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*Number 23 of 2017*

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**Minerals Development Act 2017**

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**MINERALS DEVELOPMENT ACT 2017**

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249. Amendment of section 46 of Merchant Shipping (Investigation of Marine Casualties) Act 2000
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251. Amendment of Third Schedule to Freedom of Information Act 2014
252. Amendment of Forestry Act 2014
253. Amendment of European Communities (Environmental Impact Assessment) Regulations 1989
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## LIST OF MINERALS

## ACTS REFERRED TO

Acquisition of Land (Assessment of Compensation) Act 1919 (9 & 10 Geo. 5, c. 57)  
Air Navigation and Transport Act 1950 (No. 4)  
Air Pollution Act 1987 (No. 6)  
Civil Service Regulation Act 1956 (No. 46)  
Companies Act 1963 (No. 33)  
Companies Act 2014 (No. 38)  
Continental Shelf Act 1968 (No. 14)  
Derelict Sites Act 1990 (No. 14)  
Energy (Miscellaneous Provisions) Act 1995 (No. 35)  
Energy (Miscellaneous Provisions) Act 2006 (No. 40)  
Environment (Miscellaneous Provisions) Act 2011 (No. 20)  
Environmental Protection Agency Act 1992 (No. 7)  
Environmental Protection Agency Acts 1992 to 2011  
European Parliament Elections Act 1997 (No. 2)  
Foreshore Act 1933 (No. 12)  
Forestry Act 1946 (No. 13)  
Forestry Act 2014 (No. 31)  
Freedom of Information Act 2014 (No. 30)  
Gas Act 1976 (No. 30)  
Harbours Act 1946 (No. 9)  
Harbours Act 1996 (No. 11)  
Harbours Act 2015 (No. 61)  
Land Act 1984 (No. 24)  
Land Law (Commission) Act 1923 (No. 27)  
Lands Clauses Consolidation Act 1845 (8 & 9 Vict., c. 18)  
Local Government (Water Pollution) Acts 1977 to 2007  
Local Government Act 2001 (No. 37)  
Merchant Shipping (Investigation of Marine Casualties) Act 2000 (No. 14)  
Minerals Company (Amendment) Act 1950 (No. 5)  
Minerals Company Act 1945 (No. 7)  
Minerals Company Act 1947 (No. 35)  
Minerals Company Acts 1941 to 1950  
Minerals Development Act 1940 (No. 31)  
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Minerals Development Act 1995 (No. 15)  
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Minerals Exploration and Development Company Act 1941 (No. 13)  
Mines and Minerals Act 1931 (No. 54)  
National Monuments (Amendment) Act 1987 (No. 17)  
National Monuments Act 1930 (No. 2)  
Petroleum and Other Minerals Development Act 1960 (No. 7)  
Petroleum and Other Minerals Development Acts 1960 and 1995  
Petty Sessions (Ireland) Act 1851 (14 & 15 Vict., c.93)  
Planning and Development (Amendment) Act 2010 (No. 30)  
Planning and Development Acts 2000 to 2016  
Property Values (Arbitrations and Appeals) Act 1960 (No. 45)  
Protection of the Environment Act 2003 (No. 27)  
Registration of Deeds and Title Act 2006 (No. 12)  
Registration of Deeds and Title Acts 1964 and 2006  
Sea-Fisheries and Maritime Jurisdiction Act 2006 (No. 8)  
State Property Act 1954 (No. 25)  
Statutory Instruments Acts 1947 and 1955  
Taxes Consolidation Act 1997 (No. 39)  
Waste Management Acts 1996 to 2011  
Wildlife (Amendment) Act 2000 (No. 38)  
Wildlife Act 1976 (No. 39)



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*Number 23 of 2017*

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## **MINERALS DEVELOPMENT ACT 2017**

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An Act to make further and better provision for the development of minerals in the State and for that purpose to repeal the Minerals Company Acts 1941 to 1950 and certain provisions of the Minerals Development Acts 1940 to 1999, to make consequential amendments to other Acts, to give effect to Article 3.3 of the Minamata Convention on Mercury done at Geneva on 19 January 2013, to amend the Continental Shelf Act 1968, and to provide for related matters. [26th July, 2017]

**Be it enacted by the Oireachtas as follows:**

### **PART 1**

#### **PRELIMINARY AND GENERAL**

##### **Short title, commencement and collective citation**

1. (1) This Act may be cited as the Minerals Development Act 2017.
- (2) This Act comes into operation on such day or days as the Minister may appoint by order or orders either generally or with reference to any particular purpose or provision, and different days may be so appointed for different purposes or different provisions.
- (3) This Act and the Minerals Development Act 1979 may be cited together as the Minerals Development Acts 1979 and 2017 and shall be construed together as one Act.

##### **Interpretation**

2. In this Act—

“Act of 1979” means Minerals Development Act 1979;

“ancillary surface rights” means the rights described in *section 102(2)*;

“ancillary surface rights licence” means a licence granted under *section 113(1)*;

“ancillary underground rights” means the rights described in *section 102(1)*;

“associated company”, in relation to another company, means—

- (a) a subsidiary or a holding company (within the meaning given to each respectively by section 7 and section 8 of the Companies Act 2014) of that other company, or
- (b) a body corporate that is a subsidiary of the same company of which the other company is a subsidiary;

“company” means—

- (a) a body corporate incorporated under the laws of the State, or
- (b) an EEA company (within the meaning of Part 21 of the Companies Act 2014);

“competing applications” shall be read in accordance with *section 20*;

“exclusive mining right” means a right to work minerals that is vested in any person exclusive of any other person;

“extractive waste” means waste resulting from the extraction, treatment and storage of minerals and waste resulting from the operation of quarries of stone, gravel, sand or clay;

“grant”, in relation to a licence, includes the renewal of a licence;

“inspector” means an inspector appointed under *section 191*;

“land” includes extractive waste in or on land;

“lithological log”, in relation to a borehole, shaft or other excavation, means a description of the geological characteristics of the rock units in which the borehole is drilled, or the shaft is sunk, or such other excavation takes place, derived from an examination of core or chip samples or from the shaft or trench walls;

“local authority” means a local authority for the purposes of the Local Government Act 2001;

“market price” means the amount that would be obtained in a sale in the open market between a willing seller and a willing buyer;

“minerals” means all substances, including scheduled minerals, that occur naturally in or on land, or that occur in extractive waste, and includes, if the substances are worked, the cubic space formerly occupied by those substances but does not include—

- (a) topsoil,
- (b) turf or peat,
- (c) water,
- (d) petroleum, or
- (e) stone, gravel, sand or clay, other than a type of stone, gravel, sand or clay that is a scheduled mineral;

“mineral waste” means waste resulting from the working of minerals;

“Mining Board” means the Mining Board continued by *section 154*;

“mining facilities acquisition order” means an order under *section 112*;



“mining licence” means a licence granted under *section 65*;

“Minister” means Minister for Communications, Climate Action and Environment;

“petroleum” includes—

- (a) any mineral oil or relative hydrocarbon, natural gas or other liquid hydrocarbons or gaseous hydrocarbons and their derivatives or constituent substances, existing in its natural condition in strata (including, without limitation, distillate, condensate, casinghead gasoline and such other substances that are ordinarily produced from oil and gas wells), and
- (b) any other mineral substance contained in oil or natural gas brought to the surface with such oil or natural gas in the normal process of extraction,

but does not include coal and bituminous shales and other stratified deposits from which oil can be extracted by distillation;

“prescribed” means prescribed by regulations made by the Minister under this Act;

“private land” means land other than State land;

“private minerals” means minerals other than State minerals and excepted minerals and excludes all mines of gold and silver;

“prospecting”, in relation to minerals, means searching for mineral deposits of economic value occurring in or on land and includes carrying out geological, geochemical and geophysical surveys, sampling, bulk sampling, drilling and trenching, but does not include carrying out airborne surveys for minerals within the meaning of *section 52(1)*;

“prospecting licence” means a licence granted, or deemed to be granted, under *section 17*;

“regulations” means regulations made by the Minister under this Act;

“rehabilitation”, in relation to land that has been affected by prospecting for or working minerals, means the treatment of land in such a way as to restore the land to a satisfactory state, with particular regard to soil quality, wildlife, natural habitats, freshwater systems, landscape and appropriate beneficial uses;

“rehabilitation acquisition order” means an order under *section 149*;

“retention licence” means a licence granted under *section 22*;

“scheduled mineral” means any substance referred to in the *Schedule*;

“specified land”, in relation to a licence or proposed licence, means the area of land to which the licence or proposed licence relates;

“State land” has the same meaning as in the State Property Act 1954;

“State minerals” means—

- (a) minerals,
- (b) the exclusive right of mining or taking minerals, or

(c) the right to exploit minerals,

that belong to, are the property of, are acquired by or are vested in the State or a Minister of the Government and includes all mines of gold and silver, but does not include an exclusive right of working minerals vested in the Minister under section 12 of the Act of 1979;

“stone, gravel, sand or clay” means any type of stone, gravel, sand or clay commonly extracted for use in construction or for agricultural purposes without further processing other than size reduction, grading or washing or for use in the manufacture of cement or lime;

“surface”, in relation to land, includes any buildings or works erected or constructed on the land and anything growing on the land;

“tax clearance certificate” means a tax clearance certificate under section 1095 of the Taxes Consolidation Act 1997;

“working”, in relation to minerals, has the meaning given to it by *section 5*.

### **Previous acquisition by, or vesting in, the State of minerals**

3. Any acquisition by, or vesting in, the State or a Minister of the Government of minerals, the exclusive right of mining or taking minerals or the right to exploit minerals before this section comes into operation is deemed to always have included—
- (a) scheduled minerals, and
  - (b) any substance that was considered to be a mineral at the time of the acquisition or vesting.

### **State minerals vested in Minister**

4. All State minerals are vested in the Minister on behalf of the State.

### **Working minerals**

5. (1) Subject to *subsections (2) and (3)*, in this Act “working”, in relation to minerals, means the surface or underground extraction of minerals and includes determining the location and amount, treating, processing and carrying away, of the minerals and the treatment and storage of related mineral waste.
- (2) A person who carries out an activity involving extractive waste for the primary purpose of complying with any requirements of—
- (a) the Waste Management Acts 1996 to 2011,
  - (b) the Waste Management (Management of Waste from the Extractive Industries) Regulations 2009 (S.I. No. 566 of 2009), or
  - (c) any other Act or statutory instrument,
- is not, for the purposes of this Act, considered to be working minerals.

- (3) The working of minerals does not include the surface extraction of substances for the primary purpose of obtaining stone, gravel, sand or clay and that may include small, non-commercial quantities of minerals.

### **Application of Act**

6. This Act applies to all minerals within the State or on or within the seabed and subsoil of—
- (a) the territorial seas (within the meaning of the Sea-Fisheries and Maritime Jurisdiction Act 2006), or
  - (b) any area standing designated for the time being by order under section 2 of the Continental Shelf Act 1968.

### **Existing development consents**

7. Nothing in, or granted under, this Act affects—
- (a) any requirement to obtain planning permission or an approval, or any planning permission or approval granted, under the Planning and Development Acts 2000 to 2016, or
  - (b) any requirement to obtain a licence, or any licence granted, under the Environmental Protection Agency Act 1992 or the Waste Management Acts 1996 to 2011.

## PART 2

### PROSPECTING

#### CHAPTER 1

#### *Minister's Rights and Duty in Relation to Prospecting*

### **Minister's rights and duty**

8. (1) Subject to *subsections (2) and (3) and section 195*, the Minister may, through his or her officers or agents, prospect for minerals in or on any area of land and for that purpose such officers or agents may enter the land, together with such personnel, equipment and vehicles that the Minister considers necessary to carry out the prospecting.
- (2) The Minister may exercise the rights under *subsection (1)* if—
- (a) the Minister is of the opinion that there may be minerals in or on the land concerned,
  - (b) the minerals are neither excepted minerals nor being prospected for in or on the land concerned under this Act,

- (c) none of the land is land specified in a mining licence which is in force in respect of the minerals,
  - (d) the Minister is of the opinion that prospecting for the minerals is in the public interest, and
  - (e) the Minister has complied with *section 9*.
- (3) The Minister's rights to enter and prospect for specific minerals in or on any area of land are subject to the duty to pay compensation under *section 51* for any damage or nuisance referred to in that section.

**Public notice**

9. (1) Before prospecting for minerals in or on any area of land, the Minister shall give public notice in accordance with this section that the Minister intends to prospect for the minerals concerned and shall consider any objection that meets the requirements of *subsection (3)*.
- (2) The Minister shall, for the purposes of *subsection (1)*—
- (a) deposit in the offices of the Department of Communications, Climate Action and Environment and in one or more places to which members of the public have access that are in the vicinity of the area to be prospected, a map showing the boundaries of that area, and
  - (b) publish in at least one newspaper circulating in the vicinity of the area to be prospected a notice stating that—
    - (i) the Minister intends to prospect for certain specified minerals,
    - (ii) a map showing the boundaries of the area to be prospected may be viewed at the places at which the map has been deposited in accordance with *paragraph (a)*, and
    - (iii) the public may send written objections that meet the requirements of *subsection (3)* to the Minister at an address specified in the notice.
- (3) The Minister shall consider only those objections that—
- (a) are in writing and have been delivered to the address specified in the notice under *subsection (2)(b)* within 21 days after the date of publication of the notice, and
  - (b) relate to entering on land or prospecting for minerals and that do not relate to working the minerals or compensation for working the minerals.
- (4) If the Minister is required to consider one or more objections in accordance with *subsection (3)*, the Minister shall respond to the objections within 90 days after the date of publication of the notice under *subsection (2)(b)*.

**Limited right to extract and remove minerals for analysis, etc.**

10. (1) The Minister may extract and remove from the land being prospected under *section 8*—

- (a) drill cores and other small quantities of minerals for analysis, test, trial or experiment, and
  - (b) bulk samples of minerals for analysis, test, trial or experiment including, with the prior approval of the owner, or where the owner cannot be ascertained of the occupier, of the land, bulk samples extracted from the surface.
- (2) The Minister may sell private minerals extracted under *subsection (1)* for the purpose of determining whether or not a market for the particular minerals exists.

### **Compensation in respect of minerals sold under *section 10***

**11.** (1) If the Minister—

- (a) sells private minerals extracted under *section 10*, and
- (b) after such sale, grants a mining licence in respect of those minerals, in or on the land from which those minerals were extracted,

he or she shall pay compensation in accordance with *Chapter 4 of Part 3* as if the minerals sold had been extracted by a licensee under the mining licence.

- (2) If there is a dispute over whether compensation is payable in respect of minerals referred to in *section 10*, the Mining Board, when requested by the Minister or by a person claiming an entitlement to compensation, shall determine the person, if any, entitled to compensation or the compensation payable under this section, as the case may be.

## CHAPTER 2

### *Statements of Interest*

#### **Registration**

- 12.** (1) A person may apply to the Minister to register a written statement that sets out the person's interest in prospecting for specified minerals in or on specified land (referred to in this Act as a "statement of interest").
- (2) Subject to *subsection (3)*, the Minister shall register a person's statement of interest where—
- (a) the person submits an application in the prescribed form that specifies the minerals of interest and—
    - (i) where appropriate, the number designated to the prospecting licence area by the Minister, or
    - (ii) an ordnance map at an appropriate scale or other suitable map approved by the Minister showing the area of land of interest,
  - (b) the person submits the prescribed application fee, and
  - (c) the proposed area of land does not exceed the prescribed limit on the area that may be covered by statements of interest registered in respect of one person.

- (3) No statement of interest may be registered—
- (a) in respect of land specified in a mining licence or land in relation to which the Minister has received an application for a mining licence that has not been refused,
  - (b) in respect of minerals in or on the land specified in a prospecting licence or a retention licence which is in force,
  - (c) in respect of minerals in or on the land specified in an application received by the Minister for a prospecting licence or a retention licence that has not been refused, or
  - (d) in respect of excepted minerals.

#### **Period for which statement of interest remains registered**

- 13.** The period for which a statement of interest shall remain registered shall be determined by the Minister subject to the expiration of that period under *section 15*.

#### **Notification to interested party**

- 14.** If the Minister receives an application for a prospecting licence in respect of any part of the land specified in a registered statement of interest and of minerals specified in the statement, the Minister shall send a notice to the person whose interest has been registered in accordance with *section 12* (in this Chapter referred to as the “interested person”) stating that—
- (a) the application has been received, and
  - (b) the interested person may submit an application for a prospecting licence to the Minister within a period specified in the notice.

#### **Expiration of registration after notification**

- 15.** If the Minister has sent a notice under *section 14* to an interested person and the Minister grants a prospecting licence to the applicant (who is not the interested person), the registration under *section 12* of the statement of interest of that interested person expires in respect of the minerals and land specified in the licence.

### CHAPTER 3

#### *Prospecting Licences and Retention Licences*

#### **Rights and duties under prospecting licence and retention licence**

- 16.** The licensee under a prospecting licence or a retention licence has—
- (a) the exclusive right to prospect, subject to *sections 33(1)* and *34(1)*, for the minerals specified in the licence in or on the specified land,
  - (b) the right to enter the specified land, together with such personnel, equipment and

vehicles that the licensee considers necessary to carry out the prospecting,

- (c) the limited right under *section 35* to work and sell the minerals, and
- (d) the duties imposed by this Act, the regulations and the licence, including the duty to pay compensation under *section 51* for any damage or nuisance referred to in that section.

### **Granting prospecting licence**

**17.** (1) Subject to *section 20*, the Minister shall grant a prospecting licence for specified minerals in or on specified land to an applicant if—

- (a) the applicant submits an application in the prescribed form, the prescribed application fee and a current tax clearance certificate,
- (b) the Minister is of the opinion that the minerals may be in or on the specified land,
- (c) the minerals are neither excepted minerals nor already being prospected for in or on the land concerned under this Act,
- (d) the Minister is of the opinion that prospecting for the minerals to be specified in the licence is in the public interest,
- (e) none of the specified land is land specified under a mining licence,
- (f) the applicant—
  - (i) submits an exploration programme that the Minister is satisfied is feasible and that, in the opinion of the Minister, is likely to result in the discovery of minerals of economic value within the term of the licence, and
  - (ii) satisfies the Minister that he or she has, or has available to him or her, the financial resources, technical ability and expertise to carry out the programme,
- (g) the applicant is a fit and proper person (as provided for by *section 27*) to be a licensee,
- (h) the applicant provides the prescribed information and evidence and any additional information or evidence required by the Minister,
- (i) the requirements of *section 25* regarding public notice and consideration of objections have been complied with,
- (j) the applicant obtains insurance of the classes and in the amounts that are satisfactory to the Minister,
- (k) the first instalment of the licence fee, as prescribed by the Minister under *section 28*, has been paid,
- (l) there is no application for a prospecting licence for some, or all, of the specified minerals in or on all, or any part, of the specified land pending determination by the Minister,
- (m) either—

- (i) no prospecting licence or retention licence is in force in respect of all or any part of the specified land, or
  - (ii) if either such licence is in force, the licensee has been notified in accordance with *section 18*, and—
    - (I) the licensee has not submitted a competing application within the period specified by the Minister under *section 18(b)*, or
    - (II) the competing application submitted by the licensee does not meet the requirements of *paragraphs (a) to (h)*,
- and
- (n) no statement of interest has been registered for any of the specified minerals in respect of all or any part of the specified land or, if such a statement of interest has been registered, the requirements of *section 14* regarding notification of the interested person have been complied with, and—
    - (i) the interested person has not submitted a competing application within the period specified by the Minister under *section 14(b)*, or
    - (ii) the competing application submitted by the interested person does not meet the requirements of *paragraphs (a) to (h)*.
- (2) If the Minister is of the opinion that the range of minerals specified by the applicant is excessive having regard to the exploration programme, the Minister may refuse to grant a prospecting licence or may grant a prospecting licence for fewer than all of the minerals specified.
- (3) A prospecting licence under the Minerals Development Act 1940 or Part III of the Petroleum and Other Minerals Development Act 1960 that is in force immediately before the commencement of this section is deemed to be a prospecting licence granted under this section.

#### **Notice to existing licensees under prospecting and retention licences**

- 18.** If the Minister receives an application for a prospecting licence (referred to in this section as the “current application”) over any part of the land specified in a prospecting licence or retention licence (both referred to in this section to as the “existing licence”) for minerals that are different from the minerals specified in the existing licence and is of the opinion that granting a prospecting licence for those minerals in the area or part of the area of the existing licence would not be incompatible with the exploration programme being carried out under that licence, the Minister shall send a notice to each licensee under the existing licence stating that—
- (a) the application has been received, and
  - (b) the licensee may submit an application for a prospecting licence to the Minister, within a period determined by the Minister specified in the notice.



**Competition for certain licences**

- 19.** (1) The Minister may invite applications for a new prospecting licence over land specified in a prospecting licence or retention licence that—
- (a) has expired and not been renewed,
  - (b) has been revoked in accordance with *section 43*,
  - (c) has terminated in accordance with *section 44*, or
  - (d) has been surrendered in accordance with *section 45*.
- (2) An invitation under *subsection (1)* shall—
- (a) be published in at least one national newspaper,
  - (b) identify the prospecting licence or retention licence that has expired, been revoked, terminated or been surrendered, and
  - (c) state that an application for a licence over the land specified in the licence may be submitted to the Minister within a period determined by the Minister specified in the invitation.

**Competing applications**

- 20.** (1) This section applies where competing applications for a prospecting licence exist.
- (2) Competing applications for a prospecting licence exist where—
- (a) there is more than one application for a prospecting licence and some or all of each such application relates to some or all of the same minerals in or on any part of the same land,
  - (b) more than one application has been submitted in time, that is to say—
    - (i) in the case of an application by a licensee under a prospecting licence or a retention licence referred to in *section 18*, the licensee has submitted the application within the specified period determined by the Minister under *section 18(b)*,
    - (ii) in the case of an application in response to an invitation by the Minister under *section 19*, the applicant has submitted the application within the specified period determined by the Minister under *section 19(2)(c)*, and
    - (iii) in the case of an application by a person who has registered a statement of interest, the person has submitted the application within the specified period determined by the Minister under *section 14(b)*,
- and
- (c) more than one application meets the requirements of *paragraphs (a) to (h)* of *section 17(1)*.
- (3) The Minister shall grant the prospecting licence under *section 17* to the applicant who has, in the opinion of the Minister, the best application having regard to—

- (a) the relative likelihood that the applicant's proposed exploration programme will result in the discovery of minerals of economic value within the shortest period of time,
- (b) the relative likelihood that an applicant will carry out the proposed exploration programme,
- (c) an applicant's previous performance in prospecting for or working minerals in the State or elsewhere,
- (d) any other prescribed factor.

### **Renewing prospecting licence**

**21.** The Minister shall grant a renewal of a prospecting licence to the licensee in respect of the minerals and land specified in the prospecting licence if—

- (a) the licensee submits, before the end of the term of the current licence, an application in the prescribed form, the prescribed application fee and a current tax clearance certificate,
- (b) the Minister is of the opinion that the minerals may be in or on the specified land,
- (c) the Minister is of the opinion that prospecting for the minerals is in the public interest,
- (d) the applicant—
  - (i) submits an exploration programme that the Minister is satisfied is feasible, and that, in the opinion of the Minister, is likely to result in the discovery of minerals of economic value within the period for which the licence is renewed, and
  - (ii) satisfies the Minister that the applicant has, or has available to him or her, the financial resources and technical ability to carry out the programme,
- (e) the applicant continues to be a fit and proper person (as provided for by *section 27*) to be a licensee,
- (f) the licensee has complied with the conditions of the licence to be renewed and has not breached a provision of this Act or the regulations or a condition of any other prospecting licence, retention licence, mining licence or ancillary surface rights licence held by the licensee,
- (g) the applicant provides the prescribed information and evidence and any additional information or evidence required by the Minister,
- (h) the requirements of *section 25* regarding public notice and consideration of objections have been complied with,
- (i) the applicant obtains insurance of the classes and in the amounts that are satisfactory to the Minister, and
- (j) the first instalment of the licence fee, as determined by the Minister, has been paid.

**Retention licence**

22. (1) Where a licensee under a prospecting licence has discovered minerals in or on the specified land, the Minister shall, subject to *subsection (2)*, grant a licence (in this Act referred to as a “retention licence”) to the licensee to continue to prospect, subject to a reduction or elimination of the requirements relating to the exploration programme and financial expenditure if—
- (a) the licensee submits, before the end of the term of the prospecting licence, an application in the prescribed form, the prescribed application fee and a current tax clearance certificate,
  - (b) the licensee has held the prospecting licence for the prescribed period,
  - (c) the Minister is satisfied that the licensee at the time of making the application has discovered minerals in or on the specified land, and is also satisfied that—
    - (i) it is not economically feasible to work the minerals, although it is reasonable to expect that working the minerals will become economically feasible in the future, or
    - (ii) there are environmental, access or other difficulties that prevent the minerals from being worked for the time being,
  - (d) the Minister is of the opinion that prospecting for the minerals is in the public interest,
  - (e) the applicant satisfies the Minister that—
    - (i) a reduced exploration programme is appropriate and that the applicant has, or has available to him or her, the financial resources and technical ability to carry out the programme, or
    - (ii) no exploration programme is required in the circumstances,
  - (f) the applicant continues to be a fit and proper person (as provided for by *section 27*) to be a licensee,
  - (g) the licensee has complied with the conditions of the prospecting licence and has not breached a provision of this Act or the regulations or a condition of any other prospecting licence, retention licence, mining licence or ancillary surface rights licence held by the licensee,
  - (h) the applicant provides the prescribed information and evidence and any additional information or evidence required by the Minister,
  - (i) the requirements of *section 25* regarding public notice and consideration of objections have been complied with,
  - (j) the applicant obtains insurance of the classes and in the amounts that are satisfactory to the Minister, and
  - (k) the first instalment of the licence fee, as determined by the Minister, has been paid.
- (2) A retention licence may be granted in respect of some or all of the minerals for which

the prospecting licence was granted and may include additional minerals, other than excepted minerals.

- (3) A retention licence applies to the land in or on which the minerals are located and any other land that may be required for future mining operations as specified in the retention licence.

### **Renewing retention licence**

- 23.** The Minister shall grant a renewal of a retention licence to the licensee in respect of the minerals and land specified in the retention licence if—
- (a) the licensee submits, before the end of the term of the current licence, an application in the prescribed form, the prescribed application fee and a current tax clearance certificate,
  - (b) the Minister is satisfied that at the time of making the application—
    - (i) it is still not economically feasible to work the minerals, although it is reasonable to expect that working the minerals will become economically feasible in the future, or
    - (ii) there are still environmental, access or other difficulties that prevent the minerals from being worked for the time being,
  - (c) the Minister is of the opinion that prospecting for the minerals is in the public interest,
  - (d) the applicant satisfies the Minister that—
    - (i) a reduced exploration programme is appropriate and that the applicant has, or has available to him or her, the financial resources and technical ability to carry out the programme, or
    - (ii) no exploration programme is required in the circumstances,
  - (e) the applicant continues to be a fit and proper person (as provided for by *section 27*) to be a licensee,
  - (f) the licensee has complied with the conditions of the licence to be renewed and has not breached a provision of this Act or the regulations or a condition of any other prospecting licence, retention licence, mining licence or ancillary surface rights licence held by the licensee,
  - (g) the applicant provides the prescribed information and evidence and any additional information or evidence required by the Minister,
  - (h) the requirements of *section 25* regarding public notice and consideration of objections have been complied with,
  - (i) the applicant obtains insurance of the classes and in the amounts that are satisfactory to the Minister, and
  - (j) the first instalment of the licence fee, as determined by the Minister, has been paid.

**Refusal to grant prospecting licence or retention licence before public notice**

**24.** (1) If the Minister determines, before giving public notice under *section 25*, that—

- (a) any of the requirements of *paragraphs (a) to (h)* and *paragraphs (l) and (m)* of *section 17(1)* have not been met in respect of an application to grant a prospecting licence,
- (b) any of the requirements of *paragraphs (a) to (g)* of *section 21* have not been met in respect of an application to renew a prospecting licence,
- (c) any of the requirements of *paragraphs (a) to (h)* of *section 22(1)* have not been met in respect of an application to grant a retention licence, or
- (d) any of the requirements of *paragraphs (a) to (g)* of *section 23* have not been met in the case of an application to renew a retention licence,

then the Minister shall notify the applicant—

- (i) of the requirements (if any) that have not been met,
  - (ii) that the applicant may submit written representations to the Minister within 30 days after the date on which the notice was sent.
- (2) If, after considering any written representations that have been submitted to the Minister under *subsection (1)(ii)*, the Minister still considers that any requirements have not been met then the Minister shall send to the applicant a notice of refusal with reasons.
- (3) If, in the case of competing applications for a prospecting licence, the Minister determines that an application is not, in his or her opinion, the best application based on factors set out in *section 20(3)*, the Minister shall send to the applicant a notice of refusal with reasons.
- (4) If the Minister sends an applicant a notice of refusal, the Minister shall not grant a prospecting licence to the applicant unless a new application is submitted.

**Public notice before granting or renewing prospecting licence or retention licence**

**25.** (1) Before granting or renewing a prospecting licence or a retention licence the Minister shall give public notice in accordance with this section that the Minister intends to grant or renew the licence, as the case may be, and shall consider any objection that meets the requirements of *subsection (3)*.

(2) The Minister shall, for the purposes of *subsection (1)*—

- (a) deposit in the offices of the Department of Communications, Climate Action and Environment and in one or more places to which members of the public have access that are in the vicinity of the area of the proposed licence a map showing the boundaries of the area, and
- (b) publish in at least one newspaper circulating in the vicinity of the area of the proposed licence a notice indicating the type of licence the Minister intends to grant or renew, as the case may be, and stating that—

- (i) the Minister intends to grant or renew the licence, as the case may be, for specified minerals to the specified applicant,
  - (ii) a map showing the boundaries of the area of the licence proposed to be granted or renewed, as the case may be, may be viewed at the places at which the map has been deposited in accordance with *paragraph (a)*, and
  - (iii) the public may send written objections that meet the requirements of *subsection (3)* to the Minister at an address specified in the notice.
- (3) The Minister shall consider only those objections that—
- (a) are in writing and have been delivered to the address specified in the notice within 21 days after the date of publication of the notice required under *subsection (2)*, and
  - (b) relate to entering on land or prospecting for minerals and that do not relate to working the minerals or compensation for working the minerals.
- (4) If the Minister is required to consider one or more objections in accordance with *subsection (3)*, the Minister shall decide whether to grant the licence within 90 days after the date of publication of the notice required under *subsection (2)*.

#### **Refusal to grant prospecting licence or retention licence after public notice**

26. (1) If the Minister decides to refuse to grant or renew a prospecting licence or a retention licence after giving public notice under *section 25*, the Minister shall notify the applicant of the requirements specified in *section 24(1)* that have not been met and provide the applicant with an opportunity to submit written representations within 30 days after the date on which the notice was sent.
- (2) If, after considering any written representations that have been submitted to the Minister under *subsection (1)*, the Minister still considers that any requirements have not been met, the Minister shall send to the applicant a notice of refusal with reasons.
- (3) If the Minister sends an applicant a notice of refusal, the Minister shall not grant a prospecting licence or retention licence to the applicant unless a new application is submitted.

#### **Fit and proper person**

27. The Minister shall consider the following in determining whether an applicant is a fit and proper person to be a licensee under a prospecting licence or a retention licence:
- (a) letters of reference;
  - (b) whether the applicant or, in the case of a body corporate that is an applicant, any of its associated companies or any of the directors, officers or key employees of that body corporate or of those companies, has been convicted of an offence under the laws of the State or elsewhere that would raise doubt about the applicant complying with this Act and regulations made under it;
  - (c) in the case of a body corporate, whether any of its directors has a declaration

under section 819 of the Companies Act 2014 made against him or her or is deemed to be subject to such a declaration by virtue of Chapter 5 of Part 14 of that Act, or is subject or is deemed to be subject to—

- (i) a disqualification order, within the meaning of Chapter 4 of Part 14 of the Companies Act 2014, whether by virtue of that Chapter or any other provision of that Act, or
  - (ii) a disqualification outside the State to like effect which corresponds to a disqualification order within the meaning of Chapter 4 of Part 14 of that Act;
- (d) whether the applicant, in the case of an individual, is adjudicated bankrupt or is subject to proceedings for a declaration of bankruptcy or becomes an arranging debtor or, in the case of a body corporate—
- (i) has commenced a voluntary winding-up or is subject to a winding-up order or is subject to proceedings for such an order,
  - (ii) is subject to the appointment of a receiver or examiner, or
  - (iii) has proposed a compromise or arrangement that is sanctioned under section 453(2) of the Companies Act 2014 or 201(3) of the Companies Act 1963;
- (e) the previous performance in prospecting for or working minerals in the State or developing other natural resources in the State or elsewhere by the applicant or, in the case of a body corporate that is the applicant, any of its associated companies or any of the directors, officers or key employees of that body corporate or of those companies;
- (f) in the case of a body incorporated under the laws of another state, whether any event which corresponds to an event referred to in *paragraph (c)* has occurred in relation to its directors or whether to any event referred to in *paragraph (d)* has occurred in relation to that body corporate;
- (g) such other matters as the Minister considers appropriate to take into account in the circumstances.

#### **Licence fee for prospecting licence or retention licence**

28. (1) The Minister, with the prior consent of the Minister for Public Expenditure and Reform, shall prescribe the licence fee for granting or renewing a prospecting licence or a retention licence and the schedule for paying that fee in instalments.
- (2) The licence fee may be different for different types of licences, for different types of minerals and for different areas to be prospected.
- (3) The Minister, when determining the amount of the licence fee, shall have regard to the following factors:
- (a) the costs associated with administering this Part;
  - (b) the fee charged for similar licences in other jurisdictions;
  - (c) the goal of encouraging prospecting for minerals in the State.

- (4) Every prospecting licence and retention licence is subject to the condition that the licensee shall pay the licence fee in accordance with the payment schedule prescribed by the Minister under *subsection (1)*.

#### **Reducing or adding to land specified in application**

- 29.** (1) The Minister may, for any of the following purposes, grant a prospecting licence or a retention licence in which the land specified is less than the land specified in the application for the licence:
- (a) to promote good prospecting practices;
  - (b) to protect national parks and monuments and environmentally sensitive areas;
  - (c) to protect areas of archaeological heritage;
  - (d) to avoid land used for military purposes;
  - (e) to avoid urban or built up areas;
  - (f) to have the boundaries of the land specified correspond with landmarks or well-known existing boundaries.
- (2) The Minister may, for any of the following purposes, grant a prospecting licence or retention licence in which the land specified is more than the land specified in the application for the licence:
- (a) to promote good prospecting practices;
  - (b) to have the boundaries of the land specified correspond with landmarks or well known existing boundaries;
  - (c) to eliminate gaps in areas to be prospected.

#### **Term of licences**

- 30.** Subject to any maximum period provided for under *section 31*, the term of a prospecting licence or a retention licence shall be determined by the Minister.

#### **Regulations in respect of grant of licence**

- 31.** (1) The Minister may make regulations regarding the granting or renewal of prospecting licences and retention licences, including the following matters:
- (a) the manner of making an application;
  - (b) the period that a licensee has to hold a prospecting licence before being eligible for a retention licence.
- (2) The regulations may differentiate according to the type of prospecting licence or retention licences or minerals involved.



**Regulations relating to conditions of prospecting licences and retention licences**

- 32.** (1) The Minister may make regulations setting out conditions to which a prospecting licence or a retention licence is subject (which are in addition to those set out in this Act) regarding any of the following matters:
- (a) exploration programme and expenditure requirements, including the carry-over and combination of expenditures if more than one licence is held;
  - (b) good prospecting practice, including—
    - (i) the protection of groundwater and the integrity of aquifers,
    - (ii) waste management, and
    - (iii) the rehabilitation of the land;
  - (c) notification to persons who have an estate or interest in the land that certain activities are planned;
  - (d) compliance with other legislation;
  - (e) notification to the Minister of claims or disputes;
  - (f) insurance;
  - (g) safety of persons and animals;
  - (h) compensation payable under *section 51*;
  - (i) appointment of a resident manager and his or her functions and the necessary qualifications of persons employed by the licensee;
  - (j) rights of other licensees or the Minister to prospect;
  - (k) compliance with the Minister's instructions;
  - (l) return of licences to the Minister;
  - (m) such other matters as are ancillary or consequential to *paragraphs (a) to (l)*.
- (2) Regulations made under this section apply to prospecting licences and retention licences granted after the regulations come into operation.

**Boreholes and shafts**

- 33.** (1) Notwithstanding *section 210*, every prospecting licence and retention licence is subject to the condition that the licensee may not drill a borehole or sink a shaft below the surface of the specified land unless the prior written consent of the Minister has been obtained.
- (2) Every prospecting licence and retention licence is subject to the condition that the licensee—
- (a) shall keep and maintain, in respect of every borehole drilled or shaft sunk, a lithological log and a record of the borehole or shaft's diameter, depth, direction, inclination and location and such other information as may be prescribed, and

- (b) may not discard a drill core or other specimens obtained from a borehole or shaft unless the prior written consent of the Minister has been obtained.
- (3) After receiving a request for a consent under *subsection (2)(b)* the Minister may, at the Minister's expense, take all or part of the drill core or specimens to be discarded.
- (4) An inspector may at all reasonable times do all or any of the following in respect of a borehole or shaft referred to in *subsection (1)*:
  - (a) inspect the site of the borehole or shaft;
  - (b) inspect specimens obtained from the borehole or shaft within the term of the licence;
  - (c) take samples of such specimens;
  - (d) review and take copies of the lithological log kept in respect of the borehole or shaft.
- (5) Any person who fails to comply with the obligations imposed by this section commits an offence and is liable on summary conviction to a class A fine.

#### **Trenching, excavations and bulk sampling**

- 34.** (1) Every prospecting licence and retention licence is subject to the condition that the licensee may not carry on the following activities unless the prior written consent of the Minister has been obtained:
- (a) trenching or excavating, including excavating pits, adits and shafts;
  - (b) reopening or re-entering existing excavations, including adits and shafts;
  - (c) bulk sampling of minerals.
- (2) When deciding whether or not to give consent the Minister shall have regard to whether or not the licensee has a programme to carry out the proposed work and for the rehabilitation of the land that the Minister is satisfied is adequate and feasible.
- (3) The Minister may impose conditions on the consent relating to the efficient carrying out of the activity and the proper rehabilitation of the land and these conditions are conditions of the prospecting licence or retention licence as the case may be.
- (4) Any person who fails to comply with the obligations imposed by *subsection (1)* commits an offence and is liable on summary conviction to a class A fine.

#### **Limited right under prospecting licence to extract and remove minerals**

- 35.** (1) The licensee under a prospecting licence or a retention licence may extract and remove from the land specified in the licence—
- (a) drill cores and other small quantities of minerals for analysis, test, trial or experiment, and
  - (b) bulk samples of minerals for analysis, test, trial or experiment with the prior written consent of the Minister and, in the case of bulk samples being extracted

from the surface of the land, the owner, or where the owner cannot be ascertained the occupier, of the land.

- (2) The licensee under a prospecting licence or a retention licence may, with the prior written consent of the Minister, sell minerals referred to in *subsection (1)* for the purpose of determining whether or not a market for the particular minerals exists.
- (3) A licensee who sells minerals extracted under *subsection (1)* shall ensure that the proceeds of the sale are paid into the Exchequer in such manner as the Minister for Public Expenditure and Reform directs.
- (4) Every licensee under a prospecting licence or a retention licence who sells or otherwise transfers the ownership of minerals referred to in *subsection (1)* without obtaining the prior written consent of the Minister commits an offence and is liable on summary conviction to a class A fine or to imprisonment for a term not exceeding 6 months or to both.
- (5) Every prospecting licence and retention licence is subject to the condition that a licensee who disposes of material resulting from the activities referred to in *subsection (1)*, shall do so in a manner allowed by law and, in the case of the discarding of drill cores, subject to *section 33*.

#### **Compensation in respect of minerals worked under *section 35***

**36.** (1) If—

- (a) a licensee under a prospecting licence or a retention licence sells private minerals extracted under *section 35*, and
- (b) after such sale, the Minister grants a mining licence in respect of those minerals, in or on the land from which those minerals were extracted,

the Minister shall pay compensation in accordance with *Chapter 4 of Part 3* as if the minerals sold had been extracted by a licensee under the mining licence.

- (2) If there is a dispute over whether compensation is payable in respect of minerals referred to in *section 35* the Mining Board, when requested by the Minister or by a person claiming an entitlement to compensation, shall determine the person, if any, entitled to compensation or the compensation payable under this section, as the case may be.

#### **Reports by licensees**

- 37.** (1) Every prospecting licence and retention licence is subject to the condition that the licensee shall report to the Minister all prospecting carried out under the licence, and all data and results obtained, in accordance with regulations made under this section.
- (2) The Minister may prescribe the form, timing, and contents of reports to be made under this section.
- (3) A licensee under a prospecting licence or a retention licence commits an offence if he or she—

- (a) fails to report to the Minister in accordance with this section, or
  - (b) furnishes the information in a report knowing it to be false or misleading in a material particular.
- (4) A person who commits an offence under *subsection (3)* is liable on summary conviction to a class A fine.

### **Confidentiality of reports**

- 38.** (1) The Minister shall keep the reports that a licensee submits to the Minister under *section 37* and their contents confidential—
- (a) until the expiration of the prescribed period, unless the licensee agrees that the reports may be made public earlier, either in whole or in part,
  - (b) until the licence expires or ceases to have effect by revocation, surrender or otherwise,
  - (c) until the expiration of any extended period of confidentiality under *subsection (2)*,
- whichever last occurs.
- (2) The Minister may, on the application of the licensee and on reasonable grounds, extend the period that the reports and their contents are to remain confidential.
- (3) After the period of confidentiality ends or the licensee agrees that the reports may be made public, the reports and their contents may be—
- (a) disclosed to the public on request and on payment of reasonable administrative costs determined by the Minister, or
  - (b) made available to the public free of charge.
- (4) For the purposes of this section, a retention licence granted under *section 22* shall be deemed to be the same licence as the prospecting licence to which it relates.

### **Indemnifying the Minister and State**

- 39.** (1) Every prospecting licence and retention licence is subject to the condition that the licensee shall indemnify the Minister and the State against any claim or demand arising out of any act or omission of the licensee or the licensee's officers, employees, agents or contractors in relation to the licence.
- (2) Without prejudice to the generality of *subsection (1)*, the indemnity shall include all claims for damage—
- (a) to land, including minerals, houses, buildings, growing crops and livestock, and
  - (b) to other property, equipment and machinery on the land,
- and claims arising from personal injuries or death suffered by the officers, employees, agents or contractors of a licensee, landowners or any other person.

**Environmental practices**

- 40.** (1) The Minister may prepare and publish directives (in this section referred to as “environmental practices directives”) directing compliance with practices which in the Minister’s opinion are necessary or desirable to protect the environment when prospecting for minerals.
- (2) Environmental practices directives may incorporate by reference guidelines, codes or similar documents, as amended from time to time, that contain practices that are necessary or desirable to protect the environment.
- (3) Every prospecting licence and retention licence is subject to the condition that the licensee shall prospect for minerals in compliance with the environmental practice directives.
- (4) The Minister shall review the environmental practice directives under this section at a minimum every 5 years.

**Assignment of licensees’ rights and duties under prospecting licence or retention licence**

- 41.** (1) A licensee under a prospecting licence or a retention licence may, with the prior written consent of the Minister, assign all or a percentage of all the licensee’s rights and duties under the licence to—
- (a) an associated company, or
- (b) a company or a body incorporated under the laws of another state with which the licensee has a joint venture agreement referred to in *section 42(1)*.
- (2) If a licensee under a prospecting licence or a retention licence purports to assign all or a percentage of all of the rights under the licence without the prior written consent of the Minister, the licence expires on the day that the assignment would, but for this subsection, have effect.
- (3) The Minister shall consent to a proposed assignment if—
- (a) the Minister is provided with the prescribed information and any other information that the Minister may require the licensee or proposed assignee to provide,
- (b) the licensee is in compliance with the conditions of the licence,
- (c) in the case of an assignment of a prospecting licence or a retention licence made to comply with the obligations under a joint venture agreement referred to in *section 42(1)*, the expenditure requirements for the first 2 years of the term of licence have been satisfied,
- (d) the proposed assignee is a fit and proper person (as provided for by *section 27*) to be a licensee,
- (e) the proposed assignee obtains insurance of the classes and in the amounts that are satisfactory to the Minister, and
- (f) the proposed instrument of assignment is satisfactory to the Minister.

- (4) On the assignment of all of a licensee's rights and duties under a prospecting licence or a retention licence that has been consented to by the Minister—
  - (a) the assignee has all of the rights and duties of a licensee under that licence and is responsible for the acts or omissions of the assignor under the licence that occurred before the assignment took effect, and
  - (b) the assignor is no longer responsible to third parties or to the Minister for anything done or omitted to be done under the licence, but nothing in this paragraph prevents the assignee from obtaining an indemnity from the assignor in respect of those acts or omissions.
- (5) On the assignment of a percentage of all of a licensee's rights and duties under a prospecting licence or a retention licence that has been consented to by the Minister, the assignee has all of the rights and duties of a licensee under that licence and is responsible for the acts or omissions of the assignor under the licence that occurred before or after the assignment takes effect, but nothing in this section prevents the assignee from obtaining an indemnity from the assignor in respect of those acts or omissions.

#### **Joint ventures**

- 42.** (1) In this section “joint venture agreement” means a joint venture agreement between a licensee under a prospecting licence or a retention licence and one or more companies, or other bodies incorporated under the laws of another state in which—
- (a) the other parties to the joint venture agree to provide funding, technical expertise or any other thing that will enable the licensee to meet the obligations under the licence, and
  - (b) the licensee may, at a determinable point in the future, have the obligation to assign a percentage of all of the rights and duties under the licence to the other parties.
- (2) Every prospecting licence and retention licence is subject to the condition that the licensee shall not enter into a joint venture agreement unless—
- (a) at least 10 days before entering into the agreement, the licensee notifies the Minister and provides the Minister with a copy of the draft agreement, and
  - (b) on entering into the agreement, the licensee notifies the Minister and provides the Minister with a copy of the agreement within 10 days after it comes into effect.

#### **Suspension and revocation of licences**

- 43.** (1) The Minister may suspend the operation of a prospecting licence or a retention licence for any of the following reasons:
- (a) the licensee has breached a provision of this Act or the regulations or a condition of the licence or of any other prospecting licence, retention licence, mining licence, or ancillary surface rights licence held by the licensee;

- (b) the licensee is no longer a person who is a fit and proper person (as provided for by *section 27*) to be a licensee;
  - (c) the licensee has agreed to pay compensation in respect of a liability under *section 51* and has not paid the compensation in accordance with the agreement;
  - (d) the licensee has been directed to pay compensation in a decision of the Mining Board under this Act and the compensation has not been paid within a reasonable time.
- (2) The Minister shall notify every licensee the operation of whose licence has been suspended—
- (a) of the grounds on which the suspension is based, and
  - (b) that unless the licensee satisfies the Minister that the grounds for the suspension are not well founded or that the problem underlying the suspension has been or will be remedied to the satisfaction of the Minister, the licence will be revoked by a date specified in the notice.
- (3) The Minister shall provide the licensee with an opportunity to make submissions and to present evidence before the specified date.
- (4) If a licensee has satisfied the Minister that the grounds for the suspension are not well founded or that the problem underlying the suspension has been or will be remedied within a period acceptable to the Minister, the Minister shall terminate the suspension of the operation of the licence.
- (5) If a licensee has not satisfied the Minister—
- (a) that the grounds for the suspension are not well founded, or
  - (b) that the problem underlying the suspension has been or will be remedied within a period acceptable to the Minister,
- then the Minister shall revoke the licence.
- (6) The Minister shall notify the licensee of his or her decision under *subsection (4)* or *(5)* and the date that the termination of the suspension or the revocation of the licence is effective.

### **Termination of licences**

**44.** Every prospecting licence and retention licence terminates when—

- (a) in the case of a licensee that is a body corporate—
  - (i) the licensee commences a voluntary winding-up or becomes subject to a winding-up order,
  - (ii) a receiver or examiner is appointed to the licensee,
  - (iii) the licensee proposes a compromise or arrangement that is sanctioned under section 453(2) of the Companies Act 2014 or section 201(3) of the Companies Act 1963, or

- (iv) where the body is incorporated under the laws of another state, on the commencement of any event which corresponds to an event referred to in *subparagraph (i), (ii) or (iii)*,
- and
- (b) in the case of a licensee that is an individual, the licensee dies, is adjudicated bankrupt or becomes an arranging debtor.

#### **Surrender of licences**

- 45.** (1) Every prospecting licence and retention licence is subject to the condition that the licensee may not surrender the licence concerned without the prior written approval of the Minister.
- (2) The Minister shall approve the surrender of a licence if—
- (a) the licensee submits an application in the prescribed form,
  - (b) the applicant provides the prescribed information and any additional information required by the Minister,
  - (c) the licensee satisfies the Minister that there are no outstanding rehabilitation or environmental issues in relation to the land that is subject to the licence,
  - (d) the disposal of any drill cores and other material produced through the prospecting has been carried out to the satisfaction of the Minister, and
  - (e) the licensee has—
    - (i) complied with the condition to submit reports on the prospecting it has conducted, and
    - (ii) submitted a report setting out the status of its exploration programme as close as is practicable to the date of the proposed surrender.

#### **Effect of suspension**

- 46.** On the suspension of the operation of a prospecting licence or a retention licence—
- (a) all rights and powers exercisable by a licensee under the licence are suspended, and
  - (b) all of the licensee's duties under this Act, the regulations and the licence, continue to apply to the licensee.

#### **Effect of revocation, expiration, termination and surrender**

- 47.** On the revocation, expiration, termination or surrender of a prospecting licence or a retention licence—
- (a) all rights and powers exercisable by a licensee under the licence end,
  - (b) the conditions specified in the licence for the purposes of this section continue to apply to the former licensees,



- (c) the former licensees continue to be liable for any act or omission done under the licence, and
- (d) the former licensee is not entitled—
  - (i) to a refund of any fee that has been paid, or
  - (ii) to compensation in respect of any expenditure that the former licensee may have incurred as part of the licensee’s exploration programme.

## CHAPTER 4

*Public Interest and Prospecting for Minerals***Public interest and prospecting for minerals**

- 48.** Without prejudice to the Minister’s discretion to consider other factors, the Minister shall consider the following factors in assessing the public interest with respect to prospecting for minerals by the Minister or an applicant for a prospecting licence or retention licence or a renewal thereof:
- (a) the economic benefit to the region in which the area to be prospected is located and to the State;
  - (b) the environmental impact of the proposed exploration programme;
  - (c) the policies of the Government and strategic needs of the State.

## CHAPTER 5

*Liability***Joint and several liability**

- 49.** If a prospecting licence or a retention licence is granted to two or more persons, any duty or liability imposed on a licensee by this Act, the regulations or the licence, applies to each licensee and their liability is joint and several.

**Damage caused by previous prospecting activities**

- 50.** (1) In this section—
- “former licence” means a prospecting licence or a retention licence that is no longer in force that was granted under this Act, the Minerals Development Act 1940 or Part III of the Petroleum and Other Minerals Development Act 1960;
- “subsequent licence” means a prospecting licence or a retention licence granted under this Act that applies to some or all of the specified land described in a former licence or to some or all of the land that has been previously prospected by the Minister.
- (2) A licensee under a subsequent licence is not liable for damage caused by a licensee under a former licence unless the subsequent licence is the renewal of the former licence or is a retention licence on which the former licence is based.

- (3) A licensee under a subsequent licence is not liable for damage caused by prospecting activities previously carried out by the Minister.
- (4) If the Minister prospects for minerals over certain land, the Minister is not liable for damage caused by a licensee under a former licence that applied to some or all of that land.

### **Liability for damage or nuisance caused by prospecting**

- 51.** (1) If damage to the surface of any land, to minerals or to water supplies or a nuisance is caused, directly or indirectly—
- (a) by the exercise of the Minister of the right of entering and prospecting as provided for under *section 8*, or
  - (b) by the exercise of a licensee under a prospecting licence or a retention licence of a right under the licence,
- the Minister or the licensee, as the case may be, is liable to pay compensation for the damage or nuisance.
- (2) The reference to damage to minerals in *subsection (1)* does not include damage to minerals being prospected for by the Minister or licensee if the damage was caused by an act or omission of the Minister or licensee that was authorised under this Act.
  - (3) Except where *subsection (2)* applies, the fact that the damage or nuisance was caused by an act or omission that was authorised under this Act is not a defence to a claim under *subsection (1)*.
  - (4) If the parties cannot agree on whether the damage or nuisance was caused by the Minister or the licensee or on the amount of compensation for the damage or nuisance, the Mining Board shall determine the matter.
  - (5) A right to compensation under *subsection (1)* is extinguished unless an application to determine the matter is made to the Mining Board within the limitation period determined in accordance with the provisions of the Statutes of Limitations that is applicable to actions based on tort.
  - (6) If the damage or nuisance occurs on State land and is caused by the licensee under a prospecting licence or a retention licence, the compensation shall be paid to the Minister, but the Minister shall not enter into any agreement fixing the amount of the compensation without the prior consent of the Minister for Public Expenditure and Reform.

## CHAPTER 6

### *Airborne Surveys*

#### **Duty to notify Minister and provide data**

- 52.** (1) In this section “airborne survey for minerals” means any survey, including a magnetic, electromagnetic, gravity, radiometric or photographic survey conducted for the

purpose of searching for minerals from a manned or unmanned aircraft or other thing that can fly or float in the air.

- (2) No person may conduct an airborne survey for minerals unless the person gives the Minister at least 14 days notice in writing, or such shorter notice as the Minister may allow, before the day that the survey is to commence.
- (3) Every person who conducts an airborne survey for minerals shall provide the Minister with the data from the survey in a manner and within the time prescribed by the Minister.
- (4) A person who contravenes *subsection (2)* or *(3)* commits an offence and is liable on summary conviction to a class A fine or to imprisonment for a term not exceeding 6 months or to both.

### **Confidentiality of airborne survey data**

**53.** (1) The Minister shall keep data provided under *section 52* confidential—

- (a) until the expiration of the prescribed period, which shall not be less than 4 years, or
- (b) until the expiration of any period of confidentiality extended under *subsection (2)*,

whichever last occurs, unless the person who conducted the survey agrees that the data may be made public earlier.

- (2) The Minister may, on application of the person who conducted the survey and on reasonable grounds, extend the period that the data is to remain confidential.
- (3) After the period of confidentiality ends or the person who conducted the survey agrees that the data may be made public, the data may be—
  - (a) disclosed to the public on request and on payment of reasonable administrative costs determined by the Minister, or
  - (b) made available to the public free of charge.

## PART 3

### WORKING MINERALS

#### CHAPTER 1

#### *Right to Work Private Minerals*

### **Exclusive right of working minerals vested in Minister**

**54.** The exclusive right of working minerals referred to in section 12 of the Act of 1979 stands vested in the Minister on behalf of the State.

## CHAPTER 2

*Mining Licences***Mining licence**

55. The Minister may grant a licence to work specified minerals in or on specified land (referred to in this Act as a “mining licence”) in accordance with this Part.

**Scope of mining licences**

56. A mining licence may be granted only in respect of State minerals or private minerals or a combination of the two.

**Rights and duties under mining licence**

57. The licensee under a mining licence has—

- (a) the right to work the minerals specified in the licence in or on the specified land,
- (b) the right to sell or otherwise transfer the ownership of minerals extracted under the licence, and
- (c) the duties imposed by this Act, the regulations and the licence, including the duty to pay compensation under *section 98* for any damage or nuisance referred to in that section.

**Process**

58. (1) A licensee under a prospecting licence or a retention licence may apply for a mining licence.
- (2) A licensee under a mining licence who wishes to apply to work additional minerals, or minerals in or on land that is adjacent to the land specified in the licence, before such licence is renewed, is subject to the requirements for the granting of a new mining licence.
- (3) A licensee under a mining licence may apply for a renewal of the licence.
- (4) A licensee under a mining licence who wishes to renew the licence and to apply to work additional minerals or minerals in or on land that is adjacent to the land specified in the licence may submit one application that meets the requirements for renewals in respect of the licence to be renewed and that meets the requirements for the granting of a new licence in respect of the additional minerals or adjacent land.

**Lodgement of application for mining licence**

59. The Minister shall accept an application for a mining licence from a licensee under a prospecting licence or a retention licence if—
- (a) the application is in the prescribed form and contains a proposed mining plan and is accompanied by an ordnance map at an appropriate scale or other suitable map

approved by the Minister showing the land proposed to be specified in the mining licence,

- (b) the prospecting licence or retention licence held by the applicant applied to the minerals in or on the land proposed to be specified in the mining licence and the licensee is in compliance with the conditions of that licence,
- (c) the application contains sufficient financial, technical and other information to enable the Minister to determine, for the purposes of *section 65(d)*, whether or not the plan proposed is feasible,
- (d) the applicant nominates a company (in this Act referred to as a “nominee company”), which may be itself if the applicant is a company, that meets the requirements of *section 75* to be the licensee, and
- (e) the applicant submits a current tax clearance certificate in the name of the nominee company and the portion of the prescribed application fee that, pursuant to the regulations made under *section 64*, is to accompany the application.

#### **Lodgement of application in respect of additional minerals or adjacent land**

**60.** The Minister shall accept an application from a licensee under a mining licence who wishes to work additional minerals, or minerals in or on land that is adjacent to the land specified in the licence, if—

- (a) the application is in the prescribed form and contains a proposed mining plan and—
  - (i) in the case of an application to work additional minerals, specifies those minerals, and
  - (ii) in the case of an application to work minerals in or on adjacent land, is accompanied by an ordnance map at an appropriate scale or other suitable map approved by the Minister showing the area of the adjacent land,
- (b) the application contains sufficient financial, technical and other information to enable the Minister to determine, for the purposes of *section 66(1)(b)*, whether or not the plan proposed is feasible,
- (c) the licensee is in compliance with the conditions of the mining licence,
- (d) the mining licence does not relate exclusively to extractive waste,
- (e) the prospecting licence or retention licence on which the mining licence was based applied to the additional minerals or adjacent land, as the case may be, and
- (f) the licensee submits a current tax clearance certificate in the name of the licensee and the portion of the prescribed application fee that, pursuant to the regulations made under *section 64*, is to accompany the application.

#### **Lodgement of application for renewal of mining licence**

**61.** (1) The Minister shall accept an application from a licensee for the renewal of the mining

licence if—

- (a) the licensee submits, at least 6 months before the end of the term of the current licence, an application in the prescribed form that contains a proposed mining plan and is accompanied by an ordnance map at an appropriate scale or other suitable map approved by the Minister showing the land specified in the mining licence that is proposed to be renewed,
  - (b) the licensee is in compliance with the conditions of the mining licence, and
  - (c) the licensee submits a current tax clearance certificate in the name of the licensee and the portion of the prescribed application fee that, pursuant to the regulations made under *section 64*, is to accompany the application.
- (2) Where an application for a renewal which otherwise meets the requirements of *subsection (1)* is made less than 6 months before the end of the term of the current licence the Minister may accept the application if he or she is satisfied that there is good and sufficient reason for such delay.

### Validity of application

- 62.** (1) An application that has been accepted by the Minister ceases to be valid on the earliest of the following occurring:
- (a) the expiration of a period of 3 years, or such longer period as may be authorised by the Minister under *subsection (2)*, after the day that the Minister accepts the application;
  - (b) the prospecting licence, retention licence or mining licence on which the application is based expires, terminates or is revoked or surrendered;
  - (c) the applicant or nominee company—
    - (i) commences a voluntary winding-up or becomes subject to a winding-up order,
    - (ii) is subject to the appointment of a receiver or examiner, or
    - (iii) proposes a compromise or arrangement that is sanctioned under section 453(2) of the Companies Act 2014, or
    - (iv) where it is a body incorporated under the laws of another state, on the occurrence of any event which corresponds to an event referred to in *subparagraph (i), (ii) or (iii)*;
  - (d) in the case of an applicant that is an individual, the applicant dies, is adjudicated bankrupt or becomes an arranging debtor; or
  - (e) the applicant withdraws the application.
- (2) The Minister may, before the expiration of the 3 year period mentioned in *subsection (1)(a)*, extend that period by not more than 2 years from the date of expiration if the Minister considers it appropriate to do so.
- (3) If the Minister grants a mining licence for only a portion of the area specified in an

application, *subsection (1)* continues to apply to the application in respect of the remaining portion.

#### **Notification of acceptance**

- 63.** The Minister shall within 7 days after accepting an application under *section 59, 60 or 61* notify the applicant that the application has been accepted and that, if the mining licence is not granted, the application will cease to be valid in accordance with *section 62(1)*.

#### **Application fee for mining licence**

- 64.** (1) The Minister may, with the prior consent of the Minister for Public Expenditure and Reform, make regulations setting the application fees for mining licences, the portion of such fees to accompany an application and the portion to be paid before the mining licence is granted.
- (2) Regulations under this section may provide for different application fees to be payable based on the following matters:
- (a) the type or category of minerals to be worked;
  - (b) whether working the minerals will involve the construction of a new processing facility or an increase in the capacity of an existing processing facility;
  - (c) the level of estimated annual output of minerals from the mine at full production;
  - (d) whether the application is for—
    - (i) the first mining licence to be granted on the application of the licensee under a prospecting licence or retention licence,
    - (ii) the renewal of a mining licence, or
    - (iii) the extension of a mining licence to minerals, or minerals in or on land, that is in addition to the minerals or land specified in the existing licence.
- (3) The Minister, when setting application fees for mining licences in regulations, shall have regard to the administrative costs associated with processing applications, including the costs of determining whether the requirements for making an application have been met.

#### **Granting mining licence**

- 65.** Subject to *section 67*, the Minister shall grant a mining licence in respect of specified minerals in or on specified land to a nominee company on the application of a licensee under a prospecting licence or retention licence if—
- (a) the Minister has accepted the application for the licence and the application is valid under *section 62*,
  - (b) the nominee company continues to meet the requirements of *section 75*,
  - (c) the Minister is of the opinion that it is in the public interest that the minerals be worked,

- (d) the Minister is satisfied that the proposed mining plan is feasible and that the nominee company has the financial resources and technical ability to carry out the plan,
- (e) the Minister is satisfied that, where so required, planning permission under the Planning and Development Acts 2000 to 2016 has been granted in respect of the development comprised in the application,
- (f) the nominee company is a fit and proper person (as provided for by *section 74*) to be a licensee,
- (g) the applicant submits a current tax clearance certificate in the name of the nominee company and the remainder of the prescribed application fee,
- (h) the applicant and nominee company provide the prescribed information and evidence and any additional information or evidence required by the Minister,
- (i) the requirements of *section 69* regarding public notice and consideration of objections have been complied with,
- (j) the nominee company obtains insurance of the classes and in the amounts that are satisfactory to the Minister,
- (k) the Minister and the nominee company have agreed on—
  - (i) the mining licence fees and royalties to be paid, the amounts of which are in accordance with the regulations made under *section 76* and royalties regulations made under *section 77*,
  - (ii) when those fees are to be paid,
  - (iii) the term of the licence, and
  - (iv) any terms or conditions of the licence under *section 79(3)*,
- (l) the first instalment of the mining licence fees has been submitted, and
- (m) the Minister is satisfied that the proposed mining plan would be likely to lead to a commercially viable mine.

#### **Additional minerals or adjacent land and renewals**

- 66.** (1) Subject to *section 67*, the Minister shall renew a mining licence and shall extend a mining licence to include additional minerals or adjacent land on the application of the licensee if—
- (a) the licensee continues to be in compliance with the conditions of the mining licence, and
  - (b) the requirements of *paragraphs (a) to (l)* of *section 65*, as modified by *subsection (2)*, are met in respect of the application.
- (2) References to the nominee company in *paragraphs (a) to (l)* of *section 65* are to be read as references to the applicant licensee under the mining licence for the purposes of this section.



- (3) Where the Minister renews a mining licence under this section he or she may—
  - (a) renew the existing licence subject to the same or additional conditions, or
  - (b) renew the existing licence and extend that licence—
    - (i) to additional minerals in or on the specified land,
    - (ii) to minerals in or on land that is adjacent to the specified land, or
    - (iii) to minerals referred to in both *subparagraphs (i) and (ii)*,  
subject to the same or additional conditions.

#### **Consultation with other Ministers**

67. Before the Minister grants a mining licence in respect of minerals in or on land the surface of which is vested in or occupied by any other Minister of the Government or Minister of State, the Minister shall consult with that other Minister.

#### **Refusal to grant, renew or extend mining licence before public notice**

68. (1) If the Minister determines, before giving public notice under *section 69*, that any of the requirements of *paragraphs (a) to (h)* or *paragraph (m)* of *section 65* have not been met in respect of an application, the Minister shall notify the applicant of the requirements that have not been met and provide the applicant with an opportunity to submit written representations within 30 days after the date on which the notice was sent.
  - (2) If, after considering any written representations that have been submitted to the Minister within the period specified in *subsection (1)*, the Minister still considers that any requirements have not been met, the Minister shall send to the applicant a notice of refusal with reasons.
  - (3) If the Minister sends an applicant a notice of refusal, the Minister shall not grant or renew the mining licence or extend the mining licence to include additional minerals or adjacent land unless a new application is submitted.

#### **Public notice before granting, renewing or extending mining licence**

69. (1) Before granting or renewing a mining licence or extending a mining licence to include additional minerals or minerals in or on adjacent land, the Minister shall give public notice in accordance with this section that the Minister intends to grant, renew or extend the licence, as the case may be, and shall consider any objection that meets the requirements of *subsection (3)*.
  - (2) The Minister shall, for the purposes of *subsection (1)*—
    - (a) deposit in the offices of the Department of Communications, Climate Action and Environment and in one or more places to which members of the public have access that are in the vicinity of the land specified in the proposed licence a description of the proposed licence and a map showing the boundaries of the specified land,

- (b) publish once each week in 2 successive weeks in *Iris Oifigiúil*, in a national newspaper and in at least one newspaper circulating in the vicinity of the specified land a notice stating that—
    - (i) the Minister intends to grant, renew or extend, as the case may be, the licence for specified minerals to the applicant's nominee company, and that the licensee will be entitled to exercise ancillary underground rights in respect of the minerals,
    - (ii) a description of the proposed licence and a map showing the boundaries of the specified land may be viewed at the places at which they have been deposited in accordance with *paragraph (a)* and that copies can be obtained at an office of the Department of Communications, Climate Action and Environment, specified in the notice, on payment of a fee, and
    - (iii) the public may send written objections that meet the requirements of *subsection (3)* to the Minister at an address specified in the notice,and
  - (c) in the case of an application to grant a mining licence not involving a renewal of the licence, or to extend a mining licence to additional minerals or minerals in or on adjacent land, make reasonable efforts to deliver to all occupied dwellings and business premises on the specified land and, if there is registered land within the specified land, to the registered owners of that land a notice that—
    - (i) contains the information set out in *paragraph (b)*,
    - (ii) includes a map showing the boundaries of the specified land, and
    - (iii) invites any person claiming a right to compensation under *section 86* if the minerals are worked to notify the Minister of his or her claim at an address specified in the notice and within a specified time.
- (3) The Minister shall consider only those objections that—
- (a) are in writing and have been delivered to the address specified in the notice within 28 days after the first date of publication of the notice in *Iris Oifigiúil*, and
  - (b) relate to entering on land, working minerals or the exercise of ancillary underground rights and do not relate to compensation or matters to be addressed in permissions, licences or environmental impact assessments by or under—
    - (i) the Planning and Development Acts 2000 to 2016,
    - (ii) the Environmental Protection Agency Acts 1992 to 2011,
    - (iii) the Local Government (Water Pollution) Acts 1977 to 2007,
    - (iv) the Air Pollution Act 1987,
    - (v) the Waste Management Acts 1996 to 2011,
    - (vi) the Waste Management (Management of Waste from the Extractive Industries) Regulations 2009, or

- (vii) the European Communities (Birds and Natural Habitats) Regulations 2011 (S.I. No. 477 of 2011).
- (4) The Minister shall determine the fee to cover the cost of providing copies referred to in *subsection (2)(b)(ii)*.

#### **Oral hearing and mining licence**

- 70.** (1) If the Minister is required to consider one or more objections in accordance with *section 69(3)*, the Minister may, if he or she considers it necessary that an oral hearing be held concerning one or more of those objections, request the Mining Board to conduct such a hearing and to provide written recommendations based on such hearing to the Minister.
- (2) After receiving the Minister's request, the Mining Board shall—
- (a) conduct an oral hearing for the purpose of evaluating the objections referred to it by the Minister, and
- (b) provide written recommendations based on such hearing to the Minister within 75 days after the day that the request is received or such longer period as the Minister may specify.
- (3) Only the Minister, the applicant for the mining licence and the persons who made the objections being evaluated are entitled to appear, be heard and adduce evidence at the oral hearing and may do so personally or be represented by counsel or a solicitor.
- (4) The Minister shall decide whether to grant the licence within 14 days after the day that he or she receives the recommendations of the Mining Board or such longer period as the Minister may specify in a notice to the persons who made the objections considered by the Board and to the applicant.

#### **Decision of Minister if no oral hearing**

- 71.** If the Minister is required to consider one or more objections in accordance with *section 69(3)* and decides that an oral hearing is not necessary, the Minister shall decide whether or not to grant, renew or extend the licence, as the case may be, within 90 days after the first date of publication of the notice in *Iris Oifigiúil* or such longer period as the Minister may specify in a notice to the persons who made the objections and to the applicant.

#### **Refusal to grant mining licence after public notice**

- 72.** (1) If, after giving public notice, the Minister intends to refuse to grant, renew or extend a mining licence the Minister shall notify the applicant of the requirements that have not been met and give the applicant a period of 30 days after the date on which the notice was sent to submit written representations to the Minister.
- (2) If, after considering any written representations that have been submitted to the Minister within the period referred to in *subsection (1)*, the Minister still considers that any requirements have not been met, the Minister shall send to the applicant a notice

of refusal with reasons.

- (3) If the Minister sends an applicant a notice of refusal, the Minister shall not grant or renew the mining licence or extend the mining licence to include additional State or private minerals or adjacent land unless a new application is submitted.

#### **Licence for portion of area of land**

73. (1) The Minister may grant a mining licence for only a portion of the area of land specified in an application for a mining licence either—
- (a) at the request of the applicant, or
  - (b) where the area applied for greatly exceeds the estimated extent of the ore body outline.
- (2) The Minister shall not grant a mining licence for the remainder, or a portion of the remainder, of the land referred to in *subsection (1)* unless an additional application fee is paid for each licence requested and the requirements of *section 65* have been met at the time of the grant of the licence.

#### **Fit and proper person**

74. The Minister shall consider the following in determining whether a nominee company is a fit and proper person to be a licensee under a mining licence:
- (a) letters of reference;
  - (b) whether the nominee company or any of its associated companies or any of the directors, officers or key employees of that company or those companies has been convicted of an offence under the laws of the State or elsewhere that would raise doubt about the nominee company complying with this Act and any regulations made under it;
  - (c) whether any of its directors has a declaration under section 819 of the Companies Act 2014 made against him or her or is deemed to be subject to such a declaration by virtue of Chapter 5 of Part 14 of that Act, or is subject or is deemed to be subject to—
    - (i) a disqualification order, within the meaning of Chapter 4 of Part 14 of the Companies Act 2014, whether by virtue of that Chapter or any other provision of that Act, or
    - (ii) a disqualification outside the State to like effect which corresponds to a disqualification order within the meaning of Chapter 4 of Part 14 of that Act;
  - (d) whether the nominee company—
    - (i) has commenced a voluntary winding-up or is subject to a winding-up order or is subject to proceedings for such an order,
    - (ii) is subject to the appointment of a receiver or examiner, or
    - (iii) has proposed a compromise or arrangement that is sanctioned under section

453(2) of the Companies Act 2014 or section 201(3) of the Companies Act 1963;

- (e) the previous performance, in relation to prospecting for or working minerals in the State or elsewhere, of the nominee company or any of its associated companies or any of the directors, officers or key employees of that company or any of those companies;
- (f) such other matters as the Minister considers appropriate to take into account in the circumstances.

### Requirements for companies

75. A mining licence may only be granted to—

- (a) a company that is incorporated under the laws of the State, or
- (b) an EEA company (within the meaning of Part 21 of the Companies Act 2014).

### Mining licence fees

76. (1) The Minister shall, with the prior consent of the Minister for Public Expenditure and Reform, make regulations setting out the mining licence fees that are payable in respect of a mining licence over its term.

(2) These regulations shall be reviewed every 5 years.

(3) Regulations under *subsection (1)* may, in particular, provide for—

- (a) a minimum licence fee payable in respect of the grant of a licence,
- (b) minimum annual fees payable over the term of a licence,
- (c) increases or decreases in licence fees over the term of the licence.

(4) The method of calculating mining licence fees shall be based on the type of minerals to be worked and the area of land specified in the licence.

(5) The method of calculating mining licence fees may be based on the tonnage of minerals produced and removed from the area of the mining licence or the revenue (as calculated by reference to regulations under this section) generated by working the minerals.

(6) Without prejudice to the Minister's discretion to consider other factors, the Minister shall have regard to the following when setting mining licence fees:

- (a) the costs associated with administering this Part and the enforcement of this Act (including the regulations made under it) and mining licences;
- (b) the amount of legal costs that the Minister may be required to pay under *section 91* in determining the persons entitled to compensation in respect of private minerals;
- (c) the capital and other start-up costs associated with the commencement of mining operations;

- (d) the value of conferring the exclusive right to work minerals under the licence;
- (e) the need to encourage the continuous working of the minerals after a licence has been granted.

### **Royalties**

77. (1) The Minister shall, with the prior consent of the Minister for Public Expenditure and Reform, make regulations (in this section referred to as “royalties regulations”) setting out the minimum and maximum rates of royalties that are payable in respect of minerals over the term of a mining licence and those rates may increase or decrease over that term.
- (2) The method of calculating rates of royalties shall be based on the type of minerals to be worked and on one or more of the following factors:
- (a) the tonnage of minerals produced and removed from the area of the mining licence;
  - (b) the revenue (as calculated by reference to the royalties regulations) generated by working the minerals;
  - (c) the profits (as calculated by reference to the royalties regulations) derived from working the minerals.
- (3) Rates of royalty shall be based on the Minister’s estimate of market royalty rates and, without prejudice to the Minister’s ability to consider other factors, the Minister shall have regard to the following factors when determining those rates:
- (a) the quality, grade and value of mineral deposits normally found in the State;
  - (b) general international practice of states in respect of setting royalties or equivalent payments or charges;
  - (c) existing domestic rates of royalties for similar minerals;
  - (d) rates of royalties set out in mining leases and licences continued under *section 232*.
- (4) In setting rates of royalty the Minister may have regard to—
- (a) a fair and reasonable return to the State and to private mineral owners for the extraction of minerals, and
  - (b) the desire of licensees to obtain a commercial return on their investment.
- (5) The Minister shall review royalties regulations every 5 years from the date of their making in order to ensure that they reflect market rates.

### **Special payment arrangements for State minerals**

78. (1) The Minister may, with the prior approval of the Minister for Public Expenditure and Reform, reduce, waive or defer either or both the mining licence fees or royalties for a specific period or for the entire term of a mining licence if the Minister is of the

opinion that special circumstances exist and it is necessary to do so to attract investment in the State or to ensure the working of the minerals.

- (2) The Minister may, with the prior approval of the Minister for Public Expenditure and Reform, agree with the licensee that mining licence fees and projected royalties for the entire term of the licence may be paid in advance in one or more instalments if the Minister is of the opinion that special circumstances exist.
- (3) This Minister may only exercise the powers under this section in respect of a mining licence that does not include a right to work private minerals.

### **Mining licences and regulations imposing conditions**

79. (1) The Minister may make regulations setting out conditions to which a licence is, or may be, subject in relation to any of the following matters:
- (a) the payment of mining licence fees and royalties, including remedies and penalties for non-payment or late payment of those fees or royalties;
  - (b) where, under *section 94*, the Mining Board determines that the compensation to be paid to a right-to-compensation holder in respect of minerals is greater than the royalty paid in respect of those minerals, the reimbursement of the Minister by the licensee of the additional amount payable;
  - (c) any payments for which the licensee is liable under *section 113* or *114* or any other provision of this Act;
  - (d) the payment of taxes and other charges under other Acts;
  - (e) compliance with other Acts, including obtaining permissions and licences required by—
    - (i) the Planning and Development Acts 2000 to 2016, and
    - (ii) the Environmental Protection Agency Acts 1992 to 2011,and compliance with any conditions of those permissions or licences;
  - (f) notices;
  - (g) working the minerals, including requirements regarding the continuous working of minerals;
  - (h) the surface of the land in which the minerals occur or are worked, including the avoidance of subsidence of that land;
    - (i) *force majeure*;
    - (j) workers, including requirements regarding professional qualifications, and equipment;
    - (k) safety and security;
      - (l) activities or other things prohibited without the Minister's consent or approval;
    - (m) weighing or measuring minerals;

- (n) records, reports, data, lithological logs and plans, including access to them and auditing them;
  - (o) the requirement to report to the Minister and the form, timing and contents of such reports;
  - (p) the Minister's right of inspection of mines;
  - (q) assignment of the licence, including a prohibition or restriction on assignment;
  - (r) the provision of financial security in order to ensure that the licensee can pay compensation for damages or nuisance for which he or she may be liable under *section 98*;
  - (s) indemnification by the licensee of the Minister and the State if the Minister or the State is found liable to pay compensation for any act or omission of the licensee or the licensee's officers, employees, agents or contractors;
  - (t) where the licence relates to private minerals, reimbursement by the licensee of any payment made by the Minister to discharge the reasonable legal costs of a holder of a right to compensation referred to in *section 91*;
  - (u) insurance;
  - (v) renewal of the licence;
  - (w) the expiration, revocation, termination and surrender of the licence, including the rights and duties of the licensee in those circumstances;
  - (x) mine closure and rehabilitation of land, including the provision of financial security in order to ensure the licensee's obligations in relation to these matters are met;
  - (y) the settlement of disputes;
  - (z) restrictions on the publication or disclosure of information communicated under the licence;
  - (aa) the maximum period following the grant of a licence within which operations under the licence are to commence;
  - (ab) such other matters as are ancillary or consequential to the other provisions of this subsection.
- (2) Any regulations made under this section which are stated to apply to all mining licences shall apply to mining licences granted or renewed after those regulations come into operation.
- (3) The Minister and the licensee may agree on terms and conditions to which a licence is to be subject that are in addition to the conditions prescribed under *subsection (1)*.

#### **Minister taking participating interest**

- 80.** The Minister may with the prior consent of the Minister for Public Expenditure and Reform and with the prior consent of the licensee under the mining licence—



- (a) take a participating interest in the working of the minerals under the licence, or
- (b) provide in the licence for the right of the Minister to acquire such a participating interest in the future.

### **Furnishing information**

**81.** (1) Every licensee under a mining licence shall furnish to the Minister—

- (a) the information necessary to calculate the royalties and the mining licence fees payable in respect of a period set out in the licence, no later than 45 days after the end of that period,
  - (b) if the licensee has been notified that the Mining Board has determined that a person having an estate or interest in the subsurface of private land is entitled under *Chapter 2 of Part 4* to compensation for the exercise of an ancillary underground right in respect of that subsurface, a notice that the right has been exercised, as soon as practicable after receiving the notification from the Board of its determination,
  - (c) if a licensee has been notified that the Mining Board has determined that a person having an estate or interest in the subsurface is entitled under *Chapter 2 of Part 4* to compensation for the exercise of an ancillary underground right and the licensee has not yet exercised the right in respect of that subsurface, a notice that that right has been exercised, within 45 days after the end of the year in which that right is exercised,
  - (d) the information required by regulations under *subsection (2)*, within the time specified in those regulations, and
  - (e) such other information relating to the working of minerals under the licence that the Minister may require, within 28 days after being required by the Minister to do so.
- (2) The Minister may make regulations regarding the furnishing of information by a licensee under a mining licence to the Minister and when that information is to be furnished.

### **Offences relating to requirement to furnish information**

**82.** (1) A person who is required under *section 81(1)* to furnish information or a notice to the Minister commits an offence if the person—

- (a) fails to furnish the information or notice within the time specified, or
  - (b) furnishes the information or notice required knowing it to be false or misleading in a material particular.
- (2) A person who commits an offence under *subsection (1)* is liable on summary conviction to a class A fine.

**Relinquishing of State's exclusive right to work minerals**

- 83.** (1) Where an application has been made for a mining licence in respect of private minerals the Minister may, instead of granting a licence, relinquish the exclusive right of working such minerals vested in the Minister under section 12 of the Act of 1979 if the Minister considers that, on account of the small tonnage or value of the minerals, it is expedient and efficient and in the public interest to do so.
- (2) Where the Minister relinquishes the State's exclusive right to work minerals under *subsection (1)* those minerals shall be deemed to be excepted minerals and the Mining Board shall register them accordingly without the need for an application under section 15 of the Act of 1979.
- (3) The Minister shall notify the Mining Board if the Minister relinquishes the State's exclusive right to work minerals under *subsection (1)*.

## CHAPTER 3

*Public Interest***Public Interest in respect of mining licence**

- 84.** Without prejudice to the Minister's discretion to consider other factors, the Minister shall consider the following in assessing the public interest in respect of an application for a mining licence:
- (a) the economic benefits to the region in which the area to be worked is located and to the State;
  - (b) the importance of the minerals concerned to the economies of the State and the European Union;
  - (c) sustainable development, being development that meets the needs of the present without compromising the ability of future generations to meet their own needs;
  - (d) the policies of the Government.

## CHAPTER 4

*Compensation for Working Minerals***Definitions – Chapter 4**

- 85.** In this Chapter—

“right to compensation”, in relation to private minerals, means a right to compensation under section 20 of the Act of 1979;

“right-to-compensation holder” means a person that the Minister under *section 91*, or on appeal the Mining Board, has determined holds a right to compensation in relation to private minerals.

**Right to compensation**

- 86.** (1) The Minister shall pay compensation to every right-to-compensation holder in respect of those private minerals to which his or her right to compensation relates that are extracted by a licensee under a mining licence.
- (2) For the purposes of determining entitlement to compensation under this section it shall be presumed, until the contrary is shown, that minerals contained in extractive waste are part of the land in, or on, which the waste occurs.

**Vesting of right to compensation on transfer**

- 87.** (1) A conveyance of any estate or interest in private minerals shall operate to vest in the person to whom the estate or interest is conveyed (in this section referred to as “the transferee”) any right to compensation that is vested in the person making the conveyance (in this section referred to as “the transferor”) and which relates to that estate or interest.
- (2) Where on the date that a right referred to in *subsection (1)* is vested in the transferee, any step or proceeding by the transferor for the purpose of claiming the compensation concerned remains to be completed, that step or proceeding may be carried on or completed on or after that date by the transferee, and, accordingly—
- (a) any compensation payable on foot of that claim shall be paid to the transferee, and
- (b) in any proceedings pending in any court in respect of that claim the name of the transferee shall be substituted for that of the transferor and the proceedings shall not abate by reason of such substitution.

**Public notice of working minerals**

- 88.** The Minister shall, as soon as practicable after granting a mining licence over minerals or extending a mining licence to include additional minerals or adjacent land—
- (a) deposit in the offices of the Department of Communications, Climate Action and Environment and in one or more places to which members of the public have access that are in the vicinity of the area to be worked a map showing the boundaries of the area,
- (b) publish once each week in 2 successive weeks in *Iris Oifigiúil*, in a national newspaper and in at least one newspaper circulating in the vicinity of the area to be worked a notice setting out that—
- (i) the Minister has granted a mining licence over that area in respect of specified minerals,
- (ii) a map showing the boundaries of the area may be viewed at the places at which the map has been deposited in accordance with *paragraph (a)*, and
- (iii) every person described in *section 86* claiming a right to compensation if the minerals are extracted shall submit his or her claim to the Minister at an address specified in the notice within the time limit under *section 90*,

and

- (c) deliver to all persons who claimed a right to compensation in response to the notice given under *section 69* a notice that—
  - (i) contains the information set out in *paragraphs (b)(i)* and *(iii)*, and
  - (ii) includes a map showing the boundaries of the area to be worked.

#### **Claim for compensation in respect of private minerals**

- 89.** A claim for a right to claim compensation under this Chapter shall be submitted to the Minister in the prescribed form.

#### **Extinguishment of right to compensation in respect of private minerals**

- 90.** (1) A person's right to compensation in relation to a mining licence referred to in *section 86* is extinguished if the claim for compensation is not submitted to the Minister within 12 months, or such longer period allowed under *subsection (2)*, after the first publication in *Iris Oifigiúil* of the notice referred to in *section 88(b)* or, if the notice was delivered to the person under *paragraph (c)* of *section 88* after the date on which the notice was delivered.
- (2) The Minister may, on the written application of a claimant, extend the 12 month period referred to in *subsection (1)* up to an additional 12 months if the Minister is satisfied that good reasons exist for the failure of the claimant to submit a claim for compensation within the initial 12 month period, provided that any such extension shall not result in the period being extended to more than 24 months after the first publication in *Iris Oifigiúil* of the notice, or the date on which the notice was delivered, as the case may be.

#### **Determination of persons entitled to compensation in respect of private minerals**

- 91.** (1) After receiving a claim for compensation that has not been extinguished under *section 90*, the Minister shall determine if the claimant holds a right to compensation and shall notify the claimant of his or her decision.
- (2) If the Minister determines that the claimant holds a right to compensation the Minister shall pay to the claimant the reasonable legal costs of establishing that fact.
- (3) If the Minister determines that a claimant does not hold a right to compensation the claimant may, within 30 days after the Minister has given notice of the decision, appeal the decision to the Mining Board.
- (4) If the claimant appeals, the claimant's legal costs of establishing entitlement to compensation shall be determined by the Mining Board under *section 179*.

#### **Initial compensation for private minerals worked under mining licence**

- 92.** (1) If the Minister grants a mining licence that applies to private minerals, then every right-to-compensation holder whose right relates to minerals located on or in the

specified land shall be paid the greater of—

- (a) €500, and
  - (b) €500 together with a prescribed amount that increases the amount in *paragraph (a)* to reflect any change in the consumer price index.
- (2) The Minister shall make the payment under this section within 45 days after the date of the notice from the Minister advising the right-to-compensation holder that his or her entitlement has been established or, in the case of the Mining Board determining entitlement, the date of its determination.
- (3) In this section “change in the consumer price index” means the difference between—
- (a) the All Items Consumer Price Index number last published by the Central Statistics Office before the date of the passing of this Act, and
  - (b) the All Items Consumer Price Index number most recently published by the Central Statistics Office before the date on which the amount is prescribed for the purposes of *subsection (1)(a)*,
- expressed as a percentage of the last-mentioned number.

#### **Calculation of compensation for private minerals payable over term of mining licence**

93. (1) When private minerals are worked under a mining licence, the Minister shall pay compensation to a right-to-compensation holder for minerals that have been—
- (a) extracted by the licensee under the mining licence from—
    - (i) deposits of minerals to which the right to compensation relates, and
    - (ii) mineral waste resulting from the working of the deposits referred to in *subparagraph (i)*,and
  - (b) removed from the area of the mining licence.
- (2) Subject to *section 94*, the compensation payable by the Minister in respect of minerals referred to in *subsection (1)* shall be equal to the amount of the royalties payable in respect of those minerals in accordance with regulations made under *section 77* less the amount paid to any right-to-compensation holder under *section 92*.

#### **Referral of calculation of compensation to Mining Board**

94. (1) Where either the Minister or a right-to-compensation holder are of the opinion that the amount of compensation payable under *section 93(2)* is not fair and reasonable having regard to all the circumstances of the case (including the matters referred to in *section 23(1)* of the Act of 1979) either party may, within a period of 90 days from the date of the notification referred to in *section 91(1)*, refer the matter to the Mining Board for a determination of the amount of compensation payable.
- (2) Where a right-to-compensation holder refers the matter of compensation to the

Mining Board, if the compensation awarded by the Mining Board is equal to or less than the amount of the royalties payable in accordance with regulations made under *section 77* the Board may, if the Board considers it appropriate to do so, order the right-to-compensation holder to bear his or her own costs and to pay the costs of the Minister in so far as those costs were incurred after the date on which the right-to-compensation holder referred the matter to the Board.

- (3) Where the Minister refers the matter of compensation to the Mining Board, if the compensation awarded by the Mining Board is equal to or exceeds the amount of the royalties payable in accordance with regulations made under *section 77*, the Board may, if the Board considers it appropriate to do so, order the Minister to bear his or her own costs and to pay the costs of the right-to-compensation owner in so far as those costs were incurred after the date on which the Minister referred the matter to the Board.

#### **Timing of payment of compensation**

95. Where a person's entitlement to compensation has been determined under *section 91* and the period of 90 days referred to in *section 94* has passed or the amount of compensation payable has been determined by the Mining Board, as the case may be, the Minister shall, within 90 days after the end of each year, pay compensation for—
- (a) minerals described in *section 93* that were removed from the area of the relevant mining licence during that year, and
  - (b) minerals described in *section 93* that were removed before the beginning of that year in respect of which no compensation was paid.

#### **Notice of renewals of mining licences**

96. The Minister shall, within 14 days after renewing a mining licence over private minerals, notify every right-to-compensation holder in respect of that licence that the licence has been renewed and of the term of the renewed licence.

### CHAPTER 5

#### *Liability under mining licence*

#### **Joint and several liability of licensees**

97. Where a mining licence is held by 2 or more licensees any duty or liability imposed by this Act, the regulations or the licence applies to each licensee and each licensee is jointly and severally liable.

#### **Liability for damage or nuisance under mining licence**

98. (1) Where the exercise of—
- (a) a right under a mining licence,
  - (b) an ancillary underground right, or

- (c) an ancillary surface right,  
causes a nuisance, or damage to the surface of any land or to water supplies, the licensee is liable to pay compensation for such nuisance or damage.
- (2) *Subsection (1)* does not apply to a nuisance or to damage—
- (a) caused by the exercise of an ancillary surface right that was acquired by the licensee by agreement or compulsorily under *Part 4* if the nuisance or damage is suffered by the person who granted the right by agreement or was compensated for the compulsory acquisition of that right, or
- (b) that results from carrying out an operational purpose within the meaning of *section 110* in respect of which the licensee acquired an estate or interest in the land by agreement or compulsorily under *Part 4* if the damage or nuisance is suffered by the person who transferred the estate or interest by agreement or was compensated for the compulsory acquisition of that estate or interest.
- (3) The reference to damage to minerals in *subsection (1)* does not include damage to the minerals being worked by the licensee if the damage was caused by an act or omission of the licensee that was authorised under this Act.
- (4) Other than in circumstances referred to in *subsection (3)*, the fact that nuisance or damage is caused by an act or omission that was authorised under this Act is not a defence to a claim under *subsection (1)*.
- (5) If the parties cannot agree on whether nuisance or damage was caused by the licensee, or on the amount of compensation payable for the nuisance or damage, the Mining Board shall determine the matter.
- (6) A right to compensation under *subsection (1)* is extinguished unless an application to determine the matter is made to the Mining Board within the limitation period determined in accordance with the provisions of the Statutes of Limitations that is applicable to actions based on tort.
- (7) If the nuisance or damage occurs on State land and is caused by the licensee under a mining licence, the compensation shall be paid to the Minister, but the Minister shall not enter into any agreement fixing the amount of the compensation without the prior consent of the Minister for Public Expenditure and Reform.

## CHAPTER 6

### *Safety at Closed and Abandoned Mines*

#### **Application of Chapter**

**99.** This Chapter applies to—

- (a) a mine in which State minerals have been worked, and
- (b) a mine in which private minerals have been worked under a mining licence.

**Fencing and other works to prevent accidents**

- 100.** (1) If a mine has been abandoned or its operations have permanently ceased, whether before or after this section comes into operation, the Minister may, through his or her officers or agents, to prevent accidents to people or animals at the mine—
- (a) erect and maintain fencing or other barriers or seal openings to prevent access to any part of the mine,
  - (b) erect warning signs in the vicinity of the mine,
  - (c) if there is an immediate threat of accidents to people or animals occurring at any part of a mine site, carry out such other works at the mine as he or she considers necessary, and
  - (d) enter any land or abandoned structure or building for any of the purposes specified in *paragraph (a), (b) or (c)*.
- (2) No compensation is payable in respect of the exercise of the powers of the Minister under this section.
- (3) Nothing in *subsection (1)* shall be construed as imposing any obligation on the Minister to take any measures under that subsection.
- (4) A person who obstructs or interferes with an officer or agent of the Minister in the exercise of powers under this section or interferes with or damages any fence, barrier or sign erected, or any works carried out, under this section, commits an offence and is liable—
- (a) on summary conviction, to a class A fine or to imprisonment for a term not exceeding 12 months, or to both, or
  - (b) on conviction on indictment, to a fine not exceeding €50,000 or to imprisonment for a term not exceeding 3 years, or to both.

**Relationship to other liabilities and powers**

- 101.** Nothing in this Chapter—
- (a) exempts any person from an obligation or liability under any Act or otherwise with respect to an abandoned mine or a mine whose operations have permanently ceased, or
  - (b) affects the powers or obligations of a local authority under any Act, including the Derelict Sites Act 1990, with respect to an abandoned mine or a mine whose operations have permanently ceased.



## PART 4

## ANCILLARY RIGHTS

## CHAPTER 1

*Definitions***Ancillary rights**

- 102.** (1) The following are “ancillary underground rights” for the purposes of this Act:
- (a) a right to remove rock that is adjacent to minerals for the purposes of underground mining;
  - (b) a right to construct and to operate and use shafts, tunnels, boreholes and other underground rights of way for the purposes of—
    - (i) accessing or conveying minerals or machinery, or transporting persons,
    - (ii) ventilation, drainage or emergency egress, or
    - (iii) working minerals;
  - (c) a right to construct and operate underground facilities, such as workshops, canteens, material and explosive storage facilities and pump chambers.
- (2) The following are “ancillary surface rights” for the purposes of this Act:
- (a) a right to remove rock and other overburden for the purposes of open-cast mining;
  - (b) a right of way on the surface—
    - (i) for access to, and the transport of, minerals,
    - (ii) for pipelines for the transport of water, tailings or other fluids or slurries, and
    - (iii) for overhead or buried power lines;
  - (c) the right to fence in those rights of way;
  - (d) a right to a supply of surface water in connection with the working of minerals;
  - (e) a right to dam or divert any river or watercourse, including an artificial watercourse, for the purpose of gaining access to minerals;
  - (f) a right to divert—
    - (i) pipelines, sewers, water mains and other pipes,
    - (ii) power and any other type of cables, and
    - (iii) a public road, street or right of way or a private right of way, including the right to substitute for an existing bridge another bridge at a different location;
  - (g) a right of access for the purposes of monitoring land, air and noise, and a right to

install, fence in and maintain equipment for those purposes.

## CHAPTER 2

### *Ancillary Underground Rights*

#### **Exercise of ancillary underground rights**

**103.** Every licensee under a mining licence may, in respect of the subsurface of the specified land that lies 10 metres or more below the surface, exercise any ancillary underground right necessary for the efficient working of the minerals specified in the licence.

#### **Entitlement to compensation in relation to exercise of ancillary underground rights**

**104.** Every owner of an estate or interest in the subsurface of private land is entitled to compensation under this Chapter for the exercise of an ancillary underground right by a licensee under a mining licence granted after this section comes into operation where the exercise of such rights affects the portion of that subsurface that lies 10 metres or more below the surface.

#### **Public notice of exercise of ancillary underground rights**

**105.** The Minister shall, as soon as practicable after granting a mining licence over private land—

- (a) deposit in the offices of the Department of Communications, Climate Action and Environment and in one or more places to which members of the public have access that are in the vicinity of the specified land a map showing the boundaries of the land,
- (b) publish once each week in 2 successive weeks in *Iris Oifigiúil*, in a national newspaper and in at least one newspaper circulating in the vicinity of the specified land a notice stating that—
  - (i) the Minister has granted a mining licence in respect of specified minerals in or on the specified land,
  - (ii) a map showing the boundaries of the specified land may be viewed at the places at which the map has been deposited in accordance with *paragraph (a)*,
  - (iii) the owner of an estate or interest in the subsurface of the specified land is entitled to compensation if an ancillary underground right is exercised that affects the land to which the estate or interest relates and that lies 10 metres or more below the surface, in an amount equal to the value (if any) of the subsurface,
  - (iv) the value of any subsurface lying 10 metres or more below the surface of that land is nil, unless it is shown to be of a greater value by the owner of the estate or interest in the land, and

(v) any owner of an estate or interest in any portion of the subsurface of the area concerned wishing to claim that the value of that subsurface is greater than nil shall submit his or her claim to the Mining Board at an address specified in the notice within the time limit provided under *section 106*,

and

(c) make reasonable efforts to deliver to all occupied dwellings and business premises within the specified land and, if there is registered land within the specified land, to the registered owners of that land a notice that—

(i) contains the information set out in *subparagraphs (i) and (iii) of paragraph (b)*, and

(ii) includes a map showing the boundaries of the specified land.

#### **Extinguishment of right to compensation for ancillary underground rights**

**106.** (1) A person's right to compensation under this Chapter in respect of a mining licence referred to in *section 105* is extinguished if the claim for compensation is not submitted to the Mining Board within 12 months, or such longer period allowed under *subsection (2)*, of the first publication in *Iris Oifigiúil* of the notice referred to in *section 105(b)* or, if the notice was delivered to the person under *section 105(c)*, after the date that the notice was delivered.

(2) The Minister may, on the written application of a claimant, extend the period referred to in *subsection (1)* if the Minister is satisfied that good reasons exist for the failure of the claimant to submit a claim for compensation within the initial 12 month period, but any such extension shall not result in the period being extended to more than 24 months after the first publication in *Iris Oifigiúil* of the notice or from the date that the notice was delivered, as the case may be.

#### **Determination of compensation for exercise of ancillary underground rights**

**107.** (1) After receiving a claim for compensation that has not been extinguished under *section 106*, the Mining Board shall determine, in accordance with *Chapter 3 of Part 6*, entitlement to compensation and award compensation in an amount equal to the value (if any) of the subsurface at the time of making its decision.

(2) The assessment of compensation shall be governed by the rules in section 2 of the Acquisition of Land (Assessment of Compensation) Act 1919 (including those rules that apply where compensation is payable by a planning authority) and references to a "property arbitrator" in those rules shall be read as references to the Mining Board.

#### **Payment of compensation for exercise of ancillary underground rights**

**108.** If the Mining Board determines that a person is entitled to compensation under this Chapter, the Minister shall pay an amount of compensation in accordance with the Board's decision—

(a) in the case that the ancillary underground right has already been exercised at the

time of the Board's decision, within 60 days after the day that the Minister was notified of the Board's decision, and

- (b) in the case that the ancillary underground right has not been exercised at the time of the Board's decision, within 60 days after the end of the year in which the right is exercised.

#### **Licensee liable to Minister for compensation**

- 109.** (1) If, under a decision of the Mining Board, the Minister pays compensation to a person in respect of an ancillary underground right exercised by a licensee under a mining licence, the licensee shall pay to the Minister the amount of that compensation.
- (2) The amount that is payable by the licensee is recoverable by the Minister as a simple contract debt in any court of competent jurisdiction.

### CHAPTER 3

#### *Ancillary Surface Rights and Operational Purposes*

#### **Interpretation - Chapter 3**

- 110.** In this Chapter—

“estate or interest”, in relation to land, does not include an ancillary surface right;

“operational purpose”, in relation to working minerals, means any of the following purposes:

- (a) to exercise an ancillary underground right with respect to the subsurface of land that lies less than 10 metres from the surface;
- (b) to permanently remove rock and other overburden for the purposes of open-cast mining;
- (c) to exercise an ancillary underground right that causes significant subsidence to the surface that results in permanent damage to the surface;
- (d) to construct and operate surface facilities, including water wells and ventilation facilities;
- (e) to access and transport minerals;
- (f) to dispose of mineral waste;
- (g) to construct and operate treatment facilities, including facilities for the retention or discharge of water.

#### **Licensee's duty to negotiate**

- 111.** (1) A licensee under a mining licence that requires an ancillary surface right over private land in order to work minerals or an estate or interest in private land for an operational purpose shall make reasonable attempts—

- (a) to ascertain and locate every owner concerned, and
  - (b) if any owner concerned is located, to negotiate the acquisition of that right, estate or interest from him or her, and, in particular, to make an unconditional written offer to such owner for the purposes of such acquisition.
- (2) If any owner concerned does not respond to a written offer made under *subsection (1)(b)* within 14 days after the offer is given to the owner, that owner is deemed to have rejected it.
- (3) If a licensee under a mining licence has not been able—
- (a) to ascertain or locate any owner concerned, or
  - (b) to acquire an ancillary surface right, estate or interest in private land by agreement from that owner,
- then the licensee may apply to the Minister for an ancillary surface rights licence, which the Minister may grant only after acquiring the right by a mining facilities acquisition order.
- (4) If a licensee under a mining licence has not been able to ascertain or locate the owner concerned or acquire the estate or interest in private land by agreement from the owner, the licensee may apply to the Minister to grant a mining facilities acquisition order that vests that estate or interest in the licensee.

#### **Mining facilities acquisition order**

- 112.** (1) The Minister may, by order to be known as a “mining facilities acquisition order”, compulsorily acquire an ancillary surface right, for the purposes of a licensee under a mining licence, or acquire and, subject to *Chapter 2 of Part 7*, vest in a licensee under a mining licence an estate or interest in private land if—
- (a) the licensee submits an application in the prescribed form and the prescribed application fee,
  - (b) in the case of acquiring an ancillary surface right, the Minister is satisfied that the ancillary surface right is necessary for the efficient working of the minerals,
  - (c) in the case of acquiring an estate or interest in land, the Minister is satisfied that the estate or interest is necessary for an operational purpose,
  - (d) the licensee has complied with the requirements of *section 111(1)*,
  - (e) the licensee has provided the prescribed information and any additional information required by the Minister,
  - (f) the requirements of *section 116* regarding public notice and consideration of objections have been complied with,
  - (g) where an oral hearing has been conducted under *section 117*, the Minister has considered the report of the Mining Board, and
  - (h) the Minister for Public Expenditure and Reform consents to the making of the order.

- (2) A mining facilities acquisition order shall—
  - (a) specify the ancillary surface right or the estate or interest acquired, including its duration, and describe the land affected,
  - (b) in the case of the vesting of a fee simple estate, identify any interests or burdens to which the estate is subject, and
  - (c) contain any supplementary or ancillary provisions as the Minister, with the prior consent of the Minister for Public Expenditure and Reform, considers proper.
- (3) On the making of a mining facilities acquisition order for the purpose of acquiring an ancillary surface right, the right is vested in the Minister on behalf of the State.
- (4) On the making of a mining facilities acquisition order for the purpose of acquiring an estate or interest in land, the estate or interest is vested in the licensee.
- (5) Notwithstanding the Registration of Deeds and Title Acts 1964 and 2006, the vesting of an ancillary surface right, estate or interest under *subsections (3) and (4)* that affects registered land occurs when the order is made.
- (6) The Statutory Instruments Acts 1947 and 1955 do not primarily apply (within the meaning of those Acts) to an order made under *subsection (1)*.

#### **Granting ancillary surface rights licence based on order**

- 113.** (1) After the Minister acquires an ancillary surface right by operation of a mining facilities acquisition order, the Minister may, subject to *Chapter 2 of Part 7*, grant an ancillary surface rights licence to the licensee under the mining licence.
- (2) The ancillary surface rights licence may contain such conditions as the Minister considers necessary for the efficient working of the minerals.
  - (3) The licensee under the ancillary surface rights licence shall pay to the Minister—
    - (a) the Minister's costs incurred in making the mining facilities acquisition order on which the licence is based, and
    - (b) the compensation awarded by the Mining Board in respect of the right acquired by the order that has been paid by the Minister.

#### **Licensee liable to Minister for compensation payable for acquisition of estate or interest**

- 114.** When an estate or interest in land is vested in a licensee under a mining licence by operation of a mining facilities acquisition order, the licensee shall pay to the Minister—
  - (a) the Minister's costs incurred in making the order, and
  - (b) the compensation awarded by the Mining Board in respect of the estate or interest that has been paid by the Minister.

#### **Debt**

- 115.** The amounts that are payable by the licensee under *sections 113 and 114* are recoverable

by the Minister as a simple contract debt in any court of competent jurisdiction.

**Public notice of intention to make mining facilities acquisition order**

**116.** (1) Before making a mining facilities acquisition order, the Minister shall give public notice in accordance with this section that the Minister intends to make the order and shall consider any objection that meets the requirements of *subsection (3)*.

(2) The Minister shall, for the purposes of *subsection (1)*—

(a) deposit in the offices of the Department of Communications, Climate Action and Environment and in one or more places to which members of the public have access that are in the vicinity of the area to be affected by the proposed order a map showing the boundaries of the area and a copy of the proposed order,

(b) publish once each week in 2 successive weeks in *Iris Oifigiúil*, in a national newspaper and in at least one newspaper circulating in the vicinity of the area to be affected by the proposed order a notice stating that—

(i) the Minister intends to make the order that will compulsorily acquire an ancillary surface right or an estate or interest in specified land,

(ii) a map showing the boundaries of the area to be affected by the order and a copy of the proposed order may be viewed at the places at which they have been deposited in accordance with *paragraph (a)* and that copies can be obtained at an office of the Department of Communications, Climate Action and Environment, specified in the notice, on payment of a fee, and

(iii) any person claiming to have an estate or interest in the area to be affected by the proposed order may send written objections that meet the requirements of *subsection (3)* to the Minister at an address specified in the notice,

and

(c) make reasonable efforts to deliver to all occupied dwellings and business premises within one kilometre of the boundaries of the area to be affected by the proposed order and, if there is registered land within that area, to the registered owners of that land a notice that—

(i) contains the information set out in *paragraphs (b)(i)* and *(iii)*,

(ii) includes a map showing the boundaries of the area to be affected and a copy of the proposed order, and

(iii) invites any person claiming a right to compensation under *section 122* to notify the Minister of his or her claim at an address specified in the notice and within the time specified by the Minister.

(3) The Minister shall consider only those objections that—

(a) are in writing from persons claiming an estate or interest in the affected land and have been delivered to the address specified in the notice within 28 days after the first date of publication of the notice in *Iris Oifigiúil*,

- (b) in the case of an ancillary surface right, relate to whether the right is necessary for the efficient working of the minerals,
- (c) in the case of an estate or interest in land, relate to whether the estate or interest is necessary for an operational purpose, and
- (d) do not relate to compensation or matters to be addressed in permissions, licences or other forms of authorisations under—
  - (i) the Planning and Development Acts 2000 to 2016,
  - (ii) the Environmental Protection Agency Acts 1992 to 2011,
  - (iii) the Local Government (Water Pollution) Acts 1977 to 2007,
  - (iv) the Air Pollution Act 1987,
  - (v) the Waste Management Acts 1996 to 2011,
  - (vi) the Waste Management (Management of Waste from the Extractive Industries) Regulations 2009, or
  - (vii) the European Communities (Birds and Natural Habitats) Regulations 2011.
- (4) The Minister shall determine the fee to cover the cost of providing copies referred to in *subsection (2)(b)(ii)*.

#### **Oral hearing in relation to grant of mining facilities acquisition order**

- 117.** (1) If the Minister is required to consider one or more objections in accordance with *section 116(3)*, the Minister may, if he or she considers it necessary that an oral hearing be held concerning one or more of those objections, request the Mining Board to conduct such a hearing and to provide recommendations based on such hearing to the Minister.
- (2) After receiving the Minister's request, the Mining Board shall—
- (a) conduct an oral hearing for the purpose of evaluating the objections referred to it by the Minister, and
  - (b) provide written recommendations based on such hearing to the Minister within 75 days after the day that the request is received or such longer period as the Minister may specify.
- (3) The Minister, the licensee under the mining licence concerned and any person claiming an estate or interest in the land affected by the proposed mining facilities acquisition order is each entitled to appear, be heard and adduce evidence at the oral hearing and may do so personally or be represented by counsel or solicitor.
- (4) The Minister shall decide whether to grant the mining facilities acquisition order within 14 days after the day he or she receives the recommendations of the Mining Board or such longer period as the Minister may specify in a notice to the persons who made the objections considered by the Board.



**Decision of Minister if no oral hearing for mining facilities acquisition order**

**118.** If the Minister is required to consider one or more objections in accordance with *section 116(3)* and decides that an oral hearing is not necessary, the Minister shall decide whether to grant the mining facilities acquisition order within 90 days after the first date of publication of the notice in *Iris Oifigiúil* or such longer period as the Minister may specify in a notice to the persons who made the objections.

**Mining facilities acquisition order and registration of fee simple**

**119.** The Property Registration Authority shall, on production of a mining facilities acquisition order under the official seal of the Minister that vests a freehold estate in land in a person—

- (a) register the person as owner of the freehold estate in the land described in the order with absolute title subject to such burdens as may be specified in the order, and
- (b) make any consequential alterations to any register that are appropriate having regards to the terms of the order.

**Mining facilities acquisition order and ancillary surface rights**

**120.** (1) The Property Registration Authority shall on production of a mining facilities acquisition order under the official seal of the Minister that vests in a person an ancillary surface right over registered land register the ancillary surface right as a burden affecting the land described in the order.

- (2) The Property Registration Authority shall, on production of a mining facilities acquisition order under the official seal of the Minister that vests in a person an ancillary surface right over land that is not registered, register the order as though it were a deed under Part 3 of the Registration of Deeds and Title Act 2006.

**Mining facilities acquisition order and extinguishment of an ancillary surface right**

**121.** (1) The Minister may, with the prior consent of the Minister for Public Expenditure and Reform, by order extinguish an ancillary surface right acquired by operation of a mining facilities acquisition order if—

- (a) the mining operations in respect of which the right was acquired have ceased, and
  - (b) the Minister is satisfied that the right is no longer required.
- (2) The Property Registration Authority shall, on production of an order under the official seal of the Minister that extinguishes an ancillary surface right over registered land, cancel the entry of the right as a burden affecting the land described in the order if that right had been previously registered.
  - (3) The Property Registration Authority shall, on production of an order under the official seal of the Minister that extinguishes an ancillary surface right over land that is not registered, register the order as though it were a deed under Part 3 of the Registration of Deeds and Title Act 2006.

- (4) The Statutory Instruments Acts 1947 and 1955 do not primarily apply (within the meaning of those Acts) to an order made under *subsection (1)*.

**Right to compensation in relation to mining facilities acquisition order**

- 122.** (1) Every person who, immediately before the making of a mining facilities acquisition order, has an estate or interest in land that is subject to the order, has a right to compensation.
- (2) Entitlement to compensation under this section shall be determined and paid in accordance with *section 125*.

**Public notice of making mining facilities acquisition order**

- 123.** The Minister shall, as soon as practicable after making a mining facilities acquisition order—
- (a) deposit in the offices of the Department of Communications, Climate Action and Environment and in one or more places to which members of the public have access that are in the vicinity of the area subject to the order a map showing the boundaries of the area,
  - (b) publish once each week in 2 successive weeks in *Iris Oifigiúil*, in a national newspaper and in at least one newspaper circulating in the vicinity of the area subject to the order a notice setting out that—
    - (i) the Minister has made a mining facilities acquisition order that compulsorily acquired a specified ancillary surface right or an estate or interest in private land,
    - (ii) a map showing the boundaries of the area subject to the order may be viewed at the places at which the map has been deposited in accordance with *paragraph (a)*, and
    - (iii) any person claiming compensation under *section 122* shall submit his or her claim to the Minister at an address specified in the notice within the time limit under *section 124*,
 and
  - (c) deliver to all persons who claimed a right to compensation in response to the notice given under *section 116* a notice that—
    - (i) contains the information set out in *paragraph (b)(i)* and *(iii)*, and
    - (ii) includes a map showing the boundaries of the area subject to the order.

**Extinguishment of right to compensation under *section 122***

- 124.** (1) A person’s right to compensation under this Chapter is extinguished if the claim for compensation is not submitted to the Mining Board within 12 months, or such longer period allowed under *subsection (2)*, after the first publication in *Iris Oifigiúil* of the notice referred to in *section 123(b)* or, if the notice was delivered to the person under

*section 123(c)*, after the date that the notice was delivered.

- (2) The Minister may, on the written application of a claimant, extend the period referred to in *subsection (1)* if the Minister is satisfied that good reasons exist for the failure of the claimant to submit a claim for compensation within the initial 12 month period, but any such extension shall not result in the period being extended to more than 24 months after the first publication in *Iris Oifigiúil* of the notice, or the date that the notice was delivered, as the case may be.

#### **Determination of entitlement to and amount of compensation**

- 125.** (1) After receiving a claim for compensation that has not been extinguished under *section 124*, the Mining Board, in accordance with *Chapter 3 of Part 6*, shall determine entitlement to compensation and award compensation in an amount equal to the value (if any), on the date of the order, of the estate or interest acquired together with interest at the prescribed rate on the amount from the date of the order to the date of payment.
- (2) The assessment of compensation shall be governed by—
    - (a) the rules in section 2 of the Acquisition of Land (Assessment of Compensation) Act 1919 (including those rules that apply where compensation is payable by a planning authority) and references to a “property arbitrator” in those rules shall be read as references to the Mining Board, and
    - (b) section 63 of the Lands Clauses Consolidation Act 1845.
  - (3) The Minister shall pay the amount of compensation awarded by the Mining Board.

#### **Costs and compensation awarded under *section 125***

- 126.** (1) In this section—

“acquiring party” means the licensee under a mining licence on whose application a mining facilities acquisition order has been made;

“owner” means a person who, immediately before the making of the order, was entitled to an estate or interest in the land that is subject to a mining facilities acquisition order and who the Mining Board determines is entitled to compensation under *section 122*.

- (2) If the compensation awarded by the Mining Board under *section 125* is equal to or less than the amount that the acquiring party offered the owner under *section 111(1)(b)*, the Board may, if the Board considers it appropriate to do so, order the owner to bear his or her own costs and to pay the costs of the acquiring party in so far as those costs were incurred after the offer was made.
- (3) If an owner made an unconditional written offer to the acquiring party to accept an amount as compensation prior to the mining facilities acquisition order being made and the compensation awarded by the Mining Board under *section 125* is equal to or exceeds the amount that the owner offered to accept, the Board may, if the Board considers it appropriate to do so, order the acquiring party to bear his or her own costs

and to pay the costs of the owner in so far as those costs were incurred after the offer by the owner was made.

### **Regulations applying Lands Clauses Consolidation Act 1845 and compulsory acquisition of certain facilities**

- 127.** (1) The Minister may by regulations, in such cases (if any) and to such extent as he or she considers necessary for the purposes of compulsory acquisition under a mining facilities acquisition order, apply all or any of the provisions of sections 69 to 83 of the Lands Clauses Consolidation Act 1845 as if—
- (a) such compensation were purchase money or compensation under that Act, and
  - (b) the Minister was the promoter of the undertaking,
- together with any other necessary modifications.
- (2) Where money is paid into court under section 69 of the Lands Clauses Consolidation Act 1845, as applied by the Minister under *subsection (1)*, no costs are payable by the Minister to any person in respect of any proceedings for the investment, payment of income or payment of capital of such money.

### **Requirements for grant of ancillary surface rights licence in respect of State land**

- 128.** (1) Subject to *subsections (2) and (3)*, the Minister may grant an ancillary surface rights licence in respect of State land to a licensee under a mining licence authorising the licensee to exercise an ancillary surface right if—
- (a) the licensee submits an application in the prescribed form and the prescribed application fee,
  - (b) the Minister is satisfied that the ancillary surface right is necessary for the efficient working of the minerals, and
  - (c) the licensee has provided the prescribed information and any additional information required by the Minister.
- (2) Before granting an ancillary surface rights licence under *subsection (1)*, the Minister shall consult any other Minister of the Government having the authority to use the State land affected by the application.
- (3) The Minister shall not grant an ancillary surface rights licence under *subsection (1)* without the prior consent of the Minister for Public Expenditure and Reform.

### **Ancillary surface rights and conditions**

- 129.** Every ancillary surface rights licence granted in respect of State land may contain such conditions as the Minister, with the prior consent of the Minister for Public Expenditure and Reform, considers necessary for the efficient working of the minerals.

**Compensation upon grant of ancillary surface rights licence over State land**

- 130.** (1) The licensee under the ancillary surface rights licence shall pay compensation to the Minister in an amount that is equivalent to the compensation that would have been payable if the licence applied to private land.
- (2) The licensee and the Minister shall, within 45 days after the licence is granted, provide to each other a statement setting out an amount they consider to be fair compensation.
- (3) The licensee and the Minister may agree the amount of compensation payable under *subsection (1)* and such amount may be recovered by the Minister as a simple contract debt in any court of competent jurisdiction.
- (4) In default of agreement, the compensation payable under *subsection (1)* shall be determined by the Mining Board.
- (5) If the compensation awarded by the Mining Board is equal to or less than the amount that the licensee set out in the statement provided under *subsection (2)*, the Board may, if the Board considers it appropriate to do so, order the Minister to bear his or her own costs and to pay the costs of the licensee in so far as those costs were incurred after the statement was provided.
- (6) If the compensation awarded by the Mining Board is equal to or exceeds the amount that the Minister set out in the statement provided under *subsection (2)*, the Board may, if the Board considers it appropriate to do so, order the licensee to bear his or her own costs and to pay the costs of the Minister in so far as those costs were incurred after the statement was provided.
- (7) The Minister may apply regulations under *section 127* to compensation awarded by the Mining Board under this section.
- (8) The Minister's right to compensation under *subsection (1)* is extinguished if an application to determine the amount of the compensation is not submitted to the Mining Board within 12 months after the ancillary surface rights licence has been granted.

## PART 5

## REHABILITATION

**Definitions (Part 5)**

**131.** In this Part—

“rehabilitation area” means an area designated under *section 132*;

“mine site” means the site of a mine at which minerals were worked before or after the coming into operation of this Part, and, without prejudice to the generality of the foregoing, includes the underground works and open pits of the mine, the surface where processing minerals has taken place, areas subject to any ancillary underground rights or ancillary surface rights and areas used for mineral and other waste disposal facilities and

other ancillary facilities;

“rehabilitation plan” means the plan referred to in *section 136*.

### **Designation of rehabilitation areas**

- 132.** (1) The Minister, after consultation with the Minister for Housing, Planning, Community and Local Government, may, if the conditions in *subsection (2)* are met, by order designate any or all of the following as a rehabilitation area:
- (a) a mine site that has been abandoned, or in respect of which operations have permanently ceased, before or after the coming into operation of this Part;
  - (b) any lands that are adjacent to a mine site referred to in *paragraph (a)* that are in need of rehabilitation as a result of the operations of the mine.
- (2) The conditions for making the designation are the following:
- (a) the rehabilitation of the mine site or adjacent land is necessary to ensure the health or safety of the public or animals or to address major environmental damage;
  - (b) the rehabilitation of the mine site is complex due to a combination of factors, such as the presence of pollution or hazardous substances, the physical stability of the ground, the heritage significance of the land or structures and the ownership of the land; and
  - (c) it is unlikely that the mine site or adjacent land will be rehabilitated within a reasonable time by the person who controls the site.

### **Right of entry before designation of rehabilitation area**

- 133.** (1) Subject to *subsection (2)*, for the purpose of determining if a mine site and any adjacent lands should be designated as a rehabilitation area, the Minister may, at all reasonable times, enter—
- (a) the site and adjacent lands, and
  - (b) other lands in order to gain access to the site and adjacent lands.
- (2) At least 21 days before entering the mine site or lands, the Minister shall make reasonable efforts to deliver to all occupied dwellings and business premises on the mine site or lands and, if there is registered land within the mine site or lands, to the registered owners, a notice of the proposed entry.

### **Rehabilitation authority**

- 134.** (1) The Minister is the rehabilitation authority for each rehabilitation area.
- (2) The rehabilitation authority shall prepare or adopt a rehabilitation plan in respect of each rehabilitation area and, if necessary, revise that plan.
- (3) The rehabilitation authority has the power to do all things that are necessary or incidental to implement each rehabilitation plan and, without prejudice to the

generality of this power, the authority may in respect of the rehabilitation area concerned—

- (a) hire project managers, consultants and specialists,
  - (b) undertake an investigation of, and conduct tests in, the area,
  - (c) apply for and do all things necessary to obtain permissions or licences under any legislation,
  - (d) carry out remedial works, including those related to mine rehabilitation, associated structural engineering and road works in the area,
  - (e) divert, pump or treat water and ground water and construct, modify or repair settlement ponds in the area,
  - (f) arrange for the disposal of hazardous and non-hazardous waste either within or outside the area, and
  - (g) conduct long-term monitoring and maintenance of the area.
- (4) Nothing in this Part requires the rehabilitation authority to implement a rehabilitation plan.

#### **Authorisation of persons to exercise functions of rehabilitation authority**

- 135.** (1) The Minister may authorise any person in writing to exercise all or any of the functions of the rehabilitation authority under this Part in respect of any rehabilitation area and that person, when exercising those functions, shall be deemed to be the rehabilitation authority for the purposes of this Part.
- (2) The Minister shall not authorise a local authority to exercise any of the functions referred to in *subsection (1)*, without the prior written agreement of the Minister for Housing, Planning, Community and Local Government.
- (3) An authorisation under this section to exercise any of the functions referred to in *subsection (1)* granted to any person other than a local authority or the Environmental Protection Agency is subject to the condition that the person so authorised shall indemnify the Minister and the State against any claim or demand arising out of any act or omission of the person or the person's officers, employees, agents or contractors in relation to the exercise of those functions.
- (4) An authorisation under this section may contain such other terms and conditions as the Minister considers appropriate and the person authorised shall comply with such terms and conditions.
- (5) Without prejudice to the generality of *subsection (3)*, the indemnity referred to in that subsection includes all claims for damage to land and to minerals, houses, buildings, equipment and machinery and claims arising from personal injuries or death suffered by the officers, employees, agents or contractors of an authorised person, owners and any other person.
- (6) A person shall not prepare, adopt, revise or implement a rehabilitation plan in respect of a rehabilitation area unless he or she has been authorised to do so by the Minister

under *subsection (1)*.

### **Rehabilitation plan**

- 136.** (1) The purpose of a rehabilitation plan is to provide for the long-term rehabilitation and maintenance of a rehabilitation area.
- (2) In preparing or adopting a rehabilitation plan in respect of a rehabilitation area, the rehabilitation authority shall make reasonable efforts to consult with each of the following:
- (a) the occupiers of dwellings and business premises in the area, and of any land over which access to the area may be required, and if there is registered land within the area, or land over which access is required, the registered owners of that land;
  - (b) any person who may have obligations with respect to the rehabilitation of the area;
  - (c) the local authorities within whose boundaries the rehabilitation area lies, the Environmental Protection Agency, the Departments of State with direct responsibility for national parks and wildlife and for national monuments and any statutory body that the rehabilitation authority considers appropriate in the circumstances;
  - (d) any individual or company, including any group or association of individuals or companies, that the rehabilitation authority considers appropriate in the circumstances.
- (3) Before revising a rehabilitation plan, the rehabilitation authority shall, where appropriate, make reasonable efforts to consult with each of the persons referred to in *subsection (2)*.

### **Public participation in preparation and revision of rehabilitation plan**

- 137.** (1) Where the rehabilitation authority proposes to prepare or, as the case may be, revise a rehabilitation plan it shall give public notice in accordance with this section and shall consider submissions in accordance with *subsection (3)*.
- (2) The rehabilitation authority shall, for the purposes of *subsection (1)*—
- (a) deposit in the offices of the Department of Communications, Climate Action and Environment and in one or more places to which members of the public have access that are in the vicinity of the area subject to the plan or revised plan, a map showing the boundaries of that area, together with a draft of the plan and the information on which the draft is based, and
  - (b) publish on the website of the Department of Communications, Climate Action and Environment, in a national newspaper and in at least one newspaper circulating in the vicinity of that area a notice stating that—
    - (i) the rehabilitation authority proposes to prepare or, as the case may be, revise the rehabilitation plan,



- (ii) a map showing the boundaries of the area subject to the plan, together with a draft of the plan and the information on which the draft is based may be viewed at the places at which they have been deposited in accordance with *paragraph (a)*, and
  - (iii) the public may send submissions that meet the requirements of *subsection (3)* to the rehabilitation authority at an address specified in the notice.
- (3) The rehabilitation authority shall consider any submissions that—
- (a) are in writing and have been delivered to the address specified in the notice under *subsection (2)(b)* within 21 days after the date of publication of the notice, and
  - (b) are relevant to the proposed plan.

### **Outcome of public participation on rehabilitation plan**

- 138.** (1) Where public participation has taken place in accordance with *section 137* the rehabilitation authority shall—
- (a) take due account of the outcome of the public participation in its preparation or, as the case may be, revision, of the rehabilitation plan, and
  - (b) make a copy of the plan or revised plan available to the public at the offices of the Department of Communications, Climate Action and Environment and on the Department's website.
- (2) The procedure for seeking judicial review of the preparation or revision of a rehabilitation plan and the costs of any such judicial review are governed by Part 2 of the Environment (Miscellaneous Provisions) Act 2011.

### **Right of entry after designating area**

- 139.** (1) Subject to *subsection (2)*, for the purposes of preparing, adopting, revising or implementing a rehabilitation plan in respect of a rehabilitation area, the rehabilitation authority may, at all reasonable times, enter the area and other lands in order to gain access to the area.
- (2) At least 21 days before entering the rehabilitation area or other land, the Minister shall make reasonable efforts to deliver to all occupied dwellings and business premises within the area or lands and, if there is registered land within the area or lands, to the registered owners, a notice of the proposed entry.

### **Evidence of authority**

- 140.** (1) The owner or occupier of land may request evidence of authority in respect of a person exercising a power to enter land under this Part.
- (2) Evidence of authority may be given by producing for inspection a document issued by the rehabilitation authority that identifies the person as an officer or agent of the Minister or rehabilitation authority together with personal identification.

**Liability for damage or nuisance by rehabilitation authority**

- 141.** (1) If damage to the surface of any land, to minerals or to water supplies or a nuisance is caused, directly or indirectly, by a rehabilitation authority implementing a rehabilitation plan, the rehabilitation authority is liable to pay compensation for the damage or nuisance.
- (2) The fact that the damage or nuisance was caused by an act or omission that was authorised under this Act is not a defence to a claim for compensation under *subsection (1)*.
- (3) If the parties cannot agree on whether the damage or nuisance was caused by the rehabilitation authority or on the amount of compensation for the damage or nuisance, the Mining Board shall determine the matter.
- (4) A right to compensation under *subsection (1)* is extinguished unless an application to determine the matter is made to the Mining Board within the limitation period determined in accordance with the provisions of the Statutes of Limitations that is applicable to actions based on tort.

**Funding of rehabilitation plan**

- 142.** (1) The Minister may allocate funds out of monies provided by the Oireachtas towards the preparation, adoption, revision or implementation of a rehabilitation plan, including the reasonable administration costs of persons authorised to exercise the functions of the Minister as a rehabilitation authority.
- (2) For the purposes of preparing, adopting, revising or implementing a rehabilitation plan the Minister may, with the prior consent of the Minister for Public Expenditure and Reform, from time to time advance to a person authorised to exercise the functions of the Minister as a rehabilitation authority out of monies provided by the Oireachtas such sums, by way of grant or loan (where appropriate), as the Minister may determine and on such terms and conditions as he or she considers necessary.

**Recovery of expenditures under this Part**

- 143.** (1) Any expenditure incurred under this Part in the implementation of a rehabilitation plan may be recovered by the Minister as a simple contract debt in any court of competent jurisdiction from—
- (a) the former lessee or licensee who had been responsible for the mine site being rehabilitated, and
- (b) any person that has any legal obligation to rehabilitate that area.
- (2) The expenditure referred to in *subsection (1)* does not include compensation paid under *section 141* unless the damage or nuisance was unavoidable in order to carry out the rehabilitation works.

**Existing obligations not affected**

- 144.** Nothing in this Part affects any obligation of—

- (a) the former lessee or licensee who had been responsible for a mine site,
- (b) the owner or occupier of the mine site, or
- (c) any other person in respect of the mine site.

#### **Acquisition of lands by agreement or rehabilitation acquisition order**

**145.** The Minister may, with the prior consent of the Minister for Public Expenditure and Reform, for the purposes of implementing a rehabilitation plan, do either or both of the following:

- (a) purchase by agreement an estate or interest in private land that the Minister considers necessary or expedient for those purposes;
- (b) acquire compulsorily, by a rehabilitation acquisition order, an estate or interest in private land that the Minister considers necessary for those purposes.

#### **Public notice before making rehabilitation acquisition order**

**146.** (1) Before making a rehabilitation acquisition order, the Minister shall give public notice in accordance with this section that the Minister intends to make the order and shall consider any objection that meets the requirements of *subsection (3)*.

(2) The Minister shall, for the purposes of *subsection (1)*—

- (a) deposit in the offices of the Department of Communications, Climate Action and Environment and in one or more places to which members of the public have access that are in the vicinity of the area to be affected by the proposed order a map showing the boundaries of the area and a copy of the proposed order,
- (b) publish once each week in 2 successive weeks in *Iris Oifigiúil*, in a national newspaper and in at least one newspaper circulating in the vicinity of the area to be affected by the proposed order a notice stating that—
  - (i) the Minister intends to make the order that will compulsorily acquire an estate or interest in specified land,
  - (ii) a map showing the boundaries of the area to be affected by the order and a copy of the proposed order may be viewed at the places at which they have been deposited in accordance with *paragraph (a)* and that copies can be obtained at a specified office of the Department of Communications, Climate Action and Environment on payment of a fee, and
  - (iii) any person claiming to have an estate or interest in the area to be affected by the proposed order may send written objections that meet the requirements of *subsection (3)* to the Minister at an address specified in the notice,

and

- (c) make reasonable efforts to deliver to all occupied dwellings and business premises within the area to be affected by the proposed order and, if there is registered land within that area, to the registered owners of that land a notice

that—

- (i) contains the information set out in *paragraph (b)(i)* and *(iii)*, and
  - (ii) includes a map showing the boundaries of the area to be affected and a copy of the proposed order.
- (3) The Minister shall consider only those objections that—
- (a) are in writing from persons claiming an estate or interest in the land to be affected and have been delivered to the address specified in the notice within 28 days after the first date of publication of the notice in *Iris Oifigiúil*,
  - (b) relate to whether the estate or interest to be acquired is necessary for implementing the rehabilitation plan, and
  - (c) do not deal with compensation.
- (4) The Minister shall determine the fee to cover the cost of providing copies referred to in *subsection (2)(b)(ii)*.

#### **Oral hearing before making rehabilitation acquisition order**

- 147.** (1) If the Minister is required to consider one or more objections in accordance with *section 146(3)*, the Minister may, if he or she considers it necessary that an oral hearing be held concerning one or more of those objections, appoint a suitably qualified person (referred to in this section as the “hearing officer”) to conduct such a hearing and to provide recommendations to the Minister.
- (2) The hearing officer shall—
- (a) conduct an oral hearing for the purpose of evaluating the objections referred to the officer by the Minister, and
  - (b) based on such hearing, provide written recommendations to the Minister within 75 days after the day of his or her appointment or such longer period as the Minister may specify.
- (3) Any person claiming an estate or interest in the land affected by the proposed rehabilitation acquisition order is entitled to appear, be heard and adduce evidence at the oral hearing and may do so personally or by counsel or solicitor.
- (4) The Minister shall decide whether to make the rehabilitation acquisition order within 14 days after the day he or she receives the recommendations of the hearing officer or such longer period as the Minister may specify in a notice to the persons who made the objections considered by the officer.

#### **Decision of Minister if no oral hearing**

- 148.** If the Minister is required to consider one or more objections in accordance with *section 146(3)* and decides that an oral hearing is not necessary, the Minister shall decide whether to make the rehabilitation acquisition order within 90 days after the first date of publication of the notice in *Iris Oifigiúil* or such longer period as the Minister may

specify in a notice to the persons who made the objections.

### **Rehabilitation acquisition order**

- 149.** (1) The Minister, with the prior consent of the Minister for Public Expenditure and Reform, may by order to be known as a “rehabilitation acquisition order” compulsorily acquire an estate or interest in private land for the purpose of implementing a rehabilitation plan if—
- (a) the requirements of *section 146* regarding public notice and consideration of objections have been complied with,
  - (b) the Minister has considered the recommendations of the hearing officer where an oral hearing has been conducted under *section 147*, and
  - (c) the Minister is satisfied that it is necessary to compulsorily acquire the estate or interest in the land.
- (2) A rehabilitation acquisition order shall—
- (a) specify the estate or interest acquired, including its duration, and describe the land affected,
  - (b) in the case of the vesting of the fee simple estate, identify any interests to which the estate is subject, and
  - (c) contain such supplementary or ancillary provisions as the Minister considers appropriate.
- (3) On the making of a rehabilitation acquisition order for the purpose of acquiring an estate or interest in land, the estate or interest is vested in the Minister on behalf of the State.
- (4) The vesting of an estate or interest under *subsection (3)* that affects registered land occurs when the order is made notwithstanding the provisions of the Registration of Deeds and Title Acts 1964 and 2006.
- (5) The Statutory Instruments Acts 1947 and 1955 do not primarily apply (within the meaning of those Acts) to an order made under *subsection (2)*.

### **Registration of Minister as owner**

- 150.** The Property Registration Authority shall, on production of a rehabilitation acquisition order under the official seal of the Minister that vests the fee simple in the Minister—
- (a) register the Minister as owner of the freehold land described in the order as tenant in fee simple having an absolute title in that land, subject to such burdens as may be specified in the order, and
  - (b) make any alterations to any register that are appropriate having regard to the terms of the order.

**Rehabilitation acquisition order and compensation**

- 151.** (1) Where, immediately before a rehabilitation acquisition order is made by the Minister, any person had an estate or interest in the land acquired by the order, the person may, at any time after the making of the order, apply to the Minister for compensation.
- (2) After receiving an application and being satisfied that the applicant had an estate or interest in the land acquired by the rehabilitation acquisition order, the Minister shall, subject to *section 152*, pay to the person by way of compensation an amount equal to the value (if any), on the date of the order, of that estate or interest together with interest at such rate as the Minister, with the prior consent of the Minister for Public Expenditure and Reform, may determine from time to time, on the amount from that date to the date of the payment.
- (3) The compensation to be paid shall, in default of agreement, be determined by arbitration under and in accordance with the Acquisition of Land (Assessment of Compensation) Act 1919.

**Regulations applying Lands Clauses Consolidation Act 1845 and compulsory acquisition under *section 149***

- 152.** (1) The Minister may by regulations, in such cases (if any) and to such extent as he or she considers necessary for the purposes of compulsory acquisition under *section 149*, apply all or any of the provisions of sections 69 to 83 of the Lands Clauses Consolidation Act 1845 as if—
- (a) such compensation were purchase money or compensation under that Act, and
- (b) the Minister were the promoter of the undertaking,
- together with any other necessary modifications.
- (2) Where money is paid into court under section 69 of the Lands Clauses Consolidation Act 1845, as applied by the Minister under *subsection (1)*, no costs shall be payable by the Minister to any person in respect of any proceedings for the investment, payment of income or payment of capital of such money.

**Powers of local authority not affected**

- 153.** Nothing in *section 149* shall be read as restricting the powers of a local authority to compulsorily acquire a mine site that has been abandoned or in respect of which operations have permanently ceased, or any part of such site, under the Derelict Sites Act 1990 or under any other enactment.

## PART 6

## MINING BOARD

## CHAPTER 1

*Continuation of Mining Board and Administrative Matters***Continuation of Mining Board**

- 154.** (1) The Mining Board, established under section 33 of the Minerals Development Act 1940, is continued in being and shall perform the functions conferred on it by this Act, the Petroleum and Other Minerals Development Acts 1960 and 1995 and any other Act.
- (2) The Mining Board shall continue to be known by that name in the English language and shall be known in the Irish language as An Bord Mianadóireachta.
- (3) The Mining Board is a body corporate with perpetual succession and an official seal and with the power—
- (a) to sue and be sued in its corporate name, and
  - (b) to acquire, hold and dispose of land, or an interest in land and other property.
- (4) The Mining Board shall be independent in the performance of its functions.

**Membership and qualifications**

- 155.** (1) The Mining Board consists of its members, being a chairperson and 2 ordinary members, who are appointed by the Government on the recommendation of the Minister.
- (2) The chairperson of the Mining Board shall be a practising barrister or solicitor of at least 10 years standing.
- (3) Each ordinary member of the Mining Board shall be a person who is a property arbitrator appointed under the Property Values (Arbitrations and Appeals) Act 1960.

**Disqualification**

- 156.** A member of the Mining Board shall cease to be qualified, and cease, to be a member of the Mining Board if he or she—
- (a) is adjudicated bankrupt,
  - (b) makes a composition or an arrangement with creditors,
  - (c) is sentenced by a court of competent jurisdiction to a term of imprisonment, or
  - (d) is convicted of an indictable offence.

**Exclusion resulting from membership of either House of the Oireachtas, European Parliament or local authorities**

- 157.** (1) A person shall cease to be a member of the Mining Board where the person—
- (a) is, with the person's consent, nominated as a candidate for election to either House of the Oireachtas or the European Parliament,
  - (b) is elected as a member of either House of the Oireachtas or of the European Parliament,
  - (c) is nominated as a member of Seanad Éireann,
  - (d) is regarded under Part XIII of the Second Schedule to the European Parliament Elections Act 1997 as having been elected to that Parliament to fill a vacancy, or
  - (e) becomes a member of a local authority or is, with the person's consent, nominated as a candidate for election as such a member.
- (2) A person who is for the time being entitled under the Standing Orders of either Houses of the Oireachtas to sit therein or who is a member of the European Parliament shall, while so entitled or such a member, be disqualified from becoming a member of the Mining Board.
- (3) A person who is a member of a local authority shall be disqualified from becoming a member of the Mining Board while he or she is a member of such local authority.

**Term of members**

- 158.** The term of a member of the Mining Board is 5 years and a member may be reappointed for a second or subsequent term.

**Removing member**

- 159.** (1) The Government may remove a member of the Mining Board from office if, in the Government's opinion—
- (a) the member has become incapable through ill-health of being a member of the Board,
  - (b) the member has committed stated misbehaviour, or
  - (c) the member's removal appears to be necessary for the effective performance of the functions of the Board.
- (2) The Minister shall cause to be laid before each House of the Oireachtas a statement in writing of the reasons for any such removal.

**Resignation of membership**

- 160.** A member of the Mining Board may resign by written notice given to the Minister and the resignation takes effect on the date specified in the notice or on the date on which the Minister receives the notice, whichever is later.



**Membership on temporary basis**

- 161.** (1) If any member of the Mining Board is for any reason temporarily unable to attend the sittings of the Board or ceases to be a member of the Board or is removed or resigns, the Minister may appoint another person as a member on a temporary basis.
- (2) No person may be appointed on a temporary basis unless the person possesses the qualification required by *section 155(2) or (3)*, as the case may be.

**Appointment of secretary and other staff**

- 162.** (1) The Minister shall appoint a secretary of the Mining Board and may, subject to the prior consent of the Minister for Public Expenditure and Reform as to their number, appoint such other staff as the Minister considers necessary for assisting the Board in the performance of its functions.
- (2) The secretary and each member of the staff shall be a civil servant, within the meaning of the Civil Service Regulation Act 1956, who is seconded to the Mining Board either on a whole-time or part-time basis.

**Appointment of consultants and advisers**

- 163.** The Mining Board may from time to time, with the approval of the Minister and the prior consent of the Minister for Public Expenditure and Reform, engage under contract such consultants and advisers as it may consider necessary for the discharge of its functions.

**Payment of members, consultants and advisers**

- 164.** The following shall be paid, with the approval of the Minister and the prior consent of the Minister for Public Expenditure and Reform, as part of the expenses of the administration of this Act:
- (a) the remuneration and expenses of the members of the Mining Board;
  - (b) payments due to a consultant or adviser engaged by the Mining Board.

**Indemnification**

- 165.** (1) The Minister may, in the manner and to the extent and subject to the terms and conditions that the Minister may determine from time to time, indemnify a person to whom this section applies against all actions or claims however they arise in respect of the performance of the person's functions if the Minister is satisfied that the person has acted in good faith.
- (2) This section applies to—
- (a) a member of the Mining Board, and
  - (b) a consultant or adviser engaged by the Mining Board.

**Seal**

- 166.** (1) The seal of the Mining Board shall be authenticated by the signature of—
- (a) a member of the Board, or
  - (b) a member of the staff of the Board who is authorised to do so by the Board in writing under the seal of the Board.
- (2) Judicial notice shall be taken of the seal of the Mining Board and an instrument purporting to be an instrument made by the Board and to be sealed with the seal (purporting to be authenticated in accordance with *subsection (1)*) shall be received in evidence and be deemed to be such an instrument without further proof, unless the contrary is shown.

**Payments to be deposited into Exchequer**

- 167.** All payments received by the Mining Board shall be paid into or disposed of for the benefit of the Exchequer in such manner as the Minister for Public Expenditure and Reform directs.

**Disclosure of confidential information**

- 168.** (1) A person who discloses confidential information obtained while performing his or her functions, or in his or her capacity, as a member of the Mining Board, the secretary or other member of the staff of the Board or a consultant or adviser engaged by the Board, unless the person is authorised by the Board to do so, commits an offence.
- (2) *Subsection (1)* shall not operate to prohibit the disclosure of confidential information by a person referred to in that subsection to the Mining Board.
- (3) A person who commits an offence under *subsection (1)* is liable—
- (a) on summary conviction to a class A fine or to imprisonment for a term not exceeding 6 months or to both, or
  - (b) on conviction on indictment to a fine of €50,000 or imprisonment for a term of 2 years or to both.
- (4) In *subsection (1)* “confidential information” includes information, or information of a particular class or description of information, expressed by the Mining Board to be confidential.

## CHAPTER 2

*General Provisions Relating to Mining Board Decisions***Quorum and decisions**

- 169.** The quorum of the Mining Board is all 3 members and its decisions may be made by a majority of its members.

**Hearings open to public**

**170.** The hearings of the Mining Board are open to the public unless the Board directs that the public is excluded.

**Rules for procedure and practice**

**171.** (1) The Mining Board may make rules regarding procedure and practice, including—

- (a) the times and places of the sittings of the Board,
- (b) the persons to whom and the times and manner in which notice of the sittings of the Board are to be given, and
- (c) such other matters in relation to the practice and procedure of the Board as the Board may consider necessary or expedient for the proper conduct of its business.

(2) Every rule made by the Mining Board shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the rule is passed by either such House within the next 21 days on which the House has sat after the rule is laid before it, the rule shall be annulled accordingly but without prejudice to the validity of anything previously done under the rule.

**Infants and persons of unsound mind**

**172.** For the purpose of proceedings before the Mining Board, the Board may apply in a summary manner to the High Court for the appointment of—

- (a) a person to represent the interests of a minor or a person of unsound mind if there is no person duly authorised by law to represent those interests, and
- (b) a person to represent the interests of any person who has not been found or ascertained after due diligence and in respect of whom no other person has been duly appointed to represent those interests.

**Entering and conducting investigation on land**

**173.** (1) Any member of the Mining Board and any person authorised in that behalf by the Board may for any purpose connected with the performance of its functions enter and conduct an investigation on any land as the Board considers necessary.

(2) Any person who obstructs or otherwise interferes with any member of the Mining Board or any person authorised by the Board in the due exercise of the powers conferred on such member or person by *subsection (1)* commits an offence and is liable on summary conviction to a class A fine.

**Injunction**

**174.** The High Court may, on the application of the Mining Board, grant an injunction, in the case of a member of the Board or any person authorised by the Board being obstructed or impeded in the exercise of the powers conferred on the Board, or on an authorised person, by *section 173(1)*, directing a person to refrain from obstructing or impeding the

member of the Board or the authorised person when that member or authorised person is exercising his or her powers.

### **Witnesses and production of documents and property**

- 175.** (1) Subject to the other provisions of this Act, the Mining Board has all the powers, rights, privileges and duties of the High Court or a judge of the High Court when hearing an action that relate to—
- (a) enforcing the attendance of witnesses,
  - (b) examining witnesses on oath (which any member of the Board is hereby authorised to administer) or otherwise, and
  - (c) compelling the production of records or other documents or property.
- (2) The chairperson or any ordinary member of the Mining Board may issue a summons for the purposes of exercising the powers, rights, and privileges and performing the duties referred to in *subsection (1)(a)* and *(c)*.
- (3) *Subsection (2)* does not limit the generality of *subsection (1)*.
- (4) Subject to any rules under *section 171* and to the necessity of observing fair procedures, the Board may receive evidence given—
- (a) orally before the committee,
  - (b) by statutory declaration,
  - (c) as otherwise allowed by those rules, including by means of a live video link, or any other means of transmission.
- (5) A witness appearing before the Mining Board has the same immunities and privileges as a witness before the High Court.

### **Offence relating to witnesses and production of documents and property**

**176.** A person who—

- (a) having been summoned under *section 175* to attend before the Mining Board defaults in attending,
- (b) being in attendance before the Mining Board, refuses to take the oath on being required by the Board to do so or refuses to answer any question in respect of which the Board may legally require an answer,
- (c) having been summoned under *section 175* to produce records or other documents or property in the person's power or control, or within the person's procurement, refuses to produce the document or property, or
- (d) does any other thing that, if the Mining Board were a court having power to commit for contempt of court, would be contempt of such court,

commits an offence and is liable on summary conviction to a class A fine or to imprisonment for a term not exceeding 6 months or to both.

**Referral of questions of law to High Court**

- 177.** (1) The Mining Board may at any stage in proceedings, on its own motion or on the application of any party to the proceedings, refer any question of law by way of case stated for the determination of the High Court, and shall adjourn the proceedings pending the determination.
- (2) Any party to proceedings before the Mining Board who is aggrieved by the refusal of the Board to state a case on a question of law may apply, either before or within 21 days after the day that the Board makes its decision, to the High Court in a summary manner for an order directing the Board to state a case for the determination of the High Court on the question.
- (3) The High Court, on receiving an application under *subsection (2)*, may make the requested order, and, in that event—
- (a) the Mining Board shall comply with its terms even though the Board may have given its decision, and
- (b) if the Mining Board has already given its decision, the decision is annulled accordingly and the Board shall make a new decision following the determination of the case stated.
- (4) The costs of any reference to the High Court under this section are in the discretion of that Court.

**Judicial review**

- 178.** (1) Subject to *subsection (2)*, a person shall not question a decision of the Mining Board otherwise than by way of an application to the High Court for judicial review under Order 84 of the Rules of the Superior Courts (S.I. No. 15 of 1986).
- (2) Nothing in this section affects the rights of a party under *section 177*.
- (3) For the purposes of this section, an application for leave to apply for judicial review shall—
- (a) be made within the period of 3 months commencing on the date on which the decision was made, unless the High Court, on the basis of evidence put before it, is satisfied that there is a good and substantial reason for extending the period, and
- (b) be made by motion on notice, grounded in the manner specified under Order 84 of the Rules of the Superior Courts in respect of an *ex parte* motion for such leave in accordance with that Order, to the Mining Board, the Minister and any other party concerned.
- (4) The High Court may, before hearing an application to which this section relates, direct that notice of it also be served on such persons as the Court may specify.
- (5) An application to which this section relates for leave to apply for judicial review, shall not be granted unless the High Court is satisfied that there are substantial grounds for contending that the decision is invalid or ought to be quashed.

- (6) The determination of the High Court on an application to which this section relates for leave to apply for judicial review, or an application for judicial review, is final, and no appeal from the determination lies to the Court of Appeal in either case, except by leave of the High Court.
- (7) The High Court shall grant leave to appeal under *subsection (6)* only where that Court certifies that its decision involves a point of law of exceptional public importance and that it is desirable in the public interest that an appeal be taken to the Court of Appeal.
- (8) *Subsection (6)* does not apply to a determination of the High Court, in so far as it involves a question of the validity of any law having regard to the provisions of the Constitution.

### Costs

- 179.** (1) The costs of the parties in any proceedings before the Mining Board shall be in the discretion of the Board, and the Board may, by its decision, direct to whom, by whom and in what manner those costs or any part of the costs shall be paid.
- (2) When determining compensation in accordance with *section 94*, the Mining Board shall comply with the provisions of that section that relate to costs.
  - (3) When determining compensation as a result of a mining facilities acquisition order, the Mining Board shall comply with *section 126* in awarding costs.
  - (4) The Mining Board may, with the consent of the parties concerned, fix the amount of costs to be paid or, in default of such consent, may refer the costs to a Taxing Master of the High Court for taxation and the costs as so taxed are recoverable as a simple contract debt in any court of competent jurisdiction.
  - (5) If the Mining Board orders an applicant for compensation to pay all or part of the costs of the person by whom the compensation is payable, the person may deduct the amount of the costs from the amount of the compensation.
  - (6) For the purpose of this section, costs include any fees, charges and expenses of the decision.

### Improperly influencing Mining Board

- 180.** (1) A person who communicates with a member of the Mining Board, the secretary or another member of staff of the Board or a consultant or adviser engaged by the Board, for the purpose of influencing improperly the deliberations of the Board commits an offence.
- (2) A person who commits an offence under *subsection (1)* is liable on summary conviction to a class A fine or to imprisonment for a term not exceeding 6 months or to both.
  - (3) If a member, secretary, other staff member, consultant or adviser is of the opinion that a person has communicated with him or her in contravention of *subsection (1)*, he or she shall not entertain the communication further and shall immediately inform the Mining Board in writing of the substance of the communication and the Mining Board

shall acknowledge in writing the receipt of such information.

### CHAPTER 3

#### *Jurisdiction of the Mining Board under this Act*

#### **Application of Chapter 3**

**181.** This Chapter applies only in respect of the following matters:

- (a) whether a person is entitled under *section 11* or *36* to compensation for the sale of private minerals relating to prospecting activities and the compensation payable in accordance with either section;
- (b) whether damage or nuisance to which *section 51* relates was caused by the Minister or a licensee under a prospecting licence or retention licence when prospecting for minerals and the amount of compensation for the damage or nuisance;
- (c) whether a person is entitled, as determined under *section 91*, to compensation in relation to private minerals extracted by a licensee under a mining licence;
- (d) the calculation under *section 94* of compensation payable in relation to private minerals extracted by a licensee under a mining licence;
- (e) whether damage or nuisance to which *section 98* relates was caused by a licensee under a mining licence when working minerals or exercising ancillary underground or surface rights and the amount of compensation for the damage or nuisance;
- (f) the compensation payable pursuant to *section 107* in relation to the exercise of an ancillary underground right;
- (g) whether a person is entitled pursuant to *section 125* to compensation as a result of the acquisition of an estate or interest in land or an ancillary surface right under a mining facilities acquisition order and the amount of compensation for that estate, interest or right;
- (h) the compensation payable pursuant to *section 130* in relation to the exercise of an ancillary surface right over State land;
- (i) whether damage or nuisance to which *section 141* relates was caused by the rehabilitation authority when implementing a rehabilitation plan and the amount of compensation for the damage or nuisance.

#### **Applications**

**182.** (1) The Mining Board may accept an application to determine a matter under this Chapter only if it is made by—

- (a) the Minister,
- (b) any person entitled, or claiming to be entitled, to compensation, or

- (c) any person by whom such compensation may be payable.
- (2) Every application shall contain the information, documents and evidence required by the Mining Board's rules and such other information or documents as the Board may specify and every application made by an applicant referred to *paragraph (b)* or *(c)* of *subsection (1)* shall be accompanied by the prescribed application fee, if any.

### **Application fees**

- 183.** (1) The Minister, with the prior consent of the Minister for Public Expenditure and Reform, may make regulations setting fees for applications submitted to the Mining Board.
- (2) Regulations under this section may set different fees in respect of different types of application.
  - (3) The Minister, when setting application fees, shall have regard to the administrative costs associated with processing an application, including the costs of determining if the requirements of an application have been met.

### **Right of audience before Mining Board**

- 184.** On the hearing of any application before the Mining Board only the following persons are entitled to appear, be heard and adduce evidence and may do so personally or by counsel or solicitor:
- (a) the Minister;
  - (b) any person entitled, or claiming to be entitled, to compensation;
  - (c) any person by whom such compensation may be payable;
  - (d) any person claiming to have an estate or interest in land in respect of which compensation is claimed.

### **Decisions of Mining Board**

- 185.** (1) Every decision of the Mining Board shall be in writing and contain the following:
- (a) a statement setting out the Board's conclusions with respect to the issues that were to be determined under the application and the reasons for those conclusions;
  - (b) if compensation is awarded—
    - (i) a statement setting out the amount of the compensation and how the amount was calculated and the manner of payment,
    - (ii) the name of the person by whom compensation is payable, and
    - (iii) the name of the person to whom compensation is payable;
  - (c) if the compensation is to be paid to 2 or more persons, the allocation of the payment amongst those persons.



- (2) The Mining Board shall send a copy of the decision to the Minister, to the persons who appeared before it and, if the matter relates to land that is subject to a licence granted under this Act, to the licensee.
- (3) The Minister may publish a decision of the Mining Board, in particular on the website of the Department of Communications, Climate Action and Environment.

### **Enforcement of decision**

- 186.** An award or other decision of the Mining Board may, by leave of the High Court, be enforced in the same manner as a judgement or order of the High Court to the same effect and, where leave is so given, judgement may be entered in terms of the award or decision.

### **Certificate**

- 187.** A certificate, purporting to be certified by the secretary of the Mining Board, which contains a statement of—

- (a) the fact that the Board has made a decision,
- (b) if compensation was awarded, the amount of the compensation, how the amount was calculated and the manner of payment,
- (c) the person by whom the compensation is payable, or
- (d) the person to whom the compensation is payable,

shall be received in all legal proceedings as *prima facie* evidence of the matters so certified without proof of the signature of the person by whom such certificate purports to be certified or that the person was in fact the secretary of the Board.

### **Missing or unascertained recipients of compensation**

- 188.** (1) If the Mining Board determines that any compensation is payable under this Act to a person, and the person cannot be found or ascertained, then the amount of the compensation shall, subject to *subsection (2)*, be paid into the High Court and sections 69 to 80 of the Lands Clauses Consolidation Act 1845 apply to any compensation so payable.
- (2) Where a person to whom *subsection (1)* relates cannot be found but a debt to which *section 189* applies is due and owing by the person, then the Minister may deduct that amount in accordance with that section before paying the remainder of the compensation (if any) into the High Court.
- (3) Sections 69 to 80 of the Lands Clauses Consolidation Act 1845 apply to the compensation paid into the High Court under this section.

### **Deductions from compensation for debts**

- 189.** If under this Act the Minister is required by a decision of the Mining Board to make a payment to a person and a debt is due and owing by that person to any Minister of the

Government or to the Central Fund, the Minister may deduct the amount of the debt from the payment, and may direct that the amount so deducted (as the case may require) be paid to the appropriate Minister of the Government or paid into, or disposed of, for the benefit of the Exchequer in such manner as the Minister for Public Expenditure and Reform directs.

## PART 7

### ENFORCEMENT AND MISCELLANEOUS

#### CHAPTER 1

#### *Enforcement*

#### **Unlawful prospecting for or working of minerals**

- 190.** (1) No person other than the Minister or his or her servants or agents shall prospect for or attempt to prospect for minerals in or on land unless they are authorised to do so by a licence granted under this Act.
- (2) No person shall work or attempt to work minerals in or on land, or sell minerals so worked or obtained from such working, unless they are authorised to do so by a licence granted or continued under this Act.
- (3) *Subsection (2)* does not apply in respect of excepted minerals.
- (4) Every person who contravenes *subsection (1)* or *(2)* commits an offence and is liable—
- (a) on summary conviction to a class A fine, or
- (b) on conviction on indictment to a fine not exceeding €250,000.
- (5) In a prosecution for an offence under this section, a certificate purporting to be signed by an officer of the Minister certifying that the person charged was not on a specified day the holder of a licence granted under this Act that authorised the alleged conduct in the area in which the alleged conduct occurred, shall, without proof of the signature of the person purporting to sign such certificate or that he or she was an officer of the Minister, be sufficient evidence of the matters set out in the certificate until the contrary is shown.

#### **Inspectors**

- 191.** (1) The Minister may appoint inspectors for the purposes of the enforcement of this Act and the carrying out of inspections and investigations under this Act, including but not limited to—
- (a) inspections of work being carried out under a licence granted or continued under this Act,
- (b) inspections of rehabilitation activities in respect of mines of State minerals or

- private minerals,
- (c) inspections of mines to which *Chapter 6 of Part 3* applies,
  - (d) investigations of possible unlawful prospecting for, or working of, State minerals or private minerals, and
  - (e) inspections of mines of excepted minerals to determine whether or not minerals are being worked or are being worked efficiently.
- (2) The Minister shall furnish evidence of appointment to every inspector appointed under this section.
- (3) When exercising his or her functions an inspector shall, if requested by a person affected, produce for inspection evidence of appointment as an inspector together with personal identification.

### **Indemnification**

- 192.** The Minister may, in the manner and to the extent and subject to the terms and conditions that the Minister may determine from time to time, indemnify an inspector against all actions or claims however they arise in respect of the performance of the person's functions if the Minister is satisfied that the person has acted in good faith.

### **Duty to assist inspectors**

- 193.** (1) Every licensee under a prospecting licence, retention licence, or mining licence shall—
- (a) allow an inspector to have access at all reasonable times to the land specified in the licence and to all surface structures and underground workings used by the licensee,
  - (b) produce to an inspector on request—
    - (i) any record that is required to be kept under, and
    - (ii) any information regarding his or her compliance with, this Act, the regulations or the licence, and
  - (c) provide to an inspector on request drill cores and specimens of minerals or rock obtained prospecting for, or working, minerals.
- (2) Every owner or manager of a mine of excepted minerals shall allow an inspector to have access at all reasonable times to the mine site and to all surface and underground structures and workings used in the mine operations.

### **Access to land**

- 194.** Where it appears to the Minister or an inspector that minerals are being prospected for or worked unlawfully on land, an inspector shall have the right of access to the land and to any surface structures and underground workings that appear to be used for the purposes of prospecting for or working minerals in order to ascertain whether any such unlawful

activity is being carried out and every owner and occupier of the land shall allow an inspector to have access to the land, structures and workings at all reasonable times.

### Private dwellings

**195.** Notwithstanding any other provision of this Act, the right to enter or access land or any structures or buildings under this Act does not include the right to enter a private dwelling.

### Obstruction of inspector

**196.** A person who fails to comply with *section 193* or *194* or obstructs or otherwise interferes with an inspector in the due performance of his or her functions commits an offence and is liable on summary conviction to a class A fine.

### Injunctions

**197.** (1) The High Court may, on the application of the Minister or an inspector, grant an injunction directing a person—

- (a) in the case of unauthorised working or prospecting for minerals that is being or is likely to be carried out or continued, to do or not to do or to cease to do anything, as the Court considers necessary, including to restore, so far as practicable, any land affected by the unauthorised working or prospecting to its condition prior to the commencement of the unauthorised activity,
- (b) in the case of the Minister being prevented from exercising the powers under *section 100(1)* in respect of abandoned mines, to refrain from interfering with the exercise of those powers,
- (c) in the case of the Minister's officers or agents being prevented from entering on any land for the purposes of determining if an area should be designated as a rehabilitation area under *section 132* or for the purposes of preparing, adopting, revising or implementing a rehabilitation plan under *section 139*, to refrain from interfering with such entry, and
- (d) in the case of the Minister's officers or agents being prevented from implementing a rehabilitation plan, to refrain from interfering with the implementation.

(2) The High Court may on the application of—

- (a) the Minister when the Minister is being prevented from acting under this Act, or
- (b) the licensee referred to *paragraph (i) to (iii)* when the licensee is being prevented from so acting,

grant an injunction directing a person—

- (i) in the case of the Minister or a licensee under a prospecting licence or retention licence being prevented from entering land to prospect for minerals, to allow the entry and prospecting to take place,

- (ii) in the case of the Minister or a licensee under a mining licence being prevented from exercising an ancillary surface right that the Minister or the licensee is entitled to exercise, to refrain from interfering with that right, and
  - (iii) in the case of a licensee under a mining licence being prevented from exercising an ancillary underground right, to refrain from interfering with that right.
- (3) The High Court may, on the application of the Minister, grant an injunction directing a licensee under a prospecting licence, retention licence, or mining licence who refuses to comply with a request for information from the Minister under this Act within the time specified or refuses to grant an inspector access to information, to provide the information or to grant access to it.

#### **Power to grant injunction after conviction**

- 198.** A judge of the High Court or Circuit Court who finds that a person has committed an offence under this Act may, on the application of the prosecution and if satisfied that there is a likelihood of a further occurrence of the prohibited conduct or a further contravention by the person of the obligation under this Act, grant an injunction or such other relief as the Court deems necessary to prevent the further occurrence of the prohibited conduct or contravention of the obligation.

#### **Prosecution of offences brought by summary proceedings**

- 199.** (1) Summary proceedings in relation to an offence under *sections 33(5), 34(4), 35(4), 37(4), 52(4), 82, 100(4), 190(4), 196, 210(6), 227 and 228* may be brought and prosecuted by the Minister.
- (2) Summary proceedings in relation to an offence under *section 168, 173(2), 176 or 180* may be brought and prosecuted by the Mining Board.

#### **Time limit for offences that may only be brought by summary proceedings**

- 200.** (1) Notwithstanding section 10(4) of the Petty Sessions (Ireland) Act 1851, summary proceedings for an offence under this Act to which that provision applies may be instituted—
- (a) within 12 months after the date on which the offence was committed, or
  - (b) within 6 months after the date on which evidence sufficient, in the opinion of the person instituting the proceedings, to justify proceedings comes to that person's knowledge,
- whichever is the later, provided that no such proceedings shall be commenced later than 2 years after the date on which the offence concerned was committed.
- (2) For the purposes of *subsection (1)(b)*, a certificate signed by or on behalf of the person initiating the proceedings as to the date on which evidence referred to in that subsection came to his or her knowledge shall be evidence of that date and, in any legal proceedings, a document purporting to be a certificate under this subsection and to be so signed shall be admitted as evidence without proof of the signature of the

person purporting to sign the certificate, unless the contrary is shown.

### **Offences by bodies corporate**

- 201.** (1) Where an offence under this Act 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 person being a director, manager, secretary or other officer of the body corporate, or a person who was purporting to act in any such capacity, that person as well as the body corporate commits an offence and is liable to be proceeded against and punished as if he or she had committed the first-mentioned offence.
- (2) Where the affairs of a body corporate are managed by its members, *subsection (1)* applies in relation to the acts and defaults of a member in connection with his or her functions of management as if he or she were a director or manager of the body corporate.

## CHAPTER 2

### *Public Participation and Access to Justice in Relation to Decisions on Specific Activities*

### **Activities which may have significant effect on environment**

- 202.** (1) Before making any decision under this Act which permits an activity in respect of which planning permission is not required under the Planning and Development Acts 2000 to 2016 the Minister shall determine whether such activity is one which may have a significant effect on the environment.
- (2) For the purposes of determining whether an activity may have a significant effect on the environment the Minister shall have regard to the following:
- (a) the characteristics of the proposed activity, in particular—
    - (i) the nature and duration of the activity,
    - (ii) the resource requirements, in particular land, soil and water, of the activity,
    - (iii) the type and volume of waste produced by the activity and the method proposed for its disposal,
    - (iv) the measures and protocols proposed in order to minimise environmental impact and the risk of potential pollution or nuisance;
  - (b) the location and zone of influence of the proposed activity, with particular regard to—
    - (i) any area proposed as a natural heritage area and the subject of a notice made under section 16(1) of the Wildlife (Amendment) Act 2000,
    - (ii) any area designated as, or proposed to be designated as, a natural heritage area by a natural heritage area order made under section 18 of the Wildlife (Amendment) Act 2000,

- (iii) any nature reserve established or proposed to be established under an establishment order made under section 15 (as amended by section 26 of the Wildlife (Amendment) Act 2000) of the Wildlife Act 1976,
  - (iv) any nature reserve recognised or proposed to be recognised under a recognition order made under section 16 (as amended by section 27 of the Wildlife (Amendment) Act 2000) of the Wildlife Act 1976,
  - (v) any refuge for fauna or flora designated or proposed to be designated under a designation order made under section 17 (as amended by section 28 of the Wildlife (Amendment) Act 2000) of the Wildlife Act 1976,
  - (vi) national parks, and
  - (vii) national monuments (within the meaning of section 2 of the National Monuments Act 1930);
- (c) the likely impact of the activity on the environment, in particular on—
- (i) surface water and groundwater, including the risk to human health from contamination of water sources,
  - (ii) any area designated as a special area of conservation pursuant to Regulation 14 of the European Communities (Birds and Natural Habitats) Regulations 2011 (S.I. No. 477 of 2011), and
  - (iii) any areas designated by the State as special protection areas pursuant to Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009<sup>1</sup> on the conservation of wild birds.
- (3) The Minister shall publish any determination made under *subsection (1)*, and the reasons for such determination, including publication on the website of the Department of Communications, Climate Action and Environment together with information on the procedure for seeking to have the decision judicially reviewed and notification that the costs of any such judicial review are governed by Part 2 of the Environment (Miscellaneous Provisions) Act 2011.

#### **Public participation in decisions authorising certain activities**

- 203.** (1) Where the Minister determines under *section 202(1)* that a decision under this Act may permit an activity which may have a significant effect on the environment, the Minister shall give public notice in accordance with this section that the Minister proposes to make the decision concerned and shall consider any matters that meet the requirements of *subsection (3)*.
- (2) The Minister shall, for the purposes of *subsection (1)*—
- (a) deposit in the offices of the Department of Communications, Climate Action and Environment and in one or more places to which members of the public have access that are in the vicinity of the area to be subject to the decision, a map showing the boundaries of that area, together with the information relevant to the proposed decision, and

<sup>1</sup> OJ No. L 20, 26.1.2010, p. 7

- (b) publish on the website of the Department of Communications, Climate Action and Environment, in a national newspaper and in at least one newspaper circulating in the vicinity of that area a notice describing the nature of the decision and stating that—
  - (i) the Minister proposes to make the decision,
  - (ii) a map showing the boundaries of that area to be subject to the decision, together with the information relevant to the proposed decision may be viewed at the places at which they have been deposited in accordance with *paragraph (a)*, and
  - (iii) the public may send written comments, information, analyses and opinions that meet the requirements of *subsection (3)* to the Minister at an address specified in the notice.
- (3) The Minister shall consider any comments, information, analyses and opinions that—
  - (a) are in writing and have been delivered to the address specified in the notice under *subsection (2)(b)* within 21 days after the date of publication of the notice, and
  - (b) are relevant to the activity to be permitted by the proposed decision.
- (4) In this section “information relevant to the proposed decision” includes—
  - (a) a copy of the application on which the decision is based,
  - (b) a description of the site and the physical and technical characteristics of the proposed activity, including an estimate of the expected residues and emissions,
  - (c) a description of the significant effects of the proposed activity on the environment,
  - (d) a description of the measures envisaged to prevent or reduce the effects, including emissions,
  - (e) a non-technical summary of the information referred to in *paragraphs (a) to (d)*,
  - (f) where relevant, an outline of the main alternatives studied by the person seeking to carry out the activity,
  - (g) details of any permissions, licences or other forms of authorisations under—
    - (i) the Planning and Development Acts 2000 to 2016,
    - (ii) the Environmental Protection Agency Acts 1992 to 2011,
    - (iii) the Local Government (Water Pollution) Acts 1977 to 2007,
    - (iv) the Air Pollution Act 1987,
    - (v) the Waste Management Acts 1996 to 2011,
    - (vi) the Waste Management (Management of Waste from the Extractive Industries) Regulations 2009, or
    - (vii) the European Communities (Birds and Natural Habitats) Regulations 2011,



and

- (h) the main reports and advice that have been issued to the Minister at the time of the notification referred to in *subsection (2)(b)*.
- (5) Notwithstanding this section, the Minister may, taking into account the public interest served by disclosure and whether the information concerned relates to emissions into the environment, refuse to disclose any information if the disclosure would adversely affect—
- (a) the confidentiality of the proceedings of public authorities, where such confidentiality is provided for under any enactment,
  - (b) international relations, national defence or public security,
  - (c) the administration of justice, the ability of a person to receive a fair trial or the ability of a public authority to conduct an enquiry of a criminal or disciplinary nature,
  - (d) the confidentiality of commercial and industrial information, where such confidentiality is protected by law in order to protect a legitimate economic interest (within this framework, information on emissions which is relevant for the protection of the environment shall be disclosed),
  - (e) intellectual property rights,
  - (f) the confidentiality of personal data or files relating to an individual where that person has not consented to the disclosure of the information to the public, where such confidentiality is provided under any enactment,
  - (g) the interests of a third party that has supplied the information requested without that party being under or capable of being put under a legal obligation to do so, and where that party does not consent to the release of the material, or
  - (h) the environment to which the information relates, such as the breeding sites of rare species.

### **Outcome of public participation**

**204.** Where public participation has taken place in accordance with *section 203* the Minister shall—

- (a) take due account of the outcome of the public participation in his or her decision,
- (b) include in the decision information on the procedure for seeking to have the decision judicially reviewed and notification that the costs of any such judicial review are governed by Part 2 of the Environment (Miscellaneous Provisions) Act 2011, and
- (c) make available to the public a copy of the decision, along with the reasons and considerations on which the decision is based, at the offices of the Department of Communications, Climate Action and Environment and in one or more places to which members of the public have access that are in the vicinity of the area to be subject to the decision.

**Judicial review of certain decisions**

- 205.** (1) A person shall not question the validity of a determination under *section 137(1)* or *202(1)* or of a decision, act or omission that is subject to public participation under *section 137* or *203* otherwise than by way of judicial review under Order 84 of the Rules of the Superior Courts.
- (2) The High Court shall not grant leave for judicial review under this section unless it is satisfied that—
- (a) the applicant has a sufficient interest in the matter which is the subject of the application, or
  - (b) the applicant—
    - (i) is a body or organisation (other than a State authority, a public authority or governmental body or agency) the aims or objectives of which relate to the promotion of environmental protection, and
    - (ii) has, during the period of 12 months preceding the date of the application, pursued those aims or objectives.
- (3) A sufficient interest for the purposes of *paragraph (a)* of *subsection (2)* is not limited to an interest in land or other financial interest.
- (4) The Court, in determining either an application for leave for judicial review of a decision, act or omission that is subject to *section 203* or an application for judicial review on foot of such leave, shall act as expeditiously as possible consistent with the administration of justice.
- (5) In this section “State authority, a public authority or governmental body or agency” means—
- (a) a Minister of the Government;
  - (b) the Commissioners of Public Works in Ireland;
  - (c) a harbour authority within the meaning of the Harbours Act 1946 as amended by section 83 (inserted by section 48 of the Harbours Act 2015) of the Harbours Act 1996;
  - (d) a local authority within the meaning of the Local Government Act 2001;
  - (e) the Health Service Executive;
  - (f) a person established—
    - (i) by or under any enactment (other than the Companies Act 2014 or a former enactment relating to companies (within the meaning of section 5 of that Act)) or charter,
    - (ii) by any scheme administered by the Government, or
    - (iii) under the Companies Act 2014 or a former enactment relating to companies (within the meaning of section 5 of that Act), in pursuance of powers conferred by or under another enactment, and financed wholly or partly,

whether directly or indirectly, by means of monies provided, or loans made or guaranteed, by a Minister of the Government or by subscription for shares held by or on behalf of a Minister of the Government;

- (g) a company (within the meaning of the Companies Act 2014), a majority of the shares in which are held by or on behalf of a Minister of the Government.

### CHAPTER 3

#### *General Provisions Relating to Liability for Damage or Nuisance*

#### **Application of Chapter**

- 206.** This Chapter applies to claims for compensation for damage or nuisance under any of sections 51, 98 and 141.

#### **Determining compensation**

- 207.** The amount of compensation in relation to a claim for damage or nuisance shall be determined by reference to—
- (a) the principles governing the measure of damages in the law of tort, and
  - (b) the same enactments as would be applicable in assessing an amount of damages if proceedings in court were brought in relation to the claim.

#### **Other actions precluded**

- 208.** (1) If the Mining Board, based on a claim, determines the amount of compensation in respect of certain damage or nuisance, the parties involved in the matter are precluded from claiming compensation for that damage or nuisance on any other basis in any other forum or court.
- (2) *Subsection (1)* does not affect the right under *section 177* to have questions of law that are before the Mining Board determined by the High Court.

#### **Court awards and settlements**

- 209.** If a person has received an award from any court, has been found by any court not to be entitled to an award or has received a settlement in respect of an action arising out of any circumstances that could give rise to a claim before the Mining Board, the person is not entitled to make a claim to the Mining Board.

### CHAPTER 4

#### *Non-mineral Boreholes*

#### **Drilling non-mineral boreholes**

- 210.** (1) In this section “non-mineral borehole” means a borehole drilled, other than in the course of prospecting for or working minerals, to a depth greater than 5 metres below

the surface.

- (2) A person having an interest in land who proposes to drill or to have others drill a non-mineral borehole on the land shall give to the Minister at least 14 days before the drilling starts a notice in writing containing the particulars of the proposed drilling.
- (3) Every person having an interest in land who drills a non-mineral borehole or has others drill a non-mineral borehole on the land shall keep and maintain—
  - (a) in respect of every borehole drilled, a lithological log, and a record of the borehole's diameter, depth, direction, inclination and location, and such other information as may be prescribed, for a period of 5 years after the completion of the drilling, and
  - (b) specimens, either as cores or fragments, of the strata passed through that were obtained in the course of the drilling—
    - (i) for a period of not less than 60 days after the completion of the drilling,
    - (ii) for such longer period as the Minister may direct, or
    - (iii) where the period to which *subparagraph (i) or (ii)* relates has expired but the specimen, in whole or in part, is being kept or maintained, for such further period as the Minister may direct.
- (4) Every person who drills a non-mineral borehole on behalf of a person who has an interest in land shall keep a copy of the record referred to in *subsection (3)(a)* for a period of 5 years after the completion of the drilling.
- (5) An inspector may at all reasonable times do all or any of the following in respect of a non-mineral borehole:
  - (a) inspect the site of the borehole;
  - (b) inspect specimens obtained from the borehole within the period to which *subsection (3)(b)* relates;
  - (c) take samples of the specimens;
  - (d) review and take copies of the lithological log kept in respect of the borehole.
- (6) Any person who—
  - (a) fails to comply with the obligations imposed by this section, or
  - (b) obstructs or otherwise interferes with an inspector in the due exercise of any of the powers conferred on the inspector by *subsection (5)*,commits an offence and is liable on summary conviction to a class E fine.

### **Confidentiality of record and samples**

- 211.** (1) If any person having an interest in land who has drilled, or had others drill, a non-mineral borehole on the land gives notice in writing to the Minister requesting that the copies of the record or samples of specimens of the strata taken by an inspector under *section 210* be treated as confidential then, unless the Minister considers such request

unreasonable, the Minister shall keep the copies and their contents and the samples confidential for the prescribed period.

- (2) The Minister may, on the application of a person having an interest in land who has drilled, or had others drill, a non-mineral borehole on the land, on reasonable grounds extend the prescribed period of confidentiality in respect of that person's lithological log and samples.
- (3) After the prescribed period of confidentiality ends, the lithological log and its contents and samples may be—
  - (a) disclosed to the public on request and on payment of such reasonable administrative fee as may be determined by the Minister to cover the cost of disclosure, or
  - (b) made available to the public free of charge.

## CHAPTER 5

### *Excepted Minerals*

#### **Deemed cancellation of registration of excepted minerals**

- 212.** (1) Subject to *subsection (2)*, the registration under section 15 of the Act of 1979 of any minerals as excepted minerals is deemed to be cancelled under section 16 of that Act on the date of the passing of this Act.
- (2) This section shall not apply to minerals of any description in any land if—
- (a) the existing registration of such minerals as excepted minerals is notified to the Minister on or before the date occurring 90 days after the date of the passing of this Act, and
  - (b) the Mining Board is satisfied, on the application of the Minister, that on the date occurring 90 days after the passing of this Act a person is lawfully working a mine of such minerals.
- (3) Subsections (3) and (4) of section 16 of the Act of 1979 shall apply to the cancellation of registration of minerals as excepted minerals under this section.

#### **Records of excepted minerals**

- 213.** (1) The Mining Board shall keep records of minerals registered as excepted minerals.
- (2) The records to be kept under *subsection (1)* shall include—
- (a) the location of the excepted minerals,
  - (b) the minerals specified as excepted minerals, and
  - (c) the date on which the minerals were registered as excepted minerals.
- (3) The Mining Board shall keep records of minerals registered as excepted minerals at its offices and shall make them available for public inspection during normal office

hours.

- (4) The Mining Board shall notify the information specified in *subsection (2)* to the Minister who shall make the information available on the website of the Department of Communications, Climate Action and Environment.
- (5) Copies of records of minerals registered as excepted minerals may be obtained from the Minister on payment of such fee as may be determined by the Minister to cover the copying costs.

## CHAPTER 6

### *Miscellaneous*

#### **Research and Revitalisation**

- 214.** (1) The Minister may undertake, commission, sponsor or facilitate research directed towards—
- (a) exploring for minerals,
  - (b) developing minerals,
  - (c) rehabilitating mine sites,
- in the State and such area to which this Act applies, including, but not limited to, the following:
- (i) identifying the mineral potential of extractive waste;
  - (ii) exploring the recycling, reusing or reclaiming of extractive waste, where this is environmentally sound;
  - (iii) identifying practices that will facilitate the protection of the environment;
  - (iv) the potential to improve remediation of the mine and associated waste as part of a process of revitalisation.
- (2) Any proposals emanating from this section which involve the revisiting of formerly disused sites shall engage in a period of public consultation prior to activity commencing at that site. During this period of consultation, members of the public and other interested parties shall be free to submit their views on the proposals.

#### **Processing of mineral data**

- 215.** The Minister may, through his or her officers or agents, process any data submitted under the terms of a prospecting licence, retention licence or mining licence or otherwise under this Act and all intellectual property rights in such processed data are vested in the Minister.

#### **Regulations generally**

- 216.** (1) The Minister may make regulations in respect of any matter or thing referred to in this

Act as prescribed or to be prescribed.

- (2) Regulations made by the Minister under this Act shall be laid before each House of the Oireachtas as soon as may be after they are made and, if a resolution annulling the regulations is passed by either such House within the next 21 days on which the House has sat after the regulations are laid before it, the regulations shall be annulled accordingly but without prejudice to the validity of anything previously done under those regulations.

#### **Regulations to deal with methods of giving notice**

- 217.** (1) Subject to *subsection (2)*, in addition to any method of giving notice to the public or persons specified under a provision of this Act, the Minister may make regulations that provide for methods of giving notice by fax, e-mail or other electronic means (including the use of the internet). Any notice given in accordance with the regulations for a specific provision is valid for the purposes of that provision.
- (2) Nothing in this section affects any requirement in this Act to give any notice in *Iris Oifigiúil*.

#### **Application fees**

- 218.** (1) Save where provided otherwise in this Act, the Minister may, with the approval of the Minister for Public Expenditure and Reform, prescribe the fees payable in respect of any application under this Act.
- (2) The Minister may prescribe different fees in respect of different types of applications and according to the type of minerals involved.
  - (3) The Minister, when prescribing the amount of a fee payable in respect of an application, shall have regard to the administrative costs associated with processing the application, including the costs of determining whether the requirements of the application have been met.
  - (4) Fees payable in respect of any application under this Act, including fees set or prescribed under another section of this Act, are non-refundable.

#### **Payments to be deposited into Exchequer**

- 219.** All payments received by the Minister under this Act shall be paid into or disposed of for the benefit of the Exchequer in such manner as the Minister for Public Expenditure and Reform directs.

#### **Land subject to a purchase annuity**

- 220.** Before the Minister makes a payment of compensation under this Act to a person who has an estate or interest in land that is subject to a purchase annuity within the meaning of section 2 of the Land Act 1984, the Minister shall provide a written notice of the payment to the Minister of the Government responsible for those annuities.

**Combining public notices**

**221.** If the Minister is required to give more than one public notice in respect of related matters, the Minister may give public notice by combining them so long as the requirements for each notice are met in the combined notice.

**Expenses in administering Act**

**222.** The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Public Expenditure and Reform, be paid out of monies provided by the Oireachtas.

**Annual report to Oireachtas**

**223.** As soon as practicable after the 31st day of December of each year, the Minister shall cause to be laid before each House of the Oireachtas a report showing all of the following matters:

- (a) particulars of all prospecting, retention, mining and ancillary surface rights licences that are in force;
- (b) the amount of money collected during that year by the Minister in respect of each class of licence;
- (c) particulars of any mining facilities acquisition orders or rehabilitation acquisition orders made during that year;
- (d) particulars of rehabilitation areas designated under *section 132* during that year and the implementation of rehabilitation plans during that year;
- (e) any other matter relating to minerals or to the working of minerals that the Minister considers appropriate to include.

## PART 8

ARTICLE 3.3 OF THE MINAMATA CONVENTION ON MERCURY DONE AT GENEVA ON 19 JANUARY 2013

**Definitions – Part 8**

**224.** In this Part—

“mercury” means elemental mercury (Hg(0), CAS No. 7439-97-6) and includes mixtures of mercury with other substances, including alloys of mercury, with a mercury concentration of at least 95 per cent by weight;

“mercury-added product” means a product or product component that contains mercury or a mercury compound that was intentionally added;

“mercury compounds” means mercury (I) chloride (known also as calomel), mercury (II) oxide, mercury (II) sulphate, mercury (II) nitrate, cinnabar and mercury sulphide;

“primary mercury mining” means mining in which the principal material sought is



mercury.

**Scope of Part 8**

**225.** This Part shall not apply in respect of—

- (a) quantities of mercury or mercury compounds to be used for laboratory-scale research or as a reference standard,
- (b) naturally occurring trace quantities of mercury or mercury compounds present in such products as non-mercury metals, ores or mineral products, including coal, or products derived from these materials, and unintentional trace quantities in chemical products, or
- (c) mercury-added products.

**Restriction on Minister's power to grant licences in respect of mercury**

**226.** Nothing in this Act shall be construed as—

- (a) authorising prospecting for mercury or primary mercury mining, or
- (b) empowering the Minister to authorise prospecting for mercury or primary mercury mining, by the grant of a licence or otherwise.

**Prohibition on prospecting for mercury**

**227.** A person who prospects for mercury commits an offence and is liable—

- (a) on summary conviction to a class A fine, or
- (b) on conviction on indictment to a fine not exceeding €250,000.

**Prohibition on primary mercury mining**

**228.** A person who carries out primary mercury mining commits an offence and is liable—

- (a) on summary conviction to a class A fine, or
- (b) on conviction on indictment to a fine not exceeding €250,000.

**PART 9****TRANSITIONAL PROVISIONS, REPEALS AND CONSEQUENTIAL AMENDMENTS****CHAPTER 1***Transitional Provisions***Definition**

**229.** In this Chapter—

“Act of 1940” means Minerals Development Act 1940;

“Act of 1960” means Petroleum and Other Minerals Development Act 1960;

“former instrument” means—

- (a) a lease granted under section 11 of the Mines and Minerals Act 1931,
- (b) a State mining lease granted under section 26 of the Minerals Development Act 1940, or
- (c) a licence granted under section 17 of the Act of 1979.

#### **Applications for prospecting licences under Minerals Development Acts 1940 to 1999**

- 230.** (1) Applications for prospecting licences under the Minerals Development Acts 1940 to 1999 under consideration when this section comes into operation are deemed to be applications for prospecting licences under this Act.
- (2) The requirements of this Act regarding the granting of prospecting licences apply to an application referred to in *subsection (1)* except that if the Minister has, before this section comes into operation, given public notice of his or her intention to grant a prospecting licence in respect of that application, *section 25* does not apply.

#### **Applications for mining leases and licences under Minerals Development Acts 1940 to 1999**

- 231.** (1) All applications for mining leases or licences under the Minerals Development Acts 1940 to 1999 under consideration when this section comes into operation are deemed to be applications for mining licences under this Act.
- (2) The requirements of this Act regarding the granting of mining licences apply to an application referred to in *subsection (1)* except that if the Minister has, before this section comes into operation, given public notice of his or her intention to grant a mining lease or licence under the Minerals Development Acts 1940 to 1999 in respect of that application, *sections 69 to 72* of this Act do not apply.

#### **Continuation of former instruments**

- 232.** (1) Every former instrument that is in force when this section comes into operation is continued as a mining licence under this Act.
- (2) The provisions of the former instruments that are continued by *subsection (1)* operate notwithstanding any conflict with the other provisions of this Act or the regulations until the instruments are renewed under this Act.

#### **Compensation for working private minerals**

- 233.** (1) *Chapter 4* of *Part 3* does not apply in respect of private minerals extracted either before or after the coming into operation of this section under the authority of a licence granted under section 17 of the Act of 1979 that is—

- (a) continued by *section 232*, or
  - (b) continued by *section 232* and renewed under this Act.
- (2) Notwithstanding the repeals effected by *section 238*, compensation in respect of the private minerals referred to in *subsection (1)* continues to be governed by Part III of the Act of 1979.

#### **Compensation relating to the exercise of ancillary underground rights**

- 234.** The entitlement to compensation under *section 104* does not apply to ancillary underground rights exercised under a former instrument that is continued by *section 232* or that is continued by *section 232* and renewed under this Act.

#### **Liability for damage and nuisance under former Acts**

- 235.** Liability for damage and nuisance under the following provisions of the Minerals Development Act 1940 are continued under the following provisions of this Act:
- (a) liability under section 10 of the Act of 1940 (as amended by section 74 of the Act of 1960) is continued under *section 51* of this Act;
  - (b) liability under section 25 of the Act of 1940 (as amended by section 79 of the Act of 1960) is continued under *section 98* of this Act;
  - (c) liability under section 31(3) of the Act of 1940 (as amended by section 80 of the Act of 1960) is continued under *section 98* of this Act.

#### **Rehabilitation of mines**

- 236.** (1) In this section “Part 9 mine” means a mine within the meaning of section 23 of the Energy (Miscellaneous Provisions) Act 2006 in respect of which a mine rehabilitation plan was being implemented under Part 9 of that Act before the coming into operation of this section.
- (2) Notwithstanding the repeal of Part 9 of the Energy (Miscellaneous Provisions) Act 2006, that Part continues to apply to a Part 9 mine.
- (3) *Part 5* of this Act does not apply to the rehabilitation of a Part 9 mine.

#### **Validity of certain instruments**

- 237.** (1) Any state mining lease or licence purported to be granted under the Mines and Minerals Act 1931 or the Minerals Development Acts 1940 to 1979 before 31 March 1999 in respect of any minerals or exclusive mining rights that were vested in the Irish Land Commission under or by virtue of the Land Purchase Acts, the Land Law Acts, the Congested Districts Board (Ireland) Acts or by any other means is deemed to have been validly granted.
- (2) In this section—  
“the Congested Districts Board (Ireland) Acts” has the same meaning as in the Land

Law (Commission) Act 1923;

“the Land Law Acts” means the Land Law Acts as defined by the Land Law (Commission) Act 1923, together with any subsequent Act which provides that it is to be construed as one with the Land Law Acts.

## CHAPTER 2

### *Repeals*

#### **Repeals**

**238.** (1) The following are repealed:

- (a) the Minerals Development Act 1940;
- (b) Part III of the Petroleum and Other Minerals Development Act 1960;
- (c) the Minerals Development Act 1995;
- (d) the Minerals Development Act 1999;
- (e) the Minerals Company Acts 1941 to 1950 being—
  - (i) the Minerals Exploration and Development Company Act 1941,
  - (ii) the Minerals Company Act 1945,
  - (iii) the Minerals Company Act 1947, and
  - (iv) the Minerals Company (Amendment) Act 1950.

(2) The following provisions of the Minerals Development Act 1979 are repealed:

- (a) section 2(1) other than the definitions of “excepted minerals” and “the Minister”;
- (b) sections 3 to 8;
- (c) section 11 and the Schedule;
- (d) section 13;
- (e) sections 17 to 19;
- (f) sections 21 to 23.

(3) The following Acts are repealed to the extent indicated:

- (a) section 5 of the Property Values (Arbitrations and Appeals) Act 1960;
- (b) Chapter V (sections 29 to 32) of Part II, section 38(2), subsections (3) and (4) of section 46 and Chapter VIII (sections 49 to 51) of Part II of the Petroleum and Other Minerals Development Act 1960;
- (c) Part 9 (sections 23 to 30) of the Energy (Miscellaneous Provisions) Act 2006.

(4) The Minerals Development (Amendment) Regulations 1995 (S.I. No. 223 of 1995) are revoked.

## CHAPTER 3

*Consequential Amendments***Amendment of Foreshore Act 1933**

**239.** The Foreshore Act 1933 is amended—

(a) in section 1—

(i) by inserting the following before the definition of the expression “beach material”:

“the word ‘minerals’ has the same meaning as in *section 2* of the *Minerals Development Act 2017*;”,

(ii) by substituting the following for the definition of the expression “beach material”:

“the expression ‘beach material’ means clay, sand, gravel, shingle, stones and rocks on the surface of the seashore and includes outcrops of rock above the surface of the seashore and also includes bent grass growing on the seashore and also seaweed whether growing or rooted on the seashore or deposited or washed up on the seashore by the action of tides, winds or waves, but does not include minerals;”,

(b) in section 2 by substituting the following for subsection (7):

“(7) Any State minerals within the meaning of *section 2* of the *Minerals Development Act 2017* in or on the foreshore are, pursuant to *section 4* of that Act, vested in the Minister under that Act.”,

(c) in section 3—

(i) in subsection (1) by deleting the words “to get and take any minerals in such foreshore and not more than thirty feet below the surface thereof,” and

(ii) by substituting the following for subsection (8):

“(8) No licence granted under this section shall extend to or authorise the removal of any minerals lying in or on the foreshore.”,

and

(d) by deleting section 24.

**Amendment of Forestry Act 1946**

**240.** Section 9 of the Forestry Act 1946 is amended by substituting the following for subsection (2):

“(2) Nothing in subsection (1) shall be construed as authorising the Minister to sell, or let, or exchange for other land, any foreshore, within the meaning of the Foreshore Act 1933, or any State minerals, within the meaning of the *Minerals Development Act 2017*.

- (2A) All State minerals (within the meaning of the *Minerals Development Act 2017*) in, or under land referred to in subsection (1) are, pursuant to *section 4* of that Act, vested in the Minister under that Act.”.

#### **Amendment of section 12 of Air Navigation and Transport Act 1950**

**241.** Section 12 of the Air Navigation and Transport Act 1950 is amended in subsection (2)—

- (a) in paragraph (a) by inserting “, other than any minerals within the meaning of *section 2* of the *Minerals Development Act 2017*,” after “may dispose of”, and
- (b) by substituting the following for paragraph (c):

“(c) Any State minerals within the meaning of *section 2* of the *Minerals Development Act 2017* in or on land referred to in subparagraphs (i) and (ii) of paragraph (a) are, pursuant to *section 4* of that Act, vested in the Minister under that Act.”.

#### **Amendment of First Schedule to State Property Act 1954**

**242.** The First Schedule to the State Property Act 1954 is amended in paragraph 2 by substituting “*section 2* of the *Minerals Development Act 2017*.” for “the Minerals Development Act, 1940 (No. 31 of 1940), except sand, gravel, stone or clay which is not more than twenty feet below the surface.”.

#### **Amendment of Petroleum and Other Minerals Development Act 1960**

**243.** (1) The Petroleum and Other Minerals Development Act 1960 is amended—

- (a) in section 2(1) by substituting the following for the definition of “the Board”:

“ ‘the Board’ means the Mining Board continued under *section 154* of the *Minerals Development Act 2017*,”

and

- (b) by substituting the following for section 59:

##### **“Collection and disposal of fees**

**59.** All fees payable under this Part to the Minister shall be collected and taken in such manner as the Minister for Public Expenditure and Reform shall from time to time direct and shall be paid into or disposed of for the benefit of the Exchequer in accordance with the directions of the Minister for Public Expenditure and Reform.”.

#### **Amendment of Continental Shelf Act 1968**

**244.** The Continental Shelf Act 1968 is amended—

- (a) by substituting the following for section 4:

**“Application of *Minerals Development Acts 1979 and 2017* and *Petroleum and Other Minerals Development Acts 1960 and 1995*”**

4. (1) The *Minerals Development Acts 1979 and 2017* apply to any minerals (within the meaning of those Acts) within a designated area.
- (2) The *Petroleum and Other Minerals Development Acts 1960 and 1995* apply in relation to petroleum (within the meaning of those Acts) within a designated area.”,
- (b) in section 5 (inserted by section 5 of the *Energy (Miscellaneous Provisions) Act 1995*)—
- (i) in subsection (1), by deleting the definition of “relevant Minister”,
- (ii) in subsection (2), by deleting “and the Minister for the Marine”,
- (iii) by inserting after subsection (2) the following:
- “(2A) The Minister shall consult with the Minister for Transport, Tourism and Sport in relation to safety of navigation before granting his consent under this section.”,
- (iv) in subsection (3), by substituting “The Minister” for “A relevant Minister”,
- (v) in subsection (5), by substituting “the Minister” for “the Minister for the Marine”,
- (vi) in subsection (6)—
- (I) in paragraph (a), by substituting “the Minister” for “a relevant Minister”,
- (II) in paragraph (c), by substituting “The Minister” for “A relevant Minister”, and
- (III) in paragraph (d), by substituting “the Minister” for “the relevant Minister”,
- (vii) in subsection (7), by substituting—
- (I) “the Minister” for “a relevant Minister”,
- (II) “the Minister” for “that Minister”, and
- (III) “the Minister” for “the relevant Minister”,
- (viii) in subsection (9), by substituting—
- (I) “the Minister” for “a relevant Minister, being the Minister”, and
- (II) “the Minister” for “that Minister” in each place that it occurs,
- (ix) in subsection (10), by substituting—
- (I) “the Minister” for “a relevant Minister, being the Minister for the Marine”, and
- (II) “the Minister” for “that Minister” in each place that it occurs,

- (x) in subsection (11), by substituting “the Minister” for “the relevant Minister”,
- (xi) in subsection (12), by substituting—
  - (I) “the Minister” for “a relevant Minister”, and
  - (II) “the Minister” for “that Minister”,and
- (xii) in subsection (13), by substituting “the Minister” for “a relevant Minister”,
- (c) in section 7(1), by substituting “The Minister” for “The Minister for Energy, with the consent of the Minister for the Marine,”, and
- (d) in section 12(1), by deleting—
  - (i) “or the Minister for the Marine”, and
  - (ii) “or the Minister for the Marine (as the case may be)”.

**Amendment of Gas Act 1976**

**245.** The Gas Act 1976 is amended—

- (a) by deleting section 29, and
- (b) in section 41—
  - (i) in subsection (1) by substituting “within the meaning of the *Minerals Development Act 2017.*” for “within the meaning of the Minerals Development Act 1940, other than sand, gravel or clay.”, and
  - (ii) in subsection (2) by inserting “, the *Minerals Development Act 2017*” after “the Act of 1960”.

**Amendment of section 2 of National Monuments (Amendment) Act 1987**

**246.** Section 2 of the National Monuments (Amendment) Act 1987 is amended in subsection (7) by substituting the following for paragraph (b):

“(b) was authorised by a prospecting licence, retention licence or mining licence under the *Minerals Development Act 2017.*”.

**Amendment of Environmental Protection Agency Act 1992**

**247.** The Environmental Protection Agency Act 1992—

- (a) in section 99F(8) (inserted by section 15 of the Protection of the Environment Act 2003)—
  - (i) by substituting “the *Minerals Development Act 2017*” for “the Minerals Development Acts 1940 to 1999”, and
  - (ii) by substituting “mining licence under that Act” for “lease granted by the Minister for Communications, Marine and Natural Resources under the said



Acts”,

- (b) in section 99F(9) (as amended by section 79(d) of the Planning and Development (Amendment) Act 2010) by substituting for paragraph (b) the following:

“(b) a mining licence under the *Minerals Development Act 2017*,”

- (c) in section 99F(10) (inserted by section 15 of the Protection of the Environment Act 2003) by substituting “or mining licence” for “or lease”, and
- (d) in paragraph 1.3 of the First Schedule (inserted by section 18 of the Protection of the Environment Act 2003) by substituting “*section 2* of the *Minerals Development Act 2017*” for “the Minerals Development Acts 1940 to 1999”.

### **Amendment of Taxes Consolidation Act 1997**

**248.** The Taxes Consolidation Act 1997 is amended—

- (a) in section 5(1) in the definition of “minerals”, by substituting “*section 2* of the *Minerals Development Act 2017*” for “section 3 of the Minerals Development Act, 1940”,

- (b) in section 21A(1)—

- (i) by substituting for paragraph (b) of the definition of “excepted operations” the following:

“(b) working minerals or mineral compounds other than so much of such working as is manufacturing,”

- (ii) by substituting for the definition of “minerals” the following:

“ ‘minerals’ has the same meaning as in *section 2* of the *Minerals Development Act 2017*,”

and

- (iii) by inserting the following definition of “mineral compound” after the definition of “minerals”:

“ ‘mineral compound’ means any substance formed by the chemical combination of two or more minerals;”

- (c) in section 670(1)—

- (i) in the definition of “mine” by substituting “any mineral or mineral compound” for “any scheduled mineral, mineral compound or mineral substance within the meaning of section 2 of the Minerals Development Act, 1940”, and

- (ii) by inserting the following definitions after the definition of “mine”:

“ ‘minerals’ has the same meaning as it has in *section 2* of the *Minerals Development Act 2017*;

‘mineral compound’ means any substance formed by the chemical

combination of two or more minerals;”,

and

(d) by substituting for section 683(5) the following:

“(5) Where a right to compensation under section 20 of the Minerals Development Act 1979 is vested in a person and the Minister for Communications, Climate Action and Environment pays compensation to that person in respect of that right to compensation, that person shall be deemed for the purposes of this section to have sold a scheduled mineral asset for a capital sum equal to the amount of compensation paid to that person, and subsections (2) to (4) shall apply to the compensation as they apply to a capital sum received in respect of a sale of a scheduled mineral asset.”.

#### **Amendment of section 46 of Merchant Shipping (Investigation of Marine Casualties) Act 2000**

**249.** Section 46 of the Merchant Shipping (Investigation of Marine Casualties) Act 2000 is amended by deleting “or natural resource”.

#### **Amendment of section 4 of Environment (Miscellaneous Provisions) Act 2011**

**250.** Section 4(4) of the Environment (Miscellaneous Provisions) Act 2011 is amended by substituting the following for paragraph (k):

“(k) a prospecting licence granted under *section 17*, a retention licence granted under *section 22*, a mining licence granted under *section 65* or continued under *section 232*, an ancillary surface rights licence granted under *section 113*, or a rehabilitation plan prepared or adopted under *section 134* of the *Minerals Development Act 2017*,”.

#### **Amendment of Third Schedule to Freedom of Information Act 2014**

**251.** The Third Schedule to the Freedom of Information Act 2014 is amended by inserting at the end of Part I—

(a) in column (2), “*Minerals Development Act 2017*”, and

(b) in column (3), opposite the mention in column (2) of the *Minerals Development Act 2017*, “*section 168*.”.

#### **Amendment of Forestry Act 2014**

**252.** The Forestry Act 2014 is amended by inserting after section 6 the following:

##### **“Minister not authorised to dispose of State minerals**

**6A.** Nothing in this Act shall be construed as authorising the Minister to sell or otherwise dispose of any State minerals within the meaning of the

*Minerals Development Act 2017.”.***Amendment of European Communities (Environmental Impact Assessment) Regulations 1989**

- 253.** Paragraph 2(c) of Part II of the First Schedule (inserted by Regulation 8 of the European Communities (Environmental Impact Assessment) (Amendment) Regulations 1999 (S.I. No. 93 of 1999) to the European Communities (Environmental Impact Assessment) Regulations 1989 (S.I. No. 349 of 1989) is amended by substituting “*Minerals Development Act 2017*” for “Minerals Development Acts, 1940 to 1995”.

**Amendment of Planning and Development Regulations 2001**

- 254.** The Planning and Development Regulations 2001 (S.I. No. 600 of 2001) (as amended by the Planning and Development (Amendment) Regulations 2015 (S.I. No. 264 of 2015)) are amended—

(a) by substituting “within the meaning of the *Minerals Development Act 2017*”—

(i) in Articles 28(1)(t), 82(3)(r) and 121(1)(r), for “within the meaning of the Minerals Development Acts, 1940 to 1995”,

(ii) in Articles 28(1)(x)(i), 82(3)(u)(i), 121(1)(u)(i) and 179(2)(u)(i), for “within the meaning of the Minerals Development Acts 1940 - 1999”, and

(iii) in paragraph 2(c) of Part 2 of Schedule 5, for “within the meaning of the Minerals Development Acts, 1940 to 1999”,

and

(b) in paragraph (a) of the description of class 5 in column 1 of Part 3 of Schedule 2, by substituting “prospecting licence or retention licence within the meaning of the *Minerals Development Act 2017*” for “licence, lease or permission granted by the Minister for the Marine and Natural Resources under the Minerals Development Acts 1940 to 1999”.

**Amendment of Waste Management (Management of Waste from the Extractive Industries) Regulations 2009**

- 255.** Regulation 22(3) of the Waste Management (Management of Waste from the Extractive Industries) Regulations 2009 is amended by substituting “*Minerals Development Act 2017*” for “Minerals Development Acts 1940 to 1999”.

**Amendment of Second Schedule to European Communities (Birds and Natural Habitats) Regulations 2011**

- 256.** The Second Schedule to the European Communities (Birds and Natural Habitats) Regulations 2011 is amended by substituting “*Minerals Development Act 2017*” for “Minerals Development Acts 1940 to 1995”.

SCHEDULE

*Section 2*

LIST OF MINERALS

alum shales  
andalusite  
anhydrite  
antimony, ores of  
apatite  
arsenic, ores of  
asbestos minerals  
attapulgitite  
ball clay  
barytes  
bauxite  
bentonites  
beryllium, ores of  
bismuth, ores of  
bitumens  
brucite  
cadmium, ores of  
calcite  
celestite  
chalk  
china clay  
chromite  
chromium, ores of  
coal  
cobalt, ores of  
copper, ores of  
corundum  
cryolite  
diamond

diatomite  
dolomite  
feldspar  
fireclay  
fluorspar  
fuller's earth  
gallium, ores of  
gannister  
garnet  
gemstones including semi-precious stones  
gold, ores of  
graphite  
gypsum  
heavy minerals sands  
iron, ores of  
kaolin  
kyanite  
laterite  
lead, ores of  
lignite  
lithium, ores of  
magnesium, ores of  
magnesite  
manganese, ores of  
marble  
mercury, ores of  
metals not otherwise set out in this Schedule, ores of  
mica  
mineral pigments including oxides of iron, iron-manganese and titanium  
molybdenum, ores of  
monazite

nepheline  
nickel, ores of  
niobium, ores of  
oil shales  
olivine  
perlite  
platinum group elements, ores of  
potash mineral salts  
pyrophyllite  
quartz  
radioactive minerals  
rare earth elements, ores of  
refractory clays  
rock phosphates  
rock salt  
selenium, ores of  
sepiolite  
serpentinous marble  
silica sand  
sillimanite  
silver, ores of  
steatite  
strontium, ores of  
sulphur, ores of  
talc  
tantalum, ores of  
tellurium, ores of  
tin, ores of  
titanium, ores of  
tripoli  
tungsten, ores of

vanadium, ores of

vermiculite

witherite

wollastonite

zeolites

zircon

zirconium, ores of

zinc, ores of

In this Schedule “silica sand” means sand of sufficient purity to be suitable for use in the manufacture of glass or ceramics.