

ANTARCTIC ACT 2013

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2 – Miscellaneous and Final

Miscellaneous

Section 16 – Conservation of animals and plants

57. Section 7(1)(e) of the 1994 Act makes it an offence to remove or damage such quantities of any native plant that its local distribution or abundance will be significantly affected, except in accordance with a permit granted under section 12 or under the written authorisation of another Party to the Protocol. *Subsection (2)* of this section extends this to native invertebrates. This amendment reflects recent revisions to Annex II to the Protocol to the Antarctic Treaty, adopted at the 32nd Antarctic Treaty Consultative Meeting in 2009.
58. *Subsection (3)* is explained below in the context of subsection (9)(b).
59. Section 8 of the 1994 Act makes it an offence to introduce a non-indigenous species into Antarctica (unless authorised by a permit granted under section 12). Subsection (2) of section 8 does, however, allow for animals and plants to be kept on board vessels visiting Antarctica, providing the animal remains on board. *Subsection (4)* of this section replaces section 8(2) of the 1994 Act, so as to limit the scope of this exception. The new subsection means that the keeping of animals on board vessels in Antarctica is prohibited unless the animal is a recognised assistance dog or if the vessel is merely transiting the Antarctic marine area. This will bring section 8 of the 1994 Act into line with legislative provisions regarding the keeping of any animals on board vessels in Antarctica that can be found in many other Antarctic Treaty Parties' domestic legislation. These provisions prohibit the keeping of animals on board vessels in Antarctica generally, while providing an exception for assistance dogs. These exceptions recognise that certain visitors with assistance needs will require the aid of an assistance dog on board their vessel when they are visiting Antarctica.
60. *Subsection (5)* adds a new subsection into section 8 which provides that the introduction of a microscopic organism into the Antarctic environment is not prohibited by section 8. It also inserts a new *subsection (5)* into section 8 of the 1994 Act, which provides a definition of a plant for the purposes of section 8. This definition is consistent with the definition of “native plant” in section 31 of the 1994 Act (as amended by section 16(9)(c)).
61. *Subsection (6)* inserts a new section 8A into the 1994 Act. Subsection (1) of new section 8A prohibits the introduction of any microscopic organism of a non-native species into Antarctica, except in accordance with a permit. The prohibition does not apply to a person who takes reasonable precautions to prevent the introduction of the organism (subsection (2)). The prohibition also does not include organisms inhabiting the human body or the body of an animal (subsection (3)). These new provisions reflect revisions to Annex II to the Protocol adopted in 2009. Subsection (4) creates an offence

*These notes refer to the Antarctic Act 2013 (c.15)
which received Royal Assent on 26 March 2013*

for contravening subsection (1) for which the penalties are provided in section 20 of the 1994 Act, namely a maximum 2 year prison sentence, a fine or both on conviction on indictment, or a fine not exceeding the statutory maximum on summary conviction. This reflects the 2009 revisions to Annex II of the Protocol.

62. *Subsection (8)* inserts a new section 8B into the 1994 Act. Subsection (1) prohibits the introduction of non-sterile soil into any part of Antarctica. Subsection (2) disapplies subsection (1) if the person took reasonable precautions to prevent the introduction of the non-sterile soil. Subsection (3) creates an offence for contravening subsection (1) for which the penalties are provided in section 20 of the 1994 Act, namely a maximum 2 year prison sentence, a fine or both on conviction on indictment, or a fine not exceeding the statutory maximum on summary conviction. This reflects the 2009 revisions to Annex II of the Protocol.
63. *Subsections (9)(a) and (10)* reflect recent revisions to Annex II of the Protocol, which make clear that it protects species which migrate to Antarctica permanently, for example as a result of climatic changes. This section inserts a new provision into section 31 of the 1994 Act to specify that references to a species “indigenous to Antarctica” include a species occurring in Antarctica through natural migration. This change therefore broadens the definitions of “native bird”, “native invertebrate” and “native mammal” in section 31.
64. *Subsection (9)(b)* extends the definition of “native invertebrate” and “native plant” in section 31 of the 1994 Act, to include marine invertebrates and plants. This has the effect that section 7(1)(e), (f), and (g) will also now cover native marine plants and native marine invertebrates in Antarctica. *Subsection (3)* makes a consequential amendment to the 1994 Act to exempt accidental harm to native marine invertebrates and native marine plants from constituting an offence under section (7)(1)(e), (f) or (g) as a result of the normal operations of a vessel (for example, anchoring) and fishing for profit.