
STATUTORY INSTRUMENTS

1995 No. 490

The Antarctic Regulations 1995

PART 1

GENERAL

Citation and commencement

1. These Regulations may be cited as the Antarctic Regulations 1995 and shall come into force on such day as the Secretary of State may by order appoint and different days may be appointed for different provisions and different purposes.

Interpretation

2.—(1) In these Regulations “the Act” means the Antarctic Act 1994, and expressions used in these Regulations have, unless the contrary intention appears, the meaning which they bear in the Act.

(2) Any reference in these Regulations to a communication “in writing” shall include a reference to a communication by telex, facsimile or other similar instantaneous means which produces a document containing a text of the communication.

(3) Any reference in these Regulations to the Secretary of State with respect to the application, grant, production, revocation or suspension of a permit for the purposes of section 11 or 12 of the Act shall include a reference to any person exercising the powers of the Secretary of State for those purposes in accordance with a delegation given under section 16 of the Act.

(4) Any reference in these Regulations to a numbered regulation shall be construed as a reference to the regulation bearing that number in these Regulations.

(5) Any period of time specified in these Regulations by reference to days, working days or months—

(a) where such period is expressed to begin after a particular date, shall begin on the first day after that date, and shall be inclusive of the last day unless that day falls on a Saturday, Sunday, Christmas Day, Good Friday or any other day appointed by law to be a bank holiday in any part of the United Kingdom, in which case the period shall run to the immediately following working day; and

(b) where such period is expressed to run or to expire before a particular date or event, the period shall be calculated to expire on the last working day before the particular date or the date of that event.

(6) In computing any period of time specified in these Regulations by reference to working days there shall be disregarded the whole of any Saturday, Sunday, Christmas Day, Good Friday or any other day appointed by law to be a bank holiday in any part of the United Kingdom.

Service of documents

3.—(1) Anything required to be served on any person under these Regulations or the Act shall be set out in a notice in writing which may be served either—

- (a) by delivering it to that person;
- (b) by leaving it at his proper address;
- (c) by sending it by post to that address; or
- (d) by sending it to him at that address by telex, facsimile or other similar instantaneous means which produces a document containing a text of the communication, in which event the document shall be regarded as served when it is transmitted,

and where the person is a body corporate the document may be served, by any of these means, upon the Secretary of that body.

(2) When a document is sent by post it shall be deemed to have been received 3 working days after despatch if posted to an address within the United Kingdom and 7 working days if posted to an address elsewhere.

(3) For the purposes of this regulation the proper address of any person shall in the case of a body corporate be the registered or principal office of that body and in any other case shall be the last known address of the person.

PART 2

PERMITS

Applications for permits under sections 3, 4, 5 and 6 of the Act

4.—(1) An application for a permit under section 3, 4, 5 or 6 of the Act shall be made to the Secretary of State in such form, and accompanied by such number of copies, as he may require.

(2) No later than 7 days after making the application, the applicant shall cause notice of the application to be published in the London Gazette in such form and containing such information as the Secretary of State may require.

(3) The applicant shall during the period the application is pending—

- (a) make available a copy of the application for inspection during normal office hours by any person who may so request; and
- (b) provide copies of the application to any person on receipt of a request in writing, subject to payment of reasonable charges for supplying the copies, including postage.

Initial Environmental Evaluation

5.—(1) If the Secretary of State considers that the activity for which an application has been made under regulation 4 is likely to have more than a negligible impact on the environment of Antarctica, he shall, unless he has required the applicant to submit a draft Comprehensive Environmental Evaluation in accordance with regulation 6(1), require the applicant to submit to him an Initial Environmental Evaluation.

(2) An Initial Environmental Evaluation shall be in such form, and accompanied by such number of copies, as the Secretary of State may require and shall contain sufficient information for the Secretary of State to be able to assess—

- (a) the scale of the impact which the proposed activity may have on the environment of Antarctica;

- (b) whether, in the light of existing and known planned activities, it may have a cumulative impact; and
 - (c) whether there may be alternative ways of carrying out the proposed activity which might lessen the environmental impact or possible cumulative impact.
- (3) The applicant shall during the period the application is pending—
- (a) make available a copy of the Initial Environmental Evaluation for inspection during normal office hours by any person who may so request; and
 - (b) provide copies of the Initial Environmental Evaluation to any person on receipt of a request in writing, subject to payment of reasonable charges for supplying the copies, including postage.
- (4) The Secretary of State shall cause to be published annually a list of the Initial Environmental Evaluations submitted to him in accordance with this regulation during the preceding 12 months.

Comprehensive Environmental Evaluation

6.—(1) If the Secretary of State at any time after the making of an application considers that the activity which is the subject of the application is likely to have more than a minor or transitory impact on the environment of Antarctica, he shall require the applicant to submit to him a draft Comprehensive Environmental Evaluation.

(2) Such draft Comprehensive Environmental Evaluation shall be in such form, and accompanied by such number of copies, as the Secretary of State may require and shall contain sufficient information for the Secretary of State to be able to consider or determine—

- (a) possible alternatives to the proposed activity, including the alternative of not proceeding with it;
- (b) the initial environmental reference state with which predicted changes are to be compared, and the likely future environmental state in the absence of the proposed activity;
- (c) whether the methods and data used to forecast the impacts of the proposed activity are satisfactory for that purpose;
- (d) the nature, extent, duration and intensity of the likely direct impacts of the proposed activity;
- (e) possible indirect or second order impacts of the proposed activity;
- (f) any cumulative impacts of the proposed activity in the light of existing activities and other known planned activities;
- (g) the measures which could be taken to minimize or mitigate impacts of the proposed activity, and whether a monitoring programme to verify foreseen impacts or detect unforeseen impacts, and provide early warning of any adverse effects of the activity, should be provided for;
- (h) the measures which could be taken to deal promptly and effectively with accidents;
- (i) whether there may be any unavoidable impacts of the proposed activity;
- (j) the effects of the proposed activity on the conduct of scientific research and on other existing uses and values; and
- (k) whether there are gaps in knowledge or uncertainties with regard to the possible impact of the proposed activity.

(a) (3) (a) When so required by the Secretary of State, the applicant shall submit to him a final Comprehensive Environmental Evaluation in such form, and accompanied by such number of copies, as the Secretary of State may require.

(b) When making such a requirement the Secretary of State shall provide the applicant with

- (i) any comments in writing on the draft Comprehensive Environmental Evaluation which have been received by the Secretary of State from any person in accordance with paragraph (5);
- (ii) any comments on such Evaluation from another Contracting Party;
- (iii) any advice in respect of such Evaluation from the Committee for Environmental Protection established under the Protocol; and
- (iv) an account of the consideration by the Antarctic Treaty Consultative Meeting of such Evaluation in the light of such advice,

and the applicant shall, in preparing the final Comprehensive Environmental Evaluation, take into account such comments, advice and account and include or summarize them in the final Comprehensive Environmental Evaluation.

(4) The Secretary of State shall, while an application is pending and for one year thereafter, make available the draft and the final Comprehensive Environmental Evaluation for inspection during normal office hours by any person who may so request in writing, and shall provide any person with copies on request in writing subject to payment of reasonable charges for supplying the copies, including postage.

(5) The Secretary of State shall, by a notice published in the London Gazette, notify receipt by him of each draft Comprehensive Environmental Evaluation and each final Comprehensive Environmental Evaluation, draw attention to the provisions of paragraph (4), and invite comments in writing, in the case of a draft Comprehensive Environmental Evaluation, within 90 days of publication of the notice and, in the case of a final Comprehensive Environmental Evaluation, within 30 days of the publication of the notice.

(6) The Secretary of State in taking his decision whether to grant a permit shall take into account any comments in writing submitted to him by any person in accordance with paragraph (5), if the comments are received within the relevant period specified in that paragraph.

Refusal of Permits under sections 3, 4, 5 and 6 of the Act

7. If the Secretary of State decides not to grant a permit under section 3, 4, 5 or 6 of the Act he shall so inform the applicant in writing giving his reasons.

Applications for and refusals of permits under sections 11 and 12 of the Act

8.—(1) An application for a permit under section 11 or 12 of the Act shall be made to the Secretary of State in such form, and accompanied by such number of copies, as he may require.

(2) If the Secretary of State decides not to grant such a permit he shall so inform the applicant in writing giving his reasons.

Production of permits

9.—(1) Subject to the provisions of this regulation, when there is reason to believe that a person has carried out (or is carrying out or may be about to carry out) an activity for which a permit is required by section 3(1), 4(1), 5(1), 6(1), 7(1), 8(1), 9(1) or 11(1) of the Act, an authorised person may require that person to produce, or cause to be produced, within 5 days after the request has been made, a permit granted under the Act authorising that activity.

(2) Where a permit has been granted to a person in respect of another specified person or of persons of a specified description, the requirement in paragraph (1) to produce the permit shall apply also to such person or persons.

(3) The requirements of the preceding paragraphs may be satisfied by the production of a true photocopy of the permit.

(4) An authorised person shall have the power to inspect and copy any permit which he has the power pursuant to this regulation to require to be produced to him.

(5) For the purpose of this regulation—

“authorised person” means the Secretary of State and

- (a) in the United Kingdom
 - (i) a justice of the peace or a sheriff;
 - (ii) a constable;
 - (iii) a harbour master;
 - (iv) an aerodrome manager;
 - (v) a customs or immigration officer; or
 - (vi) any other person authorised by the Secretary of State in writing for the purpose of this regulation either generally or in a particular case,and for the purposes of sub-paragraph (iv) “aerodrome manager” means the aviation authority, local authority or any other person by whom the aerodrome is managed;
- (b) anywhere in Antarctica
 - (i) a station manager (that is to say any person who is for the time being running a station in Antarctica on behalf of the Director of the British Antarctic Survey);
 - (ii) any person authorised by the Secretary of State in writing for the purpose of this regulation either generally or in a particular case; or
 - (iii) in respect of permits granted under section 12 of the Act, any person designated as an observer by a party to the Antarctic Treaty in accordance with Article VII thereof;
- (c) only in the British Antarctic Territory
 - (i) a magistrate of the British Antarctic Territory; or
 - (ii) a public officer of the British Antarctic Territory;
- (d) south of the Antarctic Convergence: in respect of permits granted under section 11 of the Act, any person designated as an inspector by a Member of the Commission for the Conservation of Antarctic Marine Living Resources under Article XXIV of the Convention;
- (e) in respect of a British vessel in the seas south of 60° South latitude
 - (i) a British naval officer; or
 - (ii) the master of a vessel operated by or on behalf of the British Antarctic Survey.

Revocation and suspension of permits

10.—(1) Subject to the provisions of this regulation, the Secretary of State may revoke or suspend wholly or in part any permit granted under the Act; and where a permit has been granted in respect of more than one specified person (or vessel or aircraft), or in respect of persons (or vessels or aircraft) of a description specified in the permit, the revocation or suspension may be limited to such persons (or such vessels or aircraft), or to persons (or vessels or aircraft) of such description, as may be specified by the Secretary of State in the notice of revocation or suspension.

(2) Save as provided in paragraph (3), the Secretary of State may exercise his powers under paragraph (1) only after giving 28 days notice to the permit-holder of his intention to do so and after due consideration of any representations made in writing by or on behalf of the permit-holder (or any person specified or of a description specified in the permit).

(3) If, by reason of the urgency of the matter, it appears to the Secretary of State to be necessary for him to do so he may provisionally suspend a permit without complying with the requirements of paragraph (2), but he shall in any such case comply with those requirements as soon thereafter as is reasonably practicable, and shall then either—

- (a) revoke the provisional suspension of the permit; or
- (b) substitute therefor a definitive revocation or suspension which, if a definitive suspension, may be for the same or a different period as the provisional suspension (if any).

(4) The powers vested in the Secretary of State by paragraph (1) and paragraph (3) may be exercised by him if it appears to him that—

- (a) the permit was procured by fraud or misrepresentation;
- (b) the application for the permit contained a material error or omission;
- (c) the holder of the permit, or a person or persons specified in it, or of a description specified in it, are not fit and proper persons to carry out an activity authorised by the permit;
- (d) there has been a material change in the circumstances under which an activity authorised by the permit would be or is being carried out (including receipt by the Secretary of State of information as to the environmental impact of the activity which was not previously available) such that the continuation of the activity would have an unacceptable impact on the Antarctic environment;
- (e) the carrying out or continuation of an activity authorised by the permit would be undesirable because of an emergency which has arisen subsequent to the grant of the permit;
- (f) the person to whom the permit was granted (or any person or persons specified in it or of a description specified in it) will not be able to comply with a material condition of the permit;
- (g) there has been a breach of a condition of the permit;
- (h) the holder of the permit has purported to transfer, or has given possession of, the permit (or a copy of it) to a person who is not entitled to hold it; or
- (i) the permit (or a copy of it) has been altered or defaced.

(5) The permit-holder or any person having possession or custody of any permit which has been revoked or suspended under this regulation shall surrender it and any copies of it to the Secretary of State within a reasonable time of being required by him to do so.

(6) References in this regulation to the “permit-holder” are references to the person to whom any permit to which this Part applies has been granted.

PART 3

THE TRIBUNAL

Antarctic Act Tribunal: establishment and jurisdiction

11.—(1) For the purpose of performing the functions conferred by this regulation there shall be a tribunal to be called the Antarctic Act Tribunal (hereinafter referred to as “the Tribunal”).

(2) If a permit granted under section 3, 4, 5 or 6 of the Act has been revoked or suspended in accordance with regulation 10, the person to whom the permit was granted or any person specified in the permit may appeal to the Tribunal.

(3) The Tribunal shall consider—

- (a) whether the Secretary of State had grounds under regulation 10 for his decision; and
 - (b) if the Tribunal is satisfied that he did have such grounds, whether, taking into account all the circumstances, the decision was reasonable.
- (4) The Tribunal may dismiss the appeal or order the Secretary of State to reinstate the permit with such variations (if any) as the Tribunal may decide.

Constitution of the Tribunal

- 12.**—(1) The Tribunal shall consist of a Chairman and two other members.
- (2) The Chairman shall be appointed by the Secretary of State after consultation with the Lord Chancellor.
- (3) The other two members shall be appointed by the Secretary of State, who in so doing shall take account of the nature of the activity which is the subject of the permit and the reasons given by him for revoking or suspending the permit if they are related to the nature of the activity.
- (4) No member of the Tribunal shall be an officer of the Crown.
- (5) The Secretary of the Tribunal (hereinafter referred to as “the Secretary”) shall be such person as may be appointed for this purpose from time to time by the Secretary of State.

Procedure

13.—(1) An appeal shall be entertained by the Tribunal if the appellant, within 28 days of receipt by him of the notification of the revocation or suspension, lodges with the Secretary copies of the notice of revocation or suspension, of any representations concerning it made by him to the Secretary of State, and his grounds of appeal:

Provided that the Tribunal may waive the time limit for lodging the appeal if it is satisfied that in the circumstances the appellant could not reasonably be expected to lodge (or to have lodged) his appeal within the period prescribed.

- (2) The Secretary, on being informed of the appeal, shall without delay fix a convenient date and place for the hearing of it and shall duly inform the appellant and the Secretary of State not later than 14 days before the date of the hearing, or such shorter time as the parties and the Tribunal may agree.
- (3) The Tribunal shall conduct the hearing in such manner as it considers most suitable to the clarification of the issues before it and generally to the just handling of the proceedings; and it shall so far as appears to it appropriate seek to avoid formality in its proceedings.
- (4) The parties shall be heard in such order as the Tribunal shall determine; they shall be entitled to give evidence, to call witnesses, to question any witnesses and to address the Tribunal both on the evidence and generally on the subject matter of the appeal.
- (5) The Tribunal may determine the appeal without an oral hearing unless either party requests one.
- (6) The oral hearings of the Tribunal shall be in public, unless the Tribunal decides otherwise with regard to a particular hearing or part of a hearing at which evidence to be presented would disclose intimate personal or financial circumstances, commercially sensitive information, information communicated or obtained in confidence or matters concerning national security or diplomatic relations, and the interests of justice do not require such evidence to be heard in public.
- (a) (7) (a) The appellant shall have the right to be represented in person or by counsel, solicitor or advocate or, with the permission of the Tribunal, by any other representative as he may select.
 - (b) The Secretary of State may be represented by any person instructed in that behalf.

(8) The Tribunal may require any witness to give evidence on oath or affirmation and for that purpose there may be administered an oath or affirmation in due form.

(9) In the event of a difference of opinion amongst the members of the Tribunal, the decision of the majority shall become the finding of the Tribunal.

(10) The decision of the Tribunal shall be notified to the parties in writing by the Secretary and shall include the reasons for the finding.

(11) The Tribunal shall not have any power to order the payment of any costs or expenses.

(12) When the Tribunal is not sitting the Chairman may, if he considers it necessary or expedient, exercise the powers of the Tribunal on behalf of the other members, other than the decision of an appeal (not being a decision on an unopposed appeal).

(13) A member of the Council on Tribunals or of the Scottish Committee of the Council on Tribunals may attend any oral hearing, including any held in private, and may be present during the deliberations of the Tribunal, but shall take no part in those deliberations.

(14) Subject to the provisions of this Part, the Tribunal shall have power to regulate its own procedure.

PART 4

SPECIAL AREAS

Restricted Areas

14. For the purposes of section 9(1) of the Act, the areas listed and described in Schedule 1 to these Regulations are hereby designated as areas restricted under the Protocol.

Antarctic Historic Sites and Monuments

15. For the purposes of section 10(1) of the Act, the sites and monuments listed in Schedule 2 to these Regulations are hereby designated as Antarctic Historic Sites and Monuments.

Protected Places

16. For the purposes of section 11(1) of the Act, the places listed in Schedule 3 to these Regulations are hereby designated as places protected under the Convention.

PART 5

OFFENCES UNDER THE ACT

Application of Part 5

17. This Part applies when the Secretary of State has reasonable grounds for believing that a United Kingdom national (hereinafter referred to as “the suspect”) has committed an offence under the Act (hereinafter referred to as “the offence”) and is in any part of Antarctica or, in respect of those offences referred to in section 29(1)(a), is in any part of the area south of the Antarctic Convergence.

Arrest and conveyance in custody

18.—(1) A court in any part of the United Kingdom having jurisdiction in respect of the offence may, on the application of a person entitled under section 28 of the Act to institute proceedings in that court in respect of the offence, issue a warrant for the arrest of the suspect and his conveyance in custody to any place where he can be tried for the offence in that part of the United Kingdom.

(2) Once arrested the person the subject of the warrant (hereinafter referred to as “the accused”) shall be deemed to be in legal custody at any time when, being in the British Antarctic Territory (or any other part of Antarctica), or other British territory, or on board a British ship or British aircraft, he is being taken under the warrant to or from any place or being kept in custody under the warrant.

(3) A person authorised by the warrant to take the accused to or from any place or to keep him in custody (hereafter referred to as “the authorised person”) shall have all the powers, authority, protection and privileges

- (a) when he is outside the United Kingdom, of a constable in the part of the United Kingdom to which the accused is to be taken under the warrant; or
- (b) of a constable in the part of the United Kingdom in which the authorised person is for the time being.

(4) If the accused escapes he may be arrested without warrant by a constable and taken to any place to which he may be taken under the warrant.

(5) In paragraph (2)—

“British aircraft” means a British-controlled aircraft within the meaning of section 92 of the Civil Aviation Act 1982⁽¹⁾ (application of criminal law to aircraft) or one of Her Majesty’s aircraft;

“British hovercraft” means a British-controlled hovercraft within the meaning of that section as applied in relation to hovercraft by virtue of provisions made under the Hovercraft Act 1968⁽²⁾ or one of Her Majesty’s hovercraft; and

“British ship” means a British ship for the purpose of the Merchant Shipping Acts 1894 to 1988 or one of Her Majesty’s ships;

and in this paragraph references to Her Majesty’s aircraft, hovercraft or ships are references to aircraft, hovercraft or, as the case may be, ships belonging to or exclusively employed in the service of Her Majesty in right of the Government of the United Kingdom.

(6) In paragraph (4) “constable” means

- (a) in relation to any part of the United Kingdom, any person who is a constable in that or any other part of the United Kingdom or any person who at the place in question has under any enactment, including paragraph (3), the powers of a constable in that or any other part of the United Kingdom; or
- (b) in relation to a British territory outside the United Kingdom, any person who is a police officer in that territory or any person who in that territory has the powers of a police officer.

Physical evidence

19.—(1) The authorised person may seize and detain any article which may be evidence connected with the offence and convey it to any place in the United Kingdom where the accused can be tried.

(1) 1982 c. 16.

(2) 1968 c. 59.

(2) Where it is necessary for any article to be accompanied by any certificate, affidavit or other verifying document the authorised person shall also furnish for transmission such document of that nature as may be specified in any direction given by the Secretary of State.

(3) Where the article consists of a document, the original or a copy may be transmitted, and where it consists of any other article the article itself or a description, photograph or other representation of it may be transmitted.

Attendance of witnesses

20.—(1) This regulation applies where the Secretary of State is notified by the court in the place in the United Kingdom where the accused is being tried or is to be tried that a United Kingdom national who has been called to give evidence (hereinafter referred to as “the witness”) has failed to comply with the order of the court, or is believed by the court to be unlikely to comply, and is in Antarctica or in the area south of the Antarctic Convergence, as the case may be.

(2) If the Secretary of State receives a notification in accordance with paragraph (1) he may issue a warrant for the arrest of the witness.

(3) The provisions of paragraphs (2) to (6) of regulation 18 shall apply to the arrest and conveyance in custody of the witness as they apply to the accused.

(4) Once in the United Kingdom the witness shall be delivered by the authorised person to the court which made the notification under paragraph (1).

20th February 1995

Douglas Hurd
Secretary of State for Foreign and
Commonwealth Affairs