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NOTES ON THE DEVELOPMENT OF MODERN MINING LEGISLATION IN ENGLAND

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Abstract: This paper considers the way mining legislation has developed since about 1800 from legislation almost wholly for the protection of the mine operator and mineral owner, through a period of conscious effort to protect the miner, to, as at the present time, wider acceptance of the need to protect the general public and the environment from the worst effects of mining. Some of the idiosyncracies of the various items of historic legislation are referred to and reference is also made to the likely effects of the introduction of the more general health and safety legislation and the latest EEC Directives.

Taking an overview of all the legislation that affects mining, three basic phases become apparent:

1. The earliest laws were mainly for the protection of the mine operator and the mineral owner.

2. The nineteenth century saw the introduction of laws for the protection of the miner.

3. The twentieth century saw the introduction of laws for the protection of the general public and surrounding environment.

THE PROTECTION OF THE MINE OWNER

The protection of the mine owner and operator against the activities of the miner and even his own fellows seems to be the basis of the early local legislation, such as that of the High Peak, Stannaries and Forest of Dean. It should also be remembered that most of the mines referred to were very small, the mine operator was often the 'miner', so in all these areas there is provision for the mineral owner to remove the operators' rights if he considers that the mineral is not being "properly and diligently" worked. The working miner was not given much consideration unless he got killed - which was an inconvenience to the owner - although the Derbyshire laws did require, for example, that the corpse should be viewed and investigation carried out to find "by what mischance did he die". However, many more accidents happened that did not lead to a fatality, and these did not have to be viewed or reported.

The general attitude to the mine worker is summed up in the preamble to the Combination Acts of 1800:

> "From the situation of the veins and mines of coal and ironstone in many parts of this kingdom, the same are greatly exposed to the depredations of wicked and evil-disposed persons and the laws now in being are inadequate for the protection thereof".

This act confines itself to the imposition of severe penalties for only two types of crime, the "depredations" referred to above and for breaches by miners of the terms of their bond.

PROTECTION FOR THE MINER

The early years of the 19th century saw a change; the impact of the many coal mining disasters, increasing social awareness and the militancy of the miners themselves, including the Chartist movement, forced on Parliament various issues which were to improve the life of the miner. This resulted in a Royal Commission and, eventually, in Lord Shaftesbury's legislation of 1842. Under this Act women, girls and boys under 10 years were prohibited from employment underground, inspectors were to be appointed (but without powers to go underground or to write reports) and serious accidents were to be "investigated". Two further Acts of 1850 and 1855 corrected many of the inadequacies of the earlier legislation. The Act of 1850 strengthened the powers of inspectors and the reporting of accidents and required maps or plans to be produced, but the number of mines, the volume of work, and the few inspectors in post made enforcement very patchy. The Act of 1855 increased the number of inspectors and set out the broad principles of safety

rules which could be altered without further reference to Parliament. These included General Rules which applied to all mines and Special Rules which were to be drawn up and enforced at each mine. Some of the General Rules are still the same today, although in different legislation. They include the need for adequate ventilation, signalling in shafts, adequate braking systems on engines and safety valves on steam appliances. Of benefit to the miners, and, for the first time, the general public was the requirement that every shaft was to be securely fenced. Special Rules were also to be drawn up to suit particular conditions in individual mines - and they existed in that form until the Act of 1954.

The year 1872 saw the introduction of two major statutes which consolidated the piece-meal legislation introduced over the previous three decades. One, the Coal Mines Regulation Act, dealt with mines of coal, stratified ironstone, shale and fireclay, and the other, The Metalliferous Mines Regulation Act, was concerned with all other mines. The Coal Mines Act of 1872, and a supporting statute of 1875 bearing the same name, were to continue until the introduction of the 1954 Act.

The Metalliferous Mines Act of 1872 was passed after the Report of the Royal Commission in 1860 to "inquire into the condition of mines" which were not then under inspection. It did cause problems, particularly in North Wales where the slate mines claimed exemption as they were neither "mines" (having always been called quarries, i.e. a place where stone was 'squared') nor "Metalliferous". In fact it was a very misleading title for an act since some three times as much metal (i.e. iron ore) was being raised under the sister Coal Act as under the Metalliferous Act and the largest mines under the latter were slate mines and were not working metals at all.

Despite this the 1872 Acts were very comprehensive and surprisingly similar in broad terms to the legislation governing safety and health of the miner today. Apart from the major safety requirements related to underground mining, the Acts also set out the powers and duties of the Inspectorate, regulated the employment of women and young persons, demanded the notification of accidents and contained provisions governing legal proceedings. It was also this Act which introduced the requirements governing the statutory qualifications of managers of certain mines. It is interesting to note that, nearly 100 years later, the writer's own **Certificate of Competency** for the management of mines was number 8,435. By this time it required a degree or diploma plus three years practical experience, some time as an under-official, certificates of hearing, first aid, eyesight and gas-testing, signatures indicating responsibleness and achievement at the age of 26! Few other professions required such detailed qualifications for management positions!

Metalliferous mines did not have to have certificated managers and there were many other differences in detail between the two 1872 Acts. Similarly there were many exemptions for small mines.

With the passing of the 1911 Coal Mines Act the "coal"and "metalliferous" mining legislation took separate courses but was unified again in the all-embracing Mines and Quarries Act 1954. Quarrying legislation, which had followed a separate course, also came into this Act.

It is important to note that, unlike most other countries where mining laws depended on the mineral worked, in Britain the laws depended mainly on the method, whether underground, "stratified" or "non-stratified", or "openworks". If the openwork was less than 20 feet deep it was neither a mine or a quarry but until 1894 came within the scope of the factories' legislation. Apart from fencing off (after 1887) very little legislation affected quarries until in 1894 the Quarries Act had the effect of applying certain sections of the 1872 and 1875 Acts to them. The 1937 Factories Act extended the application of the Metalliferous Mines Act to all quarries irrespective of depth.

The 1954 Act has worked well; it was carried into effect largely by general and special regulations made by order of the Secretary of State, a number of which, together with certain parts of the Act, have now been repealed and replaced following upon the Health and Safety at Work Act 1974. This Act, and Regulations made under the 1974 Act, began the process of modifying the 1954 Act in 1975. Under Section 1(i) the 1974 Act requires that Regulations and Approved Codes of Practice must be designed to maintain and improve the standards they replace and gradually these Regulations and Codes will replace the 1954 Act completely.

PROTECTION OF THE PUBLIC AND THE ENVIRONMENT

Very little thought was given to the ways that mining activity may impinge on the life of the general public before the 1930s. A good, much later, example of this was the tip slide at Aberfan, where 144 members of the public, mainly children, died in 1966. This happened without a major breach of any mining legislation. Immediately afterwards, however, the Mines and Quarries Tips Act was rushed through to remedy this omission.

The fencing of shafts and other open holes is referred to as early as the 1850s but only to protect miners at working mines. Even now it is only at mines worked since 1872 that fencing is a requirement of law (except where the opening may be accessible to a place of public resort, when it becomes a public nuisance under the 1936 Public Health Act).

The earliest "environmental" legislation appears to have been the Rivers Pollution Prevention Act of 1876 which prohibited mine owners from discharging into streams anything that would interfere with their flow or pollute them. This problem has also been dealt with several times this century, most recently in the Water Acts of 1945 and 1948, the Rivers (Prevention of Pollution) Act 1951 and the Water Conservation Act of 1963.

Since 1948 there has been comprehensive control of mineral working. The Town and Country Planning Act 1947 introduced general planning control over the development of land (although for a few years before this permission was needed in certain cases for mineral working under Interim Orders). In succeeding years this has been modified and enlarged and now planning control is available;

a) to ensure that the needs of society for minerals are satisfied with due regard to the protection of the environment.

b) to ensure that any environmental damage or loss of amenity is kept to an acceptable level.

c) to ensure that land taken for mineral operations is reclaimed at the earliest opportunity and is capable of an acceptable afteruse.

Planning permissions are now granted by local authorities on a "conditional" basis. That is permission is given provided that a whole range of conditions are accepted and put into force. These conditions deal with a wide range of matters and are only imposed after consultation with the relevant authority or "consultee". In some cases aspects which are dealt with in other legislation are also included as a condition both for clarity and reinforcement although care has to be taken that they do not conflict. For example, a condition may require approved types of fencing but fencing is also covered by the Mines and Quarries Act, Highways Act 1980 and Local Government legislation. Any new mine, or extension to a pre-1947 mine, now requires specific planning permission, a procedure which consists of making an application, consideration of the site's location with regard to other land uses, advertisement locally, consultation with statutory consultees (Water Authority, Highway Authority etc) and with "optional" consultees. The Planning Authority then has to consider all the responses with their suggested conditions and draw them together. Most mineral planning authorities now have a Minerals Officer and supporting team, persons who have specialised in this type of work and have had some experience of a wide range of mineral industries. (A report by the Government-appointed Stevens Committee in 1976 criticised planning authorities for not having such trained persons on their staff but this has now largely been rectified).

The Planning Officer has to steer the proposal through a very difficult passage between local objections, consultees' specifications, political wishes of the elected Members and applicants' wishes. Eventually he has to come up with a recommendation, which may be an approval with conditions or a rejection. If the latter, the Planning Officer has to be prepared to argue his case on appeal.

The conditions may cover a whole range of topics including:

a) permitted life of the project
b) safeguarding on-site features both natural and man-made
c) access arrangements
d) method of working and phasing
e) protection of water and drainage
f) stability of adjoining land, control of subsidence
g) removal and storage of soils and subsoils
h) fencing
i) hours of working
j) limitation on depth and production
k) control of dust, smoke and fumes
l) control of noise and blasting effects
m) disposal of waste and formation of waste tips
n) buildings and stockpiles
o) restoration and aftercare
p) landscaping

A recent permission for a fluorspar mine in the Peak District contains 52 conditions!

It is also the responsibility of the Planning Authority to enforce these conditions and for this purpose many authorities have their own inspectors. In brief, these inspectors

deal with matters that may affect the afteruse of the site or impinge on its neighbours, while the inspectors under the Mines and Quarries Act deal with matters affecting the health and safety of persons employed on the site.

Changes are also taking place in the environmental legislation: the recent Town and Country Planning (Minerals) Act 1981, for example, has brought about a wide range of new controls including Suspension and Prohibition Orders, a regular review of planning permission conditions and a requirement for aftercare of mineral sites. Shortly a new area of mining legislation will arise as Britain is brought into line with the rest of Europe. The first step will probably be the requirement for Environmental Impact Assessments on all operations proposed of a specific type or above a certain size or in particularly sensitive environments. The impact of the 1974 Control of Pollution Act is now being fully felt, this is an area of legislation likely to be extended in the future.

CONCLUSION

Whole areas of mining legislation have not been mentioned in this paper and the various acts and other statutory documents have been referred to only sufficiently to demonstrate the points needed. Obviously the original statutes should be referred to for the definitive statement.

In "A Textbook of Ore and Stone Mining" published in 1894 Le Neve Foster categorised the then existing mining legislation under the following heads:

Ownership and Taxation
Working Regulations
Special Statutes (in which he included the Alkali Boiler Explosion, Brine Pumping, Employers Liability, Rivers Pollution and Truck Acts)

In essence he too had recognised the framework about which mining legislation was being formed, as his categories and the phases distinguished herein are very similar.

All three phases are still being developed and the present day mining professional has to be something of a lawyer in order to operate. The emphasis has of course snifted, the owners rights, while still important, have given way to considerations of safety and protection for the miner. Despite this, accident statistics are still high, particularly in the quarrying industry, where last year the major injury rate had risen to 379 per 100,000 employees, more than twice what it was in 1976. The fatal injury rate is also worse in quarrying than in either the deep mining or construction industries.

The protection of the interests of the general public and the environment still has some way to go. Members of the public are demanding more and more say in what happens to their environment, their property, their rights of way, and their views. Most major controversial sites now have established liaison committees of local residents and elected members which serve as a forum for discussion. New proposals and old problems are considered together. Many companies are becoming more public orientated, providing publicity literature, opportunities for visits, even interpretation facilities and support for industrial based museums. When the time lost in pursuing appeals against refusals at public inquiries is considered, time spent by a company in all of these things is time better spent. The new EEC regulations concerning the environmental assessment will involve a much more open consideration of each mining project and public support will become even more important than at present.

Mining legislation therefore protects a range of interests and persons; it may have developed along a particular line but it is now all-embracing and reflects more clearly modern views on equality and social responsibility.

At the conclusion of the talk a number of slides were shown indicating the range of problems caused by mining and their effects on the community, the implications of the incident with regard to present day mining legislation was referred to;

1. When is an excavation not a quarry but just the levelling of a hilltop for a pig farm?
2. The crooked public house - effects of differential subsidence.
3. Collapse of 4 houses into ancient sandworkings, Pontefract, 1986.
4. Opencast coal site overburden heap slide raising road 12 feet.
5. Road collapse along fault-line into quarry.
6. Breach of riverbank causing flooding of large opencast site producing England's deepest lake, 8 miles from Leeds, 1988.
7. Flaring off of landfill gas from backfilled quarry, 1988.
8. Claim stakes at peatcutting site near Holmfirth under commoners' rights but without planning permission!

USEFUL REFERENCES

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DISCUSSION

Q. Regarding the new legislation relating to mines and quarries - will this affect the reopening of old mines and quarries?

A. I think you are referring to the effects of the EEC Directive on Environmental Assessment. Regulations based on this will be brought into effect in the U.K. in July 1988. A planning application received by a local authority after the date of implementation (believed to be July 3rd) will in some circumstances have to be accompanied by a full environmental assessment.

Q. How will EEC legislation affect local laws such as the High Peak Act and the Stannaries Act.

A. Not much at present. Up to now EEC directives have dealt mainly with environmental protection, the effect for example of a proposed development on a local area, air and water contamination, landscape, noise levels etc. The onus is now on the developer of certain types of operation in specified areas to show that their proposed development is of no danger to the people. The local Acts do not deal with such matters.

Q. The Forest of Dean is a totally man-made environment since the miners' waste covering much of the area has now been revegetated. By its continuance mining is only continuing this natural process. Is any allowance made for this when considering planning applications?

A. Formerly a mine waste tip was considered to be a chattel if it still 'looked like a tip' and it could be removed without needing planning permission. On the other hand tips which had revegetated and "merged into the landscape" could not be disturbed without planning permission. Following the implementation of parts of the Minerals Act (1981) in 1986, disturbance of a waste-tip, whatever its condition, requires planning permission except under certain circumstances relating to area and time-scale.