

Regulatory Study Findings: main themes from qualitative analysis of interview data

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1. Background

In order to reach its net zero climate change target by 2050, the UK is dependent on the deployment of low carbon technologies, such as wind and solar energy and electric mobility. These technologies are heavily reliant on critical minerals (metals), such as lithium, cobalt, and rare earth elements, the production of which are unevenly distributed across the globe. Thus, a key regulatory challenge is to develop a critical minerals' circular economy (CE) roadmap that is underpinned by better resource flows and stocks of these metals across their value chains. It is crucial that any circular economy approach looks not merely to the end of life of products but also to the sustainable sourcing of minerals from the outset.

The UKRI funded project Met4Tech brings together an interdisciplinary team of academics who are exploring best ways to maximise opportunity in the provision of tech metals from secondary and primary sources as well as preparing a National Tech metals data Observatory and a CE Roadmap with Met4Tech partners for use by government and industry. Academics from this project have provided input into UK Government policy and strategy documents such as the UK Critical Minerals Strategy,¹ as well as to independent specialist organisations such as Critical Minerals Association.²

To that end, academics working on the legal and regulatory aspects of the project have conducted an empirical study to examine regulatory procedures and practices surrounding the primary extraction of technology metals. In view of the current renaissance in mineral exploration and mining development in Cornwall, this study focussed on the Cornish region, although some themes have wider relevance throughout England and Wales.

The findings of this paper are informed by an empirical study wherein primary data were collected through semi-structured interviews and focus groups that took place between February and June 2022. Seventeen interviews were conducted with different key stakeholders involved in the applications process, including regulators, mineral planning authorities, mining companies undertaking both onshore and off-shore exploration, lawyers working on mining applications, consultants, and representatives of trade associations. Interviews were followed by focus group discussions.

This empirical study provided significant insight into challenges and opportunities associated with the planning and permitting applications for minerals exploration and mining. Primary themes that emerged in the study included: the complexities associated with mineral rights; mineral safeguarding; blurred boundaries between planning and permitting processes; the value of early engagement with regulatory requirements; and limitations in the provision of meaningful government support.

¹ HM Government, UK Critical Minerals Strategy (2022) <https://www.gov.uk/government/publications/uk-critical-mineral-strategy>

² [Microsoft Word - CMA Mineral Rights Paper July 2022.docx \(criticalmineral.org\)](#)

2. Main findings

2.1. Mineral rights and ownership

The general principle regarding mineral rights in the UK is that of private ownership though there are exceptions for gold, silver, coal, oil and gas, which are reserved for the Crown Estate or other public authorities.³ Private mineral rights (which would apply, for example to minerals such as lithium, tin and tungsten) can be held separately from surface rights in land, and registration of mineral rights is not compulsory in the UK (with the exception of manorial rights). The UK mineral rights regime is historically complex, often dating back hundreds of years to the manorial rights of large landowners including the Church. As rights in minerals contained in land can be owned separately from surface rights in land, it is not unusual that they are retained even when land is sold. Evidence about mineral rights is also not centrally held and thus can simply be contained in deeds or documents that are held by the owner.⁴ The issue becomes even more complicated in situations where different claims might be held over the same parcel of land, or where questions arise about ownership of metals in geothermal fluids or in waters that flow over multiple properties involving a variety of interests in land. The difficulties in identifying owners of mineral rights to a particular piece of land is regarded by mining companies as a major obstacle and expense in the UK.

Interviewees almost universally highlighted that the current UK minerals rights' registration system is unclear, confusing, and complex, which is likely to be a barrier to investment. Specific issues mentioned by interviewees were that:

- The current minerals registration system is complex, expensive and long.
- Difficulties are compounded by the fact that registration of mineral rights is not compulsory in the UK (with the exception of manorial rights) and in some cases, it is impossible to identify mineral rights.
- Assembling land rights can similarly be difficult in some cases.
- Establishing certainty of the title is regarded by participants as a major legal issue.
- Chronic understaffing and poorly resourced land registry departments can delay the process of compulsory registration and leads to further delays in applications to carry out geological exploration.
- The Land Registry tends to prioritise compulsory applications for registration, thus causing particular delays and backlogs for voluntary applications for registration.
- Minerals rights owners are often unaware about their ownership or may be reluctant to formally register their ownership, even where aware of it, due to fear of potential liabilities. Many lack awareness that liabilities may still operate even where mineral rights are unregistered.
- There is a lack of standardised lease agreements, which further compounds the complexity.

³ BGS Minerals UK, Legislation & policy: mineral ownership

<https://www2.bgs.ac.uk/mineralsuk/planning/legislation/mineralOwnership.html>

⁴ C Tighe, 'Mining rights in UK can be barrier to exploration' *Financial Times* (29 Sep 2013) <https://www.ft.com/content/dd8c96e2-278d-11e3-8feb-00144feab7de> (accessed 9 May 2022)

Recommendations:

- Consider creation of a dedicated department for dealing with mineral rights applications in land registry, together with overall increase of appropriate human resources.
- Promotion of voluntary registration and raising awareness among landowners of mineral rights could provide a significant step towards facilitating UK mining.
- It would be useful to explore ways to reform the existing system of mineral rights' registration such as the introduction of compulsory registration, nationalising mineral rights or Introducing indemnity insurance in cases of qualified titles. However, any new solution needs to be carefully considered as it may have punitive impact on private owners. At the same time, any new reform needs to be underpinned by a robust overview of geological data which would justify the need for comprehensive reform of the mineral rights system.
- Consider alternative strategies in situations where mineral rights cannot be readily established (e.g. it might be useful to explore whether such rights could automatically sit with government, or whether such rights could at least be licensed on behalf of the eventual holder).

2.2. Mineral safeguarding

Safeguarding of non-renewable resources such as minerals is a key aspect of sustainable development. Mineral safeguarding refers to processes and strategies aimed at ensuring that mineral resources are not needlessly jeopardised, or crowded out by other development, and remain available for future generations.⁵

With regards to mineral safeguarding, interviewees highlighted the following issues:

- Mineral safeguarding needs to feature more prominently within wider discussions on mineral planning.
- There is a need to resolve tensions between mineral safeguarding and competing policy objectives such as house development and protection of biodiversity.
- There are difficulties in implementing mineral safeguarding plans and this is especially challenging in areas that have two-tier planning systems.

Recommendations:

- There is a need for more up to date and comprehensive data on mineral deposits. Recent governmental activity, such as the UK's new Critical Minerals Strategy and setting up of the Critical Minerals Intelligence Centre⁶ in 2022, is a significant step towards this goal.
- More frequent reviews of mineral policies and plans would help formulate more robust and dynamic strategies for minerals safeguarding.

⁵ British Geological Survey (2007), 'A Guide to Mineral Safeguarding in England'

https://www2.bgs.ac.uk/mineralsuk/download/safeguarding/guide_to_mineral_safeguarding_08.pdf

⁶ HM Government, UK'S First Critical Minerals Intelligence Centre to Help Build A More Resilient Economy, 04 July 2022 <https://www.gov.uk/government/news/uks-first-critical-minerals-intelligence-centre-to-help-build-a-more-resilient-economy> accessed 3 December 2022

2.3. Planning and permitting system

Planning and permitting are key processes for reducing the environmental and social impacts of industry, facilitating industry compliance with environmental requirements, and promoting technological innovation.⁷ This is often a two-step process where mining companies are first required to apply for planning permission (a process governed by the local Minerals Planning Authority or MPA) followed by an application to the Environment Agency (EA) for a permit.

Stakeholders in the interviews acknowledged that the UK planning and permitting system is by default permissive. Planning and permitting processes were also seen as being broadly transparent and public facing. Our interview data highlighted that:

- Participants recognised the value of permitted development for early exploratory work, though some felt that it has become more complex recently.
- Mining companies usually make the effort to engage early with the public in various ways, such as having open-door policies for local residents to discuss concerns, running community helplines, and working with schools and universities to enhance awareness of the need and benefits of responsible mining.
- A number of stakeholders took the view that local residents in Cornwall may hold more open attitudes towards mining in contrast to some other parts of the UK. This is particularly apparent in more deprived areas of Cornwall (where there may be greater historical experience and appreciation of the economic benefits of a local mining industry). However, attitudes may be less positive in more scenic areas with an influx of ‘newcomers’ to the region.
- Local residents are increasingly engaging with planning applications for minerals exploration. Local resident involvement in the planning process is becoming more structured and well-organised, with social media playing an important role in gathering evidence, creating momentum, and disseminating information (as well as, in some cases, misinformation).
- There was a perception amongst participants that local residents were primarily concerned with environmental impacts or with the impact of mining activity on their own area and day-to-day life (e.g. noise, dust and house prices).
- Local politics exerts an influence over planning decisions. The perception was that this may also have a downside in that political demands and a desire for electoral ‘popularity’ in local constituencies may occasionally override a sound evidence-based approach to planning applications.
- Mining companies on the whole have established a good working relationship with local authorities in Cornwall and the EA.
- Regulatory difficulties arise with reliance on old permissions.
- Planning requirements are regarded by mining companies as lengthy, complex and intensive.
- Inability of local authorities to issue decisions within prescribed timeframes is seen as a barrier to development.

⁷ OECD (2007) ‘Guiding Principles of Effective Environmental Permitting Systems’, 3
<<https://www.oecd.org/env/outreach/37311624.pdf>>

- The quality of environmental statements submitted by mining companies was described by most interviewees as being generally good.
- Some supporting environmental studies may be difficult to undertake due to lack of available expertise.
- Planning and permitting processes are typically not well linked and can frequently overlap, which may lead to considerable inefficiency and duplication of information.
- There are high levels of expertise within local authority planning teams and the Environment Agency, but very little, long-term investment in human resources and building future expertise.
- Some participants expressed the view that the Government needed to move away from the idea that intervention from the government needed to simply take the form of “more rules and more rules,” which could put further burden on the mining sector.

Recommendations:

- Most stakeholders agreed that mining planning and permitting decision-making should remain locally-based as currently. However, many also expressed the view that alongside this, some consistent guidance on regulatory processes from a central authority would help offer clarity to local authorities when needed and consistency across regions.
- Interviewees highlighted a need to update the Mines (Working Facilities and Support) Act 1966 in order to further facilitate mineral operators to access land and explore; This Act is nearly 60 years old and needs to be amended to support new minerals’ workings.
- Improving capacity and resources within local planning authorities and the Environment Agency was seen as crucial to help the development of local mining industry.
- It would be helpful to consider possible changes to the interplay between planning and permitting processes (e.g. one licence covering all activities or introduction of twin-tracking process).
- National planning guidelines are necessary to bring greater consistency at the local level.

2.4. Governmental support for mining

The UK Government has been the first in the world to set legal targets to reduce greenhouse gas emissions. A commitment to facilitate the rapid adoption of green technologies is also outlined in the 2020 policy paper ‘Ten Point Plan for a Green Industrial Revolution.’ However, ensuring a steady supply of critical technology metals will be crucial for this green technology transition, an issue that did not receive sufficient consideration in the 2020 policy document. Subsequent years have, however, seen government pay greater heed to the issue; in 2022, the Government launched the first UK Critical Minerals Strategy⁸ that aims to improve the security of supply of critical minerals (through both primary extraction as well as improving other secondary sources of supply).

⁸ <https://www.gov.uk/government/publications/uk-critical-mineral-strategy>

Interviewees raised the following issues with regards to governmental support for mining:

- The UK Government was generally described as being reactive rather than proactive in relation to minerals extraction policies.
- There was recognition among participants that departments such as BEIS are now working very hard to understand the issues and support the industry. However, there was also a perception that the UK Government has been lagging behind in comparison to other developed countries in terms of its critical mineral strategies in the previous 3-4 years prior to 2022, and is now “playing catch up” as it has been somewhat late to put supports in place.
- Some interviewees stated that although the UK Government verbally expresses enthusiasm to support growth of the UK mining industry, a number of recent government actions in reality are likely to do the opposite. For example, restrictions on rebated fuels such as red diesel were cited as governmental actions that will have a negative effect on the mining sector instead of promoting it: the removal of the red diesel rebate could increase domestic extraction costs by 30%, according to one participant.
- There is a reported disconnect between industry and government as the incentive structure that motives industry and investors (e.g. global market competitiveness, return on investment) may not align to the UK government strategy regarding mining.
- Government investment in knowledge and expertise in this sector was described as poor, with some participants highlighting a progressive erosion of expertise within high-level agencies.
- Participants repeatedly highlighted a need for up to date, sound and reliable geological data about UK mineral resources, citing that most countries with a vibrant mining sector hold a central repository of data.
- There is limited government understanding of the global race to secure minerals.
- Mining is still widely regarded as a ‘dirty’ industry, and mining is not seen an attractive career option for young people.

Recommendations:

- Governmental initiatives to promote greater public awareness of the importance and environmental benefits of mining to secure domestic supply of critical minerals could be very helpful to address this issue, as would speeding up pathways to investment and support.
- Participants suggested that government should develop the UK Critical Minerals Strategy by creating an agenda to promote domestic production⁹ and with this now in place following through on this agenda is crucial.

⁹ It is important to note that these interviews were carried out between April-June 2022, just before the launch of the first UK Critical Minerals Strategy (on 22nd June 2022). The new Critical Minerals Strategy does acknowledge the importance of this issue: accelerating the UK’s domestic capabilities is one of the 3 key pillars of this strategy. See HM Government, ‘Resilience for the future: the UK’s critical minerals strategy’ (June 2022) <https://www.gov.uk/government/publications/uk-critical-mineral-strategy/resilience-for-the-future-the-uks-critical-minerals-strategy#:~:text=The%20UK's%20first%20ever%20Critical,challenges%20with%20our%20international%20partners>



- Government agencies should review higher educational provision to ensure and enhance expertise and skills in minerals extraction. The UK's new Critical Minerals Strategy, which was launched soon after these interviews took place, does note with concern that UK skills base for mining and materials processing may be declining since the decline of the UK coal mining sector.¹⁰ The Strategy states an intention to work with universities and careers services to enhance the wide range of domestic skills that will be needed in this sector, including geology, mining, manufacturing, finance, law, economics and sustainable development.

3. Conclusions

At present, the UK Government is currently outlining new actions for the Critical Minerals Strategy, and it is hoped the main findings and recommendations from this Met4Tech study (as outlined above) are both timely and informative for supporting the UK government's policy plans. The Met4Tech project team will now be continuing our research on these mineral-related issues, including planned discussions with the devolved UK governments and the international community, in order to make further recommendation for improvements.

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¹⁰ HM Government, 'Resilience for the Future: the UK's Critical Minerals Strategy' (June 2022) <https://www.gov.uk/government/publications/uk-critical-mineral-strategy/resilience-for-the-future-the-uks-critical-minerals-strategy#:~:text=The%20UK's%20first%20ever%20Critical,challenges%20with%20our%20international%20partners>