



Department for
Business, Energy
& Industrial Strategy

INCLUSION OF SHALE GAS PRODUCTION IN THE NATIONALLY SIGNIFICANT INFRASTRUCTURE PROJECT REGIME

Government response

November 2019



OGL

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The Consultation

Background to the Consultation

Given shale gas has the potential to provide a new source of domestic energy, the Government has supported the development of the UK shale gas industry. The industry is currently in an exploration phase and the Government has always been clear that it will only allow development in a way which is safe and sustainable – both for the environment and local people. We have therefore taken a precautionary, evidence-based approach to exploring this potential, underpinned by world-leading environmental and safety regulations.

In addition, the Government has always recognised that the development of a shale gas industry needs to be alongside support from local communities and that they must be involved in planning decisions and any shale planning applications, whether decided by councils or government.

In the Written Ministerial Statement of 17 May 2018¹ the Government outlined a number of measures to facilitate timely decisions on shale gas planning applications. The Written Ministerial Statement also stated that Government would consult in summer 2018 on the criteria required to trigger the inclusion of shale production projects into the Nationally Significant Infrastructure Project regime.¹

Currently, any organisation wishing to undertake a shale gas development must submit its planning applications to local Mineral Planning Authorities under the Town and Country Planning Act 1990.

The Planning Act 2008 created a planning process for Nationally Significant Infrastructure Projects (NSIP) in fields of development, including energy, water, waste water, road and rail transport and hazardous waste disposal. For projects falling within scope of what is defined in the Planning Act 2008 as a NSIP, this becomes the only route for obtaining planning consent. The Planning Act 2008 defines the type and scale of infrastructure developments considered to be nationally significant and therefore required to obtain development consent. The final decision for granting development consent rests with the relevant Secretary of State depending on the type of infrastructure project.

From 19 July to 25 October 2018 the Department for Business, Energy and Industrial Strategy (BEIS) ran an initial consultation on the proposal to amend the Planning Act 2008 to include major shale gas production projects as a NSIP. Were this proposal to be implemented, then all future shale gas production projects that met threshold(s) designating it as nationally significant would have to apply for development consent within the NSIP regime.

This response is designed to give a factual overview of the submissions to the consultation made by consultees to each of the questions as well as the Government's conclusions. The Government is publishing separate responses to the Ministry of Housing, Communities and Local Government consultations on Permitted Development Rights for non-hydraulic fracturing shale gas exploration and compulsory community pre-application consultation, which were issued alongside this consultation.

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

What was consulted on?

The consultation asked whether there was agreement with the proposal to include major shale gas production projects in the Nationally Significant Infrastructure Project (NSIP) regime and, if so, what the most appropriate criteria could be to determine whether a production project is of sufficient scale to be considered nationally significant and the timings for this change to occur. The consultation document posed the following questions:

Question 1: Do you agree with the proposal to include major shale gas production projects in the Nationally Significant Infrastructure Project regime?

Question 2: Please provide any relevant evidence to support your response to Question 1.

Question 3: If you consider that major shale gas production projects should be brought into the Nationally Significant Infrastructure Project regime, which criteria should be used to indicate a nationally significant project with regards to shale gas production? Please select from the list below:

- a. The number of individual wells per well-site (or 'pad')
- b. The total number of well-sites within the development
- c. The estimated volume of recoverable gas from the site(s)
- d. The estimated production rate from the site(s), and how frequently (e.g. daily, monthly, annually or well lifetime)
- e. Whether the well-site has/will require a connection to the local and/or national gas distribution grid
- f. Requirement for associated equipment on-site, such as (but not limited to) water treatment facilities and micro-generation plants
- g. Whether multiple well-sites will be linked via shared infrastructure, such as gas pipelines, water pipelines, transport links, communications, etc
- h. A combination of the above criteria – if so, please specify which
- i. Other – if so please specify

Question 4: Please provide any relevant evidence to support your response(s) to Question 3.

Question 5: At what stage should this change be introduced? (For example, as soon as possible, ahead of the first anticipated production site, or when a critical mass of shale gas exploration and appraisal sites has been reached).

Question 6: Please provide any relevant evidence to support your response to Question 5.

Whom did we consult?

The consultation was open to all members of the public and all audiences, however the territorial extent for the proposals would apply only in England. The Government also particularly encouraged responses from onshore oil and gas operators with an interest in shale developments, planning authorities responsible for plan-making and decision-taking in relation

Summary of responses to the consultation on inclusion of shale gas production NSIP regime

to planning applications for shale gas projects, industry bodies, groups or individuals with an interest in the extraction of onshore shale gas and regulators dealing with the use, management and protection of onshore oil and gas resources.

Respondents could either submit to the consultation online via a Citizen Space link, via email or by writing to the Oil and Gas Exploration and Production Team.

The Government also considered the Housing, Communities and Local Government (HCLG) Select Committee report on planning guidance on fracking which was published on 5 July 2018² as part of the consultation submissions. This report included specific conclusions and recommendations on including shale gas production projects in the NSIP regime.

² <https://publications.parliament.uk/pa/cm201719/cmselect/cmcomloc/767/76702.htm>

Summary of consultation responses

Overview of respondents

There were a total of 2369 responses to the consultation. 1339 of these were received online via the Citizen Space site, 992 submitted to the shalegas.NSIP@beis.gov.uk mailbox and 38 were received via written mail to the department.

The respondents can be broken down into the following categories:

Type of Respondent	Number of Responses
Campaign Group	67
Individual member of the public	2142
Industry (including industry body)	14
Local Authority/Council	84
Local Group (including parish councils)	46
Member of Parliament	4
Other Organisation (including national parks and park authorities)	8
Union	2
Other	2

Question 1-2: Proposal to include major shale gas production projects in the Nationally Significant Infrastructure Project regime.

Overview

The majority of respondents opposed the proposal to include major shale gas production projects in the Nationally Significant Infrastructure Project (NSIP) regime. Of the 2369 respondents, 83% opposed the proposal and 1% stated support for the proposal. 1% did not express a view of support or opposition to the proposal and the remaining 15% of respondents were either submissions to the other consultation on permitted development rights (PDR) being led by the Ministry of Housing, Communities and Local Government (MHCLG) or were general statements of opposition to the shale gas industry.

All percentages in the sections below exclude the 15% of respondents who were either submissions to the other consultation on permitted development rights (PDR) being led by the Ministry of Housing, Communities and Local Government (MHCLG) or were general statements of opposition to the shale gas industry.

Opposition

Of the opposing responses, 35% came as part of campaigns which listed concerns over the impact on local democracy and which referred to the Intergovernmental Panel on Climate Change (IPCC) report on carbon emissions. 40% of those opposing these proposals also expressed general concerns over shale gas extraction (such as statements that there are too many risks to shale gas and that all shale gas extraction must be banned) or no specific reasons.

Almost all of the individual members of the public who responded to the consultation were opposed to the proposal (99.5%). Additionally, 95% of local councils were opposed and all of the parish councils who responded were opposed.

There were numerous reasons listed for opposition to the proposal and these can be broadly categorised as below:

- Potential impact on climate change objectives or the environment
- That shale gas production should not be considered of national significance
- Risk of industrialisation of the countryside
- Erosion of local decision-making and reduction in local democracy

Of these reasons for opposition, the most commonly stated was that it would remove local decision-making, with around 60% of respondents quoting this as one of the reasons. Following this, climate change / environmental impacts were the next most commonly stated reasons with around 30% of respondents listing this.

Local councils also highlighted that they felt the local knowledge and expertise was held within the Mineral Planning Authorities (MPAs) and as a result they are in the best position to understand the cumulative impacts and considerations for a shale production site.

The HCLG Select Committee report stated that there was little to be gained from bringing applications at any stage under the NSIP regime and that there is limited evidence it would expedite the application process. It also raised concerns about the relationship between applications and Local Plans in communities and the loss to decision-making at local level were production phase projects to be included in the regime.

Support

Supportive respondents were either individuals, industry or investors, with a small number of local councils (~5%) also supporting the proposal.

Their reasons are summarised below:

- It would help reduce our dependency on imports
- It would bring more certainty to the timings and consistency for determining applications

- Shale gas production is of national importance and significance
- Job creation and economic benefits to local communities

Of these reasons for support, the most commonly quoted was that shale gas production is of national importance (~40%) and that it can contribute to reducing imports (~30%). All of the industry responses indicated that inclusion within the NSIP regime would provide more certainty to the timings for determining planning applications.

Some of the industry stated that the NSIP regime may not be entirely appropriate in all circumstances and so suggested some changes for the benefits to be realised to the industry such as:

- Multiple phases should be included within the regime; when applying for Development Consent an operator should be able to include exploration and appraisal phase wells within the application as well as the production wells.
- A single consenting regime may not be helpful in all circumstances and that since there could be variation to the geology, engineering and requirements of different production sites, a specific threshold(s) for inclusion in the regime may not always be appropriate. As a result, some favoured an opt-in and opt-out mechanism to the regime even if a site met certain threshold(s).
- Conventional oil and gas production should also be included as part of the regime and not solely shale gas production sites.

Question 3-4: Criteria to indicate a nationally significant project with regards to shale gas production.

The consultation asked what the most appropriate criteria could be to determine if a production project is of national significance. Question 3 focussed on which criteria could be most appropriate to trigger inclusion in the NSIP regime. Respondents were then given the opportunity in question 4 to give views on specific thresholds and/or list any additional criteria as part of their response.

The most popular criteria were:

- The number of wells per well-pad (45% of supportive respondents selected this as one of the criteria)
- The estimated volume of recoverable gas from the site (50% of supportive respondents selected this as one of the criteria)
- The estimated production rate from the site (45% of supportive respondents selected this as one of the criteria)

The majority of industry responses stated that the number of wells was the most appropriate criterion for inclusion in the regime, however, they felt this could either be applied per well-pad or over multiple well-pads/sites. In addition, some of the industry responses indicated what the potential threshold could be for the number of wells to trigger inclusion in the regime. There were a range of preferences stated from 10 wells per well-pad to 30 wells (either per well-pad or over multiple well pads) suggested.

Furthermore, there were suggestions from some operators that whichever future criteria and threshold(s) were agreed, there remained a requirement for flexibility and the need to build an 'opt-in' approach into the system. This would mean that operators promoting projects meeting certain descriptions or within certain thresholds would not be obliged to have their production project applications considered under the NSIP regime but could apply to be determined under that regime if suitable. Some industry responses also suggested that all stages of shale gas development, including exploration and appraisal, should be considered under NSIP.

Industry respondents also stated some reservations about setting thresholds based on the estimated recoverable volume per-well site or the estimated production rate. This was because these can vary from site to site and between different geologies and, as they are only estimates, they come with inherent uncertainties. Therefore, it was felt that there was a risk of setting an inappropriate threshold for these criteria which did not capture the relevant production projects within the regime.

Question 5-6: Timing for when shale gas production projects should be moved into the Nationally Significant Infrastructure Projects regime.

The consultation then went on to ask at what stage this change should be introduced. Many supportive and opposing respondents gave views on this. Of the opposing respondents who gave a view, around 95% stated that they felt this change should not be introduced at any point.

In addition, some opposing and supporting respondents stated that they felt it was too early to introduce this change and that our understanding of commercial-scale shale production in the UK needed to be developed further. The proposal could then be revisited once enough production projects had gone ahead to provide a sufficient evidence base.

Of those supporting 65% wanted this change to be in place as soon as possible and 15% stated that it was premature.

Industry respondents stated that they wanted this change to be in place as soon as possible since there were concerns about delays in the current planning system.

Further considerations.

Although the initial consultation was not seeking views on a National Policy Statement (NPS) 16 respondents (supporting and opposing) from industry, MPs and local authorities did state they felt an NPS should be prepared and in place before moving shale gas production into the NSIP regime.

The main reasons for this were that an NPS can set out the national case for shale gas production and the strategic importance of shale gas production projects. An NPS can also be used to set controls on the scale of the projects, this can include specifics around the maximum density of wells per pad and/or a maximum density of well pads over a given area. This could provide a certain degree of control over the cumulative impacts of larger scale production phase projects.

The HCLG Select Committee also stated that a National Policy Statement would be essential if the proposal to include production phase projects in the NSIP regime were to be progressed. They stated that this should include suitable measures to restrict inappropriate proliferation of well-pads and unacceptable impacts on landscapes.

Public Sector Equality Duty.

After considering the potential impacts on each of the protected groups, as defined in section 149 of the Equality Act 2010, it was concluded that development of this initial consultation or potential actions related to the feedback, would not treat some people less favourably than others because of a protected characteristic, either directly or indirectly.

Should we proceed in consulting further at a later date on whether to include shale gas production into the NSIP regime, 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.

Conclusion

The majority (83%) of respondents were opposed to the proposal to move major shale gas production projects into the Nationally Significant Infrastructure Project (NSIP) regime. The reasons for opposition were largely due to the view that this involved the removal of local decision making and local democracy. Respondents also claimed that moving shale gas production into the NSIP regime would contradict the UK's climate change objectives and could lead to adverse environmental impacts.

Around 1% of respondents were supportive of the proposal, with all of the industry representations being in support. The reasons for support were largely due to the view that shale gas production was of national importance and could help to reduce the UK's reliance on imports. The added certainty the NSIP regime would provide on the timing and consistency for determining applications was also a factor. However, there were some suggestions that the NSIP regime may not be appropriate for shale production projects in all circumstances.

Of the criteria for inclusion in the NSIP regime, the number of wells per well-pad, the estimated volume of recoverable gas from the site(s) and the estimated production rate from the site(s) were the most popular criteria selected by supportive respondents. Industry collectively felt the number of wells was most appropriate but there was a range of views as to the exact number of wells the threshold should be set at and what the geographical extent of these should be.

Of the supportive respondents the majority wanted the change to be implemented as soon as possible with all of the industry respondents preferring this option. There were both supportive and opposing respondents who suggested that any imminent change would be premature and that we need a better understanding and evidence base for commercial scale shale gas production site in the UK first.

Finally, a number of supportive and opposing respondents suggested that, were we to progress with the proposal, then a National Policy Statement (NPS) should be prepared outlining the national case for shale gas production.

Government View

The consultation identified that there was a lack of support for making these proposed changes and a lack of consensus on what including shale gas production in the NSIP regime would look like in practice or under what circumstances it would be appropriate. After carefully reviewing and analysing the responses, and considering the recommendations made in the Communities and Local Government Select Committee report, it is our view that while the UK shale industry remains at an early exploratory stage including the production phase into the Nationally Significant Infrastructure Project (NSIP) regime would be premature.

Under current provisions, where a developer considers that a shale production project is of national significance, they can apply for the scheme to be considered through the NSIP regime under section 35 of the Planning Act 2008. This will remain the case and applications for directions to bring projects into the regime will continue to be judged on a case by case basis. However, 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.

This publication is available from: www.gov.uk/government/consultations/inclusion-of-shale-gas-production-projects-in-the-nationally-significant-infrastructure-project-nsip-regime

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