



# Draft Antarctic Bill

November 2009

Presented to Parliament  
by the Secretary of State for Foreign and Commonwealth Affairs

By Command of Her Majesty  
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£15.50  
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Foreign and Commonwealth Office  
King Charles Street  
London SW1A 2AH  
Telephone 020 7008 1500  
Website: [www.fco.gov.uk](http://www.fco.gov.uk)

Information about this publication available from:

Polar Regions Unit  
Foreign and Commonwealth Office  
King Charles Street  
London SW1A 2AH

This document is available on the FCO website at [www.fco.gov.uk/antarcticbill](http://www.fco.gov.uk/antarcticbill)

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ISBN: 9780101763523

Printed in the UK by The Stationery Office Limited  
on behalf of the Controller of Her Majesty's Stationery Office  
ID P002330393 11/09 650 19585

Printed on paper containing 75% recycled fibre content minimum.

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## EXECUTIVE SUMMARY

The Antarctic Treaty, agreed in 1959, designates Antarctica as a natural reserve devoted to peace and science. The Protocol on Environmental Protection to the Antarctic Treaty, which came into force in 1998, establishes a framework for the comprehensive protection of the Antarctic environment. The Protocol is implemented into UK law by the Antarctic Act 1994, by which British activities in Antarctica are regulated.

The UK is committed to upholding the Antarctic Treaty and to the comprehensive protection of the Antarctic environment. Whilst the Antarctic Treaty effectively freezes all claims to territorial sovereignty in Antarctica, the UK maintains historic, strategic, scientific and environmental interests in Antarctica and administers the British Antarctic Territory as a UK Overseas Territory. The UK protects its long-term interests in Antarctica by maintaining a highly influential position within the Antarctic Treaty System.

The British Antarctic Territory includes the Antarctic Peninsula, which is the most heavily visited region of Antarctica. Around half of all the permanent year-round research stations are within the BAT and 95% of all tourists to the continent visit this part of Antarctica. Consequently the UK has considerable interest in ensuring that those who visit Antarctica, whether for scientific or tourism purposes, do so in a safe and environmentally responsible way. The UK is therefore keen to ensure that the regulation of British activities in Antarctica is comprehensive and effective, such that it can be used as a model to encourage other countries to do likewise.

The draft Antarctic Bill implements a new Annex to the Environmental Protocol on *Liability Arising from Environmental Emergencies* (Liability Annex), and enhances the provisions of the 1994 Act to provide additional protection to the Antarctic environment and those travelling to the continent. Early ratification of the Liability Annex is desired in order to maintain the UK's influential status. To date, only four Parties have ratified the Annex.

The primary aim of the Liability Annex is to enhance protection of the Antarctic environment, by requiring those undertaking activities in Antarctica to take preventative measures to reduce the risk of environmental emergencies, and to establish contingency plans in the event of any such emergency. The Annex effectively establishes a "polluter pays" mechanism, as it requires operators to take prompt and effective response action to any environmental emergencies arising from their activities, or where no such action is taken, it imposes financial liability on the defaulting operator.

Part 1 of the draft Bill implements the Annex into UK legislation, and includes new civil and criminal offences for any failure to take adequate preventative measures before travel to Antarctica, or failure to take appropriate response actions following an environmental emergency. In cases where British operators do not take appropriate response action, the Bill provides for another Party to the Liability Annex which did take response action to sue for the costs of such action through the British courts. Where no-one takes response action, the operator would be obliged to pay an amount equivalent to the costs that would have arisen

had response action been taken into an international fund, which will be used for future environmental protection of Antarctica.

Part 2 implements an agreement by the Antarctic Treaty Parties to require operators to develop self-sufficient search and rescue plans and obtain adequate insurance to cover medical costs and repatriation arising from an incident in Antarctica. For British operators seeking authorisation to enter Antarctica under the Antarctic Act 1994, these requirements are already required prior to obtaining a permit to travel. The draft Bill ensures that British organisers of trips to Antarctica who may seek authorisation from another Party to the Antarctic Treaty, are also required to have taken such steps.

Part 3 implements some recently agreed revisions to Annex II of the Environmental Protocol on the Conservation of Antarctica Fauna and Flora, to provide for additional protection of the Antarctic environment, particularly in response to climate change and enhanced understanding of the fragile Antarctic environment. This part also updates the Antarctic Act 1994 to facilitate better regulation of British activities in Antarctica, including to respond to the increasing internationalisation of Antarctic expeditions and to enhance protection to the Antarctic marine environment.

Finally Part 4 of the draft Bill deals with general provisions and commencement. It is proposed that Parts 2 and 3 of the Bill would come into force immediately on the Bill being passed, but that Part 1 would not come into force until the Liability Annex itself is in force, in order to provide a level playing field for British Antarctic operators.

A consultation process has been launched, in co-ordination with the publication of the draft Bill, to seek views from stakeholders and other interested parties. This consultation package is also available electronically at: [www.fco.gov.uk/antarcticbill](http://www.fco.gov.uk/antarcticbill)

## **CONSULTATION PROCESS**

Comments on the draft Bill are invited, particularly from those organisations which currently, or may in the future, undertake activities in Antarctica. Please send all responses no later than 12<sup>th</sup> February 2010 to:

Stuart Doubleday  
Polar Regions Unit, Foreign & Commonwealth Office, London SW1A 2AH  
*Tel:* 0207-007-2750; *E-mail:* [Stuart.Doubleday@fco.gov.uk](mailto:Stuart.Doubleday@fco.gov.uk)

We welcome responses in any form, however, we have included a series of questions throughout this consultation document, which may aid your comments. To help put your response into context, please give details in your response of: a) who you are; and b) how many people or organisations you represent. During the consultation period, we would be happy to arrange special briefing sessions to talk through the detail of the draft Bill. If you would be interested in attending such a session, please let us know.

### ***Confidentiality***

The Secretary of State for Foreign & Commonwealth Affairs is the data controller as defined in Section 1 of the Data Protection Act 1998 (DPA) in respect of personal data that you provide in response to this consultation exercise. Personal data is information about an individual such as their name, contact details and opinions. The Department will process your personal data in accordance with the DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

In line with the FCO's policy of openness, at the end of the consultation period, copies of the response we receive may be made publicly available through our website. However, if you want the information that you provide to be treated as confidential, please state this expressly in writing to us. Please note, however, that under the Freedom of Information Act, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard any information you provide as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not be treated as a request for confidentiality and will not be regarded as binding on the Department.

### ***Next Steps***

The Foreign & Commonwealth Office will publish a summary of the results of the consultation process.

## CONSULTATION DOCUMENT

### 1. INTRODUCTION

#### ***Why are these proposals necessary?***

- 1.1. Given its sensitive environment and remoteness, the consequences of an environmental emergency occurring in the Antarctic could be devastating. The Antarctic Treaty Parties therefore negotiated a new Annex to the Protocol on Environmental Protection to the Antarctic Treaty on *Liability Arising from Environmental Emergencies* (Liability Annex), which requires those undertaking activities in Antarctica to take preventative measures against the risk of environmental damage, and to take effective response action following any such emergency. The UK is now committed to implementing the Liability Annex into domestic legislation, as part of its obligations as an Antarctic Treaty Party, and to underpin the comprehensive environmental protection of Antarctica.
- 1.2. The UK proposed improvements to safety and search & rescue arrangements of Antarctic expeditions, particularly to enhance contingency planning and self-sufficiency, to the Antarctic Treaty Consultative Meeting in 2004. The Treaty Parties subsequently adopted Measure 4(2004) on *Insurance and Contingency Planning for Tourism and Non-Governmental Activities in the Antarctic Treaty Area*. The requirements for self-sufficiency and adequate insurance cover required by this Measure are already required for expeditions seeking authorisation under the Antarctic Act 1994. Incorporating these requirements into the draft Bill will ensure that those who do not seek prior authorisation from the UK, are also bound by this internationally agreed Measure.
- 1.3. Finally, the draft Bill also includes proposals to amend the Antarctic Act 1994, to enhance environmental protection, particularly to marine plants and invertebrates, to respond to the increasing internationalisation of Antarctic science and non-Governmental expeditions, and to provide for the conservation of British Historic Sites and Monuments in Antarctica.

#### ***What are the Main Impacts?***

- 1.4. The proposals in the draft Bill are aimed at enhancing contingency planning and the mitigation of environmental emergencies. Antarctic operators will be required to take response action where their activities give rise to an environmental emergency. Additionally, operators will be required to secure adequate insurance, or demonstrate other financial guarantees, against the costs of response action to environmental emergencies. A framework will be established through which any State Party which takes response action, where an operator has failed to do so, will be able to recover their costs.



- 1.5. All Antarctic expeditions will also be required to demonstrate that they have developed comprehensive contingency plans, including arrangements for search and rescue and evacuation from Antarctica in the event of emergency. As these plans will not be able to rely on others in Antarctica without their express permission, the intention is to minimise the possibility of rescue attempts by those ill-equipped to respond.
- 1.6. The enhanced protection for marine plants and invertebrates brings these species into line with other flora and fauna protection in Antarctica. Scientific research on these species will now be subject to permitting requirements under the Antarctic Act 1994. The amendment to the Act to enable the UK to grant permits to non-British nationals on British expeditions will enable foreign scientists working in the UK, for example, to apply to the UK for authorisation, rather than their national Governments. Finally, the conservation of Historic Sites and Monuments will now be able to be authorised through the Antarctic Act permitting regime.
- 1.7. Further details about the expected impacts of the draft Bill are set out in the Impact Assessment. In addition to seeking comments on the draft Bill, **comments are also invited on the Impact Assessment.**

#### ***Who will be affected by these proposals?***

- 1.8. The proposals in the draft Bill are designed to enhance protection of the Antarctic environment and improve the safety standards of all Antarctic operators. All visitors to Antarctica will potentially be affected by the proposals, but organisers of Antarctic expeditions, including scientists and Antarctic tour operators will be most directly affected, particularly through the requirement to secure insurance, or other financial security, for response action following any environmental emergency.

## **2. BACKGROUND**

- 2.1. The UK's Antarctic Act 1994 implemented the Protocol on Environmental Protection to the Antarctic Treaty. This established a permitting regime for British expeditions and nationals travelling to Antarctica. Under the Act, all activities undertaken in Antarctica must be pre-planned and their potential environmental impacts evaluated and mitigated. Special permission is also required for scientific activity related to fauna and flora or for entry into Antarctic Specially Protected Areas. The Act also implements the total prohibition of all minerals related activity in Antarctica, except for scientific research. The 1994 Act replaced the first Antarctic Treaty Act 1967, which had enacted all obligations articulated in the initial Treaty, which was signed in 1959. The Antarctic Regulations 1995, as amended, have implemented all subsequent legally binding agreements adopted at Antarctic Treaty Consultative Meetings.
- 2.2. The proposed draft Bill includes some amendments to the Antarctic Act 1994, but would not replace this Act, which will continue to be the primary instrument for the regulation of British activities in Antarctica.

### **3. STRUCTURE OF THE DRAFT BILL**

#### 3.1. The draft Bill is arranged in four parts:

Part 1: Environmental Emergencies – which implements the new Annex to the Protocol on Environmental Protection to the Antarctic Treaty on *Liability Arising from Environmental Emergencies* (Liability Annex), agreed by the Antarctic Treaty Parties in 2005;

Part 2: Safety Planning – to enhance the requirements for self-sufficiency and adequate insurance required by those organising expeditions to Antarctica (implementing Measure 4(2004) *Insurance and Contingency Planning for Tourism and non-Governmental Activities in the Antarctic Treaty Area*, agreed by the Antarctic Treaty Parties in 2004);

Part 3: Amendments to the Antarctic Act 1994 – to enhance environmental protection to Antarctica, particularly in response to rapid climate change;

Part 4: Final - general provisions and commencement details.

#### 3.2. Suggested questions to consider are included throughout this consultation document, which may aid your responses. However, please do not feel obliged to answer all, or any of these questions, as we will be happy to consider responses in whatever form you consider appropriate.

### **4. PART 1: ENVIRONMENTAL EMERGENCIES**

4.1. This Part of the draft Bill implements the new Liability Annex to the Protocol on Environmental Protection to the Antarctic Treaty into UK legislation. Full text of the Liability Annex is included in the Explanatory Notes to the draft Bill. The Liability Annex has already been agreed among Antarctic Treaty Parties and the UK is committed to implementing it through legislation and ratifying it as part of our commitments under the Antarctic Treaty System.

4.2. In general terms, the Liability Annex obliges Antarctic Treaty Consultative Parties to require their Antarctic operators (Governmental and non-Governmental) to:

- (a) take preventative measures and to establish contingency plans in order to reduce the risk of environmental emergencies in Antarctica;
- (b) take prompt and effective response action to environmental emergencies arising from their activities; and
- (c) obtain insurance, or other financial guarantees, to reimburse another Party or pay into a special fund, the costs of response action to an environmental emergency arising from their activities, which the operator did not, or could not, undertake or organise themselves.

- 4.3. The overriding objective of the Annex is to underpin the protection of the Antarctic environment, by mitigating the risks of environmental damage, and putting a framework in place for prompt and effective response to any such emergencies. The Liability Annex does not specify what mix of criminal, civil or other types of sanctions should be used in implementation into domestic legislation. The draft Bill proposes a mixture of criminal and civil sanctions, in order to give consistency with the Antarctic Act 1994, and to provide the maximum protection to the Antarctic environment.
- 4.4. We would welcome views and comments on the proposals for the way in which the draft Antarctic Bill would implement the Annex into UK law.

### ***Introductory Section***

- 4.5. This section of the draft Bill defines ‘environmental emergency’ as an accidental event that results in, or imminently threatens to result in, any significant harmful impact on the environment of Antarctica. This definition is derived directly from the Annex.
- 4.6. The definition of ‘response action’ aims to set out the action which operators will be expected to undertake following an environmental emergency arising from their activities in Antarctica. The draft Bill proposes a definition of what will constitute ‘reasonable’ response action. This is also derived from the Annex (Article 2). Operators will need to be able to demonstrate that any reasonable response action they take meets these criteria.
- **Do you have any comment on the way in which the draft Bill sets out these definitions based on Article 2 of the Annex?**

### ***Pre-Planning Section***

- 4.7. The draft Bill requires all those who intend to undertake activities in Antarctica and who would be subject to UK authorisation under the existing Antarctic Act 1994 (whether or not they actually seek a permit through the UK), to take preventative measures to minimise the risk and potential impact of environmental emergencies, and develop contingency plans for responding to any such emergency situation.
- 4.8. The draft Bill contains an indicative list of preventative measures which those planning to undertake activities in Antarctica will need to have considered prior to entering Antarctica. This list is not, however, mandatory in every circumstance, nor is it exhaustive. The onus will be on the operator to demonstrate that they have taken measures to mitigate the potential environmental risk arising from an emergency.
- 4.9. The requirement for contingency plans covers both the handling of the response to an environmental emergency, as well as the response to an incident which is not an emergency, but which may have a potential adverse impact on the Antarctic environment. These plans may include what action would be undertaken in response

to potential emergencies or incidents, but it is not necessarily expected that every potential incident could be foreseen at the pre-planning stage.

- 4.10. For those who seek authorisation under the Antarctic Act 1994 for activities in Antarctica, it is intended that the pre-planning requirements under this part of the Bill would form part of the permit application process. This would effectively mean that the pre-planning arrangements would be approved by the Foreign & Commonwealth Office prior to the granting of a permit.
- 4.11. The draft Bill proposes that entry to Antarctica without taking these pre-planning arrangements would constitute a criminal offence. In all cases, however, criminal proceedings would be used as a last resort to impose obligations under the draft Bill, for example, in a case where an operator who is in Antarctica without a permit (in breach of the 1994 Act) and has failed to take preventative measures.

- **Do you agree it is reasonable to set a criminal penalty for failure to undertake pre-planning for environmental emergencies in Antarctica?**

#### ***Responding to environmental emergency***

- 4.12. This section requires reasonable, prompt and effective response action following an environmental emergency and makes failure to take such action a criminal offence. Those, whose activities had given rise to such an emergency, either directly, or indirectly, would not, however, be subject to criminal sanctions if the environmental emergency had arisen from unforeseeable circumstances beyond their reasonable control.
- 4.13. Following a successful prosecution for a failure to take response action which should have been undertaken, it is proposed that any fine imposed should take into account the costs which should have been incurred in taking such action, unless these costs have separately been recovered by a Party which did undertake response action.
- 4.14. It is also proposed that it would be a criminal offence to fail to notify the Secretary of State of an environmental emergency in Antarctica, which an operator becomes aware of as a result of carrying out activities there. Operators of activities will be required to ensure that mechanisms are in place to require their employees who become aware of an environmental emergency to ensure that the Secretary of State is notified as soon as practicable. The intention of the requirement is to report all environmental emergencies which the operator becomes aware of, and not just those arising as a result of the activities of the British operator. This is to ensure that the UK Government is in a position as soon as practicable to notify other operators in the region, determine the likely cause of the environmental emergency and consider what response action should be taken, in consultation with other Treaty Parties. This may result in some duplication of reporting, but we consider that this is better than no notification. The intention would only be to use criminal sanctions for failure to make

such a notification only in extreme cases, and particularly where there was a specific intent not to make such a notification.

- **Do you agree it is fair that failure to inform the Secretary of State of an environmental emergency in Antarctica be potentially subject to criminal proceedings?**

#### ***Civil Liability for Failure to take Response Action***

- 4.15. This section of the draft Bill sets out the framework by which those who fail to take effective response action to an environmental emergency in Antarctic would be liable to reimburse the costs to those who do take such action. Under the Liability Annex, only a State may bring civil proceedings against an operator to recover the costs of response action undertaken.
- 4.16. It will not be possible for another Party to the Liability Annex to pursue civil proceedings against the Crown, and its contractors or sub-contractors acting on behalf of the Crown, because the Liability Annex sets a framework by which the costs of any response action which a State did not undertake, but which another State did undertake, would be settled through the Antarctic Treaty Consultative Meeting mechanisms, which includes a State arbitration process.
- 4.17. For those cases where no response action was taken, the operator whose activities gave rise to the environmental emergency would be liable to pay the equivalent costs of the response action which should have been taken into an Antarctic Environmental Liability Fund, which will be established by the Antarctic Treaty Parties. However, should the operator not directly pay such an amount to the Liability Fund, the Secretary of State would be able to recover the monies through the UK courts, as if it were a debt to the Secretary of State.
- 4.18. The Foreign and Commonwealth Office will establish an Expert Advisory Group, consisting of UK Antarctic operators and others with appropriate expertise, to advise on what would have constituted reasonable response action, in order to determine the level of payment which British operators should reasonably be considered to pay. The intention is to enable all financial liability matters to be resolved without the need for court proceedings. However, the draft Bill provides the framework for such matters to be settled through the courts as a last resort.
- 4.19. The Financial Limits section of the draft Bill sets the maximum potential liability for any environmental emergency. The limits are set out in Article 9 of the Annex and are connected to International Monetary Fund Special Drawing Rights (SDRs), which are linked to the US Dollar. The exchange rate between an SDR and UK Sterling changes daily (for current rates, please see [www.imf.org/external/np/fin/data/rms\\_sdrv.aspx](http://www.imf.org/external/np/fin/data/rms_sdrv.aspx)). For an environmental emergency involving a ship, the liability amount will vary depending on the size of the ship, for other emergencies, the maximum liability is the equivalent of three million SDR. If the

environmental emergency is as a result of a deliberate act, the potential liability is unlimited.

- 4.20. These limits will be changed periodically by the Antarctic Treaty Consultative Parties, after the Liability Annex is in force.
- 4.21. Where the Merchant Shipping Act 1995 has set a higher level of liability, however, that higher rate will apply. The draft Bill provides protection for operators from double liability, by making clear that any liability under the Bill will be reduced, if the operator is also liable for the same costs under the Merchant Shipping Act.
- **Are you content that the issue of how the draft Bill relates to existing legislation which also sets liability limits has been appropriately dealt with?**

### ***Supplementary Section***

- 4.22. Evidence of insurance, or another financial security, for potential liability for environmental damage will be required as part of an application for a permit to enter Antarctica under the Antarctic Act 1994. Setting a criminal sanction for failure to secure such financial provision is to provide a deterrent against failure to ensure such financial security. This penalty would again only be used as a last resort, but if there was an environmental emergency and no ability to recover the costs of response action, there may be less incentive for Parties to take response action, which would be to the detriment of the Antarctic environment. Since the vast majority of activities in Antarctica take place in the British Antarctic Territory, the UK Government would be keen to ensure that response action is taken, but unless the requirement for insurance is effectively enforced, there is a risk that the costs of such action could not be recovered.
- 4.23. The ability of the Secretary of State to require information from those whose activities have directly or indirectly caused an environmental emergency in Antarctica is intended to enable the Foreign & Commonwealth Office to seek advice from experts (see paragraph 4.18 above) to determine the severity of the incident and assess whether effective response action may be undertaken by the operator themselves, or whether they will require additional assistance. This will enable those in Antarctica to formally record the circumstances of the incident and the conditions at the time of the incident, which will determine the extent to which response action is possible. It will also enable the UK Government to inform other Parties of the Liability Annex of the situation and these records may help operators to protect themselves against the risk of unnecessary or potentially ineffective response action taken by others, for which they may later try to mount a claim for liability. Any attempt to withhold information, or cover-up the severity of the emergency would be a criminal offence.
- **Do you consider that it is reasonable for the Secretary of State to require certain information directly from those in Antarctica whose activities have given rise to an environmental emergency?**

## **Exclusions**

- 4.24. The exclusion for employees is to ensure that companies and organisations which organise and undertake activities in Antarctica take corporate responsibility for the liability for environmental emergencies.
- 4.25. Part 1 of the draft Bill does not cover those in Antarctica for the purpose of fishing for profit. This is primarily because the Protocol on Environmental Protection to the Antarctic Treaty does not cover fishing activities, which are the subject of separate rules under the Convention for the Conservation of Antarctic Marine Living Resources. The provisions of this part of the Bill also do not apply to vessels or aircraft merely transiting Antarctica in order to reach an immediate destination north of 60 degrees South.

## **General**

- 4.26. The Crown is exempted from the criminal sanctions included in this Part of the Bill, except where the Secretary of State applies to the court to declare an act or omission as unlawful. This is to enable the Crown to require its employees to conduct legitimate activities in Antarctica without fear of prosecution, but enables individuals to be so prosecuted if they act outside of their duties and contravene the provisions in the Bill. This formulation has been used in other legislation, such as the Environmental Protection Act 1990.
- 4.27. This Part of the draft Bill treats the British Antarctic Survey, who provide the British permanent presence in the British Antarctic Territory, and other parts of the public sector who enter Antarctica on official business, as part of the Crown. This is also to exempt those organisations from requiring insurance, as the UK Government provides self-insurance for their operations.
- **Overall, do you agree that the draft Bill implements the Liability Annex into UK law in a reasonable, fair and consistent way?**

**SUMMARY OF SUGGESTED QUESTIONS FOR PART 1: ENVIRONMENTAL EMERGENCIES**

*Do you have any comment on the way in which the draft Bill sets out these definitions based on Article 2 of the Annex?*

*Do you agree it is reasonable to set a criminal penalty for failure to undertake pre-planning for environmental emergencies in Antarctica?*

*Do you agree it is fair that failure to inform the Secretary of State of an environmental emergency in Antarctica be potentially subject to criminal proceedings?*

*Are you content that the issue of how the draft Bill relates to existing legislation which also sets liability limits has been appropriately dealt with?*

*Do you consider that it is reasonable for the Secretary of State to require certain information directly from those in Antarctica whose activities have given rise to an environmental emergency?*

***Overall, do you agree that the draft Bill implements the Liability Annex into UK law in a reasonable, fair and consistent way?***

***Do you have any comments on the Impact Assessment for this part of the draft Bill, we would be especially interested in any views on potential costs of compliance?***



## 5. PART 2: SAFETY PLANNING

- 5.1. This Part of the draft Bill implements Measure 4(2004) on *Insurance and Contingency Planning for Tourism and Non-Governmental Activities in the Antarctic Treaty Area*, which was agreed at the 27<sup>th</sup> Antarctic Treaty Consultative Meeting in 2004. The UK is committed to the full domestic implementation of this Measure, as part of our obligations under the Antarctic Treaty System. The text of Measure 4(2004) is included in the Explanatory Notes to the draft Bill.
- 5.2. The aim of Measure 4(2004) is to improve the safety of those undertaking activities in Antarctica by ensuring that those organising or conducting such activities have appropriate contingency plans in place for if anything goes wrong. These plans must cover health and safety, search and rescue, medical care and evacuation and must not be reliant on support from anyone else without their express written agreement. The Measure also requires that adequate insurance, or other arrangements, are in place to cover any costs associated with search and rescue and medical care and evacuation. The primary purpose of the Measure is to enhance safety in Antarctica and to protect those in Antarctica from being requested to provide assistance to unprepared expeditions, in often difficult and dangerous conditions.
- 5.3. Where British operators and individuals seek a permit to enter Antarctica under the Antarctic Act 1994, the development of adequate contingency plans and the required insurance, or alternative arrangements, is a pre-condition of a permit being granted. The purpose of making these requirements subject to criminal sanctions through the draft Bill is to ensure that where prior authorisation has not been sought through the UK, all British tourism and non-Governmental expeditions to Antarctica are nevertheless subject to these requirements. As before, criminal sanctions will only be used as a last resort.
- 5.4. The draft Bill proposes that for a British expedition which has failed to make adequate arrangements for personal safety, or secure adequate insurance for emergencies relating to personal safety, that both the organiser of the activities to take place in Antarctica, and the conductor of the activities actually in Antarctica will be guilty of an offence. This is to ensure that those actually responsible for leading activities in Antarctica are party to, and aware of, the contingency plans which have been put in place for their expedition. It is also aimed to ensure that those responsible for leading activities in Antarctica do not undertake different activities, which are not subject to prior contingency planning and insurance arrangements. It will also make it an offence for a UK national to conduct activities in Antarctica, even whilst on a non-British expedition, without having ensured that contingency plans and adequate insurance are in place for the activities they will be conducting.

## **SUGGESTED QUESTIONS FOR PART 2: SAFETY PLANNING**

*Do you agree that it is reasonable to make both the organiser of activities to be undertaken in Antarctica, and, if different, the conductor of those activities actually in Antarctica, both criminally liable in a case where adequate contingency plans and insurance arrangements have not been put in place prior to the activities taking place? If not, how do you suggest that liability should be divided in such a case?*

*Do you think that it is a reasonable interpretation of Measure 4(2004) to require UK nationals who conduct activities on expeditions in Antarctica, which are subject to prior authorisation under the Antarctic Act 1994, but organised and authorised in other countries, to ensure adequate safety planning? If not, how do you suggest that compliance should be required from those conducting activities in Antarctica, as well as those organising the activities?*

***Overall, do you agree that the draft Bill implements Measure 4(2004) into UK law in a reasonable, fair and consistent way?***

***Do you have any comments on the Impact Assessment for this part of the draft Bill?***

## 6. PART 3: AMENDMENTS TO ANTARCTIC ACT 1994

6.1. Part 3 of the draft Bill makes a range of amendments to the Antarctic Act 1994. These amendments are required for the implementation of some recently agreed small amendments to Annex II to the Protocol on Environmental Protection to the Antarctic Treaty (a copy of the revised text is included within the Explanatory Notes). Other proposed amendments are for policy reasons, explained further below, particularly to enhance the protection of the Antarctic environment, especially as a result of climate change and increasing commercial interest in Antarctic organisms.

### *Application of offences to non-nationals*

6.2. Under the Antarctic Act 1994, separate permits are required to undertake activities relating to mineral resources (Section 6), fauna and flora (Section 7), or for the entry into a special area (Sections 9 and 11). These permits can, however, only be granted to UK nationals and there is no provision for a non-UK national to seek a permit to undertake such activities. This has meant, for example, that the UK has not been able to grant permits to non-UK nationals working at British research institutions.

6.3. The proposed amendment to the Act would enable the Foreign and Commonwealth Office to issue permits to non-UK nationals wishing to undertake such activities, for the purposes of education or scientific research, whilst they are participating on a British expedition. (It will remain up to any non-UK national wishing to apply for such a permit, if they are from a Protocol Party, to ensure that the domestic legislation of their home country enables them to be authorised by the UK). The amendment also extends the criminal offences of undertaking activities covered by Sections 6-11 of the Antarctic Act without appropriate authorisation to non-British nationals on British expeditions.

- **Do you agree that it is appropriate to amend the existing Antarctic Act 1994 to enable the UK Government to authorise the education or scientific activities of non-British nationals on British expeditions?**

### *Historic Sites and Monuments: permits*

6.4. Currently under the Antarctic Act 1994 it is an offence to damage, destroy or remove any part of a site or monument designated as a Historic Site or Monument. However, in recent years, as a result of the warming climate in Antarctica and increasing access to such sites, it has become necessary to undertake some considerable conservation work on Historic Sites and Monuments in Antarctica.

6.5. The UK is responsible for undertaking management at seven historic huts in the British Antarctic Territory, which were formerly used to support the UK's science programme in Antarctica. UK conservators have also been working in New Zealand's Ross Dependency on the conservation of the historic huts established during the early exploration of Antarctica around 100 years ago, for example by Captain Scott

and Ernest Shackleton. In some circumstances, it may be necessary to undertake major reconstruction work in these huts, and some of the historic artefacts within these huts may need to be taken out of Antarctica for professional preservation to be undertaken. It is therefore proposed to amend Section 10 of the Antarctic Act 1994, to enable a permit to be given for such conservation work, including, where necessary, the removal of historic artefacts for their conservation or repair, consistent with Environmental Protocol obligations.

- **Do you agree that the Antarctic Act 1994 should be amended to enable permits to be granted to enable the conservation and repair of Historic Sites and Monuments, including the potential for any part of such sites to be removed from Antarctica for such purpose?**

### ***Animals and Plants etc***

6.6. Annex II to the Protocol on Environmental Protection to the Antarctic Treaty sets the framework for the protection of Antarctica fauna and flora. As a result of a lengthy review of this Annex, some small changes have recently been made to the Annex, and the revised version is appended to the Explanatory notes to the draft Bill for information. The original and revised Annex II does not, however, afford the same level of protection to marine plants and invertebrates as it does to other Antarctic species, because some Treaty Parties were concerned that this may impact on fishing vessels operating in the Southern Ocean.

6.7. The draft Bill, however, proposes to now extend the fauna and flora protection provisions to include marine plants and invertebrates. Accidental harm to such species during fishing activities will be exempt. The amendments would mean that a permit would be required to remove or damage such quantities of marine plants or invertebrates that their local distribution or abundance would be significantly affected, or do anything which may cause significant damage to the habitat of a marine invertebrate. The intention is to protect marine invertebrates from potential large-scale harvest of marine plants or invertebrates, for example, for the purposes of identifying commercially useful genetic materials, without undertaking a full environmental impact assessment, as would be required to obtain a permit. This gives marine plants and invertebrates the same protection as that afforded to terrestrial plants and invertebrates.

- **Do you agree that marine plants and invertebrates should be afforded the same protection as terrestrial plants and invertebrates, even though this is not included in the revision to Annex II of the Protocol on Environmental Protection to the Antarctic Treaty?**

### *Introductions of animals and plants*

6.8. Section 8 of the Antarctic Act 1994 provides for the keeping of an animal on board a vessel in Antarctica, providing the animal does not leave the vessel. During the negotiations to revise Annex II to the Environmental Protocol, however, it became clear that the vast majority of other Treaty Parties prohibit the carrying of animals on board vessels or aircraft entering Antarctica. The draft Bill therefore proposes to clearly prohibit the keeping of any animal on board a vessel which is visiting Antarctica (this will not affect vessels transiting Antarctic waters, but not going close to the continent). This will avoid any accidental introduction of an animal, or animal diseases into Antarctica.

- **Do you agree that the UK should clearly prohibit the carrying of any animals on board vessels visiting Antarctica?**

### ***Microscopic organisms***

6.9. Recent climatic changes in Antarctica have increased the vulnerability of Antarctica to the introduction of non-native species. Some introductions may result from natural migrations, but there have been documented cases of non-native species around scientific bases in Antarctica, where human introduction is the most likely explanation. In order to prevent non-native introductions, most scientists and tourists take preventative measures, such as clothing and equipment decontamination. The revisions to Annex II of the Environmental Protocol aim to enhance the mitigation of the accidental introduction of non-native species. The primary intention is to minimise the introduction of seeds or other propagules of non-native plants. The draft Bill therefore proposes a new offence relating to the introduction of microscopic organisms, where reasonable precautions were not taken to prevent the introduction. For example, this could apply to the introduction of microscopic organisms that might be found on clothing or equipment which has not been adequately cleaned prior to entering Antarctica. There is no intention for such an offence to apply to human viruses and bacteria, or to viruses or bacteria found in any animals entering Antarctica under a permit.

### ***Non-Sterile Soil***

6.10. During the revisions of Annex II to the Environmental Protocol, no justification was identified for taking non-sterile soil into Antarctica. In order to minimise the potential for the introduction of non-native species, therefore, a blanket prohibition on the importation of such soil was agreed. The draft Bill therefore includes such a prohibition.

- **Do you consider that the new offences in clauses 28 (microscopic organisms) and 29 (non-sterile soil) are a reasonable way to implement the recent revisions to Annex II? If not, could you suggest an alternative approach?**

### **Meaning of 'indigenous'**

- 6.11. The minor amendment proposed to clarify the existing definition of 'indigenous' in the Antarctic Act 1994, reflects the recent changes to Annex II of the Environmental Protocol. This was agreed in light of increasing climatic changes in Antarctica, which are likely to increase the chances of flora and fauna migrating to Antarctica on a permanent, not just a seasonal, basis. Where this was occurring due to natural processes, it was agreed that it should be made clearer that these flora and fauna should be afforded the same protection as existing Antarctic flora and fauna.

#### **SUGGESTED QUESTIONS FOR PART 3: AMENDMENTS TO ANTARCTIC ACT 1994**

*Do you agree that it is appropriate to amend the existing Antarctic Act 1994 to enable the UK Government to authorise the education or scientific activities of non-British nationals on British expeditions?*

*Do you agree that the Antarctic Act 1994 should be amended to enable permits to be granted to enable the conservation and repair of Historic Sites and Monuments, including the potential for any part of such sites to be removed from Antarctica for such purpose?*

*Do you agree that marine plants and invertebrates should be afforded the same protection as terrestrial plants and invertebrates, even though this is not included in the revision to Annex II of the Protocol on Environmental Protection to the Antarctic Treaty?*

*Do you agree that the UK should clearly prohibit the carrying of any animals on board vessels visiting Antarctica?*

*Do you consider that the new offences in clauses 28 (microscopic organisms) and 29 (non-sterile soil) are a reasonable way to implement the recent revisions to Annex II? If not, could you suggest an alternative approach?*

***Overall, do you agree that the proposed amendments to the Antarctic Act 1994 are justified and reasonable? Would you suggest any other amendments to the Antarctic Act 1994?***

***Do you have any comments on the Impact Assessment for this part of the draft Bill?***

## 7. PART 4: FINAL

- 7.1. The final part of the draft Bill includes some general provisions relating to the implementation of the first three Parts. In particular, the proposed clause “General provision relating to offences” would ensure that unincorporated associations in the UK would be bound by the provisions of the draft Bill, in the same way as corporate bodies.
- 7.2. The “Commencement” draft clause proposes that Parts 2 and 3 of the draft Bill would come into force two months after the Bill is passed. Part 1 of the draft Bill would not come into force immediately, as the intention would be to bring it into force only once the Liability Annex itself was in force, which will be after it has been approved by all Antarctic Treaty Consultative Parties who agreed the Annex in 2005. This has been proposed to avoid any potential disadvantage to British operators who would otherwise incur the risk of civil liability and be required to secure insurance against potential environmental emergencies, before non-British operators were obliged to do so.

### **SUGGESTED QUESTIONS FOR PART 4: FINAL**

*Would there be any justification for bringing Part 1 of the draft Bill into force in the UK even before the Liability Annex has come into force?*

***Do you have any other comments on Part 4 of the draft Bill?***

## 8. CONCLUSION

- 8.1. The UK is committed to upholding the Antarctic Treaty System and to the comprehensive environmental protection of Antarctica. The draft Antarctic Bill will ensure that the UK has implemented all proposals for legislation adopted by the Antarctic Treaty Parties and maintain the UK’s high profile as a leading nation on Antarctic affairs. The draft Bill will ensure that the UK’s domestic legislation is among the most comprehensive, both to enhance the environmental protection of Antarctica and promote the highest safety standards by those who visit the continent. We look forward to receiving your views and comments on the draft Bill and the associated Impact Assessment.

***Polar Regions Unit  
November 2009***

# Antarctic Bill

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# B I L L

TO

Make provision consequential on Annex VI to the Protocol on Environmental Protection to the Antarctic Treaty; to make provision consequential on Measure 4 (2004) of the Antarctic Treaty Consultative Meeting; to amend the Antarctic Act 1994; and for connected purposes.

**B**E 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 1

### ENVIRONMENTAL EMERGENCIES

#### *Introductory*

#### **1 “Antarctic Treaty” etc**

In this Part—

- “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;
- “Annex VI” means Annex VI to the Protocol (liability arising from environmental emergencies);
- “Party to Annex VI” means any party to the Protocol for which Annex VI has become effective in accordance with Article 9 of the Protocol;
- “another Party to Annex VI” means a Party to Annex VI other than the United Kingdom;
- “the Antarctic Environmental Liability Fund” means the Fund maintained and administered by the Secretariat of the Antarctic Treaty pursuant to Article 12 of Annex VI.

**2 “Environmental emergency”**

- (1) In this Part, “environmental emergency” means an accidental event that results in, or imminently threatens to result in, any significant harmful impact on the environment of Antarctica.
- (2) In this Part, references to the environment of Antarctica include any concentration in Antarctica of native mammals, birds, plants or invertebrates (within the meaning of the Antarctic Act 1994).

**3 “Response action”**

- (1) In this Part, “response action”, in relation to an environmental emergency, means measures taken after the emergency to prevent, minimise or contain its impact.
- (2) For the purposes of this Part, response action relating to an environmental emergency is “reasonable” if it is –
  - (a) appropriate,
  - (b) practicable,
  - (c) proportionate, and
  - (d) based on objective criteria and on available information.
- (3) The criteria referred to in subsection (2)(d) include in particular –
  - (a) risks to the environment of Antarctica and the rate of its natural recovery,
  - (b) risks to human life and safety, and
  - (c) technological and economic feasibility.
- (4) For the purposes of this Part, taking reasonable response action in relation to an emergency –
  - (a) always includes determining the extent and impact of the emergency;
  - (b) may include cleaning up after it.

*Pre-planning***4 Pre-planning: introductory**

- (1) Sections 5 and 6 apply in a case where –
  - (a) a person organises activities to be carried out in Antarctica, and
  - (b) the activities are organised in the United Kingdom and are subject to United Kingdom authorisation.
- (2) For the purposes of this Part activities are “subject to United Kingdom authorisation” if –
  - (a) they are or are to be carried out on a British expedition, or
  - (b) they are or are to be carried out on an expedition which is not a British expedition but, in all the circumstances in which they are or are to be carried out, they require a permit under any provision of the Antarctic Act 1994.

## 5 Preventative measures

- (1) In a case referred to in section 4, the person organising the activities must, by the time specified in subsection (3), have taken reasonable preventative measures designed to reduce –
  - (a) the risk of environmental emergencies arising from those activities, and
  - (b) the potential adverse impact of such environmental emergencies.
- (2) Preventative measures under subsection (1) may, for example, include –
  - (a) specialised structures or equipment incorporated into the design and construction of facilities and means of transport;
  - (b) specialised procedures for the operation or maintenance of facilities and means of transport;
  - (c) specialised training.
- (3) The time referred to in subsection (1) is the time when any of the persons by whom the activities are to be carried out enters Antarctica.
- (4) A person who contravenes subsection (1) is guilty of an offence.
- (5) A person who is guilty of an offence under this section is liable –
  - (a) on conviction on indictment for a term not exceeding two years or to a fine or to both;
  - (b) on summary conviction to a fine not exceeding the statutory maximum.

## 6 Contingency plans

- (1) In a case referred to in section 4, the person organising the activities must, by the time specified in subsection (3), have made a contingency plan for responding to –
  - (a) environmental emergencies, and
  - (b) other incidents with a potential adverse impact on the environment of Antarctica,where those emergencies or incidents result from or affect the carrying on of those activities.
- (2) A contingency plan under subsection (1) may, for example, include –
  - (a) in the case of an environmental emergency, plans for taking response action (see section 7) and informing the Secretary of State (see section 8);
  - (b) in the case of another incident, plans for taking steps in response to the incident and informing the Secretary of State of it.
- (3) The time referred to in subsection (1) is the time when any of the persons by whom the activities are to be carried out enters Antarctica.
- (4) A person who contravenes subsection (1) is guilty of an offence.
- (5) A person who is guilty of an offence under this section is liable –
  - (a) on conviction on indictment for a term not exceeding two years or to a fine or to both;
  - (b) on summary conviction to a fine not exceeding the statutory maximum.

*Responding to environmental emergency***7 Duty to take response action**

- (1) Where—
  - (a) activities carried out in Antarctica directly or indirectly give rise to an environmental emergency, and
  - (b) the activities were organised in the United Kingdom and are subject to United Kingdom authorisation, andthe person who organised the activities must take reasonable, prompt and effective response action.
- (2) A person who contravenes subsection (1) is guilty of an offence.
- (3) A person is not guilty of an offence under this section if the environmental emergency was caused by—
  - (a) an act or omission necessary to protect human life or safety;
  - (b) a natural disaster, where the person had complied with the requirements of section 5(1) (preventative measures) in relation to disasters of that description;
  - (c) an act of terrorism;
  - (d) an act of belligerency against the activities of the person;
  - (e) action which was itself reasonable response action relating to a prior environmental emergency.
- (4) A person who is guilty of an offence under this section is liable on conviction on indictment for a term not exceeding two years or to a fine or to both.
- (5) In determining the amount of a fine under subsection (4) the court by which a person is convicted must take into account the desirability of securing that the person pays an amount equivalent to the costs specified in subsection (6) (to the extent that those costs are not recovered from the person under the following provisions of this Part).
- (6) The costs referred to in subsection (5) are the costs that the person would have incurred had the person taken reasonable, prompt and effective response action.

**8 Duty to inform Secretary of State**

- (1) Where—
  - (a) as the result of the carrying out of activities in Antarctica the person who organised them, or any of that person's employees or agents, becomes aware of any environmental emergency, and
  - (b) the activities were organised in the United Kingdom and are subject to United Kingdom authorisation,the person organising the activities must promptly inform the Secretary of State about the environmental emergency.
- (2) It is immaterial for the purposes of subsection (1) whether the activities gave rise to the emergency.
- (3) A person who contravenes subsection (1) is guilty of an offence.
- (4) A person is not guilty of an offence under this section if the person informed the Secretary of State as soon as was practicable in all the circumstances.

- (5) A person who is guilty of an offence under this section is liable—
  - (a) on conviction on indictment to a term not exceeding two years or to a fine or to both;
  - (b) on summary conviction to a fine not exceeding the statutory maximum.

*Civil liability for failure to take response action*

**9 Liability to Parties to Annex VI**

- (1) This section applies in a case where—
  - (a) activities carried out in Antarctica directly or indirectly give rise to an environmental emergency,
  - (b) the person organising the activities does not take reasonable, prompt and effective response action, and
  - (c) reasonable response action is taken pursuant to Article 5(2) of Annex VI.
- (2) Where the reasonable response action referred to in subsection (1)(c) is taken by the Crown or a person specifically authorised by the Crown and—
  - (a) the person organising the activities is based in the United Kingdom, or
  - (b) the condition specified in subsection (3) is met,the person organising the activities is (subject to this Part) liable to pay to Her Majesty's Government an amount equal to the costs of the action.
- (3) The condition referred to in subsection (2)(b) is that—
  - (a) the activities were organised in the United Kingdom, and
  - (b) the activities are subject to United Kingdom authorisation.
- (4) Where the reasonable response action referred to in subsection (1)(c) is taken by another Party to Annex VI or a person specifically authorised by such a Party and—
  - (a) the person organising the activities is based in the United Kingdom, or
  - (b) the condition specified in subsection (5) is met,the person organising the activities is (subject to this Part) liable to pay to that Party an amount equal to the costs of the action.
- (5) The condition referred to in subsection (4)(b) is that—
  - (a) the activities were organised in the United Kingdom,
  - (b) the activities are subject to United Kingdom authorisation, and
  - (c) the person is based in a State which is not a Party to Annex VI.
- (6) This section does not impose any liability on—
  - (a) the Crown or a contractor, sub-contractor or agent of the Crown, or
  - (b) another Party to Annex VI or a contractor, sub-contractor or agent of such a Party.
- (7) Proceedings pursuant to this section may be brought by any Minister of the Crown (within the meaning of the Ministers of the Crown Act 1975).
- (8) Proceedings may not be brought pursuant to this section after—
  - (a) the end of the period of three years beginning with the day on which the reasonable response action referred to in subsection (1)(c) was commenced, or

- (b) if later, the end of the period of three years beginning with the day on which Her Majesty’s Government or the Party to Annex VI (as the case may be) ascertained, or ought reasonably to have ascertained, the identity of the person organising the activities.
- (9) Subsection (8)(b) does not permit the bringing of proceedings pursuant to this section after the end of the period of fifteen years beginning with the day on which the reasonable response action referred to in subsection (1)(c) was commenced.
- (10) Proceedings pursuant to this section are not subject –
  - (a) in England and Wales, to section 9(1) of the Limitation Act 1980 (time limit for actions for sums recoverable by statute);
  - (b) in Scotland, to section 6 of the Prescription and Limitation (Scotland) Act 1973 (extinction of obligations by prescriptive periods of 5 years);
  - (c) in Northern Ireland, to Article 4(d) of the Limitation (Northern Ireland) Order 1989 (S.I. 1989/1339 (N.I.11)) (time limit for actions for sums recoverable by virtue of any statutory provision).

## 10 Liability to Antarctic Environmental Liability Fund

- (1) This section applies in a case where –
  - (a) activities carried out in Antarctica directly or indirectly give rise to an environmental emergency,
  - (b) the person organising the activities does not take reasonable, prompt and effective response action, and
  - (c) no Party to Annex VI takes response action pursuant to Article 5(2) of Annex VI.
- (2) Where the person organising the activities is the Crown, the Secretary of State is (subject to this Part) liable to pay to the Antarctic Environmental Liability Fund an amount equal to the recoverable costs of the response action.
- (3) Where –
  - (a) the person organising the activities is based in the United Kingdom, or
  - (b) the activities were organised in the United Kingdom and are subject to United Kingdom authorisation,
 the person organising the activities is (subject to this Part) liable to pay to the Antarctic Environmental Liability Fund an amount equal to the recoverable costs of the response action.
- (4) Subsection (3) does not impose any liability on –
  - (a) the Crown or a contractor, sub-contractor or agent of the Crown, or
  - (b) another Party to Annex VI or a contractor, sub-contractor or agent of such a Party.
- (5) For the purposes of this section, the “recoverable costs” of any response action relating to an environmental emergency arising from any activities are the costs that the person organising the activities would have incurred had the person taken reasonable, prompt and effective response action.
- (6) An amount payable under subsection (3) is recoverable by the Secretary of State as if it were a debt due to the Secretary of State.



- (7) Where in proceedings pursuant to subsection (6) the Secretary of State receives all or any part of the amount referred to in subsection (3), the Secretary of State must pay it to –
  - (a) the Antarctic Environmental Liability Fund, or
  - (b) such person as the Secretary of State considers appropriate for the purposes of securing that the amount is paid to that Fund.
- (8) If in any proceedings pursuant to subsection (6) a court determines that a person is required to pay all or any part of the amount referred to in subsection (3) to the Secretary of State, the Secretary of State may require the person to pay it to –
  - (a) the Antarctic Environmental Liability Fund, or
  - (b) such person as the Secretary of State considers appropriate for the purposes of securing that the amount is paid to that Fund.
- (9) Proceedings may not be brought pursuant to subsection (6) at any time after the end of the period of 15 years beginning with the day on which the Secretary of State became aware, or ought to have become aware, of the environmental emergency.
- (10) Proceedings pursuant to subsection (6) are not subject –
  - (a) in England and Wales, to section 9(1) of the Limitation Act 1980 (time limit for actions for sums recoverable by statute);
  - (b) in Scotland, to section 6 of the Prescription and Limitation (Scotland) Act 1973 (extinction of obligations by prescriptive periods of 5 years);
  - (c) in Northern Ireland, to Article 4(d) of the Limitation (Northern Ireland) Order 1989 (S.I. 1989/1339 (N.I.11)) (time limit for actions for sums recoverable by virtue of any statutory provision).

## 11 Financial limits

- (1) Sections 9 and 10 do not require payment, in any case, of an amount exceeding the limits specified in this section.
- (2) For an environmental emergency arising from an event involving a ship, the limits are –
  - (a) for a ship with a tonnage not exceeding 2,000 tons, one million SDR;
  - (b) for a ship with a tonnage exceeding 2,000 tons, one million SDR for the first 2,000 tons and –
    - (i) 400 SDR for each ton from 2,001 to 30,000 tons,
    - (ii) 300 SDR for each ton from 30,001 to 70,000 tons, and
    - (iii) 200 SDR for each ton over 70,000 tons.
- (3) For an environmental emergency arising from an event not involving a ship, the limit is three million SDR.
- (4) The Secretary of State may by order make such amendments to the limits specified in subsections (2) and (3) as appear to the Secretary of State appropriate for the purpose of giving effect to any amendment to the limits specified in Article 9(1) of Annex VI which are made pursuant to Article 9(4) of that Annex.
- (5) The limits in this section do not apply in a case where the environmental emergency arose from an act or omission of a person which was committed with –

- (a) the intention of causing an environmental emergency, or
  - (b) knowledge that an environmental emergency would probably result.
- (6) Subsections (7) and (8) have effect in any case where –
- (a) this section, and
  - (b) the provisions set out in Schedule 7 to the Merchant Shipping Act 1995 (Convention on Limitation of Liability for Maritime Claims 1976),
- would apply in relation to any liability under section 9 or 10.
- (7) If the application of this section would produce the result that the amount for which a person is liable under this Part is lower than that for which the person would otherwise be liable, this section does not apply.
- (8) If the application of the provisions referred to in subsection (6)(b) would produce the result that the amount for which a person is liable under this Part is lower than that for which the person would otherwise be liable, those provisions do not apply.
- (9) In this section –
- “SDR” means special drawing rights;
  - “ship” means –
    - (a) any vessel, and
    - (b) any fixed or floating platform which is not a vessel.
- (10) For the purposes of any proceedings under this Part, one SDR is to be treated as such amount in sterling as the International Monetary Fund has fixed as its equivalent –
- (a) for the day when liability to make the payment is determined by the court in those proceedings, or
  - (b) if no amount has been so fixed for that day, for the last day before that day for which an amount has been so fixed.
- (11) For the purposes of this section, a ship’s tonnage is its gross tonnage calculated in accordance with the tonnage measurement rules contained in Annex 1 of the International Convention on Tonnage Measurement of Ships 1969 (as those rules have effect from time to time in relation to the United Kingdom).

## 12 Other limitations

- (1) A person is not liable under section 9 or 10 in relation to an environmental emergency which was caused by –
- (a) an act or omission necessary to protect human life or safety;
  - (b) a natural disaster, where the person had complied with the requirements of section 5(1) (preventative measures) in relation to disasters of that description;
  - (c) an act of terrorism;
  - (d) an act of belligerency against the activities of the person;
  - (e) action which was itself reasonable response action relating to a prior environmental emergency.
- (2) In a case where an environmental emergency arises from activities organised by two or more persons, liability is joint and several; but no person is liable under section 9 or 10 in respect of any part of an environmental emergency not arising from activities organised by that person.

- (3) A person is not liable under section 9 or 10 to make a payment in respect of any costs if or to the extent that the person or another person has made a payment in respect of those costs –
  - (a) under this Part,
  - (b) pursuant to Articles 6 and 7 of Annex VI as applied in the law of another Party to Annex VI.
- (4) A person is not liable to make a payment under section 9 to Her Majesty's Government or a Party to Annex VI in respect of any costs if or to the extent that the person has made a payment to that Government or Party in respect of those costs under Part 9 of the Merchant Shipping Act 1995 (salvage and wreck); and vice versa.
- (5) Where a person liable to make a payment under section 9 to Her Majesty's Government or a Party to Annex VI is also liable to make a payment to another person under Part 9 of the Merchant Shipping Act 1995 in respect of action taken pursuant to the same environmental emergency, the amount which a person is liable to pay under that section is reduced by the amount the person is liable to pay under that Part.
- (6) Where a person liable to make a payment under section 10 to the Antarctic Environmental Liability Fund is also liable to make a payment to a person under Part 9 of the Merchant Shipping Act 1995 in respect of action taken pursuant to the same environmental emergency, the amount which the person is liable to pay under that section is to be reduced by the amount the person is liable to pay under that Part.

### *Supplementary*

## **13 Insurance**

- (1) A person organising activities to be carried out in Antarctica must, by the time specified in subsection (3), have secured adequate insurance cover or other financial security in respect of the matters referred to in subsection (2).
- (2) Those matters are –
  - (a) the cost of taking any response action which the person may be required to take under section 7 in relation to an environmental emergency arising directly or indirectly from the activities organised by the person;
  - (b) any liability which the person may incur under section 9 or 10 in relation to such an environmental emergency.
- (3) The time referred to in subsection (1) is the time when any of the persons by whom the activities are to be carried out enters Antarctica.
- (4) For the purposes of subsection (1), cover or security is not adequate if it is subject to any limitation, exception or exclusion which makes it fundamentally deficient for the purposes of providing the cover referred to in that subsection.
- (5) In particular, any cover or security required for the purposes of subsection (2)(b) is not adequate if it does not extend up to the limits referred to in section 11 which are applicable in the particular case.
- (6) A person who contravenes subsection (1) is guilty of an offence.
- (7) A person who is guilty of an offence under this section is liable –

- (a) on conviction on indictment for a term not exceeding two years or to a fine or to both;
  - (b) on summary conviction to a fine not exceeding the statutory maximum.
- (8) Subsection (1) does not apply to—
- (a) the Crown, or
  - (b) another Party to Annex VI or a contractor, sub-contractor or agent of such a party.

#### **14 Secretary of State’s power to require information**

- (1) This section applies in a case where—
- (a) activities carried out in Antarctica were organised in the United Kingdom and are subject to United Kingdom authorisation, and
  - (b) it appears to the Secretary of State that the activities have given rise directly or indirectly to—
    - (i) an environmental emergency, or
    - (ii) an incident with a potential adverse impact on the environment of Antarctica.
- (2) The Secretary of State may give a notice to the person organising the activities—
- (a) specifying the emergency or incident,
  - (b) requiring the person to give such information as may be specified in the notice about the emergency or incident and any steps taken in response, and
  - (c) requiring the person to give that information within the period specified in the notice.
- (3) A person to whom a notice is given under subsection (2) must comply with the notice within the period specified in it.
- (4) A person who contravenes subsection (3) is guilty of an offence.
- (5) A person is not guilty of an offence under this section if that person did not have the information required and could not reasonably have been expected to obtain it.
- (6) A person who is guilty of an offence under this section is liable—
- (a) on conviction on indictment to a term not exceeding two years or to a fine or to both;
  - (b) on summary conviction to a fine not exceeding the statutory maximum.

#### *Exclusions*

#### **15 Employees**

Nothing in this Part imposes any criminal or civil liability on an individual who organises activities as the employee of another person.

#### **16 Excluded activities**

In this Part, references to activities do not include—

- (a) the activity of fishing for profit, or

- (b) activities carried out or to be carried out in Antarctica on a vessel or aircraft travelling to an immediate destination outside Antarctica.

*General*

**17 The Crown**

- (1) This Part binds the Crown, except as otherwise expressly provided.
- (2) No contravention of any provision of this Part makes the Crown criminally liable; but the High Court or, in Scotland, the Court of Session may on the application of the Secretary of State declare unlawful any act or omission of the Crown which constitutes such a contravention.
- (3) Subsection (2) does not affect the criminal liability of persons in the service of the Crown.
- (4) For the purposes of this Part, references to the Crown include in particular—
  - (a) the Natural Environment Research Council (including the British Antarctic Survey);
  - (b) any other person specified by order made by the Secretary of State.

**18 Orders**

- (1) An order under this Part may make—
  - (a) different provision for different cases or circumstances, and
  - (b) incidental and supplementary provision.
- (2) An order under this Part must be made by statutory instrument.
- (3) A statutory instrument containing an order under this Part is subject to annulment in pursuance of a resolution of either House of Parliament.

**19 Part 1 interpretation**

- (1) In this Part—
  - “Annex VI” has the meaning given in section 1;
  - “the Antarctic Treaty” has the meaning given in section 1;
  - “the Antarctic Environmental Liability Fund” has the meaning given in section 1;
  - “environment”, in relation to Antarctica, has the meaning given in section 2(2);
  - “environmental emergency” has the meaning given in section 2(1);
  - “Party to Annex VI” and “another Party to Annex VI” have the meanings given in section 1;
  - “the Protocol” has the meaning given in section 1;
  - “response action” and “reasonable response action” have the meanings given in section 3;
  - “subject to United Kingdom authorisation” has the meaning given in section 4(2).
- (2) For the purposes of this Part a person is “based in” the United Kingdom or another State if—

- (a) the person is a body corporate incorporated there, or which has its principal place of business there;
- (b) the person is an unincorporated association which has its principal place of business there or whose activities (other than activities in Antarctica) are principally carried out there;
- (c) the person is an individual whose habitual place of residence is there.

## PART 2

### SAFETY PLANNING

#### 20 Requirements relating to safety planning

- (1) Where activities subject to United Kingdom authorisation are to be carried out in Antarctica –
  - (a) adequate arrangements for personal safety (see section 21) must be made in relation to the persons carrying out the activities by the time specified in subsection (2), and
  - (b) adequate insurance for emergencies relating to personal safety (see section 22) must be secured in relation to those persons by that time.
- (2) The time referred to in subsection (1)(a) and (b) is the time when any of the persons by whom the activities are to be carried out enter Antarctica.
- (3) In this Part “subject to United Kingdom authorisation” has the same meaning as in Part 1 (see section 4(2)).
- (4) In this Part, references to activities do not include –
  - (a) the activity of fishing for profit, or
  - (b) activities carried out or to be carried out in Antarctica on a vessel or aircraft travelling to an immediate destination outside Antarctica.

#### 21 Arrangements for personal safety

- (1) In this Part, “arrangements for personal safety” means arrangements for –
  - (a) health and safety in Antarctica,
  - (b) medical care in Antarctica,
  - (c) search and rescue in the event of an emergency in Antarctica, and
  - (d) evacuation in the event of such an emergency.
- (2) For the purposes of section 20(1)(a), arrangements for personal safety are not adequate unless they include any appropriate contingency plans.
- (3) Where arrangements for personal safety depend on support from –
  - (a) a party to the Protocol, or
  - (b) a person carrying out activities in Antarctica with the written authorisation of a party to the Protocol,
 they are not adequate for the purposes of section 20(1)(a) except to the extent that that party or person has agreed to them in writing.
- (4) For the purposes of subsection (3) “the Protocol” has the meaning given in section 1(1).

## **22 “Insurance for emergencies relating to personal safety”**

- (1) In this Part, “insurance for emergencies relating to personal safety” means insurance or other financial security to cover the costs of –
  - (a) medical care in Antarctica,
  - (b) search and rescue in the event of an emergency in Antarctica, and
  - (c) evacuation in the event of such an emergency.
- (2) For the purposes of section 20(1)(b), insurance for emergencies relating to personal safety is adequate if it is not subject to any limitation, exception or exclusion which makes it fundamentally deficient for the purpose of providing the cover referred to in subsection (1).

## **23 Breach of requirements**

- (1) This section applies where activities subject to United Kingdom authorisation are to be carried out in Antarctica and –
  - (a) the requirement in section 20(1)(a) is not met, or
  - (b) the requirement in section 20(1)(b) is not met.
- (2) If the activities are to take place on a British expedition, the following are guilty of an offence –
  - (a) the person organising the activities, and
  - (b) if different, the person responsible for conducting the expedition.
- (3) If the activities are to take place on an expedition which is not a British expedition and the person responsible for conducting the expedition in Antarctica is a United Kingdom national, that person is guilty of an offence.
- (4) A person who is guilty of an offence under this section is liable –
  - (a) on conviction on indictment for a term not exceeding two years or to a fine or to both;
  - (b) on summary conviction to a fine not exceeding the statutory maximum.
- (5) Nothing in this section imposes criminal liability on an employee acting in the course of their employment.
- (6) In subsection (3) “United Kingdom national” has the same meaning as in the Antarctic Act 1994.

### **PART 3**

#### **AMENDMENTS TO ANTARCTIC ACT 1994**

##### *Offences*

## **24 Application of offences to non-nationals**

- (1) The Antarctic Act 1994 is amended as follows.
- (2) In the following provisions, after “United Kingdom national” insert “, and no non-national on a British expedition,” –
  - (a) section 7(1) (offence of damaging flora and fauna etc);
  - (b) section 8(1) (offence of introducing non-native animals and plants);
  - (c) section 9(1) (offence of entering or remaining in restricted areas);

- (d) section 10(1) (offence of damaging etc certain sites and monuments);
  - (e) section 11(1) (offence of entering or remaining in protected place).
- (3) In section 11 (protected places) –
- (a) in subsection (3) (permits), after “United Kingdom national” insert “, or any non-national on a British expedition,”;
  - (b) after that subsection insert –
    - “(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.”
- (4) In section 12 (permits for activities prohibited by sections 7, 8 and 9) –
- (a) the existing provision becomes subsection (1);
  - (b) in that provision, after “United Kingdom national” insert “, or any non-national on a British expedition,”;
  - (c) after that provision insert –
    - “(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.”
- (5) In section 31(1) (interpretation), at the appropriate place insert –
- ““non-national” means an individual who is not a United Kingdom national;”.
- Consequential*
- (6) In section 3 (permits for British expeditions), in subsection (3), for “section” substitute “Act”.
- (7) In section 31(1) (interpretation), at the appropriate place insert –
- ““British expedition” has the meaning given by section 3;”.

## 25 Historic Sites and Monuments: permits

- (1) The Antarctic Act 1994 is amended as follows.
- (2) In section 10 (Historic Sites and Monuments) –
- (a) in subsection (1), at the end insert “, except in accordance with a permit granted under this section or under the written authorisation of another Contracting Party”;
  - (b) at the end insert –
    - “(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.”

*Consequential*

- (3) In section 15 (duty to have regard to Protocol), in each of paragraphs (a), (b) and (c), after “5” insert “, 10”.
- (4) In section 16 (delegation of powers)—
  - (a) in the heading, after “sections” insert “10,”;
  - (b) in subsection (1), after “section”, in both places, insert “10,”.
- (5) In section 30 (evidence), in subsection (3), for “or 9(1)” substitute “, 9(1) or 10(1)”.

*Animals and plants etc*

**26 Conservation of animals and plants**

- (1) The Antarctic Act 1994 is amended as follows.
- (2) In section 7 (conservation of Antarctic fauna and flora), in subsection (1)(e), after “native plant” insert “or native invertebrate”.
- (3) In that section, after subsection (1) insert—

“(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).”
- (4) In section 31 (interpretation), in subsection (1), in the definition of “native invertebrate” after “terrestrial” insert “, marine”.

**27 Introduction of animals and plants**

- (1) Section 8 of the Antarctic Act 1994 (permits required for introducing non-native animals and plants) is amended as follows.
- (2) For subsection (2) substitute—

“(2) The keeping of—
  - (a) an animal on board a vessel which is travelling to an immediate destination outside Antarctica, or
  - (b) a plant on board a vessel in Antarctica,shall not be regarded as a contravention of subsection (1).”
- (3) At the end insert—

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

- (5) In this section “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).”

## 28 Microscopic organisms

- (1) The Antarctic Act 1994 is amended as follows.  
(2) After section 8 insert –

### “8A Introduction of microscopic organisms

- (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.”
- (3) In section 12 (grant of permits for activities prohibited by sections 7, 8 and 9) –  
(a) in the heading, for “sections 7, 8 and 9” substitute “sections 7 to 9”;  
(b) after “8(1)” insert “, 8A(1)”.

## 29 Non-sterile soil

- (1) The Antarctic Act 1994 is amended as follows.  
(2) After section 8A (as inserted by section 28 above) insert –

### “8B Introduction of non-sterile soil

- (1) No United Kingdom national, and no non-national on a British expedition, may introduce non-sterile soil into any part of Antarctica.
- (2) Any person who contravenes subsection (1) shall be guilty of an offence.”
- (3) In section 18(1) (defences), after “5(4)”, insert “, 8B(2)”.

## 30 Marine plants

In section 31 of the Antarctic Act 1994 (interpretation), in subsection (1), in the definition of “native plant” after “terrestrial” insert “, marine”.

## 31 Meaning of “indigenous”

- (1) In section 31 of the Antarctic Act 1994 (interpretation), after subsection (1)

insert—

- “(1A) In this Act, references to a species “indigenous to Antarctica” include a species occurring in Antarctica through natural migration.”
- (2) In that section, in subsection (1), in the definitions of “native bird” and “native mammal” omit “or occurring there seasonally through natural migrations”.

*Definitions relating to vessels*

**32 British vessels**

In section 5 of the Antarctic Act 1994 (British vessels and aircraft entering Antarctica), in subsection (3), for “section 21(1) of the Merchant Shipping Act 1979” substitute “section 85(1) of the Merchant Shipping Act 1995”.

**33 Hovercraft**

In section 31 of the Antarctic Act 1994 (interpretation), in subsection (1), in the definition of “vessel”, after “hovercraft” insert “(within the meaning of the Hovercraft Act 1968)”.

**PART 4**

FINAL

**34 Evidence**

- (1) For the purposes of any proceedings under Part 1 or 2, a certificate signed by or on behalf of the Secretary of State and stating that, at the time of the certificate, a State was or was not—
- (a) a party to the Protocol, or
  - (b) a Party to Annex VI,
- is conclusive evidence of the facts stated in it.
- (2) A document purporting to be such a certificate is to be deemed to be one unless the contrary is proved.
- (3) In subsection (1) “the Protocol” and “Party to Annex VI” have the meanings given by section 1.

**35 General provision relating to offences**

- (1) The following provisions of the Antarctic Act 1994 apply in relation to offences under this Act as if they were offences under Part 2 of that Act—
- (a) section 17 (places where proceedings may be taken etc);
  - (b) section 19 (offences committed by bodies corporate etc);
  - (c) section 28 (consents required for institution of proceedings);
  - (d) section 29(1)(b) and (2) (power to make regulations about arrest etc).
- (2) Where an offence under this Act is committed by an unincorporated association and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of—
- (a) an officer of the association or any member of its governing body, or

- (b) any person who was purporting to act in any such capacity, that officer or person (as well as the association) shall be guilty of that offence and liable to be proceeded against and punished accordingly.
- (3) Proceedings for an offence under this Act alleged to have been committed by an unincorporated association are to be brought against it in its own name.
- (4) For the purposes of such proceedings –
- (a) rules of court relating to the service of documents shall have effect as if the partnership or association were a body corporate;
  - (b) the following provisions shall apply as they apply in relation to a body corporate –
    - (i) section 33 of the Criminal Justice Act 1925 and Schedule 3 to the Magistrates’ Courts Act 1980;
    - (ii) sections 70 and 143 of the Criminal Procedure (Scotland) Act 1995;
    - (iii) section 18 of the Criminal Justice Act (Northern Ireland) 1945 (c. 15 (N.I.)) and Schedule 4 to the Magistrates’ Courts (Northern Ireland) Order 1981 (SI 1981/1675 (N.I. 26)).
- (5) Where a fine is imposed on a partnership or other unincorporated association on its conviction for an offence under this Act, the fine shall be paid out of the funds of the association.
- (6) In this section, a reference to an offence under this Act includes –
- (a) an offence of conspiracy or attempting to commit an offence under this Act;
  - (b) in Scotland, an offence of incitement to commit an offence under this Act;
  - (c) in England and Wales and Northern Ireland, an offence under Part 2 of the Serious Crime Act 2007 (encouraging or assisting crime) in relation to an offence under this Act.

### 36 General interpretation

In this Act, the following words and expressions have the same meaning as in the Antarctic Act 1994 –

- “Antarctica” (see section 1 of that Act);
- “British expedition” (see section 3(3) of that Act);
- “contravenes” (see section 31(1) of that Act);
- “vessel” (see section 31(1) of that Act).

### 37 Extent

- (1) This Act extends to England and Wales, Scotland and Northern Ireland.
- (2) Subsections (2) and (3) of section 34 of the Antarctic Act 1994 (power to extend to the Channel Islands, Isle of Man and British overseas territories) apply in relation to –
  - (a) the provisions of Parts 1 and 2, and
  - (b) the provisions of the Antarctic Act 1994 as amended by Part 3.

**38 Commencement**

- (1) Part 1 comes into force on such day as the Secretary of State may by order made by statutory instrument appoint (and different days may be appointed for different purposes).
- (2) Parts 2 and 3 come into force at the end of the period of two months beginning with the day on which this Act is passed.
- (3) This Part comes into force on the day on which this Act is passed.

**39 Short title**

This Act may be cited as the Antarctic Act 2010.

# DRAFT ANTARCTIC BILL

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## EXPLANATORY NOTES

### INTRODUCTION

1. These explanatory notes relate to the draft Antarctic Bill 2009. They have been prepared by the Foreign and Commonwealth Office in order to assist the reader in understanding the draft Bill.
2. They do not form part of the draft Bill and have not been endorsed by Parliament.
3. The notes need to be read in conjunction with the draft Bill. They are not, and are not meant to be, a comprehensive description of the draft Bill. So where a clause or part of a clause does not seem to require any explanation or comment, none is given.

### BACKGROUND

#### *Antarctic Treaty*

4. The Antarctic Treaty establishes a mechanism for international co-operation to protect and preserve Antarctica for peaceful purposes. The UK was the first country to ratify the Treaty, which came into force in 1961. There are currently 28 Consultative (executive) Parties and 19 non-Consultative Parties. The Antarctic Treaty Consultative Parties meet annually to exchange information and consult on matters relating to Antarctica and may adopt measures “in furtherance of the principles and purposes of the Treaty” which become effective when approved by the Governments of all Antarctic Treaty Consultative Parties. The full text of the Treaty can be found at:  
[www.ats.aq/documents/ats/treaty\\_original.pdf](http://www.ats.aq/documents/ats/treaty_original.pdf).

#### *Environmental Protocol to the Antarctic Treaty*

5. The Protocol on Environmental Protection to the Antarctic Treaty (“the Protocol”) provides for the comprehensive protection of the Antarctic environment. It requires all activities undertaken in Antarctica to be planned and conducted so as to limit adverse impacts on the Antarctic environment. The Protocol, including its Annexes I – IV, was adopted in 1991 and entered into force in 1998. Annex V was adopted later in 1991 and entered into force in 2002. Provision is made in the Protocol for additional annexes to be

adopted and incorporated into the Protocol following their entry into force. The text of the Protocol can be accessed from: [www.ats.aq/e/ats\\_protocol.htm](http://www.ats.aq/e/ats_protocol.htm).

### ***Liability Annex***

6. Annex VI to the Protocol on “*Liability Arising from Environmental Emergencies*”, (in these notes called “the Liability Annex”) was adopted by the Antarctic Treaty Consultative Parties in 2005. It obliges States Parties to require their Antarctic operators (governmental and non-governmental) to take preventative measures to reduce the risk of environmental emergencies in Antarctica, to establish contingency plans and to take prompt and effective response action to environmental emergencies arising from their activities. It imposes financial liability on operators which fail to take such response action, effectively establishing a “polluter pays” mechanism. The primary aim of the Annex is to act as a deterrent for those who might operate irresponsibly in Antarctica. In accordance with the Provisions of Article 9(2) of the Protocol, and Article IX of the Antarctic Treaty, the Liability Annex will enter into force once it has been approved by all of the 28 Consultative Parties which adopted it in 2005. The approval of each Consultative Party takes place when it deposits a note signifying its approval of the Annex with the Depositary Government of the Antarctic Treaty. The text of the Liability Annex is included at Appendix 1 and may also be downloaded at: [www.ats.aq/documents/recatt/Att006\\_e.pdf](http://www.ats.aq/documents/recatt/Att006_e.pdf).

### ***Antarctic Act 1994***

7. The Antarctic Act 1994 gives effect to obligations of the United Kingdom under the Antarctic Treaty and the Protocol (including its Annexes I – V). Under the 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 and can be accessed at: [www.opsi.gov.uk/acts/acts1994/Ukpga\\_19940015\\_en\\_1.htm](http://www.opsi.gov.uk/acts/acts1994/Ukpga_19940015_en_1.htm).

### **SUMMARY**

8. Part 1 of the Bill implements the Liability Annex (see paragraph 6 above).
9. Part 2 of the Bill implements Measure 4 (2004): *Insurance and Contingency Planning for Tourism and non-Governmental Activities in the Antarctic Treaty Area*, adopted at the 27 Antarctic Treaty Consultative Meeting in 2004. Measure 4 (2004) is included at Appendix 2 and at [www.ats.aq/devAS/info\\_measures\\_listitem.aspx?lang=e&id=321](http://www.ats.aq/devAS/info_measures_listitem.aspx?lang=e&id=321).

10. Part 3 of the Bill amends the Antarctic Act 1994, primarily to respond to the increasing internationalisation of Antarctic expeditions and the increasing vulnerability of the Antarctic environment as a result of climate change. These amendments include those necessary to implement revisions to Annex II to the Protocol adopted by the Antarctic Treaty Consultative Meeting in 2009. Annex II as revised is included at Appendix 3 and also downloadable from [www.ats.aq/documents/recatt/att432\\_e.pdf](http://www.ats.aq/documents/recatt/att432_e.pdf)).

## **TERRITORIAL EXTENT**

11. This Bill extends to the whole of the United Kingdom. The Secretary of State may also, by order, provide for the provisions of the Bill be extended to the Channel Islands, Isle of Man and British Overseas Territories – see clause 37.

## **TERRITORIAL APPLICATION: WALES**

12. The Bill applies to Wales in the same way that it applies to the rest of the UK.

## **COMMENTARY ON CLAUSES**

### **PART 1 – ENVIRONMENTAL EMERGENCIES**

#### *Pre-Planning*

#### **Clause 4 – Pre-planning: introductory**

13. This clause sets out who is required to take action under clauses 5 and 6, namely, a person who organises activities to be carried out in Antarctica and has relevant links to the United Kingdom. This reflects the provisions of Articles 3 and 4 of the Liability Annex, and the definitions in Article 2(c) and (d) of the Annex,

#### **Clause 5 - Preventative measures**

14. Clause 5 requires the organiser of the activities in Antarctica to take reasonable preventative measures designed to reduce the risk of environmental emergencies arising from those activities and their potential adverse impact. This reflects Article 3 of the Liability Annex. “Environmental emergency” is defined in clause 2, which reflects the definition in Article 2(b) of the Liability Annex.

15. *Subsection (2)* gives some examples of preventative steps that the organiser may need to take to satisfy the obligation in *subsection (1)* to reduce the risk of environmental



emergencies and reduce the potential adverse impact of any such emergencies. The examples of preventative measures outlined in subsection (2) are not exhaustive.

16. *Subsection (4)* makes it an offence to contravene the requirements of subsection (1). The penalties are set out in *subsection (5)*.

### **Clause 6 – Contingency plans**

17. This clause requires those organising activities in Antarctica to develop contingency plans, before entering Antarctica, for responding to environmental emergencies and other incidents which may have a potential adverse impact on the Antarctic environment. This reflects Article 4 of the Liability Annex.

18. *Subsection (2)* gives examples of what a contingency plan required by *subsection (1)* might include, such as setting out plans for taking action in response to an environmental emergency or incident and arrangements for informing the Secretary of State.

19. *Subsection (4)* makes it an offence to contravene the requirements of subsection (1). The penalties for this offence are set out in *subsection (5)*.

### *Responding to environmental emergency*

### **Clause 7 – Duty to take response action**

20. This clause requires those who organise activities carried out in Antarctica to take reasonable, prompt and effective response action in relation to any environmental emergency arising directly or indirectly from those activities. It applies where the organisation of the activities takes place in the United Kingdom and the activities are “subject to United Kingdom authorisation” as defined in clause 4(2). This obligation reflects Article 5(1) of the Liability Annex. ‘Response action’ and what constitutes ‘reasonable’ response action are defined in clause 3. These definitions reflect Article 2(e) and (f) of the Liability Annex.

21. *Subsection (2)* makes it an offence to contravene the requirement in *subsection (1)* to take response action.

22. *Subsection (3)* sets out the situations in which criminal liability for failure to take reasonable response action to an environmental emergency will not arise. In respect of a natural disaster, the exemption will only apply in circumstances where the organiser had taken preventative measures under clause 5. This subsection reflects the exemptions from liability in Article 8 of the Liability Annex.

23. The penalties for this offence are set out in *subsection (4)*. *Subsections (5) and (6)* require the court, in determining the amount of a fine, to take into account the amount that the offender would have spent had the obligations in this clause been complied with (to the extent that those costs are not recovered from the offender under the civil liability provisions of this Part, namely, clauses 9 to 12). See Article 6 of the Liability Annex.

#### **Clause 8 – Duty to inform the Secretary of State**

24. Clause 8 requires organisers of activities in Antarctica to inform the Secretary of State promptly of any environmental emergency of which they become aware as a result of the carrying out of those activities. Failure to do so is an offence (*subsection (3)*), the penalties for which are set out in *subsection (5)*. *Subsection (4)* provides that this obligation arises irrespective of the cause of the emergency. This reflects Article 4 of the Liability Annex.

#### *Civil liability for failure to take response action*

#### **Clause 9 – Liability to Parties to Annex VI**

25. Clause 9 enables a Party to the Liability Annex, including the UK Government, to recover the costs for any reasonable response action taken following an environmental emergency, where the organiser of the activities which gave rise to the environmental emergency failed to take reasonable, prompt and effective response action. The persons who may be liable under this clause include, but are not limited to, those to whom clause 7 applies. This reflects Articles 6 and 7 of the Liability Annex. See, in particular, Article 6(1).

26. *Subsection (2)* provides that where the Crown undertakes response action after an environmental emergency arising from an organiser based in the United Kingdom, or where the activities have relevant links to the UK (as set out in *subsection (3)*), the Government is entitled to recover the costs of such actions. (See clause 17, which defines the “Crown” for the purposes of Part 1 of the draft Bill. In practice, if any part of the Crown is involved in any response to an emergency in Antarctica, it would probably be the Royal Navy or the British Antarctic Survey.)

27. *Subsection (4)* enables other Parties to the Liability Annex to recover the costs, through the courts in the UK, of any reasonable response action that they undertook where the organiser of activities which gave rise to the environmental emergency failed to do so. It applies only where the organiser is based in the United Kingdom (see definition in clause 19(2)) or where the activities have relevant links to the UK (see *subsection (5)* of this clause) The links to the UK specified in *subsections (4) and (5)* reflect those in Article 7(1) of the Liability Annex.

28. *Subsection (6)* exempts the Crown and the other Parties to Annex VI from liability under this clause for any failure on their part to take response action to environmental emergencies arising from their own activities. This reflects Article 7(1) of the Liability Annex, which applies only to actions against non-State (that is, non-governmental) operators. The obligation under Article 5 of the Liability Annex to take such response action applies equally to State and non-State operators. However, Article 7(4) of the Annex stipulates a set of international mechanisms for determining the liability of a Party as a State operator under Article 6(1); and moreover, that only these mechanisms may be used.
29. *Subsections (8), (9) and (10)* set out the limitation period which applies to actions brought under this clause. Proceedings may not be brought after a period of three years from the date of commencement of the response action, or, if later, from the date when the plaintiff ascertained, or ought reasonably to have ascertained, the identity of the person organising the activities, subject to a maximum of fifteen years from the date of commencement of the response action. This reflects Article 7(1) of the Liability Annex.

#### **Clause 10 – Liability to Antarctic Environmental Liability Fund**

30. This clause applies to cases where the organiser of the activities which gave rise to an environmental emergency in Antarctica failed to take reasonable, prompt and effective response action, and no response action was taken by any Party to Annex VI. In such cases, the costs of what would have constituted reasonable, prompt and effective response action must be paid to the Antarctic Environmental Liability Fund. The Fund will be established under Article 12 of the Liability Annex, and maintained and administered by the Secretariat of the Antarctic Treaty. Its funds may be used only in accordance with a Decision adopted under Article 12 by the Antarctic Treaty Consultative Meeting.
31. *Subsection (2)* provides that in cases involving the activities of the Crown (as defined in clause 17), the Secretary of State will be required to make a direct payment to the Antarctic Environmental Liability Fund. In practise, this will be the Secretary of State responsible for the activities in question.
32. Where the activities were organised by a person with relevant links to the UK other than the Crown or another Party to the Liability Annex, *subsection (6)* enables the Secretary of State (in practice, the Foreign Secretary) to recover the costs as if they were a debt due to the Secretary of State. Under *subsections (7) and (8)*, the Secretary of State may receive all or any of the amount due and transfer it to the Antarctic Environmental Liability Fund, or require the person who is liable to pay it direct to the Fund. The limitation period is fifteen years from the date on which the Secretary of State became aware, or ought to

have become aware of the environmental emergency (see *subsection (9)*). This reflects Article 7(3) of the Liability Annex.

### **Clause 11 – Financial limits**

33. Clause 11 sets out the limits to the amounts recoverable under clauses 9 and 10. The amounts are those set out in Article 9 of the Liability Annex, and are accordingly expressed in International Monetary Fund Special Drawing Rights. Under current exchange rates, the limits for environmental emergencies involving a ship range from the equivalent of approximately US\$1.5 million for the smallest vessels, rising upwards to more than US\$45 million for the largest passenger cruise vessels which have operated recently in Antarctica. A limit the equivalent of US\$4.5 million is applicable to environmental emergencies not involving ships.
34. To allow for the implementation of any amendments to the financial limits in Article 9 of the Liability Annex which may be adopted by the Antarctic Treaty Consultative Parties under Article 9(4), *subsection (4)* provides for the Secretary of State to amend the limits in *subsections (2)* and *(3)* by order.
35. *Subsection (5)* provides that where the environmental emergency was caused intentionally or with knowledge that such an emergency would probably result, the liability is not limited by the levels set out in this clause. This reflects Article 9(3) of the Liability Annex.
36. *Subsections (6), (7)* and *(8)* provide that where there is liability under both this Bill and the Merchant Shipping Act 1995, the higher of the limits will apply. This reflects Article 9(2) of the Liability Annex.

### **Clause 12 – Other limitations**

37. *Subsection (1)* sets out the circumstances under which the organiser of activities giving rise to an environmental emergency in Antarctica would not be liable under the civil liability provisions of the Bill, namely, clauses 9 and 10. These are the same as the exemptions from criminal liability, as set out in clause 7 (see above), also reflecting the exemptions from liability in Article 8 of the Liability Annex.
38. *Subsection (2)* provides that where two or more organisers of activities in Antarctica are involved in an emergency, they will be jointly and severally liable. However, no person will be liable in respect of any part of an emergency that did not arise from the activities organised by that person.

39. *Subsections (3) to (6)* prevent double recovery of costs. So, for example, an organiser is not liable in respect of costs that he or another person has already paid under the provisions of the Bill or of Annex VI as implemented in another State. Neither is an organiser to be liable under both the provisions of the Bill and under Part 9 of the Merchant Shipping Act 1995 (which deals with salvage and wrecks) in respect of the same costs.

### *Supplementary*

#### **Clause 13 – Insurance**

40. This clause requires organisers of activities in Antarctica to secure adequate insurance cover or other financial security for (a) the costs of taking any response action required by clause 7; and (b) any liability which may be incurred under clause 9 or 10. This clause reflects Article 11 of the Liability Annex.

41. Examples of “other financial security” are bonds or guarantees of a bank or similar institution.

42. *Subsections (4) and (5)* specify conditions that the insurance cover or financial security must satisfy to qualify as “adequate” for the purposes of *subsection (1)*. It must not be subject to any limitation, exception or exclusion that makes it fundamentally deficient and the level of cover for liability under clauses 9 and 10 must be at least as high as the limits on liability as set out in clause 11 of the draft Bill.

43. Failure to secure adequate insurance or other financial security to cover potential liabilities in advance of visiting Antarctica is an offence under *subsection (6)* and will give rise to the penalties set out in *subsection (7)*.

44. *Subsection (8)* exempts the Crown (as defined in clause 17) and other Parties to Annex VI from the requirement to obtain insurance. This reflects Article 11(3) of the Liability Annex, which is based on the recognition that governments usually self-insure.

#### **Clause 14 – Secretary of State’s power to require information**

45. This clause enables the Secretary of State to require specific and detailed information from those organising activities in Antarctica which have, or appear to have, caused an environmental emergency or an incident which has the potential to cause an environmental emergency.

46. The Secretary of State's request must be complied with within a set timeframe. Failure to do so is an offence (see *subsection (4)*). Penalties for failing to meet the requirements set out in this clause are set out in *subsection (6)*.
47. However, *subsection (5)* provides that no offence will be committed if the required information is not available to the organiser of the activities and it would not be reasonable to expect that person to obtain it (for example on practical or safety grounds).

### *Exclusions*

#### **Clause 16 - Excluded activities**

48. This Clause specifies activities which are not covered by Part 1 of the draft Bill. These are: fishing for profit and activities carried out on a vessel or aircraft while travelling to an immediate destination outside Antarctica. These exclusions are consistent with those in section 5(2) of the Antarctic Act 1994, and incorporate the exemptions provided for by Article VI of the Antarctic Treaty, which applies by virtue of Article 4 of the Protocol.

### *General*

#### **Clause 17 – The Crown**

49. *Subsection (1)* provides that Part 1 applies to the Crown, except as otherwise provided (for example, clause 13 (insurance) does not apply to the Crown). *Subsection (2)* exempts the Crown from criminal liability but provides for a declaration to be made against the Crown. For the purposes of Part 1 of the draft Bill, references to the Crown include the Natural Environment Research Council (including the British Antarctic Survey) which is a Non-Departmental Public Body, and any other persons specified by the Secretary of State by order. Operators of the Crown, as defined by this clause, are those which the Government categorises as the State or governmental operators of the United Kingdom for the purposes of the provisions of the Liability Annex, which apply differently to State and non-State operators (or governmental and non-governmental operators).

## **PART 2 – SAFETY PLANNING**

50. This Part of the Bill implements Measure 4 (2004): *Insurance and Contingency Planning for Tourism and Non-Governmental Activities in the Antarctic Treaty Area*, adopted by the 27th Antarctic Treaty Consultative Meeting in 2004 under Article IX of the Antarctic Treaty. Measure 4 requires those organising or conducting activities in Antarctica to ensure they have appropriate contingency plans and sufficient arrangements in place for

health and safety, search and rescue and medical care and evacuation, as well as adequate insurance arrangements.

#### **Clause 20 – Requirements relating to safety planning**

51. This clause requires that adequate arrangements be made for the personal safety of individuals undertaking activities in Antarctica and that adequate insurance for emergencies involving personal safety be secured for those individuals before they enter Antarctica.
52. These requirements apply where the activities to be carried out in Antarctic are “subject to United Kingdom authorisation”. Activities are “subject to United Kingdom authorisation” when carried out on a British expedition (for which a permit is required under section 3 of the Antarctic Act 1994) or if they are activities which require a permit under any other provision of the Antarctic Act 1994. Whether or not a particular activity requires a permit under that Act may depend on various factors such as whether the individual concerned is a United Kingdom national, or whether written authorisation for that activity has been given by another Contracting Party to the Protocol (see, for example, section 7 of the 1994 Act). Where the activities are “subject to United Kingdom authorisation”, this Part of the Bill applies to them, irrespective of whether a permit has in fact been granted in respect of them under the 1994 Act. (When a permit application is made, compliance with these requirements would be assessed prior to the grant of any permit by the Secretary of State).
53. *Subsection (4)* specifies activities which are not covered by Part 2 of the draft Bill. These are: fishing for profit and activities carried out on a vessel or aircraft while travelling to an immediate destination outside Antarctica. These exclusions are consistent with those in section 5(2) of the Antarctic Act 1994, and reflect Article VI of the Antarctic Treaty.

#### **Clause 21 – Arrangements for personal safety**

54. This clause sets out the details of the “arrangements for personal safety” required by clause 20.

#### **Clause 22 - Insurance for emergencies relating to personal safety**

55. This clause sets out the further details of the “insurance for emergencies relating to personal safety” required by clause 20.

### **Clause 23 – Breach of requirements**

56. *Subsections (1) and (2)* of this clause provide that, if the activities are to take place on a British expedition, both the person organising the activities in Antarctica and, if different, the person responsible for conducting the expedition in Antarctica would be committing an offence if the requirements in clause 20 are not met.
57. *Subsections (1) and (3)* of this clause provide that, if the activities are to take place on an expedition which is not British, but the person conducting the expedition in Antarctica is a United Kingdom national, that person would be committing an offence if the requirements in clause 20 are not met.
58. Penalties for failure to comply with this Part of the draft Bill are set out in *subsection (4)*.

### **PART 3 – AMENDMENTS TO ANTARCTIC ACT 1994**

59. This Part updates the Antarctic Act 1994 (referred to as “the 1994 Act” for the purposes of these notes), to respond to the increasing internationalisation of Antarctic expeditions, to protect historic sites and monuments, to implement revisions to Annex II to the Protocol adopted by the Antarctic Treaty Consultative Meeting in 2009; and to provide further protection for the Antarctic environment.

#### *Offences*

### **Clause 24 – Application of offences to non-nationals**

60. Under section 12 of the 1994 Act, the Secretary of State may grant a permit to do anything which is prohibited under section 7(1), 8(1) or 9(1) of that Act. These provisions prohibit United Kingdom nationals from harming conservation of Antarctic fauna and flora, introducing non-native species into Antarctica or entering restricted areas, respectively, without a permit. However, under section 12, the Secretary of State may only grant a permit in respect of United Kingdom nationals. This means that non-UK nationals wishing to conduct such activities are not eligible for a UK permit, even if their activity is to take place on an expedition organised by a British scientific institution. The Protocol requires all persons wishing to engage in such activities to obtain a prior permit. Therefore, if a non-UK national on a British expedition wishes to carry out such an activity, authorisation must be obtained from another State Party, in respect of that individual. This requirement has, on occasions, caused inconvenience to British scientific institutions which employ non-UK nationals to conduct scientific research in Antarctica. Moreover, in cases where the individual scientist is a national of a State which is not a



Party to the Protocol, it may not currently be possible for that individual to be covered by a permit at all.

61. *Subsection (2)* amends sections 7(1), 8(1) and 9(1) of the 1994 Act by extending the scope of those offences to cover non-UK nationals on a British expedition. (“British expedition” is defined by section 3 of that Act). *Subsection (4)* amends section 12 of that Act to enable the Secretary of State to grant a permit for an activity otherwise prohibited by sections 7, 8 or 9 to a non-UK national on a British expedition, for the purposes of education or scientific research.
62. Subsection (2) also extends sections 10 and 11 of the 1994 Act to cover non-UK nationals on a British expedition. (For permits relating to section 10, see clause 25, and for permits relating to section 11, see *subsection (3)*).

### **Clause 25 – Historic Sites and Monuments: permits**

63. Section 10 of the 1994 Act makes it an offence to damage, destroy or remove any part of a historic site or monument. This reflects the provisions of Annex V to the Protocol which protect such historic sites and monuments. However, the prohibition in section 10 may on occasion impede effective conservation management of these sites, for example, where it is necessary to remove part of a monument or an object within a site temporarily for conservation or repair work.
64. This clause amends section 10 of the 1994 Act to enable the Secretary of State to grant a new form of permit in respect of conservation or repair work of designated Historic Sites and Monuments. A consequential amendment to section 15 of the 1994 Act is also made, to ensure that in granting any such permit, the Secretary of State would be obliged to have regard to the provisions of the Protocol and to any measures adopted by the Antarctic Treaty Meeting.

### *Animals and Plants etc*

### **Clause 26 – Conservation of animals and plants**

65. *Subsection (2)* of this clause extends the scope of section 7(1)(e) of the 1994 Act to native invertebrates. 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. This amendment therefore creates a new offence of removing or damaging such quantities of any native invertebrate (including marine invertebrates), that its local distribution or abundance will be significantly affected, except in accordance with a permit. This amendment reflects

recent revisions to Annex II to the Protocol to the Antarctic Treaty, adopted at the 32nd Antarctic Treaty Consultative Meeting in 2009.

66. *Subsection (3)* amends the 1994 Act to exempt accidental harm to native marine invertebrates and native marine plants under of section (7)(1)(e), (f) and (g) as a result of the normal operations of a vessel (for example anchoring) and fishing for profit.
67. *Subsection (4)* extends the definition of ‘native invertebrates’ in the 1994 Act to include marine invertebrates, which are currently outside of the scope of the Act and therefore not currently protected under UK legislation. This has the effect of extending the scope of section 7(1)(g) of the 1994 Act to marine invertebrates, making it an offence to do anything that is likely to cause significant damage to the habitat of a native marine invertebrate.

#### **Clause 27 – Introduction of animals and plants**

68. Section 8 of the 1994 Act makes it an offence to introduce a non-indigenous species into Antarctica (unless authorised by a permit granted under section 12). Subsection (2) of section 8 does, however, allow for animals and plants to be kept on board vessels visiting Antarctica, providing the animal remains on board.
69. *Subsection (2)* of this clause replaces section 8(2) of the 1994 Act, so as to limit the scope of this exception. The new subsection prohibits the keeping of animals on board vessels unless the vessel is merely transiting the Antarctic marine area. This will bring section 8 of the Antarctic Act 1994 into line with the legislation in many other Antarctic Treaty Parties which have prohibited the keeping of any animals on board vessels in Antarctica.
70. *Subsection (3)* provides that the introduction of a microscopic organism into the Antarctic environment is not prohibited by section 8. It also inserts a new *subsection (5)* into section 8 of the 1994 Act, which provides a definition of a plant for the purposes of section 8. This definition is consistent with the definition of “native plant” in section 31 of the 1994 Act.

#### **Clause 28 – Microscopic organisms**

71. This clause inserts a new section 8A to the 1994 Act. The new section prohibits the introduction of any microscopic organism of a non-native species into Antarctica, except in accordance with a permit. The prohibition does not apply to a person who takes reasonable precautions to prevent the introduction of the organism. The prohibition also does not include bacterium or viruses inhabiting the human body. These new provisions reflect the revisions to Annex II to the Protocol adopted in 2009.

### **Clause 29 – Non-sterile soil**

72. This clause inserts a new section 8B to the 1994 Act. This new section makes it an offence to introduce non-sterile soil into any part of Antarctica, for which the penalties are provided in section 20 of the 1994 Act, namely a maximum 2 year prison sentence, a fine or both on conviction on indictment, or a fine not exceeding the statutory maximum on summary conviction. This reflects the 2009 revisions to Annex II of the Protocol.

### **Clause 30 – Marine plants**

73. This clause extends the definition of “native plant” in section 31 of the 1994 Act, to include marine plants. This has the effect that section 7(1)(e), (f), and (g) of that Act will also now cover native marine plants in Antarctica, which will enhance protection against damage.

### **Clause 31 – Meaning of “indigenous”**

74. This amendment reflects recent revisions to Annex II of the Protocol, which make clear that species which migrate to Antarctica permanently, for example as a result of climatic changes, are also afforded protection. This clause inserts a new provision into section 31 of the Antarctic Act 1994 to specify that references to a species “indigenous to Antarctica” include a species occurring in Antarctica through natural migration. Such references are made in the definitions of “native bird”, “native invertebrate” and “native mammal” in section 31.

### **Clause 32 – British vessels**

75. This clause updates a cross-reference in section 5 of the 1994 Act. It replaces a reference to a provision in the Merchant Shipping Act 1979 by the equivalent provision in the Merchant Shipping Act 1995, which was a consolidation of Merchant Shipping legislation.

### **Clause 33 - Hovercraft**

76. This clause adds to the definition of “vessel” in section 31 of the Antarctic Act 1994 by inserting a reference to the Hovercraft Act 1968 after the reference to “hovercraft”.

## **PART 4 - FINAL**

### **Clause 38 – Commencement**

77. This clause provides for Part 1 of the draft Bill to come into force on a date appointed by order of the Secretary of State. It is proposed that such an order would be made to coincide with the entry into force of the Liability Annex, which will occur when all twenty-eight Antarctic Treaty Consultative Parties which adopted it in 2005 have approved it.

78. The clause provides for Parts 2 and 3 to come into force two months after Royal Assent.

*Polar Regions Unit  
October 2009*

**Annex VI to the Protocol on Environmental Protection to the  
Antarctic Treaty  
Liability Arising From Environmental Emergencies**

***Preamble***

The Parties,

*Recognising* the importance of preventing, minimising and containing the impact of environmental emergencies on the Antarctic environment and dependent and associated ecosystems;

*Recalling* Article 3 of the Protocol, in particular that activities shall be planned and conducted in the Antarctic Treaty area so as to accord priority to scientific research and to preserve the value of Antarctica as an area for the conduct of such research;

*Recalling* the obligation in Article 15 of the Protocol to provide for prompt and effective response action to environmental emergencies, and to establish contingency plans for response to incidents with potential adverse effects on the Antarctic environment or dependent and associated ecosystems;

*Recalling* Article 16 of the Protocol under which the Parties to the Protocol undertook consistent with the objectives of the Protocol for the comprehensive protection of the Antarctic environment and dependent and associated ecosystems to elaborate, in one or more Annexes to the Protocol, rules and procedures relating to liability for damage arising from activities taking place in the Antarctic Treaty area and covered by the Protocol;

*Noting* further Decision 3 (2001) of the XXIVth Antarctic Treaty Consultative Meeting regarding the elaboration of an Annex on the liability aspects of environmental emergencies, as a step in the establishment of a liability regime in accordance with Article 16 of the Protocol;

*Having regard to* Article IV of the Antarctic Treaty and Article 8 of the Protocol;

**Have agreed** as follows:

***Article 1***  
**Scope**

This Annex shall apply to environmental emergencies in the Antarctic Treaty area which relate to scientific research programmes, tourism and all other governmental and nongovernmental activities in the Antarctic Treaty area for which advance notice is required under Article VII(5) of the Antarctic Treaty, including associated logistic support activities. Measures and plans for preventing and responding to such emergencies are also included in this Annex. It shall apply to all tourist vessels that enter the Antarctic Treaty area. It shall also apply to environmental emergencies in the Antarctic Treaty area which relate to other vessels and activities as may be decided in accordance with Article 13.

## *Article 2* **Definitions**

For the purposes of this Annex:

(a) “Decision” means a Decision adopted pursuant to the Rules of Procedure of Antarctic Treaty Consultative Meetings and referred to in Decision 1 (1995) of the XIXth Antarctic Treaty Consultative Meeting;

(b) “Environmental emergency” means any accidental event that has occurred, having taken place after the entry into force of this Annex, and that results in, or imminently threatens to result in, any significant and harmful impact on the Antarctic environment;

(c) “Operator” means any natural or juridical person, whether governmental or nongovernmental, which organises activities to be carried out in the Antarctic Treaty area. An operator does not include a natural person who is an employee, contractor, subcontractor, or agent of, or who is in the service of, a natural or juridical person, whether governmental or non-governmental, which organises activities to be carried out in the Antarctic Treaty area, and does not include a juridical person that is a contractor or subcontractor acting on behalf of a State operator;

(d) “Operator of the Party” means an operator that organises, in that Party’s territory, activities to be carried out in the Antarctic Treaty area, and:

- (i) those activities are subject to authorisation by that Party for the Antarctic Treaty area; or
- (ii) in the case of a Party which does not formally authorise activities for the Antarctic Treaty area, those activities are subject to a comparable regulatory process by that Party.

The terms “its operator”, “Party of the operator”, and “Party of that operator” shall be interpreted in accordance with this definition;

(e) “Reasonable”, as applied to preventative measures and response action, means measures or actions which are appropriate, practicable, proportionate and based on the availability of objective criteria and information, including:

- (i) risks to the Antarctic environment, and the rate of its natural recovery;#
- (ii) risks to human life and safety; and
- (iii) technological and economic feasibility;

(f) “Response action” means reasonable measures taken after an environmental emergency has occurred to avoid, minimise or contain the impact of that environmental emergency, which to that end may include clean-up in appropriate circumstances, and includes determining the extent of that emergency and its impact;

(g) “The Parties” means the States for which this Annex has become effective in accordance with Article 9 of the Protocol.

*Article 3*  
**Preventative Measures**

1. Each Party shall require its operators to undertake reasonable preventative measures that are designed to reduce the risk of environmental emergencies and their potential adverse impact.
2. Preventative measures may include:
  - (a) specialised structures or equipment incorporated into the design and construction of facilities and means of transportation;
  - (b) specialised procedures incorporated into the operation or maintenance of facilities and means of transportation; and
  - (c) specialised training of personnel.

*Article 4*  
**Contingency Plans**

1. Each Party shall require its operators to:
  - (a) establish contingency plans for responses to incidents with potential adverse impacts on the Antarctic environment or dependent and associated ecosystems; and
  - (b) co-operate in the formulation and implementation of such contingency plans.
2. Contingency plans shall include, when appropriate, the following components:
  - (a) procedures for conducting an assessment of the nature of the incident;
  - (b) notification procedures;
  - (c) identification and mobilisation of resources;
  - (d) response plans;
  - (e) training;
  - (f) record keeping; and
  - (g) demobilisation.
3. Each Party shall establish and implement procedures for immediate notification of, and co-operative responses to, environmental emergencies, and shall promote the use of notification procedures and co-operative response procedures by its operators that cause environmental emergencies.

*Article 5*  
**Response Action**

1. Each Party shall require each of its operators to take prompt and effective response action to environmental emergencies arising from the activities of that operator.
2. In the event that an operator does not take prompt and effective response action, the Party of that operator and other Parties are encouraged to take such action, including through their agents and operators specifically authorised by them to take such action on their behalf.
3. (a) Other Parties wishing to take response action to an environmental emergency pursuant to paragraph 2 above shall notify their intention to the Party of the operator

and the Secretariat of the Antarctic Treaty beforehand with a view to the Party of the operator taking response action itself, except where a threat of significant and harmful impact to the Antarctic environment is imminent and it would be reasonable in all the circumstances to take immediate response action, in which case they shall notify the Party of the operator and the Secretariat of the Antarctic Treaty as soon as possible.

(b) Such other Parties shall not take response action to an environmental emergency pursuant to paragraph 2 above, unless a threat of significant and harmful impact to the Antarctic environment is imminent and it would be reasonable in all the circumstances to take immediate response action, or the Party of the operator has failed within a reasonable time to notify the Secretariat of the Antarctic Treaty that it will take the response action itself, or where that response action has not been taken within a reasonable time after such notification.

(c) In the case that the Party of the operator takes response action itself, but is willing to be assisted by another Party or Parties, the Party of the operator shall coordinate the response action.

4. However, where it is unclear which, if any, Party is the Party of the operator or it appears that there may be more than one such Party, any Party taking response action shall make best endeavours to consult as appropriate and shall, where practicable, notify the Secretariat of the Antarctic Treaty of the circumstances.
5. Parties taking response action shall consult and coordinate their action with all other Parties taking response action, carrying out activities in the vicinity of the environmental emergency, or otherwise impacted by the environmental emergency, and shall, where practicable, take into account all relevant expert guidance which has been provided by permanent observer delegations to the Antarctic Treaty Consultative Meeting, by other organisations, or by other relevant experts.

## ***Article 6*** **Liability**

1. An operator that fails to take prompt and effective response action to environmental emergencies arising from its activities shall be liable to pay the costs of response action taken by Parties pursuant to Article 5(2) to such Parties.
2. (a) When a State operator should have taken prompt and effective response action but did not, and no response action was taken by any Party, the State operator shall be liable to pay the costs of the response action which should have been undertaken, into the fund referred to in Article 12.  
  
(b) When a non-State operator should have taken prompt and effective response action but did not, and no response action was taken by any Party, the non-State operator shall be liable to pay an amount of money that reflects as much as possible the costs of the response action that should have been taken. Such money is to be paid directly to the fund referred to in Article 12, to the Party of that operator or to the Party that enforces the mechanism referred to in Article 7(3). A Party receiving such money shall make best efforts to make a contribution to the fund referred to in Article 12 which at least equals the money received from the operator.



3. Liability shall be strict.
4. When an environmental emergency arises from the activities of two or more operators, they shall be jointly and severally liable, except that an operator which establishes that only part of the environmental emergency results from its activities shall be liable in respect of that part only.
5. Notwithstanding that a Party is liable under this Article for its failure to provide for prompt and effective response action to environmental emergencies caused by its warships, naval auxiliaries, or other ships or aircraft owned or operated by it and used, for the time being, only on government non-commercial service, nothing in this Annex is intended to affect the sovereign immunity under international law of such warships, naval auxiliaries, or other ships or aircraft.

#### *Article 7* **Actions**

1. Only a Party that has taken response action pursuant to Article 5(2) may bring an action against a non-State operator for liability pursuant to Article 6(1) and such action may be brought in the courts of not more than one Party where the operator is incorporated or has its principal place of business or his or her habitual place of residence. However, should the operator not be incorporated in a Party or have its principal place of business or his or her habitual place of residence in a Party, the action may be brought in the courts of the Party of the operator within the meaning of Article 2(d). Such actions for compensation shall be brought within three years of the commencement of the response action or within three years of the date on which the Party bringing the action knew or ought reasonably to have known the identity of the operator, whichever is later. In no event shall an action against a non-State operator be commenced later than 15 years after the commencement of the response action.
2. Each Party shall ensure that its courts possess the necessary jurisdiction to entertain actions under paragraph 1 above.
3. Each Party shall ensure that there is a mechanism in place under its domestic law for the enforcement of Article 6(2)(b) with respect to any of its non-State operators within the meaning of Article 2(d), as well as where possible with respect to any non-State operator that is incorporated or has its principal place of business or his or her habitual place of residence in that Party. Each Party shall inform all other Parties of this mechanism in accordance with Article 13(3) of the Protocol. Where there are multiple Parties that are capable of enforcing Article 6(2)(b) against any given non-State operator under this paragraph, such Parties should consult amongst themselves as to which Party should take enforcement action. The mechanism referred to in this paragraph shall not be invoked later than 15 years after the date the Party seeking to invoke the mechanism became aware of the environmental emergency.
4. The liability of a Party as a State operator under Article 6(1) shall be resolved only in accordance with any enquiry procedure which may be established by the Parties, the

provisions of Articles 18, 19 and 20 of the Protocol and, as applicable, the Schedule to the Protocol on Arbitration.

5. (a) The liability of a Party as a State operator under Article 6(2)(a) shall be resolved only by the Antarctic Treaty Consultative Meeting and, should the question remain unresolved, only in accordance with any enquiry procedure which may be established by the Parties, the provisions of Articles 18, 19 and 20 of the Protocol and, as applicable, the Schedule to the Protocol on Arbitration.  
  
(b) The costs of the response action which should have been undertaken and was not, to be paid by a State operator into the fund referred to in Article 12, shall be approved by means of a Decision. The Antarctic Treaty Consultative Meeting should seek the advice of the Committee on Environmental Protection as appropriate.
6. Under this Annex, the provisions of Articles 19(4), 19(5), and 20(1) of the Protocol, and, as applicable, the Schedule to the Protocol on Arbitration, are only applicable to liability of a Party as a State operator for compensation for response action that has been undertaken to an environmental emergency or for payment into the fund.

#### *Article 8* **Exemptions from Liability**

1. An operator shall not be liable pursuant to Article 6 if it proves that the environmental emergency was caused by:
  - (a) an act or omission necessary to protect human life or safety;
  - (b) an event constituting in the circumstances of Antarctica a natural disaster of an exceptional character, which could not have been reasonably foreseen, either generally or in the particular case, provided all reasonable preventative measures have been taken that are designed to reduce the risk of environmental emergencies and their potential adverse impact;
  - (c) an act of terrorism; or
  - (d) an act of belligerency against the activities of the operator.
2. A Party, or its agents or operators specifically authorised by it to take such action on its behalf, shall not be liable for an environmental emergency resulting from response action taken by it pursuant to Article 5(2) to the extent that such response action was reasonable in all the circumstances.

#### *Article 9* **Limits of Liability**

1. The maximum amount for which each operator may be liable under Article 6(1) or Article 6(2), in respect of each environmental emergency, shall be as follows:
  - (a) for an environmental emergency arising from an event involving a ship:
    - (i) one million SDR for a ship with a tonnage not exceeding 2,000 tons;
    - (ii) for a ship with a tonnage in excess thereof, the following amount in addition to that referred to in (i) above:

- for each ton from 2,001 to 30,000 tons, 400 SDR;
- for each ton from 30,001 to 70,000 tons, 300 SDR; and
- for each ton in excess of 70,000 tons, 200 SDR;

(b) for an environmental emergency arising from an event which does not involve a ship, three million SDR.

2. (a) Notwithstanding paragraph 1(a) above, this Annex shall not affect:

(i) the liability or right to limit liability under any applicable international limitation of liability treaty; or

(ii) the application of a reservation made under any such treaty to exclude the application of the limits therein for certain claims; provided that the applicable limits are at least as high as the following: for a ship with a tonnage not exceeding 2,000 tons, one million SDR; and for a ship with a tonnage in excess thereof, in addition, for a ship with a tonnage between 2,001 and 30,000 tons, 400 SDR for each ton; for a ship with a tonnage from 30,001 to 70,000 tons, 300 SDR for each ton; and for each ton in excess of 70,000 tons, 200 SDR for each ton.

(b) Nothing in subparagraph (a) above shall affect either the limits of liability set out in paragraph 1(a) above that apply to a Party as a State operator, or the rights and obligations of Parties that are not parties to any such treaty as mentioned above, or the application of Article 7(1) and Article 7(2).

3. Liability shall not be limited if it is proved that the environmental emergency resulted from an act or omission of the operator, committed with the intent to cause such emergency, or recklessly and with knowledge that such emergency would probably result.

4. The Antarctic Treaty Consultative Meeting shall review the limits in paragraphs 1(a) and 1(b) above every three years, or sooner at the request of any Party. Any amendments to these limits, which shall be determined after consultation amongst the Parties and on the basis of advice including scientific and technical advice, shall be made under the procedure set out in Article 13(2).

5. For the purpose of this Article:

(a) “ship” means a vessel of any type whatsoever operating in the marine environment and includes hydrofoil boats, air-cushion vehicles, submersibles, floating craft and fixed or floating platforms;

(b) “SDR” means the Special Drawing Rights as defined by the International Monetary Fund;

(c) a ship’s tonnage shall be the gross tonnage calculated in accordance with the tonnage measurement rules contained in Annex I of the International Convention on Tonnage Measurement of Ships, 1969.

**Article 10**  
**State Liability**

A Party shall not be liable for the failure of an operator, other than its State operators, to take response action to the extent that that Party took appropriate measures within its competence, including the adoption of laws and regulations, administrative actions and enforcement measures, to ensure compliance with this Annex.

**Article 11**  
**Insurance and Other Financial Security**

1. Each Party shall require its operators to maintain adequate insurance or other financial security, such as the guarantee of a bank or similar financial institution, to cover liability under Article 6(1) up to the applicable limits set out in Article 9(1) and Article 9(2).
2. Each Party may require its operators to maintain adequate insurance or other financial security, such as the guarantee of a bank or similar financial institution, to cover liability under Article 6(2) up to the applicable limits set out in Article 9(1) and Article 9(2).
3. Notwithstanding paragraphs 1 and 2 above, a Party may maintain self-insurance in respect of its State operators, including those carrying out activities in the furtherance of scientific research.

**Article 12**  
**The Fund**

1. The Secretariat of the Antarctic Treaty shall maintain and administer a fund, in accordance with Decisions including terms of reference to be adopted by the Parties, to provide, *inter alia*, for the reimbursement of the reasonable and justified costs incurred by a Party or Parties in taking response action pursuant to Article 5(2).
2. Any Party or Parties may make a proposal to the Antarctic Treaty Consultative Meeting for reimbursement to be paid from the fund. Such a proposal may be approved by the Antarctic Treaty Consultative Meeting, in which case it shall be approved by way of a Decision. The Antarctic Treaty Consultative Meeting may seek the advice of the Committee of Environmental Protection on such a proposal, as appropriate.
3. Special circumstances and criteria, such as: the fact that the responsible operator was an operator of the Party seeking reimbursement; the identity of the responsible operator remaining unknown or not subject to the provisions of this Annex; the unforeseen failure of the relevant insurance company or financial institution; or an exemption in Article 8 applying, shall be duly taken into account by the Antarctic Treaty Consultative Meeting under paragraph 2 above.
4. Any State or person may make voluntary contributions to the fund.

*Article 13*  
**Amendment or Modification**

1. This Annex may be amended or modified by a Measure adopted in accordance with Article IX(1) of the Antarctic Treaty.
2. In the case of a Measure pursuant to Article 9(4), and in any other case unless the Measure in question specifies otherwise, the amendment or modification shall be deemed to have been approved, and shall become effective, one year after the close of the Antarctic Treaty Consultative Meeting at which it was adopted, unless one or more Antarctic Treaty Consultative Parties notifies the Depositary, within that time period, that it wishes any extension of that period or that it is unable to approve the Measure.
3. Any amendment or modification of this Annex which becomes effective in accordance with paragraph 1 or 2 above shall thereafter become effective as to any other Party when notice of approval by it has been received by the Depositary.

Measure 4 (2004)

**Insurance and Contingency Planning for Tourism and non-Governmental Activities in the Antarctic Treaty Area**

The Representatives,

*Concerned* at the potential impacts, including the imposition of additional costs, that tourist or other non-governmental activities may have on national programmes, and the risks to the safety of those involved in search and rescue operations;

*Desiring* to ensure that tourist or other non-governmental activities undertaken in Antarctica are carried out in a safe and self-sufficient manner;

*Desiring further* to ensure that the risks associated with tourism or other non-governmental activities are fully identified in advance, and minimised;

*Noting* that the "Procedures to be Followed by Organisers and Operators", as set out in the Attachment to Recommendation XVIII-1, contain some elements relating to self-sufficiency and insurance;

**Recommend** to their Governments the following Measure for approval in accordance with paragraph 4 of Article IX of the Antarctic Treaty:

That Parties shall require those under their jurisdiction organising or conducting tourist or other non-governmental activities in the Antarctic Treaty Area, for which advance notification is required in accordance with Article VII (5) of the Antarctic Treaty, to demonstrate compliance with the following requirements:

- that appropriate contingency plans and sufficient arrangements for health and safety, search and rescue (SAR), and medical care and evacuation have been drawn up and are in place prior to the start of the activity. Such plans and arrangements shall not be reliant on support from other operators or national programmes without their express written agreement; and
- that adequate insurance or other arrangements are in place to cover any costs associated with search and rescue and medical care and evacuation.

**Annex II to the Protocol on Environmental Protection to the Antarctic Treaty  
(as amended in 2009)**

**Conservation of Antarctic Fauna and Flora**

***Article 1***  
**Definitions**

For the purposes of this Annex:

- (a) “native mammal” means any member of any species belonging to the Class Mammalia, indigenous to the Antarctic Treaty area or occurring there naturally through migrations;
- (b) “native bird” means any member, at any stage of its life cycle (including eggs), of any species of the Class Aves indigenous to the Antarctic Treaty area or occurring there naturally through migrations;
- (c) “native plant” means any member of any species of terrestrial or freshwater vegetation, including bryophytes, lichens, fungi and algae, at any stage of its life cycle (including seeds, and other propagules), indigenous to the Antarctic Treaty area;
- (d) “native invertebrate” means any member of any species of terrestrial or freshwater invertebrate, at any stage of its life cycle, indigenous to the Antarctic Treaty area;
- (e) “appropriate authority” means any person or agency authorised by a Party to issue permits under this Annex;
- (f) “permit” means a formal permission in writing issued by an appropriate authority;
- (g) “take” or “taking” means to kill, injure, capture, handle or molest a native mammal or bird, or to remove or damage such quantities of native plants or invertebrates that their local distribution or abundance would be significantly affected;
- (h) “harmful interference” means:
  - (i) flying or landing helicopters or other aircraft in a manner that disturbs concentrations of native birds or seals;
  - (ii) using vehicles or vessels, including hovercraft and small boats, in a manner that disturbs concentrations of native birds or seals;
  - (iii) using explosives or firearms in a manner that disturbs concentrations of native birds or seals;
  - (iv) wilfully disturbing breeding or moulting native birds or concentrations of native birds or 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.

(i) “International Convention for the Regulation of Whaling” means the Convention done at Washington on 2 December 1946.

(j) “Agreement on the Conservation of Albatrosses and Petrels” means the Agreement done at Canberra on 19 June 2001.

*Article 2*  
**Cases of Emergency**

1. This Annex shall not apply in cases of emergency relating to the safety of human life or of ships, aircraft, or equipment and facilities of high value, or the protection of the environment.
2. Notice of activities undertaken in cases of emergency that result in any taking or harmful interference shall be circulated immediately to all Parties and to the Committee.

*Article 3*  
**Protection of Native Fauna and Flora**

1. Taking or harmful interference shall be prohibited, except in accordance with a permit.
2. Such permits shall specify the authorised activity, including when, where and by whom it is to be conducted and shall be issued only in the following circumstances:
  - (a) to provide specimens for scientific study or scientific information;
  - (b) to provide specimens for museums, herbaria and botanical gardens, or other educational institutions or uses;
  - (c) to provide specimens for zoological gardens but, in respect of native mammals or birds, only if such specimens cannot be obtained from existing captive collections elsewhere, or if there is a compelling conservation requirement; and
  - (d) to provide for unavoidable consequences of scientific activities not otherwise authorised under sub-paragraphs (a), (b) or (c) above, or of the construction and operation of scientific support facilities.
3. The issue of such permits shall be limited so as to ensure that:
  - (a) no more native mammals, birds, plants or invertebrates are taken than are strictly necessary to meet the purposes set forth in paragraph 2 above;
  - (b) only small numbers of native mammals or birds are killed, and in no case more are killed from local populations than can, in combination with other permitted takings, normally be replaced by natural reproduction in the following season; and



- (c) the diversity of species, as well as the habitats essential to their existence, and the balance of the ecological systems existing within the Antarctic Treaty area are maintained.
4. Any species of native mammals, birds, plants and invertebrates listed in Appendix A to this Annex shall be designated “Specially Protected Species”, and shall be accorded special protection by the Parties.
  5. Designation of a species as a Specially Protected Species shall be undertaken according to agreed procedures and criteria adopted by the ATCM.
  6. The Committee shall review and provide advice on the criteria for proposing native mammals, birds, plants or invertebrates for designation as a Specially Protected Species.
  7. Any Party, the Committee, the Scientific Committee on Antarctic Research or the Commission for the Conservation of Antarctic Marine Living Resources may propose a species for designation as a Specially Protected Species by submitting a proposal with justification to the ATCM.
  8. A permit shall not be issued to a Specially Protected Species unless the taking:
    - (a) is for a compelling scientific purpose; and
    - (b) will not jeopardise the survival or recovery of that species or local population;
  9. The use of lethal techniques on Specially Protected Species shall only be permitted where there is no suitable alternative technique.
  10. Proposals for the designation of a species as a Specially Protected Species shall be forwarded to the Committee, the Scientific Committee on Antarctic Research and, for native mammals and birds, the Commission for the Conservation of Antarctic Marine Living Resources, and as appropriate, the Meeting of the Parties to the Agreement on the Conservation of Albatrosses and Petrels and other organisations. In formulating its advice to the ATCM on whether a species should be designated as a Specially Protected Species, the Committee shall take into account any comments provided by the Scientific Committee on Antarctic Research, and, for native mammals and birds, the Commission for the Conservation of Antarctic Marine Living Resources, and as appropriate, the Meeting of the Parties to the Agreement on the Conservation of Albatrosses and Petrels and other organisations.
  11. All taking of native mammals and birds shall be done in the manner that involves the least degree of pain and suffering practicable.

#### *Article 4*

#### **Introduction of Non-Native Species and Diseases**

1. No species of living organisms not native to the Antarctic Treaty area shall be introduced onto land or ice shelves, or into water, in the Antarctic Treaty area except in accordance with a permit.

2. Dogs shall not be introduced onto land, ice shelves or sea ice.
3. Permits under paragraph 1 above shall:
  - (a) be issued to allow the importation only of cultivated plants and their reproductive propagules for controlled use, and species of living organisms for controlled experimental use; and
  - (b) specify the species numbers and, if appropriate, age and sex of the species to be introduced, along with a rationale, justifying the introduction and precautions to be taken to prevent escape or contact with fauna or flora.
4. Any species for which a permit has been issued in accordance with paragraphs 1 and 3 above shall, prior to expiration of the permit, be removed from the Antarctic Treaty area or be disposed of by incineration or equally effective means that eliminates risk to native fauna or flora. The permit shall specify this obligation.
5. Any species, including progeny, not native to the Antarctic Treaty area that is introduced into that area without a permit that has been issued in accordance with paragraph 1 and 3 above, shall be removed or disposed of whenever feasible, unless the removal or disposal would result in a greater adverse environmental impact. Such removal or disposal may include by incineration or by equally effective means, so as to be rendered sterile, unless it is determined that they pose no risk to native flora or fauna. In addition, all reasonable steps shall be taken to control the consequences of that introduction to avoid harm to native fauna or flora.
6. Nothing in this Article shall apply to the importation of food into the Antarctic Treaty area provided that no live animals are imported for this purpose and all plants and animal parts and products are kept under carefully controlled conditions and disposed of in accordance with Annex III to the Protocol.
7. Each Party shall require that precautions are taken to prevent the accidental introduction of micro-organisms (e.g., viruses, bacteria, yeasts, fungi) not present naturally in the Antarctic Treaty area.
8. No live poultry or other living birds shall be brought into the Antarctic Treaty area. All appropriate efforts shall be made to ensure that poultry or avian products imported into Antarctica are free from contamination by diseases (such as Newcastle's Disease, tuberculosis, and yeast infection) which might be harmful to native flora and fauna. Any poultry or avian products not consumed shall be removed from the Antarctic Treaty area or disposed of by incineration or equivalent means that eliminates the risks of introduction of micro-organisms (e.g. viruses, bacteria, yeasts, fungi) to native flora and fauna.
9. The deliberate introduction of non-sterile soil into the Antarctic Treaty area is prohibited. Parties should, to the maximum extent practicable, ensure that non-sterile soil is not unintentionally imported into the Antarctic Treaty area.

*Article 5*  
**Information**

Each Party shall make publicly available information on prohibited activities and Specially Protected Species to all those persons present in or intending to enter the Antarctic Treaty area with a view to ensuring that such persons understand and observe the provisions of this Annex.

*Article 6*  
**Exchange of Information**

1. The Parties shall make arrangements for:
  - (a) collecting and annually exchanging records (including records of permits) and statistics concerning the numbers or quantities of each species of native mammal, bird, plant or invertebrate taken in the Antarctic Treaty area; and
  - (b) obtaining and exchanging information as to the status of native mammals, birds, plants, and invertebrates in the Antarctic Treaty area, and the extent to which any species or population needs protection.
2. As early as possible, after the end of each austral summer season, but in all cases before 1 October of each year, the Parties shall inform the other Parties as well as the Committee of any step taken pursuant to paragraph 1 above and of the number and nature of permits issued under this Annex in the preceding period of 1 April to 31 March.

*Article 7*  
**Relationship with other Agreements outside the Antarctic Treaty System**

Nothing in this Annex shall derogate from the rights and obligations of Parties under the International Convention for the Regulation of Whaling.

*Article 8*  
**Review**

The Parties shall keep under continuing review measures for the conservation of Antarctic fauna and flora, taking into account any recommendations from the Committee.

*Article 9*  
**Amendment or Modification**

1. This Annex may be amended or modified by a measure adopted in accordance with Article IX (1) of the Antarctic Treaty. Unless the measure specifies otherwise, the amendment or modification shall be deemed to have been approved, and shall become effective, one year after the close of the Antarctic Treaty Consultative Meeting at which it was adopted, unless one or more of the Antarctic Treaty Consultative Parties notifies the Depositary, within that time period, that it wishes an extension of that period or that it is unable to approve the measure.

2. Any amendment or modification of this Annex which becomes effective in accordance with paragraph 1 above shall thereafter become effective as to any other Party when notice of approval by it has been received by the Depositary.

### **Appendices to the Annex**

#### ***Appendix A: Specially Protected Species***

*Ommatophoca rossii*, Ross Seal.



## IMPACT ASSESSMENT

Summary: Intervention & Options		
Department /Agency: FCO	Title: Draft Antarctic Bill	
Stage: Consultation	Version: 1	Date: October 2009
Related Publications: Draft Antarctic Bill Consultation Package		

Contact for enquiries: **Stuart Doubleday**

Telephone: **0207008 2750**

What are the problems under consideration? Why is government intervention necessary?

The Antarctic Treaty Parties have negotiated a new Liability Annex to the Protocol for Environmental Protection in order to enhance environmental protection in the Antarctic. The UK is required to ratify the Annex, once it has been implemented into UK legislation. The main provisions of the Annex are to require operators to take preventative measures to reduce the risk of environmental emergencies and to take prompt and effective response action to deal with an emergency arising from their activities in Antarctica. It also provides a framework for the recovery of costs from dealing with an emergency, should an operator fail to do so themselves. The draft Antarctic Bill will implement this Annex in the UK. The draft Bill also implements Measure 4(2004) *Insurance and Contingency Planning for Tourism and non-Governmental Activities in the Antarctic Treaty Area* which enhances the requirements under the Antarctic Act 1994, to ensure that all British activities in Antarctica have in place insurance and contingency planning in the case of health and safety, search and rescue and medical evacuation. Currently, it is only possible to implement this requirement for those who seek authorisation for their Antarctic activities through the UK. Finally, the draft Bill also provides for some updating amendments to the Antarctic Act 1994, primarily to respond to the increasingly internationalisation of Antarctic expeditions and the increasingly vulnerability of the Antarctic environment as a result of climate change.

What are the policy objectives and the intended effects?

Part 1 of the draft Bill will implement the Liability Annex and so ensure that all UK Antarctic operators (governmental and non-governmental) take preventative measures to reduce the risk of environmental emergencies, establish contingency plans, and take prompt and effective response action to environmental emergencies arising from their activities. Where an operator fails to take such response action to an environmental emergency arising from its activities, the Bill will enable States Parties to do so, and will entitle them to reclaim the costs of their action from the defaulting operator, akin to the polluter pays principle. It will require new criminal and civil penalties being enacted in UK legislation.

Part 2 of the draft bill implements Measure 4(2004) on safety planning for Antarctic activities. This makes it a legal requirement that all UK activities to Antarctica are required to have insurance and conduct necessary contingency planning.

Part 3 provides for some updating of the Antarctic Act 1994. This includes provisions to allow the UK to permit the activities of non-British nationals on British expeditions, to include additional protection to Antarctic fauna and flora, and to allow for the authorisation of active conservation of Antarctic Historic Sites and Monuments.

What policy options have been considered? Please justify any preferred option.

We considered three possible ways forward: i) Do nothing; ii) Revise the Antarctic Act 1994 through primary legislation; iii) Use secondary legislation only, under the Antarctic Act 1994.

We rejected i) on the basis that if the UK does not approve the Annex it will not enter into force and our position within the Treaty System will be undermined. We also concluded that option iii) will not provide the full range of powers needed to update the Antarctic Act 1994 or transpose the Liability Annex in full, as there is also a need to create new civil obligations and criminal penalties. We therefore concluded that option ii) is the only one to provide us with the necessary powers and ensure full compliance with our international obligations.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

The Annex will be reviewed annually at the Antarctic Treaty Consultative Meeting by the State Parties to assess its effectiveness and to ensure compliance. The UK will carry out a formal policy review once the Annex enters into force following the ratification of all member states. This is likely not to be for a number of years. The UK will review the impact of Parts 2 and 3 of the Bill after the first full Antarctic season, following the Bill coming into force.

**Ministerial Sign-off** For consultation stage Impact Assessment:

*I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options*

Signed by the responsible Minister:

Chris Bryant, Parliamentary Under Secretary of State for the Foreign and Commonwealth Office

Date: 16.10.09

**Summary: Analysis & Evidence**

<b>Policy Option:</b> Do nothing	<b>Description:</b>
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<b>COSTS</b>	<b>ANNUAL COSTS</b>			Description and scale of <b>key monetised costs</b> by 'main affected groups' If the Liability Annex does not come into force then any operator in Antarctica (UK or otherwise) will not be financially liable for any environmental emergency they have caused. Pollution clean-up will be ad hoc and will have to be funded by those undertaking clean-up. If the requirement for search and rescue and insurance is not fully implemented, UK Government may be required to direct resources to deal with emergencies in Antarctica. Those without insurance may subsequently face a bill for search and rescue and evacuation services of another operator, which may be significant.
	<b>One-off (Transition)</b>	<b>Yrs</b>		
	<b>£ 0 (to operators)</b>			
	<b>Average Annual Cost (excluding one-off)</b>	<b>Cost</b>		
	<b>£ 0 (to operators)</b>		<b>Total Cost (PV)</b>	<b>£ 0 (to operators)*</b>

Other **key non-monetised costs** by 'main affected groups' If the UK does not implement the Annex, this will result in the legislation not coming into force within the Treaty system. Key knock-on effects of this would be:

- UK accountability for the failure of the Liability Annex and therefore damage to the UK's position within the Treaty System and ability to negotiate on issues such as Antarctic shipping, environmental protection, tourism etc.
- Weakening of the Antarctic Treaty System and consequent risk to UK sovereignty of the British Antarctic Territory;
- Potential impacts on UK tourism operators – if dedicated tourism sites suffer pollution damage and there is no clean-up operation, sites would be deemed unworthy for tourism activities and business would suffer.
- Should the UK Government need to undertake a clean-up operation in the British Antarctic Territory, or recover British nationals without search and rescue or insurance coverage, the costs could be considerable.

<b>BENEFITS</b>	<b>ANNUAL BENEFITS</b>			Description and scale of <b>key monetised benefits</b> by 'main affected groups' The 'do nothing' option would not give any direct benefits to Antarctic operators (other than save the small costs of required insurance). The potential costs to the UK Government of emergency involving a British operator could, however, be significant.
	<b>One-off</b>	<b>Yrs</b>		
	<b>£ 0</b>			
	<b>Average Annual Benefit</b>	<b>Benefit</b>		
	<b>£ 0</b>		<b>Total Benefit (PV)</b>	<b>£ 0</b>

Other **key non-monetised benefits** by 'main affected groups'  
None

**Key Assumptions/Sensitivities/Risks** The key risk if the Annex does not come into force is that there would be no incentive or mechanism to encourage response action following an environmental emergency in Antarctica. The risk of British operators entering Antarctica without adequate search and rescue contingency planning is that other Antarctic operators may be diverted from their core activities in response to an emergency.

Price Base	Time Period	Net Benefit Range (NPV)	<b>NET BENEFIT (NPV Best estimate) £ 0</b>
Year	Years 5 years	£ 0	

What is the geographic coverage of the policy/option?	n/a
On what date will the policy be implemented?	n/a
Which organisation(s) will enforce the policy?	n/a
What is the total annual cost of enforcement for these organisations?	£ 0
Does enforcement comply with Hampton principles?	N/A
Will implementation go beyond minimum EU requirements?	N/A
What is the value of the proposed offsetting measure per year?	£0
What is the value of changes in greenhouse gas emissions?	£0
Will the proposal have a significant impact on competition?	No
Annual cost (£-£) per organisation	Micro 0 Small 0 Medium 0 Large 0
Are any of these organisations exempt?	No No No No

<b>Impact on Admin Burdens Baseline (2005 Prices)</b>			
Increase of	£ 0	Decrease of	£ 0
		<b>Net Impact</b>	<b>£ 0</b>

Key: **Annual costs and benefits: Constant Prices** (Net) Present Value



Summary: Analysis & Evidence					
Policy Option: Implement draft Bill			Description: Implement Liability Annex and Measure 4(2004).		
<b>COSTS</b>	<b>ANNUAL COSTS</b>		Description and scale of <b>key monetised costs</b> by 'main affected groups' Implementation of the Liability Annex will require Antarctic operators to obtain additional insurance. Initial consultation with the insurance industry indicates that this amounts to a small increase in insurance premiums, but this will of course depend on the nature of the activities to be undertaken in Antarctica (see Appendix 1 for an example clean up bill).		
	<b>One-off (Transition)</b>	<b>Yrs</b>			
	£ minimal		The requirement to take preventative measures may also impose some one-off costs to operators who may need to take additional precautions to avoid environmental emergencies, but the vast majority of operators already undertake such measures. Other operators may adjust their activities in Antarctica to minimise possible emergencies, but in many cases, this is not expected to give rise to major costs. The vast majority of British operators already meet the requirements for insurance for search and rescue and medical evacuation.		
	<b>Average Annual Cost</b> (excluding one-off)	<b>Cost</b>			
	£ minimal		<b>Total Cost (PV)</b>		£ minimal
Other <b>key non-monetised costs</b> by 'main affected groups' Over recent years only two major UK operators have worked in Antarctica and this is not expected to rise significantly. The majority of permits issued by the UK for activities in Antarctica are for specific scientific projects, mainly undertaken by Government-funded scientists. The non-monetised impacts of implementing the draft Bill may include scientists and operators adjusting their plans to avoid highly sensitive areas in Antarctica, or areas remote from other operators who may be able to assist with any necessary search and rescue or response action. There may also be training time needed for any new equipment obtained for potential response action. However, such non-monetised costs are not expected to be significant.					
<b>BENEFITS</b>	<b>ANNUAL BENEFITS</b>		Description and scale of <b>key monetised benefits</b> by 'main affected groups' The benefit of securing adequate insurance against the requirement for search and rescue and evacuation may save potential claims for unlimited reimbursement by operators who provide such responses. Consumers may also prefer to use commercial operators who can demonstrate they have the highest safety and environmental standards.		
	<b>One-off</b>	<b>Yrs</b>			
	£ 0	1	Other <b>key non-monetised benefits</b> by 'main affected groups' Once the Liability Annex is in force, it will create a level playing field for all Antarctic operators and will ensure appropriate response action to any environmental emergency and so help protect the environment. The requirement for all operators to have self-sufficient search and rescue arrangements will minimise the possibility of other operators being diverted from their activities to provide emergency assistance.		
	<b>Average Annual Benefit</b> (excluding one-off)	<b>Benefit</b>			
	£ minimal		<b>Total Benefit (PV)</b>		£ minimal
Key Assumptions/Sensitivities/Risks That the benefits of measures such as adequate insurance will accrue only in the event of an emergency.					
Price Base Year	Time Period Years	Net Benefit £	Range (NPV)	NET BENEFIT (NPV Best estimate) £	
What is the geographic coverage of the policy/option?			Antarctica		
On what date will the policy be implemented?			To be determined		
Which organisation(s) will enforce the policy?			FCO		
What is the total annual cost of enforcement for these organisations?			£ minimal		
Does enforcement comply with Hampton principles?			Yes		
Will implementation go beyond minimum EU requirements?			N/a		
What is the value of the proposed offsetting measure per year?			N/a		
What is the value of changes in greenhouse gas emissions?			£ 0		
Will the proposal have a significant impact on competition?			No		
Annual cost (£-£) per organisation		Micro	Small	Medium	Large
Are any of these organisations exempt?		No	No	No	No
<b>Impact on Admin Burdens Baseline (2005 Prices)</b>					
Increase of	£ 0	Decrease of	£ 0	<b>Net Impact</b>	£ 0
Key:				<b>Annual costs and benefits: Constant Prices</b>	
				<b>(Net) Present Value</b>	

## Evidence Base (for summary sheets)

### POTENTIAL IMPACTS ON BUSINESS

The primary potential regulatory burdens stemming from the draft Bill arise from the implementation of the Liability Annex, dealt with in Part 1.

Part 2 will also require insurance cover and a requirement to develop contingency/safety plans, but as mentioned before these are already required through the permitting regime and so should not require additional costs to the vast majority of responsible British operators.

The requirements and amendments set out in Part 3, to update the Antarctic Act 1994, do not have any direct financial impacts on businesses or individuals.

Therefore, the following sections concentrate largely on the impacts and benefits arising from implementation of Part 1 of the draft Bill.

#### 1. Will businesses incur extra costs when they are required to report certain events?

##### *Generally*

Additional specific questions on contingency planning for environmental emergencies will be added to the annual pre-season permitting process, however compliance costs involved in completing these additional questions are anticipated to be minimal.

##### *In the event of an environmental emergency*

Incident-related reporting could result in very minor additional costs. The operator (or business) will need to establish and maintain direct and timely contact with the relevant authorities to manage environmental emergency responses. Such reporting may extend over a considerable period, depending on the extent of the environmental emergency and any response action. However, this would form part of normal practice in the event of any emergency situation.

#### 2. Will businesses incur extra costs in keeping abreast of regulatory requirements?

##### *Generally*

Some additional costs may be incurred in educating staff on the contingency planning arrangements for environmental emergencies but these should be negligible or minimal as we would expect this to build on existing training and education programmes as part of the normal safety routines. Part 2 of the draft Bill will not involve additional costs in terms of insurance and contingency planning as these costs are already required of businesses as part of the permitting regime. Businesses will also need to keep aware of the changes flowing from Part 3 of the draft Bill but the costs of this should be extremely minimal and the Foreign and Commonwealth Office will provide any guidance through the permitting process.

*In the event of an environmental emergency*

Operators active in Antarctica are unlikely to incur extra costs other than possible increased insurance premiums.

3. Will additional costs be incurred in seeking permission to conduct an activity?

The permitting processes are conducted free of charge to businesses.

4. Will businesses need to purchase additional materials, equipment or external services?

*Generally*

All vessels operating in the Antarctic must comply not only with the provisions required under the Antarctic Treaty but also those required under the Safety of Life at Sea Convention (SOLAS) and MARPOL. The latter is the main international instrument aimed at preventing ship-source pollution (Antarctica is designated as a special area for the purposes of MARPOL.) SOLAS details requirements for life-saving appliances such as life boats, rescue boats and life jackets according to the type of ship. These provisions are supplemented by the International Life-Saving Appliance Code which provides specific technical requirements for life-saving appliances.

The International Safety Management Code also requires, for example, that ship operators have procedures to ensure the safe operation of ships and protection of the environment in compliance with relevant international legislation and to have procedures to respond to emergency situations.

As part of contingency planning for environmental emergencies, businesses may need to undertake a slightly more comprehensive risk assessment for their proposed activities if they do not already do so as part of their normal planning procedures. In order to respond to or manage identified risks, businesses may need to purchase additional equipment and possibly secure additional services (to cover liabilities and provide legal and public relations advice). Therefore, implementation should involve only very minor additional costs for responsible and compliant operators.

Operators may face additional costs for insurance or other financial security, such as a bank guarantee, to cover liability for response action taken by a Party to the Protocol where the operator fails to take prompt and effective response action, or for the costs of search and rescue and repatriation. Such insurance must cover liability up to the financial limits of liability set out in Articles 9 (1) and (2) expressed in International Monetary Fund special drawing rights (at time of drafting this was equivalent to a minimum of £820,000 Sterling for environmental emergencies involving a ship and £2,500,000 Sterling for other environmental emergencies). These limits were judged to reflect an appropriate balance between the need to set limits sufficiently high as to offer a deterrent, and the need to keep financial risks within reasonable limits.

*In the event of an environmental emergency*

Containment, mitigation, and remediation of an environmental emergency in the Antarctic may potentially lead to substantial costs to a business/operator responsible for the incident. Response action or management may be directly undertaken by the business itself, or may be undertaken by third parties with costs borne by, or reclaimed from, the operator/business. Public relations and legal costs to the business immediately and over time may be significant.

The draft Bill imposes a strict but capped limit on liability for the business whether the event involves a ship or not, however such liability is unlimited where the event is due to an intentional or reckless act by the business. This is set out in Clause 11 of the draft Bill.

5. Will businesses need to keep additional records?

*Generally*

Contingency planning arrangements, including training, for environmental emergencies will need to be kept up-to-date and this may result in increased but low compliance costs. Expenditure may be required initially to prepare contingency plans but as this is a normal condition and requirement under existing permitting procedures there will be no added costs arising from the draft Bill.

*In the event of an environmental emergency*

Businesses will need to maintain full records of any environmental emergency incident and response actions undertaken. Again this reflects best practice and is a requirement under existing international maritime law. The costs involved will depend on the diligence of the business concerned. Such records may need to be maintained for considerable periods depending on the incident and the consequent assessment and attribution of costs arising. The appropriate Antarctic State operators (i.e. those located closest to the incident area) would carry out an investigation into any incident which has occurred.

6. Will businesses incur additional costs in cooperating with audits or inspections?

*Generally*

At this stage, no auditing or inspection arrangements are envisaged. Such analyses would be conducted without cost to businesses.

*In the event of an environmental emergency*

Within the limits of liability set out above businesses may be subject to minimal additional costs associated with auditing and inspection of responses to an environmental emergency.

7. Will businesses incur additional costs when producing documents?

*Generally*

There may be some, but very minor, additional costs in preparing relevant documentation.

*In the event of an environmental emergency*

Any operator who causes or discovers an environmental incident will be required to notify the appropriate authority (a Treaty Party) – this can be done in the quickest, most efficient way possible, i.e. an email or telephone call. As indicated above, under existing international maritime law, an operator responsible for causing an environmental emergency will be required to prepare incident reports and maintain records etc. Any additional costs associated with the requirements under Part 1 of the draft Bill are likely to be negligible.

8. Will businesses incur additional costs from other compliance costs, including indirect costs or impacts on intermediaries such as accountants, lawyers, banks or financial advisers?

*Generally*

Very unlikely, the Foreign and Commonwealth Office will provide clear and thorough guidance on all new procedures through our permitting process.

*In the event of an environmental emergency*

Businesses may potentially face considerable costs in addressing the consequences of an environmental emergency, e.g. in managing public relations and addressing legal and financial issues. However such costs would be likely to apply irrespective of whether the draft Bill is in force.

9. Potentially affect the number and range of businesses in an industry?

*Generally*

It is unlikely that the draft Bill will have a direct affect on the number and range of businesses in this area.

The sharing of information among businesses on contingency planning for environmental emergencies will potentially result in the avoidance of certain risks and mitigation of others, leading to benefits for all businesses over time. Contingency planning may impact on the nature and scope of activities conducted in the Antarctic depending on the level of potential risk.

*In the event of an environmental emergency*

The costs of clean up and/or legal action resulting from an emergency may impact upon the viability of individual businesses or the tourism sector as a whole but this is no different from the current situation.

10. Potentially change the ability of businesses to compete?

*Generally*

Part 1 of the draft Bill will only come into force once it has been implemented into the domestic legislation of all Antarctic Treaty Consultative Parties. Once in force, it will apply to all operators, and therefore will not create unfair competition. Certain businesses may no longer be able to organise or conduct activities in Antarctica due to risks faced but these will be limited in number. For example private expeditions to Antarctica may find that their

activities will need to be conducted in concert with established tourism operators for insurance purposes.

Equally Parts 2 and 3 should impose no additional responsibilities which make UK businesses uncompetitive.

*In the event of an environmental emergency*

An environmental emergency is likely to have adverse impacts on the reputation of the business or operator responsible for the incident and its capacity to compete in the marketplace. Conversely, operators with a strong track record and professional approach are likely to perform better.

11. Potentially alter a business's incentives to compete?

*Generally*

Potential customers to commercial operators offering activities in Antarctica may use compliance as one of several criteria for choosing between businesses. Operators wishing to undertake activities for which they cannot obtain the necessary insurances may not be able to operate in the Antarctic, but this is not likely to be the case for any existing operators.

*In the event of an environmental emergency*

Customers may decide not to do business with an operator which causes or deals badly with an environmental incident or emergency. Similarly such operators may find it more difficult to obtain insurance or may pay higher premiums.

12. Potentially impact on consumers?

*Generally*

Consumers may face additional costs in light of increased insurance requirements but these will be marginal or negligible. Customers will have greater reassurance that operators have suitable contingency plans in place and are able to deal responsibly and effectively with any environmental emergency and so help protect the Antarctic environment.

*In the event of an environmental emergency*

Consumers may face significant disruption to planned activities in the Antarctic.

13. Will the activities that people are able to conduct in Antarctica be affected and negatively impact business and individuals?

*Generally*

Parts 1 and 2 of the draft Bill should have no affect on Antarctic activities, unless they are likely to endanger the environment or personal safety. Part 3 will have an extremely minor affect on what you can take into Antarctica and thus the activities possible to conduct there. However we do not envisage this having any impact on business.

#### 14. Potentially have any other impacts on business and individuals or the economy?

##### *Generally*

Over time those organising or conducting activities in the Antarctic may progressively reduce the level of risk of an environmental emergency and enhance the effectiveness of responses to such incidents. It should also significantly reduce the dangers to individuals and protect the Antarctic ecosystem.

##### *In the event of an environmental emergency*

The limits of liability are based on the Special Drawing Rights (SDR) as defined by the International Monetary Fund. The potential liability faced by UK businesses will fluctuate over time based on the relative conversion rate.

The UK Government may potentially face costs in meeting its obligations as an Antarctic Treaty party in pursuing compensation under domestic law from businesses in the event of an environmental emergency.

## NATIONAL INTEREST ANALYSIS

1. The adoption of the Liability Annex fulfils a longstanding obligation on Antarctic Treaty Countries, including the UK, to conclude an annex to the Environmental Protocol of the Treaty to set out a legal liability for damage to the Antarctic environment. This obligation is contained in Article 16 of the Environmental Protocol. The Liability Annex is an essential element of the Antarctic environmental protection regime, in essence implementing the “polluter pays principle”.
2. Parts of the draft Bill dealing with the Liability Annex will enter into force once it has been approved by all of the Antarctic Treaty Consultative Parties, including the UK (Environmental Protocol, article 9(2) and the Antarctic Treaty, article IX). The UK plays an active role in the Antarctic Treaty System and strongly supports its objectives.
3. The status quo is for liability for environmental emergencies in Antarctica to be governed by the general provisions of Article 15 of the Environmental Protocol and the international legal principles governing State responsibility. Neither of these sources provides sufficient certainty for operators, whether State or non-State, as to their potential liability. To create clear, enforceable legal obligations, the draft Bill must come into force.
4. The draft Bill is an opportunity to highlight and promote, both domestically and internationally, the UK’s support for a strong environmental protection in Antarctica. A large number of Antarctic Treaty Consultative Parties have started their internal review process for approving the Liability Annex. These include New Zealand, Australia, the USA, Brazil, China, France and Germany.
5. The UK’s legal obligations under the Part 1 of the draft Bill, once it has entered into force will include:
  - Requiring UK operators to take preventative measures to reduce the likelihood of accidents harming the Antarctic environment, and to establish contingency plans to deal with harmful incidents.
  - Requiring UK operators to take prompt and effective response action when environmental emergencies arise from their activities and where they do so, establishing their liability to pay the costs of the response action they should have taken.
  - Establishing a notification procedure for an operator who discovers an environmental emergency, so that the Government can consider whether to take response action itself; and promoting the use of notification procedures and cooperative response procedures by UK operators who cause environmental emergencies.



- Establishing legal mechanisms for the recovery of response action costs and the situations in which they will be exempted.
- Setting the financial limits on the compensation for which an operator may be liable and requiring operators to carry insurance up to these limits.

These are the same legal obligations that other Parties would have upon the entry into force of the Liability Annex.

6. Part 2 of the draft Bill and the implementation of Measure 4(2004) is again necessary for the UK Government under its responsibilities as an Antarctic Treaty Party. It also puts into a firm legal footing the current requirements under the permitting regime and gives a sound basis for legal prosecution for failure to comply.
7. Part 3 is crucial within the UK Government's agenda of environmental protection of the Antarctic ecosystem and its efficient management of the British Antarctic Territory and the regulation of British operators in Antarctica.

### ***Corporate Social Responsibility***

8. Corporate social responsibility is a key component in improving the social, economic and environmental standards of Antarctic operations. That means doing more than the bare minimum needed to comply with legal requirements. Better standards lead to safer operations, safer operations lead to fewer accidents, and fewer accidents mean less cost and less damage to the environment. That is why we are proposing that the draft Bill will apply to both State and non-State operators.
9. The Bill will have long term benefits for the Antarctic environment. In particular, requiring operators to take preventative measures and establish contingency plans will reduce the likelihood of accidents harming the Antarctic environment. Imposing a legal liability to clean up or pay the costs of response action where damage does occur will act as an incentive for operators to minimise environmental damage.
10. It is also essential that Antarctic operators take full responsibility for the safety of their crew and passengers through the provisions of Part 2 of the Bill. Just as they must make every effort not to introduce any banned foreign organisms or materials into Antarctic environment as set out in the Antarctic Act 1994, the provisions of which are enhanced by Part 3 of the draft Bill.

### ***Amendment Procedure***

11. Clause 21 of the draft Bill sets out the standard capacity of the Government to amend the act by statutory instrument. The UK would take a leading role in the negotiation of any amendments or modifications that the Antarctic Treaty Parties choose to make to the Liability Annex.

### ***State Operators***

12. The draft Bill will allow Parties to elect to self-insure rather than carry insurance for State operators. The British Antarctic Survey (BAS) are financially guaranteed by the Department for Business, Innovation and Skills (BIS). As a result, there is no need to take up the self-insurance option in respect of BAS.
13. The Royal Navy operates HMS Endurance and can operate other vessels in the Antarctic. In case of a ship-based accident the limit on liability would be set at 2.6 million SDRs (£2,150,000 Sterling) for a ship of 6,000 tonnes (approximate tonnage of HMS Endurance). The Royal Navy is financially guaranteed by the Ministry of Defence (MOD) meaning that there is no need to take up this insurance option.

### ***Dispute Resolution Mechanisms***

14. The Bill contains provisions for both civil and criminal liability. However such criminal provisions will be used as a last resort. Civil proceedings will include the full range of options including arbitration, etc. International disputes will be governed by the existing dispute resolution procedures set out in the Protocol on Environmental Protection to the Antarctic Treaty.

### ***Cost of Environmental Clean-Up in Antarctica from Previous Incidents***

15. Once it comes fully into force, Part 1 of the draft Bill will establish financial liability on an Antarctic operator in the event of their failure to take response action. This liability is intended to reimburse the costs of the response action taken by an Antarctic Treaty Party or, where no response action was taken, the costs of the clean up that should have been undertaken.
16. As there have been relatively few major environmental emergencies in Antarctica, it is difficult to determine the precise costs of any clean-up activities. However, based on the evidence available, the costs of clean-up are likely to be both higher and continue for longer than in more conventional situations (see Appendix 1).

## CASE STUDIES

The following case studies have been prepared to help illustrate the costs incurred during actual incidents in Antarctica:

### ***The 1989 Bahia Paraiso incident***

There has been one substantial case of a foundering ship which led to clean up of spilled fuels and lubricants — this involved the Argentine vessel *Bahia Paraiso* which grounded in January 1989. Although not recent, the response actions applied to that incident provide an indication of the possible costs.

After running aground near Palmer Station in 1989, approximately 600 000 litres of diesel and lubricants spilled out of the vessel into surrounding waters and onto nearby shores. The US National Science Foundation (NSF) sent a response team to the site to assist Argentina with assessment of damage and the clean up. The clean up involved containment and mitigation of the spill using floating barriers, divers, floatable bladders, a tug boat, skimmers, absorption chemicals and associated support. Scientific studies of the initial impacts and effects of the spill were conducted, and long term scientific monitoring of the affected areas commenced. The initial clean up was able to remove approximately 65,000 litres of fuel.

The clean up operation and associated science undertaken by the NSF was estimated to have cost \$US 2.5million (2) (equivalent to approximately \$US 4 million (3) in 2007). In addition, a US Air Force C-5B was used to position 52 tonnes of equipment to be used at the site.

In 1992 a Memorandum of Understanding was drawn up between Argentina and The Netherlands to undertake further study of the *Bahia Paraiso* and remove any remaining contaminants. The subsequent clean up work was contracted to a Dutch company with operational assistance from the Argentine navy. This operation recovered a further 148,500 litres from the ship's tanks. The total cost of the clean up, including an EIA, contracted diving operations, use of the *Canal Beagle* and assistance from the *Francisco de Gurruchaga* was approximately NLG8 million(2), which would have been approximately equivalent to \$US 4 million (approximately \$US 6 million in 2007).

Adding the cost of the initial clean up (\$US 3.3 million), the approximate cost of hiring an equivalent air craft (\$US 0.5 million), and the upper estimate of conducting the secondary clean up of the site (just over \$US 5 million), the total cost of a clean up of the *Bahia Paraiso* accident, if it occurred today, would be approximately \$US 10 million. (Note that these figures are not precise, given the calculations made regarding inflation rates and conversions — the final figure provides only an indication of magnitude. To put this in relation to other major spills, the *Exxon Valdez* disaster released over 41,000,000 litres of crude oil in near-shore waters. The cost of that response, clean-up, and restoration exceeded \$US 2.1 billion.)

### **Removal of a damaged aircraft**

A Basler 67 operated by Adventure Network International was damaged in a severe storm in Ellsworth Land in October 2002. The aircraft was insured by Lloyds of London and was assessed as a “total loss”. The cost of removing the aircraft from Patriot Hills to Punta Arenas in Argentina was assessed at approximately \$US 250 000(4).

2 Report of Organizational Meeting US–Argentine cooperation Bahia Paraiso 8 May 1990.

3 Calculated using the pre-1975 data Consumer Price Index statistics from Historical Statistics of the United States (USGPO, 1975).

4 Antarctic Non-government Activity News (ANAN) No. 91 January 2003

### **Costs involved in clean up and remediation**

#### **Clean up and remediation at Thala Valley**

This case study does not relate to an environmental incident, but does reflect clean up costs. Thala Valley was used as a dump for solid wastes from Australia’s Casey station between 1969 and 1985. A wide range of domestic and industrial wastes were deposited at the site. Clean up of the site involved removal and storage of materials and subsequent shipping to Australia for disposal of up to 2,000 cubic metres of material. Monitoring of the site is also required to detect the mobilisation of contaminants and the effectiveness of clean up.

The estimated costs of the clean up were approximately \$US 3M at 2007 values. These costs include equipment, material and personnel for the monitoring of the activity, site remediation, removal of material, creation of barriers around the site, transportation and storage of material and disposal in Australia. These figures reflect actual costs being incurred during the clean up and predictions for future operational costs. A detailed breakdown of the costs is given in Table 5.

**Table 1: Costs associated with Thala Valley clean up**

Costs are shown in US dollars in 2003 values, based on February 2003 exchange rates.

<b>Task</b>	<b>Itemised cost \$US</b>	<b>Total costs \$US</b>
<b>Purchase of equipment</b>		
240 containers, gabions, barriers, treatment plant materials and tracked loader	1 576 000	1 576 400
<b>Monitoring</b>		
Baseline monitoring	103 400	
Operational monitoring (2 years)	206 900	
Post operational monitoring	103 400	413 700
<b>Treatment Plants</b>		
Design and construction of Treatment Plants	101 000	
Operation of Treatment Plants	11 900	112 900
<b>Removal and Containment of materials</b>		
Removal of materials from dump site	105 200	
Design and construction of barrier	14 900	

Installation of barrier	10 100	
Dig drainage system	5 300	
Quarry rock for gabions	3 600	
Complete clean up and remove structures	2 400	141 500
<b>Transport of materials</b>		
Transport of containers to site on vessel	86 200	
Removal of material in containers on vessel	86 200	
Design and construction of containers	22 600	195 000
<b>Disposal of contaminated material</b>		
Disposal of material (in Australia)	445 900	445 900
<b>Total</b>		<b>2 885 400</b>

### Costs for response equipment and personnel

In 2003, the Council of Managers of National Antarctic Programmes (COMNAP) sought indicative costs for equipment and personnel required for response action in Antarctica from Australia and Chile (see below). Costs are shown in US dollars in 2003 values, based on February 2003 exchange rates.

**Table 2: Generic operational costs (provided by Australia)**

# Total cost includes all incidental costs

\* Delivery fee is each way from the Northern hemisphere to Southern Hemisphere “gateway” port.

~Rates for aircraft are estimates, and the cost may vary depending on operator and aircraft availability.

	Basic Cost	Incidental costs	Total cost#
<b>Vessels</b>			
Ocean going tug	\$US21 250 per day	\$US5 000 bunker per day plus \$US1 mil delivery*	
Cargo vessel	\$US15 000 per day	\$US5 000 bunker per day plus \$US1 mil delivery *	
Ice class ship	\$US32 000 (European vessel)	\$US5 000 bunker per day plus \$US1 mil delivery*	
Bulk fuel transport	\$US30 000 to \$US70 000	\$US5 000 bunker per day plus \$US1 mil delivery*	
<b>Air transport</b>			
Squirrel helicopter (medium size)	\$US1 300 per day	\$US3 000 per day inc crew and fuel for 5 hrs	
Hercules C130 or IL76	\$US250 000 per week	\$US250 000 Prepositioning costs (from Northern Hemisphere) \$US100 000 Prepositioning costs (from Singapore)	\$US0.5 mil per week or \$US0.35 mil from Singapore. Includes crew and fuel for one flight. Cost of refuel must

			be added.
<b>Other equipment</b>			
Truck / Tractor (purchase price)	\$US 118 900 to \$US 178 400		
Quarter container (purchase price)	\$US 4 800		
<b>Remediation</b>			
Treatment of contaminated soil	\$US 60 to 90 per tonne	Transport of material to facility in Australia	
<b>Trades personnel ^</b>			
Basic salary and on cost	\$US 250 per person per day		
Basic salary, on cost and overheads plus cost of transport and food when travelling to/from Antarctica	\$US 625 per person per day while travelling		
Basic salary, on cost and overheads plus upkeep while in Antarctica	\$US 750 per person per day while staying in Antarctica		
Total cost of personnel (including salary, on cost, overheads, training, travel costs, upkeep in Antarctica)	\$US 1 000 per person per Day		

### ***Costs indicated by Chile***

The costs indicated by Chile relate to the worst case scenario — that is, a vessel that sinks and breaks up, releasing bunker and fuel. The mobilisation costs may include:

- a) Sea transport of clean up materials from a port in the Northern Hemisphere to Antarctica
- b) Air transport of clean up materials to a port in the Southern Hemisphere and then transport by sea to Antarctica
- c) Transport clean up materials from a port near Antarctica
- d) Use clean up materials already on a station or ship operated in Antarctica
- e) Removal by sea or air materials from Antarctica

On this basis, a clean up operation, including mobilisation of a ship to Antarctica (40 to 60 days outward journey and return) and 20 to 30 days in the Antarctic Treaty area would cost \$US 3 to 5 million (assuming \$US 30 000 per ship per day). Some savings will be made if the clean up materials used are already in Antarctica.

The Chilean maritime organisation provided the following itemised assessment of the “on the ground” costs for a more limited clean up operation of 10 days duration, excluding the costs of transport to and from Antarctica.

**Table3: Indicative costs for a 10 day clean up (provided by Chile)**

	<b>Cost* \$US</b>	<b>Quantity</b>	<b>Total cost \$US</b>
<b>PERSONNEL</b>			
Supervisor	\$US 53 per hour	10 hour x 10 days	5 300
Foreman	\$US 36 per hour	10 hour x 10 days	3 600
6 Equipment operators	\$US 26 per hour per person	10 hour x 10 days	15 600
2 Divers	\$US 36 per hour per person	3 hour x 10 days	2 160
1 Dive supervisor	\$US 41 per hour	10 hour x 10 days	4 100
			<b>30 760</b>
<b>FUEL RECOVERY</b>			
Siri Alfa disc	\$US 256 per day	10 days	2 560
Lori LSC disk	\$US 256 per day	10 days	2 560
Rope MOP band	\$US 256 per day	10 days	2 560
Mantis 12 T	\$US 51 per day	10 days	5 100
Skim Pak	\$US 41 per day	10 days	4 100
Desmi Termite	\$US 256 per day	10 days	2 560
			<b>19 400</b>
<b>FUEL BARRIER</b>			
Rigid Bay Barrier	15" \$US 2 per metre per day	1000 metres x 10 Days	20 000
Inflate Open Sea Barrier 24"	\$US 3 per metre per day	1000 metres x 10 Days	30 000
			<b>50 000</b>
<b>PUMPS</b>			
300m <sup>3</sup> /hour	\$US 123 per day	3 x 10 days	3 690
90m <sup>3</sup> /hour	\$US 92 per day	3 x 10 days	2 760
30m <sup>3</sup> /hour	\$US 51 per day	3 x 10 days	1 530
Power pack 25 hp	\$US 77 per day	9 x 10 days	6 930
			<b>14 910</b>
<b>TANKS</b>			
Floating tank 15 m <sup>3</sup>	\$US 202 per day	10 x 10	20 200
10 m <sup>3</sup>	\$US 135 per day	10 x 10	13 500
			<b>33 700</b>
<b>CHEMICAL PRODUCTS</b>			
Dispersants	\$US 4 per litre	10 000 litres	40 000
BALAREP 25kgr/can	\$US 671 per can	100 can	67 100
BALAREP	\$US 27 per kg	1.000 kg	27 000
Opturep	\$US 160 u.	100 u	16 000
			<b>150 100</b>
<b>OTHERS</b>			
Hercules C 130	\$US 32 275 per trip	2 trips	64.550

Cargo vessel	\$US 10 000 per day	10 days	100 000
Container ISO 20'	\$US 41 per day	10 x 10	4 100
Zodiac	\$US 11 per day	5 x 10	550
Hydro washer machine	\$US 256 per day	3 x 10	7 680
			<b>176 880</b>
<b>GRAND TOTAL</b>			<b>475 750</b>

\*Chilean Maritime Organisation (DIRECTEMAR)



**LIST OF ORGANISATIONS SENT CONSULTATION PACKAGE**

Association of British Insurers  
BBC Natural History Unit  
Better Regulation Executive  
British Antarctic Survey  
British Insurance Brokers Association  
British Marine Federation  
British Maritime Law Association  
British Shippers Council  
British Tug owners Association  
Chamber of Shipping  
Countdown to 2041  
Department for Business, Innovation and Skills  
DBIS Enterprise Directorate  
Department for Environment, Food and Rural Affairs  
Northern Ireland Executive  
DfT Better Regulation  
DfT Shipping Policy  
Friends of the Earth  
Golden Fleece expeditions  
Governments of the Isle of Man, Jersey and Guernsey  
Governments of the UK Overseas Territories  
Greenpeace  
HM Treasury  
Home Office  
Institute of Environmental Management and Assessment  
Intertanko  
Intercargo  
Joint Nature Conservation Committee (JNCC)  
Lloyds Register  
Marine Conservation Society  
Maritime and Coastguard Agency  
MOJ (Ministry of Justice)  
MOD (Ministry of Defence)  
National Oceanography Centre  
Natural Environment Research Council  
Nautilus  
Nobel Caledonia  
Pelagic Expeditions  
P&O/Carnival UK  
Poles Apart  
Renewable Fuels Agency (RFA)  
Royal Yachting Association

Royal Society for the Protection of Birds (RSPB)  
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