

First Minister
Minister for Business, Innovation and Energy

UNCONVENTIONAL OIL AND GAS: REGULATORY WORKSHOP

Purpose

To provide an update on the unconventional oil and gas (UOG) regulatory workshop that took place on 13 October. Also to recommend that the outputs are uploaded to the SG website at the same time as the UOG research reports are published on 08 November.

Priority: Immediate

Background

1. The statement that accompanied the announcement of the UOG moratorium on 28 January 2015 stated that the Scottish Government would: *...conduct further work into strengthening planning guidance; and look at further tightening of environmental regulation.*
2. The announcement of the evidence-gathering programme on 08 October 2015 indicated that stakeholder workshop(s) would be undertaken to support this work, and that a summary of the workshop would be published in Autumn 2016 before the consultation.
3. To fulfil the commitment made and support the cautious, evidence-led approach towards UOG, officials designed a one-day event for the key regulators, which took place on 13 October.
4. **Without prejudicing the outcomes of the UOG consultation and moratorium, the outputs from the workshop provide a valuable and objective overview of (i) the current regulatory framework; (ii) the regulatory issues identified by the research commissioned by SG; and (iii) a view from the regulators on how the regulatory framework could be explored further should that be required in the future.**

Regulatory Workshop

5. The Independent Expert Scientific Panel report (2014) concluded that: "The regulatory framework is largely in place to control the potential environmental impacts of the production of unconventional oil and gas in Scotland, although there may be gaps to address."
6. The key gaps identified by the Expert Scientific Panel, which relate to greenhouse gas emissions and air quality, and decommissioning, have been explored in more detail by the research reports commissioned in 2016. The research reports also make a range of observations about the regulatory framework and the potential for it to be improved on a broader range of issues.
7. In light of this, the purpose of the workshop was, without prejudice to the eventual outcome of the Government's consultation and moratorium process, to:

- a. consolidate the range of examinations and considerations of the regulatory framework to date;
- b. consider the current regulatory framework in light of issues raised by the independent research, and how to approach improvements should it become necessary;
- c. discuss how to inform the public consultation.

8. The workshop was attended by all the main UOG regulators, namely Scottish Environment Protection Agency, Scottish Natural Heritage, the Health and Safety Executive, the Coal Authority, Heads of Planning Scotland, and Environmental Health Officers. Health Protection Scotland and the British Geological Survey also attended to provide technical input.

9. Delegates agreed that:

- a. a paper drafted by officials, "Overview of the Current Regulatory Framework", provides a helpful factual summary of the regulations that are currently in place;
- b. the research reports appropriately capture the regulatory issues, noting that stakeholders have raised some additional issues.

10. In the event that Scottish Ministers wish the regulatory framework for UOG to be further explored, the delegates concluded that the observations made by the independent researchers form an appropriate basis for organising work to examine how regulation could be strengthened if this was required. The delegates also concluded that an effective approach to advancing such work, in the event that it is required, would be the formation of an Expert Regulatory Group, chaired by the Scottish Government with representation from the organisations present at the workshop.

11. There are two outputs from the workshop:

- a. **Overview of the Current Regulatory Framework** - a 31 page factual and objective summary of the regulations as they currently stand. Further detail is given in **Annex A**.
- b. **Note of the workshop** - a brief, high-level summary of workshop, given in **Annex B**. The note of the workshop also encompasses an objective summary of the regulatory issues and considerations raised by the SG research projects, which is presented in the form of excerpts from the relevant research projects.

Recommendation

12. Officials, in consultation with SpAds, recommend uploading both outputs to the Scottish Government website, at the same time as the research on unconventional oil and gas reports are published on 08 November. This will meet our commitment to make a summary of a regulatory workshop available in Autumn 2016.

13. Advice regarding the publication of the research reports and associated communications and handling is provided in the accompanying submission from **REDACTED** (01 Nov 16).

REDACTED

Copy List:	For Action	For Comments	For Information		
			Portfolio Interest	Constit Interest	General Awareness
Deputy First Minister					X
Cabinet Secretary for Economy, Jobs and Fair Work			X		
Cabinet Secretary for Health and Sport			X		
Cabinet Secretary for Environment, Climate Change and Land Reform			X		
Cabinet Secretary for Communities, Social Security and Equalities			X		
Cabinet Secretary for Rural Economy and Connectivity			X		
Minister for Public Health and Sport			X		
Minister for Local Government and Housing			X		

Permanent Secretary
 DG Economy
 DG Communities
 Chief Scientific Advisor
 Chief Scientific Advisor for Rural Affairs, Food and the Environment
 Chris Stark
 Kenneth Hogg
 Bridget Campbell
 David Ritchie
 John Ireland
 John McNairney
REDACTED
 Simon Fuller
REDACTED
 John McFarlane
 Kate Higgins
 David Miller
 Liz Lloyd
REDACTED
 Jeanette Campbell
 Comms Economy
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OUTLINE OF DOCUMENT, “OVERVIEW OF REGULATORY FRAMEWORK”

Background and Purpose

This section explains that:

- The paper summarises the overarching framework of regulation that currently exists to minimise hazards, and mitigate the risks to public health and the environment across the lifetime of a UOG project.
- The paper does not describe detailed processes and procedures for each stage of regulation;
- The Scottish Government has a moratorium on UOG and is not proposing to make any changes to regulation at this time. The Scottish Government’s approach to UOG will be informed by the evidence that is being gathered and the public consultation.

Section 1: Overview of the regulatory framework

- Scottish Government’s five principles of good regulation
- Brief outline of the responsibilities of the key regulatory bodies
- Explanation of the current onshore petroleum licensing framework and the interactions with Strategic Environmental Assessments (SEA) and Habitats Regulations Appraisal
- Overview of the role of planning, including Scottish Planning Policy and Environmental Impact Assessments
- Public participation in decision making, including public consultation in the SEA process and opportunities for everyone to engage in the development decisions which affect them throughout the planning system.

Section 2: Activities, Hazards and Controls

This section is the main body of the paper, outlining the full range of regulations (and which regulatory bodies are responsible for them), in relation to the following issues:

- Air and Climate
- Water
- Soil
- Naturally Occurring Radioactive Materials
- Light, Noise and Odour
- Landscape
- Biodiversity, Flora and Fauna
- Seismic Activity

Links to all legislation referenced.

NOTE OF WORKSHOP

The Scottish Government is taking a cautious and evidence-led approach to unconventional oil and gas (UOG). On 28 January 2015, the Scottish Government announced a moratorium on UOG so that further evidence could be gathered before holding a full public consultation.

On 08 October 2015 the Scottish Government published details of a comprehensive programme of research and the timetable for the consultation on UOG.

This workshop on regulation is part of this programme of evidence-gathering.

The evidence considered at the workshop included the review of UOG carried out by the Independent Expert Scientific Panel, as well as the research projects commissioned in 2016, namely:

- Health Impact Assessment (Health Protection Scotland)
- Transport - Understanding and mitigating community level impacts (Ricardo).
- Decommissioning, site restoration and aftercare – obligations and treatment of financial liabilities (AECOM)
- Understanding and monitoring induced seismic activity (the British Geological Survey)
- Economic impacts (KPMG)
- Climate change impacts – (UK Committee on Climate Change)

The Independent Expert Scientific Panel report (2014) set out a comprehensive analysis of regulatory issues, and concluded that: *The regulatory framework is largely in place to control the potential environmental impacts of the production of unconventional oil and gas in Scotland, although there may be gaps to address.*

The purpose of the workshop, without prejudice to the eventual outcome of the Government's consultation and moratorium process, was to:

- consolidate the range of examinations and considerations of the regulatory framework to date;
- consider the current regulatory framework in light of issues raised by the independent research, and how to approach improvements should it become necessary;
- discuss how to inform the public consultation.

The following organisations were represented:

- Scottish Government Energy and Climate Change, Environment and Forestry, and Local Government and Communities Directorates
- Scottish Environment Protection Agency
- Health and Safety Executive
- Health Protection Scotland
- British Geological Survey
- Scottish Natural Heritage
- Coal Authority

- Heads of Planning Scotland
- Local Authority Environmental Health Officers

For reference, a copy of the meeting agenda is attached at **Annex A**.

The draft paper “Overview of the current regulatory framework” was accepted as a comprehensive and correct description of the regulatory framework as it currently exists, subject to a small number of technical amendments.

Following presentations on the findings of the research projects and the Health Impact Assessment, it was agreed that the regulatory issues relating to UOG had been appropriately captured (**Annex B [not included in submission]**), and that stakeholders have raised issues relating to protection of the water environment and wider wildlife interests. In discussion, the importance of the following points was emphasised:

- Long-term monitoring, record keeping and liability (noting that the research found the risk of an escape of fluids from a decommissioned well to be low);
- Long-term nature of UOG developments with early stages being exploratory;
- transparency and clarity for communities about the role of regulators and the protection that regulatory controls provide;
- community engagement;
- co-ordination and close working between the regulatory bodies;
- resourcing for any increased regulatory role.

In the event that Scottish Ministers wish the regulatory framework for UOG to be further explored, it was agreed that:

- the observations made by the independent researchers and noted at this workshop would form an appropriate basis for organising work to examine how regulation could be strengthened if that was to be required;
- that an effective approach, in the event that it is required, to advancing such work would be the formation of an Expert Regulatory Group, chaired by the Scottish Government with representation from the organisations present at the workshop.

The group would require access to technical and legal resource, would make use of existing professional networks and would consider community impacts and involvement.

Scottish Government
October 2016