

EAST AFR. PROT.
No. 15374

C O
15374
REL 30 APR 07

No. 132
1907
April 8
Previous Paper
119K
So far as taking is concerned
3478

(Subject)

Mining Regulations - Amendment Order
No 2. 1907

file - with memo by Crown Advocate
being to report funds of minerals it was thought necessary
to introduce amending legislation as matter was urgent Order
could not be refused until Request sanction
(Minutes) (Spare copies of Order)
noted in Account Book

Mr Read

You consider that it is not
necessary to consider the details
of this Order as Mr Jolliffe
Mining Expert whose report
going out with no doubt
make suggestions for such
amendments as may be necessary
I do not however understand
why the form of proposal
has not appeared in our
despatch file (45802) has
not been embodied in the
Order (Mr Woodhouse who

Subsequent Paper
21150

called the three day complained better
by of the deception which, he said,
had been practised upon him
in sending him this form (in an
letter of 4 Jan^r) which when
he reached the Post he found
was not in force.

In allowing the Order
to connect as above.

Page
188

M. J. R.

Mr. R. will you say whether the
order is in order?

H. J. R.

28/5

Mr. R.
Mr. R.

It appears that it is thought unnecessary to
scrutinize the details of this order -
The 3rd Principal order - the 1st Principal Regulation
but so far as formal matters are concerned the
order appears to be in order. I cannot say how it dovetails
into the Principal Regulations and I think it
would be much better to refer to
connect so much of the letter as it was
desired to return

So done
the order
is in

H. J. R. 29/5

5/10. for order.

above

H. J. R.

29/5

C. O.
15374
Commissioner's Office,
REC.
REC 30 APR 07
Nairobi,

April 1907.

No. 132
(Incl. 5)

I have the honour to transmit herewith eight copies of the Mining Regulations Amendment Ordinance 1907 which I caused to be published in an Extraordinary Issue of the Official Gazette dated the 21st ultimo.

Owing to the reported finds of minerals in different parts of the Protectorate and the unsuitability in some respects of the existing enactments respecting mining it was thought necessary to introduce amending legislation and, as the matter was urgent, it was impossible to refer the Ordinance home for Your Lordship's sanction, which, I trust, however, will not be withheld.

I enclose a Memorandum by the Crown Advocate dealing

The Principal Secretary of State

for the Colonies,

Downing Street,

LONDON, S.W.

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Amend
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dealing with the various pilots in which the new Ordinance differs from the previous one.

Being in the recent rioting case I have required Mr. Combs's presence in Nairobi lately and he has therefore been prevented from his reference library at Bombay and I am unable to supply the usual tabulated comparative statement. I trust that your Lordship will excuse this omission.

I have the honour to be,

With the highest respect,

My Lord,

Your Lordship's most obedient,

humble servant,



Acting Commissioner.

The Mining Regulations Amendment Ordinance

1907

The purpose of this Ordinance is to make certain alterations in and additions to the East Africa Mining Regulations 1902.

The first part of the Ordinance deals with Prospecting Licences and it is in this part that the chief alteration in the law is to be found.

1. Under the Principal Regulations two classes of prospecting licences are granted the one authorising the holder to prospect on Crown lands, the other authorising the prospector to prospect on the lands, to be specified in the licence, of a private owner. The latter licence can only be granted to a person who has entered into a bond with two sureties in the sum of 400 rupees for himself and 200 rupees for each of the Sureties for the due and proper repair of any surface damage done by him and for payment of any sum due from him to the owner of the land on account of payments to be made by him under the Regulations.

The provisions of the Principal Ordinance as regards prospecting licences are open to the following among other objections.

(1) The practice of requiring a prospector to specify the land on which he intends to prospect and to take out a separate licence in respect of the land of each landowner on which he intends to prospect works somewhat unfairly as the prospector who may in the course of prospecting

prospecting pass over the lands of many persons .

(2) As with few exceptions private lands in the Protectorate are unfenced , it is often impossible for a prospector to know whether he is prospecting on the land for which he holds a licence or on the land of some adjoining landowner .

(3) It was no doubt the intention of the framers of the Ordinance that a prospecting licence for private land should be granted only to persons who could satisfy the licencing officer that they and their Sureties were in a position to meet their liabilities under their bond . I have however myself known many cases in which licences were issued on bonds being entered into by persons from whom it would have been impossible to obtain anything should it have been necessary to take action on the bond . It is obviously wrong that the Government should authorize a person to enter the lands of private owner and there to enjoy certain rights and privileges and to do damage to the surface of the land without first securing that proper compensation can and will be paid by the prospector .

In the Amending Ordinance it is sought to remove the objections by issuing one class of prospecting licence only which will entitle the holder to prospect on Crown Lands or on private land subject to the condition that before prospecting on the land of any private owner he shall either obtain the permission of the landowner and make his own terms with him as to payment of compensation or else shall deposit the sum of Rs. 575 with the Commissioner of Mines to be held by him during the currency of the licence to cover any sum payable under the Ordinance and which the prospector shall fail to duly pay to the landowner .

This

This provision, it is submitted, will protect the landowner and will at the same time insure that it will be possible for a bona fide prospector to prospect on any land. If as has been suggested from some quarters prospecting on private land should only be allowed subject to the consent of the landowner a very considerable amount of land might be closed against prospecting. The privileges granted to a prospector and the payments to be made by him to the owner of land, are unaltered except in the case when the prospector and landowner have entered into an agreement.

2. Under the Principal Regulations the holder of a prospecting licence may peg out a prospecting claim which he can hold during the continuance of the licence or any renewal thereof, and except that by a rule made under the Regulations he is required to do seven days work in his area in every month, no provision is made for the proper prospecting of a prospecting area. It appears to me that provision should be made for the proper prospecting of a prospecting area and that it should not be possible for persons to hold a prospecting area unless he is in fact a bona fide prospector and I have therefore made provision by section 19 of the Ordinance whereby a prospecting area may be annulled if it is not worked to the satisfaction of the Commissioner of Mines.

3. By section 21 of the Ordinance the Commissioner of Mines may call upon the owner of a prospecting area on a public field to relinquish his prospecting area and to mark off his claims.

This provision is substituted for section 16 of the Principal Regulations. Under that section a prospector could hold a prospecting area on a public field until such time as the Commissioner of Mines should be satisfied

satisfied as to the existence of gold or precious stone on the area, and if then required to give up his area he would be entitled to mark off 14 digger's claims, a greater privilege than that granted to the original discoverer.

4. Part II of the Ordinance deals with the proclamation of a Public field, and the rights of the holders of Digger's licences. The provisions of this part with the exception of sections 26 and 34 are taken from or are based upon the Mining laws of Cape Colony.

Section 26 limits the right to take out a digger's licence given by section 21 of the Principal Regulation to any males over 15 years of age and of European birth or descent and thereby leaves it to the discretion of Commissioner of Mines to say whether natives shall be entitled to hold Digger's claims on a public field.

The Principal Regulation fixes or authorises the Commissioner to fix the royalty to be paid on minerals extracted under a Mining or Mineral lease; but makes no provision for the payment of a royalty on minerals taken from a public field. As it is conceivable that it might be desirable to impose a royalty on minerals taken from a public field, I have by section 34 of the Ordinance made provisions for the fixing of the royalty in such a case.

5. By section 39 in Part III of the Ordinance the land required for the purposes of the Uganda railway is exempted from the operations of the Mining Regulations. The Statute No. 6 of 1897 referred to in the section declared that all land within one mile of the Railway was reserved for public purposes.

The Manager of the Uganda Railway agrees that it is unnecessary to exempt the whole of that area from the operation

5.

operation of the Mining Regulations and has approved the provisions of the section.

6. I have in accordance with instruction recently received from the Colonial Office by section 41 referred to the Crown any mineral oil or oils which may be discovered in the Protectorate and which may be required for purposes of the Imperial Government. If however persons are to be encouraged to search for or to report the discovery of mineral oil, provision should be made for the payment of a reward to the discoverer of any mineral oil should the Government require the oil for its own purposes.

7. Section 42 applies the provision of the Principal Ordinances relating to the dealing in native gold, to uncut diamonds.

8. I am of opinion that the Amendments and additions made by this Ordinance to the Mining laws are urgently required and that under the circumstances the Ordinance is one which may be properly published without first obtaining the sanction of His Majesty's Secretary of State.

Sd/ R. M. Combs.

March 14th. 1907.

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EXA

3

343

DRAFT

figure
Change 35 197

EXA = 393

Gov

MINUTE

Mr. Liddell

10/21/5

Mr. Rivers 3

Mr. ...

Mr. ...

Mr. ...

Mr. ...

Mr. ...

Mr. ...

The Earl of Ely

I should be
honour to inform
that the power of
disallowance will
not be exercised with
respect to the Act
No. 2 of 1907, of the
EXA, entitled "The
Mining Regulations
Amendment Ordinance
1907", a trace of
which accompanied
the 7th of previous Sup
No. 12 of the 8th April last

2. There is printed
 that the word Principal
 054 in section 3 of
 the Act should be
 Principal & Co.,
 and further to
 observe that
 it would have
 been preferable
 my opinion to
 appeal to several
 members of the
 Principal in question
 to return this preferable

~~It is not clear why the
 term of suspending
 because a copy of
 which is in my
 desk is 15 of the
 17 January has not
 been included in~~

that Mr. Jell of the
 principal office in the
 subject has already
 advised you will be
 brought some copy
 -ments in the subject
 lesson for subject
 and by offering
 may then be taken
 of consolidation all the
 enactments into one Bill
 of which shd. be returned
 to me in draft form

45502
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~~Article~~

#3. From the copy of the
 letter from the Dept
 to Messrs. Fisher & Wood
 of the 4th of January, it
 had been transmitted
 to you in the copy of the
 letter from the Dept
 will observe that
 a copy of the proposed
 suspending
 from office
 was ^{communicated} to you in the
 same dispatch
 was ^{the same} sent to these
 gentlemen on the 10th.

54. I understand however
 that in the opinion
 of the Board
 it is not
 necessary to
 discover that the
 suspending
 proposed from office
 had not come into
 force.

5. Note moreover that
the form, - question
has not been enclosed
in the present list
and I have to request
that you would inform
me of the reason for
its omission.

- list

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