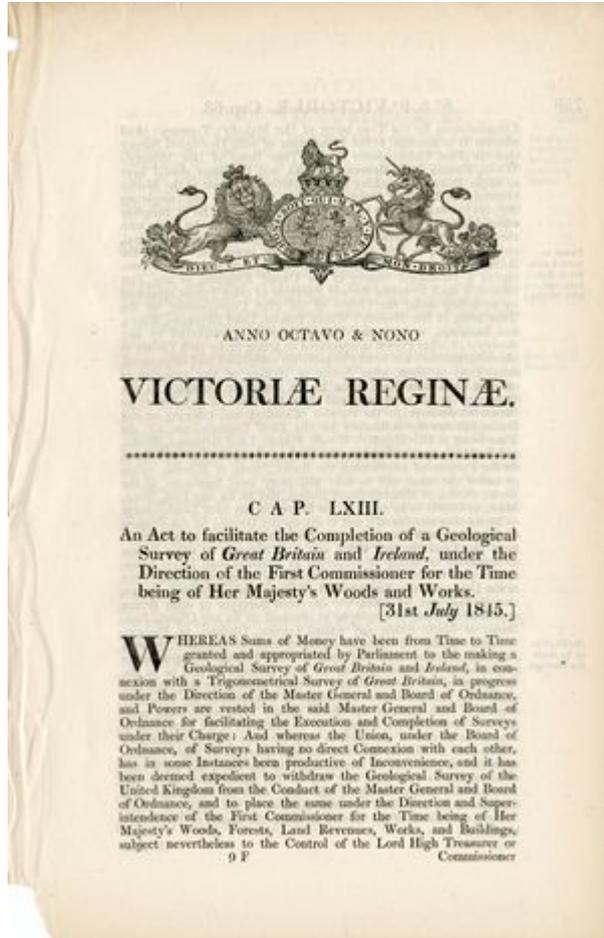


British Geological Survey - the legislative framework

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The Geological Survey Act and the creation of the Geological Survey of Great Britain & Ireland

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British Geological Survey - The legislative framework

By R Bowie.

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Summary

Since shortly after its inception in 1835 the Geological Survey has had the support of a number of statutory rights to obtain geological and other scientific information to ensure that it could carry out its role as a National Survey. These rights also carry with them the obligation to maintain records of this work and to make it available to government and the public. As the work of the British Geological Survey and its precursors has mainly been carried out for and funded by Government its records are covered by Public Records legislation. The Freedom of Information Act, the Lord Chancellors Codes of Practice and the Environmental Information Regulations set out further obligations and provide guidance for good practice. The more recent Statutory Instrument 2009 No. 1744 has restored Public Records Body status on the Research Councils and brings them all within the scope of the Public Records Act.

Introduction

Foundation of the Survey and the legislative framework from 1845 on

The Geological Survey came into existence, not as a result of legislation, but as a result of funding being provided by the Board of Ordnance to cover the cost of geologically colouring the

topographical maps of the Trigonometrical Survey. Sir Henry de la Beche had first worked for the Board in 1832, having obtained funding to add geological information to 'the topographical maps of Devon. The success of his initial work led to the formal setting up of the Survey in 1835 when a new Board of Ordnance bid was made by Colby and received strong support from Buckland, Lyell and Sedgwick. In his Presidential Address to the Geological Society in 1836, Lyell stated "we drew up a joint report in which we endeavoured to state fully our opinion as to the great advantages which must accrue from such an undertaking, not only as calculated to promote geological science, which would alone be a sufficient object, but also as a work of great practical utility bearing on agriculture, mining, road-making, the formation of canals and railroads and other branches of national industry".

In 1841, the need to protect the surveyors and to expedite the work of the topographic survey at the six-inch scale led to the passing of the Survey Act "to authorise and facilitate the Completion of the Survey of Great Britain and the Isle of Man" (the Irish Survey Act of 1825 already covered survey activity in other parts of the British Isles).

Soon after this the Geological Survey Act published on 31st July 1845 (Appendix 1) provided a similar framework in that it was passed "to facilitate the Completion of the Geological Survey of Great Britain and Ireland under the direction for the Time being of Her Majesty's Woods and Works". Under the Act, responsibility for the Survey passed from the Board of Ordnance to the Office of Woods, Forests, Land Revenues, Works and Buildings.

The 1845 Act covered subsequent activity until the First World War period. As far back as 1914 a review of industrial and scientific research had been under way. By Order-in-Council of 28th July 1915 the Department of Scientific and Industrial Research (DSIR) came into existence "to direct, subject to such conditions as the Treasury may from time to time prescribe, the application of any sums of money provided by Parliament for the organisation and development of scientific and industrial research". On 1st November 1919, the Geological Survey was transferred to the DSIR.

The Department of Scientific and Industrial Research Act of 1956 (Appendix 2) amended aspects of the management of research functions and placed the DSIR under the charge of a Council for Scientific and Industrial Research, the forerunner of the current Research Councils. In 1965, the Science and Technology Act (Appendix 3) contained "further provision with respect to the responsibility and powers in relation to scientific research and related matters". This Act brought into being (Section 1(b)), the Natural Environment Research Council (NERC) within which the British Geological Survey (BGS) still operates. The NERC was in addition given chartered status by a Royal Charter in 1965 (Appendix 4) and a supplemental Royal Charter in 1993 (Appendix 5). These were considered beneficial for the execution of basic, strategic and applied research, surveying and long term monitoring as set out in the Act

Overseas activities

The 1965 Act via the NERC Charter sanctioned research activities beyond the UK. Although the overseas work of BGS is now an integral part of its operations, the early Survey legislation made no provision for activity outside the British Isles. Nevertheless several members of the Geological Survey staff did carry out commissioned survey and research work in various parts of the world during the 19th Century. Formally organised geological activity overseas developed largely with the founding of the Imperial Institute in 1883. One section of the Institute handled work connected to the mineral resources of the Empire. The strong trade connection was reflected in the Institute's parent Department for most of its life. From 1903 to 1916 it was part of the Board of Trade, from 1925 (Imperial Institute Act) it merged with the Imperial Mineral Resources Bureau and operated under the Department of Overseas Trade. In 1947 a new body emerged, the Colonial Geological Surveys and this in turn, reflecting developments, became the Overseas Geological Surveys in 1956.

In 1965 the Overseas Geological Surveys and the Geological Survey of Great Britain were merged within the new NERC and became the Institute of Geological Sciences (IGS), on the 26th March 1966. IGS changed its name to BGS in 1984.

Legislation relating to the scientific activities of the British Geological Survey

Current legislation on access and rights to geological data

The full history of legislation affecting the rights and obligations of BGS (through the Natural Environment Research Council) or affecting its work is both long and complex. There have been numerous revisions and amendments. The following is not a comprehensive listing of all the legislation, but covers the current legislation that provide the right of access to property and data relevant to the work of the Survey. A short summary of these rights was published by the Director in 1994 (Appendix 6)

The Relevant Acts

1. Geological Survey Act 1845

This was an enabling act which provided authorisation for any authorised officer "to enter any land for the purpose of making, carrying on, and completing, any geological survey to break up the surface of any part of such land for the purposes of ascertaining the rocks strata or minerals within or under the same and to take and carry away specimens" A geological survey is now been judged to include geochemical and geophysical surveys

2. The Mining Industry Act of 1926. (23)

The intention of Section 23 of the Mining Industry Act 1926 as amended by the Mines and Quarries Act 1954 and the Science and Technology Act 1965. is to ensure that all information obtained from sinking boreholes and shafts for minerals is made available to the BGS. The Act requires the mandatory notification of all boreholes or shafts sunk for the purpose of mineral exploration or extraction which are intended to reach a depth of more than 100 feet below the surface. A journal must be kept and the cores or fragments retained for a minimum of six months to allow BGS to inspect or copy the journals and take representative specimens of the cores. The data obtained can be published or made available for public inspection except where a request is made for it to be held in confidence. (Similar provisions in the Water Resources Act 1991 cover water bores; see below).

In addition in sections 3 & 5 'the Act gives the same rights to officers appointed by NERC in relation to the production and inspection of plans sections and drawings as are conferred on Inspectors of Mines'. BGS is also given 'free access at all reasonable times to all underground workings' and shall be supplied with 'such information and specimens of seams and strata as may reasonably be required'.

3. The Petroleum Production Act 1934 (9)

This declares that the expression 'minerals' in the Mining Industry Act 1926 includes petroleum.

4. The Mines and Quarries Act 1954 145 (1e)

Inspectors (and therefore BGS) have the right to the production of and to inspect, 'any registers, books, plans or other documents...which are required to be kept'. BGS is entitled to take copies of

plans data and has exercised this right on a regular basis over the years. Substantial sections of the Mines and Quarries Act 1954 have now been repealed including those relating to plans and records. These are now covered by new regulations in the Management and Administration of Safety and Health at Mines Regulations 1993.

5. Minerals (Miscellaneous provisions) Act (Northern Ireland) 1959 as amended by the Mineral Development Act 1969

These provisions for Northern Ireland contain similar but far wider provisions to those in the Mining Industry and Water Acts. These are intended to ensure that all information from the sinking of all shafts and boreholes or excavations for minerals, water, or engineering works reaching a depth of more than 15m are made available to the Geological Survey of Northern Ireland (GSNI). Data can be required to be sent to the Survey and information from the carrying out of geochemical and geophysical surveys and the production of geophysical logs are unequivocally covered by the Act.

6. Science and Technology Act 1965

Following the above act the NERC was established by Royal Charter. Article 2 states that the NERC responsibilities in the field of geology are exercised by the IGS (BGS) whose duties include the 'conservation, correlation and interpretation of the geological information obtained by others' and the 'communication of the results through...publications and by answers to specific inquiries'.

The Act transferred the facilities provided by the Mining Industry Act, Water Acts and the Geological Survey Act to NERC.

7. Mineral Exploration and Investment Grants Act 1972

In return for assistance in mineral exploration on the UK Continental Shelf the applicant agrees to communicate the geological information obtained to the BGS. The data from these mineral exploration operations have been lodged with BGS and the Act has now been revoked, following termination of the grants.

8. The Petroleum (Production Regulations) 1976

Contains provision for the Minister to furnish any specified data (All records, returns, plans, maps, samples) to BGS or other similar bodies for the purpose of their geological activities

9. Water Resources Act 1991 Water Act 1945 & Water Act (Scotland)

Includes Provides similar provisions to the Mining Industry Act but is generally much more comprehensive and requires copies of the data to be sent to BGS. The data includes information on water levels, flow and analysis. BGS is allowed to take specimens of core material and water.

10. Royal Charter 1965 and supplemental Royal Charter 1993

Sets out the objects of the Council to promote and support high quality basic, strategic and applied research, survey and long term environmental monitoring.

Other instructions from Government Departments or Agencies

Petroleum Operations Notice 9 (PON 9) regulations (on-shore and off-shore)

All petroleum licences require operators to retain all the data collected in the course of their

operations and to send any or all of this data to the Department of Energy and Climate Change as required. The BGS is the custodian, on behalf of the DECC, of core samples and records collected by operators as a requirement of the Petroleum Operations Notice No 9 Information from Trial Holes Ministry of Housing and Local Government Circular No 18/62 In 1963 the Minister of Housing and Local Government asked Local Authorities to assist the Survey by providing information about strata encountered in the sinking of trial boreholes. The aim being to help to 'add to the value of the advice given by the Survey'.

Department of Transport / Highways Agency Advice Note HA 34/874.26

Part of the arrangement between the Highways Agency and their Consultants/Contractors is that a full copy of the factual sections of any report produced as part of their Ground Investigation work is supplied to the Survey. This now includes the digital data in standard AGS format. SI No 732, The Control of Pollution (Licensing on Waste Disposal) Regulations 1976

Under powers conferred under the Control of Pollution Act, 1974, BGS should be the prescribed person referred to and where underground storage of toxic waste was planned the licensing authority must refer the proposal to BGS.

Legislation related to obligations to maintain information and make it available

Public Records Act 1958 and 1967

If the creator of a record was a central government department, agency or body, or predecessor to a modern department of state, funded from central Treasury funds granted through a parliamentary vote, then its records are likely to be public records falling within the definition and scope of the 1958 Act.

The Geological Survey, as placed under the Department of Scientific and Industrial Research (DSIR) in 1919 for the period up to 1965, was a public record body, so those records held by the BGS, that were created by or which belonged to the Imperial Institute, the Geological Survey of Great Britain, and the Directorates of Colonial and Overseas Geological Surveys, are all public records

The Natural Environment Research Council was omitted from the listing of Public Record Bodies when the Public Records Act was revised in 1967 (later this was found to be an oversight). Whilst this meant that the administrative records of the council were no longer Public Records the records created by the basic surveying and other work being carried out under Statutes and the other work directly funded by government departments continued to be Public Records. The omission from the Public Records Act was corrected in 2009 (see 3.2 below)

Freedom of Information Act 2000

Section 4(1) of the Public Records Act 1958 allows the Lord Chancellor to make arrangements with other organisations for the storage, permanent preservation and access to public records. The National Geoscience Data Centres at Keyworth and Edinburgh are among the 235 designated "places of deposit for public records". The Freedom of Information (FOI) Act in 2000 gives the public the right to ask any public body for all the information they have on any subject. Also, unless there's a good reason, the organisation must provide the information within a month.

The FOI also has significant implications for places of deposit. Public records are held by places of

deposit on behalf of the Lord Chancellor, who expects The National Archives (TNA) to ensure that suitable arrangements are made by places of deposit for compliance with the FOI Act where it relates to information in these records. TNA must also work to help ensure that where public records are held in places of deposit, for permanent preservation, that they comply with the Act,

Lord Chancellors Code under sections 45 and 46 of the Freedom of Information Act 2000

Under sections 45 and 46 of the FOI Act the Lord Chancellor has a duty to issue Codes of Practice as a supplement to the Act itself. These two Codes provide guidance to all public authorities on the practice which, in the opinion of the Lord Chancellor, would be desirable for them to follow in connection with the discharge of their functions under the FOI Act. These deal with the following two areas:

- The management of records, including (in Part 2 of the s.46 Code) the review and transfer of public records;
- Handling requests for information held in public records (s.45 Code)

The Codes themselves do not have statutory force. However, failure to comply with the provisions of the Codes may lead to breach of the FOI Act, and ultimately enforcement action being taken by the Information Commissioner.

Environmental Information Regulations (EIR) 2004

The Environmental Information Regulations gives rights of access to environmental information held by public bodies, including the BGS. As with the FOI, the EIR also places obligations on public authorities such as the BGS. Under EIR, any member of the public can apply for access to environmental information

Statutory Instrument 2009 No. 1744

This instrument corrects the omission in the Public Records Act of 1967 and brings the records of the Research Councils within the scope of public records legislation. It has the effect of ensuring that the Councils have appropriate procedures for managing and appraising their records and information. "The Research Councils are public bodies which invest in scientific and other research in order to advance our knowledge and train scientists, engineers and historians to contribute to the economic competitiveness and intellectual capital of the country and support our quality of life. As a result it has a part in fulfilling the National Archives Acquisition Strategy and Acquisition Criteria by ensuring that those records of the Councils which document the principal deliberations, decisions and actions of UK government and associated bodies are permanently preserved."

The inclusion of the Research Councils has corrected the omission in the Public Records Act of 1967 has restored Public Records Body status to the Research Councils and ensures that they will form a research resource for future generations.

Some deficiencies or areas where legislation could be improved

The Geological Survey Act covers all contemporary surveying techniques. The drilling of boreholes and the carrying out of geochemical and geophysical surveys are all current survey techniques.

However Due to the age of the Act although covered they are not stated.. More recent Northern Ireland legislation covers these deficiencies. The Mining Industry Act does not require data to be sent to BGS, just made available for inspection and copying. However in practice most companies find it easier to send data at the time it is produced, rather than at a subsequent date. The position with regard to the production of geophysical logs is unclear, but as with the surveying techniques it is considered they are covered.

The drilling of shallow site investigation bores is not covered by any legislation except those over 15m drilled in Northern Ireland. A vast amount of important data of is therefore lost The Water Resources Act does not require core materials or water samples to be kept for any specific period as is required under the Mining Industry Act.

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