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## Purpose Built

# Assessing the impact of fracking for rural areas

July 14, 2015 By Guest Blogger — [Leave a Comment](#)



*In light of the release of the Department for Environment, Food and Rural Affairs' (Defra) unredacted report ([Draft Shale Gas Rural Economy Impacts paper](#)) assessing the impact of hydraulic fracturing (fracking), Jeremy Glen, partner at Brechin Tindal Oatts solicitors, discusses the legal issues around fracking operations, and what the future may hold for this highly controversial method of extracting shale.*

### What have been highlighted as the potential negative effects of fracking?

Following freedom of information requests, the full report on fracking by the Department for Environment, Food and Rural Affairs (Defra) has now been released. Among the issues raised in the report are:

- the potential negative impact on house prices in the area
- unknown environmental damage
- a detrimental effect on human health due to polluted water
- the contamination of agricultural products, and
- the risk of earthquakes

One of the biggest concerns among members of the public in relation to fracking is how it will affect their property and, in particular, their homes. Although concern over the effects of fracking on house prices is commonly centred around damage caused by earthquakes, there are a host of other, perhaps more pertinent, issues which should be considered. Perceived direct effects of fracking can include changes to views, noise, traffic, airborne dust and road damage to name a few. In addition, the potential for issues such as groundwater contamination and methane gas seeps, whether realised or not, can alter the perception of houses in areas where fracking takes place and have a negative impact on house prices.

### To what extent could communities or individuals claim for specific loss or detriment as a result of fracking operations? What would be the challenges in bringing any claim?

The UK government has tried to pre-empt claims by communities affected by the fracking process, by declaring that higher levels of compensation will be made available. However, if the risks which have been highlighted do manifest, the potential for claims by community members is high. Difficulties can arise in respect of both quantifying the loss suffered by individuals or households, and proving causation in respect of that loss. As so many of the effects of fracking are still unknown, it would be difficult to prove that ill health or environmental damage has been caused directly by fracking.

### What are the particular challenges around claims around ill health?

There would need to be several cases of individuals suffering similar symptoms before a case could be made that fracking was the cause. As with all cases of exposure to toxins, it would be many years before the long term effects would be known—including for example, the effects on the development of unborn or young children. In addition, potential claimants would need to show that the loss sustained was not adequately compensated for by the government's standard compensation scheme.

### What do the proposed changes to access laws mean for landowners?

For the communities involved, the risks are high. However, despite receiving over 40,000 objections to their consultation paper in 2014, the government has announced plans to change access laws so that landowners are not able to prevent fracking under their property. In principle, this represents a fairly radical change to homeowners' rights in the UK, and the government claims it will avoid costly and time consuming application processes.

In practice, however, the change is less drastic. In *Bocardo SA v Star Energy UK Onshore Ltd* [2010] UKSC 35, [2010] 3 All ER 975, the Supreme Court held that while fracking operations on a landowner's land without consent constituted trespass, it did not interfere with the owner's enjoyment of the land. Damages to be awarded were therefore minimal. While community members would have the opportunity to object to applications for planning permission, it is unlikely objectors would be able to stop permission being granted if the government considers it to be economically viable.

### The UK government has distanced itself from this report, how do you think this might affect the future of the fracking industry in the UK?

The UK government has responded to the report by insisting that it is still an internal discussion paper which is 'not analytically robust and remains incomplete'. By trying to prevent the release of the full report, the government has exposed itself to wide spread criticism—including allegations of censoring and attempts to conceal the truth. It is worth noting here that the Scottish Government has banned fracking in Scotland for the time being, despite the potentially significant contribution it could make to the economy, announcing that they intend to carry out a full assessment of the potential risks before any fracking operations resume. In what has been a turbulent time for the energy industry in Scotland, the government's view is that too little is known of the risks and long term impact on health and the environment.

While the UK, and Scotland in particular, may not have the vast reserves of shale gas found in the US, significant deposits do exist and the UK government is keen to ensure they are exploited. However, despite the economic benefits offered by the fracking of shale gas reserves, the process has been heavily criticised by environmental groups, local communities and other organisations who are concerned about the wider impact of the process. The extent of the political impact remains to be seen, but for the foreseeable future the fracking industry appears to have the full support of the UK government and the impending changes to access laws will most likely result in a boom in the fracking industry in the near future.

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