



Department for
Communities and
Local Government

Revised requirements relating to planning applications for onshore oil and gas

Proposals for comment

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Introduction

1. The Government is committed to an effective and efficient planning system. It has taken forward a series of measures to simplify and streamline the arrangements for making and determining planning applications in England. These have included streamlining requirements in relation to design and access statements, requiring a proportionate approach to information that local planning authorities can request with planning applications and reintroducing the right of appeal where a local planning authority refuses to validate a planning application.
2. On 19 July the Government published planning practice guidance for onshore oil and gas¹. Its intention was to provide clarity on the role of the planning system in taking forward applications for oil and gas development, including the important exploratory stage of extraction. The Written Ministerial Statement² published on the same day indicated that *“the Government is minded to amend existing secondary legislation in relation to application requirements and fees for onshore oil and gas development. We believe that greater clarity in law will help provide certainty to councils and encourage investment.”*
3. This paper sets out a number of proposals for possible changes to secondary legislation. Where appropriate, any changes will be accompanied by short planning guidance.
4. Comments on these proposals and suggestions about how to achieve the Government’s aim would be welcome. Details of how to contribute are at the end of the document.

Consideration

5. The Government wants to ensure that application requirements for onshore oil and gas development are fit for purpose and proportionate. The changes proposed here cover:
 - a) how landowners and tenants are notified by applicants of applications for onshore oil and gas development;
 - b) the form on which any application for onshore oil and gas development should be made; and
 - c) calculation of the fee to accompany planning applications for onshore oil and gas development.

The proposals set out below are for amendments to secondary legislation and guidance which applies in England only.

¹ <https://www.gov.uk/government/publications/planning-practice-guidance-for-onshore-oil-and-gas>

² <https://www.gov.uk/government/speeches/local-planning-and-shale-gas>

Notice by applicants of applications for planning permission

6. Planning permission is required for development, meaning building, engineering, mining or other operations in, on, over or under land³. Where someone other than the sole owner of land applies for planning permission to develop land, they are legally required to give notice of the application to owners or tenants of any of the land to which the application relates. This is set out in section 65 of the Town and Country Planning Act 1990 and article 11 of the Town and Country Planning (Development Management Procedure) (England) Order 2010⁴.
7. Article 11(2) of the 2010 Order applies in the case of an application for planning permission for development consisting of the winning and working of minerals by underground operations. It requires the applicant to give notice (using a form provided in the Order):

to any person (other than the applicant) who on the prescribed date is an owner of any of the land to which the application relates, or a tenant,

(a) by serving the notice on every such person whom the applicant knows to be such a person and whose name and address is known to the applicant;

(b) by publication of the notice after the prescribed date in a newspaper circulating in the locality in which the land to which the application relates is situated; and

(c) by site display in at least one place in every parish within which there is situated any part of the land to which the application relates, leaving the notice in position for not less than 7 days in the period of 21 days immediately preceding the making of the application to the local planning authority.

8. The rationale for these provisions is that any owner or tenant of land should be made aware that a planning application is going to be submitted in relation to the land in which they have an interest to ensure they have the opportunity to make representations.
9. However, the Government considers that underground operations for the winning and working of oil and gas are different in character from other existing forms of development, including those that involve some development under land or extraction of other minerals:
 - In the case of the exploration and exploitation of underground oil and gas, the development on the surface (e.g drilling rigs, associated plant and infrastructure and temporary buildings) is limited and takes place on a relatively small surface area (typically 1-2 hectares maximum).

³ This is subject to exceptions: see section 55 of the Town and Country Planning Act 1990.

⁴ The meaning of "owner" is set out in section 65(8) of the 1990 Act and "tenant" means the tenant of an agricultural holding any part of which is comprised in the land to which the application relates.

- Extraction of the oil and gas takes place at a significant depth below the surface – most viable deposits of oil and gas in the UK are found at a depth of greater than 1km underground and unconventional hydrocarbons deeper still. Wells are drilled vertically to reach the geological layer where lateral drilling may take place. At such depths the wells that are drilled are between 6-12 inches in diameter, and there are controls in place to ensure that there should not be any surface impacts (outside the area where the oil and gas is brought to the surface, stored and then moved off-site). Extraction of the oil and gas takes place over a significant underground area, involving multiple landowners and/or agricultural tenancies.
 - Additionally, it is often not possible to identify exact routes of lateral drilling at the time of application since this will depend on the geology of the land, which can only be accurately known once drilling has commenced. As a consequence, at the time of an application, it is difficult to precisely define the underground area of land where lateral drilling will take place and the area of land from which the oil and gas will be removed. This means that because of the uncertain route of the underground works the area of land identified in a planning application which is to be developed has to be drawn widely to ensure that it is broad enough to cover any potential route of lateral drilling and area of working. A widely drawn area would necessarily require the notification of significant numbers of owners.
10. In light of this, the Government considers that it is unreasonable and impractical to require applicants for planning permission for underground oil and gas working to serve notice on owners and tenants of land across such a widely drawn area. It is therefore appropriate to review the manner in which they are notified for onshore oil and gas planning applications.
11. The Government is minded to amend the notice requirements for applications for planning permission for underground oil and gas operations. It would retain the requirement to serve notice on individual owners and tenants of land on the above ground area where works are required (who the applicant knows to be such a person and whose name and address is known to the applicant) but remove this requirement for owners of land beyond this area ie the owners of land where solely underground operations may take place.
12. The requirement for applicants to publish the notice in a newspaper circulating in the locality and for site display in parishes would continue to apply in all cases. But the Government notes that not all areas of England are covered by parishes. It is therefore proposed to add a new requirement to the 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.
13. Equivalent amendments would be made to the instrument which sets out procedures for applications made directly to the Secretary of State under section 62A of the 1990 Act (where the local planning authority has been designated as poorly performing).

14. The Government's view is that the measures proposed above would be sufficient to ensure that owners and tenants of land above such workings are given notice of applications for planning permission for development under their land. They will, therefore, continue to have the opportunity to make representations on applications. Furthermore, no changes are proposed to article 13 of the 2010 Order which sets out publicity requirements for a planning application once it is made to the local planning authority. Consultation arrangements in Part 3 of the 2010 Order would also remain unchanged.

Standard Application Form for onshore oil and gas

15. Applications for planning permission for development "consisting of mining operations or the use of land for mineral-working deposits" are made on an application form provided by the mineral planning authority, whereas other applications for planning permission are made on a form published by the Secretary of State (see articles 6(1)(a) and 6(4)(a) of the 2010 Order).

16. The Government proposes to introduce a standard application form for planning applications for onshore oil and gas development. The purpose of this change is to simplify the planning process, largely by:

- preventing the need for applicants to familiarise themselves with many different forms and requirements, thereby improving efficiency;
- preventing unnecessary delays to the time it takes to make decisions by improving the quality of the applications that are submitted without local authorities requesting further information;
- assisting in consistency between applications which may cover more than one local authority area, and
- improving transparency, as standardising the information received will enable greater electronic transfer and more efficient handling of electronic information.

17. The Government therefore proposes to publish a standard application form for applications for onshore oil and gas development, and to make it compulsory for local authorities and applicants to use such a form, or a form substantially to the like effect, so that any application for development which is not on the standard form will not be validated or processed. The same application form will cover all phases of oil and gas development (see paragraph 147 of the National Planning Policy Framework).

18. A proposed form is attached at Annex A for consideration, and comments would be welcome on its contents and structure.

19. Equivalent forms will be developed, covering all forms of minerals development for applications made directly to the Secretary of State where a minerals planning authority has been designated as poorly performing.

Application fees

20. Planning fees were introduced in 1981, with the intention that users and potential beneficiaries of the planning system, rather than taxpayers in general, meet the costs incurred by local planning authorities in deciding planning applications.

21. The Secretary of State has power 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). The Scale of Fees for different categories of development are set out in Part 2 of Schedule 1 to the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012. The most relevant categories and fees for applications for oil and gas development are:

<p>9. The carrying out of any operations connected with exploratory drilling for oil or natural gas.</p>	<p>(1) Where the site area does not exceed 7.5 hectares, £385 for each 0.1 hectare of the site area; (2) where the site area exceeds 7.5 hectares, £28,750; and an additional £115 for each 0.1 hectare in excess of 7.5 hectares, subject to a maximum in total of £250,000.</p>
<p>10. The carrying out of any operations not coming within any of the above categories.</p>	<p>(1) In the case of operations for the winning and working of minerals— (a) where the site area does not exceed 15 hectares, £195 for each 0.1 hectare of the site area; (b) where the site area exceeds 15 hectares, £29,112; and an additional £115 for each 0.1 hectare in excess of 15 hectares, subject to a maximum in total of £65,000; (2) in any other case, £195 for each 0.1 hectare of the site area, subject to a maximum in total of £1,690.</p>

22. The site area for these purposes is the area of land to which the application relates (see paragraph 11(1) of Part 1 of Schedule 1).

23. Existing guidance (Circular 4/2008), which explains how to calculate fees for each category of development, states that, for the winning or working of minerals:

“In the case of any underground workings, the site area should include all the land under which any of the workings are to take place. However, development of oil and gas reserves (other than Category 8⁵) is regarded as above ground working in this context.”

24. This reflects the Government’s intention that, although underground workings would normally be considered as part of the site area, development of oil and gas reserves are regarded as an exception where the above ground workings only are taken into account when calculating the fee payable to the minerals planning authority.

25. For the avoidance of doubt the Government intends (subject to Parliamentary procedure) to amend the 2012 Regulations to clarify that, for the purposes of onshore oil and gas development, fees should be calculated on the basis of the area of the above ground works only. Any changes will be reflected in revised fees guidance to replace Circular 04/2008.

⁵ Category 8 referred to in Circular 04/2008 is Category 9 in the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012.

Your views

In providing comments on the proposed revisions to planning applications relating to planning applications for onshore oil and gas, comments are invited in particular on the following:

1. Its proposed approach to notice requirements for planning applications for underground operations for onshore oil and gas extraction.
2. An alternative option to retain the requirement 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. Thoughts on any depth which may be suitable are also welcome.
3. The proposed contents, questions and structure of the standard application form.
4. 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.
5. Other Comments

The opportunity to comment on these proposals is aimed primarily at developers and local authorities because of the technical content, but will have wider interest.

This paper was published on Monday 2 September 2013. We would welcome your views by Friday 14 October 2013.

Please send your views by e-mail to oil.gas@communities.gsi.gov.uk, or on survey monkey at: <https://www.surveymonkey.com/s/TYN2ZJQ>

Alternatively, paper communications should be sent to:

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