



Department for
Communities and
Local Government

The Chief Planning Officer
Mineral Planning Authorities in England

4 February 2016

Dear Colleague,

Section 4A Petroleum Act 1998

Provision of information when granting planning permission for shale gas applications

I am writing to request that Mineral Planning Authorities provide certain information to the Department for Energy and Climate Change and the applicant when granting planning permission for relevant shale gas or oil development. This is to support implementation of the provisions in the Infrastructure Act 2015. The information is sought in respect of any relevant planning permissions granted from the date of this letter, and is to support decision making under the Petroleum Licencing regime. Details are set out in the attached annex to this letter.

The information is sought in the form of a short notice, and it is anticipated will be readily available through the process of determining the relevant application.

Should you need any further information on the contents of this letter, please contact: james.henderson@communities.gsi.gov.uk, telephone 0303 444 1632.

Yours faithfully,

Ruth Stanier
Director of Planning

Department for Communities and Local Government
3rd Floor, Fry Building
2 Marsham Street
London
SW1P 4DF

Annex

Provision of information when granting planning permission for shale gas applications

Background

1. The Infrastructure Act 2015 (the 2015 Act) received Royal Assent on 12 February 2015. The relevant extract is attached as an appendix.
2. Section 50 of the 2015 Act inserts new sections 4A and 4B into the Petroleum Act 1998 (the 1998 Act) and thereby establishes a statutory regime under which the consent of the Secretary of State for Energy and Climate Change ('DECC Secretary of State') is required before "associated hydraulic fracturing"¹ can be carried out. Section 4A(3) of the 1998 Act provides that the DECC Secretary of State may not grant consent for "associated hydraulic fracturing" unless she is satisfied that the conditions in the table in section 4A(5), and in section 4A(6), of the 1998 Act are met. Where this Annex refers to conditions, it is referring to the conditions in this table, as reproduced in the appendix.
3. Column one of the table lists eleven substantive conditions which must be satisfied; column two of the table specifies types of document(s) that may be considered sufficient for the DECC Secretary of State to be satisfied that the conditions in column one have been met².
4. Six of the substantive conditions in the table (specifically, conditions 1, 6, 7, 9, 10 and 11) relate to the planning system, with the corresponding document identified in column 2 of the table in respect of each of these conditions being a notice given by the local planning authority which grants the relevant permission. Reflecting this, and whilst recognising that Section 50 is yet to commence, the Secretary of State for Communities and Local Government (the DCLG Secretary of State) asks that Mineral Planning Authorities, when granting a relevant planning permission, provides the information in accordance with the detailed arrangements specified below.

Information to be provided

5. In order to allow the DECC Secretary of State to satisfy herself that the conditions in section 4A(5) have been met, Mineral Planning Authorities are asked to provide the information described at paragraph 6 below when it grants planning permission in respect of any development that involves "associated hydraulic fracturing", or if not clear from the application documents, involves the boring for or getting of oil and natural gas from shale.
6. Mineral Planning Authorities should set out clearly and unambiguously their view whether:

- a) in relation to condition 1, environmental information has been taken into account in deciding to grant the relevant planning permission;

¹ For the definition of "associated hydraulic fracturing" see the appendix.

² See also the Onshore Hydraulic Fracturing (Protected Areas) Regulations 2015, which provide the definitions for conditions 5 and 6 in the table in section 4A(5) of the 1998 Act – <http://tinyurl.com/ohk88aq>

b) in relation to condition 6, the area in respect of which the relevant planning permission has been granted does not include any land within a National Park, the Broads, an Area of Outstanding Natural Beauty or a World Heritage Site;

c) in relation to condition 7, the cumulative effects of:

- i) the application; and
- ii) other applications for the exploitation of onshore petroleum that involve hydraulic fracturing;

have been taken into account (where relevant) in deciding to grant the relevant planning permission;

d) in relation to condition 9, consideration has been given as to whether to impose a restoration condition in relation to the relevant planning permission;

e) in relation to condition 10, the requirements to consult a water or sewerage undertaker pursuant to article 18, 19 or 20 and paragraph (zf) of Schedule 4 to the Town and Country Planning (Development Management Procedure) (England) Order ('the DMPO 2015') have been complied with in relation to the relevant planning permission; and

f) in relation to condition 11, the requirements in article 14 and 15 of the DMPO 2015 have been complied with in relation to the relevant planning permission.

7. The DCLG Secretary of State anticipates that Mineral Planning Authorities will be pro-active in providing the information identified in this letter, where relevant. He requests that it is provided headed 'Section 4A Petroleum Act 1998 Notice' and sent to the DECC Secretary of State, copied to the applicant.

8. Please send a Section 4A Petroleum Act 1998 Notice in respect of all relevant planning permissions granted from the date of this letter to the Office of Unconventional Gas & Oil, Department of Energy and Climate Change, 3 Whitehall Place, London, SW1A 2AW and to the applicant, on the same date as the decision notice is issued.

9. In circumstances when Mineral Planning Authorities refuse planning permission for shale development, or an appeal is made for non-determination, Mineral Planning Authorities are not requested to provide the information specified in paragraph 6 above, even where permission is subsequently granted by the DCLG Secretary of State.

Appendix

Infrastructure Act 2015

PART 6

ENERGY

Other provision about onshore petroleum

50 Onshore hydraulic fracturing: safeguards

After section 4 of the Petroleum Act 1998 insert—

“4A Onshore hydraulic fracturing: safeguards

(1) The Secretary of State must not issue a well consent that is required by an onshore licence for England or Wales unless the well consent imposes—

(a) a condition which prohibits associated hydraulic fracturing from taking place in land at a depth of less than 1000 metres; and

(b) a condition which prohibits associated hydraulic fracturing from taking place in land at a depth of 1000 metres or more unless the licensee has the Secretary of State’s consent for it to take place (a “hydraulic fracturing consent”).

(2) A hydraulic fracturing consent is not to be issued unless an application for its issue is made by, or on behalf of, the licensee.

(3) Where an application is made, the Secretary of State may not issue a hydraulic fracturing consent unless the Secretary of State—

(a) is satisfied that—

(i) the conditions in column 1 of the following table are met, and

(ii) the conditions in subsection (6) are met, and

(b) is otherwise satisfied that it is appropriate to issue the consent.

(4) The existence of a document of the kind mentioned in column 2 of the table in this section is sufficient for the Secretary of State to be satisfied that the condition to which that document relates is met.

(5) But the absence of such a document does not prevent the Secretary of State from being satisfied that that condition is met.

<i>Column 1: conditions</i>	<i>Column 2: documents</i>
1 The environmental impact of the development which includes the	A notice given by the local planning authority that the environmental information was taken into account in

<i>Column 1: conditions</i>	<i>Column 2: documents</i>
relevant well has been taken into account by the local planning authority	deciding to grant the relevant planning permission
2 Appropriate arrangements have been made for the independent inspection of the integrity of the relevant well	A certificate given by the Health and Safety Executive that it (a) has received a well notification under regulation 6 of the Borehole Sites and Operations Regulations 1995, (b) has received the information required by regulation 19 of the Offshore Installations and Wells (Design and Construction, etc.) Regulations 1996, and (c) has visited the site of the relevant well
3 The level of methane in groundwater has, or will have, been monitored in the period of 12 months before the associated hydraulic fracturing begins	An environmental permit has been given by the relevant environmental regulator which contains a condition that requires compliance with a waste management plan which provides for monitoring of the level of methane in groundwater in the period of 12 months before the associated hydraulic fracturing begins
4 Appropriate arrangements have been made for the monitoring of emissions of methane into the air	An environmental permit which contains a condition requiring compliance with a waste management plan which provides for the monitoring of emissions of methane into the air for the period of the permit
5 The associated hydraulic fracturing will not take place within protected groundwater source areas	A decision document given by the relevant environmental regulator (in connection with an environmental permit) which indicates that the associated hydraulic fracturing will not take place within protected groundwater source areas
6 The associated hydraulic fracturing will not take place within other protected areas	A notice given by the local planning authority that the area in respect of which the relevant planning permission has been granted does not include any land which is within any other protected areas
7 In considering an application for the relevant planning permission, the local planning authority has (where material) taken into account the cumulative effects of— (a) that application, and (b) other applications relating to exploitation of onshore petroleum obtainable by hydraulic fracturing	A notice given by the local planning authority that it has taken into account those cumulative effects
8 The substances used, or expected to be used, in associated hydraulic fracturing—	An environmental permit has been given by the relevant environmental regulator which contains a condition that requires substances used in associated hydraulic fracturing to be approved by that regulator

<i>Column 1: conditions</i>	<i>Column 2: documents</i>
(a) are approved, or (b) are subject to approval, by the relevant environmental regulator	
9 In considering an application for the relevant planning permission, the local planning authority has considered whether to impose a restoration condition in relation to that development	A notice given by the local planning authority that it has considered whether to impose such a condition
10 The relevant undertaker has been consulted before grant of the relevant planning permission	A notice given by the local planning authority that the relevant undertaker has been consulted
11 The public was given notice of the application for the relevant planning permission	A notice given by the local planning authority which confirms that the applicant for the relevant planning permission has certified that public notification requirements, as set out in a development order, have been met

(6) The conditions mentioned in subsection (3)(a)(ii) are—

(a) that appropriate arrangements have been made for the publication of the results of the monitoring referred to in condition 4 in the table;

(b) that a scheme is in place to provide financial or other benefit for the local area.

(7) A hydraulic fracturing consent may be issued subject to any conditions which the Secretary of State thinks appropriate.

(8) A breach of such a condition is to be treated as if it were a breach of a condition of a well consent.

4B Section 4A: supplementary provision

(1) “Associated hydraulic fracturing” means hydraulic fracturing of shale or strata encased in shale which—

(a) is carried out in connection with the use of the relevant well to search or bore for or get petroleum, and

(b) involves, or is expected to involve, the injection of—

(i) more than 1,000 cubic metres of fluid at each stage, or expected stage, of the hydraulic fracturing, or

(ii) more than 10,000 cubic metres of fluid in total.

(2) For the purposes of deciding the depth at which associated hydraulic fracturing is taking place in land—

(a) the depth of a point in land below surface level is the distance between that point and the surface of the land vertically above that point; and

(b) in determining what is the surface of the land, any building or other structure on the land, and any water covering the land, must be ignored.

(3) Subsections (1) and (2) apply for the purposes of section 4A and this section.

(4) The Secretary of State must, by regulations made by statutory instrument, specify—

(a) the descriptions of areas which are “protected groundwater source areas”, and

(b) the descriptions of areas which are “other protected areas”,

for the purposes of section 4A.

(5) A statutory instrument which contains regulations under subsection (4) may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.

(6) The Secretary of State must lay a draft of the first such regulations before each House of Parliament on or before 31 July 2015.

(7) The Secretary of State must consult—

(a) the Environment Agency before making any regulations under subsection (4)(a) in relation to England;

(b) the Natural Resources Body for Wales before making any regulations under subsection (4)(a) in relation to Wales.

(8) These expressions have the meanings given—

- “development order” has the meaning given in section 59 of the Town and Country Planning Act 1990;
- “environmental permit” means a permit granted under regulation 13 of the Environmental Permitting (England and Wales) Regulations 2010;
- “hydraulic fracturing consent” has the meaning given in subsection (1)(b);
- “licensee” means the holder of the onshore licence for England or Wales;
- “local planning authority” means—
 - (a) the planning authority to which the application for the relevant planning permission was made (unless the Secretary of State or Welsh Ministers are responsible for determining the application), or
 - (b) the Secretary of State or Welsh Ministers (if responsible for determining the application);
- “onshore licence for England or Wales” means a licence granted under section 3 which authorises a person to search or bore for or get petroleum in those parts of the landward area (within the meaning of the Petroleum Licensing (Exploration and Production) (Landward Areas) Regulations 2014) that are in England or Wales or are beneath waters (other than waters adjacent to Scotland);
- “relevant environmental regulator” means—
 - (a) the Environment Agency, if the relevant well is situated in England, or

(b) the Natural Resources Body for Wales, if the relevant well is situated in Wales;

- “relevant planning permission” means planning permission to be granted, or granted, in respect of development which includes the relevant well;
- “relevant undertaker” means the water undertaker or sewerage undertaker in whose area of appointment the relevant well is located;
- “relevant well” means the well to which a well consent relates;
- “well consent” means a consent in writing of the Secretary of State to the commencement of drilling of a well.

(9)The power of the Secretary of State to make regulations under section 4 includes power to make such amendments of the definition of “onshore licence for England or Wales” in this section as the Secretary of State considers appropriate in consequence of any other exercise of the power under section 4.

(10)The Secretary of State may, by regulations made by statutory instrument—

(a) make such amendments of column 2 of the table in section 4A as the Secretary of State considers appropriate, and

(b) make such other amendments of section 4A or this section as the Secretary of State considers appropriate in consequence of provision made under paragraph (a).

(11) A statutory instrument which contains regulations under subsection (10) may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.”