

## MINERALS DEVELOPMENT ACT, 1940

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#### SCHEDULE

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1940 31 AN ACT TO MAKE FURTHER AND BETTER PROVISION FOR THE  
DEVELOPMENT AND WORKING OF THE MINERAL RESOURCES OF THE STATE.

[14th November, 1940.]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:—

1940 31 1

Short title. 1.—This Act may be cited as the Minerals Development Act, 1940.

1940 31 2

Definitions. 2.—In this Act—

the expression "the Minister" means the Minister for Industry and Commerce;

the expression "the Land Commission" means the Irish Land Commission;

the expression "the Act of 1931" means the Mines and Minerals Act, 1931 (No. 54 of 1931);

the expression "land purchase annuity" means a land purchase annuity payable under the Land Purchase Acts to the Land Commission;

the word "rent" includes any periodical payment in the nature of rent;

the expression "royalty rent" means a rent calculated by reference to the quantity, price, or value of minerals gotten;

the word "surface", when used in relation to land, includes any buildings, works, or things erected, constructed or growing on such land;

the word "working", when used in relation to minerals, includes digging, searching for, mining, getting, raising, taking, carrying away, treating, and converting such minerals, and cognate words shall be construed accordingly;

the expression "exclusive mining right" means a right of working minerals vested in any person exclusive of any other person;

the expression "scheduled mineral" means any substance mentioned in the Schedule to this Act;

the expression "mineral compound" means any substance formed by the chemical combination of one scheduled mineral with any other such mineral;

the expression "mineral substance" means any substance of a similar nature to any scheduled mineral;

the word "prescribed" means prescribed by regulations made by the Minister under this Act.

1940 31 3

"Minerals". 3.—In this Act (save where the context otherwise requires) the word "minerals" means all substances (other than the agricultural surface of the ground and other than turf or peat) in, on, or under land, whether obtainable by underground or by surface working, and includes all mines, whether they are or are not already opened or in work, and also includes the cubic space occupied or formerly occupied by minerals, and, for greater certainty but without prejudice to the generality of the foregoing, the said word includes all scheduled minerals.

1940 31 4

State mining rights under the Land Purchase Acts. 4.—(1) Every State mining right to which this section applies shall include and be deemed always to have included a right to work scheduled minerals, mineral compounds, and mineral substances within the meaning of this Act, and in this Act, the word "minerals", when used in relation to any such State mining right, shall be construed accordingly.

(2) In this section, the expression "State mining right to which this section applies" means any such exclusive right of mining and taking minerals, and digging and searching for minerals as is mentioned in sub-section (3) of section 13 of the Irish Land Act, 1903, or in sub-section (5) of section 45 of the Land Act, 1923 (No. 42 of 1923), which is, at the passing of this Act, or becomes, after such passing, vested in the State, either by virtue of the said sub-section (3), as amended by section 2 of the Act of 1931 and adapted in consequence of the enactment of the Constitution, or by virtue of the said sub-section (5) as so adapted.

(3) Notwithstanding the repeal by this Act of the Act of 1931, the following enactments, that is to say:—

( a ) the second proviso to sub-section (3) of section 13 of the Irish Land Act, 1903,  
( b ) sub-section (4) of the said section 13 (so far only as relates to State mining rights to which this section applies),  
( c ) section 1 of the Irish Land Act, 1907, and  
( d ) section 37 of the Irish Land Act, 1909,  
shall continue to apply to any letting, lease, sale or demise of any State mining right to which this section applies made by the Land Commission before the passing of the Act of 1931.

1940 31 5

"State minerals". 5.—The following minerals and exclusive mining rights shall be State minerals for the purposes of this Act and the expression "State minerals" shall in this Act be construed accordingly, that is to say:—

( a ) any minerals and any exclusive mining right which, at the date of the passing of this Act, belong to or are the property of the State or the People, and are vested (subject to any lease granted under the Act of 1931) in the State or in any Minister of State;

( b ) any minerals and any exclusive mining right which, on or after the passing of this Act become, by any means, the property of or vested in the State or the People or become vested in a Minister of State, as on and from the date upon which they become such property or become so vested;

( c ) without prejudice to the generality of the next preceding paragraph of this section, any minerals or any exclusive mining right which become vested in the Minister by virtue of a minerals acquisition order for the time being in force made under the provisions of Part III of this Act, for so long as such minerals or such exclusive right shall be so vested;

( d ) notwithstanding anything contained in the Foreshore Act, 1933 (No. 12 of 1933), and without prejudice to the generality of paragraphs (a) and (b) of this section, any minerals lying on or under foreshore belonging to the State within the meaning of that Act, as adapted in consequence of the enactment of the Constitution;

( e ) without prejudice to the generality of paragraph (a) and (b) of this section, all mines of gold and silver.

1940 31 6

"Ancillary rights". 6.—The following rights shall be ancillary rights for the purposes of this Act, and, in this Act, the expression "ancillary rights" shall be construed accordingly, that is to say:—

( a ) a right to let down the surface including a right to let down superincumbent or adjacent strata up to and including the surface;

( b ) a right of air-way, shaft-way, or surface or underground way-leave, or other right for the purpose of access to or conveyance of minerals or machinery or the ventilation or drainage or working of mines;

( c ) a right to construct, operate and maintain roads and railways for the conveyance of minerals from any mine to any existing road or railway system and for that purpose to use and occupy land and to exercise any right in or over land or water or in or over any public road;

( d ) a right to use and occupy the surface of land for the erection of crushing and dressing mills, washeries, coke ovens, railways, aerial rope ways, aerial tramways, by-product works or brick making or other works, or for dwellings for persons employed in connection with the working of minerals or with any such works as aforesaid;

( e ) a right to a supply of water or other substances in connection with the working of minerals;

( f ) a right to dispose in a particular manner of water or other liquid matter obtained from mines or any by-product works;

( g ) a right to dispose in a particular manner of waste products obtained in connection with the working of minerals;

( h ) a right to dam or divert any river, or watercourse, including an artificial watercourse;

( i ) a right to divert sewers, watermains, and pipes;

( j ) a right to divert a public road, street, or way, or a private way, and to substitute for an existing bridge another bridge on a different site;

( k ) a right to divert a railway or a tramway;

( l ) a right to demolish buildings which impede the proper working of any minerals.

1940 31 7

Entering and prospecting for minerals. 7.—(1) Whenever it appears to the Minister that there are minerals on or under any land and that such minerals are not being worked or are not being worked efficiently, the Minister may, subject to giving the notice required by this section, do, at his discretion, either of the following things, that is to say:—

( a ) enter upon such land and there do all such things as are in his opinion necessary or desirable for the purpose of ascertaining the character, extent, or value of such minerals and, in particular make borings, sink pits, remove water from old workings, and take and remove reasonable quantities of such minerals for analysis, test, trial, or experiment;

( b ) grant to any person, in accordance with this Part of this Act, such licence (in this Act referred to as a prospecting licence) in respect of such minerals as is authorised by this Part of this Act.

(2) The Minister shall not exercise, in respect of any land, either the right conferred on him by paragraph (a) of the foregoing sub-section of this section or the power conferred on him by paragraph (b) of that sub-section before the expiration of one month after he has served on the occupier of such land notice of his intention to exercise such right or such power, as the case may be.

(3) The notice mentioned in the next preceding sub-section of this section may be served by registered post and, when so served, may be addressed to the occupier by name at either his last-known place of abode or at the land to which the notice relates.

(4) The Minister shall not enter on any land under paragraph (a) of the first sub-section of this section, or do on such land any of the things authorised by that paragraph without the consent of the Minister for Finance.

(5) The right conferred on the Minister by paragraph (a) of the first sub-section of this section is in this Act referred to as the right of entering and prospecting.

1940 31 8

Prospecting licences. 8.—(1) Every prospecting licence shall be granted upon such terms and conditions as the Minister thinks proper and specifies in such licence.

(2) On the granting of a prospecting licence, the licensee shall pay to the Minister such consideration therefor as the Minister, with the concurrence of the Minister for Finance, may determine.

(3) Every prospecting licence shall be expressed and shall operate to authorise the licensee, during the currency of such period as is specified in such licence and subject to the provisions of this Part of this Act, to enter on such land as may be similarly specified and there do all such things as the licensee considers necessary or desirable for the purpose of ascertaining the character, extent, or value of the minerals lying on or under such land, and in particular, and without prejudice to the generality of the foregoing power, for the purposes aforesaid to make borings, sink pits, remove water from old workings, and take and remove reasonable quantities of any such minerals for the purpose of analysis, test, trial or experiment.

(4) Every prospecting licence shall contain an indemnity clause whereby the licensee under such licence indemnifies the Minister against any claim or demand whatsoever in respect of the land or the minerals the subject of such licence or in any way arising out of the exercise by the licensee of any of the rights conferred on him by such licence.

(5) Every prospecting licence shall contain a clause requiring the licensee thereunder to exercise the rights conferred on him by such licence in such manner as not to interfere unnecessarily with the amenities of the locality in which are situate the land and minerals the subject of such licence.

1940 31 9

Applications for prospecting licences. 9.—(1) The Minister may make regulations for all or any of the following purposes, that is to say:—

- ( a ) prescribing the form and manner in which applications for prospecting licences shall be made;
- ( b ) requiring the payment of fees on such applications and prescribing the amounts of such fees;
- ( c ) specifying the conditions to be complied with by applicants for prospecting licences;
- ( d ) requiring every applicant for a prospecting licence to furnish evidence as to his character, financial standing, and technical qualifications and to give security for the due fulfilment of his obligations under such licence, and prescribing the nature of such evidence and of such security respectively;
- ( e ) specifying the terms and conditions to be incorporated in prospecting licences (including the period for which the licence is granted) and the obligations imposed on the licensees thereunder.

(2) Different regulations may be made under this section in respect of particular classes of prospecting licences.

(3) Every application for a prospecting licence shall be made in accordance with such of the regulations made under this section as are applicable to such application.

1940 31 10

Compensation for damage under Part II. 10.—(1) Whenever damage to the surface of any land is caused, whether directly or indirectly, either—

( a ) by the exercise by the Minister under this Part of this Act of his right of entering and prospecting, or

( b ) by the exercise by the licensee under a prospecting licence of his rights under such licence,

the Minister or the said licensee (as the case may be) shall be liable to pay compensation (in this Act referred to as compensation for damage under Part II) for such damage.

(2) The amount of compensation for damage under Part II shall, in default of agreement, be determined in accordance with the provisions of Part VII of this Act.

1940 31 11

Restriction on working minerals by licensees. 11.—(1) It shall not be lawful for any licensee under a prospecting licence to work, sell, or otherwise dispose of any minerals lying on or under the land in respect of which such licence was granted.

(2) Nothing in this section shall prevent the licensee under a prospecting licence taking and removing reasonable quantities of the minerals to which such licence relates for analysis, test, trial, or experiment.

(3) If any licensee under a prospecting licence works, sells, or otherwise disposes of any minerals in contravention of this section he shall be guilty of an offence under this section and shall be liable on summary conviction thereof to a fine not exceeding one hundred pounds and, in the case of a continuing offence, to a further fine not exceeding fifty pounds for every day during which the offence is continued.

1940 31 12

Revocation and termination of prospecting licences. 12.—(1) The Minister may at any time, in his absolute discretion, revoke a prospecting licence.

(2) A prospecting licence shall terminate, if the licensee thereunder is an individual, on his death or bankruptcy or, if such licensee is a body corporate, on its dissolution.

(3) On the revocation or termination of a prospecting licence under this section—

( a ) all rights and powers exercisable by the licensee thereunder shall cease and determine, but without prejudice to any obligation or liability imposed on such licensee by this Act or by such licence;

( b ) such licensee shall not be entitled to be repaid any part of the consideration paid by him for the grant of such licence.

1940 31 13

Undertaking by Minister to grant leases. 13.—(1) On the granting or at any time during the currency of a prospecting licence, the Minister may enter into an undertaking with the licensee under such licence to the effect that if, at any time during the currency or on the expiration of such licence, the Minister is satisfied that the prospecting carried on by such licensee has been successful and that the terms and conditions of such licence have been observed and performed, the Minister will grant to such licensee a State mining lease under Part IV of this Act to take effect from such date, either before or after the expiration of such licence, as may be specified in the State mining lease.

(2) Every such undertaking as is mentioned in the foregoing sub-section of this section shall be in such form as the Minister, with the consent of the Minister for Finance, thinks fit, and may specify the terms and conditions (if any) upon which the State mining lease which is the subject of such undertaking shall be granted.

(3) Whenever the Minister enters into an undertaking to grant a State mining lease under this section, it shall be lawful for the Minister to carry out such undertaking in accordance with the terms thereof.

1940 31 14

Minerals acquisition orders. 14.—(1) Whenever it appears to the Minister that there are minerals on or under any land and that such minerals are not being worked or are not being worked efficiently and the Minister is of opinion that it is desirable in the public interest, with a view to the exploitation of such minerals, that the working of such minerals should be controlled by the State, the Minister, with the consent of the Minister for Finance, may by order (in this Act referred to as a minerals acquisition order) either, as he shall, with the consent aforesaid, think proper, compulsorily acquire such minerals or compulsorily acquire an exclusive mining right in respect of such minerals.

(2) The following provisions shall apply and have effect in relation to every minerals acquisition order, that is to say:—

( a ) such order shall specify the nature, situation, and extent of the minerals to which it relates;

( b ) such order may be in respect of all the minerals on or under any particular land or in respect of any particular such mineral or any particular class of such minerals;

( c ) if minerals are intended to be acquired by such order, such order shall be expressed and shall operate to vest such minerals in the Minister in fee simple;

( d ) if an exclusive mining right only is intended to be acquired by such order, such order shall be expressed and shall operate to vest such exclusive mining right in the Minister for such term as shall be specified in that behalf in such order;

( e ) such order shall not be expressed or operate to vest in the Minister the surface of any land or any ancillary rights, but, subject to that limitation, such order may contain all or any such

supplemental or ancillary provisions as the Minister, with the consent of the Minister for Finance, shall think proper.

(3) All minerals acquired by a minerals acquisition order and every exclusive mining right similarly acquired shall for the purposes of this Act be deemed to be State acquired minerals, and the expression "State acquired minerals" shall, in this Act, be construed accordingly.

1940 31 15

Publications and services in respect of minerals acquisition orders. 15.—(1) Whenever the Minister makes a minerals acquisition order he shall do every of the following things as soon as may be after the making of such order, that is to say:—

( a ) publish notice of the making of such order in the *Iris Oifigiúil* and in such newspapers as he shall think proper;

( b ) deposit in the office of the Geological Survey, Dublin, a map (on a suitable scale and showing all relevant detail) of the area in which are situate the minerals to which such order relates.

(2) The notice of the making of a minerals acquisition order required or authorised by the foregoing sub-section of this section to be published by the Minister shall state whether minerals or an exclusive mining right are or is acquired by such order and shall, in either case, indicate with reasonable particularity the situation, nature, and extent of the minerals to which such order relates, and may contain such (if any) other information in respect of such order and the contents thereof as the Minister shall consider expedient.

(3) Every map deposited in the office of the Geological Survey, Dublin, in pursuance of the first sub-section of this section shall be available at all reasonable times for inspection in that office by any person desiring to inspect the same.

1940 31 16

Compensation for State acquired minerals. 16.—(1) The Minister shall be liable to pay compensation (in this Act referred to as compensation for State acquired minerals) for any minerals or any exclusive mining right acquired by him by a minerals acquisition order.

(2) Compensation for State acquired minerals shall, in default of agreement, be determined in accordance with the provisions of Part VII of this Act.

1940 31 17

Claims for compensation for State acquired minerals. 17.—(1) Any person who claims to be entitled under this Part of this Act to compensation for State acquired minerals acquired by a minerals acquisition order may, at any time within two months, or such longer time (not exceeding altogether twelve months) as the Minister may in any particular case allow, after the publication in the *Iris Oifigiúil* of notice of the making of such order lodge with the Minister a claim for such compensation.

(2) No claim to compensation for State acquired minerals which is lodged after the period limited by the next preceding sub-section of this section shall be considered by the Minister.

(3) The following provisions shall apply and have effect in relation to every claim for compensation for State acquired minerals, that is to say—

( a ) such claim shall be in the prescribed form and shall be made and verified in the prescribed manner;

( b ) such claim shall state—

(i) the nature of the applicant's interest in such State acquired minerals,

(ii) the situation, nature, and extent of the minerals in respect of which such interest exists,

(iii) all claims or encumbrances to which such interest is subject, and

(iv) such other particulars as may be prescribed;

( c ) the person making such claim shall, if required so to do by the Minister, furnish to the Minister such information as he may require for the consideration of such claim.

(4) If any person, who is required under paragraph (c) of the immediately preceding sub-section of this section to furnish any information to the Minister, either wilfully or recklessly makes for the purposes of the claim to which such information relates, any statement which is false or misleading in a material respect, he shall be guilty of an offence under this section and shall be liable on summary conviction thereof to a fine not exceeding fifty pounds.

1940 31 18

Surrender by the Minister of an exclusive mining right. 18.—Whenever an exclusive mining right has become vested in the Minister by virtue of a minerals acquisition order, the Minister, with the consent of the Minister for Finance, may, by order at any time while such right is so vested surrender such right.

1940 31 19

Compulsory acquisition of land and ancillary rights. 19.—(1) Whenever the Minister is of opinion that it is necessary for the efficient or convenient exploitation of any State minerals to acquire any land or any ancillary right, the Minister, with the consent of the Minister for Finance, may by order (in this Act referred to as a mining facilities acquisition order), compulsorily acquire, either permanently or temporarily, such land or such ancillary right.

(2) The following provisions shall apply and have effect in relation to every mining facilities acquisition order, that is to say:—

( a ) where such order provides for the acquisition of land, it shall specify the area and situation of such land and the nature and duration of the interest in such land which is vested in the Minister by such order;

( b ) where such order provides for the acquisition of an ancillary right, it shall specify the character of such right, the situation of any property affected by the exercise of such right, and the nature and duration of the interest in such right which is vested in the Minister by such order;

( c ) such order may contain all such supplementary or ancillary provisions as the Minister, with the consent of the Minister for Finance, shall think proper;

( d ) such order may contain a provision requiring that, in carrying such order into effect, all persons charged with the execution thereof shall have due regard to the amenities of the locality in which are situate the land or ancillary right acquired by such order;

( e ) such order shall be expressed and shall operate to vest in the Minister the land or the ancillary right thereby acquired for such period and in such manner as shall be specified in such order.

1940 31 20

Notices in respect of mining facilities acquisition orders. 20.—(1) Whenever the Minister proposes to make a mining facilities acquisition order he shall comply with whichever of the following provisions is applicable, that is to say:—

( a ) where the Minister proposes to acquire any land by such order, he shall, at least one month or, if there is an occupied dwelling-house on such land, at least three months before making such order, serve on every person appearing to him to have an interest in such land notice of his intention to make such order, and publish at least once in each of two newspapers circulating in the neighbourhood of such land a like notice of his said intention;

( b ) where the Minister proposes to acquire an ancillary right by such order, he shall, at least one month before making such order, serve on every person appearing to him to have an interest in any property which would be affected by the exercise of such right notice of his intention to make such order and publish at least once in each of two newspapers circulating in the neighbourhood of any such property a like notice of his said intention.

(2) Every notice required by the foregoing sub-section of this section to be served or published shall—

( a ) if such notice relates to the acquisition of land, state the situation and area of such land with sufficient particularity to enable such land to be easily identified and also state the nature and duration of the interest proposed to be acquired in such land, or

( b ) if such notice relates to the acquisition of an ancillary right, state the nature of such right, the land or other property in respect of which such right is proposed to be acquired, and the period for which such right is proposed to be acquired.

(4) A notice required by this section to be served on any person may be served by registered post and, if so served, may be addressed to such person at his last-known place of abode.

1940 31 21

Compensation for mining facilities. 21.—(1) The Minister shall be liable to pay compensation (in this Act referred to as compensation for mining facilities) for any land or ancillary right acquired by him under a mining facilities acquisition order.

(2) Compensation for mining facilities shall, in default of agreement, be determined in accordance with the provisions of Part VII of this Act.

(3) All claims for compensation for mining facilities in respect of any land or ancillary right acquired by the Minister under a mining facilities acquisition order may be made at any time within two months, or such longer period (not exceeding altogether four months) as the

Minister may in any particular case allow after the date of such order, and no such claim shall be entertained unless made within that period.

1940 31 22

Licences in respect of State acquired minerals. 22.—(1) Whenever the Minister has acquired any minerals by a minerals acquisition order, the Minister may, at any time thereafter, grant to any person a licence (in this Act referred to as a State acquired minerals licence) to work such minerals.

(2) Whenever there is vested in the Minister by virtue of a minerals acquisition order an exclusive mining right, the Minister may grant to any person a licence (in this Act also referred to as a State acquired minerals licence) to exercise such exclusive mining right and by virtue of such right to work the minerals to which such right applied.

(3) Whenever the Minister has granted a State acquired minerals licence (in this subsection referred to as the principal licence), the following provisions shall have effect, that is to say:—

( a ) if, at the time when the principal licence is granted or at any time thereafter while the principal licence is in force, there is vested in the Minister by virtue of a mining facilities acquisition order any land for the purpose of working the minerals or exercising the exclusive mining right (as the case may be) to which the principal licence relates, the Minister may grant to the licensee under the principal licence a subsidiary licence (in this Act referred to as a mining facilities licence) to use, for the purpose aforesaid and in accordance with the said order, the land or any specified part of the land so vested in the Minister;

( b ) if, at the time when the principal licence is granted or at any time thereafter while the principal licence is in force, there is vested in the Minister by virtue of a mining facilities acquisition order any ancillary right or rights for the purpose of working the minerals or exercising the exclusive mining right (as the case may be) to which the principal licence relates, the Minister may grant to the licensee under the principal licence a subsidiary licence (in this Act also referred to as a mining facilities licence) to exercise, for the purpose aforesaid and in accordance with the said order, the ancillary right or all or any particular one or more of the ancillary rights so vested in the Minister;

( c ) whenever the Minister grants a State acquired minerals licence and one or more mining facilities licences to the same person in respect of the same minerals or the same exclusive mining right, such mining facilities licence or licences may, if the circumstances permit be included in the said State acquired minerals licence;

( d ) whenever the Minister grants two mining facilities licences to the same person in respect of the same minerals or the same exclusive mining right and such licences are not included in a State acquired minerals licence, such two mining facilities licences may, if the circumstances permit, be included in a single such licence.

1940 31 23

Applications for licences in respect of State acquired minerals. 23.—(1) The Minister may make regulations for all or any of the following purposes, that is to say:—

- ( a ) prescribing the form and manner in which applications for a State acquired minerals licence or a mining facilities licence shall be made;
- ( b ) requiring the payment of fees on such applications and prescribing the amounts of such fees;
- ( c ) specifying the conditions to be complied with by applicants for any such licence;
- ( d ) specifying the terms and conditions to be incorporated in such licences (including the period for which the licence is granted) and the obligations to be imposed by such licences on the licensees thereunder and, in particular, requiring the licensee under any such licence, in exercising the rights conferred thereby, to have due regard to the amenities of the locality in which is situate the subject matter of such licence;
- ( e ) requiring every applicant for a State acquired minerals licence to furnish evidence as to his character, financial standing, and technical qualifications and to give security for the due fulfilment of his obligations under such licence, and prescribing the nature of such evidence and of such security respectively.

(2) Different regulations may be made under this section in respect of particular classes of licences.

(3) Every application for a State acquired minerals licence or a mining facilities licence shall be made in accordance with such of the regulations made under this section as are applicable to such application.

1940 31 24

Form and contents of licences in respect of state acquired minerals. 24.—(1) The following provisions shall apply and have effect in relation to every State acquired minerals licence and every mining facilities licence, that is to say:—

- ( a ) such licence shall be granted upon such terms and conditions as the Minister thinks proper and specifies in such licence, and different terms and conditions may be so specified in respect of State acquired minerals licences and in respect of mining facilities licences;
- ( b ) on the granting of such licence, the licensee shall pay to the Minister such consideration therefor as the Minister, with the concurrence of the Minister for Finance, may determine.

(2) Every State acquired minerals licence shall be expressed and shall operate to confer on the licensee for such period as may be specified in the licence, a right to do whichever of the following things is specified in the licence, that is to say:—

- ( a ) to work the minerals specified in the licence;
- ( b ) to exercise the exclusive mining right specified in the licence and by virtue of that right to work the minerals similarly specified.

(3) Where a mining facilities licence (in this sub-section referred to as the subsidiary licence) is granted as a subsidiary licence to the licensee under a State acquired minerals licence (in this sub-section referred to as the principal licence), the subsidiary licence shall be expressed and shall operate to confer on such licensee, for such period as is specified in the subsidiary licence, a right to do whichever of the following things is specified in the subsidiary licence, that is to say:—

( a ) to use, for the purpose of working the minerals or exercising the exclusive mining right (as the case may be) to which the principal licence relates and in accordance with the relevant mining facilities acquisition order, such land as is specified in the subsidiary licence;  
( b ) to exercise, for the purpose aforesaid and in accordance with the said order, such ancillary right or all or any particular such ancillary rights as is or are specified in the subsidiary licence.

1940 31 25

Compensation for damage under Part III. 25.—(1) Whenever damage to the surface of any land is caused, either directly or indirectly, by the exercise by the licensee under a State acquired minerals licence or a mining facilities licence of his rights under such licence, the said licensee shall be liable to pay compensation (in this Act referred to as compensation for damage under Part III) for such damage.

(2) The amount of compensation for damage under Part III shall, in default of agreement, be determined in accordance with the provisions of Part VII of this Act.

1940 31 26

State mining leases. 26.—(1) If, in the opinion of the Minister, it is in the public interest that any State minerals should be granted by way of lease to any person, the Minister may demise such minerals to such person by way of lease (in this Act referred to as a State mining lease) for such term as the Minister shall think proper.

(2) The following provisions shall apply and have effect in relation to every State mining lease, that is to say:—

( a ) unless the Minister, with the concurrence of the Minister for Finance, is of opinion that such lease should in the public interest be made free of payment, such lease shall be made subject to the payment to the Minister of such moneys, whether by way of fine or preliminary payment or by way of rent (including a royalty rent) or by any or all of such ways, as the Minister, with the concurrence of the Minister for Finance, shall think proper and shall agree upon with the lessee;

( b ) such lease shall contain such (if any) covenants, conditions and subsidiary agreements on the part of the Minister or of the lessee as the Minister shall consider proper or desirable in the public interest and shall agree upon with the lessee;

( c ) such lease may contain a clause providing for the renewal or successive renewals thereof, either unconditionally or subject to such conditions as shall be stated in such lease;

( d ) the Minister for Finance shall be a party to such lease.

(3) In exercising the respective powers conferred on them by this section, and in particular, in determining what (if any) payment should be made to the Minister by the lessee under a State mining lease and what (if any) covenants or conditions should be contained in such lease the Minister and the Minister for Finance may take into consideration the general advantages that are likely to accrue to the State from the development of the State minerals demised by such lease and also the extent to which it is desirable, in the public interest, that any of the minerals raised under such lease should be conserved for use within the State as raw materials for industries that are or may be established within the State.

1940 31 27

Furnishing of information by lessees of State mining leases. 27.—(1) Every lessee under a State mining lease shall furnish to the Minister, within twenty-eight days after being required by the Minister so to do, such information as the Minister may, at any time, require in relation to the minerals demised by such lease or to the working of such minerals.

(2) The Minister may make regulations in relation to the furnishing by lessees of State mining leases of information in regard to the minerals or the working of the minerals demised by such leases, and such regulations may require the furnishing of such information in addition and without prejudice to the information required to be furnished under the next preceding sub-section of this section.

(3) If any person who is required by this section or by any regulation made thereunder to furnish any information to the Minister,—

( a ) fails or refuses to furnish such information, or

( b ) knowingly furnishes any such information which is false or misleading in a material particular, or

( c ) otherwise makes default in complying with the provisions of this section or of any regulation made thereunder,

he shall be guilty of an offence under this section, and shall be liable on summary conviction thereof to a fine not exceeding ten pounds and, in the case of a continuing offence, a further fine not exceeding ten pounds for every day during which such offence is continued.

1940 31 28

Grant of State mining permissions. 28.—(1) Where—

( a ) any substances to which this section applies are comprised in a deposit of State minerals, and

( b ) any person desires to obtain permission to work any one or more of such substances in small quantities, and

( c ) such person satisfies the Minister that, on account of the small value or quantity of such substances which he desires to work, or the limited period for which he desires to work them, or for any other reason, the permission required is of trifling importance and will not materially affect the said deposit of State minerals, the Minister may, if he so thinks fit, on the application of such person in accordance with this section, grant to such person a right (in this Act referred to as a State mining permission) to work such substances in small quantities.

(2) Every State mining permission granted under this section shall be in writing and shall operate and be expressed to confer on the person to whom it is granted a right to work such of the substances to which this section applies as are therein specified and to do anything incidental to the working of such substances, but subject to such restrictions as to quantity of minerals to be worked and as to duration of working and to such other terms and conditions as may be similarly specified.

(3) A State mining permission may either (as the Minister, after consultation with the Minister for Finance, shall think fit) be made free of charge or be made subject to the payment by the person to whom it is granted of such moneys, whether by way of fine, or other preliminary payment or by way of rent (whether dead rent or royalty rent) or all or any of those ways as the Minister, after such consultation as aforesaid, shall think proper.

(4) A State mining permission shall not operate to confer on the grantee thereof an exclusive mining right in respect of the minerals to which such permission relates.

(5) This section applies to all scheduled minerals and to all mineral compounds and mineral substances, and, in this section, the expression "substance to which this section applies" shall be construed accordingly.

1940 31 29

Saving in respect of State lands. 29.—The Minister shall not grant a State mining lease or a State mining permission in respect of minerals which lie on or under land vested in or in the occupation of any other Minister of State, save after consultation with such Minister.

1940 31 30

Right of Minister to work and dispose of State minerals. 30.—(1) It shall be lawful for the Minister, with the consent of the Minister for Finance, at any time, subject to the terms of any lease, licence, or permission granted by him under this Act, to work State minerals, wherever they are situate, and to sell or otherwise dispose of the minerals obtained by such working.

(2) Whenever the Minister sells or disposes of minerals under this section, the proceeds of such sale or disposal shall be paid into or disposed of for the benefit of the Exchequer in such manner as the Minister for Finance shall direct.

1940 31 31

Right of entry and user of land containing State minerals. 31.—(1) Where there are State minerals lying on or under any land, it shall be lawful for the Minister, at any time, subject to the terms of any lease, licence, or permission granted by him under this Act, to enter on and use such land in such manner as may be reasonably necessary for the purpose of working such minerals or for any purpose incidental thereto.

(2) Where State minerals are comprised in any State mining lease or State mining permission, the lessee of such lease or the holder of such permission (as the case may be) may, during the currency of such lease or permission, enter on the land on or under which such minerals lie and use such land in such manner as may be reasonably necessary for the working of such minerals or for any purpose incidental thereto.

(3) Whenever damage to the surface of any land is caused, directly or indirectly, either—  
( a ) by working or doing anything incidental to the working of State minerals, or

( b ) by exercising a right of entry and user of land conferred by this section, the person causing such damage, whether he is the Minister, the lessee of a State mining lease, or the holder of a State mining permission, shall be liable to pay compensation (in this Act referred to as compensation for damage under Part IV) for such damage.

(4) The amount of compensation for damage under Part IV shall, in default of agreement, be determined in accordance with the provisions of Part VII of this Act.

1940 31 32

Fencing of abandoned State minerals. 32.—(1) Where the working of any State minerals has been abandoned or discontinued, whether before or after the passing of this Act, the Minister may cause the top or entrance of every shaft or outlet used in connection with such working to be kept surrounded by a structure of a permanent character sufficient to prevent accidents, and may enter on any land for the purpose of so doing.

(2) The Minister may authorise any person in writing to exercise for and on behalf of the Minister the powers conferred by the foregoing sub-section of this section on the Minister, and, whenever the Minister so authorises any person, such person (in this section referred to as an agent of the Minister) may in the name and for and on behalf of the Minister exercise such powers.

(3) If any person obstructs or interferes with an agent of the Minister in exercise of the powers conferred on such agent by virtue of the foregoing provisions of this section, such person shall be guilty of an offence under this section and shall be liable on summary conviction thereof to a fine not exceeding five pounds.

(4) No compensation shall be payable in respect or in consequence of the exercise of the powers conferred by or under this section on the Minister or an agent of the Minister.

(5) Nothing in this section contained shall exempt any person from any liability under any other Act or otherwise.

1940 31 33

Establishment of the Mining Board. 33.—(1) There shall be established a board to be known as the Mining Board (in this Act referred to as the Board) consisting of a chairman and two ordinary members to fulfil the functions assigned to it by this Act.

(2) The chairman of the Board shall be a practising barrister of at least ten years standing or a practising solicitor of like standing and one of the ordinary members shall be a person who is a member of the panel of official arbitrators appointed under the Acquisition of Land (Assessment of Compensation) Act, 1919, as amended by the Acquisition of Land (Reference Committee) Act, 1925 (No. 22 of 1925), and the other ordinary member shall be an officer of the Minister.

(3) Every member of the Board shall be appointed by the Minister for such period as he thinks fit and may be removed from office by the Minister and may resign his office at any time.

(4) There may be paid out of moneys provided by the Oireachtas to any member of the Board such fees or other remuneration and such expenses as the Minister for Finance may determine.

(5) If any member of the Board is for any reason temporarily unable to attend the sittings of the Board the Minister may appoint another person to act temporarily during such inability of such member as a member of the Board, but no person shall be appointed to act as a member of the Board under this sub-section unless he possesses the qualifications required by sub-section (2) of this section to be possessed by the member of the Board in the place of whom such person is so temporarily appointed.

1940 31 34

Regulations for proceedings before Board. 34.—The Minister may by order make regulations in relation to all or any of the following matters, that is to say:—

- ( 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 shall be given;
- ( c ) the admission or exclusion of the public to or from sittings of the Board;
- ( d ) such other matters in relation to the practice and procedure of the Board as the Minister may consider necessary or expedient for the proper conduct of the business of the Board.

1940 31 35

Powers of Board. 35.—(1) The Board shall have all such powers, rights, and privileges for enforcing the attendance of witnesses and examining them on oath (which any member of the Board is hereby authorised to administer) or otherwise and for compelling the production of documents as are vested in the High Court or a judge thereof in respect of the trial of an action, and a summons signed by any one or more members of the Board shall be equivalent to and have the like effect as a formal process issued by the High Court for enforcing the attendance of witnesses or compelling the production of documents, as the case may be.

- (2) If any person—
- ( a ) on being duly summoned as a witness before the Board makes default in attending, or
  - ( b ) being in attendance as a witness refuses to take an oath legally required by the Board to be taken, or to produce any document in his power or control legally required by the Board to be produced by him, or to answer any question to which the Board may legally require an answer, or

( c ) does any thing which would, if the Board were a Court of Justice having power to commit for contempt of Court, be contempt of such Court, the Board may certify the offence of that person under their hands to the High Court and that Court may, after such inquiry as it thinks proper to make, punish or take steps for the punishment of that person in like manner as if he had been guilty of contempt of the said Court.

(3) A witness before the Board shall be entitled to the same immunities and privileges as if he were a witness before the High Court.

1940 31 36

Entry on land by the Board or officers thereof. 36.—(1) Any member of the Board and any person authorised in that behalf by the Board may for any purpose connected with the performance of the functions imposed by this Act on the Board enter on any land and make such investigation thereon as the Board may consider necessary for the purpose aforesaid.

(2) If any person obstructs or impedes any member of the Board or any person authorised by the Board in the exercise of the powers conferred on such member or person by this section, such person shall be guilty of an offence under this section and shall be liable on summary conviction thereof to a fine not exceeding ten pounds.

1940 31 37

Staff of the Board. 37.—(1) The Minister shall appoint a secretary of the Board and may, subject to the consent of the Minister for Finance as to the number, appoint such other officers and servants of the Board as he may consider necessary for assisting the Board in the performance of its functions.

(2) The secretary and other officers and the servants of the Board shall hold office upon such terms and be remunerated at such rates and in such manner as the Minister for Finance shall sanction.

1940 31 38

Applications for unworked minerals licences. 38.—(1) Any person who desires to obtain under this Act a licence (in this Act referred to as an unworked minerals licence) to work any particular minerals may apply in writing to the Minister for the grant to him of an unworked minerals licence in respect of the said minerals.

(2) Every application under this section for an unworked minerals licence shall be made in the prescribed form and manner and shall be verified in the prescribed manner and shall contain the particulars required by the said prescribed form, including a statement of the facts relied on by the applicant in support of his application.

(3) Within the prescribed time after making an application under this section, the applicant shall serve in the prescribed manner a copy of the said application on every of the prescribed persons.

(4) Any person on whom a copy of an application under this section is served in pursuance of the next preceding sub-section of this section may, if he so thinks fit, make to the Minister at any time within such period, not being less than three weeks after the service of such copy on him, as may be prescribed, representations in respect of the said application.

1940 31 39

Restrictions on the grant of unworked minerals licences. 39.—(1) An unworked minerals licence shall not be granted unless all the following conditions (in this Act referred to as statutory conditions) are fulfilled, that is to say:—

( a ) the minerals in respect of which such licence is applied for are not being worked or are not being worked efficiently, and

( b ) the applicant for such licence desires to work the said minerals and possesses the technical and financial resources necessary for the proper and efficient working of the said minerals, and

( c ) it is not reasonably practicable for the said applicant to obtain by private arrangement a right to work the said minerals.

(2) An unworked minerals licence shall not be granted in respect of State minerals unless they are comprised in a State mining lease, and, where such licence is granted in respect of State minerals so comprised, the duration of such licence shall not exceed the unexpired residue of the term granted by such lease.

1940 31 40

Applications for ancillary rights licences. 40.—(1) Any person who desires to obtain under this Act a licence (in this Act referred to as an ancillary rights licence) to exercise an ancillary right in relation to the working of minerals which he is entitled (otherwise than under a State mining lease or a State acquired minerals licence) to work may apply in writing to the Minister for the grant to him of an ancillary rights licence in respect of the working of the said minerals.

(2) Every application under this section for an ancillary rights licence shall be made in the prescribed form and manner and shall be verified in the prescribed manner and shall contain the particulars required by the said prescribed form, including a statement of the facts relied on by the applicant in support of his application.

(3) Within the prescribed time after making an application under this section, the applicant shall serve in the prescribed manner a copy of the said application on every of the prescribed persons.

(4) Any person on whom a copy of an application under this section is served in pursuance of the next preceding sub-section of this section may, if he so thinks fit, make to the Minister

at any time within such period, not being less than three weeks after the service of such copy on him, as may be prescribed, representations in respect of the said application.

1940 31 41

Restrictions on the grant of ancillary rights licences. 41.—(1) An ancillary rights licence shall not be granted unless all the following conditions (in this Act referred to as statutory conditions) are fulfilled, that is to say:—

- ( a ) the applicant for such licence is entitled to work the minerals in relation to the working of which such licence is applied for, and
- ( b ) the ancillary right in respect of which such licence is applied for is necessary for the proper and efficient working of the said minerals by the said applicant, and
- ( c ) it is not reasonably practicable for the said applicant to obtain by private arrangement the said ancillary right.

(2) An ancillary rights licence shall not be granted in relation to the working of State minerals unless they are comprised in a State mining lease, and, where such licence is granted in relation to the working of State minerals so comprised, the duration of such licence shall not exceed the unexpired residue of the term granted by such lease.

1940 31 42

Applications for preservation of support orders. 42.—(1) Any person having an interest in land who, for the purpose of securing sufficient support for a building erected or intended to be erected on such land, desires to obtain under this Act an order (in this Act referred to as a preservation of support order) imposing restrictions on mining under such land or land adjacent thereto may apply in writing to the Minister for a preservation of support order in relation to such land and land adjacent thereto.

(2) Every application under this section for a preservation of support order shall be made in the prescribed form and manner and shall be verified in the prescribed manner and shall contain the particulars required by the said prescribed form, including a statement of the facts relied on by the applicant in support of his application.

(3) Within the prescribed time after making an application under this section, the applicant shall serve a copy of the said application on every of the prescribed persons.

(4) Any person on whom a copy of an application under this section is served in pursuance of the next preceding sub-section of this section may, if he so thinks fit, make to the Minister at any time within such period not being less than three weeks after the service of such copy on him, as may be prescribed, representations in respect of the said application.

(5) In this Part of this Act the word "building" includes every kind of artificial erection, construction, or work on land whether wholly above the surface or partly above and partly below the surface or wholly below the surface and also includes any natural object which is a national monument within the meaning of the National Monuments Act, 1930 (No. 2 of 1930).

(6) In the case of a building which is a national monument within the meaning of the National Monuments Act 1930, and is, by virtue of that Act, under the guardianship of the Commissioners of Public Works in Ireland or of a local authority within the meaning aforesaid, the said Commissioners or such local authority, as the case may be, shall for the purposes of this section be deemed to be a person having an interest in the land on or in which such building is.

1940 31 43

Restrictions on the grant of preservation of support orders. 43.—(1) A preservation of support order shall not be made unless all the following conditions (in this Act referred to as statutory conditions) are fulfilled, that is to say:—

- ( a ) mining operations which will prejudice the stability of the building in relation to which the order is applied for are in progress or are reasonably apprehended under the land on or in which such building is situate or under land adjacent to that land, and
- ( b ) the applicant for such order satisfies the Attorney-General that he is not entitled in law to such right of support in respect of such building as would enable him to obtain in a court of law relief in respect of the said mining operations, and
- ( c ) it is not reasonably practicable for the said applicant to obtain by private arrangement a right to such support as would effectually preserve the stability of such building.

(2) A preservation of support order may in a proper case be made in respect of the working of State minerals.

1940 31 44

Preliminary consideration of applications and references to Board. 44.—Whenever the Minister has received an application for an unworked minerals licence, an ancillary rights licence, or a preservation of support order, the Minister shall at the expiration of the prescribed time for the making of representations by persons on whom a copy of such applications has been served in pursuance of this Part of this Act, do the following things or such of them as shall be applicable, that is to say:—

- ( a ) he shall consider such application;
- ( b ) he shall also consider all (if any) such representations as aforesaid as have been made within the said prescribed time;
- ( c ) if the Minister is not satisfied that a prima facie case has been made for the grant of the licence or order applied for, he shall refuse the application;
- ( d ) if the Minister does not refuse the application in pursuance of the next preceding paragraph of this sub-section, he shall refer the application to the Board.

1940 31 45

Fees on applications. 45.—Every applicant for an unworked minerals licence, an ancillary rights licence, or a preservation of support order shall pay to the Minister such fee as shall be prescribed by the Minister, with the consent of the Minister for Finance, and the payment of such fee shall be a condition precedent to the consideration of such application.

1940 31 46

Inquiry and report by Board in relation to applications. 46.—(1) Whenever an application for an unworked minerals licence, an ancillary rights licence, or a preservation of support order is referred to the Board by the Minister, the Board shall consider such application and shall for that purpose hold an inquiry at which the following persons shall be entitled to be heard, either in person or by solicitor or counsel, and to adduce evidence, that is to say:—

- ( a ) the applicant;
- ( b ) the Minister;
- ( c ) any person claiming to have an estate or interest in any minerals which are the subject of such application;
- ( d ) any other person in respect of whom it appears to the Board that he would be substantially affected by the grant of the application.

(2) When the Board has considered in accordance with the foregoing sub-section of this section any such application as is mentioned in that sub-section, the Board shall report thereon to the Minister and shall in such report deal with all relevant aspects of the matter and in particular whether the relevant statutory conditions have or have not been fulfilled and, unless the Board reports against the granting of the application, the person or persons to whom compensation should be paid by the applicant, and the conditions which should be specified in the licence or order.

(3) Where two or more separate applications by different persons for unworked minerals licences in respect of the same minerals are referred to the Board, the Board may, if they so think proper, consider all such applications together and hold a single inquiry and make a single report in respect of all such applications and may also, if they so think proper, report in favour of the issue of unworked mineral licences to different such applicants in respect of different parts of such minerals.

1940 31 47

Grant of applications by Minister. 47.—(1) When the Minister has received the report of the Board on an application for an unworked minerals licence, an ancillary rights licence or a preservation of support order he shall, as he shall think proper having regard to such report and all the circumstances of the case and all (if any) matters to which he is required by this Act to have regard, either refuse such application or grant such application and issue the licence or make the order which is the subject of such application.

(2) Notwithstanding anything contained in the foregoing sub-section of this section, the Minister shall not grant any such application as is mentioned in that sub-section unless he is satisfied that the relevant statutory conditions have been fulfilled.

(3) In the case of an application for an ancillary rights licence, where the right to which the application relates is a right to let down the surface of any land and the superincumbent or adjacent strata up to such surface, and also in the case of any application for a preservation of support order, the Minister when determining whether such application should or should not be granted,—

( a ) if there are buildings on or under the land to which such application relates or if buildings are bona fide intended to be erected on such land, shall have regard to the relative values of such buildings and of the minerals which would be required to be retained under such land to support such buildings and to the relative importance in the public interest of the preservation of support for such buildings and the working of such minerals, or

( b ) if there are no buildings on or in such land or bona fide intended to be erected thereon or therein, shall have regard to the extent to which the actual or intended use of the surface of such land will be prejudiced by the subsidence of that surface and to the relative importance in the public interest of the continuance of such use and of the working of such minerals.

1940 31 48

Form and operation of unworked minerals licences. 48.—(1) An unworked minerals licence shall be expressed and shall operate to confer on the licensee the right to work the minerals specified in such licence during the period and subject to the conditions similarly specified and subject to the payment to such person as shall be specified in such licence of such compensation as shall be fixed in accordance with this Act.

(2) It shall be lawful for the Minister to attach to an unworked minerals licence all such (if any) conditions as he shall think proper and shall specify in such licence.

1940 31 49

Form and operation of ancillary rights licences. 49.—(1) An ancillary rights licence shall be expressed and shall operate to confer on the licensee the ancillary right specified in such licence during the period, for the purpose, and subject to the conditions specified in such licence and subject to the payment to such person as shall be specified in such licence of such compensation as shall be fixed in accordance with this Act.

(2) It shall be lawful for the Minister to attach to an ancillary rights licence all such (if any) conditions as he shall think proper and shall specify in such licence.

1940 31 50

Form and operation of preservation of support orders. 50.—(1) A preservation of support order shall be expressed and shall operate to impose such restrictions as shall be specified in such order on the working of such minerals under such land as shall be similarly specified and to confer on such persons as shall be similarly specified a legal right, enforceable in any court of competent jurisdiction, to enforce the restrictions so imposed.

(2) It shall be lawful for the Minister to attach to a preservation of support order all such (if any) conditions as he shall think proper and shall specify in such order.

1940 31 51

Restricted effect of grant of licences and orders. 51.—(1) Neither an unworked minerals licence nor an ancillary rights licence shall operate—

( a ) to confer on the licensee thereunder any greater or other power than would have been conferred on him by such licence if it had been granted by a person legally entitled (otherwise than under this Act) to grant the same, or

( b ) to relieve such licensee of any obligation or liability to which he would have been subject if such licence had been granted by any such person as aforesaid.

(2) A preservation of support order shall not operate—

( a ) to confer on the person (in this sub-section referred to as the grantee) to whom is granted the legal right to enforce the restrictions thereby imposed any greater or other power than he would have been entitled to exercise if the right to enforce such restrictions had been conferred on him by a person legally entitled (otherwise than under this Act) to grant the same, or

( b ) to relieve the grantee of any obligation or liability to which he would have been subject if the right to enforce such restrictions had been conferred on him by such person so legally entitled as aforesaid.

1940 31 52

Grant of licences and orders to persons in a fiduciary capacity. 52.—(1) An unworked minerals licence or an ancillary rights licence may be expressed to be issued to the licensee thereunder as tenant for life or person having the powers of a tenant for life under a settlement or as personal representative of a deceased person or as trustee or other person in a fiduciary capacity, and where any such licence is so expressed the benefit of such licence shall be deemed to be held by the licensee thereunder in such fiduciary capacity and as part of the property vested in him in that capacity.

(2) A preservation of support order may provide that the rights thereby conferred on any particular person are conferred on him as tenant for life or person having the powers of a tenant for life under a settlement or as personal representative of a deceased person or as trustee or other person in a fiduciary capacity and, where any such order so provides, the rights thereby conferred on such person shall be deemed to be vested in him in such fiduciary capacity as part of the property vested in him in that capacity.

1940 31 53

Compensation under Part VI. 53.—(1) Every licensee under an unworked minerals licence or an ancillary rights licence shall pay compensation to such person or persons as shall be specified in such licence.

(2) Whenever a preservation of support order is made by the Minister, the person on whose application such order is made shall pay compensation to such person or persons as shall be specified in such order.

(3) Compensation payable under this section (in this Act referred to as compensation under Part VI) shall, in default of agreement between the parties concerned, be fixed in accordance with the provisions of Part VII of this Act.

(4) The Minister may attach to an unworked minerals licence, an ancillary rights licence, or a preservation of support order a condition that such licence or order shall not come into operation until the compensation payable in respect thereof under this section has been fixed and, if or in so far as such compensation consists of a lump sum, has been paid or security to the satisfaction of the Minister has been given for the payment thereof.

1940 31 54

Expenses of the Board in relation to inquiries. 54.—(1) Where the Minister refers to the Board an application for an unworked minerals licence, an ancillary rights licence, or a preservation of support order, the Minister, if he so thinks proper, may and if the Minister for Finance so directs, shall, by order made at the time of such reference or at any time thereafter, require the applicant to pay to the Minister the expenses incurred or to be incurred by the Board in or about the consideration of such application.

(2) Where the Minister makes or has made an order under the foregoing sub-section of this section, he shall, after consultation with the Minister for Finance, by the same or a subsequent order certify the amount of the expenses payable under the said order made under the foregoing sub-section, and, where the Minister so certifies the amount of such expenses, such certificate shall be conclusive evidence of the amount of such expenses.

(3) All expenses payable by any person under an order made by the Minister under this section shall be recoverable by the Minister from such person as a simple contract debt in any court of competent jurisdiction and when paid to or recovered by the Minister shall be paid into or disposed of for the benefit of the Exchequer by the Minister in such manner as the Minister for Finance shall direct.

1940 31 55

Costs of the parties at inquiries. 55.—(1) The costs of an inquiry held by the Board under this Part of this Act incurred by any party appearing at such inquiry shall be borne by that party, unless the Board consider that justice requires that those costs or any part thereof should be paid by some other party appearing at such inquiry, in which event they may include a recommendation to that effect in their report to the Minister.

(2) Every recommendation made by the Board under this section shall specify the amount (in this section referred to as the specified amount) of costs which they consider should be paid, and the party whom they consider entitled to such costs and the party whom they consider liable to pay the same.

(3) Whenever the Board make a recommendation under this section, the Minister shall consider such recommendation, and may, if he so thinks fit, by order direct that such sum of costs (not exceeding the specified amount), as he thinks proper shall be paid to the party

whom the Board consider entitled to such costs by the party whom they consider liable to pay the same.

(4) A sum directed to be paid by order of the Minister under the next preceding sub-section of this section shall, in default of payment, be recoverable as a simple contract debt in any court of competent jurisdiction.

(5) For the purposes of this section, the costs of an inquiry include the fees, charges and expenses of and incidental to such inquiry.

1940 31 56

Furnishing of information to Minister by licensees. 56.—(1) The Minister may, whenever he so thinks proper, require in writing any licensee under an unworked minerals licence to furnish to him such information in respect of the minerals to which such licence relates or in respect of the working of such minerals as the Minister shall require and shall specify in such requisition.

(2) Every person who is required by the Minister under the foregoing sub-section of this section to furnish to the Minister any information shall so furnish such information in the prescribed form and manner not later than twenty-eight days after the receipt by him of such requisition, and if any such person fails or refuses so to furnish such information or furnishes any such information which is to his knowledge false or misleading in a material respect, he shall be guilty of an offence under this section and shall be liable on summary conviction thereof to a fine not exceeding ten pounds together with, in the case of a continuing offence, a further fine not exceeding one pound for every day on which the offence is continued.

1940 31 57

Definitions for purposes of Part VII. 57.—In this Part of this Act—

the word "compensation", when used without qualification, includes all kinds of compensation payable under this Act;

the expression "compensation in respect of land" includes compensation for damage under Part II, compensation for damage under Part III, compensation for damage under Part IV, and compensation for mining facilities, or any such compensation, and references to "land" include references to ancillary rights, unless the context otherwise requires.

1940 31 58

Determination of the amount of compensation. 58.—(1) The amount of compensation shall, in default of agreement, be determined by the Board in accordance with the provisions of this Part of this Act.

(2) Where compensation is payable by the Minister under this Act, the Minister shall not enter into any agreement fixing the amount thereof without the consent of the Minister for Finance.

1940 31 59

Applications for compensation in respect of land. 59.—(1) Where compensation in respect of land is payable, the following persons, namely—

- ( a ) the Minister,
- ( b ) if the land which is the subject of such compensation is subject to a land purchase annuity, the Land Commission,
- ( c ) any person claiming to be entitled to such compensation, may apply to the Board to determine the amount of such compensation.

(2) Subject to the provisions of this Part of this Act, the provisions of the Acquisition of Land (Assessment of Compensation) Act, 1919, shall apply to the determination of the amount of compensation in respect of land.

1940 31 60

Agreed compensation in respect of land subject to land purchase annuity. 60.—Where the amount of compensation in respect of land is fixed by agreement, and the land in respect of which such compensation is payable is subject to a land purchase annuity, the following provisions shall have effect, that is to say:—

- ( a ) the Land Commission shall be a party to such agreement;
- ( b ) such compensation or so much thereof as is payable under such agreement to the Land Commission shall, when received by them, be applied by them in accordance with the following provisions, that is to say:—
  - (i) in case there are any arrears of such annuity and the amount so payable to the Land Commission (in this paragraph referred to as the said amount) does not exceed such arrears, in or towards discharge of such arrears,
  - (ii) in case there are any arrears of such annuity and the said amount exceeds such arrears—
    - (I) so much of the said amount as is equal to such arrears shall be applied in discharge of such arrears, and
    - (II) the balance on the said amount shall be applied in or towards redemption of such annuity,
  - (iii) in case there are no arrears of such annuity, in or towards redemption of such annuity;
- ( c ) if the Land Commission is not a party to such agreement, the payment of the amount of the compensation fixed thereby shall not operate as a good discharge to the person paying the same of his liability to pay such compensation.

1940 31 61

Applications for compensation for State acquired minerals. 61.—(1) As soon as may be after the expiration of a period of two months or such later period (not exceeding altogether twelve

months) as the Minister may in any particular case allow from the date of publication in the Iris Oifigiúil of any minerals acquisition order, the Minister shall, in default of agreement, apply to the Board to determine the amount of compensation payable by him for the State acquired minerals acquired by such order.

(2) Every application to the Board by the Minister in respect of compensation for State acquired minerals under this section shall be accompanied by the following documents, that is to say:—

- ( a ) sufficient copies of the relevant minerals acquisition order;
- ( b ) a statement containing particulars of any claims for such compensation lodged with the Minister under Part III of this Act;
- ( c ) if any correspondence has occurred between the Minister and any claimant to such compensation in regard to the amount thereof, copies of such correspondence.

(3) Every application to determine the amount of compensation for State acquired minerals shall be heard by the Board sitting in public and, unless the Board otherwise directs, not more than one expert witness shall be allowed on behalf of each party appearing before the Board.

1940 31 62

Applications for compensation under Part VI. 62.—Where compensation under Part VI is payable, any of the following persons, that is to say:—

- ( a ) any person claiming to be entitled to such compensation, or
- ( b ) any person by whom such compensation is payable, or
- ( c ) the Minister,

may apply to the Board to determine the amount of such compensation.

1940 31 63

Fees on applications for compensation. 63.—Whenever an application is made to the Board by any person, other than the Minister or the Land Commission, to determine compensation under this Act, such person shall pay to the Board in respect of such application, such fee as the Minister, with the sanction of the Minister for Finance, shall prescribe.

1940 31 64

Right of audience on hearings before the Board. 64.—On the hearing of any application for compensation, the following persons, and no others, shall be entitled to appear, be heard and adduce evidence before the Board, that is to say:—

- ( a ) the Minister;
- ( b ) any person claiming to be entitled to such compensation;

( c ) any person claiming to have an estate or interest in the minerals or land in respect of which such compensation is claimed;

( d ) where compensation in respect of land is claimed any person claiming an interest in such land;

( e ) where compensation in respect of land is claimed and such land is subject to a land purchase annuity, the Land Commission;

( f ) any person liable under the provisions of this Act to pay such compensation.

1940 31 65

Awards of compensation. 65.—(1) The Board shall inquire into every application under this Part of this Act and shall, after such inquiry, make its award thereon.

(2) Every award (in this Part of this Act referred to as an award) made by the Board shall contain the following matters—

( a ) a statement of the nature and amount of the compensation to be paid (if any);

( b ) the name of the person by whom payment is to be made;

( c ) the name of the person to whom payment is to be made;

( d ) if the payment is to be made to two or more persons, the allocation of such amount amongst such persons;

( e ) if the compensation, or any part thereof, is assessed in respect of any land for the time being subject to a land purchase annuity, the matters required by the next following section to be included in such award.

(3) Every award shall be signed by all the members of the Board.

(4) Every award shall be conclusive evidence of all matters purported to be certified therein.

(5) Any sum directed by an award to be payable by one person to another shall be a debt payable by such first mentioned person to such other person and shall be recoverable as a simple contract debt.

(6) A certificate, purporting to be certified by the secretary of the Board, which contains a statement of the following matters, namely:—

( a ) the fact that the Board has made an award,

( b ) the nature and amount of the compensation payable under such award,

( c ) the person to whom such compensation is payable,

( d ) the person by whom such 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 he was in fact the secretary of the Board.

1940 31 66

Awards of compensation in respect of land subject to land purchase annuity. 66.—(1) Where compensation is assessed by the Board in respect of land which is for the time being subject to a land purchase annuity, the Land Commission may, if they so think fit, request the Board—

( a ) if the amount of such compensation is equal to or less than the redemption price of such annuity and the arrears (if any) of such annuity, to order by its award payment to the Land Commission of the whole or such part of the compensation as the Land Commission request, or

( b ) if the amount of such compensation exceeds the redemption price of such annuity and the arrears (if any) of such annuity to order by its award payment to the Land Commission of such sum, not exceeding the amount of the said redemption price and arrears (if any), as the Land Commission request, and the Board shall comply with such request.

(2) Where any award in relation to land for the time being subject to a land purchase annuity provides for the payment of any moneys to the Land Commission, such moneys shall upon receipt thereof be applied by the Land Commission in accordance with the following provisions, that is to say:—

( a ) in case there are any arrears of such annuity and the amount of such moneys does not exceed such arrears, in or towards discharge of such arrears,

( b ) in case there are any arrears of such annuity and the amount of such moneys exceeds such arrears—

(i) so much of such moneys as is equal to such arrears shall be applied in discharge of such arrears, and

(ii) the balance of such moneys shall be applied in or towards redemption of such annuity,

( c ) in case there are no arrears of such annuity, in or towards redemption of such annuity.

1940 31 67

Basis for assessment of compensation in respect of minerals and ancillary rights. 67.—(1) Where compensation for State acquired minerals is payable in respect of State acquired minerals, or compensation for mining facilities is payable in respect of ancillary rights, the following provisions shall have effect for the purpose of determining the amount of such compensation, that is to say:—

( a ) the Board shall assess such compensation on the basis of what would be fair and reasonable as the consideration for a bargain between a willing grantor and a willing grantee;

( b ) for the purpose of the foregoing paragraph, the Board shall have regard to the conditions subject to which the State acquired minerals or ancillary rights, the subject of such compensation, were held prior to being acquired by the State under the relevant minerals acquisition order or mining facilities acquisition order (as the case may be), and also to the conditions under which and the period for which they were so acquired under such orders.

(2) Where compensation under Part VI is payable in respect of any minerals granted under an unworked minerals licence or in respect of any ancillary right granted under an ancillary rights licence, the following provisions shall have effect for the purpose of determining the amount of such compensation, that is to say:—

( a ) the Board shall assess such compensation on the basis of what would be fair and reasonable as the consideration for a bargain between a willing grantor and a willing grantee; ( b ) for the purpose of the foregoing paragraph, the Board shall have regard to the conditions subject to which such minerals or ancillary rights were held prior to being granted under such unworked minerals licence or ancillary rights licence (as the case may be) and also to the conditions (if any) under which and the period for which they were so granted.

(3) For the purpose of the hypothetical bargain referred to in the two preceding sub-sections of this section, the grantor and grantee therein referred to shall be deemed to have had, at the time of their bargain, full notice of all such information bearing on the nature, value, extent and situation of the minerals or ancillary rights, the subject of the compensation referred to in those sub-sections, as is available for public inspection in the office of the Geological Survey, Dublin.

1940 31 68

Form of compensation for State acquired minerals and for unworked minerals licences. 68.— In awarding compensation for State acquired minerals or compensation under Part VI in respect of the grant of an unworked minerals licence, the Board shall award such compensation in the form of a royalty rent, unless such State acquired minerals or the minerals the subject of such unworked minerals licence—

( a ) were, at the date on which they were respectively acquired or granted (as the case may be), held by the owners thereof subject to a dead rent or other fixed annual payment, or

( b ) were purchased by the owners thereof for valuable consideration within a period of twenty years prior to the date of the passing of this Act,

and in either such case, the Board may, in its discretion, award such compensation either in the form of a lump sum payment, or a dead rent, or a royalty rent, or in any or all of such forms.

1940 31 69

Compensation in the case of unascertained persons. 69.—(1) Whenever the Board is of opinion that compensation under Part VI is payable to any person, and such person cannot be found or ascertained, the Board may, in its discretion, do any or all of the following things, in such order as it thinks fit, that is to say:—

( a ) order that such measures as it may direct be taken to find or ascertain such person;

( b ) direct that the amount of such compensation be paid into the High Court in such manner as may be provided by rules of court;

( c ) direct that if such person is not found or ascertained within such period as may be specified, all claims to such compensation shall be extinguished after the expiration of such period.

(2) Sections 69 to 80 of the Land Clauses Consolidation Act 1845, shall apply to any such compensation as is mentioned in paragraph (b) of the foregoing sub-section, subject to any modifications and adaptations which may be made in the said sections by the rules of court made under that paragraph.

(3) Whenever the Board directs under paragraph (c) of sub-section (1) of this section that all claims to such compensation as is mentioned in that sub-section shall be extinguished after the expiration of a specified period, all such claims shall be so extinguished accordingly.

1940 31 70

Finality of Board's decisions on questions of fact. 70.—The decision of the Board on any question of fact arising in the course of proceedings under this Part of this Act shall be final, conclusive and unappealable, and such decision shall be binding on all parties to such proceedings and their privies, as if it were a judgement in personam.

1940 31 71

Cases stated on questions of law. 71.—(1) The Board may, if it so thinks fit, of its own motion or on the application of any party to proceedings under this Part of this Act, and at any stage of such proceedings, refer any question of law arising in the course of such proceedings by way of case stated for the determination of the High Court, and may adjourn the pronouncement of its award pending such determination.

(2) In lieu of stating a case in the course of proceedings under the foregoing sub-section, the Board may, if a question of law is involved therein, state its award or any part thereof in the form of a special case for the determination of the High Court.

(3) Any party to proceedings before the Board who is aggrieved by the refusal of the Board to state a case on a question of law under this section may apply, either before or after the Board has made its award, 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 such question, and on such application the High Court may make such order, and, in that event, the Board shall comply with the terms thereof, notwithstanding that the Board has already given its award.

(4) The decision of the High Court upon any case stated under this section shall be final and conclusive and shall not be subject to an appeal to the Supreme Court.

(5) The costs of and incidental to any reference to the High Court under this section shall be in the discretion of that Court.

1940 31 72

Deductions from compensation of debts due to the State. 72.—Where the amount of any compensation payable under this Act by the Minister to any person is determined by an award, and the Minister is notified before payment of such compensation, that a debt is due and owing by that person to any Minister of State or to the Central Fund, the Minister may deduct the amount of the debt from such compensation, and may direct that the amount so deducted be (as the case may require) either paid to the appropriate Minister of State or paid into or disposed of for the benefit of the Exchequer in such manner as the Minister for Finance may direct.

1940 31 73

Awards of costs. 73.—(1) The costs of the parties in any proceedings under this Part of this Act (other than the costs of and incidental to a reference to the High Court) shall be in the discretion of the Board, and the Board may, by its award, direct to and by whom and in what manner those costs or any part thereof shall be paid, and the Board may in any case disallow the costs of counsel.

(2) The Board may themselves tax the amount of costs ordered to be paid or may direct in what manner they are to be taxed.

(3) Where the Board orders an applicant for compensation under this Act to pay the costs or part of the costs of the person by whom such compensation is payable, such person may deduct the amount of such costs from the amount of such compensation.

(4) For the purpose of this section costs include any fees, charges and expenses of the award.

1940 31 74

Prohibition on working minerals without lawful authority. 74.—(1) Every person who, without lawful authority, works or attempts to work, or does anything for the purpose of working any minerals shall be guilty of an offence under this section and shall be liable on summary conviction thereof to a fine not exceeding, one hundred pounds together with, in the case of a continuing offence, a further fine not exceeding one hundred pounds for every day on which the offence is continued, or in the discretion of the Court, to imprisonment for a term not exceeding six months or to both such fine and such imprisonment.

(2) In a prosecution for an offence under this section—

( a ) the District Court shall have jurisdiction to try such offence notwithstanding that a question of title is raised, and

( b ) the onus of proving that he had lawful authority shall rest on the defendant.

1940 31 75

Minister to be given notice of shafts and boreholes. 75.—(1) Where a person proposes to sink a shaft or borehole intended to reach a depth of more than twenty feet below the surface, he shall, before commencing such sinking, give to the Minister two weeks' notice in writing of his intention so to do.

(2) Every person who sinks a shaft or borehole intended to reach a depth of more than twenty feet below the surface shall keep a journal thereof and shall retain for a period of not less than two months or such longer period as the Minister may direct such specimens of the strata passed through as may have been obtained in the course of the sinking thereof, either as cores or fragments.

(3) An inspector shall be entitled at all reasonable times to do all or any of the following things, that is to say:—

- ( a ) have free access to any such shaft, borehole or core;
- ( b ) to inspect and take copies of journals of such shafts or boreholes;
- ( c ) to inspect all specimens so obtained and kept;
- ( d ) to take representative samples of any such specimens or cores.

(4) If any person sinking any such shaft or borehole as aforesaid gives notice in writing to the Minister requesting him to treat as confidential any copies of journals or specimens of strata or cores taken by an inspector under the foregoing sub-section, the Minister shall not, unless he considers such request unreasonable, allow such copies or specimens to be shown to any person not being an officer of the Minister except with the consent of such first-mentioned person.

(5) If any person sinking any shaft or borehole—

- ( a ) fails to comply with the obligations imposed by this section, or
  - ( b ) obstructs or impedes an inspector in the exercise of any of the powers conferred on him by this section,
- such person shall be guilty of an offence under this section and shall be liable on summary conviction thereof to a fine not exceeding fifty pounds.

(6) In this and in the next following section, the word "inspector" mean a person appointed in writing (either generally or for a particular occasion) by the Minister to be an inspector for the purposes of those sections.

1940 31 76

Powers of Inspectors. 76.—(1) Every owner agent or manager of a mine shall allow any inspector to have free access at all reasonable times to all underground or other workings and shall produce the journal of the borings and supply to any inspector such information and such specimens of seams or strata sunk through or opened out at the mine as may be reasonably required of him.

(2) If any such owner, agent, or manager fails to comply with this section he shall be guilty of an offence under this section and shall be liable on summary conviction thereof to a fine not exceeding fifty pounds.

1940 31 77

Laying of half-yearly reports before the Oireachtas. 77.—As soon as may be after every 30th day of June and every 31st day of December, the Minister shall cause to be laid before each House of the Oireachtas a half-yearly report showing, in respect of the period of six months ending on such 30th day of June or such 31st day of December, all of the following matters, that is to say:—

( a ) particulars of all State mining leases, State mining permissions, prospecting licences, State acquired minerals licences, and unworked minerals licences made or granted by him under this Act and for the time being current;

( b ) the total amount of all moneys collected by the Minister, either by way of fine or lump sum payment or by way of rent, under or by virtue of any such lease, permission, or licence;

( c ) particulars of all minerals acquisition orders made under this Act and for the time being in force and particulars of all State acquired minerals acquired thereby;

( d ) any other matter relating to minerals or to the development and working of minerals which the Minister thinks proper to include in such report.

1940 31 78

Disposal of moneys received as consideration. 78.—All moneys received by the Minister (whether in the nature of a fine or lump sum, or in the nature of rent or other periodical payment) as consideration for any lease, licence, or permission granted by him under this Act, shall, as and when received, be paid into or disposed of for the benefit of the Exchequer in such manner as the Minister for Finance shall direct.

1940 31 79

Collection and disposal of fees. 79.—(1) All fees payable under this Act, whether to the Minister or the Board, shall be collected and taken in such manner as the Minister for Finance 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 Finance.

(2) The Public Offices Fees Act, 1879, shall not apply in respect of any fees payable under this Act.

1940 31 80

Regulations. 80.—(1) The Minister may make regulations in respect of any matter or thing referred to in this Act as prescribed or to be prescribed, but no such regulation shall be made in relation to the amount or collection of any fees without the consent of the Minister for Finance.

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

1940 31 81

Expenses. 81.—The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of moneys provided by the Oireachtas.

1940 31 82

Amendment of the Foreshore Act, 1933. 82.—The Foreshore Act, 1933 (No. 12 of 1933) shall be construed and have effect as if the word "minerals", where it occurs in sub-section (7) of section 2 and sub-section (1) of section 3 of that Act, included all minerals within the meaning of this Act other than scheduled minerals, mineral compounds, and mineral substances.

1940 31 83

Repeal of the Act of 1931. 83.—The Mines and Minerals Act, 1931 (No. 54 of 1931), is hereby repealed.

1940 31

## SCHEDULE

### LIST OF MINERALS.

Alum Shales. Fireclay. Nickel, Ores of.  
Anhydrite. Flint and Chert. Oil Shale.  
Antimony, Ores of. Fluorspar. Platinum, Ores of.  
Apatite. Ganister. Potash Mineral Salts.  
Arsenic, Ores of. Gem minerals. Quartz Rock.  
Asbestos minerals. Gold, Ores of. Radioactive Minerals.  
Ball Clay. Graphite. Refractory Clays.  
Barytes. Gypsum. Rock Phosphates.  
Bauxite. Iron, Ores of. Rock Salt.  
Beryl. Kaolin. Roofing Slate.  
Bismuth, Ores of. Laterite. Serpentinous Marble.  
Bitumens. Lead, Ores of. Silica Sand.  
Calcite. Lignite. Silver, Ores of.  
Chalk. Lithomarge. Strontium, Ores of.  
China Clay. Magnesium, Ores of. Sulphur, Ores of.  
Chromite. Magnesite. Talc and Steatite or  
Coal. Manganese, Ores of. Soapstone.  
Cobalt, Ores of. Marble. Tin, Ores of.  
Copper, Ores of. Mercury, Ores of. Titanium, Ores of  
Corundum. Mica. Tripoli.  
Cryolite. Mineral Oils. Tungsten, Ores of.  
Diatomaceous Earth. Mineral Pigments. Witherite.  
Dolomite and Dolo- Molybdenite. Zinc, Ores of.

mitic Limestone. Monazite.  
Felspar. Natural Gas.

Source: Irish Statute Book Database

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