

EXPLANATORY MEMORANDUM TO
THE PETROLEUM LICENSING (EXPLORATION AND PRODUCTION)
(LANDWARD AREAS) (AMENDMENT) (ENGLAND AND WALES)
REGULATIONS 2016

2016 No. 1029

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department of Business, Energy and Industrial Strategy and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 The purpose of this instrument is to amend the model clauses for onshore petroleum exploration and development licences in order to ensure that licensees do not carry out high volume hydraulic fracturing from a well if the well pad is located in a protected area in England or Wales.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to the negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 Section 3 of the Petroleum Act 1998 (“the 1998 Act”) confers on the Secretary of State the power to issue licences to search and bore for and get petroleum in Great Britain or beneath the territorial sea adjacent to the United Kingdom, and petroleum with respect to which rights vested in Her Majesty by section 1(1) of the Continental Shelf Act 1964 (exploration and exploitation of continental shelf) are exercisable.
- 4.2 Section 4 of the 1998 Act requires the Secretary of State to make regulations prescribing model clauses which must, unless modified or excluded in any particular case, be incorporated in any such licence.
- 4.3 The Petroleum Licensing (Exploration and Production) (Landward Areas) Regulations 2014¹ prescribe the model clauses for petroleum licences for landward areas as defined in those Regulations. Schedule 2 to those Regulations (which is amended by these Regulations) prescribes the model clauses for petroleum exploration and development licences (“PEDLs”), which are defined in those Regulations as licences to search and bore for, and get, petroleum in a landward area. Schedule 3 to those Regulations prescribes the model clauses for landward petroleum exploration licences

¹ S.I. 2014/1686.

(licences which only enable licensees to search for petroleum in a landward area), and is unaffected by these Regulations.

- 4.4 Section 50 of the Infrastructure Act 2015 inserted sections 4A and 4B into the 1998 Act, to provide further safeguards where associated hydraulic fracturing (as defined in section 4B(1)) is carried out by holders of licences under section 3 of the 1998 Act. Those safeguards, and the Onshore Hydraulic Fracturing (Protected Areas) Regulations 2016 (“the Protected Areas Regulations”) which were made under section 4B of the 1998 Act, are discussed further in the policy background below.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is England and Wales.
- 5.2 The territorial application of this instrument is England and Wales.

6. European Convention on Human Rights

- 6.1 As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- 7.1 Exploring and developing the UK’s shale gas and oil resources could potentially bring substantial benefits and help the UK meet its objectives for secure energy supplies, economic growth and lower carbon emissions. The Government is committed to exploring the UK’s shale gas potential whilst maintaining the very highest safety and environmental standards, which the UK has established as a world leader in extracting oil and gas over decades.
- 7.2 In order to assure the public that the shale industry is being taken forward in a measured and reasonable manner, the Infrastructure Act 2015 amended the 1998 Act to set out restrictions on hydraulic fracturing in “protected groundwater source areas” and “other protected areas”. These terms are defined by the Protected Areas Regulations.
- 7.3 While the Infrastructure Act 2015 and the Protected Areas Regulations address hydraulic fracturing which occurs within certain protected areas, the Government considers that safeguards should also be put in place where the surface activities for hydraulic fracturing occur in specified protected areas. When the Protected Areas Regulations were laid before Parliament in draft in July 2015, the Government therefore also set out its commitment to ensure that hydraulic fracturing cannot be conducted from wells that are drilled at the surface in specified protected areas.
- 7.4 A consultation setting out proposals to give effect to this commitment was issued on 4 November 2015 and ran for six weeks, closing on 16 December 2016. In the consultation document, the Government proposed to include a licence condition in all new PEDLs to be awarded from the 14th Onshore Licensing Round onwards, that will prevent hydraulic fracturing operations from taking place from new or existing wells that are drilled at the surface in specified protected areas. For existing PEDLs, the Government proposed to set out in a policy statement that the Secretary of State is minded not to grant consent (required under section 4A of the 1998 Act) to any proposed programme of works which includes the carrying out of associated hydraulic fracturing from new or existing wells drilled at the surface in specified protected areas.

7.5 Recognising that surface activities are of greatest public concern, further to the areas covered by the Protected Areas Regulations (National Parks, the Broads, Areas of Outstanding Natural Beauty, World Heritage Sites and areas that are most vulnerable to groundwater pollution), the surface restrictions also apply to Sites of Special Scientific Interest, Ramsar and Natura 2000 sites.

8. Consultation outcome

8.1 The Government conducted a targeted consultation in November and December 2015. In total, 125 responses were received. Following a review of the arguments put forward by the respondents, the Government is confident that the key concerns have been addressed and therefore decided to proceed as proposed.

8.2 Further to the consultation, the scope of the proposals was expanded to include Wales, which brings them in line with the scope of sections 4A and 4B of the 1998 Act (as amended by section 50 of the Infrastructure Act 2015).

8.3 The activities within scope have also been slightly expanded, so that the licence changes implemented by these Regulations will apply to high volume hydraulic fracturing which is “associated hydraulic fracturing” as defined by section 4B(1) of the 1998 Act, and also to high volume hydraulic fracturing which does not meet that test but where more than 1,000 cubic metres of fluid is used at any single stage, or expected stage, of the hydraulic fracturing . (The definition of associated hydraulic fracturing requires that test to be met at *each* stage of the operation.) This is because the use of such amounts in one or more stages could well lead in some cases to similar impacts as operations which use 10,000 cubic metres of fluid in total.

9. Guidance

9.1 The Government does not intend to issue formal guidance in relation to the Regulations.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies.

10.2 There is no impact on the public sector.

10.3 A Regulatory Triage Assessment was prepared for these Regulations and evaluated the additional cost of the measure to amount to zero. All direct impacts on businesses were already accounted for in the Impact Assessment for the Protected Areas Regulations, which explicitly assumed that the restrictions would also apply to the surface.²

11. Regulating small business

11.1 The legislation applies to activities that are undertaken by small businesses.

11.2 No specific action is proposed to minimise regulatory burdens on small businesses.

11.3 As stated above in 11.3 the additional cost of the measure to businesses is estimated to amount to zero.

² <http://www.legislation.gov.uk/ukxi/2016/384/impacts>.

12. Monitoring & review

- 12.1 These Regulations do not contain a review provision, as the regulatory impact is negligible. These Regulations will nevertheless be reviewed at the same time as the Protected Areas Regulations.

13. Contact

- 13.1 James Clarke at the Department of Business, Energy and Industrial Strategy, telephone: 0300 068 6829 or email: james.clarke@decc.gsi.gov.uk, can answer any queries regarding the instrument.