

**THIRD SUPPLEMENT TO THE GIBRALTAR
GAZETTE**

No. 3,685 of 20th November, 2008

B. 25/08

BILL

FOR

AN ACT to amend the Nature Protection Act.

ENACTED by the Legislature of Gibraltar.

Title and commencement.

1. This Act may be cited as the Nature Protection (Amendment) Act 2008 and comes into operation on the day of publication.

Amendment of Nature Protection Act 1991.

2.(1) The Nature Protection Act 1991 (“the principal Act”) is amended in accordance with the provisions of this section.

(2) In section 17PA of the principal Act—

(a) in subsection (1)—

- (i) after the words “European site or a European marine site” insert “has deteriorated,”;
- (ii) after the words “specifying the steps which are to be taken in order to” insert “remedy or”; and
- (iii) after the words “in so far as such deterioration” insert “has been or”;

(b) after subsection (1) insert—

“(1A) In considering deterioration under subsection (1) no regard shall be had as to whether such deterioration arises as a consequence of human activity or from a failure to act.”;

(c) in subsection (2)–

(i) after the words “occupier of land within such a site or where the deterioration” insert “was caused,”; and

(ii) after the words “as a result of an operation outside that site, to the person” insert “who undertook, is or will be”.

(3) For section 17RA of the principal Act substitute–

“17RA.(1) The Minister must make arrangements for the surveillance of the conservation status of–

(a) natural habitats of Community interest; and

(b) species of Community interest,

and in particular, the priority natural habitat types and the priority species.

(2) The surveillance measures under subsection (1) shall be carried out systematically and on a permanent basis and the extent of the surveillance required shall have regard to–

(a) whether the habitat or species is a priority natural habitat type or priority species;

(b) the conservation status of the habitat or species; and

(c) the extent, if any, to which that conservation status is under threat.

(3) The Minister must ensure that the surveillance subsection (1) is made available to the public via electronic or undertaken pursuant to other means.”.

(4) In section 17RB of the principal Act—

(a) in subsection (1)—

(i) for “If the Minister considers it necessary” substitute “The Minister must, as required,”; and

(ii) after the words “Article 11 of the Habitats Directive,” delete the words “he must”; and

(b) in subsection (2) for the words “Where the Minister considers that measures are necessary under subsection (1) he” substitute “Where measures are required under subsection (1), the Minister”.

(5) For section 17T(1)(b)(i) of the principal Act substitute—

“(i) if the disturbance is such as is likely to impair its ability to survive, breed or reproduce, or rear or otherwise care for its young, hibernate or migrate; or”.

(6) In after section 17T(U)(4) insert—

“(5) The defences in subsections (1) to (4) apply unless it is shown by the prosecution that the defendant’s action did not satisfy the following conditions—

(a) that there was no satisfactory alternative; and

(b) that the action was not detrimental to the maintenance of the populations of the species concerned at a favourable status in their natural range.”.

(7) For section 17VA of the principal Act substitute—

“Monitoring incidental capturing and killing.

17VA.(1) The Minister must, in accordance with the provisions of this section, establish a system to monitor the incidental capture and incidental killing, of animals of the species listed in Annex IV(a) to the Habitats Directive which takes place in Gibraltar.

- (2) The system established under subsection (1) shall incorporate the following elements–
 - (a) the identification of the risks of incidental capture and incidental killing to which those species are subject (including the activities which give rise to such risks); and
 - (b) the maintenance of records of the instances of incidental capture or incidental killing of animals of those species resulting from–
 - (i) the surveillance undertaken under section 17RA or pursuant to Article 11 of the Habitats Directive;
 - (ii) the monitoring carried out under this section or pursuant to Article 12(4); and
 - (iii) any other sources.
 - (3) In establishing the monitoring system the Minister may have regard to–
 - (a) the risks identified under subsection (2)(a);
 - (b) the instances of incidental capture and incidental killing recorded under subsection (2)(b);
 - (c) whether the species is a priority species; and
 - (d) the conservation status of the species and the extent to which that conservation status is under threat.
 - (4) The Minister shall make available to the public the information obtained from monitoring under subsection (1) via electronic or other means.”.
- (8) In section 17VB(1) of the principal Act–

- (a) for the words “If the Minister considers it necessary” substitute “The Minister, as required”; and
- (b) after “Article 12(4) of the Habitats Directive,” delete “he”.

EXPLANATORY MEMORANDUM

This Act amends the Nature Protection Act 1991 so as to—

- (a) provide that the regime concerning deterioration of sites set out in section 17PA includes deterioration from past conduct and to make it clear that when considering deterioration the fact that it may have arisen from human activity or from a failure to act is not to be taken into account;
- (b) make the system for the surveillance of the conservation status of habitats and sites be carried out systematically and permanently;
- (c) ensure that the offence created under section 17T(1)(b)(i) incorporates disturbance of hibernating or migrating species;
- (d) limit the defences available in section 17T to circumstances where there was no satisfactory alternative and the action was not detrimental to the maintenance of the populations of the species concerned at a favourable conservation status;
- (e) clarify the system required for the monitoring of incidental capture and killing of species set out in Annex IV(a) to the Habitats Directive.

**Printed by the Gibraltar Chronicle Limited
Printing Office, 2, Library Gardens,
Government Printers for Gibraltar,
Copies may be purchased at 6, Convent Place, Price £0.40p**