

Deep Sea Mining (Licensing) Act, 1997

Principal Act

Act. No. 1997-28		<i>Commencement</i>	16.10.1997
		<i>Assent</i>	16.10.1997
Amending enactments	Relevant current provisions		Commencement date
Act. 2014-04 s. 2			27.2.2014

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SCHEDULE

Subject matter of Regulations

AN ACT TO PROVIDE FOR THE LICENSING OF DEEP SEA MINING.

Title.

1. This Act may be cited as the Deep Sea Mining (Licensing) Act, 1997.

Interpretation.

2. In this Act, unless the context otherwise requires—

“ancillary operations”, in relation to any licensed operations, means any activity carried on by or on behalf of the licensee which is ancillary to the licensed operations, including the processing and transportation of any substances recovered;

“deep sea bed” means that part of the bed of the high seas in respect of which sovereign rights in relation to the natural resources of the sea bed are neither exercisable by the United Kingdom nor recognised by Her Majesty’s Government in the United Kingdom as being exercisable by another Sovereign Power or, in a case where disputed claims are made by more than one Sovereign Power, by one or other of those Sovereign Powers;

“deep sea bed mining operations” means any exploration or exploitation of the hard mineral resources of the deep sea bed;

“exploitation” means commercial exploitation;

“exploitation licence” means a licence authorising the licensee to exploit the hard mineral resources of such part of the deep sea bed as may be specified in the licence;

“exploration”, in relation to the hard mineral resources of any part of the deep sea bed, means the investigation of the part of the deep sea bed for the purpose of ascertaining whether or not the hard mineral resources of that part of the deep sea bed can be commercially exploited;

“exploration licence” means a licence authorising the licensee to explore for the hard mineral resources of such part of the deep sea bed as may be specified in the licence;

“hard mineral resources” means deposits of nodules containing, in quantities greater than trace, at least one of the following elements, that is to say, manganese, nickel, cobalt, copper, phosphorus and molybdenum;

“inspector” means a person appointed as inspector under section 12;

“licensed area” means any part of the deep sea bed in respect of which there is in force an exploration or exploitation licence;

“licensed operations” means any activities which the licensee may carry on by virtue of his licence;

“licensee” means the holder of an exploration or exploitation licence;

“Minister” means the Minister with responsibility for the environment;

“prescribed” means prescribed by regulations under section 13;

“reciprocal authorisation” has the meaning given by section 5;

“reciprocating country” means a country designated as such by an order under section 5;

“ship” includes every description of vessel used in navigation; and

“United Kingdom national” means—

- (a) a British citizen, a British Dependent Territories citizen, a British National (Overseas) or a British Overseas citizen;
- (b) a person who under the British Nationality Act 1981 is a British subject; or
- (c) a British protected person, within the meaning of that Act.

Prohibition of unlicensed deep sea mining.

3.(1) Subject to the following provisions of this Act, a person to whom this section applies shall not explore for the hard mineral resources of any part of the deep sea bed unless he holds an exploration licence granted under section 4 below in respect of that part of the deep sea bed or is the agent or employee of the holder of that licence, acting in his capacity as such.

(2) Subject to the following provisions of this Act, a person to whom this section applies shall not exploit the hard mineral resources of any part of the deep sea bed unless he holds an exploitation licence granted under section 4 below in respect of that part of the deep sea bed or is the agent or employee of the holder of that licence, acting in his capacity as such.

(3) Any person who contravenes subsection (1) or (2) above shall be guilty of an offence and liable—

- (a) on conviction on indictment, to a fine;

(b) on summary conviction, to a fine not exceeding level 5 on the standard scale.

(4) This section applies to any person who is a United Kingdom national resident in Gibraltar or a body incorporated under the Companies Act.

(5) In any proceedings, a certificate issued by the Attorney General certifying that sovereign rights are not exercisable in relation to any part of the sea bed by the United Kingdom or by any other Sovereign Power shall be conclusive as to that fact; and any document purporting to be such a certificate shall be received in evidence and shall, unless the contrary is proved, be deemed to be such a certificate.

Exploration and exploitation licences.

4.(1) The Minister may, on payment of such fee as may be prescribed, grant to such persons as he thinks fit exploration or exploitation licences; and in determining whether to grant a licence in any case he shall have regard to any relevant factors including in particular the desirability of keeping an area or areas of the deep sea bed free from deep sea bed mining operations so as to provide an area or areas for comparison with licensed areas in assessing the effects of such operations.

(2) An exploration or an exploitation licence shall be granted for such period as the Minister thinks fit and shall contain such terms and conditions as he thinks fit and, in particular but without prejudice to the generality of the foregoing, a licence may include terms and conditions—

- (a) relating to the safety, health or welfare of persons employed in the licensed operations or in the ancillary operations;
- (b) relating to the processing or other treatment of any hard mineral resources won in pursuance of the licence which is carried out by or on behalf of the licensee on any ship;
- (c) relating to the disposal of any waste material resulting from such processing or other treatment;
- (d) requiring plans, returns, accounts or other records with respect to any matter connected with any licensed area or licensed operations or ancillary operations to be furnished to the Minister;
- (e) requiring samples of any hard mineral resources discovered or won in any licensed area, or assays of such samples, to be furnished to the Minister;
- (f) requiring any exploration or exploitation of the hard mineral resources of the licensed area to be diligently carried out;

- (g) requiring the payment to the Minister of such sums as may be prescribed at such times as may be prescribed; and
- (h) permitting the transfer of the licence in prescribed cases or with the written consent of the Minister.

(3) Where the Minister has granted an exploration licence he shall not grant an exploitation licence in respect of any part of the licensed area otherwise than to the licensee except with the licensee's written consent.

Licences granted by reciprocating countries.

5.(1) Where, in the opinion of the Minister, the law of any country contains provisions similar in their aims and effects to the provisions of this Act, the Minister may by Order in the Gazette designate that country as a reciprocating country for the purposes of this Act.

(2) Where a person holds a licence or other authorisation issued and for the time being in force under the law of a reciprocating country for the exploration or exploitation of the hard mineral resources of any area of the deep sea bed specified in that authorisation (the "authorised area")—

- (a) the Minister shall not grant an exploration or exploitation licence in respect of any part of the authorised area; and
- (b) if section 3 above applies to that person, he shall not be prohibited by that section from engaging in the exploration or, as the case may be, exploitation of the hard mineral resources of the authorised area.

(3) Any reference in this Act to a reciprocal authorisation is a reference to an authorisation within subsection (2) above; and references in subsection (2)(b) above to any person who holds a reciprocal authorisation includes references to his agents or employees acting in their capacity as such.

(4) For the purposes of any proceedings, a reciprocal authorisation may be proved by the production of a copy of the authorisation certified to be a true copy by an official of the government or other body which issued the authorisation; and any document purporting to be such a copy shall be received in evidence and shall, unless the contrary is proved, be deemed to be such an authorisation.

Prevention of interference with licensed operations.

6.(1) A person to whom section 3 above applies shall not intentionally interfere with any operations carried on in pursuance of an exploration or exploitation licence or a reciprocal authorisation.

(2) Any person who contravenes subsection (1) above shall be guilty of an offence and liable—

(a) on conviction on indictment, to a fine;

(b) on summary conviction, to a fine not exceeding level 5 on the standard scale.

Protection of the marine environment.

7.(1) Subject to section 5 above, in determining whether to grant an exploration or exploitation licence the Minister shall have regard to the need to protect, so far as reasonably practicable, marine creatures, plants and other organisms and their habitat from any harmful effects which might result from any activities to be authorised by the licence; and the Minister shall consider any representations made to him concerning such effects.

(2) Without prejudice to section 4(2) above, any exploration or exploitation licence granted by the Minister shall contain such terms and conditions as he considers necessary or expedient to avoid or minimise any such harmful effects.

Variation and revocation of licences.

8.(1) The Minister may vary or revoke any exploration or exploitation licence—

(a) where the variation or revocation is in the opinion of the Minister required—

(i) to ensure the safety, health or welfare of persons engaged in any of the licensed operations or ancillary operations; or

(ii) to protect any marine creatures, plants or other organisms or their habitat;
or

(iii) in pursuance of section 10 below; or

(iv) to avoid a conflict with any obligation of the United Kingdom arising out of any international agreement in force in Gibraltar;

(b) in any case, with the consent of the licensee.

(2) The Minister may revoke an exploration or exploitation licence in any case where a term or condition of the licence or any regulation made under this Act has not been complied with.

Freedom of the high seas.

9. It shall be the duty of the licensee to exercise his rights under the licence with reasonable regard to the interests of other persons in their exercise of the freedom of the high seas.

Foreign discriminatory action.

10.(1) This section applies to any ship which is registered in a country of which the government (or an agency or authority of the government), in the opinion of the Minister, has adopted or is proposing to adopt discriminatory measures or practices prohibiting or otherwise restricting the use in connection with any deep sea bed mining operations of ships registered in Gibraltar.

(2) Without prejudice to section 4(2) above, the Minister may include in any exploration or exploitation licence, either on granting the licence or by a subsequent variation, such terms and conditions as he considers expedient for prohibiting or otherwise restricting the use in connection with the licensed operations or any ancillary operations of any ship to which this section applies.

(3) The Minister, may by Order in the Gazette, extend this section to ships which are registered in any country of which the government (or any agency or authority of the government) in his opinion, has adopted or is proposing to adopt discriminatory measures or practices prohibiting or otherwise restricting the use in connection with any deep sea bed mining operations of ships registered in Gibraltar.

(4) In this section, references to an agency or authority of a government include references to any undertaking appearing to the Minister to be, or to be acting on behalf of, an undertaking which is in effect owned or controlled, directly or indirectly, by a State or territory other than the United Kingdom, Gibraltar or any other territory for whose external relations the United Kingdom is responsible.

Deep sea mining levy.

11.(1) Subject to the following provisions of this section, the holder of an exploitation licence shall, at the prescribed times, pay to the Minister—

- (a) an amount equal to 3.75 per centum of the value of the hard mineral resources recovered in pursuance of the licence during any prescribed period; or

- (b) if the value of the hard mineral resources so recovered cannot be ascertained under paragraph (a) above, 0.75 per centum of the value of any manganese, nickel, cobalt, copper, phosphorus or molybdenum; (“the elements”) or any compound containing any of the elements, found in those hard mineral resources.
- (2) The value of any hard mineral resources, element or compound shall, for the purposes of subsection (1) above, be determined in accordance with such rules as may be prescribed.
- (3) If any hard mineral resources recovered by the licensee during any prescribed period contain less than the amount prescribed in relation to that period, by weight or proportion or otherwise, of any of the elements or any compound containing any of the elements, the licensee shall not be liable to make any payment in respect of that element or compound.
- (4) A licensee may elect, in writing and at the prescribed times, in respect of any element or compound specified in the election to defer payment under subsection (1) above, until the element or compound is separated from any other matter with which it was recovered or, if earlier, until he disposes of the hard mineral resources containing that element or compound.
- (5) Where a licensee fails at the prescribed time to pay to the Minister any amount which he is required by subsection (1) above to pay at that time, the amount due shall, as from that time, carry interest at such rate as the Minister may prescribe until payment.
- (6) Where any payment has been deferred under subsection (4) above and becomes due, the amount due shall be calculated in accordance with subsections (1) to (3) above, and, for the purposes of subsection (5) above, that amount shall be deemed to have become due on the date when it would have been due had the election not been made.

Inspectors.

12.(1) The Minister may appoint inspectors to discharge such functions as may be prescribed and generally to assist him in the execution of this Act such persons appearing to him to be qualified for the purpose as he considers appropriate from time to time.

(2) The Minister may make to or in respect of any inspector appointed under subsection (1) above such payments by way of remuneration or otherwise as the Minister may determine.

Regulations and orders.

13.(1) The Minister may make regulations—

- (a) prescribing anything required or authorised to be prescribed under this Act;
- (b) generally for carrying this Act into effect;

and, without prejudice to the generality of the foregoing, regulations may be made with respect to any of the matters mentioned in the Schedule to this Act.

(2) Regulations under this section may make different provision for different cases or classes of cases and may exclude the operation of any provision of the regulations in specified cases.

Disclosure of information.

14. A person shall not disclose any information which he has received in pursuance of this Act and which relates to any other person except—

- (a) with the written consent of that other person; or
- (b) to the Minister, or any department, authority or agency of the Government that the Minister may specify;
- (c) with a view to the institution of or otherwise for the purpose of any criminal proceedings under this Act or regulations made under this Act; or
- (d) in accordance with regulations made under this Act; or
- (e) to the government of a reciprocating country or an agency of such a government or to any international organisation designated for the purposes of section 15 below.

(2) Any person who discloses any information in contravention of subsection (1) above shall be guilty of an offence and liable—

- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both;
- (b) on summary conviction, to a fine not exceeding level 5 on the standard scale.

Designated organisations.

15.(1) The Minister may designate by Order in the Gazette any international organisation for the deep sea bed, established in pursuance of an international agreement on the law of the sea which has been adopted by the United Nations Conference on the Law of the Sea (a “designated organisation”), and which has entered into force for Gibraltar.

(2) An Order under this section may also make provision for the payment to a designated organisation of any sums due to be paid pursuant to an international agreement such as is mentioned in subsection (1) above.

Supplementary provisions relating to offences.

16.(1) Proceedings for an offence under this Act or under regulations made under this Act may be taken, and the offence may, for incidental purposes, be treated as having been committed, in Gibraltar.

(2) Proceedings for such an offence shall not be taken except by or with the consent of the Attorney General.

(3) A person may be guilty of an offence under regulations made under this Act whether or not he is a resident of Gibraltar and a British citizen, a British Dependent Territories citizen, a British National (Overseas) or a British Overseas citizen or, in the case of a body corporate, it is incorporated under the Companies Act.

(4) Where an offence has been committed by a body corporate and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he as well as the body corporate shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

In this subsection “director”, in relation to a body corporate which—

- (a) is established by or under any enactment for the purpose of carrying on under public ownership any industry or part of an industry or undertaking; and
- (b) is a body whose affairs are managed by its members,

means a member of the body corporate.

(5) In any proceedings for an offence of failing to comply with any provision of this Act or of regulations made under this Act, it shall be a defence to prove that the accused used all due diligence to comply with that provision.

Civil liability for breach of statutory duty.

17.(1) Breach of a duty imposed on any person by a provision of regulations made in pursuance of section 13 above which state that this subsection applies to such a breach shall be actionable so far, and only so far, as the breach causes personal injury; and references to a wrongful act, neglect or default shall include references to any such breach which is so actionable.

(2) Nothing in subsection (1) above shall prejudice any action which lies apart from the provisions of that subsection.

(3) A defence to a charge which is available by virtue of section 16(5) above or by virtue of regulations made under this Act shall not be a defence in any civil proceedings, whether brought in pursuance of this section or otherwise.

(4) In subsection (1) above, “personal injury” includes any disease, any impairment of a person’s physical or mental condition and any fatal injury.

SCHEDULE

Section 13

SUBJECT MATTER OF REGULATIONS

General

1. Form and content of applications.
2. Evidence to be submitted in support of applications, the form in which it is to be submitted and the time within which it is to be submitted.
3. The safety, health or welfare of persons employed in any licensed operations or in any ancillary operations.
4. The holding of inquiries into accidents occurring in the course of any licensed operations.
5. The prohibition of any method of working which in the opinion of the Minister is or is likely to be harmful to any marine creatures, plants or other organisms or their habitat.

Provisions relating to inspectors

6. Powers of inspectors to board, and to obtain access to all parts of, any ship used for exploration or exploitation, and to obtain information and to inspect and take copies from any log book or other document.
7. Powers of inspectors to test equipment and, in special circumstances, to dismantle, test to destruction or take possession of any article or equipment.
8. Powers of inspectors to require, in connection with the survey or inspection of any equipment, the carrying out of procedures by such persons as may be specified in the regulations.
9. Rights of inspectors to require, on payment of reasonable costs, conveyance to and from any ship used in connection with any licensed operations, together with any equipment required

by an inspector for testing, or any equipment of which he has taken possession in special circumstances.

10. Duties to provide inspectors with reasonable accommodation and means of subsistence while on any ship in exercise of their functions under this Act.

11. Powers to be exercisable by inspectors in case of immediate or apprehended danger.

Offences

12. Regulations may provide that any prescribed breach of regulations shall be an indictable offence or a summary offence or an offence triable either way and punishable with a fine of such amount as may be prescribed but not exceeding, in the case of summary conviction, the level 5 on the standard scale.

13. Regulations may afford such defence, if any, as may be prescribed in relation to any offence created by regulations made under this Act.