

THE OFFICIAL GAZETTE--3RD SEPTEMBER, 1983 LEGAL SUPPLEMENT--C

PARLIAMENT OFFICE,
Public Buildings,
Georgetown,
Guyana.

83—08—29.

The following Bill which will be introduced in the National Assembly is published for general information.

F. A. Narain,
Clerk of the National Assembly.



GUYANA

BILL No. 19 of 1983

MINING (AMENDMENT) BILL 1983

ARRANGEMENT OF SECTIONS

SECTION

1. Short title.
2. Amendment of section 2 of the Principal Act.
3. Insertion of new Parts VIA and VIB in the Principal Act.

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2. Amendment of section 2 of the Principal Act.
3. Insertion of new Parts VIA and VIB in the Principal Act.

4. Amendment of section 79 of the Principal Act.
5. Insertion of new section 82A in the Principal Act.
6. Amendment of section 85 of the Principal Act.

A BILL

Intituled

AN ACT to amend the Mining Act.

A.D. 1983 Enacted by the Parliament of Guyana :—

Short title. 1. This Act, which amends the Mining Act, may be cited as the
Cap. 65:01 Mining (Amendment) Act 1983.

Amendment of section 2 of the Principal Act. 2. Section 2 of the Principal Act is hereby amended by the renumbering of it as subsection (1) thereof and —

(1) in subsection (1) as so renumbered, —

(a) by the insertion in the definition of the expression “the Commissioner”, after the words “and Mines”, of the words “employed by the Commission”;

(b) by the insertion in the definition of the expression “officer”, after the words “and Mines” of the words “or of the Commission”;

(2) by the insertion, after subsection (1) as so renumbered, of the following subsection as subsection (2)—

(2) In this Act the expressions “aircraft”, “carriage”, “ship”, and “steamship” shall have the meanings assigned to them by section 2 of the Customs Act.

Cap. 82:01

Insertion of new Parts VIA and VIB in the Principal Act. 3. The Principal Act is hereby amended by the insertion, after Part VI, of the following Parts as Parts VIA and VIB —

PART VIA

REGISTRATION AND LICENSING OF DREDGES, ETC.

Registration and licensing of dredges. 57A. The Minister may by regulations prescribe that the owner of a dredge which is in a mining district or claim shall register the dredge and shall take out a licence for the dredge, and

where any such regulations have been made, no dredge which is not registered, or for which a licence has not been taken out, in accordance with such regulations shall be taken into or kept in any mining district or claim.

Application of section 57A to mining machinery, etc.

57B. Section 57A and the regulations referred to therein shall apply to such machinery, equipment or plant, being machinery, equipment or plant which is used or which can be used for mining, processing or preparation of any metal or mineral, as may be specified by the Minister by order.

PART VIB

FORFEITURE OF AIRCRAFT, ETC.

Definition of "specified machinery".

57C. In this Part the expression "specified machinery" means any machinery, equipment or plant specified by the Minister by order under section 57B.

Forfeiture of aircraft, etc.

57D. (1) Any aircraft, ship or carriage, together with all animals and things, dredge or specified machinery made use of in the commission of an act, or for a purpose, prohibited by or under this Act shall be forfeited and the forfeiture of any aircraft, ship, carriage, animal, thing, dredge or specified machinery, shall be deemed to include the tackle, apparel and furniture, if any, thereof:

Provided that where —

- (a) the Commissioner; or
- (b) the magistrate, in any proceedings under this Act for forfeiture and condemnation of any aircraft, ship, carriage, together with all animals and things, dredge or specified machinery liable for forfeiture under this section,

satisfied beyond reasonable doubt that —

- (i) the person who was the owner of the aircraft, ship, carriage, together with all animals and things, dredge or specified machinery; and

- (ii) in the case of an aircraft or ship, every person who was a responsible officer thereof or in the case of a dredge or specified machinery the person in charge thereof,

when it was made use of in the commission of any act or for any purpose aforesaid, was not concerned in or privy to such use, the aircraft, ship, carriage, together with all animals and things, dredge or specified machinery shall be restored to the owner thereof.

Cap. 82:01 (2) In this section the expression “responsible officer”, in relation to any aircraft or ship, **has the same meaning as in section 201(2) of the Customs Act and includes also such other officers, not mentioned therein, as may be specified by the Minister by order.**

Search of aircraft, etc.

57E. (1) Subject to the other provisions of this section, if the Commissioner, or any other officer authorised in writing by the Commissioner for the purposes of this section, has reasonable cause to suspect that any aircraft, ship or carriage, together with all animals and things, dredge or specified machinery is being, or was, made use of in the commission of any act, or for a purpose, prohibited by or under this Act he may enter and search the aircraft, ship or carriage, together with all animals and things, dredge or specified machinery and it shall be lawful for him, in case of resistance, to break open any door, and to force and remove any other impediment or obstruction to such entry.

(2) Before the Commissioner or any other officer authorised by him under subsection (1) proceeds to effect a search under that subsection he shall apply to a magistrate for the issue of a warrant under the hand of the magistrate authorising such search and it shall be lawful for the magistrate by special warrant under his hand to authorise the applicant to enter and search the aircraft, ship or carriage, together with all animals and things, dredge or specified machinery by day or by night.

(3) Except where delay caused thereby is likely to defeat the purposes of the search, the

Commissioner or any other officer authorised by him under subsection (1) shall not effect a search under this section without applying for and obtaining under subsection (2) a special warrant authorising the search.

(4) Where it is not practicable for the Commissioner or any other officer authorised by him under subsection (1) to apply for and obtain under subsection (2) a special warrant authorising a search under this section for the reason, to be recorded in writing, that the delay caused thereby is likely to defeat the purposes of the search, the Commissioner or the other officer may carry out the search without applying for and obtaining a special warrant as aforesaid, but shall make a report in writing regarding the search to the nearest magistrate within forty-eight hours of the search.

Forfeiture of dredges and specified machinery not registered or licensed.

57F. (1) Where the regulations referred to in section 57A have been made, any dredge which is not registered, or for which a licence has not been taken out, in accordance with such regulations and found in a mining district or in any claim shall be forfeited and the forfeiture of a dredge shall be deemed to include any furniture thereof.

(2) Where the regulations referred to in section 57A have been made and any machinery, equipment or plant has been specified under section 57B, any specified machinery which is not registered, or for which a licence has not been taken out, in accordance with such regulations and found in a mining district or in a claim shall be forfeited.

Seizure of aircraft, etc.

57G. The Commissioner or any other officer authorised in writing by the Commissioner for the purposes of this section may seize any aircraft, ship, carriage, together with all animals and things, dredge or specified machinery liable for forfeiture under this Part.

Report of seizure to magistrate.

57H. (1) A report shall be made in writing of every seizure under section 57G, stating the reasons therefor, to the nearest magistrate by the person making the seizure within forty-eight hours of the seizure.

(2) The magistrate shall direct in whose custody any aircraft, ship, carriage, animal, thing, dredge or specified machinery seized under section 57G shall be kept and such direction shall be complied with by the person making the seizure.

(3) Without prejudice to the provisions of subsection (2), a magistrate may order delivery of any aircraft, ship, carriage, together with all animals and things, dredge or specified machinery seized under section 57G to the owner thereof on security being given for the payment to the Commissioner of the value thereof in case of condemnation.

Notice of seizure and claim for seized aircraft, etc.

57I. (1) Where any aircraft, ship, carriage, animal, thing, dredge or specified machinery is seized under this Part notice of the seizure shall be given by an officer as soon as possible to the owner and the person in charge thereof, if such person is not the owner.

(2) A notice under subsection (1) shall be given to the owner or person in charge of the seized aircraft, ship, carriage, animal, thing, dredge or specified machinery —

- (a) by delivering the notice personally to the owner or person in charge, as the case may be, or by sending the notice by post to his usual place of abode or business premises; or
- (b) if the owner or the person in charge, as the case may be, is not known or, if known, he cannot be found after reasonable enquiry and his usual place of abode and his business premises are not known, or he refuses to accept the notice when tendered to him, by publishing the notice in one newspaper having circulation in Guyana.

(3) Any person who claims any aircraft, ship, carriage, animal, thing, dredge or specified machinery, seized under this Part, as its owner,

or any other person duly authorised by the owner may give notice to the Commissioner, that he claims the aircraft, ship, carriage, animal, thing, dredge or specified machinery, within thirty days of the date on which the notice of seizure under subsection (1) was given to him or of the owner otherwise coming to know of the seizure, whichever is later:

Provided that no such notice of claim shall be entertained by the Commissioner under this subsection in respect of any seized aircraft, ship, carriage, animal, thing, dredge or specified machinery after the expiry of three months from the date of the seizure.

(4) An aircraft, ship, carriage, animal, thing, dredge or specified machinery seized under this Part and in respect of which no notice of claim was given before the expiry of three months from the date of its seizure may be sold by the Commissioner in such manner as may be prescribed by the Minister.

(5) Where a notice of claim has been made under subsection (3) in respect of an aircraft, ship, carriage, together with all animals and things, dredge or specified machinery seized under this Part and

- (a) no complaint for its forfeiture and condemnation under section 57K, or against the owner thereof for an order in respect of an offence under this Act, in the commission of any act constituting which it is used, is made within ninety days of its seizure or within such further time as may be allowed by the magistrate referred to in section 57H (2), or
- (b) the complaint made for its forfeiture and condemnation under section 57K is rejected, and no order for its forfeiture and condemnation is made under section 57J.,

then, upon order being made therefor by the aforesaid magistrate, the aircraft, ship, carriage, together with all animals and things, or dredge or specified machinery shall be restored to the owner thereof by the person who is given its custody under section 57H (2).

Condemnation of seized aircraft, etc. on conviction.

57J. Where a person is convicted of an offence under this Act or any regulation made thereunder, the court convicting him may, in addition to any other penalty imposed, order that any aircraft, ship, carriage, together with all animals and things, dredge or specified machinery of which he was the owner when the offence was committed and which is liable for forfeiture on account of its use for any act constituting the offence, be forfeited and condemned.

Complaints for forfeiture under this Part.

57K. (1) Subject to the provisions of section 57J, any forfeiture imposed by this Part may be sued for and recovered summarily before a magistrate on the complaint of any officer.

(2) The practice and procedure of the magistrate's court in its civil jurisdiction shall apply to, and in relation to, any complaint under subsection (1).

Disposal of seizure.

57L. All seizures whatsoever which have been made and condemned under this Part shall be disposed of in such manner as may be prescribed by the Minister by regulations.

This Part in addition to, and not in derogation of, other provisions.

57M. The provisions of this Part shall be in addition to, and not in derogation of, the other provision of this Act.

Amendment of section 79 of the Principal Act.

4. Section 79 of the Principal Act is hereby amended in the following respects —

(a) in subsection (1) —

(i) by the insertion in paragraph (u), after the words "like nature", of the words", or aircraft, ship, carriage, animal, thing, dredge or specified machinery";

(ii) by the insertion after paragraph (y), of the following

paragraphs as paragraphs (ya),
(yb) and (yc) —

“(ya) the registration and
licensing of dredges, the terms
and conditions subject to
which the registration or
licence shall be granted, and
the cancellation of the regis-
tration or licence;

(yb) the manner of sale
under sections 57I (4) and
57L;

(yc) the form referred to in
the proviso to section 82A;”;

- (b) by the substitution in subsection
(2), for the words “three hundred”,
of the words “ten thousand”;
- (c) by the substitution in subsection
(3), for the words “three hundred”,
of the words “ten thousand”.

5. The principal Act is hereby amended by the insertion, after
section 82, of the following section as section 82A —

**Insertion of
new section
82A in the
Principal
Act.**

82A. Notwithstanding any other provision
of this Act, the Minister may, in any case he
deems proper and in substitution for any pro-
ceedings in a court, accept on behalf of the State
a sum of money by way of compensation from
any person reasonably suspected of a contraven-
tion of this Act or any regulation made there-
under:

“Power to
accept com-
pensation for
an offence.”

Provided that such compensation shall be
accepted only where the person reasonably sus-
pected of such contravention has expressed his
willingness in the form prescribed by the Minister
by regulations that the contravention as aforesaid
shall be so dealt with.”.

6. Section 85 of the Principal Act is hereby amended by the re-
numbering of it as subsection (1) thereof and —

**Amendment
of section
85 of the
Principal
Act.**

- (a) by the insertion in subsection (1) as
so renumbered, after the words
“other moneys”, of the word “, not

being moneys referred to in subsection (2).”;

- (b) by the insertion after subsection (1) as so renumbered of the following subsection as subsection (2) —

“(2) All fines, penalties, forfeitures, and proceeds of sale of forfeitures, recovered in respect of the contravention of any provision of this Act, all payments made to the Commissioner under section 57H(3) and sums of money received by the Minister under section 82A shall be paid into the Consolidated Fund.”.

EXPLANATORY MEMORANDUM

This Bill seeks to amend the Mining Act so as to make provision for enabling the Minister to make regulations requiring the registration of dredges in mining districts and claims and the taking out of licences for them. It is also proposed to empower the Minister to specify machinery, equipment or plant used for mining, processing or preparation of any metal or mineral which may be required to be registered or for which licence is required to be taken out. Any dredge or specified machinery required to be registered or for which a licence is required to be taken out but is not registered or licenced and found in any mining district or claim shall be liable, as proposed in the Bill, for forfeiture.

2. Provision is also proposed to be made for forfeiture of any aircraft, ship, carriage, together with all animals and things, dredge and specified machinery made use of in the commission of an act, or for a purpose, prohibited by or under the Mining Act. Incidental provisions for search of any such aircraft, etc. and seizure of aircraft, etc. liable for forfeiture, are also proposed to be made.

3. The maximum penalty for the breach of any regulation made under the Act that may be prescribed under section 79 (2) or that may be imposed under section 79 (3) is proposed to be increased to ten thousand dollars from three hundred dollars.

4. The Bill also seeks to empower the Minister to accept on behalf of the State compensation from any person reasonably suspected of contravention of the Act or any regulation made under in substitution for proceedings in a court. Besides, it is proposed to clarify that all fines, penalties, forfeitures and proceeds of sale of forfeitures and certain other payments and receipts under the Act shall be paid into the Consolidated Fund.

H. Rashid,
Minister of Energy & Mines.

(Bill No. 19/1983).
(EM: 22/10).