Antarctic Minerals Act 1989

1989 CHAPTER 21

An Act to make provision with respect to the exploration and exploitation of mineral resources in Antarctica; to enable proceedings with respect to matters arising under the law of the British Antarctic Territory to be brought in England and Wales; and for connected purposes. [21st July 1989]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Exploration and exploitation

1 General prohibition

(1) Except as provided by section 2 below, a person to whom this section applies shall not carry on in Antarctica any activities for, or for purposes connected with, the exploration or exploitation of mineral resources.

(2) This section applies to United Kingdom nationals, Scottish firms, and bodies incorporated under the law of any part of the United Kingdom.

(3) Her Majesty may by Order in Council extend the application of this section to bodies incorporated under the law of any of the Channel Islands, the Isle of Man or any colony.

(4) In this Act—

"Antarctica" means the following areas—

(a) the continent of Antarctica (including all its ice shelves);

(b) all Antarctic islands, that is to say, islands south of 60° South Latitude; and

(c) all areas of continental shelf which are adjacent to that continent or those islands,

and for this purpose "continental shelf" shall be construed in accordance with the rules of international law;

"mineral resource" means any natural resource which is neither living nor renewable;

"United Kingdom national" means an individual who is—

(a) a British citizen, a British Dependent Territories citizen, a British National (Overseas) or a British Overseas citizen;

(b) a person who under the British Nationality Act 1981 is a British subject; or

(c) a British protected person within the meaning of that Act.

2 Exception for prospecting activities

(1) Section 1 above does not apply to any activities which are carried on in Antarctica by any person for, or for purposes connected with, the identification of suitable areas for the further exploration or the exploitation of mineral resources (in this Act referred to as "prospecting activities") if—

(a) he is authorised to carry on those activities by a licence granted under section 3 below or by an authorisation granted under the corresponding law of another Contracting State; or

(b) he is an agent or employee of (or an employee of an agent of) a person so authorised, the Crown or another Contracting State and is acting in accordance with the terms of his agency or employment.

(2) In this Act—

"the Commission" means the Antarctic Mineral Resources Commission established in pursuance of Article 18 of the Convention;

"Contracting State" means a State which is a party to the Convention;

"the Convention" means the Convention on the Regulation of Antarctic Mineral Resource Activities done at Wellington on 2nd June 1988;

"the Crown" means the Crown in right of Her Majesty's Government in the United Kingdom;

"prospecting activities" includes field observations, geological, geochemical and geophysical investigations, the use of remote sensing techniques and the collection of samples, but does not include—

(a) drilling to depths exceeding 25 metres or such other depth as the Commission may determine for particular circumstances; or

(b) dredging or excavation otherwise than for the purpose of obtaining small-scale samples.

(3) For the purposes of this Act persons in the service of the Crown shall be taken to be employees of the Crown whether or not they would be so taken apart from this subsection.

Licensing of prospecting activities

3 Grant of licences

(1) Subject to the provisions of this section, the Secretary of State may, if he thinks fit, grant a licence authorising any person to carry on such prospecting activities as may be described in the licence (in this section referred to as "the authorised activities").

(2) An application for a licence shall be accompanied by such fee (if any) as may be prescribed.

(3) The Secretary of State shall not grant a licence to any person unless he is satisfied that the carrying on by that person of the authorised activities will be consistent with the international obligations of the United Kingdom.

(4) A licence shall be granted for such period, and subject to such conditions, as the Secretary of State thinks fit.

(5) Without prejudice to the generality of subsection (4) above, a licence may include conditions—

(a) requiring the licensee to pay to the Secretary of State such sums as may with the consent of the Treasury be determined by or under the licence at such times as may be so determined;

(b) requiring the licensee, to such extent as may be determined by or under the licence, to insure himself against any liability incurred in respect of such loss or damage arising out of the carrying on by him of authorised activities as may be so determined; and

(c) providing for the termination of the licence on an event specified in the licence.

(6) In this Act—

"licence" means a licence under this section and "licensee" shall be construed accordingly;

"prescribed" means prescribed by regulations made under section 6 below.

4 Transfer, variation, suspension or termination of licences

(1) A licence may be transferred with the written consent of the Secretary of State and in such other cases as may be prescribed.

(2) The Secretary of State may revoke, vary or suspend a licence with the consent of the licensee or where it appears to him—

(a) that a condition of the licence or a provision of regulations made under section 6 below has not been complied with; or

(b) that the revocation, variation or suspension is required to secure compliance with any international obligation of the United Kingdom.

(3) The suspension, revocation, termination or expiry of a licence shall not affect the obligations of the licensee under the conditions of the licence.

5 Obligation of licensees to indemnify government against claims

A licensee shall indemnify Her Majesty's Government in the United Kingdom against any claims brought against them in respect of loss or damage arising out of the carrying on by him of the activities authorised by his licence.

Other controls

6 Power to make regulations

(1) The Secretary of State may make regulations—
- (a) prescribing anything required or authorised to be prescribed under this Act;
- (b) for securing compliance with the international obligations of the United Kingdom;
- (c) for securing the safety, health and welfare of persons engaged in prospecting activities; and
- (d) generally for carrying this Act into effect.

(2) Regulations under this section may make different provision for different cases and may, in particular, make provision—
- (a) for the granting of exemptions from requirements of the regulations in such circumstances, for such periods and to such extent as may be determined by or under the regulations;
- (b) for anything falling to be determined under the regulations to be determined by such persons, in accordance with such procedure and by reference to such matters and to the opinion of such persons as may be prescribed.

(3) Regulations under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

7 Power to give directions

(1) If it appears to the Secretary of State—
- (a) that an activity is being carried on by a person to whom section 1 above applies in contravention of subsection (1) of that section; or
- (b) that an activity is being carried on by a licensee, or by an agent or employee of (or an employee of an agent of) a licensee, in contravention of a condition of the licence or of a provision of regulations made under section 6 above,

he may give such directions to that person or licensee (or, in the case of a body corporate, to the holder of any office in that body) as appear to him necessary to secure compliance with the international obligations of the United Kingdom, with the conditions of the licence or with the regulations.

(2) Compliance with a direction may, without prejudice to other means of enforcement, be enforced on the application of the Secretary of State by injunction or, in Scotland, by interdict or by order under section 91 of the Court of Session Act 1868.

8 Appointment of inspectors

(1) The Secretary of State may appoint as inspectors to discharge such functions as may be prescribed and generally to assist him in the execution of this Act such persons appearing to him to be qualified for the purpose as he considers appropriate.

(2) The Secretary of State may make to or in respect of any inspector appointed under subsection (1) above such payments by way of remuneration or otherwise as the Secretary of State may determine with the approval of the Treasury.

(3) Regulations under section 6 above may make provision with respect to any of the following matters—

(a) powers of inspectors to obtain access to all parts of any ship, aircraft, installation or station used in connection with prospecting activities, and to inspect and take copies of any log book or other document;

(b) powers of inspectors to test equipment and, in special circumstances, to dismantle, test to destruction or take possession of any article of equipment;

(c) powers of inspectors to require, in connection with the survey or inspection of any equipment, the carrying out of procedures by such persons as may be prescribed;

(d) rights of inspectors to require, on payment of reasonable costs, conveyance to or from any ship, aircraft, installation or station used in connection with any prospecting activities, together with any equipment required by them for testing, or any equipment of which they have taken possession in special circumstances;

(e) duties to provide inspectors with reasonable accommodation and means of subsistence while on any ship, aircraft, installation or station in the exercise of their functions under this Act;

(f) powers to be exercisable by inspectors in case of immediate or apprehended danger.

9 Disclosure of information

(1) Subject to subsection (2) below, a person shall not disclose any information—

(a) which he has received in pursuance of this Act, a condition of a licence or a provision of regulations made under section 6 above; and

(b) which relates to some other person.

(2) Subsection (1) above does not apply to any disclosure which is made—

(a) with the written consent of the other person; or

(b) to the Treasury, the Commissioners of Inland Revenue or the Secretary of State; or

(c) with a view to the institution of or otherwise for the purposes of any criminal proceedings under this Act; or

(d) in accordance with the Convention or with regulations made under section 6 above.

Criminal and civil liability

10 Offences under Act

(1) Any person who—

(a) carries on an activity in contravention of section 1(1) above;

(b) for the purpose of obtaining a licence (for himself or another), knowingly or recklessly makes a statement which is false in a material particular;

(c) being a licensee, fails to comply with the conditions of his licence;

(d) fails to comply with such provisions of regulations made under section 6 above as may be prescribed;

(e) fails to comply with a direction under section 7 above; or

(f) discloses any information in contravention of section 9 above,

shall be liable on conviction on indictment to a fine and on summary conviction to a fine not exceeding the statutory maximum.

(2) Proceedings for an offence under this Act may be taken, and the offence may for incidental purposes be treated as having been committed, in any place in the United Kingdom.

(3) Proceedings for an offence under this Act shall not be instituted in England and Wales or Northern Ireland except by the Secretary of State, by a person authorised by him in that behalf or—

(a) in England and Wales, by or with the consent of the Director of Public Prosecutions; or

(b) in Northern Ireland, by or with the consent of the Director of Public Prosecutions for Northern Ireland.

(4) Where an offence under this Act has been committed by a body corporate and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of—

(a) a director, manager, secretary or other similar officer of the body corporate; or

(b) any person who was purporting to act in any such capacity,

he as well as the body corporate shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

In this subsection "director", in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.

(5) In any proceedings for an offence under paragraph (a), (c), (d) or (e) of subsection (1) above, it shall be a defence to prove that the accused took all reasonable precautions to avoid the commission of the offence.

11 Application of criminal law to certain persons

(1) Where—

(a) anything is done, or omitted to be done, by a qualifying agent or employee while he is in Antarctica in the course of his agency or employment, or by an inspector or designated observer while he is in Antarctica for the purpose of exercising his functions as such; and

(b) the act or omission would, if it occurred in any part of the United Kingdom, be an offence under the law of that part of the United Kingdom,

he shall by virtue of this section be guilty of the like offence as if the act or omission had occurred in that part of the United Kingdom and shall be liable to be proceeded against and punished accordingly.

(2) Subsection (1) above shall have effect without prejudice to the operation of section 10 above.

(3) In this section—

"designated observer" means a United Kingdom national who has been designated as an observer either by or on behalf of Her Majesty's Government in the United Kingdom or by the Commission under Article 12 of the Convention;

"inspector" means an inspector appointed under section 8 above;

"qualifying agent or employee" means an agent or employee of (or an employee of an agent of) a licensee or the Crown.

12 Strict liability for certain loss or damage etc

(1) The provisions of the Convention which are set out in Part I of the Schedule to this Act (strict liability for loss or damage etc.)—

(a) shall have the force of law in the United Kingdom; and

(b) shall for that purpose be construed in accordance with subsection (2) below and the provisions of the Convention which are set out in Part II of that Schedule.

(2) In the provisions set out in Part I of the Schedule to this Act—

"Antarctic mineral resource activities" means any activities carried on in Antarctica for, or for purposes connected with, the exploration or exploitation of mineral resources;

"the Antarctic Treaty" means the Antarctic Treaty done at Washington on 1st December 1959;

"operator" means a licensee or, in the case of activities carried on by or on behalf of the Crown, the Crown.

13 Civil liability for breach of statutory duty

(1) Breach of a duty imposed on any person by a provision of regulations made under section 6 above which states that this subsection applies to such a breach shall be actionable so far, and only so far, as the breach causes personal injury; and references in—

(a) section 1 of the Fatal Accidents Act 1976;

(b) section 1 of the Damages (Scotland) Act 1976; and

(c) Article 3(1) of the Fatal Accidents (Northern Ireland) Order 1977,

to a wrongful act, neglect or default shall include references to any such breach which is so actionable.

(2) Nothing in subsection (1) above shall prejudice any action which lies apart from the provisions of that subsection.

(3) The provisions of this section, and any provisions of regulations made under section 6 above to which they relate, shall bind the Crown.

(4) In this section "personal injury" includes any disease, any impairment of a person's physical or mental condition and any fatal injury.

British Antarctic Territory

14 Jurisdiction with respect to proceedings under territorial law

(1) Her Majesty may by Order in Council confer on any court in England and Wales such criminal or civil jurisdiction (whether original or appellate) in respect of matters arising under the law of the British Antarctic Territory (in this section referred to as "the territory") as Her Majesty thinks fit.

(2) An Order in Council under this section may make such provision as Her Majesty thinks fit with respect to, or for purposes connected with, the exercise of any jurisdiction conferred by the Order on any court, including in particular provision—

(a) as to procedure, the attendance of witnesses and the production of documents; and

(b) as to the enforcement and execution of, and appeals from, any judgment, decree, order or sentence of the court.

(3) Without prejudice to the generality of subsection (2) above, an Order in Council under this section which confers criminal jurisdiction may make provision for any of the following matters, that is to say—

(a) the conveyance in custody of any person suspected of committing an offence under the law of the territory to any place in England and Wales where he can be tried for that offence;

(b) the seizure and detention of any article which may be evidence of such an offence and its conveyance to any place in England and Wales where a person charged with that offence can be tried; and

(c) the arrest, in any part of the United Kingdom, of any person suspected of committing such an offence.

(4) This section shall have effect without prejudice—

(a) to any other powers of Her Majesty;

(b) to the jurisdiction, apart from this section, of any court (whether in the territory, any part of the United Kingdom or elsewhere) in respect of anything arising under the law of the territory.

(5) No recommendation shall be made to Her Majesty to make an Order in Council under this section unless a draft of the Order has been laid before and approved by a resolution of each House of Parliament.

Supplemental

15 Powers of arrest etc

(1) Her Majesty may by Order in Council make provision for any of the following matters, that is to say—

(a) the arrest in any part of Antarctica of any person suspected of committing an offence under this Act;

(b) the conveyance in custody of any person so arrested to any place where he can be tried for that offence;

(c) the seizure and detention of any article which may be evidence of an offence under this Act and its conveyance to any place where a person charged with that offence can be tried; and

(d) the attendance, before any court by which a person can be tried for an offence under this Act, of any person required to give evidence or produce documents in proceedings relating to that offence.

(2) Any Order in Council made under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

16 Evidence

(1) Her Majesty may by Order in Council certify who are the Contracting States.

(2) For the purpose of any proceedings before any court in any part of the United Kingdom—

(a) any Order in Council under subsection (1) above shall be conclusive evidence of the matters certified by the Order; and

(b) any document purporting—

(i) to be a licence under section 3 above or an authorisation granted under the corresponding law of another Contracting State; and

(ii) to be issued in respect of a person bearing the name by which a person is referred to in those proceedings,

shall, unless the contrary is proved, be presumed to be such a licence or authorisation and to relate to the person so referred to.

17 Status of Commission

The Commission shall have the legal capacities of a body corporate.

18 Financial provisions

(1) There shall be paid out of money provided by Parliament any sums which Her Majesty's Government in the United Kingdom are obliged to pay to the Commission or other persons under or by virtue of the Convention.

(2) Any fees or other sums received by the Secretary of State by virtue of any provision of this Act shall be paid into the Consolidated Fund.

19 Index of defined expressions

The following Table shows provisions defining or otherwise explaining expressions used in this Act (other than provisions defining or explaining an expression used only in the same section)—

Antarctica	section 1(4)
the Commission	section 2(2)
Contracting State	section 2(2)
the Convention	section 2(2)
the Crown	section 2(2)
employee of the Crown	section 2(3)
licence and licensee	section 3(6)

mineral resource	section 1(4)
person to whom section 1 applies	section 1(2) and (3)
prescribed	section 3(6)
prospecting activities	section 2(1) and (2)
United Kingdom national	section 1(4)

20 Short title, commencement and extent

(1) This Act may be cited as the Antarctic Minerals Act 1989.

(2) This Act shall come into force on such day as the Secretary of State may by order appoint; and different days may be appointed under this subsection for different purposes.

(3) Her Majesty may by Order in Council direct that any of the provisions of this Act shall extend, with such modifications (if any) as may be specified in the Order, to the Channel Islands, the Isle of Man or any colony.

(4) It is hereby declared that this Act extends to Northern Ireland.

SCHEDULE Section 12.

STRICT LIABILITY FOR CERTAIN LOSS OR DAMAGE ETC.

PART I

PROVISIONS OF THE CONVENTION HAVING EFFECT OF LAW

Article 8(2)

An Operator shall be strictly liable for:

(a) damage to the Antarctic environment or dependent or associated ecosystems arising from its Antarctic mineral resource activities, including payment in the event that there has been no restoration of the *status quo ante* ;

(b) loss of or impairment to an established use, as referred to in Article 15, or loss of or impairment to an established use of dependent or associated ecosystems, arising directly out of damage described in sub-paragraph (a) above;

(c) loss of or damage to property of a third party or loss of life or personal injury of a third party arising directly out of damage described in sub-paragraph (a) above;

(d) reimbursement of reasonable costs by whomsoever incurred relating to necessary response action, including prevention, containment, clean up and removal measures, and action taken to restore the *status quo ante* where Antarctic mineral resource activities undertaken by that Operator result in or threaten to result in damage to the Antarctic environment or dependent or associated ecosystems.

Article 8(4)

An Operator shall not be liable pursuant to paragraph 2 above if it proves that the damage has been caused directly by, and to the extent that it has been caused directly by:

(a) an event constituting in the circumstances of Antarctica a natural disaster of an exceptional character which could not reasonably have been foreseen; or

(b) armed conflict, should it occur notwithstanding the Antarctic Treaty, or an act of terrorism directed against the activities of the Operator, against which no reasonable precautionary measures could have been effective.

Article 8(6)

If an Operator proves that damage has been caused totally or in part by an intentional or grossly negligent act or omission of the party seeking redress, that Operator may be relieved totally or in part from its obligation to pay compensation in respect of the damage suffered by such party.

Article 8(12)

When compensation has been paid other than under this Convention liability under this Convention shall be offset by the amount of such payment.

PART II

PROVISIONS FOR CONSTRUING THE PROVISIONS SET OUT IN PART I

Article 1(15)

"Damage to the Antarctic environment or dependent or associated ecosystems" means any impact on the living or non-living components of that environment or those ecosystems, including harm to atmospheric, marine or terrestrial life, beyond that which is negligible or which has been assessed and judged to be acceptable pursuant to the Convention.

Article 15(1)

Decisions about Antarctic mineral resource activities shall take into account the need to respect other established uses of Antarctica, including:

(a) the operation of stations and their associated installations, support facilities and equipment in Antarctica;
(b) scientific investigation in Antarctica and cooperation therein;
(c) the conservation, including rational use, of Antarctic marine living resources;
(d) tourism;
(e) the preservation of historic monuments; and
(f) navigation and aviation,

that are consistent with the Antarctic Treaty system.