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Practical cross-border insights into mining law

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1 Relevant Authorities and Legislation

1.1 What regulates mining law?

Regulation of the mining industry follows the devolution of certain powers relating to mining from the Government of the United Kingdom to the Governments of Scotland, Wales and Northern Ireland. As such, some law applies to the whole of the UK, while some applies only to a particular part of the UK.

The principal sources of law in the UK are Acts of Parliament and associated statutory instruments, common law (essentially case law) and retained EU legislation. Mineral leases, planning consents and environmental consents will also contain terms and conditions which mine operators need to comply with, and many of these will be tailored to the particular project and the nature and location of the operations, imposing, for example, restrictions on traffic movements, limits on air and noise emissions and the need to decontaminate and restore the site after closure.

The UK regulatory regime for mining also varies according to the mineral in question.

1.2 Which Government body/ies administer the mining industry?

The Government, and to some extent local authorities, set the policy framework within which the mining industry operates. The general position under the law of property is that landowners own the minerals beneath their land and are able to license the right to exploit them to third parties. However, in some cases, all rights to search for and exploit minerals have been reserved for the Crown; for example, all naturally occurring gold and silver (historically referred to as Mines Royal) vest with the Crown, as well as oil and gas and all minerals occurring on and beneath the seabed within 200 nautical miles of the coast. Licensing of exploration and exploitation of these minerals is either conducted on behalf of the Crown or by governmental bodies established for this purpose.

The ownership of the majority of unworked coal and coal mines in the UK (excluding Northern Ireland) belongs to the Coal Authority. The Coal Authority, established under the Coal Industry Act 1994, is an executive, non-departmental public body whose responsibilities include, amongst others, the licensing of coal mining operations, the administering of coal mining subsidence damage claims, and bearing the liability for contaminated mine water caused by historic coal workings. The Coal Authority sometimes owns non-coal mines and minerals in coal mining areas.

The exploitation of gold and silver is overseen by the Crown Estate and, in Scotland, the Crown Estate Scotland (together, TCE, established through the Crown Estate Acts of 1956 and 1961) through Wardell Armstrong, the Crown Estate Mineral Agent. TCE also manages the seabed to the 12-nautical-mile territorial limit and other rights including non-energy mineral rights out to 200 nautical miles in all parts of the UK. In this capacity, TCE grants licences for the extraction of marine sand and gravel resources from the seabed, as well as such minerals as salt, potash and polyhalite occurring beneath the seabed.

The Oil and Gas Authority (OGA), a State-owned company limited by shares, was formally established as an independent regulator under the Energy Act 2016 and is responsible for the licensing of offshore and onshore oil and gas operations in the UK, including exploration, production, decommissioning and abandonment.

In Northern Ireland, the Mineral Development Act (Northern Ireland) 1969 vested most minerals in Northern Ireland in the Department of the Economy. This enables the Government of Northern Ireland to grant exploration and production licences in its own name. The main exceptions to this right are (a) offshore oil and gas deposits which are administered by the OGA, (b) gold and silver which vest in the Crown, (c) "common" substances (including aggregates, sand and gravel), and (d) minerals which were being worked at the time of the 1969 Act.

As well as a licence to exploit minerals, planning consent is required to authorise any development works from the local mineral planning authority (MPA).

The Health and Safety Executive (HSE), formed in 1975, enforces health and safety regulation in England, Wales and Scotland, together with local authorities and other authorised bodies. In Northern Ireland, health and safety regulation is enforced by the Health and Safety Executive for Northern Ireland.

Environmental regulation is undertaken by the national environmental regulators and, in some respects, the local authorities. The principal environmental regulator for England (and in some subject areas across the UK nations) is the Environment Agency (EA), formed under the Environment Act 1995; for devolved matters in Scotland it is the Scottish Environment Protection Agency (SEPA), formed under the Environment Act 1995; in Wales it is Natural Resources Wales (NRW) (established in 2013); and in Northern Ireland it is the Northern Ireland Environment Agency (NIEA), which has been established as an executive agency within the Department of Agriculture, Environment and Rural Affairs since 2016. Natural England additionally issues licences under the wildlife and habitats conservation regime, as well as providing specialist input to other bodies.

In early 2020, the UK Government proposed the Environment Bill to provide a framework to set long-term, legally binding environmental targets for the UK and to establish a new statutory body (the Office for Environmental Protection) to oversee the implementation of environmental policies in the UK. The Environment Bill is currently with the House of Lords for approval.

1.3 Describe any other sources of law affecting the mining industry.

The principal legislation affecting the mining industry in the UK includes:

(a) the Coal Industry Act 1994 establishing the Coal Authority and setting out the framework within which the coal industry currently operates;
(b) the Mines and Quarries Act 1954 governing the management and control of mines and quarries;
(c) the Mines Regulations 2014 establishing mine-specific health and safety regulations that are centred around major hazards within the underground mining sector, as amended post-Brexit by the Carcinogens and Mutagens (Miscellaneous Amendments) Regulations 2020, which adjust the occupational exposure limit values for certain hazardous substances that may be found in the workplace;
(d) the Health and Safety at Work etc. Act 1974 and a large body of health and safety regulations of general application across all sectors, which includes the:
    (i) Explosives Regulations 2014;
    (ii) Control of Substances Hazardous to Health Regulations 2002;
    (iii) Dangerous Substances and Explosive Atmospheres Regulations 2002; and
    (iv) Provision and Use of Work Equipment Regulations 1998;
(e) the Environmental Permitting (England and Wales) Regulations 2016 and equivalents in the devolved regions; and
(f) the Town and Country Planning Act 1990.

As a result of section 3 of the European Union (Withdrawal) Act 2018 (as amended by the European Union (Withdrawal Agreement) Act 2020, many of the directly applicable EU mining regulations have also continued in force after the UK's exit from the EU on 31 January 2020 as retained EU legislation that forms part of UK domestic law. New UK domestic laws, such as the Environment Bill, are also expected to be introduced but, partly due to the disruptions caused by the COVID-19 pandemic, the extent of UK legislative and policy changes occurring post-Brexit remains to be seen.

2 Recent Political Developments

2.1 Are there any recent political developments affecting the mining industry?

Brexit: The impact on the mining industry following the UK's withdrawal from the EU on 31 January 2020 remains to be seen. The industry, on average, does not expect any significant changes, although some also hope for some relaxation of the regulatory regime and other measures aimed at supporting local mineral producers. Termination of the EU's freedom of movement policy and the introduction in the UK of new systems and costs for employing workers who are not UK-resident, particularly when coupled with the return home of overseas workers from the UK as a result of the COVID-19 pandemic, does however, pose the threat of labour shortages in the mining sector, which could have an impact on the cost and availability of mine workers. Furthermore, in accordance with the trade agreement concluded between the UK and the EU, all exports and imports between the UK and EU member countries are subjected to additional customs formalities and the expenses associated with complying with such bureaucratic processes.

Coal: An industry which may benefit the most in conjunction with, if not as a direct result of, Brexit, is coal mining. Despite the Government's previously announced plans to shut down the remaining coal-fired power stations in the country by 2025, as part of the country's commitment to reduce its carbon footprint, several new coal licences and planning permissions have been granted since the beginning of 2019, including the Woodhouse Colliery site in West Cumbria which obtained a secondary approval in October 2020, perhaps as a result of post-Brexit "resource nationalism". Woodhouse Colliery, which is expected to produce as much as 3.1 million tonnes of coal a year until 2049, is the first deep coal mine to be opened since the 1980s, with more new applications underway. However, the Government remains committed to achieving its commitments in the Paris Agreement on climate change and legally binding UK domestic climate change targets for emissions reduction, which have recently been increased with the ambition of achieving a 100% reduction – compared to the 1990 figures – by 2050. Furthermore, the COVID-19 pandemic (as well as bad weather) has had a significant impact on coal production, with coal production in the first quarter of 2021 falling to a record low of 259 thousand tonnes, a drop of 53% compared with the same period in 2020. If such trends continue, the Government could achieve its targets as set out in the Paris Agreement sooner than originally expected.

Lithium and other critical minerals: The UK's Industrial Strategy focuses on clean growth and a 10-point Green Industrial Revolution plan. The mining of critical minerals such as cobalt, graphite and lithium can be seen as part of this strategy, as can the Government's plans to end the sale of new petrol and diesel cars and vans by 2030 and to promote the use of electric vehicles. In this context, there has been much support for the proposal from Cornish Lithium, a UK-based company, to develop a geothermal mine in Cornwall for the low-carbon extraction of lithium. Further, in support of the UK's Industrial Strategy, the Critical Minerals Association was founded in early 2020 to provide a platform for industry to communicate with the Government to improve the quality of UK mining supply chains, particularly for critical minerals.

Foreign Investment: The UK's public interest intervention regime under the Enterprise Act 2002 allows the Government to intervene in the merger control process (usually confined to competition review by the Competition Markets Authority (CMA) or European Commission) when strictly defined public interest considerations arise in relation to specified categories of transaction. In 2020, the Government approved two statutory instruments to strengthen the public interest merger provisions of the Enterprise Act 2002. The first is the Enterprise Act 2002 (Share of Supply) (Amendment) Order 2020, which lowers the thresholds that are required be met before the Government can intervene to review investments/mergers relating to artificial intelligence, advanced materials, and cryptographic authentication. The second is the Enterprise Act 2002 (Specification of Additional Section 58 Consideration) Order 2020, which provides the Government with the power to intervene in a transaction if such transaction is relevant to "the need to maintain in the United Kingdom the capability to combat, and to mitigate the effects of, public health emergencies" provided that such

transaction would satisfy the usual UK merger control thresholds. Such amendment was enacted following concerns that the Government did not have sufficient powers to intervene in mergers or takeovers of UK-incorporated businesses with a critical role in the UK's pandemic response. Further, with the aim of protecting national interests, the National Security and Investment Act 2021 (NSI), enacted on 29 April 2021, established an Investment and Security Unit (ISU) to review acquisitions and purchases in the context of national security, including a mandatory notification system for significant acquisitions in 17 "sensitive sectors".

The non-petroleum extractive sector is currently not specifically referenced in the NSI or the amendments to the Enterprise Act 2002. However, as an area where concerns for public interest have been identified, mining remains an industry which might, in the future, be brought within this regime.

2.2 Are there any specific steps the mining industry is taking in light of these developments?

Coal: The industry has been quick to applaud what it interprets as changing attitudes towards coal mining in the UK, and hopeful voices among the industry commentators have suggested that this could signify a reversal of the Government's policy towards coal. This was further reinforced by the periods of surges in the wholesale price of less-polluting gas which made it cheaper for utility companies to generate power from coal, as well as the continuing domestic demand for coking coal used in the steel-making process. However, the Government has made it clear that phasing out the mining and production of coal is essential in order to achieve its 2050 goal of carbon neutrality. Indeed, in 2020, Hargreaves Services, one of the largest remaining operators of surface mines in the UK, wound down and repurposed its UK mining operations due to coal's perceived "limited future"; whilst Coelbren, one of the last open-cast coal mines in South Wales, has been closed by the Welsh Government's decision not to issue the project with a mining licence on environmental grounds.

Large-scale projects: Outside of fossil fuels, the mining industry has been given impetus with new projects, such as the Woodsmith mine in North Yorkshire. The Woodsmith mine is considered to be the largest known high-grade resource of polyhalite (a multi-nutrient fertilizer which combines calcium, magnesium, potassium and sulphur) in the world. Sirius Minerals plc – the original developer of the mine – announced plans to make it fully operational from the end of 2021. However, funding challenges resulted in the mine being sold to Anglo American in March 2020. Despite some interference to the project timeline as a result of COVID-19, the project is reportedly on track, and is expected to employ up to 1,000 people and support an additional 1,500 in the wider economy. Nevertheless, the availability of funding for capital-intensive projects remains the key challenge for the non-fossil fuel sector in the UK, and is cited as the main reason for suspension of operations at the Drakelands mine in Devon, host to the fourth-largest tin-tungsten deposit in the world, after its operating company – Wolf Minerals (UK) Limited – went into liquidation in late 2018. Tungsten West Ltd acquired the mine in late 2019; following completion of a successful feasibility study, it is considering options for reopening the mine later this year.

3 Mechanics of Acquisition of Rights

3.1 What rights are required to conduct reconnaissance?

Please refer to question 3.2 below.

3.2 What rights are required to conduct exploration?

The rights required for reconnaissance and exploration will depend on the type of mineral and its ownership. All minerals in the UK are owned privately, apart from those expressly reserved for the Crown or a specific public authority (such as coal, gold, silver, and the mineral resources on and beneath the seabed within 200 nautical miles of the coast).

For State-owned minerals, the licensing requirements and procedures will be set out by the competent Government authority or public body and are applicable to all prospective licensees in the same way. The process will culminate in the decision to grant (or to refuse the grant of) an option, lease or licence for a specified period of time and usually subject to certain conditions that the licensee will undertake to fulfil during the term of the grant. The terms of coal licences and oil and gas licences, in particular, have long been standardised and are set out in model form documents which can be accessed on the Coal Authority and OGA websites. In contrast to this, the terms on which privately owned minerals can be exploited will be determined by, and agreed with, the landowners directly, and are not subject to any country-wide regulations (save for health and safety and environmental regulations which apply to the exploration of State- and privately owned minerals in the same way).

Having the right to conduct reconnaissance or exploration works does not automatically grant the right to access the land where the relevant deposit is located. Such rights can only be obtained directly from the landowner, generally in the form of a lease. Alternatively, the freehold title to the land can be acquired, but this happens relatively rarely in practice, for economic reasons.

Unless categorised as a permitted development, exploration works would typically also require planning permission, which will need to be obtained from a local MPA. In some cases, an exploration licence will be issued which is conditional on the licensee obtaining such planning permission. Obtaining planning permission will likely require the applicant to undertake an environmental impact assessment.

As well as planning permission, the operator may need one or more environmental permits from the relevant environmental regulator.

3.3 What rights are required to conduct mining?

Once exploration works are completed, extraction will require a production-type licence from the owner of the mineral resource. The applicable requirements will depend on the mineral in question and whether it is Crown- or privately owned (as described in question 3.2 above).

The licensee will also require continued access to land and planning permission for the extraction works. Any environmental permits obtained at the exploration stage are likely to require variation (see section 9 for more detail on this).

3.4 Are different procedures applicable to different minerals and on different types of land?

Different procedures, as established and enforced by the relevant Government agency or other public body, will apply to different publicly owned minerals, including coal, gold and silver. Even when dealing with the same mineral, the procedure may also vary depending on whether the licence is sought for onshore or offshore operations.

Privately owned minerals will be accessed on the terms agreed with the relevant landowners and are not subject to any specific procedural requirements. Regardless of the ownership of the mineral in question, all extractive companies must, however, comply with all applicable laws concerning health and safety, environmental protection and planning when conducting their operations.

3.5 Are different procedures applicable to natural oil and gas?

The regulatory regime applicable to oil and gas exploration and production in the UK (with the exception of the onshore territory of Northern Ireland) and on the UK Continental Shelf (UKCS) is set out in the Petroleum Act 1998. Under the Petroleum Act, all rights to petroleum including the rights to "search and bore for, and get" petroleum, are vested in the Crown. Any exploration or production of petroleum therefore requires a licence from the OGA. A separate regime applies to onshore oil and gas in Northern Ireland, established under the powers devolved to the Northern Ireland Assembly.

The OGA issues production licences through competitive licensing rounds. A requirement for offshore licences is that the bidder must promise to maximise the economic recovery of the UK's oil and gas resources. The OGA can only accept licence applications in respect of a formal invitation to apply. The process will usually start with publication of the invitation in the London, Edinburgh and Belfast Gazettes, with applications only being submitted at least 90 days later. There may be exceptional circumstances where it would be reasonable for a company not to have to wait for the next licensing round to get a licence, so the OGA also has an out-of-round application process. It can only be used if justified by exceptional circumstances, and is not a routine alternative to licensing rounds.

Petroleum licences can be held by a single company or by several companies working together, though in legal terms there is only ever a single licensee; however, it may comprise many companies. All companies on a licence share joint and several liability for obligations and liabilities that arise under it. Each licence takes the form of a deed, which binds the licensee to obey the licence conditions, regardless of whether or not it is using the licence at any given moment.

Additional requirements apply to onshore high-volume hydraulic fracturing (or fracking) operations. In particular, operators are required to undertake detailed geological studies and submit a Hydraulic Fracture Plan (HFP) to the OGA (and also the EA) setting out how they propose to control and monitor the fracturing process and assess the risk of induced seismic activity. The HFP must then be approved independently by both regulators, with the HSE having had the opportunity to comment. Consent from the department for Business, Energy & Industrial Strategy (BEIS) will also be required to commence hydraulic fracturing operations.

4 Foreign Ownership and Indigenous Ownership Requirements and Restrictions

4.1 What types of entity can own reconnaissance, exploration and mining rights?

There are no formal requirements as to the type of entity which can be granted reconnaissance, exploration and mining rights.

4.2 Can the entity owning the rights be a foreign entity or owned (directly or indirectly) by a foreign entity and are there special rules for foreign applicants?

Presently, there are no general restrictions on foreign investment in the mining sector. (For regulation of foreign direct investment (FDI) on an economy-wide basis, please refer to the National Security and Investment Act 2021 and the 2020 amendments to the Enterprise Act 2002, which expanded the UK's FDI screening controls to include businesses responding to the COVID-19 pandemic, with the consequence that more foreign investments will be subject to review.) Applicable licensing requirements will, however, need to be studied for applicants' residency criteria which may, for example, require that the applicant is registered as a UK company, has a branch of a foreign company registered at Companies House (which is the registrar for companies in the UK) or has a staffed presence in the UK.

4.3 Are there any change of control restrictions applicable?

Whether there are any restrictions applicable to change of control will be determined under the terms of the licence. For example, the model clauses for coal licences issued by the Coal Authority require the licensee to notify the Coal Authority of any change of control of the licensee. Such notification will contain the details of the financial standing and controlling persons of the intended transferee, the experience and expertise of the transferee and its controlling persons, as well as the proposals of the transferee with regard to the carrying out of future coal mining operations within the licensed area. On receipt of the notification, the Coal Authority may impose such conditions as it thinks fit to ensure that the terms of the licence will be complied with.

If certain turnover/share-of-supply thresholds are exceeded, the acquisition of a mining company will be caught by the UK's general merger control regime and may be reviewed by the UK's CMA which has, in the wake of Brexit, inherited the European Commission's role in investigating mergers that may impact the UK's national interest, whereas previously it could not assume cases already under EU review. If the proposed acquisition raises any national security concerns, a national security assessment may also be undertaken at this stage, although, as noted in question 2.1 above, the mining sector is not specifically referenced in the UK's public interest interventions regime and is not listed as a sensitive sector in the National Security and Investment Act 2021 or the amendments to the Enterprise Act 2002. Consequently, transactions in respect of purely mining companies, as a rule, seem unlikely to raise such concerns under the FDI regime.

4.4 Are there requirements for ownership by indigenous persons or entities?

There are no indigenous ownership entitlements in the UK.

4.5 Does the State have free carry rights or options to acquire shareholdings?

The Government does not have free carry rights or options to acquire equity interests in mining projects.

5 Processing, Refining, Beneficiation and Export

5.1 Are there special regulatory provisions relating to processing, refining and further beneficiation of mined minerals?

Beneficiation of mined minerals must comply with all applicable environmental and health and safety requirements (see sections 9 and 11 for more detail), including restrictions on the manufacture and use of certain dangerous substances, such as asbestos.

5.2 Are there restrictions on the export of minerals and levies payable in respect thereof?

Registration, evaluation, authorisation and restriction of chemicals (REACH) regimes apply to chemical substances manufactured or imported in the EU and UK. An important exemption allows producers to avoid registration provisions under REACH, provided that the minerals, ores, ore concentrates, raw and processed natural gas, crude oil and coal that they produce occur in nature and are not chemically modified. Otherwise, registration is mandatory in order to place any of the above on the EU or UK market.

Following the end of the Brexit transition period on 31 December 2020, the EU REACH framework no longer applies to the UK (except in Northern Ireland) and has been replaced by a UK REACH regime. The intention is for the UK REACH regime to mirror the EU system as closely as possible, maintaining existing standards of health and environmental protection, and substance production. For UK-based operations supplying to the UK only, the process is straightforward, as permits granted under EU REACH have been "carried over" to the new regime and simply need to be confirmed by the permit holder on the UK REACH IT system. However, to continue to export or import substances subject to REACH, both UK-based companies and their EU/EEA-based counterparts are likely to need to comply with both EU and UK regulations when trading together.

In the unlikely scenario that the item is listed on the UK Strategic Export Controls List (e.g., as a dual-use item which can be used for both civilian and military applications), an export licence will be required, which will be issued by the Export Control Joint Unit.

There are no export levies due to the Government. Levies payable in third countries will depend on the destination country, the type of goods, their origin and value.

6 Transfer and Encumbrance

6.1 Are there restrictions on the transfer of rights to conduct reconnaissance, exploration and mining?

For publicly owned mineral resources, there will generally be a formal process to arrange for the licence to be transferred or assigned to another entity, in full or in part, administered by the competent Government authority or other public body.

Where the rights to conduct reconnaissance, exploration or mining were granted by a private landowner, the terms on which such rights were granted will need to be consulted for any restrictions on their assignment.

6.2 Are the rights to conduct reconnaissance, exploration and mining capable of being mortgaged or otherwise secured to raise finance?

Under the Law of Property Act 1925, the definition of "Land" includes mines and minerals on or under the Land. This means that an interest in mines and minerals can be mortgaged or otherwise secured to raise finance (subject to any restrictions conferred by the right on which such interest is held).

The interest in mines and minerals should, however, be distinguished from the rights to conduct reconnaissance, exploration and mining works, which generally take the form of a licence. The ability to use the latter as security will depend on the terms of the instrument conferring such rights.

7 Dealing in Rights by Means of Transferring Subdivisions, Ceding Undivided Shares and Mining of Mixed Minerals

7.1 Are rights to conduct reconnaissance, exploration and mining capable of being subdivided?

There are no specific rules relating to subdivision of the rights to conduct reconnaissance, exploration and mining. However, a licensee will often be able to transfer (by way of sale or assignment) a part of the licence to another person, with the licensor's consent. In such cases, it will be important to establish the liability regime as between the old and the new licensees and whether they would be jointly and severally liable for any violation of the terms of the licence.

Any transfer of a licence (or any part thereof) will also raise questions concerning the continued use of (i) the land where the relevant operations are being conducted, and (ii) the permits obtained prior to transfer, which will need to be addressed with the relevant third parties.

7.2 Are rights to conduct reconnaissance, exploration and mining capable of being held in undivided shares?

This will depend on the licence sought. For example, licences issued by the Coal Authority can be held by a single company or by several working together. Importantly, all companies named on such licence will share joint and several liability for obligations and liabilities that arise under it.

7.3 Is the holder of rights to explore for or mine a primary mineral entitled to explore or mine for secondary minerals?

There is no presumption that the holder of rights to explore for or mine a primary mineral will be entitled to the same in respect of secondary minerals found in the same area. Unless specifically included in the terms of the original licence (which is not common), a separate grant from the owner of the secondary mineral (whether private or public) will therefore need to be sought. For example, holders of coal licences can obtain further licences from the Coal Authority for adjacent activities such as coal bed methane extraction, abandoned mine methane extraction, mine water heat recovery and deep energy exploitation.

7.4 Is the holder of a right to conduct reconnaissance, exploration and mining entitled to exercise rights also over residue deposits on the land concerned?

Similarly, the holder of a right to conduct reconnaissance, exploration and mining will not be automatically entitled to exercise these rights over any residue deposit and other residue stockpiles. While such rights can in principle be provided in the terms of a licence, this is not common.

7.5 Are there any special rules relating to offshore exploration and mining?

Offshore operations in UK territorial waters and on the UKCS are subject to additional requirements with a view to preserving the marine environment.

Oil and gas operators are required to submit and implement a "safety case" document to the OGA in accordance with the requirements of UK regulations for offshore installations and wells. Although UK operators are no longer required to comply with the provisions of the EU Offshore Safety Directive 2013, because such directive was largely modelled on the UKCS health and safety case regime, compliance with such regime is unlikely to amount to any practical deviation from compliance with the EU Directive.

TCE is the body responsible for licensing the extraction of marine sand and gravel resources which are widely used in construction projects, as well as for coastal protection and land reclamation, whereas coal deposits are managed by the Coal Authority (both onshore and offshore).

8 Rights to Use Surface of Land

8.1 Does the holder of a right to conduct reconnaissance, exploration or mining automatically own the right to use the surface of land?

The right to use the surface of land is to be distinguished from the right to conduct reconnaissance, exploration or mining, and will need to be applied for separately. This can be particularly cumbersome on the prospective licensee where the landowner is not the same as the Government authority or other public body which granted the licence.

As an exception, holders of licences to conduct high-volume hydraulic fracturing do have a statutory right under the Petroleum Act 1998 to access reserves located deep under neighbouring land over which the licensee does not have a private right of access. In other cases, attempts to access without landowner permission will constitute a trespass and may lead to court action for damages and/or an injunction.

8.2 What obligations does the holder of a reconnaissance right, exploration right or mining right have *vis-à-vis* the landowner or lawful occupier?

The lease or other document pursuant to which the licensee was granted access to the land will specify the obligations owed to the landowner as agreed between the parties. These obligations will typically include the payment of rent or royalties, the obligation to ensure adequate support for the surface and make good any damage caused to the surface, and others.

General principles of the law of nuisance will also apply to the use of land as a mine or quarry. Examples of mining activities capable of creating a nuisance include the emission of dust or noxious fumes, the discharge of polluting effluents into a river, the creation of noise and vibration, and the projection of debris by blasting. Affected landowners may in these circumstances bring a claim for an injunction and, in some cases, damages against the mine operator. Complaints of noise and dust emissions may also cause the relevant environmental regulator to investigate whether permit conditions have been breached.

The emission of smoke or fumes and the lack of proper fencing of abandoned and disused mines and quarries are, in certain circumstances, a statutory nuisance in relation to which the local authority may issue an abatement notice requiring the nuisance to cease. If the impacts of the nuisance affect several people in the vicinity, the nuisance may also constitute a public nuisance.

8.3 What rights of expropriation exist?

It is possible for land, and rights for mining and extraction, to be obtained using compulsory acquisition. In each case, landowners whose land has been acquired, or who have suffered as a result of the acquisition, may be entitled to be paid compensation, as assessed by a specialist tribunal.

In England and Wales, rights over land (but not freehold interests) can be acquired under the Mines (Working Facilities and Support) Act 1966. To do so, an application must be submitted to the Government, which in turn will instigate proceedings in the High Court. The court will not grant rights under the 1966 Act unless it can be proven that to do so would be "expedient in the national interest".

The Opencast Coal Act 1958 grants the Coal Authority the power to compulsorily purchase the temporary right to land containing mineral deposits, although it has been rare for it to do so. Under the Acquisition of Land Act 1981, it is possible for a Compulsory Purchase Order to include provision for the digging and carrying away of minerals by statutory undertakers, where this is necessary for construction work.

Planning permission must be obtained from the local planning authority before mining activity is commenced. If permission is refused and mining activity has already taken place, a claim can be made, under the Town and Country Planning Act 1990 revocation provisions, for such activity to cease. Any losses incurred as a result of stopping the mining activity may be recovered by making a claim to the local planning authority under the Town and Country Planning Act 1990.

9 Environmental

9.1 What environmental authorisations are required in order to conduct reconnaissance, exploration and mining operations?

Onshore, a number of activities carried out as part of mining operations will require an environmental permit. The Environmental Permitting (England and Wales) Regulations 2016 (EPR) require a permit to crush, grind or reduce minerals, except for the cutting of stone, or the grading, screening or heating of clay, sand or any other naturally occurring mineral other than coal, or where it is unlikely to result in the release of particulate matter into the air or underground. A permit will also be required to discharge any pollutants to the water environment, manage radioactive materials, operate combustion facilities or discharge groundwater and, importantly, an environmental permit for a mining waste operation will be required in order to manage extractive waste, as outlined in question 9.2 below.

These permits will cover emissions to the air and water, energy efficiency, and the need to have in place proper environmental management systems. Permits are only awarded to applicants who can satisfy the regulator that they are a suitable person to hold and comply with the ongoing requirements of such a licence. There are annual subsistence fees, and the environmental regulator will conduct inspections and has powers to prosecute or take a range of other actions for breach, which in some cases involves the right to suspend operations and/or revoke a permit.

Conservation legislation protects certain species and habitats, which a mine may need a licence in order to disturb. This legislation includes the Wildlife and Countryside Act 1981, the Conservation of Habitats and Species Regulations 2017 (which consolidated and updated the Conservation of Habitats and Species Regulations 2010), the Protection of Badgers Act 1992 and the Offshore Marine Conservation (Natural Habitats, & c.) Regulations 2017 (which consolidated and updated the Offshore Marine Conservation (Natural Habitats, & c.) Regulations 2007).

Abstraction of surface and/or groundwater, including as part of dewatering the mine, will require an abstraction licence under the Water Resources Act 1991. Separate consent must be obtained from the local sewerage undertaker for liquid effluents disposed of into the sewage network. Additionally, following the UK's exit from the EU on 31 January 2020, the Government launched the UK Emissions Trading System to support the UK's 2050 goal of carbon neutrality and to maintain continuity with the EU's carbon trading system. The UK Emissions Trading System works on the "cap and trade" principle, where a cap is set on the total amount of certain greenhouse gases that can be emitted by sectors covered by the scheme. The intention is that this limits the total amount of carbon that can be emitted, and as it decreases over time. The first auctions on the UK Emissions Trading System took place on 19 May 2021.

The storage of certain hazardous substances on site will additionally require hazardous substances planning consents to be obtained from the local planning authority.

Planning consent may contain additional requirements and restrictions with regard to environmental impacts such as noise and dust levels.

For offshore oil and gas operations, there are some differences to the permitting regime which, for example, require permits from BEIS for discharges of oil or chemicals into the marine environment, and to vent or flare natural gas.

9.2 What provisions need to be made for storage of tailings and other waste products and for the closure of mines?

Most mining operations will require a permit from the EA to manage extractive waste as a waste management operation, and some will include operating a mining waste facility. Operators must take necessary measures to ensure that extractive waste is managed in a controlled manner without endangering human health or harming the environment.

A mining waste environmental permit is required to cover all waste streams generated by the mining operation, with the exception of waste unrelated to extraction, such as domestic waste from on-site worker facilities. A permit may also be necessary for any wastes accumulated or stored at the site which contain naturally occurring radioactivity above a minimum level (NORMS).

The requirements for both types of permit are set out in the Environmental Permitting (England and Wales) Regulations 2016. Higher requirements apply to mining waste facilities categorised as posing a high-level hazard (Category A), or which involve hazardous as opposed to non-hazardous or inert waste.

Operators must, as part of their permit application, prepare a waste management plan, including classification of all extractive waste streams in accordance with EU methods, and including a closure plan for the facility. Operators must also use best available techniques (BAT) for the minimisation of environmental impacts from their operations, which may change over time due to technological progress. Guidance on BAT for mining waste facilities is set out in the EU BAT Reference Document (BREF), which is periodically revised and may result in permits being updated.

Under the Mines Regulations 2014, there is also an obligation to build tips in such a way as to avoid instability or movement that could risk the health and safety of any person. This requires the mine operator to ensure that a competent person carries out an appraisal at appropriate intervals. If, following this, there is deemed to be a risk, a geotechnical specialist is required to carry out an assessment.

9.3 What are the closure obligations of the holder of a reconnaissance right, exploration right or mining right?

There is no statutory framework which is generally applicable. Rather, this is addressed through a combination of the conditions of the relevant consents and permits held and any provisions within property agreements.

Planning permissions are likely to include site restoration programmes that need to be complied with.

To surrender certain environmental permits, including those for mining waste operations, the operator will need to satisfy the regulator that necessary measures have been taken to avoid a risk of pollution and to return the site to a satisfactory state. The procedure for this will be outlined in a detailed closure plan agreed by the environmental regulator dealing with rehabilitation, after-closure procedures and monitoring.

9.4 Are there any zoning or planning requirements applicable to the exercise of a reconnaissance, exploration or mining right?

In England and Wales, planning permission is required for the carrying out of mining operations. Express planning permission is granted by the local MPA. In England, the MPA is the county planning authority in respect of a site in a non-metropolitan county and the local planning authority in respect of a site in a metropolitan district or London borough. In Wales, the local planning authority is also the MPA.

Applications for planning permission must be taken in accordance with the relevant development plan unless (amongst other things) there are material considerations that indicate otherwise. There is no definition of "material considerations" and the MPA has wide discretion in determining this. Guidance published by the Ministry of Housing, Communities and Local Government confirms that planning is concerned with land use in the public interest, so that the protection of purely private interests (e.g. impact on the value of neighbouring property or loss of private rights to light) could not be material considerations. In England, the National Planning Policy Framework, which sets out the Government's planning policy and has a section on facilitating the sustainable use of minerals, is a material consideration that must be taken into account where it is relevant to a planning application.

In planning for mineral extraction, MPAs are encouraged to designate: (i) "Specific Sites", where viable resources are known to exist, landowners are supportive of minerals development, and the proposal is likely to be acceptable in planning terms; (ii)

"Preferred Areas", which are areas of known resources where planning permission might reasonably be anticipated; and (iii) "Areas of Search", where knowledge of mineral resources may be less certain but within which planning permission may be granted. Such areas may also include adjacent land for the essential operations associated with mineral extraction.

Planning permissions granted for the working of minerals will usually include conditions, which can regulate how the development is carried out and which will usually impose restoration and aftercare requirements. Conditions will, crucially, determine the life of the mineral planning permission by imposing a time limit. If permission is refused, there is a right of appeal to central Government, which also has the power to recover jurisdiction of certain applications and appeals where it considers them to conflict with national policy in important ways or be nationally significant.

Separate rules apply in Scotland and Northern Ireland.

10 Native Title and Land Rights

10.1 Does the holding of native title or other statutory surface use rights have an impact upon reconnaissance, exploration or mining operations?

There is no concept of native title in English law. Other grounds may exist, however, on which third parties will be able to claim access to the surface of land, such as rights of way (public or private), easements and agreements of the landowner with electricity and other utility providers.

11 Health and Safety

11.1 What legislation governs health and safety in mining?

The Mines Regulations 2014 and the Quarries Regulations 1999 (QR) constitute the primary legislation governing health and safety in mining operations.

The legislation governing health and safety in the workplace applies to mining operations. The principal legislation is the Health and Safety at Work etc. Act 1974, and beneath it are several sets of regulations governing individual aspects of worker health and safety such as handling work equipment, hazardous substances and explosives, managing the risk of fire, explosion and other incidents. Breach of health and safety regulations is a criminal offence for which mine operators may face prosecution.

Under the 1974 Act, every employer has a duty to ensure that, so far as is reasonably practicable, the health, safety and welfare of employees and others in the employer's workplace are protected. All employers with five or more employees must have a written health and safety policy, which must be brought to the notice of all employees. Criminal liability arises for breach of regulation and may result in prosecution.

In response to the COVID-19 pandemic, the Government published a set of Site Operating Procedures (SOP) to which mining sites must adhere (see question 11.3 below). The SOP were updated in July 2021 to account for the relaxation of certain Government-imposed restrictions and advice.

11.2 Are there obligations imposed upon owners, employers, managers and employees in relation to health and safety?

The entity in day-to-day control of safety at the mine will most likely be the entity acting as the mine operator. Where this is a different entity from the mine owner, the mine owner is responsible under health and safety regulation to take care to appoint a suitable operator and to exercise a degree of continuing oversight of health and safety management by that operator. This may, for example, entail periodic meetings with the operator and the provision of reports and notification to the owner where issues or incidents arise.

The QR place most duties on the "operator", being the person with overall control of the working of a quarry. However, the quarry owner must not permit another person to be the operator of the quarry unless that person is suitable and has sufficient resources to be able to operate the quarry safely. The operator then has general duties to ensure health and safety at the quarry, including producing a "health and safety document".

An employer also owes its employees a duty of care in employment law, which means that it should take all steps which are reasonably possible to ensure the health, safety and wellbeing of its employees. The requirements under an employer's duty of care are wide-ranging and include in particular:

- clearly defining jobs and undertaking risk assessments;
- ensuring a safe work environment;
- providing adequate training and feedback on performance;
- ensuring that staff do not work excessive hours;
- providing areas for rest and relaxation;
- providing communication channels for employees to raise concerns; and
- consulting employees on issues which concern them.

The failure of an employer to properly discharge its duties to employees may result in liability for negligence, vicarious liability or strict liability for the employer, as well as criminal prosecution by the HSE and/or the issue of a prohibition or improvement notice (failure to comply with which may itself result in fines and prosecution). Since the entry into force of the Corporate Manslaughter and Corporate Homicide Act 2007, companies can also be held criminally liable for serious failures in the management of health and safety which result in a fatality.

11.3 Are there any unique requirements affecting the mining industry in light of the coronavirus (COVID-19) pandemic?

Despite predictions forecasting significant loses to the mining sector in 2020 as a result of the COVID-19 pandemic, mining is one of the few sectors that reported a strong year in 2020. Compared to 2019, net profit increased by 15%, revenue increased by 4% and market capitalisation increased by 64%, with copper as the largest contributor to these results. Positive forecasts for 2021 have so far been supported by Q1-2021 results, which show that the aggregate market capitalisation of mining companies reached a multi-year high of over $2 trillion in such period, largely due to equity market support.

These metrics were reported notwithstanding the difficulties faced by the mining industry from shortage of supplies, lack of labour, governmental restrictions and additional requirements that mining operations must now follow in order to comply with COVID-19 guidance.

As discussed above, in light of the pandemic, the Government published the SOP in May 2020. These outlined various measures that employers should take on their worksites, including:

- introducing one-way flow-through areas and floor markings to maintain social distancing (where possible);
- maintaining social distancing and avoiding surface transmissions when goods enter and leave the site;
- ensuring workers who have symptoms or who live with others who show symptoms stay at home and are tested; and

- where site visits are required, ensuring that customers, visitors and contractors are aware of how to maintain safety and proper social distancing.

As noted in question 11.1, the SOP were updated in July 2021 to account for the relaxation of certain Government-imposed restrictions and advice.

12 Administrative Aspects

12.1 Is there a central titles registration office?

A register of interests in land in England and Wales, including any registered interests acquired or granted for mining purposes, is kept by the Land Registry, which is the central title registration office in the UK. Importantly, however, the registration of mines and minerals held apart from the surface is not compulsory, and so, unless the minerals constitute the surface or outcrop (which would trigger the usual rules regarding compulsory registration that apply to the surface), they can be transferred or leased without any registration implications. Following a thorough review of this area of law (and, in particular, the Land Registration Act 2002) over recent years, the Law Commission has advocated in favour of making the registration of all mines and minerals compulsory. This reflects the desire for the register to reveal a complete picture of land ownership. In the Government's full response to the Law Commission published in March 2021, the Government does not accept the Law Commission's recommendation to introduce compulsory triggers for registration of estates in mines and minerals. It also rejects the recommendation for surface owners to be notified of an application to register an estate in mines and minerals beneath their land but acknowledges the intention to provide transparency for property owners and agrees to consult further on the issue.

Some mineral owners have already pursued voluntary registration of their interests, and it is not uncommon to encounter separate titles for underground mines and minerals. In granting such titles, the Land Registry will not necessarily notify the owner of the surface title that the separate mines and minerals title has been created.

Registration of minerals can often be problematic, as the conventional conveyancing procedure for surface land will rarely be sufficient to allow the granting of an absolute title to mines and minerals. Specialist advice will usually be sought.

Information about individual licences and other rights granted by the Government authorities and other public bodies can often be found on their respective websites or obtained by making an enquiry.

The British Geological Survey, through its "BritPits" database, also holds extensive information on mines and quarries in the UK. This information includes details of the name of the mines and quarries, their location and address, the geology and mineral commodities produced, the name of the operator and the responsible MPA.

12.2 Is there a system of appeals against administrative decisions in terms of the relevant mining legislation?

Available appeal routes will depend on the type of administrative decision and the public authority that adopted it. In each case, applicable legislation will first need to be checked for any statutory provisions providing for appeals. Otherwise, judicial review is generally available in respect of public law decisions (although, as a remedy of last resort, any statutory appeal right may need to be exercised first).

13 Constitutional Law

13.1 Is there a constitution which has an impact upon rights to conduct reconnaissance, exploration and mining?

The UK does not have a formally adopted written constitution. Its constitutional framework is formed around a number of fundamental acts and principles which formulate the country's body politic. The framework governing the rights of reconnaissance, exploration and mining is set out in the mining legislation and case law.

13.2 Are there any State investment treaties which are applicable?

The UK is party to over 100 bilateral and multilateral investment treaties with other States which provide protections to foreign investors operating in the UK. These treaties are governed by public international law and provide companies with additional protections that are independent of any protections afforded by domestic laws and contractual relationships.

Full texts of the UK's current investment treaties are available online and can be accessed from multiple sources, including the Foreign & Commonwealth Office website.

14 Taxes and Royalties

14.1 Are there any special rules applicable to taxation of exploration and mining entities?

Within the UK's taxation regime, there are no special rules applicable to mining companies (in contrast to the oil and gas sector, which is subject to a distinct taxation regime).

14.2 Are there royalties payable to the State over and above any taxes?

There are no royalties payable to the Government over and above any taxes. Royalties in the form of payment for the right to work the minerals may, however, be specified in the agreements with TCE or private landowners. In particular, the rights to extract minerals from the seabed within the 12-nautical-mile territorial limit are granted by TCE subject to the payment of royalties.

15 Regional and Local Rules and Laws

15.1 Are there any local provincial or municipal laws that need to be taken account of by a mining company over and above National Legislation?

Scotland, Wales and Northern Ireland can pass their own laws and further regulations within the powers devolved to their respective parliamentary assemblies. These powers generally include the licensing and oversight of onshore exploration and mining activities in the respective territories and will need to be consulted.

County councils' and other local authorities' roles will typically be limited to preparing development plans for the relevant area and reviewing and granting planning permissions.

15.2 Are there any regional rules, protocols, policies or laws relating to several countries in the particular region that need to be taken account of by an exploration or mining company?

As noted in question 1.3 above, although the UK left the EU on 31 January 2020, many of the EU mining regulations have continued in force after the UK's exit as retained EU legislation that forms part of UK domestic law. Where EU legislation has not been retained, domestic legislation enacted by Government post-Brexit has not shown any significant divergence from current EU regulations. The UK's approach is not expected to change at the time of writing.

The UK is also a party to the regional Convention for the Protection of the Marine Environment of the North-East Atlantic (OSPAR Convention), which was adopted in 1992 together with a Final Declaration and an Action Plan. The OSPAR Convention deals with such areas as prevention and elimination of pollution from various sources, assessment of the quality of the marine environment, and protection and conservation of the ecosystems and biological diversity of the marine area.

16 Cancellation, Abandonment and Relinquishment

16.1 Are there any provisions in mining laws entitling the holder of a right to abandon it either totally or partially?

While there is no general prohibition on surrendering the right to explore for or mine minerals, the exact procedure will depend on the type of licence and the authority which granted the right in question in the first place.

The surrender of coal licences for exploration and mining, for example, is provided for under the model licence documents and requires one month's notice from the licensee.

Environmental permits received in connection with mining operations can also be surrendered in full or in part. In some cases, however, a fee will be payable to process a surrender application.

16.2 Are there obligations upon the holder of an exploration right or a mining right to relinquish a part thereof after a certain period of time?

Generally, there is no legal requirement or practice for the holder of an exploration or mining right to surrender a part thereof (other than in petroleum licences for offshore exploration, which are outside the scope of this review). In the case of a privately granted licence, however, its terms will need to be consulted for any unusual or onerous requirements.

16.3 Are there any entitlements in the law for the State to cancel an exploration or mining right on the basis of failure to comply with conditions?

Failure to comply with the licence conditions is grounds for revocation of the licence or refusal to extend it for a new term. Termination is usually not automatic but requires a notice from the competent authority or other public body to remedy the breach within a specific period of time, failing which the licence can be revoked without further compensation.

Planning, environmental and other permits obtained in connection with exploration and mining operations will also be subject to various conditions, and non-compliance with those conditions will be grounds for cancellation of the relevant permits.

John Dewar is a partner in the London office of Milbank LLP and a member of the firm's Global Project, Energy and Infrastructure Finance Group. John is widely recognised as a leading individual in his field by a number of journals, among them: *Chambers UK* (which designated him among the first tier of Project Finance lawyers in the UK); *Chambers Global*; *The Legal 500*; and the *Who's Who of Project Finance*. He has advised on a number of mining projects in a number of countries including Greenland, Ireland, Mongolia, Romania, Saudi Arabia, Sierra Leone, Tanzania, Uganda and the UK. He has built an extremely broad practice and outstanding reputation for advising on the most innovative and significant "market-first" transactions around the world. His practice focuses on advising parties in the development and financing of mining and metals, oil and gas, natural resources, independent power, renewable energy, telecommunications, satellite and other infrastructure projects.

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