

# The Antarctic Act 1994 (Overseas Territories) Order 1995

## 1. PART I PRELIMINARY

### 1. 1.MEANING OF "ANTARCTICA".

### 2. 2.THE ANTARCTIC TREATY, THE PROTOCOL AND THE CONVENTION.

## 2. PART II ENVIRONMENTAL PROTECTION

### 1. PERMITS FOR ENTERING AND REMAINING IN ANTARCTICA

#### 1. 3.PERMITS REQUIRED FOR BRITISH EXPEDITIONS TO ANTARCTICA.

#### 2. 4.PERMITS REQUIRED FOR BRITISH STATIONS IN ANTARCTICA.

#### 3. 5.PERMITS REQUIRED FOR BRITISH VESSELS AND AIRCRAFT ENTERING ANTARCTICA.

### 2. MINERAL RESOURCES

#### 1. 6.MINERAL RESOURCE ACTIVITIES.

### 3. FAUNA AND FLORA

#### 1. 7.CONSERVATION OF ANTARCTIC FAUNA AND FLORA.

#### 2. 8.PERMITS REQUIRED FOR INTRODUCING NON-NATIVE ANIMALS AND PLANTS INTO ANTARCTICA.

### 4. SPECIAL AREAS

#### 1. 9.AREAS RESTRICTED UNDER THE PROTOCOL.

#### 2. 10.HISTORIC SITES AND MONUMENTS.

#### 3. 11.PLACES PROTECTED UNDER THE CONVENTION.

### 5. PERMITS UNDER PART II: FURTHER PROVISIONS

#### 1. 12.GRANT OF PERMITS FOR ACTIVITIES PROHIBITED BY SECTIONS 7, 8 AND 9.

#### 2. 13.CONDITIONS ATTACHED TO PERMITS UNDER PART II.

#### 3. 14.PERMITS: APPLICATIONS, PRODUCTION, REVOCATION AND SUSPENSION.

#### 4. 15.DUTY TO HAVE REGARD TO THE PROTOCOL AND TO MEASURES IMPLEMENTING THE PROTOCOL.

#### 5. 16.(OMITTED).

### 6. OFFENCES UNDER PART II

#### 1. 17.PROCEEDINGS FOR OFFENCES UNDER PART II.

#### 2. 18.DEFENCES.

#### 3. 19.OFFENCES COMMITTED BY BODIES CORPORATE.

#### 4. 20.PENALTIES.

## 3. PART III APPLICATION OF CRIMINAL LAW TO UNITED KINGDOM NATIONALS

### 1. 21.UNITED KINGDOM NATIONALS IN THE UNCLAIMED SECTOR OF ANTARCTICA.

### 2. 22.UNITED KINGDOM NATIONALS WORKING UNDER THE ANTARCTIC TREATY.

### 3. 23.UNITED KINGDOM NATIONALS WORKING UNDER THE CONVENTION.

#### 4. 24.PROCEEDINGS FOR OFFENCES UNDER PART III.

## 4. PART IV MISCELLANEOUS AND SUPPLEMENTARY

1. INTERNATIONAL RIGHTS, OBLIGATIONS AND ARRANGEMENTS

1. 25. POWER TO MAKE FURTHER PROVISION IN CONNECTION WITH THE ANTARCTIC TREATY, THE PROTOCOL AND THE CONVENTION.

2. OFFENCES UNDER THIS ACT: FURTHER PROVISIONS

1. 26. (OMITTED).

2. 27. MEANING OF "OFFENCE UNDER THIS ACT".

3. 28. INSTITUTION OF PROCEEDINGS.

4. 29. POWER OF ARREST ETC.

5. 30. EVIDENCE.

3. INTERPRETATION

1. 31. INTERPRETATION.

4. SUPPLEMENTARY

1. 32. REGULATIONS.

**PART I PRELIMINARY**

*Meaning of "Antarctica"*

1.—(1) In this Act "Antarctica" means—

(a) the continent of Antarctica (including all its ice-shelves),

(b) all islands south of 60° South latitude (including all their ice-shelves),

(c) all areas of continental shelf which are adjacent to that continent or those islands and which are south of 60° South latitude, and

(d) all sea and airspace south of 60° South latitude.

and for this purpose "continental shelf" shall be construed in accordance with the rules of international law.

*The Antarctic Treaty, the Protocol and the Convention*

2.—(1) "the Antarctic Treaty" means the Antarctic Treaty signed at Washington on 1st December 1959, "the Convention" means the Convention on the Conservation of Antarctic Marine Living Resources drawn up at Canberra on 20th May 1980<sup>(1)</sup>, and

"the Protocol" means the Protocol on Environmental Protection to the Antarctic Treaty done at Madrid on 4th October 1991<sup>(2)</sup>.

(2) In this Act "another Contracting Party" means any State other than the United Kingdom that is a party to the Protocol.

## **PART II ENVIRONMENTAL PROTECTION**

### **Permits for entering and remaining in Antarctica**

#### Permits required for British expeditions to Antarctica

3.—(1) No person who is on a British expedition may enter or remain in Antarctica except in accordance with a permit granted under this section.

(2) Subsection (1) does not apply—

(a) to a person travelling through, on or above the high seas to an immediate destination outside Antarctica, or

(b) to a person entering or remaining in Antarctica for the sole purpose of fishing for profit.

(3) Subject to subsection (4), for the purposes of this section an expedition is a British expedition if—

(a) it was organised in the United Kingdom or the Territory or

(b) the place of final departure for Antarctica of the persons on the expedition was in the United Kingdom or the Territory.

(4) An expedition organised in and authorised in writing by another Contracting Party shall not be regarded as a British expedition.

(5) Any person who contravenes subsection (1) shall be guilty of an offence.

(6) If subsection (1) is contravened by a person who—

(a) is on an expedition in respect of which a permit has been granted under this section to another person, and

(b) is specified or of a description specified in that permit,

that other person shall be guilty of an offence.

(7) If a person whose place of final departure for Antarctica was in the United Kingdom or the Territory enters Antarctica in contravention of subsection (1)—

(a) the operator of the vessel or aircraft on which he enters Antarctica, and

(b) the master of that vessel or the commander of that aircraft, shall each be guilty of an offence.

(8) The Governor, with the consent of the Secretary of State, may on the application of any person grant to him a permit authorising any person specified or of a description specified in the permit to enter and remain in Antarctica on a British expedition.

(9) In this section references to the Territory shall be construed as including a reference to any other territory to which this Act has been extended.

#### Permits required for British stations in Antarctica

4.—(1) No person may remain on a British station in Antarctica except in accordance with a permit granted under this section.

(2) For the purposes of this section a station is a British station if it is maintained by or on behalf of a United Kingdom national.

(3) Any person who contravenes subsection (1) shall be guilty of an offence.

(4) If subsection (1) is contravened by a person who—

(a) is on a station in respect of which a permit has been granted under this section to another person, and

(b) is specified or of a description specified in that permit,

that other person shall be guilty of an offence.

(5) The Governor, with the consent of the Secretary of State, may on the application of any person grant to him a permit authorising any person specified or of a description specified in the permit to remain on any British station in Antarctica specified in the permit or of a description specified in the permit.

#### Permits required for British vessels and aircraft entering Antarctica

5.—(1) No British vessel or British aircraft may enter Antarctica except in accordance with a permit granted under this section or under the written authorisation of another Contracting Party.

(2) Subsection (1) does not apply—

(a) to a vessel or aircraft travelling to an immediate destination outside Antarctica, or

(b) to a vessel entering Antarctica for the sole purpose of fishing for profit.

(3) In this section—

“British vessel” means a ship which—

(a) is registered in the United Kingdom or the Territory; or

(b) is not registered under the law of any country but is wholly owned by persons each of whom is either a United Kingdom national or a body corporate which is established under the law of a part of the United Kingdom or in the Territory and has its principal place of business in a part of the United Kingdom or in the Territory;

- “British aircraft” means an aircraft—

(a)

which is for the time being registered in the United Kingdom or the Territory; or

(b)

which is not for the time being registered in any country but in the case of which either the operator of the aircraft or each person entitled as owner to any legal or beneficial interest in it satisfies the following requirements, namely—

(i)

that he is a person qualified to be the owner of a legal or beneficial interest in an aircraft registered in the United Kingdom or the Territory; and

(ii)

that he resides or has his principal place of business in the United Kingdom or the Territory; or

(c)

which being for the time being registered in some other country, is for the time being chartered by demise to a person who, or to persons each of whom, satisfies the requirements aforesaid.

(4) If subsection (1) is contravened—

(a) the operator of the vessel or aircraft, and

(b) the master of the vessel or the commander of the aircraft,

shall each be guilty of an offence.

(5) The Governor, with the consent of the Secretary of State, may on the application of any person grant to him a permit authorising any British vessel or aircraft of which he is the operator and which is specified or of a description specified in the permit to enter Antarctica on occasions or in circumstances specified in the permit.

(6) In this section references to the Territory shall be construed as including a reference to any other territory to which this Act has been extended.

## **Mineral Resources**

### **Mineral resource activities**

6.—(1) No United Kingdom national may in Antarctica—

(a) drill, dredge or excavate for mineral resources,

(b) collect any samples of mineral resources, or

(c) do anything for the purpose of identifying specific mineral resource occurrences or deposits, or areas where such occurrences or deposits may be found,

except in accordance with a permit granted under this section.

(2) Any person who contravenes subsection (1) shall be guilty of an offence.

(3) The Governor, with the consent of the Secretary of State, may on the application of any person grant to him a permit authorising any United Kingdom national who is specified or of a description specified in the permit to do anything so specified or of a description so specified that would otherwise constitute a contravention of subsection (1).

(4) The Secretary of State shall not consent to the grant of a permit under this section unless he is satisfied that the activities authorised by the permit will be carried on—

(a) only for the purposes of scientific research, or

(b) only for purposes connected with the construction, maintenance or repair in Antarctica of a British station within the meaning of section 4 or of any other structure, road, runway or jetty maintained by or on behalf of a United Kingdom national.

(5) In this section “mineral resource” means any natural resource that is neither living nor renewable.

## **Fauna and flora**

### **Conservation of Antarctic fauna and flora**

7.—(1) No United Kingdom national may in Antarctica—

(a) intentionally kill, injure, capture, handle or molest any native mammal or native bird,

(b) while on foot intentionally disturb a breeding or moulting native bird, or a concentration of native mammals or native birds,

(c) use a vehicle, vessel or aircraft in a manner that disturbs a concentration of native mammals or native birds,

(d) use explosives or firearms in such a manner,

(e) remove or damage such quantities of any native plant that its local distribution or abundance will be significantly affected,

(f) significantly damage a concentration of native plants, or

(g) do anything that is likely to cause significant damage to the habitat of any native mammal, bird, plant or invertebrate,

except in accordance with a permit granted under section 12 or under the written authorisation of another Contracting Party.

(2) Any person who contravenes subsection (1) shall be guilty of an offence.

### **Permits required for introducing non-native animals and plants into Antarctica**

8.—(1) No United Kingdom national may introduce into any part of Antarctica any animal of a species that is not indigenous to Antarctica, or any plant that is not a native plant, except in accordance with a permit granted under section 12 or under the written authorisation of another Contracting Party.

(2) The keeping of an animal or plant on board a vessel in Antarctica shall not be regarded as a contravention of subsection (1).

(3) Any person who contravenes subsection (1) shall be guilty of an offence.

## **Special areas**

### **Areas restricted under the Protocol**

**9.**—(1) No United Kingdom national may enter or remain in an area in Antarctica designated by regulations as an area restricted under the Protocol except in accordance with a permit granted under section 12 or under the written authorisation of another Contracting Party.

(2) Any person who contravenes subsection (1) shall be guilty of an offence.

### **Historic Sites and Monuments**

**10.**—(1) No United Kingdom national may damage, destroy or remove any part of a site or monument designated by regulations as an Antarctic Historic Site or Monument.

(2) Any person who contravenes subsection (1) shall be guilty of an offence.

### **Placed protected under the Convention**

**11.**—(1) No United Kingdom national may enter or remain in a place that is in the area south of the Antarctic Convergence and that has been designated by regulations as a place protected under the Convention (in this section referred to as a “protected place”) except in accordance with a permit granted under this section.

(2) Any person who contravenes subsection (1) shall be guilty of an offence.

(3) The Governor, with the consent of the Secretary of State, may on the application of any person grant to him a permit authorising any United Kingdom national specified or of a description specified in the permit to enter and remain in any protected place specified in the permit.

## **Permits under Part II: further provisions**

### **Grant of permits for activities prohibited by sections 7, 8 and 9**

**12.** The Governor, with the consent of the Secretary of State, may on the application of any person grant to him a permit authorising any United Kingdom national who is specified or of a description specified in the permit to do anything specified or of a description specified in the permit that would otherwise constitute a contravention of section 7(1), 8(1) or 9(1).

### **Conditions attached to permits under Part II**

**13.**—(1) The Governor, with the consent of the Secretary of State, may on granting a permit under this Part attach to it such conditions as he thinks fit, including—

(a) conditions to be complied with by persons doing anything authorised by the permit,

(b) in the case of a permit granted under section 5, conditions to be complied with by the master and crew of any vessel to which the permit relates or by the commander and crew of any aircraft to which the permit relates, and

(c) conditions requiring the person to whom the permit is granted to provide information to the Governor or the Secretary of State.

(2) If any person contravenes a condition attached to a permit under subsection (1)—

(a) he shall be guilty of an offence, and

(b) if the permit was granted to another person, that other person shall be guilty of an offence.

#### **Permits: applications, production, revocation and suspension**

**14.—**(1) Regulations may make provision—

(a) as to the procedure for making applications for permits under this Part,

(b) as to the circumstances in which, the persons to whom, and the persons by whom, permits may be required to be produced,

(c) as to the circumstances in which permits are liable to be revoked or suspended by the Governor,

(d) as to the notice to be given before permits are revoked or suspended, and as to the other procedure to be followed in relation to the revocation or suspension of permits, and

(e) for appeals against the revocation or suspension of permits, and as to the procedure to be followed in relation to such appeals (including provision in accordance with which such procedure is to be determined).

(2) Any person who without reasonable excuse fails to produce a permit in compliance with a requirement made in accordance with regulations under subsection (1)(b) shall be guilty of an offence.

#### **Duty to have regard to the Protocol and to measures implementing the Protocol**

**15.** The Secretary of State shall have regard to the provisions of the Protocol and to any measures for the implementation of the Protocol that have become effective by virtue of paragraph 4 of Article IX of the Antarctic Treaty in considering in any case whether to give his consent to the grant of a permit under section 3, 4, 5 or 12 or to conditions to be attached thereto under section 13(1).

**16.** (omitted).

### **Offences under Part II**

#### **Proceedings for offences under Part II**

**17.** Proceedings for an offence under this Part may be taken and the offence may for incidental purposes be treated as having been committed in the Territory.

## Defences

**18.**—(1) Where a person is charged with an offence under section 3(5), (6) or (7), 4(3) or (4), 5(4) or 13(2), it shall be a defence to prove that the contravention in question occurred by reason of matters outside his control and that he took all reasonable precautions to avoid such a contravention.

(2) Subject to subsection (3), where a person is charged with an offence under this Part it shall be a defence to prove that the contravention in question occurred in a 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.

(3) Subsection (2) does not apply where the contravention in question is a contravention of section 6(1) or of a condition attached to a permit granted under section 6(3).

(4) Where a person is charged with an offence under section 7(2) in respect of a contravention of section 7(1)(a), it shall be a defence to prove that the act in question was done for the relief of the suffering of the mammal or bird in question.

## Offences committed by bodies corporate

**19.**—(1) Where an offence under this Part has been committed by a body corporate and the contravention in question is proved to have occurred with the consent or connivance of, or to be attributable to any neglect on the part of—

- (a) a director, manager, secretary or other similar officer of the body corporate, or
- (b) any person who was purporting to act in any such capacity,

he as well as the body corporate shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(2) In subsection (1) “director”, in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.

## Penalties

**20.** Any person who is guilty of an offence under this Part shall be 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 5,000 or its equivalent.

## **PART III APPLICATION OF CRIMINAL LAW TO UNITED KINGDOM NATIONALS**

### *United Kingdom nationals in the unclaimed sector of Antarctica*

**21.** Where a United Kingdom national does or omits to do anything on any land lying south of 60 South latitude and between 150 West longitude and 90 West longitude and that act or omission would have constituted an offence under the law of the Territory if it had occurred in the Territory, he shall be guilty of the

like offence as if the act or omission had taken place in the Territory, and shall be liable to be proceeded against and punished accordingly.

*United Kingdom nationals working under the Antarctic Treaty*

**22.**—(1) Where a United Kingdom national who—

(a) is an Antarctic Treaty official, and

(b) is in any part of Antarctica, other than the area mentioned in section 21, for the purpose of exercising his functions as an Antarctic Treaty official,

does or omits to do anything, and that act or omission would have constituted an offence under the law of the Territory if it had taken place in the Territory, he shall be guilty of the like offence as if the act or omission had taken place in the Territory, and shall be liable to be proceeded against and punished accordingly.

(2) In subsection (1) “Antarctic Treaty official” means a person who—

(a) has been designated as an observer by, or on behalf of Her Majesty’s Government in the United Kingdom in accordance with Article VII of the Antarctic Treaty,

(b) is a scientist who has been exchanged in accordance with Article III (1)(b) of the Antarctic Treaty, or

(c) is a member of the staff accompanying a person such as is mentioned in paragraph (a) or (b).

*United Kingdom nationals working under the Convention*

**23.**—(1) Where a United Kingdom national—

(a) who is a Convention official, and

(b) who is on a vessel in any part of the area south of the Antarctic Convergence for the purpose of exercising his functions as a Convention official,

does or omits to do anything, and that act or omission would have constituted an offence under the law of the Territory if it had taken place in the Territory, he shall be guilty of the like offence as if the act or omission had taken place in the Territory, and shall be liable to be proceeded against and punished accordingly.

(2) In subsection (1) “Convention official” means any person designated as an inspector or observer by a Member of the Commission for the Conservation of Antarctic Marine Living Resources under Article XXIV of the Convention.

*Proceedings for offences under Part III*

**24.** Where by virtue of section 21, 22 or 23 a person is liable to be proceeded against for an offence in the Territory, the proceedings may be taken, and the offence may for incidental purposes be treated as having been committed, in the Territory.

## **PART IV MISCELLANEOUS AND SUPPLEMENTARY**

### ***International rights, obligations and arrangements***

Power to make further provision in connection with the Antarctic Treaty, the Protocol and the Convention

**25.**—(1) Regulations may make provision for the purpose of implementing any right or obligation of the United Kingdom created or arising by or under any of the Agreements.

(2) In subsection (1) “the Agreements” means—

(a) the Antarctic Treaty, the Protocol and the Convention (as they have effect on 5th July 1994 or subsequently), and

(b) any annex or protocol to the Antarctic Treaty, the Protocol or the Convention (as any such annex or protocol has effect on 5th July 1994 or, if later, the date on which it is made, or subsequently).

(3) Regulations may make provision for the purpose of giving effect to any recommendations made in accordance with Article IX(1) of the Antarctic Treaty (recommendations to the governments of the parties to the Antarctic Treaty of measures in furtherance of its principles and objectives).

(4) Regulations under subsection (1) or (3) may not create any new criminal offence punishable with a penalty greater than that provided for in section 20 in respect of offences under Part II.

**26.** (omitted).

### **Offences under this Act: further provisions**

Meaning of “offence under this Act”.

**27.** In the following provisions of this Act “offence under this Act” includes any offence committed by virtue of section 21, 22 or 23 and any offence (wherever committed) or incitement to commit an offence under Part II, conspiracy to commit an offence under Part II or attempting to commit an offence under Part II.

Institution of proceedings

**28.** Proceedings for an offence under this Act shall not be instituted in the Territory except by or with the consent of the principal public officer of the Territory having responsibility for criminal prosecutions:

Provided that this section shall not prevent the arrest, or the issue or execution of a warrant for the arrest, of any person in respect of such an offence, or the remand in custody or on bail of any person charged with such an offence, notwithstanding that the necessary consent to the institution of proceedings for the offence has not been obtained.

Power of arrest etc.

**29.**—(1) Regulations may make provision for the arrest—

(a) in any part of the area south of the Antarctic Convergence of any person suspected of committing an offence under section 11(2), under section 13(2) in relation to a condition attached to a permit granted under section 11, or by virtue of section 23, and

(b) in any part of Antarctica of any person suspected of committing any other offence under this Act.

(2) Regulations may make provision for—

(a) the conveyance in custody of any person arrested under regulations made by virtue of subsection (1) to any place where he can be tried for the offence in question,

(b) the seizure and detention of any article which may be evidence of an offence under this Act and its conveyance to any place where a person charged with that offence can be tried, and

(c) securing the attendance, before any court by which a person can be tried for an offence under this Act, of any person required to give evidence or produce documents in proceedings relating to that offence.

**30.**—(1) For the purposes of any proceedings for an offence under this Act a certificate signed by or on behalf of the Secretary of State or the Governor and stating that at the time specified in the certificate—

(a) a State was or was not a party to the Protocol,

(b) a person was or was not an Antarctic Treaty official as defined in section 22, or

(c) a person was or was not a Convention official as defined in section 23,

shall be conclusive evidence of the facts stated in it.

(2) A document purporting to be a certificate such as is mentioned in subsection (1) shall be deemed to be such a certificate unless the contrary is proved.

(3) A document purporting to be a written authorisation such as is mentioned in section 3(4), 5(1), 7(1), 8(1) or 9 (1) shall be deemed to be such an authorisation unless the contrary is proved.