



Ministry of Housing,
Communities &
Local Government

Compulsory community pre-application consultation for shale gas development

Consultation



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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 whether applicants should be required to conduct pre-application consultation with the local community prior to submitting a planning application for shale gas development. It covers the following areas:</p> <ol style="list-style-type: none"> 1. Whether community pre-application consultation should be compulsory prior to submitting a planning application for shale gas development. 2. Whether compulsory community pre-application consultation for shale gas development should follow one of the existing processes, or some other process. 3. Defining what shale gas development should be subject to compulsory community pre-application consultation.
Scope of this consultation:	The Ministry of Housing, Communities and Local Government is consulting on whether applicants should be required to conduct community pre-application consultation prior to undertaking shale gas development, as announced in 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 10 weeks from 31 October 2018.
Enquiries:	For any enquiries about the consultation please contact: shaleconsultation@communities.gov.uk
How to respond:	<p>You may respond by completing an online survey at:</p> <p>https://www.surveymonkey.co.uk/r/R375YM9</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.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 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 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 six planning approvals for exploratory shale development. Shale gas operators have also 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 policy made by Greg Clark and James Brokenshire on 17 May 2018¹ 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 to support Mineral Planning Authorities, including holding an early stage consultation on the principle of whether non-hydraulic fracturing shale exploration development should be granted planning permission through a **permitted development right**, and consulting on the criteria required to trigger the **inclusion of shale production projects into the Nationally Significant Infrastructure Projects regime**.
5. These consultations were published on 19 July 2018 and ran for a period for 14 weeks, ending 25 October. The time for responses to these consultations has now closed. The Government will issue separate responses to each of those consultations in due course.
6. The statement also committed to **strengthen community engagement by consulting on the potential to make pre-application consultation a statutory requirement**. In line with the broad focus of the Written Ministerial Statement on

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

supporting shale gas development, this consultation will seek views on whether applicants should be required to conduct pre-application consultation with the local community prior to submitting a planning application for **shale gas development**.²

7. The Government has also published a revised National Planning Policy Framework on 24 July 2018. The National Planning Policy Framework sits alongside the Written Ministerial Statement. We intend to publish revised planning practice guidance on shale development in due course, ensuring clarity on issues such as cumulative impact, local plan making, and confirmation that planners can rely on the advice of regulatory experts.

Community Consultation

8. An extensive legislative framework already governs community involvement in the planning process. There are statutory requirements for making information available, and providing opportunities for local engagement, on plan making and planning applications.³
9. Planning applications may be controversial and heavily contested, resulting in lengthier application processes and increased costs for developers, councils, and communities.⁴
10. Sufficiently early engagement with communities at the pre-application stage may give local people an earlier say in the planning process. It can also make developers aware of issues of importance to the community that may need to be resolved through the planning process.

Pre-application engagement

11. The [National Planning Policy Framework](#) and [Planning Practice Guidance](#) make it clear that early engagement has significant potential to improve the efficiency and effectiveness of the planning application system for all parties. Good quality pre-

² This means the 3 phases of shale gas development which require a planning application. This does not cover all onshore oil and gas exploration and/or extraction operations.

³ [Town and Country Planning Act 1990](#); [Planning and Compulsory Purchase Act 2004](#)

⁴ See the [Onshore Wind Call for Evidence: Government Response](#).

application discussion enables better coordination between public and private resources and improves outcomes for the community.

12. Pre-application engagement can help provide interested parties with an understanding of the relevant planning policies and other material considerations associated with a proposed development. Pre-application engagement also enables collaborative working at an early stage to identify, understand and seek to resolve issues associated with a proposed development. Examples of these issues could be potential noise, highways and visual impacts of the proposed development.
13. This engagement is a collaborative process between a prospective applicant and other parties. For planning applications this can include the local planning authority, statutory and non-statutory consultees, elected members, and local people. It is recognised that the parties involved at the pre-application stage will vary on a case by case basis, and the level of engagement needs to be proportionate to the nature and scale of a proposed development. In some cases it is beneficial to put in place a [Planning Performance Agreement](#) where this would help with managing the process and agreement of any additional dedicated resources for progressing the application.
14. It is currently not a statutory requirement for applicants to undertake pre-application community consultation prior to submitting a planning application for all types of proposed development.

What is shale gas development?

15. Shale gas is methane found in rocks deep below the earth's surface which had previously been considered too impermeable ('tight') to allow for economic recovery. Hydraulic fracturing is the process of opening and/or extending existing narrow fractures or creating new ones (fractures are typically hairline in width) in gas or oil-bearing rock, which allows gas or oil to flow into wellbores to be captured. The fractures are opened or created by pumping a mixture of water, sand and possibly some chemical additives under pressure down a borehole into the rock.
16. There are 3 phases of shale gas extraction:
 - Exploration - the exploratory phase of gas extraction seeks to acquire geological data to establish whether hydrocarbons are present. In the case of shale gas this may involve drilling an exploration well, and conducting seismic surveys.

- Appraisal- the appraisal phase takes place following exploration when the existence of gas has been proved, but the operator needs further information about the extent of the deposit or its production characteristics to establish whether it can be economically exploited. The appraisal phase can take several forms including additional seismic work, longer-term flow tests, or the drilling of further wells.
- Production - the production phase normally involves the drilling of a number of wells. This may be wells used at the sites at the exploratory and/or appraisal phases of hydrocarbon development, or from a new site.⁵

Existing consultation requirements for shale gas development

17. Under planning law, where a planning application has been submitted to the relevant mineral planning authority, for any phase of shale gas development⁶, it will undertake a period of [publicity](#), and [consultation](#) with certain consultees, where views on the proposed development can be expressed. The formal consultation period will normally last for 21 days, and the mineral planning authority will identify and consult a number of different groups, including the public, statutory consultees, non-statutory consultees, and any consultation required by a [direction](#).⁷
18. Following the initial period of consultation, mineral planning authorities may consider it necessary to reconsult as a result of any changes that may have been submitted by the applicant to address issues that may have been raised, prior to any decision being made. Finally, once consultation has concluded, the mineral planning authority will consider the [representations](#) and proceed to decide the application.
19. The Government is committed to help ensure every planning application is dealt with as quickly as possible. However, recent decisions on shale exploration planning applications remain disappointingly slow against a statutory time frame of

⁵ See 'Planning for hydrocarbon extraction', in [Planning Practice Guidance](#).

⁶ Does not include permitted development consisting of the drilling boreholes for the purposes of—
 (a) carrying out groundwater monitoring;
 (b) carrying out seismic monitoring; or
 (c) locating and appraising the condition of mines,
 which is preparatory to potential petroleum exploration, and the provision or assembly on that land or adjoining land of any structure required in connection with any of those drilling, monitoring or locating and appraising operations: <http://www.legislation.gov.uk/ukxi/2016/332/article/14/made>

⁷ See Articles 15 and 18 of the [Town and Country Planning \(Development Management Procedure\) \(England\) Order 2015](#); Section 15 of the [Town and Country Planning Act 1990](#).

16 weeks where an Environmental Impact Assessment is required unless an extended timeframe has been agreed.⁸ At present applications determined by mineral planning authorities have taken up to 83 weeks for a decision.

20. The Government recognises that early engagement with local authorities on shale gas applications, including capitalising on formal pre-application discussions, is critical in building confidence in decision making, securing support for development proposals, and setting realistic timeframes for decisions.⁹

21. It is also of great importance that the views of communities are taken into account at an early stage, to give local people more opportunity to influence and shape decisions about shale projects affecting their area. We welcome the shale gas industry's commitment to through their Community Engagement Charter to ensure open and transparent communications between industry, stakeholder groups and communities in areas in which they operate. However, requiring applicants to conduct community pre-application consultation prior to undertaking shale gas development could further strengthen the role local people play in planning process.

Question 1

Should community pre-application consultation be compulsory prior to applying for planning permission for shale gas development?

Yes/No/Not sure

⁸ The statutory time frame for non-Environmental Impact Assessment shale gas development is 13 weeks: [Town and Country Planning \(Development Management Procedure\) \(England\) Order 2015](#).

⁹ <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2018-05-17/HCWS690>

Existing processes for compulsory community pre-application consultation

21. Currently, it is not a statutory requirement for applicants to undertake pre-application community consultation prior to submitting a planning application for all types of proposed development. However, there are existing processes that require community consultation at the pre-application stage. These are a) for development that would fall within the scope of the Nationally Significant Infrastructure Projects regime, and b) for more significant onshore wind development that doesn't fall within the scope of that regime.
22. The requirement to undertake community pre-application consultation under those processes is the responsibility of the prospective applicant for planning permission or development consent (and must be undertaken prior to the submission of an application).
23. Any community pre-application consultation for shale gas development could follow one or other of these processes or follow a different process altogether. It could apply where certain criteria or thresholds are reached, or could cover all shale gas development where a planning application is required.

Onshore wind development

22. The [Localism Act 2011](#) introduced a new statutory requirement for prospective applicants to undertake compulsory consultation with local communities prior to the submission of certain applications for planning permission.¹⁰ The purpose of the Localism Act provision was to further strengthen the role of local communities in the planning process. It helps to ensure that the views of local communities are known and considered earlier in the planning process and helps to promote better quality applications for planning permission, and better decision making.
23. Following this, the Government brought forward legislation in November 2013 requiring compulsory pre-application consultation with local communities for more significant onshore wind development.¹¹ The legislation requires prospective applicants to:

¹⁰ See section 61W of the [Town and Country Planning Act 1990](#).

¹¹ This followed the outcome of the Department of Energy and Climate Change [Onshore Wind Call for Evidence](#), and the [Onshore Wind Call for Evidence: Government Response](#).

- Publicise the proposed application in such a manner that is likely to bring it to the attention of a majority of the persons who live at, or occupy, premises in the vicinity of the land. In doing so setting out information on how the applicant may be contacted, and the proposed timetable for the consultation (ensuring sufficient time for people to comment);
- Have regard to the advice (if any) given by the local planning authority about local good practice;
- Where proposing to go ahead with making an application for planning permission, have regard to any responses to the consultation;
- Where an application for planning permission is made, it must be accompanied by particulars of how the applicant complied with the publicising and consultation requirements, the responses received by the applicant, and how the applicant has taken account of the responses.¹²

24. The statutory requirement for prospective applicants to conduct consultation with local communities (prior to undertaking onshore wind development involving more than 2 turbines, or where the hub height of any turbine exceeds 15 metres) is linked to the threshold at which onshore wind development requires screening to determine whether there is a likelihood of significant environment effects under the [Town and Country Planning \(Environmental Impact Assessment\) Regulations 2017](#).

25. The aim of [Environmental Impact Assessment](#) is to protect the environment by ensuring that a local planning authority, when deciding whether to grant planning permission for a project, which is likely to have significant effects on the environment, does so in the full knowledge of the likely significant effects, and takes this into account in the decision making process.

26. Although all applications must be assessed on a case-by-case basis, applications for all phases of shale gas development are likely to fall under [paragraph 2 of Schedule 2 to the Town and Country Planning \(Environmental Impact Assessment\) Regulations 2017](#). An Environmental Impact Assessment is therefore required if the project is likely to have significant environmental effects.¹³

27. As with onshore wind development, it could also be appropriate that shale gas development that is likely to have a significant impact on the environment (requiring an Environmental Impact Assessment) could be subject to the

¹² See Article 3 of the [Town and Country Planning \(Development Management Procedure\) \(England\) Order 2015](#).

¹³ Applications for the production phase where more than 500 tonnes of oil or 500,000 cubic metres of gas will be extracted per day may fall under Schedule 1, in which case an Environmental Impact Assessment is mandatory. See schedule 1 to the [Town and Country Planning Environmental Impact Assessment\) Regulations 2017](#).

requirement to undertake community pre-application consultation, and this could follow the process set out above.

Nationally Significant Infrastructure Projects regime

28. The other process by which applicants are currently required to conduct pre-application community consultation prior to undertaking development is through the Nationally Significant Infrastructure Projects regime.

29. The [Planning Act 2008](#) created a new development consent regime for nationally significant infrastructure projects in fields of development including energy, water, waste water, road and rail transport and hazardous waste disposal. They are large scale developments, both onshore and offshore, such as new harbours, power stations (including wind farms), and electricity transmission lines.

30. The Planning Act 2008 sets out the thresholds above which certain types of infrastructure development are considered to be nationally significant and require development consent.¹⁴ The Secretary of State may also issue a direction, the effect of which is to bring a project into the remit of the 2008 Act.¹⁵

31. The Planning Act 2008 sets out the statutory requirements for applicants to engage in pre-application consultation with local communities, local authorities, and those who would be directly affected by the project. The regime provides the ability for anyone interested in or affected by a major infrastructure proposal to make representations on a proposed scheme. Applicants are required to:

- Produce a Statement of Community Consultation¹⁶, in consultation with the relevant local authority or authorities, which describes how the applicant proposes to consult with the local community about their project and then carry out consultation in accordance with that Statement;
- Make the Statement of Community Consultation available for inspection by the public in a way that is reasonably convenient for people living in the vicinity of the land where the development is proposed;
- Set a deadline for consultation responses of not less than 28 days from the day after receipt/last publication;
- Have regard to relevant responses to publicity and consultation; and

¹⁴ See section 14 of the [Planning Act 2008](#).

¹⁵ See section 35 of the [Planning Act 2008](#).

¹⁶ See section 47 of the [Planning Act 2008](#).

- Prepare a consultation report and submit it to the Secretary of State.¹⁷

32. It is recognised through this process that major infrastructure projects, and the communities and environment in which they are located will vary considerably. Applicants are best placed to understand the detail of their specific project, and local authorities, who have a unique knowledge of their local communities, are encouraged to work together to develop plans for consultation. This reflects the view that there is no 'one-size fits all' approach to pre-application consultation, and decisions as to the scope in terms of the nature and extent of consultation are best made at the local level, on a case by case basis.¹⁸

33. As with Nationally Significant Infrastructure Projects it could be appropriate that shale gas development that fulfils specific criteria or thresholds is subject to a requirement to undertake community pre-application consultation prior to submitting a planning application, and this could follow the process set out above.

34. We have consulted on whether shale gas production projects should be included in the Nationally Significant Infrastructure Projects regime.¹⁹ If the Planning Act 2008 was to be amended, so as to bring shale gas production development meeting particular specified thresholds into that regime, then the statutory pre-application consultation outlined above would be required for such development.

Question 2

By what process (if any) should prospective applicants be required to conduct community pre-application consultation prior to applying for planning permission for shale gas development?

Onshore wind development/ Nationally Significant Infrastructure Projects /Other (please specify)

Question 3

What (if any) shale gas development should be subject to compulsory community pre-application consultation?

All shale gas development requiring a planning application/ Where an Environmental Impact Assessment is required/Other criteria or threshold (please specify)

¹⁷ See Part 5, Chapter 2 of the [Planning Act 2008](#).

¹⁸ [Planning Act 2008: guidance on the pre-application process for major infrastructure projects](#).

¹⁹ <https://www.gov.uk/government/consultations/inclusion-of-shale-gas-production-projects-in-the-nationally-significant-infrastructure-project-nsip-regime>

Public sector equality duty

35. 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 4

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

Questions

Question 1

Should community pre-application consultation be compulsory prior to applying for planning permission for shale gas development?

Yes/No/Not sure

Question 2

By what process (if any) should prospective applicants be required to conduct community pre-application consultation prior to applying for planning permission for shale gas development?

Onshore wind development/ Nationally Significant Infrastructure Projects /Other (please specify)

Question 3

What (if any) shale gas development should be subject to compulsory community pre-application consultation?

All shale gas development requiring a planning application/ Where an Environmental Impact Assessment is required/Other criteria or threshold (please specify)

Question 4

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

Annex A

Personal data

The following is to explain your rights and give you the information you are be 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.