

## GUIDELINES FOR THE LEISURE USE OF MINES

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## 1.0 INTRODUCTION

The following information is offered as a guide to NAMHO members on the current law relating to access and safety, for exploration or use of disused and abandoned mines.

It is acknowledged that NAMHO has members in areas which have different legislative systems e.g. Eire, Isle of Man and Scotland (and that similar issues may in future increasingly apply to Wales). However it is likely that the principles of the guidance here (based on English law) will still generally apply. However, within any particular area, the reader should give consideration to any legislative differences which may exist.

The NAMHO membership is now composed of a great variety of Mining History organisations that have wide ranging interests reflected in these Guidelines, which are therefore unlikely to apply wholly to any one group. The information is not intended to be read straight through, but rather to be dipped into by those who need to check whether any of their current or proposed activities create a duty in law. The Guidelines do not address activities at working mines whether extracting minerals, or having any other industrial or commercial use.

This document replaces the earlier NAMHO publication: “Guidelines on Exploration of Abandoned Mines and the Application of Mines & Quarries and HSW Legislation.”

In the years since that was published there has been a dramatic change in the scope and approach to Health and Safety legislation. Much of the Mines and Quarries Act 1954 has been replaced with regulations which are goal setting, rather than prescriptive. More guidance is provided by Approved Codes of Practice (ACOP), which people with legal duties are expected to follow, unless they can show they have complied with the law in some other way. There is a greater emphasis upon risk assessments to identify hazards and the safety management measures needed to reduce accidents to a minimum.

NAMHO is committed to supporting the safe exploration, study and preservation of abandoned or disused mine workings by its members. In particular NAMHO emphasises its support for the continuation of the traditional activities of Mining History/Caving Groups. The HSE has made its position clear; its role is to ensure that risks to people’s health and safety from work activities are properly controlled. It focuses on the world of work and will not interfere with club activities, except in response to complaint or where the public is put at risk.

In issuing these Guidelines NAMHO wish to make it clear that this is not a legal document and must not be considered a substitute for reading the actual law. The Guidelines represent a voluntary code of good practice and outline possible areas of legal responsibility. Responsibility for safety and proper compliance with the law will always rest with the individuals and organisations using the mines, particularly the person in charge of the group.

Considerable effort has been made to ensure that, where these Guidelines summarise legal obligations, this has been done as accurately as possible, taking account of advice offered by the HSE.

## 2.0 ABBREVIATIONS

References to legislation and other terms may be found abbreviated as shown below. More details of legislation, regulations and Approved Codes of practice are given in Appendix 2.

ACOP	Approved Code of Practice (HSE)
AAALA	Adventure Activities Licensing Authority
AALR	The Adventure Activities Licensing Regulations 1996
BCRA	British Cave Research Association
BMC	British Mountaineering Council
CIC	Cave Instructors Certificate
DETR	(Department of the Environment, Transport and Regions)

ERMR	Escape and Rescue from Mines Regulations 1995
HSC	Health and Safety Commission
HSE	Health and Safety Executive
HSWA	Health and Safety at Work etc Act 1974
IRR	The Ionising Radiations Regulations 1995
LA	Local Authority (Environmental Health Dept.)
LCMLA	Local Cave/Mine Leader Assessment (NCA/NAMHO)
MASHAM	Management and Administration of Safety and Health at Mines Regulations 1993
MHSW	The Management of Health and Safety at Work Regulations 1992
MLTB	Mountain Leader Training Board
MQA	Mines and Quarries Acts 1954 as amended
NAMHO	National Association of Mining History Organisations
NCA	National Caving Association
PDO	Potentially Damaging Operations (SSSIs)
RIDDOR	The Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995
RIGS	Regionally Important Geological Site
SSSI	Site of Special Scientific Interest

### 3.0 DEFINITIONS FOR THE PURPOSES OF THESE GUIDELINES

#### 3.1 Affiliated

Accepted into membership of NAMHO or the NCA as a responsible organisation specialising in research, exploration, restoration, training or other aspects of educational/recreational activity underground.

#### 3.2 Approved Leadership Assessment

A valid leadership assessment from one of the following NCA approved schemes:

Local Mine/Cave Leadership Assessment (LMCMLA)

Level 1 - in horizontal systems without pitches

Level 2 - in more vertical systems involving pitches not exceeding 18m (60ft)

Cave Instructors Certificate (CIC)

A “professional” qualification for those instructing in caving

The above are only valid when accompanied by a current First Aid Certificate.

#### 3.3 Club

Mining History/Caving Group having regularly subscribing members meeting to achieve mutual objectives. It must not constitute a business or part of a business conducted for profit.

#### 3.4 Enforcing Authority

The body responsible for ensuring compliance with legislation. For Health and Safety this is the Health and Safety Executive (HSE) and Local Authority - Environmental Health Department (LA). English Nature or its equivalents in Scotland, Wales and Northern Ireland, enforce the provisions of the Wildlife and Countryside Act 1981 (as amended) including SSSIs. English Heritage or its equivalents in Scotland, Wales and Northern Ireland, recommends protection of sites and enforces statutory protection of listed Ancient Monuments. (See Appendix 4 for details of these bodies).

#### 3.5 Member of the Public

Any person not a regularly subscribing member of an affiliated organisation, club, or society.

### **3.6 Mine and related terms**

#### **3.6.1 Mine**

An excavation or system of excavations, including all such excavations to which a common system of ventilation is provided, made for the purpose of, or in connection with, the getting, wholly or substantially by means of employment of persons below ground, of minerals (whether in their natural state or in solution or suspension) or products of minerals.

Note that a mine does not cease to be a mine just because mineral getting has ended. Surface land and buildings are part of a mine if still used in connection with working the underground parts of a mine.

#### **3.6.2 Disused mine**

A mine no longer working for mineral and still physically accessible.

#### **3.6.3 Abandoned mine**

A mine no longer worked that has undergone the formal procedures of abandonment, including the lodging of abandonment plans to the Mines Inspectorate and sealing, or secure fencing, of entrances.

#### **3.6.4 Show Mine**

A mine opened to members of the public for entertainment or educational purposes. Includes tourist mine, museum mine.

#### **3.6.5 Working mine**

A mine where there are persons at work below ground, or plant or equipment is in operation at the mines to maintain the safety of that mine or any other mine or operation of driving a shaft or outlet is being undertaken at the mine (as in MASHAM Regulation 2(3)). See 3.11 for meaning of 'at work'.

### **3.7 Mine Owner**

Clearly defined by MQA 1954 181 para 1 and MASHAM Regulation 2, as the person who is for the time being entitled to work the mine.

The owner of a mine for the purpose of Health and Safety legislation, is therefore not necessarily the owner of the land or the owner or lessee of the mineral rights, it may be a subsequent licensee or lessee who has the right to work the mine. Normal access agreements by clubs will not alter the ownership or liability of an owner.

### **3.8 Mines Inspector**

A suitably qualified person appointed by the Health and Safety Executive to ensure that the legislation covering safety and health at mines is complied with. Each area has a local inspector, qualified in mining engineering, who is responsible to a Principal District Inspector. There are also specialist inspectors with expertise in electrical and mechanical engineering.

The Inspectorate of Mines is a division of the Health and Safety Executive. The country is divided into two administrative districts, each under the control of a Principal Inspector. See Appendix 4.

The Mines Inspectorate are the enforcing authority for Health and Safety legislation at mines, except for MQA Section 151 - fencing of disused mine entrances and shafts – which is enforced by the Local Authority.

### **3.9 Mining History/Caving Group**

Either: an organisation or group affiliated to the NCA or NAMHO

Or: any other group under the leadership of a person holding an Approved Leadership Assessment. (See section 3.2.)

### **3.10 National Governing Body**

British Mountaineering Council **BMC**

Mountain Leader Training Board **MLTB**

National Caving Association **NCA**

National Association of Mining History Organisations **NAMHO**

### **3.11 Work**

Except where it is used in the context of ‘to work a mine for minerals’, ‘work’ and ‘at work’ have the same meaning in these Guidelines as in the HSWA (see sections 52 and 53). Work means as an employee or as a self-employed person. An employee is an individual who works under a contract of employment, whether express (oral or in writing) or implied. A self-employed person is an individual who works for gain or reward otherwise than under a contract of employment.

Thus, people who are being paid for their services will almost certainly be ‘at work’. People who get together in their spare time with no thought of profit or gain from their group’s activities are unlikely to be ‘at work’. However, the definition of employment does not refer to payment, so a volunteer can still be an employee and a charity or other organisation not motivated by profit can be an employer. (See also section 5.)

### **3.12 Young Person**

A person below the age of 18 years old.

## **4.0 SAFETY - GENERAL PRINCIPLES**

### **4.1 Introduction**

The priority for anyone visiting mines for whatever purpose should be to do so safely. Besides the more obvious consideration of protecting people from danger, there is also the fact that if an activity is not carried out in what is considered to be a safe manner, access arrangements may become difficult to obtain or be denied in the future.

It is important to remember that HSWA Section 8 places a duty on any person not to interfere with or misuse things provided in the interests of health and safety by someone with a duty under the Act. Any person, whether at work or not, who breaks into a fenced mine could be in breach of this section.

Individuals not at work may also have a duty of care under civil law for colleagues, such as not leaving a heavy object in a precarious position, or power leads where people may trip up, etc.

Anyone venturing underground should consider fully the consequences of an accident and think through the safety procedures required to ensure they can get out again, or when necessary that they can be rescued as soon as possible. Suitable provision for escape and rescue in emergency situations is common sense for anyone leading trips into disused mines, as well as a legal requirement for working mines.

### **4.2 National Governing Body Codes**

NAMHO and the NCA issue codes of practice for most aspects of mine exploration (see Appendix 3) and these should be followed by all affiliated organisations. The NCA in conjunction with NAMHO, have developed an Approved Mine Leadership Assessment that should be seriously considered for mine leaders taking members of the public into mines (other than limited regular itineraries at show mines). Other codes of practice issued by the MLTB and BMC may be useful guides to activities falling within their expert field of knowledge, eg. outside climbing to gain access, or use of remote entrances above 1,000ft in winter etc.

### **4.3 Risk Assessment**

Risk assessment is now required by several health and safety regulations, particularly MHSW. It provides a structured and proportionate approach to safety management so is recommended even for those affiliated groups who do not have a legal duty to carry out risk assessments.

A good mine leader will constantly make risk assessments during the progress of a trip. At its simplest level risk assessment means looking out for hazards and taking appropriate precautions to keep the group safe. A more structured risk assessment is strongly advised at the planning stage of any new project contemplated by a Mining History/Caving group.

NAMHO members should not take people who are not regular subscribing members of their organisation or another affiliated group into a mine unless the group has made appropriate risk assessments and put in place safety procedures to deal with the hazards identified during the process.

Risk assessments should be carried out by competent persons with the relevant experience and qualifications for the subject e.g. experienced club member, mining engineer, CIC, etc. as appropriate. Expertise in the activity being assessed is the important thing. The HSE has issued leaflets outlining five steps to risk assessment.

1. Look for the hazards.
2. Decide who might be harmed and how.
3. Evaluate the risk and decide whether existing precautions are adequate or whether more should be done.
4. Record your findings.
5. Review your risk assessment and revise if necessary.

The process of risk assessment should cover the entire activity so that each hazard is identified and analysed for the purpose of putting in place the precautions needed to reduce risk.

The HSE have produced a new leaflet for use at activity centres, which explains the process of risk assessment for outdoor activities in a clear and easily followed form, entitled Adventure Activities Centres: Five Steps to Risk Assessment (see Appendix 2). This is highly recommended reading for any club wishing to review their safety practices.

A useful general leaflet, '5 Steps to Risk Assessment' (see Appendix 2), is free and can also be found on the HSE website: ([www.hse.uk/pubs/indg163.htm](http://www.hse.uk/pubs/indg163.htm)).

## **5.0 SAFETY - LEGAL IMPLICATIONS OF MINE USAGE**

### **5.1 Introduction**

The following comprises a list of the most common activities by groups within NAMHO that use disused mine workings; although not exhaustive, it is intended to give an outline of responsibilities and whether a group's activities are likely to give rise to specific duties under health and safety law. In general this depends upon whether 'work' is involved (see 3.11 above).

### **5.2 Mining History/Caving Groups - activities for members**

Mining History/Caving Groups using disused mines for exploration, research, surveying, restoration, conservation, maintenance, training, or other recreational/educational purposes involving only their members (i.e. not involving members of the public); would not be undertaking work activities and so are not required to involve the Mines Inspectorate in their activities.

### **5.3 Mining History/Caving Groups - development activities**

If activity at a mine includes a programme of restoration, conservation, maintenance or development affecting the fabric of the mine and aimed at re-opening the mine for public access underground, then the Mines Inspectorate should be made aware of the activity. Depending on the circumstances, volunteers could be considered to be at work as employees of the club or mine owner.

Where a Mining History/Caving group has its own disused mine whether through ownership, lease or licence, it becomes the mine owner for the purposes of Health and Safety legislation and has the duty of complying with legislation and notifications to the Mines Inspectorate. If the Group has an ordinary access

agreement with the mine owner, these duties remain with the mine owner. The Group does however have a duty to keep the mine owner fully informed of their activities and should check that the owner has contacted the Mines Inspectorate.

It is likely that any project carried out by a Group for the purposes of reopening a mine and resembling a mining operation, such as shaft clearance, support of workings or a large undertaking to reopen collapsed workings, would have to be notified under MASHAM regulation 7 and health and safety legislation appropriate to the activity could apply. One months notice of the start of such an operation is required and any access problems should also be highlighted to the Inspectorate as an inspection is likely to be considered necessary.

Even if the Mines Inspectorate advises that having considered the circumstances, they do not deem these mining operations to constitute work activities, Groups should carry out a risk assessment and take account of relevant legislation and ACOPs (see Appendix 2 and 3) as setting out good practice. For example shaft headgear and haulage systems, should be constructed and maintained to a high engineering standard and only operated by well trained, competent adults. Use of caving ladders, lifelines and single rope techniques should follow current NCA best practice.

#### **5.4 Mining History/Caving Groups - open days**

Where Groups hold publicly advertised open days when members of the public are invited into or are allowed to enter a disused mine, the public can reasonably expect to be exposed to no more risk than during a visit to a show mine, or where the nature of the activity has been made clear in advance, to expect an adventure caving activity suitable for novice members of the public. Any form of trading with the public during the event, whether or not the underground visit is free, is likely to mean that the event would be viewed as a work activity. The Mines Inspectorate should be notified at least one month in advance of the first use of a mine for such an event. The provisions of the AALR may also apply (see 5.6).

Where members of the public ask a Mining History/Caving Group to take them into a disused mine and this is organised on an occasional basis to foster public relations, without charging a fee, this is unlikely to be considered as a work activity. The Mines Inspectorate need not be informed.

Whenever members of the public are to go below ground, a suitably cautious risk assessment should be undertaken beforehand (see 4.3).

Members of the public must NOT be allowed to ride on any shaft winding or underground transport systems, except at a working mine duly notified to the Mines Inspectorate.

Members of the public should not be encouraged to use caving ladders or single rope techniques unless that is an advertised activity or part of an emergency escape arrangement. In either case they must be under the instruction and supervision of a suitably trained or qualified person, preferably with an approved leadership assessment – see Definitions 3.2.

Where fixed ladders are provided, these should not be vertical or overhang and every ladder exceeding 5 metres in length must have platforms at intervals not exceeding 5 metres.

All members of the public need to be appropriately equipped and supervised by a competent person at all times. Follow appropriate NAMHO/NCA best practice. The mine used should be appropriate for the purpose, and the route should be easily within the capability of the least able person involved.

#### **5.5 Show Mines and Mining Museums**

Any disused mine where paid employees work below ground will be treated as a working mine and must be notified to the Mines Inspectorate and the mine owner will be expected to comply with current legislation. If paid employees work on the surface parts of the mine undertaking and only volunteer helpers go below ground with members of the public, this is still likely to be regarded as a working mine.

It would be wise to discuss a proposed new venture with the Mines Inspectorate when the idea is conceived, in order to assess the feasibility of the project. The Inspector can provide positive advice and may suggest visits to similar sites to see recommended methods of operation.

### **5.6 Adventure Activities for Young People**

Certain activities (including exploring disused mines) undertaken by young people aged under 18 at Outdoor Education Centres or under the control of another organisation or person are covered by the Adventure Activities Licensing Regulations (AALR) if a fee is charged. The person or organisation responsible for leading such visits is known as a Provider. The AALR are administered by the Adventure Activities Licensing Authority (AALA) which is approved by the Department for Education and Employment and operates under the guidance of the Health and Safety Executive. The Licensing Authority inspects the safety management systems of the Providers and issues licences to those who require them under the AALR. Not to hold a licence for activities in a disused mine in the above circumstances, or to operate contrary to the conditions of the licence, are serious offences enforced by the HSE or Local Authority.

In some cases, the AALR does not impose an obligation for a Provider to be licensed, eg where:

- a) each individual young person is accompanied by their parent or legal guardian
- b) the trip is to a working mine or public area of a show mine
- c) the trip is provided by an affiliated club offering taster activities to non-members
- d) the activities and their facilities are provided free of charge.

In the case of (c) and (d), although the Provider may not need to be licensed under the AALR, they do need to have an Approved Leadership Assessment.

(see also “The Adventure Activities Licensing Regulations 1996 Guidance to the Licensing Authority – Appendix 2).

## **6.0 ACCESS**

### **6.1 Introduction**

If you wish to use a mine for whatever purpose, an arrangement must be made with the legal owner before the mine is used. Failure to obtain access permissions can lead to prosecution and/or invalidate some insurances, making access arrangements difficult in the future, or impossible for anyone else to obtain.

If the owner of a mine is unknown, every effort should be made to discover who controls access. If the site is used regularly without any attempt to control access this may be for many reasons but is not satisfactory, and does not remove liability. If it is intended to lead novice groups into a mine regularly, the owner may particularly wish to become aware of this. For the sake of all parties, every attempt should be made to ensure that legal obligations are met.

### **6.2 Agreements**

Access agreements can be verbal or written; either formal or informal. It may also be necessary to arrange access agreements with landowners or tenants, as well as the mine owner. If the site is classed as a Site of Special Scientific Interest (SSSI) then English Nature (their equivalents in Scotland, Wales and N. Ireland) may need to be consulted if the activity lies outside those already permitted, or is considered a Potentially Damaging Operation (PDO) for that site.

### **6.3 Conditions of Access**

Access agreements should ensure that the intended activities are fully included. Agreements almost inevitably only allow specified activities; some activities such as digging, removal of artefacts/minerals, use of explosives may all be outside the terms of an original agreement. Access may also be subject to conditions voluntarily imposed by schemes such as Regionally Important Geological Sites (RIGS), legal protection of the site as an SSSI, or scheduling as an Ancient Monument (see Conservation 7.0.)

Changes to regular activities carried out under an agreement should be discussed and approved, by the mine owner. Failure to keep the owner informed, besides risking future access, may place the mine owner in breach of a legal duty to notify an authority of the activity, or other duties.

#### **6.4 Accepting responsibility for a mine**

It can be possible for a Mining History/Caving Group to license or lease the rights to a mine as a means of transferring safety responsibilities from an owner who is reluctant to grant access. Provided the rights transferred include an exclusive right to work minerals (perhaps excluding commercial mineral extraction, so long as no other person had those rights at the same time) and the licensee/lessee is an individual, partnership, company, trust or other legal entity (not a club), then it becomes the new mine owner for the purposes of health and safety law. The health and safety duties of a mine owner, including the notification of change of ownership to the Mines Inspectorate, transfer to the licensee/lessee.

It is also possible for a mine owner to appoint persons (which could be club officials) to fulfil some, or all of the mine owner's responsibilities for the mine. The owner has to send copies of appointments to the Mines Inspectorate and the Inspectorate may object if the choice of person appears inappropriate, or they do not have clearly defined responsibilities for making financial and other provision for securing compliance with health and safety law.

These avenues could be explored if an affiliated group wish to adopt a mine and/or take members of the public below ground where the owner is reluctant to accept legal liability.

There are other important factors to consider when taking responsibility for a mine, such as: legal duties under mining law, occupier liability, subsidence liability; fencing and security of entrances, shafts etc.; pollution and water course treatment. Owners of mines abandoned after 1999 do not enjoy the water pollution relaxations that existed before the Environment Act 1995. It is becoming increasingly important when contemplating taking responsibility for a mine, to consider what (potentially costly) environmental commitments may be involved either in the short or longer term.

Anyone considering taking responsibility for any aspect of a mine ought to take adequate legal advice and speak to the Mines Inspectorate.

## **7.0 CONSERVATION**

### **7.1 Introduction**

Many mine sites are of a sensitive nature and uncontrolled access by careless persons can cause irrevocable damage. By virtue of wet conditions, age, wear and tear, etc. many original mining features are fragile and prone to damage, requiring respect and care from visiting groups. Features such as mining machinery, artefacts, natural features including mud/mineral formations etc. may be composed of unusual combinations which add to their importance; a careless hand reaching out, can destroy something irreplaceable.

These may be considered by some to be moral issues rather than legal ones, but visiting groups can be liable for damage or loss suffered by the mine owner. Hopefully mine leaders take a pride in passing on information to their groups that will safeguard and create interest in the environment they are visiting. See Appendix 3 – NAMHO and NCA guidelines.

### **7.2 Regionally Important Geological Sites (RIGS)**

Special interest groups using important local earth science sites may classify a site under the RIGS scheme. In most cases this is arranged with a site owner. This will mean that the local RIGS group, which may be composed of interested geological organisations, local volunteers, museums, wildlife trusts and local authorities, ideally will have negotiated with the site owner, a suitable management scheme and entered it upon a register. The role of the scheme is to draw the planning authority's attention to geological features of local value, with the intention that consideration of an important site may become integral with the planning process.

RIGS do not provide any legal protection for sites, but raise site profiles and encourage owners to look after important features on their land. Site conservation and management arrangements made under the RIGS scheme and affecting use of mine sites should be incorporated into access agreements.

### **7.3 Sites of Special Scientific Interest (SSSI)**

Some mine sites are protected as Sites of Special Scientific Interest. These are areas of land notified under the Wildlife and Countryside Act 1981 as being of special nature conservation interest. SSSIs can be designated throughout Britain. Mines may be important bat habitats or be of unique geological interest, there may be unusual plants growing on waste tips etc. SSSIs are notified by English Nature (or its equivalents in Scotland, Wales and Northern Ireland).

Notifications are made to every owner and occupier of the land, the local planning authority, Secretary of State for the Environment, the appropriate water and sewerage companies, the Environment Agency and owners of minerals. English Nature regional staff can advise whether a particular site is within an SSSI.

Each SSSI site notification contains a list of Potentially Damaging Operations (PDO's) which any access agreement would need to reflect. Owners and occupiers of a site must give four months notice, in writing if they intend to carry out any of the activities listed in the notification, which may cause alteration or damage to the special interest of the site. There is a useful booklet available from English Nature, see Appendix 2.

The SSSI status does not infer any public right of access to sites. The mine owner is responsible for notifying to English Nature alterations to activities at a mine. It is important that anyone wishing to use an SSSI site, properly identifies the owner of the registered site and makes sure that their intended activities are within those allowed; access agreements should reflect the requirements of any SSSI status.

### **7.4 Ancient Monuments**

The provisions of the Ancient Monuments and Archaeological Areas Act 1979 seeks to promote the preservation of archaeological heritage sites through scheduling of nationally important sites. Sites range from prehistoric to many important 20<sup>th</sup> century sites; increasingly, historic mining sites are being selected for scheduling.

The Secretary of State for Culture, Media and Sport, and English Heritage, identify sites requiring designation as scheduled monuments. Once a site is scheduled, permission must be obtained from the Secretary of State for Culture, Media and Sport for any activity affecting the site or its setting. English Heritage plays a central role through its regional teams, giving advice to Government on individual applications, or management advice, grants and assistance to help with a monument's management.

Scheduling does not infer public access, although this may become an aspect of the site management plan. Where access is not generally available, it should be arranged through the property owner who has a duty to keep English Heritage informed and to ensure conservation and safety issues for the site continue to be addressed in any access agreement. The relevant County Council keeps records of scheduled monuments.

### **7.5 Listed Buildings**

Mines and their buildings are increasingly appreciated as making a major contribution to the historic interest of a locality or even considered of national importance; once lost they are irreplaceable. In some cases, listing has included not just mine buildings but important features such as tunnels, man made cavities, chimneys etc. Listing is not intended to 'fossilise' its subject but ensures that its architectural and historic interest is carefully considered before alterations or development (either outside or inside) are agreed. English Heritage are responsible for listing but the local planning authority are responsible for determining any subsequent development control and listed building consents. English Heritage may chose to become closely involved with applications involving Grade 1 or Grade 2\* buildings. The local authority planning department will usually have a conservation and listed buildings officer with the specialist knowledge to advise and deal with issues arising from this specialised planning control subject. Records of listings and copies of individual entries can be obtained from the local authority planning department, County Council offices and most local reference libraries.

The full national list of listed buildings is held by the Royal Commission on the Historical Monuments of England at the National Buildings Record, Kemble Drive, Swindon. SN2 2GZ. English Heritage can offer grants for repairs to historic buildings and ancient monuments. For further information see Planning Policy Guidance Note No 15 Planning and the Historic Environment published by the Department of Environment, Transport and Regions (previously Department of the Environment) available via TSO - address Appendix 4. See also leaflets 'Scheduled Monuments' and 'Listed Buildings' - Appendix 2.

### **7.6 Bats and Other Protected Species**

Bats are a familiar part of mine exploration and require sensitivity on the part of those using mines. A voluntary code of practice and legal requirements are outlined in the leaflet 'Bats Underground – A Conservation Code'. See Appendix 3.

Bats are protected by the Wildlife and Countryside Act 1981 (as amended) as are other species listed in schedule 5 of the Act (including common otters, which have been seen in mines). It is illegal to knowingly disturb, injure, take or kill any of these animals; or to damage, destroy or obstruct access to any place used by them. English Nature must be consulted over any proposed alterations to a site known to be used by bats or any other listed species. If it is intended to gate or grille entrances to a bat habitat, English Nature must be consulted; they will provide advice on construction and installation, they may even help with the procedure and provide grants.

NAMHO members and all visitors to mine sites are asked to respect all animal and plant life that they may encounter, taking particular account of hibernation periods or any other measures that can reduce disturbance.

## **8.0 RELATIONSHIPS WITH ENFORCING AUTHORITIES**

The various enforcing authorities promote compliance with legislation and often have considerable legal powers.

It is sensible to be frank with Inspectors and follow their recommendations when activities within a mine fall within their remit. By members building trust and acting responsibly, mutual co-operation can be established whereby the officers can help you to understand and comply with your duties, as well as passing on a wealth of knowledge and useful contacts that can prove invaluable.

The authorities will not, however, appreciate being treated as a free consultancy, so do your homework first before approaching an Inspector. The information you are seeking may be available from the authority's publications, internet website or helpline. There is also a wealth of knowledge and experience among members of NAMHO.

## **9.0 INSURANCE**

If safety measures fail, insurance is the last resort. The best form of insurance is of course to ensure that accidents cannot happen or if they do, that their severity is reduced to a minimum. Following safety procedures highlighted by risk assessment is an effective tool for anticipating unfortunate or unforeseen events.

NAMHO members have the option to participate in an insurance scheme provided through the BCRA. The policy covers activities currently specified as:

Cave karst and mine research, exploration, preservation, surveying, equipment testing, photography and publishing, etc for a pastime. Also associated outdoor pursuits with instruction and other activities relative to the general encouragement of scientific and sporting caving and mine exploration.

The public liability indemnity included in this policy may help with negotiation of access over private property or to gain underground access, where insurance is seen to be desirable by the land or mine owner.

The BCRA insurance indemnifies an insured person for any activity within its scope if they should prove to have been negligent, but normal good practices and any legal requirements will be expected to have been followed for the particular activities involved.

Professional activities, or activities carried out beyond the involvement or scope of membership of an insured club, will not be covered and would require separate insurance arrangements to be made by the persons involved. Employers are required to have cover for at least £5 million by the Employers Liability (Compulsory Insurance) Act 1969 and Regulations 1998.

## 10. CONCLUSION

Members of NAMHO are asked to consider the wider issues concerning activities involving mines and their surrounds. There are a range of Codes of Practice produced by NAMHO, the NCA and other governing bodies which members are expected to follow as appropriate. Through the wide membership of NAMHO itself, members have access to a wealth of experience covering most situations, or to act as a sounding board for new ideas; all it takes is the time to make a phone call, to send a letter or an email. Increasing use of the internet has opened new sources for mining history information and brought about the creation of discussion groups; the internet gives access to most national and local government information, including whole publications that can be downloaded through a personal computer.

Health and safety issues are not being raised among NAMHO members by the HSE as long as activities only involve club members and do not endanger the public. It is common sense however to consider the outcome of activities, and if appropriate clubs should consider carrying out risk assessments for more unusual or high risk activities to ensure that harm does not come to those who participate.

Environmental considerations are likely to become more of an issue in the future and the implications of scheduling and special designations being imposed upon sites, must become part of the consideration given to mine sites visited or to those forming part of projects.

Although legislation and controls seem to be an ever increasing restriction upon what was previously perceived to be an unrestricted (or even un-bureaucratic) underground scene; in the past there was a willingness to ignore many legal restrictions which were there. Times change and we must change with them; it is to the memberships' advantage to know what the realities are before undertaking projects or even visiting mines. Some of the 'restrictions' or controls may even be used to the advantage of NAMHO members; grants may be available to protect vulnerable sites and buildings, protection or advice obtained to ensure that damage to sites is minimalised, for future generations to enjoy. The presence of bats can stop destruction of workings by infilling or quarrying etc. The Mines Inspectorate can be a source of sound advice and do not wish to become involved with club activities. The picture is not as bad as some might think.

Ultimately the traditional activities of Mining History/Caving Groups can continue much as it always has done, with very few restrictions. But as member groups seem to increasingly become involved in peripheral activities, there comes a corresponding increase in responsibilities to a wider range of people and authorities. It is in the interest of the entire NAMHO membership for the use of disused mines to be as responsible and safe as possible; this is the most certain way to ensure our exciting and absorbing pastime can continue to give pleasure not only to us but also to future generations of mine explorers.



## APPENDIX 1

### AN OUTLINE OF HEALTH AND SAFETY LEGISLATION

#### 1. Health and Safety at Work etc Act 1974 (HSWA)

This is the framework Act that sets out general duties on people at work, allows Regulations to be made and sets up the administrative and enforcement provisions. The circumstances in which this Act applies are usually clear from the wording of each section. HSWA applies if persons are at work in a mine (or any other workplace); it places duties upon employers, self employed persons, employees and persons in control of premises, to ensure the safety of people who may be put at risk by work activities. It includes (in Sections 3 and 4) important duties to ensure that members of the public are not put at risk.

In what follows it is important to keep in mind that Regulations made under HSWA (for example MHSW, MASHAM etc) have the same scope as HSWA: so Regulations made under the HSWA do not apply if there is no work involved. For Mining History/Caving Group activities they should be considered to be guidance on what is accepted good practice. AALR (see 5.) were not made under HSWA, so do apply to people who are not at work.

#### 2. Management of Health and Safety at Work Regulations 1999 (MHSW)

This covers the management of safety in all workplaces. It includes risk assessments, supervision and competence of persons to carry out work. NB Although new regulations (updating 1992 version) were published in 1999 to implement European Directives, related guidance is still awaited.

#### 3. Management and Administration of Safety and Health At Mines Regulations 1993 (MASHAM)

The MASHAM regulations build upon the HSWA, MHSW, and repealed much of the MQA legislation. The regulations set out the duties on mine owners, and requirements for managers, surveyors and plans, supervision, inspection, maintenance and training and various related notifications to the HSE

#### 4. Escape and Rescue from Mines Regulations 1995 (ERMR)

These regulations require an assessment of what emergencies could arise at the mine, planning of suitable escape arrangements, and access to a suitable rescue organisation. ERMR makes specific provisions for “tourist mines”; they are exempted from many of the specific requirements of rescue teams, but must still have a suitable rescue arrangement which might be with the Mines Rescue Service, Fire and Rescue Service or a recognised Cave Rescue Organisation.

#### 5. Adventure Activities Licensing Regulations 1996 (AALR)

The AALR places responsibility upon anyone providing adventure activities for persons under 18 years of age to obtain and comply with the terms of a licence. It requires providers of certain activities, including those in “parts of mines no longer worked,” to make proper risk assessment of hazards and have proper systems of safety management, including staff training, regular equipment maintenance, adequate means of rescue etc. If the Adventure Activities Licensing Authority is satisfied, it can issue a licence for up to three years. AALA can stop an activity or require improvements by revoking or amending the licence as it sees fit. AALA is an independent body working to guidance from the Health and Safety Commission.

Enforcement of licence conditions and for carrying out activities without a licence, can be enforced by either the HSE or the Local Authority.

#### 6. Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 (RIDDOR)

Under RIDDOR any death, major injury or dangerous occurrence arising from work activities, or if a member of the public is taken directly to hospital from a workplace, must be notified to the HSE as soon as

possible and submit the official report (on form F2508) within 10 days. Commercial enterprises should keep an accident book and report serious near misses, as well as notifiable accidents. Copies of form F2508 are found in RIDDOR publications, see Appendix 2.

#### **7. Ionising Radiation Regulations 1999 (IRR)**

IRR requires employers and the self-employed who take the public underground where Radon or other sources of radiation are present to ensure that the levels of radiation to which they and the public are exposed do not present a health risk. Where appropriate, the public should be made aware of potential risks. See NCA booklet “Radon Underground”, and appendix 3.

#### **8. The Mines and Quarries Act 1954 (MQA)**

While much of the MQA has been repealed by the HSWA and its regulations, MQA still covers matters such as ventilation and transport.

## APPENDIX 2

### USEFUL LEGAL REFERENCES

**Five Steps to Risk Assessment** – HSE ref: IND(G)163L

**Adventure Activities Centres: Five Steps to Risk Assessment** – HSE ref: C30 ISBN 07176 2463 3

**The Adventure Activities Licensing Regulations 1996 - Guidance on Regulations** HSE ref: L77. ISBN 0717611604

**Escape and Rescue from Mines Regulations 1995** – ACOP HSE ref: L71

**Health and Safety at Work Act 1974: Application to Private Clubs** – HSC ref: HSC(G)1

**The Management and Administration of Safety and Health at Mines Regulations 1993** – ACOP HSE ref: L44. ISBN 071760618X

**Everyone's Guide to RIDDOR** – HSE ref: HSE 31

**Health and Safety Regulations - A Short Guide** – HSC ref: HSC13

**Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995** – Legal Guidance L73. ISBN 0717610128

**Guidance to the Health and Safety at Work Act** – Guide L1. ISBN 0717604411

**The Use of Electricity in Mines - Electricity at Work Regulations 1989** – ACOP ISBN 0118854836

**What You Should Know About SSSIs** – English Nature ISBN 185716038X

**Scheduled Monuments: An English Heritage Guide for Owners and Occupiers** – English Heritage 1996 Code XH10876

**Listed Buildings: the work of English Heritage** – English Heritage 1997 Code XH20040

See Appendix 4 for the contact addresses to obtain these leaflets.

## APPENDIX 3

### USEFUL CODES OF PRACTICE, LEAFLETS AND INFORMATION

**Bats Underground – A Conservation Code.** Joint publication of the Fauna and Flora Preservation Society, Vincent Trust and Nature Conservancy Council (NCC now English Nature) 1988. ISBN 0947902104

**Going Down the Mine – Code of Practice for Mine Exploration.** NAMHO/NCA

**You May be a Leader of Men.** NAMHO

**Code of Practice for Mineral Collecting at Disused Mines.** NAMHO

**Code of Practice for Removal of Artefacts.** NAMHO

**Radon Underground.** NCA ISBN 0952552027 - £3.00

**A Code of Conduct Near Mines** – Sport England, East Midlands Region, Grove House, Bridgford Road, West Bridgford, Nottingham. NG2 5AP Tel. 0115-9821887 Website. [www.sportengland.org](http://www.sportengland.org)

**A Code of Practice for Geological Visits to Quarries, Mines and Caves** – The Geological Society, Burlington House, Piccadilly, London W1V 9H6

See Appendix 4 for the contact addresses to obtain these leaflets.

## APPENDIX 4

### USEFUL CONTACTS

#### Mines Inspectorate

At the time of writing, there are two Mines Inspectorate offices (see below) under a single principal District Inspector, Mr R. Stevenson. There are plans to merge the two offices in 2001.

#### Mines Inspectorate: Scotland and South East England District

Comprising the whole of Scotland. The counties of Northumberland, Tyne and Wear, Durham and Cleveland, North and West Yorkshire, Humberside, South Yorkshire, Cumbria, Derbyshire, Nottinghamshire, Lincolnshire, Leicestershire, Northamptonshire, Cambridgeshire, Norfolk, Suffolk, Essex, Oxfordshire, Buckinghamshire, Bedfordshire, Hertfordshire, Berkshire, Greater London, Hampshire, Surrey, East and West Sussex, Kent and Isle of Wight.

Address: Silver House  
Silver Street  
Doncaster  
South Yorkshire DN1 1HR

Telephone: 01302 368165/342267  
Fax: 01302 326521

#### Mines Inspectorate: Wales and West of England District

Comprising the counties of Lancashire, Merseyside, Greater Manchester, Cheshire, Shropshire, Staffordshire, West Midlands, Herefordshire, Worcestershire, Warwickshire, Gloucestershire, South Gloucestershire, Wiltshire, Somerset, Dorset, Devon, Cornwall and the whole of Wales.

Address: Daniel House  
Trinity Road  
Bootle  
Merseyside L20 7HE

Telephone: 0151 951 3991  
Fax: 0151 951 3896

#### Adventure Activities Licensing

**Authority**  
17 Lambourne Crescent  
Llanishen  
Cardiff. CF4 5GG

Tel: 029 2075 5715  
Fax: 029 2075 5757

#### English Heritage

23 Saville Row  
London  
W1X 1AB

Tel: 020 7973 3000

#### Department of the Environment, Transport and the Regions

Eland House,  
Bressenden Place,  
London. SW1E 5DU

Tel: 020 7890 3000

#### Cadw Welsh Historic Monuments

Crown Building  
Cathays Park  
Cardiff CF1 3NQ

Tel: 029 2050 0200

**Historic Scotland**  
Longmore House  
Selsbury Place  
Edinburgh EH9 1SH

Tel: 0131 668 8600

**English Nature**  
Northminster House  
Peterborough  
PE1 1UA

Tel: 01733 455000

**Natural Heritage**  
Environmental and Heritage Services  
Commonwealth House  
35 Castle Street  
Belfast BT1 1GU

Tel: 01232 251477

**HSE Books**  
PO Box 1999  
Sudbury  
Suffolk  
CO10 6FS

Tel: 01787 881165  
Fax: 01787 313995  
(HSE priced and free publications)

**National Caving Association**  
Monomark House  
27 Old Gloucester Street  
London  
WC1 3XX

**National Association of  
Mining History Organisations**  
c/o Peak District Mining Museum  
The Pavilion  
Matlock Bath  
Matlock  
Derbyshire DE4 3NR

Tel: 01629 583834

**Built Heritage**  
Environment and Heritage Service  
5-33 Hill Street  
Belfast BT1 2LA

Tel: 01232 235000

**Countryside Council for Wales**  
No.4 Castleton Court  
Fortran Road  
St Mellons  
Cardiff CF3 0LT

Tel: 029 2077 2400

**Scottish Natural Heritage**  
12 Hope Terrace  
Edinburgh  
EH9 2AS

Tel: 0131 447 4784

**The Stationery Office (TSO, previously HMSO)**  
33 Wine Street  
Bristol  
BS1 2BQ

Tel: 0117 926 4306  
Fax: 0117 929 4515  
(TSO or HMSO priced and free publications)

**Tony Flannigan**  
**NCA Training Co-ordinator**  
The Annexe,  
Thornton in Lonsdale  
Westhouse, Nr Ingleton  
Via Carnforth  
Lancashire LA6 3PD

Tel/Fax: 015242 41737

**British Cave Research Association**  
20 Woodland Avenue  
Westonzoyland  
Bridgwater  
Somerset TA7 0LQ

**USEFUL WEB SITES:**

**NAMHO:**

<http://wkweb4.cableinet.co.uk/adrian.pearce/INDEX.HTM>

**NCA:**

[www.nca.org.uk](http://www.nca.org.uk)

**BCRA:**

[www.caves.org.uk](http://www.caves.org.uk)

**HSE:**

[www.hse.gov.uk](http://www.hse.gov.uk)

**AALA:**

[www.aala.org](http://www.aala.org)

**English Nature:**

[www.english-nature.org.uk](http://www.english-nature.org.uk)

**English Heritage:**

[www.english-heritage.org.uk](http://www.english-heritage.org.uk)

**HMSO:**

[www.hmso.gov.uk](http://www.hmso.gov.uk)

**TSO:**

[www.the-stationery-office.co.uk](http://www.the-stationery-office.co.uk)

**Mining History Information Pages:**

[www.exeter.ac.uk/~pfclaugh/mhinf/](http://www.exeter.ac.uk/~pfclaugh/mhinf/)

**Mining history e-mail discussion list:**

[www.mailbase.ac.uk/lists/mining-history/](http://www.mailbase.ac.uk/lists/mining-history/)