
STATUTORY INSTRUMENTS

2020 No. 1251

**EXITING THE EUROPEAN UNION
ANTARCTICA**

**The Antarctic Act 1994 (Convention for the Conservation
of Antarctic Marine Living Resources) Regulations 2020**

Made - - - - 6th November 2020

Laid before Parliament 12th November 2020

Coming into force in accordance with regulation 1

The Secretary of State, in exercise of the powers conferred by section 25 of the Antarctic Act 1994⁽¹⁾, including those powers as extended to the Bailiwick of Guernsey by the Antarctic Act 1994 (Guernsey) Order 1995⁽²⁾, the Bailiwick of Jersey by the Antarctic Act 1994 (Jersey) Order 1995⁽³⁾ and the Isle of Man by the Antarctic Act 1994 (Isle of Man) Order 1995⁽⁴⁾ makes the following Regulations:

PART 1

Introduction

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Antarctic Act 1994 (Convention for the Conservation of Antarctic Marine Living Resources) Regulations 2020 and subject to paragraph (3) come into force immediately before IP completion day within the meaning of section 39(1) of the EU (Withdrawal Agreement) Act 2020⁽⁵⁾.

(2) These Regulations extend to the United Kingdom and the Bailiwick of Guernsey, the Bailiwick of Jersey and the Isle of Man.

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- (1) 1994 c. 15. The 1994 Act was amended by the Antarctic Act 2013 (c. 15), but no amendments were made to section 25 of the 1994 Act.
- (2) S.I. 1995/1033 as amended by S.I. 2018/1073. S.I. 2018/1073 extended to the Bailiwick of Guernsey the amendments made to the Antarctic Act 1994 by sections 14 to 16 of the Antarctic Act 2013.
- (3) S.I. 1995/1034 as amended by S.I.2016/1215. S.I. 2016/1215 extended to the Bailiwick of Jersey the amendments made to the Antarctic Act 1994 by sections 14 to 16 of the Antarctic Act 2013.
- (4) S.I. 1995/1035 as amended by S.I. 2015/1531. S.I. 2015/1531 extended to the Isle of Man the amendments made to the Antarctic Act 1994 by sections 14 to 16 of the Antarctic Act 2013.
- (5) 2020 c. 1.

- (3) These Regulations come into force—
- (a) in the Bailiwick of Guernsey, on the day following the day on which they are registered by the Royal Court of Guernsey or the day on which they come into force in the United Kingdom, whichever is the later;
 - (b) in the Bailiwick of Jersey, on the day following the day on which they are registered by the Royal Court of Jersey or the day on which they come into force in the United Kingdom, whichever is the later;
 - (c) in the Isle of Man, on the day on which they come into force in the United Kingdom.

Interpretation

2. In these Regulations—

“British Overseas Territory administration” means the administration of any territories mentioned in Schedule 6 to the British Nationality Act 1981⁽⁶⁾;

“British vessel” means a British ship within the meaning of section 1 of the Merchant Shipping Act 1995⁽⁷⁾, a Guernsey ship within the meaning of section 1(3) of the Merchant Shipping (Bailiwick of Guernsey) Law, 2002⁽⁸⁾, a Jersey ship within the meaning of Article 2 of the Jersey (Shipping) Law 2002⁽⁹⁾, or a Manx ship within the meaning of the Merchant Shipping Registration Act 1991⁽¹⁰⁾;

“CCAMLR inspector” means a person designated (whether by the United Kingdom or any other Commission member) under Article XXIV of the Convention as such;

“CCAMLR observer” means a person designated (whether by the United Kingdom or any other Commission member) under Article XXIV of the Convention as such;

“Commission” means the Commission for the Convention established under Article VII of the Convention;

“Convention” means the Convention for the Conservation of Antarctic Marine Living Resources done at Canberra on 20th May 1980⁽¹¹⁾;

“Convention Area” means the area provided for in paragraph 1 of Article I of the Convention;

“fisheries administrations” means—

- (a) the Secretary of State;
- (b) the Marine Management Organisation;
- (c) the Scottish Ministers;
- (d) the Welsh Ministers;
- (e) the Department of Agriculture, Environment and Rural Affairs in Northern Ireland;
- (f) a British Overseas Territory administration;
- (g) in the Bailiwick of Guernsey, the States of Guernsey Committee for Economic Development;

⁽⁶⁾ 1981 c. 61. Schedule 6 has been amended by section 1 of the British Overseas Territories Act 2002 (c. 8) and S.I. 1983/882, 1986/948, 2001/3497 and 2009/2744.

⁽⁷⁾ 1995 c. 21. This definition includes vessels registered in a “relevant British possession” which is further defined in section 313 of the Merchant Shipping Act to include vessels registered in any of the Channel Islands or the Isle of Man or a colony (which includes a British Overseas Territory).

⁽⁸⁾ Order in Council No. VIII of 2004, as amended.

⁽⁹⁾ Revised edition chapter 19.885.

⁽¹⁰⁾ AT 15 of 1991 (Isle of Man).

⁽¹¹⁾ Treaty Series No. 49 (1982). Cmnd 8714.

- (h) in the Bailiwick of Jersey, the Minister within the meaning of the Sea Fisheries (Jersey) Law 1994⁽¹²⁾;
- (i) in the Isle of Man, the Department of Environment, Food and Agriculture;
“to fish” includes catching and retaining marine living resources on board as well as landing and transshipping marine living resources.

PART 2

Fishing for profit and authorisation

Notification of intention to fish for profit by British vessel in the Convention Area

3.—(1) The Secretary of State must notify the Commission, in accordance with the relevant conservation measures⁽¹³⁾, of any British vessel which intends to fish for profit in the Convention Area.

(2) Before notifying the Commission, the Secretary of State must consult the fisheries administrations.

Prohibition on fishing for profit by British vessel in the Convention Area

4. No British vessel may enter the Convention Area to fish for profit except in accordance with an authorisation issued under regulation 5.

Authorisation to fish in the Convention Area

5.—(1) The Secretary of State may, on the application of any person, grant to that person an authorisation which authorises any British vessel, of which that person is the operator and which is specified in the authorisation, to enter the Convention Area to fish for profit during a specified period.

(2) The Secretary of State must not grant an authorisation under this regulation unless the Secretary of State is satisfied that a licence has been granted in respect of the vessel by the relevant fisheries administration which authorises the vessel to fish for profit in the Convention Area for the period for which the authorisation is sought.

(3) The Secretary of State must consult the relevant fisheries administration which issued the licence under paragraph (2) before determining whether to grant an authorisation for the period for which the authorisation is sought.

(4) The Secretary of State may, on granting an authorisation under paragraph (1), attach to the authorisation such conditions as the Secretary of State thinks appropriate.

(5) Such conditions, in respect of vessels which have been granted a licence by the Scottish Ministers, Welsh Ministers or the Department for Agriculture, Environment and Rural Affairs in Northern Ireland, may only apply in respect of Antarctica⁽¹⁴⁾.

(6) The Secretary of State must notify the Commission of any authorisation granted in accordance with this regulation and provide such details of the authorisation as the Secretary of State considers necessary under the relevant conservation measures⁽¹⁵⁾ adopted by the Commission.

⁽¹²⁾ Revised edition chapter 14.825.

⁽¹³⁾ The relevant conservation measures which require such notification are paragraph 3 of Conservation Measure 21-01, paragraph 6 of Conservation Measure 21-02, paragraph 1 of Conservation Measure 21-03 and paragraph 3 of Conservation Measure 24-01. All conservation measures are available at www.ccmlr.org/en/conservation-and-management/browse-conservation-measures.

⁽¹⁴⁾ “Antarctica” is defined in section 1 of the Antarctic Act 1994.

⁽¹⁵⁾ Paragraphs 3 and 4 of Conservation-Measure 10-02 is the relevant conservation measure.

Guidance

- 6.—(1) The Secretary of State must issue and publish guidance which sets out—
- (a) the conservation measures adopted by the Commission relevant to a British vessel which intends to fish for profit in the Convention Area;
 - (b) the process for making an application under regulation 5; and
 - (c) any other matters which the Secretary of State considers to be relevant.
- (2) Before issuing and publishing any guidance under paragraph (1), the Secretary of State must consult the fisheries administrations.

Revocation or suspension of an authorisation

- 7.—(1) The Secretary of State may revoke, vary or suspend an authorisation granted in accordance with regulation 5.
- (2) The Secretary of State must notify the person to whom the authorisation was granted, as well as the relevant fisheries administration, of any revocation, variation or suspension of the authorisation.
- (3) The Secretary of State must notify the Commission of any revocation, variation or suspension of an authorisation.

PART 3

Criminal offences

Fishing without an authorisation

- 8.—(1) A person commits an offence if—
- (a) the person is the master, owner or operator of a British vessel which enters the Convention Area to fish for profit without an authorisation;
 - (b) the person is the master, owner or operator of a British vessel from which a person fishes for profit in the Convention Area without an authorisation or in contravention of an authorisation (including any conditions attached thereto); or
 - (c) the person fishes for profit from a British vessel in the Convention Area without an authorisation or in contravention of an authorisation (including any conditions attached thereto).
- (2) A person commits an offence if the person generates revenue from, or benefits from revenue generated from, any of the actions of the persons in paragraph (1)(a) to (c).
- (3) A person commits an offence if the person enables or supports any of the actions in paragraph (1)(a) to (c) where the person had reason to suspect that such actions would take place in contravention of any conditions of any authorisation granted.
- (4) If subsection (1)(a) is contravened by the master of the vessel, the owner of the vessel and the operator of the vessel, each commits an offence.
- (5) It is a defence for a person charged with an offence under—
- (a) paragraph (1)(a) to prove that the entry into the Convention Area without an authorisation took place by reasons of matters outside the control of the person and that the person took all reasonable precautions to avoid such entry;
 - (b) paragraph (1)(b) to prove that the person took all reasonable precautions to avoid such fishing;

- (c) paragraph (1)(c) to prove that the person took all reasonable steps to comply with the conditions of any authorisation;
- (d) paragraph (2) to prove that the person took all reasonable precautions to ensure that the benefits were not generated by actions falling under paragraph (1)(a) to (c);
- (e) paragraph (3) to provide that the person took all reasonable precautions to ensure that the support provided was not in relation to actions which would fall under paragraph (1)(a) to (c).

(6) In deciding whether a person took all reasonable precautions or steps in relation to any of the defences set out in paragraph (5), a court must take into account whether the person followed the guidance issued under regulation 6.

(7) Where a person is charged with an offence under this regulation it is a defence to prove that the contravention in question occurred in the case of emergency relating to—

- (a) the safety of human life, vessels or aircraft;
- (b) the safety of equipment and facilities of high value, or
- (c) the protection of the environment.

(8) In England and Wales, any person who is guilty of an offence under this regulation is liable on conviction on indictment to imprisonment for a term not exceeding two years, to a fine or to both, and on summary conviction to a fine.

(9) In Scotland and Northern Ireland, any person who is guilty of an offence under this regulation is liable on conviction on indictment to imprisonment for a term not exceeding two years, to a fine or to both, and on summary conviction to a fine not exceeding the statutory maximum.

(10) In the Bailiwick of Guernsey, any person who is guilty of an offence under this regulation is liable on conviction on indictment to a term not exceeding two years, or a fine or both, and on summary conviction to a fine not exceeding level 5 on the uniform scale, within the meaning of the Uniform Scale of Fines (Bailiwick of Guernsey) Law, 1989⁽¹⁶⁾.

(11) In the Bailiwick of Jersey, any person who is guilty of an offence under this regulation is liable on conviction to imprisonment for a term not exceeding two years, to a fine or to both.

(12) In the Isle of Man, any person who is guilty of an offence under this regulation is liable on conviction on information to custody for a term not exceeding two years, to a fine or to both, and on summary conviction to a fine not exceeding level 5 on the standard scale, within the meaning of section 55(1) of the Interpretation Act 2015⁽¹⁷⁾.

Offences

9.—(1) The following provisions of the Antarctic Act 1994 apply to an offence under regulation 8 as if it was an offence under Part 2 of that Act—

- (a) section 17 (places where proceedings may be taken);
- (b) section 19 (offences committed by bodies corporate and Scottish partnerships);
- (c) section 28 (consents required for institution of proceedings).

(2) In the Bailiwick of Guernsey, the provision of the Antarctic Act 1994 referred to in paragraph (1) are those provisions as extended to that Bailiwick by the Antarctic Act 1994 (Guernsey) Order 1995.

(3) In the Bailiwick of Jersey, the provisions of the Antarctic Act 1994 referred to in paragraph (1) are those provisions as extended to that Bailiwick by the Antarctic Act 1994 (Jersey) Order 1995.

⁽¹⁶⁾ Order in Council No. V of 1989, as amended.

⁽¹⁷⁾ AT 11 of 2015 (Isle of Man).

(4) In the Isle of Man, the provisions of the Antarctic Act 1994 referred to in paragraph (1) are those provisions as extended to the Isle of Man by the Antarctic Act 1994 (Isle of Man) Order 1995.

PART 4

CCAMLR Catch Documentation Scheme contact officers

Appointment of CCAMLR Catch Documentation Scheme contact officers

10. The Secretary of State may appoint CCAMLR Catch Document Scheme contact officers who are authorised to carry out tasks specified by the Secretary of State associated with the implementation of the Catch Documentation Scheme adopted by the Commission under Article IX(1)(f) of the Convention⁽¹⁸⁾.

PART 5

CCAMLR inspectors

Designation of CCAMLR inspectors

11.—(1) The Secretary of State may designate CCAMLR inspectors who are authorised to carry out tasks specified by the Secretary of State associated with the implementation of, and in compliance with, the System of Inspection adopted by the Commission under Article XXIV of the Convention⁽¹⁹⁾.

(2) The Secretary of State may withdraw a designation under paragraph (1) by giving notice to the designated person.

Notification of CCAMLR inspectors

12. The Secretary of State must notify the Commission of inspectors designated under regulation 11 and of any subsequent withdrawal of a designation.

Inspector reports

13.—(1) Inspectors designated under regulation 11 must report to the Secretary of State, in a manner and form that the Secretary of State may determine, on—

- (a) any inspections carried out at sea;
- (b) any interference by the master of a vessel with any of the tasks of the inspector;
- (c) any instance of a vessel in the Convention Area which refused to stop or otherwise facilitate the transfer of the inspector.

(2) The Secretary of State must forward any report received under paragraph (1), together with any photographs or video footage provided, to the Executive Secretary to the Commission.

⁽¹⁸⁾ Conservation Measure 10-05 (2018).

⁽¹⁹⁾ The System of Inspection was adopted by the Commission at CCAMLR-VII in 1998. The report of the meeting is available at www.ccamlr.org/en/ccamlr-vii (see para 125 of the report for the adoption of the System of Inspection).

Obligations of British vessels

14. Any British vessel in the Convention Area must, when given the appropriate signal in the International Code of Signals⁽²⁰⁾ by a vessel carrying a CCAMLR inspector, stop or take other such actions as may be necessary to facilitate the safe and prompt transfer of the CCAMLR inspector and appropriate assistants to the vessel, unless the vessel is actively engaged in fishing operations, in which case it must do so as soon as practicable.

Proceedings resulting from inspection reports in relation to British vessels

15. The Secretary of State must report to the Executive Secretary to the Commission on the laying of any charges or the institution of any proceedings resulting from an inspection report provided to the Commission in relation to any British vessel within 14 days of those charges being laid or those proceedings being instituted.

PART 6

CCAMLR observers

Designation of CCAMLR observers

16.—(1) The Secretary of State may designate observers who are authorised to carry out tasks specified by the Secretary of State associated with the implementation of, and in compliance with, the Scheme of International Scientific Observation adopted by the Commission under Article XXIV of the Convention⁽²¹⁾.

(2) The Secretary of State may withdraw a designation under paragraph (1) by giving notice to the designated person.

Notification of observer deployment

17. Prior to the deployment of an observer designated under regulation 16, the Secretary of State must notify the Executive Secretary to the Commission of the information required under the Scheme of International Scientific Observation.

Observer reports

18. Observers designated under regulation 16 must report to the Secretary of State, in a manner and form that the Secretary of State may determine, on each observation visit, who must, not later than one month after the completion of the observer trip or after the return of the observer to their home country, forward that report and any accompanying documentation to the Commission.

Obligation of British vessels

19. Any British vessel in the Convention Area must, in accordance with directions given by the Secretary of State, facilitate, and cooperate fully with, the work of any CCAMLR observer, including allowing such access to the vessel and parts thereof as may be necessary for a CCAMLR observer to fulfil their duties and ensuring safe working conditions.

(20) Resolution A.80 (IV) adopted by the International Maritime Organisation on 27 September 1965, as revised. Available at www.imo.org.

(21) The Scheme of International Scientific Observations was adopted by the Commission at CCAMLR-XI in 2002. The report of the meeting is available at www.ccamlr.org/en/ccamlr-xi (see para 6.11 of the report for the adoption of the Scheme of International Scientific Observation).

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

6th November 2020

Sugg
Parliamentary Under Secretary of State
Foreign, Commonwealth and Development
Office

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement key provisions of the Convention for the Conservation of Antarctic Marine Living Resources (“the Convention”).

Part 1 provides that the regulations will come into force immediately before IP Completion Day (11p.m. on 31st December 2020), unless they are registered by the Royal Court later in either the Bailiwick of Guernsey or the Bailiwick of Jersey in which case they come into force in those jurisdictions the day after such registration. The extent and application of the regulations are the whole of the United Kingdom, the Bailiwick of Guernsey, the Bailiwick of Jersey and the Isle of Man.

Part 2 provides that no British vessel may fish for profit in the Convention Area unless it has an authorisation from the Secretary of State (regulation 4). Prior to this, the Secretary of State must notify the Commission established under the Convention (“the Commission”) of any British vessels intending to fish in the forthcoming season (regulation 3). Regulation 5 enables the Secretary of State to grant an authorisation with conditions. Regulation 6 obliges the Secretary of State to publish guidance on the relevant conservation measures as well as the authorisation application process. The Secretary of State may revoke, vary or suspend an authorisation (regulation 7).

Part 3 creates criminal offences of entering the Convention Area intending to fish for profit without an authorisation, and fishing for profit within the Convention Area without an authorisation or in breach of any condition of an authorisation, the penalty for which is a maximum of two years’ imprisonment.

Part 4 enables the Secretary of State to designate contact officers to carry out tasks under the Convention’s Catch Documentation Scheme, as agreed by the Commission in the relevant conservation measures adopted in accordance with the Convention.

Part 5 provides that the Secretary of State may designate inspectors under the Convention to carry out the functions set out in the Convention System of Inspection. Inspectors must report to the Secretary of State on all inspections (regulation 13) and British vessels are obliged to facilitate the work of inspectors (irrespective of nationality) (regulation 14).

Part 6 provides that the Secretary of State may designate observers under the Convention to carry out the functions set out in the Convention Scheme of International Scientific Observation. Observers must report to the Secretary of State on all observation visits (regulation 18). Regulation 19 obliges British vessels to facilitate the work of observers in accordance with directions given by the Secretary of State.

A full impact assessment has not been prepared for this instrument as no, or no significant, impact is foreseen on the private, voluntary or public sectors.