



THE GAS ACT 1965

Guidance on the Gas Act 1965, under which licensed Gas Transporters proposing to store gas in natural porous strata onshore seek consent from the Secretary of State for Trade and Industry

A CONSULTATION

MAY 2007

This Consultation is published alongside the Energy White Paper *Meeting the Energy Challenge*. The wide range of measures set out in the White Paper take forward our commitment to meeting the two long-term energy challenges. They are:

- tackling climate change by reducing carbon dioxide emissions both within the UK and abroad; and
- ensuring secure, clean and affordable energy as we become increasingly dependent on imported fuel.

Further information on the White Paper and related documents is available on the DTI website: www.dti.gov.uk/energy/whitepaper

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A consultation

Why is DTI conducting this consultation?

The Government has committed to simplifying and streamlining the onshore gas infrastructure consents regime in light of the UK's increasing gas import dependence, and our need for additional gas supply infrastructure (import terminals, storage facilities and pipelines) to help us meet this challenge. The commitment was reiterated in respect of the 2006 Energy Review as part of a comprehensive package of short term and long term measures to improve the energy planning for Major Infrastructure Projects.

Recommendations made in Kate Barker's Review of Land Use Planning¹ and Sir Rod Eddington's Transport Study² have helped to shape the development of proposals to create a new consenting regime for all major infrastructure, including major energy projects such as overhead lines, large scale power stations, and gas supply infrastructure, as set out in the Government's White Paper, *Planning for a Sustainable Future*, published 21 May 2007.

However, a number of planned projects may wish to begin making applications through existing mechanisms, in advance of any changes that may be made to the system.

The Gas Act 1965 is the consenting route for certain developers, undertaking certain types of project. It provides an authorisation regime for the storage of kinds of gas (including natural gas) by licensed gas transporters in natural porous strata onshore.

Those not licensed as gas transporters who want to store gas underground in natural porous strata must apply to the local planning authority under the Town and Country Planning Act 1990 (TCPA). Similarly, both licensed gas transporters and those not licensed gas transporters who want to store gas underground in non -porous strata (i.e. salt cavities) must also apply under the TCPA.

No guidance has previously been produced on the Gas Act 1965, but in light of increased interest in gas storage developments in the UK, it is important that those considering making applications understand if the Gas Act 1965 applies to them, and if so, what the process for making an application is, and how an application is considered. It is also important that other interested parties, such as consultees and people living close to the proposed storage facility, understand the processes, how to make their views known and the factors which may be relevant to any decision.

The Government is seeking views on whether the guidance explains the processes, requirements, timescales and other information relating to the Gas Act 1965 in a sufficiently clear and comprehensible manner to meet the needs of industry, interested and representative bodies and individuals.

¹ Review of Land Use Planning, Kate Barker, December 2006.

² The Eddington Transport Study, Sir Rod Eddington, December 2006.

Issued on	23 May 2007
Respond by	15 August 2007
Enquiries to	Ruth French Leader, Gas Supply Infrastructure Project Department of Trade and Industry Bay 2100 1 Victoria Street London SW1H 0ET Tel: 020 7215 6554 Email: GasActGuidance@dti.gsi.gov.uk

How to respond

When responding, please state whether you are doing so as an individual, or representing the views of an organisation. If responding on behalf of an organisation, please make it clear whom the organisation represents and, where applicable, how the views of members were assembled.

Responses can be submitted by post or email (email preferred) by Wednesday 15 August 2007 to:

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SW1H 0ET
Tel: 020 7215 6554/5176
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We would also be pleased to meet with you and hear your views on the issues raised.

We are sending this document to key interested parties of this consultation. We would welcome suggestions of others who may wish to be involved in this consultation exercise. A list of consultees is at Annex B. A copy of this document is also available on request from the address above and on the DTI website at www.dti.gov.uk/files/file38982.pdf.

Additional copies

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What happens next?

Following the end of this consultation, and in light of the comments received, the DTI intends to publish formal Guidance on the Gas Act 1965. This would be available on the DTI website, with paper copies available on request.

Confidentiality & Data Protection

Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004). If you want other information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.

In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

The Department will process your personal data in accordance with the DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

Help with queries

If you have comments or complaints about the way this consultation has been conducted, these should be sent to:

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Consultation Co-ordinator
Department of Trade and Industry
Better Regulation Team
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The six consultation criteria in the Code of Practice on Consultation are set out in Annex A.

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Executive Summary

The Gas Act 1965 provides for the Secretary of State for Trade and Industry to authorise the storage of kinds of gas, including natural gas, by a licensed gas transporter, in natural porous strata underground.

This guidance only covers the consenting process in England and Wales as this is where developers have shown an interest in bringing forward proposals. In the event of proposals coming forward in Scotland, account would have to be taken of the devolution settlement to determine whether the Secretary of State's functions under the Act would be exercisable by him or by the Scottish Ministers. Any enquiries pertaining to such developments in Scotland should be addressed to the DTI's Development Consents Team in the first instance. Queries relating to Scotland should be addressed to the DTI Development Consents Team in the first instance.

No guidance has previously been produced on the Gas Act 1965. This guidance has been produced in response to increased interest in the storage of natural gas onshore in the UK, which is a market-led response to meeting the challenge of the UK's growing dependence on imported gas.

Whilst some applications for onshore gas storage developments will be made under the Town and Country Planning Act 1990, the Gas Act 1965 will be a consenting route in some cases.

The information provided in this document is neither definitive nor exhaustive. It sets out the requirements of the Act and how the Secretary of State will administer the regime (which is untested). The guidance should be read in conjunction with the legislation to which it refers and other legislative guidance or advice where available. It is for the Courts to interpret legislation and an authoritative statement of the law can only be made by the Courts. The Department is unable to provide legal advice and this guidance should not be seen as a substitute for independent professional advice.

The Government is seeking views on whether the guidance set out below explains the processes, requirements, timescales and other information relating to the Gas Act 1965 in a sufficiently clear and comprehensible manner to meet the needs of industry, interested and representative bodies and individuals.

Consultation Questions

The consultation asks the following questions; these are repeated in the main text, and in order to fully understand them, we suggest that it is necessary to read the text.

Part 2

- Q1: Is the language used to describe the scope of the Gas Act and to whom it applies clear and comprehensible?**
- Q2: Do you have any suggestions for improving the pictorial representation of processes?**

Part 4

- Q3: Could anything further be added to Part 4 to clarify particular stages of the process? Please explain.**
- Q4: Are consultation requirements clear? If further explanation is required, please explain.**

Part 5

- Q5: Is the process for decision-making clear? If further explanation is required, please explain.**

Annexes and general

- Q6: Are there any additional topics that could be considered for inclusion in an annex? Please explain.**
- Q7: Do you have any additional suggestions for improving the style, content or layout of the guidance to improve its usefulness to all parties?**

Proposed Gas Act 1965 Guidance

Guidance on the Gas Act 1965, under which licensed Gas Transporters proposing to store gas in natural porous strata onshore seek consent from the Secretary of State for Trade and Industry.

Part 1: Introduction

- 1.1** The Government's report on the Energy Review 'The Energy Challenge'³ examined the UK's progress against the medium and long-term goals set out in the 2003 Energy White Paper 'Our energy future – creating a low carbon economy'. It also considered options for further steps to achieve those goals.
- 1.2** A number of actions on planning for energy infrastructure projects were identified in the Review, including the streamlining and simplification of the planning process for gas supply infrastructure projects.
- 1.3** The current consent regimes covering onshore gas storage are complex. Proposals to create a new consents regime for all major infrastructure, including major energy projects such as overhead lines, large scale power stations, and gas supply infrastructure, are set out in the Government's White Paper, *Planning for a Sustainable Future*, published 21 May 2007, and follow recommendations made in the Barker Review of Land Use Planning⁴ and Eddington Transport Study.⁵
- 1.4** Any changes to the planning process for gas supply infrastructure will take time to implement. With a number of gas storage proposals already in planning or pre-planning stages, and some of those developments potentially falling within the scope of the Gas Act 1965 regime, this guidance focuses on the onshore consents process for licensed Gas Transporters seeking to store gas in natural porous strata under the 1965 Act, for which no guidance has previously been published.
- 1.5** The Gas Act 1965 only applies to the onshore underground storage of gas (including natural gas) by licensed Gas Transporters in natural porous strata (e.g. depleted hydrocarbon fields⁶).⁷

³ The Energy Challenge, DTI, July 2006.

⁴ Barker Review of Land Use Planning, Kate Barker, December 2006.

⁵ The Eddington Transport Study, Sir Rod Eddington, December 2006.

⁶ In some countries, aquifers are also used to store gas. Aquifer storage would also be considered under the Gas Act, if such projects are, in the future, considered in the UK. Specific geological conditions are required for such storage.

⁷ Other consents may also be necessary.

- 1.6** Non-Gas Transporters who want to store gas underground in natural porous strata must apply to the local planning authority under the normal planning regime (i.e. the Town and Country Planning Act 1990 -TCPA).⁸
- 1.7** Similarly, both Gas Transporters and those who are not Gas Transporters who want to store gas underground in salt cavities must also apply for planning permission under the TCPA.⁹
- 1.8** The DTI's Developments Consents and Planning Reform team handle various electricity and gas consenting applications in England and Wales that fall to be determined by the Secretary of State for Trade and Industry, including applications made under the Gas Act 1965.
- 1.9** They receive objections and other letters on behalf of the Secretary of State and assess applications on his behalf. They also aim to make sure that the procedures are carried out fairly and transparently. A site visit may be carried out with the relevant planning authorities and applicant in order to familiarise the case officer with the development site and surrounding area (usually after the consultation period has closed).
- 1.10** **Neither the Secretary of State nor officials acting on his behalf can discuss the merits of individual cases or give an indication of what the Secretary of State's decision might be.**
- 1.11** Any queries on the Gas Act 1965 consenting process or gas policy and market issues should be addressed to the appropriate contact points below:
- | <i>Gas Act 1965 Consenting Issues</i> | <i>General Gas Policy & Market Issues</i> |
|---------------------------------------|---|
| Rob Pridham | John Havard |
| Energy Development Unit | Energy Markets Unit |
| Energy Group | Energy Group |
| Bay 2121 | Bay 2100 |
| 1 Victoria Street | 1 Victoria Street |
| London SW1H 0ET | London SW1H 0ET |
| Tel: 020 7215 2813 | Tel: 020 7215 5546 |
| Fax: 020 7215 2601 | Fax: 020 7215 2890 |
| E-mail: robert.pridham@dti.gsi.gov.uk | E-mail: john.havard@dti.gsi.gov.uk |
- 1.12** This guidance only covers the consenting process in England and Wales, as this is where developers have shown an interest in bringing forward proposals. In the event of proposals coming forward in Scotland, account would have to be taken of the devolution settlement to determine whether the Secretary of State's functions under the Act would be exercisable by him or by the Scottish Ministers. Any enquiries pertaining to such developments in Scotland should be addressed to the DTI's Consents Team in the first instance.

⁸ Other consents may also be necessary.

⁹ Other consents may also be necessary.

- 1.13** Please note that the information provided in this document is neither definitive nor exhaustive. It sets out the requirements of the Act and how the Secretary of State will administer the regime (which is untested). The guidance should be read in conjunction with the legislation to which it refers and other legislative guidance or advice where available. It is for the Courts to interpret legislation and an authoritative statement of the law can only be made by the Courts. The Department is unable to provide legal advice and this guidance should not be seen as a substitute for independent professional advice.
- 1.14** All applications for Storage Authorisation Orders made under the Gas Act 1965 or any other statutory regime will be considered on their merits and nothing in this guidance will pre-judge the outcome of any such decision.

Part 2: Scope of the Gas Act 1965

Note: A glossary of terms pertaining to the Guidance, and particularly relevant for Parts 2, 3 and 4, is contained at Annex i.

2.1 The Gas Act 1965 has limited scope. It provides a consenting regime for the onshore underground storage of gas by a licensed Gas Transporter in natural porous strata (i.e. partially depleted oil and gas fields or aquifers). All other developments require consent under the Town and Country Planning Act 1990 (“TCPA”). See Annex viii for more detail. Table 1 summarises the planning consent required by developers for different types of project, and this is described in more detail below.

Table 1: summary of applicable consent regimes¹⁰

Developer	Development	Consent regime
Licensed gas transporter	Storage in natural porous strata (depleted fields or aquifers)	Gas Act 1965
Licensed gas transporter	Storage in salt cavities	TCPA
Non-licensed gas transporter	Storage in natural porous strata (depleted fields or aquifers)	TCPA
Non-licensed gas transporter	Storage in salt cavities	TCPA

Licensed Gas Transporters storing gas in natural porous strata underground

2.2 A licensed Gas Transporter must apply for a Storage Authorisation Order to develop or use natural porous strata (e.g. partially depleted hydrocarbon field or aquifers) for the storage of gas (section 4(2) of the Gas Act 1965). A licensed Gas Transporter owns and operates gas pipeline systems that convey gas to premises or other Gas Transporters’ systems. Through their licence, which is granted for a specific geographic area (which may overlap with other Gas Transporters’ licence areas), they can convey gas to premises in their licensed area or to the interface of other Gas Transporters’ systems.

¹⁰ Other consents are also likely to be necessary.

- 2.3** Whilst the Gas Act 1965 does not displace any need under the TCPA for planning permission in respect of a proposal, a Storage Authorisation Order may grant deemed planning permission for bringing a storage facility into use or operation in accordance with a Storage Authorisation Order and for the carrying out or construction of any surface works, boreholes, or pipes associated with it (section 4(6) of the Gas Act 1965).

Licensed Gas Transporters storing in non-porous strata

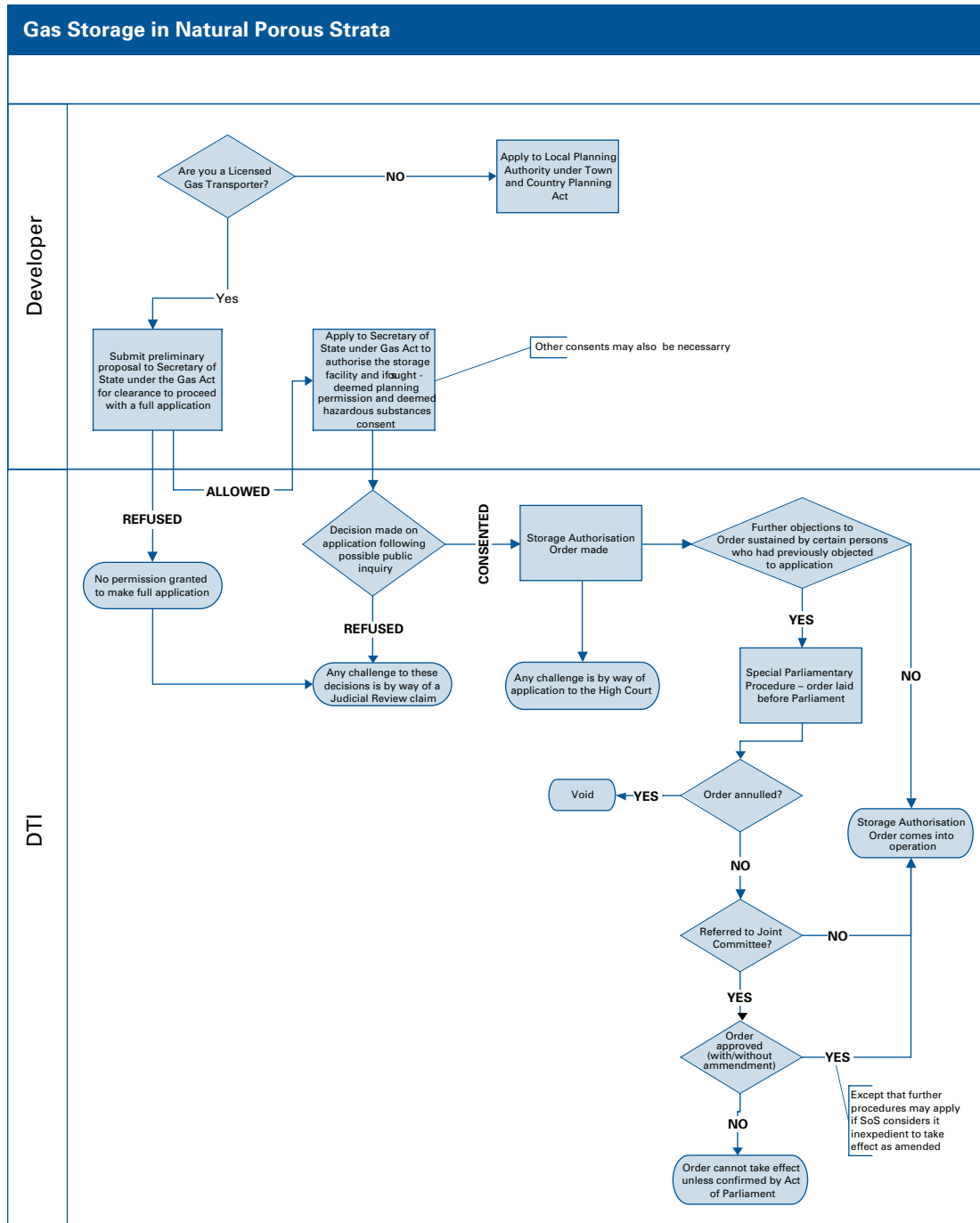
- 2.4** Applications from licensed Gas Transporters seeking to store gas underground in non-porous strata (e.g. in salt cavities) are considered by the relevant local planning authority in the normal planning regime under the TCPA. Further detail on the TCPA and the planning system in general can be accessed at <http://www.planningportal.gov.uk>

Those without a Gas Transporter Licence

- 2.5** Those not licensed as Gas Transporters who want to store gas underground in either natural porous strata or non-porous strata must apply to the local planning authority for planning permission under the TCPA.

- Q1: Is the language used to describe the scope of the Gas Act and to whom it applies clear and comprehensible?**

Chart 1: The main consent process (under the Gas Act 1965) for a gas storage facility in Natural Porous Strata by a Licensed Gas Transporter



Q2: Do you have any suggestions for improving the pictorial representation of processes?

Part 3: Summary of main processes under Gas Act 1965

Note: further detail on the processes is contained in Part 4.

Notes

- Section 4 of the Gas Act 1965, which concerns the granting of Storage Authorisation Orders, only applies to onshore gas storage in natural porous strata by licensed Gas Transporters.
- Details of the application process are covered in Schedule 2 of the Gas Act 1965.
- It is a two-stage process involving:
 - i) a preliminary submission of proposals; and
 - ii) a formal application for a Storage Authorisation Order.



3.1 Preparatory work by developer and submission of developer's preliminary proposal

- The developer, will identify a location.
- The developer is advised to discuss the proposal with:
 - the relevant planning authority;
 - other statutory consultees under the Gas Act 1965 and other bodies, such as the HSE
 - interest groups and local people (e.g. by holding public meetings and exhibitions etc) as appropriate.
- The developer is likely to need to prepare an Environmental Statement.

- The developer will need to consider other permissions necessary for the construction and operation of the gas storage facility. The developer may wish to meet with the Onshore Consents Team of DTI to discuss Gas Act 1965 procedures, but they are unable to discuss the merits or otherwise of proposals or offer legal advice.
- The developer will submit the preliminary submission of proposals to the Secretary of State, c/o the Onshore Consents Team at DTI, seeking clearance to proceed with a full application.
- The developer will need to publicise the preliminary submission of proposals in the London Gazette and one or more local newspapers for two successive weeks. A minimum period of 28 days should be given for representations to be made to the Secretary of State.
- The developer must serve notice of the proposal on every relevant local planning authority, every relevant local authority who are not a local planning authority, relevant statutory water undertakers, the Environment Agency and anyone else the Secretary of State designates (e.g. the HSE). A minimum period of 28 days should be given for representations to be made to the Secretary of State.
- The Secretary of State will consider all representations received and make a decision as to whether or not proposals can proceed to full application (with or without permitted modifications).

See paragraphs 4.5–4.24 for further detail.



3.2 Application by developer for a Storage Authorisation Order

- The developer should submit the application for a gas Storage Authorisation Order to Secretary of State, c/o Consents Team, DTI.
- The developer may apply for deemed planning permission for the carrying out or construction of any surface works, boreholes or pipes associated with the gas storage and for bringing the storage into use or operation, and also for deemed Hazardous Substances Consent.
- The Gas Act 1965 regime does not have any dedicated Environmental Impact Assessment (EIA) regulations. However, the DTI considers an environmental impact assessment is likely to be necessary, and an EIA is usually necessary for gas storage projects in the general planning regime. An Environmental Statement should usually be provided with an application.

- Whilst the regime does not specify the HSE as a consultee, they are nonetheless an important consultee and the accompanying documentation will also need to include an outline safety document. HSE will also be consulted by DTI on any deemed Hazardous Substances Consent application.
- The developer will need to serve notice of the application on every relevant local planning authority, every relevant local authority who are not a local planning authority, relevant statutory water undertakers, the Environment Agency, relevant highway authorities, relevant landowners, lessees and occupiers (except tenants for a month or less), and anyone else the Secretary of State designates, such as the HSE.
- DTI will also request copies to handle the circulation of the proposal to the Government network (e.g. Government Offices in the Regions, other Government Departments and Agencies etc).
- The developer should notify the Secretary of State of the extent to which access to land will be acquired voluntarily, and must notify the Secretary of State of the extent to which they have acquired, or expect to be able to acquire, any necessary land and rights by negotiation.
- The regime enables the Secretary of State to require that any Compulsory Purchase Order sought to be confirmed be handled concurrently with the application.

See paragraphs 4.8–4.12, 4.25–4.41 for further detail.



3.3 General Publicity

- Public notice of the application has to be given in the London Gazette and one or more local newspapers for two successive weeks.

See paragraphs 4.27–4.34 for further detail.



3.4 Consultation period

- Public notice specifies objections to the Secretary of State must be made within a specified period – Schedule 2 specifies the period has to be not less than 28 days from date of first public notice.
- The Secretary of State considers that those served with notice of the application (e.g. owners, occupiers and lessees within the storage area) should be given 2 months within which to make representations.

See paragraphs 4.35–4.44 for further detail.



3.5 Consideration

- Responses from local planning authority, other bodies and public are assessed by the DTI Onshore Consents team. Further information is requested from the developer, as necessary. A site visit will normally be undertaken by the Onshore Consents team.
- The Gas Act provides for a public local inquiry to be held in certain circumstances.

See paragraphs 4.47–4.48 and Annex ii for further detail.



3.6 Determination

- The Secretary of State determines whether to make a Storage Authorisation Order or refuse an application, taking into account the report of any public inquiry or hearing held, and matters as detailed in Part 5.
- If relevant local planning authorities, relevant local authorities who are not a local planning authority, relevant statutory water undertakers or relevant highway authorities had sustained objections to the application, the Secretary of State must serve on them a notice of the making of the order. They have 28 days within which to maintain an objection to the order, in which case the order becomes subject to special parliamentary procedure.
- The developer must arrange for public notice of the order in the London Gazette and one or more local newspapers, as soon as practicable.

- The developer will also need to notify those served with the notice of the application. The developer must deposit the order and map with every relevant local authority so that it is available for inspection by the public at those local authorities' offices.

See paragraphs 5.1–5.10 for further detail.



3.7 Post-decision

- A challenge to a storage authorisation order must be made by application to the High Court within 6 weeks, usually, of the date on which notice of the making of the order is first published. Other decisions may be subject to challenge by bringing a claim for judicial review. Such a claim must be brought expeditiously and in any event not later than three months after the grounds for making the claim arose.

See paragraphs 5.11-5.13 and Annex iv for further detail.

Part 4: The processes

- 4.1** The Gas Act 1965 sets out a two-stage process. It involves i) a preliminary submission of the developer's proposals and ii) if agreed by the Secretary of State, a formal application for a Storage Authorisation Order.
- 4.2** The preliminary submission stage provides an opportunity to identify any overriding objections to a proposal such that it would not be appropriate for it to proceed and be considered fully at the formal application stage. The Secretary of State also considers that it provides an opportunity for consultees and interested parties to make representations on any further information they would like to see covered in more detail in the application and/or any Environmental Statement.
- 4.3** As well as the requirement for a Storage Authorisation Order as a Gas Transporter, the developer will also need planning permission for matters constituting 'development'. Planning permission for certain matters constituting development may be deemed to be granted in a Storage Authorisation Order, subject to any conditions specified (see paragraph 2.3). Planning permission provides the conditions by which the development is controlled and mitigated and is enforced by the local planning authority.
- 4.4** Similarly, the developer may also apply to the Secretary of State for a direction at the time of making any Storage Authorisation Order that Hazardous Substances Consent be deemed to be granted¹¹ rather than applying to the local Hazardous Substances Authority (which is usually the local planning authority) for this consent. Safety and Hazardous Substances Consent are covered in more detail at Annex v.

Preparatory work by developers

- 4.5** Before submitting a proposal, we recommend that a developer consults widely with relevant statutory and non-statutory bodies and members of the local community in order to gauge their reaction to the proposal and to identify any particular issues.

¹¹ By virtue of section 12(1) of the Planning (Hazardous Substances) Act 1990.

- 4.6** It is for the developer to ensure that they obtain all the necessary consents and permissions for the gas storage project, considering what is required for both the construction and operation of the proposed development, as well as the possible requirement for any related Compulsory Purchase Orders. The developer should also discuss connection to the National Transmission System (NTS) with National Grid at an early stage, and may also wish to approach Ofgem with regard to the Third Party Access regime.
- 4.7** Although the Gas Act 1965 does not have any dedicated Environmental Impact Assessment regulations, the Secretary of State considers such an assessment is likely to be necessary, and an EIA is usually necessary for gas storage projects in the general planning regime. The 1965 Act allows the Secretary of State to require a developer to provide further written information concerning his application, so all developers should therefore work on the basis that an EIA is likely to be necessary, in which case an Environmental Statement will be required in support of a formal application for a Storage Authorisation Order.

Good Practice Tips for developers: preparatory work

- Consult widely and at an early stage with the relevant planning authorities, statutory and non-statutory bodies (such as the Health and Safety Executive and the Environment Agency), the local water company, parish councils, the RSPB, and local interest groups such as wildlife trusts, conservation and archaeological groups, who will have specialist local knowledge of how the development may impact upon the area.
- Ensure that sufficient information is provided at the preliminary submission of proposals stage to enable consultees and interested parties to have a good feel for what the project would involve and what issues any supporting Environmental Statement is likely to cover.
- Ensure the necessary environmental surveys, studies and reports for inclusion in an Environmental Statement have been carried out before submitting the formal application. If not, the Secretary of State and consultees will not be able to consider it properly and the developer will be directed to carry out the assessments later, leading to delays.
- Consider the pipeline connection to the National Transmission System (as well as possible requirements for related Compulsory Purchase Orders). Discuss the connection with National Grid at an early stage. Although it will not be possible to carry out a full EIA until route options are clearly identified, the Secretary of State considers that the developer will still need to demonstrate that they have given consideration to how the gas will be delivered to and from the storage area, the likely impact, and whether that impact can be mitigated (e.g. where it is intended to connect to the NTS, the likely pipeline route corridor, whether it will cross sensitive areas such as National Parks, SSSIs, SPAs, bridle paths etc). It may also be useful to discuss the project with Ofgem at an early stage.

- Set a realistic timetable for the development proposal. For example, speak to the relevant local authority before submitting an application to find out how their planning committee cycle fits in with the consultation period. The Onshore Consents Team in the DTI will also be able discuss procedural matters relating to Gas Act 1965 applications and give an indication of timings (although it will not be able to discuss the merits or otherwise of a gas storage proposal given the Secretary of State’s quasi-judicial role in determining applications).
- Factor in the possibility that an inquiry might need to be held and, if objections are maintained by certain objectors, that any Storage Authorisation Order may be subject to special parliamentary procedure (see paragraph 5.8).

The Environmental Statement (ES)

- 4.8** As indicated in paragraph 4.7, an Environmental Impact Assessment is likely to be necessary in respect of the proposal. If so, the developer will need to provide an Environmental Statement (ES) in support of a formal application for a Storage Authorisation Order, but will not need to submit a full ES at the preliminary submission stage.
- 4.9** In the absence of specific EIA Regulations under the Gas Act 1965, developers should refer to the requirements of The Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 as amended, most recently¹² by The Town and Country Planning (Environmental Impact Assessment) (Amendment) Regulations 2006 and the Town and Country Planning (Environmental Impact Assessment) (Amendment) (Wales) Regulations 2006 and note the publicity requirements set out in the Regulations.
- 4.10** The Regulations may be accessed through the Office of Public Sector Information website, and the links to the Regulations are:
- <http://www.opsi.gov.uk/si/si1999/19990293.htm>
- <http://www.opsi.gov.uk/si/si2006/20063295.htm>
- <http://www.opsi.gov.uk/legislation/wales/wsi2006/20063099e.htm> and
- <http://www.opsi.gov.uk/legislation/wales/wsi2006/20063099w.htm> (in Welsh)

¹² Also amended by the Town and Country Planning (Environmental Impact Assessment) (England and Wales) (Amendment) Regulations S.I. 2000/2867, <http://www.opsi.gov.uk/si/si2000/20002867.htm>

- 4.11** An ES will involve a considerable amount of work. It should include an assessment of the effects of the proposed development on the environment (including, if applicable, its cumulative impact alongside other developments already consented but not yet built or in the planning system) and proposed mitigation and compensatory measures. The developer will also need to provide details of the gas pipeline connection to the NTS, including details of route, habitats to be traversed, and mitigation measures. Details on the content of an ES are also set out in The Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999.
- 4.12** Guidance on EIA and the TCPA Regulations is provided on the Department for Communities and Local Government website www.communities.gov.uk. Further details on EIA for onshore hydrocarbons facilities is also available on the DTI website http://www.og.dti.gov.uk/regulation/legislation/environment/onshore_hydrocarbons/index.htm

Good Practice Tips for developers: drafting the Environmental Statement

- Good preparation is everything. Spending, for example, an additional three months at the pre-application stage on an ES may save nine months later. If the ES is considered deficient, the Secretary of State will issue a direction for further information. This in turn will need to be gathered and advertised and a further opportunity will have to be given for representations to be made.
- Ensure that the ES and, in particular the Non-Technical Summary is easy to understand, well cross-referenced and written in plain English.
- Do not rely on the comments from consultees at preliminary submission of proposals stage to capture everything that should be included in the ES. Consultees only have a limited period in which to respond during the preliminary consultation.

Format of a Preliminary submission of proposals

- 4.13** There is no set application form for a Preliminary submission of proposals. The Secretary of State has the discretion to request further information in writing. However, the 1965 Act lays down the statutory basics to be provided in writing.¹³

¹³ Under schedule 2, paragraph 3(2).

A preliminary submission of proposals (Schedule 2, paragraph 3): must:

- Include name and address of applicant
- Specify by reference to a large-scale map the perimeter of the storage area and any protective area
- State the depth or depths below which is it proposed that the Secretary of State's control over workings and borings is to have effect in the various parts of the storage and protective areas
- State the nature and volume of gas which is proposed to be stored, and the depths and nature of the stratum in which it is to be stored, and of the strata contiguous to that stratum
- Include information on the proposed operation of the storage, including methods of injecting and withdrawing gas
- State what exploratory work has been carried out to prove the proposed storage, and the results obtained from the work

Other information to be included in the preliminary submission

- 4.14** The Secretary of State considers that the following should be included in the preliminary submission, although this list may not be exhaustive:
- Whether it is intended to seek deemed planning permission and the matters for which it is intended to be sought;
 - Whether it is intended to seek deemed Hazardous Substances Consent;
 - Copies of Notices published and served under Schedule 2, paragraph 4(1) and (2) (see paragraphs 4.15–4.16 below);
 - Contact details of bodies and parties consulted;
 - Any other information he directs.

Publicity Requirements for Preliminary Submission

- 4.15** A notice must be published¹⁴ for 2 successive weeks in the London Gazette and one or more local newspapers. No statutory time limit is given, but the Secretary of State considers a minimum period of 28 days should be given for representations from the date of the first advert (which should not include public holidays). This provides an opportunity for members of the public and other interested parties not directly consulted to make representations. Although not a statutory requirement,

¹⁴ Under Schedule 2, paragraph 4(1).

developers will also be asked to post notices in prominent positions (e.g. in post offices, public notice boards etc) within the vicinity of the proposed gas storage.

- 4.16** Developers will be required¹⁵ to serve a notice containing all particulars of the published notice on the following bodies, and any other bodies or individuals as directed by the Secretary of State:
- Local Planning Authorities and local authorities who are not a local planning authority being, in either case, an authority within whose area any part of the storage or protective area lies;
 - Environment Agency;
 - Statutory water undertakers within whose area any part of the storage or protective area lies, or who are holders of a statutory licence to abstract water within either of those areas.
- 4.17** Other consultees are likely to include:
- Natural England or Countryside Council for Wales;
 - English Heritage or Cadw (in Wales);
 - Department for Communities and Local Government;
 - Health and Safety Executive;
 - The Government Office for the Region;
 - Department for the Environment, Food and Rural Affairs (Defra);
 - Department for Transport;
 - Ministry of Defence – Defence Estates;
 - Civil Aviation Authority.
- 4.18** It is recommended that developers therefore check with the Onshore Consents Team in advance of submitting a preliminary submission.
- 4.19** Both the published and served notices must describe the surface area of the storage and protective areas, the nature and volume of gas proposed to be stored and the minimum depth below the surface of the ground of the stratum in which it is to be stored. They also need to state where copies of the proposals and accompanying map may be inspected (which is normally at the offices of the relevant planning authorities or at public libraries in the locality of the proposed facility) during reasonable working hours, and should give the address to which any representations should be made and the closing date for such submissions.

¹⁵ Under Schedule 2, paragraph 4(2)

- 4.20** The Secretary of State will require copies of the actual newspaper notices and copies of the notices served in order to confirm compliance with the publicity requirements. He will also ask for evidence that the site notices have been promulgated.
- 4.21** Although developers are expected to seek their own legal and professional advice, the Department is willing to look at a draft notice in advance to check that it includes the necessary details. They should be sent to the Onshore Consents Team at DTI prior to advertising.
- 4.22** After taking the proposals into consideration, the Secretary of State may refuse a developer to proceed with their proposals,¹⁶ or may allow them to proceed with the proposals in a formal application,¹⁷ with or without specified modifications. However, it should be noted that any modifications will not be permitted to vary the storage area so as to include any area that was not included in the preliminary submission to the Secretary of State.¹⁸ If this was necessary, the preliminary application would need to be resubmitted.
- 4.23** The Secretary of State will give written notification to the applicant and usually also to other interested parties of his decision. If he refuses to allow the developer to proceed with its proposals, he shall, if requested in writing, give the developer a written statement of the reasons for his decision.¹⁹
- 4.24** The time taken from preliminary submission to the Secretary of State's decision is likely to vary from application to application. However, a best estimate is about three months.

Format of a formal application for a Storage Authorisation Order

- 4.25** There is no set application form for a formal application and the Secretary of State has the discretion²⁰ to request further written information. However, the 1965 Act does lay down the statutory basics to be provided in writing as noted below.

¹⁶ Schedule 2, paragraph 5(1).

¹⁷ Under the provisions of Schedule 2.

¹⁸ Schedule 2, paragraph 5(2).

¹⁹ Under Schedule 2, paragraph 5(3).

²⁰ Under Schedule 2, paragraph 6(2).

A formal application for a Storage Authorisation Order (Schedule 2, paragraphs 6 (1), 9(1) and 13(1)) must include the following:

- a specification of the surface works, boreholes and pipes associated with the storage, and any limits of deviation that may be required in their construction;
- a large-scale map showing the perimeters of the storage area and of any protective area and the intended position of surface works, boreholes and pipes, so far as those are known, and any limits of deviation that may be required in siting them;
- sufficient particulars of any additional surface works which will or are likely to be required, but the position of which cannot be determined at the time when the application is made;
- a statement of the depth, or depths below which, it is proposed that the Secretary of State's control over workings and borings is to have effect in the various parts of the storage and protective areas;
- particulars of the nature and volume of gas which is proposed to be stored, and the depths and nature of the stratum in which it is to be stored, and of the strata contiguous to that stratum;
- the extent to which the developer has been, or expects to be, able to acquire by negotiation the land and rights which it must possess in order to develop and operate the underground gas storage;
- any request for the Secretary of State to include in the Storage Authorisation Order an approval (for the purposes of deemed planning permission) of any of the surface works, boreholes or pipes associated with the storage and the intended positions of these matters must be shown in the map accompanying the application.

Other non-statutory information to be included for a storage authorisation order

4.26 The Secretary of State considers the following should be included in or with the formal application, although this list may not be exhaustive:

- Any supporting Environmental Statement including outline safety document;
- Confirmation of whether deemed Hazardous Substances Consent is sought (and if so, the appropriate forms should also be enclosed);
- Details of other consents/permissions being sought in connection with the gas storage project;

- Copies of notices served²¹ and confirmation of closing date for representations given in notices published in accordance with schedule 2 paragraph 7(1) (in London Gazette and local newspaper(s)) (copies of the actual newspaper notices and site notices posted should also be provided in due course);
- Contact details of bodies and parties consulted.

Publicity Requirements for a formal application for a Storage Authorisation Order

- 4.27** A notice of the formal application must²² be published by the developer for two successive weeks in the London Gazette and in one or more local newspapers. The period for making objections to the Secretary of State should not be less than 28 days from the date of publication of the first notice.²³ This provides an opportunity for members of the public and other interested parties generally to make representations on the application, any supporting Environmental Statement and any deemed Hazardous Substances Consent application.
- 4.28** Although not a statutory requirement, developers will also be asked to post notices in prominent positions (e.g. in post offices, public notice boards etc) near the proposed gas storage.
- 4.29** Developers are also required²⁴ to serve a notice on certain bodies and persons, essentially²⁵ every relevant local planning authority, every relevant local authority who are not a local planning authority, the Environment Agency, relevant statutory water undertakers, every relevant highway authority (who are not a local authority), every owner, lessee and occupier (except tenants for a month or less) of land within the storage or protective area and any other bodies or individuals as directed by the Secretary of State. It is recommended that developers therefore check with the Onshore Consents Team in advance of submitting a preliminary submission.
- 4.30** Other parties to be consulted by the Secretary of State on a formal application may depend on the responses received at the preliminary submission stage. He will usually require additional notices to be served on bodies such as the Health and Safety Executive and Natural England or the Countryside Council for Wales, and other organisations as noted in paragraph 4.17.

²¹ Under schedule 2, paragraph 7(3).

²² Under Schedule 2, paragraph 7(1).

²³ Under schedule 2, paragraph 7(2).

²⁴ Under Schedule 2, paragraph 7(3).

²⁵ See paragraph 4.36 below for the full details of these bodies and persons.

- 4.31** The 1965 Act specifies that the notice must give 28 days for representations to be made to the Secretary of State by the parties served with the notice. However, the Secretary of State considers that this is insufficient time for these consultees to consider the application and any supporting Environmental Statement. He is therefore of the view that it is best practice for developers to give two months to these parties for them to make their views known (although longer may be appropriate if this period includes public holidays). Any request for an extension to the consultation period, as specified in the notice, should be in writing and will need to be agreed with both the Secretary of State and the developer.
- 4.32** Both the published and served notices must describe the surface area of the storage and protective areas, the nature and volume of gas proposed to be stored and the minimum depth below the surface of the ground of the stratum in which it is to be stored. They must also state a place in the locality where the application, accompanying map and any supporting environmental statement and, if applicable deemed Hazardous Substances Consent application, may be inspected (which will normally at the offices of the relevant planning authorities or at public libraries). The notices must give the address to which any representations should be made, as well as the closing date for such representations and require any person objecting to the application to state the grounds of the objection.
- 4.33** The notice should also refer to any Environmental Statement and any requests for deemed planning permission or deemed Hazardous Substances Consent. It should specify where copies of a Non-Technical Summary of the Environmental Statement can be obtained free of charge and the amount payable for the full Environmental Statement.
- 4.34** Although developers are expected to seek their own legal and professional advice, the Department is willing to look at a draft notice in advance and recommends that developers send them to the Onshore Consents Team prior to advertising. The role of the Department will be confined to checking that the notice contains the requisite details.

Consultation during the formal application process

- 4.35** Through the service of the notice on certain persons and the published notices, those interested in the proposals are afforded an opportunity to make representations. This is an important part of the process as it enables those likely to be affected by the proposed storage facility to make their views known. Such representations are taken into consideration by the Secretary of State.
- 4.36** As explained above, the notice of the application must be served on the following persons:
- Every local planning authority and every local authority who are not a local planning authority, being in either case, an authority within whose area any part of the storage area or protective area lies;

- All statutory water undertakers within whose area any part of the storage area or protective area lies or who are holders of a statutory licence to abstract water within either of those areas;
- The Environment Agency;
- Every highway authority who are not a local authority and who are responsible for any part of a highway within the storage area or protective area;
- Every owner, lessee and occupier (except tenants for a month or any period less than a month) of any land within the storage area or within the protective area; and
- Such other bodies or individuals as the Secretary of State may direct (which is likely to depend on the responses received to the preliminary submission, but will include the Health and Safety Executive, Natural England or the Countryside Council for Wales).

4.37 The Secretary of State will require the developer to provide copies of the actual newspaper and Gazette notices and copies of the notices served in order to confirm compliance with the publicity requirements. This is important as the Secretary of State must take reasonable steps to satisfy himself that the notices have been published or served before making any Order.²⁶ He will also ask for evidence that site notices have been promulgated.

Making a representation

4.38 Representations should be sent to the member of the DTI Consents team named in the notice for that purpose. All representations (including e-mails) should include:

- the name of the person or body making it;
- a postal address (so that parties may be contacted by post as necessary); and
- the grounds for making any objection.

4.39 Those wishing to make representations are advised to do so within the period set out in the notice. In the case of the published notice, this must be at least 28 days from the date of first publication of the notice. In the case of the served notice, this should be at least two months from the date of the service of the notice. It is important that anyone wishing to make a representation does so within the specified period because objections duly made may necessitate the holding of a public inquiry or be relevant to any decision on whether or not to hold one.²⁷

²⁶ Schedule 2, paragraph 10(2).

²⁷ See paragraph 4.47 for further detail.

- 4.40** Also, any persons who were entitled to be served with the notice of application have an automatic right to appear at any public inquiry if they objected within the specified period.²⁸ Other objectors, including those who responded outside the specified period, can only appear at any public inquiry at the discretion of the inspector holding the inquiry.
- 4.41** All the responses received by the Secretary of State are copied to the applicant and relevant planning authorities. These will appear on the planning register of the relevant planning authority and be available for inspection locally.

Timescales in the Process

- 4.42** It is important that gas storage proposals, as potentially part of the nation's energy infrastructure, are handled in a timely manner. For that reason the formal application process seeks to capture, early on, the views and issues identified by the various participants in the process.
- 4.43** The Gas Act 1965 regime for onshore gas storage is untested and it is difficult to predict how long the statutory process is likely to take from submission of the formal application to a decision. The duration of any case will also be influenced by the adequacy of any Environmental Statement and any particular sensitivities with the chosen location. However, our experience from other energy infrastructure projects (e.g. such as power stations) determined by the Secretary of State, is that where a public inquiry takes place the timescale has been of the order of 36 months.
- 4.44** Views and issues should be identified early on and in the light of that information the Secretary of State may require the applicant to provide further information in writing.

Public Participation

- 4.45** In order for interested parties to be able to participate in the process it is essential that they have access to information on the proposed development. Information is delivered in a number of ways:
- The application and any supporting Environmental Statement are advertised in the local press and London Gazette and are available for inspection or the ES may be purchased from the applicant (except the Non-Technical Summary of the ES, which is available free of charge). Copies are normally placed in the local public library and/or in local authorities' offices.
 - The application and supporting documentation are notified to the relevant planning authority and should be placed in the Planning Register.

²⁸ Unless the objection was withdrawn or disregarded.

- Any further information required by the Secretary of State under the Gas Act 1965 may need to be advertised in the local press and London Gazette and made available for inspection or to purchase from the applicant.
- All representations received by the Secretary of State are copied to the applicant and relevant planning authority. These should also appear on the Planning Register and be available for inspection locally.

Appropriate Assessments

- 4.46** One important issue to consider is whether the location could have an impact on a 'European site' or 'designated species' – a designated nature site or species pursuant to the Conservation (Natural Habitats, etc) Regulations 1994 or under the Wildlife and Countryside Act 1981, as amended. If there is likely to be a significant environmental impact as a result of the proposed development then a separate formal 'appropriate assessment' must be carried out by the competent authority i.e. the Secretary of State, before a decision is taken. If this assessment demonstrates the development is likely to have an adverse effect on the integrity of a European site, it should not be approved, unless considerations of overriding public interest justify approval (for further information see Annex iii).

Public Local Inquiries

- 4.47** In certain circumstances, a public local inquiry will be called under the 1965 Act in relation to a proposed development before any decision is made on it, as set out below:

Detailed Notes: Objections by persons served notice under Schedule 2, paragraph 7 (3)

- Under paragraph 8(1) of Schedule 2 if an objection is duly made by any person on whom a notice has been served under paragraph 7 (3) and the objection has not been withdrawn, subject to the point in the next bullet point, the Secretary of State shall not grant the application unless he has caused a public local inquiry to be held.
- The Secretary of State may disregard an objection (see paragraph 8(2) & 8(3)) for the purposes of paragraph 8(1) if:
 - i. in accordance with a request in writing from the objector disclaiming the right to an inquiry, the Secretary of State has afforded the objector an opportunity of appearing before and being heard by a person appointed by him for the purpose;
 - ii. the objection is, in the opinion of the Secretary of State, trivial or frivolous; or
 - iii. the Secretary of State is satisfied that the objection relates exclusively to matters which can be dealt with by the Lands Tribunal on a claim for compensation.

Detailed Notes: Objections by other persons, Schedule 2, paragraph 8 (1)

- Where the Secretary of State is not required to hold a public local inquiry, he may, if he thinks fit, nevertheless hold one. In the absence of objections from persons served with a notice of the application, the Secretary of State will take into account any objections received to the published notice, together with any other material considerations, in order to determine whether a public inquiry should be held.

4.48 Further information on public inquiries is provided in Annex ii.

Associated Works and Planning Permission

4.49 It is possible for a Storage Authorisation Order to include an approval of certain matters constituting development for the purposes of deemed planning permission.²⁹ Section 4(6) of the Gas Act deals with the matters for which deemed planning permission may be authorised in the Order, namely:

- a) the carrying out or construction of any surface works, boreholes or pipes associated with the underground gas storage, and
- b) the bringing into use or operation of an underground gas storage in accordance with the Order.

4.50 Once a Storage Authorisation Order has been made, permitted development rights may be available for certain matters within the storage area and any protective area under the Town and Country Planning (General Permitted Development) Order 1995.³⁰

Planning Conditions

4.51 Rather than object, a relevant planning authority may make their agreement conditional, i.e. subject to a number of planning conditions being imposed. They may well also require the applicant to enter into an agreement, for example, to restrict the development or use of land in any specified way.³¹ The Secretary of State is not party to this agreement, but the Consents Team will want comfort on that agreement before any decision is taken on the application.

²⁹ See section 4(6) of the Gas Act 1965 and section 90 of the Town and Country Planning Act 1990 which provides for deemed planning permission.

³⁰ See Schedule 2 Class F. Permitted development rights may be available for the construction in the storage or any protective area of boreholes and the erection or construction in any such area of any plant or machinery required in connection with the construction of such boreholes, provided the borehole is not shown in the Order as having deemed planning permission and that any such plant or machinery would not exceed 6 metres in height.

³¹ Under Section 106 of the Town and Country Planning Act (a so-called 'Section 106 agreement').

4.52 In a particular case, relevant planning conditions may arise from the views of the relevant planning authority, the advice of statutory advisers and the experience of the Consents Team. *Planning Circular 11/95: The Use of Conditions in Planning Permission* provides general advice on planning conditions and includes suggested models of acceptable conditions for use in appropriate circumstances. Whatever conditions are proposed they have to meet the six tests specified in the Circular. The Circular can be found at:
<http://www.communities.gov.uk/index.asp?id=1144452>

4.53 Planning conditions should be:

- necessary;
- relevant to planning;
- relevant to the development to be permitted;
- enforceable;
- precise; and
- reasonable in all other respects.

4.54 Any Storage Authorisation Order/deemed planning permission granted is likely to contain a condition that the commencement of the development shall not be later than five years from the date of the consent, or such longer period as the Secretary of State may direct in writing. To prevent avoidable delays on any consented gas storage project, where any matter is required to be agreed or approved by the Council under any of the conditions attached to the 'deemed' planning permission, it is standard practice to include a default provision whereby the Secretary of State can act to resolve any outstanding areas requiring agreement.

Safety Conditions

4.55 The Secretary of State may,³² at any time, if he considers it necessary in the interests of safety, serve a notice on the Gas Transporter, imposing conditions concerning the manner in which the underground gas storage is developed or operated, for example, conditions as to the maximum pressure and rate at which gas may be injected. Similarly, he can at any time, if he considers it necessary in the interests of safety, serve a notice on the Gas Transporter requiring it to do certain things, for example, to cease injecting gas into the underground storage.³³ Further detail on health and safety matters and the role of the Health and Safety Executive is contained in Annex v.

³² Under section 16(1).

³³ Under section 16(2). The notice may also require the gas transporter to reduce the quantity of gas in the storage to a specified quantity, or to take other measures in respect of the storage, or any activity, or other connected matters as appear to the Secretary of State to be expedient in the interests of safety. The notice may include provision dealing with the duration of the requirements.

Compulsory purchase orders and rights

- 4.56** A Licensed Gas Transporter may be authorised³⁴ to purchase compulsorily a **right** to store gas in an underground gas storage.
- 4.57** Similarly the Secretary of State may authorise³⁵ the Gas Transporter to compulsorily purchase any **land** that is in the storage area or protective area and on which there is any well, borehole or shaft for the purpose of:
- a) using it in connection with the development or use of the underground storage (and to the exclusion of its use by any other person); or
 - b) where it extends below the depth prescribed by the Storage Authorisation Order, of stopping it up or preventing its use by any other person.
- 4.58** A Gas Transporter can also be authorised³⁶ to purchase compulsorily **rights** to enable the Gas Transporter to ensure that any well, borehole or shaft extending below the depth prescribed by the Storage Authorisation Order is stopped up or is prevented from being used by any other person.
- 4.59** Similarly a Gas Transporter may be authorised to purchase compulsorily a **right of way over any land** (for persons on foot, or on foot and vehicles), for the purpose of enabling the Gas Transporter to obtain access to land in the storage or protective area on which it proposes to construct a well, borehole or shaft connected with the underground storage or where these facilities already exist.³⁷
- 4.60** Licensed Gas Transporters also have other powers of compulsory purchase of land (including rights over land) by virtue of the Gas Act 1986³⁸ that may, for example, be used for the purchase of land for other works. In relation to all of these powers of compulsory purchase by Gas Transporters, the Secretary of State is required to consult Ofgem prior to authorising any such purchase.
- 4.61** The Secretary of State may give notice³⁹ that he will not proceed with the application for a Storage Authorisation Order until necessary related Compulsory Purchase Orders have been made and confirmation applied for and that he will then proceed concurrently with both applications. If he does this, he is required to give notice to certain objectors.⁴⁰
- 4.62** More detailed generic guidance on Compulsory Purchase Orders can be found at: http://www.communities.gov.uk/pub/561/Circular0604CompulsoryPurchaseandTheCrichelDownRules_id1162561.pdf

³⁴ By virtue of Section 12(1) of the 1965 Act and Schedule 3 to the Gas Act 1986.

³⁵ By virtue of Section 13(1) of the 1965 Act and Schedule 3 to the Gas Act 1986.

³⁶ By virtue of section 13(2) of the 1965 Act and Schedule 3 to the Gas Act 1986.

³⁷ By virtue of section 13(3) of the 1965 Act and Schedule 3 to the Gas Act 1986.

³⁸ Section 9(3) and Schedule 3.

³⁹ Under paragraph 9(2) of Schedule 2 to the Gas Act 1965.

⁴⁰ Those persons upon whom a notice was served under Schedule 2, paragraph 7(3) to the 1965 Gas Act, who have duly objected and not withdrawn the objection.

4.63 The procedure for the confirmation of Compulsory Purchase Orders provides for a public inquiry to be held in certain situations. Where this occurs, and there were also to be an inquiry into the application for a Storage Authorisation Order, if appropriate, the Secretary of State would look to have the two matters considered together at one joint inquiry. Similarly, if appropriate, he would also consider with the Secretary of State for Communities and Local Government, whether any related planning appeals or Hazardous Substances Consent appeals should also be considered at the same inquiry.

Fees for preliminary submissions and formal applications

4.64 There is no fee payable for preliminary submissions and formal applications.

Other consents

4.65 The developer must ensure that they have all the relevant consents/permissions/licences, etc., required to construct and operate a gas storage facility. This Guidance does not set out all the consents which might be relevant: developers are reminded of the need to seek their own advice on this. However, where a storage development is proposed in a hydrocarbon feature (whether partially depleted or otherwise) it is a requirement of the Petroleum Act 1998 that the developer holds a Petroleum Exploration and Development Licence. These Licences are awarded by the DTI after a competitive process has been undertaken.

4.66 The Licence requires the Secretary of State's consent to the submission of a Field Development Plan (FDP) in relation to a storage development in an existing oil and/or gas field. Approval to the FDP where there is a change of use proposed, will only be given after those consents have been obtained or any Storage Authorisation Order under the Gas Act 1965 has been made. Further information may be found at:

www.og.dti.gov.uk/upstream/licensing/lictype.htm

<http://www.og.dti.gov.uk/regulation/guidance/onshorefdpguidecbmmminesgasJan06rev1.doc>

4.67 Other consents and approvals may also be necessary, such as a Pollution Prevention and Control permit and Hazardous Substances Consent (if deemed consent not sought from the Secretary of State).

Q3: Could anything further be added to Part 4 to clarify particular stages of the process? Please explain.

Q4: Are consultation requirements clear? If further explanation is required, please explain.

Part 5: The decision

- 5.1** The Gas Act 1965 requires the developer, when formulating proposals for a Storage Authorisation Order, and the Secretary of State, when considering such proposals, to have regard to the following matters⁴¹ and the Secretary of State is required to take into account any effect the proposals might have on these:
- Safety of the public
 - Protection of water resources
 - The desirability of:
 - preserving natural beauty;
 - conserving flora, fauna, and geological or physiographical features of special interest; and
 - protecting buildings and other objects of architectural or historic interest.
- 5.2** In reaching his decision, the Secretary of State will also take account of relevant factors. These factors can vary from case to case but include Government Policy (both energy and other Government policies, for example the Statement of Need for Additional Gas Supply Infrastructure (see Annex vi)); planning considerations (including national, regional and local plans and guidance); environmental issues; local issues; and representations received on the proposal. Each case is considered on its individual merits.
- 5.3** The Secretary of State will also consider the proposal against the following criteria:
- (a) the proposal is consistent with the Government’s energy policy and its goals of reducing carbon emissions, maintaining the reliability of our energy supplies, promoting competitive markets, and ensuring that every home is adequately and affordably heated;
 - (b) the proposer has provided adequate environmental information for the Secretary of State to judge its impact;
 - (c) the proposer has identified what he can do to mitigate the impact of his proposed development;

⁴¹ See section 4(1), (3) and (4).

- (d) the Secretary of State judges that the environmental impact is acceptable;
- (e) the Secretary of State judges that any concerns about the safety of the public and the protection of water resources can be satisfactorily addressed;
- (f) the procedures for considering the gas storage proposal have been properly followed;
- (g) the proposer has set out the means by which gas will be delivered to the storage facility and extracted from it.

5.4 The Secretary of State will also consider the Inspector’s report from any public inquiry held into the proposal.

5.5 Having considered all relevant matters, the Secretary of State will make his decision on whether or not to make the Order. Should he decide to make a Storage Authorisation Order, he is first required by the 1965 Act to take reasonable steps to satisfy himself that all the proper notices have been published or served.⁴²

5.6 If the Secretary of State decides to make an Order, he may do so either in accordance with the terms of the application, or with modifications. However any modifications may not have the effect of varying the storage area so as to include land which was not included in the storage area applied for.⁴³ Also, there is an additional procedure where a modification is proposed which would have the effect of varying the protective area so as to include in it land which was not included in either the protective or storage areas applied for. In effect, this procedure is similar to that for applications under the Act, but relates to the particular additional land in question, so that all the parties interested in this additional land, have the opportunity to make representations, and a public inquiry would be held in certain circumstances.⁴⁴

5.7 If the Secretary of State decides to make an Order and any of the following parties had duly made objections which have not been withdrawn, the Secretary of State is required to serve a notice on them of the making of the Order:⁴⁵

- every local planning authority, and every local authority who are not a local planning authority, within whose area any part of the storage or protective area lies;
- all statutory water undertakers within whose area any part of the storage or protective area lies, or who hold a statutory licence to abstract water within either of those areas;
- every highway authority who are not a local authority and are responsible for any part of a highway within the storage or protective areas.

⁴² Paragraph 10(2) of Schedule 2.

⁴³ Paragraph 10(3) of Schedule 2.

⁴⁴ Paragraph 12 of Schedule 2.

⁴⁵ Paragraph 10(4) of Schedule 2, see also paragraph 12 (a modification enlarging the protective area), in which case this list also includes the Environment Agency in relation to the additional land.

- 5.8** In this case, the Order cannot come into effect earlier than 28 days after the date of service of the notice, and these parties have those 28 days in which to give notice in writing to the Secretary of State objecting to the Order. If such objection is made and not withdrawn, the Order becomes subject to special parliamentary procedure.⁴⁶ In broad terms it involves laying the Order before Parliament (after giving 3 days notice in the London Gazette), followed by a 21 day period in which petitions of general objection or amendment may be lodged, and thereafter a period in which either House could resolve that the Order be annulled. If such petitions are lodged, the Order is likely to be referred to a Joint Committee of both Houses to report to Parliament on whether or not to approve it (with or without amendment). Otherwise the Order comes into operation.
- 5.9** ‘Minded to’ and actual decision letters will be issued by the Consents Team, on behalf of the Secretary of State, setting out the reason for the decision. Where the Secretary of State has consented to the development, the decision letter will be accompanied by the Order, accompanying map and, if applicable, the Order will include the approval for the purposes of ‘deemed’ planning permission and, if applicable there will be a direction that Hazardous Substances Consent be deemed to be granted.

Publicity of the making of an Order

- 5.10** As soon as practicable after any Order is made, the applicant is required⁴⁷ to:
- publish in the London Gazette and in one or more local newspapers, a notice stating that the Order has been made and describing the land to which it relates;
 - to serve a notice⁴⁸ containing all the particulars in the published notice on every person on whom they were required to serve a notice under paragraph 7(3) of Schedule 2; and
 - to deposit with every local authority within whose area any part of the storage area or protective area lies, a copy of the Order, and its accompanying map, which should be made available at an office of each of the local authorities for inspection by the public at all reasonable times free of charge.

⁴⁶ Paragraph 10(5) of Schedule 2 and see also paragraph 12(7) where the objection was to a modification enlarging the protective area. This procedure is set out in the Statutory Orders (Special Procedure) Acts 1945 and 1965.

⁴⁷ Schedule 2 Paragraph 10(6).

⁴⁸ Schedule 2 Paragraph 10(7).

Legal Challenges

- 5.11** There is a statutory jurisdiction to question the validity of a Storage Authorisation Order made under the Gas Act 1965 or any provision in it. To do so, an application must be made to the High Court within six weeks, usually⁴⁹ of the date on which notice of the making of the Order is first published.
- 5.12** Other decisions (such as a decision not to make a Storage Authorisation Order) may be subject to challenge by bringing a claim for judicial review. This involves making an application to the High Court expeditiously and in any event not later than three months after the grounds for making the claim arose.
- 5.13** In both types of challenge, the Court does not generally consider the merits of the potential development or decision, rather whether the Secretary of State has properly exercised his powers and/or that the procedures have been properly followed. Annex iv provides further information.
- Q5: Is the process for decision-making clear? If further explanation is required, please explain.**

⁴⁹ Where the Order is subject to special parliamentary procedure the position is sometimes different.

Annex i: Glossary of Terms

Term or acronym	Definition
Compulsory Purchase Order	An Order authorising the purchase of land or rights over land without the agreement of the owner. The body making the Order (e.g. a Gas Transporter) must be authorised to do so by legislation. The Order only takes effect if confirmed by the appropriate Government Minister
EIA	Environmental Impact Assessment
ES	Environmental Statement
FDP	Field Development Plan – description of an oil and/or gas field development project submitted for the consent of the Secretary of State to permit facilities to be installed and hydrocarbons to be produced pursuant to the Petroleum Act 1998
Hazardous Substances Consent	Consent required to store Hazardous Substances above a certain threshold
HSC	Health and Safety Commission – the body responsible for health and safety regulation in Great Britain
HSE	Health and Safety Executive – one of the enforcing bodies who work in support of the Commission
Licensed Gas Transporter	A licensed Gas Transporter owns and operates gas pipeline systems that convey gas to premises or other Gas Transporters' systems. Through their licence, which is granted for a specific geographic area (which may overlap with other Gas Transporters' licence areas), they can convey gas to premises in their licensed area or to the interface of other Gas Transporters' systems
Local newspapers	Local newspapers circulating in the locality of the storage area

Natural Gas	‘Natural gas’ refers to any gas derived from natural strata including gas originating outside the UK
Natural Porous Strata	Rocks containing natural interconnected pore spaces (i.e. partially depleted oil/gas fields, aquifers)
Non Porous Strata	Rocks without natural interconnected pore spaces (i.e. salt cavities)
NTS	National Transmission System – the pipeline network across the UK that transports gas from reception terminals to end consumers
Ofgem	Office of Gas and Electricity Markets
Protective area	An area outside the storage area in which certain operations (such as excavation or mining) carried out below a specified depth(s) are subject to control by the Secretary of State, so as to protect the integrity of the storage area
“relevant” when describing bodies or persons e.g. upon whom a notice of the preliminary submission or formal application must be served	Those bodies or persons whose area, responsibility, or land lies within the storage or protective areas. For the full descriptions of those bodies or persons, see paragraphs 4.16 and 4.36 in relation to the preliminary submission and formal application respectively.
SPAs	Special Protection Areas (within Sites of Special Scientific Interest)
SSSIs	Sites of Special Scientific Interest – sites that are particularly important for wildlife and geological reasons
Storage area	The area within the surface perimeter (and in some contexts, this includes the land below it) below which the gas may be stored. The storage area must be shown on a map attached to a Storage Authorisation Order.
Storage Authorisation Order	An Order made under the Gas Act 1965 by which the Gas Transporter named in the Order is authorised to store gas (of the nature specified in the Order) in natural porous strata underground within the storage area indicated in the map attached to the Order.
TCPA	Town and Country Planning Act 1990

Third Party Access regime

Supplying gas to consumers can require access to a range of physical facilities along the supply chain – for example, pipe-lines, import terminals, storage facilities. 'Third Party Access' is the term used to describe arrangements by which third parties, who do not own a particular facility, can use that facility in order to supply their customers. The TPA conditions for major gas storage facilities are supervised by the regulator, Ofgem

Annex ii: Public Inquiries

Q1: What is a public inquiry?

A public inquiry before an inspector is a way of allowing everyone involved to present their cases, and to test the arguments of other people, within a structured framework.

Some people, like the applicant and statutory objectors,⁵⁰ are entitled to appear at the inquiry, call evidence and to cross-examine persons giving evidence. But others can only do so at the discretion of the inspector. It is normal practice for inspectors to allow anyone to speak who has something relevant to say. Those parties with similar interests and views may wish to work together to present a joint case.

The pre-inquiry procedures (which may include a pre-inquiry meeting to discuss procedural matters and to agree a timetable for the inquiry) are designed to provide parties with information before the inquiry opens, which helps to allow the inquiry to focus on the main issues in dispute.

Q2: Does the Secretary of State always have to hold a public inquiry?

In some situations a public inquiry is obligatory. A public inquiry will often be triggered where objections from certain persons (such as owners of land in the proposed storage or protective areas, the relevant local planning authority etc) have been received within the time limit for making objections. There is an exception to this where all such objections have either been withdrawn, or disregarded for this purpose (they can only be disregarded on certain narrow grounds).⁵¹

If a public inquiry is not obligatory, then the Secretary of State has discretion as to whether or not to hold one and in reaching a decision on this point, he would take account of any objections received and any other relevant matters.

⁵⁰ These are persons who were entitled to be served with the notice of the application and duly objected in accordance with paragraph 7 of Schedule 2 and whose objection has not been withdrawn or disregarded under paragraph 8.

⁵¹ Under paragraph 8(2) of Schedule 2, the Secretary of State may disregard an objection for the purposes of paragraph 8(1) if a) in accordance with a request in writing from the objector disclaiming the right to an inquiry, the Secretary of State has afforded the objector an opportunity of appearing before and being heard by a person appointed by him for the purpose, or b) if the objection is in the opinion of the Secretary of State, trivial or frivolous or can be disposed of under paragraph 8(3). Under paragraph 8(3), the Secretary of State may disregard the objection if he is satisfied that it relates exclusively to matters which can be dealt with by the Lands Tribunal on a claim for compensation.

Q3: Who will conduct the public inquiry?

The Secretary of State will appoint an Inspector to hold the Inquiry. The Inspector will need to have an appropriate background to consider the matters that appear to the Secretary of State to be relevant to his consideration of the application. The Inspector may also ask the Secretary of State to appoint an Assessor to advise him if, for example, highly specialised, and/or technical matters are involved.

The current procedural rules covering inquiries into gas storage proposals under the Gas Act 1965 are the Gas (Underground Storage) (Inquiries Procedure) Rules 1966.

Q4: Will the Secretary of State hold a public inquiry to consider both the application for a Storage Authorisation Order and, if applicable, an associated Compulsory Purchase Order?

Wherever possible the Secretary of State will usually seek to have related applications considered together at one joint public inquiry.

Q5: If there are any appeals or called-in applications under the TCPA and/or the Planning (Hazardous Substances) Act 1990 related to a Gas Act 1965 application, can the Secretary of State hold a combined inquiry into all these matters?

Any appeals or applications 'called-in' under the TCPA or Planning (Hazardous Substances) Act 1990 can only be considered at the same inquiry alongside applications for Storage Authorisation Orders and any associated Compulsory Purchase Orders, with the agreement of both the Secretary of State for Trade and Industry and the Secretary of State for Communities and Local Government, who must agree that the matters are so interlinked that they should be considered together.

Q6: Where and when will the inquiry be held?

The inquiry and, if applicable, also the pre-inquiry meeting, will be held at a suitable venue in the locality of the proposed development site.

Subject to the availability of the Inspector, the Onshore Consents Team will make every effort to comply with the wishes of parties involved on dates for the inquiry. However, this is not always possible, particularly where there are a number of parties who wish to be involved, and it may be necessary to set a date in advance with the expectation that sufficient time has been given for parties to rearrange any prior commitments they may have.

Q7: Where can I find out more about public inquiries?

Further information on public inquiries, including on current inquiries, is available from the Planning Inspectorate:

<http://www.planning-inspectorate.gov.uk/pins/inquiries/index.htm>

Annex iii: Appropriate Assessments

The Habitats Directive (92/43/EEC) is European Law which provides for the creation of a network of protected areas for the conservation of the most endangered habitats and species across the European Union known as “Natura 2000”. The Natura 2000 network of protected sites consists of Special Areas of Conservation (SACs) designated under the Habitats Directive to conserve natural habitats and wild fauna and flora and Special Protection Areas (SPAs) designated under the earlier European Birds Directive (79/409/EEC) to conserve rare and migratory wild bird species. The Habitats Directive also requires all Member States to set up an effective system to prevent the capture, killing, injuring or damaging disturbance of certain endangered species.

Regulation 48 of the Conservation (Natural Habitats, etc.) Regulations 1994 (which implements Article 6 (3) of the Habitats Directive) requires a ‘competent authority’ (i.e. in the case of section 4 of the Gas Act 1965 applications, the Secretary of State) to undertake an ‘appropriate assessment’ in respect of any plan or project which:

- either alone or in combination with other plans or projects would be likely to have a ‘significant effect’ on a ‘European Site’; and
- is not directly connected with the management of the site for nature conservation.

In general, the Secretary of State can authorise a plan or project only if he has made certain – through the appropriate assessment procedure – that the plan or project will not adversely affect the integrity of the European Site.⁵² However, the Secretary of State may still authorise a plan or project which has adverse effects where the project must be carried out for imperative reasons of overriding public interest.

A European Site is classified as an SPA or SAC from the point where the Commission and the Government agree the site as a Site of Community Importance. An appropriate assessment is also required, as a matter of Government policy, for potential SPAs, candidate SACs and listed RAMSAR Sites (i.e. wetland sites of international importance designated under the Ramsar Convention).

⁵² This assessment can take account of any measures that cancel or minimise the potential adverse effects.

Natural England, or the Countryside Council for Wales for projects in Wales, who are consulted on applications for Storage Authorisation Orders, will advise on whether a proposal is likely to have a significant effect on any of the above sites and if so, must also be consulted during the course of the assessment under the 1994 Regulations. The Secretary of State must have regard to any representations made by them within such a reasonable time as he may specify and is also required to take into account the opinion of the general public.

The 1994 Regulations are available at
http://www.opsi.gov.uk/SI/si1994/Uksi_19942716_en_1.htm

It should be noted that DEFRA are currently consulting upon proposed amendments to the 1994 Regulations (i.e. the draft Conservation (Natural Habitats &c.) (Amendment) (England and Wales) Regulations), which are expected to come into force during 2007.

Annex iv: Statutory Challenge to an Order and Judicial Review of other decisions

The procedure to challenge the validity of a Storage Authorisation Order, or any provision in it, made under the Gas Act 1965 is provided for in paragraph 11 of Schedule 2 to the Gas Act. This, in effect, applies the appeal provisions of the Acquisition of Land Act 1981 (sections 23 – 27) to Orders under the Gas Act with necessary modifications (e.g. so that references in those provisions to the Acquisition of Land Act 1981 are to be substituted with references to Part II of the Gas Act 1965). This appeal jurisdiction is the mechanism by which the High Court in England and Wales supervises the proper exercise of the Secretary of State's functions in making Storage Authorisation Orders under the Gas Act 1965.

If the Secretary of State decides not to make a Storage Authorisation Order, the only way to challenge this decision is to bring a claim for judicial review. There may also be circumstances where a decision (other than one to make or not to make a Storage Authorisation Order) relating to the application process or any other matter concerning the Gas Act 1965 may be subject to judicial review on the basis that it has been incorrectly made. Anyone who thinks that this might be the case is advised to seek their own legal advice immediately.

Both judicial review and the statutory challenge are concerned with the improper exercise of power and are not generally a process to re-evaluate the merits of the proposed development or decision. Thus the Court will not usually form a different view on the development or decision but in a successful challenge the decision may be quashed. The Secretary of State may then have to remedy the deficiency found by the Court and then retake the decision. That decision could of course be the same decision, for example to grant consent.

A challenge to the validity of a Storage Authorisation Order (or a provision in it) must be made to the High Court, usually within 6 weeks of the date on which notice of the making of the Order is first published in accordance with the provisions of the Gas Act 1965.⁵³

A judicial review claim must be made promptly and in any event not later than 3 months after the grounds to make the claim first arose.

Therefore there is a need for anyone considering a challenge to a decision to act very quickly and any persons considering such a challenge should seek their own legal advice immediately. There are cost implications and legal requirements to be understood.

⁵³ The position is different in some cases where the Order is subject to special parliamentary procedure.

Annex v: Safety and Deemed Hazardous Substances Consent

The safe operation of gas storage sites and the safety of the general public who may live in the vicinity of these sites will always be of paramount importance in the consideration of whether to permit such developments to be built and operated.

Safety considerations are taken into account both at the preliminary stage of any application, and before a decision is made as to the granting of any Storage Authorisation Order. A Storage Authorisation Order would not normally be granted without Hazardous Substances Consent being granted.

The role of the Health and Safety Commission and the Health and Safety Executive

The Health and Safety Commission is responsible for health and safety regulation in Great Britain. The Health and Safety Executive (HSE) and local government are the enforcing authorities who work in support of the Commission. Their mission is to protect people's health and safety by ensuring that risks in the changing workplace are properly controlled.

HSE's responsibilities include ensuring that those involved with the transmission, distribution and storage of natural gas comply with the relevant legislation. Its primary role and regulatory responsibilities for ensuring safety are during the design, construction, operation and decommissioning of these sites.

Gas storage developments and general safety comments

In June 2006 HSE contributed an expert report to the Government's Energy Review on the potential risks relating to health and safety risks and regulatory strategy related to energy developments including gas storage. The report is available from HSE's website: www.hse.gov.uk/consult/condocs/energyreview/energyreport.pdf

Its broad conclusions are that the hazards and risks of the onshore and offshore storage of gas in strata and in salt cavities are well understood. Effective safety standards are in place, and help to manage the risks from future developments.

Consultation with HSE on deemed Hazardous Substances Consent

All establishments wishing to hold stocks of certain hazardous substances above a threshold quantity must apply to the Hazardous Substances Authority (HSA) for Hazardous Substances Consent under the Planning (Hazardous Substances) Regulations 1992. For natural gas the threshold is 15 tonnes. In most cases the HSA will be the local planning authority. However, by virtue of Section 12 of the Planning (Hazardous Substances) Act 1990, the Secretary of State, at the time of granting a storage authorisation order under the Gas Act 1965, may direct that Hazardous Substances Consent be deemed to be granted (subject to any conditions which may be specified in the direction). If deemed consent is sought, the Secretary of State will consult HSE and also other parties including the local planning authority and the Environment Agency, as the HSA normally would have done if the application had been made to it. Developers should also use the appropriate forms from the Planning (Hazardous Substances) Regulations 1992.

HSE assesses the risks based on the consent particulars and, in some cases, other plant features which have the potential to significantly affect the risk to people. Where HSE does not advise against the HSA granting the consent, it will also recommend whether the consent should be granted subject to any conditions (e.g. typical conditions may include the maximum pressure in the storage reservoir, number and diameter of wellheads and pipelines). HSE limits its advice to health and safety issues within its expertise and to those which are covered by the Health and Safety at Work etc Act 1974.

Where consent is granted, HSE will set a consultation zone around the major hazard site and notify the HSA (and the planning authority if different). Whenever a development is proposed within the consultation zone HSE is consulted for its advice as to the advisability or otherwise of locating the particular development there.

HSE's role as a consultee is to inform the HSA, or Secretary of State in the case of deemed consent being sought, whether there are safety grounds for refusal of consent, or whether any conditions are necessary.

The relevant Hazardous Substances Consent legislation, regulations and guidance are available on the Office of Public Sector Information and Department for Communities and Local Government websites:

http://www.opsi.gov.uk/si/si1992/Uksi_19920656_en_1.htm

http://www.opsi.gov.uk/acts/acts1990/Ukpga_19900010_en_1.htm

http://www.communities.gov.uk/index.asp?id=1143299-P101_8820

Consultation with HSE under the Gas Act 1965

Developers of gas storage will be required by the Secretary of State to submit an outline safety document with their application. This will need to include how the developer is going to address safety, how he believes his proposal is safe, storage integrity and how safety standards are to be met. The Secretary of State will consult HSE at both the preliminary submission of proposals stage and at the formal application for a Storage Authorisation Order. HSE has a key role to play in the consideration of any gas storage proposal.

Additional safety measures under the Gas Act

Section 16 of the Gas Act allows the Secretary of State at any time, if he considers it necessary in the interests of safety, by notice served on the Gas Transporter, to impose conditions concerning the manner in which the underground gas storage is developed or operated including conditions as to the maximum pressure and rate at which gas may be injected.

Similarly, he can give notice to the Gas Transporter requiring it to do certain things, namely the cessation of injecting gas, the reduction in the quantity of gas in the storage to a specified quantity or to take such other measures in respect of the storage or any activity or matters connected as appears to him to be expedient in the interests of safety.

Application of additional safety regulations

The Borehole Sites and Operations Regulations 1995 (BSOR) applies to the storage of gas in partially depleted hydrocarbon features.

http://www.opsi.gov.uk/si/si1995/Uksi_19952038_en_1.htm

The Offshore Installations and Wells (Design and Construction, etc.) Regulations 1996 (DCR) apply to offshore and onshore for wells “drilled with a view to extraction of petroleum” and would be applicable to those wells drilled under BSOR.

http://www.opsi.gov.uk/si/si1996/Uksi_19960913_en_1.htm

Annex vi: Ministerial Written Statement

16 May 2006

Secretary of State for Trade and Industry

Energy statement of need for additional gas supply infrastructure

I am making a statement today to the House on the interaction of existing Government policy and planning procedures with regard to the need for additional gas supply infrastructure.

This statement reiterates previous public commitments⁵⁴ made by this Government on the importance of gas supply infrastructure and will help clarify the Government policy context for planning and consent decisions on gas supply infrastructure projects.

The UK economy faces a major challenge; our indigenous gas supplies are in decline and we are moving towards increasing import dependence on gas. To manage this change, new gas supply infrastructure is needed to increase Great Britain's capacity to import, store and transport gas efficiently. A regulatory environment that enables the development of timely and appropriately sited infrastructure projects is therefore vital.

The need for increased gas supply infrastructure, and a regulatory environment to allow such infrastructure to be delivered to the market in a timely fashion, was set out by the Government in the Energy White Paper of 2003:⁵⁵ 'Our Energy Future – creating a low carbon economy'. It identified four challenges, one of which was securing the reliability of energy supplies. This remains integral to an energy policy that meets the needs and expectations of all energy consumers. It is being considered as part of the DTI's Energy Review⁵⁶ in the context of the measures that are required to develop the GB market framework for delivering reliable energy supplies. It is clear that any weakness in infrastructure could push up gas prices, or result in interruptions to supply, with harmful consequences for both UK markets and UK consumers.

⁵⁴ Cf Annex A.

⁵⁵ Energy White Paper, February 2005, Cm.5761, Section 6.51.

⁵⁶ Energy Review consultation document, 'Our Energy Challenge', DTI, January 2006.

The decline in our indigenous supplies has serious implications for our gas import infrastructure, storage and domestic transportation needs. The Government welcomes all solutions which could help address this need, and favours no particular route. The market is responding to this challenge, with actual and planned investment in gas import infrastructure, storage and related transportation of some £10 billion over 2005-2010. The projects have the potential to make a real difference to our gas supply infrastructure; by 2010, our storage capacity could more than double and our import infrastructure is planned to more than triple.

Ultimately, as my Hon. Friend the Minister for Energy noted⁵⁷ to the House last year, failure to help facilitate such infrastructure will, immediately or over time, create difficulties in balancing supply and demand, reducing the reliability of our energy supply arrangements, with potentially disastrous consequences for the local, regional and national communities and economies.

To meet this challenge we require a regulatory environment that enables the development of timely and appropriately sited new gas supply infrastructure projects. The current consents regime is only now starting to deal with a new tranche of gas supply infrastructure projects; we must consider how avoidable delays can be prevented in the future to ensure that these projects, and those that follow them, can commission on time if approved. This means a planning consent regime that offers more clarity for developers about processes and timescales, thereby contributing to a lower overall level of risk for developers.

Our focus must therefore be on reducing the regulatory barriers to maximising gas supply, a view shared by the Trade and Industry Committee,⁵⁸ and in line with this Government's focus on better regulation. We are looking to achieve this through a number of measures, as set out by my Rt. Hon. Friend the then Secretary of State for Trade and Industry in a Parliamentary debate⁵⁹ on security of supply earlier this year. The measures will cover:

- legislation⁶⁰ (when Parliamentary time permits) to establish an offshore regime to enable innovative projects to go forward—gas storage in salt caverns offshore, and Liquefied Natural Gas (LNG) import projects with offshore unloading;
- a review of the onshore consents regimes, aiming towards simplification and streamlining of procedures, in co-ordination with the Energy Review, and with the Barker Review of Land Use Planning into the planning and land use system; and
- measures to improve public understanding of the need for additional gas supply infrastructure projects, including onshore projects, and to promote best practice among project sponsors when applying for regulatory consents.

This statement forms an integral part of the third action, and my department is actively progressing the other measures.

57 Written Ministerial Statement, Renewable Energy Statement of Need for Transmission System Upgrades, 21 July 2005.

58 Trade and Industry Committee First Report on Security of Supply, 13 December 2005.

59 House of Commons, 12 January 2006, Hansard cols: 486-534.

60 Consultation currently being carried out as part of the DEFRA Marine Bill: paras 9.76-9.79 <http://www.defra.gov.uk/environment/water/marine/uk/policy/marine-bill/index.htm>

This Government believes that allowing the free operation of a competitive GB market, within an appropriate regulatory framework overseen by an independent regulator, is the most efficient way to ensure security of gas supply. Government policy establishes broad objectives, which are supported by light touch regulation. The private sector then takes commercial decisions to develop the infrastructure that can maintain and improve the reliability of energy supplies. This Government warmly welcomes the potential diversity of solutions that the market is seeking to deliver. Both onshore and offshore, large and small solutions are required to meet our needs.

The storage of gas onshore and offshore is only possible in certain geological structures, which are present in a limited number of locations in Great Britain. Such salt formations must have a certain minimum thickness in order to store gas.

Gas is now also stored in some depleted oil and gas fields.⁶¹ Only one field is currently in operation but there are several others at different stages of development. These provide “ready made” storage structures with seals that have proven to be secure for millions of years. The nature of these structures is well known from the data collected during their development. An additional benefit is that storage in oil-bearing reservoirs can increase the amount of oil ultimately extracted from them. However, the reservoir characteristics needed for storage can be different from those needed to develop the field and not all onshore fields will be suitable for gas storage. Local planning officers should take this into consideration when making or preparing advice on planning consents.

The DTI recognises the importance of local democracy in the decision making process, and the significant contribution that local involvement makes to the quality of decision making. The views of all stakeholders must be taken into account. But if we are to maintain a rigorous planning system, it must also enable decisions to be taken in reasonable time. A balance must be struck between meeting the concerns of local authorities and those they represent, and the national need for infrastructure that will provide us with secure energy supplies.⁶²

As my Hon. Friend the Minister for Energy set out to the House last year,⁶³ the provision of energy infrastructure is part of a delivery system that provides an essential national service. Business and homes in the UK require a reliable supply of energy free from disruption and interruption. New energy infrastructure projects may not always appear to convey any particular local benefit, but they provide crucial national benefits, which all localities share. In particular, projects add to the reliability of national energy supply, from which every user of the system benefits.

Against the background of the clear national need for new gas storage infrastructure, it is important that developers, where they are not already doing so, start an early dialogue with planning authorities to ensure that appropriate policies are included in Regional Spatial

61 In some countries, aquifers are also used to store gas. Again specific geological conditions are required for such storage. There is some current commercial interest in such projects in the UK.

62 DCLG Planning Policy Statement 1 recommends planning authorities should “recognise the wider sub-regional, regional or national benefits of economic development and consider these alongside any adverse local impacts”.

63 Written Ministerial Statement, Renewable Energy Statement of Need for Transmission System Upgrades, 21 July 2005.

Strategies and Local Development Frameworks. Where developments need to come forward ahead of changes to local planning policy, it will be vital for developers to begin an early dialogue with local planning authorities, and the community more generally, about their proposals. It will be important to ensure that the environmental impacts of their proposals are better understood, and that the national need for these developments is fully taken into account by local planning authorities when making their decisions regarding planning consents.

In summary, we need timely and appropriately sited gas supply infrastructure to be delivered by the market, because:

- Great Britain is becoming increasingly dependent on gas imports, and requires new gas supply infrastructure to help ensure security of supply;
- new projects enable extra supply and storage options if they proceed without avoidable delays;
- there are limited locations currently suitable for much needed gas storage projects;
- onshore storage is needed to enable slow-moving gas to be available close to market when consumers require it;
- new energy infrastructure projects provide national benefits, shared by all localities.

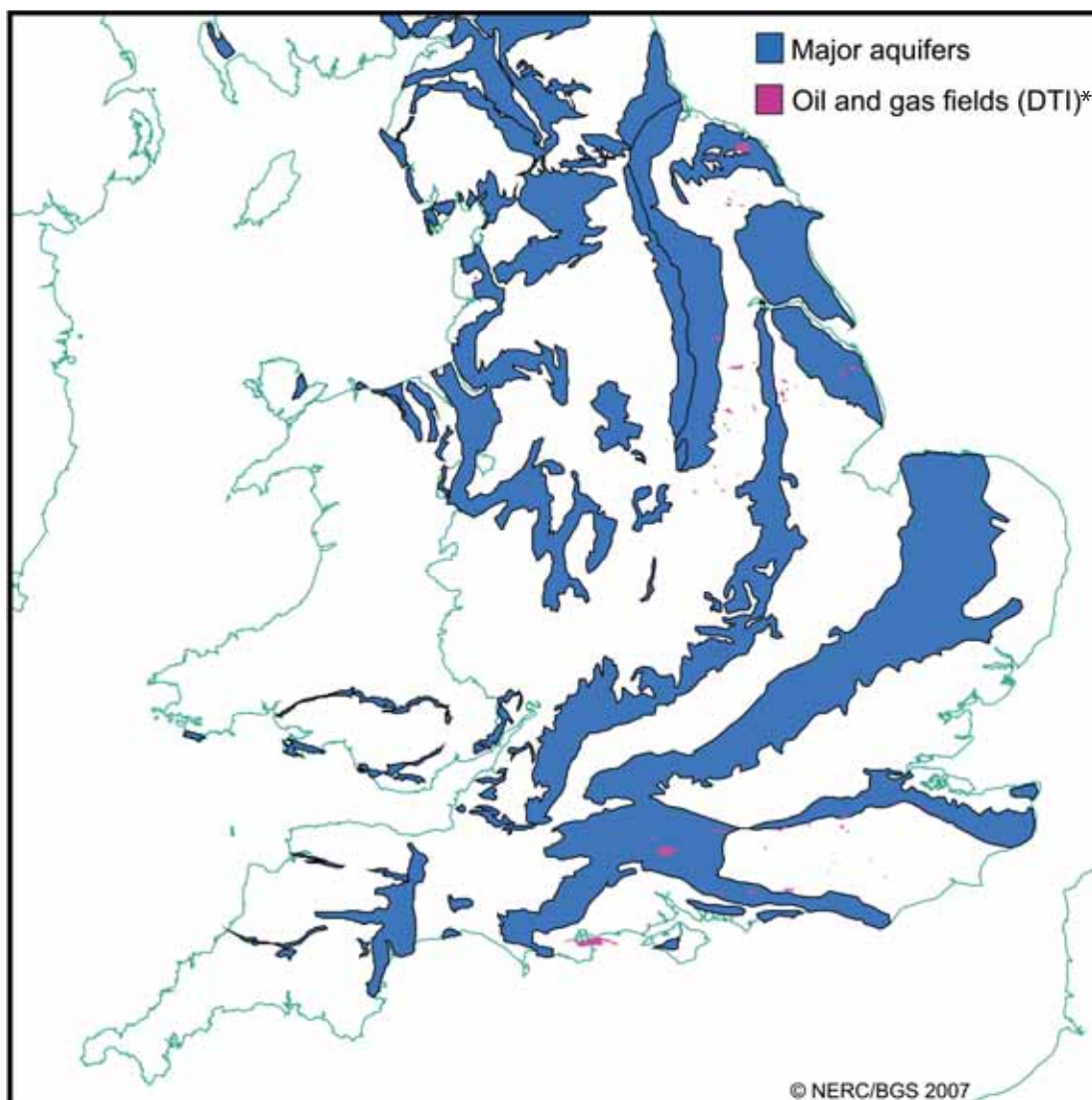
I am today placing in the Libraries of the House a fuller note, including annexes, setting out Government policy, to help clarify the context for planning and consent decisions on gas supply infrastructure.

DTI
May 2006

06/1221

A copy of this Statement and accompanying background notes may be accessed at:
<http://www.dti.gov.uk/files/file28954.pdf>

Annex vii: Location map of distribution of Onshore Hydrocarbon Fields and Aquifers in the UK

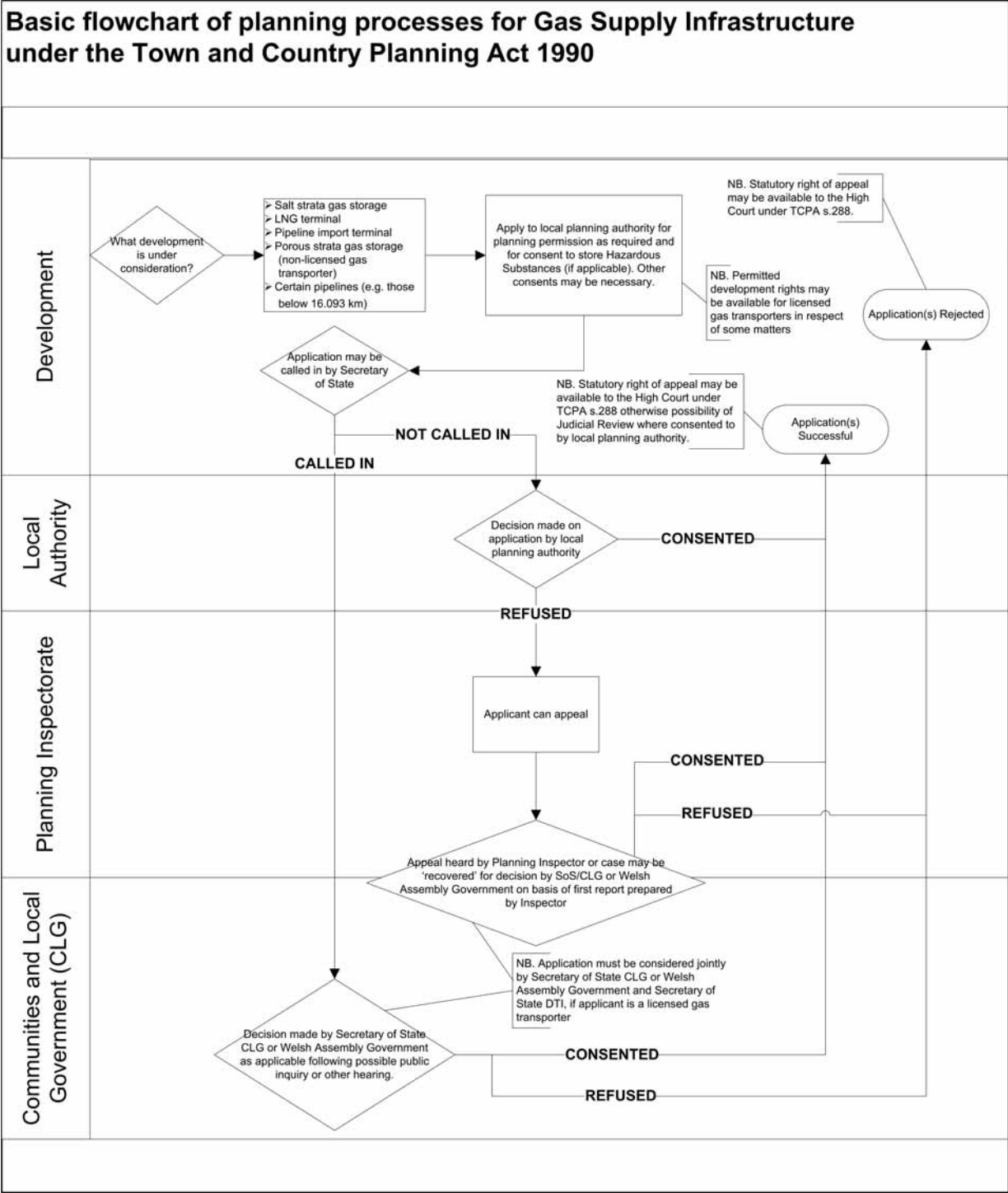


Q6: Are there any additional topics that could be considered for inclusion in an annex? Please explain.

Q7: Do you have any additional suggestions for improving the style, content or layout of the guidance to improve its usefulness to all parties?

* Further detail on onshore licensing and fields is available at:
www.og.dti.gov.uk/upstream/licensing/onshore_10th/onshore_fields_map.htm

Annex viii: Basic flowchart of planning processes for gas supply infrastructure



Annex A: Code of Practice on Consultation: the Criteria

1. Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.
2. Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses.
3. Ensure that your consultation is clear, concise and widely accessible.
4. Give feedback regarding the responses received and how the consultation process influenced the policy.
5. Monitor your department's effectiveness at consultation, including through the use of a designated consultation co-ordinator.
6. Ensure your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.

The complete code is available on the Cabinet Office's web site, address <http://www.cabinetoffice.gov.uk/regulation/consultation/index.asp>

Comments or complaints

If you wish to comment on the conduct of this consultation or make a complaint about the way this consultation has been conducted, please write to:

Stephen Childerstone
Consultation Co-ordinator
Department of Trade and Industry
Better Regulation Team
1 Victoria Street
London
SW1H 0ET

Email: stephen.childerstone@dti.gsi.gov.uk
Tel: 020 7215 0354
Fax: 020 7215 2235

Annex B: List of Individuals/ Organisations consulted

Developers

BG Group
BP Gas, Power and Renewables
British Energy
Canatxx
Centrica
Centrica Storage Ltd
CNG Services Ltd
Conoco Phillips
E.On UK plc
EDF Energy
Egdon Resources Plc
EnCore Oil Plc
Exxon Mobil
Independent Resources Plc
Marathon International Petroleum Ltd
Mulberry Capital Ltd
National Grid
NPL Estates
Perenco
RWE npower
Scottish and Southern Energy Plc
Scottish Power
Shell
Statoil
StagEnergy
Star Energy
Total
Warwick Energy
Wingas

Environmental organisations

Countryside Council for Wales
Cadw
English Heritage
Green Alliance
Greenpeace
Natural England

Government departments, agencies and public bodies

British Geological Survey
Civil Aviation Authority
Communities and Local Government
Department for Environment Food and
Rural Affairs
Department for Transport
Environment Agency
Government Office Regional Coordination
Unit
Health and Safety Executive
Ministry of Defence – Defence Estates
Ofgem

Devolved Administrations and local government

Cheshire Country Council
Department of Environment, Northern
Ireland
East Riding of Yorkshire Council
Lancashire Country Council
Lincolnshire County Council
Local Government Association
Scottish Executive
Surrey County Council
Welsh Assembly Government

Representative Organisations

Action Group Against Star's Turbines (AGAST)
CBI
EEF
Energy Intensive Users Group
Federation of Small Businesses
Gas Forum
Gas Storage Operators Group
Institution of Gas Engineers and Managers
Save Blackheath Common
Society of British Gas Industries
Water UK

Law Firms

DLA Piper
Hammonds

Investment Companies

Allco Finance Group
Capital International
Credit Suisse
Ecofin
Jefferies
Liberty Square

