



BRITISH ANTARCTIC TERRITORY

# **THE ENVIRONMENTAL PROTECTION ORDINANCE 2020**

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**BRITISH ANTARCTIC TERRITORY**  
**THE ENVIRONMENTAL PROTECTION ORDINANCE 2020**

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# BRITISH ANTARCTIC TERRITORY

Enacted by the Commissioner,  
Ben Merrick,  
XX XXXX 2020

## Ordinance No. 19 of 2020

### THE ENVIRONMENTAL PROTECTION ORDINANCE 2020

*AN ORDINANCE to make provision, in pursuance of various international agreements to which the United Kingdom is a party relating to the protection and conservation of the environment and resources of Antarctica and certain connected matters, for regulating entry into and presence within the Territory, for regulating activities in connection with the mineral resources of the Territory, for protecting the fauna and flora of the Territory, for regulating entry into and presence within special areas within the Territory and for protecting historic sites or monuments within the Territory; and for purposes incidental to or connected with the foregoing.*

#### PART 1

#### PRELIMINARY

- Citation and commencement. 1. This Ordinance may be cited as the Environmental Protection Ordinance 2020 and shall come into force on XXXXX.
- Definitions. 2. (1) In this Ordinance, unless the contrary intention appears –
- “ACAP” means the Agreement for Conservation of Albatrosses and Petrels;
- “Albatross” and/or “petrel” means one of any species, subspecies or population of the albatrosses and/or, as the case may be, petrels listed in Annex 1 to ACAP;
- “another Contracting Party” means any State other than the United Kingdom that is a party to the Protocol;
- “the Antarctic Treaty” means the Antarctic Treaty signed at Washington on 1 December 1959;

“Antarctica” means –

- (a) the continent of Antarctica (including all its ice-shelves);
- (b) all islands south of 60° South latitude (including all their ice shelves);
- (c) all areas of continental shelf which are adjacent to that continent and which are south of 60° South latitude; and
- (d) all sea and airspace south of 60° South latitude,

and for this purpose “continental shelf” shall be construed in accordance with the rules of international law;

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

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

“Convention official” means any person designated as an inspector or observer by a Member of the Commission for the Conservation of Antarctic Marine Living Resources under Article XXIV of the Convention;

“exchanged scientist” means a scientist who has been exchanged in pursuance of Article III(1)(b) of the Antarctic Treaty;

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

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

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

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

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

“observer” means a person designated as such in pursuance of Article VII(1) of the Antarctic Treaty;

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

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

“recognised assistance dog” means a dog which has been trained to assist a disabled person by a person, or a person of a description, prescribed in regulations;

“regulations” means any regulations made by the Commissioner;

“station” includes any building or group of buildings;

“United Kingdom national” means –

(a) a British citizen, a British overseas territories citizen, a British National (Overseas) or a British Overseas citizen;

(b) a British subject under the British Nationality Act 1981;

(c) a British protected person within the meaning of that Act;

(d) a Scottish partnership; or

(e) a body incorporated under the law of any part of the United Kingdom or under the law of the Channel Islands, the Isle of Man or any British overseas territory; and

“vessel” includes a hovercraft.

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

50° South latitude 0°;

50° South latitude 30° East longitude;

45° South latitude 30° East longitude;

45° South latitude 80° East longitude;

55° South latitude 80° East longitude;

55° South latitude 150° East longitude;

60° South latitude 150° East longitude;

60° South latitude 50° West longitude;

50° South latitude 50° West longitude; and

50° South latitude 0°.

(3) In this Ordinance, references to a species “indigenous to Antarctica” includes a species occurring in Antarctica through natural migration.

## PART 2

### ENVIRONMENTAL PROTECTION

#### *Mineral resources*

Mineral  
resource  
activities.

3. (1) No person may in the Territory –

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

(b) collect any samples of mineral resources; or

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

except in accordance with a permit granted under this section.

(2) This section does not apply to anything done under the written authorisation of another Contracting Party or in accordance with a permit granted under section 6 of the Antarctic Act 1994 (including that section as extended by the Antarctic Act 1994 (Overseas Territories) Order 1995).

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

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

(5) The Commissioner shall not grant a permit under this section unless the Commissioner is satisfied that the activities authorised by the permit will be carried on –

(a) only for the purpose of scientific research; or

(b) only for purposes connected with the construction, maintenance or repair in the Territory of a station maintained by or on behalf of a United Kingdom national or a national of another Contracting Party or of any other structure, road, runway or jetty maintained by or on behalf of such a person.

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

## *Fauna and flora*

Conservation of  
Antarctic fauna  
and flora.

4. (1) Subject to subsection (2), if any person –

(a) intentionally or recklessly kills, injures, captures, handles or molests any native mammal or native bird;

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

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

(d) uses explosives or firearms in a manner set out in paragraphs (a), (b) or (c);

(e) removes or damages such quantities of any native plant or native invertebrate that its local distribution or abundance will be significantly affected;

(f) significantly damages a concentration of native plants; or

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

that person shall be guilty of an offence.

(2) Subsection (1) does not apply to anything done in accordance with a permit granted under –

(a) section 12 of this Ordinance, or

(b) section 12 of the Antarctic Act 1994 (including that section as extended by the Antarctic Act 1994 (Overseas Territories) Order 1995), or

(c) the written authorisation of another Contracting Party.

(3) 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).



Conservation of albatrosses and petrels.

**5.** (1) Without prejudice to the generality of section 4, and subject to subsection (2), if any person deliberately takes, or causes harmful interference with –

- (a) an albatross or petrel;
- (b) an egg of an albatross or petrel, or
- (c) a breeding site of an albatross or petrel,

that person shall be guilty of an offence.

(2) Subsection (1) does not apply to anything done in accordance with a permit granted under –

- (a) section 12 of this Ordinance, or
- (b) section 12 of the Antarctic Act 1994 (including that section as extended by the Antarctic Act 1994 (Overseas Territories) Order 1995), or
- (c) the written authorisation of another Contracting Party.

Permits required for introducing non-native animals and plants into the Territory.

**6.** (1) No person may introduce into the Territory any animal of any species that is not indigenous to Antarctica, or any plant that is not a native plant, except in accordance with a permit granted under section 12 of this Ordinance or section 12 of the Antarctic Act 1994 (including that section as extended by the Antarctic Act 1994 (Overseas Territories) Order 1995) or under the written authorisation of another Contracting Party.

(2) The keeping of –

- (a) a recognised assistance dog on board a vessel in Antarctica,
- (b) another animal on board such a vessel where the vessel is travelling to an immediate destination outside Antarctica, or
- (c) a plant on board a vessel in Antarctica,

shall not be regarded as a contravention of subsection (1).

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

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

Introduction of microscopic organisms.

**7.** (1) No person may introduce into any part of the Territory any microscopic organism of a species which is not indigenous to Antarctica, except in accordance with a permit granted under section 12 of this Ordinance or

section 12 of the Antarctic Act 1994 (including that section as extended by the Antarctic Act 1994 (Overseas Territories) Order 1995) or under written authorisation of another Contracting Party.

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

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

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

Introduction of non-sterile soil.

**8.** (1) No person may introduce non-sterile soil into any part of the Territory.

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

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

### *Special areas*

Areas restricted under the Protocol.

**9.** (1) No person may enter or remain in an area in the Territory designated by regulations as an area restricted under the Protocol except in accordance with a permit granted under section 12 of this Ordinance or under section 12 of the Antarctic Act 1994 (including that section as extended by the Antarctic Act 1994 (Overseas Territories) Order 1995) or under the written authorisation of another Contracting Party.

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

Historic Sites and Monuments.

**10.** (1) No person may damage, destroy or remove any part of a site or monument designated by regulations as an Antarctic Historic Site or Monument, except in accordance with a permit granted under this section or under the written authorisation of the Commissioner.

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

(3) The Commissioner, with the consent of the Secretary of State, may on the application of any person grant to him or her a permit authorising any person 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 Commissioner must not grant a permit under this section unless the Commissioner is satisfied that the activities authorised by the permit will be carried on only for the purposes of conservation or repair of –

(a) the Antarctic Historic Site or Monument to which the permit relates, or

(b) any object within it.

Places protected under the Convention.

**11.** (1) No person may enter or remain in a place within the Territory that is in the area south of the Antarctic Convergence and that has been designated by regulations as a place protected under the Convention (in this section referred to as a “protected place”) except in accordance with a permit granted under this section or under section 11 of the Antarctic Act 1994 (including that section as extended by the Antarctic Act 1994 (Overseas Territories) Order 1995).

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

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

(4) The Commissioner must not grant a permit under this section unless he or she is satisfied that the activities authorised by the permit will be carried on only for the purposes of education or scientific research.

### *Permits under Part 2: further provisions*

Grant of permits for activities prohibited by sections 4, 5, 6, 7 and 9.

**12.** (1) The Commissioner, with the consent of the Secretary of State, may on the application of any person grant to him or her a permit authorising any person who is specified or of a description specified in the permit to do anything specified or of a description specified in the permit that would otherwise constitute a contravention of section 4(1), section 5(1), section 6(1), 7(1) or section 9(1).

(2) Subject to subsection (3), the Commissioner must not grant a permit under this section unless he or she is satisfied that the activities authorised by the permit will be carried on only for the purposes of education or scientific research.

(3) In addition to the provisions contained in subsection (2), the Commissioner must not grant a permit under this section which authorises a person to do anything that would otherwise constitute a contravention of section 5(1) unless he or she is satisfied that there is no other satisfactory course of action and the permit is granted –

(a) to enhance the propagation, re-establishment or survival of albatrosses or petrels;

(b) on a selective basis and to a limited extent for scientific, educational or similar purposes; or

(c) in other exceptional circumstances, in which case, unless an exceptional circumstance is of the nature of a short-term emergency, a prior environmental impact assessment has been carried out and made publicly available in accordance with the requirements set out in the Action Plan established by Article VI of ACAP.

(4) Any permit granted in accordance with subsection (3) shall

(a) be precise, and limited in space and time;

(b) not operate to the detriment of the conservation status of albatrosses or petrels, and

a copy of it shall be provided to the Secretariat of ACAP.

Conditions attached to permits under Part 2.

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

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

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

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

(a) he or she shall be guilty of an offence; and

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

Permits: applications, production, revocation and suspension.

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

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

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

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

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

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

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

Duty to have regard to the Protocol and to measures implementing the Protocol.

**15.** The Commissioner shall have regard to the provisions of the Protocol and to any measures for the implementation of the Protocol that have become effective by virtue of paragraph 4 of Article IX of the Antarctic Treaty –

(a) in considering in any case whether to grant a permit under section 10 or 12,

(b) in any case where the Commissioner grants a permit under section 10 or 12, in considering whether to attach conditions to it under section 13(1), and

(c) in exercising his or her power to make regulations under section 14(1)(c) in relation to a permit issued under section 10 or 12.

### PART 3

#### MISCELLANEOUS AND SUPPLEMENTARY

##### *Regulations*

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

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

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

(a) the Antarctic Treaty, the Protocol and the Convention (as they have effect at the commencement of this Ordinance or subsequently); and

(b) any annex or protocol to the Antarctic Treaty, the Protocol or the Convention (as any such annex or protocol has effect at the

commencement of this Ordinance, or, if later, on the date on which it is made, or subsequently).

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

Regulations:  
general.

**17.** (1) Regulations under this Ordinance may make –

(a) different provision for different cases or circumstances; and

(b) incidental and supplementary provision.

(2) Regulations made under section 16 may provide that any contravention of any provision of any such regulations shall be an offence.

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

Meaning of  
“offence under  
this Ordinance”.

**18.** In the following provisions of this Ordinance “offence under this Ordinance” includes any offence created by a regulation made under section 16 and also includes any incitement or conspiracy or attempt to commit an offence under this Ordinance.

Trial of offences  
and penalties.

**19.** Any person who is guilty of an offence under this Ordinance is liable on conviction on indictment to imprisonment for a term not exceeding two years, or to a fine, or to both, and on summary conviction to a fine not exceeding £10,000.

Defences.

**20.** (1) Where a person is charged with an offence under section 13(2), it shall be a defence to prove that the contravention in question occurred by reason of matters outside his or her control and that he or she took all reasonable steps to avoid such a contravention.

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

(a) the safety of human life, vessels or aircraft;

(b) the safety of equipment and facilities of high value; or

(c) the protection of the environment.

(3) Subsection (2) does not apply where the contravention in question is a contravention of section 3(1) or of a condition attached to a permit granted under section 3(4).

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

Offences  
committed by  
bodies corporate  
or  
unincorporate.

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

(a) a director, manager, secretary or other similar officer of that body; or

(b) any person who was purporting to act in such a capacity,

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

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

Evidence.

**22.** (1) For the purpose of any proceedings for an offence under this Ordinance a certificate signed by or on behalf of the Secretary of State or the Commissioner and stating that at the time specified in the certificate –

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

(b) a station within the Territory was or was not maintained by or on behalf of a national of another Contracting Party; or

(c) a person was or was not a person who, being a national of another Contracting Party, was a Convention official or an observer or an exchanged scientist or a member of the staff accompanying an observer or accompanying an exchanged scientist and who was in the Territory for the purpose of exercising his or her functions as a Convention official or as an observer or as an exchanged scientist or as a member of such staff,

shall be conclusive evidence of the facts stated in it.

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

(3) A document purporting to be a permit granted under section 6 or 12 of the Antarctic Act 1994 (including each of those sections as extended by the Antarctic Act 1994 (Overseas Territories) Order 1995) or purporting to be a written authorisation of another Contracting Party such as is mentioned

in section 4, 6, 9, 10 or 11 of this Ordinance shall be deemed to be such a permit or such an authorisation unless the contrary is proved.

Ordinance to be construed as supplementing Antarctic Act 1994, etc.

**23.** For the avoidance of doubt it is hereby declared that the provisions of this Ordinance operate so as to supplement, and not to derogate from, the provisions of the Antarctic Act 1994 and the Antarctic Act 1994 (Overseas Territories) Order 1995; and, accordingly, no provision of this Ordinance by virtue of which an act or omission is prevented from being an offence under this Ordinance shall be construed so as to prevent it from being an offence under that Act (including that Act as extended by that Order).