EXPLANATORY MEMORANDUM TO

THE ANTARCTIC (AMENDMENT) REGULATIONS 2021

2021 No. 509

1. Introduction

1.1 This explanatory memorandum has been prepared by the Foreign, Commonwealth & Development 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). Specifically, they amend the Antarctic Regulations 1995 to reflect changes to the boundary of an ASPA and by adding two additional HSMs.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is the United Kingdom.

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

5. European Convention on Human Rights

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

6. Legislative Context

6.1 The Antarctic Act 1994 ("the Act") implements the United Kingdom's international obligations under the Antarctic Treaty System, including obligations under the Protocol on Environmental Protection to the Antarctic Treaty 1991[1] ("the Protocol") relating to ASPAs and HSMs. Entry to an ASPA is prohibited except in accordance with a permit. HSMs are subject to protection against damage, destruction or removal.

[1] Treaty Series No. 6 (1999); Treaty Series No. 15 (2006).

6.2 ASPAs and HSMs are designated or modified by binding measures adopted at annual meetings of Antarctic Treaty System parties (the Antarctic Treaty Consultative Meeting, or "ATCM"). The measures adopted by each ATCM are reflected in a subsequent Command Paper.

6.3 Section 9 of the Act makes it an offence for any UK national, or non-national on a British expedition ("British expedition" is defined in section 3(3) of the Act), to enter an ASPA (referred to in the Act as an "area restricted under the Protocol"), 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.

6.4 Schedules 1 and 2 to the Antarctic Regulations 1995, as amended in 1998, 2000, 2002, 2003, 2004, 2008, 2009, and 2017,[2] list the areas designated for the time being as ASPAs and HSMs. The boundaries of areas designated as ASPAs are defined in the 1995 Regulations by reference to maps reproduced in the Command Paper that records the relevant ATCM measure.

6.5 This instrument amends Schedules 1 and 2 to the Antarctic Regulations 1995 to reflect measures adopted at the Forty-second ATCM held in Prague in July 2019,[3] namely the addition of two HSMs and the modification of the boundary of an ASPA.

7. Policy background

What is being done and why?

7.1 The United Kingdom is one of the twelve original signatories to the Antarctic Treaty[4] and is a Consultative Party. The United Kingdom is also a State Party to the Protocol, which provides for the comprehensive protection of the Antarctic Environment and which entered into force in 1998.

7.2 The Protocol substantially strengthens conservation and environmental protection in Antarctica. Annex V to the Protocol, on area protection and management, extends protected area designations. ASPAs may be created to protect marine, terrestrial, aquatic and glacial ecosystems, areas of particular biological, scientific, historical, environmental, aesthetic and wilderness values, and areas that are the only known habitat of any species. Under the Protocol, entry into ASPAs requires prior authorisation and activities within them are subject to compliance with the associated management plan. Annex V also makes provision for HSMs, which are made subject to protection from being damaged, removed or destroyed.

7.3 The United Kingdom supports the strengthening of measures to protect the Antarctic environment, including the designation of these new protected areas.

7.4 The Foreign, Commonwealth & Development Office (FCDO) is the UK competent authority responsible for granting authorisation to visit Antarctica, ensuring that the terms of the Protocol are complied with in connection with British expeditions to Antarctica.

[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; S.I. 2017/706.
[3] CP 247.
[4] Treaty Series No. 97 (1961).

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

9.1 This instrument contains the first modifications of the Schedules to the Antarctic Regulations 1995, since they were replaced under the Antarctic (Amendment) Regulations 2017. No consolidation is therefore currently planned. However, further amendments to the Schedules are likely to be necessary in the near future, due to ongoing work by the ATCM on extending protected areas. Consolidation will be considered when the ATCM has completed that work.

10. Consultation outcome

10.1 Informal consultation on proposed changes to the areas protected as ASPAs or HSMs is undertaken both prior to and during the ATCM. The British Antarctic Survey is part of the UK delegation at the meeting itself. At the ATCM non-governmental organisations have the opportunity to debate these matters alongside the Antarctic Treaty Consultative Parties. These include environmental and scientific experts and representatives of tourist and other industry associations.

11. Guidance

11.1 Guidance for those wishing to visit Antarctica, and on how to apply for permits, is published by the FCDO on its website (www.gov.uk/guidance/visits-to-antarctica-how-to-apply-for-a-permit).

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument because any impacts will be negligible and limited to only those very small number of businesses with an interest in visiting the specific sites in Antarctica referenced in the Regulations. Expeditions to Antarctica must already obtain permits for their presence and planned activities; we expect that any additional requirements created by these Regulations would normally be met at the same time through the same processes.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 No specific action is proposed to minimise regulatory burdens on small businesses.

13.3 The basis for the final decision on what action to take to assist small businesses is that the modification of an ASPA and addition of two new HSMs, within the existing regulatory framework, will involve negligible additional costs or impacts.

14. Monitoring & review

14.1 As the operator of the permit regime, the Polar Regions Department of the Foreign, Commonwealth & Development Office will monitor this legislation and any requirement to update the lists in Schedules 1 and 2 in light of Measures adopted at

future ATCMs. The regulation does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, Lord Ahmad, Minister of State at the Foreign, Commonwealth & Development Office, has made the following statement: the Minister considers a review provision would not be appropriate and would be disproportionate. 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.

15. Contact

15.1 George Clarkson at the Foreign, Commonwealth & Development Office, Telephone: 07521 665670, or email: George.Clarkson@fcdo.gov.uk, can be contacted with any queries regarding the instrument.

15.2 Jane Rumble, Head of Polar Regions Department at the Foreign, Commonwealth & Development Office, can confirm that this Explanatory Memorandum meets the required standard.

15.3 Lord Ahmad, Minister of State at the Foreign, Commonwealth & Development Office, can confirm that this Explanatory Memorandum meets the required standard.