

# Conclusions and recommendations

## Updating and improving guidance

1. The Infrastructure Act 2015 definition of fracking does not reflect the technologies used on the ground nor the public understanding of fracking, leading to a lack of understanding among key stakeholders and significant concerns about loopholes in the current regulatory regime. *We therefore believe that the Infrastructure Act 2015 definition is unsuitable in the planning context and recommend that it should not be liquid or volume-based. While we welcome the Government's intention to unify the definitions of fracking used in the Infrastructure Act 2015 and the National Planning Practice Guidance due to the resultant lack of clarity and uncertainty in using multiple definitions, we are highly concerned at the Government's suggestion that the Infrastructure Act definition will replace the current definition in a revised National Planning Practice Guidance. We call on the Government to amend the Infrastructure Act definition to ensure public confidence that every development which artificially fractures rock is subject to the appropriate permitting and regulatory regime.* (Paragraph 19)

2. The proposed changes pertaining to fracking in the revised National Planning Policy Framework, published in March 2018, lack detail and create ambiguity about the Government's position on fracking. It is also counterintuitive that the 2018 Written Ministerial Statement, which moves the goalposts of the Government's fracking planning policy, was issued after the consultation on the National Planning Policy Framework had closed as it leaves stakeholders unable to comment. (Paragraph 27)

3. *The Government must clarify and consolidate the full extent of its fracking policy within the revised National Planning Policy Framework, including how fracking sits with the UK's commitments to climate change in order to make clear to Mineral Planning Authorities how they can balance competing objectives, and respond to the public's concerns. Mineral Planning Authorities must continue to consider environmental sustainability as part of the determination of planning applications. If, as a result of the 2018 Written Ministerial Statement, the final version of the revised National Planning Policy Framework is significantly different from that already consulted on, the Government should hold a further consultation.* (Paragraph 28)

4. However, as we note below, there would seem to be merit in ensuring that there is flexibility in the Government's approach to take account of such scientific and other developments, where appropriate. We also believe that the Government should assess the implications for existing fracking guidance of Professor Peter Styles' report, entitled Fracking and Historic Coal Mining: Their relationship and should they coincide? (Paragraph 33)

5. We welcome the Government's announcement that the National Planning Practice Guidance will be revised following the proposed changes to the National Planning Policy Framework. However, a number of other guidance documents are out-of-date. There does not appear to be a clear process for incorporating scientific and technological developments. *The Government should clarify the*

*process by which scientific and technological developments, as well as practical experience at fracking sites, are reviewed and, if appropriate, incorporated into existing guidance, particularly as fracking developments move towards production and the cumulative effect of fracking materialises further. (Paragraph 37)*

*6.The Government must hold a public consultation on changes to the sections regarding fracking in the National Planning Practice Guidance to ensure public confidence in the decision-making process for fracking developments. (Paragraph 38)*

## **Consolidation of guidance**

*7.We conclude that navigating the disparate guidance hinders understanding, transparency and engagement with fracking planning applications. The Government should create an online, publicly-available “one-stop shop” for all fracking guidance and policy documents. The site should clearly explain the roles of each regulatory body and provide links to guidance and policy documents including those not produced by MHCLG (e.g. Public Health England, Oil and Gas Authority, BEIS). We recommend that the proposed planning brokerage system in partnership with the Shale Environmental Regulator host such a site, subject to the changes in the remit of the brokerage system and shale environmental regulator that we propose in the ensuing chapters of this Report. (Paragraph 47)*

## **Weight of guidance**

*8.While the primary consideration for Mineral Planning Authorities must be Local Plans, the status of the various guidance documents in the planning process is not always clear to Mineral Planning Authorities. Notwithstanding our earlier recommendation for the Government to consolidate its position on fracking in the revised National Planning Policy Framework, particularly in regard to how it fits with the UK’s climate change commitments, we are content that Mineral Planning Authorities are currently finding an appropriate balance between national and local policy and guidance in the determination of fracking planning applications. (Paragraph 53)*

*9.We are disappointed with the Minister’s refusal to answer our questions. Claiming that the Minister cannot respond to our questions because he cannot answer hypothetical cases or comment on specific cases is incongruous given that the questions referred directly to a Government statement on fracking planning policy. (Paragraph 58)*

*10.There is a contradiction between the spirit of the Localism Act 2011 and the 2018 Written Ministerial Statement on fracking planning policy which could unreasonably restrict Local Plans. Mineral Planning Authorities are best placed to understand their local area and weigh up what requirements should be in place for fracking developments. We note that Local Plans are already subject to scrutiny at national level from the Planning Inspectorate. Given that the English planning system is plan-led, Mineral Planning Authorities should be free to adapt their Local Plans as they see fit as long as they do not arbitrarily restrict fracking developments. It is essential that Mineral Planning Authorities have the right to put conditions in their Local Plans which can be justified having proper regard to local circumstances. (Paragraph 59)*

## **Shale Environmental Regulator**

11. Given the existing roles and wider remits of the Oil and Gas Authority, Environment Agency and Health and Safety Executive, a single regulator is inappropriate for the fracking industry. *The regulatory roles and powers of the existing regulators should be maintained to protect the independence of the regulatory regime, avoid conflict of interests and ensure regulatory specialisms are maintained.* (Paragraph 64)

12. There is a need to better communicate the purpose and role of the regulatory bodies. *We recommend that the Government establish an overarching single point of contact for fracking queries., which should host the “one-stop shop” for fracking guidance and policy documents that we recommend in Chapter 3. The overarching body should encourage multi-agency working between the existing regulatory bodies. We note the Government’s suggestion that the proposed Shale Environmental Regulator would “act as one coherent single face for the public, mineral planning authorities and industry” and acknowledge that a Shale Environmental Regulator could fulfil this role. However, in view of our previous recommendation that the existing regulatory functions should be maintained, the Government should consider renaming and repurposing the proposed Shale Environmental Regulator as the ‘Shale Information and Coordination Service’ in order to avoid further confusion. We also recommend that the overarching point of contact co-opts the planning brokerage system to provide a comprehensive service to Mineral Planning Authorities and applicants as well as the public, pursuant to our recommendation in Chapter 6, and minimise confusion about the role of an additional body in the fracking development process.* (Paragraph 68)

## **Changes to the planning regime**

13. There is little to be gained from bringing fracking planning applications at any stage under the NSIP regime; there is limited evidence that it would expedite the application process and such a move is likely to exacerbate existing mistrust between local communities and the fracking industry. We are particularly concerned that if the NSIP regime were adopted, there would be no relationship between fracking applications and Local Plans in communities. Furthermore, we note that the Government has not provided any justification or evidence for why fracking has been singled out to be included in a national planning regime in contrast to general mineral applications. (Paragraph 82)

14. *Fracking planning applications should not be brought under the NSIP regime. While we note that the NSIP regime does provide opportunities for consultation with Mineral Planning Authorities and local communities, such a move could be perceived as a significant loss to local decision-making. Mineral Planning Authorities are best placed to understand their local area and consider how fracking can best take place in their local communities.* (Paragraph 83)

15. *Despite our recommendation above and the overwhelming evidence we received, if NSIP were to be used for fracking applications, it is essential that a National Policy Statement is prepared as a matter of urgency that would include suitable measures to restrict inappropriate proliferation of well-pads and unacceptable impacts on landscapes. We consider that the North Yorkshire Draft Joint Minerals and Waste Plan offers an appropriate template for such guidance. While we note that the Government stated that the issue of cumulative impact “would be addressed on a case by case basis as part of the NSIP examination process,” the National Policy Statement should ensure*

*that it is considered automatically as part of every determination. Every decision should also be consistent with Local Plans. (Paragraph 84)*

*16. Shale gas development of any type should not be classed as a permitted development. Given the contentious nature of fracking, local communities should be able to have a say in whether this type of development takes place, particularly as concerns about the construction, locations and cumulative impact of drill pads are yet to be assuaged by the Government. (Paragraph 91)*

*17. It is essential that Mineral Planning Authorities are sufficiently resourced to deal with fracking planning applications. The shale support fund of £1.6 million over two years and the planning brokerage system are to be welcomed though we note that in the previous financial year Mineral Planning Authorities could apply for financial support from a fund of £1.2 million. Furthermore, given that we were told that fracking applications can cost Mineral Planning Authorities more than £500,000, we recommend that the Government raise the cap on funding bids to the shale support fund and increase the funding available. The Government should also consider making the fund more flexible so that Mineral Planning Authorities can react more effectively to fracking planning applications. (Paragraph 98)*

*18. Limiting access to the planning brokerage system to Mineral Planning Authorities and applicants is likely to increase opposition to individual fracking applications, thereby further inhibiting the role of Mineral Planning Authorities. The planning brokerage system should extend its support to members of the public and organisations who wish to participate in the planning process to avoid overburdening Mineral Planning Authorities. In doing this, a more independent and even-handed approach to fracking planning applications would be facilitated. As part of its support to Mineral Planning Authorities, the Government should provide long-term funding to the Planning Advisory Service to ensure continued access to training and support. (Paragraph 102)*

*19. Pursuant to our earlier recommendation to rename and repurpose the proposed Shale Environmental Regulator, we call on the Government to integrate the planning brokerage system into the Shale Information and Coordination Service, to truly establish “one coherent single face for the public, mineral planning authorities and industry”. (Paragraph 103)*