

# PARLIAMENTARY DEBATES

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OFFICIAL REPORT

Sixth Delegated Legislation Committee

## PETROLEUM LICENSING (EXPLORATION AND PRODUCTION) (LANDWARD AREAS) (AMENDMENT) (ENGLAND AND WALES) REGULATIONS 2016

*Wednesday 1 March 2017*

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**The Committee consisted of the following Members:**

*Chair:* JAMES GRAY

Ali, Rushanara (*Bethnal Green and Bow*) (Lab)

† Barclay, Stephen (*Lord Commissioner of Her Majesty's Treasury*)

† Burns, Conor (*Bournemouth West*) (Con)

† Clifton-Brown, Geoffrey (*The Cotswolds*) (Con)

† Debbonaire, Thangam (*Bristol West*) (Lab)

† Eagle, Maria (*Garston and Halewood*) (Lab)

† Flynn, Paul (*Newport West*) (Lab)

† Herbert, Nick (*Arundel and South Downs*) (Con)

† Leslie, Charlotte (*Bristol North West*) (Con)

† Mills, Nigel (*Amber Valley*) (Con)

† Norman, Jesse (*Parliamentary Under-Secretary of State for Business, Energy and Industrial Strategy*)

† Shapps, Grant (*Welwyn Hatfield*) (Con)

† Sunak, Rishi (*Richmond (Yorks)*) (Con)

† White, Chris (*Warwick and Leamington*) (Con)

† Whitehead, Dr Alan (*Southampton, Test*) (Lab)

† Woodcock, John (*Barrow and Furness*) (Lab/Co-op)

Kenneth Fox, Juliet Levy, *Committee Clerks*

† **attended the Committee**

## Sixth Delegated Legislation Committee

Wednesday 1 March 2017

[JAMES GRAY *in the Chair*]

### Petroleum Licensing (Exploration and Production) (Landward Areas) (Amendment) (England and Wales) Regulations 2016

8.55 am

**Dr Alan Whitehead** (Southampton, Test) (Lab): I beg to move,

That the Committee has considered the Petroleum Licensing (Exploration and Production) (Landward Areas) (Amendment) (England and Wales) Regulations 2016 (S.I. 2016, No. 1029).

It is a pleasure to serve under your chairmanship, Mr Gray. We have before us a statutory instrument purporting finally to put in place protection against surface drilling for hydraulic fracturing in national parks, sites of special scientific interest, areas of outstanding natural beauty and similar areas. It might be worth casting our minds back and considering how we got to a position in which this SI is being presented to us today. During the passage of the Infrastructure Act 2015, the then Secretary of State for Energy and Climate Change, the right hon. Member for Hastings and Rye (Amber Rudd), assured us that

“we have agreed an outright ban on fracking in national parks, sites of special scientific interest and areas of outstanding natural beauty.”—[*Official Report*, 26 January 2015; Vol. 591, c. 586.]

That was assumed to be the outcome of the Infrastructure Bill discussions, but it turned out, at the end of consideration of that Bill, that a separate SI needed to be introduced to give effect to the outright ban. That secondary legislation was laid before us in autumn 2015, but it turned out that it was not an outright ban on fracking in national parks, sites of special scientific interest and so on, because it separated hydraulic fracturing underground from drilling on the surface in national parks. Although it indicated that hydraulic fracturing would be restricted as far as sub-surface activity was concerned, it appeared to many of us at the time that that was something of an absurdity, inasmuch as a common-sense interpretation of fracking is that it does involve drilling a hole in the ground, and then fracking that hole, so separating the two in the way the SI did might be regarded as somewhat Jesuitical.

When that SI was laid before Parliament, the then Minister of State, Department of Energy and Climate Change, the right hon. Member for South Northamptonshire (Andrea Leadsom), reassured those who had made that point that

“the Government have separately committed to ensure that hydraulic fracturing cannot be conducted from wells that are drilled at the surface of national parks and other protected areas. Members can be reassured that that remains the Government’s position.”—[*Official Report*, *Second Delegated Legislation Committee*, 27 October 2015; c. 7-8.]

That is why we have this statutory instrument today; it is a third go. It deals at last with surface drilling in national parks and sites of special scientific interest.

One would therefore expect these regulations finally to lay that trail to rest, so that we could say that yes, there is to be an outright ban on fracking in national parks and sites of special scientific interest, which I believe all hon. Members present would want. Elementary research—I will not go into names or places—shows that a number of Members present have those areas in their constituency. What the Minister says about a ban today may give them some succour in discussions in their constituency with people who are concerned about fracking in their area. Hon. Members might have welcomed the regulations as finally indicating that their wishes had come true, and that there actually was to be a ban, and might have thought that we could leave the room this morning safe in thinking that that was what we had voted for. Unfortunately, it appears unlikely that that is what will happen if we vote for the regulations.

In the 2015 Act, there is a definition not just of fracking—surface drilling—but of “associated hydraulic fracturing”, which is fracking that involves

“more than 1,000 cubic metres of fluid at each stage, or expected stage, of the hydraulic fracturing, or...more than 10,000 cubic metres of fluid in total.”

That fluid is the water associated with the fracking process. It is injected into a well, comes back up again, and then has to be dealt with as waste once the fracking has been completed. If a well produces less fluid than that, it is not deemed associated hydraulic fracturing under the Act, although common sense would suggest that it is fracking.

Proposed new clause 22A(2)(c) slightly redefines “associated hydraulic fracturing” as “Relevant Hydraulic Fracturing”, although that has exactly the same definition as “associated hydraulic fracturing” does in the 2015 Act. The regulations define relevant hydraulic fracturing as

“hydraulic fracturing of shale or strata encased in shale which is carried out in connection with the use of a Well to search or bore for or get petroleum, and involves, or is expected to involve, the injection of—

more than 1,000 cubic metres of fluid at any stage, or expected stage, of the hydraulic fracturing, or

more than 10,000 cubic metres of fluid in total.”

Proposed new clause 22A(1) states:

“The Licensee shall not carry out Relevant Hydraulic Fracturing from a Well if the well pad is in a Protected Area in England or Wales.”

There is a clear link between the definition of relevant hydraulic fracturing and whether a licensee can carry out that fracking in a protected area. That is a problem, because if, in legislation to protect such areas, we place a limit below which fracking is not fracking, then evidently, straightforwardly and logically there is a point below which that area is not protected. It is not protected if someone is fracking in it but not producing 10,000 cubic metres of fluid. That is what appears in the explanatory memorandum that accompanies these regulations:

“The purpose of this instrument is to amend the model clauses for onshore petroleum exploration and development licences in order to ensure that licensees do not carry out high volume hydraulic fracturing from a well if the well pad is located in a protected area”.

I emphasise “high volume”, because that is the reality of what is in front of us today. We are talking not about fracking, but about high-volume fracking, and those are two very different things.

I mention this problem because we have expert testimony on what happened with hydraulic fracking in the United States; I am sorry to call on the wisdom of experts, because I know there is some dispute about whether we should listen to experts. In the United States, the amount of water used for fracking in any well is notified to the Environmental Protection Agency. There is still an EPA in the United States, which is good; it monitors how much water is used in each well and publishes the numbers once the fracking is completed. Work by Professor Stuart Haszeldine at the University of Edinburgh looking at more than 17,000 wells fracked in the United States between 2000 and 2010 shows that 43% of wells fracked through gas fracking, hydraulic fracking, and machinery and surface drilling—the whole lot—would not be defined as fracking under UK rules simply because the amount of water they used did not reach the American equivalent of that 10,000 cubic metres overall definition.

In case we do not agree with experts, I—a non-expert—have looked at the EPA’s more recent data from 2011 to 2013 on wells that have been fracked, and not only do they show a very similar picture, but in the majority of states in which wells have been fracked, all the wells are below the 10,000 cubic metre water level. That suggests that to some extent this is an issue of variability in geology, the difficulty of fracking a particular well and so on. In some states in the United States, most of the wells use more than 10,000 cubic metres of water in the fracking process, and in other states, most do not.

Of course, we simply do not know whether the UK is likely to be an Arkansas, a New Mexico or even a Texas as far as fracking is concerned because we have the evidence of only two wells. It may be that all the wells across the UK will have to use more than 10,000 cubic metres of water, or it may turn out that none or not many will. The problem with the statutory instrument is that the outcome is pre-empted and predicted by it stating that protection from fracking in protected areas will be based on a prescribed definition of what it is to frack a well, and what amount of water is involved.

**Maria Eagle** (Garston and Halewood) (Lab): As everyone on the Committee knows, many people campaign against fracking, particularly in places where it is to take place. How does my hon. Friend think people who campaign because they fear the damage from fracking will react to politicians who have told them that protected areas will not be fracked, if they see wells in those areas because the fracking will involve less than the specified volume of water?

**Dr Whitehead:** I cannot imagine anything other than that those people will feel betrayed, let down and effectively duped when they find that what they thought was the protection of those areas turns out to be nothing of the sort.

Perhaps the Minister can assist me; under the SI, what will be the process for deciding to frack in a particular area? What process will have to be carried out in relation to the 10,000 cubic metre outcome? The SI is pretty silent on that. Taking the provisions at face

value, I can imagine that a company wanting to frack in a national park—and, indeed, surface-drill, so that things will be worse than under previous statutory instruments—will merely have to say, “We are confident that this well will not produce 10,000 cubic metres of water, so it is not relevant hydraulic fracking—so we can go ahead, can’t we?”

It may be suggested that there are other means by which that outcome could be prevented, such as through planning arrangements or ministerial intervention. Ministerial intervention has already overturned a planning decision, in an early fracking case, in Preston, but that is not the real point. The point is that the SI was supposed to be the definitive measure finally establishing protection—on the surface and under the surface—in national parks: protection for national parks with no ifs, no buts and no quibbles. I suggest that the SI simply does not do that. Furthermore, as my hon. Friend the Member for Garston and Halewood mentioned, it opens the door to a possible series of national confusions; what people thought was the case may turn out not to be, and we, collectively, will find that we are responsible for that.

There are two possible explanations for the SI taking the form it does. Either the Government consider that all wells drilled in this country will use more than 10,000 cubic metres of water, in which case it would be a good idea to have some evidence on the table to demonstrate that. Alternatively, they do not want proper protection for national parks, despite previous statements, and have produced the SI in accordance with that. I cannot believe that such mendaciousness is involved, however; I prefer to think that either the Government erroneously believe that all wells will have 10,000 cubic metres of water associated with them, or they believe that other mechanisms can protect the national parks, despite what the SI says. If that is the case, I hope that the Minister will be able to explain.

In the absence of all those explanations, I suggest that the right thing for hon. Members to do—this is not a party issue; it is a matter of doing what we collectively said we would do on fracking—is, as we say in our conferences, refer this back. We should not vote for the motion, but should ask the Government to go away and come back with a statutory instrument that produces the result that we all want.

It is unfortunate that statutory instruments cannot be amended, because the easiest thing to do would be simply to delete proposed new clause 22A(2)(c) and let the rest of the SI stand. The rest of it—the protections for national parks—is perfectly okay. It is just the introduction of the concept of relevant fracking that fatally overturns the intention behind the regulations. Unless we receive a bolted-on, cast-iron explanation of why the world is not as we see it, I am afraid we will not support these regulations, and we will seek a Division.

9.16 am

**The Parliamentary Under-Secretary of State for Business, Energy and Industrial Strategy (Jesse Norman):** It is an honour to serve under your chairmanship, Mr Gray. I congratulate hon. Members of all parties on coming along this morning at this early hour to take part in this debate.

[*Jesse Norman*]

I start by restating the Government's commitment to ensuring that the UK has secure energy supplies that remain reliable, affordable and clean. Shale gas has the potential to be a domestic energy source that can contribute to our security of supply, help to achieve climate change objectives, and create jobs and economic growth.

Gas is the cleanest of the fossil fuels and still meets a third of our energy demand. We will need it for many years to come. Members of the public are understandably worried about a process that has not been used onshore much before now. I want to use this opportunity to reassure them and provide a clear explanation of why this new industry is in the national interest and will be safely carried out.

First, let me assure the hon. Member for Southampton, Test that the Government are clear that shale development must be safe and environmentally sound. The UK has more than 50 years of experience of safely regulated oil and gas exploration, and we have world-class independent regulators who will not allow operations to go ahead if they are dangerous to the environment or to local communities. We are confident that we have a robust regulatory regime in place. To reinforce those regulations, the Infrastructure Act 2015 introduced a range of requirements that must be met before an operator can carry out hydraulic fracturing, and ensure that they do so in a responsible, sustainable and safe way. They include the exclusion of hydraulic fracturing in protected areas.

The Onshore Hydraulic Fracturing (Protected Areas) Regulations 2016 ensure that the process of hydraulic fracturing cannot take place at depths above 1,200 metres in national parks, the broads, areas of outstanding national beauty, world heritage sites and areas that are the most vulnerable to groundwater pollution. When those regulations were passed, we recognised that concerns had been expressed about fracking from wells drilled at the surface of some protected areas. The Government at the time therefore decided that safeguards should also be applied to surface activities in protected areas. As a result, further regulations were laid before Parliament on 31 October last year and delivered through the petroleum licensing regime.

These landward areas regulations, which were prayed against, serve to strengthen further the protections already in place for protected areas. They should, I hope, assure the hon. Member for Southampton, Test that special protection will be accorded to sensitive areas. The surface restrictions in the landward areas regulations apply to the same areas detailed in the protected areas regulations, as well as to sites of special scientific interest.

**Maria Eagle:** It is excellent to hear the Minister read a speech written before he heard the speech of my hon. Friend the Member for Southampton, Test. Will he address some of the specific points made by my hon. Friend about the volume and definition of relevant hydraulic fracturing?

**Jesse Norman:** I am grateful to the hon. Lady for anticipating the point in my speech at which I will address the questions. Let me finish, if I may, the process of not merely introducing the importance of shale gas but touching on the way in which the regulations have been structured and why that is so.

As I said, the regulations serve to strengthen the protections already in place for protected areas and to extend special protection to sensitive areas. The surface restrictions apply to the same areas detailed in the protected areas regulations as well as sites of special scientific interest and Ramsar and Natura 2000 sites. That is further evidence of the Government's recognition of the importance of protecting key areas around the country. I stress that even outside those areas—the hon. Member for Southampton, Test recognised this point—a company looking to develop shale gas will still need to obtain all the necessary permissions, including planning and environmental permits, before hydraulic fracturing can be carried out. That is in addition to the requirements of the regulations. As part of the licence, permission and permit procedures, the environmental impact of operations and any risks associated with them are assessed by regulators and through the planning system on a case-by-case basis.

All oil and gas sites need permits under the Environmental Permitting (England and Wales) Regulations 2010 as well as planning permission from the relevant planning authority. The national planning policy framework and supporting practice guidance clearly state that, in respect of minerals such as shale oil and gas, new development should be appropriate for its location. If the risks of a proposed shale activity are deemed unacceptable, the environmental regulators will simply not allow that activity to go ahead, irrespective of the area involved.

**John Woodcock** (Barrow and Furness) (Lab/Co-op): I thank the Minister for giving way, and please accept my apologies, Mr Gray, for having come in a few minutes late. I am listening carefully to the Minister's considered speech. I am trying to get to the nub of the issue for my constituents. Does the promise made that there would be categorically no fracking in the Lake District national park still stand?

**Jesse Norman:** The Government's position remains unchanged that there should be no surface fracturing within those protected areas. That is the question raised at present. Of course it is possible to fracture from outside national parks beneath them, 1,200 metres below the earth, which is 800 metres below the normal lowest levels of any water sites. That is at least 1,200 metres below the surface of the national park. That is the form of the protection.

**Maria Eagle:** I wish to press the Minister on the point made by my hon. Friend the Member for Southampton, Test about the definition of relevant hydraulic fracturing in proposed new section 22A(2)(c). It clearly sets out the minimum number of cubic metres of fluid to be used at any instance or stage, or that a total of 10,000 cubic metres is used. That suggests that if the total is less than 10,000 cubic metres and 1,000 cubic metres of fluid are not used at any stage, that activity will not meet the definition of relevant hydraulic fracturing. Therefore, the regulations do not prevent such activity from taking place in protected areas and even in national parks. Am I correct about that?

**Jesse Norman:** Perhaps I can reassure the hon. Lady. The point of the regulations is precisely to ensure that smaller scale operations meet an equivalent range of

safeguards to those set out in the Petroleum Act 1998. In some cases there may be local activities that are subject to all of the usual procedures and, if they are not hydraulic fracturing, they are captured by separate rules. However, hydraulic fracturing in national parks has been banned. That is the Government's position.

I draw the hon. Lady's attention to the fact that even at the sub-surface level, protections are in place to ensure not merely that hydraulic fracturing using more than 10,000 cubic metres of fluid cannot be done, but that hydraulic fracturing using more than 1,000 cubic metres of fluid at any one stage cannot be done either. That is a comprehensive response to the question.

**Dr Whitehead:** The problem is that proposed new clause 22A(1) states:

"The Licensee shall not carry out Relevant Hydraulic Fracturing from a Well if the well pad is in a Protected Area in England or Wales."

The Minister has simply not answered the question of whether a well cannot be drilled at all in a national park or an area of outstanding natural beauty, or whether it can be drilled from the surface within a national park if the well uses less than 10,000 cubic metres of water overall. If he cannot assure me about that, does he accept that the assurance he has just given is not correct?

**Jesse Norman:** No. The position is that "well pad", as the hon. Gentleman knows, describes the location in which a well is drilled. That term was defined in paragraph 3.33 of the Government's response to the landwards regulations consultation. Further consideration may be needed of whether a more explicit definition is required elsewhere, but what is in the response is clear. To give him comfort, let me reiterate that a well pad counts as being in a protected area if any part of it is in that area. There should be no ambiguity about that; it is what the response to the consultation says. I take his point, but it has already been addressed.

If I may continue with what I was saying, I should emphasise that the shale gas resources beneath this country have enormous potential, which we as a country should not underrate. We have a very secure regime in place.

**Maria Eagle:** Will the Minister give way?

**Jesse Norman:** I have already taken two interventions from the hon. Lady—perhaps she will allow me to complete what I was saying. We have a thoroughly effective set of permitting permissions and governing legislation in place. This country therefore cannot be compared in any fair way to other countries in which fracking may have taken place under different regimes. We have an excellent track record—one of the best in the world—when it comes to protecting the environment. I am confident that the commitment to restrict surface activities, which is being implemented through landward areas regulations and the policy statement, will complement the protected areas regulations and further strengthen the protections that are afforded to these sensitive areas.

9.28 am

**Nick Herbert** (Arundel and South Downs) (Con): I have listened carefully to this morning's exchanges. Fracking has been proposed within the half of my constituency that is covered by the South Downs national park,

which is a very sensitive landscape, and I take at face value the Government's assurance that they intend to ban fracking in the national park. That is what many of us heard and I believe that it is what the Minister and the Government intend.

When we had this debate a while ago, as the hon. Member for Southampton, Test reminded us, despite the fact that the Government were clear that fracking was to be banned at the surface of national parks, a great campaign was got up, suggesting that because wells could be drilled laterally at enormous depths from outside the national park, that was somehow a breach of the Government's undertaking and that fracking would be allowed in the national park. A lot of members of the public were stirred up to express their opposition. When it was actually explained to them that that was not the case and that these wells were going to be at enormous depths far below the level of aquifers, most were reassured and some considered themselves misled by the campaign that had been whipped up.

Similarly, I wonder whether the concerns raised this morning about the effect of these regulations are real. Just outside my constituency, in the South Downs national park, there is conventional drilling for oil. It is a completely unremarkable and uncontroversial activity. The wellhead is hidden behind some trees, on a very small footprint and sensibly located so that access is from a main road and lorry movements do not inconvenience members of the local community. I am unaware of any opposition to the activity at all. The Minister will correct me if I am wrong, but I do not think it has been the Government's intention that conventional drilling of that kind should suddenly be outlawed in protected areas. The Government's intention was clear—to outlaw fracking at the surface—and this is the final piece of the necessary legislation to ensure that that is the case.

The hon. Gentleman's case seems to rest on the idea that some kind of mini-fracking can take place with smaller quantities of water, and that it therefore creates some great lacuna in the legislation that will allow fracking to take place. What he has not successfully done, as far as I am concerned, is explain whether such mini-fracking activity is usual—whether it is normally carried on using much smaller quantities of water. I simply invite the Minister to repeat what he said before: the Government's intention is to ensure that all fracking activity—with emphasis on the word "all"—is prohibited within the protected areas, which includes national parks, and that that is the effect of these regulations as well as the intention behind them. I do not accept that there is some lacuna in the law, because I have seen too many campaigns of this kind suggest that fracking will somehow take place when it has clearly been the Government's intention that it should not. If the Minister could confirm that that is the precise intention and effect of the legislation, I, for one, would be reassured.

**The Chair:** I apologise to the hon. Member for Garston and Halewood; I should have called her earlier, and I do so now.

9.32 am

**Maria Eagle:** It is a pleasure to serve under your chairmanship, Mr Gray. I had not intended to participate; this is not an area in which I am a great expert, and I

[*Maria Eagle*]

approach it as somebody who has an ordinary interest in the positives and downsides of the issue. However, I am afraid that in his response to my hon. Friend the Member for Southampton, Test, the Minister was not sufficiently clear, to my satisfaction, about the potential impact of these regulations—if we vote for them—in order to make me happy about voting for them today. I am going to give him one more chance—if I can explain what concerns me, he might be able to satisfy those of us on this side of the Committee sufficiently in his closing remarks so that we do not feel we have to oppose these regulations.

My hon. Friend set out some of the experiences in America. Of course, the USA has had a great deal of fracking. I do not remember the precise percentage that he used but he set out the fact that much of the fracking in the USA is done at below the volumes in the regulations and would not, therefore, count as relevant hydraulic fracturing under them. To my mind he was saying that it is possible in this industry to frack—as most ordinary people would understand the phrase—at volumes that would not meet the threshold the regulations set out. That would, in effect, still be fracking—an ordinary intelligent person looking at what was going on around them would still think of it as fracking—but the regulations would not define it as relevant hydraulic fracturing. That is the point.

As my hon. Friend said, owing to geological issues—there has been only a bit of test drilling; the industry is at a very early stage—we do not yet know what percentage of wells dug will be below the threshold for relevant hydraulic fracturing. It could be anywhere between a few and almost all for all we know, but it is certainly in the realms of possibility that there will be a lot of what an ordinary person would think of as fracking taking place below the threshold for relevant hydraulic fracturing, as defined in the regulations, and therefore below the threshold for the protection that the Minister and the Government seek to implement and the previous Government said they would implement when the original primary legislation went through.

In addition to answering the straightforward question from the right hon. Member for Arundel and South Downs, which ought to have a straightforward answer, will the Minister explain what he will do to reassure people that the definition in the regulations will stop all fracking in sites of special scientific interest and national parks? I can tell the Minister now that if this protection results in wells operating below the defined volume in areas that are supposed to be protected, he will inflame campaigners' concerns, whether those concerns are scientifically based and accurate or not. He will look shiftily. He will look like he has been pretending to provide protections for those areas when in fact he is not.

I am sure that the Minister does not want to look like that, and I am sure that the Government do not want to be seen as cynical and trying to pull the wool over the eyes of people who live in those areas and have legitimate concerns that need to be addressed. The best way for the Minister to address such concerns is to be as open and transparent as possible, and to be clear when setting out what this instrument will and will not achieve. I invite him, when he makes his closing remarks, to be a little clearer than he has been so far.

9.38 am

**Geoffrey Clifton-Brown** (The Cotswolds) (Con): Like my right hon. Friend the Member for Arundel and South Downs, I take the Minister's words at face value, but as about 80% of my constituency is in an AONB, I would like one or two points of clarification. As I understand it, there could be wells or operations that use more than 1,000 cubic metres of fluid and up to a total of 10,000 cubic metres. Does that apply to individual wells, or to groups of wells? The definition does not seem totally clear on that subject. In other words, there could be one well in an AONB that was under the threshold, but could there be a series of wells that, together, were over the threshold?

This is a complicated subject. My right hon. Friend the Member for Arundel and South Downs asked for clarification; I would be grateful if the Minister could give further clarification, because I can see that this will hit my local paper, particular given that I am on this Committee. We need absolutely crystal clear clarification on this matter. None of us is an expert on fracking—it is an emerging technology—but the hon. Member for Southampton, Test, the Opposition spokesman, referred to 46% of operations in the United States being below these levels. Potentially, therefore, there is a concern. The Minister would do himself and all of us a great favour if he clarified these matters.

9.40 am

**Paul Flynn** (Newport West) (Lab): It is a pleasure to be called to speak. This has been a very informative debate. The main problem before us is that the SI is yesterday's solution to tomorrow's problem. A huge amount of nonsense—on both sides of the argument—has contributed to the public's perception of fracking. Public opinion was possibly initially shaped by a short piece of film of a sink catching fire, shown universally many times. We now know that that was nothing to do with fracking; that had to do with naturally occurring methane gas. The film was everywhere and is mentioned by people as an example of the dangers of fracking, but that is false; it is not true. The other influence is the earthquakes that took place during test drilling; they were of such a minor nature, but people are naturally alarmed about the prospect of an earthquake.

I am intrigued by the concept of a lovable mini-fracking that is house-trained, family-friendly and benign to all concerned. I do not understand that, but I am baffled by the fact that our objections are limited to national parks. The national parks of the South Downs and the Lake District have a geography in which one would think it was impossible to frack. As one travels across the United States from the Rockies to the Atlantic, one notices the hills, but a huge area is flat. That is reproduced in the geology deep underground, with layers that are suitable for fracking because they are even. Below our country—in particular, below the national parks—the layers are fractured and go in different ways. That is why the hills stand higher than the plain. Our geography in the United Kingdom is therefore not friendly towards fracking, but there is a great deal of fuss and excitement about the issue.

Fracking results in a carbon-producing source of energy, which we should be turning our backs on. Although it is not as damaging to the environment as other forms of carbon-producing energy, we should remember that we have an environmental vandal in

charge of the United States who is likely to add to our problems of global warming, and the best reason for opposing this SI is that it will increase the dangers to our children and grandchildren. We should concentrate on those forms of energy production that are carbon-free. The one that is by far the most promising, according to a recent Government report by a former Minister, which warned that we should turn our backs on carbon-producing energy sources, is tidal power. There is immense power in the tides, which wash up and down my constituency—

**The Chair:** Albeit that they are beyond the scope of the SI.

**Paul Flynn:** They still have to do with the SI, because its whole purpose is to increase our carbon load, but the best way to proceed is via sources of power that are carbon-neutral. The case for tidal power is that it is eternal, predictable, clean, British and immense in its wasted energy. It has long been neglected. By opposing the SI and putting obstacles in the way of fracking, we will accelerate support for tidal power.

9.44 am

**Jesse Norman:** I am grateful to colleagues in all parts of the Committee for their interventions and speeches, and I am happy to respond to them. Let me pick up a couple of points of information that were raised. First, I welcome what sounded like an endorsement from the hon. Member for Newport West of our strategy towards a low-carbon future. I would also like to assure my hon. Friend the Member for The Cotswolds that the regulations apply to single wells in each case.

**Geoffrey Clifton-Brown:** That is a concern. If the regulations apply to single wells, it would be quite possible to have multiple wells that, together, would breach the 10,000 cubic metre limit. Perhaps I have misunderstood the situation and my hon. Friend could clarify it.

**Jesse Norman:** The intention and the regulations are clear: hydraulic fracturing consent should be obtained for any operations that use more than 1,000 cubic metres at any single stage.

**Geoffrey Clifton-Brown:** For any well?

**Jesse Norman:** Any well, so it is a tighter restriction than my hon. Friend perhaps recognises.

On the points raised by my right hon. Friend the Member for Arundel and South Downs, and the hon. Member for Garston and Halewood, my right hon. Friend eloquently described the importance of drawing a distinction between conventional drilling and hydraulic fracturing. It is important that we do not get caught up in nomenclature. The Government's intention is clear: to prohibit what we would describe as hydraulic fracking. There may be conventional, low-scale operations; they are not covered by the regulations. The purpose of the regulations is not to cover those, because there are other protections in the system that configure themselves to local circumstances, including protections in planning permission. It is important not to rule out those things that may have very beneficial local and community effects. The Government's overall intention is clear. In particular, it is clear that small-scale operations should meet an equivalent range of safeguards to those set out in section 4 of the Petroleum Act 1998.

Let me close by saying that I am grateful to all hon. Members for their comments. Restricting hydraulic fracturing from sites at the surface of protected areas has been welcomed by many interested parties across the political spectrum. It demonstrates our commitment to protecting our most precious landscapes. The regulations will ensure that our excellent record of protecting the environment and maintaining safety for the general public will continue while we take advantage of the promising benefits that a shale gas industry will provide. I therefore commend them to the Committee.

**Nick Herbert:** Will my hon. Friend give way?

**Jesse Norman:** Of course, in a spirit of generosity to a friend.

**Nick Herbert:** I am grateful. Could I invite my hon. Friend one last time to clarify the position? It is the contention of the hon. Member for Southampton, Test, that something under half of fracking activity in the United States takes place with these smaller quantities of water and so would not apparently be covered by the regulations. Is it the case that such fracking activity could be permitted in protected areas under the regulations, because of the threshold set for the use of water? If it is, it seems to me that, contrary to what I suggested earlier, there is a lacuna. If the Minister can assure us that all fracking activity will be prevented in protected areas, we will accept his assurance.

**Jesse Norman:** I think I have been perfectly clear about the regulations and what the rules suggest. The hon. Member for Southampton, Test, brought a set of suggestions, or what he regards as facts or other evidence. I am more than happy for my officials to review that information, and to write to my right hon. Friend the Member for Arundel and South Downs to clarify the matter. I cannot comment on it now because it has just been presented to the Committee, but I am content and comfortable with writing to my right hon. Friend to give him the necessary reassurance after the debate.

**John Woodcock** *rose*—

**Jesse Norman:** I have given way in extenso.

9.50 am

**Dr Whitehead:** I think it is evident from our exchanges this morning that the central question about drilling from wells and fracking from the ground underneath them is this: can that take place using less than 10,000 cubic metres of water? As I have set out for the Committee—not as my contention, but in a series of facts—yes, it can. It happens in the United States, not just occasionally, but to a very substantial extent—indeed, in just under half of all fracking operations. Everybody in the United States regards those as real fracking operations, with real wells drilled and real volumes of water involved.

We are not talking about whether fracking is safe or a boon to the economy. We are talking about the fact that Ministers have given apparently cast-iron assurances that fracking will not take place in areas of outstanding natural beauty, national parks or sites of special scientific interest, but the Minister has not given any assurances to that effect today, and it is quite evident, not just from external sources but from the wording of the SI, that there is no such protection in legislation. The Minister said that we should not get too hung up on nomenclature,

[Dr Whitehead]

but we absolutely should, because legislation is all about getting it right. It is about getting assurances in writing, so that people know that what Ministers say is backed up by legislation from this House.

**John Woodcock:** My hon. Friend has made a compelling case today, which has clearly raised new questions for Government Members. I credit the Minister for being honest with hon. Members about not having the answers, and for saying that he is prepared to write to the right hon. Member for Arundel and South Downs. However, does the shadow Minister agree that, in the circumstances, the sensible thing would be to pause this process and resume it when we have the right assurances and the proper facts to enable us to decide whether to proceed?

**Dr Whitehead:** My hon. Friend makes an important point. Writing to the right hon. Member for Arundel and South Downs and to the hon. Member for The Cotswolds after we have voted on this legislation today will have no weight at all and will provide no assurances whatever. Either the legislation protects national parks and areas of outstanding national beauty from fracking and drilling on the surface—not lateral drilling, but wells in pads drilled within the curtilage of the parks—or it does not. If it does not, no amount of writing to hon. Members to assure them that it does will alter that.

A strong case has been made this morning. I make the caveat that we do not know for certain whether every well drilled in the United Kingdom will use more than 10,000 cubic metres of water; we can merely refer to the evidence from the United States, which is that a lot do and a lot do not. My hon. Friend the Member for Newport West points out that the UK's geology is very different from that of the United States. It may be that, just as there are different circumstances—I pointed those out in my evidence to the Committee, as it were—in different states of the US, different amounts of water are used in different geological circumstances. Given the difficult geology in the UK, it may be that quite a lot of water would be used. It may be that Bowland shale and Wealden shale need different amounts of water for fracking.

It will be extremely difficult—the Minister fell on this difficulty—to walk out of this room assured that there will be no fracking in national parks and sites of special scientific interest as a result of the regulations. If that is what we believe, we should not allow the SI to proceed. That is not to say that the Minister is not sincere and clear in his contention that there is no intention to enable fracking to take place in national parks and SSSIs, but evidently there is a dissonance between what the Minister says and what the legislation says.

**Geoffrey Clifton-Brown:** On a point of order, Mr Gray. Could you advise the Committee on what the procedure would be for taking the SI away, looking at it carefully, and bringing it back when answers have been given to the queries raised in this Committee?

**The Chair:** I am grateful to the hon. Gentleman for his point of order. The position is that the statutory instrument has been laid before Parliament, made and come into force already. All we are considering today is

whether the Committee has considered the statutory instrument. Those who believe that the Committee has considered it properly will vote aye; those who believe that the Committee has not considered it properly will vote no. In either case, there will not be a change to the status of the SI, which is already in force.

**Dr Whitehead:** My understanding is that because this SI was under the negative procedure, was prayed against and was brought to this Committee, it is indeed in operation at the moment, but if we do not vote for it, that brings into question whether it should continue in operation without some form of amendment that would meet the intentions behind the SI. As for what should be done for the future, it is not possible to amend statutory instruments, as I said, but the wishes of Members and the discussion that we have had will be on the record. If we in this House do not indicate that we wish the SI to proceed in its present form, it will, in my view, be incumbent on the Government to bring forward an SI that fulfils its purpose, which perhaps we could support.

**The Chair:** Order. For the sake of clarity, I point out that if there were a feeling in the Committee that there was something wrong with the statutory instrument, it would be perfectly open to the Opposition or anybody else to engineer a vote on the matter on the Floor of the House of Commons, using one of a variety of instruments, including, but not limited to, the Backbench Business Committee. This Committee is merely considering whether the statutory instrument has been considered.

**Dr Whitehead:** Thank you for that clarification, Mr Gray. Were the SI not accorded a positive vote, there would be a deferred Division, as I understand it, on the Floor of the House next week, and we would have to vote on it. If, however, there is a yes vote on the SI this morning, that Division would not take place; we therefore could not seek any further clarity on the SI. I have made clear what, to my mind, the safe course of action would be. I take the points made, and I commend the right hon. Member for Arundel and South Downs, and the hon. Member for The Cotswolds, for seeking the clarification that I think is essential on the SI. It appears that we should not give the SI our positive commendation today, but should refer it for consideration on the Floor of the House. Between now and next week, we may get the further clarification that we did not get this morning.

In any event, the right course of action, which I urge upon the Government, is to bring forward a further SI that establishes that the things that have been said about national parks and sites of special scientific interest are really the case, with no ifs or buts. We would all be able to stand behind that. Anything less would need us to take another look at it.

*Question put.*

*The Committee divided: Ayes 8, Noes 5.*

**Division No. 1]**

**AYES**

Barclay, Stephen	Norman, Jesse
Burns, Conor	Shapps, rh Grant
Leslie, Charlotte	Sunak, Rishi
Mills, Nigel	White, Chris

**NOES**

Debonnaire, Thangam  
Eagle, Maria  
Flynn, Paul

Whitehead, Dr Alan  
Woodcock, John

*Question accordingly agreed to.*

*Resolved,*

That the Committee has considered the Petroleum Licensing (Exploration and Production) (Landward Areas) (Amendment) (England and Wales) Regulations 2016 (S.I. 2016, No. 1029).

10.2 am

*Committee rose.*

