



# Housing, Communities and Local Government Committee

## Oral evidence: Planning guidance on fracking, HC 767

Monday 21 May 2018

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Members present: Mr Clive Betts (Chair); Mike Amesbury; Bob Blackman; Helen Hayes; Kevin Hollinrake; Andrew Lewer; Jo Platt; Liz Twist; Matt Western.

Questions 141 - 259

### Witnesses

I: Dominic Raab MP, Minister of State for Housing, Ministry of Housing, Communities and Local Government; Claire Perry MP, Minister of State for Energy and Clean Growth, Department for Business, Energy and Industrial Strategy.

### Examination of witnesses

Witnesses: Dominic Raab MP and Claire Perry MP.

**Chair:** Good afternoon and welcome to both Ministers. Thank you for coming to our final evidence session on this inquiry that the Select Committee is conducting on planning guidance on fracking. Thank you both for being with us. Can I ask Committee members to put on record any particular interest matters that they have that need declaring with regard to this particular inquiry? I am a vice-president of the Local Government Association.

**Andrew Lewer:** I am a vice-president of the Local Government Association.

**Kevin Hollinrake:** I employ a councillor in my office.

**Helen Hayes:** I employ a councillor in my office.

**Jo Platt:** I employ a councillor in my team as well.

**Mike Amesbury:** I employ a councillor in my team.



Q141 **Chair:** Those are the issues of relevance to local government that we may have. As I say, thank you both for coming. Could I just begin by asking you both about the written ministerial statement last week? The Committee were a little surprised and disappointed when we saw it in terms of the timing of the statement. We are, as you are clearly aware, quite a long way into our inquiry about certain issues to do with fracking, particularly around planning guidance, which is the focus of our inquiry. The inquiry has been known about for a long period of time. We have obviously had a lot of written evidence and a considerable amount of oral evidence so far, and you are the last session on that.

We were concerned that that statement, dealing very much with the matters that we have been taking evidence on, effectively put a line on your ability to consider what we may have to say in our eventual report on this, having listened to the evidence, and that the Ministers had made up their mind before they came to the Committee about what they were going to do. Perhaps you could clarify the position for us.

**Dominic Raab:** First of all, Mr Chairman, it is a pleasure to be before your Committee again. This was a manifesto commitment that we were looking to give effect to and, in fairness on the side of the sector, we are approaching an important moment at the exploration stage; later this year we may see the first shale gas extraction since 2011. There is a real operational need to get on with this. Equally—and the terms of the WMS reflect this—we are confident, and want to give you the reassurance, that this is still at a very formative stage on all the key measures, and you and your Committee, and indeed your report, will come at a very timely moment, with the opportunity to fully influence the direction of travel. Hopefully we can give you that reassurance.

**Claire Perry:** If I may add to that, Mr Chairman, one of the things that we were clear about in the WMS is that we were signalling bringing forward several consultations, where, again, your Committee's work would be extremely welcome. If there is any question on timing, I can assure the Committee that we will do everything possible to make sure those consultations run sufficiently long to make sure the Committee's report, and indeed any other submissions from the Committee, are taken into account in terms of those consultations—consultations around the permitted development rights, the triggering point for extraction moving into the NSIP programme and about any future standalone environmental regulator.

Q142 **Chair:** Right. Just in response to that, yes, I accept your manifesto commitments. We have all read them; we have read every detail of the Conservative Party's manifesto, which is perhaps more than some Conservative MPs have done. We have read the 2015 manifesto as well as the more recent one. It is three years since that commitment was made. The timing was not really that impetrate, was it, that you had to do that at this stage?



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**Dominic Raab:** I cannot really say any more than I have. We wanted to get on with this. The delay compounds the sense of wanting to make progress with this. The key thing is that we have the right planning regime in place with full time for the kind of consultation that you have discussed, with opportunities for your Select Committee and other consultees to feed into that, in order for when we need it. That is the most important aspect of it.

Q143 **Chair:** In terms of the indication that you are making very clearly—that all aspects of this statement are still up for consideration and the Committee can make its views known and they will generally be listened to—that certainly seems to be the case in terms of the wording with regard to the permitted development issue and taking fracking applications into the national infrastructure regime. That is certainly where the word “consultation” is mentioned. However, just in terms of the shale regulator, that clearly in this statement is a decision. The word “consultation” or “consideration” is not there. Can we be clear? Is the issue of a shale regulator up for consultation and consideration, or is it a decision that has been made where there is no further thought that can be given to it by Government?

**Claire Perry:** We will consult on whether there will be a standalone environmental regulator and what it will look like. That will come at the same time as the other two consultations.

Q144 **Chair:** Right, okay. That wording was slightly different to saying that the issue was up for consultation. What you are saying to the Committee, Minister, I think is that you have taken a decision to have a standalone regulator but that you will consult about how that regulator should look and how it should operate and how it would relate to existing regulators. Is that what the situation is?

**Claire Perry:** No, not at all, Mr Betts. There are two things at stake. The first is that there is a genuine belief among the Departments and the industry that we currently have excellent regulatory powers. We have three superb regulators involved in establishing a very sound basis for this industry. However, there is a process problem at the moment, as we know, that is difficult for developers and for local authorities. The first stage that we have been clear about is that we will work to join those regulators together more closely and then we will consult on whether a standalone regulator is required and, if it is required, whether there are additional powers that should be in place.

Q145 **Chair:** That is helpful. We will come back to that issue in detail a little later on. Joining up regulation is one thing but the issue about whether we have a separate standalone regulator is still up for consultation.

**Claire Perry:** Correct.

**Chair:** That is very helpful clarification.

Q146 **Kevin Hollinrake:** As you may know, my constituency is covered to a



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great extent by PEDL licences; probably 80% of it is. One of the things that has often been raised with me is the definition of fracking. There are fundamentally different definitions within the minerals planning guidance and the Infrastructure Act 2015. One talks about the volume of liquids being used and one refers to a broader definition. Which one are we likely to use? Are we going to amend the 2015 legislation to reflect that?

**Claire Perry:** I have read the evidence submitted by the Environment Agency to the inquiry: that they are happy with the current definition and believe that they can absolutely carry out their duties. The HSE has made the same point. Therefore, as it stands, we do not believe the legislation requires updating to change the definition of hydraulic fracturing.

**Kevin Hollinrake:** That is the 2015 legislation, the Infrastructure Act.

**Claire Perry:** We have also included a slightly wider definition through the protected areas regulation, which was part of the direction to the OGA.

Q147 **Kevin Hollinrake:** Yes, okay. How does the one in the protected areas regulation differ from the one in Infrastructure Act?

**Claire Perry:** The same set of standards are required to obtain hydraulic fracturing consent for any operations that use more than 1,000 cubic metres of fluid at any single stage.

Q148 **Kevin Hollinrake:** Is that the Infrastructure Act definition?

**Claire Perry:** No, that is the direction to the OGA from 29 November 2017. As I understand it, the hydraulic fracturing in the Infrastructure Act is essentially derived from the approach taken by the European Commission and it does not set a threshold for the regulators, and the regulators have said that they do not require that definition to carry out their key role.

**Kevin Hollinrake:** I think section 50, clause 4B of the Infrastructure Act says "more than 1,000 cubic metres", which sounds like it is referring to the same figure.

**Claire Perry:** My officials are scribbling.

Q149 **Kevin Hollinrake:** The issue is that the minerals planning guidance is different because it is about the process of opening the rocks rather than the volume of water. The North Yorkshire plan, which I have taken a key interest in, uses that broader definition. Is that inappropriate? We will talk about nationally significant infrastructure projects in a second, but would we not allow a definition within a—

**Claire Perry:** As I understand, the reason for the Secretary of State going further was that traditional techniques, which we have used onshore for decades to extract both oil and gas, have used volumes of liquid in the process but have used lower volumes of liquid. There was a concern that, by not specifying a minimum, if you like, for the volume,



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you would be capturing lower volume activities that are not effectively what both ourselves and the Committee would be understanding as hydraulic fracturing.

Q150 **Kevin Hollinrake:** Yes, so conventional becoming non-conventional.

**Claire Perry:** Correct. Or being captured in the definition.

Q151 **Kevin Hollinrake:** The worry, of course, from many of my constituents, and probably others, is that the industry uses this as some kind of loophole to start fracking in protected areas, as you referred to previously, Minister.

**Claire Perry:** Sorry, I have just been handed a point of clarification. The Infrastructure Act definition relies on the quantity of water at every stage whereas the wider definition is at any one stage. That is the difference. There is another discrepancy relating to planning guidance on this that predates the Infrastructure Act, and it is the intention of our two Departments to ensure that that is updated so there is no discrepancy between planning guidance and the Infrastructure Act.

Q152 **Kevin Hollinrake:** What you are saying is that we should rely on the Infrastructure Act rather than the minerals planning guidance.

**Claire Perry:** Yes.

Q153 **Kevin Hollinrake:** We know that the minerals planning guidance is different.

**Claire Perry:** Yes. Again, the intention of the WMS was to be absolutely clear that there was a statement from Government that should be taken into account in planning considerations that set out a number of views and attributes and requirements to take forward.

Q154 **Kevin Hollinrake:** But you understand the reasonable concerns that people have that setting out a definition like that potentially allows operators and producers, which are perhaps not universally trusted by some of my constituents, a way through the protections in the various regulations?

**Claire Perry:** I understand the concern. What we have always set out to do is to have a sober, science-led process of exploration to understand if this resource exists, if it can be extracted safely, and if it can deliver the jobs and benefits for local communities. It is absolutely the intention, if there is any level of mistrust that has been built up between local communities and industry, that we all work to eliminate that because we must not have energy policy in this country set by ideology; it has to be based on the facts.

Q155 **Kevin Hollinrake:** The North Yorkshire plan is currently under examination, and you may say that you cannot comment on that basis. That uses a different definition from the Infrastructure Act. Will it be ruled that they cannot use a separate definition?



**Dominic Raab:** Sorry, could you repeat the question?

Q156 **Kevin Hollinrake:** The North Yorkshire joint minerals and waste plan uses a different definition, using the definition from the minerals planning guidance rather than from the Infrastructure Act, which they feels creates more certainty around what is allowed and what is not allowed.

**Dominic Raab:** I am going to be very careful, Mr Chairman, about opining on individual plans because the definitions may well be tested both in examination and subsequently by Ministers, if not the courts.

Q157 **Chair:** I just have a simple question then. If, instead of water, acid or carbon dioxide pressure is used to force the gas out, is that fracking?

**Claire Perry:** Is that your understanding of fracking?

**Chair:** I understand that the minerals planning guidance actually includes that as fracking and does not use the very limited definition of water and quantities of water. There are two different definitions. That is the problem.

**Claire Perry:** My understanding of the Infrastructure Act and the wider definition is that it is based on water at every stage or at a single stage.

Q158 **Chair:** Yes, therefore the minerals planning guidance is different. How do authorities weigh up two completely different definitions?

**Dominic Raab:** Sorry, I missed the question.

Q159 **Chair:** There are different definitions. The minerals planning guidance is based on a different definition than the Infrastructure Act and includes, for example, where gas is forced out by other methods such as carbon dioxide pressure or acid. That would not be included in the definition within the Infrastructure Act, which only refers to water.

**Dominic Raab:** We will have to write to you on that, Mr Betts. The truth is that there are different regulatory regimes and guidance for different aspects of this and they do often have discrete meanings. We know that that is an issue that you may want to come on to later. On that specific point, I am very happy to write to you, or my colleague will.

**Claire Perry:** Again, my understanding is that the Infrastructure Act was the first to define hydraulic fracturing in legislation for exactly these reasons, and the regulators and mineral planning authorities focus on compliance with the regulation, not on the definition of what is underlying there. You will be a greater expert than me, Mr Betts, on what creates precedence in local authorities' minds when they consider applications.

Q160 **Chair:** Perhaps I can help you write the guidance then and we might all be clearer about it.

**Claire Perry:** I am looking forward to your Committee's reports.

**Chair:** Okay. There are differences at present; that is what the



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Committee has heard. It would be helpful for everyone to have one clear understanding of what fracking actually is.

Q161 **Andrew Lewer:** What impact do you expect the proposed changes in the NPPF that relate to fracking, if they are adopted, to have on mineral planning authorities' decision-making?

**Dominic Raab:** As your Committee will probably know, the NPPF, as revised, went out to consultation. That closed on 10 May. Local plans will then need to be consistent with the national framework that it contains and, when published, the NPPF will be a material consideration when those decisions are made. The written statement sits alongside the NPPF and it is a material consideration in plan-making and decision-making.

In relation to the revised NPPF and the substance, as opposed to the process that I have just outlined, the key innovation in the 2018 draft on which the consultation is closed is chapter 17 and the obligation on planning authorities to recognise the benefits of onshore oil and gas development, put in place policies to facilitate exploration and extraction, and to plan in a positive way for the three phases of development, from exploration through to production. That is the process. Obviously I paraphrase but check chapter 17. Most of the innovations are there.

Q162 **Andrew Lewer:** As you say, that is the process. If adopted, you would expect it to accelerate MPA decision-making over fracking; is that the idea?

**Dominic Raab:** We want to have a clear regime that creates greater certainty both for local authorities and also for the sector. We want to try to give some of the greater clarity that you have already touched on in this Committee. Yes, hopefully decisions will be more streamlined and ultimately faster.

Q163 **Andrew Lewer:** In terms of achieving that, some of the industry operators that we have heard from were concerned that the changes do not actually reflect the 2015 written ministerial statement on fracking because the changes in the NPPF do not make reference to this important statement within the WMS, which is, "There is a national need to explore and develop these resources in a safe, sustainable and timely way". With that, and in the light of the more recent written ministerial statement on fracking planning policy, do you anticipate the revised NPPF to go further than those proposed changes, to place even greater emphasis on the Government's support for fracking?

**Dominic Raab:** I will not pre-empt what the Government's response to the consultation will be but I have outlined at chapter 17 some of the innovations that have been made in the revised draft that was put out for consultation. It is certainly true to say that it builds on the 2015 written ministerial statement.

Q164 **Andrew Lewer:** In the course of your deliberations on what people have



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to say about this, the fact that the industry has concerns that that statement is not in there would form part of those further reflections.

**Dominic Raab:** We will reflect on all and every feedback we get. Obviously you have not just the NPPF but the further guidance that can be provided once we have got to that stage.

Q165 **Mike Amesbury:** The recent report by Professor Peter Styles found that there was a higher risk of seismic activity if fracking is to take place in former mining areas. How are scientific and policy developments such as this provided for in the current guidance? It is particularly relevant to Yorkshire and North Yorkshire and certainly for my fellow Member here in Leigh, but probably not to Surrey and parts of Wiltshire.

**Dominic Raab:** We regularly review our guidance. Obviously, this is an evolving area where there is practice and innovation going on all the time. We want to make sure that the guidance clearly reflects the national context as well as local circumstances in order to make sure, as I said, that it is fit for purpose. We do periodic reviews of the guidance but we also keep it up-to-date on a case-by-case basis where that is necessary. Hopefully that will give you the reassurance but obviously, on the environmental side of things, that is something that is regularly and consistently kept up-to-date.

**Claire Perry:** Of course the OGA is the seismicity risk analyser—one of the three regulators—and it requires operators to stop activity if any seismicity is measured, even if it is lower than the tremors caused by a rollercoaster. The monitoring regime is robust and we have a very good regulator in the OGA, which is prepared to stop if there is any sense of seismicity being a risk.

Q166 **Mike Amesbury:** Minister, who is responsible for updating this planning guidance?

**Dominic Raab:** The Ministry of Housing, Communities and Local Government but, of course, we take into account all the different regulators and all the different evidence as it emerges. That is the same with lots of things. The NPPF is a national framework covering all sorts of things, from environmental concerns to the state of the high street, and they cover a wide number of different Government Departments and public bodies. We do have to filter up and triage up all the important elements as the evidence evolves to make sure it is properly incorporated. That is why we have to have a system where we keep it regularly up-to-date, and we work with other Departments, including BEIS, very closely on this.

Q167 **Mike Amesbury:** Peter Styles is also the same professor who linked the seismic activity of Cuadrilla in Blackpool and who was a former adviser to Prime Minister David Cameron. I assume that there will be further public consultations around updating the planning guidance around fracking.



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**Dominic Raab:** Once we have published the revised NPPF, there will then be an opportunity to make sure that the underlying guidance is renewed and refreshed.

Q168 **Mike Amesbury:** Will this be continuously updated? Let us say activity takes place maybe in the future in terms of shale gas extraction. As further scientific evidence emerges, will this be updated?

**Claire Perry:** We will have operational evidence from those wells, which will be incredibly closely monitored. We have, again, a world-leading seismic surveying set of teams in this country—one of the things we have been very proud of—and we have absolute regulatory powers. We will have data that can absolutely feed into any further guidance that is required.

Q169 **Jo Platt:** Minister, my constituency is Leigh and we have five licences, as it stands, in our area. It is historically an old coal-mining area. When seismic activity happens, is it not too late then? We already have areas with high subsidence. We have these licences. I am not the expert here. Have you taken that into consideration?

**Claire Perry:** Absolutely. Coalfields Regeneration Trust were at an industry event we had this morning, as were other union representatives. Of course, it is very striking to compare what happened in terms of subsidence and landslip risk with a very strong regulatory regime that we will be monitoring. As I say, the well will be shut down under current guidance if there is a tremor less than that of a rollercoaster. The opportunity for pretty clear monitoring and measurement of any seismicity before anything untoward happens is made very clear as part of the licences.

Q170 **Chair:** Can I just ask two follow-ups? If a minerals planning authority gets an application now for fracking, should they take account of Professor Styles' report in any way?

**Dominic Raab:** We want to be very careful about prejudicing any individual planning applications. They will obviously take advice. If there is any lack of clarity in the guidance, we will make sure it is there.

**Claire Perry:** Professor Robert Mair is our world-leading professor in terms of measurement and monitoring of remote activity. He is the reason that Big Ben is underpinned with concrete blocks and has not fallen into the Jubilee line hole. He ran the original regulatory analysis and said that, if well-regulated, which it will be, this is a safe industry. Of course, there may always be academic debate but we should be very careful to single out any particular report and prejudice any individual application on that basis because we have had the world's best scientists reviewing this industry for many years.

Q171 **Chair:** Should they take account of this report or should they simply ignore it and wait for something more to come from Government?



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**Dominic Raab:** I do not think they should park individual reports.

**Claire Perry:** Why would we single out one specific report? They should take account, as our guidance does and our regulator does, of the overwhelming bulk of academic and on-the-ground evidence.

**Dominic Raab:** Ultimately, the planning authorities follow the NPPF, the guidance that is there and the facts and the individual circumstances of the case.

Q172 **Chair:** Currently, if householders experience subsidence in an ex-mining area, it is pretty clear where they go to get redress for any costs. If, in the future, fracking is taking place in an old mining area and subsidence happens, one could foresee a situation where there is then a dispute about who is responsible for the subsidence, and householders may not have that degree of clarity in terms of their legal rights. Will Government address that issue in advance of any problems occurring for householders?

**Claire Perry:** That is a whole series of theoreticals, with respect, Mr Betts, and we are here today to talk about the current legislation before any wells have actually been drilled. It is very clear about decommissioning authority. At the moment I am not aware of any policy. There may well be and we would be happy to write to you with it.

Q173 **Chair:** I was not asking for an answer here and now—I accept it is a future issue—but I would be interested to know that the Government were, as you seem to be indicating now, going to give some thought to it, so that householders did not experience the problem and then find that there is nowhere to go because it had not been thought through in advance.

**Claire Perry:** Of course the difference is that the coal-mining in many cases was done tens of metres below the surface whereas, for hydraulic extraction, the ban is 1,000 metres below. If you believe what the world-leading seismologists and surveyors tell us, the risk of this is very low but clearly could be greater than zero.

Q174 **Kevin Hollinrake:** Just looking at the overall guidance for shale gas exploration, there are 20 different guidance documents from both your Departments and from the Royal Society and various other bodies. Is there a plan to draw this all together into a single document? We have heard conflicting evidence as to whether that would be a good idea. What are your thoughts?

**Dominic Raab:** There are various disparate bits of regulation and guidance. We do not think that the guidance should somehow be consolidated into one document. The worry would be that you would either render it uncertain as a result of doing that or blur the demarcation between, say, planning and regulatory matters, which would not make matters more effective or clear. It is also important for the local authorities and the planning authorities to recognise the competence of



those individual regulators and rely on their advice as they set out their planning guidance. They are related but I am not persuaded that consolidating them, at least at this stage, would not bring more risk than it would resolve.

**Claire Perry:** It must be exceptionally difficult as a local authority member to know where to go for the whole gamut of this. As we indicated in the WMS, as well as making funding available, Dominic's Department will be launching the shale planning brokerage service, which is there to assist local authority decision-makers through the process, if you like, so that all sides are aware of what is actually happening because, clearly, this can be very tricky for hard-pressed local councillors and officials.

Q175 **Kevin Hollinrake:** Yes, I think we will have some questions about that later. In the written ministerial statement you mentioned revised planning practice guidance. Would that not have been an opportunity to draw all these different elements together? Is that the plan or is that something different?

**Dominic Raab:** It is an opportunity to make sure that we do not have any inconsistencies or conflicts but, again, the guidance will help us implement the NPPF. In a sense, the planning regulatory side of things is kept discrete from the other regulatory requirements, and the worry is that merging or blurring them will make matters less, not more, clear.

Q176 **Kevin Hollinrake:** Will the actual guidance itself that you are planning be very detailed? You will have seen a copy of my local minerals plan, for example, which is very detailed and covers measures such as proliferation, development density and proximity to residential dwelling. Is that the idea behind the guidance or is that something different? Should we expect that level of detail or not?

**Dominic Raab:** I do not want to pre-empt the guidance before we have even got the revised NPPF out but we are looking at quite how prescriptive it should be. We want to create maximum certainty. We certainly also want to benefit from the Select Committee's work and report, so we will certainly be taking that into account as well.

Q177 **Jo Platt:** How do you expect MPAs to balance local and national guidance and policy in determining fracking planning applications?

**Dominic Raab:** Local plans are at the heart of the planning system. Mineral planning authorities need to recognise the national importance of shale gas while setting out their environmental criteria in line with the national framework, and that is the basis on which the local applications will be tested. The full capability of taking into account the environmental or the health implications of it and the soundness of the local plan policies will be tested at examination. There is a locus for residents to give their views at the formulation stage, at the examination stage and, of course, in relation to any individual planning applications.



Q178 **Jo Platt:** Do you think the MPAs are getting that balance right at the moment?

**Dominic Raab:** Again, in a sense, we have a localised system with a national framework in the NPPF. We are trying to strike that sensible balance. We want to give national support to shale exploration and production while making sure that, at those three key steps, there is the local input. The balance is right and the NPPF and the guidance that follows will look to make sure it is optimised.

Q179 **Jo Platt:** Do you think there is a contradiction between the Government's 2015 written ministerial statement on shale gas and its commitments to the Clean Growth Strategy in tackling climate change?

**Claire Perry:** Not at all. It is an area that comes up often. One of the things that we will be doing in this country over the next few years is ending the generation of power using coal, which is twice as dirty as any other fossil fuel, and part of that is because we are able to bring gas into the mix, which produces about 30% of the CO<sub>2</sub> emissions from generation from a coal-fired power station. It is very striking that every scenario that the Committee on Climate Change—again, an independent body that we have been world-leading in setting up—propose in reaching our 2050 reduction targets includes gas, because it is so essential, for generation but also for cooking and heating. We would obviously like to decarbonise gas further—that is one of the reasons for focusing so much on carbon capture, usage and storage—but it is a fundamental part of our energy mix and we can achieve our climate change targets using it.

Q180 **Jo Platt:** What would you say to those people who are asking why the same focus is not given to the renewable industry?

**Claire Perry:** 30% of our energy supply comes from renewables but the problem with renewables is intermittence. If you check the energy generation today, we are getting about 6% or 7% from wind; 50% from gas; not very much from coal; and the rest of it from Europe. They are just very different features of the energy system and we are absolutely investing in more renewables technology, particularly the battery storage technology—the Faraday Challenge—with £250 million of taxpayers' money going into that. It is not ever the Government's money; it is taxpayers' money.

They achieve different things in the energy mix. At the moment, we do not have the technologies, for example, for cooking and heating—we can debate generation—to do this in a cost-effective manner. We should further decarbonise the gas supply and also generate gas domestically from our own sovereign sources. Again, that is why the Committee on Climate Change has been clear that there is a role for gas and indeed a role for gas from onshore extraction, assuming that the tests that they have set out are met. I am extremely comfortable to be a world leader in setting out climate change ambition and using gas, particularly gas that is sourced domestically.



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Q181 **Jo Platt:** Going back to the NPPF guidelines, why is it then harder to install a wind turbine than it would be for fracking?

**Claire Perry:** We have a planning regime that does bring forward onshore wind right now, and indeed small-scale wind plants can and do succeed in the policy framework. However, there was a political decision, if you like, put in the manifesto that we would not bring forward onshore, large-scale wind for England, and that commitment still stands.

**Dominic Raab:** To supplement what Claire said, shale gas is a mineral. Minerals are pretty unique. They are a finite natural resource. They can only be worked where they are found. We want to make sure that we have a regulatory regime that does not just class them all as the same but that is tailored to the specific demands, challenges, risks, benefits and opportunities that each one of our vital energy sources entails. It is right to have a different regulatory regime for the two, and this one is very much tailored towards minerals.

Q182 **Jo Platt:** This is last point from me. Do you support the localism approach taken in the North Yorkshire joint minerals and waste plan?

**Claire Perry:** I do not think we can comment on specific plans, Ms Platt, because that will no doubt be coming to a Department.

**Dominic Raab:** We have both been very well-versed not to be prejudiced, and it is important not to do that because, on both sides of the argument, we need to make sure that we do not pre-empt what will be argued, let alone determined.

Q183 **Kevin Hollinrake:** Perhaps we should look at a hypothetical rural constituency, on that basis. In the WMS there was the line, "Plans should not set restrictions or thresholds across their plan area that limit shale development without proper justification". What does that mean?

**Dominic Raab:** It is a very deft way of trying to tempt us in but we cannot legally—certainly not as planning Minister—comment on any actual cases. As a politician, I am reluctant to be drawn into a hypothetical question, again because it is a legal issue that would need to be determined.

Q184 **Kevin Hollinrake:** It is not hypothetical in that it is in your statement. You must understand therefore what that sentence means. You are saying that you cannot set restrictions without proper justification. What would be a proper justification?

**Claire Perry:** If I may, to get back to your opening question as to why the statement was issued now, this is an extremely timely point to try to draw together the conversations that we have had about different regulations and to make sure that there is a series of guiding principles going forward on the planning and the regulatory side. Again, I shall take my lead from the experts.



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**Dominic Raab:** We are in the same place. I am sorry we cannot give you more detail. We have the NPPF. We will have the guidance once it is finalised and then we need to respect, as a matter of local democracy, as we have just been hearing, the fact that ultimately it is for the local authorities to make those determinations. There is a process the integrity of which we want to preserve and ultimately, if it is appealed, it may come to us, in which case I do not want to prejudice it.

Q185 **Kevin Hollinrake:** Would a proper justification be the protection of other parts of the economy in the locality, for example?

**Dominic Raab:** Again, I am not going to set out generalisations. The WMS is there. In truth, it reiterates the existing policy and guidance. It sits alongside the NPPF. There will be further guidance in due course but I am not going to give edicts as to what it might mean in individual cases. The guidance will need to stand on its own two feet.

Q186 **Mike Amesbury:** I am just seeking some clarity. Is shale gas a fossil fuel?

**Claire Perry:** Yes, of course. It is methane that is coming out of shale. Yes, it is coming out of many of the same formations from which we have extracted hydrocarbons. If you look at the CO<sub>2</sub> emissions, it is about 30% of that from coal and about 70% of that from oil. There is the potential to decarbonise it further. The exciting thing for many of our constituents is to not just think about it in a generation sense but to think about how we decarbonise heavy industry. The problem that we have right now is that many of us have strategic industries such as ceramics and steel in our constituencies, and it is really hard to decarbonise them. Working on carbon capture, usage and storage alongside generation could potentially offer some very good opportunities to decarbonise sections of our economy that are difficult to do otherwise. That is a longer answer than you were looking for, Mr Amesbury, sorry. I am very excited about carbon capture and storage.

Q187 **Mike Amesbury:** To extract at scale, Cambridge University and Friends of the Earth have talked about 6,100 mines littered all across the country; it might even include Surrey and Wiltshire. Surely that is a backward step in terms of the Government's aim to be the greenest Government in history.

**Claire Perry:** At the moment, we are going through a science-led process of exploration to understand if the shale resources that we know are there in the three main formations can be extracted at a high enough flow rate to make it worthwhile in a way that absolutely respects local communities' wishes and to make sure that we have regulation fit for purpose. Until we have gone through those processes, we can all hypothesise as to what this could look like.

Gas is an important part of our heating, our cooking and our generation mix. We have gone from being a net exporter of fuel to a net importer. We are currently importing about half, and there are estimates that we



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could be importing two-thirds by 2030. We are not reliant on Russian gas despite some of the news you might read, although Russia has a big impact on the pricing in Europe. If we have something that is sitting beneath our countryside in specific areas that we can extract safely that is a lower carbon alternative, then this is why we think we should be looking at doing so but in very much a science-led way.

Many of the presentations I have seen from various lobby groups are actually an argument for why we should not have gas at all—an argument for us to go 100% for renewables—which cannot be delivered with the current technology at the right price. It is generally an anti-gas argument as well as an argument for not extracting gas through shale.

**Q188 Liz Twist:** Can I reframe the question that we started with about North Yorkshire provisions? I am looking at the written ministerial statement from last week about planning decision-making. You talk about holding a consultation as to whether non-hydraulic fracturing shale exploration development should be treated as permitted development and, in particular, the circumstances in which that might be appropriate. How does that fit in with the concept of localism and local authorities and local communities having a say and a set of parameters for what is best for their area? I put it in those general terms instead of a specific application.

**Dominic Raab:** Do you mean the PDR?

**Liz Twist:** Yes.

**Dominic Raab:** Notwithstanding the move to a PDR—and obviously it is meant to speed up things—there are still opportunities for local consultation and local buy-in, particularly if you have a prior condition as part of that process. That is the way that we strike the right balance. We would be consulting on that aspect of it, which I hope would give the Select Committee plenty of opportunity to feed in and to make sure that we get the right balance.

**Q189 Liz Twist:** Some local communities might feel that, by having permitted development rights, it does limit the degree of local input into proposals for fracking and mineral extraction on this scale.

**Dominic Raab:** Where permitted development rights are already established, there is often a prior approval process and that can be set out as a condition to many of the permitted development rights. That is one of the key aspects that we want to look at to give those that share those concerns some reassurance. We are consulting on the principle of whether or not non-hydraulic fracturing shale exploration should be treated as a permitted development, and that goes to the question you asked at the beginning about the extent to which this is a fait accompli or whether we are still at a formative stage. Of course, it is worth noting that a development that requires an environmental impact assessment cannot be subjected to permitted development. Not only are there



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safeguards there—there is no automaticity to it—but there is also scope, in the way I described, for local consultation to make sure you get the right balance.

**Claire Perry:** I believe that local authorities do have the power to remove those permitted rights even when a consultation with the EA is not required under certain circumstances. This is why we want to be very clear in setting out in the consultation all of these aspects and hopefully getting the Committee's input.

Q190 **Liz Twist:** Yes, but it does rather limit the local authorities, does it not?

**Claire Perry:** I am not sure I agree with that, Ms Twist. If you have an application to explore, which is a temporary event as we know, and it is subject to various preconditions or an environmental impact, in which case it cannot go through that right, you could turn it around and ask why local authorities would not want to go through that process to see if there is a valuable resource that could benefit their local communities both in terms of jobs and economic impact.

Again, this is why some of the representatives from the former coal-mining communities and many of the unions are very positive about this statement, because they see the opportunity to create high-value jobs, particularly in areas that have not had investment since the coal-mining days. We could turn it around and say that we absolutely need to respect this balance but if we believe we have strong regulation and a strong framework, then it allows local authorities to go through that process.

Q191 **Liz Twist:** And limits the grounds on which local communities may be able to object.

**Claire Perry:** As Dominic set out, there are opportunities for local views to absolutely be taken into account. Remember: that is just for the development right. There is then an entirely different series of steps that need to be taken into account for any permission to extract where there are very strong consultation points and reference points for local communities.

Q192 **Liz Twist:** To follow up of that, I am sure we will come on in detail to the nationally significant infrastructure projects angle, but again I would suggest that removes the localism aspect and the input of the local community.

**Dominic Raab:** Again, obviously we are making changes. If the Committee wants to come on to it, we can look at the delays in the planning decisions and the fact it has become—

**Chair:** I think we will come on to that.

**Dominic Raab:** In a sense, that is one of the evidence bases on which we are formulating our policies, as Claire has already said. We want to make sure we have a regime that deals with the national priority that we are putting on this but also takes into account those local concerns. The



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nationally significant infrastructure planning regime is a bespoke system. It is designed to examine and determine complex major infrastructure projects very effectively, and it only applies at the production stage, not the exploratory stage.

Prior to that, you have all those other safeguards that are in place. There are comprehensive legal requirements in place to make sure that the local authorities and local communities can have their say. There is the statement of community engagement, which is a condition before the application can be submitted to the NSIP, at the production stage. There is local community engagement at the examination stage.

Of course, it is a system that is not being taken out of blue-sky thinking; it has been tried and tested, particularly in the infrastructure and transport infrastructure sector. We do think we have the right balance by making sure this is a nationally important resource that we can take advantage of but with the appropriate level of safeguards at the local level.

**Claire Perry:** That has been what we have used for energy policy. The NSIP was brought into place in 2008 by a previous Government for exactly this reason: for very important strategic decisions, particularly around energy, and particularly bearing in mind, as we discussed with the minerals' location, they are not distributed everywhere. There has to be away of balancing what is potentially a strategically vital resource with the concerns of local communities. It is worth noting that after the 2008 decision, the Hinkley Point C decision was put through the NSIP regime. That was approved in 17 months with a big impact, potentially, on the local community. Heathrow Terminal 5, I am sure we all painfully remember, took eight years from application to decision. That is why NSIP was created by a former Government. We think it is absolutely right to use this for important energy policy. Again, consulting on the trigger point, if you like, for any application or group of applications to go into this is really important.

I did just want to go back to your previous point, Ms Twist, about exploration. I confess that until I took on the role I had not quite understood what exploration was. You watch a time-lapse build-up of a well and then it goes away again. It is a single well; it is a single drill point; it is a temporary structure. It is simply drilling a single well to establish the presence and flow rate potential of the gas, and then it can move away again and there is no degradation of the land. It is not as terrifying as some people think. You probably know more about it than I do.

**Liz Twist:** We have heard evidence from other people about exploration. Thank you for that.

Q193 **Chair:** We will come back to the national infrastructure issue and time periods in due course. In terms of the revised changes to the NPPF that you are suggesting, which build on previous written ministerial



statements about the importance of mineral planning authorities taking account of the benefits of onshore oil and gas development—I am reading the words of the NPPF—including unconventional hydrocarbons for the security of energy supplies and supporting the transition to a low-carbon economy, assuming we take that as read, if an application comes in for fracking where the applicant is making it clear from the beginning that the gas that they are going to extract, if they manage to extract some at the end of the process, is not going to be used for burning as part of our overall energy mix but is going to be used for another purpose, does the mineral planning authority at that stage have to have regard to this statement in the NPPF where it is not relevant to that particular application?

**Dominic Raab:** This feels, Mr Betts, slightly like a hypothetical scenario.

Q194 **Chair:** No, I think INEOS has actually said that they will use the gas from some of their sites for producing plastics.

**Dominic Raab:** The NPPF will be revised and published. We will make sure the guidance underpinning it is clear. Ultimately, I am not going to debate what INEOS or any other company has said. It will be to be determined by the local planning authority. Ultimately, it can come to Ministers and, ultimately, for judicial determination.

Q195 **Chair:** The mineral planning authority—the local authority—will have to simply make its best judgment about that situation at the time.

**Dominic Raab:** I would suggest that the NPPF and the guidance will be sufficiently clear, but it always has to exercise its judgment. That is its statutory responsibility.

Q196 **Helen Hayes:** The ministerial statement that announced the introduction of a shale environmental regulator came just days after this Committee had taken detailed oral evidence from the existing regulators. I hope therefore you can appreciate the Committee's frustration that the timing of the statement means that evidence could not possibly have been taken into account by the Government in making the statement. I have some questions that focus on the implications of some of that evidence that we had from the existing regulators. Could you tell us what will the role and remit of the shale environmental regulator be?

**Claire Perry:** I think you were here, but just to confirm, the WMS is intended to announce the consultation on the potential look, if you like, of a standalone shale environmental regulator. What we have done is acknowledge the complexity of regulation right now. We acknowledge that we have excellent regulatory regimes but it is complex and it is not transparent to the industry, and also for local decision-makers, as to who is responsible for what. We are told—and you may as have heard as well from decision-makers—that the sequential processing of regulatory applications is one of the reasons we have had very significant delays, well outside the statutory guidelines.



We want to set up a coherent single face for the public mineral planning authorities and industry, which was a manifesto commitment. The form of that and whether it should be the three current regulators working together in a more seamless fashion or whether it should have any standalone responsibilities will be part of the subject of the consultation this summer. I apologise if you in any way have felt that we would not be taking into account your Committee's evidence. I can assure you that will not be the case.

**Q197 Helen Hayes:** Both the manifesto and the statement refer to a single regulator. Would it not have been better to announce this consultation as being about the shape of regulation of the shale industry, acknowledging that there are complexities around the creation of a single body and there are potentially some conflicts around the creation of a single body? Such an announcement might have acknowledged the complexity and lack of fitness for purpose of the current regime while leaving the impression that there were a range of options that were genuinely on the table for the future of regulation.

**Claire Perry:** I am entirely open to suggestions as to how we title the consultation. You may have just come up with a good title for us. What we have said we want is to have regulators acting as one coherent single face for the public mineral planning authorities and industry. That could be accomplished by a standalone body or it could be accomplished by the three regulators working more coherently together and having a single point of contact, if you like, which is essentially what we have started to do immediately. Again, it is important to have a consultation on the future set up of a statutory regulator, which we will develop and bring forward. The plan is to do so before the summer recess.

**Q198 Helen Hayes:** To what extent have you explored the potential transferring of existing regulatory powers from the existing regulatory bodies to a new standalone regulator?

**Claire Perry:** We have not explored that. The focus has been on launching an operational working group, including case management support, so that we have a joined-up coherent group of people, ultimately, who sit behind the regulations, so that people are aware of whose responsibility it is to deal with applications and to resolve consenting issues across local bodies. I am going to be personally chairing the next several of those meetings, because I want to understand myself where there are particular issues or concerns and what might need to be done. The challenge of this is around the complexity. We do have excellent regulators in this space and we want to make sure they are working effectively to support developers but also to support local planning authorities and mineral planning authorities, because we know, again, that it can be a very confusing picture for people who are trying to make the decisions on the ground.

**Q199 Helen Hayes:** What are your intentions at the moment around the levels of public engagement, which will be maintained, increased or reduced as



a consequence of a new regulatory regime?

**Claire Perry:** We will consult on the regulator. We will set forward in the consultation this question of what the form of the regulator should be. My sense is—and we will look at this in the consultation—that the regulatory regime as applied by the three regulators now is considered to be an excellent regulatory regime. The problem is the complexity and the sequencing of the various consultations. As we have done in the offshore industry, where we have world-leading regulators in the North Sea basin, we have taken that expertise onshore and the three regulators, in terms of the regulations, are very much fit for purpose.

Q200 **Helen Hayes:** In terms of public engagement around the regulatory process and the decision-making process, what are your thoughts about that?

**Claire Perry:** Again, it being clear to the public how the process is made and what each regulator does is an important part of that. That is partly why the shale brokerage service at the moment is a local authority-facing set of actions, if you like, but there is nothing to stop this being made very public. The idea is that we want to have a transparent and robust regulatory regime so that people can be reassured the decisions and the activities are properly regulated.

Q201 **Helen Hayes:** Before the ministerial statement, concerns have been raised that a single regulator might have a vested interest in promoting the industry. Concerns were also expressed by one of the regulators who came before this Committee last week that there might be an inherent conflict between, for example, the economic aspects of regulation and the environmental aspects of regulation. How will you ensure that the regulator ensures safety rather than promotes the industry?

**Claire Perry:** Again, the intention of regulation is not to be a champion for the industry; it is to ensure that the activities are done in the most robust form. This will absolutely be a point to be made in the consultation and response, which we will be launching.

Q202 **Helen Hayes:** There might be a perception that there is a streamlining of regulation in order to make it easier for the industry to commence activities in a wider range of different communities.

**Claire Perry:** I do not think there has been any sense that has been a regulatory barrier to the industry. The industry is working better. As we know, there has been a highly complex interplay between regulations and planning, which means that the applications are taking a long time and creating uncertainty for local authorities and developers. I have heard no sense whatsoever that there is a desire to lighten the regulatory burden. In fact, it is quite the opposite: there is a strong view that we could create a real benefit in helping other countries that we know are wrestling with similar issues but also have potentially very substantial amounts of onshore gas, by helping them develop a robust regulatory regime. There could be a big export opportunity for our knowledge and expertise.



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**Dominic Raab:** If I may just add, we were being questioned earlier on why we did not consolidate and merge all the guidance and the regulation. This is one of the reasons why: in order to make sure that there is no question that we are losing sight of one or other aspect that needs to be done in a discrete way in order to retain the confidence that you have described.

**Claire Perry:** If I can be clear, thanks to my very helpful officials, there will be no transfer of the licensing conditions that sit in the OGA into the regulator. There is no sense of doing that because, as you have pointed out, there is the absolute need to separate the cheerleading from the regulatory role.

Q203 **Helen Hayes:** How are you proposing that the regulator will interact with the mineral planning authorities?

**Claire Perry:** Subject to the consultation as to what is required, the way to think of this is as a virtual model. It is a single face-to-face point of contact and different users can access it for different requirements, if you like, whether it is information about regulation but not as planning, as we have talked about. We think it is important that they are separate. It is essentially bringing together those who are facing this industry in all its forms—local authorities, mineral planning authorities, industry, the public—and trying to work out the best way to support them with a very strong regulatory structure.

Q204 **Helen Hayes:** Will the regulator have a role at all in maintaining planning guidance on fracking?

**Dominic Raab:** I do not think that is our intention; again, it is part of keeping the guidance discrete. There is learning that comes through any regulator. As I said before, the NPPF is a national point at which all of the issues that affect planning can be filtered through. The responsibility for it will remain with our Department at the national level and obviously the local planning authorities at the local level.

Q205 **Chair:** One of the findings from the inquiry into the Piper Alpha disaster was that health and safety regulation should be kept separate. Are you going to take account of that?

**Claire Perry:** Yes. The Cullen inquiry is absolutely part of the thinking about how this regulator would sit. That is the reason for excluding the licensing functions that sit in the OGA, because there was a view expressed in Cullen that energy policy functions and economic licensing are separate from environmental and safety regulation. The Piper Alpha example is the one that is quoted.

Q206 **Chair:** If you were going to include in a separate regulator environmental issues and responsibility for environmental issues on fracking sites, you would need primary legislation, would you not, to remove from the Environment Agency the current responsibility they have for environmental matters throughout the whole country?



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**Claire Perry:** To reassure you, Mr Betts, there is no intention to do that. This is not about stripping very highly functioning regulators—HSE and EA, in particular—and putting them into another regulator with a statutory footing. I suppose it is like a Venn diagram of clustering together those parts of their regulation that face the industry, the public and the local decision-makers and making sure that they are accessible and supportive.

Q207 **Chair:** Can we go on to a completely different issue that is mentioned in the ministerial statement? It comes out from Ministers fairly often that dealing with planning applications remains disappointingly slow. Those are the words used. Could the Minister tell us which particular application you have in mind?

**Dominic Raab:** You are right, and one of the aims of the 2018 written ministerial statement is to facilitate speedier decisions. We are putting in £1.6 million over the next two years to support local authorities dealing with shale applications. It is about getting it right but doing that in a swifter process. The data is that we have had seven planning applications for shale gas exploration so far. Of those seven applications where decisions were taken by the planning authorities, they took between 17 and 83 weeks to get to a decision, whereas the statutory timeframe is 13 weeks from validation of an application to decision-making. It is 16 weeks if there is an environmental impact assessment. That gives you the basis for our concern to make sure we have the most efficient system in place.

Q208 **Chair:** Are you saying that every one of those applications should have been dealt with within 16 weeks?

**Dominic Raab:** No, I am just pointing out that the fact that none of them were dealt with within the timeframe suggests that we have some work to do.

Q209 **Chair:** I do not know whether you saw the evidence we had from Andrew Mullaney from Lancashire County Council last week; he spelt out in great detail to the Committee why, for example, when new information is provided by the applicant responding to questions about the environmental impact assessment that has been done, the authority has to consult under Regulation 22 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2011. That is again another three weeks every time they consult. He said they had had four such Regulation 22 issues around the application. That already is an extra 12 weeks of statutory requirement, is it not?

**Dominic Raab:** We will take into account that local experience. All of these matters are going to be consulted on. It is also why we are putting in more money to support local authorities. We want a clearer framework. We know there is some capability-building that needs to be done but we also want to make sure there is not undue delay, well beyond the statutory timeframes, as a matter of course.



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Q210 **Chair:** Can you tell us in which of the applications that have so far been considered you believe there has been undue delay in dealing with?

**Claire Perry:** All of them are outside the statutory limit. I do want to pay tribute, though, particularly to members of local councils who have given evidence, because in a way they have gone through the pathfinder process and these applications have in some cases been subject to tens of thousands of complaints, many of which are from outside the local area, whereas a housing development of a similar size may only have tens to low hundreds of representations. They have helped all of us understand what we need to do to support them and make the system a little more robust.

Q211 **Chair:** An application may be considered outside the statutory limit for a very good reason, as I think Lancashire explained to us. The question I asked was which are the ones that you are concerned have been subject to undue delays?

**Dominic Raab:** Mr Betts, I am sure you know this is coming: we are not going to start singling out individual local authorities. We are in the business of supporting them: learning from them, listening to them and supporting them.

**Claire Perry:** Absolutely.

**Dominic Raab:** As a general matter, what we are extrapolating from experience—and, yes, it is important to look at all the local circumstances—is that we are not getting anywhere near, overall, our statutory timeframe and we want to make sure the regime and the support is there in place to help us to get close to doing so.

Q212 **Chair:** In terms of support, you have announced a £1.6 million shale support fund. Is that in addition to existing resources, or does that include existing resources?

**Dominic Raab:** It is new money.

Q213 **Chair:** That may be welcome but is it sufficient? We heard from the chief exec of North Yorkshire that just dealing with one planning application, which I think they approved, cost them £500,000. That would be a third of your additional money gone in one application.

**Dominic Raab:** Not quite. The aim is not to fund the resource required for individual planning applications; it is to build the capabilities and the capacity of the local authorities. Some of them have greater pressures and greater strengths than others, and so it would be quite focused. It is about capability-building across the local authorities. As I said, that will depend on the demand they face and the existing strength they have.

Q214 **Chair:** In terms of the brokerage service that you are suggesting, is this funded out of the same £1.6 million, or is that additional funds as well?

**Claire Perry:** It is additional.



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**Dominic Raab:** That is a further piece of capacity-building infrastructure, if you like, aimed to provide guidance to local authorities and the developers on the planning process and how best to engage with it. Obviously, it is about the process. The brokerage service is about the process rather than in any sense considering the substance of the planning applications.

Q215 **Chair:** In terms of the actual support for dealing with planning applications as opposed to capacity-building or the brokerage service, how much is available for that for local authorities?

**Dominic Raab:** I am very happy, if we do not have it immediately to hand, to write to you with all of the existing funding, the new funding and the brokerage service, if that would be helpful.

Q216 **Chair:** Yes, that would be very helpful indeed. Do you think that authorities in North Yorkshire's position, if they get further applications, where each one is going to cost them £500,000—and there is no evidence that the costs are going to diminish in the future—are going to need some additional resources beyond those that you have already identified?

**Dominic Raab:** Obviously we keep it under constant review. Local authorities can make more than one bid. We will learn from our experience as we go, but the key message we are sending is that we want to support local authorities throughout this process.

Q217 **Matt Western:** To pull up on the brokerage service, the written ministerial statement says that the service will provide guidance to developers and local authorities on the planning process to facilitate timely decision-making. I guess, from what you have been saying earlier, that means a faster process. Can you explain or confirm that it will also work for those groups or individuals who are opposing a planning application?

**Dominic Raab:** The overriding focus will be on making sure that the planning process is clearly understood on both sides. We will need to be careful in getting involved in anything remotely connected to the substance of the decision but, for example, making sure that there is positive engagement between the parties and any statutory consultees is certainly part of the remit. That probably addresses what you have in mind.

Q218 **Matt Western:** A broker is there to give advice, are they not? That is the general sense of the term "broker". Therefore, if it was a local authority or an applicant, you could get that. Surely, it would be balanced if it was also giving advice to those who are looking to oppose, address or challenge the application?

**Dominic Raab:** If you started expanding its remit in that way, it would become very diffuse. The point is that the broker is tasked with facilitating positive engagement between the parties and, on the other



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hand, the statutory consultees. That is the way it will be focused, to try and make sure it is properly targeted but also covers the breadth you are describing.

Q219 **Matt Western:** How will it work with the mineral planning authorities?

**Dominic Raab:** In what respect?

Q220 **Matt Western:** I am trying to understand this brokerage service. It is obviously a creation that you are describing in the statement. I am just trying to understand how it will work with the MPAs.

**Dominic Raab:** It is going to try to encourage the local authorities to facilitate timely decision-making and greater use of planning performance agreements where they are appropriate. It will seek to ensure that all the parties are positively engaged in the pre-application discussions. Obviously, as I said, it is focusing on the process, not the substance, but it is about giving the local authorities and the planning authorities the capability and the confidence to deal with those applications.

Q221 **Matt Western:** Can you give an example of how that might work? If an application comes in, at what point would the brokerage kick in?

**Claire Perry:** It is as required. This is a resource that the Government want to make available, again recognising that these are complicated decisions. It is there to provide guidance to local councils, which we know work very hard on what can be tough issues. If you have 36,000 expressions of concern, most of which are not coming from the local area, there is a suggestion that those who want to oppose these developments do not need much more support than they already have. What we know is that the length of time it has taken to work through complex decisions is too long. Therefore, this was something that was asked for: "Can you help us navigate these pathways of planning?" It is meant to be a resource that is there. It is not a statutory requirement to use it if authorities do not feel the need to.

**Dominic Raab:** The feedback in terms of what is useful to local authorities is that it should be as early as possible but to try to understand what the focus of the pre-application discussions and issues are likely to be, almost to narrow down the issues that they are going to have to then grapple with.

Q222 **Matt Western:** It will not be proactive; it will be waiting for the local authority to approach them, or likewise the applicant.

**Dominic Raab:** No. It depends what you mean by "proactive", but we will want to be encouraging local authorities to make use of the service to get the best out of it. That may well be early on.

Q223 **Matt Western:** The facilitation is on demand, basically.

**Dominic Raab:** Yes, I think so.



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**Claire Perry:** It is set up and resourced from now. It is there. It is a resource that is required, funded and set up. If authorities, developers and others want to use it, then they can.

**Dominic Raab:** Equally, if a local authority was finding things challenging, we would be proactive in trying to encourage them to take advantage of the infrastructure we have set up to boost capability.

Q224 **Matt Western:** How would it work? Would it have any role or responsibility towards planning officers, or support for planning officers or councillors on regulatory authorities and committees within authorities, to give them training or direct support?

**Dominic Raab:** I am not sure whether we have gone quite as far as training. I would want to look at that but I am again happy to write to you about it. The key distinction we are focused on is getting the local authorities as organised as possible, thinking about the issues they are likely to face but not trespassing on the substance of individual planning applications. Anything that covers that initial procedural remit would be within bounds that the planning brokerage service would be able support with.

Q225 **Liz Twist:** We have heard from a number of people giving us evidence, especially from some of the statutory consultees that the regulators have talked about. I just wondered what evidence there was that this brokerage service is needed.

**Claire Perry:** The feedback from the Departments is that, as we have discussed, there are various levels of planning policy and these are often decisions made extremely controversially at the local area, often by outside influences, and we need to make sure local authorities have all the support they need to work through them.

**Dominic Raab:** We are in the early days with a lot of this. We only have a limited amount of practice but we want to make sure that we do not wait for challenges to arise. We know there is an issue with some of the timeframes. We know there are understandable reasons, as you have described, for why those are taking place. We want to be proactive in supporting local authorities in dealing with this.

Q226 **Liz Twist:** Mr Betts asked earlier about the reasons for delays, and the evidence that we heard from Lancashire was that it was the issue of new information being brought forward by the applicants that was causing the delays.

**Claire Perry:** This is absolutely part of the reason for having the brokerage service; it is working with applicants, local authorities and statutory consultees to make sure that you do not have those kinds of sequential requirements that quite properly then require local consultation. It is also meant to be a way of making sure applicants are providing the right information in a timely fashion.



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Q227 **Liz Twist:** Does that mean you will be doing a lot of proactive work with applicants to make sure they submit all the information that may be required at the early stage?

**Dominic Raab:** We want to make sure that the brokerage service is made available to both sides. Of course, a key consideration in all of this is that some local authorities will get better at this more swiftly, but we want to make sure that we can spread the practices of those who are pioneering best practice. I would see the brokerage service as really helping lift up the standards across the country, because there will be some local authorities that are smaller and less advanced in dealing with this that can learn the lessons from elsewhere. This is a great way of facilitating that.

Q228 **Liz Twist:** To play devil's advocate, some people might see it as a way of pushing through contentious applications more quickly.

**Dominic Raab:** As I said, this is all about the process, advising both local authority and the developers on the process and how best to engage with it. It does not touch or impinge on the substance of any planning applications. We can say that the integrity of the decision-making is going to be preserved that way.

Q229 **Matt Western:** To follow up on that point, it does seem, in everything that you have said, that the emphasis is very much on giving legal advice or additional support to ensure this goes through. Would that not be a good way of summing up the brokerage service?

**Dominic Raab:** It is not legal advice. It is procedural and process learning.

Q230 **Matt Western:** Or ways around.

**Claire Perry:** No. Forgive me, but this is a very nefarious line of questioning. We all face controversial planning decisions in our local authorities. This is meant to be helpful to incredibly hard-pressed councillors and officers. The idea that somehow we want to set up and fund something to give people reasons to get around legislation and planning guidance we are bringing in is one I completely reject. This is meant to be something that is helpful to authorities that we know are struggling, often because we have made it very complex, and we now want to make it much clearer to help them meet the statutory guidelines. Maybe you think of dark arts in your constituency, Mr Western. In my constituency, we all want to help our local authorities make decisions.

Q231 **Matt Western:** I have sat on a regulatory committee. I am very aware of what happens on regulatory committees, the pressures they are put under and the experience that is required. The point was very simple, and that was about whether there is more emphasis being given to the applicant and support being given to the applicant, as opposed to a balanced view on these applications. That was the first point of my question.



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**Dominic Raab:** No. The brokerage service is there for both the local authority and the developer. One of the key things we do is facilitate positive engagement with all of the statutory consultees. To be honest with you, if we were not doing this, your Committee would be criticising us.

**Claire Perry:** You would be asking why we are not doing this. Is this not a helpful thing? We have just heard from the evidence you have taken of situations where there could have been better co-ordination between the developer and the local authority in terms of information. This is a way of making sure that information is provided in a timely fashion, by developing potentially a planning performance agreement that obliges both sides to deliver.

**Dominic Raab:** Which, of course, for local communities could be a good way of establishing early confidence in the process.

Q232 **Matt Western:** I understand. Perception is a very important thing, and how this will come across to communities is that there is very much a skew towards the applicant and getting something through. If I could extend this, as an example, in planning committees it is made very clear to people who oppose some sort of application—it is spelt out to them—that the only basis or grounds for opposing such an application would be on such-and-such a basis. I would suggest that this brokerage could actually serve a good function towards the opposition as well.

**Claire Perry:** It behoves all of us to be responsible when we are talking about this industry and the benefits it might bring to the national and local economies.

Q233 **Matt Western:** That is for another day. That is very questionable, I would suggest.

**Claire Perry:** It behoves all of us to be responsible in our communications. This is simply meant to be a delivery of a requirement for which we have been asked, which will help all parties to a complicated decision-making process reach a better decision.

**Dominic Raab:** You have rather depicted a very adversarial process. One of the points of the brokerage service is, early on, to try to break that down and create the win-win for the community and for the local authority, and that locks in the developer. We would feel that this is trying to get away from the adversarial situation and get in there as pre-emptively as possible, to make sure that local community concerns have been taken on board. Any planning performance agreement that is agreed voluntarily is an opportunity to lock that in. It is an opportunity to get around some of the opposition by meeting it and addressing it, not somehow in an untoward way, circumventing the issues or the process. It is quite the opposite.

Q234 **Matt Western:** Yes. I am not sure about “adversarial”. It is adversarial in terms of someone may apply for something and sometimes you have



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an opposition to a planning application, whatever that may be. My simple point is that if this brokerage service was also working, or was seen to be working, to support and advise opposition, that might be a positive effect.

**Claire Perry:** Do you have any evidence that that support and advice is not being currently provided?

Q235 **Matt Western:** I do not, but then I do not know that any advice is being currently provided to the applicant.

**Claire Perry:** This is meant to provide positive engagement between the parties—the local decision-makers, the applicant and statutory consultees, who are those who are required to reach a decision on these particular applications.

Q236 **Matt Western:** I understand that. I am just suggesting that there may be advantage in extending it to other parties who have an interest in these applications.

Can I move on? I want to ask about the current planning regime and how the Government could better support co-operation between the mineral planning authorities and other regulatory and advisory bodies when determining fracking applications.

**Dominic Raab:** Sorry, what is the question? Is it how it can be done better?

**Matt Western:** In the current regime, yes.

**Dominic Raab:** Again, can you elaborate a little bit because we have covered lots of this already? I do not want to miss what you are trying to get at here.

Q237 **Matt Western:** Given the current regime between MPAs and the advisory bodies—the other regulatory bodies—how could Government better support it?

**Claire Perry:** Again, is that not the purpose of the £1.6 million fund that is available to mineral planning authorities? I thought we had covered that, in that we are absolutely trying to support them with additional resource with new applications. That was the purpose of the fund.

**Dominic Raab:** We are here together. We are working very closely together. We want to make sure that this is a model of cross-departmental working. There are issues that affect me and my Department that also affect Defra. Flooding is a good illustration. We are going to make sure, through our joint working, that we cover the whole remit. If you have an example of something that is not working properly, beyond what we have given evidence on today, I am very happy to take that away and look at it.

**Claire Perry:** Maybe we are just misunderstanding the difference between local authorities and mineral planning authorities, which



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effectively become the same thing in these processes. All of the comments we have made in relation to support for local decision-makers should be taken to read across to local mineral planning authorities, which of course only exist in counties, do they not? I know Wiltshire has one.

**Dominic Raab:** Or unitaries.

Q238 **Matt Western:** Finally, how does the working relationship function between the Ministry of Housing, Communities and Local Government and BEIS?

**Dominic Raab:** It is terrific, as you have seen today.

**Claire Perry:** We have a cross-departmental action team that I lead in close consultation with Dominic. We also touch Defra and HMT. What we do is try to work as closely as possible across Government. It was very much a joint WMS. It is a joint working team. We have excellent officials on both of our core policy teams but we do work closely with other Government Departments as needed.

Q239 **Matt Western:** What gaps have you identified?

**Claire Perry:** None so far. What we want to do, as we promised, is bring forward the consultations and take advice. We absolutely appreciate the level of scrutiny you are giving us and other evidence-givers to your Committee. We want to come up with a regime—both a planning and a regulatory regime—that does the job, which gives the right balance between local and national decision making, allows us to support those who are making decisions and allows us to, as we said, take us through this evidence-led process of assessing whether this resource is something we can be using.

Q240 **Kevin Hollinrake:** Looking at moving the planning process potentially to NSIP, Mr Raab, earlier you expressed concerns about the speed of the process and the speed of decision-making. Is that the only reason you are thinking of moving over to that?

**Claire Perry:** This of course is for production applications, not exploration. I guess it is a predictability question. You have a one-year statutory timeframe—within a year; it does not have to be a target. You have national policy statements that establish the need for that particular investment and provide the basis for the decisions. It does bring together this one-stop shop for planning, consents and representations to be brought together. It was brought in in 2008 and it has been a useful addition to these really important decisions we make about nationally important investments.

Q241 **Kevin Hollinrake:** We have heard evidence on both sides of the argument. INEOS themselves, in their written submission to us, said, “INEOS considers that the use of the 2008 Planning Act system would not be suitable for individual well applications”, for example. Yet, on the



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other side of the argument, we have heard protestors saying that this is undemocratic.

**Claire Perry:** There you are: making fact-based decisions without leaning in to one particular side of the argument. There is an important point, though, and this is the intention of consulting on it: what is the trigger point by which an application or a set of applications would be brought into this regime? There is a real difference between exploration—single well—and then production, which might mean multiple points of extraction in that well. Again, that is why we want to consult and make sure that the trigger point is established.

Q242 **Kevin Hollinrake:** You might decide that a certain element of the process is NSIP.

**Claire Perry:** A certain size of project might be NSIP-able.

Q243 **Kevin Hollinrake:** Could you give us more detail on what your thinking might be?

**Claire Perry:** I am thinking about getting a consultation out that establishes these important questions and gets them answered. Again, we discussed earlier the value of doing this. Hinkley Point C was a very interesting case in point: an important strategic piece of infrastructure, which took a 17-month NSIP regime—outside the 12 months; we must have tightened up since then. You have a one-stop shop, if you like, for these decisions.

Q244 **Matt Western:** I will come on to that, using that as an analogy or example, in a second. In terms of timescales, it is public consultation and then what is it from there? What are the timescales around this potential policy announcement?

**Claire Perry:** We have not set out the timescales for the consultations. The intention is to launch them before the summer recess and then let them run for a sufficient time to make sure all the right decisions can be brought in. I do not know that we have set a target time for bringing this forward.

**Kevin Hollinrake:** Your response and that sort of thing.

**Claire Perry:** Yes. This has to be done correctly.

Q245 **Kevin Hollinrake:** Moving on to permitted developments, this centres around non-hydraulic fracturing shale exploration. That is what you are considering on permitted developments. What could that include? On well pad construction, for example, even drilling that is not fracturing—just to drill the well itself—you can only drill on a well pad. Would the construction of the well pad be permitted development, for example?

**Dominic Raab:** The principle is that it is only in relation to the exploration phase. One of the things we will want to look at very carefully is the definitions around that. We will take into account, Mr



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Hollinrake, the challenge and the questions. We will certainly feed that in, because it will be very important to get the definitions right.

Q246 **Kevin Hollinrake:** Yes, because you can understand the concern that these well pads are significant pieces of infrastructure. If you can simply put one anywhere on a permitted development basis, people would have real concerns about that. I am sure that is not what you are trying to achieve.

**Dominic Raab:** No. It is useful to have this meeting. We understand the concern; we will feed it in.

Q247 **Kevin Hollinrake:** I have a similar question that you probably will not be able to give me the answer to, but a test frack, for example, might be considered within that definition too. Would that be covered under permitted development?

**Dominic Raab:** Again, the key distinction is between exploratory operations and ones for production. In terms of which side of the line that would fall on, I am afraid I am not a techy or an expert.

**Claire Perry:** We do need to set quite clear guidelines on this. PD will need to have very clear guidelines if it is to be successful, for exactly these reasons.

**Dominic Raab:** Obviously, again, that is why we need to consult on it to make sure we get the parameters right and they create more, not less, certainty.

Q248 **Kevin Hollinrake:** Assuming you come to a certain position, what legislation would be required to bring all these different measures forward?

**Dominic Raab:** That is a good question.

**Claire Perry:** We will have to write to you. It clearly requires legislation. I cannot remember. I think it is secondary but it certainly requires legislation. People are scribbling to us. It is secondary legislation but it would obviously require the consent of the House to bring it forward.

Q249 **Kevin Hollinrake:** Is that for NSIP and permitted development? Perhaps you might write to us.

**Claire Perry:** I want to say yes, but I need to double-check.

Q250 **Kevin Hollinrake:** In terms of the comparison you made a couple of times about Hinkley Point C, you also mentioned the fact that a single well pad has a certain kind of development life cycle. It comes in and comes out. One of the things that really concerns people is the cumulative impact of this development. You will accept, of course, despite the fact this is a national opportunity, which I think most people can understand, it has to be acceptable locally as well as nationally. To have a social licence, there is a concern not about that one individual well



pad but the ongoing cumulative impact of those developments. How would an NSIP regime, which is totally different from one nuclear power station, for example, cope with that?

**Claire Perry:** It is a good question—and this is again why we need to consult—because currently the threshold set for generation is a capacity size for us. We would need to be clear about setting out what the threshold was, whether it is an extraction volume or a number of wells. This is in my brain rather than anything I have read, but that is clearly the question: what is this trigger point and what would make sense for this trigger point? Clearly understanding the cumulative impact and concerns of local communities in that would be really important, and a really important part of that process.

Q251 **Kevin Hollinrake:** I went out to Pennsylvania to look at this kind of stuff and I looked at the impact on local communities and the local area. Clearly, the fewer well pads there are, the more acceptable it is to the community. I think that is fair to say. That was definitely the impression I got. In one of their documents, INEOS has stated that one well pad can cover 10 to 15 square kilometres, which then led to a certain local authority defining that there are no more than 10 well pads per 100 square kilometres, to give people and the communities the understanding of what they can expect. You can then represent that in your mind and that can be represented visually as well, so people did not think that this would end up like some Texan oil field, which is a real concern people have.

If it moved to NSIP, how would we develop guidelines on that basis? Would that be the kind of thing we would look to do, to provide those protections and to provide that kind of certainty and confidence in the community that this was not going to end up redrawing the landscape?

**Claire Perry:** We would need to provide a bespoke definition for trigger points but again absolutely bear in mind that the idea that we want to turn our beautiful countryside into sun-scorched Texan is absolutely not right. Certainly the view of industry is that the number of wells you put in a particular pad is based on what the formation looks like. That is part of the exploration process: trying to work out where you get the highest extraction and extraction rates for the minimal amount of drilling, because it costs to drill. You want to make sure that you are drilling carefully and judiciously to extract the maximum benefit. These are absolutely the points that we need to put into the consultation for what the appropriate trigger point is.

Q252 **Kevin Hollinrake:** There is a delicate balance to be struck. The operator has a responsible within the PEDL licence to maximise recovery, which seems to contradict the planning authority's responsibility to measure cumulative impact. How are those two things put in balance on a national basis? That would be the concern many people would have.

**Claire Perry:** I agree. That is exactly the purpose of the consultation: to understand what the impact of cumulative development actually is.



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Q253 **Kevin Hollinrake:** You would not rule out potentially some national guidelines on that basis to inform an inspector on how they would make a decision in Bristol rather than Northallerton?

**Dominic Raab:** I do not think I need to rule it out. I am not sure it would be necessary. At this stage, we are listening.

**Claire Perry:** Could I make a point of clarification, Mr Betts, which is just about the question about whether there is legislation required for both the NSIP regimes? Both NSIP and the PDR would require secondary legislation—affirmative—not primary.

Q254 **Chair:** Is it possible you could say to the Committee which bit of primary legislation you currently think gives permission?

**Claire Perry:** The Planning Act 2008 gives the Secretary of State powers to make amendments by affirmative order without primary legislation.

Q255 **Chair:** But in terms of the actual scope of the Planning Act, as we have understood it, there is some doubt about whether it covers energy projects, or it does but it does not appear to cover mineral extraction. It is one or the other. There seems to be a doubt about the actual definition that fracking falls under and therefore whether it would be covered in the Planning Act. Could you give us a note on that as well?

**Claire Perry:** I can try.

**Dominic Raab:** As a clarification, the PDR is a negative SI, not a positive.

**Claire Perry:** Sorry; you are right. It is affirmative for the NSIP.

Q256 **Chair:** Can you give us your view about the primary legislation?

**Dominic Raab:** We can do that.

Q257 **Chair:** Finally, I think one of the concerns around these issues we have discussed is a wider concern about the gradual erosion of local authority powers and the transfer up to unelected bodies. The justification for considering this—and I accept that it is a consideration at this stage—appears to be that the Government have a national policy and requirement for domestic gas to be supplied through fracking, and they are concerned that the current regime is too slow in dealing with applications. I have heard exactly the same argument from housebuilders: that the Government have a national requirement to build houses and so many applications take so long with local authorities that housebuilders get frustrated. Are we going to see this argument and this justification applied to other issues in the future as well?

**Dominic Raab:** No, but what we are doing with the revised NPPF is addressing very squarely the challenge that we have with homebuilding. There are all sorts of things from the streamlining of the process to the home delivery test to the provisions on density. What it takes to address the challenge in housing is not going to be the same with extraction of a



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mineral-based resource. We want to make sure we have the bespoke regime in place to maximise the homebuilding with the buy-in of local communities and all the infrastructure investment that goes with it—the Housing Infrastructure Fund and all the rest of it—and at the same time do it in a tailored way for shale gas.

**Q258 Chair:** The argument that there is a national government policy and it takes too long to deal with applications does not apply to housing and the transfer of those powers for major housing schemes up to the national infrastructure regime?

**Dominic Raab:** No, but we already have a planning system bespoke for housing. We are making sure we have the right one but we constantly review it. I am suggesting that the demands of the challenge, whether it is shale gas or homebuilding, are different. We want to make sure that we have the best regime in place for both. The balance and the point at which local communities feed in is different. You do not have the same process around Section 106 and CIL. They are not the same processes so they do need to be applied differently and we want to make sure we have the right regime for both.

**Claire Perry:** I agree completely with Dominic. This question of balance is so important. Equally, we have made it very difficult for local decision-makers and those putting together mineral plans, because it is early stages in the process. There has been an awful lot of misinformation put out in the public domain, often by groups that do not want us to use gas at all. There is a lot of ideology that is feeding into many of these plans. We have also arguably not given enough resource and help to local authorities to pick through what can be a very complicated landscape. Trying to help local decision-makers achieve that balance, make decisions based on the facts and take us through this exploration phase in a way that supports local decision-making is the objective of the WMS and is what we would like to do.

**Q259 Mike Amesbury:** If I was to set up a company called Frack-Free Liz, for example, this new regime would enable me to process things much, much quicker with the support of central Government overriding what may be the local planning authority, for example. I do not know. Frack-Free Liz Ltd might want to progress it forward in Surrey or indeed other areas of the UK, and the Government would support that.

**Claire Perry:** I have said this on the record several times. People say, “Would you like this to happen?” There is not shale formation in the middle of my constituency where I live but if there was energy to be extracted there, I personally have no issue. You could not do that, with respect, Mr Amesbury, because you would have to, first, get a licence to do this, then you would have to pass a whole series of tests in order to enter the market, then you would have to submit an application that would go through all of the various processes we have talked about, and then, if you were to proceed to get a permission to extract, you would have a whole other series of tests. We have not talked about the



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financial test that we also apply, but there are a whole series you may or may not meet. There are some pretty robust checks and balances to stop Amesbury Fracking Ltd coming any time soon, but you never know. Maybe there is another career beckoning.

**Chair:** Thank you both very much for coming to give evidence to the Committee this afternoon.