



Department for
Communities and
Local Government

Further amendments to permitted development rights for petroleum exploration site investigation and monitoring

Government response to the consultation



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Contents

Government response to consultation on further amendments to permitted development rights for petroleum exploration site investigation and monitoring

| | |
|--|-----------|
| Introduction | 4 |
| Summary of responses by question | 5 |
| Extension of duration of proposed permitted development rights for groundwater monitoring to 24 months | 5 |
| Boreholes for seismic investigation and monitoring | 8 |
| Boreholes for the location and appraisal of mine workings | 10 |
| Potential cost savings | 11 |
| Conclusion | 12 |

Government response to consultation on further amendments to permitted development rights for petroleum exploration site investigation and monitoring

Introduction

1. Permitted development rights are set out in the Town and Country Planning (General Permitted Development)(England) Order 2015 (“the 2015 Order”). Permitted development rights enable certain types of development and building works to be undertaken without the need for specific planning permission, where the need to apply for permission would be out of proportion with the impacts of development. They are subject to limitations and conditions to control impact and to protect local amenity.
2. The Government’s response on 13 August 2015¹, to consultation carried out in March 2015, set out the intention to amend the 2015 Order so that development which consists of the drilling of boreholes for groundwater monitoring for petroleum exploration can take place as permitted development. The permitted development right will apply to the temporary use of land (for no more than 28 days), and the longer term use of land (for no more than 6 months).
3. Before making the changes, the Government invited views on the following further amendments to permitted development rights for petroleum development:
 - (a) to extend the duration of the period for the longer term use of land for the drilling of boreholes for groundwater monitoring previously consulted upon, from 6 to 24 months;
 - (b) to enable as permitted development the drilling of boreholes for seismic investigation and monitoring;
 - (c) to enable as permitted development the drilling of boreholes for the location and appraisal of former mine workings.
4. These proposals would assist in establishing a more informed baseline for future monitoring; provide information to inform any environmental statement for an environmental impact assessment; and inform the location of drilling sites for any future planning application for petroleum exploration.

¹ <https://www.gov.uk/government/consultations/amendment-to-permitted-development-rights-for-petroleum-exploration>

5. The period in which responses were requested on these further proposals closed on 24 September 2015. Twenty three responses were received from a range of interested parties including local government (4%), businesses and trade associations (57%), landowners and private individuals (17%), and others, including non-profit organisations and Non-Departmental Public Bodies (22%).
6. The following section of this document provides a summary of the responses received to the individual questions put forward and the Government's response to them.

Summary of responses by question

Extension of duration of proposed permitted development rights for groundwater monitoring to 24 months

Question 1: Do you have views on whether permitted development rights should be amended to extend the period for boreholes for groundwater monitoring for petroleum exploration from six months to twenty four months?

7. Eleven respondents opposed this proposal, seven supported it, and three further respondents submitted comments. Some respondents were opposed in principle to shale development, and to granting permitted development rights for an activity related to potential shale gas exploration which they considered could lead to a loss of accountability and scrutiny. Others suggested the permitted development right might impact on the consideration of applications for future shale exploration. It would be important that information collected through monitoring by a private developer was objective, and it would be necessary to obtain the landowner's consent to enter land.
8. Respondents who supported the proposal highlighted the importance of being able to establish the baseline conditions and undertake subsequent monitoring, enabling greater understanding of any risks over a longer period. One respondent proposed that the period should extend to 36 months.
9. Some respondents suggested that an extension of the time in which the right could be exercised may extend the visual and environmental impacts from drilling activity. Others noted the potential for disruption to agricultural operations and historic buried remains, and the cumulative impact of boreholes for groundwater monitoring, together with those proposed for seismic and mine working investigations.
10. Representations in support of the proposal considered that the increased period for exercising the right would allow for a much better understanding of the hydro-

geological regime in the area and hence identification of any potential risks to groundwater. The Environment Agency, which is responsible for water quality, supported the exclusion of certain groundwater source protection areas, and reiterated its previous comments that all boreholes should be drilled, constructed and decommissioned in accordance with their guidance. Some respondents proposed that the protected groundwater source area should not allow permitted development within 500 metres of a water supply source. An additional requirement to notify the Environment Agency and the appropriate drinking water supply undertaker of borehole development was requested.

Government response

11. In responding to representations to the first consultation, the Government announced the intention to take forward an amendment to the 2015 Order to allow as permitted development the drilling of boreholes for groundwater monitoring for petroleum exploration. The rights would be subject to the same restrictions and conditions, with the additional amendments agreed in August, as those which currently apply to mineral exploration. The Government has carefully considered issues raised about the principle of amending permitted development rights to cover groundwater monitoring for petroleum exploration in response to the invitation for views; while also acknowledging that the consultation provided an opportunity for expression of any general objections to shale development. The Government is not persuaded that these issues are sufficiently significant or different in nature to earlier representations to change the decision already taken to allow the drilling of boreholes for groundwater monitoring for petroleum exploration as permitted development.
12. For certain shale development there is a requirement to monitor the level of methane in groundwater in the period of 12 months before any hydraulic fracturing commences (Section 4A of the Petroleum Act 1998, as introduced by Section 50 of the Infrastructure Act 2015; these provisions are not yet in force). The extension of the duration of the permitted development right to 24 months is considered necessary to enable the monitoring work to be undertaken effectively under the permitted development rights, particularly in light of the new legislative provisions. The Government is however not persuaded at this time that there is justification for extending the proposed period for drilling of boreholes for groundwater monitoring beyond this to 36 months.
13. The shale oil and gas industry has publicly committed to carrying out environmental impact assessments for all exploration wells that involve hydraulic fracturing, and will provide an environmental statement with planning applications for exploration and extraction in respect of such development. These statements would be informed, amongst other things, by the results of the monitoring of the groundwater environment, undertaken under this permitted development right. The findings and conclusions reached on any environmental impacts arising from the proposed exploration or extraction development will be

assessed by the mineral planning authority, informed by consultation, before a decision is made on that application.

14. Normal commercial and operational practice indicates that the drilling rigs required for the monitoring boreholes would be removed once the drilling has been completed (the monitoring activity would be more likely to continue for the remainder of the duration for which development is permitted). In the unlikely event that a rig and any associated structure were to remain on site for the full 24-month period, the Government considers that the new right is acceptable given the limited visual impacts and disturbance that might arise, and the restrictions and safeguards imposed on the right.
15. In considering visual and environmental impacts the Government has taken into account the concerns about cumulative impacts, not just from groundwater monitoring boreholes, but also those proposed for seismic investigation and monitoring and the location and appraisal of mine workings. The permitted development rights for use of land for a longer period will in certain circumstances provide the mineral planning authority with the power, under Article 5 of the 2015 Order, to require a planning application if it considers the cumulative effects of development already being carried out, or notified to it, would be seriously detrimental to local amenity or well-being.
16. The Government has clarified the definition of the groundwater source protection areas, with the Environment Agency, and is satisfied that no change is required to the definition. A 50 metre minimum standoff distance is applied to any source of drinking water or water used for food production and is a standard distance used widely by the Environment Agency for groundwater protection purposes. The Government is not persuaded that there is sufficient justification to define a new standoff distance.
17. The Environment Agency publishes guidance on the construction and decommissioning of boreholes. Permitted development rights do not remove the need to have regard to the general law and other regulatory requirements and guidance. The Government proposes to update its planning guidance by providing a link to the Environment Agency's guidance.
18. The Government has carefully considered the planning impacts of extending the permitted development right from 6 to 24 months. It considers that it is acceptable for the proposed development to be allowed to take place as permitted development, given the extent and nature of the development proposed, its impacts, and the control measures that it is putting in place.
19. We therefore intend to proceed with the proposal to allow the drilling of boreholes for groundwater monitoring as permitted development, as confirmed in August 2015, and to extend the duration of the time period for the longer term use of land from 6 to 24 months. This is in recognition of the fact that

establishing the groundwater baseline may take longer than 12 months, depending on the geology, and can also be influenced by seasonal variations in groundwater levels, and also in light of the legislative requirements for groundwater monitoring associated with certain hydraulic fracturing proposals.

20. The Government will add a new requirement for operators to notify the Environment Agency and the relevant drinking water supply undertaker of all proposals to drill boreholes under the new permitted development rights (including those for seismic investigation and monitoring and for the location and appraisal of mine workings), to ensure that they receive direct notification of these proposed works.

Boreholes for seismic investigation and monitoring

Question 2: Do you have views on whether permitted development rights should be amended to include boreholes for seismic investigation and monitoring for petroleum exploration?

21. Nine respondents opposed this proposal, six supported it and four submitted comments. In common with responses to question 1, a number of respondents were opposed in principle to shale development and the extension of permitted development rights. Alongside representations about cumulative impacts from multiple boreholes, some respondents commented on potential impacts on biodiversity, the environment and disruption for communities. It would be important to ensure the use of explosives was given appropriate consideration.
22. Those who supported the proposal highlighted the importance of gaining information on seismicity and assessing risk early, to inform an assessment of environmental impacts that would be needed to support any future planning application for petroleum exploration. Respondents also noted that this information was necessary to inform the Government's traffic light monitoring system for high volume hydraulic fracturing and risk assessment. The notification of all boreholes to the Environment Agency and water supply undertakers and sealing in accordance with Environment Agency guidance was requested.

Government response

23. The Government response to question 1 above to general objections to shale development and the principle of extending permitted development rights, including cumulative impacts and notification requests, is also relevant to this question.
24. The existing conditions attached to permitted development rights for mineral exploration will be transposed across to the new rights. These include a range of restrictions and safeguards to ensure that the impacts of the permitted

development will be acceptable, and provide for the sealing of boreholes at the end of the permitted development period. As noted above, a link will be provided from the Government's planning guidance to the Environment Agency's guidance. Overall, the Government considers that there are safeguards in place to deal sufficiently with the impacts that could arise from the drilling of boreholes for seismic investigation and monitoring.

25. In respect of ecological impacts, any operator utilising the proposed permitted development rights must have regard to the Wildlife and Countryside Act 1981 and Conservation of Habitats and Species Regulations 2010. The 2010 Regulations transpose the EU Habitats and Wild Birds Directives and include provision for the protection of species named in those Directives.
26. The purpose of the right is to enable monitoring and investigation work to be undertaken to inform any future planning application, and to supplement available geological data and studies carried out of the subsurface environment. To minimise risks operators have a duty to exercise care and would be expected to use best practice techniques when carrying out drilling. Permitted development rights do not remove the need to comply with the general law, and the requirements and guidance of other regulators, in particular those relating to health and safety.
27. In relation to the potential use of explosives, the current conditions applied to the permitted development rights for mineral exploration, limiting the amount of explosive charges that may be used, will be applied to boreholes for petroleum seismic monitoring and investigation. It is not anticipated that a charge would be needed in all circumstances, as the development permitted also includes the drilling of relatively shallow boreholes that would be required to monitor background seismicity. With these restrictions and the other safeguards in place, the impacts are considered to be acceptable.
28. The Government considers that it is important to obtain seismic data to inform any potential proposals for petroleum exploration, and it would be beneficial to be able to do this early in the process. Having carefully considered the views expressed in response to consultation and the potential impacts, the Government considers that it is appropriate to proceed with this proposal. We intend to take this forward through amendment of the 2015 Order.

Boreholes for the location and appraisal of mine workings

Question 3: Do you have views on whether permitted development rights should be amended to include boreholes for the location and appraisal of mine workings for petroleum exploration?

29. Nine respondents opposed this proposal, eight supported it and two submitted comments. In common with responses to question 1, a number of respondents were opposed in principle to shale development and the extension of permitted development rights. In addition to representations about the cumulative impact of multiple boreholes, respondents commented on the potential release of gases or fluids from any former mine workings that are found, or risk of ground subsidence.
30. Those respondents who agreed with the proposed amendment considered that the identification and appraisal of mine workings is an important aspect to inform any future consideration of proposed petroleum exploration, and would facilitate the design of an efficient future drilling programme and risk management strategy. The notification of all boreholes to the Environment Agency and water supply undertakers and sealing in accordance with Environment Agency guidance was requested.

Government response

31. The Government response to question 1 to general objections to shale development and the principle of extending permitted development rights, including cumulative impacts, is also relevant here. The Government response above in relation to notification requests and sealing of boreholes is also relevant to this question. Operators need to comply with the general law and will be expected to observe best practice and follow the guidance set out in the Coal Authority/Health and Safety Executive document "Guidance on Managing the Risk of Hazardous Gases when Drilling or Piling near Coal". The Coal Authority supports the proposals. Any boreholes will require a permit from the Coal Authority where they intersect with coal seams or coal mining legacy features, which would allow for the management of public safety and environmental risks that might arise from such features.
32. The planning impacts of the proposed permitted development rights are considered to be acceptable, taking into account the safeguards Government intends to impose. The permitted development rights are time limited and apply to investigative work for the location and appraisal of mine workings.
33. The Government considers that there is significant merit in enabling the drilling of boreholes for the identification and appraisal of former mine workings as permitted development. Having carefully considered the views expressed on the proposal, we propose to add a new requirement for operators to notify the Coal

Authority of proposals for drilling boreholes under the new permitted development rights, to ensure that they receive direct notification of these proposed works. The Government considers that with the limitations and conditions intended to be imposed, it is appropriate to proceed with this proposal and we intend to take this forward through amendment of the 2015 Order.

Potential cost savings

Question 4: We consider that, as well as the benefits in providing public confidence that the environmental impacts of potential petroleum exploration schemes are being properly considered, the proposal could save time for such schemes going forward. What potential cost savings might be achieved were these additional permitted development rights to be realised?

34. Eighteen respondents submitted representations on this question. Those opposed to the proposals considered that drilling of boreholes for monitoring and investigative purposes should be subject to local determination, through the planning application process. Those who responded positively to the proposals considered that any potential cost savings would be measured in time saved in the region of 7-12 months, through not having to submit a planning application before monitoring work can commence, and removing delay and uncertainty from the planning process.
35. One respondent considered that it would impose additional costs on mineral planning authorities if they felt that directions were necessary to remove the permitted development rights. Another respondent considered that mineral planning authorities should see savings from not having to determine planning applications for monitoring work. Some respondents queried whether there would be any cost saving if the proposals led to less public engagement at an early stage, and commented on general environmental and social concerns about shale extraction. Others considered that the use of robust monitoring data to identify risks should enable consultees to better respond to subsequent planning consultations

Government response

36. The Government has taken account of the general concerns expressed about shale extraction, although the proposals on which views were sought relate specifically to monitoring and investigative work. We have carefully considered the representations about engagement and accountability in the planning process. It remains the case that all exploratory and extraction work will require planning permission from the mineral planning authority. It is not in the interest of operators to withdraw from early engagement with communities, as proposals for exploration or extraction of shale and petroleum can only be taken forward if planning permission is granted. Rather than compromising public engagement,

the early collection and assessment of environmental monitoring information should enable a more informed consideration of the impacts, risks and mitigation measures that may be necessary in respect of any future planning applications by communities, statutory consultees and mineral planning authorities.

37. The Government notes the comment that mineral planning authorities would potentially be faced with additional costs if they felt that an Article 5 Direction was required, but this a matter for local determination. We also note that there may be savings for mineral planning authorities from a reduction in the number of planning applications. Extending permitted development rights does not remove the need for compliance with other regulatory or consenting regimes.
38. The Government considers that the proposed amendments could achieve cost and time savings by enabling monitoring and investigative activities to be undertaken earlier in the planning process. The Government considers there could be further cost savings as obtaining baseline data earlier in the planning process is likely to lead to earlier identification of key issues and better informed planning decisions.

Conclusion

39. This document should be read alongside the Government response to the March 2015 consultation, which was published in August 2015². That document set out the Government's intention to amend the permitted development rights to allow the drilling of boreholes for groundwater monitoring for petroleum exploration; and sought views on further amendments to ensure that full consideration could be given to the potential impacts of the additional proposals, before amending the 2015 Order. The responses to the further invitation for views are summarised above.
40. Taking into account the nature of the permitted development rights; careful consideration of the planning impacts; and the safeguards already contained in the mineral permitted development rights classes together with those it proposes to include for the new permitted development rights (as noted in the preceding sections), the Government considers that the drilling of boreholes for the specific purposes proposed is acceptable as permitted development. The permitted development right amendments for monitoring and investigative activities for petroleum development will enable data to be collected to better inform any future planning applications for the exploration of petroleum

² <https://www.gov.uk/government/consultations/amendment-to-permitted-development-rights-for-petroleum-exploration>

development. The amended permitted development rights will be subject to conditions and restrictions and do not remove the need for operators to comply with other regulatory or consenting regimes. They would also be proportionate to the type of development that is allowed to be carried out under permitted development rights, including those currently allowed for mineral exploration more generally.

41. In summary, the amendments are to enable the drilling of boreholes for monitoring and investigative purposes in respect of petroleum exploration to be carried out as permitted development for the purposes of:
 - groundwater monitoring – with the duration of the longer term right extended from 6 to 24 months for the longer use of land
 - seismic investigation and monitoring;
 - location and appraisal of mine workings.
42. In all cases the permitted development rights will apply to both the temporary use of land (no more than 28 days) and the longer use of land (no more than 6 months – except in the case of groundwater monitoring, where the period will be extended to 24 months). Relevant existing conditions and restrictions attached to the current permitted development rights for mineral exploration will apply, together with those previously announced in August.
43. As proposed in this document, in the case of boreholes drilled for monitoring for petroleum exploration, a requirement will be included for operators to notify the Environment Agency and drinking water supply undertaker of all boreholes; and to notify the Coal Authority of boreholes drilled for the purposes of the location and appraisal of mine workings.
44. The detailed wording of the amendments to the Town and Country Planning (General Permitted Development) (England) Order 2015 will be set out in a statutory instrument, to be laid before Parliament in 2016.