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Gold Mining: Regulatory Responsibilities

As requested by the Committee for Infrastructure, the following paper considers gold mining in terms of departmental responsibilities, with a particular focus on the role of the Department for Infrastructure.

Introduction

According to the Geological Survey of Northern Ireland (GSNI), Northern Ireland is the most prospective area of the UK and Republic of Ireland for precious metal deposits. Modern-day exploration commenced in the late 1970s¹. The Dalradian basement rocks of the Sperrin Mountains have been the main focus of exploration, however additional prospective areas have also been identified²:

¹ GSNI [online] *Precious Metals* <https://www.bgs.ac.uk/gsni/minerals/prospectivity/preciousmetals/> (accessed 24/08/2016)

² *ibid*

1. Sperrin Mountains:

Cavanacaw deposit - Galantas Gold developed the first modern gold mine in the British Isles. Proven reserves of 180,000 tonnes (t) with indicated reserves of 1,200,000t across the mine lease area.

Curraghinalt prospect licensed to Dalradian – to date approximately 26,000 metres of drilling on over 250 drill holes has taken place and indicated 1.56 Million Ounces (Moz) of gold (just over 44t).

2. Northeast Co. Down:

Extensive gold anomalies have been identified in soils and stream sediments east of Belfast in Holywood and Newtownards areas.

3. Southeast Co. Down:

Tellus geochemistry has identified a soil gold anomaly from Warrenpoint to Kilkeel where gold grains have been recovered in pan concrete samples.

4. Co. Armagh:

An extensive zone of gold in both soil and stream sediment samples in the Keady area. Conroy Gold and Natural Resources have identified a large resource just over the border in Monaghan. Recent drilling has confirmed gold in bedrock in the Clay Lake area of south Armagh.

Responsibilities for gold mining are split across a number of different departments or agencies as illustrated in the below table. While the responsibilities are separated they are very much interconnected and dependent on one another. For example, the grant of a mining licence is dependent on the outcome of other permissions such as planning permission, environmental and health and safety requirements. For this reason, the paper gives an overview of all responsibilities, with a focus on planning being the responsibility of the Department for Infrastructure (Dfi).

The following table gives a brief summary of the split of responsibilities:

Agency	Crown Estate	DfE (Dept. for Economy)	Dfi	DAERA	HSENI
Responsibility	Prospecting Licence required from Crown Estate	Mining/mineral Licence	Planning permission	Environmental regulation	Health and Safety including explosives

1 Licensing

Licensing for goldmining is the responsibility of both the Crown Estate (for a prospecting licence) and the Department of the Economy (DfE) (for a mineral licence) as explained in this section.

Under the Mineral Development Act (Northern Ireland) 1969, a separate licence for prospecting/exploration and development of minerals is required. Under the Act, all minerals in Northern Ireland are vested in DfE (previously DETI). However, gold (and silver) is an exception to this as rights are owned by the Crown Estate.³

This means that a prospecting licence must be obtained from the Crown Estate Commissioners (CEC) which grants the right of lease to prospect for precious metals, also known as Mines Royal⁴. The physical process of mining is not controlled by the CEC,⁵ therefore companies wishing to explore and develop these metals must apply for a separate mining licence from DfE. Guidance on applying for mineral licences suggests that companies can apply simultaneously to CEC and DfE for concurrent licences.⁶ The issue of these licences is influenced by the outcome of planning permission from the Department for Infrastructure (DfI) and all environmental requirements from the Department for Agriculture, Environment and Rural Affairs (DAERA).

Detail on the terms and conditions required for a mining licence from DfI are available in guidance and include proof of⁷:

- Land ownership;
- Mineral plan showing storage, extraction, remediation works and facilities, and work to protect the environment;
- Adequate financial support;
- Statutory insurances and public liability cover to indemnify the Department.

³ DETI published by DfI (2016) *Mineral Licences-Guidance for Applicants* <https://www.economy-ni.gov.uk/publications/mineral-licences-guidance-applicants> and Geological Survey NI <https://www.bgs.ac.uk/gsni/minerals/legislation/>

⁴ Crown Estate, *Commercial Exploitation of Mines Royal* [online] <http://www.thecrownestate.co.uk/rural-and-coastal/minerals/commercial-development-of-mines-royal/> (Accessed 10/08/16)

⁵ Crown Estate, *Our Portfolio* [online] <http://www.thecrownestate.co.uk/rural-and-coastal/minerals/our-portfolio/> (Accessed 10/08/16)

⁶ DETI published by DfI (2016) *Mineral Licences-Guidance for Applicants* <https://www.economy-ni.gov.uk/publications/mineral-licences-guidance-applicants>

⁷ DETI published by DfI (2016) *Guidance for applicants for a mining licence or lease* <https://www.economy-ni.gov.uk/publications/application-mining-licence>

2 Planning

Planning permission is the responsibility of DfI and the following section gives a brief description of the process.

Under the Planning Act 2011 (s.24) planning permission is required for the development of any land. Development includes mining as defined under the Planning Act:

*the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.*⁸

Development falls under a new three tier hierarchy of development. This includes: local, major and regionally significant development. Detail is further set out in the Planning (Development Management) Regulations (Northern Ireland) 2015⁹.

All local and major developments are to be dealt with by local councils and major developments will be subject to a pre-application notice to the council or Department (at least 12 weeks prior to the submission of an application) so as to determine the extent of a pre-application consultation with the community.¹⁰

An applicant must give all stakeholders and local communities a chance to discuss and voice their views before a formal application for major development is submitted. The level and extent of pre-application consultation is to be proportionate to the scale and the complexity of the proposed development.¹¹

Under the Planning Act, regionally significant development is determined by the Department and is considered to be any major project deemed to be of regional significance. Proposals will also be subject to pre-application notice and community consultation.

According to Schedule 1 of the Planning (Development Management) Regulations 2015, mining is classed as:

- Major if the development is or exceeds 2 hectares; or
- Regionally significant if:
 - the development involves quarries or open-cast mining exceeding 25 hectares; or
 - development involving underground mining exceeding 2 hectares at surface.

⁸ Planning Act 2011 Section 24 <http://www.legislation.gov.uk/nia/2011/25/part/3/crossheading/development-and-requirement-of-planning-permission>

⁹ Planning (Development Management) Regulations (Northern Ireland) 2015 <http://www.legislation.gov.uk/nisr/2015/71/regulation/2/made>

¹⁰ Practice Note 10: Pre-Application Community Consultation. Available at <http://www.planningni.gov.uk/index/advice/practice-notes/common-newpage-10.htm>

¹¹ Practice Note 10: Pre-Application Community Consultation. Available at <http://www.planningni.gov.uk/index/advice/practice-notes/common-newpage-10.htm>

Regionally significant applications may be subject to additional scrutiny where the Department may ask the Planning Appeals Commission, or a person appointed by the Department, to hold a public local inquiry into any application of regional significance. When determining the planning application, the Department must take any report produced from the inquiry into account. However, the Department takes the final decision.¹²

2.1 Permitted development rights

The Planning (General Permitted Development) Order (Northern Ireland) 2015 lists development that can take place without the need for planning permission, known as permitted development rights.

Under Schedule 1 Part 16, mineral exploration is granted permitted development rights. This includes the drilling of boreholes, seismic survey work, excavation and construction work for no longer than four months. However, full planning permission is required for the actual mining of minerals.

The relevant council must be pre-notified of the proposed exploratory work, and the council has the powers under Article 7 to restrict the permitted development rights and require planning permission.¹³

Permitted development rights for mineral exploration has been a subject of contention. Due to this the previous Environment Minister, Mark H Durkan, opened a call for evidence from March to May 2016. This call for evidence is to inform a review of permitted development rights by the Department and any future proposals. However, it will be for the new Minister to decide on the approach going forward.¹⁴

2.2 Pre-application Discussions (PAD)

Different to the statutory pre-application consultation, an applicant may enter into pre-application discussions (PAD) with the Department as a matter of best practice. This is carried out by submitting a pre-application form to the Department prior to an application. The Department will provide advice on key elements of the planning application, facilitate discussions with other stakeholders including NIEA and Road Service etc., and will provide written confirmation of issues agreed. However, a PAD may not be relevant in every instance as a decision depends on the nature, scale and benefits of the application.¹⁵

¹² Planning Act 2011 S.26 <http://www.legislation.gov.uk/nia/2011/25/section/26>

¹³ Article 7 <http://www.legislation.gov.uk/nisr/2015/70/article/7/made>

¹⁴ Call for Evidence http://www.planningni.gov.uk/index/policy_legislation/call-for-evidence.htm

¹⁵ Planning NI (2014) *Information Leaflet 14: Pre-application Discussions*.

http://www.planningni.gov.uk/index/advice/advice_leaflets/common_advice_and_guidance-newpage.htm

2.3 Planning Conditions

Planning permission may be granted by the Department (if the development is deemed regionally significant) subject to planning conditions. Under Part 3 of the Planning Act conditions may be applied to enhance the quality of the development and enable development to proceed where it otherwise would have been refused. For example, they may be used to introduce time limits, restrict use or permitted rights and impose after care conditions.¹⁶

Grants of planning permission must impose a time limit of five years from the date of permission within which the development must be started. However, there are exemptions to the five-year limit.

Conditions may be challenged on appeal in writing to the Planning Appeals Commission. A “breach of condition notice” may be issued where conditions attached to a grant of planning permission have not been complied with.

2.3.1 Aftercare Conditions

The Department or the council has the power to impose aftercare conditions, or restoration conditions, on the grant of mineral planning permission under Section 53 of the Planning Act. This may require that once work has completed, the site is to be restored to a standard, or for a use, determined by the Department or council, specifying the steps to be taken. Uses specified may include:

- use for agriculture;
- use for forestry;
- use for amenity; or
- use for ecological purposes.

An after care period lasts for five years from when the condition is imposed, unless otherwise specified by the Department or council.¹⁷

2.3.2 Developer Contributions

Developer contributions can be secured as a condition to planning permission or by a planning agreement under section 76 of the 2011 Planning Act. This enables the Department or council to enter into Planning Agreements for the purpose of facilitating, regulating or restricting the development or use of the land. This may include the setup of contributions to be paid by the developer to the relevant authority, or any Northern Ireland department, to offset the impact of the proposed development, in conjunction with granting planning permission.

¹⁶ Development Management Practice Note 20 <http://www.planningni.gov.uk/index/advice/practice-notes/common-newpage-10.htm>

¹⁷ Planning Act 2011 Section 53 <http://www.legislation.gov.uk/nia/2011/25/section/53/enacted>

According to the Spatial Planning Policy Statement (SPPS) developer contributions can be used:¹⁸

- where a proposed development requires the provision or improvement of infrastructural works over and above those programmed in a LDP;
- where earlier than planned implementation of a programmed scheme is required;
- where a proposed development is dependent upon the carrying out of works outside the site; and
- where archaeological investigation or mitigation is required.

2.4 Planning Appeals

Appeals on decisions, including conditions attached, may be made by or on behalf of the applicant to the Planning Appeals Commission (PAC). There is no 'third party' right of appeal against a planning decision. However, when an application is appealed, objectors or anyone with an interest in the proposal may make a response to the PAC.

The Planning Appeals Commission (PAC) is an independent appeals body which operates under the 2011 Planning Act. While it makes decisions on appeals against Departmental and council decisions, it also conducts Public Inquiries at the Department's request.¹⁹

2.5 Enforcement

Under Part 5 of the 2011 Planning Act, the power to take enforcement action is left up to the discretion of the relevant council or the Department. Enforcement action must be taken within five years of completion for breaches of operational development (building, engineering, mining or other operations in, on, over or under land).

Should the breach be considered extensive, the decision may be made to issue an enforcement notice to bring the unauthorised development under control. Failure to comply with an enforcement notice is an offence liable to a fine of up to £100,000 on summary conviction, or an unlimited fine on indictment.

An appeal against an enforcement notice may be made, by the person served with the notice, to the Planning Appeals Commission (PAC).

¹⁸ SPPS <http://www.planningni.gov.uk/spps>

¹⁹PAC NI [online] <https://www.pacni.gov.uk/about-us> (Accessed 11/08/16)

2.6 Environmental Impact Assessments (EIAs)

Environmental Impact Assessments (EIAs) assess the possible impact – positive and negative – that a proposed project may have on the environment and human health. This information is submitted in the form of an Environmental Statement (ES) in order for it to be considered alongside a planning application.

Whether or not an EIA is required for a particular development depends on the nature of the development. For example, under the Planning (Environmental Impact Assessment) Regulations 2015:

- EIA is compulsory for quarries and open-cast mining where the surface of the site exceeds 25 hectares (Schedule 1);
- All development in relation to underground mining must be assessed by the Department on the need for an EIA (Schedule 2)²⁰.

With an EIA, the Department has 16 weeks from the date of receipt of the ES to determine the planning application, instead of the normal eight weeks from the receipt of a planning application.

2.7 Waste Management Plan

The Planning (Management of Waste from Extractive Industries) Regulations (Northern Ireland) 2010 transpose the Mining Waste Directive. These apply to sites where the management of extractive waste takes place. Under the Regulations, “extracted waste” is defined as “*waste produced from an extractive industry and resulting from the winning, working, treatment and storage of minerals*’.”²¹

The Regulations set out requirements on operators for the management of waste material from the prospecting, extraction, treatment and storage of mineral resources so as to prevent harm to the environment and human health.

The planning application, along with the EIA, should be accompanied by a waste management plan (WMP) demonstrating how the operator intends to ensure compliance with the Regulations. Operators should set out in their WMP:

- Possible impacts of the extractive waste on the environment and human health and safety;
- Proposals for prevention or minimisation, treatment, recovery and disposal of extractive waste to mitigate possible impacts; and
- Plans for rehabilitation, restoration and aftercare of the site once the operation/facility closes.

²⁰ <http://www.legislation.gov.uk/nisr/2015/74/contents/made>

²¹ The Planning (Management of Waste from Extractive Industries) Regulations (Northern Ireland) 2010 <http://www.legislation.gov.uk/nisr/2010/64/contents/made> (Part 1 s.2)

The WMP can refer to existing plans such as the Risk Assessment, and EIA. While the Planning Authority has the responsibility for assessing whether the WMP meets all the objectives, advice will be sought from other agencies, this includes advice on:

- Environmental impacts e.g. water pollution through discharge consent to which DAERA has responsibility for ensuring compliance with the Water (Northern Ireland) Order 1999; and
- Health and safety regulations under the Quarries Regulations (Northern Ireland) 2006 which is the responsibility of HSENI.²²

An operator must have a WMP that has been formally approved by the Department if it wants to continue operations.²³

3 Environmental Regulation

Environmental regulation is the responsibility of the Northern Ireland Environment Agency (NIEA) under DAERA. NIEA is a statutory consultee in planning decisions made by either DfI or local councils. NIEA can advise the planning authority on the possible environmental impacts of a development and the accuracy of the information provided by the applicant. NIEA can make recommendations on approval and conditions. However, the planning authority has the ultimate say on the final decision.²⁴

NIEA offer a pre-application consultation to provide advice on the permits that are required and the information that must be submitted with an application.²⁵ Some of the areas that may require consent from the NIEA are listed below; this is an indicative list and should not be read as a definitive description of all permissions required. Some of the permissions include²⁶:

1. **Water quality under the Water (NI) Order 1999** – consent must be applied for to discharge effluent (waste water) to ground water or waterways. NIEA can lay down conditions on the quality and quantity of effluent discharged and monitors this. The operator must place an advertisement of the application in the local newspapers. A decision can take 4 months (unless a longer timescale is agreed).
2. **Water quality under the Ground Water (NI) Regulation 2009** - notice must be given to NIEA of proposals to construct a borehole for the purpose of extracting minerals. The notification must detail the method by which the borehole is to be constructed.

²² DoE *Mining Waste Guidance Document*. Now published by DAERA [online]

http://www.planningni.gov.uk/index/advice/advice_apply/advice_special_studies/mwd_waste_management-plan.htm

²³ Ibid

²⁴ <https://www.daera-ni.gov.uk/articles/development-management>

²⁵ NIEA (2015) *Required Environmental Legislation: Consultation Guidance*

<http://search.nics.gov.uk/search?siteName=planning&q=+Required+Environmental>

²⁶ NIEA (2015) *Environmental Legislation: DOE responsibilities under Northern Ireland environmental legislation*.

www.planningni.gov.uk/index/advice/environmental_legislation.pdf

3. **Controlling radioactive material under the Radioactive Substances Act 1993** – consent to keep, use and store radioactive material, equipment and waste must be obtained from NIEA. A decision can take 4 months (unless a longer timescale is agreed).
4. **Industrial pollution under the Pollution Prevention and Control Regulations 2003 and the Pollution Prevention and Control (Industrial Emissions) Regulations 2012** - applications for a permit must be made to NIEA illustrating a high level of protection for the environment in the way technology will be used and installations designed, built, maintained, operated and decommissioned.
5. **Waste management under the Waste and Contaminated Land Order 1997 and the Waste Management Licensing Regulations 2003** - any person producing/transporting waste in connection with their business must apply to NIEA to be registered as a carrier of controlled waste. A decision can take 2 months.²⁷
6. **Controlling hazardous waste (under the Waste and Contaminated Land (Northern Ireland) Order 1997, the Hazardous Waste Regulations (Northern Ireland) 2005, the Environmental Protection (Disposal of Polychlorinated Biphenyls (PCB) and other Dangerous Substances) Regulations (Northern Ireland) 2000)** – when moving hazardous waste, a consignment note must be obtained from NIEA. Operators can apply to NIEA for the appropriate forms and to clarify whether waste is hazardous.
7. **Conservation of protected sites under the Conservation of (Natural Habitats etc.) Regulations 1995** – NIEA will assess, and only agree to a project and any conditions set, once it has ascertained it will not have a detrimental impact on any protected site. NIEA can request further information from the applicant and can consult with the general public to help inform its decision.
8. **SEA under the Environmental Assessment of Plans and Programmes Regulations (Northern Ireland) 2004**

Strategic Environmental Assessment (SEA) is a method of assessing environmental considerations of a plan or programme at an early stage of the development process. A SEA assesses the effects the plan is likely to have on the physical and natural environment. It is conducted by the body which is implementing the plan and must address the significant effects that are likely to be caused to the environment.²⁸

²⁷ NIEA, Register of waste carriers and brokers http://www.doeni.gov.uk/niea/waste-home/public_reg/reg-waste-carrier-transporter.htm

²⁸ NIEA (2015) *Environmental Legislation DOE responsibilities under Northern Ireland environmental legislation*. www.planningni.gov.uk/index/advice/environmental_legislation.pdf

9. Surveys

NIEA may require surveys to be carried out by a developer so as to assess the impact on specific species such as: bats, badgers, breeding birds, protected birds etc.²⁹

4 Health and Safety

4.1 HSENI

The Health and Safety Executive NI (sponsored by DfE) must be notified of any proposals for exploration, extraction and restoration. HSENI will review plans from a health and safety perspective under the Health and Safety at Work (NI) Order 1978, and also the Borehole Sites and Operating Regulations (NI) 1995 if relevant.

HSENI's duty as a statutory consultee in the planning process is provided under Schedule 3 Part 2 of the Planning (General Development) Order (2015). This sets out the criteria for when HSENI must be consulted by Planning in DfI, which includes the presence of toxic, highly reactive, explosive or inflammable substances.

As a statutory consultee, HSENI can also suggest conditions to be attached to an approval. However, the final decision rests with the planning authority.³⁰

4.2 Explosives

The Quarries (Explosives) Regulations (NI) 2006 require that any store of explosives must be registered/licensed under the Explosives Act 1975. It also states the duties of the operator regarding the use of explosives, which is to ensure that the work is properly managed, planned, co-ordinated and supervised. This includes appointing an appropriate Explosives Supervisor who is in charge of the overall day to day works with explosives.³¹

The Manufacture and Storage of Explosives Regulations (Northern Ireland) 2006, state the separation distances that are required for a store of explosives from any building, place of public resort or major road. However, stores with 100g or less of explosives, 30Kg or less of shooters powder and less than 200 detonators are exempt.³²

²⁹ NIEA (2015) Required Environmental Legislation: Consultation Guidance
<http://search.nics.gov.uk/search?siteName=planning&q=+Required+Environmental> p. 17

³⁰ PlanningNI [online] *Processing applications: consultation with other bodies*
http://www.planningni.gov.uk/index/advice/advice_system/advice_processing_apps/advice_other_bodies.htm (accessed 12/08/16)

³¹ HSENI, Explosives at Quarries. Available at <http://www.hseni.gov.uk/resources/codes-of-practice.htm>

³² HSENI, *Manufacture and Storage of Explosives in Northern Ireland*. Available at <http://www.hseni.gov.uk/resources/codes-of-practice.htm>