

ANTARCTIC ACT 2013

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2 – Miscellaneous and Final

Miscellaneous

Section 14 – Application of offences to non-nationals

52. Under section 12 of the 1994 Act the Secretary of State may grant a permit in respect of a United Kingdom national to do anything which is otherwise prohibited under section 7(1), 8(1) or 9(1) of the 1994 Act. These provisions prohibit United Kingdom nationals from harming Antarctic fauna and flora, introducing non-native species into Antarctica and entering restricted areas, respectively, without a permit. Non-United Kingdom nationals wishing to conduct such activities are not currently eligible for a United Kingdom permit, even if their activity is to take place on an expedition organised by a British scientific institution. The Protocol requires all persons wishing to engage in such activities to obtain a prior permit. Therefore, if a non-United Kingdom national on a British expedition wishes to carry out such an activity, authorisation must be obtained from another State Party in respect of that individual. This requirement has, on occasions, caused inconvenience to British scientific institutions which employ non-United Kingdom nationals to conduct scientific research in Antarctica. Moreover, in cases where the individual scientist is a national of a State which is not a Party to the Protocol, it may not currently be possible for that individual to be covered by a permit at all.
53. *Subsection (2)* amends sections 7(1), 8(1) and 9(1) of the 1994 Act by extending the scope of those offences to cover non-United Kingdom nationals on a British expedition. (“British expedition” is defined by section 3 of that Act.) *Subsection (4)* amends section 12 of that Act to enable the Secretary of State to grant a permit for an activity otherwise prohibited by section 7, 8 or 9 to a non-United Kingdom national on a British expedition, for the purposes of education or scientific research.
54. *Subsection (2)* also extends sections 10 and 11 of the 1994 Act to cover non-United Kingdom nationals on a British expedition. Section 10 protects historic sites and monuments in Antarctica, and section 11 prohibits entry into protected places.

Section 15 – Historic Sites and Monuments: permits

55. Section 10 of the 1994 Act makes it an offence to damage, destroy or remove any part of a historic site or monument. This reflects the provisions of Annex V to the Protocol which protect such historic sites and monuments. However, the prohibition in section 10 may on occasion impede effective conservation management of these sites, for example, where it is necessary to remove part of a monument or an object within a site temporarily for conservation or repair work.
56. This section amends section 10 of the 1994 Act to enable the Secretary of State to grant a new form of permit in respect of conservation or repair work of designated Historic

Sites and Monuments. A consequential amendment to section 15 of the 1994 Act is also made, to ensure that in granting any such permit, the Secretary of State would be obliged to have regard to the provisions of the Protocol and to any measures adopted by the Antarctic Treaty Meeting.

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 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.

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

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.

Final

Section 17 – Northern Ireland

65. *Subsection (1)* amends Schedule 2 to the Northern Ireland Act 1998, which specifies excepted matters, by inserting in it regulation of activities in Antarctica (as defined in section 1 of the 1994 Act), with the effect that this matter is included among those not devolved to the Northern Ireland Assembly. *Subsection (2)* gives subsection (1) retrospective effect to the date that Schedule 2 to the Northern Ireland Act came into force.

Section 18 – Extent, commencement and short title

66. The Act extends to England and Wales, Scotland and Northern Ireland. *Subsection (2)* provides in addition that powers in the 1994 Act to extend provisions to the Channel Islands, the Isle of Man or any British overseas territory by Order in Council may be exercised in respect of the provisions in Part 1 of the Act and the provisions of the Antarctic Act 1994 as amended by sections 14 to 16.
67. *Subsection (3)* provides for Part 1 of the Act to come into force on a date appointed by order of the Secretary of State. It is proposed that such an order would be made to coincide with the entry into force of the Liability Annex, which will occur when all 28 Antarctic Treaty Consultative Parties which adopted it in 2005 have approved it.
68. *Subsection (4)* provides for sections 14 to 16 of the Act to come into force two months after Royal Assent.