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Regulations relating to the protection of the environment and safety in Antarctica (With Comments)

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The purpose of these Regulations is to protect the Antarctic environment and its dependent and associated ecosystems and the intrinsic value of Antarctica, including its wilderness and aesthetic values and its value as an area for the conduct of scientific research.

This translation is for information purposes only. Legal authenticity remains with the official Norwegian version as published in Norsk Lovtidend.

Chapter 1. Introductory provisions

§ 1. Purpose

The purpose of these Regulations is to protect the Antarctic environment and its dependent and associated ecosystems and the intrinsic value of Antarctica, including its wilderness and aesthetic values and its value as an area for the conduct of scientific research. The Regulations also aim to ensure that all activity in Antarctica covered by the Regulations is carried out in a safe and self-sufficient manner. These considerations shall be fundamental to the planning and implementation of all activities in Antarctica.

§ 2. Scope

The Regulations apply, throughout Antarctica, to:

- a. Norwegian nationals
- b. Norwegian legal persons
- c. Norwegian ships and aircraft
- d. foreigners resident in Norway
- e. foreigners who participate in or are responsible for activity in Antarctica which is organised in Norway or proceeds directly from Norway to Antarctica.

On Queen Maud Land and Peter I's Island, the Regulations also apply to anyone who is staying there or is responsible for activity there, refer to § 9.

However, the Regulations do not apply to persons staying in Antarctica as part of an activity approved by another State which has corresponding provisions and is a party to the Protocol on Environmental Protection to the Antarctic Treaty, or that are responsible for organising such an activity.

The Regulations do not apply to fishing activity or vessels sailing in the open sea.

§ 3. Definitions

For the purposes of these Regulations, the following words or phrases are assigned the following meanings:

- a. Antarctica: the area south of the 60th south latitude.
- b. activity: any kind of operation that takes place in Antarctica, including tourism and research, with the exception of fishing activity or vessels sailing in the open sea, refer to § 2.
- c. party responsible for the activity, responsible operator, etc: any legal or natural person, whether governmental or non-governmental, that organises activity to be carried out in Antarctica. Natural persons who are employed by, are suppliers or subcontractors to, agents of or in any other way provide services to a governmental or non-governmental natural or legal person that organises activity to be carried out in Antarctica are not counted as a responsible operator. Legal persons that are suppliers or subcontractors of an activity which is organised on behalf of a State operator are also not counted as a responsible operator.
- d. case of emergency: a situation involving acute danger to a person's life or health or an acute danger of considerable material damage.
- e. environmental emergency: any incident which has resulted in or entails an imminent danger of a considerable harmful effect on the environment in Antarctica.
- f. response action: reasonable measures undertaken after an environmental emergency has arisen in order to avoid, minimise or contain the impact of that environmental emergency. Response action includes the determination of the scope and effect of the environmental emergency and may include cleaning up.
- g. ship: a vessel of any kind that operates in a marine environment.
- h. SDR: special drawing rights, a unit of value determined by the International Monetary Fund.

§ 4. Relationship with the exercise of authority by other States

Criminal prosecution for a breach of these Regulations may only take place following the consent of the Ministry of Foreign Affairs in cases when:

- a. the act was committed by a person who is not a Norwegian national or resident of Norway, or
- b. the act was committed elsewhere than in Queen Maud Land or on Peter I's Island.

Chapter 2. General provisions

§ 5. On activities in Antarctica in general

Activities in Antarctica shall be planned and conducted so as to have the least possible effect on the environment in Antarctica and dependent and associated ecosystems and so as to preserve the value of the region for research. In this connection, activities must be prevented from leading to:

- a. effects on the climate or weather patterns,
- b. effects on air or water quality,
- c. changes in the atmospheric, terrestrial, glacial, limnetic or marine environments,
- d. changes in the distribution, occurrence or productivity of species or populations of animals or plants,
- e. risks to vulnerable or threatened species or populations of such species,
- f. risk of damage to areas of biological, scientific, historical or aesthetic importance or of significance to the region's nature as a wilderness, or
- g. damage or other degradation of historical sites and cultural heritage.

Activities in Antarctica shall also be planned and executed in a safe and self-sufficient manner. Any possible risks of danger to life or health posed by the activity shall be identified and reduced in so far as possible.

§ 6. Prohibition against extracting mineral resources

Any activity relating to mineral resources, with the exception of research, is prohibited.

The Norwegian Polar Institute decides in each case what constitutes research.

§ 7. Inspections

Observers designated by Antarctic Treaty Consultative Parties and Antarctic Treaty Consultative Meetings shall have full access to all parts of stations, installations, equipment, ships and aircraft which are open to inspection pursuant to the Antarctic Treaty.

§ 8. Cases of emergency

The provisions in the present Regulations do not apply to cases of emergency.

Measures implemented in a case of emergency shall be notified to the Norwegian Polar Institute as quickly as possible.

Chapter 3. Requirements as to activity in Antarctica

§ 9. Duty to give notice of activity in Antarctica

A party organising any kind of activity in Antarctica shall notify the Norwegian Polar Institute at the latest one year before the activity is planned to start. The same applies to plans for any previously unnotified change in an activity. The Norwegian Polar Institute may agree to a shorter deadline in individual cases, refer to § 36.

The notification shall include the name of the responsible operator and the scope of the activity, including an initial environmental evaluation, refer to § 16, and the technology and measures that will be used to limit any harmful effects. The notification shall also contain information on how the requirement of insurance or an equivalent guarantee pursuant to § 12 is to be met before the activity starts.

Contingency plans in accordance with § 10 and § 11 are to be enclosed with the notification.

The Norwegian Polar Institute may issue more detailed guidelines on the information and assessments that a notification must contain.

If the Norwegian Polar Institute does not make a decision based on the notification at the latest within two months before the activity is planned to start, the activity may be carried out in accordance with that stated in the notification.

§ 10. Requirement of preparedness for an environmental emergency

The responsible operator shall undertake preventative measures to reduce the risk of environmental emergencies and the potential environmental damage caused by any such environmental emergency.

Before the activity starts, the responsible operator must have the necessary equipment and expertise as well as contingency plans which are necessary for handling an environmental emergency in Antarctica. The contingency plans must, among other things, contain:

- a. routines for giving notice of environmental emergencies
- b. routines for considering the scope of the environmental emergency and response plans
- c. an overview of the resources available and how these can be mobilised
- d. documentation and training routines.

The contingency plans are to be submitted together with the notification pursuant to § 9.

The Norwegian Polar Institute may stipulate more detailed requirements as to contingency plans.

§ 11. Requirement of preparedness in order to safeguard life and health

The responsible operator shall undertake measures to reduce the danger to the life and health of those taking part in the activity.

The responsible operator shall have appropriate contingency plans and sufficient arrangements for health and safety, search and rescue (SAR), and medical care and evacuation in place prior to the start of the activity.

Should such plans require the support of other operators or national research programmes, the agreements on such support that have been entered into shall be submitted before the activity starts.

The contingency plans shall be submitted together with the notification pursuant to § 9. The Norwegian Polar Institute may stipulate more detailed requirements as to contingency plans.

§ 12. Requirement of insurance

Before the activity starts, the responsible operator must have insurance or provide an equivalent guarantee for the financial liabilities that may arise pursuant to the rules stated in chapter 7 on liability for environmental emergencies.

The responsible operator must also have sufficient insurance or provide an equivalent guarantee for costs of any kind incurred by public authorities or others in connection with any searches, rescue operations or medical transport that have to be carried out in relation to the activity in Antarctica. The insurance or guarantee pursuant to this provision must cover such expenses irrespective of whether negligence has been shown by the responsible operator, persons in this party's service or those taking part in the trip.

The Norwegian Polar Institute determines the sum insured or the size of the guarantee pursuant to the first and second paragraphs. The size of the insurance or guarantee pursuant to paragraph one cannot be higher than that which follows from § 31. The Norwegian Polar Institute may also stipulate a deadline for when an insurance or equivalent guarantee must be provided before the activity starts.

§ 13. Orders changing, postponing or prohibiting an activity

The Norwegian Polar Institute may order that an activity be changed or postponed or may completely prohibit the activity if its implementation will or may result in effects on the environment in Antarctica or dependent and associated ecosystems or the safeguarding of life and health which are contrary to the purpose of the Regulations, the provisions stated in these Regulations or issued pursuant to the Regulations, or international resolutions, advice or recommendations adopted by the parties to the Antarctic Treaty system. The same applies to notices of changes in an activity.

The Norwegian Polar Institute may order the postponement of an activity or of a change in an activity if this is necessary to ensure that an environmental evaluation is carried out in accordance with rules to which Norway has acceded by international agreement, refer to § 16 and § 17.

If an activity which has been started proves to lead to unforeseen effects on the environment in Antarctica or dependent and associated ecosystems, the Norwegian Polar Institute may order changes to be made to the activity, postpone the activity, or completely prohibit the activity if this is necessary to counteract or contain the unforeseen effects.

§ 14. Monitoring and measures in the event of unforeseen effects

A responsible operator that is subject to a requirement of a comprehensive environmental evaluation pursuant to § 17 is obliged to monitor the environment regularly and effectively in order to:

- a. assess the effects of the ongoing activity, including verifying the foreseen effects, and
- b. ensure suitable conditions for the early discovery of possible unforeseen effects.

Should unforeseen effects on the environment come to light in the course of any activity, the responsible operator is obliged to notify the Norwegian Polar Institute immediately and to make the changes in the activity necessary to counteract the damage.

§ 15. Duty to report

The responsible operator is obliged to prepare reports on the activity and the use made of permits granted pursuant to these Regulations, including a final report on the conclusion of the activity. The Norwegian Polar Institute may provide more detailed guidelines on the duty to report.

Chapter 4. Initial and comprehensive environmental evaluations

§ 16. Initial environmental evaluation

Anyone wishing to start a planned activity in Antarctica shall prepare an initial environmental evaluation unless a comprehensive environmental evaluation is initiated pursuant to § 17.

An initial environmental evaluation shall contain:

- a) A description of the proposed activity, including its location, purpose, duration, intensity, use of means of transport, clearing-up plans and impact, if any, on the environment, and
- b) an assessment of alternatives to the proposed activity and any effects that such activity may have, including an assessment of the cumulative effects in the light of existing and known planned activities.

§ 17. Comprehensive environmental evaluation

If an initial environmental evaluation indicates or the Norwegian Polar Institute determines that a proposed activity is likely to have more than a minor or transitory impact on the environment, the responsible operator shall prepare a comprehensive environmental evaluation. The comprehensive environmental evaluation shall be in a form suitable for official consideration.

A comprehensive environmental evaluation shall include:

- a. a description of the proposed activity, including its purpose, location, duration and intensity, and any alternatives to the activity, including the alternative of not

- proceeding, and the consequences of those alternatives,
- b. a description of the initial environmental reference state with which predicted changes are to be compared and a prediction of the future environmental reference state in the absence of the proposed activity,
 - c. a description of the methods and data used to predict the effects of the proposed activity,
 - d. an estimate of the nature, extent, duration and intensity of the likely direct effects of the proposed activity,
 - e. an assessment of the possible indirect or secondary effects of the proposed activity,
 - f. an assessment of the total impact on the environment, including the impact on individual species and the ecosystem, in the short and long term, of the proposed activity in the light of existing activities and other known planned activities,
 - g. descriptions of measures, including monitoring programmes, that may be undertaken to minimise or mitigate the effects of the proposed activity and to detect unforeseen effects, and that could provide early warning of any adverse effects of the activity in addition to dealing promptly and efficiently with accidents,
 - h. a description of unavoidable effects of the proposed activity,
 - i. an assessment of the effects of the proposed activity on the conduct of scientific research and on other existing areas of use and values,
 - j. a description of gaps in knowledge and uncertainties linked to the compilation of the information required according to this section,
 - k. a non-technical summary of the information provided under this section, and
 - l. the name and address of the person or organisation that prepared the comprehensive environmental evaluation.

Chapter 5. Conservation of flora and fauna

§ 18. Conservation of native flora and fauna

The taking of or harmful interference with flora and fauna, including harmful traffic, in Antarctica is prohibited.

The Norwegian Polar Institute may permit taking or catching in accordance with rules to which Norway has acceded by international agreement.

§ 19. Introduction of plant and animal species and microorganisms

Plant or animal species may only be introduced pursuant to a permit granted by the Norwegian Polar Institute in accordance with rules to which Norway has acceded by international agreement. The introduction of dogs is prohibited.

Food imports are not covered by the first paragraph provided they are subject to proper control.

The Norwegian Polar Institute may issue more detailed guidelines to prevent the unintended introduction of microorganisms which do not occur in the native flora and fauna.

The Norwegian Polar Institute may order a party that has imported plants or animals without a permit to remove these species and any trace of them unless removing them will cause more damage to the environment than allowing them to remain. If the order is not complied with, the Norwegian Polar Institute may claim the cleaning-up costs from the responsible operator.

Chapter 6. Management of pollutants and waste

§ 20. Scope

This chapter applies, with the limitations which follow from § 2, to any activity not run from a ship.

§ 21. Removal of waste from Antarctica

It is prohibited to leave waste in Antarctica.

The ban does not apply if the waste can be burnt in incinerators without producing environmentally harmful emissions. The Norwegian Polar Institute may issue more detailed guidelines on such incineration.

§ 22. Prohibition against emissions of environmentally harmful substances and products

The emission of substances or products that may harm the environment in Antarctica is prohibited.

§ 23. Storage of waste

All waste that is later to be removed, incinerated or disposed of in some other way in Antarctica, refer to § 21, shall be stored in such a way as to prevent its dispersal or emission into the environment.

§ 24. Cleaning up of waste-disposal sites and work sites

Past and present waste-disposal sites and abandoned work sites shall be cleaned up by the generators of the waste and users of the sites. The Norwegian Polar Institute is to be notified before the cleaning up starts. The Norwegian Polar Institute may grant exemptions if removing the waste would cause more harm to the environment than leaving it.

The Norwegian Polar Institute may order the responsible operator to clean up within a specific time limit. If the order is not complied with, the Norwegian Polar Institute may undertake the cleaning-up operation and claim the costs from the responsible operator.

The Norwegian Polar Institute may demand that security is posted to cover cleaning-up costs. Such security may be demanded at any time.

§ 25. The control and recording of waste management

For every activity, an order may be imposed stating that the waste is to be managed and recorded in accordance with a classification system prepared by the Norwegian Polar Institute.

Every activity in Antarctica must have a person responsible for waste management. The person responsible may undergo training approved by the Norwegian Polar Institute.

Chapter 7. Liability for an environmental emergency

§ 26. Response action

The responsible operator shall without undue delay undertake effective response action if an environmental emergency occurs as a result of activity for which the party is responsible.

The responsible operator shall without undue delay notify the Norwegian Polar Institute if an environmental emergency occurs. The same applies, to a reasonable extent, to anyone who finds out that an environmental emergency has occurred. The Norwegian Polar Institute shall thereafter notify the parties to the Treaty and other affected parties.

If no response action is undertaken in accordance with paragraph one and the environmental emergency is of such a nature that it is reasonable to undertake immediate response action, the Norwegian Polar Institute or a party authorised by the Norwegian Polar Institute may undertake response action on behalf of the responsible operator.

§ 27. Liability for response action undertaken by others

A responsible operator that does not undertake response action which the party is obliged to undertake pursuant to the first paragraph of § 26 shall, irrespective of blame, pay damages to the party that undertook response action on behalf of the responsible operator. The damages are to equal the costs of undertaking the response action.

§ 28. Liability when no response action is undertaken

If no response action is undertaken by the responsible operator or anyone else, the responsible operator shall pay compensation equal to the costs that would have been incurred if response action had been undertaken.

The Norwegian Polar Institute determines the size of the compensation following an assessment of the reasonable costs that would have been incurred in determining the scope, and efficiently limiting or avoiding the consequences, of the environmental emergency.

The compensation is payable to the Norwegian Polar Institute, which is responsible for paying it into a fund administered by the Antarctic Treaty secretariat. Any state or person may also make voluntary donations to the fund.

§ 29. Joint and several liability

If two or more operators that are jointly responsible for an activity cause an environmental emergency, they are jointly and severally liable.

§ 30. Exemptions from liability

The responsible operator is not liable according to § 27 or § 28 paragraph one if the environmental emergency is caused by:

- a. An act or omission that was necessary to protect human life or safety
- b. An incident that represents a natural disaster of an extraordinary nature in Antarctica and which could not reasonably have been foreseen. This only applies if all reasonable measures have been undertaken to reduce the risk and potential harmful effects of the environmental emergency
- c. An act of terrorism
- d. An act of war aimed at the responsible operator's activity
- e. A reasonable response action undertaken by a party on behalf of the Norwegian Polar Institute to remedy the environmental emergency.

§ 31. Limitation of liability

For incidents not involving ships, the responsible operator's liability to pay compensation pursuant to § 27 or § 28 paragraph one is limited to a maximum of SDR 3 million in each case.

For incidents involving a ship, the rules stated in chapter 9 of the Norwegian Maritime Code apply in so far as they are suitable if the responsible operator is one of those that, pursuant to section 171 of the Maritime Code, may limit their liability pursuant to these rules.

For incidents involving a ship when the responsible operator is not covered by chapter 9 of the Maritime Code, the responsible operator's liability to pay compensation pursuant to § 27 and § 28 paragraph one is limited to a maximum of SDR 1 million for ships of up to 2,000 tons. For ships of more than 2,000 tons, the limit of liability is increased as follows:

- a. for every ton between 2001 and 30,000 tons, by SDR 400
- b. for every ton from 30,000 to 70,000 tons, by SDR 300 and
- c. for every ton that exceeds 70,000 tons, by SDR 200.

The limits on liability stated in paragraphs one and three apply to the sum of all claims against the individual responsible operator which arise due to the same incident.

The right to a limitation on liability does not apply if it is proven that the responsible operator caused the environmental emergency with intent or gross negligence and understood that such an emergency situation would probably arise.

§ 32. Legal proceedings

The Norwegian Polar Institute may bring an action for damages against a non-governmental responsible operator in accordance with § 27.

If a governmental responsible operator has incurred liability pursuant to § 27, the action for damages is to be dealt with in the way determined by the King.

The action for damages is to be heard by the court in the State where the responsible operator that has not implemented any response action was incorporated or has its head office or residence. If the responsible operator was not incorporated or does not have its head office or residence in a State that has corresponding provisions and is a party to the Protocol on Environmental Protection to the Antarctic Treaty, the action for damages is to be heard by Oslo District Court.

The action for damages is to be brought within three years of the date when the response action was initiated or within three years of the date when the Norwegian Polar Institute discovered, or ought to have discovered, the identity of the responsible operator. An action for damages may in all cases not be brought more than 15 years after the response action was initiated.

Chapter 8. Specially protected and specially managed areas

§ 33. Specially protected areas

An area may be designated as a specially protected area in order to protect the area's outstanding environmental, scientific, historic or aesthetic values or wilderness nature, any combination of such values, or ongoing or planned scientific research.

Parties planning to stay in Antarctica are obliged to ascertain which areas have been designated as specially protected areas.

A permit issued by the Norwegian Polar Institute is required before entering or engaging in activity in specially protected areas. The permit states the conditions for the stay.

During the stay in the protected area, the holder of the permit must have a copy of the permit with him/her.

§ 34. Specially managed areas

Areas where activities are being conducted or may in future be conducted can be designated as specially managed areas in order to assist in the planning and coordination of activities, avoid possible conflicts, improve cooperation with foreign activities or, as far as possible, to prevent environmental conflicts.

Persons planning to stay in Antarctica are obliged to ascertain which areas have been designated as specially managed areas.

Persons entering a specially managed area must comply with the rules to which Norway has acceded by international agreement, including rules governing access to the area, stays in the area and activities. This information is provided by the Norwegian Polar Institute.

§ 35. Historical sites and cultural heritage

Historical sites and cultural heritage which have been registered pursuant to international agreements to which Norway has acceded shall not be damaged, removed or destroyed.

If a historical site or cultural heritage has been designated as a specially protected or specially managed area, § 33 and § 34 apply in addition to the first paragraph.

The provisions stated in Norwegian Act of 9 June 1978 No.50 Concerning the Cultural Heritage that relate to the export, import and return of illegally exported cultural objects, § 23a - § 23f, are applicable in so far as they are suitable.

Chapter 9. Special provisions

§ 36. Exemption

The Norwegian Polar Institute may grant exemptions from the provisions in these Regulations when special reasons exist and when doing so is not contrary to the purpose of the Regulations.

§ 37. Duty of disclosure

The Norwegian Polar Institute may order the responsible operator to state the information which is necessary for carrying out the Norwegian Polar Institute's tasks pursuant to these Regulations.

When special grounds so indicate, the Norwegian Polar Institute may demand that information is to be provided by anyone taking part in the activity of the responsible operator.

§ 38. Supervision

The Norwegian Polar Institute or a party authorised by the Norwegian Polar Institute shall supervise the implementation of these Regulations.

The supervising authority shall have unrestricted access to all installations, means of transport and areas where activities that fall within the scope of these Regulations are conducted.

§ 39. Appeals

Appeals against decisions made by the Norwegian Polar Institute may be lodged with the Ministry of the Environment according to the rules stated in the Act of 10 February 1967 relating to procedure in cases concerning the public administration.

§ 40. Penalties

Deliberate or negligent violation of these Regulations or of prohibitions or orders issued pursuant to them is punishable by fines and/or imprisonment for up to one year.

§ 41. Entry into force and repeal of previous regulations

The Regulations enter into force immediately. The Ministry of the Environment may amend the Regulations.

Regulations of 5 May 1995 No.408 relating to Protection of the Environment in Antarctica are repealed on the date when these Regulations enter into force.

Comments on the regulations relating to safety and the protection of the environment in Antarctica

I General comments

Antarctica is 12 million square kilometres, around 40 times bigger than Norway. In accordance with the Protocol on Environmental Protection to the Antarctic Treaty (the Environmental Protocol) signed by Norway in Madrid in 1991 and decisions made at the consultative meetings pursuant to the Antarctic Treaty, the Regulations stipulate strict rules for protecting the environment and preserving Antarctica's wilderness and aesthetic values, as well as rules on travellers' responsibility for their own safety. The Norwegian Polar Institute (NPI) is the environmental protection authority in Antarctica.

Those wishing to go to Antarctica must notify NPI at least one year before their planned departure. The notification must include the names of those travelling, the purpose and scope of the activity, cleaning-up plans and the effects that the activity may have on the environment in Antarctica. The party responsible for organising an activity in Antarctica (the responsible operator) must, before departure, provide guarantees for expenses linked to rescue operations and present contingency plans and insurance for the financial liability that may arise in the case of environmental damage. Such parties may also in some cases be ordered to provide a guarantee to cover cleaning up.

The Regulations stipulate rules for the responsibility for environmental damage, imposing a duty for the party responsible for an activity in Antarctica (the responsible operator) to undertake measures to counteract an environmental emergency when this, or the danger of it, has arisen in connection with the activity. If no such measures are undertaken, the party may be financially liable.

The flora and fauna in Antarctica are very vulnerable and are protected, in the sense that it is prohibited to take or in any other way harm plants and animals. However, the Regulations do allow taking and catching for research purposes.

Waste produced by the expeditions must be removed from Antarctica when they leave for home. This is necessary to preserve Antarctica as the world's largest untouched wilderness area, with unique environmental qualities. The intrinsic value of such an area is high today and will increase in the future.

Under these Regulations, travellers to Antarctica will be obliged to acquaint themselves with specially protected areas and cultural heritage or historical sites and follow the rules that apply to the individual area.

The Regulations are based on the Protocol on Environmental Protection (the Environmental Protocol) and the following annexes:

- annex I: Environmental impact assessment
- annex II: Conservation of Antarctic fauna and flora
- annex III: Waste disposal and waste management
- annex IV: Prevention of marine pollution
- annex V: Area protection and management in Antarctica
- annex VI: Liability arising from environmental emergencies.

The comments on the various provisions are to a large extent linked to the Environmental Protocol's relevant articles and annexes, as they are the basis for much of the Regulations' wording.

II. Comments on the individual provisions

Chapter 1. Introductory provisions

Re § 1. Purpose

This provision is intended to reflect the obligations Norway has undertaken by agreeing to the main objective stated in articles 2 and 3 of the Environmental Protocol. The term “dependent and associated ecosystems” gives expression to the need for a comprehensive approach to environmental protection and to see ecosystems in relation to each other when regulating activity in Antarctica.

The second paragraph refers to Measure 4, which was agreed to at the Antarctic Treaty consultative meeting in 2004 and which imposes on those responsible for activities in Antarctica a duty to have contingency plans and schemes to safeguard life and health, as well as insurance for expenses that may be incurred for search, rescue and medical transport. This is stipulated in § 11 and 12, paragraph two. The conditions in Antarctica (absence of infrastructure, weather conditions, etc) presuppose that the risks involved in carrying out activities must be borne by the party carrying out the activity. The reference to the fact that the activity must be “self-sufficient” signalises this.

Re § 2. Scope

The Regulations’ geographic scope is correspondingly defined in the Antarctic Treaty’s scope. When “Antarctica” is used in the Regulations, this means the area south of the 60th south latitude.

The provision regarding whom the Regulations apply to is extensive due to the special status of Antarctica under international law and is partly based on article 3 of the Environmental Protocol and article VII (5) of the Antarctic Treaty. The Regulations are applicable to all Norwegian nationals, etc. The Regulations also apply to foreigners when they are organising an activity in Norway or when the activity departs directly from Norway to Antarctica. In addition, the Regulations apply to all those staying in Queen Maud Land or on Peter I's Island. This is because the Norwegian claim to sovereignty entails Norwegian jurisdiction in the area. Other states with claims to sovereignty have adopted the same model for scope and extent.

Annex IV's provisions on marine pollution are not included in the Regulations as they are covered by existing regulations through the implementation of MARPOL. The Environmental Protocol refers to the fact that the countries who are parties to MARPOL are to enforce these rules.

In order to coordinate the Regulations with other States that are parties to the Environmental Protocol and which have provisions that correspond to the Norwegian provisions, an exemption is granted for those that are covered by these States' provisions. These may be Norwegians, Norwegian ships or aircraft, or foreigners. This is among other things applicable to Norwegian tourists on cruise vessels sailing under a foreign flag when the tour operator or ship arranges the necessary permits from its country's authorities.

Paragraph four also contains an exemption for fishing activity. However, whether the ship is constructed, registered or in any other way adapted to fishing activity cannot in itself constitute grounds for exemption. The activity is what is essential. Many expeditions to Antarctica also take place in the form of mixed cruises, where research takes place alongside fishing. In order for the exemption in paragraph four to apply, cruises such as these will have to be assessed to determine whether they entail a predominant volume of fishing activity. Fishing in Antarctica is regulated by the Convention for the Conservation of Antarctic Marine Living Resources (CCAMLR). The fishing activity must be carried out in accordance with permits pursuant to these regulations in order for the exemption to apply.

Paragraph four also stipulates an exemption for vessels sailing in the open sea. This is due to the Regulations only being applicable to ships whose destination is in the Antarctic Treaty area. The most common exemption will be for carriers.

Re § 3. Definitions

Letter a) – refers to the scope of the Regulations, refer to § 2, and is based on the definition in article VI of the Antarctic Treaty.

Letter b) – is based on article 3 of the Environmental Protocol and article VII (5) of the Antarctic Treaty.

Letter c) – the wording of the definition is taken from annex VI on liability arising from environmental emergencies (the Liability Annex), article 2. The Regulations are applicable to two categories of parties that are subject to this duty. Apart from those that are responsible for and organise an activity, the scope also covers those who take part in activities in Antarctica and those who otherwise are within the area of the Norwegian claim area without organising the activity. This second category of parties must comply with the normal requirements which apply to travelling in Antarctica in general, such as § 5 on avoiding various effects on the environment, cultural heritage, etc, or § 21 which prohibits leaving waste in Antarctica. For practical reasons, this will mainly apply to tourists who take part in the activity of a tour operator. The provisions that on the other hand are expressly aimed at the “responsible operator”, etc, contain more special requirements and include a duty pursuant to § 9 to notify any planned activity in Antarctica and the liability annex rules in chapter 7.

At the same time, the definition is meant to clarify that the responsibility pursuant to the liability annex rules in chapter 7 is an operator liability, which means that it is the party organising the activity that is responsible for any lack of response action in the case of an environmental emergency, and not, for example, the shipowner.

Letter d) – refers to the provision in § 8 regarding the exemption from the Regulations in emergency situations.

Letter e) – refers to situations that fall under the liability rules in chapter 7.

Letter f) – refers to the liability rules in chapter 7.

Letter g) – the definition is taken from article 9 (5) (a) of the liability annex, and includes, among other things, hydrofoil boats, hovercraft, submarines, floating vessels and fixed or floating platforms.

Letter h) – refers to § 31 concerning the limitation of liability.

Re § 4. Relation to other states' exercise of authority

The objective of this rule is coordination with other states in the Antarctic Treaty Area. It is assumed that the Ministry of Foreign Affairs' consent is to be obtained at the reporting stage. The provision only applies to criminal prosecution. For example, legal proceedings resulting from liability incurred pursuant to the rules in chapter 7 will thus not require such a consent.

Chapter 2. General provisions

Re § 5. On activities in Antarctica in general

The provision is a general provision which stipulates an environmental norm for activity in Antarctica by limiting the harmful effects, if any, of such activity. The provision is based on article 3 no. 2 (a) and (b) and 3) of the Environmental Protocol. General standards will, among other things, be important when planning and assessing an activity. The wording of the Regulations is not identical to that of article 3 because the intention has been to impose stricter conditions. All effects on the environment are to be avoided, not only "negative effects" or "significantly negative effects". In these cases, "effect" is used in the wording of the Regulations. This accords with other Norwegian environmental legislation and was originally stated in Regulations no. 408 of 5 May 1995 on the protection of the environment in Antarctica.

Re § 6. Prohibition against extracting mineral resources

This prohibition is absolute and is based on the agreement between the parties to the Environmental Protocol to prohibit the extraction of mineral resources for the next 50 years.

Re § 7. Inspections

The Act of 27 February 1930 no. 3 on Bouvet Island, Peter I's Island and Queen Maud Land, etc, contains provisions in section 5 that ensure observers access to installations, etc, which are open for inspection pursuant to the Treaty. The provision allows the ministry (Ministry of Justice and Public Security) to appoint persons who are authorised to inspect stations, facilities, equipment on ships, aircraft and other things in the Norwegian dependencies and other parts of Antarctica (subsection 1). The provision goes somewhat further than article VII of the Antarctic Treaty in that there are no limitations for ships or aircraft. (In article VII, the right is linked to ships and aircraft bringing cargo or personnel to Antarctica or taking them on board in Antarctica.) Section 5 paragraph two states that such a right may be given to observers appointed by a Convention state. The last paragraph stipulates a duty for any party to give the observers access to that which they are to inspect.

The provision in the Dependent Territories Act provides sufficient authority for meeting the obligations pursuant to article 14 of the Environmental Protocol. The provision in these Regulations has been included for clarity and information.

Re § 8. Cases of emergency

The Regulations do not apply in cases of emergency, due to considerations of necessity. Cases of emergency are defined in § 3 letter d. The measures which are implemented in cases of emergency must, refer to paragraph two, be immediately reported to NPI, which is responsible for reporting to affected expert authorities and other parties to the Treaty. The general reporting provision in § 15 does not apply to cases of emergency.

Chapter 3. Requirements as to activity in Antarctica

Re § 9. Duty to give notice of activity in Antarctica

To ensure that Norwegian activity is carried out in accordance with the rules that Norway has undertaken to comply with through the Antarctic Treaty collaboration, NPI must be notified of any activity due to take place in Antarctica, refer to § 2.

Activity must be planned on the basis of sufficient information to conduct a provisional assessment and evaluation of possible effects (refer to art. 3 item 2 (c) of the Environmental Protocol). By acceding to annex I of the Environmental Protocol on environmental impact assessment, Norway undertook to conduct extensive procedures which, among other things, state that activity with more than a minor or transitory impact on the environment may be submitted for comment to the Environmental Committee and to Antarctic Treaty Consultative meetings. A prerequisite for this is that Norwegian environmental authorities receive notice of all proposed Norwegian activity in Antarctica.

Norway has undertaken to ensure that the activity will be modified, postponed or cancelled if it results in or threatens to result in effects on the environment that are incompatible with the environmental principles stated in article 3 item 4. According to § 10 and the first paragraph of § 12, the responsible operator must also be prepared and have insurance in accordance with the liability rules in chapter 7. Through Measure 4 (2004), the rules concerning contingency plans and insurance relating to life and health which are stipulated in § 11 and the second paragraph of § 12 also apply.

The duty to give notice applies to any governmental or non-State activity. The duty to give notice applies to both planned activities and changes to ongoing activities. The latter only applies if the change is not stated in a previous notification.

Activity in Antarctica requires careful planning and consumes a great deal of logistical and financial resources. It is therefore in the interest of the responsible operator to ensure that clarification with the environmental authorities is obtained in good time before the activity is to start and so that NPI has, in more complicated cases, enough time to obtain additional information and conduct the investigations which are necessary for considering a notification. In addition, the procedures relating to the consideration of environmental evaluations at Antarctic Treaty meetings mean that, in the case of activities which entail consequences for the environment, there will be a long consideration period, refer to the comments on § 16 and § 17 below. The deadline for notification has therefore been set at one year, with an opportunity to demand that the activity be postponed, refer to § 13 and § 14. At the same time, NPI has the power, in accordance with the exemption in § 36, in special cases to accept a shorter deadline when it is of no practical consequence whether or not the deadline is met, for example in cases of clear, well-documented expedition notifications.

According to paragraph five, NPI must make a decision on the basis of the submitted notification at least two months before the activity is planned to start. A decision may, among other things, be an order to provide information, refer to § 37, or to change the activity, refer to § 13, but may also state that the activity may start in accordance with the notification. The provision is intended to ensure predictability for the party planning activity in Antarctica.

Re § 10. Requirement of preparedness for an environmental emergency

This provision implements articles 3 and 4 of the liability annex. The provisions that implement the liability annex are stated in chapter 7 of the Regulations. A definition of environmental emergencies is included in § 3 letter d.

The first paragraph implements article 3 (1) of the liability annex and stipulates a duty to undertake preventative measures relating to both environmental emergencies and environmental damage if an environmental emergency has occurred. The provision is primarily to be regarded as a duty of care standard and any further definition of preventative measures is not included in this paragraph as it is expected that these factors be covered through the practical preparation and handling of contingency plans. However, article 3 (2) of the liability annex does mention some examples of what is meant by preventative measures: Specialised structures or equipment incorporated into the design and construction of facilities and means of transportation, specialised procedures incorporated into the operation or maintenance of facilities and means of transportation, and specialised training of personnel.

Paragraph two implements article 4 (1) and (2). The provision does not contain the entire list stated in the original wording of article 4 (2), but includes what the expert directorates have regarded as the most important factors. The list in paragraph two is therefore not to be considered exhaustive. This paragraph also imposes a duty on the responsible operator to ensure that there is sufficient equipment and expertise in addition to contingency plans. Article 4 (3) is not covered by the provision but is implemented as a duty to give notice in § 26 of the Regulations regarding response action, see separate comment.

According to paragraph three, the contingency plans are to be presented to NPI together with the notification pursuant to § 9. In order for the requirement of preparedness to be met, it is also necessary for the preparedness to be initiated and practised and to function in practice. NPI is therefore given the right to comment on and stipulate more detailed requirements as to the content of the plans without this requiring any positive approval by NPI.

The requirement of contingency plans also does not necessarily mean anything new for the parties carrying out activity. Many will already have contingency plans as part of their activity and it will in many cases be enough if these plans are submitted together with an notification.

Paragraph four allows NPI, in each case, to decide in further detail what is to be covered by the contingency plans, but the provision also allows NPI to prepare general guidelines on how contingency plans are to be formulated.

Re § 11. Requirement of preparedness in order to safeguard life and health

This provision implements the first option in Measure 4 (2004) on contingency plans and sufficient arrangements for health and safety, which was adopted at ATCM XXVII in Cape Town. The second option in measure 4, on the duty to provide insurance (2004), is covered by § 12 paragraph two, and was originally stipulated in the Antarctic Regulations of 1995.

The provision is only aimed at health and safety, not the environment. The requirement of contingency plans that cover environmental damage is stipulated in § 10.

Paragraph two stipulates a requirement of both "contingency plans and schemes", which corresponds to the original wording "contingency plans and (...) arrangements". This means that besides planning for events that affect safety, etc, parties must also have specific means for dealing with such situations. These may, for example, be medical equipment or logistical aids such as lifeboats or helicopters.

It will be more practical for a party planning activity in Antarctica to use external logistics providers. In such case, paragraph two stipulates that, before the activity starts, agreements on search and rescue, etc, must have been entered into and proof of such agreements must be submitted to NPI in connection with the notification process.

Paragraph three stipulates, as in § 10, that the plans are to be presented to NPI at the same time as notification pursuant to § 9. The second sentence states NPI's power to in each case further determine what is to be covered by the contingency plans and to prepare guidelines in the same way as in the last paragraph of § 10.

Re §12. Requirement of insurance

This provision contains two parallel insurance requirements, and the first paragraph is based on article 11 of the liability annex, while the second paragraph implements the second option in Measure 4 (2004) regarding the duty to have insurance.

The first paragraph stipulates that the responsible operator must have an insurance scheme or guarantee that covers the liability which may be incurred pursuant to the rules in Chapter 7 on liability for environmental emergencies. A guarantee may be, for example, an amount deposited in a bank or other equivalent financial institution.

Paragraph two imposes a duty on the responsible operator to ensure that there is insurance or another equivalent guarantee to cover any rescue costs. This is a provision aimed at the safety of those participating in an activity and not the environment.

Paragraph three stipulates that NPI is to determine the sum insured. An explanation that this applies to both the first and second paragraphs is included. The sum insured for liability pursuant to chapter 7 must be considered in each case based on an assessment of the activity's damage potential. There will for example be a difference between a skiing expedition and a cruise vessel with regard to the potential for environmental damage. Liability pursuant to chapter 7 is about financial liability for response action in the case of an environmental emergency. It is up to NPI to determine the amount, but other countries' practice and consultations with the insurance industry may help to find an adequate level. An upper limit for the financial liability follows from § 31 on limitation of liability, and this is referred to in the second sentence. This means that NPI cannot demand a higher insurance amount than that which follows from § 31.

The size of the insurance for costs relating to search, rescue, and medical transport, refer to paragraph two, must correspondingly be specifically assessed based on the nature of the expedition, but the provision requires further explanation. When it comes to activity at sea, it is the case that insurance covering search and rescue is not normally issued in connection with sea-based activity since each ship is obliged to provide necessary help to anyone in danger at sea or who is threatened by danger at sea. However, it is assumed that this does not apply to search and rescue operations linked to activities on land (unless a ship in distress has sought refuge near to/on the coast), and that the duty to have insurance pursuant to the Antarctic Regulations shall cover search and rescue operations initiated in connection with activity on land. The duty to have insurance also covers costs incurred by others in connection with medical transport, which is not necessarily linked to distress at sea and may be incurred during a voyage or in connection with land-based activity. A person becoming ill on board a vessel that is otherwise not in distress is an example of this.

These are factors that NPI will have to consider and which mean that very different levels of insurance coverage may be determined for different activities.

Re § 13. Orders changing, postponing or prohibiting an activity

The party giving notice of an activity in accordance with § 9 must as a rule expect any order by the authorities to be given before the activity starts, i.e. within the one-year deadline. NPI may demand that the notification and any impact analysis be of such quality that they provide a sufficient overview of the activity and any consequences for the environment.

An activity that may have more than a minor or transitory impact must be submitted to the Antarctic Treaty Meeting which, in the form of resolutions/advice or recommendations may decide changes in the notified activity. NPI is authorised to enforce such orders. This includes the power to demand changes or a postponement or prohibiting the activity.

The rule concerning postponement in paragraph two is linked to the necessity of ensuring an adequate environmental impact assessment and treatment according to the regulations stipulated in annex I. These extensive regulations may mean that the one-year deadline is insufficient. The authority to order postponement in paragraph one is linked to environmental effects of the activity, so the two provisions do not overlap.

Paragraph three provides authority to demand changes to be made to the activity if unforeseen effects arise. Such orders are necessary if responsible operators do not make the necessary changes themselves, refer to §14 paragraph two.

Re § 14. Monitoring and measures in the event of unforeseen effects

Paragraph one makes the responsible operator liable for monitoring any environmental effects of the activity, refer to article 3 item 2 (d) and (e) of the Environmental Protocol and article 5 of annex I.

In paragraph two, the duty to report and duty to implement measures are linked to unforeseen effects, refer to article 3 item 2 (e) of the Environmental Protocol. Foreseen effects are assumed to have been mapped and considered in connection with the environmental impact assessment, and measures in connection with such effects must be determined before the activity is implemented, refer to § 16 and § 17.

The duty of the responsible operator to implement measures to make changes to the activity in order to counteract unforeseen environmental effects that have arisen is intended to prevent time being wasted between the damage being discovered and NPI receiving and dealing with notification of the damage. Thus, no permit is required to make such a change but the change is presumed not to entail a breach of other provisions. According to § 13 paragraph three of the Regulations, NPI may demand that changes are made to the activity if unforeseen effects are discovered.

Re § 15. Duty to report

Final reports are to be submitted following all notified activities and any use of permits granted pursuant to the Regulations. The report should particularly focus on the taking of native mammals, birds and plants, waste-handling and documentation.

Norway is obliged to report various activities, the use of permits and measures in cases of emergency to the other parties to the Treaty (article 6 of the Environmental Protocol). Compliance with this duty depends on the users of the Regulations reporting to NPI. This is also necessary in order for the environmental authorities to obtain the necessary information and empirical basis for their decisions.

Chapter 4. Initial and comprehensive environmental evaluations

Re § 16 and § 17 Environmental evaluations

The provisions regarding environmental evaluations are to be found in article 8 of the Environmental Protocol and in annex I on environmental impact assessment.

Advance notice pursuant to § 9 shall contain an initial environmental evaluation. This is to provide a basis for considering whether a comprehensive environmental evaluation is to be required.

The assessment of the environmental effects in an initial environmental evaluation shall contain the highlights, unlike a comprehensive environmental evaluation pursuant to § 17. The content of the initial environmental evaluation deviates slightly from annex I article 2, refer to § 16. The reason for this is that it is expedient to have a report on the use of transport, how clearing up is planned to be carried out, and what effects the activity may have on the environment. §17 letter f includes a clarification of annex I article 3, stating that it is the short-term and long-term effects on the environment that are to be considered.

Impact assessments are to be conducted both before the activity starts and if any changes are made to the activity. It is not counted as a change if the activity takes place in accordance with plans whose impact has previously been assessed.

In those cases where a comprehensive environmental evaluation is to be prepared, the case is to be sent to the parties to the Environmental Protocol for their consideration. This process may be time-consuming, and it can take more than a year between the activity being notified and it being possible to initiate the activity. §13 takes this into account and grants authority to demand the postponement of the activity. Those who are going to Antarctica are therefore urged to contact NPI as early as possible.

Chapter 5. Conservation of flora and fauna.

Re § 18. Conservation of native flora and fauna

This provision is based on article 3 of annex II to the Environmental Protocol. §18 and §19 of the Regulations are general framework provisions. NPI is assumed to comply with the criteria stated in article 3 and appendix A concerning permission to take and catch. Permits shall only be granted in individual cases and must be specific. Unspecified or general permits thus cannot be granted.

Article 6 of annex II requires the parties to the Treaty to inform each other of activities concerning fauna and flora in Antarctica. This requires those carrying out the activity to report after ending activity in the treaty area. The reporting requirement is stipulated in § 15.

The content of the concepts of "taking" and "harmful interference" is defined in article 1 of annex II. The Regulations clearly state that harmful traffic is covered by "harmful interference". The definition of the concept of "harmful interference" in article 1 of annex II is included here for information purposes:

(h) "harmful interference":

- (i) flying or landing helicopters or other aircraft in a manner that disturbs concentrations of birds and seals;
- (ii) using vehicles or vessels, including hovercraft and small boats, in a manner that disturbs concentrations of birds and seals;
- (iii) using explosives or firearms in a manner that disturbs concentrations of birds and seals;
- (iv) wilfully disturbing breeding or moulting birds or concentrations of birds and seals by persons on foot;
- (v) significantly damaging concentrations of native terrestrial plants by landing aircraft, driving vehicles, or walking on them, or by other means; and
- (vi) any activity that results in the significant adverse modification of habitats of any species or population of native mammal, bird, plant or invertebrate.

Re § 19. Introduction of plant and animal species and microorganisms

The prohibition in § 19 is linked to article 4, appendices B and C. The provision is a framework provision, refer to the comments on § 18. However, a slightly stricter solution than that stated in the Environmental Protocol has been chosen in that a permit is also required for native species in the area. This solution is a continuation of the Antarctic Regulations of 1995 and the reason for it is that these species also comprise an infection risk when introduced. "Introduction" may also include movement within Antarctica from one area to another, since this may also entail a risk of environmental damage. The reference to "international agreement" refers most practically to other kinds of decisions made by parties to the Treaty that are not incorporated in the legislation but are established as binding guidelines and in the form of guidance. NPI uses a number of these when dealing with notifications pursuant to the Antarctic Regulations.

According to § 19 paragraph one, a permit may not be given to take dogs into the Treaty area. This provision is based on an environmental risk assessment which is agreed to by the Antarctic Treaty collaboration.

Paragraph three stipulates that NPI may issue guidelines to prevent the unintended introduction of microorganisms. This may, for example, relate to guidance on washing footwear and clothes.

Paragraph four aims to prevent potentially negative consequences that arise due to foreign species being introduced without a permit. The provision stipulates that a party that introduces animals or plants without a permit may also be ordered to remove the species and any traces that they have left. An example of this may be the removal of plants that have become established and spread. The provision ensures the efficient enforcement of the permit requirement and prohibition against introduction. Paragraph four does not apply to the unintentional introduction of microorganisms, refer to paragraph three.

Paragraph four regulates incidents of illegal introduction. The reason for the provision not also applying to lawful introduction is that article 4 item 4 of annex II to the Environmental Protocol stipulates that any species for which an introduction permit has been issued is to be removed or destroyed before the permit expires. NPI also stipulates this as a condition when it grants such introduction permits.

Chapter 6. Management of pollutants and waste

Re § 20. Scope

This provision stipulates that chapter 6 is applicable to any activity apart from activity run from a ship, refer to the definition in § 3 letter g. The reference to § 2 is only included for guidance and stipulates that the chapter, with the exception of ships, has the same scope as the rest of the Regulations. The reason for this construction is linked to the fact that pollution and waste from ships are regulated by Regulations of 30 May 2012 no. 488 relating to the environmental safety of ships and mobile installations, which implement Norway's obligations pursuant to MARPOL 73/78. Article 13 of annex VI to the Environmental Protocol also stipulates that the parties to MARPOL 73/78 are to apply the rules stated there.

As regards ships sailing under the flag of a state that is not a party to MARPOL 73/78, IMO states that 129 countries have currently acceded to annex IV on sewage discharge and that around 87% of the world's surface is covered, which must be regarded as a large percentage, especially since most countries which have not acceded do not have any mentionable maritime activity. When it is also taken into account that around 99% (151) of the world's countries have acceded to annexes I and II of the MARPOL Convention and that 96% (136) have acceded to annex III, and that the MARPOL parties have sanctions against ships that operate through ports under their jurisdiction, refer to annex I article 5, this is regarded as providing sufficiently effective protection so that it is not necessary to have special rules in the Regulations.

Chapter 6 relates to both waste and pollution on land/ice and to the disposal of waste/pollution in such a way that the waste ends up in the sea unless the waste/pollution is disposed of from a ship.

Re § 21. Removal of waste from Antarctica

It is prohibited to leave waste in Antarctica. This ban means that parties must take the waste with them out of Antarctica at the end of the activity. If the activity lasts for several seasons, the waste must usually be removed after the end of each season, refer to the last paragraph.

The ban applies with two exceptions. In the first place, waste may be burned if this takes place in incinerators. All open fires are prohibited. Incineration is to take place in compliance with emission standards and guidelines prepared by NPI in accordance with those prepared during the Antarctic collaboration.

In the second place, NPI may grant an exemption from the ban if such an exemption is applied for and there are special grounds for this. What is to be regarded as special grounds must be determined in each individual case. This also applies to § 22.

Sewage is considered as waste and is covered by the ban. Due to logistics, however, it may be relevant to allow sewage to be left and collected one or two seasons later. An exemption may be granted for this if it is regarded as certain that the sewage will be collected and that it will be stored properly (refer to § 23). This has especially been practical for skiing expeditions.

Re § 22. Prohibition against emissions of environmentally harmful substances and products

This provision is based on annex III article 7, but is formulated as a general prohibition against the emission of environmentally harmful substances and products instead of a catalogue, as has been done in article 7. This is in order to allow flexibility with regard to new environmentally harmful products. In addition, the list of substances mentioned in article 7 is not regarded as containing all the substances that are currently known to be environmentally harmful and emissions of which are prohibited on the Norwegian mainland.

Emissions from, for example, means of transport, primus stoves and suchlike are not covered by the prohibition in the case of normal use because they cannot be regarded as having any noticeable effect on the environment. If they are used to a greater extent, this will be noticed through the assessment of the notification pursuant to § 9 and the environmental impact assessment.

An exemption from this provision, refer to § 36, may be granted in connection with special research, medical or hygiene purposes.

Re § 23. Storage of waste

This provision is based on annex III article 6.

Re § 24. Cleaning up of waste-disposal sites and work sites

Norway is obliged to ensure that waste-disposal sites and work sites that were created before the Regulations entered into force are also cleaned up, refer to annex III article 1 no. 5. § 24 imposes a duty on the generators of the waste and users of the site to clean up past and present waste-disposal sites and abandoned work sites. The second sentence also stipulates a duty to notify NPI before the cleaning-up work starts. The reason for this is so that NPI, which is the cultural heritage authority in Antarctica, may decide whether the waste-disposal site/work site contains material that can be counted as cultural heritage.

Paragraph two authorises NPI to determine a deadline for the cleaning-up work and, if relevant, to clean up at the responsible operator's expense if the order is not complied with. This provision is intended to ensure that the cleaning-up work is carried out, including in cases where the waste will disappear into the ice if cleaning up does not take place within a certain time. The costs of cleaning up should be covered by the responsible operator, in accordance with the polluter pays principle.

In order to ensure that the responsible operator is able to pay for the cleaning-up expenses, a guarantee or insurance to cover any costs may be required. The costs may be high due to the special conditions in Antarctica, so it is important to ensure that there are sufficient funds for the cleaning-up work.

Re § 25. The control and recording of waste management

The Norwegian Environment Agency has prepared a classification system for waste on mainland Norway. This system and the system that is to be created by the parties to the Antarctic Treaty must form the basis of the system that NPI prepares and which parties may be ordered to use for any activity in Antarctica. The provision is primarily aimed at major activities that last for some time and require a certain infrastructure, etc. Skiing expeditions, for example, will not normally be covered, and in the case of activity from ships, there will often be separate waste-disposal systems that meet the requirements set by § 25.

NPI must also approve the training given to ensure that participants in activities receive training in waste management in accordance with the obligations stated in annex III article 10.

Chapter 7. Liability for an environmental emergency

Re § 26. Response action

This provision implements article 5 of the liability annex with the exception of the definition of “response action” which is included in § 3 letter f.

The first paragraph stipulates that the responsible operator must undertake response action when an environmental emergency arises and the environmental emergency is causally linked to the activity of the responsible operator. The provision must be seen in relation to the requirement of preventative measures and preparedness in § 10. The liability is limited to response action that is “reasonable”, refer to § 3 letter f, and “effective” refer to § 26. This entails an assessment of whether the response actions are in proportion to the result that is likely to be achieved in relation to the environment, safety, resources and preparedness. “Reasonable” does not refer to reasonableness in a financial sense.

The first sentence of paragraph two imposes a duty on the responsible operator to notify NPI if an environmental emergency occurs. The second sentence extends the duty to give notice to apply “to a reasonable extent” “to anyone who finds out that an environmental emergency has occurred”. The provision in the second sentence is not directly based on the liability annex, it was included to ensure the most effective notification scheme and the shortest possible response time in the case of an environmental emergency, and must be seen in relation to article 13 (1) of the Environmental Protocol, which orders the parties to implement sufficient enforcement mechanisms to ensure compliance with the Environmental Protocol and its annexes.

Any failure to comply with the duty to notify may lead to criminal liability, refer to § 40, but does not entail any disproportionate burden on a party travelling in Antarctica who finds out about such pollution. In addition, according to the wording of the second sentence, the scope of the liability is limited to that which is within a reasonable extent. The duty to notify is also limited by § 2. According to the third sentence, the duty to notify applies to NPI, which has formal routines for notifying parties to the Treaty and any other affected parties.

The third paragraph allows NPI or any party that NPI authorises to undertake response action if the responsible operator does not do so. One prerequisite for this is that the pollution is of such a nature that one cannot wait for response action to be taken by the responsible operator. The objective of this provision is to allow Norwegian authorities to have an effective opportunity to react to an environmental emergency when the responsible operator does not do so.

Re § 27. Liability for response action undertaken by others

The provision stipulates a strict liability for damages for a responsible operator that has failed to undertake response action pursuant to § 26. In such case, damages are to be paid to the party that undertook the response action on behalf of the responsible operator. This applies both when Norwegian authorities have done this themselves and when they have ordered another party to undertake response action.

The second sentence stipulates that the damages are to equal the costs incurred by undertaking the measure. The liability applies to both governmental and non-State operators. If the claim for damages is contested, § 32 also stipulates that NPI is entitled to sue. The reason for this is stated to be that the party entitled to damages will either be NPI itself or a party that NPI has ordered to undertake response action.

Re § 28. Liability when no response action is undertaken

The first paragraph stipulates that when an environmental emergency has arisen and no response action has been undertaken by anyone, the responsible operator shall nonetheless pay compensation equal to the costs that would have been incurred if response action had been undertaken. This rule is stipulated in article 6 (2) (b) of the liability annex. Here, too, the liability applies to both governmental and non-State operators.

According to the second paragraph, the compensation amount is to be determined discretionarily by NPI, which is to issue a decision regarding this. This provision must be seen in relation to § 26 concerning the duty to undertake response action and the definition of “response action” in § 3 letter f, which states the scope of what is regarded as reasonable and effective response action. In addition, a requirement of proportionality in the determination of the compensation amount must be interpreted into this in the normal way.

It is proposed that the compensation amount is to be determined in the form of a decision, since this is not a financial loss and since a claim for compensation pursuant to this provision is not covered by the normal law of damages principles. It is normally the party that is the subject of a decision that must, if it wishes, bring legal proceedings to challenge the validity of the decision, refer to section 1-5 first sentence of the Disputes Act. In addition, such a decision will be regulated by section 27 letter b of the Public Administration Act, which means that legal proceedings may be postponed until the appeals body, which is in this case the Ministry of Climate and Environment, has reached a decision. This is unlike an action for damages pursuant to the liability stated in § 27, which is discussed in further detail in the comments on § 32.

According to paragraph three, the compensation is to be paid to a fund administered by the Antarctic Treaty secretariat, refer to article 12 of the liability annex. No such fund has yet been established and NPI must therefore keep the money in an interim account until this takes place. Once the fund has been established, the money plus interest is to be transferred from NPI. This solution is not specifically stated in the Regulations in order to allow flexibility before and after the fund is established. The wording does not necessitate any change to the Regulations once the fund is established, when it will under all circumstances be natural for NPI to arrange for the compensation.

The second sentence stipulates that a state or person may also make voluntary contributions to the fund. This rule is derived from article 12 (4) of the liability annex.

Re § 29. Joint and several liability

This provision implements article 6 (4) of the liability annex, but also refers to the general law of damages' principle of joint and several liability for concurrent tortfeasors. If several responsible operators have to different degrees contributed to the environmental emergency, this will have to be assessed specifically when calculating the damages.

Re § 30. Exemptions from liability

This provision implements article 8 of the liability annex. The Regulations already contain a normal exemption provision for cases of emergency in § 8. See the comments on this.

The provision provides an exemption from the liability for damages resulting from not having undertaken response action in the case of pollution that endangers the environment provided the pollution is caused by something outside the responsible operator's control. Letter e also states that if any party acting on behalf of NPI pursuant to § 26 paragraph three has undertaken response action in relation to an existing environmental emergency and this response action causes additional damage or a risk of damage, then the responsible operator is not liable for this.

Re § 31. Limitation of liability

This provision is based on article 9 of the liability annex, which concerns the right to limit the financial liability for an environmental emergency.

The provision has three categories of limitation of liability: In addition to incidents that do not involve ships, where a separate upper limit applies, a distinction must be drawn between two categories related to ships: Maritime responsible operators (ie, where the responsible operator is also a shipowner/shipping company) and non-maritime responsible operators. For non-maritime responsible operators, separate liability limit amounts are stipulated on a level with the maximum amounts for damage to property stated in the Convention on the Limitation of Liability for Maritime Claims, 1976, amended by the 1996 Protocol (1996 LLMC), refer to article 9 (1) (a) of the liability annex. Norway is a party to the LLMC and has implemented the Convention's rules in chapter 9 of the Maritime Code.

As regards maritime responsible operators, the liability annex states that it is assumed that international liability conventions will be applicable, refer to article 9 (2) (a), if the maritime responsible operators are resident in states that are a party to such conventions and if the limits on liability are at least on a level with the limits on liability for damage to property in the 1996 LLMC. Although article 9 (2) (a) (i) is generally worded and refers to "any applicable international limitation of liability treaty", it is assumed that for practical purposes this refer to the 1976 LLMC and 1996 LLMC, but nonetheless such that it is in any case the limits on liability pursuant to the 1996 LLMC that are to be applied in the case of incidents covered by the liability annex.

Article 9 (2) (a) (ii) also allows the application of limits other than those which follow from international limitation of liability conventions, which is in practice a reference to the opportunity of a party to the LLMC to reserve the right to determine its own, higher, national limits of liability. Norway made such a reservation on 28 June 2002 and has introduced higher limits on liability for cleaning-up measures following maritime accidents, refer to sections 172a and 175a of the Maritime Code. The higher limits of liability in the Maritime Code apply to ships of more than 300 gross tons. For ships of 300 gross tons or less, the normal limits on liability in section 175 of the Maritime Code also apply to claims following cleaning-up measures, etc. LLMC does not stipulate any lower limit for the ship concept, but allows the individual parties to regulate the system that is to apply to ships of less than 300 tons.

The distinction between maritime and non-maritime responsible operators is shown by paragraphs two and three respectively. Maritime responsible operators may claim a limit on liability pursuant to section 171 of the Maritime Code, which means that the special limits on liability for cleaning-up measures following maritime accidents are always applicable if the conditions for these exist without this having to be expressly stated in the Regulations.

At the same time, this solution must be compared to the interest in uniform regulation of the area and the need to avoid forum shopping. In this comparison, it has been decided that Norway's implementation of the liability annex should harmonise with the rest of the national regulation of shipping and that higher limits of liability indicate stronger protection of the environment in the case of pollution incidents. The rules on the limitation of liability in Antarctica should be at least as strict as the rules in the Maritime Code.

For non-maritime responsible operators that are not covered by section 171 of the Maritime Code, the limits on liability expressly included in § 31 paragraph three, refer to article 9 (1) (a) (ii) of the liability annex, are applicable.

The objective of the distinction between maritime and non-maritime responsible operators in the liability annex was to avoid double regulation and insurance, and maritime responsible operators will meet the insurance requirement pursuant to § 12 paragraph one if they have liability insurance for liability pursuant to the 1996 LLMC.

As regards the condition for excluding the right to limit liability in paragraph five, this is based on the level of guilt stated in article 9 (3), which is within the gross part of the negligence scale. The wording of the provision is also based on that of corresponding provisions in the Maritime Code, refer to section 174 and section 194 subsection three.

Re § 32. Legal proceedings

This provision implements article 7 of the liability annex.

The first paragraph stipulates that NPI may bring legal proceedings when NPI or any party authorised by NPI has undertaken response action on behalf of a non-State operator. This paragraph refers to “a non-State operator” in order to differentiate this from cases where a State operator has become liable by not undertaking response action, refer to the procedure stated in the provision’s second paragraph.

Paragraph two is aimed at cases where another state has incurred liability by not undertaking response action pursuant to section 27 or 28 paragraph one. If a foreign state that does not have any corresponding regulations or is not a party to the Environmental Protocol under the Antarctic Treaty, refer to § 2 paragraph three, has become liable for damages, it is up to the King to decide whether and how this matter is to be pursued. States that have corresponding regulations and are parties to the Environmental Protocol are not covered by the scope of the Regulations.

The liability annex has a separate procedure for countries that are a party to the Protocol, which are liable according to the liability rules - either that the rules in articles 18, 19 and 20 of the Environmental Protocol, relating to dispute resolution, are to be applied, or that the parties to the Treaty are to jointly arrive at a solution, which is stipulated in article 7 (4) and (5) of the liability annex. This will apply in any case where the Norwegian state has become liable to pay damages. For such cases, it has also been left up to the King to determine the procedure. This solution has been chosen for reasons of flexibility and because the dispute resolution regulations in the Environmental Protocol have so far not often been tried out in practice and appear challenging to implement as national legislation at regulation level.

Paragraph three regulates the legal venue and stipulates that, in cases where the responsible operator has links to a state that has implemented the rules in the liability annex and is a party to the Protocol on Environmental Protection to the Antarctic Treaty, the legal proceedings are to be brought there. This is in accordance with article 7 (1) of the liability annex, refer to article 2 (g). If the responsible operator has links with a state that is not such a party, the action for damages is to be heard by Oslo District Court.

Paragraph four regulates the time-barring of actions for damages, and sets an absolute upper limit of 15 years after the date when the response action started. The limitation periods are stipulated in article 7 of the liability annex.

Chapter 8. Specially protected and specially managed areas

Re § 33. Specially protected areas

When notification is given pursuant to § 9, it must be stated which areas the person intends to enter. A permit is required if a person wishes to enter a specially protected area. The Consultative Parties may decide that areas are to be designated as “specially protected areas”, refer to article 3 of annex V. Areas may be proposed by the parties, together with a plan for managing the area.

A permit from a national authority, ie, NPI, is required to enter a specially protected area, refer to article 3 no. 4 of annex V. The permit is to be granted in accordance with the management plan that exists for the specially protected area, refer to article 7 of annex V. Permit-holders must carry a copy of the permit while in the area, refer to article 7 no. 3, and the permit must be specific to the person.

Re § 34. Specially managed areas

When notification is given pursuant to § 9, it must be stated which areas the person intends to enter. Basically, a permit is not required to enter a specially managed area unless part of the area is also a specially protected area or the agreed management plan for the area stipulates restrictions on access. A person wishing to go to Antarctica must become familiar with the location of these areas and any restrictions which follow from management plans. In practice, this can be done by NPI providing information on this and issuing maps showing where the areas are. Norway is obliged to do the latter through article 9 of annex V, which deals with the parties' duty to provide information.

Re § 35. Historical sites and cultural heritage

A list of historical sites and cultural heritage in Antarctica is to be prepared. In order to be included on this list, the historical site or cultural heritage must be selected as a separate protected area or management area, or as part of such an area, refer to articles 3, 4 and 8 of annex IV. § 34 and § 35 are applicable when the site is selected as a specially protected area or specially managed area. The list will also contain historical sites and cultural monuments that have not been selected as specially protected or managed areas but which are registered on the list in a simpler manner, refer to article 8 no. 2 of annex IV. Such registered sites will have less extensive protection. Historical sites and cultural heritage that were protected before the Environmental Protocol was signed are also covered, refer to article 8 no. 4.

The prohibition against damaging, removing or destroying historical sites or cultural heritage applies irrespective of the manner in which the site or heritage has arrived on the list.

The parties attending the Antarctic Treaty meeting in 2001 also agreed to Resolution 5, which provides guidelines for handling pre-1958 cultural heritage “whose existence or present location is not yet known”. This is safeguarded by NPI stating, in its guide to those planning activities in Antarctica, among other things the intention behind Resolution 5 (2001), which is to also provide protection to cultural heritage that has not yet been discovered or registered.

Chapter 9. Special provisions

Re § 36. Exemption

It is regarded as expedient for NPI to have the power to grant exemptions from the Regulations' provisions in special cases. That which is to be counted as “special” must be determined in each case. The provision has been continued from the Regulations of 5 May 1995 no. 408 concerning the protection of the environment in Antarctica.

Re § 37. Duty of disclosure

The objective of the proposed provision is to make sure that NPI has sufficient access to the information that is necessary for NPI to carry out its tasks as an authority pursuant to the Regulations. The provision is partly based on the system stated in section 89 of the Svalbard Environmental Protection Act and section 49 of the Pollution Control Act.

NPI's right to order persons to provide information applies without restriction in relation to a responsible operator, while special grounds are required to give such an order to other participants in the same activity. Refer also to the comments on § 2 concerning those subject to the Regulations.

Re § 38. Supervision

The Norwegian Polar Institute (NPI) is assigned the supervisory authority pursuant to the Regulations. In order for it to be possible to supervise that the Regulations are complied with, NPI is given the opportunity to, for example, authorise individuals who are involved in activities to carry out supervision. This provision can be seen together with § 6 on inspections. However, the latter was adopted in order to authorise observers from other states that are parties to the Treaty to inspect that Norway is complying with the Environmental Protocol. This provision applies to Norwegian authorities' opportunity to ensure that the national regulations are complied with.

Re § 39. Appeals

This is a provision stating the appeals body. Otherwise, the Act of 10 February 1967 relating to procedure in cases concerning the public administration's provisions concerning appeals apply.

Re § 40. Penalties

Section 8 of the Act relating to Bouvet Island, Peter I's Island and Queen Maud Land, etc, states that contraventions may be punished by fines and/or imprisonment of up to one year. Corporate penalties may also be relevant. In such case, reference is made to the Penal Code.

Re § 41. Entry into force and repeal of previous regulations

The Ministry of Climate and Environment is authorised to amend the Regulations. The regulations of 5 May 1995 no. 408 concerning the protection of the environment in Antarctica are repealed on the date when these Regulations enter into force.

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