



**THE REPUBLIC OF KENYA**

LAWS OF KENYA

---

**MINING ACT**

CHAPTER 306

Revised Edition 2012 [1987]

Published by the National Council for Law Reporting  
with the Authority of the Attorney-General

[www.kenyalaw.org](http://www.kenyalaw.org)

---



**CHAPTER 306**

**MINING ACT**

ARRANGEMENT OF SECTIONS

PART I – PRELIMINARY AND GENERAL

*Section*

1. Short title.
2. Interpretation.
3. Mineral oil excluded from Act.
4. Minerals vested in Government.
5. Prospecting in closed districts.
6. Penalty for prospecting or mining without authority.
7. Lands excluded from prospecting and mining.
8. Saving for custom.
9. Employment of officers.
10. Powers of Commissioner may be exercised by other officers.
11. Protection of officers.
12. Royalties and export permits.

PART II

*A—Prospecting Right*

13. Prospecting right.
14. Prospecting right privileges.
15. *Repealed.*
16. Authority to prospect on land excluded.
17. Authority to prospect or mine on land reopened after exclusion under section 7(1)(j).

*B—Exclusive Prospecting Licence*

18. Exclusive prospecting licences.
19. Penalty for giving false information.
20. Rights under exclusive prospecting licence.
21. Transfer of licence.
22. Obligation of holder of exclusive prospecting licence.
23. Records of prospecting operations.

*C—General*

24. Disposal of minerals obtained in prospecting.
25. Discovery to be reported.
26. Payment of compensation to owners and occupiers of land.
27. Revocation of prospecting right or exclusive prospecting licence.

PART III – MINING

28. Registration of locations.
29. Duration of location.

*Mining*

---

*Section*

30. Rights under location.
31. Mining for mineral other than that for which location registered.
32. Right of location-holder to take timber.
33. Transfer of locations and interests therein.
34. Locations, when liable to forfeiture.
35. Obligation on abandonment.
36. Owner may remove plant, etc., on expiry, abandonment or forfeiture.
37. Repegging of ground, forfeiture, etc.
38. Application of section 15 to locations.

*Leases*

39. Grant of leases.
40. Application for leases.
41. Applicant to show sufficient capital.
42. Giving false information.
43. Duration of leases.
44. Rent payable and penalty on non-payment thereof.
45. Rent, how recoverable.
46. Renewal and surrender of leases and remission of covenants, etc.
47. Rights under lease.
48. Right of lessee to take timber.
49. Subterranean limits of locations and leases.
50. Subterranean leases.
51. Discovery to be reported.
52. No transfer of lease without consent.
53. Mining for mineral other than that for which lease granted.
54. Notice and payment of compensation in respect of private land.
55. Special leases.
56. Grounds for forfeiture of lease.
57. Treatment of tailings, etc., after the determination of lease.
58. Owner may remove plant, etc., on surrender.
59. Registration of leases.
60. Registration of dealings.

**PART IV – DISPUTES**

61. Commissioner may decide disputes.
62. Procedure.
63. Commissioner to keep record and take notes.
64. Enforcement of Commissioner's decrees.
65. Appeal to High Court from decision of Commissioner.
66. Power to award costs.
67. Jurisdiction of ordinary courts not excluded.

**PART V – INSPECTION AND ACCIDENTS**

68. Powers of officers.
69. Obligation to remedy dangerous practice.

*Section*

- 70. Proceedings on objection to comply with notice.
- 71. Proceedings on failure to comply with notice.
- 72. Agreement not to preclude or exempt.
- 73. Notice of accident.
- 74. Special report by Commissioner.
- 75. Provisions as to inquests on deaths from accidents in mines.
- 76. Provisions as to inquiries in non-fatal accidents.

PART VI – MISCELLANEOUS

- 77. Compensation on acquisition of land by Government.
  - 78. Agreements with the Fund.
  - 79. Subsequent grants.
  - 80. Protection of estate of deceased person, bankrupt or lunatic, etc.
  - 81. Government officers prohibited from acquiring rights.
  - 82. Discovery of mineral by Government servant.
  - 83. Salting.
  - 84. Penalty for false return, etc.
  - 85. Obstructing officer.
  - 86. Penalty for interfering with mining, etc.
  - 87. Power of Commissioner to conduct prosecutions.
  - 88. Arrest.
  - 89. Address, and service of notices.
  - 90. Copy of mining register and assay certificates receivable in evidence.
  - 91. General penalty.
  - 92. Regulations.
  - 93. Appeals.
  - 94. Saving of previous titles.
-



## CHAPTER 306

## MINING ACT

[Date of commencement: 1st October, 1940.]

**An Act of Parliament to consolidate the law relating to mining**

[Act No. 29 of 1940, Cap. 168 of 1948. Act No. 22 of 1954, L.N. 342/1956, L.N. 343/1956, Act No. 27 of 1959, L.N. 172/1960, L.N. 173/1960, Act No. 15 of 1961, Act No. 27 of 1961, Act No. 28 of 1961, Act No. 25 of 1963, L.N. 142/1963, L.N. 56/1965, Act No. 21 of 1966, Act No. 39 of 1968, Act No. 12 of 1970, Act No. 3 of 1980, Act No. 18 of 1986, Act No. 13 of 1988, Act No. 6 of 1989, Act No. 6 of 2006, Act No. 17 of 2006.]

## PART I – PRELIMINARY AND GENERAL

**1. Short title**

This Act may be cited as the Mining Act.

**2. Interpretation**

(1) In this Act, unless the context otherwise requires—

“**alluvial**” includes all forms of mineral deposits which do not fall within the definition of “lode”;

“**claim**” means the unit of a location as prescribed;

“**engineer**” means a person who is a graduate of a school of mines recognised by the Minister, and has had three years’ practical mining experience since graduating, or a person who has been in full charge of major mining or metallurgical operations for a minimum continuous period of five years;

“**land**” includes the seabed and subsoil of the exclusive economical zone;

“**lease**” means a mining lease granted under this Act;

“**lessee**” means a lessee under a lease and any person deriving title under such a lessee;

“**location**” means an area in respect of which mining rights have been acquired under a prospecting right or exclusive prospecting licence and which subsist in accordance with the provisions of this Act;

“**lode**” or “**reef**” includes all true fissure veins, contact veins, segregated veins, bedded veins, metalliferous bankets, stockworks, such irregular deposits as conform generically to the above classification, and beds of any mineral, such as beds of ironstone;

“**mine**” includes any open-cast mine, place, excavation or working whereon, wherein or whereby any operation in connection with prospecting or mining is carried on;

“**to mine**” means intentionally to win minerals and includes any operations necessary for the purpose;

“**minerals**” means all minerals and mineral substances, other than mineral oil as defined in the Mineral Oil Act (Cap. 307), and may be precious metals, precious stones or non-precious minerals, but save for the purposes of Part V of this Act and of the Mining (Safety) Regulations, does not include clay, murrum, limestone, sandstone or other stone or such other common mineral substances as the Minister may by notice in the *Gazette* declare not to be minerals for the purposes of this Act, always provided these do not contain any precious metal or precious stone in economically workable quantities;

“**non-precious minerals**” means all minerals other than precious metals or precious stones;

“**officer of the Mines and Geological Department**” means an officer appointed under section 9;

“**open-cast**” means any uncovered excavation which has been made from the surface for the purpose of winning minerals;

“**precious metals**” means gold, silver or metal of the platinoid group in the unmanufactured state, including ores containing such metal, but does not include ores containing any such metal in combination with another mineral where such metal cannot be worked apart from such mineral and the value of such metal is less than the cost of producing both the metal and the mineral;

“**precious stones**” means any diamond, emerald, opal, ruby, sapphire, turquoise and any other stones which the Minister may by notice in the *Gazette* declare to be included in this definition;

“**private lands**” means land held on freehold tenure and land the subject of a ground lease or licence from the Government or a county council;

“**to prospect**” means to search for minerals, and includes such working as is reasonably necessary to enable the prospector to test the mineral-bearing qualities of the land;

“**protection area**” means an area within which an exclusive right prospecting is acquired under a protection notice;

“**protection notice**” means a notice posted by the holder of a prospecting right in the prescribed manner for the purpose of creating a protection area;

“**salt licks**” means those deposits of salt or other mineral which are being regularly used as salt licks for stock, whether privately owned or not;

“**stock**” includes cattle, sheep, goats, horses, swine, camels, mules, donkeys, dogs and poultry;

“**tailings**” means all gravel, sand, slimes or other substance which is the residue of *bona fide* mining operations;

“**the regulations**” means the regulations for the time being in force under this Act.

(2) Deleted by L.N. 56/1965.

[Act No. 22 of 1954, s. 2, L.N. 342/1956, L.N. 343/1956, Act No. 27 of 1959, Sch., L.N.172/1960, L.N. 173/1960, Act No. 15 of 1961, Sch., Act No. 25 of 1963, Sch., L.N. 56/1965, Act No. 21 of 1966, First Sch., Act No. 18 of 1986, Sch., Act No. 6 of 1989, Sch.]

**3. Mineral oil excluded from Act**

Nothing contained in this Act shall confer any right to prospect for or to win any mineral oil.

**4. Minerals vested in Government**

All unextracted minerals (other than common minerals) under or upon any land are vested in the Government, subject to any rights in respect thereof which, by or under this Act or any other written law, have been or are granted, or recognized as being vested, in any other person.

[Act No. 39 of 1968, s. 11.]

**5. Prospecting in closed districts**

Nothing in this Act shall be deemed to authorise any person to enter any district or area to which entrance by him may be forbidden by any written law, for the time being in force.

[L.N. 56/1965, s. 5.]

**6. Penalty for prospecting or mining without authority**

(1) Except as in this Act provided, any person who prospects or mines on any land in Kenya shall be guilty of an offence and liable to a fine of two thousand shillings or to imprisonment for a term not exceeding six months and to the forfeiture of all minerals obtained in the course of such unauthorized prospecting or mining, or, if such minerals cannot be forfeited, to the payment to the Government of such sum as the Court assesses as the value of such minerals.

(2) An offence under this section shall be cognizable to the police.

**7. Lands excluded from prospecting and mining**

(1) The following classes of land are (save where otherwise in this Act provided) excluded from prospecting and mining—

- (a) land dedicated or set apart as a place of burial or for any public purpose other than mining, except with the consent of the Minister in the case of Government land or, in the case of other land, the person or authority in whom the land is vested;
- (b) any area situate within any municipality or township or trading centre, except with the consent of the owner or holder of the surface rights and of the municipal or other authority exercising control thereof;
- (c) land held under grant or lease giving the holder rights of working the minerals, non-precious minerals, precious metals and precious stones, save by the holder thereof:

Provided that any prospecting or mining operations carried on by such holder shall be subject to the provisions of Part V in so far as they are applicable and to the provisions of the Mining (Safety) Regulations;

- (d) any area over which exclusive prospecting or mining rights have previously been granted by or on behalf of the Government and are

- (e) land reserved for the purpose of any railway or situate within one hundred metres of any railway, except with the consent of the Kenya Railways Corporation;
- (f) any area which is the site of or is within one hundred metres of any dam, canal, reservoir or building belonging to the Government or a county council, except with the consent of the Minister or of the county council, as the case may be;
- (g) the site of any public street, road or highway and any land which is *gazetted* as a road reserve or otherwise reserved for the purposes of any public street, road or highway, except with the consent of the Minister or of the local authority or other public body having the control thereof;
- (h) salt licks;
- (i) Trust land, except with the consent in writing of the county council within whose area of jurisdiction the land is situated;
- (j) land which the Commissioner may by notice in the *Gazette* declare to be excluded from prospecting and mining;
- (k) any area which is the site of or is within five hundred metres of the nearest boundary of any public aerodrome or landing ground, except with the permission of the Minister;
- (kk) any land in or within one hundred metres of any monument or protected area declared or deemed to have been declared as such by the Minister under the National Museums and Heritage Act;
- (l) lands which are within the boundaries of an area over which an exclusive prospecting licence has been granted, and—
  - (i) which at the time when such exclusive prospecting licence was granted were either areas over which exclusive prospecting or mining rights had been previously granted and were still subsisting, but which have since the grant of such exclusive prospecting licence been abandoned, cancelled, forfeited or otherwise lapsed, or were areas in respect of which an application in the prescribed form for any such rights had been accepted for consideration and have since the grant of such exclusive prospecting licence been abandoned, cancelled, forfeited or otherwise lapsed; or
  - (ii) over which the holder of such exclusive prospecting licence has during the existence of such licence obtained location, lease or other mining rights and which rights have also during the existence of such licence been abandoned, cancelled, forfeited or otherwise allowed to lapse,save in each case by the holder of such exclusive prospecting licence;
- (m) private lands, except with the consent of the owner thereof.

(2) Should any question arise as to whether any particular land is excluded under this section, it shall be referred to the Minister, whose decision shall be final and conclusive.

(3) Where any consent required under subsection (1) is unreasonably withheld or the Minister considers that any withholding of consent is contrary to the national interest, the Minister may take such steps as are necessary under the Law relating to the compulsory acquisition of land or rights or interests in land to vest the land or area in question, or rights or interests in such land or area, in the Government or on behalf of the Government; and thereafter such land or area shall cease to be land excluded from prospecting and mining under subsection (1).

[Act No. 22 of 1954, s. 3 and Sch., Act No. 27 of 1959, Sch., Act No. 15 of 1961, Sch., Act No. 28 of 1961, Sch., Act No. 25 of 1963, Sch., L.N. 142/1963, L.N. 56/1965, Act No. 21 of 1966, First Sch., Act No. 12 of 1970, Second Sch., Act No. 6 of 2006, s. 74.]

## **8. Saving for custom**

Nothing in this Act shall be deemed to prevent any citizen of Kenya from taking, subject to such conditions as may be prescribed, iron, salt or soda from lands (other than lands within the area of a mining lease or location) from which it has been the custom of the members of the community to which that citizen belongs to take the same.

[L.N. 56/1965.]

## **9. Employment of officers**

There shall be appointed a Commissioner of Mines and Geology (hereinafter referred to as "the Commissioner"), a mining engineer, inspectors and assistant inspectors of mines, wardens and registrars, and such other officers as may be necessary for the carrying into effect of the provisions of this Act.

[L.N. 56/1965, Act No. 21 of 1966, First Sch.]

## **10. Powers of Commissioner may be exercised by other officers**

The Commissioner may, with the approval of the Minister, delegate or assign to any other officer appointed under section 9 all or any of his powers and duties.

[L.N. 342/1956, L.N. 172/1960.]

## **11. Protection of officers**

No action or other legal proceeding whatsoever, civil or criminal, shall be instituted in any court against the Commissioner or other officer or any person acting under his authority for or on account of or in respect of anything done in good faith and in the execution or intended execution of his duty under this Act.

## **12. Royalties and export permits**

(1) All minerals obtained in the course of prospecting or mining operations shall be liable to such royalties as may be prescribed:

Provided that the Commissioner may by permit under his hand exempt from liability to royalties samples of minerals extracted for the purposes of assay or of metallurgical tests.

(2) *Deleted by Act No. 17 of 2006, s. 23.*

(3) No person shall deal in minerals unless he has been registered as a dealer and has been issued with a mineral dealers licence by the Commissioner:

Provided that a person holding a valid mining title who has declared as provided by this Act that he is in production and is disposing of the type of mineral for which he is licensed to mine shall not be required to obtain a mineral dealers licence.

(4) A person who has been issued with a mineral dealers licence shall maintain a proper register of the kind, quantity and quality of minerals dealt in, bought, sold, bartered, exported, cut or polished, the manner by which it was obtained or disposed of; and the dealer shall make the register available for inspection by the Commissioner or any person authorised by him in writing.

(5) A mineral dealers licence issued under this section shall expire on the 31st December in the year of issue.

(6) The fees for a mineral dealers licence shall be prescribed by the Minister by notice in the *Gazette*.

(6A) Any person who possesses or deals in any mineral without a mineral dealer's licence shall be guilty of an offence and liable to a fine not exceeding twenty thousand shillings or to imprisonment for a term not exceeding two years or to both; and the minerals in respect of which the offence was committed shall be forfeited to the Government.

(7) For the purposes of this section, "**to deal in minerals**" includes to buy, sell, barter deposit or receive as a pledge or security, export, cut or polish any miners which are subject to this Act.

[Act No. 22 of 1954, s. 4, Act No. 18 of 1986, Sch.,  
Act No. 13 of 1988, Sch., Act No. 17 of 2006, s. 23.]

## PART II

### *A—Prospecting Right*

#### **13. Prospecting right**

(1) The Commissioner or an officer duly authorized by him in that behalf may issue to any person a prospecting right in the prescribed form upon the payment of the prescribed fee:

Provided that a prospecting right shall not be granted—

- (i) to any person who is under eighteen years of age;
- (ii) to any person who, in the opinion of the Commissioner, is unable to understand the provisions of this Act and the regulations;
- (iii) to any person to whom there has previously been issued either in his own name or as agent for any individual, company, body of persons or partnership a prospecting right which has not been surrendered or cancelled and which is in all other respects still valid.

(2) A prospecting right may be granted to an individual as agent for another individual if such agent is the Lawfully constituted attorney of such individual.

- (a) A prospecting right shall not be granted to a company, body of persons or partnership as such, but may be granted to an individual as agent of the company, body of persons or partnership.

- (b) In such case, the application for the prospecting right must be made by the individual in person, who must either be the Lawfully constituted attorney of the company, body of persons or partnership or produce an application in writing for the grant of the prospecting right to the individual as agent for the company, body of persons or partnership, signed by a director or responsible manager of the company, or by all the members of the body of persons or by every member of the partnership.
- (c) Such application shall contain an undertaking by the company or by every member comprising the body of persons or by every member of the partnership with the Government to be responsible for the acts and omissions of the individual, who shall also be responsible for his own acts and omissions.

(4) A prospecting right shall not be transferable, and shall be in force for a period of one year from the date of issue, but may be renewed for a period of one year from the date of expiration thereof or from the expiration of any renewal thereof upon application being made in the prescribed form and upon payment of the prescribed fee.

(5) A prospecting right shall be produced whenever demanded by the owner or occupier of private land on which the holder thereof is prospecting, or by any administrative officer, officer of the Mines and Geological Department or police officer.

(6) *Deleted by Act No. 18 of 1986, Sch.*

(7) The Commissioner may at any time require the holder of a prospecting right to give security in such sum as he may consider necessary, and to deposit such sum with the Provincial Commissioner of such province as the Commissioner may specify.

[L.N. 56/1965, Act No. 18 of 1986, Sch.]

#### **14. Prospecting right privileges**

Subject to the exceptions contained in section 7 and to the regulations and to the provisions of any law as to forests or as to the regulation of natural water supplies, the holder of a prospecting right may—

- (a) by himself, his agents and his servants—
- (i) prospect on any land in Kenya for any minerals, except diamonds, unless the Commissioner endorses on the prospecting right authority to prospect for diamonds; any such authority may be refused by the Commissioner without assigning any reason and, in any case in which such authority is granted, the Commissioner may—
- (a) limit such authority to any specified area of land or to the time during which it shall remain in force, or both;
- (b) make such authority subject to any terms and conditions which he, in his absolute discretion, deems fit:
- Provided that the holder of a prospecting right shall not prospect in a forest area or game reserve unless he has first given notice to the officer in charge of such

*Mining*

---

area or reserve and complies with the conditions lawfully imposed by such officer;

- (ii) whilst engaged in *bona fide* prospecting, erect on any unoccupied land his camp and such buildings or machinery as may be necessary for the purpose of prospecting, on payment or tender of a reasonable sum in payment therefor;
  - (iii) make excavations, sink shafts or wells, drive adits or levels or dig trenches;
  - (iv) on any land not excluded from prospecting take for the purposes of *bona fide* prospecting or for his domestic use water from any lake, river or stream, and, with the consent of the owner or occupier of private land or on tendering to the owner or occupier a reasonable sum in payment therefor, any fuel other than standing timber:  
  
Provided that he shall not divert water from any river, stream or watercourse without the consent of the authority having control thereof;
  - (v) graze upon lands not excluded from prospecting such horses or other animals as may be necessary for his subsistence or for the carrying on of prospecting or mining, on payment or tender of a reasonable sum in payment therefor;
  - (vi) build installations and other devices for protecting and, where the prospecting is done within the exclusive economic zone, create safety areas around such installations or devices;
- (b) by himself—
- (i) create a protection area;
  - (ii) apply for an exclusive prospecting licence; and
  - (iii) peg locations.

[L.N. 56/1965, Act No. 6 of 1989, Sch.]

**15.** Repealed by L.N. 56/1965.

**16. Authority to prospect on land excluded**

(1) The holder of a prospecting right may apply to the Commissioner for an authority to prospect on any lands for the time being vested in the Government or on behalf of the Government, which are excluded from prospecting, and the Commissioner, notwithstanding any other provisions of this Act, may grant such authority on such terms as to area, period, rent and other conditions as he may think fit.

(2) Failure to comply with any of the terms so fixed shall render the authority liable to cancellation.

[Act No. 22 of 1954, Sch., L.N. 56/1965.]

**17. Authority to prospect or mine on land reopened after exclusion under section 7(1)(j)**

(1) When any land has been excluded by the Commissioner from prospecting and mining under paragraph (j) of subsection (1) of section 7, the Commissioner may, by notice in the *Gazette*, declare the whole or any part of such land to be reopened to prospecting or mining or both.

(2) Upon such reopening, the Commissioner may, by notice in the *Gazette*, declare that the whole or such part of the land as is reopened may be prospected or mined, or both, in accordance with—

- (a) the provisions of this Act and the regulations; or
- (b) a special licence which, notwithstanding the provisions of this Act and the regulations, may contain such terms and conditions as the Commissioner in his discretion may determine.

(3) Without in any way restricting or fettering the discretion of the Commissioner granted by paragraph (b) of subsection (2), a special licence may contain terms and conditions in respect of the following matters—

- (a) area;
- (b) the minerals which may be prospected for, or mined, and the methods of prospecting, or mining, to be adopted;
- (c) rents, royalties and fees;
- (d) labour;
- (e) form and period of such licence.

(4) Any special licence granted under this section shall be subject to all the terms and conditions contained therein and to all the provisions of this Act and the regulations, except in so far as the terms and conditions contained in such licence expressly provide for non-compliance with any provisions of this Act and the regulations.

[Act No. 22 of 1954, Sch., L.N. 142/1963, L.N. 56/1965.]

*B—Exclusive Prospecting Licence*

**18. Exclusive prospecting licences**

(1) The Commissioner may grant an exclusive prospecting licence to any person who holds a prospecting right or to any person, company, body of persons or partnership whose agent is the holder of a prospecting right issued to him as such agent.

(2) An application for an exclusive prospecting licence shall be in the prescribed form, and the applicant shall submit with his application a programme of work and satisfy the Commissioner that he has sufficient capital to ensure the proper prospecting, by methods approved by the Commissioner, of the area in respect of which the application is made and the payment of any compensation which may be payable to the owners and occupiers of the land in respect of which the licence is required, and shall, if required by the Commissioner or by the regulations, furnish a financial guarantee for such sum as the Commissioner may direct or as may be prescribed; and notice of every such application, if accepted for consideration, shall be published in the *Gazette*.

- (a) The Commissioner may grant an exclusive prospecting licence for precious metals, precious stones and non-precious minerals or one or more of them:

Provided that no such licence shall be granted for diamonds, unless it is specially endorsed with authority to prospect for them.

- (b) In every such exclusive prospecting licence such terms and conditions as the Commissioner may determine may be inserted therein, and upon any renewal of any exclusive prospecting licence issued under the Mining Act, 1933 (No. 61 of 1933 now repealed), or under this Act, such terms and conditions as were inserted in the original licence or any renewal thereof may be re-inserted, added to, varied or modified at the discretion of the Commissioner.
- (c) Notwithstanding the foregoing provisions of this subsection, within a period of one year after the expiration, forfeiture or abandonment of any exclusive prospecting licence, no further exclusive prospecting licence in respect of the whole or any portion of the area of land comprised in the exclusive prospecting licence so expired, forfeited or abandoned shall be granted to the holder thereof nor to any person, company, body of persons or partnership associated in prospecting with such holder.

(4) An exclusive prospecting licence shall be valid for one year from the date thereof, subject, on acceptance of a satisfactory programme of further development, to renewal as to the whole or any portion of the area in respect of which the original licence was granted, at the discretion of the Commissioner, for further terms of one year each up to a maximum of five years from the date of the original grant:

Provided that, should renewal be refused, the licence shall be valid for a further period of thirty days from the date at which it would otherwise have expired.

(5) All exclusive prospecting licences shall be registered at the office of the Commissioner in the prescribed manner.

(6) For every exclusive prospecting licence there shall be paid a registration fee of one hundred shillings and a conveyancing fee of five hundred shillings; and for every renewal thereof a renewal fee of one hundred shillings and a conveyancing fee of such sum not exceeding five hundred shillings as the Registrar of mines may assess.

(7) Prior to the issue of any exclusive prospecting licence granted after the 30th June, 1939, and in respect of each renewal of any such exclusive prospecting licence, the holder thereof shall pay, in addition to all other fees due, a fee of two hundred and fifty shillings per square kilometre or part thereof of the area included in the original or renewed licence:

Provided that the Commissioner, in his discretion, may reduce such fee.

(8) *Deleted by L.N. 56/1965.*

[Act No. 22 of 1954, Sch., Act No. 15 of 1961, Sch., L.N. 56/1965, Act No. 12 of 1970, Second Sch., Act No. 18 of 1986, Sch.]

## **19. Penalty for giving false information**

An applicant for an exclusive prospecting licence who wilfully or recklessly—

- (a) gives false information as to any matter in respect of which information is called for or required to be given under this Act; or
- (b) withholds any information which is called for under this Act,

shall be guilty of an offence.

**20. Rights under exclusive prospecting licence**

(1) The holder of an exclusive prospecting licence shall, upon the lands comprised in such licence and during the currency of such licence, subject to the provisions of this Act and the regulations, have the following rights—

- (a) the sole right of prospecting in accordance with the terms and conditions of his licence;
- (b) if he has obtained the consent of the Commissioner—
  - (i) the sole right of alluvial mining, provided that there has been paid such fee in respect thereof as the Commissioner has required; the amount of such fee shall in no case be in excess of a rate of twenty shillings in respect of every 1,000 square metres of land;
  - (ii) the right to remove and dispose of any minerals so mined, provided that such minerals are minerals in respect of which the licence was granted,
- (c) the sole right of pegging locations of any class of minerals for which the licence was granted, and, with the written authority of the Commissioner and upon such terms and conditions as he may think fit, the sole right of pegging locations of any other class of minerals for which locations may be pegged.

(2) The holder of an exclusive prospecting licence may, for the purposes set out in subsection (1), by himself, his agents and his servants—

- (a) enter and exercise any of the rights mentioned in subsection (1) upon the lands comprised in his licence; and
- (b) on and over unoccupied land comprised in his licence, erect and maintain such machinery and plant and construct such ways as may be necessary for or in connexion with his prospecting operations and any alluvial mining.

[Act No. 12 of 1970, Second Sch., Act No. 18 of 1986, Sch.]

**21. Transfer of licence**

(1) The holder of an exclusive prospecting licence shall not transfer his licence or any part thereof without the consent of the Commissioner signified by an endorsement thereon.

(2) The transferee as well as the transferor shall be liable for the payment of all rents and compensation which may have accrued due, and the observance of all obligations imposed by the licence up to the date of the transfer in respect of the licence or part thereof so transferred, but the transferor shall not be liable for the payment of any future rents and compensation or the compliance with any obligations so imposed as aforesaid in regard to the licence or part thereof so transferred after the date of the transfer.

[Act No. 22 of 1954, Sch., L.N. 56/1965.]

**22. Obligation of holder of exclusive prospecting licence**

The holder of an exclusive prospecting licence shall during the continuance of the licence or any renewal thereof diligently observe all the terms and conditions of the licence:

*Mining*

---

Provided that the Commissioner may, on the application in writing of such holder and for good cause shown, by writing under his hand, suspend the

operation of any term or condition of the licence for such time as to the Commissioner may seem proper.

### **23. Records of prospecting operations**

(1) The holder of an exclusive prospecting licence shall keep such records of his prospecting operations and alluvial mining (if any) as may be determined from time to time by the Commissioner.

(2) Copies of such records shall be submitted to the Commissioner as and when required by him.

#### *C—General*

### **24. Disposal of minerals obtained in prospecting**

(a) Subject to the provisions of paragraph (b) of subsection (1) of section 20, minerals obtained in the course of prospecting under a prospecting right or an exclusive prospecting licence shall be the property of the Government and, except for the purposes of sampling and assay, shall not be removed from the land or disposed of by the holder of the right or licence or by any other person except with the consent of the Commissioner.

(b) Any person who contravenes subsection (1) shall be guilty of an offence.

(2) The Commissioner may authorize the removal of minerals from the land from which they have been obtained to any place approved by him for safe custody, subject to such conditions, if any, as he may impose.

(3) If the holder of a prospecting right or an exclusive prospecting licence desires to retain or dispose of any minerals obtained in the course of prospecting, he shall make an application in writing to the Commissioner, and, if the Commissioner is satisfied that such holder has been conducting such work only as is reasonably necessary to enable him to test the mineral-bearing qualities of the land, he may authorize such holder to retain or dispose of the minerals in respect of which application is made on payment of the prescribed royalties.

### **25. Discovery to be reported**

When the holder of any exclusive prospecting licence or location granted under this Act discovers on any land comprised in such licence or location any minerals of economic value other than those for which the licence was granted or location was registered, he shall immediately report the discovery thereof to the Commissioner.

### **26. Payment of compensation to owners and occupiers of land**

(1) Whenever, in the course of prospecting or mining operations, any disturbance of the rights of the owner or lawful occupier of any lands or nuisance or damage to such lands or to any crops, trees, buildings, stock submarine cables, pipelines or works thereon is caused or endangers the living natural resources of the exclusive economic zone. The holder of the prospecting right, exclusive prospecting licence or location under which such operations are or were carried out, and his successors in title thereto, shall be liable, on demand

duly made, to pay to such owner or occupier fair and reasonable compensation for such disturbance or nuisance or damage, as the case may be, according to their respective rights or interests (if any) in the property concerned.

- (a) If such a person or his successor in title fails to pay compensation when demanded under subsection (1), or if an owner or occupier is dissatisfied with the compensation offered, such an owner or occupier may, within one month of such a demand having been made, refer the matter to the Court.
- (b) The court shall assess and determine the amount of compensation to be paid.

(3) The sum awarded shall be paid by such holder or successor in title, as the case may be, to the person entitled thereto within fourteen days of the date on which the amount of the final award is notified to such holder or such successor in title, as the case may be, or shall pending the disposal of any appeals thereon be paid into court.

(4) *Deleted by L.N. 56/1965.*

(5) The Minister may suspend the prospecting right or exclusive prospecting licence or the right to work a location of the person in default until the amount awarded has been paid and until the holder of the right, licence or location has deposited with the Government such further sum as security for any future payments as the Minister may demand, and if such payment and deposit is not made within such time as the Minister may consider reasonable the Minister may revoke the prospecting right, exclusive prospecting licence or forfeit the location of the person in default.

[Act No. 22 of 1954, s. 5, L.N. 342/1956, L.N. 172/1960, L.N. 56/1965, Act No. 21 of 1966, First Sch.]

## **27. Revocation of prospecting right or exclusive prospecting licence**

In the case of any breach by the holder of a prospecting right or an exclusive prospecting licence or by any attorney of or manager employed by such holder of any of the terms and conditions of his licence or of any of the provisions of this Act or of any of the regulations, it shall be lawful for the Commissioner to call upon the holder of the right or licence to show cause, within a time specified by the Commissioner, why his right or licence should not be revoked, and, should he fail to comply with such order within the time specified or should the cause shown not be adequate in the opinion of the Minister, the Minister may summarily revoke the right or licence, and thereupon all privileges and rights conferred thereby or enjoyed thereunder shall as from the date of such revocation cease:

Provided that such revocation shall not in any way affect the liability of such holder in respect of the breach of any provision of the terms and conditions of his licence or of this Act or of any of the regulations committed by him before such revocation.

[Act No. 22 of 1954, Sch., L.N. 342/1956, L.N. 172/1960.]

## **PART III – MINING**

### **28. Registration of locations**

(1) When any holder of a prospecting right or exclusive prospecting licence pegs a location in the manner prescribed, on land not excluded from prospecting

or mining in accordance with the provisions of this Act and of the regulations, he shall within thirty days thereafter apply in the manner prescribed for registration, and shall state the class of the location pegged:

Provided that the Commissioner may in writing for good and sufficient cause extend such period.

(2) If the application is in accordance with the provisions of this Act and of the regulations, the Commissioner or officer authorized by him shall register the location.

(3) Any person failing to apply for the registration of a location within the period authorized shall forfeit all rights in respect thereof and shall, if he works or mines on such a location, incur the penalty prescribed by section 6.

[L.N. 56/1965.]

## **29. Duration of location**

(1) The rights of a holder of a location shall remain valid for the period of one year from the date of the pegging of the location and shall then expire:

Provided that—

- (i) if the holder of the location has complied with the terms and conditions upon which such rights were granted and with the prescribed conditions, the Commissioner may, at any time, renew such rights, on payment of the prescribed fee, for a further or successive period of one year from the date of the expiry thereof or of any renewal thereof, or for such lesser period as may be authorized under subsection (3);
- (ii) notwithstanding the foregoing provisions, where the location is situated in Trust land, no such renewal shall be granted except with the consent of the county council within whose area of jurisdiction such Trust land is situated unless the renewal would not have the effect of extending the validity of the rights in the location beyond the period of ten years from the date of the pegging of the location; any such consent may relate to and be validly given in respect of successive renewals over a period not exceeding five years.

(2) An application for the consent of the Commissioner under subsection (1) shall be made to him in writing not less than six months before the expiration of the period of ten years from the date of pegging:

Provided that the Commissioner may accept an application made within a shorter period if he is satisfied that the applicant's failure to comply with the provisions of this subsection was not due to the default or neglect of the applicant.

(3) Subject to the regulations two or more locations may be renewed to a common date, provided that such renewal shall not extend the life of any one of such locations for a period of more than one year from the date of such renewal.

(4) Notwithstanding anything to the contrary contained in the regulations the holder of a location which has expired may, with the written authority of the Commissioner, granted in his discretion, renew the whole or any part of the area of such location within thirty days after the date of its expiry upon the payment of a penalty of fifty shillings per claim in addition to the prescribed fee for renewal.

(5) Any locations renewed to a common date before the commencement of subsection (3) in pursuance of any such power as is contained in such subsection, and which would have been lawfully renewed to a common date if that subsection had come into force on the 1st January, 1933, shall be deemed to have been lawfully renewed to a common date.

[Act No. 22 of 1954, s. 6, Act No. 15 of 1961, Sch., L.N. 142/1963, L.N. 56/1965,  
Act No. 18 of 1986, Sch.]

### **30. Rights under location**

Subject to the provisions of section 26, the holder of a location shall, in respect of such location, have the right by himself, his agents and his servants to enter upon the land the subject of the location, and the exclusive right to prospect and mine thereon, or to mine thereon, and to remove therefrom and dispose of the minerals in respect of which the location has been registered; and have all the rights conferred upon a lessee by paragraph (b) of section 47.

### **31. Mining for mineral other than that for which location registered**

(1) The Commissioner may, subject to section 7, grant authority upon such terms and conditions as he may think fit permitting the holder of a location to mine on the land comprised in his location for any mineral other than that in respect of which the location shall have been registered, and may vary or revoke any such authority.

(2) If the holder of a location mines for any mineral other than in respect of which his location or any authority as aforesaid has been granted, his location shall be liable to forfeiture.

(3) Locations shall be either alluvial locations or lode locations:

Provided that the Commissioner may, subject to section 7, grant authority, on such terms and conditions as he may think fit, permitting the holder of a location to conduct, on the land comprised in his location, mining operations of a kind different from that in respect of which his location is registered, and may vary or revoke any such authority.

(4) If the holder of a location on the land comprised in his location carries on mining operations of a kind different from that in respect of which his location is registered, unless authorized so to do under subsection (3), his location shall be liable to forfeiture.

[L.N. 56/1965.]

### **32. Right of location-holder to take timber**

The holder of a location may subject to obtaining any consents required under section 7, on the lands included within the area of his location, cut, take and use any tree when necessary in the course of mining operations or when required for mining or domestic purposes, but he shall be liable for any fees or royalties which may be payable under any law relating to forests and shall, before cutting, taking and using any such tree, pay to the owner or occupier of the land on which such tree is standing a reasonable sum therefore; and if the owner or occupier is dissatisfied with the compensation offered the dispute shall be dealt with under section 26.

[L.N. 56/1965.]

**33. Transfer of locations and interests therein**

Subject to the approval of the Commissioner, after a location has been registered as aforesaid, the holder may, in the manner prescribed, by instrument in writing divide his interest in the location into such shares as he thinks proper, and may allot shares or transfer the location or such subdivisions thereof as may be authorized by the regulations, or create or transfer any interest therein.

**34. Locations, when liable to forfeiture**

(1) A location or part thereof shall be liable to forfeiture by the Commissioner if—

- (a) the holder fails to comply with any of the provisions of this Act or of the regulations in respect of such location or part thereof; or
- (b) registration thereof has been obtained by any false or fraudulent representation or concealment, and in such case the holder shall also be deemed to have committed an offence.

(2) If the Commissioner is satisfied that a location or part thereof should be forfeited, he shall serve a notice upon the holder of such location or part thereof requiring him—

- (a) in the case of a breach or default which, in the opinion of the Commissioner, is not capable of being repaired or made good, to show cause within a time specified why his location or part thereof should not be forfeited; or
- (b) in the case of a breach or default which, in the opinion of the Commissioner, is capable of being repaired or made good, to repair or make good such breach or default within a time to be limited in the notice.

(3) If the holder fails to show cause as aforesaid or persists in his neglect or refusal to repair or make good the breach or default, the Commissioner may by notice to the holder and in the *Gazette* state the cause of forfeiture and declare such location or part thereof to be forfeited as from a date to be specified in such notice:

Provided that such forfeiture shall not affect the liability of the holder in respect of the breach of any provision of this Act or of the regulations committed by him before such forfeiture.

**35. Obligation on abandonment**

- (a) The holder of a registered location or exclusive prospecting licence may abandon the whole or any part of the area comprised therein by notification to the Commissioner in writing, and on receipt of such notification the Commissioner shall publish in the *Gazette* notice of such abandonment, and such notice shall be deemed to be valid and sufficient proof of such abandonment.
- (b) In the event of the abandonment of a portion only of the area comprised in a location or in an exclusive prospecting licence, the remainder thereof shall be re-beaconed in accordance with the directions of the Commissioner.

- (a) Any person who abandons his location or any part thereof, or his exclusive prospecting licence area or any part thereof, and any person whose location or any part thereof, or exclusive prospecting licence area or any part thereof, has been forfeited, shall, in such a manner as to prevent persons or stock other than dogs or poultry inadvertently entering them, forthwith fill up, or secure to the satisfaction of the Commissioner, all shafts, pits, holes and excavations and remove all notices, beacons and boundary posts thereon, and in default of so doing shall be guilty of an offence and liable to a fine of one thousand shillings or to imprisonment for a term not exceeding three months, and in addition shall be liable to pay such sum as the Commissioner may certify the cost of doing so will be.
- (b) Any sum certified by the Commissioner under paragraph (a) shall, upon application made by the Commissioner, be enforced by a civil court in the same manner as a decree of such court.

(3) For the purposes of subsection (2), failure to apply for registration or renewal of a location or for the renewal of an exclusive prospecting licence within the prescribed time shall be deemed to be an abandonment of such location or of such exclusive prospecting licence.

### **36. Owner may remove plant, etc., on expiry abandonment or forfeiture**

(1) The owner of any plant, machinery, engines or tools on any expired, abandoned or forfeited location or exclusive prospecting licence area may, within three months from the date of expiry, abandonment or forfeiture, or within such further period which in the case of such area or any portion thereof being in Trust land but not otherwise shall not exceed six months from the date of expiry, abandonment or forfeiture (unless the time so fixed is extended with the consent of the country council within whose area or jurisdiction such Trust land is situated) as the Commissioner may allow remove such plant, machinery, engines or tools, but shall not remove or interfere with any timber in any mine, except with the written consent of the Commissioner.

(2) If such plant, machinery, engines or tools are not so removed, they may be sold by auction by order of the Commissioner at the risk of the owner thereof.

(3) The net proceeds of such sale, after deducting the costs thereof, shall be paid to the Permanent Secretary to the Treasury, and held until applied for by the former owner.

(4) Any person who in breach of this provision removes or interferes with any timber in a mine shall be guilty of an offence.

[Act No. 15 of 1961, Sch., L.N. 56/1965.]

### **37. Repegging of ground, forfeiture, etc.**

(1) The ground covered by a location or exclusive prospecting licence which has expired or has been abandoned or forfeited shall not be open to prospecting or pegging of locations until the completion of a period of thirty days from the date of such expiry, abandonment or forfeiture:

Provided that the holder of a location which has expired or been abandoned or forfeited shall not, unless authorized in writing by the Commissioner in accordance with subsection (2), directly or indirectly through an agent or by any means whatsoever, peg or cover by a protection notice any

portion of the expired, abandoned or forfeited location previously held by him until after the completion of ninety days from the date of such expiry, abandonment or forfeiture.

(2) The holder of a location which has expired or been abandoned or forfeited may, before the completion of ninety days from the date of such expiry, abandonment or forfeiture, apply in writing to the Commissioner to repeg the area of any such location previously held by him, and the Commissioner, if he is satisfied—

- (a) that the pegs, beacons and notices of the location over which application to repeg has been made have been maintained in accordance with the provisions of this Act and the regulations;
- (b) that all development required by such provision up to the date of expiry, abandonment or forfeiture has been completed or the prescribed fee paid in lieu thereof; and
- (c) that the claims comprising the location to be repegged are to be identical with the expired, abandoned or forfeited location,

may, in his discretion, grant authority in writing so to repeg, subject to the condition that such repegging is only permitted subject to any prospecting or mining title that may have been lawfully obtained by any other person between the date of expiry, abandonment or forfeiture and the date of repegging.

(3) Upon any such location being repegged and being registered, the provisions of this Act shall apply thereto and to the rights of the holder thereof, and the life of the location shall be deemed to have commenced upon the date of the original pegging thereof.

[Act No. 22 of 1954, s. 7, Act No. 12 of 1970, Second Sch.]

### **38. Application of section 15 to locations**

The provisions of section 15 shall apply *mutatis mutandis* to a location.

#### *Leases*

### **39. Grant of leases**

The Commissioner may in respect of land for the time being vested in or on behalf of the Government grant a lease to the holder of a location, or to any person whose agent is the holder of a prospecting right in respect of that location issued to him as such agent, in respect of the whole or any part of the area covered by any such location and upon such terms and conditions as he may determine.

[Act No. 3 of 1980, s. 2.]

### **40. Applications for leases**

Applications for leases shall be made in the prescribed form and manner, and shall be subject to the prescribed conditions, and shall be accompanied by payment of one year's rent in advance at the rate prescribed.

### **41. Applicant to show sufficient capital**

The Commissioner may require an applicant for a lease to show to his satisfaction that he possesses or commands or will within twelve months from the

date of his application command sufficient working capital to ensure the development of and working of mining operations on the area applied for, and to supply such other information as the Commissioner may require.

#### **42. Giving false information**

Any applicant for a lease who wilfully or recklessly gives false information as to any of the matters in respect of which information is or may be required to be given under this Act shall be guilty of an offence.

#### **43. Duration of leases**

A lease may be granted for such term, not being less than five nor more than twenty-one years, as the Commissioner may think proper:

Provided that nothing in this section contained shall be deemed to derogate from or limit the power of renewal of a lease conferred upon the Commissioner by section 46 or the power conferred upon the Commissioner by section 55 to grant or renew a special lease in accordance with the provisions of that section for such term as he may think fit.

[Act No. 22 of 1954, Sch., L.N. 56/1965.]

#### **44. Rent payable and penalty on non-payment thereof**

The lessee in respect of his lease shall pay to the Commissioner, yearly in advance, a rent of one hundred and fifty shillings per annum per hectare or part thereof and, if such rent is not paid within three months of becoming due, and the Commissioner has served notice on the lessee demanding payment, an amount of twenty-five per centum of the amount due shall be added to the rent, and shall be due and payable as if it were part of the rent.

[Act No. 22 of 1954, s. 8, L.N. 56/1965.]

#### **45. Rent, how recoverable**

The rent reserved by any lease may be levied or recovered under the authority of or in the name of the Commissioner, in like manner as rent is or shall be leviable or recoverable by law in cases where private persons only are concerned.

#### **46. Renewal and surrender of leases and remission of covenants, etc.**

The Commissioner, in addition to and without derogating from or limiting any other right, power or authority vested in him under this Act may—

- (a) renew any lease, other than a special lease, for such term, not exceeding twenty-one years, and upon and subject to such terms and conditions, as he may think fit:

Provided that in the case of any such renewal the rent shall not be increased;

- (b) wholly or partially remit all or any of the terms and conditions contained in any lease where, owing to special circumstances, in his opinion compliance therewith would be impossible or great hardship would be inflicted upon the lessee;

- (c) extend time to the lessee for observing or performing all or any of the terms and conditions of any lease, upon such terms and conditions as he may think fit;
- (d) accept, whether with a view to the renewal or re-grant of any lease or otherwise, the surrender of any lease or any part of the area comprised therein upon such terms and conditions as he may think fit:

Provided that no such surrender shall affect any liability incurred by the lessee before the surrender shall have taken effect.

[Act No. 12 of 1970, Second Sch., Act No. 18 of 1986, Sch.]

#### **47. Rights under lease**

A lease shall confer upon the lessee the right in accordance with the terms and conditions of the lease and subject to the provisions of this Act and the regulations by himself, his agents and his servants—

- (a) to enter upon the lands the subject of the lease and the exclusive right to mine on such lands and the right to remove and dispose of the minerals specified in the lease, and to do all such things as are reasonably necessary for the conduct of mining operations; and
- (b) in so far as may be necessary for and in connexion with such mining operations—
  - (i) to make all necessary excavations;
  - (ii) to erect, construct and maintain houses and buildings for his use and for the use of his agents and servants;
  - (iii) to erect, construct and maintain such engines, machinery, buildings and workshops and other erections as may be necessary;
  - (iv) to stack or dump any of the products of mining;
  - (v) subject to the provisions of any law relating to water, to lay water pipes and to make water-courses and pounds, dams and reservoirs, and to divert from a natural watercourse any water on or flowing entirely through the land, provided that—
    - (a) any water diverted not containing any noxious or poisonous matter is returned to its natural channel before leaving such land;
    - (b) any existing rights to use any source of natural water supply is not disturbed;
  - (vi) to construct and maintain such tramways, roads, communications and conveniences as may be necessary;
  - (vii) to graze upon lands not excluded from prospecting or mining such horses or other animals as may be necessary for his subsistence or for the carrying on of mining, on payment or tender of a reasonable sum in payment therefor:

Provided that, whenever a disagreement arises between the owner in the case of private land and the lessee in connexion with surface rights, the matter shall be determined by the Commissioner.

- (viii) in the exclusive economic zone to construct such artificial islands, installations and

[Act No. 22 of 1954, s. 9, L.N. 56/1965.]

#### **48. Right of lessee to take timber**

The provisions of section 32 shall apply *mutatis mutandis* to a lessee.

#### **49. Subterranean limits of locations and leases**

The subterranean limits of any location or lease shall be vertical planes passing through the sides by which the location or lease is bounded.

#### **50. Subterranean leases**

The Minister may in respect of land for the time being vested in or on behalf of the Government grant—

- (a) to the holder of a location, in respect of the whole or any part of the area covered by any location or locations held by him, a lease of a subterranean area; and where any such subterranean lease is granted, the surface lying above the subterranean area shall be excluded from prospecting or mining:

Provided that such lessee may, upon payment of such rent and compensation as the Commissioner may determine, enter upon any part of the surface lying above the subterranean area, and engage in diamond drilling or any similar method of drilling, and construct thereon such works, ways, buildings and air shafts as the Commissioner may deem necessary for the proper working of such subterranean lease;

- (b) to the lessee of any area comprised in a lease granted to him under section 39 a lease of any subterranean area which is contiguous to such area provided he is a location holder in respect of the area to be comprised in such subterranean lease; and, where any such subterranean lease is granted, the lessee, upon payment of such rent and compensation for the use of the surface as the Minister may determine and subject to the provisions of this Act and of the regulations, may prospect and mine, in addition to the area comprised in the lease granted to him under section 39, so much of the surface lying above the area comprised in the subterranean lease as does not exceed, at any one time, in the aggregate, the area comprised in the lease granted to him under section 39.

[L.N. 56/1965, Act No. 6 of 1989, Second Sch.]

#### **51. Discovery to be reported**

The provisions of section 25 shall apply *mutatis mutandis* to a lease granted under this Act.

#### **52. No transfer of lease without consent**

A lessee shall not transfer or assign his lease or any part thereof without the consent in writing of the Commissioner signified by endorsement thereon.

[Act No. 22 of 1954, Sch., L.N. 56/1965.]

**53. Mining for mineral other than that for which lease granted**

The provisions of subsections (1) and (2) of section 31 shall apply *mutatis mutandis* to a lease granted under this Act.

**54. Notice and payment of compensation in respect of private land**

The provisions of section 15 and 26 shall apply to a lease and a lessee as such provisions apply to a prospecting right or exclusive prospecting licence or location and the holder of any such right or licence or of a location.

[Act No. 22 of 1954, Sch., L.N. 56/1965.]

**55. Special leases**

(1) Notwithstanding the provisions of section 39, the Commissioner may grant to any person a special lease of any land for the time being vested in or on behalf of the Government if he is satisfied that by reason of the difficulties and cost attending the mining in, or under such land, or for any other cause, it is desirable that such a lease be granted.

(2) A special lease granted under this section may be granted, and may be renewed, for such term and upon and subject to such terms and conditions as the Commissioner may think fit, but except in so far as any such special lease otherwise provides the same shall be subject to the provisions of this Act and of the regulations.

[Act No. 22 of 1954, s. 11.]

**56. Grounds for forfeiture of leases**

(1) The Minister may, by notice to the lessee, declare a lease to be forfeited in the following cases—

- (a) if the lessee commits a breach or default of any provision of this Act or of the regulations in respect of such lease, or of any term or condition of the lease, and the Minister has caused a notice to be served upon the lessee requiring him—
  - (i) in the case of a breach or default which in the opinion of the Minister is not capable of being repaired or made good, to show cause within a time specified therein why his lease should not be forfeited; or
  - (ii) in the case of a breach or default which in the opinion of the Minister is capable of being repaired or made good, to repair or make good such breach or default within a time to be limited in the notice,

and the lessee has failed to show cause as aforesaid or has persisted in his neglect or refusal to repair or make good the breach or default; or

- (b) if the lessee wholly ceases work in, on or under the land the subject of the lease during a continuous period of six months, without the written consent of the Commissioner.

(2) Such forfeiture shall not affect any liability already incurred by the lessee.

(3) Publication in the *Gazette* together with written notice to the last known address of the lessee shall be sufficient notice to the lessee.

[Act No. 22 of 1954, s. 12, L.N. 56/1965, Act No. 3 of 1980, s. 3.]

#### **57. Treatment of tailings, etc., after the determination of lease**

(1) Any lessee whose lease has expired or has been surrendered or forfeited may, within thirty days of such expiry, surrender or forfeiture, apply to the Commissioner for leave to enter the land which was comprised in the lease and treat or remove any tailings or ore at grass left thereon by him.

(2) The Commissioner may grant such leave and may fix a time, which in the case of such land or any portion thereof being in Trust land, but not otherwise, shall not exceed six months from the date of expiry, surrender or forfeiture (unless the time so fixed is extended with the consent of the county council within whose area of jurisdiction such Trust land is situated) within which such treatment or removal is to be completed.

(3) If such leave is not applied for within thirty days or such treatment or removal is not completed within the time fixed, any tailings or ore at grass remaining on the land shall become the absolute property of the Government.

[Act No. 22 of 1954, Sch.]

#### **58. Owner may remove plant, etc., on surrender**

The provisions of section 36 shall apply *mutatis mutandis* to a lessee.

#### **59. Registration of leases**

Every lease under this Act shall be registered in the office of the Commissioner in the manner prescribed.

#### **60. Registration of dealings**

(1) Any sale, lease, mortgage, charge, lien, option or other dealing relating to any prospecting or mining title shall be void as against any subsequent purchaser for value of such prospecting or mining title unless either—

- (a) it is registered in the prescribed manner before such subsequent purchaser for value acquires such prospecting or mining title; or
- (b) such subsequent purchaser for value has actual notice thereof at the time he acquires such prospecting or mining title.

(2) Nothing in this section contained shall prejudice or affect any contractual right or obligation, or other right *in personam*, or any right to any prospecting or mining title, against any person other than a purchaser for value of such prospecting or mining title who has pursuant to the provisions of subsection (1) acquired such title free from priorities which were not registered before, or of which he had no actual notice at the time, he acquired such title.

(3) For the purposes of this section—

“**prospecting or mining title**” includes an exclusive prospecting licence, a special licence, a location and a mining lease; and

“**purchaser for value**” means any purchaser, mortgagee, chargee, lessee or option-holder who acquires his interest as such for valuable consideration of any description whatsoever.

[Act No. 15 of 1961, Sch.]

#### PART IV – DISPUTES

##### **61. Commissioner may decide disputes**

(1) Subject to the provisions of any law for the time being in force, the Commissioner may inquire into and decide all disputes, concerning any of the matters specified in subsection (2), and shall have power to make any order which may be necessary for the purpose of giving effect to his decision and to order the payment by any party to the dispute of such compensation to any other party as may be reasonable.

(2) The matters referred to in subsection (1) are as follows—

- (a) disputed boundaries of any area held under prospecting or mining right;
- (b) any wrongful act committed, or any act wrongfully omitted, or alleged to have been committed or omitted, in the course of prospecting or mining operations, by any person against any other person;
- (c) acts, omissions or matters in the course of, connected with or auxiliary to prospecting or mining operations;
- (d) the claim of any person to be entitled to erect, cut, construct or use any pump, line of pipes, flume, race, drain, dam or reservoir for mining purposes, or to have any priority of water taken, diverted, used or delivered, as against any other person claiming the same;
- (e) assessment and payment of compensation where provided for under this Act, except where express provision is made in this Act for another authority so to do.

##### **62. Procedure**

The mode of proceeding shall be as follows—

- (a) the person complaining shall lodge a memorandum in duplicate at the office of the Commissioner;
- (b) the memorandum shall be in the prescribed form, or in a form to the like effect, and shall specify shortly the subject-matter of the complaint and the relief claimed;
- (c) upon receipt of the memorandum, the Commissioner shall give notice in the prescribed form, by post or otherwise, to the party sued of the nature of the complaint, and the time and place at which the same will be heard and determined, and may, if he thinks fit, and shall, if the person complaining requests him to do so in the prescribed manner, require him to answer the complaint in writing;
- (d) at the time and place appointed, the parties shall attend and state their cases before the Commissioner, and may call evidence on

- (e) the Commissioner may adjourn such hearing to any other time or place, and may, either at the original hearing or any adjournment, proceed in the absence of either party;
- (f) the Commissioner may at any time during the hearing seize or cause to be seized any minerals, and may detain them pending his decision;
- (g) the law for the time being regulating proceedings before and the powers of a subordinate court of the first class in the exercise of its civil jurisdiction shall, so far as practicable, and subject to any modifications, additions or alterations which may be prescribed but without any restriction or limit as to the value of the subject-matter in dispute, apply to proceedings before the Commissioner and to the enforcement of his decisions in like manner as if such decisions were the decisions of such court;
- (h) fees shall be charged as may be prescribed.

**63. Commissioner to keep record and take notes**

(1) The Commissioner shall keep a record of all cases heard and complaints decided by him, and shall take notes in writing of all evidence given before him.

(2) Any person interested in any dispute, decision or order shall be entitled to obtain a copy of such record and notes upon payment of the prescribed fee.

**64. Enforcement of Commissioner's decrees**

(1) The Commissioner may send a copy, certified under his hand and seal, of any decree or order made by him to any civil court within the local limits of whose jurisdiction the subject-matter of the decree is situated, and such civil court shall enforce the decree of the Commissioner in the same manner in which it would enforce its own decree or order.

(2) The same fees only shall be payable in the civil court upon the enforcement of such decree or order as would be payable upon the enforcement of a like decree or order made by such court.

**65. Appeal to High Court from decision of Commissioner**

(1) Any person aggrieved by any decree, order or decision made or given under the powers vested in the Commissioner under this Part may appeal to the High Court.

(2) No appeal to the High Court shall be admitted after the expiration of thirty days from the date of the decree, order or decision appealed against except by leave of a judge of the High Court.

**66. Power to award costs**

(1) In any dispute adjudicated upon under section 61 of this Act, the Commissioner may award costs to the successful party.

(2) The Chief Justice may make rules of court prescribing the scale of costs which may be awarded under this section.

[Act No. 15 of 1961, Sch.]

#### **67. Jurisdiction of ordinary courts not excluded**

Nothing in this Part contained shall be deemed to prevent any person from instituting in any court any proceedings he may think fit to institute, as provided by law:

Provided that, subject to the provisions of section 65, where a dispute has been adjudicated upon in accordance with the provisions of section 61, proceedings in respect of the same cause of action shall not thereafter be instituted in any court.

### **PART V – INSPECTION AND ACCIDENTS**

#### **68. Powers of officers**

The Commissioner, mining engineer, inspector of mines or assistant inspector of mines, or any other person duly authorized by the Commissioner in that behalf, may at all reasonable times by day or night, but so as not unreasonably to impede or obstruct work in progress—

- (a) enter, inspect and examine any land on which prospecting or mining operations are being conducted or which is the subject of any right, licence, location or lease;
- (b) examine into and make inquiry respecting the condition and ventilation of any mine and any building connected with prospecting or mining activity and all matters relating to the safety and health of the persons employed;
- (c) inspect and examine the state of the machinery used upon or in the mine, and the state of all plant, works and ways;
- (d) examine and take extracts from all books, accounts, vouchers and documents relating to prospecting or mining operations or to any minerals obtained by such operations, and examine and take samples of any material being mined; but any such information so obtained shall be confidential to Government;
- (e) inspect the storage of explosives upon any mine and direct in what manner the same shall be stored;
- (f) examine and make preliminary investigation into any accident occurring in respect of any prospecting or mining activity;
- (g) exercise all powers necessary for carrying this Part into effect.

#### **69. Obligation to remedy dangerous practice**

(1) If in any respect such mining engineer, inspector of mines or assistant inspector of mines or other authorized officer or person finds any mine or any matter, thing or practice in or connected with prospecting or mining operations to be dangerous or defective so as, in his opinion, to threaten or tend to the bodily injury of any person or stock, he shall give notice in writing thereof to the lessee or the holder of the right, licence or location or his agent in charge of the mine or operations, and shall state in such notice the particulars in which he considers

such mine, matter, thing or practice to be dangerous or defective, and shall require the same to be remedied, either forthwith or within such time as he may specify, and may order work to be suspended until the danger is removed to his satisfaction.

(2) On receipt of such notice, the lessee or the holder of the right, licence or location or his agent shall comply therewith, or, if he intends to object thereto, as provided by section 70, he shall cease to use the said mine, or part thereof, machine, plant, matter, thing or practice as to which such notice shall have been given, and shall forthwith withdraw all men from the danger indicated by such officer until such time as the matter has been determined by the Commissioner, and in case of default shall be guilty of an offence:

Provided that, if in the opinion of such officer there is no immediate danger, he shall allow work to proceed during such period, under such restrictions and upon such conditions, specified by him in writing, as he may consider necessary to ensure the safety of the persons and stock.

#### **70. Proceedings on objection to comply with notice**

If such lessee or holder of the right, licence or location or his agent objects to remedy the matter complained of in any notice under section 69, he may, notwithstanding that such notice may specify a time less than twenty-one days in which the requirements referred to therein have to be complied with, lodge his objection in writing with the Commissioner within twenty-one days after the receipt of such notice, and thereupon the matter shall be submitted to and determined by the Commissioner or by such officer as he may appoint in that behalf.

#### **71. Proceedings on failure to comply with notice**

If such lessee or holder or his agent fails to comply with the requisition of the notice, where no objection is lodged within the time aforesaid, or with the decision of the Commissioner or other officer as aforesaid, immediately after the expiration of the time for objection or the decision (as the case may be), he shall be guilty of an offence and liable to a fine not exceeding fifteen thousand shillings.

#### **72. Agreement not to preclude or exempt**

No person shall be precluded or exempted by any agreement from doing such acts as may be necessary to comply with sections 69, 70 and 71 or be liable under any contract to any penalty or forfeiture for doing such acts.

#### **73. Notice of accident**

Every person in charge of prospecting or mining operations shall, as soon as practicable after the occurrence of any accident in connexion with prospecting or mining operations which either causes loss of life to any person or causes any fracture, dislocation or other serious personal injury, or other personal injury likely to have serious effects, to any person, report in writing the facts of the matter so far as they be, or ought to be, known to him to the District Commissioner of the district in which the accident occurred and to the nearest officer of the Mines and Geological Department; any person who fails to comply with the provisions of this section shall be guilty of an offence.

[Act No. 27 of 1961, Sch.]

**74. Special report by Commissioner**

(1) Whenever in or about any mine an accident has caused loss of life or personal injury to any person, the Minister may, at any time, direct the Commissioner to make a special report with respect to the accident, and the Minister may cause any such report to be made public at such time and in such manner as he may think fit.

(2) Nothing in this section contained shall affect the provisions of the Commissions of Inquiry Act (Cap. 102) or the Fire Inquiry Act (Cap. 103).

[Act No. 22 of 1954, s. 14.]

**75. Provisions as to inquests on deaths from accidents in mines**

(1) Where a magistrate holds an inquest or inquiry on the body of any person whose death may have been caused by any accident of which notice is required by this Act to be given to a District Commissioner and an officer of the Mines and Geological Department, The magistrate shall adjourn the inquest or inquiry unless an inspector of mines, or some person on behalf of the Commissioner, is present to watch the proceedings.

(2) The magistrate, at least fourteen days before holding the adjourned inquest or inquiry, shall send to the inspector of mines of the mining district in which, and to the manager of the mine in connexion with which, the accident occurred notice in writing of the time and place of holding the adjourned inquest or inquiry.

(3) The magistrate, before the adjournment, may take evidence to identify the body and may order the interment thereof.

(4) An inspector of mines or other representative of the Commissioner shall be at liberty at any such inquest or inquiry to examine any witness, subject nevertheless to the power of the magistrate to disallow any question which, in his opinion, is not relevant or is otherwise not a proper question.

(5) Any relative of any person whose death may have been caused by the accident with respect to which the inquest or inquiry is being held, and the owner, agent or manager of the mine in which the accident occurred and any person representing any association of workmen to which the deceased belonged or any association of which the owner is a member, shall be at liberty to attend and examine any witness, either in person or by advocate or agent, subject nevertheless to the power of the magistrate to disallow any question which, in his opinion, is not relevant or is otherwise not a proper question.

[Act No. 22 of 1954, s. 15, L.N. 342/1956, L.N. 172/1960.]

**76. Provisions as to inquiries in non-fatal accidents**

(1) In the event of any accident of which notice is required by this Act to be given to a District Commissioner and to an officer of the Mines and Geological Department not being the subject of an inquest or inquiry under section 75, a magistrate empowered to hold a subordinate court of the first or second class shall hold an inquiry into the cause thereof:

Provided that such an inquiry may be dispensed with where the magistrate is satisfied, upon the written report of an inspector of mines, that it is unnecessary to hold an inquiry.

(2) A magistrate holding an inquiry under this section shall, for the purposes thereof, have power to summon witnesses, to call for the production of books and documents and to examine the witnesses or parties concerned on oath.

(3) Any person summoned to attend or to produce books or documents as aforesaid who refuses or neglects so to do, or who refuses to answer any question put to him by or with the concurrence of the magistrate, shall be guilty of an offence and liable to a fine not exceeding one hundred shillings:

Provided that no person shall be bound to incriminate himself, and every witness shall, in respect of any evidence given by him at such inquiry, be entitled to the same privileges as those to which he would be entitled if giving evidence before a court.

(4) The provisions of section 75 shall apply to such an inquiry as aforesaid and to the proceedings thereat in like manner as those provisions apply to such an inquest or inquiry as is referred to in that section.

(5) Any witness attending an inquiry under this section at the request of or upon summons by a magistrate shall, subject to any order made by such magistrate, be entitled to the like expenses as if summoned to attend the High Court in a criminal trial, and payment shall be made in such manner as the Minister may direct.

[Act No. 22 of 1954, s. 15.]

#### PART VI – MISCELLANEOUS

##### **77. Compensation on acquisition of land by Government**

In any case where the Government is acquiring, under the provisions of any law relating to the compulsory acquisition of land for the time being in force, any land held under a lease, exclusive prospecting licence, special licence or location, compensation shall be payable in respect of any disturbance of prospecting or mining rights, in addition to any other compensation.

[Act No. 22 of 1954, s. 15.]

##### **78. Agreements with the Fund**

(1) Subject to this section, the Government may enter into agreement with the United Nations Revolving Fund for Natural Resources Exploration (in this section called the Fund), an organ of the United Nations, whereby—

- (a) the Fund is granted exploration rights in respect of such area and such minerals as may be specified in the agreement and on such terms and conditions as the Minister thinks fit; and
- (b) the Government is liable to make financial contributions (in this section called replenishment contributions) to the Fund on such basis and at such times as may be specified in the agreement in respect of any minerals which are reported by the Fund in terms of the agreement to exist in workable deposits and which are subsequently mined and (whether before or after processing) sold.

(2) Replenishment contributions shall be charged upon and paid out of the Consolidated Fund without further appropriation than this Act.

(3) The mining of any mineral deposits reported under paragraph (b) of subsection (1) shall be subject to the provisions of this Act:

Provided that the mining lease or licence relating thereto shall provide for payment to the Commissioner by the lessor or licensee of the amounts of any replenishment contributions from time to time payable under that paragraph in respect of those deposits, on such basis and terms as may be specified in the lease or licence or prescribed by regulations under this Act.

(4) The Fund shall not acquire by virtue of any agreement under this section any right to a mining lease or to exploit or sell any minerals.

(5) Agreements under this section and any variations thereof from time to time shall be signed by the Minister or Ministers for the time being responsible for both Mining and Finance in Kenya, or by persons specially authorized in writing in that behalf by him or each of them respectively.

[Act No. 15 of 1961, Sch.]

### **79. Subsequent grants**

Subject to the Constitution and any other written law, any authority or duly authorised person may, notwithstanding the previous grant of any licence, location or lease over any land under this Act, make any grant of such land which he is empowered by law to make:

Provided that—

- (i) the person to whom any such grant may be made shall not be entitled to compensation for any disturbance of his rights under the grant by reason of the exercise by the holder of any licence or location or by any lessee under this Act of any rights conferred upon him by such licence, location or lease;
- (ii) before making such grant, notice shall be given to the holder of such licence or location or the lessee of intention to make the grant.

[Act No. 3 of 1980, s. 4.]

### **80. Protection of estate of deceased person, bankrupt or lunatic, etc.**

(1) In any case where the holder of any licence or location or any lessee dies, the obligations imposed upon such holder or lessee by this Act or by the regulations or by any regulations made under the Act repealed by this Act which are still subsisting shall be suspended and the rights conferred on such holder or lessee by such Act or by such regulations shall be preserved for six months from the date of death:

Provided that the Commissioner may for good and sufficient cause extend the time.

(2) In any case where the holder of a licence or location or any lessee—

- (a) has a receiving order in bankruptcy made against him; or
- (b) is found to be a lunatic under any law relating to lunacy for the time being in force; or
- (c) being a company, has a winding-up order made against it by the court,

the obligations imposed upon such holder or lessee by this Act or by the regulations or by any regulations made under the Act repealed by this Act which

are still subsisting or by the licence or lease shall be suspended and the rights conferred on such holder or lessee by such Act or by such regulations or by the licence or lease, shall be preserved until the expiration of ninety days—

- (i) from the date of the receiving order; or
- (ii) from the date of the appointment of any manager of the estate of the lunatic so found; or
- (iii) from the date of appointment of a liquidator by the court,

as the case may be:

Provided that the Commissioner may for good and sufficient cause extend the time.

#### **81. Government officers prohibited from acquiring rights**

No person, whether civil or military, while in the service of the Government, shall directly or indirectly acquire or hold any right or interest under any prospecting right, exclusive prospecting licence, special licence, location or mining lease, and any right, licence, location or lease or other document or transaction purporting to confer any such right or interest on any such officer shall be null and void:

Provided that a temporary employee may retain rights and interests acquired prior to accepting Government employment.

[L.N. 56/1965.]

#### **82. Discovery of mineral by Government servant**

(1) In the event of the discovery of minerals by any person in the service of the Government or of the Community, the discoverer may peg, in the manner prescribed for pegging a location, an area, to be called a Government Protection Area, not exceeding two and a half square kilometres.

(2) Such discovery and pegging shall be forthwith reported to the Commissioner, and no person may thereafter prospect in such area without the consent of the Commissioner.

(3) Notwithstanding the provisions of this Act, authority to mine in a Government Protection Area may be granted by the Commissioner to such persons and subject to such terms and conditions as he may think fit.

[Act No. 15 of 1961, Sch.]

#### **83. Salting**

Any person who places or deposits, or is accessory to the placing or depositing of, any minerals in any place with the intent to mislead any persons as to the payable nature of such place, or who mixes or causes to be mixed with any ore any valuable metal or substance whatsoever that will increase the value or in any way change the nature of the said ore, with intent to deceive, cheat or defraud, shall be guilty of an offence and liable to a fine not exceeding twenty thousand shillings or to imprisonment for a term not exceeding three years, or to both such fine and such imprisonment.

#### **84. Penalty for false return, etc.**

Any person who in connexion with any return, statement or document in respect of which information is or may be required to be given under this Act or

the regulations wilfully or recklessly gives false information or makes a false statement, whether oral or in writing, shall be guilty of an offence and, if no other penalty is specifically provided, liable to a fine not exceeding six thousand shillings or to imprisonment for a term not exceeding three years, or to both such fine and such imprisonment.

**85. Obstructing officer**

Any person who wilfully obstructs, hinders, assaults or resists an officer, or any person duly authorized by an officer or a person authorized by this Act or the regulations to exercise any right or power or execute any duty, or wilfully disobeys an officer's order other than an order for the payment of money, or is guilty of contempt of the Commissioner or other officer when acting in a judicial capacity, shall be guilty of an offence and liable to a fine not exceeding two thousand shillings or to imprisonment for a term not exceeding six months, or to both such fine and such imprisonment.

**86. Penalty for interfering with mining, etc.**

Any person who—

- (a) interferes with any prospecting or mining operations authorized by or under this Act;
- (b) obstructs any person in the exercise of any right conferred by or under this Act;
- (c) interferes with any machinery, plant, works or property established on, in, under or over any land in exercise of a right conferred by or under this Act;
- (d) without lawful authority wilfully breaks, defaces or removes, or in any other way interferes with, any boundary mark, beacon, pillar or post erected for any of the purposes of this Act or under the regulations, shall be guilty of an offence and liable to a fine not exceeding six thousand shillings or to imprisonment for a term not exceeding three years, or to both such fine and such imprisonment.

[L.N. 343/1956, L.N. 173/1960, L.N. 56/1965, Act No. 12 of 1970, Second Sch.]

**87. Power of Commissioner to conduct prosecutions**

The Commissioner or any officer of the Mines and Geological Department may conduct or assist in conducting a prosecution for any offence under this Act.

**88. Arrest**

(1) The Commissioner or any officer of the Mines and Geological Department may without warrant arrest and search any person whom he may find committing, or whom he reasonably suspects of having committed, an offence under this Act:

Provided that the person arrested shall be taken, with as little delay as possible, before a court to be dealt with according to law.

(2) Any person who on any mining property fights or behaves in such a manner as to be likely to cause injury to himself or to any other person, or to cause damage to any machinery, plant or workings, shall be guilty of an offence

and may be arrested by any police officer without warrant or may be apprehended by the owner or occupier of the mining property on which the offence is committed or by any servant authorized by such owner or occupier, and such person, when so apprehended, shall be handed over to the nearest police officer without unnecessary delay.

#### **89. Address, and service of notices**

(1) The holder of an exclusive prospecting licence, special licence or location or a lessee shall, at the time he registers such licence, location or lease, furnish to the Commissioner his permanent address in Kenya, and if thereafter such holder or lessee changes his address he shall forthwith send a notification of such change to the Commissioner.

(2) Where, under this Act or under the regulations or under any regulations made under the Act repealed by this Act which are still subsisting, the Commissioner is required to serve any notice, demand or other communication, such notice, demand or other communication shall be deemed to have been duly served if sent by registered post to the last address in Kenya (furnished to the Commissioner) of the person upon whom such notice, demand or other communication is required to be served.

(3) The provisions of subsection (2) shall apply in like manner to any notice, demand or other communication which the Commissioner may, in his discretion, serve upon any person.

[Act No. 22 of 1954, s. 16.]

#### **90. Copy of mining register and assay certificates receivable in evidence**

A copy of any entry in any mining register purporting to be signed by the Commissioner or by any officer of the Mines and Geological Department authorized by him and certified to be correct by the person signing it, and an assay certificate signed by the Government Assayer and certified by him to be correct, shall be receivable in evidence without further proof in all courts and in any proceedings instituted under section 61:

Provided that where any party proposes to produce such assay certificate by virtue of the provisions of this section, he shall give notice to the other party not less than fourteen days before the date of hearing of his intention so to do, and such other party may give notice to the party purporting so to do requiring him to produce the assayer at the hearing for the purposes of cross-examination, and failure to produce such assayer shall, in the absence of just cause or excuse which is reasonable in the circumstances, render such certificate inadmissible.

#### **91. General penalty**

Any person who is guilty of an offence under, or contravenes any of the provisions of, this Act or of the regulations made under the Act repealed by this Act which are still subsisting, for which a penalty is not expressly provided, shall be liable on conviction to a fine not exceeding two thousand shillings or to imprisonment for a term not exceeding six months, or to both such fine and such imprisonment.

**92. Regulations**

(1) The Minister may make regulations in connexion with or for all or any of the matters or purposes following—

- (i) the manner in which applications for any right, licence, location or lease which may be granted under this Act shall be made, and the forms to be used;
- (ii) the information to be supplied by the applicants;
- (iii) the classes of locations and leases;
- (iv) the manner in which locations shall be pegged;
- (v) the manner in which protection areas may be acquired, their size and shape, the fees payable in respect thereof and the period for which they may be held;
- (vi) the shape of the areas over which exclusive prospecting licences may be granted;
- (vii) the size and shape of the areas over which locations or mining leases may be granted;
- (viii) the manner in which areas and boundaries shall be surveyed, marked and beaconed, and the fees payable in respect of such survey when performed by the Government;
- (ix) the working and any other conditions to be applied to licences, locations and mining leases;
- (x) the construction and use of roads, tramways and railways;
- (xi) the construction and erection of houses, pits, shafts, machinery and other works to be used for prospecting or mining purposes;
- (xii) the fencing off or rendering secure of any shaft, well, trench, tunnel, drive or other works constructed, erected or made for prospecting or mining purposes;
- (xiii) the grazing of cattle or other animals, and the cutting down and use of timber for the purpose of carrying on prospecting and mining operations;
- (xiv) the safety and health of persons employed in mines, and the carrying on of prospecting or mining operations in a safe, proper, sanitary and effectual manner;
- (xv) the renewal, transfer, assignment and surrender of any licence, location or lease or any rights thereunder;
- (xvi) the registration of exclusive prospecting licences, locations and mining leases and instruments under which any right or interest thereunder is transferred or surrendered, and the fees payable on such registration;
- (xvii) the returns to be rendered and the nature of the accounts, books and plans to be kept by the holders of exclusive prospecting licences, locations and mining leases;
- (xviii) the rates of royalties to be paid to the Government, the method of calculation of the amount of such royalties and the manner and time of payment thereof;

- 
- (xix) the counting of development done on the area of one licence, location or lease towards development due to be done on the area of another licence, location or lease in the same ownership;
  - (xx) the disposal of any poisonous or noxious products the result of mining operations;
  - (xxi) regulating the occasion on which the Commissioner may require a survey to be made for the prevention of differences as to boundaries or for the settlement of disputes, and for the payment of the cost of such survey;
  - (xxii) prescribing a penalty, not exceeding one hundred shillings, which may be imposed by any officer of the Mines and Geological Department for breach of any regulation made under this section and the manner in which such penalty shall be paid;
  - (xxiii) the procedure on an appeal to the Minister;
  - (xxiv) the fees to be paid in respect of any matter or thing done under this Act;
  - (xxv) the contribution by parties benefited of a fair share of the cost of pumping in cases where pumping in one mine benefits other mines;
  - (xxvi) the defiling or wasting of water, wherever situated and wherever obtained;
  - (xxvii) the form and issue of export permits;
  - (xxviii) requiring any person, being the owner, manager or agent of a mine by whom or by whose instructions or directions any borehole, other than a borehole for water, is drilled or sunk in the course of prospecting or mining operations, to furnish to the Commissioner such information relating to the borehole as may be prescribed;
  - (xxix) prescribing the services which may or shall be rendered by the Mines and Geological Department to members of the public and the fees which may be charged therefor;
  - (xxx) generally for prescribing anything which may be prescribed under this Act and for the carrying into effect the purposes of this Act.

(2) Any such regulation may require acts or things to be performed or done to the satisfaction of an officer appointed under section 9, and may empower such officer to issue orders, either verbally or by notice, requiring acts and things to be performed or done, prohibiting acts and things from being performed or done, imposing conditions and prescribing periods or dates upon, within or before which such acts or things shall be performed or done or such conditions shall be fulfilled.

[Act No. 15 of 1961, Sch.]

### **93. Appeals**

(1) Any person aggrieved by any decision or determination of the Commissioner

- 
- (a) refusing to grant a special licence under section 17, or as to the terms and conditions upon or subject to which the Commissioner is prepared to grant any such licence;

- (b) refusing to grant an exclusive prospecting licence under section 18, or as to the terms and conditions upon or subject to which the Commissioner is prepared to grant any such licence;
- (c) refusing to consent to the transfer of an exclusive prospecting licence under section 21;
- (d) *deleted by L.N. 56/1965*;
- (e) refusing to grant a lease under section 39, or as to the terms and conditions upon or subject to which the Commissioner is prepared to grant such a lease;
- (f) subject to the provisions of section 43, as to the term for which the Minister is prepared to grant a lease;
- (g) *deleted by L.N. 56/1965*;
- (h) refusing to grant a subterranean lease under section 50, or as to the terms and conditions upon or subject to which the Commissioner is prepared to grant any such lease;
- (i) refusing consent to the transfer or assignment of a lease or any part thereof under section 52;
- (j) *deleted by L.N. 56/1965*;
- (k) *deleted by L.N. 56/1965*,

may appeal against such decision or determination to the Minister whose decision shall be final and shall not be subject to appeal or review in any court.

(2) Any person aggrieved by any decision or determination of the Minister—

- (a) revoking a prospecting right or exclusive prospecting licence under section 27; or
- (b) declaring a lease to be forfeited under section 56, may appeal against such decision or determination to the High Court.

(3) Any person aggrieved by a decision or determination of the Commissioner—

- (a) refusing to renew a lease under section 46; or
- (b) refusing to renew a special lease under section 55,

may appeal against such decision or determination to the Minister, and if he is aggrieved by the decision or determination of the Minister he may appeal against the same to the High Court.

[Act No. 22 of 1954, s. 17, L.N. 343/1956, L.N. 173/1960.]

#### **94. Saving of previous titles**

All prospecting, mining and other rights and titles granted under the Mining Act, 1933 (No. 61 of 1933 now repealed) shall be deemed to have been granted under, and to be subject to the provisions of, this Act.

---

