



## FALKLAND ISLANDS

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### Mining Ordinance 2005

(ORDINANCE No. 10 OF 2005)

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## FALKLAND ISLANDS

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### Mining Ordinance 2005

AN ORDINANCE To make new provision in relation to the prospecting and exploration for and exploitation of minerals.

*[DATE OF COMMENCEMENT: 31ST AUGUST 2005]*

#### PART I INTRODUCTORY

##### **1 Short title and commencement**

This Ordinance may be cited as the Mining Ordinance 2005 and comes into force on such date as may be fixed by the Governor by notice published in the Gazette.

##### **2 Ordinance to bind Crown**

Subject to section 5(2), this Ordinance binds the Crown.

##### **3 Application of this Ordinance**

(1) This Ordinance-

(a) applies-

(i) to minerals belonging to the Crown in the Falkland Islands, including, subject to paragraph (b), minerals in or beneath the beds of rivers, lakes, ponds and pools of water in the Falkland Islands,

(ii) to mineral operations in relation to such minerals; but

(b) does not apply-

(i) to minerals in the controlled waters, or

(ii) to minerals in private ownership.

## 4 Interpretation

(1) In this Ordinance, except where the context otherwise requires-

**"ancillary rights"** means in relation to minerals, any facility, right or privilege and, in particular, but without prejudice to the foregoing includes-

- (a) a right to let down the surface;
- (b) a right of airway, shaftway or underground way leave or other right for the purpose of access to or conveyance of minerals or the ventilation or drainage of mines;
- (c) a right to use and occupy the surface for the erection of washeries, coke ovens, railways, by-product works or other works or of dwellings for persons employed in connection with the working of the minerals or with any such works as aforesaid;
- (d) a right to obtain a supply of water or other substances in connection with the working of minerals;
- (e) a right to dispose of water or other substances in connection with the working of minerals.

**"ancillary rights agreement"** means an agreement between a person desiring ancillary rights in relation to land for the purpose of carrying out mineral related activities and the owner or occupier of that land;

**"bed"**-

- (a) in relation to any river, means the space of land which the waters of the river cover at their fullest extent without overtopping the banks of the river, and
- (b) in relation to a lake pond or pool of water means the space of land which the waters of the lake, pond or pool of water cover at their highest level without exceeding its physical margin;

**"compulsory rights order"** means an order made under section 48;

**"contravene"**, in relation to any obligation or requirement, includes a failure to comply with it and "contravention" has a corresponding meaning;

**"controlled waters"** has the same meaning as that expression has under section 2(1) of the Offshore Minerals Ordinance 1994;

**"crop"** means plants grown on cultivated land the produce of which is to be harvested;

**"Crown land"** means all land whatsoever which is owned by the Crown, including any national park so far as it is comprised in land owned by the Crown, the foreshore of the sea and the bed of any lake, pond, pool or river which is owned by the Crown;

**"Crown minerals"** means-

- (a) all minerals in land belonging to the Crown which has never been alienated by the Crown;
- (b) all minerals reserved to the Crown by the terms of any Crown Grant or Crown Lease;

- (c) all minerals conveyed to the Crown by the owner of any land and which have not subsequent to such conveyance been granted by the Crown to any other person; and
- (d) gold and silver;

**"current"**, in relation to a licence, means that that licence has been granted and has not expired or been surrendered or revoked and "currency" has a corresponding meaning;

**"Director"** means the Director of Mineral Resources;

**"discovery"** means the discovery of a deposit of a mineral or minerals;

**"dwellinghouse"** means any building, whether permanent or temporary, that is occupied, in whole or in part, as a residence (and includes any structure or outdoor living area that is ancillary to, and used wholly or principally for the purposes of the residence, but does not include the land upon which any building is sited);

**"enter"** includes "re-enter" and "entry" has a corresponding meaning;

**"exploration"** includes any activity undertaken for the purpose of identifying mineral deposits or occurrences and evaluating the feasibility of mining particular deposits or occurrences of one or more minerals (and includes any drilling, dredging or excavations (whether surface or sub-surface) that are reasonably necessary to determine the nature and size of a mineral deposit or occurrence) and "to explore" has a corresponding meaning;

**"exploration licence"** means an exploration licence granted as such under section 11 of this Ordinance or continuing to have effect as if so granted;

**"foreshore"** means any land covered and uncovered by the flow and ebb of the tide at mean spring tides;

**"fossicking"** means to search for, extract and remove rock, ore or other minerals, except diamonds and (except under a permit granted under section 28(1) in a gold fossicking area) except gold, in quantities not exceeding the prescribed amount and by means not prohibited by this Ordinance, as samples or specimens for the purpose of a mineral collection, lapidary work or a hobby interest;

**"gold"** includes any substance containing gold or having gold mixed in it;

**"gold fossicking area"** means any area declared under section 28(1) to be a gold fossicking area;

**"Governor"**, except where specifically stated to the contrary, inconsistent with the context or inconsistent with any provision of the Constitution, means the Governor advised by the Executive Council;

**"in"**, in relation to land, means on or under the surface of land;

**"land"** includes land covered by water other than any water which is part of the controlled waters;

**"licence"** means a prospecting licence, exploration licence or a mining licence granted under, or continuing to have effect as if granted under, this Ordinance;



**"mine"**, as a noun, means any place in, on or under which mining operations are carried on and includes a quarry;

**"mine"**, as a verb, includes any manner or method of mining operations;

**"mineral"** means any substance, other than water, and whether that substance is in a solid, liquid or gaseous form, which has been formed by or is subject to geological process and any naturally occurring inorganic substance beneath or at the surface of the earth, and whether or not any such substance is under water;

**"minimum impact activity"** means any of the following-

- (a) geological, geochemical and geophysical surveying;
- (b) taking samples by hand or hand-held methods;
- (c) aerial surveying;
- (d) land surveying;
- (e) any activity prescribed as minimum impact activity;
- (f) any lawful act incidental to any activity to which paragraphs (a) to (e) of this definition relate which does not include-
  - (i) the use of explosives,
  - (ii) the cutting, destroying, removing or injuring of any vegetation on any other than a minimal scale,
  - (iii) damage to improvements, stock or chattels on any land,
  - (iv) any breach of the provisions of this or any other Ordinance,
  - (v) any impacts prescribed as prohibited impacts, or
  - (vi) entry on land prescribed as prohibited land;

**"mining licence"** means a licence granted under section 11 of this Ordinance as a mining licence;

**"mining operations"** includes quarrying operations and means any mode or method of working whereby the earth or any rock structure, stone, fluid or mineral bearing substance may be disturbed, removed, washed, sifted, crushed, leached, roasted, distilled, evaporated, smelted or refined or dealt with for the purpose of obtaining any mineral therefrom whether it has been previously disturbed or not and includes-

- (a) the removal of overburden by mechanical or other means and the stacking, deposit, storage and treatment of any substance believed to contain any mineral;
- (b) operations by means of which salt or other evaporates may be harvested;
- (c) operations by means of which mineral is recovered from any water supply or body of water;
- (d) any acts reasonably incidental to or conducive to any of the foregoing,

**"model clauses"** and **"the model clauses"** mean one or model clauses prescribed by regulations made under section 12(1);

**"non-exclusive licence"** means a licence which confers a right to prospect or explore for, mine or quarry any Crown owned mineral which right is not exclusive to the holder of the licence;

**"notice"** means a notice in writing;

**"occupier"**, in relation to land, means a person who has a right to occupy the land by virtue of a lease, sub-lease, licence or any renewal of any of the foregoing, and includes the holder of an exploration licence or mining licence who has a right of access in respect of the land for the purpose of carrying out a mining operation or mining operations or an activity (other than a minimum impact activity) under the licence;

**"this Ordinance"** means this Ordinance as from time to time amended and in force and includes any subsidiary legislation made, or continuing to have effect as if made, under this Ordinance as from time to time amended and in force;

**"owner"** means-

- (a) in relation to Crown Land, Her Majesty the Queen in right and title of Her Government of the Falkland Islands; and
- (b) in relation to any other land, the person or persons who holds the fee simple title to the land.

**"person"** includes a body corporate, an unincorporated body of persons and a partnership;

**"prescribed"** means prescribed by regulations made under this Ordinance;

**"prospecting"** means-

- (a) any activity authorised to be carried out by or by virtue of a prospecting licence granted under the repealed Ordinance; and
- (b) any activity undertaken for the purpose of identifying land likely to contain exploitable mineral deposits or occurrences; and includes-
  - (i) geological, geochemical and geophysical surveys,
  - (ii) the taking of samples by hand or hand held methods, and
  - (iii) aerial surveys,

and "to prospect" has a corresponding meaning;

**"prospecting licence"** means a licence granted as a prospecting licence under section 11 of this Ordinance or continuing to have effect as if so granted and which authorises prospecting;

**"regulations"** means regulations made, or continuing to have effect, under any provision of this Ordinance;

**"right of access"** means, in respect of land, the right of a licensee, his employees, agents and contractors, to enter use and occupy that land for the purpose of carrying out any lawful activity under a licence; and

**"working day"** means any day which is not a Saturday, Sunday or public holiday.

(2) A reference in this Ordinance to "the clauses of the licence" is a reference to the model clauses incorporated in a licence pursuant to regulations made under section 12(1) (and, if appropriate, subject to such exclusions and modifications of such model clauses as may have been made by the licence) together with any other clauses included in, or conditions imposed by, a licence, in addition to any such model clauses, on the grant of that licence or otherwise in accordance with this Ordinance.

(3) In this Ordinance so far as is consistent with the context-

- (a) words and expressions of the masculine gender include the corresponding words of the feminine gender and the neuter gender and vice versa;
- (b) words in and expressions used in the singular include the corresponding words in the plural and vice versa.

(4) Subject to this Ordinance, the Interpretation and General Clauses Ordinance 1977 applies to and in relation to this Ordinance and expressions used in this Ordinance.

*[Revision w.e.f. 31/07/2017]*

(5) Nothing in the Land (Non-residents) Ordinance 1999 applies in respect of the grant or assignment of licences under this Ordinance.

## **PART II PROSPECTING, EXPLORATION AND MINING OF CROWN MINERALS**

### *Prohibition of prospecting for, exploring for or mining of any Crown mineral*

#### **5 Certain operations unlawful without a licence**

(1) Subject to subsection (3) of this section and to section 6, it is unlawful for any person to prospect for, explore for or mine any Crown mineral unless he does so under and in accordance with the terms and conditions of a licence granted under this Ordinance or by virtue of section 8 having effect as if granted under this Ordinance.

(2) Subsection (1) does not bind the Crown.

(3) Subsection (1) does not prohibit prospecting for or exploring for, or mining, gold in a gold fossicking area other than by means of motorised machinery or machinery which is not hand held.

(4) A person who contravenes subsection (1) commits an offence.

## **6 Exception in favour of landowners to requirement to have licence**

(1) The owner or lessee of any land the minerals on or in which belong to the Crown may, for the purpose only of using the same upon the land or other land in the Falkland Islands in his ownership or occupation, without any licence under section 11 prospect for, explore for, mine, quarry or take stone, flint, chalk, gravel, sand or calcified seaweed in or on the land concerned.

(2) It is unlawful for the owner or lessee of any land who has lawfully quarried or taken any Crown mineral under the provisions of subsection (1) to sell or otherwise dispose of any of it to a third party without the permission of the Governor in writing or, if the Governor imposes any condition on granting such permission, without complying with every such condition which is for the time being current.

(3) A person who contravenes subsection (1) or (2) commits an offence.

### *Saving for other laws*

## **7 Other legal requirements not affected**

(1) Nothing in this Ordinance, except in so far as may specifically be stated in it to the contrary, excuses any person from compliance with any other written law of the Falkland Islands, including in particular and without prejudice to the generality of the foregoing, the Planning Ordinance 1991.

*[Revision w.e.f. 31/07/2017]*

(2) It shall be deemed to be a condition of every licence granted under this Ordinance (contravention of which constitutes contravention of section 5(1)) that nothing requiring the grant of planning permission under the Planning Ordinance shall be done except under and in accordance with such planning permission (including any conditions subject to compliance with which it was granted).

### *Transitional*

## **8 Licences granted under repealed Ordinance**

(1) A licence which was granted under section 5 of the repealed Ordinance and which was current immediately prior to the commencement of this Ordinance shall continue to have effect as if it had been granted under section 11 of this Ordinance on the terms and conditions on which it was granted and contraventions of any of those terms and conditions committed after the commencement of this Ordinance shall constitute an offence and shall be punishable in the same way as contraventions of terms and conditions of a licence so granted are punishable.

(2) Any licence continuing to have effect by virtue of subsection (1) may be revoked, renewed or varied under the provisions of this Ordinance as if it had been granted under section 11.

## *Application for and grant of licence*

### **9 Application for a licence**

(1) Any person may apply to the Director in the form prescribed by regulations under section 12 for the grant to him of a licence by the Governor under section 11. Every application shall be accompanied by such fee, if any, as is prescribed by regulations under subsection (3) of this section.

(2) Following receipt of such an application the Director may require the applicant to provide in writing such further information, additional to that required by such regulations, as the Director thinks fit or the Governor may have requested the Director to obtain.

(3) The Governor may make regulations prescribing fees to be paid on the making of an application for the grant of a licence and information to be provided by applicants (and such regulations may make different provision in relation to different minerals and different categories of licence).

### **10 Allocation by public tender**

(1) The Governor may from time to time by notice in the Gazette and such other publications as he thinks fit offer licences for allocation by public tender.

(2) Every notice for the purposes of subsection (1) must specify-

- (a) the type of licence offered;
- (b) the land and minerals to which the licence offered relates;
- (c) the manner in which tenders must be submitted, and the time by which such tenders must be received by the Director in order for such tenders to be valid; and
- (d) the conditions to which any licence granted pursuant to the tender will be subject (which must include the model clauses except in so far as they are varied or excluded by the notice)

and must require every tenderer to send to the Director an application for a licence in the form prescribed by regulations under section 12.

(3) The Director must reject any tender which in a material manner does not comply with the requirements of the notice or any such regulations.

(4) The Governor may decline to grant any licence pursuant to a tender, either to a particular tenderer or any tenderer.

(5) Any licence granted under section 11 pursuant to a tender under this section shall be granted subject to such conditions as were specified in the notice or subsequently agreed with the tenderer concerned.

### **11 Grant of licences<sup>i</sup>**

(1) Subject to subsections (2), (3) and (5), the Governor may grant to a person a prospecting licence, an exploration licence or a mining licence in respect of such minerals (being Crown

minerals) and land as are specified in the licence, subject to such conditions as are contained or referred to in the licence or are deemed to be conditions subject to which the licence is granted.

(2) The Governor shall not exercise his powers under subsection (1)-

- (a) without the prior consent of the Secretary of State unless the Governor is satisfied that all of the conditions mentioned in subsection (3) are met; or
- (b) in respect of-
  - (i) any land or substratum thereof which lies within 100 metres of any dwellinghouse or other building enjoyed in connection with any dwellinghouse and within the same curtilage,
  - (ii) any land which forms part of Stanley Common,
  - (iii) any land held by the Crown subject to any covenant or obligation that it is used as an open space;
  - (iv) any land within Stanley or the apparent boundaries of any settlement; or
  - (v) any land used as or within 30 metres of a building, cemetery, burial ground, waterworks, dam, yard, stockyard, orchard, plant nursery, tree plantation, shelterbelt, airstrip or aerodrome.

(3) The conditions referred to in paragraph (a) of subsection (2) are-

- (a) any environmental impact statement required by law in relation to the mining activity has been obtained and published in accordance with law;
- (b) thereafter any necessary planning permission has been obtained;
- (c) the licence application relates only to stone, flint, chalk, gravel, sand or calcified seaweed to be won from land in the Falkland Islands (so that none of the mineral is to be won from the sea, any river or body of water); and
- (d) the Governor is satisfied, after taking all advice he considers appropriate, that there is no danger that the mining activity might-
  - (i) be prejudicial to any wetland of international importance designated under the Ramsar Convention, or prejudice any nature reserve or sanctuary;
  - (ii) occasion coastal erosion or the inundation of any land; or
  - (iii) have any significant adverse international implications.

(4) Every licence granted shall be deemed to be granted subject to the compliance by the licensee with the provisions of the model clauses (so far as they are applicable in respect of the licence concerned) except to the extent that they are expressly excluded or modified by the terms of the licence.

(5) The Governor shall not grant a licence under this section unless he is satisfied that the applicant is able to and intends to comply with the conditions of the licence if granted.

(6) The Governor may by the terms of the licence require the payment to the Crown of-

- (a) an annual rent or fee, which may be variable or subject to increase in accordance with the provisions of the licence;
- (b) in the case of a mining licence, a royalty calculated in such manner as may be specified in the licence;
- (c) in the case of a prospecting licence or an exploration licence, any one or more of the foregoing the Governor considers appropriate in the circumstances of the case.

(7) A licence shall specify whether it is granted as a prospecting licence, an exploration licence or a mining licence.

(8) Subject to subsection (9), the Governor may with the consent of the holder of the licence, amend, vary, add to or augment the conditions of the licence he has granted under this section.

(9) Where, by virtue of paragraph (a) of subsection (2) read with subsection (3), the consent of the Secretary of State was required to the grant of the licence in question, the consent of the Secretary of State is also required to the exercise of the Governor's powers under subsection (8) in relation to that licence.

### *Other provisions in relation to the grant of licences*

#### **12 Model clauses**

(1) The Governor shall, before granting any licence under section 11 in respect of any mineral, make regulations under this section approved by the Secretary of State in relation to that mineral prescribing-

- (a) conditions as to the size and shape of any area in respect of which a licence may be granted;
- (b) model clauses which must, unless he sees fit to exclude or modify them in any particular case, be incorporated in any such licence,

and different regulations may be made under this section in respect of different types of licence and in respect of different minerals.

(2) Model clauses not excluded from a licence shall be deemed to be conditions incorporated in that licence.

#### **13 Further provisions as to grant of licence**

(1) The Governor shall not grant a licence under section 11 unless he believes that the applicant for the licence is likely to comply with and give proper effect to the licence.

(2) The Governor may as a condition precedent to the grant of a licence under section 11 require the applicant to deposit with the Director or some other public officer such sum of money, bond or other document or thing by way of security for compliance with the conditions of the proposed licence as the Governor may direct.

(3) Without prejudice to the generality of subsection (2), a requirement under that subsection may in particular be made in relation to the restoration by the holder of the licence of the land or part of the land to be the subject of a licence to its former state and condition or the carrying out of remedial or improvement works to that land at the conclusion of mining operations.

#### **14 General duties of the Governor**

(1) It shall be the general duty of the Governor in the exercise of his powers-

- (a) under section 11, to grant licences;
- (b) under section 12, to make regulations prescribing model clauses;
- (c) otherwise under this Ordinance to balance the need-
  - (i) in connection with any licence granted in relation to any Crown minerals in any land to secure the effective and co-ordinated development of Crown minerals of the like kind in any adjacent or neighbouring land with the need
  - (ii) to secure so far as may be possible economic and other benefits to the residents of the Falkland Islands apart from enhancement of the Crown's revenues and the need
  - (iii) to minimise any adverse effect upon the environment and to refuse to permit any activity which in his opinion would have an unacceptable degree of environmental impact,

but no court shall have jurisdiction to enquire as to whether the Governor has in any particular case failed satisfactorily to balance those needs.

(2) Nothing in subsection (1) shall be construed as placing upon the Governor any obligation to grant or refuse a licence under section 11 to the applicant or any other person.

#### **15 Conditions for prevention or reduction of injury to land**

(1) On the grant of a mining licence or at any subsequent time, the Governor may impose on the licensee such conditions as the Governor reasonably considers to be necessary for the purpose of preventing or reducing, or making good, injury to the natural surface of the land in respect of which the licence was granted, or injury to anything on the natural surface of that land or consequential damage to any other land.

(2) Without prejudice to the generality of subsection (1), the Governor may, on the grant of the mining licence or at any subsequent time, impose a condition that mining operations shall not be carried out within such distance of the natural surface of the land in respect of which the licence is granted as is specified in the condition.

(3) This section has effect without prejudice to the provisions of the Planning Ordinance 1991

*[Revision w.e.f. 31/07/2017]*

#### ***Priority rights***



## **16 Priority of applications**

(1) If a further application, or more than one further application, is made for a licence in respect of all or part of the same land and in respect of a common mineral as that in respect of which an earlier application which has not yet been determined was made, then unless under section 17 one of the applicants has a right to a licence in priority to all others, the Governor may grant such of the applications received as he thinks fit, but shall not be obliged to grant any of them.

(2) If his application was received by the Director on or after the date of publication of the notice of offer of the licence to which the tender relates then the applicant shall not have a right of priority over any tender made pursuant to that notice for a licence in respect of the same or partly the same land and a common mineral.

## **17 Right to consideration of application for mining licence in priority to all others**

(1) A prospecting licence or an exploration licence may provide that, subject to the provisions of that licence and to compliance by the licensee with the terms of that licence, the holder of that licence shall have the right in priority to all others to consideration of an application for the grant to him of a mining licence in respect of the whole or part of the land comprised in his prospecting or exploration licence ("a priority right"), but if his prospecting or exploration licence does not extend to all minerals, only in respect of the mineral or minerals to which his licence extends.

(2) A priority right must be exercised before the expiration of the prospecting licence or exploration licence (including any extension of that licence) and does not excuse the licensee under that licence from any provision of this Ordinance which he would not be excused from if that right did not exist.

(3) The Governor shall not be bound to grant a mining licence on the application of a person who has exercised a priority right, but if he refuses it shall not within three years grant a mining licence to any other person in respect of the same land and the same mineral or minerals to which the application relates unless he first gives an opportunity to the first-mentioned person, in accordance with subsection (4), to accept a mining licence on the same terms.

(4) Where the Governor is obliged by subsection (3) to give an opportunity to a person to accept a mining licence on the same terms as it would be otherwise offered to another person, he must give notice to the first-mentioned person ("the notifier") at his address last-known to the Governor-

- (a) sufficiently specifying the terms on which the Governor proposes to issue the licence;
- (b) informing him that, if he wishes to accept a licence on those terms, he must deliver to the Governor a notice in writing to that effect ("the notice of acceptance") within 60 days of the service upon him of that notice;
- (c) that the Governor will be free to grant a licence on identical terms to any other person if he fails to so notify the Governor or to execute and return to the Governor so that it is received by the Governor within 30 days of its receipt from the Governor, a licence offered to him in accordance with subsection (5).

(5) If the Governor receives a notice of acceptance under subsection (3), he must send to the notifier within 30 days thereafter a form of licence in triplicate for execution by the notifier incorporating the terms specified in the notice under that subsection, and no other terms to be

complied with by the notifier save only such as the notifier may have agreed with the Governor. If the Governor receives within the period mentioned in subsection (4)(c) both copies of the form of licence executed by the notifier, he shall himself execute all three copies under the Public Seal and return one copy to the notifier.

(6) If a person served with a notice under subsection (3)-

- (a) informs the Governor in writing that he does not wish to take up the offer of a licence upon the terms specified in that notice;
- (b) fails to deliver a notice of acceptance to the Governor in accordance with that notice; or
- (c) fails to return in accordance with subsection (5) both copies of the form of licence and make at the same time any deposit of money or lodge with the Governor any bond required pursuant to section 13(2),

the Governor may grant a licence to any other person on terms identical to those offered in accordance with this section to the person having the priority right.

(7) The preceding provisions of this section shall have effect as often as may be necessary until the priority right is extinguished by effluxion of time or by the grant of a mining licence in accordance with this section.

### *Prospecting licences*

#### **18 Term of prospecting licence and right to be granted exploration licence**

(1) Subject to this Ordinance, a prospecting licence shall not be granted for, or remain current for, a period exceeding 4 years from and including the date on which it was granted.

(2) When a prospecting licence is surrendered, forfeited or expires the land the subject of the prospecting licence and any part of that land shall not be applied for as the subject of a proposed prospecting licence or exploration licence-

- (a) by or on behalf of the person who was the holder of the prospecting licence immediately prior to the date of the surrender, revocation or expiry;
- (b) by or on behalf of any person who had an interest in the prospecting licence while it was current,

until after the expiry of 6 months from the date on which it ceased to be current.

(3) For the purposes of subsection (2)(b), the holding of shares in a company listed on a stock exchange in the United Kingdom or Australia or in any prescribed country does not of itself constitute an interest in a prospecting licence.

(4) Subject to sections 12 to 14, and unless the prospecting licence expressly provides otherwise, if the holder of such a licence satisfies the Governor that the results of his prospecting under the prospecting licence justify the grant of an exploration licence in respect of any land and mineral to which the prospecting licence relates, the holder shall have the right, on applying under section

11 before the expiry of the prospecting licence, to surrender that licence so far as it relates to that land and to be granted in exchange an exploration licence in respect of that land or mineral.

(5) Where an application for a mining licence is made by the holder of a prospecting licence in respect of any land in respect of which that licence is at that time still current and the term of the prospecting licence would but for this subsection expire, that licence shall continue in force in respect of the land the subject of that application until the application for the mining licence is determined.

### *Exploration licences*

#### **19 Term of exploration licence**

(1) Subject to this Ordinance, an exploration licence shall remain in force for a period of 5 years from and including the date on which it was granted, and shall then expire.

(2) Notwithstanding subsection (1), but subject to subsection (3), the Governor with the consent of the Secretary of State may extend on such terms and conditions as he thinks fit an exploration licence as to an area of land, being an unbroken area not exceeding one half of the area comprised in the licence.

(3) The Governor shall not extend an exploration licence-

(a) for a period exceeding four years; or

(b) at all unless the applicant has submitted with his application a proposed programme of work to be carried out which the Governor is satisfied will provide for the satisfactory exploration of the land in respect of which the extension is sought and the Governor is satisfied that that land is so situated that it will not prevent or seriously hinder the exploration by any other of any part of the remainder of the land comprised in the exploration licence as originally granted.

(4) Without prejudice to subsection (3), the Governor is not bound to extend the term of any exploration licence.

(5) Where an application for a mining licence is made by the holder of an exploration licence in respect of any land and the term of the exploration licence would but for this subsection expire, that licence shall continue in force in respect of the land the subject of that application until the application for a mining licence is determined.

### *Mining licences*

#### **20 Applications for mining licences**

(1) An application for a mining licence shall not be made in respect of an area greater than 10 square kilometres in area, but a person may concurrently apply for the grant of more than one mining licence. The application shall-

- (a) describe all works which are intended to be carried out under the authority of the licence if granted;
- (b) state whether and, if so what, ancillary rights over any land (whether comprised within the area in respect of which an application for a licence is made or not) are required in connection with the licence if granted;
- (c) describe all works which are intended to be carried out in connection with those ancillary rights.

(2) An applicant for a mining licence shall give notice in writing of his application to the owners and occupiers of all land to which his application relates and to the owners and occupiers of any other land not comprised in the application and over which any ancillary rights are required, and shall publish notice of his application in the Gazette and one or more newspapers published in the Falkland Islands.

(3) The application shall be made by reference to a written description of the area of the land in respect of which the licence is sought and shall be accompanied by a map on which are clearly delineated the boundaries of the area and a copy of such written description and map shall be incorporated in the notice published in accordance with subsection (2).

(4) The applicant shall state in his application whether or not application has been made for planning permission-

- (a) in relation to mining operations;
- (b) in relation to any ancillary rights,

and whether that application has yet been determined and, if so, with what result.

## **21 Objections to grant of mining licences**

(1) A person who wishes to object to the grant of a mining licence shall lodge with the Director a notice of objection within 20 working days or such greater period as the Governor may allow from the date of the later of publication, pursuant to section 20(2), of notice of the application in the Gazette or date of the publication of the notice in a newspaper circulating in the Falkland Islands and, if more than one such publication, the latest of them.

(2) It is not a valid ground of objection to an application for a mining licence that planning permission has not yet been granted, or has been refused, in respect of any development required to enable, or to facilitate, mining under the licence applied for.

(3) If any objection is validly made to the grant of a mining licence the Governor shall not grant a mining licence to the applicant without first having given the objector and any other person, including the applicant, who wishes to be heard an opportunity of being heard by a person appointed by the Governor to inquire into and report to the Governor in relation to the matter ("the inspector").

(4) The Governor may make regulations requiring a public inquiry into objections to be carried out into the grant of a mining licence when so directed by the Governor and the manner in which such an inquiry is to be carried out, the appointment of a person or persons as inspector to conduct such an inquiry, the procedure at such an inquiry and the powers and duties of inspectors.

(5) After the inquiry has been concluded the inspector shall send to the Governor his report thereon with his recommendation as to whether the Governor should grant or refuse the application for a mining licence and the reasons for that recommendation.

(6) On receipt of the inspector's report the Governor may, with the consent of the Secretary of State grant or refuse a mining licence to the applicant, irrespective of whether the inspector has recommended the grant or refusal of it.

## **22 Terms of mining licences, options and renewals**

(1) Subject to this Ordinance, a mining licence shall be current-

- (a) for an initial period of 21 years;
- (b) where application for renewal is made during the final year of that 21 year period, as of right for a further period of 14 years as from the expiry of the initial period, provided that during the initial period the licensee has complied with all the terms and conditions of the licence but subject in respect of that further term to the provisions of this Ordinance in force on or after the date of renewal.

(2) Subject to subsection (1), the Governor may, if he thinks fit and with the consent of the Secretary of State renew or further renew a mining licence for successive periods but so that no such period exceeds 14 years. In respect of any such period the provisions of this Ordinance in force on or after the date of the renewal shall apply as they do in respect of a further period to which paragraph (b) of subsection (1) applies.

(3) Where an application for the renewal of a mining licence is made by the holder of the licence and the term of that licence would but for this subsection expire, that licence shall continue in force in respect of the land the subject of that application until the application is determined.

## **23 Holder of surrendered, forfeited, revoked or expired mining licence not be granted new licence for a period in respect of same land**

Where a mining licence is surrendered, forfeited, revoked or expires, a prospecting or exploration licence shall not be granted in respect of the land the subject of the former mining licence or any part of that land-

- (a) to or on behalf of the person who was the holder of the mining licence immediately prior to the date of the surrender, forfeiture or expiry; or
- (b) to any person who had an interest in the mining licence immediately prior to that date,

within a period of 12 months from and including that date.

## *Fossicking*

## **24 Gold fossicking permits**

(1) The Governor may by Order declare any area of land owned by the Crown and not leased to or in the occupation of any other person to be a gold fossicking area and may by regulations provide

for the issue of gold fossicking permits, permitting persons to fossick for gold in such an area and providing for the conditions of, and the fees chargeable for such permits.

(2) It is unlawful to fossick for gold with any motorised machinery or machinery which is not hand held.

(3) The designation of any area as a gold fossicking area does not prevent the granting of a licence under section 11 in respect of that area.

## **25 Fossicking generally**

(1) Subject to this section, it is lawful for any person to fossick, other than for gold, in an area of land owned by the Crown which is-

- (a) outside the boundaries of Stanley and of any settlement;
- (b) further than 100 metres from any dwellinghouse and any building enjoyed in connection with a dwellinghouse and within the same curtilage.

(2) It is unlawful to fossick upon or in-

- (a) any land which forms part of Stanley Common;
- (b) any land held by the Crown subject to any covenant or obligation that it be used as open space;
- (c) any land which is a reserve to which the Conservation of Nature and Wildlife Ordinance 1999 applies;

*[Revision w.e.f. 31/07/2017]*

- (d) any land which is under crop or is in use at the time in question as a lambing paddock;
- (e) any land within Stanley or within the apparent boundaries of any settlement;
- (f) any land used as or within 30 metres of a building, cemetery, burial ground, waterworks, dam, yard, stockyard, garden, orchard, plant nursery, tree plantation, shelterbelt, airstrip or aerodrome;
- (g) any land leased to or in the occupation of any other person;
- (h) any land held by the Crown subject to any covenant or obligation that it be used as open space;
- (i) any Crown land which is prescribed by regulations as being land in which fossicking is not permitted.

### ***Rights conferred by licences***

## **26 Rights conferred by prospecting licence**

(1) A prospecting licence authorises the holder, subject to this Ordinance, and in accordance with any conditions to which the licence is subject, to prospect for the mineral or minerals to which the licence relates in the land comprised in the licence.

(2) The holder of a prospecting licence shall not without the prior written consent of the Director excavate, extract or remove any earth, soil, rock, stone, fluid or mineral bearing substance in an amount which, in total during the period for which the licence remains in force, exceeds such quantity as is prescribed by regulations or, if not so prescribed, is stated in the licence.

(3) Nothing in any prospecting licence shall have effect so as to authorise the holder of a prospecting licence any right to take any water whatsoever from any spring, lake, pond, pool, river or stream or any right to take water from any underground aquifer or source of water.

(4) The grant of a prospecting licence does not confer upon the holder of a prospecting licence or any person claiming under him any right to enter upon any land other than in accordance with the subsequent provisions of this Ordinance.

(5) A person who contravenes subsection (2) commits an offence.

## **27 Rights conferred by exploration licence**

(1) An exploration licence authorises the holder, subject to this Ordinance, and in accordance with any conditions to which the licence is subject-

- (a) to prospect for the mineral or minerals to which the licence relates in the land comprised in the licence;
- (b) to explore for the mineral or minerals to which the licence relates in the land comprised in the licence.

(2) Subsections (2) to (5) of section 26 apply in relation to an exploration licence as they do in relation to a prospecting licence but with the replacement of the words "prospecting licence", wherever they appear in those subsections, with the words "exploration licence".

## **28 Rights conferred by mining licences**

(1) Subject to this Ordinance, a mining licence authorises the holder and his agents and employees on his behalf-

- (a) to work and mine the land in respect of which the licence was granted for the mineral or minerals to which the licence relates; and
- (b) to take and remove from the land any mineral or minerals to which the licence relates and to dispose of them.

(2) All minerals lawfully mined by the holder or on his behalf under the authority of the mining licence belong to the holder.

(3) Subsections (2) to (5) of section 26 apply in relation to a mining licence as they do in respect of a prospecting licence but with the replacement of the words "prospecting licence" wherever they appear in those subsections with the words "mining licence".

## **29 Compensation to be agreed upon or determined before mining operation commences**

(1) The holder of a mining licence shall not commence any mining operation on any land unless he has paid or tendered to the owner and the occupier of that land the amount of the compensation, if any, that he is required to pay under and in accordance with this Ordinance or he has made an

agreement with the owner and the occupier as the amount, times and mode of the compensation, if any.

(2) "Owner" and "occupier" in subsection (1) include the Crown where the Crown is the owner or, as the case may be, the occupier of the land in question.

(3) Where any person to whom compensation is payable under this section-

- (a) cannot be found;
- (b) is, without a grant of personal representation having been made to his estate, dead; or
- (c) is for any reason incapacitated at law from dealing with his property without a person having been lawfully appointed by him as his attorney or by a court of competent jurisdiction to act on his behalf,

any payment of compensation required by this section may be made to the Director in trust for that person or his attorney, personal representative or person appointed by a court of competent jurisdiction to act on his behalf, as the case requires.

### *Revocation and surrender of licences*

#### **30 Revocation of licence**

(1) If the Governor, on receipt of a report from the Director or otherwise, has reason to believe that a licensee has contravened or is contravening any provision-

- (a) of this Part of this Ordinance or of any regulations made under this Part; or
- (b) of any condition of his licence (including any model clause deemed to be a condition of his licence),

the Governor may cause to be served on him a notice-

- (a) specifying the alleged contravention;
- (b) requiring him, within 20 working days after the service of the notice or such longer time as the Governor may specify in the notice, to remedy the contravention, if capable of remedy (or, if not remediable to take such steps as are available to mitigate the consequences of the contravention) or show that the contravention complained of has not in fact occurred; and
- (c) stating that failure to comply with the requirements of the notice may result in the revocation of the licence.

(2) If the Governor is satisfied that the holder of a licence has failed to comply with the requirements of a notice served under subsection (1), the Governor may, by notice served on the holder, revoke the licence on such date, not being less than 20 working days after the date of service of the notice as is specified in it, and, subject to subsection (4), the licence on the expiry of that period shall be revoked.

(3) A licensee who has been served with notice under subsection (2) may, not later than 20 working days after the date of service appeal against the Governor's decision to the Supreme Court.



(4) Where the licensee has appealed against the revocation of the licence, the licence remains in force until the determination of the appeal unless it sooner expires.

(5) The revocation of a licence does not release the holder from any liability in respect of-

- (a) any antecedent contravention of the licence or any of its conditions; or
- (b) any antecedent act or omission giving rise to a cause of action.

### **31 Surrender of licence**

(1) Subject to subsection (2), a licensee may surrender a licence or any part of it by giving six months' notice in writing to the Director of his intention to do so.

(2) Where a licence is surrendered, the licensee is not excused from-

- (a) any antecedent contravention of the licence or any of its conditions; or
- (b) any antecedent act or omission giving rise to a cause of action.

### **32 Transfers and assignments of licences**

(1) The holder of a licence shall not, except with the consent in writing of the Governor and in accordance with the conditions (if any) of the consent do anything whereby, under the law (including the rules of equity) of the Falkland Islands, any right granted by the licence or derived from a right so granted becomes exercisable by or for the benefit of or in accordance with the directions of another person.

(2) Without prejudice to the generality of subsection (1), an agreement or arrangement of any kind between the holder of the licence and any other person permitting the carrying out in the licensed area or in any part thereof any operation which the holder of the licence is permitted to carry out only by virtue of the licence is to be treated as an assignment of the licence.

(3) The holder of a licence shall not enter into any agreement providing for a person other than the holder to become entitled to, or to the proceeds of sale of, any mineral which, at the time the agreement is made, has not been but may be won and saved under the licence unless the terms of the agreement have been approved in writing by the Governor either conditionally or subject to conditions, but the preceding provisions of this subsection do not apply to an agreement for the sale of any mineral or minerals under which the price is payable after the mineral or minerals has or have been won and saved.

(4) The holder of a licence shall not, without the consent of the Governor, dispose of any mineral won and saved under the licence in such a manner that the disposal, to the knowledge of the holder of the licence or without such knowledge, fulfils or enables another person to fulfil obligations which a person who controls the holder is required to fulfil by an agreement of which the terms require approval by virtue of subsection (3): and subsections (2) to (4) and (6) of section 416 of the Income and Corporation Taxes Act 1988 of the United Kingdom shall apply for the purpose of determining whether one person has control of another with the following modifications-

- (a) for the words "greater part" wherever they occur in the said subsection (2) there shall be substituted the words "one third or more"; and
- (b) in the said subsection (6), for the word "may" there shall be substituted the word "shall", and the words "from such attribution" onwards shall be omitted and in the other

provisions of that subsection any reference to the associate of a person shall be construed as including only a relative of his (as defined by section 417(4) of that Act), a partner of his and a trustee of a settlement (as defined by section 618(4) of that Act) of which he is a beneficiary.

(5) Where the holder of a licence is two or more persons, then without prejudice to the preceding provisions of this section, none of those persons shall enter into an agreement with respect to the entitlement of any of them to-

- (a) the benefit of any rights granted by the licence;
- (b) any mineral or minerals won and saved under the licence;
- (c) any proceeds of sale of such mineral or minerals,

unless the terms of the agreement have been approved in writing by the Governor.

(6) In so far as and to the extent that the provisions of any clause of the licence (including the model clauses incorporated therein) imposes any greater burden upon the licensee than is imposed by the foregoing subsections of this section (including characterising the sale or transfer of control of any shares in a licensee, being a company, as an assignment or partial assignment of the licence which is prohibited without the consent of the Governor) those provisions shall apply in addition to those subsections.

### **33 Unit development**

(1) If the Governor is satisfied that-

- (a) the land to which any 2 or more licences relate or any part of such land forms part of a single deposit of a mineral (a "mineral deposit"); and
- (b) in order to prevent waste or to secure the most economical and efficient extraction and to secure the maximum ultimate recovery of the mineral, the mineral deposit should be worked as a unit in co-operation by all relevant licensees whose licences comprise any part thereof,

the Governor may, of his own motion or at the request of any one or more of the licensees, by notice in writing require all the licensees to co-operate in the preparation of a scheme (a "development scheme") for the working and development of the mineral deposit as a unit by the licensees in co-operation and to submit the scheme jointly for the approval of the Governor.

(2) A notice under subsection (1) must specify the land in respect of which, and the period within which, the Governor requires a development scheme to be submitted.

(3) If the Governor withholds his approval of a development scheme under subsection (1), the Governor shall notify the licensees that he has withheld approval and of his reasons for doing so and shall invite the licensees to submit a modified development scheme for his approval within such time as the Governor specifies in the notice given under this subsection.

## **PART III WORKING FACILITIES AND SUPPORT**

## *General principle*

### **34 Licence does not give right of access to land**

Subject to section 35, the granting of a licence under section 11 does not confer upon the holder a right of access to any land.

## *Access to land for minimum impact activity*

### **35 Entry on land for minimum impact activity**

(1) Subject to subsection (3) and to section 36-

- (a) the Director and any public officer authorised by the Director;
- (b) any consultant engaged by the Crown;
- (c) any employee or contractor of such a consultant authorised specifically or generally for that purpose,

may during the daytime enter any land in which the Crown owns the minerals, with such assistance as he thinks fit, and carry out minimum impact activity.

(2) Subject to subsection (3) and to section 41, a licensee and any employee, consultant or contractor of a licensee authorised by the licensee for the purpose may enter any land to which the licence relates and carry out minimum impact activity.

(3) Notwithstanding sections (1) and (2), no person may enter any land under either of those subsections without the consent of every owner and every occupier of that land unless not less than 10 working days' notice has been given to every owner and every occupier of the land of-

- (a) the date of intended entry;
- (b) the type and duration of any works to be carried out, and
- (c) a telephone number in the Falkland Islands of the person who intends to enter the land.

(4) Every person who enters land under this section shall, if required by any owner or occupier to do so, produce a copy of the authorisation or licence which gives rise to entry under this section.

(5) A person who enters land under this section shall not carry out any activity on or in the land other than a minimum impact activity.

(6) A person who contravenes any provision of this section commits an offence.

### **36 Entry on certain classes of land prohibited**

(1) Unless otherwise agreed between each owner and occupier of the land and the person requiring access, no person may under section 35 enter-

- (a) any land which forms part of Stanley Common;

- (b) any land held by the Crown subject to any covenant or obligation that it be used as open space;
- (c) any land which is under crop or is in use at the time in question as a lambing paddock;
- (d) any land within Stanley or within the apparent boundaries of any settlement;
- (e) any land used as or within 30 metres of a building, cemetery, burial ground, waterworks, dam, yard, stockyard, garden, orchard, plant nursery, tree plantation, shelterbelt, airstrip or aerodrome,

for the purpose of carrying out any minimum impact activity.

(2) A person who contravenes subsection (1) commits an offence.

### *Access to land for other than minimum impact activity*

#### **37 Access to land other than for minimum impact activity**

(1) This section does not apply in respect of minimum impact activities.

(2) The holder of a licence shall not prospect, explore or mine in land to which his licence relates otherwise than in accordance with an access agreement which has been agreed in writing between the holder of the licence and each owner and occupier of the land or a compulsory rights order.

#### **38 Effect of access agreement etc.**

(1) Where an owner or occupier has entered into an access agreement, the agreement shall be binding on that owner or occupier, and subject to access agreement having been registered in the Land Charges Register, on that owner or occupier's successors in title.

(2) On entering into an access arrangement which is of more than 6 months duration from the date of its commencement, the holder of the licence, applicant for a licence or prospective applicant for a licence who entered into the agreement shall forthwith lodge with the Registrar General 3 copies of particulars of the agreement together with an application for its registration pursuant to the Land Charges Ordinance 1996 and a remittance for the fee payable on such registration.

*[Revision w.e.f. 31/07/2017]*

(3) The placing by the Registrar General or by any other person acting by his authority of an entry in the Land Charges Register or any other register or record maintained by him of particulars of an access agreement shall operate as notice of that agreement and shall not operate to create any estate or interest in any land to which the access agreement relates (and accordingly the Land (Non-residents) Ordinance shall not apply in respect of it).

#### **39 Meaning of entry on land**

For the purposes of section 37 only, prospecting, exploration or mining carried out below the surface of any land do not constitute prospecting, exploration or mining in or on land if the activity in question-

- (a) will not or is not likely to cause any damage to the surface of the land or any loss to the owner or occupier of the land;
- (b) will not or is not likely to have any prejudicial effect in respect of the use and enjoyment of the surface of the land; or
- (c) will not or is not likely to have any prejudicial effect in respect of any possible future use of the surface of the land.

#### **40 Dispute as to classification of land or activities**

- (1) If any dispute arises as to whether or not-
  - (a) any land is included in any class referred to in section 36;
  - (b) any activity is a minimum impact activity; or
  - (c) prospecting, exploration or mining carried out below the surface of any land constitutes prospecting, exploration or mining on or in land for the purposes of section 37,

a party to the dispute may apply to the Magistrate's Court for that court to determine the matter.

(2) At least 10 working days' notice in writing of any such application shall be given by the applicant to every other party to the dispute.

(3) On receipt of any such application, the Courts Administrator shall give notice of the time and place fixed for the hearing of the application to the applicant and every other party to the dispute.

(4) The applicant and every other party to the dispute shall be entitled to be present at and heard in person or through his legal practitioner at the hearing of the application.

#### **41 Notice of request for ancillary rights agreement**

(1) Any person who wishes to obtain ancillary rights in his favour ("the applicant") in order to prospect, explore or mine on or in land, or to erect or put in place or construct any necessary buildings, pipes or cables, roads or other access ways or discharge waste water or other waste on land shall endeavour to negotiate an agreement for such an arrangement with every owner and occupier of the relevant land.

(2) The applicant shall notify every such owner and occupier in writing as to the following matters-

- (a) the land affected;
- (b) the purpose or purposes for which the ancillary rights are required;
- (c) the proposed programme of work including the type and the duration of work to be carried out and the likely adverse effect on the land or the owner or occupier of the land;
- (d) the compensation and safeguards against any likely adverse affects proposed;
- (e) the type of licence held or applied for by the applicant;
- (f) details of any planning permission applied for or obtained by the applicant or any other person in relation to any of the work referred to in (c), including any planning

permission obtained in relation to the construction of any road or other access way or in relation to the construction of any buildings, pipes, cables or other works ; and

- (g) any matter in relation to a request for an ancillary rights agreement of which the applicant is required to give notice by regulations.

#### **42 Grant of ancillary rights by agreement**

(1) An ancillary rights agreement in relation to land reached by negotiation between the parties shall encompass such of the matters mentioned in subsection (2) as-

- (a) are relevant in the circumstances of the case;
- (b) are agreed between the parties; or
- (c) one of the parties requests shall be included in it.

(2) The matters referred to in subsection (1) are-

- (a) the period or periods during which the licensee is to be permitted access, to erect lay and construct and maintain buildings, pipes cables or other works;
- (b) the route or routes over which and the means by which the licensee is to be permitted access to lay and construct pipes or cables;
- (c) the siting of any roads or access ways, buildings, pipes, cables, drainage or other works;
- (d) the part or parts of the land on or in which the licensee may explore, prospect or mine;
- (e) the kinds of prospecting, exploration or mining operation that may be carried out on or in land;
- (f) any obligations of the licensee in relation to the protection of the environment while having access or erecting or maintaining any building laying or maintaining any pipe or laying erecting or maintaining any cable or other works under the ancillary rights agreement and prospecting, exploring or mining in or on the land;
- (g) any compensation payable by the licensee as a consequence of prospecting, exploring or mining on the land;
- (h) the manner of resolving any dispute arising in connection with the agreement;
- (i) the manner of varying the agreement.

(3) An ancillary rights agreement may deal with such other matters, not mentioned in subsection (2), as the parties may agree.

(4) In this section "licensee" means the applicant, and where the relevant licence has been granted, includes the person who for the time being holds that licence, if that person is not the applicant.

#### **43 Ancillary rights arrangements in relation to Crown land**

(1) The Governor may, by agreement, enter into an ancillary rights agreement in respect of Crown land, including Crown land forming part of a national park.

(2) In considering whether to enter into an ancillary rights agreement in relation to Crown land, the Governor shall have regard to-

- (a) the purpose for which the land is held and the purpose for which the land is presently used (if there is no identifiable purpose for which the land is held);
- (b) any policy statement or management plan of the Crown in relation to the land;
- (c) the safeguards against potential adverse environmental effects of carrying out the proposed programme of work,

and the Governor may have regard to any other matter he considers relevant.

(3) Before deciding to enter into an ancillary rights agreement in relation to any Crown land the Governor must consult to the extent it is reasonably practicable to do so those persons he believes to be representative of interests likely to be substantially affected by the ancillary rights agreement and must consult the Planning and Building Committee, whether or not the implementation of the ancillary rights agreement, if made, would involve the doing of anything by the grantee which would constitute development requiring planning permission.

#### **44 Application for a declaration that a compulsory rights order would be in public interest**

(1) If the owner or occupier of any land in respect of which a licence has been granted under section 11 fails or refuses within 60 days of the service of a notice upon him under section 41(2) to enter into an ancillary rights agreement with the applicant, the applicant may apply in writing to the Director for a declaration by the Governor that the making of a compulsory rights order would be in the public interest.

(2) The application for a declaration shall set out the circumstances alleged to justify the making of a compulsory rights order, and shall be in such form and accompanied by such information as the Director may require.

(3) On receiving an application under subsection (1) the Director shall forward it to the Governor together with a statement of the Director's view as to whether the making of a compulsory rights order would be in the public interest and shall serve a copy of the application and such statement on every owner or occupier of land served with the notice under section 41(2) and notice of the effect of subsection (4).

(4) Before deciding whether or not to make a declaration that the making of a compulsory rights order would be in the public interest the Governor shall consider any written representations he may receive from any owner or occupier of the land affected within 30 days of the service by the Director of notice under subsection (3).

(5) If the Governor is minded, after considering any such written representations, to make a declaration that the making of a compulsory rights order would be in the public interest he shall so advise the Legislative Assembly and if the Legislative Assembly, on considering the Governor's advice so agrees and informs the Governor accordingly, the Governor may serve notice to that effect, stating the reasons for making a declaration on every owner or occupier affected and every such owner or occupier may, within 21 days of the service of that notice, apply by petition to the Supreme Court for an order that no such declaration be made.

- (6) The Supreme Court, on hearing any such petition, may-
- (a) dismiss the petition;
  - (b) order that the Governor shall not make a declaration that the making of a compulsory rights order would be in the public interest;
  - (c) make any other order, including an order as to costs, it considers necessary or expedient in the circumstances of the case,

but the Supreme Court shall dismiss the petition unless it is satisfied that the making of a compulsory rights order would not be in the public interest.

(7) The Governor, the applicant and the owner and occupier of the land affected shall be entitled to be heard personally or by legal practitioner on the hearing of the petition.

(8) In this and the following section, "the applicant" has the same meaning as it has in section 41.

#### **45 Declaration that a compulsory rights order would be in public interest: publication, etc**

(1) The Governor may make a declaration that a compulsory rights order would be in the public interest if, after he has complied with section 44(4) and (5) in relation to an application for such a declaration, he is of the view that such a declaration would be in the public interest and either-

- (a) no person has, within the time limited by section 44(5), petitioned the Supreme Court for an order that no such declaration shall be made; or
- (b) the Supreme Court has dismissed any such petition or petitions affecting the land the subject of the application.

(2) Any such declaration shall be by Notice published in the Gazette and a copy of the Notice shall be sent to the Magistrate's Court, the applicant and the owner and any occupier of the land affected.

(3) A Notice under subsection (2) shall have effect to refer to the Magistrate's Court for determination the question as to whether a compulsory rights order should be made in favour of the applicant against the owner and any occupier of any land affected.

#### **46 Fixing time and place for conducting hearing**

(1) The Magistrate's Court shall as soon as possible after appointment pursuant to the preceding section-

- (a) fix a time and place for conducting a hearing into the question of ancillary rights in or over the land concerned;
- (b) cause notice of the time and place fixed for conducting the hearing to be given to the person desiring access and to each of the owners and occupiers of the land.

(2) The court may, by further notice served on the person desiring access and on each of the owners and occupiers of the land concerned (whether on the application of the person seeking the compulsory rights order or of any owner or occupier of that land or otherwise) vary the time and place fixed for conducting the hearing.



(3) The court shall, at the time and place fixed under this section, conduct a hearing into the question of whether a compulsory rights order should be made.

#### **47 Further provisions as to determination**

(1) The court shall not make a compulsory rights order until it has brought, or used its best endeavours to bring, the parties to a settlement acceptable to them but if the parties come to such a settlement, the court shall make an order which gives effect to that settlement.

(2) At any hearing by the court into the question of the making of a compulsory rights order, a person desiring ancillary rights to the land concerned, and each of the owners and occupiers of that land are entitled to appear and be heard either personally or by a person representing him.

(3) Except as otherwise provided by this Ordinance, the procedure at a hearing shall be as determined by the court.

(4) The court shall act according to equity, good conscience and the substantial merits of the case without regard for legal technicalities or forms.

(5) The court may conduct a hearing even though one or more of the parties to the hearing fails to attend the hearing and may from time to time adjourn a hearing to a date time and place fixed by him.

(6) The costs of all parties to the proceedings shall be borne by the person desiring the grant of the compulsory rights order and, if not agreed, shall be fixed by the court on the application of the person desiring that order.

(7) The parties may, at any time before the conclusion of the hearing, terminate the hearing by notice in writing, signed by all of the parties, delivered to the court, but the delivery of such a notice shall not affect the liability under subsection (6) of the person desiring the compulsory rights order to bear the costs of all parties thereto to the proceedings.

#### **48 Making of compulsory rights order, etc.**

(1) As soon as practicable after concluding the hearing, subject to section 49, the court shall make a compulsory rights order in respect of the land concerned giving such ancillary rights as it considers necessary on such terms and subject to such conditions, and for such period, as the court thinks fit and on such a determination being made the court shall reduce it to writing and serve a copy of it on each of the parties.

(2) In determining the duration of any right to be granted the court shall have regard to the time reasonably necessary to enable the minerals to be fully worked, and shall have regard to the duration of the applicant's licence, if already granted.

(3) Such a determination must specify the compensation as assessed by the court, to which each owner or occupier of the land is entitled under this Part.

(4) Where the person desiring access has not obtained the required licence under this Ordinance at the time of the making of the compulsory rights order, the court shall specify the compensation, as assessed by the court, to which each owner and occupier would be entitled under this Part if the

person desiring access had obtained the required licence; and in any such case the obligation to pay compensation shall be conditional upon the person desiring access obtaining the required licence.

#### **49 Limitation on grant of rights**

- (1) The court shall not make a compulsory rights order under section 48 unless it is satisfied
  - (a) that the arrangement is expedient in the public interest;
  - (b) that it is not reasonably practicable to obtain the right by private arrangement for any of the following reasons-
    - (i) that the persons with power to grant the right are numerous or have conflicting interests;
    - (ii) that the persons from whom the right must be obtained, or any of them, have not the necessary powers of disposition, whether by reason of defect of title, legal disability or otherwise; or
    - (iii) that the person with power to grant the right unreasonably refuses to grant it or demands terms which, having regard to the circumstances, are unreasonable.
- (2) An appeal lies to the Supreme Court at the instance of the Governor or the applicant from and against any refusal by the Magistrate's Court to make an order under section 48 on the ground that it is not satisfied that to do so is expedient in the public interest.

#### **50 Effect of compulsory rights order**

Subject to section 52(4), rights granted by an order under section 48 -

- (a) take effect when a copy of the order has been served on each of the parties and the person desiring access has complied with any condition imposed under section 52(4) if that section is applicable;
- (b) subject to the order having been registered in the Land Charges Register, have effect as if its terms were embodied in a deed that had been duly executed by each of the parties; and
- (c) run with the land affected and bind all subsequent owners and occupiers.

#### **51 Variation of compulsory rights order**

- (1) Rights conferred by an order under section 48 may be varied by the court with the consent of all the parties to the proceedings, or their successors.
- (2) Subsection (1) has effect without prejudice to any other power the court has to vary the order.

#### **52 Compensation: general**

- (1) Where an order is made under section 48 or any restriction is imposed under section 61, the court shall determine the amount or nature of compensation or consideration to be paid or given at the time when it decides whether to make the order or whether the restrictions should be imposed.

(2) The compensation or consideration in respect of any right, including a right to enforce restrictions and any compensation payable by reason of injurious affectation occasioned by the exercise of any right, shall be assessed by the court on the basis of what would be fair and reasonable between a willing grantor and a willing grantee, having regard to the conditions subject to which the compulsory rights order is made or restriction is imposed, and the subsequent provisions of this section and the provisions of sections 53 to 59, where applicable, have effect subject to that over-riding principle.

(3) In assessing compensation or consideration under that subsection in relation to the determination of an ancillary rights arrangement, the court shall have regard-

- (a) not only to the value of the land taken or occupied by the ancillary rights but also to the damage, if any, to be sustained by the owner or occupier of the land by reason of the severing of the land from the other land of the owner or occupier or otherwise injuriously affecting such other land by the grant of the compulsory rights order ; and also
- (b) to any monetary or non-monetary compensation offered to the owner or occupier of the land by the person desiring ancillary rights.

(4) Without prejudice to sections 53 to 59, the court may impose as a condition on the determination of any ancillary rights arrangement or the imposition of any restriction that any compensation or consideration payable in respect thereof shall be paid, or that security to the satisfaction of the court shall be given, before any right under the arrangement is commenced to be exercised or the restriction is enforced.

### *Compensation in respect of agricultural land*

#### **53 General provision as to annual compensation**

(1) For the purposes of this Part, where land immediately before an order under section 48 comes into effect-

- (a) was occupied as a unit, and
- (b) was so occupied wholly or mainly for the purposes of agriculture carried on by way of a trade or business,

the entirety of that land (excluding Crown minerals) shall be taken for those purposes to constitute a holding to which this section applies.

(2) Where an order under section 48 affects the whole or part of such a holding, unless the court orders to the contrary, compensation shall be payable in respect of that holding-

- (a) for each year beginning with the operative date, and
- (b) for each subsequent year which begins with the anniversary of that date and falls wholly or partly within the period of occupation.

(3) Subject to subsection (4), the person entitled to any compensation payable for any year by virtue of this section in respect of a holding shall be the person who-

- (a) in respect of so much (if any) of the holding as is not affected by the order is for the time being entitled to occupy the holding, and
- (b) in respect of so much of the holding as is affected by the order, would be entitled for the time being to occupy it if the order had not been made.

#### **54 Calculation of compensation under section 53**

(1) The compensation payable for any year in respect of a holding to which section 53 applies shall, subject to any determination to the contrary of the Supreme Court on appeal under section 62, be a sum equal to the annual borrowing cost for that year of the value of the rights conferred by the compulsory rights order in relation to the holding.

(2) For the purposes of this section, the value is such amount as would be fair and reasonable between a willing grantor and a willing grantee having regard to the conditions subject to the conditions contained in or referred to in the order.

(3) For the purposes of subsection (1), the annual borrowing cost for any year of any amount ("the value") is the aggregate sum which would fall to be paid in that year by way of payments of interest and repayments of capital if the value had been borrowed on the date on which the ancillary rights arrangement was made on terms which-

- (a) required interest to be paid and capital to be repaid by way of the relevant number of equal annual instalments; and
- (b) provided for interest on outstanding capital to become due immediately before the time for payment of each instalment, at an annual rate equal at that date to three per cent per annum above the minimum lending rate of Standard Chartered Bank Stanley branch at the date on which the compulsory rights order was made;

and in this subsection "the relevant number" means the number of years for which, when it was determined, the ancillary rights arrangement was to have effect.

#### **55 Terminal compensation**

(1) Where an order under section 48 relates to the whole or part of a holding to which this section applies, the provisions of this section and of sections 56 and 57 have effect as to the compensation payable in respect of that holding by the person who immediately before the period of occupation is the person entitled to the rights conferred by the order.

(2) Section 53(1) has effect in relation to this section as it has in relation to that section, and references to a holding to which this section applies shall be construed accordingly.

(3) Compensation payable in respect of a holding under the provisions referred to in subsection (1) of this section shall consist of either or both of the following-

- (a) compensation by way of payment of cost of works, and
- (b) compensation by reference to the diminution in value of the holding.

## **56 Compensation by way of payment of cost of works**

(1) Subject to the following provisions of this section, compensation by way of the cost of works shall, in the case of an order under section 48, be payable in respect of a holding to which section 55 applies if-

- (a) at the end of the period of occupation, any land forming part of the holding and comprised in the arrangement has not been restored to the condition in which it was immediately before the date of entry, and
- (b) after the end of the period of occupation, expenses are reasonably incurred by any person in respect of work carried out (over and above the ordinary use and maintenance of land) for the purpose of further restoring that land to or towards that condition or a condition substantially similar thereto.

(2) Where in accordance with subsection (1) compensation by way of payment of cost of works is payable-

- (a) the person entitled thereto shall be the person by whom the expenses in question are incurred; and
- (b) the compensation shall be payable from time to time as the expenses are incurred and shall be of an amount equal to the amount of the expenses.

(3) The provisions of Schedule 1 to this Ordinance have effect with respect to compensation by way of payment of cost of works under this section.

## **57 Compensation by reference to the diminution in value of a holding**

(1) Compensation by reference to a diminution in value of a holding to which section 55 applies shall be payable to the owner if the value of a freehold interest in the holding, computed in accordance with paragraph (a) of subsection (2), or in accordance with paragraph (b) of that subsection, as the case may be, but (in either case) with the benefit of any prospective right to compensation by way of payment of cost of works in respect of the holding, is less than the value of such an interest computed in accordance with paragraph (c) of that subsection.

(2) For the purposes of subsection (1) there shall be computed the following values-

- (a) where the entirety of the holding is affected by the order under section 48, the value at the end of the period of occupation of a freehold interest in the holding;
- (b) where part of the holding is not affected by the order, the value which a freehold interest in the holding would have at the end of the period of occupation if that part of the holding were in the state in which it was immediately before the date of entry, the remainder of the holding being taken to be in the state in which it was at the end of the period of occupation;
- (c) in either case, the value which a freehold interest in the holding would have at the end of the period of occupation if that part of the holding were in the state in which it was immediately before the date of entry.

(3) Where in accordance with subsection (1) compensation by reference to the diminution in value of a holding is payable, the amount of the compensation shall be the difference between the values

mentioned in that subsection, and the person entitled to that compensation shall be the person who at the end of the period of occupation is the owner of the holding.

(4) In computing value as mentioned in any of paragraphs (a), (b) and (c) of subsection (2), it shall be assumed that a freehold interest in the holding is, in the circumstances mentioned in the paragraph in question, being offered for sale on the open market by a willing seller immediately after the end of the period of occupation, with vacant possession of the holding and free from incumbrances, other than any easement or similar right, any right restrictive of the use of the land and any licence under this Ordinance conferring working rights, affecting the holding or any part thereof at that time.

## **58 Additional compensation on re-occupation**

(1) Subject to the following provisions of this section, with a view to furthering the resumption of agriculture on land formerly affected by an order under section 49, a person shall be entitled to compensation by virtue of this section in respect of a holding to which section 55 applies if he is in occupation of the holding at the end of the period of occupation or if he enters into occupation of the holding at or after the end of that period, provided that he is occupying the holding or (as the case may be) he enters into occupation of the holding wholly or mainly for the purposes of agriculture carried on by way of trade or business.

(2) No compensation shall be payable by a person by virtue of this section unless he is either the person who, immediately before the order under section 49, was entitled to occupy the holding (in this subsection called "the original occupier") or a person who, before the end of the period of occupation, became entitled to the relevant interest in the holding in accordance with the disposition of the original occupier's estate effected by his will, or the law relating to intestacy, or the combination of his will and that law.

(3) In subsection (2)-

- (a) "the relevant interest", in relation to any person, means the interest by virtue of which he became entitled to occupy the holding (or would have become entitled to occupy the holding (or would have become so entitled if the compulsory rights order had not been made); and
- (b) "will" includes codicil.

(4) The compensation payable in respect of a holding by virtue of this section shall be payable by the person who immediately before the end of the period of occupation is the person entitled to the rights conferred by the ancillary rights arrangement and, subject to the following provisions of this section, shall be an amount equal to the compensation payable in respect of that holding under section 53 for the last twelve months of the period of occupation.

(5) Subject to the following provisions of this section, in any case where the compensation payable in respect of a holding under section 53 was in fact payable by reference to a period of less than twelve months, the compensation payable in respect of that holding by virtue of this section shall be an amount equal to the compensation which was so payable under section 53, multiplied by the fraction of which the denominator is 365 and the numerator is the number of days in the period by reference to which the compensation was so payable under that section.

(6) Where the person entitled, immediately after the end of the period of occupation, to occupy the holding concerned ceases, before he enters into occupation, to be entitled to occupy some part of it then, subject to subsection (7)-

- (a) his entry into occupation of the part which he remains entitled to occupy shall be treated for the purposes of subsection (1) as entry into occupation of the holding; but
- (b) the compensation payable to him by virtue of this section shall be such proportion of the compensation which would have been so payable had he remained entitled to enter into occupation of the whole of the holding as properly attributable to the part of the holding which he remains entitled to occupy.

(7) If, immediately before the end of the period of occupation, only part of the holding concerned (in this subsection referred to as "the compensatable portion") was comprised in the ancillary rights arrangement and (after the end of the period of occupation) subsection (6) applies, then-

- (a) if the holding which the person concerned ceased to be entitled to occupy comprises the whole of the compensatable portion, no compensation shall be payable to him by virtue of this section,
- (b) if the person concerned remains entitled to occupy the whole of the compensatable portion, the compensation so payable to him shall not be reduced under paragraph (b) of subsection (6) above; and
- (c) in any other case, for the purpose of determining the proportion of the compensation properly attributable to any part of the holding under paragraph (b) of subsection (6), the holding shall be treated as consisting of the compensatable portion only.

### *Compensation in respect of other matters*

#### **59 Compensation in respect of easements and other rights**

(1) The provisions of this section shall have effect where, by reason of an order under section 48 or anything done in the exercise of rights conferred thereby, the exercise of an easement or similar right over any land comprised in the arrangement, or any right restrictive of the use of any such land, is prevented or injuriously affected.

(2) For the year beginning with the date on which the rights under the order took effect, and for each subsequent year which begins with the anniversary of that date and falls wholly or partly within the period of occupation, the person for the time being entitled to the easement or right in question shall be entitled to compensation of an amount equal to the loss (if any) suffered by him by reason that the exercise of the easement or right is prevented or injuriously affected as mentioned in the preceding subsection.

(3) The liability to pay compensation under subsection (2) falls upon the person who, for the whole or any part of the year in question, has been entitled to the rights conferred by the order.

(4) Where, after the end of the period of occupation, the exercise of the easement or right continues to be prevented or injuriously affected by reason of anything done during that period in the exercise of the rights conferred by the by the compulsory rights order ?

- (a) if that easement or right is appurtenant to, or the benefit of it is in any other way annexed to, any land, the person who, at the end of the period of occupation, is the owner of that land shall be entitled to compensation from the person who immediately before the end of the period of occupation is the person entitled to the rights conferred by the order if an amount equal to the diminution (if any) in the value of that land, in so far as any such diminution is attributable to the fact that the exercise of the easement or right is so prevented or injuriously affected;
- (b) in any other case, the person who at the end of the period of occupation is entitled to the right in question shall be entitled to compensation from the person who immediately before the end of the period of occupation is the person who immediately before the end of the period of occupation is the person entitled to the rights conferred by the order of an amount equal to the market value which the right would then have if its exercise were not so prevented or affected, reduced by the amount of any market value which the right actually has at the end of that period.

(5) For the purposes of paragraph (a) of subsection (4) the value of the land in question shall be taken to have been diminished if (and to the extent to which) the value of the freehold interest in that land at the end of the period of occupation is less than the value which such interest would then have if the land affected by the order, over which the easement or right is exercisable, were in the state in which it was immediately before the date of entry; and for the purpose of computing those values the provisions of section 57(4) shall apply as they apply for the purposes of section 57(2), but with the substitution, for the references to the holding, of references to the land to which the benefit of the easement or right is annexed.

## **60 Unknown owner of land**

(1) Where an owner or occupier of land with whom a person desiring access wishes to enter into an access arrangement under this Part is unknown or of unknown whereabouts and cannot after reasonable enquiry be discovered or found, the person desiring access may by originating application in the Supreme Court to which the Attorney General shall be the respondent apply for the appointment by the court of a fit and proper person authorised to act on behalf of the owner or occupier as if he had been duly appointed by power of attorney to do so, and the court may, if it thinks fit, by order appoint such a person.

(2) The court, whether or not it appoints such a person, shall order the applicant to bear the Attorney General's costs of the application which, if not agreed, shall be assessed by the court.

(3) If the court appoints a person in exercise of its powers under subsection (1), that person shall for the purposes of this Part have and may exercise all the powers of the owner or occupier in respect of whom he was appointed and may, in particular, enter into an access arrangement on his behalf.

(4) Any compensation payable under an access arrangement to an owner or occupier in respect of whom an order under subsection (1) applies shall be paid into court and held by the court upon trust for the owner or occupier concerned.

(5) Where any doubt or dispute arises in relation to the right of any person to receive any compensation paid into court in accordance with subsection (4), the Supreme Court may, upon the application of any interested person, make such order in relation thereto as it thinks fit.



## **61 Restrictions on working minerals required for support**

(1) If any person having an interest in land is not entitled to support or sufficient support, whether vertical or lateral, for any buildings or works, whether on or below the surface, and alleges that it is not reasonably practicable to obtain a right to such support by private arrangement for any of the reasons mentioned in section 49(3), he may apply to the Magistrate's Court for such restrictions to be imposed on the working of the minerals under that land and the land adjacent thereto as he may consider necessary to secure sufficient support to the building or works.

(2) An application under this section shall set out the circumstances alleged to justify the imposition of the restrictions, and shall be in such form, and accompanied by such information, as may be required by rules of court.

(3) Where any application is made to the Magistrate's Court under subsection (1), the court if satisfied that the requirements of this section are complied with in the case of the applicant and that it is expedient in the public interest that restrictions should be imposed, may, by order, impose such restrictions, on such terms and subject to such conditions and for such period as it may think just, and upon such order being made the right to enforce the restriction imposed by the order shall, subject to the following provisions, vest in the applicant.

(4) Where restrictions are imposed, such compensation or consideration as in default of agreement may be determined by the court shall be paid or given by the applicant in respect of the imposition of the restrictions to such persons as the court may determine to be entitled hereto.

(5) The restrictions may be either on the quantity or position of the minerals to be worked, or on the methods of working or packing, or otherwise as may be necessary to secure adequate support of the buildings or works or to prevent or minimise damage to them.

(6) In determining whether restrictions should be imposed the court shall have regard to the value of the buildings or works or the cost of repairing damage likely to be caused to them by subsidence, as compared with the value of the minerals, or to the importance in the public interest of the erection or preservation of the buildings or works, as compared with the importance in the public interest of the working of the minerals.

## **62 Appeal to Supreme Court against determination**

(1) Subject to subsection (2), an appeal lies to the Supreme Court at the instance of a person aggrieved against any order made by the Magistrate's Court under section 48 or grant of a restriction under section 61. Any such appeal must be commenced by notice in writing lodged in the Supreme Court within 21 days of the service upon the person aggrieved of the copy of the order made under section 48 or 61, as the case may be, and the notice must specify the ground or grounds on which the appellant is aggrieved by the Magistrate's Court's determination.

(2) No appeal to the Supreme Court lies against the making of an order under section 47(1) (order giving effect to settlement agreed between the parties).

(3) Any person appealing pursuant to subsection (1) must serve a copy of the notice lodged under that subsection upon every other party to the access arrangement or the person or persons affected by the restriction, as the case may be.

(4) When an appeal is lodged under subsection (1), the access arrangement or restriction shall not take effect, unless otherwise ordered by the Supreme Court, until the appeal is determined and shall then take effect as confirmed or varied by the Supreme Court.

(5) Except as otherwise provided by this Ordinance and by any rules of court made for the purpose, the procedure in and relating to appeals under this section shall be such as the Supreme Court may determine.

(6) In relation to an appeal under this section, the Supreme Court -

- (a) shall have and may exercise all or any of the powers of the Magistrate's Court under any of the previous provisions of this Part;
- (b) may vary the determination of the Magistrate's Court in such manner as it thinks fit or quash it and proceed to determine the matter (including any compensation payable) afresh; and
- (c) may order the costs of and relating to the appeal to be borne by such of the parties and in such proportions as it thinks fit.

(7) No further appeal shall lie at the instance of any person to any tribunal or authority from and against a determination by the Supreme Court of an appeal under this section.

***Notification to Registrar General of grants of a licence, extensions of a licence, access arrangements etc***

**63 Lodging and registration of licences**

(1) When a licence is granted the Director shall forthwith send four copies of the licence to the Registrar General, each of which copies shall have attached to or incorporated in it a plan identifying the land to which it relates and a schedule identifying the relevant Crown Grant number or numbers in relation to that land.

(2) On receipt of the documents referred to in subsection (1) and the prescribed fee the Registrar General shall-

- (a) record and file one of the copies in the Register of Deeds;
- (b) enter in the register of every Crown Grant affected by the licence particulars of the entry relating to it in the Register of Deeds and the nature of the licence and its date of expiry;
- (c) return the remaining copies to the Director, endorsed with particulars of the registration of the licence in the Register of Deeds and the registers of Crown Grants.

(3) On the return to the Director in accordance with subsection (2)(c) of the copies of the licence the Director shall-

- (a) file one copy in the Director's records of licences granted;
- (b) send one copy to the Attorney General; and
- (c) send the remaining copy to the licensee.

(4) The Director may recover from the licensee the amount of any prescribed fee paid by the Director to the Registrar General on or in connection with the lodging of copies of a licence under this section.

(5) For the purposes of subsection (2), the prescribed fee is £200 or such higher fee as is prescribed by regulations under this Ordinance.

#### **64 Lodging of certificates of extension**

Section 63 applies to the extension of land to which a licence relates as if the granting of the extension were the granting of a licence in respect of the land subject to the extension and, except where the context otherwise requires, every reference in section 63 to "licence" shall, in the case of an extension of land to which the licence relates, be deemed to be a reference to the certificate of extension.

#### **65 Notification of access rights**

(1) If he enters into an access arrangement which is of more than 6 months in duration, or of indefinite duration, from its date of commencement, the licensee or applicant for a licence who entered into the arrangement shall forthwith lodge with the Registrar General four copies of a notice of the arrangement or, in the case of a compulsory rights order made by the court under section 49, of the order together with the prescribed fee.

(2) On receipt of the documents referred to in subsection (1) and the prescribed fee the Registrar General shall-

- (a) record and file one of the copies in the Register of Deeds;
- (b) enter in the register of every Crown Grant affected by the access arrangement particulars of the entry relating to it in the Register of Deeds and the nature of the licence and its date of expiry;
- (c) register notice of the arrangement as such class of in the Land Charges Register as may be prescribed under the Land Charges Ordinance 1996;
- (d) return one of the remaining copies to the licensee or applicant for a licence, endorsed with particulars of the registration of the access arrangement in the Register of Deeds and the registers of Crown Grants.
- (e) send one copy so endorsed to the Director for the Director to retain with the Director's records of licences;
- (f) send one copy so endorsed to the Attorney General; and
- (g) retain the last copy with his own records.

#### **66 Entry of licences and access arrangements to be notice only**

(1) The entry by the Registrar General in any register in his custody of the particulars of a licence or access arrangement operates only as notice of the licence or access arrangement and does not create any estate or interest in land whatsoever and, accordingly, nothing in the Land (Non-residents) Ordinance 1999 applies thereto.

*[Revision w.e.f. 31/07/2017]*

(2) Nothing in the Land Ordinance 1949 or any statute of or having effect in the Falkland Islands in relation to land shall have effect in any way to limit or affect any right title or interest held under a licence, access arrangement compulsory rights order or order under section 61 which has been recorded or entered in any register by the Registrar General under the provisions of section 64 or section 65.

*[Revision w.e.f. 31/07/2017]*

## **67 Certified copies of licences, certificates and other documents to be evidence**

(1) The Registrar General shall on payment of any fee prescribed under this or any other Ordinance provide to any person applying for it a certified copy of any licence or other document recorded or registered by the Registrar General under this Part.

(2) Any such certified copy which is signed by the Registrar General and sealed with his seal shall be received in evidence for all purposes for which the original licence or other document might be received in evidence.

## **68 Recorded documents to be open to search**

Any person may, on payment of any fee prescribed under this or any other Ordinance, inspect and take copies of any document recorded or registered by the Registrar General under any provision of this Part.

## **69 Revision of records and registers**

The Registrar General shall, on receiving any notice of revocation of a licence or surrender of a licence, discharge the record or registration of the licence, and note the particulars of the notice in his records, or, as the case may be, registers.

## **70 Register of licences**

(1) The Director shall keep a register of licences in such form as the Governor may approve in which there shall be entered brief particulars of all licences issued under this Ordinance and all assignments of licences.

(2) There shall be open to public inspection at the office of the Director, during the hours that office is open for business and on payment of such fee as may be prescribed by regulations -

- (a) a copy of every licence granted under this Ordinance or continuing to have effect as if granted under this Ordinance;
- (b) the register kept under subsection (1);
- (c) such other documents as may from time be prescribed by regulations.

(3) A certificate under the hand of the Director as to -

- (a) the contents of the register maintained under subsection (1); or
- (b) that on the date specified in the certificate the name of any person did not appear in the register as the holder of any licence,

shall, in the absence of proof to the contrary, be sufficient evidence in accordance with its tenor.

**PART IV**  
**HEALTH AND SAFETY AT WORK AND PROTECTION OF THE ENVIRONMENT**

*Health and safety at work*

**71 Application of Health and Safety at Work etc. Act 1974**

(1) The Governor may by an Order under this subsection apply the provisions of Part I of the Health and Safety at Work etc Act 1974 and any regulations made under section 15(1) of that Act, with such modifications and exceptions as may be stated in the Order -

- (a) to mines and quarries in the Falkland Islands and any plant or machinery used thereat or in connection therewith;
- (b) to operations specified in such an Order undertaken or carried out in connection with the construction, operation, maintenance, repair, dismantling or decommissioning of mines and quarries in the Falkland Islands and any plant or machinery used thereat or in connection therewith;
- (c) to the maintenance in a safe state of any former mine or quarry;
- (d) to the processing, refining, smelting or treatment in any manner whatsoever of any ore or rock obtained from any mine or quarry in the Falkland Islands;
- (e) to operations specified in such an Order undertaken or carried out in connection with the construction, operation, maintenance, repair of any plant or machinery used in or in connection with the processing, refining, smelting of any ore or rock obtained from any mine or quarry in the Falkland Islands; and
- (f) without prejudice to the generality of the preceding paragraphs, to any premises, apparatus, equipment, or machinery used in or in connection with the supply of power to any premises, apparatus, equipment plant, machinery comprised within the foregoing paragraphs.

(2) If an Order has been or is about to be made under subsection (1) the Governor may -

- (a) enter into an agreement or arrangement with the Health and Safety Executive for and relating to the exercise on behalf of the Crown in the Falkland Islands of the like functions in the application of Part I of that Act under subsection (1) as it has under that Part in the United Kingdom;
- (b) make such Order as it appears to him necessary or convenient to make to give effect in the law of the Falkland Islands to any such agreement or arrangement.

(3) Where any person has a right of action arising out of the act or default of the Health and Safety Executive in the performance or purported performance of any function under and by virtue of any such agreement or arrangement as is referred to in subsection (2), that right of action shall lie against Her Majesty in right of Her Government of the Falkland Islands and not (except so far as

may be required by or under the law of the United Kingdom) against Her Majesty in right of Her Government of the United Kingdom.

## **72 Civil liability for breach of statutory duty**

(1) Breach of a duty imposed on a person by virtue of the application by an Order under section 71(1) of this Ordinance of Part I of the Health and Safety at Work etc Act 1974 or of any regulations made thereunder shall be actionable so far, and only so far, as the breach causes personal injury, and references in Part I of the Fatal Accidents Act 1846 in its application to the Falkland Islands to a wrongful act, neglect or default shall include references to any such breach which is so actionable.

(2) Nothing in subsection (1) of this section precludes any action which lies apart from the provisions of that subsection.

## **73 Environmental protection**

(1) The Governor may by Order under this subsection apply any provisions specified in that Order of the Environmental Protection Act 1990, as amended from time to time, and any regulations made under that Act, subject to such modifications and exceptions to that Act or those regulations as are stated in that Order to and in respect of the like premises, operations, matters and things as an Order under section 71(1) may be made.

- (2) If an Order has been or is about to be made under subsection (1) the Governor may -
- (a) enter into an agreement or arrangement with the Environment Agency for and relating to the exercise on behalf of the Crown in the Falkland Islands of the like functions in the application of that Act and those regulations under subsection (1) as it has in the United Kingdom;
  - (b) make such Order as it appears to him necessary or convenient to make to give effect in the law of the Falkland Islands to any such agreement or arrangement.

(3) Where any person has a right of action arising out of the act or default of the Environment Agency in the performance or purported performance of any function under and by virtue of any such agreement or arrangement as is referred to in subsection (2), that right of action shall lie against Her Majesty in right of Her Government of the Falkland Islands and not (except so far as may be required by or under the law of the United Kingdom) against Her Majesty in right of Her Government of the United Kingdom.

## **PART V MISCELLANEOUS**

### *Miscellaneous provisions as to licences and access arrangements*

## **74 Consent required for assignment of licences**

(1) A licence may not be assigned without the consent of the Governor in writing.

- (2) For the purposes of this Ordinance, a licence is assigned if-
- (a) the licensee does anything whereby under the law (including the rules of equity) of the Falkland Islands or of the law of the place of incorporation of the licensee, any right granted by the licence or derived from a right so granted (other than by sale in the course of business of any mineral extracted under the licence) becomes exercisable by or for the benefit or partly for the benefit of or in accordance with the directions of another person; or
  - (b) the control of the licensee becomes vested in a person or persons different from the person or persons stated in the application for the licence to control the applicant.
- (3) If without the consent of the Governor the holder of a licence does anything which by virtue of subsection (2) is for the purposes of this Ordinance an assignment of that licence -
- (a) the Governor may terminate that licence by notice in writing served upon the holder of the licence;
  - (b) the transaction amounting to an assignment of the licence has no effect whatsoever (except to enable the Governor to terminate the licence) until and unless the Governor consents in writing to that assignment of the licence.

## **75 Licences and access arrangements not to confer estate or interest in land**

- (1) Neither a licence nor an access arrangement confers on a licensee or applicant for a licence an estate or interest in the land to which it relates.
- (2) A right of access obtained by a licensee, whether before or after the licence was granted, may, subject to the terms of the access arrangement, be enjoyed by the holder for the time being of the licence.

## **76 Notices**

- (1) Any notice or other communication authorised or required to be given by any provision of this Ordinance may be sent-
- (a) by post;
  - (b) by electronic mail;
  - (c) by facsimile transmission; or
  - (d) delivered to the addressee.
- (2) Subject to subsection (6), any notice or other communication sent by post within the Falkland Islands to an addressee in the Falkland Islands shall be deemed to be received by the addressee, unless the contrary is proved, on the third business day following the day on which it is proved to have been posted.
- (3) Subject to subsection (6), any notice or other communication sent by post where either the sender or addressee are not within Stanley shall be deemed to be received by the addressee, unless the contrary is proved on the tenth business day following the day on which it is proved to have been posted.

(4) Any notice or other communication sent by electronic mail shall be deemed to have been received by the addressee at nine in the morning on the business day following the day on which it is proved to have been received by the addressee's receiving equipment or, if earlier acknowledged by or on behalf of the addressee, at the time on the day the sender of the notice or communication received the acknowledgment.

(5) Where under the provisions of section 77(1)(a) or of regulations made under section 77(1)(b) an agent has been appointed and a notice or other communication has been posted, sent by electronic mail or facsimile transmission or delivered to that agent on account or in respect of the person appointing him, that person shall be deemed to have received that notice or communication at the same time as he would, in accordance with the foregoing provisions of this section be taken to have received it if he himself were the agent he has appointed.

(6) Subsections (2) and (3) shall not operate in favour of the sender of a notice or communication unless the notice or other communication is shown to be correctly addressed, and the same applies in respect of a notice or communication to an agent sent by post to an agent (to which subsection (5) applies).

## **77 Appointment of person to receive notices**

(1) The Governor may

- (a) by a condition of a licence granted under this Ordinance; or
- (b) by regulations under this subsection,

require any licence or permit holder who is not-

- (i) a living person ordinarily resident in the Falkland Islands;
- (ii) a company incorporated under the laws of the Falkland Islands and having a usual place of business in Stanley; or
- (iii) an oversea company registered under Part X of the Companies Act 1948 in its application to the Falkland Islands;

to appoint a person of a kind mentioned in sub-paragraph (i) as his or its agent and so often as may be necessary to appoint another such person in place of the first-mentioned person.

(2) Where a company has -

- (i) pursuant to Part X of Companies Act 1948;
- (ii) pursuant to a condition of a licence granted to it under this Ordinance; or
- (iii) pursuant to regulations made under subsection (1) of this section,

appointed a person for the purpose of accepting or receiving service of any notice or proceedings which might otherwise have been given or served upon the licensee or permit holder, any notice or communication under this Ordinance or process civil or criminal shall for all purposes be taken to have been duly served or given to the company if it is shown to have been served upon or given to the person appointed as mentioned in this subsection.



## *Offences and criminal proceedings*

### **78 Obstruction etc.**

A person commits an offence who wilfully obstructs, hinders, resists, or deceives any person in the execution of any powers conferred on that person by or under this Ordinance.

### **79 Liability of principal for acts of agents, corporate liability, liability of directors etc.**

(1) Where an offence under this Ordinance is committed by any person acting as the agent or employee of another person, that other person is, without prejudice to the liability of the first-mentioned person and subject to subsection (2) of this section, liable in the same manner and to the same extent as if he had personally committed that offence.

(2) It is a defence to any prosecution brought by virtue of subsection (1) for the defendant to prove-

(a) if the defendant is a natural person-

- (i) that he did not know and could not reasonably have been expected to know that the offence was to be or was being committed; and
- (ii) that he took all steps which he reasonably could have taken to prevent the commission of the offence or stop it;

(b) if the defendant is a body corporate-

- (i) that neither the directors nor any person involved in the management of the body corporate knew or could reasonably be expected to have known that the offence was to be or was being committed; and
- (ii) that the body corporate took all steps it reasonably could have taken to prevent the commission of the offence.

(3) Where a body corporate is convicted of an offence against any provision of this Ordinance, every director and every person concerned in the management of the body corporate has committed and is liable to be convicted of the like offence if it is proved -

(a) that the act that constituted the offence took place with his authority, permission or consent; or

(b) that he knew or could reasonably be expected to have known that the offence was to be or was being committed and failed to take all reasonable steps to prevent it or stop it.

### **80 Penalties**

(1) A person who is convicted of an offence of contravening section 5(1) of this Ordinance (prospecting, exploring or mining without a licence) is liable to imprisonment for a term not exceeding 2 years and to a fine not exceeding the maximum of level 12 on the standard scale and, if the offence is a continuing one, to a further fine of £25,000 for every day or part of a day during which the offence continues.

(2) A person who is convicted of an offence against any other provision of this Ordinance is liable to imprisonment for a term not exceeding six months and to a fine not exceeding the maximum of

level 8 on the standard scale and, if the offence is a continuing one, to a further fine not exceeding £5,000 for every day or part of a day during which the offence continues.

(3) The continued existence of anything which constitutes an offence against any provision of this Ordinance or the intermittent repetition of any action which constitutes an offence against any provision of this Ordinance shall for the purposes of subsections (1) and (2) of this section be deemed to be a continuing offence.

## **81 Strict liability**

(1) In any prosecution for any offence of contravening any provision of this Ordinance, it is not necessary to prove that the defendant intended to do the act or acts or make the omission or omissions, or both such act or acts and omission or omissions, as constitute the offence.

(2) Subject to subsection (3), it is a defence to such a prosecution if the defendant proves-

(a) -

(i) that the action or event to which the prosecution relates was necessary for the purpose of saving or protecting life or health, or preventing serious damage to property or avoiding an actual or likely serious adverse effect on the environment;

(ii) that the conduct of the defendant was reasonable in the circumstances; and

(iii) that the effects of the action or event were as far as they reasonably could have been adequately mitigated by the defendant after it occurred; or

(b) that the action or event to which the prosecution relates was due to an event beyond the control of the defendant, including natural disaster, mechanical failure, or sabotage and, in each case -

(i) that the action or event could not reasonably have been foreseen or provided against by the defendant; and

(ii) that the effects of the action or event were as far as they reasonably could have been adequately mitigated by the defendant after it occurred.

(3) Except with the leave of the court, the defendant shall not be permitted to rely upon a defence afforded by subsection (2) of this section unless within 10 days after the service of the summons or such further time as the Court may within 10 days thereafter upon application to it allow the defendant delivers to the prosecutor a written notice specifying -

(a) the defence under subsection (2) of this section upon which the defendant intends to rely; and

(b) the facts alleged by the defendant to support that defence.

## **82 Time limit and authority for bringing proceedings**

(1) Notwithstanding any provision of the law of the Falkland Islands which has effect to the contrary a prosecution under this Ordinance may be brought at any time within 12 months after the time when the contravention giving rise to the prosecution became known, or should have become known, to the Director.

(2) No prosecution for an offence under this Ordinance shall be commenced except by or with the consent of the Attorney General.

### **83 Jurisdiction to try offences**

All offences under this Ordinance shall be tried summarily by the Magistrate's Court which has power on conviction of any person for such an offence to impose any sentence which this Ordinance provides may be imposed on that person.

## *Regulations*

### **84 Power to make Regulations**

(1) The Governor may, without prejudice to any power under any antecedent provision of this Ordinance to make regulations, make regulations -

- (a) prescribing or making provision for forms of applications, licences, permits, notices and other documents for the purposes of this Ordinance;
- (b) prescribing the information to be provided with applications for licences;
- (c) prescribing conditions on which licences may be applied for, granted, changed or extended;
- (d) prescribing the manner in which licences may be surrendered;
- (e) prescribing registers to be kept under this Ordinance, the form of such registers, the matters to be entered therein and the means whereby entries shall be verified;
- (f) providing for the keeping and provision of records, returns, reports and information by licensees for any of the purposes of this Ordinance;
- (g) providing for the keeping by a holder of a licence of cores, specimens or samples obtained in the course of activities carried out under the licence;
- (h) prescribing matters in relation to which fees are to be payable under this Ordinance, the amount of the fees, the time and manner of their payment, and the persons liable to pay them, and providing for charges for late payment of fees;
- (i) providing for a contravention of any provision of the regulations specified for the purpose to constitute a criminal offence punishable in such manner as is prescribed not exceeding a maximum term of imprisonment of three months or a fine not exceeding the maximum of level 5 on the standard scale or both such imprisonment and such fine;
- (j) providing for or prescribing any other matter or thing necessary or convenient to be prescribed for the purposes of this Ordinance.

(2) Any regulations made under subsection (1) may provide for different regulations to apply to different types of licence, licensees or activities or in respect of the same type of licence, licensees or activities in different circumstances.

## 85 Repeal

The Mining Ordinance 1918<sup>ii</sup> is repealed.

*[Revision w.e.f. 31/07/2017]*

### **SCHEDULE PROVISIONS AS TO COMPENSATION BY WAY OF PAYMENT OF COST OF WORKS**

(section 56)

1. In this Schedule-

**"compensation"** means compensation under section 56 of this Ordinance;

**"final operator"** means the person who immediately before the end of the period of occupation is the person entitled to the rights conferred by the order;

**"former use"**, in relation to any land, means the use for which it was used immediately before the operative date of the order in question;

**"proper cost"**, in relation to any work, means such cost as is reasonable, having regard to the prices of materials and rates of remuneration for services current at the time when the work is carried out.

2. (1) The final operator shall not be required to pay compensation in respect of expenses incurred in carrying out any work unless-

- (a) not less than the prescribed length of time before the work was begun, the person incurring the expenses gave to the final operator in the prescribed manner, notice in writing containing adequate particulars of the work, together with a statement of the time when it was proposed to carry out the work and estimate of the cost of the work, and
- (b) at all reasonable times after the service of that notice, that person afforded to the final operator reasonable facilities to inspect the land to which the notice related, in so far as he was in a position to afford such facilities.

(2) In the following provisions of this Schedule "the applicant", in relation to a notice under this paragraph, means a person who gave that notice.

3. Where a notice has been given under the last preceding paragraph the final operator within the prescribed time after the giving of that notice, may serve on the applicant a counter-notice, stating-

- (a) that the final operator objects to the work specified in the applicant's notice, or to such one or more items thereof as may be specified in the counter-notice, and
- (b) that the final operator objects thereto on such one or more grounds as may be specified in the counter-notice, being one or more of the grounds mentioned in the next following paragraph.

4. Subject to the next following paragraph, the said grounds, in relation to any work specified in a notice under paragraph 2 of this Schedule, are the following, that is to say-

- (a) that the work could not reasonably be regarded as work falling within section 56(1)(b) of this Ordinance;
- (b) that the work is likely to be ineffective, or is by its nature unsuitable to the land in question, or is proposed to be carried out in an unsuitable way;
- (c) that the estimated cost of the work is grossly disproportionate to any prospective increase attributable to the work in the value of the land;
- (d) that the work, in a case where the former use of the land in question was agricultural, would not be appropriate to the use of that land for agriculture, or, in any other case, would not be appropriate to the use of that land for its former use;
- (e) that the work would not be required but for dilapidation, deterioration or damage which has occurred since the end of the period of occupation and is attributable to default on the part of the owner or of an occupier of the land;
- (f) that the work if carried out at the time specified in the applicant's notice, would be premature;
- (g) that the work, if carried out at the time specified in the applicant's notice, would not have been carried out at the first reasonable opportunity after the end of the period of occupation, or within a reasonable time after that opportunity arose.

5. (1) In so far as a notice given under paragraph 2 of this Schedule (in this paragraph referred to as "the current notice") specifies any work (in this paragraph referred to as "the new work") in a case where the applicant has previously given one or more notices under that paragraph specifying similar work which he proposed to carry out in respect of the same land, the last preceding paragraph shall apply in relation to the new work with the substitution, for sub-paragraph (c) of that paragraph, of the following sub-paragraph (in this paragraph referred to as "as the substituted sub-paragraph (c)")-

"(c) that the aggregate cost of that work and of all relevant work specified in previous notices relating to the same land is grossly disproportionate to the aggregate increase attributable to all such work in the value of the land."

(2) In the substituted sub-paragraph (c) the reference to the aggregate cost of the new work and of all other relevant work specified in previous notices relating to the same land is a reference to the aggregate of-

- (a) the estimated cost of the new work, and
- (b) the estimated cost of any similar work specified in any previous notice given by the applicant which is still outstanding on the relevant date, and
- (c) the proper cost of any similar work specified in any previous notice given by the applicant in respect of which a claim for compensation has been allowed before the relevant date or is still outstanding on that date.

(3) In the substituted sub-paragraph (c) the reference to the aggregate increase attributable to all such work as is therein mentioned in the value of the land is a reference to the aggregate of-

- (a) the prospective increase in that value attributable to the new work, and

- (b) the prospective increase in that value attributable to any similar work specified in any previous notice given by the applicant which is still outstanding on the relevant date, and
  - (c) the increase in that value attributable to any similar work specified in any compensation has been allowed before the relevant date or is still outstanding on that date.
- (4) For the purposes of sub-paragraphs (2) and (3) of this paragraph-
- (a) a previous notice specifying similar work shall be taken to be outstanding on the relevant date if-
    - (i) such a notice has been given before the relevant date and has not been withdrawn, and
    - (ii) either the final operator has not before that date served a counter-notice objecting to that work, or, if the final operator has served such a counter-notice, that objection has before that date been withdrawn or determined by the Court not to be well-founded, and
    - (iii) no claim for compensation has before the relevant date been made in respect of expenses incurred in carrying out that work;
  - (b) a claim for compensation in respect of any work shall be taken to have been allowed before the relevant date if before that date-
    - (i) a claim for compensation has been made in respect of expenses incurred in carrying out that work, and
    - (ii) it has been agreed by the final operator, or determined by the Court, that compensation is payable in respect of those expenses, whether the amount of compensation so agreed or determined to be payable was the amount claimed or a different amount;
  - (c) a claim for compensation in respect of any work shall be taken to be still outstanding on the relevant date if at that date-
    - (i) a claim for compensation has been made in respect of expenses incurred in carrying out that work, and
    - (ii) that claim has not been withdrawn, and it has not been determined by the Court that no compensation is payable in respect of those expenses, but
    - (iii) it has not been agreed by the final operator, or determined by the Court, that compensation is payable in respect of those expenses.

(5) In this paragraph "similar work", in relation to the new work, means work directed to the same aspect of restoration as the new work; "previous notice", in relation to the current notice, means a notice given under paragraph 2 of this Schedule before the date on which the current notice was given; and "the relevant date", in relation to the current notice, means the date on which the final operator serves a counter-notice objecting to the new work, or the date on which the time for serving such a counter-notice expires, whichever is the earlier.

(6) In the following provisions of this Schedule (except where the contrary is expressly provided) any reference to sub-paragraph (c) of the last preceding paragraph, in relation to work to which that paragraph applies in accordance with sub-paragraph (1) of this paragraph, shall be construed as a reference to the substituted sub-paragraph (c), and any reference in this Schedule to the grounds mentioned in the last preceding paragraph shall be construed accordingly.

6. For the purpose of determining whether an objection on the grounds mentioned in sub-paragraph (c) of paragraph 4 of this Schedule is well-founded, the estimated cost of any work shall be taken to be such amount as may be agreed, or determined by the court, to be a fair estimate of the cost of the work, whether the amount is equal to, or greater or less than, the estimated cost of the work as stated in the applicant's notice specifying that work.

7. (1) In sub-paragraph (e) of paragraph 4 of this Schedule, the reference to default on the part of the owner or of an occupier of the land shall be construed in accordance with the following provisions of this paragraph.

(2) In relation to agricultural land, the reference to default on the part of the owner shall be construed as a reference to failure on his part to manage the land in accordance with the rules of good estate management, and the reference to default on the part of an occupier of the land shall be construed as a reference to failure on the part of such an occupier to fulfil his responsibilities to farm the land in accordance with the rules of good husbandry.

(3) In relation to any other land, the reference to default on the part of the owner shall be construed as a reference to failure on his part to deal with the land in a proper and due course of arrangement, and the reference to default on the part of an occupier of the land shall be construed as a reference to failure on the part of such an occupier to maintain and use the land in a reasonable manner.

8. Where a notice has been given under paragraph 2 of this Schedule, and the applicant has incurred expenses in carrying out any of the work specified in that notice, and claims compensation in respect of those expenses-

- (a) if the final operator has not served a counter-notice under paragraph 3 of this Schedule in respect of that notice, he shall not be entitled to object to that claim on any of the grounds mentioned in paragraph 4 of this Schedule;
- (b) if the final operator has served such a counter-notice, he shall not be entitled to object to that claim on any of the grounds mentioned in paragraph 4 of this Schedule, except in so far as the claim relates to items which were specified in the counter-notice and the objection is on grounds which were so specified in relation to those items.

9. (1) Where a notice has been given under paragraph 2 of this Schedule, and the final operator has served a counter-notice objecting to the work specified in the notice, or to one or more items thereof, the applicant, before beginning to carry out any item to which such an objection relates, may require the question whether the objection is well-founded to be referred to the Magistrate's Court.

(2) If on such a reference the Court determines that the objection is not well-founded, and the applicant incurs expenses in carrying out any of the work to which the objection relates and claims compensation in respect of those expenses, then (in addition to any grounds on which the final operator is precluded by the last preceding paragraph from objecting to that claim) the final

operator shall not be entitled to object to that claim on any of the grounds which were the grounds of that objection.

(3) If on such a reference the Court determines that the objection is well-founded, and the applicant incurs expenses in carrying out any of the work to which the objection relates, and claims compensation in respect of those expenses-

- (a) if the objection was on the grounds mentioned in any of sub-paragraphs (a), (b), (c), (d) and (e) of paragraph 4 of this Schedule, no compensation shall be payable in respect of those expenses;
- (b) if the objection was on the grounds mentioned in sub-paragraph (f) of the said paragraph 4, no compensation shall be payable in respect of those expenses by virtue of the notice referred to in sub-paragraph (1) of this paragraph, but without prejudice to the service of a further notice under paragraph 2 of this Schedule in respect of the work in question;
- (c) if the objection was on the grounds mentioned in sub-paragraph (g) of the said paragraph 4, the expenses shall be disallowed by virtue of this sub-paragraph in so far as (but no further than) they were greater than they would have been if the work to which the objection related had been carried out at the first reasonable opportunity after the end of the period of occupation.

10. (1) If, in a case where a notice has been given under paragraph 2 of this Schedule, and the final operator has served a counter-notice objecting to the work specified in the notice, or to one of more items thereof-

- (a) the applicant incurs expenses in carrying out work to which the objection relates, without having required the question whether the objection is well-founded to be referred to the Magistrate's Court, and claims compensation in respect of those expenses;
- (b) on a reference to the Magistrate's Court with respect to that claim the final operator maintains the objection; and
- (c) on that reference the Court determines that the objection is well-founded,

the provisions of heads (a) to (c) of sub-paragraph (3) of the last preceding paragraph shall apply (subject to the following provisions of this paragraph) as they apply in the circumstances mentioned in that sub-paragraph.

(2) Where the objection was on the grounds mentioned in sub-paragraph (c) of paragraph 4 of this Schedule (otherwise than in a case falling within paragraph 5 of this Schedule) so much of the preceding sub-paragraph as relates to the maintenance of the objection, and to a determination that the objection is well-founded, shall apply as if, in the said sub-paragraph (c), the reference to the estimated cost of the work were a reference to the proper cost of the work.

(3) Where the objection was on the grounds mentioned in the substituted sub-paragraph (c), within the meaning of paragraph 5 of this Schedule, so much of sub-paragraph (1) of this paragraph as relates to the maintenance of the objection, and to a determination that the objection is well-founded, shall apply as if, in the said paragraph 5, any reference to the relevant date were a reference to the date on which the question whether compensation is payable in respect of expenses



incurred in carrying out the new work (within the meaning of that paragraph) falls to be determined by the Court, and the objection had been formulated accordingly.

11. (1) Subject to the next following sub-paragraph, expenses incurred in carrying out any work shall not be treated as having been reasonably incurred as mentioned in paragraph (b) of subsection (1) of section 22 of this Ordinance, if the work was begun more than fifteen years after the end of the period of occupation.

(2) The preceding sub-paragraph shall not apply to any work required for making good damage caused by the settlement of soil replaced in the course of restoring the land or any other damage to the land caused by subsidence which is attributable to anything done in the exercise of rights conferred by the compulsory rights order in question.

12. Where it is shown that the expenses incurred in carrying out any work exceeded the proper cost of the work, any claim for compensation in respect of those expenses shall (without prejudice to any other grounds on which the claim may be liable to be disallowed, wholly or in part) be disallowed to the extent of the excess.

13. (1) Except in so far as objection is made to any work on the grounds mentioned in sub-paragraph (c) of paragraph 4 of this Schedule, and subject to the provisions of this Schedule relating to any such objection, expenses incurred in carrying out any work shall not be disallowed (wholly or in part) on the grounds that the proper cost of that work (or of that work together with any other work) is greater than any increase attributable thereto in the value of the land.

(2) Subject to the preceding sub-paragraph, nothing in the preceding provisions of this Schedule shall be construed as precluding the final operator from maintaining any objection to a claim for compensation, in so far the objection is on any grounds other than those mentioned in paragraph 4 of this Schedule.

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<sup>i</sup> This section has been amended by S. 3(2) of the Mining (Amendment) Ordinance (Ord. 10/2007), which has not yet commenced.

<sup>ii</sup> The repeal of this title number refers to the previous [repealed] Mining Ordinance. The new Mining Ordinance (Ord 10 of 2005) was inserted under the same title number as the previous Mining Ordinance.