



Ministry of Housing,
Communities &
Local Government

Permitted development for shale gas exploration

Consultation



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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:

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About this consultation

This consultation document and consultation process have been planned to adhere to the Consultation Principles issued by the Cabinet Office.

Representative groups are asked to give a summary of the people and organisations they represent, and where relevant, who else they have consulted in reaching their conclusions when they respond.

Information provided in response to this consultation, including personal data, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 2018 (DPA), and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, as a public authority, the Department is bound by the Freedom of Information Act and may therefore be obliged to disclose all or some of the information you provide. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

The Ministry of Housing, Communities and Local Government will process your personal data in accordance with the law and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties. A full privacy notice is included at Annex A.

Individual responses will not be acknowledged unless specifically requested.

Your opinions are valuable to us. Thank you for taking the time to read this document and respond.

Are you satisfied that this consultation has followed the Consultation Principles? If not or you have any other observations about how we can improve the process please contact us via the [complaints procedure](#).

Scope of the consultation

Topic of this consultation:	<p>This consultation seeks views on the principle of granting planning permission for non-hydraulic shale gas exploration development through a permitted development right. It covers the following areas:</p> <ol style="list-style-type: none"> 1. Whether to introduce a permitted development right for non-fracturing shale gas exploration development 2. Definition of non-hydraulic fracturing shale gas exploration 3. Development not permitted 4. Development conditions and restrictions 5. Prior approval 6. Time-limited or permanent permitted development right 7. Public sector equality duty
Scope of this consultation:	The Ministry of Housing, Communities and Local Government is consulting on the principle of granting planning permission for non-hydraulic shale gas exploration development through a permitted development right, as introduced through the 17 May 2018 joint Written Ministerial Statement on Energy Policy.
Geographical scope:	These proposals relate to England only.
Impact Assessment:	Impact assessment not required.

Basic Information

To:	This consultation is open to everyone. We are keen to hear from a wide range of interested parties from across the public and private sectors, as well as from the general public.
Body/bodies responsible for the consultation:	Ministry of Housing, Communities and Local Government
Duration:	This consultation will last for 14 weeks from 19 July 2018.
Enquiries:	For any enquiries about the consultation please contact: shaleconsultation@communities.gsi.gov.uk
How to respond:	<p>You may respond by completing an online survey at:</p> <p>https://www.surveymonkey.co.uk/r/9LDDSVZ</p> <p>We strongly encourage responses via the online survey, particularly from organisations with access to online facilities such as local authorities, representative bodies and businesses. Using the online survey greatly assists in our analysis of the</p>

responses, enabling more efficient and effective consideration of the issues raised for each question.

Alternatively you can email your response to the questions in this consultation, using the pro forma found at the end of this document, to:

shaleconsultation@communities.gsi.gov.uk

If you are responding in writing, please make it clear which questions you are responding to.

Written responses should be sent to:

Shale Consultation
Planning Infrastructure Division
Ministry of Housing, Communities and Local Government
3rd Floor
Fry Building
2 Marsham Street
LONDON
SW1P 4DF

When you reply it would be very useful if you confirm whether you are replying as an individual or submitting an official response on behalf of an organisation and include:

- your name,
- your position (if applicable),
- the name of organisation (if applicable),
- an address (including post-code),
- an email address, and
- a contact telephone number

Background to the consultation

1. Domestic onshore gas production, including shale gas has the potential to play a major role in further securing our energy supplies and creating economic benefits locally and nationally, including new jobs.
2. The UK is approaching an important moment in the exploration stage of shale gas extraction. Shale gas operators have been making steady progress at the various stages of applying for the relevant permissions and consents for shale gas extraction. Later this year, we may see the first shale gas extraction activity since 2011.
3. Written Ministerial Statements on energy and planning policy¹ made by Greg Clark and James Brokenshire on 17 May 2018 reiterated the Government's view that there are potentially substantial benefits from the safe and sustainable exploration and development of our onshore shale gas resources.
4. The statement announced a range of measures to facilitate timely decisions on shale planning applications and support Mineral Planning Authorities, including:
 - Holding an early stage consultation, in summer 2018, on the principle of whether non-hydraulic fracturing shale exploration development should be granted planning permission through a **permitted development right**;
 - Consulting, in summer 2018, on the criteria required to trigger the **inclusion of shale production projects into the Nationally Significant Infrastructure Projects regime**.
5. The Government have also consulted on a draft revised National Planning Policy Framework (NPPF). The consultation closed on 10 May 2018. In due course the revised National Planning Policy Framework will sit alongside the Written Ministerial Statement. We intend to publish revised planning practice guidance on shale development once the revised National Planning Policy Framework has been launched, ensuring clarity on issues such as cumulative impact, local plan making, and confirmation that planners can rely on the advice of regulatory experts.
6. The purpose of this consultation is 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**, and in particular the circumstances in which it would be appropriate. Any permitted development right would not apply to the appraisal and production operations of shale gas extraction.

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

7. Further to this consultation, the Government will strengthen community engagement by consulting on whether developers should be required to conduct pre-application consultation prior to shale gas development. This consultation will be launched in Autumn 2018.

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

8. It is the Government's view that there are potentially substantial benefits from the safe and sustainable exploration and development of our onshore shale gas resources.
9. The UK must have safe, secure and affordable supplies of energy with carbon emissions levels that are consistent with the carbon budgets defined in our Climate Change Act and our international obligations. We believe that gas has a key part to play in meeting these objectives both currently and in the future. The development of the shale gas industry so far has already led to millions of pounds being invested in the UK, supporting businesses and the supply chain, and creating British jobs. We have recently seen five planning approvals for exploratory shale development.
10. The Government 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.
11. Recent decisions on shale exploration planning applications remain disappointingly slow against a statutory time frame of 16 weeks where an Environmental Impact Assessment is required. Where there has been agreement on time extensions, applications determined by mineral planning authorities have taken up to 83 weeks for decision. The Government is committed to help ensure every planning application is dealt with as quickly as possible.
12. The UK has world class regulation to ensure that shale gas exploration can happen safely, respecting local communities and safeguarding the environment. Any developments that would be permitted through any potential permitted development right for non-hydraulic fracturing shale gas exploration, would still be required to receive the appropriate consents from the three regulators (the Environment Agency, the Health and Safety Executive and the Oil and Gas Authority) before development can proceed.
13. The measures announced in the joint Written Ministerial Statement on 17 May 2018 to consult on the principle of whether non-hydraulic fracturing shale gas exploration development should be granted planning permission through a permitted development right aims to support a decision-making regime that is fit for the future needs of the energy sector.

Permitted development rights

14. Permitted development rights are a national grant of planning permission. They provide a simpler, more certain route to encourage development and speed up the planning system, and reduce the burden on developers and local planning authorities by removing the need for planning applications. Since 2013 we have brought forward a range of new permitted development rights including change of use of offices, shops and other high street uses and agricultural buildings to residential use, installation of digital communications masts (up to 25 metres), and increased rights to extend homes and business premises.
15. Permitted development rights are set out in the [Town and Country Planning \(General Permitted Development\) \(England\) Order 2015](#). The Order sets out both what is allowed under each permitted development right, and any exclusions, limitations and conditions that apply to comply with the legal duty to mitigate the impact of development granted under permitted development. For example, most permitted development rights are subject to conditions that seek to minimise their impact and to protect local amenity, others are subject to geographic exclusions to ensure environmental protections are maintained. All however, are subject to clearly defined restrictions to cover the specific nature and scope of the operation or quantum of development that would benefit from a permitted development right.
16. Where a proposed development does not fall within the permitted development limits, this does not mean that the development is not acceptable and cannot be built. It means that an application for planning permission needs to be made so that the local planning authority can consider all the circumstances of the case.
17. Permitted development only covers the planning aspects of the development. It does not remove requirements under other regimes (e.g. environmental licencing and permitting or environmental legislation).
18. Some permitted development rights are subject to a requirement to seek the prior approval of the local planning authority for certain planning matters before carrying out development.

The definition of non-hydraulic fracturing shale gas exploration

19. The exploratory phase of oil and gas extraction seeks to acquire geological data to establish whether hydrocarbons are present, which in the case of shale gas may involve drilling an exploration well, and conducting seismic surveys. This is then followed by a (testing) appraisal stage, and then a production stage.
20. In line with the broad focus of the Written Ministerial Statement on supporting shale gas development, any permitted development right for exploratory shale drilling would only apply to **shale gas exploration, and for non-hydraulic fracturing operations to take core samples for testing purposes. We consider that it would not be appropriate for it to allow for the injection of any fluids for the purposes of hydraulic fracturing. The right would not apply to all onshore oil and gas exploration and / or extraction operations.** To also ensure that no hydraulic fracturing would take place and to ensure that the right is fit-for-purpose to align with the 2017 Conservative Manifesto commitment, it would be necessary to tightly define in legislation what development is permitted. Any permitted development right for non-hydraulic fracturing shale gas exploration would not be designed to circumvent the regulatory processes currently culminating in the hydraulic fracturing consent provisions.
21. We consider that an appropriate definition could be:
- **'Boring for natural gas in shale or other strata encased in shale² for the purposes of searching for natural gas and associated liquids, with a testing period not exceeding 96 hours per section test'.³**
22. Where a developer intends to use hydraulic fracturing as part of the operation, or as would be necessary at the appraisal stage, they would be required to obtain planning permission from the relevant mineral planning authority.

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?

² "Source-rock production" means the getting of Petroleum contained in -

(a) shale or other strata encased in shale; or

(b) coal seams;

by drilling Wells into the strata in which that Petroleum is contained - [The Petroleum Licensing \(Exploration and Production\) \(Landward Areas\) Regulations 2014](#).

³ [Oil and Gas Authority Consolidated Onshore Guidance](#) - Drill Stem Tests. More extensive testing is considered to be an extended well test.

Question 2

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

Development not permitted

23. The Government remains committed to ensuring that the strongest environmental safeguards are in place. The formulation of any permitted development right will have regard to environmental and site protection laws such as those for Areas of Outstanding Natural Beauty, Scheduled Monuments, conservation areas⁴, Sites of Special Scientific Interest and World Heritage Sites, National Parks or Broads⁵.
24. **By law, development which is likely to have significant effects on the environment requiring an Environmental Impact Assessment would not be permitted development.**⁶ If the proposed development would fall into Schedule 2 of the Environmental Impact Assessment Regulations, it would only be permitted where a local planning authority has issued a screening opinion determining that the development is not Environmental Impact Assessment development, or where the Secretary of State has directed that it is not Environmental Impact Assessment development, or that the development is exempt from the Environmental Impact Assessment Regulations.
25. Some existing permitted development rights also exclude various other types of land.⁷ For example there are restrictions on agricultural change of use on sites designated as a scheduled monument, safety hazard areas, and military explosive areas. Others do not permit development on land safeguarded for aviation or defence purposes.

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

⁴ An area designated as a conservation area under section 69 of the [Planning \(Listed Buildings and Conservation Areas\) Act 1990](#) (designation of conservation areas).

⁵ Known as Article 2(3) land by virtue of the [General Development Permitted Order \(2015\)](#).

⁶ <http://www.legislation.gov.uk/uksi/2015/596/article/3/made>

⁷ <http://www.legislation.gov.uk/uksi/2015/596/schedule/2/made>

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

Development conditions and restrictions

26. The UK has a world class regulatory regime to ensure that shale exploration can happen safely, respecting local communities and safeguarding the environment. To control the impact of a proposed development, protect local amenity, and ensure compliance with the legal duty to mitigate the impact of development,⁸ permitted development rights can impose specific conditions and restrictions that are nationally prescribed in legislation.

27. We understand that despite being a temporary operation, due to the scale of shale gas exploration development, any permitted development right would require specific conditions and restrictions to mitigate any potential adverse effects and impacts of the development.

28. Some existing permitted development rights for the use of land in respect to mineral exploration carry conditions and restrictions to ensure the impact of the development is mitigated, including:

- Agreement with the relevant mineral planning authority on the restoration of the conditions of the land before the development took place;
- Limits on the height of any structure assembled or provided;
- Limits on the height of any substructures and ancillary drilling compounds;
- Time-limits on both the operation and duration of works;

⁸ <http://www.legislation.gov.uk/ukxi/2017/571/contents/made>

- Restrictions on any operations carried out within a certain distance of sensitive site uses;
- Restrictions on the number of wells within a certain area;
- Restrictions on development near an aerodrome or airport;
- No removal of trees from the land.⁹

29. Permitted development rights can also require the local planning authority to consult with bodies with a relevant interest in the impact of the development. In the case of shale gas exploration this can include: the Environment Agency, the Health and Safety Executive, Highways Agency, Natural England, Historic England, as well as others.

30. For a permitted development right for non-hydraulic fracturing shale gas exploration development, in addition to being a temporary operation, any conditions and restrictions attached would be outlined in the legislation, which would create the national permission for the development.

Question 4

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

Prior approval

31. A condition of any permitted development right can also be a requirement that the developer has to seek prior approval from the local planning authority. Prior approval means that a developer has to seek approval from the local planning authority that specified elements of the development as listed in the legislation are acceptable before work can proceed. A local planning authority cannot consider any other matters when determining a prior approval application. The matters for prior approval vary depending on the type of development, but it can involve a requirement for public engagement through site or written notices to allow representations from local residents, and the views of statutory consultees.

32. The requirements relating to prior approval are much less prescriptive than those relating to planning applications. This is deliberate, as prior approval is a light-touch process which applies where the principle of the development has already been established.

⁹ [General Development Permitted Order \(2015\) Part 17](#) Class K – use of land etc for mineral exploration.

33. For shale gas exploration, local consideration of particular elements of the development may potentially be required to be approved by the relevant mineral planning authority through a prior approval process. By way of example, the prior approval considerations might include transport and highways impact, contamination issues, air quality and noise impacts, visual impacts, proximity of occupied areas, setting in the landscape, and could include an element of public consultation.

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?

Time-limited or permanent permitted development right

34. At this stage it is unclear the impact a permitted development right for non-hydraulic fracturing shale exploration development would have or even whether such a right would be effective given the exclusions, limitations and restrictions that it may be subject to. Consistent with other types of development permitted by the regime, the Government could seek to monitor and measure the success of the right by granting it time-limited consent. Time-limited permitted development rights enable for a review of the impacts and outcomes, and inform whether permitted development rights should be retained permanently.
35. In line with other types of development permitted by the regime it could be appropriate that a permitted development right for non-hydraulic fracturing shale gas exploration would only apply for 2 years starting from the date at which the secondary legislation implementing these changes comes into force.

Question 6

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

Public sector equality duty

36. We are required to assess these proposals by reference to the public sector equality duty contained in the Equality Act 2010. We do not consider that the matters raised in this consultation will have a negative direct or indirect impact on people with protected characteristics, having regard to the need to eliminate discrimination, foster good relations or and advance equality of opportunity. However, we would welcome your comments as part of this consultation.

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?

Annex A

Personal data

The following is to explain your rights and give you the information you are entitled to under the Data Protection Act 2018.

Note that this section only refers to your personal data (your name address and anything that could be used to identify you personally) not the content of your response to the consultation.

1. The identity of the data controller and contact details of our Data Protection Officer

The Ministry of Housing, Communities and Local Government (MHCLG) is the data controller. The Data Protection Officer can be contacted at dataprotection@communities.gsi.gov.uk

2. Why we are collecting your personal data

Your personal data is being collected as an essential part of the consultation process, so that we can contact you regarding your response and for statistical purposes. We may also use it to contact you about related matters.

3. Our legal basis for processing your personal data

The Data Protection Act 2018 states that, as a government department, MHCLG may process personal data as necessary for the effective performance of a task carried out in the public interest. i.e. a consultation.

3. With whom we will be sharing your personal data

Your personal data will not be shared with any organisation outside of MHCLG

4. For how long we will keep your personal data, or criteria used to determine the retention period.

Your personal data will be held for two years from the closure of the consultation

5. Your rights, e.g. access, rectification, erasure

The data we are collecting is your personal data, and you have considerable say over what happens to it. You have the right:

- a. to see what data we have about you
- b. to ask us to stop using your data, but keep it on record
- c. to ask to have all or some of your data deleted or corrected

d. to lodge a complaint with the independent Information Commissioner (ICO) if you think we are not handling your data fairly or in accordance with the law. You can contact the ICO at <https://ico.org.uk/>, or telephone 0303 123 1113.

6. The data you provide directly will be stored by Survey Monkey on their servers in the United States. We have taken all necessary precautions to ensure that your rights in terms of data protection will not be compromised by this.

7. Your personal data will not be used for any automated decision making.

8. Your personal data will be stored in a secure government IT system.

If you submit information to this consultation using Survey Monkey, it will be moved to our internal systems at a date following the consultation publication date.