

Parliamentary Briefing

Banning Fracking in Scotland

For the Scottish Government debate *Unconventional Oil and Gas*,
Tuesday 24 October 2017

Summary

- The Scottish Government's ban on fracking is very welcome.
- Using planning and environmental regulation powers to stop fracking is the right approach initially.
- Parliament should support any measures that make the policy ban stronger.
- Parliament should support a full legal ban on fracking when devolved power over licensing commences.

The Scottish Government's proposal to ban unconventional oil and gas extraction is a victory for Scotland's communities, our climate, and our zero-carbon economic future.

It has been cheered in the frontline communities who have been campaigning in defence of their land and water for over 6 years, and in the communities around the world where that struggle continues.

However, as an uncodified government policy, the ban could be overturned by a future Minister at the stroke of a pen. Frontline communities deserve the reassurance of a ban in law that could only be changed through a vote of the Scottish Parliament.

Record-breaking public response

The *Talking "Fracking"* consultation, which ran from 31 January to 31 May 2017, received 60,535 responses - the second-largest response to any consultation in the devolution era¹.

Approximately 99% of these responses were opposed to fracking², making it by some distance the biggest single message ever sent by the Scottish people in response to a government consultation.

This unprecedented response is testament to the work of grassroots campaigners, particularly those in communities on the frontline of the industry, including Scotland Against Fracking and the members of the Broad Alliance.

The response demonstrated that as well as the health, climate and ecological evidence showing fracking must be rejected, there is, as Paul Wheelhouse MSP put it in his ministerial statement, "no social license" for unconventional oil and gas development in Scotland.

The Scottish Government announcement

On 3 October 2017 the Minister for Business, Innovation and Energy, Paul Wheelhouse MSP, announced that the Scottish Government had "today written to local authorities across Scotland to make clear that the Directions that gave effect to the moratorium [on unconventional oil and gas development] will remain in place indefinitely."

The principal Direction the Minister was referring to requires local authorities to notify the Scottish Government if they receive an application for planning permission for unconventional oil or gas development³.

In his statement, the Minister continued “this action means we will use planning powers to ensure that any unconventional oil and gas applications are considered in line with our position of not supporting unconventional oil and gas.” The implication is that, should Ministers receive a notification from a local authority, they would call in the planning application and refuse it.

The Minister noted that the Scotland Act 2016 devolves power over onshore oil and gas licensing, but that the commencement order for that Section of the Act, expected in February this year, has still not been brought forward by the UK Government. For this reason, the Minister did not address in his statement how these powers, once devolved, will be used to support the fracking ban.

As we already know the legal details of these powers, Friends of the Earth Scotland believes that there is no reason not to consider now how these powers should be used once they become available. FoES wishes to see the devolution of these powers completed as soon as possible, and hopes MSPs will urge their UK Parliament colleagues to press the UK Government to bring forward the long-overdue commencement order.

The case for a ban in law

Friends of the Earth Scotland agrees with the Minister’s analysis that “this action is sufficient to effectively ban the development of unconventional oil and gas extraction in Scotland.” However, this ban only lasts as long as it is actively maintained by this and future governments.

Revoking this form of ban would not require the permission of the Scottish Parliament. In fact, a future Minister need not take any action at all if they wished to overturn the ban, or allow an exception to it. All they would need to do is to *not* call in an application having been notified of it by the local authority.

This is not the long-term reassurance that communities living under the threat of fracking are looking for. After years of campaigning, research, consultation and debate, it is not sufficient that Scotland’s final decision on fracking should be based on what is effectively a promise of this Government.

While the Minister was right to say that this is “an effective and indeed a much quicker way” to ban unconventional oil and gas in Scotland, it is not the only effective way and it should not be the permanent way.

The policy ban is the right first step - it is certainly sufficient to prohibit fracking developments until the Scottish Parliament can legislate to put this national decision on a legal and permanent footing, revocable only by the Scottish Parliament itself.

Friends of the Earth Scotland urges MSPs to support amendments that request the Scottish Government either support the Member’s Bill in development by Claudia Beamish MSP, or bring forward their own legislation, in either case locking in the fracking ban into law.

¹ The Scottish Government consultation *The Registration of Civil Partnerships, Same Sex Marriage* elicited the largest-ever feedback, with 77,508 responses. However, these responses showed no consensus on the issue, making the opposition to fracking the largest single point of view expressed in response to a consultation.

² Paul Wheelhouse MSP, [Scottish Parliament Official Report 3 October 2017](#), col 12.

³ [Town and Country Planning \(Notification of Applications\) \(Unconventional Oil and Gas\) \(Scotland\) Direction 2015](#).