

Shale Gas in the UK: A preliminary point of view

Author: [Lynne P. Freeman](#), Partner, London

Author: [Vincent Rowan](#), Partner, London

Author: [Laura Riddeck](#), Associate, London

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Introduction

Will we see large scale shale gas production in the UK? There are a lot of issues to be resolved before we know whether shale gas offers a practical solution to the UK's energy needs. The key challenges to prospective shale players will be the following:

- Obtaining planning and other permissions to access the land;
- Overcoming environmental and safety concerns;
- The influence of lobbyists and environmental pressure groups;
- Access to funding for exploration;
- Obtaining rights over the land and permission from planning and other regulatory authorities to drill the shale reserves;
- The impact of governmental decisions on energy policy.

The government is clear that the UK must learn from the 10 years of experience gained by certain US States in shale plays, including the exploration and exploitation of Marcellus Shale. Sensibly, the UK government wants to benefit from the practical and regulatory lessons learnt there. We know that the Environment Agency (EA) has had informal discussions with the US Environmental Protection Agency and plans to exchange information about best practice. What else can the UK learn from the US experience and what differences will operators have to face?

Land and environmental pressure groups

The embracing of shale exploration by many in the US undoubtedly helped it become commercially viable so quickly. This process will have been made easier by virtue of the fact that US landowners own the rights to natural gas. Part of the reason for the ready acceptance in the US is the payment of royalties which allows landowners to benefit directly. UK landowners cannot benefit directly from shale gas reserves which are, like coal and oil, owned by the State. There will clearly need to be practical and legal arrangements put into place to adjust for these differences.

In relation to shale gas, clearly the US benefits from being a large country with (relatively) low population density. Given the UK's size and relatively crowded state, it seems likely that the industry will face a strong environmental lobby against shale gas exploration and production. For many decades the UK has experienced protests to infrastructure projects. Such pressure groups have previously successfully defeated planning applications for wind turbine installation and have resorted to mass protest to block controversial road building.

Given the significant adverse publicity that fracking operations have had in the US, and the concerns that recent earthquakes in Lancashire have already generated, it must be anticipated that the environmental lobby in the UK will be well set up, well informed and will work hard to block development which may be seen as potentially damaging to the local environment. Inhabitants of a locality will feel a sense of ownership through use of amenities of their area, and this attachment should not be under-estimated.

Commentators such as the Oxford Institute of Energy Studies have suggested that financial compensation be given to local communities. It may prove to be the case that this is addressed through the planning process.

It will be essential for operators to obtain detailed advice on and support with planning procedures and judicial review applications (particularly as the UK planning process is currently undergoing changes to its planning regime).

Methodology concerns

Exploration by Cuadrilla in the north of England was stopped following seismic tremors in April and May and the results of a geomechanical survey are awaited.

There is likely to be a different approach to the methodology used for exploration in the UK given the lack of land available for well drilling and it seems probable that far fewer wells will be drilled at this stage than some US states have seen.

To benefit fully from the latest and potential discoveries, the UK may well look to tap into the US expertise and resources. If this means bringing trained and skilled personnel from the US they will also have to face the increasingly challenging environment for workers outside the EU entering the UK.

The US experience found that joint ventures were used to provide investment and funding for the exploration, between oil and gas companies and private equity dedicated to investing in such companies. Operators in the UK will be looking at how best to obtain funding, and will need legal and financial support on this.

The UK government has indicated already that one of the lessons to be learned from the US is the potential damage fracking can cause to underground water aquifers. There is also concern

about the amount of waste water that is produced through the drilling process. Regulatory bodies are likely to place a great emphasis on recycling water.

The latest UK government report on shale gas concluded that on balance there was no need to put a moratorium on fracking but it is continuing to collect and monitor evidence from the drilling activities in the Bowland Shale formation.

Regulation and policy issues

Planning (zoning) and regulatory processes vary for different countries; the UK has a substantial amount of existing legislation that already applies to the industry. However there have been calls for shale gas industry-specific regulation, and it seems likely that these will address specific areas such as:

- greater environmental impact assessment control over gas pipeline projects;
- regulation on carbon capture and storage for any shale gas fired power stations; and
- regulation of the venting and flaring of natural gas.

It seems unlikely that the regulatory regime will follow that in use in the US; current indications are that Government as well as other statutory bodies concerned with the environment and health and safety consider that the system here is already stringent enough to cope with environmental and safety issues.

As well as learning from the US, the UK Government is looking closely at what happens in Poland (referred to in government papers as the 'barometer' for the UK) and whether or not there will be legislation emanating from the European Union which may affect the production of shale gas.

In the UK attention is likely to be focused on how shale gas will feature in the government's current energy plans which focus on renewables. There is also the pressure of the low carbon transition plan and how shale gas will influence this. The 'greenhouse footprint' of shale gas in the US is not fully understood yet and expert opinion is still divided on this. The US has used shale gas as a means to reduce its dependency on coal and reduce carbon emissions, and shale gas may well prove complementary to renewable sources of energy such as wind. The UK government has also indicated that there should be a focus on developing technologies for carbon capture of gas to reduce shale's potential carbon impact.

Conclusion

Whatever the energy future for the UK is, if the discovery reported by Cuadrilla proves viable shale gas will be part of it. Reed Smith is well positioned to advise on all legal challenges that



this will present including planning issues, regulatory issues, judicial review procedures, joint venture or other M&A arrangements and infrastructure procurement.

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