

RECENT DEVELOPMENTS IN UK ONSHORE OIL & GAS EXPLORATION

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On 24 July 2018, Cuadrilla Resources received final hydraulic fracture consent from the UK's Department for Business, Energy & Industrial Strategy ("BEIS") for its first horizontal shale gas exploration well at its Preston New Road site in Lancashire, England. This follows permission being granted on 6 October 2016, which allowed Cuadrilla Resources to drill the first two horizontal shale wells in the UK, granted when the then Secretary of State for Communities and Local Government, Sajid Javid, overruled local councillors' objections on appeal. The decision to award the consent signifies a continued political shift towards support for shale gas in England, despite local opposition.

The position remains confused in Scotland where, on 3 October 2017, a moratorium on fracking that had been in place since January 2015 was announced by the energy minister of the devolved Scottish administration, Paul Wheelhouse, as having been converted to a policy in favour of an outright ban. Scottish industrial giant Ineos, which has onshore licences in Scotland, and Aberdeen firm ReachCSG took Scottish ministers to court over what they had interpreted as an indefinite effective ban and had asked the court to declare that the ministers acted unlawfully in doing so, exceeding their powers and lacking the legal competence to impose such a ban. Lord Pentland of the Court of Session, Scotland's highest civil court, ruled that the Ineos position was based on a "series of fundamental misunderstandings of the Scottish Government's position" and refused the challenge, ruling that no such definitive legal ban on fracking existed (though a moratorium was in place). Although the Scottish administration has since reaffirmed its policy goal, Scottish ministers decided on 10 July 2018 to extend Ineos' and Reach's Petroleum Exploration and Development Licence ("PEDL") 162 for a year until June 2019.

In Wales (which, whilst not a separate legal jurisdiction to England, has significant devolved powers), the Welsh administration has also had a moratorium in place since 2015. The Welsh administration is due, pursuant to the Wales Act, to take control of the power to grant onshore licences from the UK Oil & Gas Authority on 1 October 2018. It has stated that it will thenceforth grant no new onshore extraction licences.

In Northern Ireland, the Department for the Economy ("DfE") grants petroleum licences "to explore for, bore for and get" petroleum under powers granted by the Petroleum (Production) Act (Northern Ireland) 1964. There are estimated to be approximately 3 Tcf of recoverable gas reserves in the Fermanagh/Leitrim basin where Tamboran Resources are carrying out exploration activities.

REGULATORY DEVELOPMENTS OPENING UP ONSHORE EXPLORATION

In recent years, the UK's regulatory regime (outside of Scotland and Wales) has progressively removed legal and practical hurdles to the development of onshore petroleum resources.

The few legal levers open to surface landowners have been significantly limited. Before the entry into force of the Infrastructure Act 2015 ("IA 2015"), companies intending to drill onshore had to obtain the consent of surface landowners in order to gain underground access. This often led to protracted negotiations, failing which there was a risk of committing trespass¹. The IA 2015 amended this position to permit the exploitation of petroleum or geothermal energy in "deep-level land" (i.e. at least 300 metres below the surface, approximately the depth of the resource in the Weald and Downland of Southern England) by operators, dispensing with the need to obtain the prior consent of surface landowners. The operator must still obtain a Petroleum Exploration and Development Licence, planning permission and environmental and other necessary consents.

In order to be able to carry out hydraulic fracturing, special consent has been required from the Secretary of State since 6 April 2016 as, since IA 2015 environmental conditions were brought into force on this date, well consents impose a condition prohibiting associated hydraulic fracturing² at a depth of: (i) less than 1,000 metres; and (ii) 1,000 metres or more, unless consented to by the Secretary of State subject to a wider "appropriateness" consideration (together, a "hydraulic fracturing consent"). A hydraulic fracturing consent can only be issued once certain conditions have been met, which include: (i) safeguards to environmental impacts and health and safety; and (ii) additional conditions set out in section 4A(6) of IA 2015.

With regards to gas transportation, all onshore gas producers in the UK (whether conventional, unconventional or bio-methane) were previously required to hold a transporter licence under the Gas Act 1986, unless specifically exempt for a defined period. This was identified as a barrier to the development of the UK onshore gas sector, and a class exemption was therefore introduced to cover all forms of onshore gas production. This exemption removed the requirement to hold a gas transporter licence where a person conveys gas from an onshore gas processing facility to a pipeline system, provided that the length of pipeline through which the gas is conveyed does not exceed 16.043 kilometres.

In recent years, there has been a clear shift towards a more permissive regulatory regime for shale gas exploration and exploitation in England and Northern Ireland. The fact that the Secretary of State has had to intervene on the English applications and that, to date, only one hydraulic fracturing consent has been granted, show that obstacles nevertheless remain. Based on the history to date, it would seem likely that the Scottish licensees will return to the courts to press their case. However, against this history, the decision to allow Cuadrilla to carry out hydraulic fracturing for shale gas marks a significant step for the UK's shale gas industry, and will go some way to revealing whether the resources match the promise of being a source of future energy security for the UK.

¹ In *Bocardo SA v Star Energy UK Onshore Ltd and another* [2010] 3 All ER 975, it was held that the landowner could sue for underground trespasses.

² "Associated hydraulic fracturing" is defined in the IA 2015 as fracking for shale gas that is: (i) carried out in connection with use of a well to search, bore for or get petroleum; and (ii) involves (or is expected to involve) the injection of more than 1,000 cubic metres of fluid at each stage or more than 10,000 cubic metres of fluid in total.

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