditions included in a licence may contain provision for the conditions to—

(a) have effect or cease to have effect at such times and in such circumstances as may be determined by or under the conditions; or

(b) be modified in such manner as may be specified in the conditions at such times and in such circumstances as may be so determined.

(8) Any provision included in a licence by virtue of subsection (7) above shall have effect in addition to the provision made by this Part with respect to the modification of the conditions of a licence.

(9) As soon as practicable after granting a licence or an extension or restriction of a licence, the Authority shall send a copy of the licence or extension or restriction—

(a) to the Health and Safety Executive; . . .

(b) in the case of a licence, extension or restriction under section 7 above, to any gas transporter whose authorised area includes the whole or any part of the area specified in the licence, extension or restriction; and

(c) to any other person who holds a licence and whose interests may, in the opinion of the Authority, be affected by the grant.

(10) Any sums received by the Authority under or by virtue of this section shall be paid into the Consolidated Fund.

(11) In this section “prescribed” means prescribed in regulations made by the Authority.

## Annex F: Cabinet Office Consultation Code of Practice Criteria

1. Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy. **N.B. In view of the number of consultations already conducted by Ofgem on DN sales, the technical nature of this exemption order, and the timetable NGT has agreed with its buyers the Secretary of State has agreed that this consultation will be for 28 days. The minimum consultation period is being adopted as the exemption order has to be in place in early 2004 in order to prevent the sales, and consumer benefits, from collapsing. However, this timetable does not fetter the Secretary of State's decision with regard to the exemption order or the other decisions the Secretary of State must make with regard to consenting to the sales. Stakeholders with an interest in this consultation were alerted to it two weeks prior to the publication of the consultation document. As well as this consultation, the Department, with Ofgem, will table the exemption order for discussion at one of Ofgem's regular Development and Implementation Steering Group meetings which are open to all interested parties. The Department is also happy to meet any stakeholders on a bilateral basis to discuss the exemption order.**

2. Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses.

3. Ensure that your consultation is clear, concise and widely accessible.

4. Give feedback regarding the responses received and how the consultation process influenced the policy.

5. Monitor your department's effectiveness at consultation, including through the use of a designated consultation coordinator.

6. Ensure your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.

The complete code is available on the Cabinet Office's web site:

[www.cabinet-office.gov.uk/servicefirst/index/consultation.htm](http://www.cabinet-office.gov.uk/servicefirst/index/consultation.htm)

**Annex G: Consultation Response Form**

**Exemption from a prohibition to conduct particular shipper type activities for gas transporters** The closing date for this consultation is December 2004

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The Department may, in accordance with the Code of Practice on Access to Government Information, make available, on public request, individual consultation responses (please see section 2.3 of this document for further details). This will extend to your comments unless you inform us that you wish them to remain confidential.

**Please tick if you want us to keep your response confidential**

Name \_\_\_\_\_

Organisation (if applicable) \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Please feel free to disregard any questions where you do not wish to express a view.

Please tick the category that best describes you as a respondent (tick all that apply):

<input type="checkbox"/>	The holder of a licence for gas supply
<input type="checkbox"/>	The holder of a licence for gas shipping
<input type="checkbox"/>	The holder of a licence for gas transporter
<input type="checkbox"/>	The holder of a licence for electricity generation
<input type="checkbox"/>	The holder of a licence for electricity supply
<input type="checkbox"/>	An energy consultant
<input type="checkbox"/>	A representative organisation (please explain who you represent): .....
<input type="checkbox"/>	A small or medium sized enterprise
<input type="checkbox"/>	A Trade Union
<input type="checkbox"/>	Other (please describe): .....

**Question**

**Do you think that the Secretary of State should issue an exemption for certain gas transporters from a prohibition on conducting a particular shipper type activity?**

**Yes**

**No**

**Not sure**

**Comments:**

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