



Department for
Business, Energy
& Industrial Strategy

HYDRAULIC FRACTURING CONSENT

Guidance on application for hydraulic fracturing consent (HFC) under section 4A of the Petroleum Act 1998 (inserted by section 50 of the Infrastructure Act 2015).



February 2017

Guidance on application for hydraulic fracturing consent (HFC)

As required by section 4A of the Petroleum Act 1998 (inserted by section 50 Infrastructure Act 2015), all well consents issued on or after 6th April 2016 contain a requirement that the Licensee obtain consent from the Secretary of State (“hydraulic fracturing consent” or “HFC”) before carrying out any associated hydraulic fracturing as defined in section 4B of that Act.

This document contains high level guidance for Licensees in Great Britain for use when submitting an application for HFC. This document does not seek to summarise the other regulatory obligations which Licensees must comply with before carrying out associated hydraulic fracturing.

It identifies documents Licensees could consider including in their application which may evidence compliance with the conditions set out in section 4A. These documents are outlined in Annex A. But Licensees can still use other documents or sources of evidence to demonstrate they meet the conditions.

This document provides guidance only: making an application as set out in this document will not guarantee HFC approval. Section 4A(4) makes clear that the Secretary of State is entitled to rely on the documents listed in column 2 of the table in section 4A (“the table”), but under section 4A(3)(b) he/she must still decide in each case whether he/she is “*otherwise satisfied that it is appropriate to issue the consent*” .

Process to decide hydraulic fracturing consent applications

In relation to the conditions in the table, the relevant public bodies (the Mineral Planning Authorities or the Planning Inspectorate, the Health and Safety Executive and the Environment Agency (EA)) will use their current powers, where these allow, and advice to provide Licensees with documents containing the information described in the table.

We anticipate that Licensees will submit copies of this information provided to them by the public bodies mentioned above which demonstrate compliance with the relevant conditions in the table, together with any other relevant evidence in relation to those conditions¹. We also anticipate Licensees providing evidence in relation to

¹ Section 4A(5) of the Petroleum Act 1998 makes clear that the absence of a document listed in the second column of the table does not prevent the Secretary of State from being satisfied that the condition is met.

the requirements in section 4A(6) including a cover letter from the Licensee to the Secretary of State:

- setting out what arrangements have been made for publication of monitoring results (requirement in section 4A(6)(a));
- summarising details of the scheme which is in place to provide financial or other benefit for the local area (including drawing attention to the relevant provisions in any formal arrangement which is in place – a copy of which should be included) (requirement in section 4A(6)(b)); and
- confirming that they will continue with publication of monitoring results/community benefits commitments under the scheme after any HFC is granted.

These documents should be submitted to the Department for Business, Energy and Industrial Strategy (BEIS) electronically, as a paper record or both.

The Secretary of State will review the evidence provided by each Licensee in order to:

- decide whether he/she is satisfied that the section 4A conditions are met; and
- decide whether he/she is otherwise satisfied that it is appropriate to issue HFC.

If the Secretary of State is satisfied, he/she will issue the HFC subject to any conditions the Secretary of State determines appropriate, including conditions to ensure compliance with ongoing requirements². In particular, the HFC is likely to include conditions requiring that:

- monitoring results are published in accordance with the application information (requirement in section 4A(6)(a)); and
- the Licensee complies with the community benefit scheme (requirement in section 4A(6)(b)).

² Section 4A (7)A hydraulic fracturing consent may be issued subject to any conditions which the Secretary of State thinks appropriate.

Any potential change in circumstances which could be viewed as a breach should be discussed with BEIS as early as possible to ensure that this does not affect the validity of the HFC.

In particular, any proposals to vary the way in which the publication of monitoring results requirements or delivery of the community benefits scheme in section 4A(6) are met will be reviewed by BEIS to determine whether the variation would still comply with the HFC.

Any proposed variation should be discussed with BEIS as early as possible. Licensees should explain the reasons for any variation, including changes to regulatory reporting requirements for publishing monitoring data.

If a regulatory permit or permission, submitted by a Licensee as compliance of a condition, is amended by the issuing authority and the Licensee complies with that amended document, this is unlikely to affect the validity of the HFC.

Where a breach in a condition causes the HFC to cease to have effect, the hydraulic fracturing activity must stop. Hydraulic fracturing without a valid HFC would breach the licence.

The HFC will identify when it will take effect. In some cases it might not take effect immediately: for instance where the Secretary of State is satisfied that the level of methane in groundwater “will have” been monitored for 12 months before the associated hydraulic fracturing begins (condition 3), the HFC will not take effect until that 12 month period has expired.

The HFC will also identify when it will expire, including where any permits or consents relied on by the Secretary of State expire or cease to have effect (e.g. following any legal proceedings).

The HFC will also expire in specified circumstances relating to the surface development restrictions for hydraulic fracturing.³

³ Subsection (7) (paragraph 3.28 of this document and paragraph 3.4 of Annex A): https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/532428/Government_Response_Surface_Restrictions_for_Hydraulic_Fracturing.pdf

Annex A

BEIS Guidance Table, including Columns 1 and 2 set out under section 4A of the Petroleum Act 1998 (inserted by section 50 of the Infrastructure Act 2015)

	<i>Column 1: conditions</i>	<i>Column 2: documents</i>	BEIS guidance
1	<i>The environmental impact of the development which includes the relevant well has been taken into account by the local planning authority</i>	<i>A notice given by the local planning authority that the environmental information was taken into account in deciding to grant the relevant planning permission</i>	<p>The local planning authority (this is defined in section 4B to include the Secretary of State) is expected to provide a notice, copied to the Licensee, confirming that the environmental information was taken into account when it decided to grant the relevant planning permission.⁴</p> <p>Licensees can provide BEIS with the notice as evidence of compliance with condition 1.</p> <p>We would expect the environmental information taken into account by the local planning authority to be in the form of an environmental impact assessment (EIA).</p> <p>Licensees can also provide a copy of the environmental statement which was provided to the local planning authority.</p>

⁴ The Department of Communities and Local Government's letter of 4 February 2015 to Chief Planning Officers requests mineral planning authorities to provide certain information to (now) the Department for Business, Energy & Industrial Strategy and the applicant in relation to the conditions set out in the table in section 4A of the Petroleum Act 2008 : <http://tinyurl.com/hf42sjw>

2	<p><i>Appropriate arrangements have been made for the independent inspection of the integrity of the relevant well</i></p>	<p><i>A certificate given by the Health and Safety Executive that it:</i></p> <p><i>(a) has received a well notification under regulation 6 of the Borehole Sites and Operations Regulations 1995,</i></p> <p><i>(b) has received the information required by regulation 19 of the Offshore Installations and Wells (Design and Construction, etc.) Regulations 1996, and</i></p> <p><i>(c) has visited the site of the relevant well</i></p>	<p>We would normally expect Licensees to provide the Health and Safety Executive (HSE) with a well notification under regulation 6 and the information required by regulation 19 as set out in column 2.</p> <p>Once drilling is complete and the HSE have visited the well, the HSE will issue the Licensee with a certificate providing confirmation as to the three requirements set out in column 2.</p> <p>This certificate can then be provided to BEIS by the Licensee to evidence compliance with condition 2.</p>
3	<p><i>The level of methane in groundwater has, or will have, been monitored in the period of 12 months before the associated hydraulic fracturing begins</i></p>	<p><i>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</i></p>	<p>Licensees should speak to the EA about the location of groundwater monitoring boreholes before they are installed.</p> <p>Licensees should provide details of their proposed plans to undertake 12 months monitoring in their environmental permit application.</p> <p>If this information is included in a stand-alone plan (such as a separate groundwater monitoring plan) rather than in the body of the Waste Management Plan, Licensees may wish to incorporate that plan as</p>

			<p>an annex to the Waste Management Plan. It is the Waste Management Plan that is anticipated as evidence in column 2.</p> <p>Any groundwater monitoring which is included as part of the environmental permit will need to be approved by the EA. Under the environmental permitting regime, groundwater monitoring will be required before, during and after hydraulic fracturing, in accordance with EA guidance.</p> <p>As noted above, if Licensees have not yet completed 12 months' monitoring on the date the HFC is granted, it will not become valid until that monitoring has been completed.</p> <p>Licensees can submit the relevant section of their environmental permit (and any relevant plan referred to in that permit) to BEIS, identifying the particular monitoring requirements which evidence compliance with condition 3.</p>
4	<i>Appropriate arrangements have been made for the monitoring of emissions of methane into the air</i>	<i>An environmental permit which contains a condition requiring compliance with a waste management plan which provides for the monitoring of emissions of</i>	Licensees should provide details of arrangements for monitoring methane emissions into the air in their application for an

		<i>methane into the air for the period of the permit</i>	<p>environmental permit.</p> <p>Licensees can submit the relevant section of the environmental permit to BEIS, identifying the particular monitoring requirements which evidence compliance with condition 4.</p> <p>If this information is included in a stand-alone plan (such as a separate emissions plan) rather than in the body of the Waste Management Plan, it may be sensible to incorporate that plan as an annex to the Waste Management Plan as anticipated by column 2. It would be best practice for Licensees to do so.</p> <p>The emissions monitoring set out in the relevant plan will be subject to review, where appropriate, by the EA and checked against the EA's permitting requirements.</p>
5	<i>The associated hydraulic fracturing will not take place within protected groundwater source areas</i>	<i>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</i>	<p>Licensees should provide evidence to the EA that hydraulic fracturing will not take place in protected groundwater source areas. Protected groundwater sources areas are defined in the Onshore Hydraulic</p>

		<i>place within protected groundwater source areas.</i>	<p>Fracturing (Protected Areas) Regulation 2015.⁵</p> <p>Licensees can then provide BEIS with the relevant part of the EA decision document as evidence of compliance with condition 5.</p> <p>The EA decision document should explain that the proposed site/s are not within a protected groundwater source area.</p> <p>If Licensees propose to carry out hydraulic fracturing below a protected groundwater source area, the EA, as part of environmental permitting will assess the risks to groundwater before HFC is granted. BEIS may also ask the OGA or Licensee to provide further information to BEIS on the depth of the proposals.</p>
6	<i>The associated hydraulic fracturing will not take place within other protected areas</i>	<i>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</i>	The local planning authority is expected to provide this notice to Licensees explaining that hydraulic fracturing will not take place within other protected areas. These areas are defined in the Onshore Hydraulic Fracturing

⁵ <http://www.legislation.gov.uk/ukdsi/2015/9780111137932/regulation/2>

			<p>(Protected Areas) Regulation 2015.⁶</p> <p>Licensees can also submit this notice as evidence of compliance with condition 6.</p> <p>BEIS may ask the OGA or Licensee to provide an accompanying document if necessary (e.g. in relation to the depth of hydraulic fracturing), to confirm that Licensee proposals do not include drilling in protected areas.</p> <p>The need for an OGA document will be considered on a case by case basis.</p>
7	<p><i>In considering an application for the relevant planning permission, the local planning authority has (where material) taken into account the cumulative effects of—</i></p> <p><i>(a) that application, and</i></p> <p><i>(b) other applications relating to exploitation of onshore petroleum obtainable by hydraulic fracturing</i></p>	<p><i>A notice given by the local planning authority that it has taken into account those cumulative effects</i></p>	<p>The local planning authority is expected to provide this notice, copied to Licensees.</p> <p>Licensees can also submit this notice as evidence of compliance with condition 7.</p>

⁶ <http://www.legislation.gov.uk/ukdsi/2015/9780111137932/regulation/3>

8	<p><i>The substances used, or expected to be used, in associated hydraulic fracturing—</i></p> <p><i>(a) are approved, or</i></p> <p><i>(b) are subject to approval,</i></p> <p><i>by the relevant environmental regulator</i></p>	<p><i>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></p>	<p>An environmental permit will include a condition requiring substances to be approved by that regulator.</p> <p>Licensees can submit the relevant section of the environmental permit as evidence of compliance with condition 8.</p>
9	<p><i>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</i></p>	<p><i>A notice given by the local planning authority that it has considered whether to impose such a condition</i></p>	<p>The local planning authority is expected to provide this notice, copied to Licensees.</p> <p>Licensees can also submit this notice as evidence of compliance with condition 9.</p>
10	<p><i>The relevant undertaker has been consulted before grant of the relevant planning permission</i></p>	<p><i>A notice given by the local planning authority that the relevant undertaker has been consulted</i></p>	<p>The “relevant undertaker” means the water undertaker or sewerage undertaker in whose area of appointment the relevant well is located.</p> <p>The local planning authority is expected to include this in its notice, copied to Licensees.</p> <p>Licensees can also submit this notice as evidence of compliance with condition 10.</p>
11	<p><i>The public was given notice of the application for the relevant planning permission</i></p>	<p><i>A notice given by the local planning authority which confirms that the applicant for the relevant planning permission has certified that public notification</i></p>	<p>Licensees should give notice of their application for planning permission.</p> <p>The local planning authority is expected to provide a</p>

		<i>requirements, as set out in a development order, have been met.</i>	<p>notice, copied to the licensee which confirms that the relevant public notification requirements have been met.</p> <p>Licensees can submit this notice as evidence of compliance with condition 11.</p>
--	--	--	---

Requirements in section 4A(6)(a) and section 4A(6)(b)

		BEIS guidance
6a	<i>Appropriate arrangements have been made for the publication of the results of the monitoring referred to in condition 4 in the table;</i>	The Licensee should provide a letter to the Secretary of State, setting out precise details of publication. Such details could include: publishing data with visual aids and explanatory notes, to ensure the public readily understand the data, somewhere which is easily accessible and not behind a paywall. The publication arrangements should be updated at least in line with regulatory reporting requirements.
6b	<i>A scheme is in place to provide financial or other benefit for the local area</i>	The Licensee should provide any relevant documentation, e.g. the relevant deed, together with a cover letter to the Secretary of State, summarising the details of the community benefits scheme they have put in place.

