

# ANTARCTIC ACT 2013

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 1 – Environmental Emergencies**

#### **Civil liability for failure to respond to environmental emergency**

#### *Section 2 – Liability to Parties to Annex VI*

13. Under Article 5(2) of the Liability Annex, Parties to the Annex are encouraged to take response action in respect of an environmental emergency in the event that the person causing the emergency fails to take reasonable, prompt and effective response action. Section 2 enables a Party who does take such action, including the United Kingdom Government, to recover its costs from the person in question. The persons who may be liable under this section include, but are not limited to, those to whom section 1 applies. This reflects Articles 6 and 7 of the Liability Annex. See, in particular, Article 6(1).
14. *Subsection (2)* provides that where the Crown, or a person specifically authorised by the Crown, undertakes response action after an environmental emergency arising from activities organised by a person based in the United Kingdom, or from activities connected with the United Kingdom, the Government is entitled to recover the costs of such actions. See further section 10, which defines “the Crown” for the purposes of Part 1 of the Act. In practice, the most likely Crown entity to be involved in any response to an emergency in Antarctica will be the Royal Navy or the British Antarctic Survey.
15. *Subsection (3)* enables other Parties to the Liability Annex to recover the costs, through the British courts, of any reasonable response action that they have undertaken in respect of an environmental emergency arising from activities, provided that the activities giving rise to the environmental emergency were organised by a person based in the United Kingdom, or by a person based in a State that is not Party to Annex VI where the activities are connected with the United Kingdom. This reflects Article 7(1) of the Liability Annex.
16. *Subsection (4)* exempts the Crown and the other Parties to Annex VI from liability under this section 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.
17. *Subsections (6), (7) and (8)* set out the limitation period which applies to actions brought under this section. 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.

### ***Section 3 – Liability to Antarctic Environmental Liability Fund***

18. This section applies to cases where the organiser of the activities which gave rise, directly or indirectly, to an environmental emergency in Antarctica fails to take reasonable, prompt and effective response action, and no response action is taken by any Party to Annex VI. In such cases, the amount that reasonable, prompt and effective response action would have cost becomes a liability which the organiser of the activities is liable to pay to the Antarctic Environmental Liability Fund. The Fund will be established under Article 12 of the Liability Annex, and will be 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.
19. *Subsection (2)* provides that in cases involving the activities of the Crown (as defined in section 10), the Secretary of State shall be required to make a direct payment to the Antarctic Environmental Liability Fund of an amount equal to the recoverable costs of the response action. In practice, this will be the Secretary of State responsible for the activities in question.
20. *Subsection (3)* makes provision about payment into the Fund by a person other than the Crown who is liable under this section. *Subsection (4)* exempts the Crown and any other Party to the Liability Annex from any liability under subsection (3) (the Crown is exempted because its liability is under subsection (2)).
21. Where the person organising the activities is based in the United Kingdom, or the activities are connected with the United Kingdom, *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 to do so directly 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.

### ***Section 4 and Schedule – Civil liability: supplementary***

22. *Paragraphs 1 and 2* of the Schedule set out the limits to the amounts recoverable under sections 2 and 3. 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 equivalent to US\$4.5 million is applicable to environmental emergencies not involving ships.
23. To allow for the implementation of any amendments to the financial limits in Article 9 of the Liability Annex that may be adopted by the Antarctic Treaty Consultative Parties under Article 9(4), *paragraph 1(4)* of the Schedule provides for the Secretary of State to amend the limits in *paragraph 1(2) and (3)* by order.
24. *Paragraph 1(5)* of the Schedule provides that where the environmental emergency was caused intentionally, or recklessly and with knowledge that such an environmental emergency would probably result, the liability is not limited by the levels set out in this paragraph. This reflects Article 9(3) of the Liability Annex.
25. *Paragraph 2* of the Schedule provides for the circumstances where there is liability under both the Act and Schedule 7 to the Merchant Shipping Act 1995. Sections 2 and

*These notes refer to the Antarctic Act 2013 (c.15)  
which received Royal Assent on 26 March 2013*

3 of the Act provide for liability to cover the reasonable costs of response action in the event of an environmental emergency. If the limit on liability in the Merchant Shipping Act 1995 allows for more of the reasonable costs of response to be recovered than the limits in paragraph 1, then paragraph 1 does not apply. However, if applying the limits on liability in the Merchant Shipping Act would result in a lower amount being recovered towards the reasonable costs of response than is laid out in paragraph 1, then the limits in that Act do not apply. The result is that at least the amounts laid down in paragraph 1 are always recoverable to cover the costs of reasonable response action.

26. *Paragraph 3* of the Schedule 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.
27. *Paragraphs 4 and 5* of the Schedule prevent double recovery of costs. So, for example, an organiser is not liable in respect of costs that he/she or another person has already paid under the provisions of the Act or of Annex VI as implemented in another State. Neither is an organiser to be liable under both the provisions of the Act and under Part 9 of the Merchant Shipping Act 1995 (which deals with salvage and wrecks) in respect of the same costs.