

UKMF – Working Group 4 – Final report

“The cumulative impact of policy, legislation and regulation”

Introduction

1. The working group met three times during the year, but was mostly sparsely populated and a consensus on the subject matter, as described in the title above, was not easy to reach. However, by the end of the third meeting a number of points had been agreed and these are summarised below.

Key points

2. The thrust of thinking changed over the course of the three meetings, so that, by the end, the main emphasis focused on a couple of fundamental issues, albeit others were deemed to be important enough to include in the summary. The major point was to articulate that mineral developments were quite different to other sorts of developments, not least because they covered many years of operations – many decades in some cases. Another key point was that much of the minerals industry (by volume) is now owned by multi-national and overseas based companies, who have to make investment decisions on a worldwide scale: if the environment for investment in the UK is not attractive, there are strong possibilities that they will invest elsewhere, with a concomitant downstream effect on indigenous minerals supply.
3. A summary of the key points agreed is as follows:
 - a) Good regulation is good for industry and there is no concern in principle about it, but bad regulation needs challenging. The vast majority of apposite legislation and regulation emanates from Brussels and is then transposed into national legislation. Key areas are H&S, planning, environment and energy.
 - b) There is a fundamental difference between minerals and other forms of developments. It is simply that they are **continuous** operations, possibly spanning many decades, and therefore must cope with changes in policy, legislation and regulation during their lives. The basic resource is continually renewed, for example through extensions to extant operations, and these renewals have to be consented using revised health and safety, planning, water, waste and general environmental legislation and regulation. It should also be borne in mind that the length of time taken to obtain a permission will often be so long, that changes in legislation can occur after commitment of investment and the permission being granted.
 - c) Security of supply, based on indigenous supply of most bulk minerals, would be damaged if uncertainty over possible future legislation and regulation influenced investment in long term resources. This is especially the case where potential investment decisions are taken offshore by major multinational companies, with potential to concentrate production in, and obtain higher margins from investments overseas.
 - d) It is not just the breadth of legislation and regulation, but the volume that is of concern. Take, for example, the increase in the

number and complexity of planning laws that apply to minerals development.

- e) How can the situation be improved in the future? First, by designing and coordinating relevant regulations **before** implementing legislation. To achieve this, it will be vital for the appropriate regulators to be joined-up in advance of legislation being finalised. The regulators are assumed to be: HSE, EA, MPAs and EHOs. At present there are overlaps in many instances between some of them and different interpretations of what individual pieces of legislation or regulation mean. Furthermore, there are often differences in interpretation of policy, legislation and regulation between the policy makers and field officers on the ground!
- f) A classic example of this can be illustrated by the process of restoration of quarries after extraction is complete. In many cases this process requires inert waste infill, yet there are obstructions to this by way of the regulation of landfill and the definitions of what is inert waste. And, if inert waste becomes impracticable and restoration is achieved by transforming the site to a water amenity, there are obstructions in many instances because of the fear of bird strike! Such a lack of joined up thinking by different regulators is damaging for the industry.
- g) The final piece of the jigsaw is the role of the Regulatory Impact Assessment. There is an acceptance in Government at present that the system is not working and the Better Regulation Executive is tasked with reviewing this aspect. Advance coordination across Departments and regulators is required, together with a realistic dialogue with the affected industries and, where appropriate, with NGOs. The problem is not only a national one, but is evident in – and needs to be resolved in – Europe as well!

Voting at LWM3

- 4. The voting at the Conference was identifiable and is summarised below:

Q1. “How can the UK best ensure EU derived legislation is both appropriate and realistic?”

The responses were dominated by two answers, which effectively said that appropriateness to the UK was important (31%) and that legislation should not put the UK industries at a competitive disadvantage (44%).

Q2. “Is there any way of coping with – or mitigating – the industry’s continuous development question?”

Two answers again dominated, one saying that legislation should always meet the “better regulation” test (50%), the other that legislation should be introduced in the same timeframes as other established reviews, such as ROMPs (34%).

Q3. “How concerned should the UK be at the level of foreign investment in the British minerals industry?”

Just over half the respondents suggested that we should be moderately concerned (52%), about a third (31%) said that it was not an issue, but 17% were seriously concerned.

Q4. "How might different regulators better coordinate legislation before enactment?"

The vast majority answered that a mixture of better consultation between ministerial departments and all stakeholders and confirmation that field officers understood the implications of legislation and regulation before enactment was required (67%).

Q5. "How can we ensure that Regulatory Impact Assessments do not work in isolation and include the views of all stakeholders?"

Once again two views dominated. The slightly stronger one (44%) suggested that the Better Regulation Executive should demand a culture change in the process: the weaker one (39%) that regulators should promote a broader view, while accepting that change will take time.

Simon van der Byl
Convenor WG4