

**Debate Pack**

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By Felicia Rankl,  
Nikki Sutherland

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# Local consent for fracking

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## Summary

A Westminster Hall debate has been scheduled for Tuesday 15 November at 9.30am on local consent for fracking. The subject for the debate has been chosen by the Backbench Business Committee, and the debate will be opened by Helen Morgan MP.

Prior to commencing fracking operations, an operator would have to [obtain a number of permissions](#), including planning permission from the local authority. A local authority must notify the local community of, and seek views on, each planning application. As a final step, the operator would also need to obtain Hydraulic Fracturing Consent from the Government.

In November 2019, the Government said it would stop issuing Hydraulic Fracturing Consents, effectively [placing a moratorium on fracking](#). It based this decision on a report that found it was not possible to accurately predict the probability or magnitude of earthquakes linked to fracking operations.

On 22 September 2022, the Truss administration [lifted this moratorium](#) on fracking. It said fracking could take place where there was “local consent”.

On 26 October 2022, the Sunak administration readopted a [presumption against issuing Hydraulic Fracturing Consents](#). It said this “effective moratorium” would remain in place until “compelling” evidence that addressed concerns on the links of fracking to earthquakes emerged.

## 1

## Permission process for fracking

Prior to instating the 2019 moratorium on fracking, the Government placed a requirement on operators to obtain Hydraulic Fracturing Consent from the Secretary of State prior to commencing drilling and production operations.<sup>1</sup>

The Government would only consider issuing Hydraulic Fracturing Consent once other permissions had been obtained.<sup>2</sup>

In addition to a [Petroleum Exploration and Development License](#) (PEDL) from the Oil and Gas Authority (OGA, now the North Sea Transition Authority, NSTA) and [environmental permits](#) from the Environmental Agency, conditions include planning permission from the local mineral planning authority (MPA).<sup>3</sup>

Prior to deciding a planning application, a local authority must notify the local community of, and seek views on, the planning application.<sup>4</sup> Further information on the planning process is set out below.

### What is fracking?

Hydraulic fracturing (known as fracking) is a technique used to extract gas or oil from shale rock. The process involves drilling into the rock and injecting a mixture of water, sand and chemicals (known as fracturing fluid) into the borehole. This creates fractures in the rock and releases the gas or oil.<sup>5</sup>

A Commons Library briefing, [Shale gas and fracking](#), provides further information on fracking (section 1). The British Geological Survey also provides an explanation of [the extraction of shale gas using hydraulic fracturing](#).

The list of conditions that an operator needs to obtain prior to applying for Hydraulic Fracturing Consent are set out in [Section 4A of the Petroleum Act 1998](#), as introduced by [Section 50 of the Infrastructure Act 2015](#).<sup>6</sup> For further information on regulatory requirements, see:

- Government [guidance fracking: developing shale gas in the UK](#) provides further information on regulatory requirements (section 6).

<sup>1</sup> [Section 4A of the Petroleum Act 1998](#), as introduced by [Section 50 of the Infrastructure Act 2015](#)

<sup>2</sup> [Section 50 of the Infrastructure Act 2015](#); [Section 4A of the Petroleum Act 1998](#)

<sup>3</sup> BEIS, [Guidance on fracking: developing shale gas in the UK](#), updated March 2019, section 6

<sup>4</sup> BEIS, [Guidance on fracking: developing shale gas in the UK](#), updated March 2019, section 6. A PEDL grants an operator exclusive rights to explore for and extract oil and gas (including shale gas) in a defined area. PEDLs are issued in rounds by the North Sea Transition Authority (previously Oil and Gas Authority). They do not grant permission for operations.

<sup>5</sup> British Geological Survey, [Shale gas extraction](#), undated

<sup>6</sup> [Section 4A of the Petroleum Act 1998](#), as introduced by [Section 50 of the Infrastructure Act 2015](#)

- A Commons Library briefing, [Shale gas and fracking](#), also offers an overview of the permits required to undertake fracking (section 3).

## 1.1 Planning process: publicity and consultation

Like other proposals for oil and gas developments, proposals for hydraulic fracturing operations are subject to the [Town and Country Planning Act 1990](#).

The [1990 Act](#) requires operators to obtain planning permission from the local MPA for oil and gas developments (including for fracking operations).<sup>7</sup> The MPA is the strategic planning authority responsible for mineral and waste development. It is usually the county council.<sup>8</sup>

A local authority will advertise and consult on each planning application, including applications for fracking operations. This gives local communities the opportunity to express their views on the application.

The [Development Management Procedure Order 2015](#) sets out minimum publicity requirements for planning applications. For applications for fracking operations, this would usually include an advertisement in a local newspaper and publicity on the website of the local authority.<sup>9</sup>

An application notice would also have to contain information about how interested parties can express their views on the application and within what time period they have to submit their comments. The time period must last at least 14 days where a notice is published in a newspaper.<sup>10</sup>

## 1.2 Planning decisions: role of representations

When deciding a planning application, a local authority will only take certain issues that are “material” to an application into consideration.<sup>11</sup> It will also consider the representations it received in response to its consultation.<sup>12</sup>

There is no exhaustive list of what constitutes a material consideration. A list of potentially relevant material considerations for oil and gas developments

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<sup>7</sup> [Town and Country Planning Act 1990](#)

<sup>8</sup> DLUHC and MHCLG, [Planning Practice Guidance: Minerals](#), October 2014, paragraph 001

<sup>9</sup> Section 15 of the [Town and Country Planning \(Development Management Procedure\) \(England\) Order 2015](#)

<sup>10</sup> DLUHC and MHCLG, [Planning Practice Guidance: Consultation and pre-decision matters](#), last updated April 2022, paragraph 005

<sup>11</sup> [Section 70\(2\) of the Town and Country Planning Act 1990](#); [Section 38\(6\) of the Planning and Compulsory Purchase Act 2004](#)

<sup>12</sup> Section 33 of the [Town and Country Planning \(Development Management Procedure\) \(England\) Order 2015](#)

is set out in the Government's [Planning Practice Guidance on minerals](#). The Government's [National Planning Policy Framework](#) (NPPF) also contains potentially relevant policies.<sup>13</sup>

A local authority should also include a section on mineral extraction in their local plan, which will factor into planning decisions.<sup>14</sup> A local plan would have gone through (or will go through) a period of public consultation.<sup>15</sup>

The focus of the planning system is on whether a development is an acceptable use of the land and the impacts of those uses. Any control processes or health and safety issues are subject to approval under other regimes.

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<sup>13</sup> DLUHC and MHCLG, [Planning Practice Guidance: Minerals](#), October 2014, paragraph 011

<sup>14</sup> DLUHC and MHCLG, [Planning Practice Guidance: Minerals](#), October 2014, paragraph 007-010

<sup>15</sup> [Regulation 18 of the Town and Country Planning \(Local Planning\) \(England\) Regulations 2012](#)

## 2 Fracking moratorium and local consent

Prior to commencing drilling operations, an operator has to obtain several permissions, including a Petroleum and Development License, planning permission, and environmental permits. As a final step, they also need to obtain Hydraulic Fracturing Consent from the Secretary of State for Business Energy and Industrial Strategy.<sup>16</sup>

In November 2019, the Government said it would stop issuing Hydraulic Fracturing Consents.<sup>17</sup> While Liz Truss was Prime Minister, the Government briefly suspended this effective moratorium on fracking in 2022. It said fracking could take place where there was “local consent”.<sup>18</sup> In October 2022, the Government readopted the position that it would not issue Hydraulic Fracturing Consents.<sup>19</sup> These Government positions are explained in more detail below.

### 2.1 Moratorium on fracking (Nov 2019)

Prior to the 2019 moratorium on fracking, [Section 50 of the Infrastructure Act 2015](#) amended the [Petroleum Act 1998](#) to include a requirement for operators to obtain Hydraulic Fracturing Consent from the Secretary of State.<sup>20</sup>

On 2 November 2019, the Government announced that it would adopt a presumption [against issuing further Hydraulic Fracturing Consents](#), effectively placing a moratorium on fracking. It also confirmed that it would not take forward [proposals to change planning rules](#) for fracking sites.<sup>21</sup>

The decision was based on an [interim report by the Oil and Gas Authority](#) (OGA, since renamed the North Sea Transition Authority, NSTA). The 2019 report found that it was not possible to accurately predict the probability or magnitude of earthquakes linked to fracking operations.<sup>22</sup>

In a subsequent [Written Statement on 4 November 2019](#), the Government confirmed its position and set out the basis for the policy change. It said it

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<sup>16</sup> [Section 4A of the Petroleum Act 1998](#), as introduced by [Section 50 of the Infrastructure Act 2015](#)

<sup>17</sup> [HCWS68](#) [Energy Policy Update] 4 November 2019; BEIS press release, [Government ends support for fracking](#), 2 November 2019

<sup>18</sup> BEIS press release, [UK Government takes next steps to boost domestic energy production](#), 22 September 2022; HC Deb 12 October 2022 [c125](#)

<sup>19</sup> HC Deb 26 October 2022 [c293-294](#); [HCWS346](#) [Business update] 27 October 2022

<sup>20</sup> [Section 4A of the Petroleum Act 1998](#), as introduced by [Section 50 of the Infrastructure Act 2015](#)

<sup>21</sup> BEIS press release, [Government ends support for fracking](#), 2 November 2019; Ministry of Housing, Communities and Local Government (MHCLG), [Consultation: Permitted development for shale gas exploration](#), last updated November 2019

<sup>22</sup> North Sea Transition Authority (NSTA, previously Oil and Gas Authority, OGA), [Preston New Road – PNR 1Z – Hydraulic Fracturing Operations Data](#), 2019

would only support fracking where it could be done “in a safe ... way”. Because current evidence made it “difficult” to predict the probability and magnitude of earthquakes, it would take a “precautionary approach”:

On the basis of the current scientific evidence, Government is confirming today that it will take a presumption against issuing any further Hydraulic Fracturing Consents. This position, an effective moratorium, will be maintained until compelling new evidence is provided which addresses the concerns around the prediction and management of induced seismicity.

While future applications for Hydraulic Fracturing Consent will be considered on their own merits by the Secretary of State, in accordance with the law, the shale gas industry should take the Government’s position into account when considering new developments.<sup>23</sup>

Prior to the moratorium only two Hydraulic Fracturing Consents had been issued to Cuadrilla Bowland Ltd for a site in Lancashire. Works at the site were paused following the Government’s announcement.<sup>24</sup>

## 2.2

### Lifting of moratorium conditional on “local consent” (Sep - Oct 2022)

In September 2022, the Truss Government announced it would [lift the moratorium on fracking](#) in England. The Government said it would consider applications for Hydraulic Fracturing Consent “where there is local support”.<sup>25</sup>

The position that fracking would be conditional on “local consent” was reaffirmed by the Truss administration on several occasions, including by the then Prime Minister on 12 October 2022.<sup>26</sup>

Jacob Rees-Mogg, the then Secretary of State for Business, Energy and Industrial Strategy (BEIS), suggested that the responsibility to obtain local consent might rest with companies. He stated that they could use monetary incentives to incentive communities to support fracking:

[W]e will be looking to have the support of local communities. That is important. There will be a responsibility on companies, when they bring forward proposals, to work out how they can get that local consent. It seems to me pretty clear that that will involve giving money to people to encourage

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<sup>23</sup> [HCWS68 \[Energy Policy Update\]](#) 4 November 2019

<sup>24</sup> BEIS press release, [Government ends support for fracking](#), 2 November 2019

<sup>25</sup> BEIS press release, [UK Government takes next steps to boost domestic energy production](#), 22 September 2022

<sup>26</sup> HC Deb 12 October 2022 [c125](#)

them, because they will want to have the benefit locally while they are doing something that helps the country nationally.<sup>27</sup>

In the [debate on the Ban on Fracking for Shale Gas Bill](#) on 19 October 2022, Jacob Rees-Mogg said the Government would consult on what form local consent would take. He also sought to reassure Members that the Government would not overrule decisions made by local communities:

[W]e will consult on the system of local consent and provide clear advice on seismicity and safety before any hydraulic fracturing for shale gas takes place.

[...] If fracking does not get local consent—what form that local consent must take will be consulted on, and it could be [...] by local referendum. That is what the consultation will be about. If local consent is withheld, that is a veto and it will not be overruled by national Government.

[...] there is an absolute local consent lock. Any process to determine local consent must be run independently, and this House will vote on any scheme that we bring forward.<sup>28</sup>

The Truss administration did not further define what local consent would mean. [Rishi Sunak became Prime Minister](#) on 25 October 2022.

## 2.3

### Reinstatement of the moratorium (Oct 2022)

When asked whether the Government would reinstate the moratorium on fracking on 26 October 2022, the Prime Minister, Rishi Sunak, referred to the [Conservative Party’s 2019 Manifesto](#).<sup>29</sup> The Manifesto included a commitment to “not support fracking unless the science shows categorically that it can be done safely”.<sup>30</sup>

In a [Written Statement](#) on 27 October 2022, Grant Shapps, the Secretary of State for BEIS, confirmed that the Government would again adopt a presumption against issuing further Hydraulic Fracturing Consents. He said the Government would maintain this “effective moratorium” until it received compelling evidence that addressed concerns on the links to earthquakes:

[T]he Government supports the core ambitions set out in the 2019 manifesto. The Government will therefore revert to a precautionary approach and only support shale gas exploration if it can be done in a way that is sustainable and protects local communities. We will be led by the evidence on whether this form of exploration can be done in a way which acceptably manages the risk to local communities.

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<sup>27</sup> HC Deb 22 September 2022 [c797](#)

<sup>28</sup> HC Deb 19 October 2022 [c756](#); [c758](#); [c761](#)

<sup>29</sup> HC Deb 26 October 2022 [c293-294](#)

<sup>30</sup> [The Conservative and Unionist Party Manifesto 2019](#), page 55



In the November 2019 manifesto, the Government confirmed a moratorium on shale gas exploration in England with immediate effect. Having listened to local communities and assessed the state of the science we ruled out changes to the planning system. As set out in the manifesto, we will not support shale extraction unless the science shows categorically that it can be done safely.

[...] The Government is confirming today that we will again take a presumption against issuing any further hydraulic fracturing consents. This position, an effective moratorium, will be maintained until compelling new evidence is provided which addresses the concerns around the prediction and management of induced seismicity. This is in line with the commitment made in the 2019 Conservative Manifesto.<sup>31</sup>

The Government has since reaffirmed its commitment to the moratorium on fracking on several occasions.<sup>32</sup> Lord Callanan, the Under-Secretary of State for BEIS, confirmed that the Government “will not be taking forward a public consultation on the approach to local support” for fracking.<sup>33</sup>

## 2.4 Devolved administrations

Each of the devolved administrations has measures in place that prevent or create a presumption against unconventional oil and gas development (which includes fracking). The licensing of onshore oil and gas has been devolved to Scotland (by the [Scotland Act 2016](#)) and Wales (by the [Wales Act 2017](#)).

The **Welsh Government** announced in December 2018 that it would not support applications for hydraulic fracturing, following a consultation.<sup>34</sup>

The **Scottish Government** first put a moratorium on unconventional oil and gas development in place in January 2015. Following a public consultation in 2017, the Scottish Government confirmed its final position of no support for unconventional oil and gas development in October 2019.<sup>35</sup>

The **Northern Ireland Assembly** passed a motion in December 2011 for a moratorium on the exploration, development and production of shale gas.<sup>36</sup>

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<sup>31</sup> [HCWS346](#) [Business update] 27 October 2022

<sup>32</sup> For example, [PQ 72305](#) [Fracking] 26 October 2022

<sup>33</sup> [PQ HL2776](#) [Fracking: Public consultation] 20 October 2022

<sup>34</sup> Senedd Cymru/Welsh Government, [Written Statement: Petroleum Extraction Policy Statement](#), 10 December 2018

<sup>35</sup> Scottish Government, [Policy: Oil and gas: Unconventional oil and gas](#), undated

<sup>36</sup> Northern Ireland Assembly, [Hydraulic Fracturing \(Fracking\) Motion](#), 6 December 2011

## 3 Parliamentary material

### 3.1 Debate

Commons debate: [Ban on Fracking for Shale Gas Bill](#)

HC Deb 19 October 2022 | Vol 720 c748-

### 3.2 Urgent Questions

Commons Urgent Question: [Shale Gas Extraction](#)

HC Deb 22 September 2022 | Volume 719 c790-

Commons Urgent Question: [Shale Gas Production](#)

HC Deb 15 March 2022 | Vol 710 c761-

### 3.3 PQs

[Engagements](#) (Prime Minister)

**Asked by: Caroline Lucas**

The Prime Minister's reckless predecessor, the right hon. Member for South West Norfolk (Elizabeth Truss), took a wrecking ball to nature, prompting millions of members of the Royal Society for the Protection of Birds, the National Trust and the Wildlife Trusts to rise up in opposition. Yesterday, he promised to fix her mistakes, as well as to uphold his party's 2019 manifesto. If he is a man of his word, will he start by reversing the green light she gave to fracking, since it has been categorically shown not to be safe, and instead maintain the moratorium that was pledged in that very manifesto he promised to uphold?

**Answering member:** The Prime Minister

I have already said that I stand by the manifesto on that. What I would say is that I am proud that this Government passed the landmark Environment Act 2021, putting in more protection for the natural environment than we have ever had, with a clear plan to deliver it. I can give the hon. Lady my commitment that we will deliver on all those ambitions, and that we will deliver on what we said at COP, because we care deeply about passing on to our children an environment that is in a better state than we found it ourselves.

**HC Deb 26 October 2022 | Vol 721 c294**

### [Fracking](#)

**Asked by: Smith, Cat**

To ask the Secretary of State for Business, Energy and Industrial Strategy, what steps his Department plans to take to measure local consent for fracking.

**Answering member:** Graham Stuart | **Department:** Department for Business, Energy and Industrial Strategy

The Government will come forward with proposals in due course.

**HC Deb 24 October 2022 | PQ 61974**

### [Engagements](#) (Prime Minister)

**Asked by: Mark Menzies**

I thank the Prime Minister for sticking by her words and giving communities in Fylde the final say on fracking, but as always the devil is in the detail. Will the Prime Minister assure me that local consent will be measured independently and transparently, that in no circumstances will fracking companies be directly engaged in assessing local consent, and that if people in Fylde say no, that view and that decision will be respected and acted on by this Government?

**Answered by:** The Prime Minister | **Department:** Prime Minister

I agree very strongly with my hon. Friend. I know he cares deeply about this issue. I assure him that we will consult on a robust system of local consent and give clear advice on seismic limits and safety before any fracking takes place. The consultation will consider all the relevant people—the regional Mayors, the local authorities and parishes—and the concerns of those who

are directly affected. My right hon. Friend the Business Secretary will say more about this later today.

**HC Deb 19 October 2022 | Vol 720 c684**

[Fracking](#)

**Asked by: Morgan, Helen**

To ask the Secretary of State for Business, Energy and Industrial Strategy, what steps he will take to assess levels of local consent for fracking.

**Answering member:** Graham Stuart | Party: Conservative Party |  
**Department:** Department for Business, Energy and Industrial Strategy

The Government expects industry to work closely with local communities in order to build support for new developments.

**HC Deb 18 October 2022 | PQ 60205**

[Fracking](#)

**Asked by: Sturdy, Julian**

To ask the Secretary of State for Business, Energy and Industrial Strategy, what steps his Department is taking to make assessments of levels of local consent for fracking.

**Answering member:** Graham Stuart | **Department:** Department for Business, Energy and Industrial Strategy

The Government expects industry to work closely with communities in order to gather the local support needed, as well as to determine what kind of community benefits will be put in place.

**HC Deb 28 September 2022 | PQ 51643**

## 4 News and blogs

Guardian

26 October 2022

[Rishi Sunak will keep ban on fracking in UK, No 10 confirms](#)

The Consultation Institute

21 October 2022

[A consultation on consultation- how to demonstrate local consent for fracking](#)

Drill or Drop?

19 October 2022

[PM announces consultation on gauging fracking consent](#)

Times [subscription]

7 October 2022

[Households near proposed fracking sites could be offered up to £1,000](#)

The Conversation

4 October 2022

[Fracking: the simple test for whether it should happen in the UK](#)

BBC News Online

22 September 2022

[Fracking ban lifted, government announces](#)

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