

# STATES OF JERSEY



## ANTARCTIC ACT 2013: EXTENSION OF SECTIONS 14, 15 AND 16 TO JERSEY BY ORDER IN COUNCIL

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Lodged au Greffe on 20th September 2016  
by the Chief Minister

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STATES GREFFE

## **PROPOSITION**

**THE STATES are asked to decide whether they are of opinion –**

to signify, pursuant to Article 31 of the States of Jersey Law 2005, whether they agree that a request be made to the Privy Council for the making of an Order in Council that would extend to Jersey sections 14, 15 and 16 of the Antarctic Act 2013, amending certain sections of the Antarctic Act 1994 that were extended to Jersey by the Antarctic Act 1994 (Jersey) Order 1995, as summarised in the report of the Chief Minister dated 1st September 2016.

CHIEF MINISTER

## REPORT

The Antarctic Act 1994 (“the 1994 Act”) gave effect to obligations of the United Kingdom under the Antarctic Treaty and the Protocol (including its Annexes I–V). Under the 1994 Act, a permit is required for all British expeditions to Antarctica, for British vessels and aircraft entering Antarctica and for certain activities in Antarctica by United Kingdom nationals. The Act is administered by the Foreign and Commonwealth Office. The 1994 Act was extended to Jersey, with adaptations and modifications, by the [Antarctic Act 1994 \(Jersey\) Order 1995](#) (registered by the Royal Court on 5th May 1995).

The Antarctic Regulations 1995 (“the 1995 Regulations”) were made by the Secretary of State for Foreign and Commonwealth Affairs under the 1994 Act, and prescribed the procedure by which applications could be made for permits under the Act, including provisions relating to environmental evaluations, production of permits and their revocation or suspension. The 1995 Regulations established a Tribunal to hear appeals against revocation or suspension. The 1995 Regulations designated special areas protected under the Act. There were also provisions regarding offences. The 1995 Regulations were extended to Jersey with modifications by the Antarctic (Jersey) Regulations 1997 (registered by the Royal Court on 30th January 1998).

Part 2 of the Antarctic Act 2013 (sections 14, 15 and 16) amended the 1994 Act, primarily to respond to the increasing international nature of Antarctic expeditions, to protect historic sites and monuments and address the increasing vulnerability of the fragile Antarctic environment.<sup>1</sup>

The draft Order in Council would extend these sections 14, 15 and 16 of the Antarctic Act 2013. There is no call to modify them in their extension to Jersey: their effect in Jersey will be the same as their effect in the United Kingdom, which is as follows –

### *Section 14 – Application of offences to non-nationals*

Under section 12 of the 1994 Act, the Secretary of State was able to grant a permit in respect of a United Kingdom national to do anything which was otherwise prohibited under section 7(1), 8(1) or 9(1) of the 1994 Act. These provisions prohibited United Kingdom nationals from harming Antarctic fauna and flora, introducing non-native species into Antarctica and entering restricted areas, respectively, without a permit. Non-United Kingdom nationals wishing to conduct such activities were not eligible for a United Kingdom permit, even if their activity was to take place on an expedition organised by a British scientific institution. The Protocol requires all persons wishing to engage in such activities to obtain a prior permit. Therefore, if a non-United Kingdom national on a British expedition wished to carry out such an activity, authorisation had to be obtained from another State Party in respect of that individual. This requirement did, on occasions, cause inconvenience to British scientific institutions which employed non-United Kingdom nationals to conduct scientific research in Antarctica. Moreover, in cases where the individual scientist was a national of a State which was not a Party to the Protocol, it might not have been possible for that individual to be covered by a permit at all.

*Subsection (2)* of this section amended sections 7(1), 8(1) and 9(1) of the 1994 Act by extending the scope of those offences to cover non-United Kingdom nationals on a

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<sup>1</sup> Revisions to Annex II to the Protocol adopted by the Antarctic Treaty Consultative Meeting in 2009. Annex II, as revised, is available at [www.ats.aq/documents/recatt/att432\\_e.pdf](http://www.ats.aq/documents/recatt/att432_e.pdf)

British expedition. (“British expedition” is defined by section 3 of the 1994 Act.) Subsection (4) amended section 12 of the 1994 Act to enable the Secretary of State to grant a permit for an activity otherwise prohibited by section 7, 8 or 9 to a non-United Kingdom national on a British expedition, for the purposes of education or scientific research.

*Subsection (2)* also extended sections 10 and 11 of the 1994 Act to cover non-United Kingdom nationals on a British expedition. Section 10 protects historic sites and monuments in Antarctica, and section 11 prohibits entry into protected places.

#### *Section 15 – Historic Sites and Monuments: permits*

Section 10 of the 1994 Act makes it an offence to damage, destroy or remove any part of a historic site or monument. This reflects the provisions of Annex V to the Protocol which protect such historic sites and monuments. However, the prohibition in section 10 might on occasion have impeded effective conservation management of these sites; for example, where it was necessary to remove part of a monument or an object within a site temporarily for conservation or repair work.

This section amended section 10 of the 1994 Act to enable the Secretary of State to grant a new form of permit in respect of conservation or repair work of designated Historic Sites and Monuments. A consequential amendment to section 15 of the 1994 Act was also made, to ensure that in granting any such permit, the Secretary of State had to have regard to the provisions of the Protocol and to any measures adopted by the Antarctic Treaty Meeting.

#### *Section 16 – Conservation of animals and plants*

Section 7(1)(e) of the 1994 Act makes it an offence to remove or damage such quantities of any native plant that its local distribution or abundance will be significantly affected, except in accordance with a permit granted under section 12 or under the written authorisation of another Party to the Protocol. *Subsection (2)* of this section extended this to native invertebrates. This amendment reflected recent revisions to Annex II to the Protocol to the Antarctic Treaty, adopted at the 32nd Antarctic Treaty Consultative Meeting in 2009.

Subsection (3) is explained below in the context of *subsection (9)(b)*.

Section 8 of the 1994 Act makes it an offence to introduce a non-indigenous species into Antarctica (unless authorised by a permit granted under section 12). Subsection (2) of section 8 did, however, allow for animals and plants to be kept on board vessels visiting Antarctica, providing the animal remains on board. *Subsection (4)* of this section replaced section 8(2) of the 1994 Act, so as to limit the scope of this exception. The new subsection meant that the keeping of animals on board vessels in Antarctica was prohibited unless the animal was a recognised assistance dog or if the vessel was merely transiting the Antarctic marine area. This brought section 8 of the 1994 Act into line with legislative provisions regarding the keeping of any animals on board vessels in Antarctica that could be found in many other Antarctic Treaty Parties’ domestic legislation. These provisions prohibit the keeping of animals on board vessels in Antarctica generally, while providing an exception for assistance dogs. These exceptions recognise that certain visitors with assistance needs require the aid of an assistance dog on board their vessel when they are visiting Antarctica.

*Subsection (5)* added a new subsection into section 8, which provided that the introduction of a microscopic organism into the Antarctic environment was not prohibited by section 8. It also inserted a new *subsection (5)* into section 8 of the 1994 Act, which provided a definition of a plant for the purposes of section 8. This definition was consistent with the definition of “native plant” in section 31 of the 1994 Act (as amended by section 16(9)(c)).

*Subsection (6)* inserted a new section 8A into the 1994 Act. Subsection (1) of new section 8A prohibited the introduction of any microscopic organism of a non-native species into Antarctica, except in accordance with a permit. The prohibition did not apply to a person who took reasonable precautions to prevent the introduction of the organism (subsection (2)). The prohibition also did not include organisms inhabiting the human body or the body of an animal (subsection (3)). These new provisions reflected revisions to Annex II to the Protocol adopted in 2009. Subsection (4) created an offence of contravening subsection (1) for which the penalties were already provided in section 20 of the 1994 Act, namely a maximum 2 year prison sentence, a fine or both. This reflected the 2009 revisions to Annex II of the Protocol.

*Subsection (8)* inserted a new section 8B into the 1994 Act. Subsection (1) prohibited the introduction of non-sterile soil into any part of Antarctica. Subsection (2) disapplied subsection (1) if the person took reasonable precautions to prevent the introduction of the non-sterile soil. Subsection (3) created an offence of contravening subsection (1) for which the penalties were already provided in section 20 of the 1994 Act, namely a maximum 2 year prison sentence, a fine or both. This reflected the 2009 revisions to Annex II of the Protocol.

*Subsections (9)(a) and (10)* reflected recent revisions to Annex II of the Protocol, which make clear that it protects species which migrate to Antarctica permanently, for example as a result of climatic changes. This section inserted a new provision into section 31 of the 1994 Act to specify that references to a species “indigenous to Antarctica” included a species occurring in Antarctica through natural migration. This change therefore broadened the definitions of “native bird”, “native invertebrate” and “native mammal” in section 31.

*Subsection (9)(b)* extended the definition of “native invertebrate” and “native plant” in section 31 of the 1994 Act, to include marine invertebrates and plants. This had the effect that section 7(1)(e), (f), and (g) would also cover native marine plants and native marine invertebrates in Antarctica. *Subsection (3)* made a consequential amendment to the 1994 Act to exempt accidental harm to native marine invertebrates and native marine plants from constituting an offence under section (7)(1)(e), (f) or (g) as a result of the normal operations of a vessel (for example, anchoring) and fishing for profit.

**Appendix 1** hereto shows the draft Order in Council. For ease of reference, **Appendix 2** hereto shows the text of the 1994 Act as extended to Jersey with the modifications deriving from the extension of sections 14, 15 and 16 of the Antarctic Act 2013 by the draft Order in Council.

### **Financial and manpower implications**

There are no financial or manpower implications for the States arising from this proposition.

**APPENDIX 1**

**The Antarctic Act 1994 (Jersey) (Amendment) Order 201-**

*Made* 201-  
*Coming into force* 201-

At the Court at Buckingham Palace, the  
Present,  
The Queen's Most Excellent Majesty in Council

Her Majesty, in exercise of the powers conferred on Her by sections 34(2) and (3) of the Antarctic Act 1994(a), and 18(2)(b) of the Antarctic Act 2013(b) is pleased, by and with the advice of Her Privy Council, to order and it is hereby ordered, as follows:

**Citation and commencement**

1. This Order may be cited as the Antarctic Act 1994 (Jersey) (Amendment) Order 201- and shall come into force on the seventh day after it is registered by the Royal Court of Jersey.

**Amendment of the Antarctic Act 1994 (Jersey) Order 1995**

2.-(1) The Antarctic Act 1994 (Jersey) Order 1995(c) is amended as provided in paragraph (2).

(2) In article 2, after "the Antarctic Act 1994" insert "as amended by sections 14, 15 and 16 of the Antarctic Act 2013".

Clerk of the Privy Council

- (a) 1994 c.15
- (b) 2013 c.15
- (c) S.I.1995/1034

**EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order amends the Antarctic Act 1994 (Jersey) Order 1995 (S.I.1995/1034), which extended the Antarctic Act 1994 (c.15) to Jersey with certain modifications, to extend the amendments made to that Act by Part 2 of the Antarctic Act 2013 (c. 15) to Jersey.

[DRAFT – text of the 1994 Act as extended to Jersey with the modifications deriving from the extension of sections 14, 15 and 16 of the Antarctic Act 2013 by the draft Order in Council.]

**ANTARCTIC ACT 1994**

**1994 CHAPTER 15**

**AN ACT** to make new provision in connection with the Antarctic Treaty signed at Washington on 1st December 1959; to make provision consequential on the Protocol on Environmental Protection to that Treaty done at Madrid on 4th October 1991; to make provision consequential on the Convention on the Conservation of Antarctic Marine Living Resources drawn up at Canberra on 20th May 1980; to provide for the taking of criminal proceedings against, and the punishment of, British citizens and others in respect of certain acts and omissions occurring in that part of Antarctica that lies between 150° West longitude and 90° West longitude; and for connected purposes.

[5th July 1994]

**BE IT ENACTED** by the Queen’s Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows –

*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.

(2) For the purposes of subsection (1) “continental shelf” shall be construed in accordance with the rules of international law.

**The Antarctic Treaty, the Protocol and the Convention**

2.-(1) In this Act –

“the Antarctic Treaty” means the Antarctic Treaty signed at Washington on 1st December 1959;

“the Protocol” means the Protocol on Environmental Protection to the Antarctic Treaty done at Madrid on 4th October 1991; and

“the Convention” means the Convention on the Conservation of Antarctic Marine Living Resources drawn up at Canberra on 20th May 1980.

(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 Act an expedition is a British expedition if –

- (a) it was organised in [Jersey]; or
- (b) the place of final departure for Antarctica of the persons on the expedition was in [Jersey].

(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 [Jersey] 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 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.

#### **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 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 registered in Jersey or] a United Kingdom ship within the meaning of section 21(1) of the Merchant Shipping Act 1979; and

“British aircraft” means a British-controlled aircraft within the meaning of section 92 of the Civil Aviation Act 1982.

(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 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.

#### *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 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 grant 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, and no non-national on a British expedition, 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 or native invertebrate 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.

(1A) Accidental harm occurring in the course of –

- (a) normal operations of a vessel, or
- (b) the activity of fishing for profit,

shall not be regarded as a contravention of subsection (1)(e), (f) or (g).”

(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, and no non-national on a British expedition, 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 –
- (a) a recognised assistance dog on board a vessel in Antarctica,
  - (b) another animal on board such a vessel where the vessel is travelling to an immediate destination outside Antarctica, or
  - (c) a 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.

(4) Nothing in this section prohibits the introduction of a microscopic organism.

- (5) In this section –
- (a) “plant” means any terrestrial, marine or freshwater vegetation, including bryophytes, lichen, fungi and algae, and includes such vegetation at any stage of its life cycle (including seeds and other propagules of such vegetation);
  - (b) “recognised assistance dog” means a dog which has been trained to assist a disabled person by a person, or a person of a description, prescribed in regulations.

## **Introduction of microscopic organisms**

8A.-(1) No United Kingdom national, and no non-national on a British expedition, may introduce into any part of Antarctica any microscopic organism of a species which is not indigenous to Antarctica, except in accordance with a permit granted under section 12 or under written authorisation of another Contracting Party.

(2) Subsection (1) does not apply to a person if the person took reasonable precautions to prevent the introduction of the organism.

(3) Subsection (1) does not apply in relation to an organism inhabiting the human body or the body of an animal.

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

### **Introduction of non-sterile soil**

**8B.**-(1) No United Kingdom national, and no non-national on a British expedition, may introduce non-sterile soil into any part of Antarctica.

(2) Subsection (1) does not apply to a person if the person took reasonable precautions to prevent the introduction of the non-sterile soil.

### *Special areas*

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

**9.**-(1) No United Kingdom national, and no non-national on a British expedition, 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, and no non-national on a British expedition, may damage, destroy or remove any part of a site or monument designated by regulations as an Antarctic Historic Site or Monument, except in accordance with a permit granted under this section or under the written authorisation of another Contracting Party.

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

(3) The Secretary of State may on the application of any person grant to him a permit authorising any United Kingdom national, or any non-national on a British expedition, 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 subsection (1).

(4) The Secretary of State shall not grant a permit under this section unless he is satisfied that the activities authorised by the permit will be carried on only for the purposes of conservation or repair of –

- (a) the Antarctic Historic Site or Monument to which the permit relates, or
- (b) any object within it.

### **Places protected under the Convention**

**11.**-(1) No United Kingdom national, and no non-national on a British expedition, 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 Secretary of State may on the application of any person grant to him a permit authorising any United Kingdom national, or any non-national on a British expedition, specified or of a description specified in the permit to enter and remain in any protected place specified in the permit.

(4) The Secretary of State shall not grant a permit under this section in respect of a non-national on a British expedition unless he is satisfied that the activities authorised by the permit will be carried on only for the purposes of education or scientific research.

*Permits under Part II: further provisions*

**Grant of permits for activities prohibited by sections 7 to 9**

**12.**-(1) The Secretary of State may on the application of any person grant to him a permit authorising any United Kingdom national, or any non-national on a British expedition, 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), 8A(1) or 9(1).

(2) The Secretary of State shall not grant a permit under this section in respect of a non-national on a British expedition unless he is satisfied that the activities authorised by the permit will be carried on only for the purposes of education or scientific research.

**Conditions attached to permits under Part II**

**13.**-(1) 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 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 Secretary of State;
- (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 –

- (a) in considering in any case whether to grant a permit under section 3, 4, 5, 10 or 12;
- (b) in any case where he grants a permit under section 3, 4, 5, 10 or 12, in considering whether to attach any conditions to it under section 13(1); and
- (c) in exercising his power to make regulations under section 14(1)(c) in relation to a permit granted under section 3, 4, 5, 10 or 12.

### **Delegation of powers under sections 10, 11 and 12 etc.**

**16.**-(1) Any of the Secretary of State's powers relating to the granting of permits under section 10, 11 or 12, or the revocation or suspension of permits granted under section 10, 11 or 12, may be delegated by him to any person –

- (a) who holds office as Administrator of the British Antarctic Territory (or who holds an appointment, by whatever name called, having functions similar to those performed by the

person holding that office on the date of the passing of this Act);

- (b) who holds office as Director of the British Antarctic Survey (or who holds an appointment, by whatever name called, having functions similar to those performed by the person holding that office on the date of the passing of this Act); or
- (c) who is for the time being running a station in Antarctica on behalf of a person such as is mentioned in paragraph (b).

(2) Where any powers have been delegated under subsection (1) to a person such as is mentioned in paragraph (a) or (b) of that subsection, they may be exercised by any person who –

- (a) is for the time being exercising the functions of the person to whom the powers have been delegated; and
- (b) is authorised (whether generally or specially) for the purposes of this section by that person or by the Secretary of State.

(3) References in sections 13 to 15 to the Secretary of State include references to any person exercising any powers by virtue of this section.

(4) Any person to whom powers have been delegated under subsection (1) shall, as soon as practicable after the end of –

- (a) the period ending with the first 30th June after the delegation took effect; and
- (b) every subsequent period of twelve months ending with 30th June during any part of which the delegation has effect,

give a report to the Secretary of State in respect of that period.

(5) A report given under subsection (4) in respect of a period shall contain such particulars as the Secretary of State may require of –

- (a) any permits granted, revoked or suspended during that period by the person giving the report (or by any other person exercising the powers delegated to that person); and
- (b) any information received during that period by the person giving the report (or by any other person exercising the powers delegated to that person) in accordance with conditions attached to permits.

(6) The Secretary of State may from time to time by notice in writing to a person to whom powers have been delegated substitute a different period for any period in respect of which that person is required to give a report under subsection (4).



*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 [Jersey].

**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 and Scottish partnerships**

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.

(3) Where an offence under this Part has been committed by a Scottish partnership 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 partner,

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

### **Penalties**

**20.** Any person who is guilty of an offence under this Part shall be liable on conviction \* \* \* to imprisonment for a term not exceeding two years, to a fine or to both \* \* \*.

### *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 [Jersey] if it had occurred in [Jersey], he shall be guilty of the like offence as if the act or omission had taken place in [Jersey], 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 [Jersey] if it had taken place in [Jersey], he shall be guilty of the like offence as if the act or omission had taken place in [Jersey], 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 [Jersey] if it had taken place in [Jersey], he shall be guilty of the like offence as if the act or omission had taken place in [Jersey], 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 [Jersey], the proceedings may be taken, and the offence may for incidental purposes be treated as having been committed, in any place in [Jersey].

## *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 the date of the passing of this Act 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 the date of the passing of this Act 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.

### **Power to extend the application of sections 6 to 12**

**26.** Where the Secretary of State thinks fit in the light of any arrangements made by Her Majesty's government in the United Kingdom with another State, regulations may provide for any of the provisions of sections 6 to 12 to apply in relation to persons having such connection with that other State as may be specified in the regulations as they apply in relation to United Kingdom nationals.

### *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) of 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 Jersey except by or with the consent of the Attorney General for Jersey.]

#### **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.

### **Evidence**

**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 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), 9(1) or 10(1) shall be deemed to be such an authorisation unless the contrary is proved.

### *Interpretation*

### **Interpretation**

**31.**-(1) In this Act –

“British expedition” has the meaning given by section 3;

“commander”, in relation to an aircraft, means the member of the flight crew designated as commander by the operator of the aircraft, or if there is no such person, the person who is for the time being the pilot in command of the aircraft;

“contravenes” includes fails to comply with (and “contravention” has a corresponding meaning);

“expedition” includes any tour or other journey, whatever its purpose, made by one or more persons;

“land” includes any ice-shelf;

“master”, in relation to a vessel, includes any person for the time being in charge of the vessel (other than a pilot);

“native bird” means a bird of any species indigenous to Antarctica (and includes an egg of such a bird);

“native invertebrate” means a terrestrial, marine or freshwater invertebrate indigenous to Antarctica (at any stage of its life cycle);

“native mammal” means a mammal of any species indigenous to Antarctica;

“native plant” means any terrestrial, marine or freshwater vegetation, including bryophytes, lichens, fungi and algae, indigenous to Antarctica, and includes such vegetation at any stage of its life cycle (including seeds and other propagules of such vegetation);

“non-national” means an individual who is not a United Kingdom national;

“operator”, in relation to a vessel or aircraft, means the person for the time being having the management of that vessel or aircraft;

“regulations” means regulations made by the Secretary of State;

“station” includes any building or group of buildings;

“United Kingdom national” means –

- (a) a British citizen, a British Dependent Territories citizen, a British National (Overseas) or a British Overseas citizen;
- (b) a British subject under the British Nationality Act 1981;
- (c) a British protected person within the meaning of that Act;
- (d) a Scottish partnership;
- (e) a body incorporated under the law of any part of the United Kingdom;
- [(f) a body incorporated under the law of Jersey;]

“vessel” includes a hovercraft.

(1A) In this Act, references to a species “indigenous to Antarctica” include a species occurring in Antarctica through natural migration.

(2) For the purposes of this Act the Antarctic Convergence shall be taken to be a line running along parallels of latitude and meridians of longitude that joins the following points –

50° South latitude 0°;

50° South latitude 30° East longitude;

45° South latitude 30° East longitude;

45° South latitude 80° East longitude;  
55° South latitude 80° East longitude;  
55° South latitude 150° East longitude;  
60° South latitude 150° East longitude;  
60° South latitude 50° West longitude;  
50° South latitude 50° West longitude; and  
50° South latitude 0°.

*Supplementary*

**Orders and regulations**

**32.**-(1) Regulations under this Act may make –

- (a) different provision for different cases or circumstances; and
- (b) incidental and supplementary provision.

(2) Any power to make an order or regulations under this Act shall be exercisable by statutory instrument.

[(3) Regulations made under this Act shall not have effect in Jersey until they, and any order bringing them into force, are registered by the Royal Court.]

**Repeals**

**33.** The enactments mentioned in the Schedule to this Act (which include enactments that have not come into force and enactments superseded by provisions of this Act) are repealed to the extent specified in the third column of that Schedule.

**Extent**

**34.** \*\*\*\*\*

**Commencement**

**35.** \*\*\*\*\*

(2) Different days may be appointed under this section for different provisions and different purposes.

**Short title**

**36.** This Act may be cited as the Antarctic Act 1994.

*SCHEDULE*

**REPEALS**

Chapter	Short title	Extent of repeal
1967 c.65.	The Antarctic Treaty Act 1967.	The whole Act.
1981 c.61.	The British Nationality Act 1981.	In Schedule 7, the entry relating to the Antarctic Treaty Act 1967.
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