

MINES AND QUARRIES ACT, 2005

Arrangement of Sections

Section

CHAPTER I - MINES AND QUARRIES

PART I – PRELIMINARY

1. Short title and commencement
2. Application
3. Interpretation

PART II - GENERAL PRINCIPLES

4. Ownership and control of minerals continue to reside in the State
5. Authority required for prospecting, or mining or quarrying operations
6. Title to minerals to be obtained only through authorized operation
7. Designation of mining operations

CHAPTER II - MAJOR MINING OPERATIONS

PART I – GENERAL PRINCIPLES

8. Interpretation of this Chapter
9. Phases of major mining operations

PART II - APPLICATIONS FOR LICENCES AND THE GRANT, ASSIGNMENT, CANCELLATION AND SURRENDER OF LICENCES

10. Application of this Part
11. Application for licence
12. Priority of applications
13. Additional requirements in respect of applications for mining licence
14. Chief Geologist to prepare report
15. Issuance of licence by Secretary of State
16. Restriction on grant of licence
17. Licence may be granted subject to conditions
18. Prospecting licence to be subject to certain conditions
19. Form of licence

20. Period of validity of licence
21. Secretary of State may extend validity of licence
22. Application to extend validity of licence
23. Periods by which validity of licence may be extended
24. Licence may be assigned
25. Licence may be cancelled or suspended
26. Application to cancel or suspend licence

PART III - DEVELOPMENT AGREEMENTS

27. Secretary of State may enter into development agreement
28. Contents of development agreement
29. Discretion to be exercised in accordance with development agreement

PART IV – APPLICATIONS BY TENDER

30. Application for mineral rights by tender

PART V – EFFECT OF LICENCES

31. Effect of reconnaissance licence
32. Effect of prospecting licence
33. Effect of mining licence

PART VI - RETENTION LICENCES

34. Application of this Part
35. Application for retention licence
36. Chief Geologist to prepare report on application for retention licence
37. Secretary of State may grant retention licence
38. Retention licence may be granted subject to conditions
39. Form of retention licence
40. Period of validity of retention licence
41. Secretary of State may extend validity of retention licence
42. Application to extend validity of retention licence

CHAPTER III - MINOR MINING OPERATIONS

PART I - GENERAL PRINCIPLES

43. Interpretation of this Chapter
 44. Phases of minor mining operation
 45. Secretary of State may declare area reserved for minor mining operations
-

PART II - APPLICATIONS FOR PERMITS AND THE GRANT, ASSIGNMENT, CANCELLATION AND SURRENDER OF PERMITS

46. Application of this Part
47. Application for permits
48. Priority of applications
49. Chief Geologist may grant permits
50. Restriction on persons to whom permits may be granted
51. Further restriction on grant of permits
52. Permit may be granted subject to conditions
53. Form of permit
54. Period of validity of permit
55. Chief Geologist may extend validity of permit
56. Application to extend validity of permit
57. Permit may be assigned
58. Permit may be cancelled or suspended
59. Application to cancel or suspend mining permit
60. Revocation of declaration of reserved area

PART III - EFFECT OF PERMITS

61. Effect of prospecting permit
62. Demarcation of area in permit
63. Effect of mining permit

CHAPTER IV - QUARRYING OPERATIONS

PART I - GENERAL PRINCIPLES

64. Interpretation of this Chapter
65. Activities requiring authority

PART II - APPLICATIONS FOR AUTHORITIES AND THE GRANT, ASSIGNMENT, CANCELLATION AND SURRENDER OF AUTHORITIES

66. Application of this Part
 67. Application for authority
 68. Priority of applications
 69. Chief Geologist may grant authority
 70. Restriction on grant of authority
 71. Authority may be granted subject to conditions
 72. Form of authority
 73. Period of validity of authority
 74. Chief Geologist may extend validity of authority
 75. Application to extend validity of authority
 76. Authority may be assigned
-

- 77. Authority may be cancelled
- 78. Application to cancel or suspend quarrying licence

PART III - EFFECT OF AUTHORITIES

- 79. Effect of quarrying permit
- 80. Effect of quarry licence

CHAPTER V – MINERAL RIGHTS

PART I - GENERAL PROVISIONS RELATING TO MINERAL RIGHTS

- 81. Rights under a mineral right to be exercised reasonably
- 82. Obligation to insure
- 83. Obligation to indemnify and limitation of liability
- 84. Obligations of landowners
- 85. Compensation payable for crops, etc. damaged
- 86. Power of entry for inspection, etc.
- 87. Power to inspect records
- 88. Chief Geologist, etc. not to be hindered
- 89. Power to search for evidence of offence

PART II - SETTLEMENT OF DISPUTES IN RESPECT OF MINERAL RIGHTS

- 90. Chief Geologist may decide disputes
- 91. Enforcement of Chief Geologist's orders
- 92. Appeal to High Court
- 93. Rules

PART III - REGISTRATION OF MINERAL RIGHTS

- 94. Registers of mineral rights
- 95. Evidentiary provision

CHAPTER VI - DEALING IN AND POSSESSION OF RESTRICTED MINERALS

- 96. Interpretation of this Chapter
 - 97. Restricted minerals
 - 98. Restriction on dealing in or possessing restricted minerals
 - 99. Regulations may establish a system in respect of restricted minerals
-

CHAPTER VII – MISCELLANEOUS PROVISIONS

PART I - SUNDRY OFFENCES

- 100. Secrecy
- 101. Offences by corporations, etc.
- 102. Aiding and abetting
- 103. False statements
- 104. Falsifying minerals
- 105. Obstruction of holder of mineral rights
- 106. Level of fines

PART II - ADMINISTRATIVE PROVISIONS

- 107. Power of Geological Unit, etc. to stop vehicle or vessel, and power of arrest
- 108. Power to seize minerals, instruments and things
- 109. Disposal of minerals, instruments and things seized
- 110. Appeals from decisions of Secretary of State
- 111. Appeals from decisions of Chief Geologist
- 112. Recovery of fees.
- 113. Environmental protection
- 114. Power of entry for geological investigations, etc.

PART III - REGULATIONS

- 115. Regulations

PART IV - REPEALS, SAVING AND TRANSITIONAL PROVISIONS

- 116. Repeals
- 117. Savings of existing mining leases
- 118. Savings of existing mining rights
- 119. Savings of existing exclusive prospecting licences
- 120. Savings of existing prospecting rights
- 121. Savings of existing licence to possess or purchase certain minerals
- 122. Further savings
- 123. Transitional and saving regulations

MINES AND QUARRIES BILL, 2005

THE GAMBIA

NO. 7 OF 2005

**Assented to by The President
Thisday of July, 2005**

YAHYA A.J.J. JAMMEH
President

AN ACT to make provision for prospecting for minerals, for carrying out mining and quarrying operations, and for incidental or connected matters.

[see section 1 (2)

ENACTED by the President and the National Assembly.

CHAPTER I - MINES AND QUARRIES

PART I - PRELIMINARY

Short title and commencement	<p>1. (1) This Act may be cited as the Mines and Quarries Act, 2004.</p> <p>(2) This Act shall come into force on such date as Secretary of State may appoint by an Order in the <i>Gazette</i>.</p>
Application	<p>2. (1) This Act extends to the land beneath the territorial sea, and the seabed and subsoil of the continental shelf of The Gambia.</p> <p>(2) This Act does not apply to the exploration for or production of petroleum.</p>
Interpretation	<p>3. (1) In this Act, unless the context otherwise requires -</p> <p>“arbitration” means arbitration in accordance with the Arbitration Act;</p>
Cap. 9	<p>“authority” means a quarrying permit or licence granted in accordance with Chapter IV;</p>

“building material” means any form of rock, stone, gravel, sand, clay, volcanic ash or cinder, sandstone, laterite, cockleshell, limestone or other mineral intended for use in the construction of a building, road, dam, airport or similar work;

“Chief Geologist” means the person for the time being heading the Geological Unit;

“continental shelf” has the meaning assigned to it in the Continental Shelf Act;

“court” means a duly constituted court and includes a District Tribunal;

“development agreement” means an agreement referred to in section 27;

Cap 26:01

“disposing” in the definition of “mining operation” and “quarrying operation”, includes the disposal of tailings and waste rock;

“environment” has the meaning assigned to it in the National Environment Management Act, 1994;

“extracting” in the definition of “mining operation”-

(a) includes the physical, chemical, electrical, magnetic or other way of separation of a mineral, including crushing, grinding, concentrating, screening, washing, jigging, tabling, electro-winning, solvent extraction, heap leaching, flotation, fluidised bedding, carbon-in-leach and carbon-in-pulp processing; and

(b) excludes -

1994 No.
11

(a) a process in a smelter, refinery or anywhere else by which a mineral is changed to another substance, or

(ii) testing or assaying a small quantity of a mineral in a laboratory (other than one operating under a mineral right) or in a teaching institution;

“Geological Unit” means the State agency responsible for supervising, monitoring and regulating mining and quarrying operations;

“holder” in respect of a licence, a retention licence, permit or authority, means-

- (a) the person to whom the licence, permit or authority was granted; and
- (b) if the licence, permit or authority has been lawfully assigned, the person to whom it has been assigned;

“land” includes land covered by water;

“licence” has the meaning given to it under section 8;

“mine” -

- (a) as a noun, means an area where a mining operation is carried out, and includes an excavation or system of excavations made for the purpose of, or in connection with, the getting of mineral (whether in its natural state or in solution or suspension) or products of mineral, an open-cast mine and an area where a mineral is won by dredging or other means; and
- (b) as a verb, means to carry out a mining operation;

“mineral” means a substance whether in solid, liquid or gaseous form occurring naturally in or on the earth, or in or under the seabed formed by or subject to a geological process and -

- (a) includes any metalliferous ore, building material, earth material and material that may be used to improve the quality of the soil for agriculture; and
 - (b) excludes petroleum and surface water;
-

“mining licence” means a mining licence granted in accordance with section 15;

“mining operation” means an operation carried out at, or in connection with, a mine with a view to, or for the purpose of -

- (a) winning a mineral from a place where it occurs;
- (b) extracting a mineral from its natural state; or
- (c) disposing of a mineral in connection with, or waste substances resulting from, the winning or extraction;

“mining permit” means a mining permit granted in accordance with section 49;

“mineral right” means a right granted by a licence, permit or authority;

“notice” means notice in writing;

“petroleum” has the meaning given to it in the Petroleum (Exploration, Development and Production) Act 2004 -

“prescribed” means prescribed by regulations made under this Act;

“prospect” means to search for a mineral by any means, and includes –

- (a) carrying out work and removing samples necessary to test the mineral bearing qualities of land; and
- (b) reconnaissance operations;

“prospecting licence” means a prospecting licence granted in accordance with section 15;

“prospecting permit” means a prospecting permit granted in accordance with section 51;

“prospecting operations” means operations carried out in the course of prospecting;

“quarry” means an excavation or system of excavations made for the purpose of, or in connection with, getting a building material, being neither a mine nor merely a well or bore-hole or a well and bore-hole combined;

“quarrying licence” means an authority granted in accordance with section 71;

“quarrying operation” means an operation carried out at, or in connection with, a quarry with a view to, or for the purpose of -

- (a) winning a building material from a place where it occurs;
- (b) extracting a building material from its natural state; or
- (c) disposing of material in connection with, or waste substances resulting from, the winning or extraction of a building material;

“quarrying permit” means an authority granted in accordance with section 71;

“reconnaissance licence” means a reconnaissance licence granted in accordance with section 15;

“reconnaissance operation” means to search for a mineral –

- (a) by geophysical surveys, geo-chemical surveys and photo-geological or other non-intrusive surveys; or
- (b) by the study of surface geology;

“regulations” means regulations made by the Secretary of State under section 115;

2004 No.
7

“retention licence” means a retention licence granted in accordance with section 38;

“Secretary of State” means the Secretary of State

responsible for the administration of this Act.

(2) A person, being an individual, is an undischarged bankrupt for the purpose of this Act if, whether in The Gambia or elsewhere, the person -

- (a) has been adjudged or otherwise declared bankrupt, by whatever named called, and has not been discharged;
- (b) has entered into an agreement or scheme of composition with his or her creditors and that agreement or scheme continues to subsist; or
- (c) has taken advantage of a law for the benefit of debtors and the person continues to take advantage of that law.

(3) A person, being a body corporate, is in financial difficulties for the purpose of this Act if it-

- (a) is in liquidation, not being a liquidation which is part of a scheme of reconstruction or amalgamation;
- (b) is the subject of a subsisting court order for its winding up or dissolution; or
- (c) has made a composition or arrangement with its creditors that still subsists.

(4) There is a limited assignment of a mineral right in the normal course of business for the purposes of this Act if the assignment of the right is to -

- (a) an affiliate, if the obligations of the affiliate are guaranteed by the assignor or by a parent company, approved by the Chief Geologist, that directly or indirectly controls the assignor; or
 - (b) a bank or other financial institution by way of mortgage or charge given as security for a loan or guarantee in respect of operation authorised by the right; or
 - (c) another person who constitutes the holder of
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the mineral right.

(5) For the purpose subsection (4) an affiliate, in respect of a holder of a mineral right, is a company that

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(a) directly or indirectly controls or is controlled by the holder of the right; or

(b) is controlled directly or indirectly by a company that directly or indirectly controls the holder of the right.

PART II – GENERAL PROVISIONS

Ownership and control of minerals continues to reside in the state

4. (1) The entire property in and control of -

(a) all minerals, in, under or on any land in The Gambia, and

(b) all rivers, streams and watercourses throughout The Gambia,

that were declared to reside in the State before the commencement of this Act by section 3 (1) of the Minerals Act repealed under this Act shall continue to reside in the State.

(2) For the avoidance of doubt, it is hereby declared that the entire property in and control of all minerals, in, under or on the sea-bed and subsoil of the continental shelf of The Gambia resides in the State.

(3) Subsections (1) and (2) are subject to –

(a) any express grant by the State to the contrary made before and subsisting immediately before commencement of this Act; and

(b) any mineral right granted in accordance with this Act.

<p>Authority required for prospecting, or mining or quarrying operations</p>	<p>5. (1) No person shall –</p> <p>(a) carry out reconnaissance operations for a mineral; or</p> <p>(b) prospect for a mineral or carry on mining or quarrying operations for a mineral,</p> <p style="padding-left: 40px;">unless the person is authorised to do so in accordance with a mineral right granted under this Act.</p> <p>(2) A person who contravenes subsection (1) commits an offence and is liable on conviction -</p> <p style="padding-left: 40px;">(a) in the case of an individual, to a fine of not less than one hundred thousand dalasis or imprisonment for a term not exceeding three years, or to both the fine and imprisonment; or</p> <p style="padding-left: 40px;">(b) in any other case, to a fine of not less than five hundred thousand dalasis.</p> <p>(3) A mineral obtained otherwise than as authorised by this Act remains the property of the State and may be reclaimed by the State from any person for the time being in possession of it.</p> <p>(4) Subsection (3) applies notwithstanding any claim, right or title any other person may have or allege to have over the mineral.</p>
<p>Title to minerals to be obtained only through authorised operations</p>	<p>6. (1) The title to a mineral may be obtained as a result of a mining operation authorised under with this Act.</p> <p>(2) A mining operation may be either a major mining operation or a minor mining operation.</p> <p>(3) Title to minerals that are building materials may be obtained as a result of a quarrying operation authorised under this Act.</p>
<p>Designation of</p>	<p>7. (1) The Secretary of State shall, by regulations, prescribe the criteria to be used to determine whether a</p>

mining operations mining operation is a major mining operation or a minor mining operation.

(2) Those criteria may be prescribed by reference to any consideration but may, in particular, be prescribed by reference to -

(a) the expenditure the mining operation is likely to involve; and

(b) the use of any specialist technology the mining operation is likely to require.

CHAPTER II - MAJOR MINING OPERATIONS

PART I - GENERAL PRINCIPLES

Interpretation of this Chapter

8. In this Chapter, unless the context otherwise requires -

“licence” means a reconnaissance licence, a prospecting licence or a mining licence.

Phases of major mining operation

9. (1) A major mining operation may be carried out in three phases, namely, a reconnaissance phase, a prospecting phase and a mining phase.

(2) A reconnaissance licence is required to undertake the reconnaissance phase, a prospecting licence to undertake the prospecting phase and a mining licence to carry out the mining phase.

PART II - APPLICATIONS FOR LICENCES AND THE GRANT, ASSIGNMENT, CANCELLATION AND SURRENDER OF LICENCES

Application of this Part

10. This Part applies to applications for the grant of licences and to the assignment, cancellation and surrender of licences.

Application for licences

11. (1) An application for a licence shall be -

(a) made on a form provided or approved for the purpose by the Chief Geologist;

(b) accompanied by the prescribed fee;

and

(c) submitted to the Chief Geologist.

(2) The application shall contain details of -

- (a) the area in respect of which the licence is sought; and
- (b) the mineral or minerals the applicant is seeking or intends to mine.

(3) An applicant shall submit to the National Environment Agency a project brief on the area in respect of which the licence is sought as required under Part V of the National Environment Management Act, 1994.

(4) The Chief Geologist may require the applicant to provide such further information as is reasonably necessary to enable the application to be considered by the Secretary of State.

(5) The Chief Geologist may, in particular, require the applicant to provide details of -

- (a) the financial and technical resources available to the applicant;
- (b) any mineral right granted or previously granted to the applicant;
- (c) how the applicant intends to deal with environmental considerations related to the operation; and
- (d) in the case of an application for a mining licence, the applicant's forecasts and plans of operation.

1994 No.
11

Priority of
applications

12. (1) The Chief Geologist shall deal with applications for licences in the order in which they are received.

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- (2) Subsection (1) does not apply in respect of applications received as a result of an invitation to tender for a licence, which are to be dealt with in the prescribed manner.
- Additional requirements in respect of applications for mining licences
13. (1) An application for a mining licence shall not be made except by a person who-
- (a) holds a licence to carry out prospecting operation in the area it is intended to mine; and
 - (b) has, in accordance with the conditions of that licence, notified the Secretary of State of the discovery of commercial quantities of mineral in that area.
- (2) The application shall be made within two months of the notification required under subsection (1)(b).
- (3) The Secretary of State may extend the period specified under subsection (2) if he or she is satisfied that -
- (a) there were sufficient reasons why the application could not be made during that period; or
 - (b) it is in the public interest to do so.
- (4) This section does not apply in respect of -
- (a) an application made as a result of an invitation to tender for a mining licence; or
 - (b) an application by the holder of a retention licence to mine in the area and for the mineral or minerals specified in the licence.
- Chief Geologist to prepare report
14. (1) The Chief Geologist shall prepare a written report on each application for a licence.
- (2) The Chief Geologist shall, when preparing the report, consult each Government Department,
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Government agency and Local Government authority that may have an interest in the application or the operations that the licence would authorise were it to be granted.

(3) The Chief Geologist shall also consult any other person, whether in The Gambia or elsewhere, as the Secretary of State may direct.

Secretary of State may grant licence

15. (1) The Chief Geologist shall submit each application for a licence and his or her report on the application to the Secretary of State together with a recommendation as to the action to be taken.

(2) The Secretary of State may -

- (a) grant the licence sought;
- (b) grant the licence sought but place limits on the area or minerals or both to which it applies;
- (c) refuse the application; or
- (d) require the Chief Geologist to provide further information and to resubmit the report.

(3) The Secretary of State shall take into account the recommendation of the Chief Geologist when considering an application for a licence but shall make his or her own decision on the application and need not act in accordance with the recommendation.

(4) The Secretary of State shall not grant a licence that is inconsistent with a mineral right granted to any other person.

(5) Where the Secretary of State is satisfied that a licence should be granted but subsection (4) applies, the Secretary of State may terminate the existing right on terms agreed on with the holder of the right, or failing agreement, on terms

determined by arbitration.

(6) The Secretary of State may refuse to grant a licence if he or she is satisfied that it is in the public interest that no more licences of that type should be in force at that time.

Restriction
on grant of
licences

16. A licence shall not be granted to a person who being-

- (a) an individual, has not attained the age of eighteen years or is an undischarged bankrupt; or
- (b) a body corporate, is in financial difficulty.

Licence
may be
granted
subject to
conditions

17. (1) A licence may be granted subject to conditions, which shall be set out in the licence.

(2) The Secretary of State may impose conditions to-

- (a) protect the State's mineral interests; and
- (b) protect the environment of The Gambia;
- (c) ensure the safety of the operations authorised by the licence and of those undertaking those operations;
- (d) protect the lawful interests of any other person who has a mineral right; and
- (e) ensure that the activities permitted by the licence are undertaken and are undertaken within a reasonable time.

(3) In particular, the Secretary of State may impose conditions requiring the holder of the licence to-

- (a) undertake the activities permitted by the licence in compliance with a programme agreed with the Chief
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Geologist; and

- (b) expend in undertaking those activities or any part of them an amount being not less than an amount approved by the Chief Geologist; and
- (c) take measures agreed with the Chief Geologist for the protection and rehabilitation of the environment; and
- (d) in the case of a mining licence, provide a bond in the prescribed form to the Chief Geologist's satisfaction, sufficient to finance the costs of rehabilitating and making the mining area safe on the termination of mining operations should the holder of the mining licence fail to meet the obligation to do so.

(4) The Secretary of State may impose conditions that have effect after the end of the period of validity of the licence.

(5) Conditions imposed under subsection (3) are enforceable notwithstanding that, for other purposes, the period of validity of the licence has ended.

Prospecting licence to be subject to certain conditions

18. (1) A prospecting licence shall not be granted unless it is granted subject to its holder complying with the conditions set out in subsection (2).

(2) The conditions the holder shall comply with under subsection (1) are that he or she shall—

- (a) commence prospecting within three months of the grant of the licence or within any extension of that period the Chief Geologist may approve;
 - (b) undertake prospecting in compliance with a programme agreed with the Chief Geologist;
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- (c) give immediate notice to the Chief Geologist of the discovery of any mineral deposit of commercial value, the obligation to do so not being limited to mineral deposits for which the holder of the licence was authorised to prospect;
- (d) make an immediate report to the Chief Geologist and the Director General of the National Centre for Arts and Culture of any archeological finding;
- (e) expend, on prospecting during the period of validity of the prospecting

licence, an amount that is not less than the amount specified in the licence.

Form of
licence

19. (1) A licence shall be in a form approved for the purpose by the Chief Geologist.

(2) There shall be specified in the licence -

- (a) the name and address of the holder of the licence;
- (a) the area in respect of which it is granted, which may be illustrated by a plan;
- (c) the mineral or minerals in respect of which it is granted; and

(d) its period of validity.

Period of validity of licence

20. A licence may be granted in the case of-

- (a) a reconnaissance licence, for any period not exceeding one year;
- (b) a prospecting licence, for any period not exceeding three years; and
- (c) a mining licence, for –
 - (i) twenty-five years, or
 - (ii) the estimated life of the mine,

whichever is shorter.

Secretary of State may extend validity of licence

21. (1) The Secretary of State may, on the advice of the Chief Geologist, extend the period of validity of a licence.

(2) When advising the Secretary of State, the Chief Geologist shall, in particular, have regard to the extent to which the holder of the licence has –

- (a) made use of the licence; and
- (b) complied with its conditions and the requirements of this and any other Act relevant to the operations authorised by the licence.

Application to extend validity of licence

22. (1) A holder who wishes to extend the period of validity of a licence shall -

- (a) make an application to the Chief Geologist; and
- (b) accompany the application by the prescribed fee.

(2) The holder shall make the application during the period of validity of the licence and shall –

- (a) in the case of a mining licence, make it before the last year of the term
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- of the licence; and
- (b) in any other case, make it in sufficient time to allow the application be considered before the period of validity of the licence expires.
- Periods by which validity of licence may be extended
23. The period of validity of a licence may be extended, in the case of –
- (a) a reconnaissance licence, by one period not exceeding one year;
- (b) a prospecting licence, by two periods each of two years; and
- (c) a mining licence, by -
- (i) fifteen years, or
- (ii) the estimated life of the mine,
- whichever is the shorter.
- Licences may be assigned
24. (1) Subject to subsection (2), a licence shall not be assigned without the written approval of the Secretary of State.
- (2) A licence shall not be assigned to a person to whom it could not be granted.
- (3) The Secretary of State shall not unreasonably withhold or delay approval.
- Licences may be cancelled or suspended
25. (1) The Secretary of State may exercise his or her power under subsection (2) where the Chief Geologist -
- (a) has given the Secretary of State notice that the holder of a licence -
- (i) has failed to comply with any condition specified in the licence or a requirement of this Act; and
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- (ii) after being given reasonable notice to comply with the condition or requirement of this Act, and
- (b) advised the Secretary of State that the holder of a licence -
 - (i) has failed to comply with a condition specified in the licence or a requirement of this Act and as a result damage has been caused, and
 - (ii) after being given a reasonable opportunity to do so, has failed to make good that damage or to offer compensation sufficient to make good the damage or to take any measure or measures the Secretary of State has required the holder to take to prevent any further damage of that kind in the future.

(2) Where subsection (1)(a) or (b) applies, the Secretary of State may by notice to the holder of the licence -

- (a) cancel the licence; or
- (b) suspend the validity of the licence either indefinitely or for such period as the Secretary of State may determine.

Application to cancel or suspend licence

26. (1) The holder of a licence may, at any time by application made to the Chief Geologist, request that-
- (a) the licence be cancelled; or
 - (b) the period of validity of the licence be suspended.
- (2) The application shall be accompanied
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by such information as is necessary to enable the Chief Geologist to advise the Secretary of State on the application.

- (3) The Secretary of State may, after considering the advice of the Chief Geologist -
 - (a) grant the application on such terms and conditions he or she considers appropriate to safeguard the interests of The Gambia; or
 - (b) refuse the application.
- (4) If the Secretary of State agrees to cancel the licence he or she may, in particular, do so on terms that require the holder of the licence to undertake work required to make a mining area safe and to rehabilitate the environment.
- (5) If the Secretary of State agrees to suspend the period of validity of the licence he or she may, in particular, do so on terms that require the holder of the licence to undertake work required to make mining area safe during the period of suspension and to protect the environment during that period.
- (6) The cancellation or suspension of the period of validity of a licence does not affect a liability of the holder of the licence that arose before the cancellation or suspension.

PART III - DEVELOPMENT AGREEMENTS

Secretary
of State
may enter
into
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27. (1) The Secretary of State may, on behalf of The Gambia, enter into an agreement that relates to-
- (a) the grant of a licence;

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(b) the conduct of mining operations under a licence; or

(c) the financing of mining operations under a licence.

(2) The Secretary of State shall not enter into a development agreement that would be inconsistent with this Act.

(3) A development agreement may be made with-

(a) the holder of a licence;

(b) an applicant for a licence;

(c) the holder of a retention licence; or

(d) an applicant for a retention licence.

Contents
of
developm
ent
agreement

28. (1) A development agreement may contain provisions that -

(a) guarantee the fiscal stability of a long term mining project;

(b) relate to the circumstances or the manner in which the Secretary of State or the Chief Geologist will exercise a discretion conferred on him or her by this Act;

(c) relate to environmental matters; or

(d) deal with the settlement of disputes.

(2) For the purpose of guaranteeing the fiscal stability of a long term mining project a development agreement may make special provision for the payment of royalties, taxes, fees and other fiscal impositions.

(3) A development agreement may, in respect of environmental matters that are project specific and not covered by enactments of general application, contain provisions that -

(a) define the obligations and liabilities of the holder of a licence; and

(b) in an appropriate case, limit those obligations and liabilities.

(4) A development agreement may provide for –

(a) the settlement of disputes that relate to-

(i) the terms and conditions of the development agreement,

(ii) the administration of this Act, and

(iii) the terms and conditions of a licence; or

(a) a dispute to be settled by international arbitration.

Discretion to be exercised in accordance with development agreement

29. A discretion conferred on the Secretary of State or the Chief Geologist under this Act shall be exercised subject to and in accordance with any stipulation contained in a relevant development agreement.

PART VI - APPLICATIONS BY TENDER

Application for mineral rights by tender

30. (1) This section applies where the Secretary of State considers that, within a specified area, it would be in the public interest for applications for a licence to be invited by tender.

(2) The Secretary of State may, by notice in the *Gazette* -

(a) designate an area as an area to which this section applies; and

(b) invite people to tender for a

licence in respect of the area.

(3) The licence may -

- (a) be a reconnaissance licence, a prospecting licence or a mining licence; and
- (b) may relate to a specified mineral.

(4) Where this section applies, the tenders received shall be compared having regard, in particular, to the following matters -

- (a) the programme of operations that the applicant proposes to carry out;
- (b) the expenditure commitments the applicant is prepared to make;
- (c) the financial and technical resources of the applicant; and
- (d) the experience of the applicant in the conduct of prospecting and mining operations.

(5) The Secretary of State shall not designate an area that is the subject of a mineral right if the grant of the licence in respect of which tenders would be sought would be inconsistent with the terms of that right.

(6) Where the Secretary of State is satisfied that an area should be designated but paragraph (5) applies the Secretary of State may terminate the existing right on terms agreed with the holder of the right or failing agreement on terms determined by arbitration.

PART V - EFFECT OF LICENCES

Effect of
reconnaissance
-

31. (1) A reconnaissance licence gives its holder the right to carry out reconnaissance operations which are to be carried out in the area and in respect

- licence of the mineral or minerals specified in the licence.
- (2) Unless the licence otherwise provides the licence does not give the holder an exclusive right to carry out reconnaissance operation in that area or for that mineral or those minerals.
- (3) The reconnaissance operations may be carried out by the holder of the licence or by a person acting on behalf of the holder.
- (4) A reconnaissance licence does not authorise an intrusive survey of land.
- Effect of prospecting licence
32. (1) A prospecting licence gives its holder the exclusive right to prospect in the area specified in the licence for the mineral or minerals specified in the licence.
- (2) The prospecting may be carried out by the holder of the licence or by a person acting on behalf of the holder.
- (3) A prospecting licence does not authorise the removal of minerals except insofar as may be necessary to test the mineral bearing qualities of land.
- Effect of mining licence
33. (1) A mining licence gives its holder the exclusive right to carry on mining operations in the area specified in the licence for the mineral or minerals specified in the licence.
- (2) The holder of a mining licence has the right, for the purpose of carrying out mineral operations, to –
- (a) enter the area specified in the licence and take all reasonable measures on or under the surface of the area for the purposes of the mining operations;
-

- (b) erect the area necessary equipment, plant and buildings for the purposes of mining, transporting, dressing or treating the mineral recovered by the holder of the licence in the course of mining operations;
- (c) subject to the payment of royalties, dispose of any mineral recovered; and
- (d) stack or dump any mineral or waste products in a manner provided for in the licence or approved by the Chief Geologist.

(3) A person acting on behalf of the holder of the licence may exercise the rights under a mining licence.

PART VI - RETENTION LICENCES

Application of this Part

34. (1) This Part applies where -

- (a) the holder of a prospecting licence has notified the Chief Geologist that the holder has discovered, within the area specified in the licence, a deposit of mineral of the type specified in the licence that is of commercial value; but
- (b) for a temporary reason the deposit cannot be developed immediately.

(2) The reason may be technical restraints or adverse market conditions or other economic factors.

Application for retention licence

35. (1) Where this Part applies, the holder of the prospecting licence may apply to the Secretary of State for a retention licence.

(2) A retention licence gives the holder of the licence the right to apply for a mining licence at a later date and in the meantime prohibits the grant

of the licence to another person.

(3) The application for the retention licence shall be made to the Chief Geologist and shall be accompanied by supporting documents.

(4) The documents shall include details of-

(a) the extent, prospects for recovery and the commercial significance of the mineral deposit;

(b) the relevant technical restraint or adverse market conditions or other economical factors that make it impossible to develop the deposit immediately; and

(c) any other information as the Chief Geologist may reasonably require in order to prepare a report for the Secretary of State.

Chief Geologist to prepare report on application for retention licence

36. (1) The Chief Geologist shall prepare a written report on an application for a retention licence.

(2) When preparing the report, the Chief Geologist must consult each Government

Department, Government agency and Local

Government authority that may have an interest in the application.

(3) The Chief Geologist shall also consult any other person, whether in The Gambia or elsewhere, as the Secretary of State may direct.

Secretary of State may grant retention

37. (1) The Chief Geologist shall submit each application for a retention licence and his or her report on the application to the Secretary of State together with a

licence recommendation as to the action to be taken.

(2) The Secretary of State may -

- (a) grant the licence sought;
- (b) grant the licence sought but place limits on the area or minerals or both to which it applies;
- (c) grant the licence sought but limit its period of validity;
- (d) refuse the application; or
- (e) require the Chief Geologist to provide further information and to resubmit the report.

(3) The Secretary of State shall take into account the recommendation of the Chief Geologist when considering an application for a retention licence but shall make his or her own decision on the application and need not act in accordance with the recommendation.

(4) The Secretary of State may refuse to grant a retention licence on the grounds that he or she is satisfied that it is in the public interest that -

- (a) that no more retention licences should be granted at that time; or
- (b) that the mineral deposit should be worked as soon as practicable.

Retention licence may be granted subject to conditions

38 .(1) A retention licence may be granted subject to conditions which shall be set out in the licence.

(2) Conditions may be imposed to -

- (a) protect the State's mineral interests;
 - (b) protect the environment of The
-

Gambia; and

- (c) protect the lawful interests of any other person who has a mineral right in the area.

Form of retention licence

39. (1) A retention licence shall be in a form approved for the purpose by the Chief Geologist.

(2) There shall be specified in the licence -

- (a) the name and address of the holder of the licence;
- (b) the area in respect of which it is granted, which may be illustrated by a plan;
- (c) the mineral or minerals in respect of which it is granted; and

(c) its period of validity.

Period of validity of retention licence

40. A retention licence may be granted for an initial period of one year.

Secretary of State may extend validity of retention licence

41. (1) The Secretary of State, on the advice of the Chief Geologist, may extend the period of validity of a retention licence for one year at a time, but the total period of extension shall not exceed five years,

(2) The Chief Geologist shall, when advising the Secretary of State, have regard in particular, to the extent to which the relevant circumstances have changed since the retention licence was granted.

Application to extend validity of

42. (1) An application to extend the period of validity of a retention licence shall be -

- retention licence
- (a) made to the Chief Geologist by the holder of the licence; and
 - (b) accompanied by updated supporting documents.

(2) The supporting documents shall indicate-

- (a) if the extent, prospects for recovery and the commercial significance of the mineral deposit have remained the same;
- (b) whether the relevant technical restraints, or adverse market conditions or other economical factors that made it impossible to develop the deposit immediately still exist; and
- (c) any other information the Chief Geologist may reasonably require in order to prepare a report for the Secretary of State.

(3) The application shall be made -

- (a) during the period of validity of the retention licence; and
- (b) in sufficient time to allow the application to be considered before the period of validity of the licence expires.

CHAPTER II - MINOR MINING OPERATIONS

PART I - GENERAL PRINCIPLES

Interpretation of this Chapter

43. In this Chapter, unless the context otherwise requires -

“permit” means a prospecting permit or a mining permit.

Phases of

44. (1) A minor mining operation may be carried

minor
mining
operation

out in two phases -

- (a) a prospecting phase; and
- (b) a mining phase.

(2) A prospecting permit is required to undertake the prospecting phase and a mining permit is required to carry out the mining phase.

Secretary
of State
may
declare
area
reserved
for minor
mining
operations

45. (1) This section applies where the Secretary of State, after consulting the Chief Geologist, is satisfied that it would be in the interests of the orderly development of the mining industry in The Gambia if an area were to be reserved exclusively for minor mining operations either in respect of minerals generally or in respect of a particular mineral.

(2) Where this section applies, the Secretary of State may by notice in the *Gazette*, designate an area as reserved exclusively for minor mining operations.

(3) The notice shall state whether the designation is in respect of minerals generally or in respect of a particular mineral, which shall be specified in the notice.

(4) The Secretary of State shall not designate an area –

- (a) that is subject to any other mineral right;
or
- (b) in which the Secretary of State has invited application for licences by tender,

if to do so would be inconsistent with that right or the invitation to tender.

(5) Where this section applies, regulations may establish a scheme for the orderly allocation of permits in the designated area and for the general administration of the area.

**PART II - APPLICATION FOR AND THE
GRANT, ASSIGNMENT,
CANCELLATION AND SURRENDER
OF PERMITS**

Application of this Part

46. This Part applies to applications for the grant of permits and the grant, assignment, cancellation and surrender of permits.

Application for permits

47. (1) An application for a permit shall be -

(a) made on a form provided or approved for the purpose by the Chief Geologist;

(b) accompanied by the prescribed fee; and

(c) submitted to the Chief Geologist.

(2) The application shall contain details of -

(a) the area in respect of which the permit is sought; and

(b) the mineral or minerals the applicant is seeking or wants to mine.

(3) The Chief Geologist may require the applicant to provide such further information as is reasonably necessary to enable him to consider the application.

Priority of applications

48. The Chief Geologist shall deal with applications for permits in the order in which they are received.

Chief Geologist may grant permits

49. (1) The Chief Geologist may -

(a) grant the permit sought;

(b) grant the permit sought but place limits on the area or minerals, or both to which it applies; or

(c) refuse the application.

(2) The Chief Geologist shall not grant -

- (a) a permit that is inconsistent with the terms of a mineral right granted to any other person;
- (b) a mining permit in respect of an area that exceeds the size of area or dimensions prescribed by regulations for mining permits.

(3) Where the Chief Geologist is satisfied that a permit should be granted but subsection (2)(a) applies, the Secretary of State may terminate the existing right on terms agreed with the holder of the right or, failing agreement, on terms determined by arbitration.

(4) The Chief Geologist may refuse to grant a permit on the grounds that he or she is satisfied that it is in the public interest that no more permits of that type should be in force at that time.

Restriction
on
persons to
whom
permits
may be
granted

50. (1) The Chief Geologist shall not grant a permit to -

- (a) an individual who does not have a permanent residence status in The Gambia;
 - (b) a partnership, unless it is composed exclusively of –
 - (i) individuals who have permanent residence status in The Gambia,
 - (ii) bodies corporate incorporated in The Gambia, or
 - (iii) a combination of both individuals who have permanent residence status in The Gambia and a body
-

corporate incorporated in The Gambia.

(2) If the holder of a permit becomes a person to whom a permit may not be granted, under this section, the period of validity of the permit shall be deemed to be suspended.

(3) A permit may nevertheless be assigned in accordance with this Act by the holder of the permit and, on the assignment, the suspension shall be taken to have been revoked.

(4) The fact that -

- (a) the holder of a permit is no longer a person to whom a permit may be granted; or
- (b) the period of validity of a permit has been suspended,

does not affect the liability of the holder of the permit arising before or during the period of suspension.

Further restriction on grant of permits

51. A permit shall not be granted to -

- (a) an individual who has not attained the age of eighteen years or is an undischarged bankrupt; or
- (b) a body corporate that is in financial difficulty.

Permit may be granted subject to conditions

52. (1) A permit may be granted subject to conditions, which shall be set out in the permit.

(2) The Secretary of State may impose conditions to -

- (a) protect the State's mineral interests;
 - (b) protect the environment of The Gambia;
-

-
- (a) ensure the safety of the operations authorised by the permit and of those undertaking those operations; and
 - (d) protect the lawful interests of any other person who has a mineral right.
- (3) The Secretary of State may impose conditions that have effect after the end of the period of validity of the permit.
- (4) The conditions are enforceable notwithstanding that, for other purposes, the period of validity of the permit has expired.
- Form of permit
53. (1) A permit shall be in a form approved for the purpose by the Chief Geologist.
- (2) There shall be specified in the permit -
- (a) the name and address of the holder of the permit;
 - (b) the area in respect of which it is granted, which may be illustrated by a plan;
 - (c) the mineral or minerals in respect of which it is granted; and
 - (d) its period of validity.
- Period of validity of permit
Chief Geologist may extend validity of permit
54. A permit may be granted for an initial period of one year.
55. The Chief Geologist may extend the period of validity of a permit by a period of one year at a time.
- Application to extend validity of permit
56. (1) An application to extend the period of validity of a permit shall be –
- (a) made to the Chief Geologist by the holder of the permit; and
-

(b) accompanied by the prescribed fee.

(2) The application shall be made -

(a) during the period of validity of the permit; and

(b) in sufficient time to allow the application to be considered before the period of validity of the permit expires.

Permit
may be
assigned

57. (1) Except as otherwise provided by this section, the holder of a permit may assign the permit or an interest in the permit.

(2) A permit shall not be assigned to a person to whom it could not be granted.

(3) Unless it is a limited assignment in the normal course of business, a mining permit shall not be assigned without the written approval of the Chief Geologist.

(4) If the holder of a permit is more than one person each of those persons may individually assign his or her interest in the permit.

Permit
may be
cancelled
or
suspende
d

58. (1) This section applies where the holder of a permit -

(a) has failed to comply with a condition specified in the licence or a requirement of this Act; and

(b) after being given reasonable notice to comply with the condition or requirement, has failed to do so.

(2) This section also applies where the holder of a permit -

(a) has failed to comply with a condition specified in the permit or a requirement

of this Act and as a result damage has been caused; and

(b) after being given a reasonable opportunity to do so, has failed to –

(i) make good that damage,

(ii) offer compensation sufficient to make good the damage, or

(iii) take any measure or measures the Chief Geologist has required the holder to take to prevent any further such damage in the future.

(3) Where this section applies, the Chief Geologist may, by notice to the holder of the permit-

(a) cancel the permit; or

(b) suspend the validity of the permit either indefinitely or for such period as the Chief Geologist may determine.

Application to cancel or suspend mining permit

59. (1) The holder of a mining permit may, at any time by application made to the Chief Geologist, request that –

(a) the permit be cancelled; or

(b) the period of validity of the permit be suspended.

(2) The application shall be accompanied by such information as is necessary to enable the Chief Geologist to determine the application.

(3) The Chief Geologist may-

(a) grant the application on such terms and conditions he or she considers appropriate to safeguard the interests of The Gambia; or

(b) refuse the application.

(4) If the Chief Geologist agrees to cancel the permit he or she may, in particular, do so on terms that require the holder of the permit to undertake work required to make a mining area safe and to rehabilitate the environment.

(5) If the Chief Geologist agrees to suspend the period of validity of the permit he or she may, in particular, do so on terms that require the holder of the permit to undertake work required to make a mining area safe during the period of suspension and to protect the environment during that period.

(6) The cancellation or suspension of the period of validity of a permit does not affect any liability of the holder of the permit that arose before the cancellation or suspension.

Revocation
of
declaration
of
reserved
area

60. (1) The Secretary of State may, in respect of the designation of an area as an area reserved exclusively for minor mining operations, at any time, by notice in the *Gazette* -

(a) revoke the designation in respect of the whole or any part of the area; or

(b) revoke the designation in respect of any mineral to which it applies.

(2) A permit granted in respect of -

(a) an area, the designation of which is revoked, shall be taken to have been cancelled in respect of that area;

(b) a mineral, the designation of which is

revoked, shall be taken to have been cancelled in respect of that mineral.

- (3) The holder of a permit to which subsection (2)(a) or (b) applies shall be paid compensation of such amount as may be agreed or, failing agreement, as may be settled by arbitration.

PART III - EFFECT OF PERMITS

Effect of
prospectin
g permit

61. (1) A prospecting permit gives its holder the right to prospect in the area specified in the permit for the mineral or minerals specified in the permit.

(2) The permit does not give the holder -

- (a) an exclusive right to prospect in that area or for that mineral or those minerals;
- (b) the right to prospect in a part of the area specified in the permit that has been demarcated in accordance with this Act by the holder of any other prospecting permit; or
- (c) the right to prospect for a mineral in an area where the holder of a mineral right has an exclusive right to prospect for, or mine or quarry that mineral.

(3) The prospecting may be carried out by the holder of the permit or by a person acting on behalf of the holder.

Demarcati
on of area
in permit

62. (1) The holder of a prospecting permit has the right to demarcate, in the prescribed manner, an area within the area specified in the permit.

(2) The size and dimensions of the area demarcated shall not exceed the prescribed size and dimensions.

(3) When the holder of a prospecting permit

-

- (a) has demarcated an area; and
 - (b) has informed the Chief Geologist that he or she has done so,
- the holder has the exclusive right within that area to prospect for the mineral or minerals specified in the prospecting permit.
- (4) The exclusive right lasts for -
- (a) six months; or
 - (b) the remaining period of validity of the prospecting permit,
- whichever is shorter.

Effect of
mining
permit

63. (1) A mining permit gives its holder the exclusive right to carry on mining operations in the area specified in the permit for the mineral or minerals specified in the permit.

(2) A mining permit also gives the holder the right-

- (a) to enter on the area specified in the permit and to take all reasonable measures on or under the surface of the area for the purpose of the mining operations;
 - (b) to erect on the area necessary equipment, plant and buildings for the purposes of mining, transporting, dressing or treating the mineral recovered by the holder of the mining permit in the course of mining operations;
 - (c) subject to the payment of royalties, to dispose of any mineral recovered; and
 - (d) to stack or dump any mineral or waste product in a manner provided for in the
-

permit or approved by the Chief Geologist,

(3) The rights of a holder of a mining permit may be exercised by a person acting on his or her behalf, provided that the person is a person to whom a permit may be granted.

CHAPTER IV - QUARRYING OPERATIONS

PART I - GENERAL PRINCIPLES

Interpretation of this Chapter

64. In this Chapter, unless the context otherwise requires -

“authority” means a quarrying permit or a quarrying licence.

Activities requiring authority

65. (1) A quarrying permit is required to carry out small scale temporary quarrying activities.

(2) A quarrying licence is required to operate a large scale public or private quarry.

PART II - APPLICATIONS FOR AND THE GRANT, ASSIGNMENT, CANCELLATION AND SURRENDER OF AUTHORITIES

Application of this Part

66. This Part applies to applications for the grant of authorities and the grant, assignment, cancellation and surrender of authorities.

Application for authority

67. (1) An application for an authority must be-

(a) made on a form provided or approved for the purpose by the Chief Geologist;

(b) accompanied by the prescribed fee; and

(c) submitted to the Chief Geologist.

(2) The application shall contain details of -

(a) the area in respect of which the authority is sought; and

(b) the building material or building materials the applicant intends to quarry.

(3) The Chief Geologist may require the applicant to provide such further information as is reasonably necessary to enable he or she to consider the application.

Priority of applications

68. The Chief Geologist shall deal with applications for authorities in the order in which they are received.

Chief Geologist may grant authority

69. (1) The Chief Geologist may -

(a) grant the authority sought;

(b) grant the authority sought but place limits on the area or building materials, or both to which it applies; or

(c) refuse the application.

(2) The Chief Geologist must not grant an authority that is inconsistent with the terms of a mineral right granted to any other person.

(3) Where the Chief Geologist is satisfied that an authority should be granted but subsection (3) applies, the Secretary of State may terminate the existing right on terms agreed with the holder of the right or failing agreement on terms determined by arbitration.

(4) The Chief Geologist may refuse to grant an authority on the grounds that he or she is satisfied that it is in the public interest that no more authorities of that type should be in force at

that time or in respect of the relevant area.

- | | |
|--|--|
| Restriction on grant of authority | 70. An authority cannot be granted to a person who - <ul style="list-style-type: none">(a) being an individual, has not attained the age of eighteen years or is an undischarged bankrupt; or(b) being a body corporate, is in financial difficulty. |
| Authority may be granted subject to conditions | 71. (1) An authority may be granted subject to conditions which shall be set out in the authority. <ul style="list-style-type: none">(2) Conditions may be imposed to -<ul style="list-style-type: none">(a) protect the State's mineral interests;(b) protect the environment of The Gambia; and(c) ensure the safety of the operations authorised by the authority and of those undertaking those operations; and(d) protect the lawful interests of any other person who has a mineral right.(3) Conditions may be imposed that have effect after the end of the period of validity of the authority.(4) The conditions are enforceable notwithstanding that, for other purposes, the period of validity of the authority has expired. |
| Form of authority | 72. (1) An authority shall be in a form approved for the purpose by the Chief Geologist. <ul style="list-style-type: none">(2) There shall be specified in the authority - |
-

- (a) the name and address of the holder of the authority;
- (b) the area in respect of which it is granted, which may be illustrated by a plan;
- (c) the building material or building materials in respect of which it is granted; and
- (d) its period of validity.

Period of validity of authority

73. (1) A quarrying permit may be granted for an initial period not exceeding one year.
- (2) A quarrying licence may be granted for an initial period not exceeding four years.

Chief Geologist may extend validity of authority

74. (1) The Chief Geologist may extend the period of validity of a quarrying permit by periods each not exceeding one year.
- (2) The Chief Geologist may extend the period of validity of a quarrying licence by periods each not exceeding four years.

Application to extend validity of authority

75. (1) An application to extend the period of validity of an authority shall be -
- (a) made to the Chief Geologist by the holder of the authority; and
- (b) accompanied by the prescribed fee.
- (2) The application shall be made -
- (a) during the period of validity of the authority; and
 - (b) in sufficient time to allow the application to be considered before the period of validity of the authority
-

expires.

Authority
may be
assigned

76. (1) Except as otherwise provided by this section, the holder of an authority may assign the authority or an interest in the authority.
- (2) An authority cannot be assigned to a person to whom it could not be granted.
- (3) If the holder of an authority is more than one person, each of those persons may individually assign his or her interest in the authority.

Authority
may be
cancelled

77. (1) This section applies where the holder of an authority -
- (a) has failed to comply with a condition specified in the authority or a requirement of this Act; and
- (b) after being given reasonable notice to comply with the condition or requirement has failed to do so.
- (2) This section also applies where the holder of an authority -
- (a) has failed to comply with a condition specified in the authority or a requirement of this Act and as a result damage has been caused; and
- (b) after being given a reasonable opportunity to do so, has failed to -
- (i) make good that damage,
- (ii) offer compensation sufficient to make good the damage, or
- (iii) take any measure or measures the Chief Geologist has required the holder to take to prevent any further such
-

damage in the future.

(3) Where this section applies, the Chief Geologist may, by notice to the holder of the authority -

(a) cancel the authority; or

(b) suspend the validity of the authority either indefinitely or for such period as the Chief Geologist may determine.

Application to cancel or suspend quarrying licence

78. (1) The holder of a quarrying licence may, at any time by application made to the Chief Geologist, request that -

(a) the licence be cancelled; or

(b) the period of validity of the licence be suspended.

(2) The application shall be accompanied by such information as is necessary to enable the Chief Geologist to determine the application.

(3) The Chief Geologist may-

(a) grant the application on such terms and conditions he or she considers appropriate to safeguard the interests of The Gambia;

or

(b) refuse the application.

(4) If the Chief Geologist agrees to cancel the licence, he or she may, in particular, do so on terms that require the holder of the licence to undertake work required to make a quarrying area safe and to rehabilitate the environment.

(5) If the Chief Geologist agrees to suspend the period of validity of the licence he or she may, in particular, do so on terms

that require the holder of the licence to undertake work required to make a quarrying area safe during the period of suspension and to protect the environment during that period.

- (6) The cancellation or suspension of the period of validity of a quarrying licence does not affect a liability of the holder of the licence that arose before the cancellation or suspension.

PART III - EFFECT OF AUTHORITIES

Effect of quarrying permit

79. (1) A quarrying permit gives its holder, subject to the payment of royalties, the right to -

- (a) carry on temporary small scale quarrying for building material in the area and for the building material or building materials specified in the permit; and
- (b) use or dispose of any building material or building materials obtained.

(2) A quarrying permit does not give the holder an exclusive right to quarry for the building material or materials in that area.

(3) The quarrying may be carried out by the holder of the permit or by a person acting on behalf of the holder.

Effect of quarry licence

80. (1) A quarrying licence gives its holder the exclusive right to carry on quarrying operations in the area specified in the licence for the building material or building materials specified in the licence.

(2) The quarrying licence also gives the holder, for that purpose, the right—

- (a) to enter on the area specified in the licence and to take all reasonable
-

measures to carry on the quarrying operations; and

(b) to erect on the area necessary equipment, plant and buildings for the purposes of quarrying, transporting, dressing or treating the building material or building materials recovered by the holder of the licence in the course of quarrying operations;

(c) subject to the payment of royalties, to use or dispose of any building material or building materials recovered; and

(d) to stack or dump any building materials or waste products in a manner provided for in the licence or approved by the Chief Geologist.

(3) The rights of a holder of a quarrying licence may be exercised by a person acting on his or her behalf.

CHAPTER V – MINERAL RIGHTS

PART I - GENERAL PROVISIONS RELATING TO MINERAL RIGHTS

Rights under a mineral right to be exercised reasonably

81. (1) A right conferred by a mineral right shall be exercised -

(a) reasonably; and

(b) so as not to affect injuriously the interest of an owner or occupier of the land over which the right extends.

Obligation to insure

82. (1) This section applies to the holder of a mining licence, mining permit or

quarrying licence and to a person acting on behalf of such a holder who is carrying out a mining or quarrying operation on behalf of the holder.

(2) A person to whom this section applies shall maintain an insurance coverage in respect of the mining or quarrying operations he or she is undertaking.

(3) The insurance shall be of such amounts and against such risks as are customarily or prudently insured in the international mining or quarrying industry in accordance with good international mining industry or quarrying industry practice.

(4) A person to whom this section applies shall provide the Chief Geologist with certificates that show the insurance is in effect and when requested provide copies of the policies.

(5) The insurance shall cover -

(a) loss or damage to the installations, equipment and other assets used in or in connection with the mining or quarrying operations;

(b) loss of property, damage or bodily injury suffered by a third party, incurred in the course of or as a result of the mining or quarrying operations;

(c) to the extent that such cover is commercially available, pollution and environmental damage caused in the course of or as a result of mining or quarrying operations for which the holder of the relevant licence or permit, or the State may be held responsible;

(d) liability to employees engaged in the mining or quarrying operations; and

(e) the liability to indemnify the State in accordance with this Act.

(6) If requested to do so by the Chief Geologist, a person to whom this section applies shall maintain an insurance cover which the Chief Geologist reasonably considers necessary in the public interest.

(7) Where insurance cover in respect of the pollution and environmental damage referred to in subsection (5)(c) is not commercially available to a person to whom this section applies, the person shall, if required to do so by the Chief Geologist, provide a performance bond, bank guarantee or similar arrangement that is commercially available to the person to cover liability for the damage.

Obligation to indemnify and limitation of liability

83. (1) The section applies to the holder of a mining licence, mining permit or quarrying licence and to a person acting on behalf of such a holder who is carrying out a mining or quarrying operation on behalf of the holder.

(2) A person to whom this section applies shall indemnify the State.

(3) The indemnity shall be in respect of any action, claim, demand, injury, loss or damage that is a result of an act or omission in the conduct of mining or quarrying operations carried out by the person required to provide the indemnity.

(4) The indemnity shall cover claims for loss or damage to property and injury or death to persons.

(5) A person or body referred to in subsection (6) shall not be liable in damages for anything done or omitted to be done in the discharge or purported discharge of any function under this Act or under regulations made under this Act.

(6) The persons and bodies specified in subsection (5) are -

- (a) the State;
- (b) the Secretary of State;
- (c) the Chief Geologist; and
- (d) a person who is, or is acting as, an officer, employee or agent of the Secretary of State or the Geological Unit, or performing a duty or exercising a power on behalf of the Secretary of State or the Geological Unit.

(7) Except as specifically provided by this Act, a person is not entitled to claim or to receive compensation in respect of a change in the value of a mineral right, being a change –

- (a) resulting from -
 - (i) the modification of a condition of a mineral right,
 - (ii) the revocation of a mineral right, or
 - (iii) a refusal to grant permission to the assignment of a mineral right; or
- (b) otherwise resulting directly or indirectly to the exercise of a function under this Act.

(8) Subsection (7) is included for the avoidance of doubt and does not limit the operation of subsection (5).

Obligations of land owners

84. (1) A lawful occupier of land specified in a mining licence, mining permit or quarrying licence shall not erect a building or structure on the land without the consent of the holder of the licence or permit.

(2) If the Chief Geologist considers that the consent is being unreasonably withheld, he or

she may consent to the erection of the building or structure.

(3) In this section and section 85 -

“lawful occupier”, in relation to land, means a person in actual occupation of the land.

Compensa-
-tion
-payable
for crops,
etc.
damaged

85. (1) This section applies if, in the course of reconnaissance, prospecting, or mining or quarrying operations -

(a) the rights of the owner or lawful occupier of land are disturbed; or

(b) crops, trees, buildings stock or works belonging to the owner or occupier of land are damaged.

(2) Where this section applies the holder of the mineral right by virtue of which the operations were carried out shall pay the lawful occupier fair and reasonable compensation in respect of the disturbance or damage.

(3) The compensation payable is to be reduced by any amount by which the value of the land has been enhanced by the reconnaissance, prospecting, or mining or quarrying operations.

(4) Where the amount of compensation to be paid is disputed, either party may refer the matter to the Chief Geologist who shall deal with the matter in accordance with this Act.

Power of
entry for
inspection,
etc.

86. (1) The Chief Geologist or an authorised officer may enter premises at any time for all or any of the purposes specified in subsection (3).

(2) The premises that may be entered under subsection (1) shall be an area over which a mineral right has been granted or premises or a working place used in connection with the operations authorised by a mineral right.

(3) The Chief Geologist or authorised officer may

enter the premises to -

- (a) inspect the area, premises or working place;
- (b) examine prospecting, mining or quarrying operations, or the treatment of minerals;
- (c) ascertain if the conditions of a mineral right and the requirements of this Act are being complied with;
- (d) ascertain if a nuisance exists on the area, premises or working place;
- (e) give directions and take steps to enforce a condition of a mineral right or a requirement of this Act, or abate or remove a nuisance;
- (f) take, examine or assay, soil samples or specimens of rocks, ores, concentrates, tailings or minerals on the area, premises or working place;
- (g) examine accounts, vouchers, documents, maps, drilling logs, or records of any kind relevant to the operations authorised by the mineral right;
- (h) obtain information necessary for the administration of this Act.

(4) In this section, “authorised officer” means a public officer authorised by the Chief Geologist to take action under this section.

Power to inspect records

87. (1) The Chief Geologist or an authorised officer may, at all reasonable times, inspect and take a copy of a document kept by the holder of a mineral right pursuant to this Act.

(2) In subsection (1) –

“authorised officer” means a public officer authorised by the Chief

Geologist to take action under this section; and

“document” includes accounts, voucher, map, drilling log and record.

Chief Geologist, etc. not to be hindered

88. (1) A person who, without reasonable excuse, hinders or obstructs the Chief Geologist, an authorised officer or any other person carrying out a function under this Act commits an offence.

(2) A person who commits an offence under subsection (1) is liable on conviction to a fine of fifty thousand dalasis or imprisonment for a term not exceeding three years, or to both the fine and imprisonment.

(3) It is a defence for a person to show that he or she was in control of premises the Chief Geologist, authorised officer or other person wished to enter and that when he or she requested the Chief Geologist, authorised officer or other person to produce evidence of his or her right to enter the premises he or she failed to do so.

Power to search for evidence of offence

89. (1) This section applies where the Chief Geologist has reasonable grounds to believe that evidence relating to the commission of an offence under this Act may be located in any premises, vehicle, vessel or aircraft.

(2) Where this section applies, the Chief Geologist or a person authorised by him or her may enter the premises, vehicle, vessel or aircraft and search for the evidence.

(3) The entry may be made without warrant and using such force as may be reasonably necessary.

PART II - SETTLEMENT OF DISPUTES IN RESPECT OF MINERAL RIGHTS

Chief Geologist may

90. (1) The Chief Geologist may inquire into and decide a dispute in respect of prospecting, mining or quarrying

decide
disputes

operations.

(2) The dispute may be between-

- (a) the persons engaged in the prospecting, mining or quarrying operations; or
- (b) a person engaged in those operations and another person, not being the State.

(3) The dispute may be in connection with -

- (a) the boundaries of an area subject to a mineral right;
- (b) the claim by a person to be entitled to erect, cut, construct or use a pump, line of pipes, flume, race, drain, dam or reservoir for mining or quarrying purposes;
- (c) the claim by a person to take, divert, use or deliver water for mining or quarrying purposes;
- (d) the assessment and payment of compensation pursuant to this Act; or
- (e) any other prescribed matter.

(4) The Chief Geologist may-

- (a) make any order necessary to give effect to his or her decision; and
- (b) order the payment of compensation by one party to a dispute to the other.

Enforcement of Chief Geologist's orders

91. (1) The Chief Geologist may send a copy of an order he or she has made to a civil court within the local limits of whose jurisdiction the subject-matter of the order is situated.

(2) The Chief Geologist shall certify the

copy of the order to be a true copy of the original order.

(3) The civil court shall enforce the order in the same manner in which it would enforce its own orders.

(4) The fees payable on the enforcement of the order are those that would be payable on the enforcement of a like order made by the civil court.

Appeal to High Court

92. (1) A person aggrieved by a decision or order of the Chief Geologist in respect of a dispute may appeal to the High Court.

(2) The appeal shall be made within thirty days from the date on which the decision or order is given or made.

Rules

93. (1) The Chief Geologist may make rules in respect of the hearing of disputes by him or her.

(2) The rules may provide for -

- (a) the initiation and conduct of proceedings; and
- (b) the keeping of records and notes of evidence.

PART III - REGISTRATION OF MINERAL RIGHTS

Registers of mineral rights

94. (1) The Chief Geologist shall maintain a register of mineral rights.

(2) The register shall contain a record of each application, grant, variation and dealing in, assignment, transfer, suspension and cancellation of a mineral right.

Evidentiary provision

95. (1) The Chief Geologist may give a certificate certifying a matter specified in subsection (4).

(2) The certificate may be received in proceedings before a court as evidence of the matter certified.

(3) Subsection (2) is without prejudice to the right of a person to adduce evidence in rebuttal.

(4) The matters that the Chief Geologist may certify are that a specified-

(a) mineral right was granted, transferred, suspended or cancelled on, or with effect from, a specified date;

(a) land is, or was on a specified date, the subject of a specified mineral right;

(c) mineral is a mineral to which a specified mineral right relates;

(d) condition is, or was on a specified date, a condition of a specified mineral right;

(e) condition was a condition subject to which a specified consent was given under this Act;

(f) person is, or was on a specified date, the holder of a specified mineral right.

(5) In subsection (4), "specified" means specified in the certificate.

CHAPTER VI - DEALING IN AND POSSESSION OF RESTRICTED MINERALS

Interpretation of this Chapter

96. In this Chapter, unless the context otherwise requires -

"deal in" in respect of a restricted mineral, means to purchase, sell, deal in, receive or dispose of by way of barter, pledge or otherwise, the restricted mineral, either as principal or as agent;

“possess” in respect of a restricted mineral, means to have possession or control of the restricted mineral either personally or through an agent or employee;

“restricted mineral” means a mineral declared to be a restricted mineral by regulations made under section 97;

“special licence” means a licence to deal in or possess a restricted mineral granted in accordance with regulations made under section 99.

Restricted minerals 97. The Secretary of State may, by regulations, declare any mineral, in its refined or unrefined state or in both states, to be a restricted mineral.

Restriction on dealing in or possessing restricted minerals 98. (1) Unless specifically authorised to do so by a mineral right, a person shall not deal in or possess a restricted mineral except with, and in accordance with a special licence.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction -

(a) in the case of an individual, to a fine of not less than fifty thousand dalasis or imprisonment for a term not exceeding three years, or to both the fine and imprisonment; or

(b) in any other case, to a fine of not less than five hundred thousand dalasis.

(3) A court that finds a person guilty of an offence under this section may, in addition to any other penalty it imposes, order that the restricted mineral connected with the offence be forfeited to the State.

Regulations may establish system in respect of 99. (1) The Secretary of State may make regulations to establish a system for licensing person to deal in or possess restricted minerals.

restricted
minerals

(2) Regulations made for the purpose of subsection (1) may, in particular do all or any of the following-

- (a) prescribe the manner in which an application for a licence to deal in and possess a restricted mineral may be applied for;
 - (b) prescribe how an application for a special licence shall be dealt with;
 - (c) prescribe the matters to be taken into consideration before a special licence may be granted;
 - (d) prescribe the persons to whom a special licence may or may not be granted;
 - (e) prescribe the qualification a person must possess and the security a person must give before a person may be granted a special licence;
 - (f) prescribe the manner in which and the person by whom a special licence may be granted;
 - (g) prescribe the conditions subject to which a special licence may be granted;
 - (h) prescribe how a special licence may be amended, assigned, surrendered or revoked;
 - (i) prescribe the fees, royalties and other charges to be paid for or under a special licence;
 - (j) permit the Secretary of State or the Chief Geologist, or both to exercise powers under the Regulations at their discretion;
-

- (k) prescribe the records to be kept by holders of special licences and the form in which they may be kept;
- (l) prescribe the action to be taken by person who find themselves in possession of a restricted mineral other than in accordance with a mineral right or a special licence;
- (m) prescribe offences and penalties in respect of the system established under subsection (1).

CHAPTER VII - MISCELLANEOUS PROVISIONS

PART I - SUNDRY OFFENCES

Secrecy

100. (1) A person who receives information relating to the business or other affairs of a person -

(a) under or for the purpose of this Act; or

(b) directly or indirectly from a person who has so received it,

shall not disclose the information without the consent of the person to whom it relates and where paragraph (b) applies the person from whom it was received.

(2) A person who fails to comply with subsection (1) commits an offence and is liable on conviction to a fine of not less than twenty thousand dalasis or imprisonment for a term not exceeding two years, or to both the fine and imprisonment.

(3) This section does not apply to information-

(a) that, at the time of disclosure had already been made available to the public from other sources; or

(b) in the form of a summary or collection

of information so framed as not to enable information relating to any particular person to be ascertained from it.

(4) This section does not preclude the disclosure of information necessary to enable a person to discharge a function under this Act.

Offences
by
corporations,
etc

101. (1) This section applies where it is proved that an offence under this Act committed by a partnership, body corporate or unincorporated association was committed with the consent or connivance of, or was attributable to neglect or default on the part of -

(a) a person who is a partner, director, manager, secretary or other similar officer of the partnership, body corporate or association; or

(b) a person purporting to act in that capacity.

(2) Where this section applies, the person referred to in subsection (1) is also guilty of the offence and is liable in the same manner as the partnership, company or association to the penalty provided for the offence.

Aiding
and
abetting

102. A person who knowingly and wilfully aids, abets, counsels, causes, procures or commands the commission of an offence under this Act is liable to be dealt with, tried and punished as a principal offender.

False
statements

103. (1) A person shall not knowingly -

(a) make a statement in an application under this Act that is false or misleading in a material particular; or

(b) include in a report, return or affidavit submitted in compliance with this Act, information that is false or misleading in a material particular.

(2) A person who fails to comply with subsection (1) commits an offence and is liable on conviction to a fine of fifty thousand dalasis or imprisonment for a term not exceeding two years, or to both the fine and imprisonment.

Falsifying minerals

104. (1) A person shall not-

(a) place or deposit material in a place with the intention of misleading another person as to the mineral possibilities of that place; or

(b) mingle with a sample of ore a substance that will enhance the value or in any way change the nature of the ore with the intention of cheating, deceiving or defrauding another person.

(2) A person who fails to comply with subsection (1) commits an offence and is liable to a fine of not less than fifty thousand dalasis or imprisonment for a term not exceeding two years, or to both the fine and imprisonment.

Obstruction of holder of mineral rights

105. (1) A person shall not, without reasonable excuse, obstruct or hinder the holder of a mineral right from doing an act that the holder is authorised to do by this Act or the mineral right.

(2) A person who fails to comply with subsection (1) commits an offence and is liable to a fine of not less than fifty thousand dalasis or imprisonment for a term not exceeding two years or to both the fine and imprisonment.

(3) In subsection (1), a reference to the holder of a mineral right includes a person acting on behalf of that holder.

Level of fines

106. When assessing the level of a fine to be imposed in respect of an offence under this Act, the court imposing the fine shall take into account -

(a) the measure of any benefit the person

gained or was likely to gain by virtue of the offence;

(b) the length of any period during which the conduct giving rise to the offence continued;

(c) whether the person has previously been convicted of an offence of the same or

similar nature and, if so, on how many occasions; and

(c) any special, unusual or unexpected circumstance that gave rise to the commission of the offence.

PART II - ADMINISTRATIVE PROVISIONS

Power of Geological Unit etc. to stop vehicle or vessel, and power of arrest

107. (1) An officer of the Geological Unit, a police officer, a customs officer or a Badge Messenger may stop a vehicle or vessel engaged in transporting or moving minerals on any road or inland waterway for the purpose of inspection of the minerals.

(2) An officer of the Geological Unit, a police officer, a customs officer, a Head Alkalo or a Badge Messenger may arrest, without a warrant, a person who may be reasonably suspected of having committed an offence under this Act, if -

(a) the person refuses to give his or her name or address or gives a name or address which he or she believes to be false; or

(b) there is reason to believe that the person will abscond,

but a person so arrested shall be taken before a court or to the nearest police station without unreasonable delay.

Power to seize minerals, instruments and things	<p>108. (1) An officer of the Geological Unit, or a police officer not below the rank of Sergeant may seize a mineral reasonably suspected of having been unlawfully obtained and an instrument or a thing reasonably suspected of having been used in the commission of an offence under this Act.</p> <p>(2) No action shall be brought against the officer, or person acting under his or her direction in respect of damage to the instrument or thing seized in pursuance of the provisions of subsection (1).</p>
Disposal of minerals, instruments and things seized	<p>109. The Geological Unit may, after obtaining an order from a Magistrate -</p> <ul style="list-style-type: none">(a) sell any mineral, instrument or thing seized and pay to Government treasury the proceeds of the sale after deducting the expenses of the sale;(b) allocate the mineral, instrument or thing to the use of Government;(c) in the case of beach sand, re-deposit the sand at the beach at the expense of the offender; or(d) in the case of an instrument or thing, destroy the instrument or thing.
Appeals from decisions of Secretary of State	<p>110. (1) This section applies to a decision by the Secretary of State -</p> <ul style="list-style-type: none">(a) not to issue a licence;(b) as to the conditions imposed by a licence;(c) not to approve the transfer of a licence;(d) as to the conditions imposed on an approval to transfer a licence;(e) as to the period of validity of a licence or to the period of any extension or

further extension of the period of validity of a licence; or

(f) to suspend or to cancel a licence.

(2) This section also applies to a decision by the Secretary of State made on an appeal to the Secretary of State against a decision by the Chief Geologist.

(3) The Chief Geologist does not have a right of appeal under subsection (2).

(4) A person aggrieved by a decision of the Secretary of State to which this section applies may appeal to the High Court for a judicial review.

Appeals
from
decisions
of Chief
Geologist

111. (1) This section applies to a decision by the Chief Geologist -

- (a) not to issue a permit or authority;
 - (b) as to the conditions imposed by a permit or authority;
 - (c) not to approve a transfer of a permit or authority;
-

- (d) as to the conditions imposed on an approval to transfer a permit or authority;
- (e) as to the term of a permit or authority or to the term of any extension or further extension of the term of a permit or authority;
- (f) to suspend or cancel a permit or authority.

(2) A person aggrieved by a decision of the Chief Geologist to which this section applies may appeal against the decision to the Secretary of State.

(3) On an appeal under this section the Secretary of State may -

- (a) confirm the decision of the Chief Geologist;
- (b) order the Chief Geologist to revoke his or her decision; or
- (c) order the Chief Geologist to take some other action in accordance with this Act.

(4) The Chief Geologist shall comply with an order made under subsection (3).

(5) This section does not prejudice any right a person may have to apply to the High Court for judicial review.

Recovery
of fees

112. A fee, royalty or other charge due to the State under this Act is a debt due to the State and may be sued for accordingly.

Environmental
protection

113. Nothing in this Act or in a mineral right granted under this Act exempts or is to be interpreted as exempting a person from

compliance with the National Environment Management Act, 1994.

1994
No.11
Power of
entry for
geological
investigati
ons, etc

114. (1) An authorised person may enter any premises to carry out geological investigation and research.

(2) Unless the occupier otherwise agrees, an entry into premises under subsection (1) shall not be made unless-

(a) at least forty-eight hours written notice of the intention to enter the premises has been given to the occupier of the premises; and

(b) the entry is made at a reasonable time having regard to the use of the premises.

(3) An authorised person has no authority to enter premises under this section unless, when asked to do so by a person apparently in occupation of the premises, the authorised person produces for inspection his or her appointment as an authorised person.

(4) An authorised person entering premises under this section shall not cause any damage to those premises, other than a damage that may be necessary to carry out the geological investigation or research in respect of which the entry was made.

(5) An authorised person entering premises under this section may be accompanied but such other persons and by such equipment supplies and vehicles as the circumstances may reasonably require.

(6) In this section, "authorised person" means the Chief Geologist and any other officer or person authorised in writing by the Chief Geologist to carry out geological investigation and research on behalf of the Geological Unit.

PART III - REGULATIONS

Regulations

115. (1) The Secretary of State may make regulations to give better effect to this Act.

(2) In particular, regulations may provide for matters that this Act states are to be prescribed or are to be provided for by regulations.

(3) Regulations may provide -

- (a) for fees, royalties and other charges payable by virtue of this Act;
 - (b) for the way in which a fee, royalty or other charge is to be calculated;
 - (a) that different fees, royalties and other charges shall be payable in respect of different types of mineral rights, different minerals and different locations;
 - (d) that, in addition to any application fee, there shall be payable to the State, in respect of all or any mineral right, an annual charge payable on the grant of the mineral right and then annually on the anniversary of the grant so long as the right subsists;
 - (e) for the annual charge to be paid and for different charges to be paid in respect of different types of mineral rights, different minerals and different locations;
 - (f) for the procedures for inviting tenders and the conditions for tendering in response;
 - (g) for how an area specified in a mineral right is to be properly and efficiently worked;
-

- (h) for the proscription of wasteful practices;
 - (i) for the standards for work and machinery connected with prospecting and mining;
 - (j) for the measures to be taken to protect the environment, including measures-
 - (i) to protect the air, surface and ground waters and soil from pollution, and
 - (ii) requiring the restoration of land on which mining or quarrying operations have been conducted;
 - (k) for the measures to be taken in respect of an area where mining or quarrying operations are being carried out relating to sanitation and health, including the establishment of cemeteries.
 - (l) that accidents and deaths occurring in connection with prospecting, or mining or quarrying operations are to be reported and for the manner in which they are to be reported;
 - (m) the measures to be taken to make land, works or machinery over or with which prospecting, mining or quarrying operations safe;
 - (n) for the records, accounts, books and documents that shall be kept, the manner in which they are to be kept, the manner and time they are to be produced for inspection and the period during which they shall be retained;
 - (o) for the Secretary of State, the Chief Geologist or a public officer authorised
-

by either of them to do so to give directions;

- (p) that mineral rights are not to be granted in an area specified in the regulations or in an area of a type or description specified in the regulations;
- (q) that mineral rights or a specified mineral right is not to be exercised -
 - (i) in an area specified in the regulations or an area of a type or description specified in the regulations, or
 - (ii) is not to be exercised within a specified distance of the area;
- (r) that the mining or quarrying of a specified mineral does not need approval under this Act and regulations made for that purpose may provide that -
 - (i) they apply in an area specified in the regulations or in an area of a type or description specified in the regulations, and
 - (ii) the approval of some other person or body is needed to mine or quarry the mineral and provide how that approval may be sought and given; and
- (s) that a breach of any provision of the regulations is an offence and provide for a fine or imprisonment, or both in respect of the offence.

**PART IV - REPEALS, SAVING AND
TRANSI-
TIONAL PROVISIONS**

Repeal
Cap. 64

116. The Minerals Act is hereby repealed.

Savings of
existing
mining
leases

117. (1) A mining lease granted under section 29 of the repealed Minerals Act and in force immediately before the commencement of this Act shall continue in force, as if it were a mining licence granted by the Secretary of State under this Act.

(2) Subject to this Act, a mining lease shall continue in force -

- (a) with any necessary amendments to make it applicable under this Act; and
- (b) for a period expiring on the same date as it would have expired had this Act not been enacted.

(3) Notwithstanding the provisions of subsection (1), a person who is to be taken as the holder of a mining licence by virtue of that subsection shall have the same right on the expiration or other determination of that licence to remove a plant, building or other property as the person would have had under section 40 of the Minerals Act had that Act not been repealed.

Savings of
existing
mining
rights

118. (1) A mining right granted under section 24 of the Minerals Act and in force immediately before the commencement of this Act shall continue in force, notwithstanding the repeal of that Act, as if it were a mining permit granted by the Chief Geologist under this Act.

(2) Subject to this Act, a mining right shall continue in force -

- (a) with any necessary amendments to make it applicable under this Act; and
 - (b) for a period expiring on the same date as it would have expired had this Act not been enacted.
-

Savings of existing exclusive prospecting licences

119. (1) An exclusive prospecting licence granted under section 13 of the Minerals Act and in force immediately before the commencement of this Act shall continue in force, notwithstanding the repeal of that Act by this Act, as if it were a prospecting licence granted by the Secretary of State under this Act.

(2) Subject to this Act, an exclusive prospecting licence shall continue in force -

(a) with any necessary amendments to make it applicable under this Act; and

(b) for a period expiring on the same date as it would have expired had this Act not been enacted.

Savings of existing prospecting rights

120. (1) A prospecting right issued under section 11 of the Minerals Act and in force immediately before the commencement of this Act continues in force, notwithstanding the repeal of that Act as if it were a prospecting permit granted by the Chief Geologist under this Act.

(2) Subject to this Act, a prospecting right shall continue in force -

(a) with any necessary amendments to make it applicable under this Act; and

(b) for a period expiring on the same date as it would have expired had this Act not been enacted.

Savings of existing licence to possess or purchase certain minerals

121. (1) A licence granted under section 68 of the Minerals Act and in force immediately before the commencement of this Act shall continue in force, notwithstanding the repeal of that Act as if it were a special licence granted in accordance with regulations made under of this Act.

(2) Subject to this Act, a special licence continues in force -

(a) with any necessary amendments to

make it applicable under this Act; and

- (b) for a period expiring on the same date as it would have expired had this Act not been enacted.

Further savings

122. (1) A thing done under the Minerals Act that could have been done under this Act, and not invalidated on the repeal of the Minerals Act shall continue to have effect as if done under this Act.

(2) Proceedings in respect of anything done under the Minerals Act that could have been taken under that Act if it had not been repealed by this Act may be taken under this Act.

(3) Proceedings pending under the Minerals Act immediately before the commencement of this Act may be continued under this Act.

(4) An application made under the Minerals Act before the repeal of that Act and outstanding at the commencement of this Act shall have effect as if it were an application made under this Act and shall be dealt with accordingly.

(5) Nothing in this section prejudices the general application of section 10 of the Interpretation Act (which relates to the effect of repeals).

Transitional and saving regulations

123. (1) The Secretary of State may make regulations containing further transitional and saving provision.

(2) Regulations made under subsection (1) may, in particular, provide that a provision of this Act shall –

- (a) not apply to or in respect of a specified person or class of persons or in respect of a mining or quarrying operation carried out by that person or class of persons or the possession purchase of a specified mineral by that person or class of persons;
-

- (b) apply with such modifications as are specified in the Regulations; or
- (c) not apply with modification specified in the Regulation during such period as is specified in the regulations.

(3) Regulations made under subsection (1) may also provide that, notwithstanding the repeal of the Minerals Act, a provision of that Act shall continue to apply (either for a definite or indefinite period) to or in respect of a person specified in the regulations, as if that Act had not been repealed and either with or without modification specified in the Regulations.

(4) Regulations made under subsection (1) may be made to have effect retrospectively.

PASSED in the National Assembly this Twenty-Eight day of June in the year of Our Lord Two Thousand and Five

D.C.M. Kebbeh
Acting Clerk of the National Assembly

THIS PRINTED IMPRESSION has been carefully compared by me with the Bill which has passed the National Assembly, and found by me to be a true and correct copy of the said Bill.
