

Are there mineral rights-related barriers to domestic exploration and extraction of critical minerals that prevent or hinder the delivery of the UK's Critical Mineral Strategy and, if so, what are they and how can they be overcome? – Summary

Executive Summary Report

Knights Professional Services Limited

The Summary

- The default position is that surface ownership includes all strata to the centre of the earth. However, separate ownership of minerals is common and gold, silver, platinum (but not in Scotland), petroleum and natural gas are owned by the Crown. The Coal Authority owns coal.
- In England and Wales registration of title to minerals held separately from the surface ownership is not compulsory, but is in Scotland if a transfer occurs. Information in registers of title is incomplete creating uncertainty and a need for additional due diligence to establish ownership, which itself may not be conclusive.
- In 2018 the Law Commission produced a report recommending the compulsory registration of freehold minerals held separately from the surface in England and Wales on the occurrence of certain trigger events including disposals for value. The government rejected the proposals in 2021.
- Where the working of minerals is in the national interest the Mines (Working Facilities and Support) Act 1966 provides for working and other rights to be obtained by application to the Secretary of State and the courts on grounds including doubts or issues as to ownership. However, the procedure is lengthy and costly, and the Act is little used.
- As part of this report a consultation was carried out involving critical minerals and other minerals businesses, institutional and private land and mineral owners, business and professional organisations, professionals and consultants as well as approaching land registries in England Wales and Scotland. There was general acknowledgement that the incomplete information available from the land registries was an issue. Many within the critical mineral sector perceived a significant problem, whilst others including land and mineral owners, the wider minerals sector and some in the critical mineral sector acknowledged problems, but that the current system was workable.
- Issues such as compulsory registration of mineral ownership, creation of a national agency for licensing of critical minerals extraction, nationalisation of critical minerals were raised and suggested, whilst some respondents considered no changes were necessary.
- Other issues such as accessibility and cost of land registry information, central collection of geological data were raised, as were issues of planning and permitting. Suitable professional advice was considered to be available albeit at a cost, but issues relating to the future availability of appropriate expertise and the need for training were raised.
- The production of standard documents, licences, leases etc. was considered. Currently lawyers make use of commercially available precedents specifically drafted for the mineral sector, and where parties are properly advised there seems little need for standardised documents, which in any event are likely to require amendment to suit specific circumstances.
- Centrally set rents and royalties were considered but it is doubtful they would be workable or equitable and might remove competition between operators and land and mineral owners' ability to negotiate with operators. Account may not be taken of the individual circumstances of transactions including geology, the specific minerals being worked and processed.

- Lack of certainty as to mineral ownership and additional steps, cost and time required to mitigate problems may be off putting to some operators in the critical mineral sector. However, professional consultants and operators in the wider minerals sector, as well as some operating in the critical mineral sector, deal with the issues as part of their everyday business. It cannot be concluded mineral ownership related issues constitute a barrier to the critical mineral sector.
- Improvements could be made including revisiting the Law Commission's 2018 report and implementing its recommendations. A simplified procedure under the 1966 Act at the exploration stage to permit disturbance of minerals with unidentified owners where permission of surface owners has been obtained might be considered. In addition, simplifying the whole operation of the 1966 Act with a view to cost and time savings would provide a more effective tool for the minerals sector to deal with issues of unidentified mineral owners.