

**Addendum to the 2018 consultation
on the Scottish Government's
preferred policy position on
unconventional oil and gas (UOG), the
Strategic Environmental Assessment
(SEA) Environmental Report, and
partial Business and Regulatory
Impact Assessment (BRIA)**

April 2019

Addendum to the 2018 consultation on the Scottish Government's preferred policy position on unconventional oil and gas (UOG), the Strategic Environmental Assessment (SEA) Environmental Report, and partial Business and Regulatory Impact Assessment (BRIA)

Introduction

1. On 03 October 2017 the Scottish Government set out a preferred policy position that it does not support onshore unconventional oil and gas development in Scotland. The preferred policy position is subject to statutory assessments before a policy can be finalised.

2. An Environmental Report for a Strategic Environmental Assessment (SEA) of the Scottish Government's preferred policy position was published in October 2018, alongside the updated preferred policy position statement and a partial Business and Regulatory Impact Assessment (BRIA). In accordance with the Environmental Assessment (Scotland) Act 2005, views were invited on the contents of these documents during October to December 2018.

Purpose of this addendum

3. In view of the Scottish Government's commitment to transparency and public engagement on this issue, and in the light of some of the views which have so far been expressed on the contents of these documents, the Scottish Government now believes that it would be helpful to provide some further clarification on a number of points raised in responses, specifically regarding the preferred policy position and its objectives. We are also taking the opportunity to update our position on the reasonable alternatives to the preferred policy position, in light of the comments received.

4. The Scottish Government is appreciative of the contributions submitted and time taken by those who have already considered the contents of the SEA Environmental Report, the preferred policy position statement and the partial BRIA ('the October 2018 consultation documents'). The Scottish Government is publishing this addendum to these documents, and wishes to invite further comments on the points covered.

The objectives of Ministers' preferred policy position

5. The preferred policy position has been expressed in short and simple terms: the Scottish Government does not support onshore unconventional oil and gas development¹ in Scotland.

¹ Unconventional oil and gas deposits are contained in impermeable rocks, such as shale or coal deposits. In these cases, the oil or gas cannot easily flow through the reservoir. To extract the oil and gases, techniques such as hydraulic fracturing (commonly referred to as fracking) or coal bed methane dewatering are used. <https://www.gov.scot/publications/unconventional-oil-and-gas-position-statement/>

6. The preferred policy position statement published for consultation in October 2018 discusses the factors put before Ministers which led to their stating their preferred policy position. These included concerns over the insufficiency of epidemiological evidence on health impacts.

7. It also references the conclusion by the Committee on Climate Change in its report for the Scottish Government on unconventional oil and gas, that unconventional oil and gas extraction in Scotland would make meeting our existing climate change targets more challenging.

8. Added to that, the Scottish Government has acknowledged the concerns conveyed by communities, particularly in areas where developments could take place, who have yet to be convinced there is a strong enough case of national economic importance for onshore unconventional oil and gas development, when balanced against the risk and disruption they anticipate on matters such as transport impacts, risks of pollution, and on their general health and wellbeing.

9. Scotland is a global leader in tackling climate change. In 2009, the Scottish Parliament unanimously passed the most ambitious climate change legislation anywhere in the world. That Act set the target of a 42% reduction in emissions by 2020, and an 80% reduction in emissions by 2050. Scotland is well on track to meet the 2020 target. On 23 May 2018, the Scottish Government introduced a new Climate Change Bill to Parliament with even more ambitious targets than those prescribed by the 2009 Act. The Bill contains the most ambitious statutory targets of any country in the world for 2020, 2030 and 2040, and will mean Scotland is carbon neutral by 2050. The recent IPCC report on global warming², published shortly after the SEA Environmental Report itself was published, makes clear that all countries, as well as businesses and individuals, need to act now if the Paris Agreement goals are to be met. The IPCC report says the world needs to be carbon-neutral, defined as net-zero emissions of carbon dioxide, by 2050. That is exactly where Scotland will be³.

10. The Scottish Energy Strategy (The Scottish Government, 2017)⁴ sits alongside our Climate Change Plan 2018-2032⁵, which sets out how we will continue to drive down emissions over the period to 2032. One of the three key aims of the Energy Strategy is a stable energy transition towards renewable energies and the priority moving towards 2050 of championing Scotland's renewable energy potential, creating new jobs and supply chain opportunities.

² <https://www.ipcc.ch/>

³ Position as of 30 April 2019. The Scottish Government has committed to achieving net-zero emissions for all greenhouse gases as soon as possible and to setting a target date for this as soon as it can be done credibly and responsibly. Advice from the Committee on Climate Change on Scottish, UK and Welsh targets is expected on 02 May 2019. If the Committee advise that Scotland can now go even further than the targets in the Climate Change Bill, in light of the IPCC report or more being done at a UK level, the Scottish Government has committed to act on that advice.

⁴ <https://www.gov.scot/publications/scottish-energy-strategy-future-energy-scotland-9781788515276/>

⁵ <https://www.gov.scot/publications/scottish-governments-climate-change-plan-third-report-proposals-policies-2018/>

11. While it acknowledges the important role of gas in the transition to a low carbon energy future, the Scottish Government considers the development of an onshore unconventional oil and gas industry in Scotland would make achieving its ambitious energy and climate change commitments even more challenging.

12. To be clear, the objectives of the preferred policy position are to ensure that in both the planning sphere and in relation to Ministers' onshore oil and gas licensing and regulatory powers, policy should (i) minimise the potential risk of environmental and health impacts by adopting a precautionary approach; (ii) promote the achievement of our energy transition goals; and (iii) maximise the prospects of meeting the Scottish Government's carbon emissions and climate change targets.

13. For the purposes of the assessment, the Environmental Report assesses the effects of unconventional oil and gas development avoided under the preferred policy position, and compares this to the effects of the development of an industry as represented by a 'broad range of impact scenario' based on the KPMG (2016) development scenarios of 'a) central, b) low and c) high levels of exploration, appraisal and extraction of onshore unconventional oil and gas', as well as to the development of a single theoretical pilot project. Paragraphs 2.19 to 2.21 of the Environmental Report refer.

Consideration of 'reasonable alternatives' to the preferred policy position

14. Some responses commented that the description given to the 'reasonable alternatives' on pages 24 to 25 of the SEA Environmental Report lacked clarity.

15. Under the 'Business As Usual' scenario there is no moratorium on unconventional oil and gas development, and planning applications would be brought forward and determined in accordance with the current applicable development plan, the National Planning Framework (NPF) and all material considerations, but in the absence of the preferred policy position.

16. Currently Scottish Planning Policy⁶ (SPP 2014), which is a statement of Scottish Government policy and as such is a material consideration that carries significant weight, is that the planning system should recognise the benefits of indigenous coal, oil and gas production in maintaining a diverse energy mix and improving energy security; and, should minimise the impacts of extraction on local communities, the environment and the built and natural heritage. SPP 2014 is due to be reviewed following the passage of the planning bill currently before Parliament (see paragraph 20 below).

17. Since SPP 2014 was published, Scotland's first energy strategy⁷ was produced and this sets out the Scottish Government's vision for the future energy system in Scotland. It contains the preferred policy position on unconventional oil and gas, subject to completion of the relevant statutory assessments, including an SEA and BRIA.

⁶ Paragraph 235 of Scottish Planning Policy (2014) refers. Available online at

<https://www.gov.scot/publications/scottish-planning-policy/>

⁷ <https://www.gov.scot/publications/scottish-energy-strategy-future-energy-scotland-9781788515276/>

18. The SEA Environmental Report stated in paragraph 2.16 and in the Non-Technical Summary that the Scottish Government is 'not minded' to view the 'Business As Usual' and the 'Pilot Project' as 'reasonable alternative' means by which Ministers may achieve the objectives of the preferred policy position. Taking into account the comments since received to the October 2018 consultation, and in light of the objectives of the preferred policy position as clarified in paragraph 12 of this addendum, we can confirm that Ministers consider there is in effect no option that is a 'reasonable alternative' to the preferred policy position. Ministers consider it clear that, measured against the stated policy objectives, neither the "Business As Usual" nor the "Pilot Project" alternative can reasonably be expected to achieve either the positive environmental or social outcomes offered by the preferred policy position". That notwithstanding, the Scottish Government does consider it useful that the SEA Environmental Report assesses in particular the 'Business As Usual' scenario, which provides a benchmark against which to measure the likely environmental effects of the preferred policy position. The Environmental Report includes an assessment of both Business As Usual and Pilot Project alternatives for transparency and completeness (see paragraph 13 above).

19. There exist three current Petroleum Exploration and Development Licences (PEDLs) for which the licence holders may seek to obtain planning and other consents for activity. As with all other planning applications, these applications would be considered on their individual merits but must be determined in accordance with the development plan unless material considerations indicate otherwise. The preferred policy position, if adopted, would become a material consideration that would carry significant weight in the determination of planning applications and also in decisions on the granting and regulation of onshore licences to search and bore for and get petroleum in Scotland. It would take precedent over, and would in effect replace, the policy currently articulated in SPP, with immediate effect. The Directions issued to Planning Authorities and the Scottish Environment Protection Agency following the January 2015 moratorium will be reviewed once a final policy has been adopted.

20. Under the proposed provisions of the Planning (Scotland) Bill, introduced in the Scottish Parliament on 04 December 2017, the National Planning Framework and Scottish Planning Policy will be incorporated into a single document with statutory status and will be part of the development plan. Preparation of National Planning Framework 4 will begin once the Scottish Parliament has concluded its consideration of the planning bill. The Scottish Government has committed to embedding the finalised position on unconventional oil and gas within the next iteration of the National Planning Framework, thereby giving an assurance the policy would carry significant weight in development planning and decision making, and that any future changes to the policy would be given Parliamentary consideration.

Policy, Not Legislation

21. Powers over onshore oil and gas licensing were devolved to the Scottish Parliament and Scottish Ministers through sections 47 to 49 of the Scotland Act 2016 on 09 February 2018. This conferred powers on the Scottish Parliament to legislate in respect of the granting and regulation of licences to search and bore for and get

petroleum (including unconventional oil and gas). These powers do not extend to legislation on the consideration payable for such licences, which remains reserved to the Westminster Parliament.

22. It is considered that the devolved onshore oil and gas licensing powers extend the legislative competence of the Scottish Parliament to both the granting and refusal of applications for licences.

23. The Scottish Government does not consider that new legislation is necessary to control unconventional oil and gas development in Scotland; and believes that the adoption of a strong policy would provide the most appropriate and proportionate means to regulate such development, having regard to the objectives outlined above. We do not consider that an Act of the Scottish Parliament is a substitute for policy. Further, Scottish Ministers do not consider that a legislative ban is a “reasonable alternative”⁸ to the preferred policy position. This has been, and continues to be, an exercise in policy development, rather than legislation.

24. In line with the objectives set out at paragraph 12 above, in the event our preferred policy position is adopted, in addition to the policy being a material consideration in the determination of planning applications⁹, Scottish Ministers would discharge their newly devolved licensing powers having regard to that adopted policy position.

25. In practice, under the preferred policy position it is anticipated that it would be unlikely that Ministers would invite new applications for licences for onshore unconventional oil and gas developments in Scotland.

26. Ministers recognise that applications for planning and other necessary consents may be made by those holding PEDLs, and that these will require to be determined by the relevant authorities according to the law and policy in force at the relevant time: see e.g. pages 7-8 of the position statement (October 2018).

27. As referenced at paragraph 20, the Scottish Government has committed to embedding the finalised position on unconventional oil and gas within the next iteration of the National Planning Framework. The finalised policy would carry significant weight in development planning and decision making both prior to and following its incorporation into the next National Planning Framework. Under the proposed provisions of the Planning (Scotland) Bill, a policy embedded into the National Planning Framework would, in terms of the proposed provisions, form part of the development plan setting the framework for development. In addition any future changes to policy set out in the National Planning Framework would be subject to Parliamentary consideration.

⁸ Within the meaning of the Environmental Assessment (Scotland) Act 2005.

⁹ As explained in the judgment of Lord Pentland, 19 June 2018:

<https://www.scotcourts.gov.uk/docs/default-source/cos-general-docs/pdf-docs-for-opinions/2018csoh66.pdf?sfvrsn=0>

Mitigation

28. Some respondents to the consultation have commented that the Environmental Report does not take into account the available mitigation measures in considering the likely significant effects of unconventional oil and gas extraction. It may therefore be helpful to further explain that the SEA Environmental Report considers and takes into account as ‘assumed mitigation’ existing regulatory controls in assessing the likely significant effects of unconventional oil and gas on the environment. These existing regulatory controls are set out under the heading ‘*What current regulatory processes control these effects*’ in each of the topic chapters in the Environmental Report.

29. The ‘*Scope for further mitigation*’ measures applicable to ‘Business As Usual’ and a single theoretical Pilot Project are also identified, and their likely effects set out in each of the Environmental Report topic chapters. These measures are also discussed in Chapter 15 of the Report.

30. The Non-Technical Summary to the Environmental Report acknowledges the availability of mitigation measures which can ‘*help reduce the scale and severity of effects*’ of unconventional oil and gas extraction. The summary of environmental effects in Chapter 14 of the Report concludes there is ‘*considerable uncertainty*’ within the assessment findings, including with regards to the extent to which additional mitigation measures could be ‘*successfully implemented*’. It is acknowledged that relevant mitigation measures, including those set out in chapter 15, could also be applied to any planning applications considered under the preferred policy position.

Conclusion

31. Strategic Environmental Assessment is a process and the publication of this addendum is the latest step in the cautious and evidence-led approach the Scottish Government is taking to considering onshore unconventional oil and gas in Scotland. The moratorium on onshore unconventional oil and gas extraction in Scotland has allowed for informed decision-making and meaningful public participation on this issue.

32. The Scottish Government has undertaken one of the most far-reaching investigations of any government, anywhere, into unconventional oil and gas; this has included commissioning a series of research projects to examine key issues in more detail, and extensive consultation that has received a high volume of response from stakeholders.

33. The Scottish Government’s preferred policy position remains that it does not support onshore unconventional oil and gas development in Scotland. Further, and in light of the consultation comments received, we do not consider that either the ‘Business As Usual’ or ‘Pilot Project’ as described in the assessment would meet the objectives of the preferred policy position and, therefore, are not considered to be ‘reasonable’ alternatives to the preferred policy.

Next Steps

34. Consultee views on this addendum to the assessment of the Scottish Government's preferred policy position on unconventional oil and gas in Scotland are now welcome. The consultation period is eight weeks from 30 April to 25 June. Responses are invited via the Scottish Government's online consultation platform Citizen Space at <https://consult.gov.scot/energy-and-climate-change-directorate/unconventional-oil-and-gas-sea>.

35. Consultees are asked to avoid restating their views on the October 2018 consultation as these views are already being taken into account. Views already expressed in relation to the Talking "Fracking" public consultation are also not required to be restated as these have been, and will be, taken into account as the Scottish Government moves toward finalising its policy position. For the purposes of this consultation the three consultation documents of October 2018 should be read in light of the clarifications made in this Addendum.



Consultation on an addendum to the 2018 consultation on the Scottish Government's preferred policy position on unconventional oil and gas (UOG), the Strategic Environmental Assessment (SEA) Environmental Report, and partial Business and Regulatory Impact Assessment (BRIA)

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Full name or organisation's name

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The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

- Publish response with name
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Information for organisations:

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If you choose the option 'Do not publish response', your organisation name may still be listed as having responded to the consultation in, for example, the analysis report.

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

- Yes
- No



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