



Department for
Communities and
Local Government

Amendment to permitted development rights for drilling boreholes for groundwater monitoring for petroleum exploration

Technical Consultation



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Topic of this consultation	Amendment to existing permitted development rights
Scope of this consultation	This consultation seeks views on the Government's proposal to amend Part 22 of the Town and Country Planning (General Permitted Development) Order 1995 (as amended), to allow the drilling of boreholes for groundwater monitoring in relation to petroleum exploration.
Geographical scope	England
Impact Assessment	A Regulatory Triage Assessment has been confirmed by the Regulatory Policy Committee.
Body responsible for this consultation	Planning Directorate within the Department for Communities and Local Government.
Duration of consultation	6 weeks (05 March 2015 to 16 April 2015)
Enquiries	For enquiries please contact: Roger Wand Tel: 03034441688
How to respond	<ul style="list-style-type: none"> • We would ideally prefer responses to the consultation using the online SurveyMonkey at https://www.surveymonkey.com/s/7D5BN8T • Alternatively you can email your response to the questions to PDRboreholes@communities.gov.uk. We have provided a template for you to use on our website. • If you need to provide a written response please make it clear which questions you are responding to. • Written responses should be sent to: Roger Wand Department for Communities and Local Government Third Floor Fry Building 2 Marsham Street SW1P 4DF <p>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:</p> <ul style="list-style-type: none"> • 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
After the consultation	<p>We will take into account all responses to this consultation.</p> <p>A summary of responses to the consultation will be published on the Department's pages on the www.gov.uk website within three months of the closing date.</p>

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Part 1: Introduction and background

Introduction

1. It is clear that, even as we move towards a less carbon intensive future, oil and gas (petroleum) are set to remain a vital part of our energy system for years to come as part of this transition. In this context the Government is committed to ensuring that we maximise economic recovery of UK hydrocarbon resources – both offshore and onshore – in an efficient and safe manner which protects the environment. This has benefits for investment, jobs and security of supply.
2. A third of UK energy demand is met by gas. The majority of gas is used for heating buildings and for industrial processes, with the remainder used in power stations to generate electricity. As we use less coal in the next 10-15 years for electricity generation, gas will help to fill the gap alongside renewable and nuclear electricity, helping the UK reduce carbon emissions. We forecast that in 2030, the UK's gas consumption will be around the same level as it is today. We will continue to need gas for many years.
3. Home-grown shale gas could help secure our energy supply and reduce our impact on the environment. There is a need to establish, through exploratory drilling, whether there are sufficient recoverable quantities of shale present to facilitate economically viable full scale production. Effective and safe exploration of the UK's shale gas resources is key to realising the potential of this industry.
4. This consultation seeks views on a proposal to improve the monitoring for potential petroleum exploration, including shale gas, through making a minor amendment to existing permitted development rights. This change would grant permission for the drilling of boreholes for groundwater monitoring for petroleum exploration, enabling limited works to be carried out to establish baseline information on the groundwater environment in advance of, or in parallel to, any planning application(s) coming forward for such development.
5. The Infrastructure Act 2015 requires that, as one of a number of conditions¹ that need to be met before certain high volume hydraulic fracturing can occur, methane in groundwater is monitored over a twelve months period. This proposed amendment to permitted development rights would support this requirement, providing further reassurance that the environmental impacts of shale gas are being properly considered.
6. Developments vary in size and complexity and it is right for the applicable development control measures to reflect this. The proposed change to permitted development rights represents a balanced approach to enabling small scale proposals, which have limited impact on neighbours, the community or environment, to take place without the need for planning approval from the local planning authority.

¹ Section 50 of the Infrastructure Act sets out a number of conditions that would need to be met before the Secretary of State for Energy and Climate Change could give consent for high volume hydraulic fracturing to occur in respect to specific schemes.

Policy Context

7. The Government has made the planning system simpler, clearer and easier to use so that development can be brought forward more efficiently, ensuring that planning processes are proportionate to the potential impact of any development.
8. We have already taken forward a programme of reform to improve the planning system as a whole, including measures to speed up planning decisions and appeals, and to publish the National Planning Policy Framework and online planning guidance to assist the public, developers and local planning authorities to navigate national planning policy.
9. Supporting unconventional oil and gas production in particular, we amended regulations in late 2013 and early 2014 to streamline notification requirements and the calculation of fees. Updated planning guidance on oil and gas development published in July 2014 provides clarity on the role of the planning system in respect of that kind of development, including our approach in National Parks, the Broads, Areas of Outstanding Natural Beauty and World Heritage Sites.
10. The Red Tape Challenge is Government's commitment to reduce the burden of regulation on businesses. As part of that commitment, Government is seeking to consolidate the Town and Country Planning (General Permitted Development) Order 1995² ("the 1995 Order"), which grants planning permission for certain types of development at the national level. The original 1995 Order has subsequently been amended 22 times.
11. In this consultation, Government proposes a further deregulatory change to permitted development rights, to allow boreholes for groundwater monitoring for petroleum exploration.

Legal context for permitted development rights

12. The Town and Country Planning Act 1990 provides that development of land requires planning permission. Development includes any operational development and any material change of use. However, many types of development have only minor impacts, or impacts that can be controlled by standard conditions. It would be an unreasonable burden to require full planning applications for these types of development, so they are given a national grant of planning permission via permitted development rights in the 1995 Order. The 1995 Order sets out the permitted development rights, any conditions that apply to the development that is permitted, and any circumstances where the rights are disapplied.
13. Schedule 2 of the Order contains a number of Parts, each of which sets out various classes of development which may be undertaken without the need for a full planning application. The Part most relevant to this consultation is Part 22, concerning Mineral Exploration, a copy of which is annexed to this consultation.

² [The Town and Country Planning \(General Permitted Development\) Order 1995](#)

14. Permitted development rights do not apply where an Environmental Impact Assessment is required in respect of development under the Town and Country Planning (Environmental Impact Assessment) Regulations 2011. Any proposal which falls into Schedule 1 of those regulations, or falls into Schedule 2 and is considered likely to have significant effects on the environment, will be subject to an Environmental Impact Assessment, and for these types of development a full application for planning permission will need to be made to the local planning authority. Permitted development rights also do not remove requirements under other non-planning regimes (eg building regulations, the Party Wall Act, European protected species licensing or other relevant environmental legislation).
15. There is already some scope for local planning authorities to “switch off” or extend permitted development rights to meet their own particular circumstances. They can be extended by the local planning authority by means of local development orders, following local consultation, or by neighbourhood development orders brought forward by the local community. Alternatively, local planning authorities may be able to provide that a permitted development right does not apply, subject to certain exceptions, by issuing a direction under Article 4 of the Order. The local planning authority will need to consult with the community about whether there are circumstances that merit withdrawal of permitted development rights in an area.

Part 2: Consultation proposals

Background

16. Part 22 of the 1995 Order permits development on any land consisting of
 - a. the drilling of boreholes
 - b. the carrying out of seismic surveys; or
 - c. the making of other excavationsfor the purpose of mineral exploration, and the provision or assembly of any structure required in connection with these operations.
17. Part 22 is separated into two sections – ‘Class A’ and ‘Class B’. Development allowed under these permitted development rights can either be permitted for a period not exceeding 28 days (Class A) or for up to 6 months unless otherwise agreed by the mineral planning authority (Class B).
18. In relation to each class of development there are a range of exclusions in which development is not permitted, so development is only allowed by obtaining planning permission from the relevant planning authority. These include, for example, height restrictions on proposed structures associated with the development, or where explosive charges would exceed a certain weight. A copy of Part 22, setting out details of the rights and the relevant exclusions, is attached at Annex A.
19. These exclusions are not identical in each case. In particular, where development is proposed for longer than 28 days (Class B), a developer has to notify the mineral planning authority of their intention to carry out works. This gives the mineral planning authority an opportunity to consider what is proposed. In certain circumstances, the mineral planning authority then has power under Article 7 of the 1995 Order to direct that the works should not be carried out if they are satisfied that it is expedient that the development should be subject to an application for planning permission (i.e. disapplying the permitted development right). These circumstances include, for example, where what is proposed would take place in a National Park or Area of Outstanding Natural Beauty, or where the authority considers the development would cause serious detriment to the amenity of the area in which it is to be carried out (full details of the circumstances in which an authority can require an application to be made are set out at Annex B).
20. Where permitted development does take place under Class A or Class B, it is subject to certain conditions concerning the operation of the works, such as restricting the harm or damage to trees, and proper site restoration once the development has been completed.

What is proposed

Groundwater monitoring boreholes for petroleum exploration

21. Currently, drilling for boreholes for petroleum exploration (including exploration for shale gas) is excluded from the permitted development rights under Part 22. So such development

requires an application for planning permission, either for the works alone or possibly as part of a wider permission(s) covering petroleum exploration.

22. Water monitoring boreholes for a petroleum exploration project are in essence similar to water monitoring boreholes used for other mineral exploration. Generally, for petroleum, the diameter of the borehole would be about 150 millimetres, with the depth of the well varying from between 5 metres to 50 metres, depending on local geological conditions. This means the drilling operations for groundwater monitoring for potential petroleum exploration would be no more intrusive than that currently allowed by Part 22 for other types of mineral exploration.
23. **We propose to amend the General Permitted Development Order so that development, which consists of the drilling of boreholes for groundwater monitoring for petroleum exploration, can take place as permitted development under Class A or Class B of Part 22.**
24. Extending permitted rights in respect of water monitoring boreholes for petroleum exploration will avoid needless delay in bringing forward new projects. In our view it would be proportionate, in terms of scrutiny of the impacts on amenity, to allow for these types of works to be undertaken without the need for a full application for planning permission. In addition the proposal would also support the measure in section 50 of the new Infrastructure Act which received Royal Assent on 12 February, which requires that 12 month monitoring of methane in groundwater is undertaken as one of several conditions that have to have been met before certain high volume hydraulic fracturing can begin. In doing so, it would provide further reassurance that the environmental impacts of shale gas are being properly considered.
25. For development of longer than 28 days (which is likely to be the case for groundwater monitoring activity for petroleum exploration), the developer would still be required to notify the mineral planning authority of the development proposed. The authority will consider whether circumstances were such that the development would instead need to be considered by way of a separate planning application.
26. Allowing permitted development rights for the drilling of boreholes for this purpose would have no implications for, or prejudice the consideration of, the drilling of petroleum wells themselves, which would continue to require express planning permission as at present.
27. Proposed drilling of groundwater monitoring for petroleum exploration would, in practice, almost certainly need to take place over a period longer than for 28 days, but it is not unforeseeable that a shorter term might take place. We are therefore proposing the change would apply for both development for upto 28 days (Class A) and development for a longer period (ie up to 6 months unless otherwise agreed by the mineral planning authority) (Class B).
28. We consider that the amended right should, with one exception set out below at paragraphs 33 to 36 relating to the height restriction of structures needed to carry out the development, be subject to the same restrictions and conditions that apply to the existing permitted development rights, whether for up to 28 days (Class A) or longer (Class B). These restrictions and conditions are set out in Annex A.
29. For the longer (more than 28 day) duration of groundwater monitoring activity, which most

development proposals will fall under, this would mean that the right to drill boreholes for groundwater monitoring would not be permitted, in summary³:

- if it consists of the drilling of boreholes for petroleum exploration (other than for purposes of ground water monitoring);
- the developer has not notified the mineral planning authority, setting out the nature and location of development, of their intention to carry out development;
- during a prescribed period (known in Part 22 as the 'relevant period' - see Annex A for full details) after the developer has notified the mineral planning authority of their proposal in order to allow consideration of whether a direction requiring an application for planning permission should be issued;
- if any explosive charge of more than 2 kilograms would be used; and
- if any structure assembled or provided does not exceed a prescribed height (see below).

We are open to consideration of alternative restrictions or exclusions that consultees consider may be necessary to deal with the impacts of the type of development in question.

30. When the developer has notified the mineral planning authority of their proposal the authority may, if they are satisfied that this is expedient, give a direction that development should not be carried out unless permission is granted on an application if, in summary⁴:
- (a) the development proposed is within a National Park, an area of outstanding natural beauty, a site of archaeological interest (subject to a limited exception), a site of special scientific interest, or the Broads;
 - (b) the development, either in itself or in conjunction with other development, would cause serious detriment to the amenity of the area in which it is to be carried out or would adversely affect the setting of a Grade I listed building;
 - (c) the development would constitute a serious nuisance to the inhabitants of a nearby residential building, hospital or school; or
 - (d) the development would endanger aircraft using a nearby aerodrome.
31. Where the mineral planning authority does issue such a direction, the Secretary of State may disallow the direction at any time within a period of 28 days beginning with the date on which the direction is made.
32. The right to drill boreholes for groundwater monitoring for longer than a 28 day period would also be subject to conditions; in summary⁵:
- the development must be carried out in accordance with the details of the notification supplied by the developer, unless the mineral planning authority agree otherwise in writing;
 - no trees are removed, felled, lopped, topped, or harmed or damaged, unless specified in detail in the notification or the mineral planning authority agree otherwise in writing;

³ See Annex A for detail

⁴ See Annex B for detail

⁵ See Annex A for detail

- within a period of 28 days from operations ceasing, unless the mineral planning authority agree otherwise, boreholes must be adequately sealed, structures and waste material must be removed, the surface of the land must be levelled and any topsoil replaced, and the land has to be restored to its former state; and
- the development shall not continue for more than 6 months unless agreed otherwise by the mineral planning authority in writing.

Change to the 12 metre height of structures exclusion

33. Currently, it is not possible to carry out development under permitted development rights related to minerals exploration under Part 22 (both Class A and Class B) if any structure exceeds 12 metres in height.
34. Modern rigs used for the drilling of the boreholes range between 10 and 15 metres in height. Therefore we propose to amend the current height restriction for any structure assembled or provided to carry out the development under the permitted development rights in Part 22 from 12 to 15 metres.
35. Furthermore, we consider it appropriate for this increased height restriction to apply to all the development benefitting from permitted development rights under Part 22 of the 1995 Order, as this is in keeping with 'structural height' restrictions on other permitted development rights, such as development associated with mining operations. Views are invited on this proposal.
36. There is also, in relation to development which does not go on for longer than 28 days (ie Class A) a separate height restriction relating to development near aerodromes, which we do not propose to amend.

Part 3 : Consultation questions

Question 1: Do you have views on whether we amend the restrictions on existing permitted development rights for minerals exploration, to enable the drilling of boreholes for groundwater monitoring for petroleum exploration?

Question 2: Do you agree that the amended rights should (with the one exception on height of structures) be subject to the same restrictions and conditions as apply currently to mineral exploration? If not what alternative restrictions or conditions would be appropriate?

Question 3: Do you agree with the proposal to amend the height restrictions to 15 metres for structures assembled or provided under the permitted development right?

Question 4: We consider that, as well as the benefits in providing public confidence that the environmental impacts of potential petroleum exploration schemes are being properly considered, the proposal could save time for such schemes going forward. What potential cost savings might be achieved were these permitted development rights to be realised?

Annex A

Town and Country Planning (General Permitted Development) Order 1995

PART 22 MINERAL EXPLORATION

Class A

Permitted development

A. Development on any land during a period not exceeding 28 consecutive days consisting of–

- (a) the drilling of boreholes;**
- (b) the carrying out of seismic surveys; or**
- (c) the making of other excavations,**

for the purpose of mineral exploration, and the provision or assembly on that land or adjoining land of any structure required in connection with any of those operations.

Development not permitted

A.1.Development is not permitted by Class A if–

- (a) it consists of the drilling of boreholes for petroleum exploration;
- (b) any operation would be carried out within 50 metres of any part of an occupied residential building or a building occupied as a hospital or school;
- (c) any operation would be carried out within a National Park, an area of outstanding natural beauty, a site of archaeological interest or a site of special scientific interest;
- (d) any explosive charge of more than 1 kilogram would be used;
- (e) any excavation referred to in paragraph A(c) would exceed 10 metres in depth or 12 square metres in surface area;
- (f) in the case described in paragraph A(c) more than 10 excavations would, as a result, be made within any area of 1 hectare within the land during any period of 24 months; or
- (g) any structure assembled or provided would exceed 12 metres in height, or, where the structure would be within 3 kilometres of the perimeter of an aerodrome, 3 metres in height.

Conditions

A.2.Development is permitted by Class A subject to the following conditions–

- (a) no operations shall be carried out between 6.00 p.m. and 7.00 a.m.;
- (b) no trees on the land shall be removed, felled, lopped or topped and no other thing shall be done on the land likely to harm or damage any trees, unless the mineral planning authority have so agreed in writing;
- (c) before any excavation (other than a borehole) is made, any topsoil and any subsoil shall be separately removed from the land to be excavated and stored separately from other excavated material and from each other;
- (d) within a period of 28 days from the cessation of operations unless the mineral planning authority have agreed otherwise in writing–
 - (i) any structure permitted by Class A and any waste material arising from other development so permitted shall be removed from the land,
 - (ii) any borehole shall be adequately sealed,
 - (iii) any other excavation shall be filled with material from the site,
 - (iv) the surface of the land on which any operations have been carried out shall be levelled and any topsoil replaced as the uppermost layer, and
 - (v) the land shall, so far as is practicable, be restored to its condition before the development took place, including the carrying out of any necessary seeding and replanting.

Class B

Permitted development

B.Development on any land consisting of—

- (a) the drilling of boreholes;**
- (b) the carrying out of seismic surveys; or**
- (c) the making of other excavations**

the making of other excavations,

for the purposes of mineral exploration, and the provision or assembly on that land or on adjoining land of any structure required in connection with any of those operations.

Development not permitted

B.1.Development is not permitted by Class B if—

- (a) it consists of the drilling of boreholes for petroleum exploration;
- (b) the developer has not previously notified the mineral planning authority in writing of his intention to carry out the development (specifying the nature and location of the development);
- (c) the relevant period has not elapsed;
- (d) any explosive charge of more than 2 kilograms would be used;
- (e) any excavation referred to in paragraph B(c) would exceed 10 metres in depth or 12 square metres in surface area; or
- (f) any structure assembled or provided would exceed 12 metres in height.

Conditions

B.2.Development is permitted by Class B subject to the following conditions—

- (a) the development shall be carried out in accordance with the details in the notification referred to in paragraph B.1(b), unless the mineral planning authority have otherwise agreed in writing;
- (b) no trees on the land shall be removed, felled, lopped or topped and no other thing shall be done on the land likely to harm or damage any trees, unless specified in detail in the notification referred to in paragraph B.1(b) or the mineral planning authority have otherwise agreed in writing;
- (c) before any excavation other than a borehole is made, any topsoil and any subsoil shall be separately removed from the land to be excavated and stored separately from other excavated material and from each other;
- (d) within a period of 28 days from operations ceasing, unless the mineral planning authority have agreed otherwise in writing—
 - (i) any structure permitted by Class B and any waste material arising from other development so permitted shall be removed from the land,
 - (ii) any borehole shall be adequately sealed,
 - (iii) any other excavation shall be filled with material from the site,
 - (iv) the surface of the land shall be levelled and any topsoil replaced as the uppermost layer, and
 - (v) the land shall, so far as is practicable, be restored to its condition before the development took place, including the carrying out of any necessary seeding and replanting,and
- (e) the development shall cease no later than a date six months after the elapse of the relevant period, unless the mineral planning authority have otherwise agreed in writing.

Interpretation of Class B

B.3.For the purposes of Class B—

“relevant period” means the period elapsing—

- (a) where a direction is not issued under article 7, 28 days after the notification referred to in paragraph B.1(b) or, if earlier, on the date on which the mineral planning authority notify the developer in writing that they will not issue such a direction, or
- (b) where a direction is issued under article 7, 28 days from the date on which notice of that decision is sent to the Secretary of

State, or, if earlier, the date on which the mineral planning authority notify the developer that the Secretary of State has disallowed the direction.

Interpretation of Part 22

C.For the purposes of Part 22—

“mineral exploration” means ascertaining the presence, extent or quality of any deposit of a mineral with a view to exploiting that mineral; and

“structure” includes a building, plant or machinery.

Annex B

Town and Country Planning (General Permitted Development) Order 1995

Article 7 - Directions restricting permitted development under Class B of Part 22 or Class B of Part 23

7. (1) If, on receipt of a notification from any person that he proposes to carry out development within Class B of Part 22 or Class B of Part 23 of Schedule 2, a mineral planning authority are satisfied as mentioned in paragraph (2) below, they may, within a period of 21 days beginning with the receipt of the notification, direct that the permission granted by article 3 of this Order shall not apply to the development, or to such part of the development as is specified in the direction.

(2) The mineral planning authority may make a direction under this article if they are satisfied that it is expedient that the development, or any part of it, should not be carried out unless permission for it is granted on an application because—

(a)the land on which the development is to be carried out is within—

(i)a National Park,

(ii)an area of outstanding natural beauty,

(iii)a site of archaeological interest, and the operation to be carried out is not one described in the Schedule to the Areas of Archaeological Importance (Notification of Operations) (Exemption) Order 1984 (exempt operations),

(iv)a site of special scientific interest, or

(v)the Broads;

(b)the development, either taken by itself or taken in conjunction with other development which is already being carried out in the area or in respect of which notification has been given in pursuance of the provisions of Class B of Part 22 or Class B of Part 23, would cause serious detriment to the amenity of the area in which it is to be carried out or would adversely affect the setting of a building shown as Grade I in the list of buildings of special architectural or historic interest compiled by the Secretary of State under section 1 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (listing of buildings of special architectural or historic interest);

(c)the development would constitute a serious nuisance to the inhabitants of a nearby residential building, hospital or school; or

(d)the development would endanger aircraft using a nearby aerodrome.

(3) A direction made under this article shall contain a statement as to the day on which (if it is not disallowed under paragraph (5) below) it will come into force, which shall be 29 days from the date on which notice of it is sent to the Secretary of State in accordance with paragraph (4) below.

(4) As soon as is reasonably practicable a copy of a direction under this article shall be sent by the mineral planning authority to the Secretary of State and to the person who gave notice of the proposal to carry out development.

(5) The Secretary of State may, at any time within a period of 28 days beginning with the date on which the direction is made, disallow the direction; and immediately upon receipt of notice in writing from the Secretary of State that he has disallowed the direction, the mineral planning authority shall give notice in writing to the person who gave notice of the proposal that he is authorised to proceed with the development.

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 information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000, the Data Protection Act 1998 and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the Freedom of Information Act 2000, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. 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 Department for Communities and Local Government will process your personal data in accordance with the Data Protection Act 1998 and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties. 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 CLG Consultation Co-ordinator.

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