

brownfieldbriefing

**Legal perspective: Examining unconventional gas
development within the current UK legislative
framework**

Elizabeth Shepherd

Partner & Head of Environment

Eversheds

Legal perspective: Examining unconventional gas development within the current UK legislative framework

24 February 2016

Elizabeth Shepherd

*Partner and Head of Environment
Eversheds LLP*



Overview

- Infrastructure Act 2015 – measures intended to boost shale gas development and their implications
- Legal requirements for information disclosure re hydraulic fracturing (HF)
- How can the current regulatory planning framework be improved to encourage development?
- Effectively managing the legal risks

IA 2015 – measures intended to boost shale gas development

- Balance between timely development and robust regulation
- Automatic access to “deep level” land i.e. at least 300 metres below surface
 - in force April 2015
- Payment scheme

IA 2015 – section 50 – not yet in force

- Well consent must include prohibition on HF at depth of less than 1,000 metres
- New HF consent required for HF at depths of 1,000 metres or more
 - 11 conditions must be met, including monitoring of methane levels in groundwater for 12 months before HF begins
 - water companies to be consulted in planning process
 - protection of “groundwater source areas” and “other protected areas” (Onshore HF (Protected Areas) Regulations 2015)
- Section 4A Petroleum Act 1998 notice – requirement on MPAs from February 4, 2016

Legal requirements for information disclosure re HF

- Public register – includes chemicals used, & maximum concentration in HF fluid
 - EA Onshore Oil & Gas Sector Guidance Consultation draft – November 2015
- Environmental Information Regulations – EA must disclose information on emissions
 - what are “emissions to environment”?
- Industry initiatives on public disclosure
 - UKOOG template/NGS Facts for EU

Recent Advertising Standards Authority rulings

- Information must not mislead
- Whether pro HF
 - Breitling Energy – September 2014
- Or Anti HF
 - Greenpeace – May 2015
 - RAFF – January 2015

How can the current regulatory planning framework be improved to encourage development?

- Decisions by Secretary of State, not LPA?
 - on direct application
 - following “calling in”
- Nationally Significant Infrastructure planning regime
- Permitted development – seismic investigation wells/groundwater monitoring wells
- Refresh guidance on processing of exploratory applications

Effectively managing the legal risks

- Dialogue with regulators and public at pre-application stage
- Contribute to consultations
- EA pre-assessment of chemicals initiative
- Be mindful of evolving EU situation
 - EU Recommendation for minimum principles
 - Hydrocarbons BREF

EVERSHEDS

eversheds.com

©2016 Eversheds LLP
Eversheds LLP is a limited liability partnership