

ANTARCTIC ACT 2013

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1 – Environmental Emergencies

Application of this Part

Section 9 – General exclusions

41. *Subsection (1)* excludes from criminal and civil liability under Part 1 of the Act a person organising activities as an employee of another person, in the course of service in the regular forces or in the course of service or undertaking training or duties in the reserve forces.
42. *Subsection (3)* specifies activities which are not covered by Part 1 of the Act. These are: fishing for profit and activities carried out on a vessel or aircraft while travelling to an immediate destination outside Antarctica. These exclusions are consistent with those in section 5(2) of the Antarctic Act 1994, and incorporate the exemptions provided for by Article VI of the Antarctic Treaty, which applies by virtue of Article 4 of the Protocol.
43. *Subsection (5)* sets out the situations in which criminal liability for failure to take reasonable response action to an environmental emergency under section 1, or civil liability under sections 2 and 3, will not arise. In respect of a natural disaster, the exclusion of liability will only apply in circumstances where the organiser had taken preventative measures under section 5. This subsection reflects the exemptions from liability in Article 8 of the Liability Annex. The list of situations in subsection (5) is exhaustive.

Section 10 – The Crown

44. *Subsection (1)* provides that Part 1 binds the Crown, except as otherwise expressly provided (for example, section 6(1) (insurance) does not apply to the Crown – see section 6(8)(a)). *Subsection (2)* exempts the Crown from criminal liability, although not persons in the service of the Crown (*subsection (3)*) (although, as explained above, section 9(1) exempts members of the armed forces from liability). *Subsection (2)* provides however for a relevant court to make a declaration against the Crown. For the purposes of Part 1 of the Act, *subsection (4)* ensures that references to the Crown include the Natural Environment Research Council (including the British Antarctic Survey), which is a Non-Departmental Public Body, and any other persons specified by the Secretary of State by order.