

*Status: Point in time view as at 01/04/2007.*

*Changes to legislation: There are currently no known outstanding effects for the Mineral Development Act (Northern Ireland) 1969, SCHEDULE 2. (See end of Document for details)*

## SCHEDULES

### SCHEDULE 2 <sup>F1</sup>

Sections 23, 29, 42, 50, 57 and 63 and  
Schedule 3.

### MINING FACILITIES ORDERS

**F1** 1964 c.28 (NI)

### MAKING OF ORDERS

- 1 (1) The Ministry, where it proposes to acquire any land or any ancillary rights by means of a mining facilities order, shall give public notice of its intention to do so.
- (2) A notice under sub-paragraph (1)—
- (a) shall state clearly the nature of the proposal and shall specify the land which is proposed to be the subject of the acquisition or, as the case may be, the ancillary rights;
  - (b) shall state the time (not being less than twenty-one days from the last publication of the notice) within which objections to the proposal may be presented to the Ministry;
  - (c) shall name a place or places (including at least one place in the locality where the land is situated) where maps identifying the land are available for inspection at all reasonable hours; and
  - (d) shall be published in two successive weeks in the Belfast Gazette and in one or more than one newspaper circulating in the locality in which the land is situated;
- and a document containing the substance and effect of every such notice shall be served on every person appearing to the Ministry to have an interest in the land, and there shall be attached to that document—
- (i) where the notice is served on the Ministry of Finance in respect of land subject to an annuity under the Land Purchase Acts, a recently certified copy of the relevant Land Registry map showing in distinct colour the land to which it relates; or
  - (ii) where the notice is served on any other person, a map or plan sufficient to enable the person so served to identify the land concerned.
- (3) Where the mining facilities order is proposed to contain any provisions with respect to the damming or diverting of any river or watercourse or the abstraction of water from, or the discharge of water on to any land, or the deposit of spoil on any land, which appear to the Ministry to affect any water or fishery authority, that authority

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shall, for the purposes of this paragraph and paragraph 2, be deemed to be a person interested in the land.

(4) In this paragraph—

“water authority”<sup>F2</sup> means [<sup>F3</sup>a water undertaker];

“fishery authority” in relation to land any part of which is situated in the Londonderry Area (as defined by the Foyle Fisheries Act (Northern Ireland) 1952 ) means the Foyle Fisheries Commission and in relation to land any part of which is situated outside that Area means, or, as the case requires, also includes, the Fisheries Conservancy Board for Northern Ireland.

**F2** 1973 NI 2; SR 1973/504

**F3** Sch. 2 para. 1(4): words substituted (1.4.2007) in the definition of "water authority" by [Water and Sewerage Services \(Northern Ireland\) Order 2006 \(S.I. 2006/3336 \(N.I. 21\)\)](#), arts. 1(2), 308(1), [Sch. 12 para. 8\(3\)](#) (with arts. 8(8), 121(3), 307); S.R. 2007/194, [art. 2\(2\)](#), Sch. 1 Pt. II (with transitional, transitory and saving provisions in [art. 3](#), Sch. 2)

- 2 (1) On the expiration of one month after the last publication of the notice mentioned in paragraph 1, the Ministry, after considering—
- (a) all representations which have been presented to the Ministry by any interested party; and
  - (b) where the mining facilities order is proposed to be made in consequence of an application under section 26(5), any evidence adduced as to the impracticability of the land or ancillary rights being acquired otherwise than compulsorily for any of the reasons mentioned in paragraphs ( a ) to ( d ) of section 14(3); and
  - (c) any other relevant business;
- and after causing a local inquiry to be held (unless no representations have been received, or any representations have been met or withdrawn or relate solely to the amount of compensation, or are representations which the Ministry is satisfied are solely of a frivolous or vexatious nature) may,—
- (i) make the mining facilities order, which may contain any modifications that the Ministry thinks proper, vesting in the Ministry all or any part of the land or ancillary rights; or
  - (ii) determine not to make the order.
- (2) If a local inquiry is held as aforesaid, the Ministry and any person interested in the land, and such other persons as the person holding the inquiry thinks fit in his discretion to allow, shall be permitted to appear, in person or by a representative, and to be heard at the inquiry, and, before making the order, the Ministry shall consider the report of the person who held the inquiry.
- (3) Where the Ministry determines not to make a mining facilities order, it shall publish notice of the determination in the Belfast Gazette and in the newspapers in which the notice of the proposal to make the order appeared.
- (4) A mining facilities order shall contain such provisions as the Ministry thinks necessary or expedient for carrying it into effect.

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#### VALIDITY AND OPERATION OF ORDERS

- 3 (1) The following provisions of this paragraph shall have effect with respect to the validity of a mining facilities order and the date on which such an order is to come into operation, that is to say:—
- (a) as soon as may be after a mining facilities order has been made, the Ministry shall publish a notice in the Belfast Gazette and in the newspapers in which notice of the proposal to make the order appeared, stating that the mining facilities order has been made, indicating the modifications, if any, that have been made in the order, inviting claims for compensation from persons entitled thereto within a period of one year from the date of publication of that notice and naming a place where a copy of the order and of any map or plan referred to therein may be seen at all reasonable hours, and shall serve a like notice on every person who appears to the Ministry to have an interest in the land to which the order relates;
  - (b) if any person aggrieved by a mining facilities order desires to question its validity on the ground that it is not within the powers conferred on the Ministry by this Act or that the procedure specified in this Schedule has not been complied with, he may, within one month after the publication of the notice of the making of the mining facilities order, make an application for the purpose to the High Court in accordance with rules of court, and where any such application is duly made the court—
    - (i) may by interim order suspend the operation of the mining facilities order, either generally or in so far as it affects any property of the applicant, until the final determination of the proceedings; and
    - (ii) if satisfied upon the hearing of the application that the mining facilities order is not within the powers conferred by this Act, or that the interests of the applicant have been substantially prejudiced by any requirement of this Schedule not having been complied with, may quash the mining facilities order either generally or in so far as it affects any property of the applicant;
  - (c) subject to head ( b ), a mining facilities order or the making of such an order shall not be questioned in any legal proceedings whatsoever, and a mining facilities order shall become operative—
    - (i) at the expiration of a period of one month from the date on which the notice of the making thereof is published in accordance with the provisions of head ( a ); or
    - (ii) on the date of the dismissal by the High Court of any application made with respect to the order under head ( b );whichever is the later;
  - (d) as soon as may be after a mining facilities order has become operative the Ministry shall serve on every person appearing to the Ministry to have an interest in the land to which the mining facilities order relates either a copy of the order or a notice stating that the order has become operative and naming a place where a copy of the order and of any map or plan referred to therein may be seen at all reasonable hours and may be obtained free of charge upon written request made by or on behalf of any person having an interest in the land.

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- (2) Where the Ministry is satisfied that good reasons exist for the failure of any person to submit a claim for compensation within the period mentioned in sub-paragraph (1)(a), his claim may be accepted after the expiration of that period.
- 4 (1) Subject to sub-paragraph (3), a mining facilities order shall operate, without further assurance “to vest in the Ministry” as from the date on which the order becomes operative (in this Schedule referred to as “the date of vesting” ), for such period, if any, as may be mentioned in the order, such estate in, to or over the land to which it relates as is therein specified, discharged from all claims or estates whatsoever (except as is specified in the order), or (if the case so requires) such ancillary rights as the order specifies, discharged from all such claims or estates as aforesaid.
- (2) To the extent to which compensation may be payable in accordance with the provisions of this Schedule and is not paid out of any sum such as is mentioned in section 27( b)(ii), as from the date of vesting the rights and claims of all persons in respect of any land acquired by the mining facilities order or in respect of the acquisition of ancillary rights over any land to which the order relates shall be transferred and attached to the Consolidated Fund, and shall be discharged by payments made by the Ministry; and in this Act the expression “compensation fund” means the Consolidated Fund.
- (3) Where a mining facilities order relates to land the ownership of which is registered under the Local Registration of Title (Ireland) Act 1891 <sup>F4</sup>, the Ministry, before lodging the order with the registering authority under that Act, shall endorse upon the order the date on which it would have become operative were it not for the provisions of this sub-paragraph, and in relation to such land the date of vesting shall, notwithstanding anything in sub-paragraph (1), be the date on which the order is so lodged and that sub-paragraph shall have effect accordingly.

**F4** [1970 c.18 \(NI\)](#)

- 5 A mining facilities order, or the title created by such an order (if it relates to land the ownership of which is registered as aforesaid), shall forthwith upon lodgment of the order, be registered in the proper office for the registration of deeds or titles, as the case requires.
- 6 Where a mining facilities order relates to any land forming part of a holding which is subject to the future payment of an annuity under the Land Purchase Acts, it shall not be necessary for any consent or authority for the sub-division of the holding to be given under any provision of those Acts, other than the consent of the Ministry of Finance to any apportionment of the annuity.
- 7 Subject to the provisions of section 47, on and after the date of vesting the Ministry or any person authorised by the Ministry may enter upon and use the land, or exercise the ancillary rights, to which the mining facilities order relates.
- 8 (1) Section 92 of the Lands Clauses Consolidation Act 1845 shall not have effect in relation to any acquisition of land by means of a mining facilities order.
- (2) Where a mining facilities order applies to part only of a house, building or factory, a person having an estate in the whole thereof may, within six weeks after the date on which the order becomes operative, serve a notice on the Ministry, requiring the Ministry to acquire the remainder thereof.

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- (3) Where a notice is served on the Ministry under sub-paragraph (2) the Ministry shall acquire the remainder of the house, building or factory unless the Lands Tribunal determines that the acquisition of the part thereof acquired by means of the mining facilities order has not caused material detriment to the house, building or factory.
- (4) Where the Ministry acquires the remainder of a house, building or factory in pursuance of sub-paragraph (3), any question as to the amount payable in respect thereof shall be determined as if that remainder had been acquired by means of a mining facilities order.

#### REFERENCE OF DISPUTED CASES TO THE LANDS TRIBUNAL

- 9 (1) As soon as a mining facilities order has become operative, any question of disputed compensation arising between the Ministry and any person who has an estate in any land to which the order relates or would have such an estate if the order had not become operative shall be referred to and determined by the Lands Tribunal.
  - (2) Where the person entitled to compensation under this Schedule is not known or cannot be found or neglects or refuses to produce his title or to claim the compensation, or where a person claiming compensation is not absolutely entitled to the compensation or is under any disability, the Ministry may refer to the Lands Tribunal any question in connection with the compensation and that question shall be deemed to be a question of disputed compensation for the purposes of this Schedule.
  - (3) Where a mining facilities order relates to lands forming part of a holding which is subject to the payment of an annuity under the Land Purchase Acts, and the Ministry of Finance notifies the Ministry of its intention to bring before the Lands Tribunal any question with respect to the apportionment or redemption of the annuity, that question shall be deemed to be a dispute between the Ministry of Finance and any person claiming compensation in relation to the lands and the provisions of this Schedule shall apply as they apply to a question of disputed compensation.
  - (4) Any question arising as to the existence of good reasons such as are mentioned in paragraph 3(2), where the Ministry has not accepted a late claim, shall also, in default of agreement, be referred to and determined by the Lands Tribunal.
- 10 When any question of disputed compensation arises, the Ministry shall as soon as practicable thereafter cause to be made out such maps and schedules as may be prescribed of any lands to which the mining facilities order relates and of any other lands held therewith which, it is claimed, may be injuriously affected by the exercise of powers conferred on the Ministry by, or on any holder of a mining facilities permit under, this Act (in this Schedule referred to as “the scheduled lands” ), together with the names, so far as they can be reasonably ascertained, of all persons who immediately prior to the making of the order were interested in the lands as owners or reputed owners, lessees or reputed lessees, or occupiers, and the Ministry shall deliver to the appropriate officer of the Lands Tribunal one copy of each of the maps and schedules certified by the Ministry as correct and shall publish once in each of three successive weeks in one or more than one newspaper circulating in the locality in which the lands are situated a notice stating that such documents have been delivered and the times and place at which copies of them may be inspected by any person desiring to inspect them.

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#### SPECIAL POWERS OF THE LANDS TRIBUNAL

- 11 (1) The Lands Tribunal shall have the same power of apportioning any rent-service, rent-charge, chief or other rent, payment or incumbrance as two justices have under the Lands Clauses Consolidation Act 1845 .
- (2) Subject to the provisions of paragraph 14, the amount of compensation to be paid in pursuance of section 124 of the Lands Clauses Consolidation Act 1845 in respect of any estate in any of the scheduled lands which the Ministry has through mistake or inadvertence failed or omitted duly to make compensation for, shall be awarded by the Lands Tribunal and paid in like manner, as nearly as may be, as the same would have been awarded and paid if the claim of such estate had been delivered to the Lands Tribunal before the day fixed for the delivery of statements of claim.
- (3) [<sup>F5</sup>Article 8(1) of the Land Compensation (Northern Ireland) Order 1982], in its application for the purpose of estimating the compensation to be paid under this Schedule in respect of the compulsory acquisition of land or ancillary rights, shall have effect as if after the words “powers conferred on the acquiring authority by” there were inserted the words “ , or on any other person by that authority under, ” .
- (4) In determining the amount of any disputed compensation, the Lands Tribunal shall have regard to the extent to which any remaining and contiguous lands, belonging to the same proprietor, may be benefited by any proposed work or any proposed use of land for which the land, or any ancillary right, to which the mining facilities order relates is acquired by the Ministry.
- (5) In determining the amount of any disputed compensation, the Lands Tribunal shall not award any sum of money for or in respect of any improvement or alteration made, or building erected, after the date of the giving by the Ministry of notice of its intention to acquire the land or ancillary rights compulsorily if, in the opinion of the Lands Tribunal, the improvement, alteration, or building in respect of which the claim is made was made or erected with a view to obtaining or increasing compensation; nor, in respect of any estate created after the said date in any land to which the order relates, shall any sum or money be awarded so as to increase the total amount of compensation which would otherwise have been required to be paid in respect of the acquisition of the land or any ancillary rights in relation thereto.

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#### SATISFACTION OF CLAIMS

- 12 (1) The Ministry, on paying to any person any compensation (whether the amount thereof has been settled by agreement or determined by the Lands Tribunal), shall obtain from that person a receipt in such form as may be specified by the Ministry, which shall be prepared by and executed at the cost of the Ministry; and—
- (a) where the compensation is payable by way of a lump sum, or
  - (b) where the compensation is payable by instalments and the payment being made is the final instalment thereof,
- the receipt shall operate to release the compensation fund from all claims by the person giving it and all parties claiming through or under him.

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- (2) The Ministry shall pay the costs reasonably incurred by any person claiming compensation, to whom compensation is found due, of furnishing any statement, abstract or other evidence of title required by the Ministry to be furnished by him.
- 13 (1) Where the compensation payable (whether the amount thereof has been settled by agreement or determined by the Lands Tribunal) to any person does not exceed the sum of one hundred pounds, and the claimant makes a statutory declaration in such form as may be specified by the Ministry stating whether he claims as absolute or as limited owner, and gives prima facie evidence which satisfies the Ministry that for not less than six years immediately preceding he, or his immediate predecessor in title, has been personally or by an agent in receipt of the rents or profits, or in actual occupation, of the land in relation to which compensation is payable, the Ministry may pay to the person claiming as absolute owner the compensation payable for the interest in respect of which he claims, and, where a person claims as limited owner of any interest, the Ministry may pay the compensation payable for that interest to the trustees of the settlement under which the limited owner claims.
- (2) Where any compensation not exceeding the sum of one hundred pounds is payable in respect of an estate which is subject to any mortgage or charge (not being a charge consisting of an annuity under the Land Purchase Acts), the compensation may be paid to the person entitled to the mortgage or charge, or, if there is more than one such mortgage or charge, then the person entitled to the mortgage or charge which is first in priority, and the amount so paid shall be received in reduction of the principal sum for the time being owing in respect of the mortgage or charge, notwithstanding any direction, proviso or covenant to the contrary contained in any instrument; and where the compensation is paid to a mortgagee or chargeant, the receipt given by the mortgagee or chargeant shall release the compensation fund from all claims by him and any subsequent mortgagee or chargeant, and also from all claims by the person creating the mortgage or charge and all persons claiming through or under that person.
- (3) A memorandum of the amount paid under sub-paragraph (2) shall, when practicable, be endorsed on the instrument creating the mortgage or charge, and shall be signed by the person receiving the compensation, and a copy of the memorandum shall be furnished by the Ministry at its expense to all persons appearing to the Ministry to be entitled to any estate in the land subject to the mortgage or charge.
- 14 Any person claiming to be entitled to any money paid to another person pursuant to the foregoing provisions of this Schedule otherwise than in accordance with an award of the Lands Tribunal may, within six years after the payment has been made, apply for relief to the Lands Tribunal; and the Tribunal may either dismiss the application or make an award against the Ministry for the amount found due in respect of the claim, and any sum so awarded shall be a debt recoverable summarily by the Ministry from the person to whom the money was paid by it, arising at the date of the award.
- 15 (1) Where the amount of compensation which is payable in respect of any land to which a mining facilities order relates has been determined but for some reason it is not possible for the Ministry to obtain a good discharge therefor,—
- (a) if the total amount of the compensation, or, where the compensation is payable by instalments, the first instalment thereof, is or exceeds two hundred pounds but does not exceed one thousand pounds, the Ministry shall pay the money into the county court;

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- (b) if the total amount of the compensation or, where the compensation is payable by instalments, the first instalment thereof, exceeds one thousand pounds, the Ministry shall pay the money into the High Court;
- (c) if the compensation is payable by instalments and the amount of the first instalment is less than two hundred pounds, the provisions of head ( a ) shall apply to that and any subsequent instalments when the amount of those instalments aggregates two hundred pounds;

and if any such compensation or the aggregate of any instalments thereof is less than two hundred pounds and has remained in the hands of the Ministry for a period of six years from the date on which the compensation or the first instalment thereof became payable, head ( a ) shall apply to that compensation or those instalments and to all other corresponding sums falling due to the same person as if the words “ is or exceeds two hundred pounds but ” were omitted.

- (2) Money paid into the county court or, as the case may be, the High Court under sub-paragraph (1) shall, subject to county court rules or rules of court, be dealt with according to the orders of the court.
  - (3) The payment of the compensation in the manner provided by sub-paragraph (1) shall operate to discharge the compensation fund from all claims and interests in respect of which the compensation is payable.
- 16 (1) The Ministry shall pay interest upon the compensation money from the date of the vesting of the land or ancillary rights in respect of which, or in consequence of the acquisition of which, the compensation is payable, or, where the compensation is payable by instalments, upon each instalment from the expiration of one month after the date when the instalment falls due, until the time of the payment of the money and interest to the party entitled thereto, or, where such compensation is paid into court, then until the sum with such interest is paid into court accordingly.
- (2) The rate of interest payable under this paragraph shall be such rate as may be determined by the Ministry of Finance.
- 17 In this Schedule “instalment” includes any rent or other periodical payment.

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