Department for Communities and Local Government

Revised requirements relating to planning applications for onshore oil and gas: proposals paper

Summary of responses and government response

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Department for Communities and Local Government

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Summary

1. After consultation, the Government has brought forward changes to planning application requirements surrounding oil and gas development. These changes introduce proportionate and pragmatic improvements to the current regulatory regime. The Government is also bringing forward changes to clarify the arrangements of the fee payable for onshore oil and gas. This change will help provide certainty to councils, residents and industry.

Introduction

2. The Government is committed to a diverse, efficient and low-carbon energy supply, but recognises that gas, alongside low-carbon technologies, will continue to play an important role in our energy mix in the coming decades as the country moves to a low-carbon economy. Within that context, the Government is keen to maximise indigenous production where it can.

3. The Government has a safe and robust regulatory regime for handling oil and gas extraction (including shale gas), of which a locally-led planning system is a part. However, the Government wants to continue to improve the regulatory planning framework for handling such proposals.

4. In September 2013, the Government published *Revised requirements relating to planning applications for onshore oil and gas*, seeking views on proposals for possible changes to secondary legislation relating to planning application requirements and fees for oil and gas developments in England. The proposed changes included:

- how landowners and tenants are notified by applicants of applications for planning permissions for onshore oil and gas developments;

- the form on which any application for onshore oil and gas developments should be made; and

- calculation of the fee to accompany planning applications for onshore oil and gas development.

5. These proposed measures would require changes to the Town and Country Planning (Development Management Procedure) (England) Order 2010 (S.I. 2010/2184) (“the 2010 Order”), the Town and Country Planning (Section 62A Applications) (Procedure and Consequential Amendments) Order 2013 (S.I. 2013/2140) (“the 2013 Order”) and the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012 (S.I. 2012/2920). This document provides a summary of the responses received to the proposals.

Overview of Responses

6. We received 285 responses to our proposals. The table below indicates the profile of the respondents.

Respondent type	Number of respondents	% of total respondents
Individuals	234	82%
local authorities and public sector organisations	11	4%
business, developers and private sector organisations	15	5%
Non Government Organisations	12	4%
parish and town councils	6	2%
Other	7	2%

7. Of this total, over 40% provided only general comments about shale gas rather than specifically address the proposed changes to legislation.

Notice by applicants of applications for planning permission

8. Section 65 of the Town and Country Planning Act 1990 and Article 11 of the 2010 Order (and Article 9 of the Section 62A Applications Order) set out the manner in which applicants are to give notice of their planning applications to owners or tenants of any land to which the application relates. Currently for development involving the winning and working of minerals by underground workings an applicant must notify the owners and the tenants of the land to which the application relates by: (1) serving each owner and tenant; (2) publishing a notice in a local newspaper and (3) putting up a local site notice in each parish in which the land is situated.

9. The proposals paper sought views on retaining the requirement to serve notice on individual owners and tenants of land above ground area where works are required, but remove this requirement for owners of land where solely underground operations may take place. The requirement for applicants to publish the notice in a newspaper circulating in the locality and site displays in parishes would continue to apply in all cases and in addition a new requirement to proposed alternative approach for a site display in every local authority ward where no parish exists, or where the parish only covers part of the ward.

10. The proposals paper also sought views on whether there was in principle a depth where development encroaches below ground level, above which landowners and tenants should be individually notified by an applicant for an oil and gas development.

11. There were 162 respondents to the question of notification arrangements. Those in favour of the changes were largely from industry and other private sector organisations. They considered that the proposals were logical and that it would be impractical to serve notice individually on all landowners and tenants given the scale of subsequent underground workings. They also believed that the proposed requirement to publish notices in newspapers and erect site displays, would be sufficient to ensure that owners and tenants above underground workings would be given due notice. One respondent called for the proposals to be extended to geothermal technology, on the grounds that such technology faces similar issues to oil and gas development.

12. In contrast those against the changes were from non government organisations, local authorities, individuals and other private sector bodies who felt that the proposal would risk landowners and tenants being left unaware of, and unable to comment on, any subsurface activity on land which they owned. Some of these respondents felt that people should know what is happening beneath their property, since it may affect the peaceful enjoyment of their property, and because of any liability issues that might arise. Other respondents considered that the existing process was not too onerous on oil and gas companies, and that the industry should be seen to be more transparent in their approach. A number also considered that the proposal may aid or abet trespassing and that drilling will undermine the amenity value of the effected properties.

13. An alternative option in the proposals paper was to notify owners and tenants individually where works are required for oil and gas developments where the underground operations take place above a certain depth. Of the 118 respondents, the majority stated that the requirement to notify owners and tenants must be retained, whatever depth the underground operations take place.

14. Of those in favour of the proposal, there were a variety of depths that respondents considered suitable. These ranged from 100metres to 250 metres below ground depending on a range of circumstances, such as: when the drilling will deviate from the surface area of the well-pad; the depth at which surface level impacts are likely to be experienced; and the depth of existing apparatus of statutory undertakers.

Government Response

15. We intend to take forward our proposals to reform the notification requirements for planning applications for underground operations for oil and gas extraction. The Government believes that underground operations for oil and gas operations are different in character from other forms of development. This is because:

    - the development on the surface is limited and takes place on a relatively small surface area;

    - extraction takes place at a significant depth below the earth’s surface (over 1 kilometre deep), and at such depths the boreholes are between only 6-12 inches in diameter;

- extraction takes place over a significant underground area, involving multiple landowners and/or agricultural tenancies; and

- at such depths it is often not possible to identify the exact route of any lateral drilling, so the area of development on a planning application necessarily has to be drawn widely to ensure it is broad enough to cover any potential route of lateral drilling. A widely drawn area would necessarily require the notification of significant numbers of owners.

16. We are clear that these measures do not remove the basic requirement to notify landowners of applications for development which relates to their land; nor does it impact on the need for the applicant to obtain the permission of the landowner to enter onto land to extract oil and gas. Nor will these measures affect or alter any discretionary pre-application consultation between the applicant and local communities (including landowners), or any other publicity or consultation requirements that planning applications must go through. Overall, the Government considers that the proposed measures are strike the right balance between the need to notify affected owners and tenants while ensuring the implementation for developers is proportionate and pragmatic in the unique circumstances of onshore oil and gas development.

17. We have carefully considered whether to extend the measures to cover geothermal technology. Whilst we recognise the similarities in this approach, given the importance the Government attaches to exploration of unconventional oil and gas, we are pressing ahead with changes to oil and gas development only at the moment.

18. We have decided not to introduce requirements to serve notice on individual land owners and tenants only where development relates to land above a certain depth. We consider that further work is required to ensure that any such measures are practical and pragmatic before considering whether or not to introduce them.

Standard Application Form for onshore oil and gas

19. Article 6(4)(a) of the 2010 Order requires that applications for planning permission for minerals development (including oil and gas) are made on an application form provided by the mineral planning authority. This is in contrast to other forms of development, where Article 6(1)(a) stipulates that such applications must be on a form published by the Secretary of State (or one substantially like it). The proposals paper invited comments on whether to introduce a standard application form for oil and gas developments. The purpose of these changes is to streamline the planning application process, and make it compulsory for planning authorities and applicants to such a form (or one substantially like it).

20. The majority of the 78 respondents who responded to this proposal welcomed the Government's proposal. These include industry, local authorities and individual representations. They felt that a standard form would help to streamline the planning application process, provide a more consistent approach to applications, and reduce additional costs and burdens compared to the current arrangements.

21. In contrast a small number of respondents, exclusively individual respondents, opposed the introduction of a standard application form. Reasons included: that a standard form was designed to streamline the planning process so as to help the oil and gas industry, not local communities; that the imposition of a standard form undermined the principles of localisms; it would encourage subterranean trespass onto private property; and that draft form was too weak.

22. We received a number of detailed comments on how to improve the standard application form. This included comments from a number of individuals and non government organisations that the guidance accompanying the standard application form must include sufficient information to address the pollution of groundwater, seismic activity and the impacts of climate change.

Government Response

23. We intend to take forward our proposals to introduce a standard application form for oil and gas development. However, we will be making detailed changes to simplify the form. We consider that a standard application form will provide clarity on the amount of information required with each application, and improve the quality of decision making by planning authorities.

24. We recognise the concerns surrounding the impact on groundwater and seismic activity, but consider that the proposed application form already requires sufficient information to be provided. Government planning practice on oil and gas, published in July, seeks to clarify the relationship between planning and other regulatory regimes. The guidance makes it clear that the Environment Agency has responsibility for ensuring that risk to groundwater is appropriately identified and mitigated, but that planning authorities can and do play a role in preventing pollution of the water environment through various means.

25. The Environment Agency is also responsible for issues such as the safe handling of mining waste from the operation, and final off-site disposal of water. The Health and Safety Executive is responsible for the design, construction and integrity of all wells used in extracting oil and gas, as well as their safe decommissioning; whilst the Department of Energy and Climate Change is also responsible for controls on flaring and venting of gas and controls to mitigate seismic risks. Whilst the mineral planning authority should be able to rely on the assessment of the other regulatory bodies, they must still be satisfied that these issues are properly addressed.

26. We also do not consider that there needs to be a specific question on the impacts of climate change. Planning authorities must determine applications in line with the local development plan unless material considerations indicate otherwise. Each application should be considered on its own merits in line with planning legislation and relevant national policy. This includes the National Planning Policy Framework.

Application fees

27. The Secretary of State has powers to make and amend regulations setting the fees that applicants for planning permission must pay to the local planning authority considering the application (see section 303 of the 1990 Act). Schedule 1 to the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012 sets out the definition of a site area for the purposes of calculating fees, as well as the Scale of Fees for different categories of development. Existing guidance, set out in Circular 4/2008, reflects the Government's intention that only the above ground works should be taken into account when calculating the fee payable to the mineral planning authority. Whilst this is the clear intention, the Government is aware of individual instances over the last 2 years where such interpretation has not been followed. The proposals papers sought views on amending the 2012 Regulations to clarify that fees should be calculated on the basis of the area of the above ground works only.

28. Of the 105 responses on this issue, those in favour of the proposal were largely from industry and other private sector organisations. These respondents in favour of the clarificatory measures considered that planning issues were mainly to deal with the surface impact given that other regulatory regimes largely dealt with the impact of extraction at the likely depths below the surface. The UK Oil and Gas Association did, however, offer an increase in fees by 10% for all phases of onshore oil and gas development in recognition of the increased public scrutiny of applications.

29. In contrast the majority of those against the proposal were from local authorities, individuals and non government organisations. Some respondents considered that the level of fees were insufficient to cover the cost of dealing with complex and contentious issues, including underground elements they considered relevant to planning. Other respondents considered that limiting the fees to the surface area represented a subsidy to the oil and gas industry, and that fees should be set against the issues that need to be assessed. Some respondents called for a separate category of fees for exploration and production of unconventional oil and gas (including shale gas), given the different impacts between unconventional and conventional gas.

Government Response

30. Subject to Parliamentary Procedure, we intend to take forward the proposals to clarify the arrangements that the fee payable for onshore oil and gas should be calculated on the basis of the area of the above ground works only. We will also increase fees for planning applications for onshore oil and gas development by 10% on the basis of surface area works.

31. We recognise that longstanding practice for the majority of mineral planning authorities has been to calculate the levels of fees by having regard to the area of above ground works. This approach recognises the primary focus of planning on the surface impacts of any oil and gas development, and rely more on other regulatory regimes to manage sub-surface issues as appropriate. The proposed change will provide clarity and be consistent with our longstanding policy intention.

32. However, we recognise that applications for oil and gas are subject to increased public interest and scrutiny, especially over recent months. Given this we have decided to increase the application fees for oil and gas development by 10% based on the surface area. We also recognise that there are other means by which mineral planning authority may raise additional resources. Our planning practice guidance on onshore oil and gas, published in July 2013, makes clear our preference for the applicant to work with the planning authority to ensure as much preparation as possible at an early stage. Mineral planning authorities may be able to charge for such advice under section 93 of the Local Government Act 2003. In addition, mineral planning authorities may also enter into Planning Performance Agreements with applicants to ensure that a clear and efficient process is in place for dealing with an application. As part of any agreement the planning authority may negotiate additional resources.

33. We do not consider that there is any current justification for distinct categories between conventional and unconventional oil and gas, as the techniques used are similar for both forms of extraction (especially at exploratory stage).

Other comments raised by respondents

34. There were a large number of comments which addressed issues beyond the changes under consideration in the proposals paper. These included comments by some respondents that oil and gas (but particularly shale gas) should not form part of the Government's energy portfolio. Other respondents sought clarification on the extent of the planning application boundary, and others felt that applications for oil and gas development, particularly for shale gas, should be subject to a full Environmental Impact Assessment given it remains an uncertain form of development.

Government Response

35. We do not consider that these issues are relevant to the proposals under consideration.

Annex 1

Issues on which the proposals paper sought comments

36. Comments were invited on the particular issues:

- Our proposed approach to notice requirements for planning applications for underground operations for onshore oil and gas extraction.

- On an alternative option to retain the requirements to notify owners and tenants individually where works are required for oil and gas development where the underground operations take place above a certain depth. Thoughts on any depth which may be suitable are also welcome.

- The proposed contents, questions and structure of the proposed standard application form.

- The proposal to clarify that fees for planning applications for onshore oil and gas developments should be calculated by reference to the site area of the above - ground works.

- Other comments