



Ministry of Housing,
Communities &
Local Government

Government response to the permitted development for shale gas exploration consultation

A summary of responses to the consultation and the
Government's response



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If you have any enquiries regarding this document/publication, complete the form at <http://forms.communities.gov.uk/> or write to us at:

Ministry of Housing, Communities and Local Government
Fry Building
2 Marsham Street
London
SW1P 4DF
Telephone: 030 3444 0000

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Contents

Foreword	4
Overview	5
Whether to introduce a permitted development right for non-hydraulic fracturing shale gas exploration development	6
The circumstances in which a permitted development right for non-hydraulic fracturing shale gas exploration development would be appropriate	7
Public sector equality duty	11

Foreword

1. The Written Ministerial Statements on energy and planning policy made by the Secretaries of State for Business, Energy and Industrial Strategy, and Housing, Communities and Local Government on 17 May 2018¹, announced the Government's intention to hold an early stage consultation, in summer 2018, on the principle of whether non-hydraulic fracturing shale gas exploration development should be granted planning permission nationally through a permitted development right.
2. This consultation was published on 19 July 2018 alongside the separate Department for Business, Energy & Industrial Strategy consultation on the criteria required to trigger the inclusion of shale production projects into the Nationally Significant Infrastructure Projects regime². Both consultations ran for a period for 14 weeks, ending 25 October 2018. The responses to the consultation were analysed following its closure.
3. The *Permitted development for shale gas exploration*³ consultation sought views on the principle of whether non-hydraulic fracturing shale gas exploration development should be granted planning permission nationally through a permitted development right, and in particular the circumstances in which it would be appropriate to do so.
4. The consultation covered the following areas:
 - Whether to introduce a permitted development right for non-hydraulic fracturing shale gas exploration development
 - Definition of non-hydraulic fracturing shale gas exploration
 - Development not permitted
 - Development conditions and restrictions
 - Prior approval
 - Whether any permitted development right should be time-limited or permanent
 - Public sector equality duty
5. The responses to the consultation have been carefully considered and the Government's responses to the questions are set out below.
6. The Government has been clear that it remains fully committed to making planning decisions faster and fairer for all those affected by new development, and to ensure that local communities are fully involved in planning decisions that affect them. These are long standing principles. No one benefits from the uncertainty caused by delay.

¹ <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2018-05-17/HCWS690>

² <https://www.gov.uk/government/consultations/inclusion-of-shale-gas-production-projects-in-the-nationally-significant-infrastructure-project-nsip-regime>

³ <https://www.gov.uk/government/consultations/permitted-development-for-shale-gas-exploration>

Overview

Summary of Responses

7. This document provides a summary of the consultation responses received. There were 15,226 responses to the *Permitted development for shale gas exploration* consultation. Not all respondents answered every question. We received responses from a wide range of interested parties from across the public and private sectors, as well as from the general public. We are grateful to everyone who took the time to respond.
8. The table below provides a breakdown of responses to the consultation survey by type of respondent.

Type of organisation	Number of responses
Interest group, industry representative body, voluntary or charitable organisation	98
Local authority (including National Parks, Broads Authority, the Greater London Authority and London Boroughs)	109
Private sector organisation (including housebuilders, developers, housing associations, businesses, consultants)	18
Neighbourhood Planning Body / Parish or Town Council	127
Other Public Sector Body	9
Other (please specify)	45
Not provided	10
Personal response	5411

9. We also received responses expressing general opposition to shale gas exploration and extraction.

General responses	431
Friends of the Earth campaign ⁴	8968
Total number of responses	15226

10. In addition to this we received a joint petition of 307,720 signatures on behalf of Campaign to Protect Rural England, Friends of the Earth, SumOfUs, 38 Degrees and Frack Free United.

⁴ Campaign responses relate to specific issues. We received 8968 responses via Friends of the Earth to Question 2 of the consultation.

11. We have carefully reviewed and analysed the responses, and we have also considered the recommendations made in the HCLG Select Committee Report 'Planning Guidance on Fracking' (July 2018)⁵.

Whether to introduce a permitted development right for non-hydraulic fracturing shale gas exploration development

12. The primary purpose of the consultation was to seek views on the **principle** of whether non-hydraulic fracturing shale gas exploration development should be granted planning permission through a permitted development right. This purpose was fulfilled by Question 2. Question 1 sought views on a possible definition of non-hydraulic fracturing shale gas exploration development, to clarify what would be meant by that phrase if there were to be a permitted development right around it. This will be considered later in the document.

Question 2

Should non-hydraulic fracturing shale gas exploration development be granted planning permission through a permitted development, right? Yes/No

Question 2 response

13. There were 4639 responses to this question. There was minimal support for this proposal. Nearly all respondents (97.5%) opposed introducing a permitted development right for non-hydraulic fracturing shale gas exploration development.

Further points included by those who provided comments on this question were:

- The main issues raised by local planning authorities were a lack of local involvement in the decision-making process, especially for what many considered to be a technically complex and contentious form of development, and that robust, open, scrutiny through the planning application process is required. Respondents were also concerned that the process would involve as much work as a full planning application but without the application fee, placing a financial and resource burden on authorities.
- Respondents from industry were overwhelmingly supportive of introducing a permitted development right for shale gas exploration development. They suggested that the changes would support decision making within statutory timescales; create certainty to industry and supply chains; ensure that only planning impacts are considered, and rules do not cross regulatory bodies. Responses from industry also indicated that they considered that any exemptions, conditions and restrictions, and any potential prior approval

⁵ <https://publications.parliament.uk/pa/cm201719/cmselect/cmcomloc/767/76702.htm>

process, should be proportionate and should not result in unnecessary delays in decision making, and not create any additional unnecessary burden, or undermine the benefit of the measure – including to its efficiency.

- Of those who opposed the proposals, a significant number cited in principle opposition to shale development in general on environmental and climate change grounds, including the concern around the use of fossil fuels and the need to focus on renewable energy sources. Concerns were raised that any permitted development right for shale gas would remove local community consultation and local authority decision making in the planning process.
- Others commenting on the question also suggested that permitted development rights are for minor, uncontroversial developments that have minimal impact and are therefore unsuitable for shale development.

The circumstances in which a permitted development right for non-hydraulic fracturing shale gas exploration development would be appropriate

14. The consultation also sought views through Questions 1, 3-6 on the particular circumstances in which a permitted development right for non-hydraulic fracturing shale gas exploration development would be appropriate.

Question 1

- a) Do you agree with this definition to limit a permitted development right to non-hydraulic fracturing shale gas exploration? Yes/No
- b) If No, what definition would be appropriate?

Question 1 response

15. There were 3376 responses to Question 1a), and 3038 responses to Question 1b). The proposed definition for non-hydraulic fracturing shale gas exploration development received minimal support. The majority of respondents (84%) did not agree with the definition.

16. Further points included by those responding to Question 1b) were:

- Those who opposed the proposed definition reported that no definition would be appropriate, as they opposed the principle of a permitted development right for exploratory shale gas development.

- New definitions would create ambiguity with existing ones, and the complexity of the definition would make it unenforceable and difficult to monitor for breaches.
- Local planning authorities suggested that 96 hours of testing might allow for a degree of production, contrary to the purpose of exploratory work. They suggested instead to allow for borehole logging and no element of in-situ testing.
- The definition should instead allow for the industry to assess the basic geology of basins and formations within the UK. For consistency this should align with other statutory and regulatory definitions.

Question 3

a) Do you agree that a permitted development right for non-hydraulic fracturing shale gas exploration development would not apply to the following? Yes/No

- | | |
|--|---|
| • Areas of Outstanding Natural Beauty | • Conservation areas |
| • National Parks | • Sites of archaeological interest |
| • The Broads | • Safety hazard areas |
| • World Heritage Sites | • Military explosive areas |
| • Sites of Special Scientific Interest | • Land safeguarded for aviation or defence purposes |
| • Scheduled Monuments | • Protected groundwater source areas |

b) If No, please indicate why.

c) Are there any other types of land where a permitted development right for non-hydraulic fracturing shale gas exploration development should not apply?

Question 3 response

17. There were 3390 responses to Question 3a), 1764 responses to Question 3b), and 3281 responses to Question 3c).

18. There was strong support (86%) for the exemptions listed in Question 3a). A significant number of those responding to Questions 3b) and 3c) restated their in-principle opposition to the proposals. Further points included:

- Respondents suggested that additional exemptions were needed, including 'irreplaceable habitats', designated wildlife sites and habitats, listed buildings, Air Quality Management Areas, and the Green Belt.
- Respondents from industry noted that minerals can only be worked where they are found. They suggested other designations which are not covered by other legislation, the National Planning Policy Framework, and National Planning Practice Guidance, should not be included in any restriction. To do so would restrict their ability to provide data to understand geological formations.

Question 4

What conditions and restrictions would be appropriate for a permitted development right for non-hydraulic shale gas exploration development?

Question 4 response

19. There were 3316 responses to this question. Points raised included:

- Respondents agreed that conditions and restrictions should apply to the scale of development, height of structures, noise, hours of operations, duration of development and drilling period. Others suggested that additional conditions and restrictions were required to those listed in the consultation document, including: distance from sensitive receptors, groundwater and surface water protections, vehicle access and traffic movements, and waste management.
- Any permitted development right would have to align with existing regulatory regimes and their conditions and restrictions for shale gas development.
- Local planning authorities were concerned that nationally prescribed conditions would not be sufficient to mitigate site specific impacts, and instead should be determined on a case by case basis, using local knowledge and site-specific conditions.
- Parts J & K, and Article 5 of the General Permitted Development Order, with amendments for petroleum exploration, was a good starting point for conditions and restrictions.
- Respondents to this question again re-iterated their in-principle opposition to the proposals.

Question 5

Do you have comments on the potential considerations that a developer should apply to the local planning authority for a determination, before beginning the development?

Question 5 response

20. There were 3382 responses to Question 5. Examples of potential considerations included by respondents were:

- Vehicle movements and traffic, noise impacts, duration of activity, landscape impact, ecological and heritage issues, flood risk, cumulative impacts, public consultation, and site restoration.

Other comments on the question included:

- Local planning authorities raised concerns regarding the use of a standard list of considerations or conditions, which they considered would be inappropriate as there will be local and site-specific issues. Many also noted that the degree of considerations needed for shale development under permitted development could be comparable to that required by a planning application.
- Any prior approval process would need to be proportionate to ensure that there would not be delays in the decision-making process, and should not overlap with matters covered by other regulatory regimes.
- In many cases respondents prefaced their response with their opposition to the introduction of permitted development right for shale exploration, particularly in the light of the complexity of the issues to be considered.

Question 6

Should a permitted development right for non-hydraulic fracturing shale gas exploration development only apply for 2 years, or be made permanent?

Question 6 response

21. There were 1038 responses to this question. The majority of respondents (93%) indicated that should a permitted development right for non-hydraulic fracturing shale gas exploration development be brought forward, it should only apply for 2 years. Many respondents also provided comments alongside this question, the majority of which stated their in-principle opposition to the proposals.

22. Further points included by those who provided comments on this question were:

- All of the local planning authorities who responded to this question suggested that any permitted development right should be temporary. However, they reiterated that any permitted development right for shale gas development would not be appropriate.

- An alternative option could be to limit the number of wells established under a permitted development right, rather than apply a time-limit to any permitted development right for shale gas exploration development.

Government response to Questions 1-6

23. The Government remains committed to making planning decisions faster and fairer for all those affected by new shale developments, whilst also ensuring that local communities are fully involved in planning decisions that affect them. The Government is clear that permitted development rights have a proven track record of delivering key development in a timely and predictable manner which would be consistent with the objectives of the May 2018 Written Ministerial Statement. We have also been clear that any permitted development right could incorporate a degree of local consideration and mechanisms that enable local communities to make representations.
24. It is our view that while there could be considerable merit in taking forward these proposals in the future, the sector in the UK is at too early a stage in its development to properly assess the impact of the measures or their ability to deliver changes suitable for the future potential planning needs of industry. The consultation has also identified that there is little consensus on what the measures would look like or the degree to which they would be worthwhile currently. As such, the Government has decided not to take forward the proposals for any changes to permitted development rights for non-hydraulic fracturing shale gas exploratory development at this time.
25. We will continue to assess the development of the industry and the effectiveness of the planning regime. If necessary, we will consult further on possible changes, at a later date.
26. It should be noted that the Government has made clear in a separate Written Statement that on the basis of the current scientific evidence, and in the absence of compelling new evidence, it has taken a presumption against issuing any further Hydraulic Fracturing Consents. While future applications will be considered on their own merits by the Secretary of State in accordance with the law, the shale gas industry should take the Government's position into account when considering new developments.

Public sector equality duty

Question 7

Do you have any views the potential impact of the matters raised in this consultation on people with protected characteristics as defined in section 149 of the Equalities Act 2010?

Response to Question 7

27. There were 2387 responses to Question 7. The potential impacts of the matters raised in this consultation on people with protected characteristics highlighted by respondents included:

- A permitted development right for exploratory shale gas development, leading to increased shale development, may give rise to environmental effects including poorer air quality, soil pollution, additional noise, water contamination and climate change which could impact people with protected characteristics.
- The views of people with protected characteristics could potentially be ignored due to the reduced consultation involved with granting planning permission through a permitted development right.
- Without following full planning procedures, shale gas exploration sites could be situated in close proximity to sheltered accommodation where people with protected characteristics may live.
- Increased Heavy Goods Vehicles traffic could reduce movement or access to open space for people with protected characteristics.
- A number of respondents indicated that they could not foresee any potential impacts of the matters raised in the consultation on people with protected characteristics.

Government response to Question 7

28. As the Government is not taking forward these proposals at this time, we do not consider that impact of that decision (not to take forward the proposals) would have a direct or indirect impact on people with protected characteristics, having regard to the need to eliminate discrimination, foster good relations and advance equality of opportunity.

29. Should we proceed in consulting further at a later date on a potential permitted development right for non-hydraulic shale gas exploration development, we will reassess whether there would be a positive or negative, direct or indirect, impact on people with protected characteristics, having regard to the need to eliminate discrimination, foster good relations and advance equality of opportunity.