

BECHUANALAND PROTECTORATE.

No. 65 OF 1948.

(Promulgated 12th November, 1948.)

PROCLAMATION

BY HIS EXCELLENCY THE HIGH COMMISSIONER

Entitled the Bechuanaland Protectorate Radio-Active Minerals Proclamation, 1948.

Whereas it is expedient to make provision for regulating and controlling the prospecting and mining of radio-active minerals in the Bechuanaland Protectorate (hereinafter called the Territory), and the export therefrom of radio-active minerals;

Now therefore under and by virtue of the powers in me vested, I do hereby declare, proclaim and make known as follows:—

1. In this Proclamation, unless the context otherwise requires—

Inter-pretation.

“ licence ” means a licence issued under the provisions of section *two* of this Proclamation;

“ mines ” with its grammatical variations and cognate expressions, includes all operations for the intentional winning or obtaining of any radio-active mineral;

“ permit ” means a permit issued under the provisions of section *four* of this Proclamation;

“ prescribed substances ” means all or any of the substances specified in the First Schedule to this Proclamation;

“ prospect ”, with its grammatical variations and cognate expressions, means to search for any radio-active mineral and includes such working as is reasonably necessary to enable the prospector to test the radio-active mineral-bearing qualities of the area concerned;

“ radio-active mineral ” means any substance specified in the First Schedule to this Proclamation.

2. Notwithstanding anything in the Mines and Minerals Proclamation, 1932, or any other enactment, no person shall within the Territory prospect for or mine, or attempt to prospect for or mine, any radio-active mineral except under and in accordance with a licence granted by the High Commissioner.

Prospecting and mining restricted.

Holder of licence to report his operations.

3. (a) Every holder of a licence shall within the first week of every month furnish the Resident Commissioner with a true report in writing of the prospecting and mining operations conducted by him in the immediately preceding month with respect to radio-active minerals.

(b) If any such mineral is discovered in the course of prospecting, or on any claim, river location or mining lease, the holder of the prospecting right or exclusive prospecting licence, or of the claim or river location, or the lessee of the mining lease shall immediately notify the Resident Commissioner of such discovery.

(c) If any such mineral is discovered on private mining lands, no such mineral shall be removed from such lands without the consent of the Resident Commissioner.

Export restricted.

4. Notwithstanding anything in the Customs Proclamations or any other enactment, no person shall export, or attempt to export, from the Territory any radio-active mineral except under and in accordance with a permit granted by the High Commissioner in that behalf.

Grant of licence or permit discretionary.

5. The grant of a licence or a permit shall be in the absolute discretion of the High Commissioner who shall be under no obligation to assign any reason for refusing the grant thereof.

Form of licence and permit.

6. Every licence and permit shall be in such form and for such period and be subject to the payment of such fee as the High Commissioner may determine, and shall contain such terms and conditions as he may think fit to impose.

Offences.

7. (1) Every person who—

(a) prospect for or mines, or attempts to prospect for or mine, any radio-active mineral within the Territory without a licence; or

(b) being the holder of a licence, prospect for or mines, or attempts to prospect for or mine, any radio-active mineral within the Territory otherwise than in accordance with any term or condition of his licence; or

(c) being the holder of a licence, fails to comply with the requirements of section *three* of this Proclamation; or

(d) exports, or attempts to export, from the Territory any radio-active mineral without a permit; or

(e) being the holder of a permit, exports, or attempts to export, from the Territory, any radio-active mineral otherwise than in accordance with any term or condition of his permit; or

(f) obtains, or attempts to obtain, a licence or permit by means of any false statement of representation; or

(g) commits an offence against or fails to comply with the provisions of this Proclamation or of the provisions of the Schedules hereto or of any Regulations made under section *fourteen* of this Proclamation for which no penalty is prescribed,

shall, upon conviction before a Subordinate Court, be liable to imprisonment for twelve months or to a fine of five hundred pounds or to both such imprisonment and fine.

(2) The Court before which any person is convicted of an offence under sub-section (1) of this section shall order the forfeiture to His Majesty of any radio-active mineral or prospecting or mining apparatus derived from, or employed in the commission of, any act in respect of which such person was convicted.

8. (1) Any police officer not below the rank of sergeant, any senior officer of the Mines Department, any senior officer of the Geological Survey Department and any other officer or class of officers authorised in writing by the Resident Commissioner in that behalf, may, for the purposes of enforcing the provisions of this Proclamation without warrant or other legal process—

Pow
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tion.

(a) enter and search any place where he has reasonable grounds, for suspecting that an offence under this Proclamation has been, or is about to be, committed;

(b) search any person whom he has reasonable grounds for suspecting to have committed, or to be about to commit, an offence under this Proclamation;

(c) arrest any person whom he has reasonable grounds for suspecting to have committed, or to be about to commit, an offence under this Proclamation;

(d) seize any radio-active mineral or prospecting or mining apparatus connected therewith which he has reasonable grounds to suspect to be, or about to be, derived from, or employed in, the commission of any offence under this Proclamation.

(2) Where any person is arrested, or any radio-active mineral or prospecting or mining apparatus is seized, under the provisions of sub-section (1) of this section, such person, mineral and apparatus shall, as soon as practicable, be brought before the nearest District Commissioner.

(3) Every person who obstructs, or attempts to obstruct, whether actively or passively, any officer in the execution, or purported execution, of his duties under this section, shall be liable, upon summary conviction, to imprisonment for six months or to a fine of one hundred pounds or to both such imprisonment and fine.

Power to do work for purpose of discovering minerals.

9. (1) The Resident Commissioner or any person authorised by him in that behalf may, subject to the provisions of this section, do on, over or below the surface of any land such work as the Resident Commissioner considers necessary for the purpose of discovering whether there is present in or on the land, either in a natural state or in a deposit of waste material obtained from any underground or surface working, any minerals from which in his opinion any of the prescribed substances can be obtained, and the extent to which any such mineral is so present.

(2) Before any powers are exercised under the last foregoing sub-section in relation to any land, the Resident Commissioner shall serve on every owner, lessee and occupier of the land a notice in writing specifying the nature of the work proposed to be done and the extent of the land affected, and the time, not being less than twenty-eight days, within which and the manner in which objection can be made thereto, and no such power shall be exercised otherwise than in pursuance of the notice or before the expiration of the time specified therein for making objections.

(3) If any such objection is duly made and not withdrawn, the Resident Commissioner shall, before exercising any such powers, afford an opportunity to the person making the objection of appearing before and being heard by a person appointed by the Resident Commissioner for the purpose, and, if the person

making the objection avails himself of that opportunity, the Resident Commissioner may afford to any other persons to whom it appears to him expedient to afford it, an opportunity of being heard on the same occasion.

(4) The Resident Commissioner may, after considering any such objection and the report of the person appointed as aforesaid, serve on the persons on whom the original notice was served a further notice in writing withdrawing the original notice or modifying the terms thereof, but not so as to increase the extent of the land affected, and, in the case of modification, no powers shall be exercised under sub-section (1) of this section otherwise than in pursuance of the original notice as so modified.

(5) The powers conferred by sub-section (1) of this section shall be construed as including a power to remove any work constructed or other thing placed on, over or below the surface of the land in the course of the exercise of those powers, and to do such work on the land as the Resident Commissioner or person authorised by him in that behalf thinks fit for the purpose of restoring the land wholly or partly to the condition in which it would have been but for the exercise of those powers.

(6) For the purpose of exercising the powers conferred by the foregoing provisions of this section, any person authorised by the Resident Commissioner in that behalf may pass, with or without animals or vehicles, over any land.

(7) If any person wilfully obstructs or interferes with the exercise of powers under this section, he shall be guilty of an offence and shall upon conviction before a Subordinate Court, be liable to the penalties prescribed in section *seven* of this Proclamation.

(8) Compensation shall be determined and paid in accordance with the Second Schedule of this Proclamation in respect of any diminution in the value of any land resulting from the exercise of powers under this section.

10. (1) Where it appears to the Resident Commissioner that any minerals from which in his opinion any of the prescribed substances can be obtained are present in or on any land, either in a natural state or in a deposit of waste material obtained from any underground or surface working, he may by order provide

Compulsory
acquisition
of rights
to work
minerals.

for compulsorily vesting in him the exclusive right, so long as the order remains in force, to work those minerals and any other minerals which it appears to him to be necessary to work with those minerals, and may also provide, by that order or a subsequent order, for compulsorily vesting in him any other ancillary rights which appear to him to be necessary for the purpose of working the minerals aforesaid including (without prejudice to the generality of the foregoing provisions)—

(a) rights to withdraw support;

(b) rights necessary for the purpose of access to or conveyance of the minerals aforesaid or the ventilation or drainage of the workings;

(c) rights to use and occupy the surface of any land for the purpose of erecting any necessary buildings and installing any necessary plant in connection with the working of the minerals aforesaid;

(d) rights to use and occupy for the purposes of working the minerals aforesaid any land forming part of or used in connection with an existing mine or quarry, and to use or acquire any plant used in connection with any such mine or quarry; and

(e) rights to obtain a supply of water for purposes connected with the working of the minerals aforesaid, or to dispose of water or other liquid matter obtained in consequence of working such minerals.

(2) Any order made under this section shall provide for the payment of compensation in such cases and subject to such conditions as may be specified in the order or determined thereunder, in respect of loss suffered as the result of the acquisition or exercise of rights under the order, but no account shall be taken, in calculating the compensation payable as aforesaid, of the value of any minerals present in or on land affected by the order, being minerals specified in the order as those from which in the opinion of the Resident Commissioner any of the prescribed substances can be obtained.

Compulsory
acquisition
of
prescribed
substances,
stocks of
minerals
and plant.

11. (1) The Resident Commissioner may, subject to and in accordance with Part I of the Third Schedule to this Proclamation, compulsorily acquire—

(a) any prescribed substance;

(b) any minerals, being minerals from which in the opinion of the Resident Commissioner any of the prescribed substances can be obtained, other than minerals in a natural state or contained in a deposit of waste material obtained from any underground or surface working;

(c) any plant designed or adapted for the production or use of atomic energy or research into matters connected therewith.

In the case of any plant which is affixed to land, the Resident Commissioner may sever it from the land, and shall in that case make good any damage caused by the severance.

(2) Compensation in respect of the acquisition of any article under this section shall be paid in accordance with Part II of the Third Schedule to this Proclamation.

12. The High Commissioner may from time to time by notice in the *Gazette* alter, vary or amend the First Schedule to this Proclamation. Power of High Commissioner to vary schedule.

13. Nothing in this Proclamation shall be deemed to absolve any person from compliance with the provisions and requirements of the Mines and Mineral Proclamation, 1932, of the Territory. Saving.

14. The High Commissioner may make such regulations for giving better effect to the provisions of this Proclamation as he may deem to be necessary or expedient. Regulations.

15. The Bechuanaland Protectorate Uranium and Thorium Control Proclamation, 1946 (No. 7 of 1946), as amended by the Bechuanaland Protectorate Uranium and Thorium Control (Amendment) Proclamation, 1946 (No. 26 of 1946), shall be and is hereby repealed. Repeal.

16. This Proclamation may be cited as the Bechuanaland Protectorate Radio-Active Minerals Proclamation, 1948. Short title.

GOD SAVE THE KING.

Given under my Hand and Seal at Pretoria this Third day of November, One thousand Nine hundred and Forty-eight.

E. BARING,
High Commissioner.

By Command of His Excellency
the High Commissioner.

H. E. PRIESTMAN,
Administrative Secretary.

FIRST SCHEDULE.

(1) Any mineral containing uranium or thorium and, in particular and without prejudice to the generality of this paragraph, the substances hereinafter set out in this Schedule.

(2) Minerals of the pitchblende group, including pitchblende, uraninite, ulrichite, broeggerite, cleveite and related mineral species.

(3) Secondary uranium minerals including torbernite, autunite, uranite, rutherfordine, uranophane, gummite, thorigummite, uranocircite, kasolite, becquerelite, and other silicates, hydrates, carbonates, phosphates or arsenates of uranium.

(4) Carnotite, tyuyamunite, and related uranium-bearing vanadate ores.

(5) Uranium-bearing niobate-titanate-tantalate ores, including euxenite, polycrase, blomstrandine, priorite, samarskite, fergusonite, betafite and related minerals.

(6) Monazite, thorite and thorianite.

SECOND SCHEDULE.

COMPENSATION FOR WORK DONE IN SEARCHING FOR MINERALS.

1. Where compensation is payable under section *nine* of this Proclamation in respect of powers exercised thereunder in relation to any land, the compensation shall in the first instance be a sum calculated by reference to the diminution of the annual value of the land ascribable to the exercise of the powers and shall be paid in instalments, quarterly in arrear, to the person who for the time being is entitled to occupy the land. Any such compensation shall be considered as accruing due from day to day and shall be apportionable in respect of time accordingly.

2. The Resident Commissioner may at any time serve a notice in writing on every owner, lessee and occupier of land in respect of which such powers as aforesaid have been exercised stating that he does not propose to exercise those powers any further in relation to that land, and thereupon the period in respect of which compensation is payable under the foregoing paragraph shall end, and the said powers shall cease to be exercisable in so far as they depend on any notice previously served under the said section *nine* (but without prejudice to the service of a new notice thereunder).

3. Where, by virtue of the serving of a notice under the last foregoing paragraph, the said period comes to an end, then if, at the expiration of that period, the value of any estate or interest which a person then

has in the land is less than it would be but for the exercise of the said powers, there shall be paid to him by way of compensation, a sum equal to the amount of the said depreciation in the value of the estate or interest: and that compensation shall be taken to accrue due at the expiration of the said period.

4. Where compensation is payable under the last foregoing paragraph in respect of any estate or interest which to the knowledge of the Resident Commissioner is subject to a mortgage, that compensation and any interest thereon shall be paid to the mortgagee, and he shall be liable to account therefor as if the compensation were proceeds of sale of that estate or interest arising under a power of sale exercised by the mortgagee at the material time and the interest on that compensation were interest on those proceeds:

Provided that, if the estate or interest is subject to two or more successive mortgages, this paragraph shall have effect with the substitution for the references to the mortgagee of references to the first mortgagee.

5. Any such compensation shall carry interest, as from the time at which it accrues due, until payment, at such rate per annum as the Treasury may from time to time by order prescribe, and for the purposes of this paragraph compensation payable in accordance with paragraph 1 of this Schedule shall be deemed to accrue due on the last day of each quarter in respect of which it is payable.

6. Where the Resident Commissioner serves a notice under paragraph 2 hereof, he shall cause the fact to be published in such manner as he thinks best adapted for informing persons affected (other than persons on whom the notice was served).

7. In assessing any compensation payable under paragraph 1 of this Schedule, it shall be assumed that the land cannot be restored to the condition in which it would be but for the exercise of the right.

8. In this Schedule the expression "annual value" means, in relation to any land, the rent at which the land might reasonably be expected to let from year to year, if the tenant undertook to pay all usual tenant's rates and taxes and to bear the costs of the repairs and insurance and the other expenses, if any, necessary to maintain the land in a state to command that rent.

9. Where any dispute arises under this Schedule as to whether compensation is payable or as to the amount of such compensation or the persons to whom it is payable, it shall be referred to and determined by arbitration and such arbitration shall be conducted and carried on under the law in force for the time being covering arbitrations in the Province of the Cape of Good Hope.

THIRD SCHEDULE.

COMPULSORY ACQUISITION OF CERTAIN PROPERTY.

PART I.

Procedure for Acquisition.

1. Where the Resident Commissioner proposes to acquire any articles under section *eleven* of this Proclamation, he shall serve upon the person appearing to him to be the owner thereof a notice in writing (hereinafter in this Proclamation referred to as "notice of acquisition") specifying the articles to be acquired and requiring that person to make to the Resident Commissioner within a time specified in the notice a written declaration containing such particulars as may be so specified as to the ownership of those articles and as to any agreement or charge by virtue of which any other person has an interest in any of those articles.

2. Upon the service of a notice of acquisition under the last foregoing paragraph no article to which the notice relates shall be removed from the premises in which the article is situated at the time of the service of the notice without the consent of such person as is specified in the notice; and if any person knowingly removes, or causes or permits to be removed, any article in contravention of this paragraph, he shall be guilty of an offence under this Proclamation.

3. If it appears to the Resident Commissioner in consequence of any written declaration made to him in pursuance of paragraph 1 of this section or otherwise that any person other than the person on whom the notice of acquisition was served is the owner of, or has any interest in the articles to which the notice relates, he shall serve a copy of the notice of acquisition on that other person.

4. A notice of acquisition shall contain a statement to the effect that an objection may be made thereto within such time (not being less than twenty-eight days) and in such manner as may be specified in the notice, and if any such objection is duly made and not withdrawn, the Resident Commissioner shall afford an opportunity to the person making the objection of appearing before and being heard by a person appointed by the Resident Commissioner for the purpose, and, if the person making the objection avails himself of that opportunity, the Resident Commissioner may afford to any other persons to whom it appears to him expedient to afford it an opportunity of being heard on the same occasion.

5. If any such objection is duly made, the Resident Commissioner, shall, after considering any such objection which is not withdrawn and the report of the

person appointed by him under the last foregoing paragraph, serve on the persons upon whom the notice of acquisition or a copy thereof was served a further notice in writing either withdrawing the notice of acquisition or confirming the said notice as respects all the articles to which it relates or such of those articles as may be specified.

6. Any article with respect to which a notice of acquisition is served under this part of this Schedule shall—

(a) if no objection is duly made to the notice, vest in the Resident Commissioner at the expiration of the time for making such an objection;

(b) if such an objection is duly made and the notice is confirmed as respects that article by a notice served under the last foregoing paragraph, vest in the Resident Commissioner on the service of the last mentioned notice;

and shall in either case vest free of any mortgage.

PART II.

Compensation.

1. Where compensation is payable under sections *ten* and *eleven* of this Proclamation in respect of any article, the compensation shall be the sum equal to the price which the owner thereof might reasonably have been expected to obtain upon a sale thereof effected by him immediately before the date of the service of the notice of acquisition, and shall accrue due on that date, and shall, subject to the following provisions of this Schedule, be paid to the owner.

2. Any dispute as to whether any compensation is payable as aforesaid or as to the amount of such compensation or the persons to whom it is payable, shall be referred to and determined by arbitration and such arbitration shall be conducted and carried on under the law in force for the time being covering arbitration in the Province of the Cape of Good Hope.

3. Any compensation payable as aforesaid shall carry interest, as from the time at which it accrues due, until payment, at such rate as the Treasury may from time to time by order prescribe.

4. Where immediately before the service of the notice of acquisition relating to any article in respect of which compensation is payable as aforesaid, it was in the possession of some person other than the owner by virtue of a hire purchase agreement or was subject to a mortgage, the said person or the mortgagee, as the case may be, may, by a notice served on the Resident Commissioner, make a claim to have apportioned to him such part of the compensation as may be specified in his claim; and in default of agreement between the parties the last mentioned claim shall be

determined by such an arbitrator as aforesaid who may apportion the compensation between them in such manner as appears to him to be just.

5. Where any compensation is paid to a mortgagee under the last foregoing paragraph, he shall be liable to account therefor as if the compensation were proceeds of sale of the article in question arising under a power of sale exercised by the mortgagee at the material time and the interest on that compensation were interest on those proceeds.

6. In this Schedule the expression "hire purchase agreement" has the same meaning as in the Proclamation No. 14 of 1943, the expression "mortgage" includes any pledge, lien or other similar obligation, and the expression "mortgagee" shall be construed accordingly; and the expression "owner" means, in relation to any article, the person entitled to sell the article, it being assumed not to be subject to any mortgage.