

Energy & Natural Resources: Unconventional Gas

April 2013

This update focuses on recent changes to UK policy on hydraulic fracturing for shale gas (aka 'fracking') as well as providing a short overview of the relevant regulatory regimes. Please do get in touch if you would like to discuss these developments or have any related enquiries.

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INTRODUCTION

Fracking for shale gas is still in its infancy in the UK and remains, to some, a highly controversial subject. Opponents cite a wide range of alleged environmental impacts, including associated greenhouse gas emissions, earthquakes, high water use, pollution, increased local road traffic levels, noise and impacts on general amenity.

In contrast to the U.S. and some other jurisdictions where fracking is well established, all rights to UK oil and gas resources vest in the Crown and not the landowner. Thus, development incentives for UK landowners are reduced. Additionally, the UK's high population density means that fracking operations are more likely to meet stronger resistance from local communities.

However, despite the controversy, recent policy developments indicate growing UK Government support for fracking: provided it can be shown to be economic and safe, the Government believes that domestic shale gas production could offer a significant economic opportunity for the UK, with the prospect of new sources of indigenous supply, new industrial activity and skilled jobs.

If exploration is ultimately successful, early production is likely to be seen in the second half of this decade, but any substantial contribution to the UK's gas supply is unlikely until further into the 2020s.

REGULATORY CHALLENGES

Whilst there is currently no specific fracking legislation at an EU or UK level, a wide range of more general oil and gas, environmental, health and safety, planning and other regulatory controls will apply to UK fracking operations.

For example, operators will generally require the following consents, permits and

permissions as a minimum before commencing onshore operations:

Petroleum exploration and development licence ("PEDL")

- ▶ PEDLs are granted by the Department of Energy & Climate Change ("DECC") and give exclusivity to licensees in relation to appraisal and exploration within a particular licence area for a specified period. Further consents from DECC are required for drilling operations and production.

Landowner permission

- ▶ Once a licensee has identified a favourable location within their PEDL area, it will need to gain permission from the landowner to conduct operations there (or purchase the relevant land itself).

Planning permission

- ▶ Any drilling and/or fracking operations (as well as related infrastructure) will also require planning permission from the relevant minerals planning authority.

Environmental permit(s)

- ▶ Most fracking operations will require an environmental permit under the UK's environmental permitting regime. Even where a permit is not required, fracking activities will need to comply with more general environmental regulations and industry best practice.

The above permits and permissions relate mainly to the exploration stage. To commence full commercial extraction activities, additional public and private consents will most likely be required.

Despite the growing UK Government support for fracking, and statements to the effect that the existing regulatory framework is sufficient

"Shale gas is part of the future ...we will make it happen"

**UK Chancellor,
Budget Statement 2013**

"We will finance whatever it takes. Equity finance, then debt and equity. If we really succeed, it will be billions, over 10 years it will be billions [of finance to provide]"

**Lord Browne,
chairman of Cuadrilla Resources and
former Chief Executive of BP
(March 2013)**

"...it's dirty, unnecessary and its extraction will have an earth-shattering impact on local communities across the UK"

**Andrew Pendleton,
Friends of the Earth
(March 2013)**

TRIVERS SMITH

for current exploration activities, the future development of specific UK fracking regulations cannot be ruled out.

In any event, EU legislation is also likely: the European Commission recently conducted a consultation on shale gas and other unconventional fossil fuels (such as tight gas, coal bed methane, tight oil or shale oil). The consultation, the results of which are expected to be published this summer, sought views on the risks and benefits associated with the exploitation of these types of fossil fuels and whether additional regulatory safeguards are needed.

Although over regulation is a concern, many leading industry players would welcome a specific fracking regulatory regime to help, if nothing else, quell any wider environmental and safety concerns. Others advocate retaining the current regulatory framework and developing additional guidance and industry specific standards.

NEW UK GUIDANCE

The UK Onshore Operators Group (UKOOG), a body representing the UK onshore oil and gas industry, recently published voluntary Onshore Gas Well Guidelines (with input from DECC, the Health and Safety Executive and the Environment Agency), which set out what UKOOG considers to be good industry practice for the exploration and appraisal phases of shale gas developments (the guidelines will be revised in the future to cover eventual operational and production developments).

By adopting the practices presented in the guidelines (and the various additional guidelines referenced therein), UKOOG states that operators should be able to assure themselves and demonstrate to other stakeholders, on matters of well integrity and fracturing operations (including matters concerning fracturing fluids and flow-back fluids) that they have complied with all relevant regulations.

The guidelines cover a wide range of issues including groundwater isolation and protection, fracturing containment, seismicity mitigation, pollution control, water use and waste management.

The guidelines advocate early engagement with local communities in the development process (beyond that required by the planning regime) and recommend relations with the host community be treated as a "key management priority". Local community resistance (particularly where diminution in property values is feared) is likely to be one of the most significant barriers to development. NGOs are likely to fuel and help fund such activism. Judicial review and procedural challenges are, therefore, highly likely.

The guidelines further advise operators to disclose operational data on issues such as

water use, waste water generated, water disposal methods, fracking fluid additives used, shale gas volumes (including emissions), fracture design and containment and any induced seismicity to help maintain public confidence.

Operators are also expected to demonstrate how they intend to minimise disruption to local communities (by adopting vehicle management and noise reduction measures, for example) and work towards "maximising the economic benefits to local communities from their operations", by considering local employment and utilising locally based contractors, for example.

RECENT POLICY DEVELOPMENTS

To date, fracking for shale gas in the UK has been limited – only Cuadrilla's test well near Blackpool in Lancashire has undertaken any substantive works. That said, the UK Government, swayed by the successes in the U.S. and elsewhere, currently sees fracking as an important part of the UK's energy strategy:

- ▶ In December 2012, the UK's moratorium on fracking for shale gas was lifted, subject to the imposition of new controls to ensure that seismic risks relating to fracking sites are effectively mitigated.
- ▶ Also in December 2012, the Government published its Gas Generation Strategy, which confirms that gas will continue to have a major role in UK electricity generation and includes a specific chapter dealing with the development of shale gas resources.
- ▶ The new Office of Unconventional Gas and Oil (UKOOG) has been established by DECC to link responsibilities across Government, to provide a single point of contact for investors and to ensure a streamlined regulatory process.
- ▶ A new tax regime for shale gas was unveiled in the 2013 Budget, involving a new shale gas field allowance and other measures to help promote early investment.
- ▶ Also in the 2013 Budget, the Government announced plans to produce technical planning guidance on shale gas by July 2013 to provide clarity.
- ▶ The Government has also recently announced that it will consult on how its licensing regime could be modified to support the particular characteristics of shale gas developments.

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