

## **DEEP SEA MINING BILL**

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### **EXPLANATORY NOTES**

#### **INTRODUCTION**

1. These explanatory notes relate to the Deep Sea Mining Bill as brought from the House of Commons on 24th January 2014. They have been provided by the Foreign and Commonwealth Office, with the consent of Baroness Wilcox, the Peer in charge of the Bill, in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.

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

#### **BACKGROUND**

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

4. After many years when there was little interest in deep sea mining, a number of commercial companies have recently made applications to the Authority to explore for polymetallic nodules. Two of these applications were sponsored by the United Kingdom and one has already been successfully accepted by the Council of the Authority.

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

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6. However, the 1981 Act is out of date and needs to be amended to make it consonant with the Convention. In particular, the 1981 Act is based upon the idea that there would be a number of states which would sponsor the activities of their nationals, and that each such state would reciprocally recognise the activities of companies of the other states; whereas under the Convention, regulation is ensured through the Authority. Furthermore, the 1981 Act only applies to polymetallic nodules, not to other mineral resources of the deep sea bed, in relation to two of which (polymetallic sulphides and cobalt-rich crusts) the Authority has already adopted regulations. Finally, under the Convention there are two provisions which require judicial and arbitral decisions to be recognised, but there is no implementing provision in UK law so far.

## **TERRITORIAL EXTENT**

7. The Bill extends to England and Wales, Scotland and Northern Ireland. Her Majesty may, by Order in Council, direct that any provision of the Bill be extended to the Channel Islands, Isle of Man or any British overseas territories (see Clause 2(2) extending the existing provision in the 1981 Act). The Bill contains provisions about deep sea mining that fall within the terms of the Sewel Convention (which provides that Westminster will not normally legislate with regard to devolved matters in Scotland without the consent of the Scottish Parliament). The consent of the Scottish Parliament is being sought for these provisions. The Bill does not contain any provision giving rise to a legislative consent motion in relation to Wales or Northern Ireland.

## **COMMENTARY ON CLAUSES**

### **Clause 1: Amendments of Deep Sea Mining (Temporary Provisions) Act 1981**

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

### **Clause 2: Extent, commencement and short title**

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

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

10. *Paragraph 2* amends section 1 of the 1981 Act. These amendments provide that a person may not explore for or exploit mineral resources in the deep sea bed unless he holds an exploration or exploitation licence and the licence relates to mineral resources as described in the licence and to that area of the deep seabed. This change is necessary because the 1981 Act covered only polymetallic nodules. In addition, it is now possible for a licence to be given to explore for or exploit different mineral resources in the same area of the seabed (in other words, one licensee may be exploring for polymetallic nodules, whilst another may be exploring for cobalt-rich crusts in the same area), and this paragraph makes the necessary change to the 1981 Act to accommodate this.

11. *Paragraph 2(3)* amends the definition of “deep sea bed” to reflect that in the Convention, namely the area of the seabed beyond the limits of any State’s national jurisdiction. In addition, a new definition is used, namely “mineral resource”, which is defined in a manner which is consistent with the Convention. The word “hard” as used in the 1981 Act is omitted, since it is possible that liquid or gaseous minerals may be the subject of licences.

12. *Paragraph 3* amends section 2 of the 1981 Act. The main reason for the amendment is to provide that an exploration or exploitation licence cannot come into force before the date on which a “corresponding contract” comes into force; the latter term is defined as meaning an exploration or exploitation contract with the International Seabed Authority. In other words, exploration or exploitation licences can only come into operation when there is in force a contract between the International Seabed Authority and the Licensee concerned. The amendments of section 2 provide for functions to be exercised by the Scottish Ministers, so far as those functions are exercisable within devolved competence (see the note below relating to paragraph 15 of the Schedule).

13. *Paragraph 3(4)* inserts a new subsection (3A) in section 2 of the 1981 Act; this sets out the provisions which the Secretary of State or the Scottish Ministers may include in a licence; the main new provisions are in sub-paragraphs (g) to (j) which enable the Secretary of State or the Scottish Ministers to include in the licence a requirement that the contractor comply with the Convention and other international rules of the International Seabed Authority, as well as its contract with the Authority and the plan of work authorised by that contract.

14. *Paragraph 4* substitutes new sections 3 and 3A for section 3 of the 1981 Act which had provided for reciprocal recognition between the UK and reciprocating countries in relation to deep sea mining. This system has now been replaced by that in the Convention. Accordingly, the new section 3 provides that the Secretary of State or the Scottish Ministers cannot issue a licence in relation to mineral resources in a particular area of the seabed in respect of which the International Seabed Authority has entered into a contract with a

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contractor (unless it is with a UK contractor). The new section 3A provides that a person who is merely prospecting, ie undertaking exploration for minerals on the seabed but without an exclusive right to do so, is not prohibited by the Act from carrying out that activity, provided that they have notified the Authority in accordance with its regulations. In addition, under the new section 3A persons who hold contracts for exploration or exploitation to carry out the activities provided for in those contracts are not prohibited by UK law from so doing.

15. *Paragraph 9* adds to the 1981 Act new sections 8A and 8B which provide for the enforcement of decisions of the Seabed Disputes Chamber of the International Tribunal for the Law of the Sea as required by Annex VI, paragraph 39, of the Convention. The new Section 8C deals with the enforcement of arbitral awards made by a tribunal in disputes between the Authority and contractors (which have to be enforceable by virtue of Annex III, Article 21(2) of the Convention) and applies Part 3 of the Arbitration Act 1996 and sections 18 to 22 of the Arbitration (Scotland) Act 2010 to them.

16. *Paragraph 10* amends the 1981 Act by omitting sections 9 and 10 of the 1981 Act. These two Sections provided for a Deep Sea Mining Levy and a Deep Sea Mining Fund, and were intended to operate on an interim basis until an international organisation dealing with deep sea mining had been established, and then for sums to be paid to that organisation. However, this has now been overtaken by Part XI of the Convention under which contractors will make direct payments to the International Seabed Authority once exploitation of mineral resources commences (contractors will also have to continue to pay fees to the Secretary of State or the Scottish Ministers for the issue of licences under the 1981 Act). The Levy and Fund have never operated, and sections 9 and 10 of the 1981 Act can be repealed.

17. *Paragraph 12* substitutes a new section 12 of the 1981 Act in order to set out separately the further regulation-making powers of the Secretary of State and those of the Scottish Ministers.

18. *Paragraph 14* substitutes a list of defined terms. Some of these replicate what is already in the 1981 Act, but a number of them are new, including the definitions of “the Agreement”, “the Authority”, “the Convention”, “deep sea bed” and “mineral resource”, all of which reflect the provisions of the Convention.

19. *Paragraph 15* inserts a new section which provides that any provision of the 1981 Act which confers a function on the Scottish Ministers is to be read as conferring a function exercisable only so far as within devolved competence. Provisions such as the amended section 2(2) or the substituted section 12 therefore have effect subject to this restriction.

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## **FINANCIAL EFFECTS**

20. Implementation of the provisions in the Bill will be met within existing Departmental budgets.

## **SUMMARY OF IMPACT ASSESSMENT**

21. The conclusion of the impact assessment is that the Bill will have no negative impacts upon business or government. On the contrary, it will enable business to exploit opportunities which would otherwise not be available, namely the possibility of exploring for and of subsequently exploiting mineral resources of the deep seabed which are not currently covered by the 1981 Act. A copy of the impact assessment will be available from the Vote Office and the Printed Paper Office.

## **EFFECTS OF THE BILL ON PUBLIC SECTOR MANPOWER**

22. The implementation of the measures in the Bill will draw upon existing resources.

## **EUROPEAN CONVENTION ON HUMAN RIGHTS**

23. Article 6 (right to a fair trial) would apply to the provisions in the 1981 Act which are amended by the Bill concerning the issue and possible revocation of licences; however, the existence of the right of judicial review ensures compliance with Article 6. The Bill does not affect the peaceful enjoyment of possessions guaranteed by Article 1 of Protocol 1 of the Convention; on the contrary, it should enable business to explore for, and subsequently exploit, mineral resources thereby increasing the possessions available to them.

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