

14th August 2013

Kim Bridger
The balance of competences review,
DEFRA,
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Dear Kim

The balance of competences review – Call for evidence

We welcome the opportunity to comment on this consultation.

I am responding on behalf of both [British Aggregates Association](#) as well as for [The Barytes Association](#) and also my various other interests in the minerals industry in the UK, Europe and globally gained in over 40 years experience mainly at the sharp end of industry. I am a member of the CBI Minerals Group and also of the UK National Minerals Forum which includes central, devolved and local government officials, planners, heritage groups and NGOs as well as industry representatives. I am also involved with the activities of [Euromines](#) and through them an EU Commission Expert Group the [Raw Materials Supply Group](#) which includes industry, the Commission and member state representatives.

In summary we have been disadvantaged as a sector and also compared with our colleagues in the same sector in other EU countries by the increasing EU thrust of environmental legislation. A strict adherence to a *one size fits all* is often not appropriate as the responsibility for environmental legislation in our sector varies enormously between member states - some have all matters mining through a "Mining Agency", some through an "Environment Agency" and most through the planning system which historically was the standard in the UK.

This has been aggravated by the UK

- being less active in EU negotiations and stakeholder groups than other key member states, particularly Germany, France and Sweden
- having a prescriptive rather than Napoleonic national legal framework.
- creating DEFRA splitting away the responsibility for environment from planning which had previously both been within the previous DETR, now CLG.
- using the new and unproved (and unwelcome to our sector!) Environmental Permitting (EPP) system as an additional and unnecessary impost and cost on an already over-regulated industry
- allowing BIS (DTI) to have a less prominent and focussed voice for industry and our sector overall. In addition the coal sector was further removed by being sent to DECC!

Further comments are restricted to those questions listed in the review which are most specific to our sector.

Q1. What evidence is there that EU competence in the area of environment and/or climate change has benefited or disadvantaged the UK / your sector?

The *Mine Waste Directive* ([2006/21/EC](#)) is a good example of EU legislation that has disadvantaged our sector, with increased costs and no environmental benefit. This followed a large metalliferous tailings dam failure in Spain in the 1990s and a call for additional regulation for mining waste. The industry successfully sought a separate and unrelated piece of legislation rather than an amendment to the EU Waste Directive which was considered both inappropriate and alien to our sector. The UK already had fully serviceable legislation introduced following the Aberfan mining waste disaster in the 1960's, involving the Health and Safety Executive (Mines Inspectorate) and Planning Authorities which was seen as an ideal model the new EU Directive.

Regrettably the UK used DEFRA rather than CLG as the lead body to negotiate and further complicated the situation by transposing through the Environmental Permitting (EPP) Regime with the Environment Agency as the regulator. The Directive is an unnecessary piece of legislation implemented in an unnecessarily burdensome manner as environmental legislation rather than safety/land planning. Virtually all other EU countries considered they had adequate measures in place domestically so essentially kept the status quo. (Incidentally Scotland did transpose through the land planning system)

There is serious concerns that a parallel situation is developing with the current proposed revisions to the EU Environmental Impact Directive (EIA) which could create a similar problem and would be yet further erosion of the land use planning regime in the UK by the imposition of inferior EU environmental legislation.

The Environmental Liability Directive is another example where the EU are now reportedly considering requiring industry to contribute to a Commission superfund which could then enable its potential use for any perceived environmental damage by other companies in other countries. This counters standard insurance responsibilities incumbent on any operating company in the UK and totally unacceptable for them to be held responsible for less stringent arrangements by other unrelated companies in other countries.

Q4. To what extent does EU legislation on the environment and climate change provide the right balance between protecting the environment and the wider UK economic interest?

The review (para 14) highlights land use planning as a key example of one of the few remaining areas that remain within the competence of member states. It notes that.. *there are an increasing number of EU requirements affecting planning and development. These include not only environmental impact assessment, strategic environmental assessment and public participation in decision making, but also other requirements relating to habitats, water, etc. Another example of national competence is the protection and management of*

soils, an area also relevant to planning and development. A proposal for a soil framework directive remains stalled at EU level.

We note the review also acknowledges (para 18) that ... *decisions may have to be made to balance economic needs with environmental protection while avoiding unnecessary burdens on business, industry and development.*

It is our firm view that the most appropriate and time-proven mechanism for the UK to make decisions on balancing economic needs with environmental protection is the land use planning system. We believe active measures should be taken to promote the primacy of land use planning and prevent, and if possible reverse some of the recent, erosion.

The need to achieve the correct balance between economic development and environmental protection is particularly critical for mineral extraction, where, unlike other forms of development, minerals can only be worked where they naturally occur in economic quantities.

Many of these minerals, some like fluorspar already on the EU endangered list, high purity limestone and barytes only occur in environmentally sensitive areas, like National Parks and AONBs.

Q6. How could the EU's current competence for the environment be used more effectively? (e.g. better ways of developing proposals for and/or use of impact assessments, greater recognition of national circumstances, alternatives to legislation for protecting/improving the environment)

The current review of the Environmental Impact Assessment Directive is being promoted by the Commission as 'smart regulation' and, while some of the proposed changes are supported by the industry, many of the changes would, if adopted be additionally and unnecessarily prescriptive.

Most mineral extraction developments in this country are supported by an Environmental Impact Assessment and the industry believes that the administration of the regulations through the land-use planning system has worked well since 1999. It is recognised that there are some areas of the Directive that need updating, but the major amendments as currently proposed swing the balance too far towards EU level control. We therefore strongly support the UK Government's efforts to secure less prescriptive amendments.

Government should resist moves by the Commission, as in this case, to set out detailed matters, such as procedural timelines, and specifying procedures for accrediting experts at an EU level.

EU legislation should focus on setting minimum standards in countries without the benefit of adequate and appropriate systems in place - and not changing the status quo in countries like the UK, or making our UK legislators feel they need to do or change anything!!.

Q8. Are there any alternative approaches the UK could take to the way it implements EU Directives on the environment and climate change?

The UK needs to recognise that the appropriate mechanism to transpose is preferably for our sector through the land-use planning system and generally not Environmental Permitting. The unnecessary

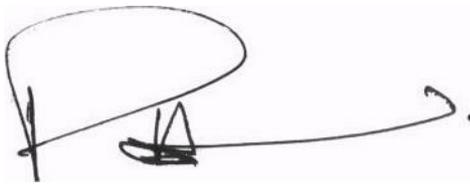
problems caused by the lack of knowledge and misunderstandings over the enormous differences between *waste* and so-called *mine waste* should be a salutary lesson.

Ideally our sector might be better served if the responsibility was within one section of BIS and the environmental, planning and associated legislative aspects were within the same government department and with an identifiable, clear and focussed point of contact.

Q11. Are there any general points you wish to make which are not captured in any of the questions above?

Climate change policy has seriously disadvantaged our mineral related high energy user industry - far, far more heavily than other industrialised countries in Europe and North America. In particular our primary aluminium production has been virtually wiped-out by the closure of the two largest of the UKs three smelters in the last two years, and the steel industry output in 2012 was still only 70% of pre-2008 recession levels compared to US(90%), Germany and Italy (86%); and France(81%).

Yours Sincerely

A handwritten signature in black ink, appearing to read 'Peter Huxtable', with a long horizontal flourish extending to the right.

Peter Huxtable
MA (Cantab), CEng, FIMMM, FIQ

