

## Explanatory note

***[This Note is not part of the Order]***

### Introduction

1. The CC published its final report on Domestic Bulk LP Gas on 29 June 2006.<sup>1</sup> In summary, the report set out the CC's findings that there are features of the markets for the supply of domestic bulk liquefied petroleum gas (LPG) in Great Britain and Northern Ireland which adversely affect competition in the UK and that the large majority of customers in the market are paying higher prices than would be the case if these features did not exist.
2. In the light of its findings the CC has decided on a package of remedies, to address the adverse effect on competition and the consequential detrimental effects on customers. This Order gives effect to those remedies in so far as they apply to the supply of LPG for domestic use in the UK other than to a person living on a metered estate.
3. Following an earlier period of consultation, the CC decided that remedies in relation to the supply of domestic LPG to a customer living on a metered estate should be the subject of a separate order, which will be made in due course. The Order does not therefore apply to any person who supplies LPG for domestic use in the UK to a person living on a metered estate.

### Structure of the Order

4. The Order begins with article 1 which identifies its title, when it comes into force and to whom it applies. It contains sections dealing with the following matters:
  - (a) Section A contains definitions and interpretation provisions which are used throughout Part I of the Order.
  - (b) Section B deals with a supplier's obligation to comply with a customer's request for a tank transfer and the general principles which apply to a tank transfer and a tank uplift.
  - (c) Section C describes the tank transfer process requirements and deals with notices, statements of eligibility, tank transfer valuation, emergency cover, telemetry equipment and the tank transfer time limit.
  - (d) Section D describes the tank uplift process requirements.
  - (e) Section E describes the switching process time limit.
  - (f) Section F deals with customers and the changes to customer contracts in terms of notice and exclusivity periods.

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<sup>1</sup>[www.competition-commission.org.uk/rep\\_pub/reports/2006/514lpg.htm](http://www.competition-commission.org.uk/rep_pub/reports/2006/514lpg.htm).

- (g) Section G deals with suppliers' obligations to provide information to the public about their industry and the switching process.
- (h) Sections H and I deal with the role of the OFT in monitoring compliance with the Order and the powers of the CC respectively.
5. The CC seeks to avoid placing undue burdens on business. The CC has borne this in mind in preparing this Order. It has not sought to provide for every possible situation which might arise, for example in the tank transfer or tank process requirements. It recognizes that the industry has the integrity to deal with a situation where a timetable cannot be met due to local flooding just as it espouses the general principle of maintaining continuity of supply. If the domestic bulk LPG industry wished to agree a process governing tank transfer or switching more generally, perhaps by developing a code of practice under the auspices of an industry trade association, it would be free to do so.
6. This Order comes into force on *[insert date three months from date of the Order]*. It is not intended that there should be any further transitional period in relation to any of the provisions contained within the Order. The CC considers that, especially taking into account the time taken in preparing this Order, suppliers have had ample time in which to prepare for compliance.
7. The rest of this Explanatory Note deals in detail with each of the articles in the draft Order.

## **Section A: Interpretation**

### ***Definitions and interpretation***

8. Article 1 defines various terms which are used in the Order and also applies the Interpretation Act 1978 to those terms which are not defined.

## **Section B: Tank transfer and tank uplift general provisions**

### ***The request for tank transfer***

9. Article 2 obliges an existing supplier of LPG to facilitate the process of switching using tank transfer whenever a customer proposes to switch to a new supplier. The existing supplier is required to inform the customer of the option to switch using tank transfer. In the case of contracts entered into after the Order comes into force, this is at the time the new contract is entered into; in the case of contracts already existing when the Order comes into force, this is no sooner than one month before the end of the contract or no sooner than one month before and no later than one month after the end of any exclusivity period. Where a customer opts to switch using tank transfer, the existing supplier is obliged to transfer both the tank and any service pipework to the new supplier. In the case of a customer who wishes to switch supplier but not have a tank transfer, the existing supplier is obliged to remove the existing tank.
10. The obligations imposed on an existing supplier by virtue of Article 2 are subject to the conditions and exceptions stated in the Order. For example, a customer must be eligible to switch supplier (ie not bound by any remaining exclusivity period in his contract). It is not the case that the new supplier is obliged to purchase the tank and it is possible that a new supplier may not want to purchase the tank. If the new supplier does not want to purchase the tank, then the existing tank is uplifted and

replaced with a new one. Where the existing supplier does not own any of the equipment used in supplying the customer, that equipment is not covered in the tank transfer process. For example, if the service pipework is owned by the customer, the service pipework will not transfer to the new supplier using the tank transfer process and will remain the property of the customer unless the new supplier makes other arrangements with the customer to take ownership of it.

11. The customer's ability to request a tank transfer, and the consequent obligation upon the existing supplier, applies only in situations where there is a tank already in situ, being used to supply the customer with LPG, and where that tank is owned or controlled by the customer's existing supplier. The customer cannot request a tank transfer where the tank being used to supply the customer with LPG is owned by the customer. In situations where the customer owns the service pipework used to supply him or her with LPG but does not own the tank, the customer cannot request a tank transfer.
12. If the customer decides at any point not to proceed with the tank transfer, he is not precluded by virtue of the Order from withdrawing from the process, provided that the new supplier has not already purchased the tank from the existing supplier.
13. When a customer decides to switch using tank transfer, the existing supplier is not permitted to charge any costs directly connected with the transfer of the tank or service pipework to the customer at the time of the transfer. This provision does not preclude a supplier from recovering the cost of a future tank transfer through the charge made for supply of LPG, but is intended to prevent the levying of a charge at the time of transfer itself, which would serve to disincentivize customers from switching supplier.

### ***General principles for tank transfer and tank uplift***

14. Article 3 provides that tank transfers and uplifts must be carried out in compliance with the Order, expeditiously and safely. The Order does not prescribe the specific safety requirements: these are already contained in the relevant legislation and the Order does not create any new situation which is not currently provided for. A supplier is also required to use all reasonable endeavours to ensure that continuity of LPG supply to the customer is maintained throughout the switching process.

## **Section C: The tank transfer process requirements**

### ***Notices***

15. The tank transfer process is represented by the flow chart in Annex 1. The process begins when the customer notifies the new supplier of his proposal to terminate his existing contract and request a tank transfer (article 4). The new supplier has to notify the existing supplier of each of those proposals. In circumstances where the customer submits only a notice of termination of contract, without either a notice of tank transfer request or notice of tank uplift, the customer is deemed to have requested tank transfer.

### ***Statements and documents***

16. A customer cannot switch supplier unless the customer is eligible to do so or is deemed to be eligible. Article 5 requires the existing supplier to provide the new supplier with a statement of eligibility confirming whether or not the customer is eligible to switch and copies of certain documents such as those held under the

PSSR<sup>2</sup> at the same time. The existing supplier should also give the new supplier information about the service pipework, including, for example, information about its age. If the existing supplier does not have that information, the existing supplier must notify the new supplier accordingly. If the existing supplier's statement of eligibility to switch shows that the customer is not eligible to switch, it must also send to the customer a copy of the customer's contract. This must be accompanied by a clear statement of when the customer will become eligible to switch, so that the customer does not have to search the contract for this information. This statement and the copy of the contract must be sent to the customer within five working days of receiving a notice of termination of contract and a notice of tank transfer request.

17. Article 5 also requires the existing supplier to provide the new supplier with a statement of whether or not the customer owns the tank: a 'statement of tank ownership'. Customer ownership of tanks is not common, but where it does exist, tank transfer or uplift is not possible.
18. If the existing supplier does not provide the new supplier with the statement of eligibility or the customer with a copy of his or her contract, the customer shall be deemed to be eligible to switch. If the customer is eligible to switch or is deemed to be eligible to switch and if the customer is not the owner of the tank, article 5 requires the existing supplier to provide to the new supplier a set of documents that relate to the tank and the service pipework.

### ***Tank transfer and valuation***

19. Under article 6, the new supplier has to notify the existing supplier whether he wants to buy the tank. If he does and the parties cannot agree on the price through negotiation, then the price of the tank is determined by the relevant formula as set out in Schedules 1 and 2 to the Order depending on whether the tank is situated above the ground or below ground. A worked example of a valuation of a tank using the formula can be found in Annex 2. The new supplier can decide not to buy the tank if it is not content to pay the formula price and cannot reach an agreement with the existing supplier on a different price. However, if the new supplier wishes to purchase the tank and is prepared to pay the price determined by the relevant formula, the existing supplier must sell the tank at that price. The Order provides the new and existing suppliers with two working days in which to seek to agree the price to be paid for the tank through negotiation, failing which the tank valuation formula is to be applied, subject to an overall time limit of 14 days in which the price of the tank should be determined (whether by negotiation or the application of the valuation formula).
20. The tank valuation formula does not include service pipework and there should be no additional charge made by the existing supplier for service pipework. In addition, it is made clear that when a tank and its service pipework are transferred, the existing supplier cannot charge the customer for any costs connected with the transfer. There is no restriction on the new supplier charging the customer in connection with the transfer. If, for any reason, the new supplier decides not to purchase the tank, it must notify both the existing supplier and the customer as soon as possible of this and of its intention to begin a tank uplift process. If the new supplier decides not to purchase the tank, then a process of tank uplift begins, as if the customer had requested a new tank.

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<sup>2</sup>SI 2000 No 128 or SI 2004/222 as applicable.

21. Where the service pipework is owned or controlled by the existing supplier, ownership of the service pipework will transfer to the new supplier with the tank itself upon completion of the tank transfer process. Where the service pipework is the property of the customer, ownership of the service pipework will not automatically transfer to the new supplier upon completion of the tank transfer pipework. It will be for the new supplier to negotiate the acquisition of the service pipework with the customer if it so wishes.
22. If, for whatever reason, a new supplier decides not to purchase the existing tank, he is required to notify the existing supplier of that fact, and notify the customer of his reasons for not proceeding. Should the customer opt to proceed with a tank uplift from that same new supplier, article 6.4 provides that the timetable need not start again from the beginning.
23. Once a new supplier has purchased the existing tank, it is required within 14 calendar days to render the signage of the existing supplier illegible and at the same time have its own signage prominently displayed on or near the emergency control valve.

### ***Emergency cover***

24. Article 7 provides that the supplier who is supplying LPG to the customer at the time the request for emergency cover is made shall respond to requests for emergency cover made at any time up to 14 calendar days from the date of purchase of the tank. This is consistent with the definition of supplier in the GSIUR. The article does permit the possibility of the supplier making arrangements for another person to respond on his behalf, which is also consistent with the GSIUR. Where at the time of the request the supplier who is responsible for emergency cover is the existing supplier, then the new supplier is required to reimburse the existing supplier for his reasonable costs of responding to, or making arrangements for another to respond to, any request for emergency cover.

### ***Telemetry equipment***

25. Article 8 makes provision for the treatment of telemetry equipment that is attached to the tank. It provides for the existing supplier to remove any such equipment in the period up to and including 14 days after the date of purchase of the tank by the new supplier. Thereafter, it provides for the new supplier to remove any such equipment and hold it for collection by the existing supplier. This provision does not cover telemetry equipment that is not attached to the tank, for example that which is installed in the customer's house. Where removal of the telemetry equipment means that the tank would be left without a contents gauge, the existing supplier is required to fit an appropriate contents gauge at its own cost.

### ***The tank transfer time limit***

26. Article 9 requires that the time taken from the receipt by the existing supplier of notice of the customer's proposal to terminate his contract and the date of purchase by the new supplier of a transferred tank must be no more than 28 calendar days. However, article 9 also provides that if the tank needs to be resited and the customer's consent to undertake such works has been obtained, then the number of days taken to complete such work shall be disregarded for the purpose of calculating compliance with the time limit.

## **Section D: The tank uplift process requirements**

### ***Notices and statements***

27. The tank uplift process requirements are similar to the tank transfer requirements but are not as extensive owing to the fact the tank is being replaced. The process begins with the receipt by the existing supplier of either a notice under article 10 or, if notice has been given under article 4 with a request for tank transfer, notification under article 6(3) that the new supplier decided not to purchase the tank.

### ***Tank uplift***

28. Article 11, which requires the existing supplier to provide a statement of eligibility to switch using a tank uplift process, is not intended to apply where a tank transfer process was aborted as a result of the customer not being eligible to switch.

### ***Tank uplift time limits***

29. The tank uplift time limit is 28 calendar days beginning on the receipt by the existing supplier of notice of the customer's proposal to terminate his contract and have a new tank installed, and ending on the completion of the installation of the new tank. However, if the customer initially requests a tank transfer, only for the new supplier to decide not to purchase the tank, the suppliers will begin a tank transfer process and then shift to a tank uplift process when the new supplier has given notice under article 6(3) that it has decided not to purchase the tank. In this case, the switching process may take up to 42 calendar days, unless the new supplier has the written consent of the customer for a longer period or unless the customer needs to undertake work in connection with resiting of the tank (see article 12(2)). This allows time for the tank transfer process to run almost to its end only for the new supplier to decide not to purchase the tank and then to shift to a tank uplift process.

### ***Tank uplift charges***

30. Article 13 provides that the existing supplier shall not impose upon the customer or the new supplier any charge directly referable to cost of the tank uplift. The intention of this article is to ensure that the imposition of a charge at the termination of a contract does not act a disincentive on the customer to switch. It does not preclude the supplier from recovering the cost of tank uplift through the charges made for supply of LPG over the course of the contract.

## **Section E: The switching process time limit**

### ***The overall limit***

31. Article 14 provides that the overall limit in both cases between the existing supplier receiving notice of the customer's proposal to terminate and the date of purchase of the tank by the new supplier or the installation of a new tank shall be no more than 42 calendar days unless the customer has agreed in writing that the time limit can be exceeded. This leaves scope for the suppliers to work through a tank transfer process (which can take no more than 28 calendar days to complete) but for the new supplier to decide at a late stage that it does not wish to purchase the tank and then to switch to a tank uplift process (which it would then be possible to complete within 14 days, some of the procedure, for example in relation to eligibility to switch, having already been completed as part of the tank transfer process). Annex 2 provides a

worked example showing how a tank transfer process could be followed by a tank uplift process. The time taken for the switching process is calculated from the time that the existing supplier receives notice (or is deemed to have received notice) of a customer's proposal to terminate his contract and switch to another supplier, regardless of whether the existing supplier receives this notice from the new supplier or directly from the customer.

## **Section F: Customers**

### ***Customer contracts***

32. Article 15 provides for changes to customer contracts. Notice periods cannot be longer than 42 days and any exclusivity period included in a contract cannot be longer than two years. This article applies to any contract that is in force after the Order comes into force, whether that contract was entered into before the Order came into force or after. Any part of an exclusivity period that has elapsed before the Order comes into force is counted as part of the exclusivity period. This means that if a contract contained a four-year exclusivity period 19 months of which had expired before the Order came into force, that 19 months would be included in the two-year limit, so that the customer would be free to switch five months after the Order came into force. A customer that had entered into a contract containing a four-year exclusivity period 30 months of which had expired before the Order came into force would already have had more than the two years maximum exclusivity period elapse before the Order came into force and would therefore be eligible to switch from the time that the Order came into force. A customer that had entered into a contract involving two separate exclusivity periods, each of 12 months, both of which had expired before the Order came into force, would also be eligible to switch from the time that the Order came into force. Contracts entered into after the Order comes into force must not contain an exclusivity period of more than two years. However, if a customer has a contract containing a two-year exclusivity period and which has expired, there is nothing to stop the customer entering into a new contract with the same supplier that contains a further exclusivity period, for example if the supplier offers a lower price in return. A supplier is free to include an exclusivity period of less than two years in a contract, and may choose to have no exclusivity period in its contracts if it so wishes.
33. A supplier must ensure that a customer's contract includes certain specified terms, including the date on which the customer will first become eligible to switch supplier and the notice period that will apply in the event of termination of contract. A supplier must also provide to every customer with every contract a document containing certain information including a description of the switching procedure, details of the supplier and his association's websites and guidance as to how the customer may establish his eligibility to switch.
34. Article 15 provides that where a new tank has been installed without a tank having been uplifted (ie where the customer is new to LPG), the exclusivity period begins on the date the tank was installed. This is because it is possible, for example where a supplier agrees with a developer to become the supplier for new houses, that the contract will begin substantially before any LPG is supplied and any revenue is earned. Where a tank is transferred or uplifted, the exclusivity period begins on the date on which the contract comes into force.

## **Section G: Suppliers' obligations to provide information**

### ***Industry trade association information***

35. Suppliers must ensure as far as reasonably practicable that their trade associations make available on their websites (if such exist), and by means of a telephone enquiry point, details of their supplier members, the areas they serve and their contact details (article 16). 'Industry trade association' is defined in article 2 as meaning any association representing suppliers of Domestic Bulk LPG in the UK and includes UKLPG or any successor body. It is envisaged that the association will be an association of suppliers in their capacity as suppliers of Domestic Bulk LPG and not in any other capacity, for example as road hauliers.

### ***Information on invoices***

36. Suppliers must include on their customer invoices a statement that further information on the LPG industry can be obtained from their association's website and telephone enquiry point and directions so that the customer can access both the website and the telephone enquiry point (article 17). Suppliers are also obliged to include on the invoice a statement of the amount of LPG supplied in litres to the customer under the invoice and the price charged to that customer for that amount in pounds sterling and pence per litre.

### ***Eligibility to switch***

37. Suppliers must notify their customers in writing that they are free to change their supplier no sooner than one month before the customer becomes eligible to switch and no later than one month after (article 18). A customer is eligible to switch from the later of the date on which this Order comes into force or the end of the customer's exclusivity period, provided that the customer's exclusivity period does not exceed two years in total (taking account of any exclusivity period that has elapsed before the Order comes into force).

### ***Information about switching***

38. Article 19 requires suppliers to provide customers with information about switching, including information about possible charges and costs for example, from a telephone enquiry point during normal working hours. Any information required to be made available from a telephone enquiry point may also be made available from a website. A supplier must provide customers with information about the possible charges that it might levy on the customer for switching (eg if the supplier allows the customer to switch before the expiry of any exclusivity period), but does not have to inform the customer about any charges that other suppliers might levy on the customer for switching. This article should not be taken to imply that an existing supplier may charge a customer for switching away from it once the customer is eligible to switch. However, a supplier may charge a customer for switching away during any exclusivity period and these charges should be made clear to the customer.

## **Section H: The OFT**

### ***Provision of specified information***

39. The OFT will have an important role in monitoring compliance with this Order. In order to do so effectively it will need specific information about, for example, the

number of tank transfers taking place in any given period. Article 20 and Schedule 3 describe the requirements to provide the OFT with information, which suppliers must meet.

## **Section I: The CC**

### ***Directions by the Competition Commission as to compliance***

40. Article 21 provides that the CC can give directions for the purposes of securing compliance with the Order.

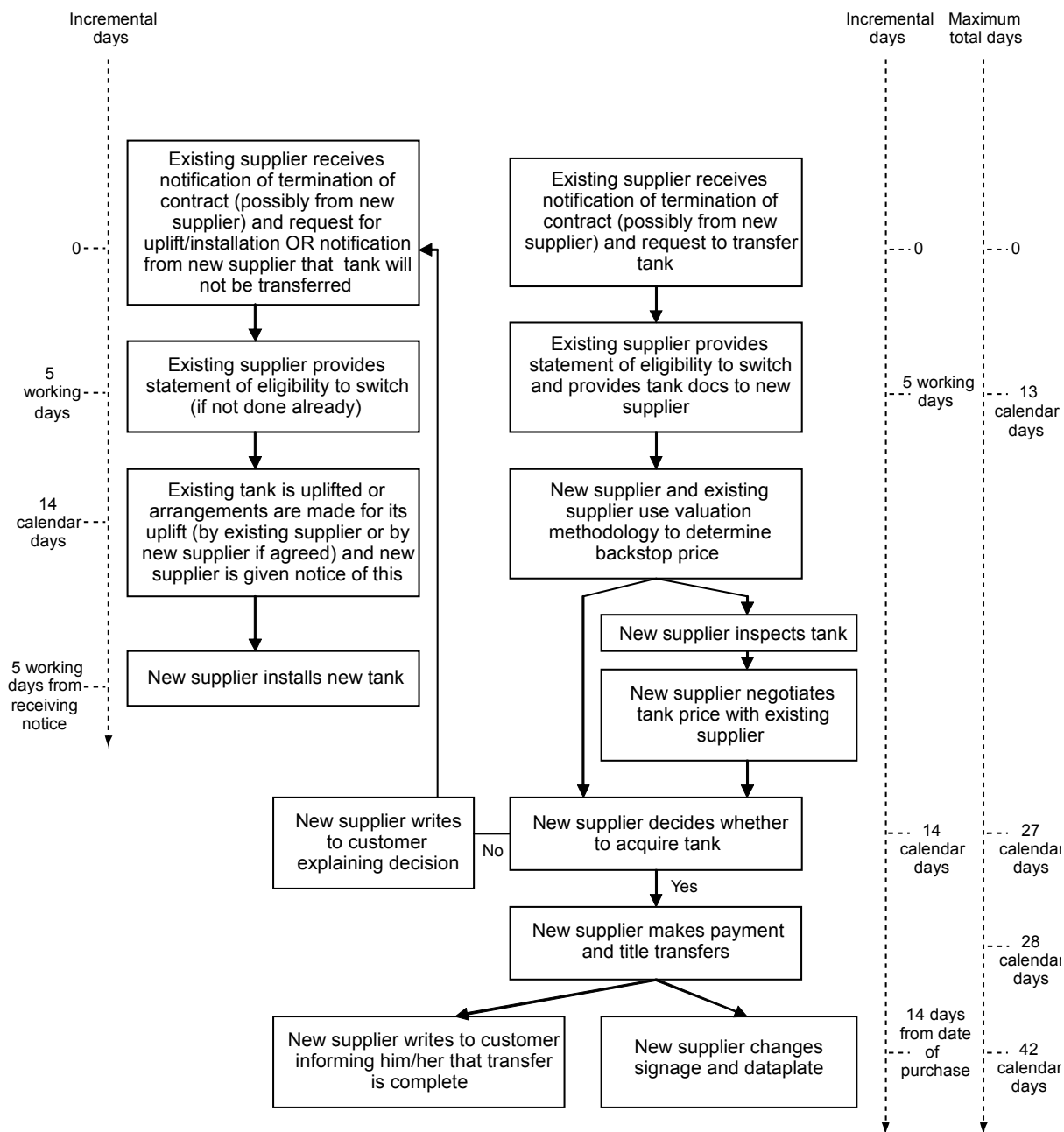
### **The Schedules**

41. Schedules 1 and 2 contain the formulae to determine the price of an above-ground tank and a tank below ground respectively. Tank capacities have been measured in terms of water capacity and the capacity categories have been set so as to avoid the most common tank capacities being on the cusp between different capacity categories.
42. Schedule 3 specifies the information with which suppliers must provide the OFT in order in relation to Part I of this Order.

### **Monitoring and review of the Order**

43. The OFT has a general duty to monitor the operation of this Part of the Order under section 162 of the Act. This includes the duty to consider, from time to time, whether the Order should be varied or revoked in the light of a change of circumstances.
44. The CC may also vary or revoke the Order if the OFT advises it to do so.

### Flow chart showing tank transfer process, tank uplift/installation process and interaction between the two



*Note:* Right-hand timeline shows maximum number of days from start of process for completion of stages for tank transfer. Other timelines show maximum number of days for particular stage from date of completion of previous stage unless otherwise marked. Completion of uplift and installation within 14 days will only be possible where uplift and installation follows an incomplete transfer. If customer requests uplift and installation from the outset, then, allowing for bank holidays, the time limits stipulated for each part of the process mean that process should be completed within 35 working days.

### Worked examples of tank valuation formula

The prices used in these worked examples are for illustrative purposes only and are not intended to reflect actual tank, test or anode prices. The figures in bold in these worked examples are those figures that will be determined by the OFT as set out in Schedules 1, 2 and 3 as appropriate.

#### Example1: Above-ground tank

Formula input values:

a = base price of tank:

501 water litre capacity to 1,200 water litre capacity: **£100**

1,201 water litre capacity to 1,800 water litre capacity: **£150**

1,801 water litre capacity to 2,500 water litre capacity: **£200**

2,501 water litres capacity to 4,200 water litre capacity: **£300**

4,201 water litre capacity to 4,600 water litre capacity: **£400**

4,601 water litre capacity to 9,000 water litre capacity: **£550**

b = residual value: **£10**

c = 20-year test price: **£80**

d = 10-year test price: **£30**

Specific tank details:

Tank capacity (in water litres): 800

x = Tank age: 18 years

y = Number of years since last '20-year test': two years

z = Number of years since last '10-year test: 12 years. 12 years is greater than 10 years so that 10 years is used to calculate the formula price (see Schedule 1, article 2)

Formula price =  $(a - (0.05 * x * (a - b))) + (c * (1 - 0.05 * y)) + (d * (1 - 0.1 * z))$

Formula price =  $(£100 - (0.05 * 18 * (£100 - £10))) + (£80 * (1 - 0.05 * 2)) + (£30 * (1 - 0.1 * 10))$

=  $(£100 - (0.05 * 18 * £90)) + (£80 * 0.95) + (£30 * (1 - 1))$

= £19 + £72 + £0

= £91

## Example 2: Below-ground tank

Formula input values:

a = base price of tank:

0 water litre capacity to 1,800 water litre capacity: **£300**

1,801 water litre capacity to 2,500 water litre capacity: **£400**

2,501 water litre capacity to 4,200 water litre capacity: **£650**

4,201 water litres capacity to 4,600 water litre capacity: **£750**

4,601 water litre capacity to 9,000 water litre capacity: **£850**

b = residual value: **£10**

c = 20-year test price: **£300**

d = 10-year test price: **£50**

e = replacement anode price: **£150**

Specific tank details:

Tank capacity (in water litres): 4,400

x = Tank age: 19 years

y = Number of years since last '20-year test': 20-year test not been carried out therefore input 20 years

z = Number of years since last '10-year test: 10 years

w = Number of years since last anode replacement: 5 years

Formula price =  $(a - (0.05 * x * (a - b))) + (c * (1 - 0.05 * y)) + (d * (1 - 0.1 * z)) + (e * (1 - 0.067 * w))$

Formula price =  $(£750 - (0.05 * 19 * (£750 - £10))) + (£300 * (1 - 0.05 * 20)) + (£50 * (1 - 0.1 * 10)) + (£150 * (1 - 0.067 * 5))$

=  $(£750 - (0.05 * 19 * £740)) + (£300 * (1 - 1)) + (£50 * (1 - 1)) + (£150 * (1 - 0.335))$

=  $(£750 - £703) + (£300 * 0) + (£50 * 0) + (£150 * 0.665)$

=  $£47 + £0 + £0 + £99.75$

= **£146.75**