

10 May 2018

Tom Tugendhat MP
Chair, Foreign Affairs Committee
Committee Office
House of Commons
London
SW1A 0AA

Dear Tom

Post-Legislative Scrutiny of the Antarctic Act 2013

I am writing to seek the Committee's agreement to postpone its assessment of the Antarctic Act 2013 (the '2013' Act). The Government has undertaken in most cases to publish a post-legislative scrutiny memoranda for Acts, generally within five years of Royal Assent, unless the relevant departmental select committee agrees that one is not required or should be published at a later date.

The Antarctic Act 2013 (the '2013 Act') received Royal Assent in March 2013. Its primary aim was to implement into UK law the decision of the Parties to the Antarctic Treaty to add a new Annex to its Environmental Protocol covering liability for environmental emergencies in Antarctica. In essence, this is a "polluter pays" mechanism, which requires any expedition to have the capacity to clean up any environmental damage they may cause, while imposing financial responsibility on those that fail to do so.

The UK was a leading force in drafting this new Annex and sought early ratification in the UK on the proviso that it would not be brought into force until all Antarctic Treaty Parties have ratified the new Annex. Currently 14 countries have still to do so and as such, Part 1 of the 2013 Act has not been commenced, although we continue to hold our operators in Antarctica to the highest environmental standards.

The 2013 Act also made some relatively minor amendments to the Antarctic Act 1994; these changes came into force two months after Royal Assent. These covered additional measures to prevent the introduction of non-native species to Antarctica; protection for marine plants and invertebrates; measures to assist the management of British heritage in Antarctica, as well as some technical amendments to improve the functioning of the permitting system operated by the Foreign and Commonwealth Office.

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Given that the primary purpose of the 2013 Act has yet to be commenced I am therefore seeking the Committee's agreement that the 2013 Act is not yet suitable for Post-Legislative Scrutiny and that such an assessment should be delayed until three to five years after Part 1 had been commenced. My officials would ensure the Committee is notified when Part 1 comes into force.

I hope this explanation will prove satisfactory to the Committee.

RT HON SIR ALAN DUNCAN MP

Attachment to Letter

Provisions of the Antarctic Act 2013

Antarctica is one of the world's most pristine natural environments. The Southern Ocean has surprising biological diversity. On its own this is enough to make an environmental emergency in Antarctica potentially devastating. The continent's remoteness, harsh operating conditions and relative lack of infrastructure only serve to exacerbate any potential impacts.

It was for these reasons that the countries party to the Antarctic Treaty agreed, in 2005, Annex VI to the Protocol on Environmental Protection to the Antarctic Treaty System – the so called “Liability Annex” – to set rules governing who is liable for preventing and dealing with environmental emergencies arising from activities carried out in Antarctica.

Part 1 of the Antarctic Act 2013 implements the Liability Annex into UK law. It will enhance contingency planning for, and the mitigation of, environmental emergencies that occur in Antarctica. It requires operators to take response action where their activities give rise to an environmental emergency and makes them liable for the costs if they fail to do so. It will also facilitate the sharing of information around environmental emergencies, better enabling effective response action to be taken. It will only come into force once all signatories to the Annex have ratified it.

Part 2 of the Act implements a number of recent changes to Annex II to the Protocol on Environmental Protection on *Conservation of Antarctic Fauna and Flora*. It brings environmental protections for Antarctic marine plants and invertebrates in line with that afforded to their terrestrial counterparts. It makes other improvements to the Antarctic permitting regime to make it easier for non-UK nationals to take part on British expeditions to Antarctica and to assist in the conservation of British cultural heritage in Antarctica.