



House of Commons
Housing, Communities and
Local Government Committee

**Planning guidance on
fracking**

Eighth Report of Session 2017–19

*Report, together with formal minutes relating
to the report*

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Housing, Communities and Local Government Committee

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Summary

As the number of planning applications for fracking is likely to grow in the coming years, and as some fracking sites are moving beyond exploration to production, we decided that now was the right time to conduct an inquiry on whether the planning guidance on fracking and the existing planning regime are fit for purpose.

The inquiry focused on whether the existing planning guidance for fracking planning applications should be updated, improved and consolidated, how Mineral Planning Authorities balance local and national need in determining fracking planning applications, and whether such applications should be dealt with under the Planning Act 2008 as Nationally Significant Infrastructure Projects.

The main conclusions and recommendations are as follows:

- **The definition of fracking used in the planning context should not be liquid or volume based.**

The Government's suggestion that the Infrastructure Act definition of fracking will replace the current definition in the revised National Planning Practice Guidance is highly concerning. The Infrastructure Act 2015 definition does not reflect the technologies on the ground nor the public understanding of fracking, leading to a lack of understanding among key stakeholders and significant concerns about loopholes in the current regulatory regime.

- **The revised National Planning Policy Framework (NPPF) should clarify and consolidate the Government's fracking policy.**

The proposed changes in the revised NPPF lack detail and create ambiguity about the Government's position on fracking which requires clarification. Particular attention should be paid to how fracking sits with the UK's commitments to climate change in order to make clear to Mineral Planning Authorities how they can balance competing objectives, and respond to the public's concerns.

- **The Government should clarify the process by which fracking planning guidance documents are updated.**

A number of existing fracking guidance documents are out-of-date and there does not seem to be a clear process for reviewing scientific and technological developments, as well as practical experience at fracking sites, and, where appropriate, incorporating such development into existing guidance.

- **An online "one-stop shop" for all fracking guidance and policy documents should be created.**

Navigating disparate guidance on fracking hinders understanding, transparency and engagement with fracking planning applications. The "one-stop shop" should bring together all of the documents relevant to the determination of fracking planning applications, including those not produced by MHCLG, and clearly explain the roles of each regulatory body.

- **Mineral Planning Authorities should be free to adapt their Local Plans as they see fit as long as they do not arbitrarily restrict fracking developments.**

There is a contradiction between the spirit of the Localism Act 2011 and the 2018 Written Ministerial Statement (WMS) on fracking planning policy which could unreasonably restrict Local Plans. Given that the English planning system is plan-led, it is essential that Mineral Planning Authorities have the right to put conditions in their Local Plans which can be justified having proper regard to local circumstances.

- **The proposed Shale Environmental Regulator should be renamed and repurposed as the Shale Information and Coordination Service.**

It is inappropriate for fracking to be regulated by a single regulator. However, there is a need to better communicate the purpose and role of various regulators. The Shale Information and Coordination Service should host the “one-stop shop” for fracking guidance and policy documents, as well as co-opt the planning brokerage system and encourage greater multi-agency working between the existing regulators.

- **Fracking planning applications should not be brought under the Nationally Significant Infrastructure Projects regime nor acquire permitted development rights.**

Mineral Planning Authorities are best placed to understand their local area and consider how fracking can best take place locally. Such changes to the planning regime, proposed by the Government in the 2018 WMS, would result in a significant loss to local decision-making, exacerbating existing mistrust between local communities and the fracking industry.

- **The Shale Support Fund for Mineral Planning Authorities should be better resourced and caps should be increased on individual bids.**

Fracking planning applications can cost Mineral Planning Authorities more than £500,000, over half of the £800,000 available per annum from the Shale Support Fund and more than the cap on individual bids of £250,000.

- **The planning brokerage system should extend its support beyond Mineral Planning Authorities and developers to members of the public.**

Facilitating public access to the planning brokerage system would provide for a more independent and even-handed approach to fracking planning applications. Limiting access is likely to increase opposition to individual fracking applications, thereby further overburdening Mineral Planning Authorities.

1 Introduction

Background

1. The debate over whether fracking should take place has long proved controversial at both local and national level. While a majority in a previous Parliament consented to fracking in the UK by means of the Infrastructure Act 2015 and the Government has repeatedly voiced its support for fracking,¹ at the heart of deciding whether fracking developments should be approved are Mineral Planning Authorities (MPAs), which are tasked with determining planning applications for such developments with due regard to a significant body of guidance. As the number of planning applications for shale gas and oil extraction is likely to grow in the coming years, and as some fracking sites are moving beyond exploration to production, we decided that now was the right time to review whether the planning guidance on fracking and the existing planning regime are fit for purpose for all parties.

Our inquiry

2. Our inquiry focused on whether the existing planning guidance for fracking planning applications should be updated, improved and consolidated, how MPAs balance local and national need in determining fracking planning applications, and whether such applications should be dealt with under the Planning Act 2008 as Nationally Significant Infrastructure Projects (NSIP). This Report sets out our key conclusions and recommendations, which we call on the Government to implement, particularly in light of the consultations and measures announced in the Government's Written Ministerial Statement (WMS) on fracking planning policy of 17 May (herein referred to as the '2018 WMS').²

3. We were disappointed that the Government decided to publish a WMS on fracking planning policy during the course of our inquiry. The 2018 WMS contained measures and areas of interest that had been raised during our oral evidence sessions and in written submissions to the inquiry. Publishing it the sitting day before our final evidence session with the Government meant that we were unable to explore its contents more widely with our witnesses. The Minister for Housing attempted to justify the untimely decision to publish the WMS by saying that "this was a manifesto commitment that we were looking to give effect to... we are approaching an important moment at the exploration stage; later this year we may see the first shale gas extraction since 2011. There is a real operational need to get on with this".³ While we acknowledge the Government's reasons, we see no reason why the Government could not have delayed the 2018 WMS by a matter of weeks to take into account our findings or, indeed, before our inquiry began so all witnesses would have been able to comment on it.

4. We note that there is considerable public interest in whether fracking should be permitted and that previous parliamentary inquiries of other select committees have

1 [HCWS202](#), 16 September 2015; [HCWS428](#), 25 January 2018; [HCWS689](#), 17 May 2018

2 [HCWS689](#), 17 May 2018

3 [Q141](#)

considered the need for and impact of fracking.⁴ We did not consider the merits of fracking, or specific changes to the planning guidance that were based on the environmental impacts of fracking because it is not within our remit. However, as noted in Chapter 2, we did consider the effects on MPAs of possible inconsistencies in the Government’s wider approach to fracking and energy policy.

5. In the course of our inquiry concerns were raised about the definition of fracking used both in the planning guidance but also in our inquiry.⁵ Notwithstanding our later comments in Chapter 2 on the definition of fracking within the planning context, our report uses the term “fracking” to refer to “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”.⁶ We feel it is appropriate that this definition, abstracted from the National Planning Practice Guidance (NPPG), makes no reference to the substance, or the volume of substance, that is used to artificially fracture rock.

6. We are grateful to everyone who contributed to our inquiry. We received over 200 written submissions, of which the majority were from members of the public. The key themes of the written evidence were explored in three oral evidence sessions with contributions from fracking operators, anti-fracking campaigners, MPAs, other regulatory bodies, and Ministers from the Ministry of Housing, Communities and Local Government and the Department for Business, Energy and Industrial Strategy.

4 Environmental Audit Committee, Eight Report of Session 2014–15, [Environmental risks of fracking](#), HC856; Environment Food & Rural Affairs Committee, [Defra’s responsibilities for fracking](#), [Letter to Secretary of State](#) following [one-off session](#), [HC \(2014–15\) 589](#), September 2014; Energy & Climate Change Committee, Seventh Report of Session 2012–13, [The impact of shale gas on energy markets](#), HC 785, and Fifth Report of Session 2010–12, [Shale gas](#), HC 798; Welsh Affairs Committee, First Report of Session 2014–15, [Energy generation in Wales: Shale gas](#), HC 284; Economic Affairs Committee, Third Report of Session 2013–14, [The Economic Impact on UK Energy Policy of Shale Gas and Oil](#), HL 172.

5 See Mobbs’ Environmental Investigations and Research ([PGF0177](#)) and Weald Action Group ([PGF0181](#)).

6 Para. 129, [Minerals Planning Guidance](#), National Planning Practice Guidance

2 Updating and improving guidance

Introduction

7. Our Report begins by considering the core question of whether the planning guidance on fracking is fit for purpose. We focus on three main issues: the definition of fracking, the proposed changes to the National Planning Policy Framework (NPPF), and whether the existing fracking planning guidance requires updating.

Definition

8. We heard that there is “fundamental uncertainty around the definition” of fracking in the planning process.⁷ Throughout our inquiry, we have heard a wide range of views on whether the current definitions are fit for purpose. There are two key definitions in question: the Infrastructure Act 2015 definition which is based on the volume of fluid used (see Box 1) and the definition in the National Planning Practice Guidance (NPPG), which is based on the process of fracturing rock (see Box 2).

Box 1: Fracking definition in the Infrastructure Act 2015

“Associated hydraulic fracturing” means hydraulic fracturing of shale or strata encased in shale which—

- a) is carried out in connection with the use of the relevant well to search or bore for or get petroleum, and
- b) involves, or is expected to involve, the injection of—
 - i) more than 1,000 cubic metres of fluid at each stage, or expected stage, of the hydraulic fracturing, or
 - ii) more than 10,000 cubic metres of fluid in total.

Source: Section 4B, Clause 50, [Infrastructure Act 2015](#)

Box 2: Fracking definition in the NPPG

What is hydraulic fracturing?

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.

Source: Paragraph 129, Minerals guidance, [NPPG](#)

9. The Infrastructure Act definition of fracking proved the most contentious during our inquiry. Chris Hesketh from Frack Free Dudleston told us that the Act defines fracking in a “very strange way,”⁸ and Dr Sylvia Bernard stated that it is “open to abuse.”⁹ The key objection concerned the limited breadth of the definition as it is based solely on the volume of fluid used. We heard that a fluid-based approach does not reflect the technologies on

7 Ms Estelle Dehon (Cornerstone Barristers) ([PGF0194](#))

8 [Q54](#)

9 Dr Sylvia Bernard ([PGF0040](#))

the ground. Specifically, it was noted by Friends of the Earth and a group of lawyers from Cornerstone Barristers that the Infrastructure Act definition of fracking does not include “acid fracturing”, “matrix acidisation”, or the fracturing of rocks by injection at pressure of cooled carbon dioxide or liquefied petroleum gas.¹⁰ Food & Water Europe agreed that the definition was limited, stating that “water consumption shouldn’t be the only defining practice... “hydraulic fracturing” is a question of geology, depth, injection pressure, water intensity, chemicals and sands, but also of technology and well density”.¹¹ Food & Water Europe went on to explain one of the impacts of the definition:

By limiting this definition to projects above a fixed threshold for water use, the United Kingdom has excluded a number of fracking operations from the legislation framework otherwise legally binding for this kind of oil and gas extraction.¹²

10. Mobbs’ Environmental Investigations and Research shared the concerns of Food and Water Europe in stating that this can lead to some developments not attracting a sufficient level of regulation.¹³ Friends of the Earth noted that this could leave protected areas vulnerable:

There is no ban on surface development of sites in protected areas like National Parks - unless the proposed volume of fluid and target strata meets the definition of Relevant Hydraulic Fracturing (RHF) set out in Petroleum Licensing (Exploration and Production) (Amendment) (Landward Areas) (England and Wales) Regulations 2016.¹⁴¹⁵

11. The definition of fracking in the NPPG is viewed more positively. A group of planning barristers from Cornerstone Barristers told us that it “has the benefit of being sufficiently wide to capture the colloquial meaning of “fracking”, as well as the other methods of fracturing ... It also has the benefit of not referring to criteria such as amounts of fluid”.¹⁶ Richard Flinton from North Yorkshire County Council (NYCC) told us that the draft North Yorkshire Joint Minerals and Waste Plan uses the NPPG definition for the following reasons:

If you were to use the definition that is in the regulations around national infrastructure, then you would narrow it down so much so that we feel that applications that just miss that threshold would require all of the same level of consideration as something that hit that definition. We also believe that it is necessary to have something that is clear to the public in terms of what is understood by the term “hydraulic fracturing”; they can then be open

10 Friends of the Earth England, Wales and Northern Ireland ([PGF0183](#)); Ms Estelle Dehon (Cornerstone Barristers) ([PGF0194](#)). See also Brockham Oil Watch ([PGF0142](#)), [Q54](#) and [Q58](#).

11 Food & Water Europe / Food & Water Watch ([PGF0165](#))

12 Food & Water Europe / Food & Water Watch ([PGF0165](#)). See also Weald Action Group ([PGF0181](#)).

13 Mobbs’ Environmental Investigations and Research ([PGF0177](#)). See also Friends of the Earth England, Wales and Northern Ireland ([PGF0183](#)).

14 Friends of the Earth England, Wales and Northern Ireland ([PGF0183](#)). See also [Q58](#).

15 Please note that the definition in the [Petroleum Licensing \(Exploration and Production\) \(Amendment\) \(Landward Areas\) \(England and Wales\) Regulations 2016](#) is slightly more stringent than the definition in the Infrastructure Act 2015 as acknowledged by the Department for Business, Energy and Industrial Strategy ([PGF0218](#)).

16 Ms Estelle Dehon (Cornerstone Barristers) ([PGF0194](#))

to participating in the planning process as a result of a definition that is not completely all-encompassing but is open to their understanding of the phrase.¹⁷

12. Nonetheless, the NPPG definition has also been criticised. Cornerstone Barristers stated that this definition is limited by a subsequent paragraph of the Minerals section of the NPPG which excludes other methods of fracking in describing the hydraulic fracturing process as follows: “During hydraulic fracturing, *a mixture of water, sand and possibly some chemical additives*¹⁸ is pumped under pressure down a borehole into the rock unit”.¹⁹

13. For MPAs, we heard that the lack of clarity over the definition of fracking can impact local authority resources and hinder public understanding.²⁰ Surrey County Council stated:

Without further clarification regarding the distinction between conventional and unconventional hydrocarbons the two processes are conflated in the eyes of the public with all oil and gas development being the focus for anti-fracking protests with subsequent major resource implications.²¹

14. Sally Gill said that Nottinghamshire County Council (NCC) has also experienced this, though suggested that changing the definition may have little impact on public understanding:

The wider world and particularly some of the anti-fracking groups will challenge local authorities on any application, whether or not it is related to shale gas development of any form. We have had planning applications relating to conventional oil and gas, and protestors have started spreading rumours that that is related to shale gas and shale gas development. The local authority then has to spend a lot of time saying, ‘No, that does not relate to shale gas’.

Universal definition

15. It has been suggested that the planning process would benefit from a universal definition of fracking. Nicola Howarth from the Peak District National Park Authority told us:

It would help if there was a common definition for fracking. As it is set out in the Infrastructure Act, it is quite scientific. It is obviously an industry definition. There is a definition in the planning practice guidance for minerals, which relates a bit more to the operation of fracking. It would be helpful if the two were possibly combined in some way and there was consensus in trying to get agreement over one definition.²²

16. However, we also heard that a universal definition of fracking could be redundant. Andrew Mullaney from Lancashire County Council (LCC) argued that it is not the

17 [Q77](#)

18 Emphasis added.

19 Ms Estelle Dehon (Cornerstone Barristers) ([PGF0194](#)); Para 130, Minerals guidance, [NPPG](#)

20 Surrey County Council – officers ([PGF0124](#)); [Q77](#)

21 Surrey County Council – officers ([PGF0124](#))

22 [Q77](#)

definition that matters but rather the impacts.²³ He expanded on this comment to say that “there is no statutory test in terms of the environmental impact assessment regulations that will trigger fracking or not. In statutory terms, I am not sure it matters, perhaps unless you are in a designated area”.²⁴ This view was broadly reflected by other regulatory bodies. Mark Ellis-Jones from the Environment Agency (EA) told us that “the legislation that we rely on does not contain a definition of hydraulic fracturing and we do not need one in order to put the environmental controls in place that we have”.²⁵ Chris Flint from the Health and Safety Executive (HSE) agreed, saying that “the definition neither helps nor hinders us because the legislation that I described applies equally”.²⁶

17. Nonetheless, we were told that that the definition does impact upon the work of the HSE and the Oil and Gas Authority (OGA). If a fracking site did not meet the Infrastructure Act definition of fracking, the HSE would not be required to visit it before fracking takes place and let the Secretary of State know that they have received notification of weekly reports from the operator.²⁷ Chris Flint clarified that the HSE may still visit the site: “We would do that on a risk-based approach. If we felt it was needed, we would do it”.²⁸ Similarly, the OGA does not require a hydraulic fracture plan if the fluid-based definition is not met. Tom Wheeler from the OGA told us that the Authority reserves the right in guidance to require one should they think there are risks of seismic activity.²⁹ He clarified that “if someone were to come along with a plan to inject an equivalent quantity of some other substance that is not water, we would look at extraordinarily carefully at that, probably more so than we would do in the case of water or the fracking fluids that we are familiar with”.³⁰

18. The Government told us that the Infrastructure Act definition of fracking does not need changing.³¹ However, it indicated that it intends to change the definition of fracking in the NPPG to that of the Infrastructure Act. The 2018 WMS stated that “we expect Mineral Planning Authorities to recognise the fact that Parliament has set out in statute the relevant definitions of hydrocarbon, natural gas and associated hydraulic fracturing”.³² We were also told that the current NPPG definition is a “discrepancy”:

There is another discrepancy relating to planning guidance on this that predates the Infrastructure Act, and it is the intention of our two Departments to ensure that that is updated so there is no discrepancy between planning guidance and the Infrastructure Act.³³

19. The Infrastructure Act 2015 definition of fracking does not reflect the technologies used on the ground nor the public understanding of fracking, leading to a lack of understanding among key stakeholders and significant concerns about loopholes in the current regulatory regime. We therefore believe that the Infrastructure Act 2015 definition is unsuitable in the planning context and recommend that it should not be

23 [Q77](#)

24 [Q80](#)

25 [Q121](#)

26 [Q121](#)

27 [Q121](#)

28 [Q123](#)

29 [Q123](#)

30 [Q126](#)

31 [Q146](#). See also [Q148](#).

32 [HCWS689](#), 17 May 2018

33 [Q151](#)

liquid or volume-based. While we welcome the Government's intention to unify the definitions of fracking used in the Infrastructure Act 2015 and the National Planning Practice Guidance due to the resultant lack of clarity and uncertainty in using multiple definitions, we are highly concerned at the Government's suggestion that the Infrastructure Act definition will replace the current definition in a revised National Planning Practice Guidance. We call on the Government to amend the Infrastructure Act definition to ensure public confidence that every development which artificially fractures rock is subject to the appropriate permitting and regulatory regime.

Proposed changes to the National Planning Policy Framework

20. Few witnesses were content with the proposed changes to the NPPF published for consultation in March 2018, which imports a statement concerning the importance of, and need for, on-shore oil and gas development, including unconventional hydrocarbons.³⁴ We heard from some MPAs that the proposed changes would not provide additional guidance. North Somerset Council stated:

The 2012 National Planning Policy Framework (NPPF) clearly has important status as a material consideration in determination of planning applications, but provides little guidance on fracking. It just includes one short specific reference to on- shore oil and gas development... the recently publicised "Draft text for consultation" includes similar limited text on on-shore oil and gas development.³⁵

21. Nicola Howarth from the Peak District National Park Authority agreed:

We would just like to see it updated and expanded. We would also like for it to include national policy on climate change and the Government's energy policy. It should really include best-practice measures and learning that has accrued so far, in terms of onshore oil and gas exploration. At the moment, it lacks that detail. In terms of technical assessment as well, previously it used to advise authorities on how to assess the impacts of major developments. It also provided technical guidance so that you could quantify those impacts and apportion weight appropriately. There is kind of a policy vacuum in that sense; it no longer provides that.³⁶

22. Concerns were raised from some industry representatives that the NPPF does not sufficiently reflect the Government's support of shale gas. Matt Lambert from Cuadrilla summarised the key industry concern as follows:

The written ministerial statement states: "There is a national need to explore and develop our shale gas and oil resources in a safe, and sustainable and timely way". That was in 2015. The current wording in the draft NPPF, or the proposal for changes to it, makes it clear that councils should give this great weight, but does not make it absolutely clear, as we would prefer, that shale gas is a nationally important priority because of energy security, primarily, and because of balance of payments.³⁷

34 [National Planning Policy Framework: Draft text for consultation](#), March 2018

35 North Somerset Council ([PGF0024](#))

36 [Q74](#)

37 [Q15](#). See also [Q3](#), [Q14](#) and [Q17](#).

23. However, we also heard from some anti-fracking groups that the proposed changes to the NPPF put too much emphasis on the benefits of fracking, which they argue are not substantiated. Kia Trainor from the Sussex branch of the Campaign for Rural England (CPRE) told us:

We do not think there should be this great weight on the benefit of mineral extraction, particularly the benefits of onshore oil and gas development, without the Government fully making that business case. What are these benefits? They need to be understood before they go in here... We would like more paragraphs within the NPPF to allow decision makers to give weight to moving towards a low-carbon economy and taking climate change into account in their decisions.³⁸

24. In addition to being told that the benefits of fracking included in the proposed revised NPPF are unsubstantiated, we heard that the references to the benefits of fracking contradicted other Government policy and the wider wording of the NPPF, leading to some confusion among MPAs. Andrew Mullaney from LCC told us:

It talks about mineral planning authorities recognising shale gas in the transition to a low-carbon economy. Maybe I am reading too much into it but that seems to me almost like a coded way of saying, “You do not need to worry, MPAs, about shale gas and the carbon emissions that result, because it is taking us on a path, on a transition to a low carbon economy”. I would like to see something more concrete around this apparent inconsistency between the Clean Growth Strategy and the need to promote gas through planning policy.³⁹

25. Nicola Howarth from the Peak District National Park Authority reflected Andrew Mullaney’s initial concern in her comments on the assumption in the proposed wording that MPAs should “plan positively” for fracking developments.⁴⁰ She told us that such wording “implies that the [fracking] development is already sustainable, whereas in effect you [MPAs] assess whether it is sustainable as part of a planning application”.⁴¹

26. Indeed, both the current and revised NPPF ask MPAs to consider how developments are sustainable.⁴² The consideration of the environmental impacts is one of three key measures of sustainability; it states, among other aspects, that sustainable developments should “adapt to climate change, including moving to a low carbon economy”.⁴³ Chris Hesketh from Frack Free Dudleston told us that “the current planning process is seeking to achieve two things that are at odds with each other; hence ambiguity and confusion exists”.⁴⁴ He took the view that the Government’s commitment to the Climate Change Act 2008 was “incompatible” with the planning guidance.⁴⁵ A 2015 Report of the Environmental Audit Committee concluded that “extensive production of unconventional gas through fracking is inconsistent with the UK’s obligations under the Climate Change

38 [Q57](#)

39 [Q96](#)

40 [National Planning Policy Framework: Draft text for consultation](#), March 2018

41 [Q72](#)

42 [National Planning Policy Framework](#); [National Planning Policy Framework: Draft text for consultation](#), March 2018

43 [National Planning Policy Framework: Draft text for consultation](#), March 2018

44 [Q54](#)

45 [Q54](#)

Act and its carbon budgets regime”.⁴⁶ CPRE Sussex stated that “no guidance exists within the NPPF/NPPG for MPAs on how to reconcile these competing priorities”.⁴⁷ When we questioned the Government, it refuted that there were any contradictions between the 2015 WMS and the Clean Growth Strategy:

Not at all... One of the things that we will be doing in this country over the next few years is ending the generation of power using coal, which is twice as dirty as any other fossil fuel, and part of that is because we are able to bring gas into the mix... We would obviously like to decarbonise gas further—that is one of the reasons for focusing so much on carbon capture, usage and storage—but it is a fundamental part of our energy mix and we can achieve our climate change targets using it.⁴⁸

27. The proposed changes pertaining to fracking in the revised National Planning Policy Framework, published in March 2018, lack detail and create ambiguity about the Government’s position on fracking. It is also counterintuitive that the 2018 Written Ministerial Statement, which moves the goalposts of the Government’s fracking planning policy, was issued after the consultation on the National Planning Policy Framework had closed as it leaves stakeholders unable to comment.

28. The Government must clarify and consolidate the full extent of its fracking policy within the revised National Planning Policy Framework, including how fracking sits with the UK’s commitments to climate change in order to make clear to Mineral Planning Authorities how they can balance competing objectives, and respond to the public’s concerns. Mineral Planning Authorities must continue to consider environmental sustainability as part of the determination of planning applications. If, as a result of the 2018 Written Ministerial Statement, the final version of the revised National Planning Policy Framework is significantly different from that already consulted on, the Government should hold a further consultation.

Accuracy

29. We heard from the Government that it “regularly reviews” its fracking planning guidance. Specifically, we were told that “we do periodic reviews of the guidance but we also keep it up-to-date on a case-by-case basis where that is necessary ... we work with other Departments, including BEIS, very closely on this”.⁴⁹

30. However, we heard from the Landscape Institute that “there is an urgent need to update and expand on the current guidance as decisions are being made based on inadequate and outdated advice”.⁵⁰ Kate Gordon from Friends of the Earth concurred, telling us that “the guidance is pretty out-of-date. Some of it dates back to 2013 and 2014”.⁵¹ She told us that “things have moved on” since the publication of one of the most important planning guidance documents, the Minerals section of the NPPG, which has not been updated (with the exception of one paragraph) since March 2014, and that it is now “quite

46 Environmental Audit Committee, Eighth Report of Session 2014–15, *Environmental risks of fracking*, HC856

47 CPRE Sussex ([PGF0077](#))

48 [Q179](#)

49 [Q165–166](#)

50 Landscape Institute ([PGF0126](#))

51 [Q55](#)

old and out of date”.⁵² INEOS also raised specific concerns about the NPPG, stating that it “does not contain the full extent of guidance available in current Written Ministerial Statements and other non-planning guidance documents”.⁵³

31. Kia Trainor from CPRE Sussex drew particular attention to a reference in the NPPG to the 2013 Annual Energy Statement.⁵⁴ She explained that:

[It] is one of the key considerations that the officer has. That energy statement is very old. It needs updating, particularly in light of... our climate change commitments and the Government commitment to clean growth and the 25-year environment plan. This is really outdated guidance to be using.⁵⁵

32. Andrew Mullaney from LCC identified the 2014 Public Health England report as a key document that requires updating:

A lot of the questions that are raised in fracking relate to public health... We get a lot of opposition groups all the time saying there has been this report and that report. If that Public Health England report was updated and in turn that underpinned some revised Government guidance on planning, public health and fracking, that would be helpful. I do not envisage it being War and Peace, but even just a paragraph or two in the revised, possibly online planning guidance would be helpful.⁵⁶

33. It is also unclear how the Government reviews and takes account of new research in its guidance. For example, a recent report by Professor Peter Styles found that there is a higher risk of seismic activity if fracking is taking place in former coal mining areas as fracking could “reactivate” old or unknown faults lines.⁵⁷ When we questioned the Government on whether MPAs should take its findings into account, we were told that “there may always be academic debate but we should be very careful to single out any particular report and prejudice any individual application on that basis because we have had the world’s best scientists reviewing this industry for many years”.⁵⁸ **However, as we note below, there would seem to be merit in ensuring that there is flexibility in the Government’s approach to take account of such scientific and other developments, where appropriate. We also believe that the Government should assess the implications for existing fracking guidance of Professor Peter Styles’ report, entitled *Fracking and Historic Coal Mining: Their relationship and should they coincide?***

34. Andrew Mullaney from LCC told us about the impact of out-of-date guidance on MPAs: “at the moment, there seems to be silence, which is filled by opposition groups pointing to studies X, Y and Z in America or whatever. Being a planner dealing with that feels quite isolating”.⁵⁹ Sally Gill from NCC explained that it is “very important, if there is new information that becomes available relating to shale gas, that any guidance or

52 [Q64](#)

53 Turley on behalf of INEOS Upstream Ltd ([PGF0163](#))

54 Para 124, [Minerals Planning Guidance](#), National Planning Practice Guidance

55 [Q54](#)

56 [Q88](#); [Q94](#)

57 Professor Emeritus Peter Styles, *Fracking and Historic Coal Mining: Their relationship and should they coincide?*

58 [Q170](#)

59 [Q95](#)

documentation is updated”.⁶⁰ She called on the Government to “build in a mechanism to review and update, so that when we are making decisions we know we have the up-to-date list of information to look at”.⁶¹

35. The question of how the guidance used in the determination of fracking planning applications is updated is of particular importance as existing exploration sites move towards production and the cumulative impact of fracking becomes more apparent. While Matt Lambert from Cuadrilla told us that “an exploration site and a production site could be very similar. You would not have to have a larger physical footprint to have a production site ... Exploration sites can become production sites. That is part of the process”,⁶² he acknowledged that there are potential issues when it comes to production such as increased transport levels that would need to be assessed in the planning process.⁶³ Ken Cronin from UK Onshore Oil and Gas (UKOOG) agreed that “as we move from exploration to production, there will be more wells on the site and bigger impacts in terms of land use planning. Again, the system is there and it is designed to take account of that through the processes that already exist”.⁶⁴

36. Notwithstanding the above concerns about inaccurate guidance and the process for updating guidance, the Government announced its intention to revise the NPPG in the 2018 WMS.⁶⁵ The revision will ensure “clarity on issues such as cumulative impact, local plan making and confirmation that planners can rely on the advice of regulatory experts”.⁶⁶ The process for agreeing the revised NPPG is unclear; it is unknown whether it will be subject to public consultation. We heard concerns that “there appears to be an increasing move towards updates happening with no consultation”.⁶⁷ This view was shared by South Hambleton Shale Gas Advisory Group who said that the existing Government guidance had been “unfounded on proper consultation”.⁶⁸

37. We welcome the Government’s announcement that the National Planning Practice Guidance will be revised following the proposed changes to the National Planning Policy Framework. However, a number of other guidance documents are out-of-date. There does not appear to be a clear process for incorporating scientific and technological developments. *The Government should clarify the process by which scientific and technological developments, as well as practical experience at fracking sites, are reviewed and, if appropriate, incorporated into existing guidance, particularly as fracking developments move towards production and the cumulative effect of fracking materialises further.*

38. *The Government must hold a public consultation on changes to the sections regarding fracking in the National Planning Practice Guidance to ensure public confidence in the decision-making process for fracking developments.*

60 [Q95](#)

61 [Q95](#)

62 [Q26](#)

63 [Q27](#)

64 [Q27](#)

65 [HCWS689](#), 17 May 2018

66 [HCWS689](#), 17 May 2018

67 Friends of the Earth England, Wales and Northern Ireland ([PGF0183](#))

68 South Hambleton Shale Gas Advisory Group ([PGF0044](#)). See also Frack Free Southport ([PGF0092](#)).

3 Consolidation of guidance

39. While we were told that the guidance used in the determination of fracking planning applications is “quite fragmented” and “disparate”, we heard differing views on whether consolidating it would be beneficial.⁶⁹ It was argued by some witnesses that consolidating the guidance would assist MPAs. Lynn Calder from INEOS told us:

We understand that local mineral authorities are overworked and under-resourced. This is a complex issue that they probably do not always feel like they have signed up for. We absolutely have empathy with that. Having disparate guidance is not entirely helpful to that end.⁷⁰

40. North Somerset Council also supported consolidating the guidance. It told us that “having clear, comprehensive, regularly updated, easily accessed guidance in one place would make it easier for the council to review our planning policy on fracking”.⁷¹ It argued that “there are multiple sources of government information ... Multiple documents makes [sic] it more difficult for the reader to access comprehensive guidance, quickly and efficiently”.⁷² The EA saw a role for consolidated guidance to cover all onshore oil and gas developments to reassure MPAs about the regulations that applies at each stage of such development.⁷³

41. Nonetheless, we heard from Richard Flinton from NYCC that “if everything can be consolidated without losing the sense of what is there, I am sure that is a nice and easy thing for professionals to have regard to, but we are not coming at this from the point that there is a serious problem to be fixed”.⁷⁴ This view was supported by West Sussex County Council, which stated that the Minerals section of the NPPG is “sufficiently comprehensive”⁷⁵ and Dr Timothy Scott, who told us that “just putting all the guidance in one place will not improve the decision-making process”.⁷⁶

42. It was noted that consolidating the guidance may be “useful to local communities”.⁷⁷ Chris Hesketh from Frack Free Dudleston told us that it would help with the “greater education of the general public”.⁷⁸ We were told that a comprehensive guidance document has the “potential for greater transparency, as [it] avoids the need to navigate the disparate guidance currently in place”.⁷⁹

43. However, we heard from some community groups that consolidating the guidance would be of disproportionate benefit to the industry. Weald Action Group argued that consolidating the guidance would “smooth the planning process for the industry”.⁸⁰ Eckington against Fracking concurred:

69 [Q86](#); [Q29](#)

70 [Q29](#)

71 North Somerset Council ([PGF0024](#))

72 North Somerset Council ([PGF0024](#))

73 Environment Agency ([PGF0199](#))

74 [Q87](#)

75 West Sussex County Council ([PGF0154](#))

76 Dr Timothy Scott ([PGF0019](#))

77 Sheffield City Council ([PGF0088](#)). See also [Q89](#).

78 [Q60](#)

79 Ms Estelle Dehon (Cornerstone Barristers) ([PGF0194](#))

80 Weald Action Group ([PGF0181](#))

Planning for an industry such as this should require planners and decision makers to work with a raft of policy e.g. current Local Plans, Mineral Plans, The Human Rights Act, The Climate Change Act, Clean Growth Policy etc. We don't believe that sections of documents such as these can be, or should be, cherry picked into one comprehensive document for this industry.⁸¹

44. Concerns were also raised about whether it is realistic and practical to consolidate all of the guidance necessary in the planning process. Norfolk County Council told us:

The reality is that proposals for fracking will impact upon a wide number of policy areas, such as water supply and pollution, waste management to name a few. In practice therefore, it will not be possible to create a single comprehensive policy/guidance document against which fracking proposals can be assessed.⁸²

45. While the Government acknowledged that “there are various disparate bits of regulation and guidance” and that “it must be exceptionally difficult as a local authority member to know where to go for the whole gamut of this”, it told us that it did not think that the guidance should be consolidated.⁸³ It argued that consolidation “would either render it uncertain... or blur the demarcation between, say, planning and regulatory matters, which would not make matters more effective or clear”.⁸⁴

46. Instead of consolidating the guidance, we heard that creating one location for all of the guidance documents may be more appropriate. Leeds City Council proposed creating a “a web-document collection page, alongside all national guidance relating to on-shore oil and gas development, i.e. providing a ‘one-stop shop’ for all relevant stakeholders.”⁸⁵ Kia Trainor from CPRE Sussex told us that it would make it “really easy for people to navigate the system”.⁸⁶ Sally Gill from NCC agreed:

There is a lot of information out there that is really useful and has been very useful to us in our processes. Rather than putting it all in one document, it would be useful if it was all in one place on your website, so we knew that if we were looking at information, everything was in one place—not necessarily one document—so we could then use the bits we needed to use, so we would be sure that we had the most up-to-date list on documents, correspondence and things.⁸⁷

47. We conclude that navigating the disparate guidance hinders understanding, transparency and engagement with fracking planning applications. *The Government should create an online, publicly-available “one-stop shop” for all fracking guidance and policy documents. The site should clearly explain the roles of each regulatory body and provide links to guidance and policy documents including those not produced by MHCLG (e.g. Public Health England, Oil and Gas Authority, BEIS). We recommend that the proposed planning brokerage system in partnership with the Shale Environmental Regulator host such a site, subject to the changes in the remit of the brokerage system and shale environmental regulator that we propose in the ensuing chapters of this Report.*

81 Eckington Against Fracking ([PGF0067](#))

82 Norfolk County Council ([PGF0037](#)). See also Ms Estelle Dehon (Cornerstone Barristers) ([PGF0194](#)).

83 [Q174](#)

84 [Q174](#)

85 Leeds City Council ([PGF0153](#)). See also Local Government Association ([PGF0147](#)).

86 [Q60](#)

87 [Q93](#)

4 Weight of guidance

48. In the determination of fracking planning applications, we heard that there is a lack of clarity about what weight different pieces of guidance should be given by MPAs. Nottinghamshire County Council stated:

There is no steer on how Minerals Planning Authorities should deal with shale gas applications, specifically the weight that should be given to them, other than the general statement at the start of Paragraph 144 [of the NPPF] ... Additional guidance in this regard within the NPPF would be beneficial.⁸⁸

49. As we detailed in greater depth in Chapter 2, there is particular confusion about the status of different aspects of Government policy and guidance in the planning process. Andrew Mullaney from LCC told us:

It is quite a fragmented policy landscape at the moment, with written ministerial statements, the NPPF and online national planning guidance... The question is, as I said before, and having just gone through a public inquiry on this, about which trumps the other. Which carries more weight? Which is the statement of Government policy?

... There seems to be some inconsistency between, on the one hand, what I would call the climate change ambitions of national policy and, on the other hand, the importance that is attached to shale gas. For example, the written ministerial statement says there is a need for gas and it is important but, on the other hand, we have things like the Clean Growth Strategy. As a planner, I am left wondering where we go with this. On the one hand, we seem to be asked to reduce CO2 but, on the other, this need for gas obviously results in CO2 emissions.⁸⁹

50. Nicola Howarth from the Peak District National Park Authority told us that the weight of the guidance is for the decision-maker and should be decided on a case-by-case basis.⁹⁰ Cheshire West and Chester Council concurred:

The Council consider the Government guidance to be a material consideration but only guidance, not statute or policy. It is considered that the weight it is to be given when determining a planning application is for the decision maker to decide.⁹¹

51. We heard from Richard Flinton from NYCC that the national guidance should be used to require MPAs to look at the benefits of mineral extraction but that local policies should be used to consider how such development can take place in a balanced way within local communities.⁹² This view was reflected by the Government which told us that “we have a localised system within a national framework in the NPPF”.⁹³

88 Nottinghamshire County Council ([PGF0139](#))

89 [Q88](#); [Q96](#)

90 [Q96](#)

91 Cheshire West and Chester Council ([PGF0031](#))

92 [Q96](#)

93 [Q178](#)

52. The Government told us “the question of balance is so important”⁹⁴ and that the “balance is right” at the moment, though “the NPPF and the guidance that follows will look to make sure it is optimised”.⁹⁵ Nonetheless, there have been suggestions that greater weight be given to the Government’s support of fracking in certain circumstances. The Landscape Institute stated:

The status, in planning terms, of the extant Government guidance, and the weight it can be given at planning inquiries, is lower than it needs to be... the greatest weight is given to development plan policies which, in the case of fracking, will be policies in an adopted local minerals and waste plan ... However, where the development plan is absent, silent or the relevant policies are out of date, an application should be determined in accordance with NPPF principles unless otherwise specified.⁹⁶

53. While the primary consideration for Mineral Planning Authorities must be Local Plans, the status of the various guidance documents in the planning process is not always clear to Mineral Planning Authorities. Notwithstanding our earlier recommendation for the Government to consolidate its position on fracking in the revised National Planning Policy Framework, particularly in regard to how it fits with the UK’s climate change commitments, we are content that Mineral Planning Authorities are currently finding an appropriate balance between national and local policy and guidance in the determination of fracking planning applications.

Local plans

54. However, despite the Government stating that it believes the balance between national support of shale gas and oil and local input is right,⁹⁷ the Government has raised questions about the extent to which MPAs are able to adapt their Local Plans to local circumstances. Given that MPAs are legally obliged to determine planning applications in accordance with the development plan unless other material considerations indicate otherwise under the Planning and Compulsory Purchase Act 2004,⁹⁸ this could have a considerable impact on fracking planning applications. The 2018 WMS on fracking planning policy stated that:

Mineral Plans should reflect that minerals resources can only be worked where they are found, and applications must be assessed on a site by site basis and having regard to their context. *Plans should not set restrictions or thresholds across their plan area that limit shale development without proper justification.*⁹⁹ *We expect Mineral Planning Authorities to recognise the fact that Parliament has set out in statute the relevant definitions of hydrocarbon, natural gas and associated hydraulic fracturing.* In addition, these matters are described in Planning Practice Guidance, which Plans must have due regard to. Consistent with this Planning Practice Guidance, policies should avoid undue sterilisation of mineral resources (including shale gas).¹⁰⁰

94 [Q258](#)

95 [Q178](#)

96 Landscape Institute ([PGF0126](#))

97 [Q178](#)

98 [Planning and Compulsory Purchase Act 2004](#)

99 Emphasis added.

100 [HCWS689](#), 17 May 2018

55. This statement is of particular relevance to North Yorkshire County Council, City of York Council and the North York Moors National Park Authority, whose Joint Minerals and Waste Plan is currently under consideration by the Planning Inspectorate. According to Richard Flinton from NYCC, the Joint Plan had been an opportunity to “shape our policies to suit our place”.¹⁰¹ He described the ability to interpret the balance locally as of “vital importance”.¹⁰² The plan proposes a series of measures in regard to fracking planning applications that are unprecedented in the UK. For example, the draft plan imposes a setback distance for all fracking sites of at least 500m from homes unless the impacts can be adequately mitigated on a case-by-case basis.¹⁰³ It also explicitly, and understandably, references the definition of fracking in the Minerals section of the NPPG (see Chapter 2 for our more detailed comment on the planning definition of fracking). Richard Flinton told us:

We pulled together that suite of measures, which we believe enables the industry to take place, is in line with recognising the value of mineral extraction, tempers the level that the industry will reach in order to enable those other qualities of life but also factors local existing jobs taking place. It was a matter of carving out our own way. In doing so, we looked at other planning issues relating to other industries, other factors and other issues of noise, transport, et cetera, and we brought those to bear in relation to this particular issue and, as I say, related it to our place. That is the importance of local government having a role in determining planning applications and pulling together local plans.¹⁰⁴

56. During the recent examination, the Planning Inspector indicated that she was minded to accept the definition and most of the proposed restrictions.¹⁰⁵ The 2018 WMS, however, suggests that the Secretary of State may disagree, which could result in the Secretary of State using his power to intervene in a local plan process under the Planning and Compulsory Purchase Act 2004.¹⁰⁶

57. It is also unclear how the 2018 WMS sits with the Localism Act 2011, which aimed “to give local planning authorities greater freedom to get on with this important job [developing local plans] without undue interference from central government”.¹⁰⁷ As we comment on in greater detail in Chapter 6, we heard the MPAs have significant local knowledge and expertise which means that they are best placed to determine planning applications and Local Plans.

58. When we asked the Government to clarify the meaning of the WMS section in paragraph 54 above, particularly in regard to what was meant by “proper justification”,¹⁰⁸ we were told “we cannot legally-certainly not as a planning minister-comment on any actual cases ... I am sorry we cannot give you more detail... again, I am not going to

101 [Q100](#)

102 [Q96](#)

103 [North Yorkshire Joint Minerals and Waste Plan](#)

104 [Q100](#)

105 [Examination in Public; Drill or Drop? Live news updates: Inspector backs buffer zones between N York shale gas sites and homes plus local fracking definition](#), 13 April 2018

106 Section 21a, [Planning and Compulsory Purchase Act 2004](#) (inserted by section 145(5) of the Housing and Planning Act 2016)

107 Department for Communities and Local Government, [A plain English guide to the Localism Act](#), November 2011.

108 [Q183-185](#)

set out generalisations”.¹⁰⁹ We are disappointed with the Minister’s refusal to answer our questions. Claiming that the Minister cannot respond to our questions because he cannot answer hypothetical cases or comment on specific cases is incongruous given that the questions referred directly to a Government statement on fracking planning policy.¹¹⁰

59. There is a contradiction between the spirit of the Localism Act 2011 and the 2018 Written Ministerial Statement on fracking planning policy which could unreasonably restrict Local Plans. Mineral Planning Authorities are best placed to understand their local area and weigh up what requirements should be in place for fracking developments. We note that Local Plans are already subject to scrutiny at national level from the Planning Inspectorate. *Given that the English planning system is planned, Mineral Planning Authorities should be free to adapt their Local Plans as they see fit as long as they do not arbitrarily restrict fracking developments. It is essential that Mineral Planning Authorities have the right to put conditions in their Local Plans which can be justified having proper regard to local circumstances.*

109 [Q183–185](#)

110 [Q182–184](#)

5 Shale Environmental Regulator

60. Following commitments in the 2017 Conservative general election manifesto, the Government announced its intention, again in the 2018 WMS, to establish a Shale Environmental Regulator (SER). The Government told us that the SER would bring together the organisations that have a regulatory role in fracking developments to act “as one coherent single face for the public, mineral planning authorities and industry.”¹¹¹ The Government also clarified that there will be a consultation on whether a standalone regulator is necessary, what it would look like, and, if it is required, whether it will be given additional powers.¹¹²

61. The majority of witnesses, including the existing regulators, raised concerns about creating a single regulator. The primary justification for this position was the “dilution of those skills and competencies” of the individual regulators.¹¹³ Chris Flint from HSE told us that the relationships between the regulators already “work very well and effectively, and have been proven to do so without creating a separate body ... The benefit of us regulating together in the way that we do is that we have expertise that the EA can rely upon and they have expertise that we can rely on, and the same with the OGA”.¹¹⁴ Chris Hesketh from Frack Free Dudleston agreed:

Why we would question the ability of the Environment Agency to look after the environment, or HSE to look after the safety of employees and the people concerned? Those bodies should and do have the ability to look after their areas of expertise. If you create a new body that is independent of those, it is not going to have this depth of experience.¹¹⁵

62. In addition, Tom Wheeler of the OGA expressed concerns about creating a conflict of interest in a single regulator. He told us that “there is good experience that mixing an economic and an environmental regulator without very careful diligence is not a good approach”.¹¹⁶ He cited the findings of the Cullen Report into the 1986 Piper Alpha disaster which concluded that a single body should not be responsible for both production and safety due to an inherent conflict of interest. The Cullen Report resulted in the regulatory responsibility for safety being transferred from the then Department for Energy, which was also responsible for production at the time, to the HSE. The importance of ring-fencing health and safety regulation was also highlighted by the industry representatives that we heard from.¹¹⁷

63. While the Government told us that the consultation will be considering whether the SER “should have any standalone responsibilities”,¹¹⁸ it allayed fears about merging existing regulatory functions. The Government told us that that “there would no transfer of the licensing conditions that sit in the OGA into the regulator”.¹¹⁹ The Secretary of State for Environment, Food and Rural Affairs also recently confirmed that the EA’s powers

111 [Q197](#)

112 [Q143–144](#)

113 [Q112](#)

114 [Q136–137](#)

115 [Q62](#)

116 [Q137](#). See also [Q37](#) and [Q205](#).

117 [Q37–38](#)

118 [Q196](#)

119 [Q202](#)

would not change in relation to shale gas.¹²⁰ The Government did not explicitly rule out transferring the functions and powers of the HSE but did tell us that “this is not about stripping very highly functioning regulators - HSE and EA, in particular - and putting them into another regulator with a statutory footing”.¹²¹

64. Given the existing roles and wider remits of the Oil and Gas Authority, Environment Agency and Health and Safety Executive, a single regulator is inappropriate for the fracking industry. The regulatory roles and powers of the existing regulators should be maintained to protect the independence of the regulatory regime, avoid conflict of interests and ensure regulatory specialisms are maintained.

65. Assuming that the existing regulatory roles are not merged, we heard that a single point of contact for fracking queries would be welcome. Matt Lambert from Cuadrilla told us:

There is a huge amount of misleading information about fracking out there. A single point of contact, independent from the industry, with a level of independence, that the public could trust, who could answer those questions and say, “No. You have heard this—it is not true” or, “Yes, this is true, but here is what happens” and could explain it properly, would be helpful.¹²²

66. Kate Gordon of Friends of the Earth expressed concern about the creation of an SER (see below) but acknowledged that there may be a role for a “signposting body that would support communities”.¹²³ Similarly, Richard Flinton from NYCC suggested that while he saw limited benefits of an SER, “the issue of public understanding of other agencies is clearly a problem” and the creation of an SER may be of limited benefit in that way.¹²⁴

67. Despite the potential awareness-raising role of a SER, we heard from anti-fracking groups that “this separate regulatory body could all too easily be seen as an offshoot of the industry body”.¹²⁵ Kia Trainor from CPRE Sussex argued that a multi-agency approach to regulating fracking would be preferable: “instead of another body, which could cause more confusion, we would be looking for better joint working with the existing bodies and more support for them to be able to do it”.¹²⁶ Kate Gordon from Friends of the Earth supported this view, telling us that “there are perfectly good bodies. The answer is much better joint working between local authorities and the statutory bodies ... There needs to be better communication - open and transparent - so everybody knows what is going on”.¹²⁷ Matt Lambert from Cuadrilla agreed that such an approach “would help make the process move more smoothly for everybody”.¹²⁸ Cuadrilla’s written submission elaborated:

The benefit of the multi-agency examination meeting(s) would be to bring together the diversity of specialist regulatory knowledge into one or more defined meetings where concerns or further request for information can be discussed openly on a multilateral rather than unilateral basis. This

120 [Topical questions](#) (Department for Environment, Food and Rural Affairs), 7 June 2018.

121 [Q206](#)

122 [Q39](#). See also [Q37](#).

123 [Q64](#)

124 [Q112](#)

125 [Q62](#). See also [Q63](#).

126 [Q62](#)

127 [Q63](#)

128 [Q30](#)

would reduce the risk of regulatory approaches overlapping and enable key technical and regulatory concerns to be discussed at an early stage helping speed up the process and ensuring statutory consultees are up to speed with the development's key issues.¹²⁹

68. There is a need to better communicate the purpose and role of the regulatory bodies. We recommend that the Government establish an overarching single point of contact for fracking queries., which should host the “one-stop shop” for fracking guidance and policy documents that we recommend in Chapter 3. The overarching body should encourage multi-agency working between the existing regulatory bodies. We note the Government’s suggestion that the proposed Shale Environmental Regulator would “act as one coherent single face for the public, mineral planning authorities and industry” and acknowledge that a Shale Environmental Regulator could fulfil this role. However, in view of our previous recommendation that the existing regulatory functions should be maintained, the Government should consider renaming and repurposing the proposed Shale Environmental Regulator as the ‘Shale Information and Coordination Service’ in order to avoid further confusion. We also recommend that the overarching point of contact co-opts the planning brokerage system to provide a comprehensive service to Mineral Planning Authorities and applicants as well as the public, pursuant to our recommendation in Chapter 6, and minimise confusion about the role of an additional body in the fracking development process.

6 Changes to the planning regime

Introduction

69. During this inquiry, we wanted to explore whether fracking planning applications should be dealt with under a national regime, specifically as nationally significant infrastructure projects (NSIPs) under the Planning Act 2008.¹³⁰ In this chapter, we consider the advantages and disadvantages of the NSIP regime, and whether it will solve some of the perceived inadequacies of the existing planning regime. We also consider whether non-hydraulic fracturing exploration should be reclassified as permitted development.

Nationally Significant Infrastructure Project regime

70. In 2016, a leaked letter from the then Secretaries of State for Energy and Climate Change, Communities and Local Government and Environment, Food and Rural Affairs to the Chancellor stated that they were “minded to bring commercial shale production within the Nationally Significant Infrastructure planning regime and to be ready to begin the move from early 2016 for large scale applications”.¹³¹ While this timetable was not met, the Government announced its commitment to such a course of action in its 2017 General Election Manifesto, which stated that “where necessary, major shale planning decisions will be made the responsibility of the National Planning Regime”.¹³² The Government set in motion this manifesto promise by announcing its intention to consult in summer 2018 on the criteria required “to trigger the inclusion of shale production projects into the Nationally Significant Infrastructure Projects regime” in its 2018 WMS.¹³³ The 2018 WMS stated that the Government want a “decision-making regime that meets the future needs of the sector.”¹³⁴ The Government clarified to us that it wanted a planning regime for fracking that balances national and local need.¹³⁵

71. We were told that one of the key benefits of bringing fracking production planning applications under the NSIP regime is greater certainty over the timescale of planning applications.¹³⁶ Once an NSIP application is formally accepted by the National Infrastructure Planning Unit at the Planning Inspectorate, it takes approximately 12–15 months until development consent is granted or refused.¹³⁷ Planning applications under the current Town and Country Planning Act 1990 should be determined by MPAs within a statutory timeframe of 13 weeks or 16 weeks if the application is subject to an environmental impact assessment.¹³⁸ While the NSIP process theoretically takes longer than the existing planning regime, the Government described the current regime as “disappointingly slow” and told us that every fracking planning application to date has failed to be determined within the statutory timeframe of 13 or 16 weeks.¹³⁹ Ken Cronin from UKOOG corroborated that “the process has now gone from an acceptable three or

130 [Planning Act 2008](#)

131 Daily Telegraph, [Ministers plot to foil anti-frackers](#), 20 January 2016

132 [The Conservative and Unionist Party Manifesto 2017](#)

133 [HCWS689](#), 17 May 2018

134 [HCWS689](#), 17 May 2018

135 [Q192](#)

136 [Q43](#). See also Cuadrilla Resources Ltd ([PGF0159](#)).

137 House of Commons Library, [Planning for Nationally Significant Infrastructure Projects \(SN06881\)](#)

138 [Town and Country Planning Act 1990](#)

139 [HCWS689](#), 17 May 2018

four months to a very unacceptable 18 months.”¹⁴⁰ Matt Lambert from Cuadrilla cited planning applications where decisions have taken significantly longer: the Preston New Road application took 28 months to be determined and the Roseacre Wood application is still being considered at appeal stage four years after the planning application was submitted.¹⁴¹

72. UKOOG stated that one of the main reasons for delays was that:

Planning officers are under significant pressure combined with reduced resources. They are under pressure to ensure that the process is legally robust; the significant volume of comments made on each planning application are considered; the high public interest is addressed; and the requirement to consult on new information (of which the definition is not always clear) is processed.¹⁴²

73. The extent of the delays and the question of whether NSIP would expedite the determination of a fracking planning application have been disputed. Andrew Mullaney from LCC said that “the suggestion that local authorities are somehow dragging their feet or do not have the competencies in speed of determination is wrong”.¹⁴³ He told us that applications often get held up when applicants submit new information during the course of the determination as it triggers further public consultation under Regulation 22 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2011.¹⁴⁴ Mullaney explained that during the first five months of the determination of the Preston New Road site, LCC had to use Regulation 22 four times.¹⁴⁵ He concluded that these procedural delays would apply equally to fracking planning applications under the NSIP regime.¹⁴⁶

74. Brockham Oil Watch also countered claims of delay in stating that:

In most cases, decision making is delayed because of faults in the documentation prepared by oil companies in support their planning applications... If the oil companies decide to continue to fight decisions made against them through the planning appeals process and then through the courts (and that if local residents do the same) the reaching a final decision can take several years; but these cases are exceptional.¹⁴⁷

75. In addition to potential procedural delays as a result of new or incorrect information, the NSIP regime is “front-loaded with a number of pre-application consultation requirements, which, depending on the complexity of the project, can take a number of years to carry out”.¹⁴⁸

140 [Q13](#)

141 We note that the 28 months quoted by Matt Lambert to conclude the [Preston New Road planning application](#) includes the appeal stage. Lancashire County Council determined the application in just over 12 months; the application was received on 2 June 2014 and determined on 29 June 2015. Similarly, Lancashire County Council determined the [Roseacre Wood planning application](#) in just over a year; the application was received on 17 June 2014 and determined on 26 June 2015.

142 UK Onshore Oil and Gas ([PGF0075](#))

143 [Q103](#)

144 [Q103](#); [Town and Country Planning \(Environmental Impact Assessment\) Regulations 2011](#)

145 [Q103](#)

146 [Q103](#)

147 Brockham Oil Watch ([PGF0142](#))

148 House of Commons Library, [Planning for Nationally Significant Infrastructure Projects \(SN06881\)](#). See also [Q103](#).

76. Zetland Group Limited contended that a further benefit to industry operators of bringing fracking planning applications under the NSIP regime was that it “could, in theory, offer greater certainty and take the decision away from elected members, mitigating the risk of political non planning based decisions”.¹⁴⁹ However, it acknowledged that this would be viewed unfavourably by the general public.¹⁵⁰ Indeed, the majority of evidence we received that opposed bringing fracking planning applications under the NSIP regime did so because of the perceived loss of local voices in the decision-making process; it was widely suggested that NSIP would “silence the voices of many local people” and would be viewed as “a deliberate attempt to circumvent democratic involvement”.¹⁵¹ We heard from West Sussex County Council that “the decision-making process for [NSIP] is more removed from the local community than if the application was determined by the LPA [local planning authority]”.¹⁵² Frack Free Ryedale noted that the link between local communities and the planning process would be broken, raising further questions about the Government’s commitment to localism and the role of local plans.¹⁵³

77. We also heard that MPAs are best placed to determine fracking planning applications under the existing planning regime because of their local knowledge. Ann Chapman stated, “local residents and their local representatives best understand their local situation and priorities, and the impact shale gas extraction would have on their local area”.¹⁵⁴ The Landscape Institute agreed, arguing that “only local planning local planning authorities have sufficient information to accurately assess cumulative impact at the local scale”.¹⁵⁵

78. The Government told us that the NSIP regime would take into account local opinions and expertise:

There are comprehensive legal requirements in place to make sure that the local authorities and local communities can have their say. There is the statement of community engagement, which is a condition before the application can be submitted to the NSIP, at the production stage. There is local community engagement at the examination stage.¹⁵⁶

79. Notwithstanding the advantages and disadvantages of bringing fracking planning applications under the NSIP regime, questions were raised about whether fracking development would meet the requirements of the regime. A group of lawyers from Cornerstone Barristers told us:

There is no evidence that future fracking applications for production will reach the thresholds set in the PA [Planning Act] 2008, and the Government’s approach to fracking as a transitional fossil fuel does not compare well

149 Zetland Group Limited ([PGF0155](#))
 150 Zetland Group Limited ([PGF0155](#))
 151 Frack Free Ryedale ([PGF0079](#)); Sheffield City Council ([PGF0088](#)). See also Margaret Higgins ([PGF0004](#)), Mr John Hobson ([PGF0005](#)), Frack Free Dudleston ([PGF0010](#)), Surrey County Council - officers ([PGF0124](#)) and Brockham Oil Watch ([PGF0142](#)).
 152 West Sussex County Council ([PGF0154](#))
 153 Frack Free Ryedale ([PGF0079](#)). See also Surrey County Council - officers ([PGF0124](#)), Lancashire County Council ([PGF0161](#)) and Ms Lynne Blake ([PGF0046](#)).
 154 Ms Ann Chapman ([PGF0151](#)). See also Weald Action Group ([PGF0181](#)), Frack Free Ryedale ([PGF0079](#)), Keep East Lancashire Frack Free ([PGF0003](#)), Cllr Keith Martin ([PGF0014](#)) Ms Miranda Cox ([PGF0016](#)), Dr Timothy Scott ([PGF0019](#)) and [Q70](#).
 155 Landscape Institute ([PGF0126](#))
 156 [Q192](#)

with current NSIP projects... for individual fracking projects, even those concerning production, it seems unlikely that there will be an element of national significance”.¹⁵⁷

West Sussex Council concurred:

[Fracking] development is not large in physical scale or land take and so is not considered to be nationally-significant by virtue of its size. It also seems unlikely that the contribution of any single site to meeting the UK’s national energy needs will be ‘nationally-significant’ - and if it was judged to be of such significance, it is unclear why the development of large-scale conventional oil and gas sites would not be.¹⁵⁸

80. In addition to potentially not meeting the thresholds of national significance, it is unclear whether fracking would qualify as an ‘energy’ project. The National Infrastructure Planning Association told us that this was “partly related to mineral extraction; and it is currently explicitly ruled out from the definition of business/commercial project”.¹⁵⁹

81. While the Government did explicitly refer to shale gas as a mineral in its evidence to us,¹⁶⁰ it is confident that it can bring the production stage of fracking developments under the NSIP regime:

The Planning Act 2008 gives the Secretary of State powers to make certain amendments by affirmative order without primary legislation; it is our view that this would allow the Secretary of State to move shale gas development into the NSIP regime as a new project within the field of energy using secondary legislation. The Planning Act 2008 refers to matters ‘in the field of energy’, as a matter of ordinary language the term ‘the field of energy’ is broad enough to capture a shale gas fracking project; ‘in the field of’ is a wide concept—not limited to, for example, projects for energy generation. The specific types of energy project referred to in the Act which are not intended to be exhaustive of what is meant by ‘energy’.¹⁶¹

82. There is little to be gained from bringing fracking planning applications at any stage under the NSIP regime; there is limited evidence that it would expedite the application process and such a move is likely to exacerbate existing mistrust between local communities and the fracking industry. We are particularly concerned that if the NSIP regime were adopted, there would be no relationship between fracking applications and Local Plans in communities. Furthermore, we note that the Government has not provided any justification or evidence for why fracking has been singled out to be included in a national planning regime in contrast to general mineral applications.

83. *Fracking planning applications should not be brought under the NSIP regime. While we note that the NSIP regime does provide opportunities for consultation with Mineral Planning Authorities and local communities, such a move could be perceived*

157 Ms Estelle Dehon (Cornerstone Barristers) ([PGF0194](#))

158 West Sussex County Council ([PGF0154](#))

159 National Infrastructure Planning Association ([PGF0127](#))

160 [Q181](#)

161 Department for Business, Energy and Industrial Strategy ([PGF0218](#))

as a significant loss to local decision-making. Mineral Planning Authorities are best placed to understand their local area and consider how fracking can best take place in their local communities.

84. *Despite our recommendation above and the overwhelming evidence we received, if NSIP were to be used for fracking applications, it is essential that a National Policy Statement is prepared as a matter of urgency that would include suitable measures to restrict inappropriate proliferation of well-pads and unacceptable impacts on landscapes. We consider that the North Yorkshire Draft Joint Minerals and Waste Plan offers an appropriate template for such guidance. While we note that the Government stated that the issue of cumulative impact “would be addressed on a case by case basis as part of the NSIP examination process,”¹⁶² the National Policy Statement should ensure that it is considered automatically as part of every determination. Every decision should also be consistent with Local Plans.*

Permitted development

85. In the 2018 WMS, the Government announced its intention to consult “on the principle of whether non-hydraulic fracturing shale exploration development should be treated as permitted development, and in particular on the circumstances in which this might be appropriate”.¹⁶³ This announcement followed a commitment in the Government’s 2017 election manifesto.¹⁶⁴ The Government told us that treating non-hydraulic fracturing shale exploration development as a permitted development would “speed up” the process and would be welcomed by former coal-mining communities who see it as an opportunity to create high-value jobs. It is unclear what the Government means by the statement ‘non-hydraulic fracturing shale exploration development’ and there are concerns that this might allow operators to build well-pads in any location they deemed suitable without due process or consideration of impacts.¹⁶⁵

86. As the 2018 WMS was published at the end of the evidence gathering stage of our inquiry, we were unable to ask witnesses about whether such a change in the planning regime would be welcomed, and received limited written evidence on the topic. Nevertheless, despite the Government asking us why would local authorities not “want to go through that process to see if there is a valuable resource that could benefit their local communities both in terms of jobs and economic impact”, concerns were raised that a permitted development regime (PDR) for non-hydraulic fracturing would be inappropriate.

87. Mirroring concerns about bringing fracking planning applications under the NSIP regime, Professor Michael Bradshaw and colleagues told us:

[The] consideration of planning applications for shale gas related activities should remain with the local authority. Given the high level of attention and concern attached to shale gas related decisions, if people regard the

162 MHCLG ([PGF0216](#))

163 [HCWS689](#), 17 May 2018

164 [The Conservative and Unionist Party Manifesto 2017](#)

165 [Q188](#); [Q190](#)

planning decision as a case of central government imposing their will on locals then the decision will be considered less legitimate and opposition to/ lack of acceptance of decisions will increase.¹⁶⁶

88. We also heard that PDR would result in reduced scrutiny of the industry.¹⁶⁷ Frack Free Ryedale and Frack Free Warsop suggested that the cumulative impact of a high number of drill pads under PDR would be of concern.¹⁶⁸

89. The Government told us:

There are still opportunities for local consultation and local buy-in, particularly if you have a prior condition as part of that process ... Where permitted development rights are already established, there is often a prior approval process and that can be set out as a condition to many of the permitted development rights. That is one of the key aspects that we want to look at to give those that share those concerns some reassurance.¹⁶⁹

90. The Government also noted that developments that require an environmental impact assessment cannot be subject to permitted development, and that local authorities “have the power to remove those permitted rights even when a consultation with the EA is not required under certain circumstances”.¹⁷⁰ Local authorities have the power to remove PDR under article 4 of the Town and Country Planning (General Permitted Development) (England) Order 2015.¹⁷¹ However, we note that “while article 4 directions are confirmed by local planning authorities, the Secretary of State must be notified, and has wide powers to modify or cancel most article 4 directions at any point.”¹⁷² Planning authorities may also be held liable to pay compensation to those whose permitted development rights have been withdrawn.¹⁷³

91. *Shale gas development of any type should not be classed as a permitted development. Given the contentious nature of fracking, local communities should be able to have a say in whether this type of development takes place, particularly as concerns about the construction, locations and cumulative impact of drill pads are yet to be assuaged by the Government.*

Local authority resources

Shale support fund

92. Questions have arisen about whether local authorities are adequately resourced to process fracking planning applications. NCC stated that fracking planning applications are “extremely demanding on Council resources”.¹⁷⁴ Sally Gill from NCC elaborated:

166 Professor Michael Bradshaw ([PGF0125](#))

167 Frack Free Southport ([PGF0092](#))

168 Frack Free Ryedale ([PGF0079](#)); Frack Free Warsop ([PGF0109](#))

169 [Q188–189](#)

170 [Q189](#)

171 [The Town and Country Planning \(General Permitted Development\) \(England\) Order 2015](#)

172 House of Commons Library, [Permitted Development Rights \(SN00485\)](#)

173 Para. 42, [When is permission required?](#) National Planning Practice Guidance

174 Nottinghamshire County Council ([PGF0139](#))

While shale gas applications are minerals planning applications, and that is what we do, the interest relating to shale gas applications and the amount of time we have had to all spend on these applications far outweigh the time we would have spent on an application for sand and gravel extraction and things. They are very resource-hungry applications for us to deal with.¹⁷⁵

93. Cuadrilla called for the Government to consider use of the NSIP regime in light of the question of “whether local authorities have the resources and the political will to process more complex applications for the production operations which will likely follow if current exploration operations are successful”.¹⁷⁶

94. The Government recognises that “shale applications and the planning process can be complex for local authorities” and announced the launch of “a new £1.6 million shale support fund over the next few years to build capacity and capability”.¹⁷⁷ Richard Flinton from NYCC, which received MHCLG funding from a previous 2017–18 shale exploration funding stream worth £1.2 million, told us that it does not cover the actual costs:

The application that I have described in North Yorkshire cost over £500,000 in terms of the burden to the council and we received some funding help from the Government, which amounted to in the region of £170,000, so there is a considerable balance to be met by the council.¹⁷⁸

95. Sally Gill from Nottinghamshire County Council explained that financial pressures were not confined to the planning department:

We were successful in obtaining some funding from DCLG, which was welcomed, but in dealing with these applications, when the applications were coming to committee the whole of the authority was involved; it was not just my team and the planning and licensing committee; it was my colleagues in the emergency planning and my legal colleagues. It was not just a burden on my planning finances; it was a burden on the local authority’s finances.¹⁷⁹

96. Andrew Mullaney from Lancashire County Council went on to say that it is not just during the determination process that local authorities are under-resourced:

It is “post-decision as well, in in terms of the monitoring and enforcement of sites. At the peak, if something at the site is happening—say, for example, the fracking rigs are being brought on, which they will be at some point in the summer—I am expecting our complaints to go through the roof and us to have to deal with those. Whether they are actual complaints or how significant they are, nevertheless all have to be investigated.”¹⁸⁰

97. Notwithstanding concerns above that this funding does not cover the true cost for MPAs, Nicola Howarth from the Peak District National Park Authority called for the

175 [Q103](#)

176 Cuadrilla Resources Ltd ([PGF0159](#))

177 [HCWS689](#), 17 May 2018

178 [Q110](#)

179 [Q110](#)

180 [Q110](#)

fund to be “available on an ongoing basis from the Government. There was a deadline to submit your application for the bid and I think it was available on a first come, first served basis, which I do not think is helpful”.¹⁸¹

98. It is essential that Mineral Planning Authorities are sufficiently resourced to deal with fracking planning applications. The shale support fund of £1.6 million over two years and the planning brokerage system are to be welcomed though we note that in the previous financial year Mineral Planning Authorities could apply for financial support from a fund of £1.2 million. Furthermore, given that we were told that fracking applications can cost Mineral Planning Authorities more than £500,000, we recommend that the Government raise the cap on funding bids to the shale support fund and increase the funding available. The Government should also consider making the fund more flexible so that Mineral Planning Authorities can react more effectively to fracking planning applications.

Planning brokerage service

99. The Government also announced the creation of a planning brokerage service (PBS) to provide guidance to MPAs and applicants on the planning process “to help facilitate timely decision-making”.¹⁸² The Government told us that “this is all about the process, advising both local authority and the developers on the process and how best to engage with it. It does not touch or impinge on the substance of any planning applications”.¹⁸³

100. While we did not hear specific requests for such a service, we heard calls for capacity-building training to be available for MPAs. Leeds City Council called on the Government to make further provision for local authority training on fracking in order “to build capacity and share experience”.¹⁸⁴ The Zetland Group agreed, saying that “planning professionals could be assisted by more training”.¹⁸⁵ The Local Government Association said that the Planning Advisory Service (PAS) already offered such training and called on the Government to support this type of support:

In partnership with environmental consultants, they also offer councillor training sessions on handling of planning applications for hydraulic fracturing of shale for mineral planning authorities. The sessions cover the decision making process and supporting information on fracking applications. The LGA fully supports this type of sector-led approach that builds capacity in local planning authorities. We would like further central government funding to be provided to enable this level of support to continue, particularly for those local authorities which have limited experience of processing these types of applications.¹⁸⁶

The Government have since told us that it intends to fund PAS to complement the service offered by the PBS.¹⁸⁷

181 [Q110](#)

182 [HCWS689](#), 17 May 2018

183 [Q228](#)

184 Leeds City Council ([PGF0153](#))

185 Zetland Group Limited ([PGF0155](#))

186 Local Government Association ([PGF0147](#))

187 MHCLG ([PGF0216](#))

101. When we questioned the Government on why such a service would not be made available to the public, we were told that “if you have 36,000 expressions of concern, most of which are not coming from the local area, there is a suggestion that those who want to oppose these developments do not need much more support than they already have.”¹⁸⁸ The Government denied that the PBS was being set up in order “to give reasons for people to get around legislation and planning guidance”.¹⁸⁹ It told us that it would be “good way of establishing early confidence in the process” among local communities as it will facilitate “better co-ordination between the developer and the local authority in terms of information. This is a way of making sure that information is provided in a timely fashion, by developing potentially a planning performance agreement that obliges both sides to deliver”.¹⁹⁰

102. Limiting access to the planning brokerage system to Mineral Planning Authorities and applicants is likely to increase opposition to individual fracking applications, thereby further inhibiting the role of Mineral Planning Authorities. *The planning brokerage system should extend its support to members of the public and organisations who wish to participate in the planning process to avoid overburdening Mineral Planning Authorities. In doing this, a more independent and even-handed approach to fracking planning applications would be facilitated. As part of its support to Mineral Planning Authorities, the Government should provide long-term funding to the Planning Advisory Service to ensure continued access to training and support.*

103. *Pursuant to our earlier recommendation to rename and repurpose the proposed Shale Environmental Regulator, we call on the Government to integrate the planning brokerage system into the Shale Information and Coordination Service, to truly establish “one coherent single face for the public, mineral planning authorities and industry”.*¹⁹¹

188 [Q221](#)

189 [Q230](#)

190 [Q231](#)

191 [HCWS689](#), 17 May 2018

7 Conclusion

104. Our inquiry asked whether the planning guidance on fracking is fit-for-purpose and whether fracking should be dealt with under the NSIP regime of the Planning Act 2008. We have concluded that there are a number of improvements that should be made to the guidance and the proposals in the 2018 WMS, but agree with the vast majority of the inquiry’s witnesses that fracking planning applications should not be brought under the NSIP regime.

105. We now ask the Secretary of State to consider our conclusions and recommendations in light of the consultations and measures announced in the 2018 WMS. While we were highly disappointed in the Government’s decision to publish a WMS during the course of our inquiry, we are pleased that the Government has provided assurances that our Report will “fully influence the direction of travel”.¹⁹²

Conclusions and recommendations

Updating and improving guidance

1. The Infrastructure Act 2015 definition of fracking does not reflect the technologies used on the ground nor the public understanding of fracking, leading to a lack of understanding among key stakeholders and significant concerns about loopholes in the current regulatory regime. *We therefore believe that the Infrastructure Act 2015 definition is unsuitable in the planning context and recommend that it should not be liquid or volume-based. While we welcome the Government's intention to unify the definitions of fracking used in the Infrastructure Act 2015 and the National Planning Practice Guidance due to the resultant lack of clarity and uncertainty in using multiple definitions, we are highly concerned at the Government's suggestion that the Infrastructure Act definition will replace the current definition in a revised National Planning Practice Guidance. We call on the Government to amend the Infrastructure Act definition to ensure public confidence that every development which artificially fractures rock is subject to the appropriate permitting and regulatory regime.* (Paragraph 19)
2. The proposed changes pertaining to fracking in the revised National Planning Policy Framework, published in March 2018, lack detail and create ambiguity about the Government's position on fracking. It is also counterintuitive that the 2018 Written Ministerial Statement, which moves the goalposts of the Government's fracking planning policy, was issued after the consultation on the National Planning Policy Framework had closed as it leaves stakeholders unable to comment. (Paragraph 27)
3. *The Government must clarify and consolidate the full extent of its fracking policy within the revised National Planning Policy Framework, including how fracking sits with the UK's commitments to climate change in order to make clear to Mineral Planning Authorities how they can balance competing objectives, and respond to the public's concerns. Mineral Planning Authorities must continue to consider environmental sustainability as part of the determination of planning applications. If, as a result of the 2018 Written Ministerial Statement, the final version of the revised National Planning Policy Framework is significantly different from that already consulted on, the Government should hold a further consultation.* (Paragraph 28)
4. However, as we note below, there would seem to be merit in ensuring that there is flexibility in the Government's approach to take account of such scientific and other developments, where appropriate. We also believe that the Government should assess the implications for existing fracking guidance of Professor Peter Styles' report, entitled Fracking and Historic Coal Mining: Their relationship and should they coincide? (Paragraph 33)
5. We welcome the Government's announcement that the National Planning Practice Guidance will be revised following the proposed changes to the National Planning Policy Framework. However, a number of other guidance documents are out-of-date. There does not appear to be a clear process for incorporating scientific and technological developments. *The Government should clarify the process by which scientific and technological developments, as well as practical experience at*

fracking sites, are reviewed and, if appropriate, incorporated into existing guidance, particularly as fracking developments move towards production and the cumulative effect of fracking materialises further. (Paragraph 37)

6. *The Government must hold a public consultation on changes to the sections regarding fracking in the National Planning Practice Guidance to ensure public confidence in the decision-making process for fracking developments. (Paragraph 38)*

Consolidation of guidance

7. We conclude that navigating the disparate guidance hinders understanding, transparency and engagement with fracking planning applications. *The Government should create an online, publicly-available “one-stop shop” for all fracking guidance and policy documents. The site should clearly explain the roles of each regulatory body and provide links to guidance and policy documents including those not produced by MHCLG (e.g. Public Health England, Oil and Gas Authority, BEIS). We recommend that the proposed planning brokerage system in partnership with the Shale Environmental Regulator host such a site, subject to the changes in the remit of the brokerage system and shale environmental regulator that we propose in the ensuing chapters of this Report. (Paragraph 47)*

Weight of guidance

8. While the primary consideration for Mineral Planning Authorities must be Local Plans, the status of the various guidance documents in the planning process is not always clear to Mineral Planning Authorities. Notwithstanding our earlier recommendation for the Government to consolidate its position on fracking in the revised National Planning Policy Framework, particularly in regard to how it fits with the UK’s climate change commitments, we are content that Mineral Planning Authorities are currently finding an appropriate balance between national and local policy and guidance in the determination of fracking planning applications. (Paragraph 53)
9. We are disappointed with the Minister’s refusal to answer our questions. Claiming that the Minister cannot respond to our questions because he cannot answer hypothetical cases or comment on specific cases is incongruous given that the questions referred directly to a Government statement on fracking planning policy. (Paragraph 58)
10. There is a contradiction between the spirit of the Localism Act 2011 and the 2018 Written Ministerial Statement on fracking planning policy which could unreasonably restrict Local Plans. Mineral Planning Authorities are best placed to understand their local area and weigh up what requirements should be in place for fracking developments. We note that Local Plans are already subject to scrutiny at national level from the Planning Inspectorate. *Given that the English planning system is plan-led, Mineral Planning Authorities should be free to adapt their Local Plans as they see fit as long as they do not arbitrarily restrict fracking developments.*

It is essential that Mineral Planning Authorities have the right to put conditions in their Local Plans which can be justified having proper regard to local circumstances. (Paragraph 59)

Shale Environmental Regulator

11. Given the existing roles and wider remits of the Oil and Gas Authority, Environment Agency and Health and Safety Executive, a single regulator is inappropriate for the fracking industry. *The regulatory roles and powers of the existing regulators should be maintained to protect the independence of the regulatory regime, avoid conflict of interests and ensure regulatory specialisms are maintained. (Paragraph 64)*
12. There is a need to better communicate the purpose and role of the regulatory bodies. *We recommend that the Government establish an overarching single point of contact for fracking queries., which should host the “one-stop shop” for fracking guidance and policy documents that we recommend in Chapter 3. The overarching body should encourage multi-agency working between the existing regulatory bodies. We note the Government’s suggestion that the proposed Shale Environmental Regulator would “act as one coherent single face for the public, mineral planning authorities and industry” and acknowledge that a Shale Environmental Regulator could fulfil this role. However, in view of our previous recommendation that the existing regulatory functions should be maintained, the Government should consider renaming and repurposing the proposed Shale Environmental Regulator as the ‘Shale Information and Coordination Service’ in order to avoid further confusion. We also recommend that the overarching point of contact co-opts the planning brokerage system to provide a comprehensive service to Mineral Planning Authorities and applicants as well as the public, pursuant to our recommendation in Chapter 6, and minimise confusion about the role of an additional body in the fracking development process. (Paragraph 68)*

Changes to the planning regime

13. There is little to be gained from bringing fracking planning applications at any stage under the NSIP regime; there is limited evidence that it would expedite the application process and such a move is likely to exacerbate existing mistrust between local communities and the fracking industry. We are particularly concerned that if the NSIP regime were adopted, there would be no relationship between fracking applications and Local Plans in communities. Furthermore, we note that the Government has not provided any justification or evidence for why fracking has been singled out to be included in a national planning regime in contrast to general mineral applications. (Paragraph 82)
14. *Fracking planning applications should not be brought under the NSIP regime. While we note that the NSIP regime does provide opportunities for consultation with Mineral Planning Authorities and local communities, such a move could be perceived as a significant loss to local decision-making. Mineral Planning Authorities are best placed to understand their local area and consider how fracking can best take place in their local communities. (Paragraph 83)*

15. *Despite our recommendation above and the overwhelming evidence we received, if NSIP were to be used for fracking applications, it is essential that a National Policy Statement is prepared as a matter of urgency that would include suitable measures to restrict inappropriate proliferation of well-pads and unacceptable impacts on landscapes. We consider that the North Yorkshire Draft Joint Minerals and Waste Plan offers an appropriate template for such guidance. While we note that the Government stated that the issue of cumulative impact “would be addressed on a case by case basis as part of the NSIP examination process,” the National Policy Statement should ensure that it is considered automatically as part of every determination. Every decision should also be consistent with Local Plans. (Paragraph 84)*
16. *Shale gas development of any type should not be classed as a permitted development. Given the contentious nature of fracking, local communities should be able to have a say in whether this type of development takes place, particularly as concerns about the construction, locations and cumulative impact of drill pads are yet to be assuaged by the Government. (Paragraph 91)*
17. *It is essential that Mineral Planning Authorities are sufficiently resourced to deal with fracking planning applications. The shale support fund of £1.6 million over two years and the planning brokerage system are to be welcomed though we note that in the previous financial year Mineral Planning Authorities could apply for financial support from a fund of £1.2 million. Furthermore, given that we were told that fracking applications can cost Mineral Planning Authorities more than £500,000, we recommend that the Government raise the cap on funding bids to the shale support fund and increase the funding available. The Government should also consider making the fund more flexible so that Mineral Planning Authorities can react more effectively to fracking planning applications. (Paragraph 98)*
18. *Limiting access to the planning brokerage system to Mineral Planning Authorities and applicants is likely to increase opposition to individual fracking applications, thereby further inhibiting the role of Mineral Planning Authorities. The planning brokerage system should extend its support to members of the public and organisations who wish to participate in the planning process to avoid overburdening Mineral Planning Authorities. In doing this, a more independent and even-handed approach to fracking planning applications would be facilitated. As part of its support to Mineral Planning Authorities, the Government should provide long-term funding to the Planning Advisory Service to ensure continued access to training and support. (Paragraph 102)*
19. *Pursuant to our earlier recommendation to rename and repurpose the proposed Shale Environmental Regulator, we call on the Government to integrate the planning brokerage system into the Shale Information and Coordination Service, to truly establish “one coherent single face for the public, mineral planning authorities and industry”. (Paragraph 103)*

Formal minutes

Monday 2 July 2018

Members present:

Mr Clive Betts, in the Chair

Mike Amesbury	Andrew Lewer
Bob Blackman	Jo Platt
Helen Hayes	Liz Twist
Kevin Hollinrake	Matt Western

Draft Report (*Planning guidance on fracking*) proposed by the Chair, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 105 read and agreed to.

Summary agreed to.

Resolved, That the Report be the Eighth Report of the Committee to the House.

Ordered, That the Chair make the Report to the House.

Ordered, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

[Adjourned until Monday 9 July at 3.30 p.m.]

Witnesses

The following witnesses gave evidence. Transcripts can be viewed on the [inquiry publications page](#) of the Committee's website.

Monday 30 April 2018

Ken Cronin, Chief Executive, UK Onshore Oil and Gas, **Matt Lambert**, Director of Government and Public Affairs, Cuadrilla, **Lynn Calder**, Commercial Director, INEOS Shale

[Q1–52](#)

Chris Hesketh, Chairman, Frack Free Dudley, **Kia Trainor**, Director, Campaign for Rural England (Sussex branch), **Kate Gordon**, Senior Planner, Friends of the Earth

[Q53–70](#)

Monday 14 May 2018

Sally Gill, Group Planning Manager, Nottinghamshire County Council, **Nicola Howarth**, Minerals Planner, Peak District National Park Authority, **Andrew Mullaney**, Head of Planning and Environment, Lancashire County Council, **Richard Flinton**, Chief Executive, North Yorkshire County Council

[Q71–112](#)

Mark Ellis-Jones, Programme Executive—Onshore Oil & Gas Programme, Environment Agency, **Tom Wheeler**, Director of Regulation, UK Oil and Gas Authority, **Chris Flint**, Director, Energy Division, HSE

[Q113–140](#)

Monday 21 May 2018

Dominic Raab MP, Minister of State for Housing, Ministry of Housing, Communities and Local Government, **Rt Hon Claire Perry MP**, Minister of State for Energy and Clean Growth, Department for Business, Energy and Industrial Strategy

[Q141–259](#)

Published written evidence

The following written evidence was received and can be viewed on the [inquiry publications page](#) of the Committee's website.

PGF numbers are generated by the evidence processing system and so may not be complete.

- 1 Andrew Walker ([PGF0081](#))
- 2 Appleton Le Moors Parish Council ([PGF0038](#))
- 3 Bolsover Against Fracking ([PGF0094](#))
- 4 Brockham Oil Watch ([PGF0142](#))
- 5 Caroline Gurd ([PGF0012](#))
- 6 Catherine Lodge ([PGF0173](#))
- 7 Cheshire West and Chester Council ([PGF0031](#))
- 8 Cllr Keith Martin ([PGF0014](#))
- 9 Coal Aston & Dronfield Against Fracking ([PGF0084](#))
- 10 Councillor Paul Andrews ([PGF0210](#))
- 11 CPRE Cheshire Branch ([PGF0011](#))
- 12 CPRE Lancashire ([PGF0157](#))
- 13 CPRE Sussex ([PGF0077](#))
- 14 CPRE Sussex ([PGF0211](#))
- 15 Cuadrilla ([PGF0217](#))
- 16 Cuadrilla Resources Ltd ([PGF0159](#))
- 17 David Cragg-James ([PGF0209](#))
- 18 Deborah Gibson ([PGF0207](#))
- 19 Department for Business, Energy and Industrial Strategy ([PGF0218](#))
- 20 Derbyshire County Council ([PGF0193](#))
- 21 Diane Stokes ([PGF0091](#))
- 22 Dr Barbara Kneale ([PGF0105](#))
- 23 Dr Celia Briar ([PGF0114](#))
- 24 Dr David Lowry ([PGF0214](#))
- 25 Dr David Webster ([PGF0048](#))
- 26 Dr F P Rugman ([PGF0206](#))
- 27 Dr Jane Clarbour ([PGF0008](#))
- 28 Dr Jonathan Whittaker ([PGF0122](#))
- 29 Dr Sylvia Bernard ([PGF0040](#))
- 30 Dr Timothy Scott ([PGF0019](#))
- 31 East Kent Against Fracking (EKAF) ([PGF0100](#))
- 32 East Riding of Yorkshire Council ([PGF0017](#))
- 33 Eckington Against Fracking ([PGF0067](#))

- 34 Elizabeth Walker ([PGF0158](#))
- 35 Ellesmere Port Frack Free ([PGF0009](#))
- 36 Environment Agency ([PGF0199](#))
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