



Department for
Communities and
Local Government

Changes to Town and Country Planning (Development Management Procedure) (England) Order 2010 for onshore oil and gas extraction

Impact assessment

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Title: Changes to Town and Country Planning (Development Management Procedure) (England) Order 2010 for onshore oil and gas extraction IA No: DCLG/1315 Lead department or agency: Department for Communities and Local Government (DCLG) Other departments or agencies:	Impact Assessment (IA)
	Date: 22/01/14
	Stage: Validation
	Source of intervention: Domestic
	Type of measure: Secondary Legislation
	Contact for enquiries: Mark Plummer 0303 444 1708
Summary: Intervention and Options	RPC: Awaiting validation

Cost of Preferred Option				
Total Net Present Value	Business Net Present Value	Net cost to business per year (equivalent annual net cost to business on 2009 prices)	In scope of One-In, Two-Out?	Measure qualifies as
0.0	0.0	0.0	Yes*	OUT

What is the problem under consideration? Why is government intervention necessary?

The Government is committed to an effective and efficient planning system. It has taken forward a series of measures to simplify and streamline the arrangements for making and determining planning applications in England. These have included streamlining requirements in relation to design and access statements, requiring a proportionate approach to information that local planning authorities can request with planning applications and reintroducing the right of appeal where a local planning authority refuses to validate a planning application.

The Budget and the recent Spending Review confirmed the Government's commitment to kick-start the shale gas industry in the UK. The planning system plays an important role in creating the right conditions for this type of development, from the exploratory work through to full scale production. As the shale gas industry develops, the Government wants to ensure an effective, locally-led planning system is in place, and it remains committed to improving the regulatory regime surrounding its exploration and production, whilst ensuring that there remains a robust, comprehensive and safe regulatory regime in place.

The preparation of planning practice guidance on onshore oil and gas in the first half of 2013 identified areas where the regulatory regime could be improved. Therefore, when the Government published its planning practice guidance, it announced its intention to consider proposals to improve the regime for application requirements and fees in England. There are two key matters under consideration: i) improving the application process by changing requirements for how to notify landowners; and ii) clarifying how to calculate the level of fees payable to the local planning authority for applications of onshore oil and gas development.

The Government also proposed to clarify the arrangements for calculating fees payable for the exploration and production of oil and gas. It also proposes to increase the fees by 10%, accepting an offer made by the UK Onshore Oil and Gas Association, in recognition of the increased public scrutiny that may result from such applications, particularly on any work involving shale gas. However, in line with clause 1.9.8, section vii of the Better Regulation Framework Manual, the uprating of any fees is outside the scope of One In Two Out, and the costs to business incurred by this increase should not be counted under One In Two Out.

*Fee proposals are excluded from One In Two Out.

What are the policy objectives and the intended effects?

The intention of the proposed changes to secondary legislation is to make the procedural requirements for oil and gas extraction less onerous. Our proposals are two-fold:

i) to streamline the requirements to notify landowners of applications on their land. The extent of underground working for oil and gas development is different to other forms of development under land. It has a very small surface area (typically 1-2 hectares maximum), and exploration/extraction takes place many hundreds or thousands of metres below the surface. Since the exact route of any drilling is not known at the time of application (as it will depend on the geology), the underground area where the oil and gas is removed is not always clearly defined.

Given the unique nature of oil and gas extraction, and to take account of new extraction technology, it is considered desirable to introduce a more proportionate and flexible approach, with less onerous notification requirements, for applicants for onshore oil and gas development. The measures under consideration will still protect the rights of landowners to be given notice of, and hence make representations on, proposed applications but take account of the uncertainties surrounding the sub-surface issues at such great depth.

ii) to introduce a standard planning application form for applications for onshore oil and gas development. This is partly in response to claims that forms in some authorities are unnecessarily complex, but is principally to deal with the transaction costs that the lack of standardisation imposes on developers who submit minerals applications in different areas of the country.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

Following the announcement of our consideration to legislate, we issued a paper seeking comment on proposals to legislate. Linking this paper to the policy rationale we have considered four options:

- **Do nothing** - do not prepare secondary legislation; notification requirements will continue to be onerous and lack of a standard, consistent, approach to planning applications for onshore oil and gas will lead to confusion and uncertainty on the information expected.
- **Option 1 (Preferred Option)** – amend legislation to streamline notification requirements and introduce a standard planning application form for onshore oil and gas development.
- **Option 2** - introduce guidance for notification – this option was not considered feasible since the wording of primary and secondary legislation provides no scope to change requirements outside legislation
- **Option 3** - issue guidance for handling application forms – minerals applications are the one type of development that remain outside the Government’s single application form. Whilst the Department has for some years encouraged a more standard approach, there are still marked variations in the amount of information expected from the oil and gas industry adding cost and delay.

Having considered the policy intention and rationale for intervention, drawing on the comments received to our proposals paper and other advice when preparing the planning practice guidance, we intend to progress Option 1 as the most effective and proportionate course of action.

Does implementation go beyond minimum EU requirements?			N/A		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	Micro Yes	< 20 Yes	Small Yes	Medium Yes	Large Yes
What is the CO2 equivalent change in greenhouse gas emissions? (Million tonnes CO2 equivalent)			Traded: n/a		Non-traded: n/a

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister: _____ Date: _____

Summary: Analysis & Evidence

Policy Option 1

Description: amend legislation to streamline notification requirements and introduce a standard planning application form for onshore oil and gas development.

FULL ECONOMIC ASSESSMENT

Price Base Year 2013	Present Value Base Year 2013	Time Period Years 10	Net Benefit (Present Value) (£m)		
			Low: 0.0	High: 0.0	Best Estimate: 0.0

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	0.0	<0.1	0.1
High	0.0	<0.1	0.1
Best Estimate	0.0	<0.1	0.1

Description and scale of key costs by 'main affected groups'

The main affected group is prospective applicants for oil and gas development and landowners who are currently consulted on all applications.

Familiarisation costs of new arrangements: applicants will be required to understand the new less burdensome notification procedure and the new standard application form. It is anticipated that costs of familiarisation will be very small and one-off. Once an applicant or developer is familiar with the updated approach to notification, and how it fits alongside other procedural requirements, no further familiarisation costs are foreseen. There are currently only around 15 operators likely to put in these types of applications, around 32 per annum. It has not been possible to monetise these costs however familiarisation costs for the new notification requirements are not expected to be any higher than £2,500 per year – see discussion below.

A 10% fee increase will represent an increase in cost for applicants. This offer was made by the increase represents a transfer to the local authority and recognises increased costs of processing applications which may be subject to increased public scrutiny.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	0.0	<0.1	0.1
High	0.0	<0.1	0.1
Best Estimate	0.0	<0.1	0.1

Description and scale of key benefits by 'main affected groups'

The main affected group is prospective applicants for onshore oil and gas development who will benefit from streamlined consultation requirements and the clarity provided by a standard application form. They will gain from:

- making the notification procedure more efficient
- greater certainty on the level of information that is likely to be required with applications

However, given that each planning application covers separate areas of land, and each of the small number of applications, 32 per annum, will have its own individual issues for which information may be required, it is not possible to quantify the benefits from undertaking revised notification or of completing a standardised application form.

Local authorities will benefit from the 10% increase in fees. This is a transfer from local authorities to applicants.

Key assumptions/sensitivities/risks

- (i) the number of planning applications for onshore oil and gas development each year;
- (ii) the number of people required to familiarise themselves with the new arrangements;

Discount rate (%) 3.5

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) (2009 prices and 2013 values) £m:			In scope of One-In Two-Out?	Measure qualifies as
Costs: 0.0	Benefits: 0.0	Net: 0.0		

*Fee proposals are excluded from One In Two Out

Evidence Base

Policy issue under consideration and objectives

1. The Government is committed to an effective and efficient planning system. It has taken forward a series of measures to simplify and streamline the arrangements for making and determining planning applications in England. These have included streamlining requirements in relation to design and access statements, requiring a proportionate approach to information that local planning authorities can request with planning applications and reintroducing the right of appeal where a local planning authority refuses to validate a planning application.
2. On 19 July the Government published planning practice guidance for onshore oil and gas. Its intention was to provide clarity on the role of the planning system in taking forward applications for oil and gas development, including the important exploratory stage of extraction, whilst ensuring that there remains a robust, comprehensive and safe regulatory regime in place.
3. During its preparation, the Government concluded that there was scope to further streamline the regulatory regime for such types of operations. Therefore the Written Ministerial Statement published on the same day indicated that *“the Government is minded to amend existing secondary legislation in relation to application requirements and fees for onshore oil and gas development. We believe that greater clarity in law will help provide certainty to councils and encourage investment.”*
4. This measure will be implemented through an amendment to the Town and Country Planning (Development Management Procedure)(England) Order 2010 (as amended) and also an amendment to the Town and Country Planning (Section 62A Applications) (Procedure and Consequential Amendments) Order 2013. These measures will not affect or alter any discretionary pre-application consultation between the applicant and local communities (including landowners), or any other publicity or consultation requirements that planning applications must go through.

Current position

Notice by applicants of applications for planning permission

5. Planning permission is required for development, meaning building, engineering, mining or other operations in, on, over or under land. Where someone other than the sole owner of land applies for planning permission to develop land, they are legally required to give notice of the application to owners or tenants of any of the land to which the application relates. This is set out in section 65 of the Town and Country Planning Act 1990 and Article 11 of the Town and Country Planning (Development Management Procedure) (England) Order 2010.
6. Article 11(2) of the 2010 Order applies in the case of an application for planning permission for development consisting of the winning and working of minerals by underground operations. It requires the applicant to give notice (using a form provided in the Order):
 - to any person (other than the applicant) who on the prescribed date is an owner of any of the land to which the application relates, or a tenant,*
 - (a) by serving the notice on every such person whom the applicant knows to be such a person and whose name and address is known to the applicant;*
 - (b) by publication of the notice after the prescribed date in a newspaper circulating in the locality in which the land to which the application relates is situated; and*
 - (c) by site display in at least one place in every parish within which there is situated any part of the land to which the application relates, leaving the notice in position for not less than 7 days in the period of 21 days immediately preceding the making of the application to the local planning authority.*
7. The rationale for these provisions is that any owner or tenant of land should be made aware that a planning application is going to be submitted in relation to the land in which they have an interest to ensure they have the opportunity to make representations.
8. As noted above, the Government considered that it is unreasonable and impractical to require applicants for planning permission for underground oil and gas working to serve notice on owners and tenants of land across such a widely drawn area, and that it was appropriate to review the manner in which they are notified for onshore oil and gas planning applications.

Standard Application Form for onshore oil and gas

9. Article 11 of the Town and Country Planning (Development Management Procedure) (England) Order 2010 makes it clear that all applications for planning permission are made on a form published by the Secretary of State. However, Article 6(4) contains an exception to this rule and requires that applications for planning permission for development "consisting of mining operations or the use of land for mineral-working deposits" are made on an application form provided by the mineral planning authority.

Options under consideration

10. The Government remains committed to improving the regulatory regime surrounding the shale gas industry in the UK. The four options considered to assist the exploration and production of shale gas in the UK were:
 - a) **Do nothing** - do not prepare secondary legislation; notification requirements will continue to be onerous and lack of a standard, consistent, approach to planning applications for onshore oil and gas will lead to confusion and uncertainty on information expected.
 - b) **Option 1 (Preferred Option)** – amend legislation to streamline notification requirements and introduce a standard planning application form for onshore oil and gas development.
 - c) **Option 2** - introduce guidance for notification – this option was not considered feasible since the wording of primary and secondary legislation provides no scope to change requirements outside legislation
 - d) **Option 3** - issue guidance for handling application forms – minerals applications are the one type of development that remain outside the Government's single application form. Whilst the Department has for some years encouraged a more standard approach, there are still marked variations in the amount of information expected from the oil and gas industry adding cost and delay.

Summary of Preferred Option

11. Having set out the policy issue and rationale for intervention above, we are progressing option 1.

Notification requirements

12. The Budget and the recent Spending Review confirmed the Government's commitment to kick-start the shale gas industry in the UK. The planning system plays an important role in creating the right conditions for this type of development, from the exploratory work through to full scale production. As the shale gas industry develops, the Government wants to ensure an effective, locally-led planning system is in place, and it remains committed to improving the regulatory regime surrounding its exploration and production.
13. We intend to amend regulations to streamline the requirements on how to notify landowners of applications on their land. The new requirements will contain two changes:
 - a) firstly, places a requirement for an individual notice under 11(2)(a) to be served only on the owner of the surface area where works are required, but that owners of land under which drilling may take place would not have to receive individual notices; and
 - b) places a new requirement for a site display in every ward as well as every parish, to cover those areas where no parish exists. This is in recognition that not every area where oil and gas extraction may take place is in part of a parish.
14. The information that needs to be provided, whether through direct notification of the landowner or through a site notice, is largely the same.
15. The measures under consideration will still protect the rights of landowners to be given notice of, and hence make representations on, proposed applications but take account of the uncertainties surrounding the sub-surface issues at such great depth.

Introduction of a Standard application form for oil and gas proposals

16. The second approach is to introduce a standard planning application form for applications for onshore oil and gas development. This is partly in response to claims that forms in some authorities are unnecessarily complex. Principally, though, it seeks to address the transaction costs that the lack of standardisation imposes on developers who submit minerals applications in different areas of the country.

Intended effects

17. As this is a Validation Impact Assessment, the intended effects are set out below with a specific focus on business.

Prospective applicants (including business)

18. The intention of the proposed changes to secondary legislation is to make the procedural requirements for oil and gas extraction less onerous. Responses to the proposals paper provided no additional information on the overall cost or saving to current practice. The extent of any notification requirements depend considerably on the nature and size of the proposal and the number of individual landowners that might have to be notified. However, the industry argued that these changes provide sufficient clarity for them and planning authorities to focus on the surface area for oil and gas development, rather than the underground area where there are other regulatory regimes to ensure the safe and environmentally acceptable extraction of oil and gas.
19. Likewise, the responses to the proposals paper provided no additional information on the overall cost or saving to current practice on the preparation of the standard application form. However, the industry agreed with the overall conclusion that the benefits of the form would lead to benefits identified in the proposals paper. These include: greater efficiency as applicants need to familiarise themselves with many different forms and requirements; greater clarity on information that may be required with applications; and improvement of consistency of applications which may cover more than one local authority area.
20. Taken together, through the provision of a streamlined notification process and the clarity provided by a standard application form, planning applications for onshore oil and gas should be of better quality and a decision reached earlier than would otherwise have been the case. This will lead to financial and time savings for the applicants and the mineral planning authorities processing the applications.
21. To ensure this policy has its intended effect a waiver to the microbusiness exemption has been sought. We want these measures to apply all prospective applicants progressing planning applications for onshore oil and gas. There are less than 15 known operators in the onshore oil and gas market in England but, with one possible exception, they all have under 200 employees. If we were to exclude micro businesses from the requirement it could limit the effectiveness of the policy and prevent certain companies from taking advantage of the more certain, less onerous procedures. Community concerns about onshore oil and gas will exist regardless of the size / nature of the prospective applicant progressing the planning application.

Local Planning Authorities

22. Mineral planning authorities are not affected by the proposed changes to the notification process, since the responsibility falls entirely on the applicant.
23. On the standard application form, mineral planning authorities will likely use the standard form that is being prepared, which includes all reasonable information requirements to handle applications for oil and gas extraction. Some mineral planning authorities – especially those who have an electronic application form – may choose to carry out some minor additional work to align their existing form with the standard application form. As a result of the requirement, it is anticipated that mineral planning authorities should receive better quality planning applications and better quality information in order to make an informed decision. This should help mineral planning authorities meet their statutory targets for determining planning applications as set out in the Town and Country Planning (Development Management) Order 2010.

Local communities and landowners

24. This proposal does not impact on the opportunity that local communities or land owners have to comment on individual planning applications. The provisions in place still require landowners (in some cases these will be businesses) to be notified. Introduction of the standard application form will better increase understanding of the planning issues involved in oil and gas applications since similar issues will be dealt with (albeit it to varying degree). As a result of these changes, local communities may see an increase in economic activity in their area.

Summary of Costs and Benefits (Preferred Option)

1) Notification requirements and standard application form

25. The proposed revisions to notification requirements and the standard application form will have three broad impacts:

- small, one-off costs associated with familiarisation with the new requirements;
- on-going benefits arising from operating under these streamlined requirements; and
- Transfer from applicants to local authorities from fee increases

26. Developers, and their consultants or lawyers assisting them in respect of development proposals, will need to gain familiarity with the new requirements. But the costs of familiarisation to business should be very small. The more flexible requirement to notify landowners in advance of submitting a planning application will potentially result in considerably reduced time and cost in identifying the appropriate landowners.
27. In the context of the whole planning system there number of applications for onshore oil and gas development per annum are very small. Table P146 of the live tables listed on the Department for Communities and Local Government's website shows that, over the past ten years there have been a very small number of decisions for oil and gas exploration/appraisal/development, averaging at 32 (for each of the three listed categories) per annum.¹ This compares to 380 decisions for all mineral and 1,442 'county matter' decisions. This volume is an order of magnitude lower than the 525,000 'district matter' planning decisions. There are no robust projections of likely future applications over the next few years. However, the 10 year annual average is used in this case to provide a likely future profile. In 2012 the Government published a gas generation strategy which may increase the demand for onshore oil and gas, including shale gas, in the future. Applications for shale gas, a form of unconventional gas, are very low and at exploratory stage. Even if there is future potential for oil and gas from conventional and unconventional sources, and applications for shale gas reach production stage, there may be increasing number of planning applications, but we consider that oil and gas applications will always comprise a very small percentage of all applications.

Familiarisation Costs

28. The oil and gas industry, in response to our proposals paper, highlighted that the process of applications is changing, and that, certainly in respect of shale gas there is little baseline data in which to compare and contrast the costs. They do not consider it is possible to quantify the effects of the changes we are proposing but have indicated they believe the proposals will result in a small net benefit. Familiarisation and benefits are expected to be felt on around 32 applications per annum based on the ten year average above.
29. To illustrate the negligible cost of familiarisation (given industry were unable to provide an estimate) we assume that one person for every application in the first year is required to familiarise themselves with the new, standard, application form, then we can present an estimate for familiarisation costs. The average hourly wage of those individuals required to familiarise themselves with the updated policy is assumed to be £23.36: this wage is up-scaled from the median wages of 'construction project managers and related professionals'² to reflect non-wage labour costs in line with HM Treasury guidance.
30. If familiarisation takes between three and four hours, which is consistent with the assumptions in the Impact Assessment accompanying the National Planning Policy Framework, then annual costs are likely to be just £3,000 per annum in the high scenario. This is likely to be an extremely cautious estimate, since the extent of the documentation involved in this case is far lower than that for the National Planning Policy Framework, and as such the number of hours required for familiarisation is likely to be lower, but the figure helps to reassure that the familiarisation costs for business applicants is likely to be minimal. This is consistent with the industry response to consultation.
31. Additionally, in respect of notification requirements, the net benefits from the new minimum requirements for how applicants notify landowners will depend on the saving from not having to identify and notify landowners where underground working is taking place, and the additional cost for placing new site notices in such areas. The number of landowners that may need to be served an individual notice depends entirely on the area and location of the oil and gas. Since the oil and gas industry has come forward with no additional information and indicated it considered the proposals to be net beneficial, we consider that these familiarisation costs are negligible.

Simplification (clarification) Benefits

32. On standard application forms, applicants are already asked to provide information in support of their planning applications. Bringing together a standard form to provide clarity and certainty on those issues which may need to be addressed with onshore oil and gas proposals. Those applicants who apply to more than one mineral planning authority, or where developments straddle more than one authority, would benefit from the consistency of the forms across authorities and so should be able to complete the form more efficiently. It

¹ This falls to fewer than 22 where 2011/12 is excluded, in which there was an unusually high number of applications for oil and gas exploration.

² Taken from the Annual Survey of Hours and Earnings table 14.5a published by the Office for National Statistics

should also lead to better quality planning applications and quicker decisions, quality information in order to make an informed decision.

33. Standardisation of information sought from applicants will also facilitate the eventual electronic delivery of minerals applications through the planning system as this requires 'interoperability' of information. This is likely to have long-term benefits for society in general in helping to streamline the whole planning application process.
34. Landowners (that are businesses) are not affected because, although the oil and gas industry provided no additional information in response to the Government's proposals paper, they indicated that the benefits of a standardised approach outweighed the costs of retaining the current arrangements.

ii) Increasing Planning Fees

35. As discussed above, Table P146 on the Department for Communities and Local Government's website shows that, over the past ten years there have been a very small number of applications for oil and gas exploration/appraisal/development. Over the last ten years these are averaged at 11 applications for exploratory work, 4 for appraisal and 12 for production. In addition, there was an average of 3 applications per annum for production of coalbed methane, and 2 applications for exploratory/appraisal work. The Government is looking to clarify that the amount of fees payable should depend on the surface area of land.
36. The result of the changes to fees is to clarify the chargeable area – this confirms the original intention of the regulations. The increase in fees recognises the costs of processing this type of planning application. The increase in fees is paid by applicants and received by local planning authorities. This represents a transfer.
37. The average surface area of sites is 1.5 hectares. The increase in cost per application is £570 per application for exploratory drilling and £285 per application for appraisal or production. Based on the 10 year average volume of applications the average annual fee increase is around £11,000. The ten year net present value is +around £0.1m. In line with clause 1.9.8, section vii of the Better Regulation Framework Manual, the uprating of any fees is outside the scope of One In Two Out and therefore these costs should not be counted as a cost to business.

Total annual costs to business

38. Given our assumptions and the discussion outlined above, the overall costs for notification requirements and using a standard application form cannot be monetised but the overall direction is that is a small deregulatory measure. Industry consultation responses are supportive of this view. The broad illustration of familiarisation costs set out in paragraph 29 shows that these costs are minimal. Given this illustration rests on significant assumptions, that industry were unable to provide an estimate but indicate they see no net cost to business and that we have not attempted to monetise the corresponding benefits none of these illustrations are included in the One In Two Out calculation. It is reasonable not to attempt to quantify these costs and benefits further given the small number of applications per annum and limited scale, <£0.1m ten year present value (consistent with the Better Regulation Framework Manual paragraph 2.2.3)
39. The overall approach provides clarity and certainty to applicants in preparing an application for consideration by mineral planning authorities, and seeks to make less onerous certain requirements. In parallel, applicants will make increased fee contributions, estimated at around £0.1m ten year net present value. This is not included in the Equivalent Annual Net Cost to Business consistent with Reducing Regulation Committee guidance.

Implementation

40. This Impact Assessment is a Validation Stage Impact Assessment
41. Changes will be brought into effect by amending the Town and Country Planning (Development Management Procedure) (England) Order 2010 (as amended) and also the Town and Country Planning (Section 62A Applications) (Procedure and Consequential Amendments) Order 2013.