

## **Concerned about fracking and the law?**

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This document is for people and local communities concerned about some of the legal issues to do with “fracking” and “unconventional gas drilling and exploration” proposals.

Other people have written guides to what those terms mean and what is involved – see, for example, the websites of Friends of the Earth and SaFE Alliance.

This document gives an overview to enable local people and groups to have an idea of the legal issues raised by proposals in their area.

#### **Land ownership issues**

Drilling horizontally under peoples land without the owner’s permission may amount to trespass. Property holders may be able to block drilling by formally declaring their opposition to a proposal.

#### **Petroleum Exploration and Development Licences**

Anyone wishing to exploit gas and other hydrocarbon resources underground needs to obtain a Petroleum Exploration and Development Licence (PEDL) from the Department of Energy and Climate Change (DECC). The Government has issued those in “rounds”. The most recent was the 13<sup>th</sup> round.

Here is the Government’s “Strategic Environmental Assessment” in which it described what it envisaged as the environmental impacts of the 13<sup>th</sup> round of PEDL licences:

<https://www.og.decc.gov.uk/consultations/OnshoreLicensingSEA.pdf>

Here is the map showing what that led to:

[https://www.og.decc.gov.uk/upstream/licensing/onshore\\_13th/13R\\_Offered.pdf](https://www.og.decc.gov.uk/upstream/licensing/onshore_13th/13R_Offered.pdf)

Here is the map for the 14<sup>th</sup> round which was suspended following “seismic tremors” during fracking operations in Lancashire:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/252142/SEA\\_and\\_licensed\\_areas.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/252142/SEA_and_licensed_areas.pdf)

There is also a wall map on the DECC website showing which areas are currently covered by a licence:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/15095/landfields-lics.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/15095/landfields-lics.pdf)

For further information about any of these licences, email [approvals@decc.gsi.gov.uk](mailto:approvals@decc.gsi.gov.uk) and include the ordnance survey coordinates of the site in question.

## **Permits and permissions**

Each proposal within those areas will also need a range of other permissions, including from the local planning authority (planning permission) and the Environment Agency (other permissions).

The Environment Agency has produced a document for people promoting exploration or fracking proposals, which explains the range of permits they will need and some of the issues involved. It is currently in the form of a consultation draft:

<https://consult.environment-agency.gov.uk/file/2582905>

You will see that different issues can arise when a company wants to undertake exploratory drilling as opposed to actually “fracking”.

You will need to be clear about what is being contemplated in your area – but beware that the overall descriptions may not always tell the whole story, so you need to scrutinise the detail. You should be able to get information about any applications or permissions and find out about the process by which applications are being considered by contacting the relevant Minerals Planning Authority. Ask them to provide information about outstanding (and considered) planning applications to explore for gas under the Environmental Information Regulations 2004. There may be a significant amount of background material with each application, in which case they should at least supply you with a link to access the information electronically.

The Environment Agency permits all deal with very specific aspects of the process (such as the potential impact on groundwater). The “planning permission” (and the planning application and process which comes before it) deals with all the more general questions about the principle of what is proposed, including its impact on local communities, noise, roads, and so on.

Obviously, everyone hopes that their local council, the Environment Agency, and so on, will be rigorous in enforcing the legal requirements involved. But local people can have their say in those processes, and should be on the lookout for things which are not being done properly in legal terms.

Points to look out for when it comes to identifying the legal issues:

- Check for consistency between what is being said by the proposer in different places.
- Check for particular policies in the “Local Plan” produced by your local planning authority (council) that might have relevance.
- Check whether the proposals are in or near areas of particular environmental or other sensitivity (particularly those designated as such or given special

protections). Sites of particular relevance include Special Areas of Conservation and Special Protection Areas (which are designated under European environmental legislation) and have special requirements with regards to assessing the environmental impact of the proposal.

- Check to see that the proposer has not 'sliced up' their project into stages/phases in a way which tries to reduce scrutiny.
- Check that relevant bodies and the public are being canvassed for their views. In some situations there are particular requirements in terms of the information that must be made available and to whom.
- You might also contact the Environment Agency to request a copy of a document known as the River Basin Management Plan for the area. The decision-maker must be certain that any proposals do not endanger the quality of the ground water supply, in respect of which environmental objectives have been included in the Management Plan.
- Check who is deciding on what and when; and how you can make your representations in the process.

If you think that legal corners are being cut, then do not wait – get in touch with us early. Legal challenges (such as to what a local council or the Environment Agency are doing) need to be brought promptly. It is not possible to challenge old decisions. So do not delay: it is better to be told that you are too early, than that you have missed the deadline. But, in principle, if a public authority, such as the local planning authority or Environment Agency, has not dealt lawfully with an application, then it can be challenge in what is called “judicial review”. More information about this process can be found on our website: <http://www.leighday.co.uk/Asserting-your-rights/Human-rights/Environmental-Litigation-Service/Environmental-case-studies>