

EXPLANATORY NOTES

Deep Sea Mining Act 2014

Chapter 15

£6.00

These notes refer to the Deep Sea Mining Act 2014 (c. 15)
which received Royal Assent on 14 May2014

DEEP SEA MINING ACT 2014

EXPLANATORY NOTES

INTRODUCTION

1. These explanatory notes relate to the Deep Sea Mining Act 2014 which received Royal Assent on 14 May 2014. They have been provided by the Foreign and Commonwealth Office in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by Parliament.

2. The notes need to be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section does not seem to require any explanation or comment, none is given.

BACKGROUND

3. Under Part XI of the United Nations Convention on the Law of the Sea, as modified by an Agreement on the Implementation of Part XI adopted in 1994, ("the Convention") provision is made for the regulation of mining on the deep sea bed. In broad terms, the system involves a contractor being sponsored by a State Party, which must in turn be able to exercise effective control over that contractor under its own law. A contractor must then enter into a contract with the International Seabed Authority ("the Authority") before it can start exploring for or exploiting the mineral resources of the deep sea bed.

4. For many years there was little interest in deep sea mining, but before the Bill for this Act was introduced a number of commercial companies had already made applications to the Authority to explore for polymetallic nodules. Two of these applications were sponsored by the United Kingdom and one had already been successfully accepted by the Council of the Authority.

5. Although the existing United Kingdom legislation, the Deep Sea Mining (Temporary Provisions) Act 1981 ("the 1981 Act"), was enacted prior to the adoption of the Convention, it nevertheless gave sufficient power to grant licences to explore for polymetallic nodules to the company which made the applications to the Authority, thereby ensuring that the United Kingdom was able to exercise effective control over the company, and was therefore able to avoid any liability under Annex III, Article 4(4), of the Convention.

6. However, the 1981 Act was out of date and this Act makes amendments to it so that it is consonant with the Convention. In particular, the 1981 Act was based upon the idea that there would be a number of states which would sponsor the activities of their nationals, and that each such state would reciprocally recognise the activities of companies of the other states; whereas under the Convention regulation is ensured through the Authority. Furthermore, the 1981 Act (as originally enacted) only applied to polymetallic nodules, not to other mineral resources of the deep sea bed, in relation to two of which (polymetallic

sulphides and cobalt-rich crusts) the Authority has already adopted regulations. Finally, under the Convention there are two provisions which require judicial and arbitral decisions to be recognised, but there was no implementing provision in UK law.

TERRITORIAL EXTENT

7. The Act extends to England and Wales, Scotland and Northern Ireland. Her Majesty may, by Order in Council, direct that any provision of the Act be extended to the Channel Islands, Isle of Man or any British overseas territories (see section 2(2) extending the existing provision in the 1981 Act).

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).

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.

HANSARD REFERENCES

20. The following table sets out the dates and Hansard references for each stage of the Act's passage through Parliament.

Stage	Date	Hansard Reference
House of Commons		
Introduction	19 June 2013	Vol. 564 Col. 937
Second Reading	6 September 2013	Vol. 567 Cols. 590-638
Ways and Means Resolution	15 October 2013	Vol. 568 Cols. 701-2
Committee	15 January 2014	Hansard Public Bill Committee
Report	24 January 2014	Vol. 574 Cols. 574-81
Third Reading	24 January 2014	Vol. 574 Cols. 581-94
House of Lords		
Introduction	24 January 2014	Vol.751 Col. 970
Second Reading	7 February 2014	Vol. 752 Cols. 391-402
Order of Commitment Discharged	25 February 2014	Vol. 752 Col. 833
Third Reading	18 March 2014	Vol. 753 Col. 83

Stage	Date	Hansard Reference
Royal Assent	14 May 2014	Lords: Vol. 753 Col. 1920 Commons: Vol. 580 Col. 859

© Crown copyright 2014

Printed in the UK by The Stationery Office Limited under the authority and superintendence of Carol Tullo, Controller of Her Majesty's Stationery Office and Queen's Printer of Acts of Parliament

5/2014 40548 19585

Published by TSO (The Stationery Office) and available from:
Online
www.tsoshop.co.uk

Mail, Telephone, Fax & E-mail
TSO
PO Box 29, Norwich, NR3 1GN
Telephone orders/General enquiries: 0870 600 5522
Fax orders: 0870 600 5533
E-mail: customer.services@tso.co.uk
Textphone: 0870 240 3701

The Houses of Parliament Shop
12 Bridge Street, Parliament Square
London SW1A 2JX
Telephone orders/General enquiries: 020 7219 3890
Fax orders: 020 7219 3866
Email: shop@parliament.uk
Internet: http://www.shop.parliament.uk

TSO@Blackwell and other Accredited Agents

ISBN 978-0-10-561514-9

9 780105 615149