

DEEP SEA MINING ACT 2014

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Section 1: Amendments of Deep Sea Mining (Temporary Provisions) Act 1981

8. *Section 1(1)* gives effect to the amendments to the 1981 Act which are set out in the Schedule; these are grouped together in a Schedule since nearly all of them are necessary for the purpose of implementing obligations under the Convention. *Subsection (2)* changes the citation of the 1981 Act to remove the words “Temporary Provisions” since they are no longer appropriate.

Section 2: Extent, commencement and short title

9. The Act extends to England and Wales, Scotland and Northern Ireland, and *subsection (2)* extends the existing provision in the 1981 Act to enable the amendments in the Bill to be extended by Order in Council to the Channel Islands, Isle of Man or any overseas territory. *Subsection (3)* provides for the Bill to come into force two months after Royal Assent.

Schedule: Amendments of Deep Sea Mining (Temporary Provisions) Act 1981

10. *Paragraph 2* amends section 1 of the 1981 Act. These amendments provide that a person may not explore for or exploit mineral resources in the deep sea bed unless he holds an exploration or exploitation licence and the licence relates to mineral resources as described in the licence and to that area of the deep seabed. This change is necessary because the 1981 Act covered only polymetallic nodules. In addition, it is now possible for a licence to be given to explore for or exploit different mineral resources in the same area of the seabed (in other words, one licensee may be exploring for polymetallic nodules, whilst another may be exploring for cobalt-rich crusts in the same area), and this paragraph makes the necessary change to the 1981 Act to accommodate this.
11. *Paragraph 2(3)* amends the definition of “deep sea bed” to reflect that in the Convention, namely the area of the seabed beyond the limits of any State’s national jurisdiction. In addition, a new definition is used, namely “mineral resource”, which is defined in a manner which is consistent with the Convention. The word “hard” as used in the 1981 Act is omitted, since it is possible that liquid or gaseous minerals may be the subject of licences.
12. *Paragraph 3* amends section 2 of the 1981 Act. The main reason for the amendment is to provide that an exploration or exploitation licence cannot come into force before the date on which a “corresponding contract” comes into force; the latter term is defined as meaning an exploration or exploitation contract with the International Seabed Authority. In other words, exploration or exploitation licences can only come into operation when there is in force a contract between the International Seabed Authority and the Licensee concerned. The amendments to section 2 provide for functions to be exercised by Scottish Ministers, so far as those functions are exercisable within devolved competence (see the note below relating to paragraph 15 of the Schedule).

*These notes refer to the Deep Sea Mining Act 2014
(c.15) which received Royal Assent on 14 May 2014*

13. *Paragraph 3(4)* includes a new sub-section (3A) in section 2 of the 1981 Act; this sets out the provisions which the Secretary of State or Scottish Ministers may include in a licence; the main new provisions are in sub-paragraphs (g) to (j) which enable the Secretary of State or Scottish Ministers to include in the licence a requirement that the contractor comply with the Convention and other international rules of the International Seabed Authority, as well as its contract with the Authority and the plan of work authorised by that contract.
14. *Paragraph 4* substitutes new sections 3 and 3A for section 3 of the 1981 Act which had provided for reciprocal recognition between the UK and reciprocating countries in relation to deep sea mining. This system has now been replaced by that in the Convention. Accordingly, the new section 3 provides that the Secretary of State or Scottish Ministers cannot issue a licence in relation to mineral resources in a particular area of the seabed in respect of which the International Seabed Authority has entered into a contract with a contractor (unless it is with a UK contractor). The new section 3A provides that a person who is merely prospecting, ie undertaking exploration for minerals on the seabed but without an exclusive right to do so, is not prohibited by the Act from carrying out that activity, provided that they have notified the Authority in accordance with its regulations. In addition, under the new Section 3A persons who hold contracts for exploration or exploitation to carry out the activities provided for in those contracts are not prohibited by UK law from so doing.
15. *Paragraph 9* adds to the 1981 Act new sections 8A and 8B which provide for the enforcement of decisions of the Seabed Disputes Chamber of the International Tribunal for the Law of the Sea as required by Annex VI, paragraph 39, of the Convention. The new Section 8C deals with the enforcement of arbitral awards made by a tribunal in disputes between the Authority and contractors (which have to be enforceable by virtue of Annex III, Article 21(2) of the Convention) and applies Part 3 of the Arbitration Act 1996 and sections 18 to 22 of the Arbitration (Scotland) Act 2010 to them.
16. *Paragraph 10* amends the 1981 Act by omitting sections 9 and 10 of the 1981 Act. These two sections provided for a Deep Sea Mining Levy and a Deep Sea Mining Fund, and were intended to operate on an interim basis until an international organisation dealing with deep sea mining had been established, and then for sums to be paid to that organisation. However, this is now been overtaken by Part XI of the Convention under which contractors will make direct payments to the International Seabed Authority once exploitation of mineral resources commences (contractors will also have to continue to pay fees to the Secretary of State or the Scottish Ministers for the issue of licences under the 1981 Act). The Levy and Fund have never operated, and sections 9 and 10 of the 1981 Act can be repealed.
17. *Paragraph 12* substitutes a new section 12 of the 1981 Act in order to set out separately the further regulation-making powers of the Secretary of State and those of the Scottish Ministers.
18. *Paragraph 14* substitutes a list of defined terms. Some of these replicate what is already in the 1981 Act, but a number of them are new, including the definitions of “the Agreement”, “the Authority”, “the Convention”, “deep sea bed” and “mineral resource”, all of which reflect the provisions of the Convention.
19. *Paragraph 15* inserts a new section which provides that any provision of the 1981 Act which confers a function on the Scottish Ministers is to be read as conferring a function exercisable only so far as within devolved competence. Provisions such as the amended section 2(2) or the substituted section 12 therefore have effect subject to this restriction.