



The Antarctic Bill

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The original proposal for an Antarctic Bill was put forward by the previous Government who published a consultation and Draft Bill in December 2009. This Bill would implement a new annex to the Antarctic Treaty that was agreed in 2005. The Annex, on Liability Arising from Environmental Emergencies, requires anyone undertaking activities in Antarctica to ensure measures are in place to prevent any environmental damage, together with contingency plans to deal with any damage that might occur.

The current Antarctic Bill is a hand-out Bill which has been taken up by Neil Carmichael MP, who will take it through the House of Commons as a Private Member's Bill. The Bill has Government support and is due to have its Second Reading on 2 November 2012. It will be based on the Bill consulted on by the previous Government, although it will not contain what was Part 2 of the original Bill covering the requirement for contingency and safety planning for all British operators.

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1 Background

The original proposal for an Antarctic Bill came from the previous Government who published a consultation and Draft Bill in December 2009. The Bill would implement a new annex to the Antarctic Treaty that was agreed in 2005. The Annex, on [Liability Arising from Environmental Emergencies](#), requires anyone undertaking activities in Antarctica to ensure measures are in place to prevent any environmental damage, together with contingency plans to deal with any damage that might occur.

2 The Antarctic Treaty

The [Antarctic Treaty](#) that governs the region has been in place since 1959. The Treaty froze all territorial disputes relating to the continent in order to further peaceful scientific investigation and conservation there, and its 1991 Protocol introduced stringent measures on environmental protection including a 50-year moratorium on mineral extraction. Library Briefing Note [SN5040 Antarctica: the treaty system and territorial claims](#) covers the Treaty in detail.

3 Current UK Permitting Requirements

The current permit requirements for British expeditions entering the Antarctic were introduced through the [Antarctic Act 1994](#), which implemented the Treaty’s [Protocol on Environmental Protection](#). The Act requires a permit for any member of a British expedition, unless they have one from another contracting party to the Treaty. The [guidance](#) on permit applications from the Foreign and Commonwealth Office (FCO) defines a British expedition as follows:

A "British expedition" is one that is organised in, or whose place of final departure for Antarctica is, the United Kingdom. The Act has been extended to United Kingdom Dependent Territories, and an expedition which is organised in, or whose final place of departure for Antarctica is, for example, the Falkland Islands or South Georgia, will also be a "British expedition". A "British expedition" does not have to be composed of UK nationals. The Antarctic Act requires a permit for any member of a British expedition (whatever their nationality) to enter or remain in Antarctica.

Additional permits are required for those staying on a research station or carrying out any mineral resource activities, any activity that may interfere with native flora and fauna, any intended introduction of a non-native species. Permits are also required for anyone wanting to enter any Specially Protected Areas.

Environmental Requirements

The Antarctic is a pristine and highly sensitive environment. To ensure minimal impacts part of the permit application process requires the completion of a Preliminary Environmental Impact Questionnaire. Depending on the potential impact of any activity a more rigorous Environmental Evaluation may be required. The FCO states that it “*will not normally authorise activities for non-scientific purposes which are likely to have more than a minor or transitory impact on the Antarctic environment.*”

To prevent the introduction of non-native species no live animals are allowed on any vessels entering the Antarctic region. Vessels also have to take measures to prevent the transport of rodents, particularly rats. Checking of all goods, equipment and clothing is recommended, including decontamination as required.

The accumulation of waste products has been a problem in the region in the past, particularly around research stations. Those applying for a permit have to meet the requirements of Annexes III (waste disposal) and IV (marine pollution) to the Environmental Protocol. The [guidance](#) sets out what materials have to be removed, which can be disposed of once made sterile and how other wastes, such as sewage, can be disposed of.

The following products are prohibited:

No polychlorinated biphenyls (PCBs), non-sterile soil, polystyrene beads, chips or similar forms of packaging, or pesticides (other than those required for scientific, medical or hygiene purposes) must be introduced onto land or ice shelves or into water in Antarctica.

Currently there is no requirement for expeditions to have contingency plans to deal with any environmental emergencies.

Medical, Emergency Procedures & Insurance

Permit applications must also show that adequate contingency measures have been put in place to deal with health and safety issues, any medical emergencies (including evacuations) and provide adequate search and rescue arrangements. There is also a requirement to ensure adequate insurance to cover the cost of any of the above.

4 Antarctic Bill 2009 Consultation.

The previous Government consulted on a [Draft Antarctic Bill](#) in November 2009. The aim of the Bill was to:

- Implement the Liability Annex which requires expeditions to have contingency plans to deal with any environmental emergencies.

The intention is for this part of the Bill not to come into force until the Annex itself is ratified and comes into force, so as not to disadvantage British expeditions.

- Extend the requirement for contingency and safety plans to all British operators, whichever country they obtain their permits from;

- Allow the FCO to issue permits to foreign nationals on British expeditions and
- Enhance the protection of plant and animal species in Antarctica.

The implications of the proposals for operators were summarised in the consultation as follows:

The proposals in the draft Bill are aimed at enhancing contingency planning and the mitigation of environmental emergencies. Antarctic operators will be required to take response action where their activities give rise to an environmental emergency. Additionally, operators will be required to secure adequate insurance, or demonstrate other financial guarantees, against the costs of response action to environmental emergencies. A framework will be established through which any State Party which takes response action, where an operator has failed to do so, will be able to recover their costs.

All Antarctic expeditions will also be required to demonstrate that they have developed comprehensive contingency plans, including arrangements for search and rescue and evacuation from Antarctica in the event of emergency. As these plans will not be able to rely on others in Antarctica without their express permission, the intention is to minimise the possibility of rescue attempts by those ill-equipped to respond.

The enhanced protection for marine plants and invertebrates brings these species into line with other flora and fauna protection in Antarctica. Scientific research on these species will now be subject to permitting requirements under the Antarctic Act 1994. The amendment to the Act to enable the UK to grant permits to non-British nationals on British expeditions will enable foreign scientists working in the UK, for example, to apply to the UK for authorisation, rather than their national Governments. Finally, the conservation of Historic Sites and Monuments will now be able to be authorised through the Antarctic Act permitting regime.

In the [responses to the consultation](#) published in April 2010, some of the concerns raised were the level of liability that might be incurred by smaller expedition operators or commercial fishing operators; and whether it would be expedition organisers or their employees who would be liable for any damage.

In the response the Government announced that following some amendments - mainly to address some of the technical issues raised during the consultation - a Bill would be put forward as soon as parliamentary time became available.

5 Neil Carmichael's Antarctic Bill

The Antarctic Bill is a hand-out Bill which has been taken up by Neil Carmichael MP, who will take it through the House of Commons. The Bill has Government support and is due to have its Second Reading on 2 November 2012. It will be based on the Bill consulted on by the previous Government.

The Bill will not contain what was Part 2 of the original Bill covering the requirement for contingency and safety planning, including search and rescue, for all British operators regardless of the country granting their permit. According to FCO officials this can be addressed through the permitting system and will not require legislation.

The FCO has summarised what is proposed in the Bill as follows:

Part 1 of the Bill implements the Annex into UK legislation, and includes new civil and criminal offences for any failure to take adequate preventative measures before travel to Antarctica, or failure to take appropriate response actions following an environmental emergency. In cases where British operators do not take appropriate response action, the Bill provides for another Party to the Liability Annex which did take response action to sue for the costs of such action through the British courts. Where no-one takes response action, the operator would be obliged to pay an amount equivalent to the costs that would have arisen had response action been taken into an international fund, which will be used for future environmental protection of Antarctica. Part 1 would not come into force until the Liability Annex itself is in force, in order to provide a level playing field for British Antarctic operators.

Part 2 implements some recently agreed revisions to Annex II of the Environmental Protocol on the Conservation of Antarctica Fauna and Flora, to provide for additional protection of the Antarctic environment, particularly in response to climate change and enhanced understanding of the fragile Antarctic environment. This part also updates the Antarctic Act 1994 to facilitate better regulation of British activities in Antarctica, including to respond to the increasing internationalisation of Antarctic expeditions and to enhance protection to the Antarctic marine environment.¹

¹ FCO, Antarctic Bill Executive Summary, June 2012