

## LEGISLATIVE CONSENT MEMORANDUM

### AMENDMENTS TO THE DEEP SEA MINING (TEMPORARY PROVISIONS) ACT 1981

#### Draft Legislative Consent Motion

1. The draft motion, which will be lodged by the Cabinet Secretary for Finance, Employment and Sustainable Growth, is:

“That the Parliament agrees that the relevant provisions of the Deep Sea Mining Private Members Bill introduced to the House of Commons on 19 June 2013, relating to the amendment of the [Deep Sea Mining \(Temporary Provisions\) Act 1981](#), so far as these matters fall within the legislative competence of the Scottish Parliament or alter the executive competence of Scottish Ministers, should be considered by the UK Parliament.”

#### Background

2. This motion has been lodged by John Swinney, Cabinet Secretary for Finance, Employment and Sustainable Growth under Rule 9.B.3.1(c)(i) of the Parliament’s Standing Orders. The Deep Sea Mining Bill was introduced to the House of Commons 19 June 2013 and amended to extend to Scotland on 15 January 2014. The latest version of the Bill can be found at: <http://services.parliament.uk/bills/2013-14/deepseamining.html>
3. The Deep Sea Mining Bill (“the Bill”), a Private Member’s Bill by Sheryll Murray MP, seeks to amend the Deep Sea Mining (Temporary Provisions) Act 1981 (“the 1981 Act”). The 1981 Act which pre-dates the United Nations Convention on the Law of the Sea (“UNCLOS”), partially implements Part XI of UNCLOS. The 1981 Act requires to be amended to become fully compliant and this is the purpose of the Deep Sea Mining Bill.
4. Part XI of UNCLOS and the 1981 Act concern deep sea mining in that part of marine environment defined as “the Area” in UNCLOS, namely the seabed, ocean floor and subsoil thereof, beyond the limits of national jurisdiction. It accordingly concerns activities beyond our fishing limits and Scottish waters.
5. Deep sea mining is, generally a devolved matter although as the Bill seeks to amend the 1981 Act to provide that all types of minerals may be mined where this may include coal or gas it would, in those cases, be a reserved matter.
6. Amending the Bill offers potential growth opportunity for Scottish companies. Companies wishing to mine the sea bed for minerals need to be licensed under national law. Access to the international resource is governed by the International Sea Bed Authority (“the ISA”), established under UNCLOS
7. The 1981 Act sets down the licensing regime in the UK concerning deep sea mining in “the Area”. Under UNCLOS a person may apply to their national authority (or “State Party”) for a licence to carry out deep sea mining in a specific region of ‘the Area’. The State Party, upon issuing a licence, then sponsors their application to the ISA for a contract to mine that region.

8. The Bill when presented in the House of Commons extended only to England, Wales and Northern Ireland. The 1981 Act extends to the whole of the UK. There have been exchanges and discussions between the Foreign and Commonwealth Office and the Scottish Government which have concluded that the Bill should be extended to Scotland and amendments to that effect have been tabled in the UK Parliament.

### **Content of the Bill**

9. The updates to the 1981 Act implement in full UNCLOS to include widening the scope of mineable material covered by the Act, which currently only apply to polymetallic nodules, to all types of minerals, no matter their form (ie solid, liquid or gaseous form).
10. The Deep Sea Mining Bill will amend the 1981 Act to:
  - Give effect to Part XI of UNCLOS providing that companies wishing to undertake deep sea mining must enter into a contract with the ISA before exploring or exploiting the mineral resources of the deep sea bed.
  - Extend coverage of the 1981 Act from hard mineral resource to mineral resources of any form.
  - Authorise, in Scotland, the exploration and exploitation for the mineral resource in a specified part of the Area.
  - The Bill once amended will apply to UK nationals, Scottish firms or bodies incorporated under UK law and residents of any part of the UK and which could also be extended by Order to persons outside the UK (the Channel Islands, the Isle of Man or any colony).

### **Provisions which relate to Scotland**

The following paragraphs describe the specific provisions for which consent is sought.

#### **Clause 2 of the Bill - extent, commencement and short title**

11. Policy Intent: The Scottish Government is seeking to update the regulatory framework to extend the functions of the Scottish Ministers by providing that they are the competent authority for considering Scottish applications to mine a wider range of minerals than is currently the case.
12. Background: The existing functions under the 1981 Act which were exercisable by the Secretary of State were transferred so as to be exercisable by the Scottish Ministers within devolved competence by virtue of section 53 of the Scotland Act 1998 instead of by the Secretary of State. Subject to the agreement of the Parliament on the LCM, the Bill will be amended to extend to Scotland to provide that the Scottish Ministers are to exercise the functions of the Secretary of State that are being added to or modified by the Bill so far as the exercise of those functions would be within devolved competence (within the meaning of the Scotland Act 1998).
13. If the Bill were not extended to Scotland then the legislation applying to Scottish companies with an interest in deep sea mining would be out of step with international law. Furthermore, if that was the case then Scottish companies would

only be able to apply for licenses to mine from the sea bed only those minerals which are in a solid form, and not such minerals in gaseous or liquid states.

14. Modernising the legislation will provide international agreement to avoid conflict over deep sea mining areas; and extend coverage of the scheme from hard mineral resource to mineral resources of any description (ie solid, liquid or gas).

### **Schedule to the Bill – amendments to the Deep Sea Mining (Temporary Provisions) Act 1981**

15. Policy intent: the Bill seeks to ensure that companies seeking to exploit all types of mineral resources of the deep sea bed in the Area obtain licences from the Secretary of State, or where it is within the devolved competence of the Scottish Ministers, authorising that activity which is also regulated by the ISA in line with UNCLOS.

16. Background: Companies wishing to mine the sea bed for minerals in the Area need to be licensed under national law - the 1981 Act sets down the licensing regime. The Act partially implements UNCLOS, but requires amendment to become fully compliant. Under UNCLOS a person may apply to their national authority (or “State Party”) for a licence to carry out deep sea mining. The State Party, upon issuing a licence, then sponsors their application to the ISA for a contract to mine that part of the Area. In order for the 1981 Act to be made compliant with UNCLOS across the UK. Amendments to the Bill have been tabled extending its application to Scotland, in order to:

- Ensure that exploration and exploitation deep sea mining licences are only valid if there is a contract between the ISA and the Licensee.
- Ensure that exploring or exploiting minerals requires an exploration or exploitation licence which states the type of mineral to be explored or exploited and the area of the deep sea bed that is to be explored or, as the case may be, exploited.
- Provide that the Scottish Ministers may on payment of a fee grant a exploration or exploitation licence.
- Provide that the Scottish Ministers may grant a licence subject to such terms and conditions as they think fit, including the protection of the environment, health and safety, treatment of minerals, disposal of waste requiring plans or samples.
- Provide that where the Secretary of State or the Scottish Ministers have granted an exploration licence then they may not grant an exploitation licence in relation to any part of the licensed area to which the exploration licence has been granted or to any of the mineral resources to which that licence relates unless the exploitation licence is granted to the holder of the exploration licence, or with that person’s written consent.
- Provide that, where required, the Scottish Ministers may vary or revoke any exploration or exploitation licence.
- Provide that the enforcement of decisions of the Seabed Disputes Chamber of the International Tribunal for the Law of the Sea (“the Tribunal”) may be registered in the Court of Session for enforcement and applies the Arbitration (Scotland) Act 2010 to disputes between the ISA and contractors.
- Provide that if a person had a licence under the 1981 Act or held a contract issued by the ISA and if that person acted in pursuance of that licence or

contract then the provisions of Part 4 of the Marine (Scotland) Act 2010 or Part 4 of the Marine and Coastal Access Act 2009 should not apply to that activity. The 1981 Act, as unamended, provides such an exclusion in relation to Part 2 of the Food and Environment Protection Act 1985 and that exclusion remains in place under the Bill. This avoids the person from having to comply with two (or more) licensing regimes.

## **Consultation**

17. Given that this is a non-contentious technical change to better implement existing Treaty obligation, detailed consultation with stakeholders has been thought unnecessary. The provisions are being taken forward by means of a Private Members Bill.

## **Financial implications**

18. We would not anticipate a significant change following the new legislation coming into force. Agreeing to the LCM will result in the extent of the Bill applying to Scotland without the need to consider enacting our own legislation.

19. Amending the Bill offers potential growth opportunity for Scottish companies. Companies wishing to mine the sea bed for minerals need to be licensed under national law. We do not expect any practical consequences in the short term because of the extreme challenges involved in initiating a deep sea mining operation – our approach is sensible and pragmatic, agreeing to the changes but preserving the responsibilities devolved to us.

## **Conclusion**

20. It is the view of the Scottish Government that it is in the interests of Scottish business and good governance that the relevant provisions outlined above which fall within the executive competence of Scottish Ministers or legislative competence of the Scottish Parliament, should be considered by the UK Parliament.

## **Scottish Government**

January 2014