EXPLANATORY MEMORANDUM TO

THE ANTARCTIC (AMENDMENT) REGULATIONS 2017

2017 No. 706

1. Introduction

1.1 This explanatory memorandum has been prepared by the Foreign and Commonwealth Office and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 These regulations update, for the purpose of their protection under the Antarctic Act 1994, the internationally recognised descriptions of the places that have been designated under the Antarctic Treaty System as Antarctic Specially Protected Areas (ASPAs) or Historic Sites and Monuments (HSMs).

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Other matters of interest to the House of Commons

3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

4.1 The Antarctic Act 1994 implements the United Kingdom's international law obligations arising under the Antarctic Treaty System, including the requirement to authorise and control activities of its nationals, and non-nationals on British expeditions, vessels and aircraft, operating in Antarctica. The Antarctic Regulations 1995 set out the details of the permitting regime and offences under the 1994 Act, and make provision for the establishment of the Antarctic Act Tribunal.

4.2 Sections 9 and 11 of the Antarctic Act 1994 make it an offence for any UK national, or non-national on a British expedition ("British expedition" is defined in section 3(3) of the 1994 Act), to enter an area designated as restricted or protected by regulations, except in accordance with a permit granted by the Secretary of State under section 12 of the Act. Section 10 of the Act makes it an offence to damage, destroy or remove any site or monument designated as a HSM except in accordance with a permit granted by the Secretary of State under that section.

4.3 Schedules 1 to 3 to the Antarctic Regulations 1995 listed all the ASPAs, HSMs, and places protected at that time under the Convention on the Conservation of Antarctic Marine Living Resources[1]. Amendments to those Schedules were subsequently made by the Antarctic (Amendment) Regulations 1998, 2000, 2002, 2003, 2004, 2008 and

[1] Treaty Series No. 48 (1982).

2009[2] to reflect decisions made under the Antarctic Treaty System to amend, update or delist restricted or protected areas.

4.4 These regulations simplify and update the statute book by replacing Schedules 1 and 2 and deleting Schedule 3 (as there are currently no sites listed under the Convention on the Conservation of Antarctic Marine Living Resources).

5. Extent and Territorial Application

5.1 The extent of this instrument is the whole of the United Kingdom.

5.2 The territorial application of this instrument is the whole of the United Kingdom. This instrument also applies to UK nationals and to non-nationals on a British expedition whilst in Antarctica.

6. European Convention on Human Rights

6.1 As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

What is being done and why

7.1 The United Kingdom is a Consultative Party to the Antarctic Treaty[3], the international agreement for the governance of the continent of Antarctica. The United Kingdom is also a Consultative Party to the Environmental Protocol to the Antarctic Treaty ("the Protocol")[4], which provides for the comprehensive protection of the Antarctic environment and which entered into force in 1998, and to the Convention on the Conservation of Antarctic Marine Living Resources.

7.2 The Antarctic Act 1994, as amended by the Antarctic Act 2013, implements the UK's environmental obligations under the Treaty and the Protocol. In particular, these include the requirement to authorise and control activities of its nationals, vessels and aircraft operating in Antarctica and to regulate any entry into areas protected or restricted under the Protocol or the Convention on Antarctic Marine Living Resources.

Consolidation

7.3 This instrument amends Schedules 1 and 2 to the Antarctic Regulations 1995, replacing them with new consolidated lists of places that have been designated under the Antarctic Treaty System as ASPAs or HSMs.

7.4 This instrument also includes the relevant Measures adopted at the Antarctic Treaty Consultative Meetings XXXII (2009), XXXIII (2010), XXXIV (2011), XXXV (2012) and XXXVI (2013), XXXVII (2014) which until now had not been included in a set of Antarctic (Amendment) Regulations. They also include the relevant Measures adopted at the Antarctic Treaty Consultative Meeting XXXVIII, held at Sofia in June 2015, which is the last meeting for which the subsequent Command Paper[5] has been laid before Parliament.

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[2] S.I. 1998/1007; S.I. 2000/2147; S.I. 2002/2054; S.I. 2003/323; S.I. 2004/2782; S.I. 2008/3066; S.I. 2009/2354.
[3] Treaty Series No. 97 (1961).
[4] Treaty Series No. 6 (1999); Treaty Series No. 15 (2006).
[5] Cm 9356.

8. Consultation outcome

8.1 No formal consultation was conducted given the very small impact of the regulations.

9. Guidance

9.1 Guidance on visiting Antarctica and applying for permits is published by the Foreign and Commonwealth Office on the government's website (https://www.gov.uk/visits-to-antarctica-how-to-apply-for-a-permit).

10. Impact

10.1 The impact on business, charities or voluntary bodies is negligible.

10.2 The impact on the public sector is negligible.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The instrument applies to activities that are undertaken by small businesses.

11.2 No specific action regarding small business has been taken given the negligible additional costs associated with this statutory instrument.

12. Monitoring & review

12.1 As the operator of the permit regime, the Polar Regions Department of the Foreign and Commonwealth Office will monitor this legislation and any requirement to update the lists in Schedules 1 and 2 in light of Measures adopted at future Antarctic Treaty Meetings.

12.2 In accordance with the provisions of section 28 (2)(b) and 31 of the Small Business, Enterprise and Employment Act 2015, the Minister has determined that it would not be appropriate to conduct a review of these regulations under section 28 of that Act. These regulations implement the UK's international law obligations to protect ASPAs and HSMs, and the provisions of the Antarctic Act 1994 requiring permits for United Kingdom nationals to enter ASPAs and HMAs came into force on 1 November 1995. A review would be disproportionate taking into account the very small number of small businesses based in the UK engaging in Antarctic tourist activities. The instrument makes no change to the operation of the permitting regime itself, but simply updates the list of places for which a permit to undertake activities will be required in accordance with the UK's international law obligations. The economic impact of the regulations on these small businesses is negligible.

13. Contact

13.1 Stuart Doubleday at the Polar Regions Department, Foreign and Commonwealth Office (Telephone: 020 7008 2616 or email: stuart.doubleday@fco.gov.uk) can answer any queries regarding the instrument.