

**THIRD SUPPLEMENT TO THE GIBRALTAR
GAZETTE**

No. 3,713 of 21st May, 2009

B. 15/09

BILL

FOR

AN ACT to enable work on important Government projects to be undertaken during normally restricted hours when this is necessary or desirable in the public interest.

ENACTED by the Legislature of Gibraltar.

Title and commencement.

1. This Act may be cited as the Construction (Government Projects) Act 2009 and comes into operation on the day of publication.

Interpretation.

2. In this Act, unless the context otherwise requires—

“Certificate” means a certificate issued under section 3;

“construction work” shall be construed widely and includes the carrying out of demolition, building, engineering or other operations in, on, over or under land or sea;

“Government projects” means construction projects being undertaken by or on behalf of the Government or any company or other entity wholly owned and controlled by the Government;

“the Minister” means the Chief Minister;

“restricted hours” means any time or times during the day or night during which any other law applicable in Gibraltar curtails, restricts,

prohibits or sanctions the causing of noise, vibration, ambient airborne matter or any other source of nuisance or the execution of construction works for any other reason whatsoever.

Authorisation of construction works during restricted hours.

3.(1) If the Minister considers that the execution or continuation of construction works relating to Government projects during restricted hours is necessary or desirable in the public interest by virtue of the nature, importance or other characteristic or circumstance of the project or by virtue of the effect of the works on any other activity in or amenity of Gibraltar, or to the operation of any other facility in Gibraltar that is affected by the project and/or the construction works, he may issue a Certificate to that effect.

(2) The Minister may only issue a Certificate in respect of construction works on projects listed in Schedule 2.

(3) The Minister may place projects and/or construction works in Schedule 2 by notice published in the Gazette, but shall not do so without the approval of Parliament by Resolution of the House.

(4) A Certificate under subsection (1) may impose conditions, restrictions or limitations of any kind that the Minister, in his absolute discretion, considers appropriate.

(5) A Certificate under subsection (1) shall be issued in the form set out in Part 2 of Schedule 1, with such modifications as the Minister may consider appropriate or desirable.

(6) The Minister may at any time in his absolute discretion amend, modify or revoke a Certificate issued under this section, including any condition, restriction or limitation imposed and may impose new and additional conditions, restrictions or limitations.

(7) An application for a Certificate shall be submitted to the Chief Secretary, in writing, in the form set out in Part 1 of Schedule 1.

Monitoring.

4.(1) The Chief Environmental Health Officer shall be responsible for monitoring that any condition, restriction or limitation imposed in a Certificate are observed.

(2) In order to facilitate him in the execution of his duty the Chief Environmental Health Officer shall be afforded reasonable access to the construction work to which the Certificate relates and shall be allowed to inspect such documents as he may reasonably require for the purposes of discharging his duties under subsection (1).

Breach of condition.

5.(1) A person who considers that a condition, restriction or limitation imposed in a Certificate is being breached may lodge a complaint with the Chief Environmental Health Officer who may enquire as to the circumstances regarding the complaint.

(2) Where the Chief Environmental Health Officer is satisfied, whether as a result of a complaint under subsection (1) or otherwise, that a condition, limitation or restriction imposed in the Certificate has been breached he shall forthwith notify the person carrying out the construction works of the breach and the notice shall set out the date by which the breach is to be remedied.

(3) Where the Chief Environmental Health Officer observes that following the issue of a notice under subsection (2) the breach has not been remedied, he shall notify the Minister in writing and submit recommendations for remediation.

(4) Upon receipt of notice under subsection (3) the Minister shall consider whether to vary or extend the conditions, limitations and restrictions imposed in the Certificate, or revoke the Certificate or what other action, if any, to take.

Protection from suit or prosecution.

6.(1) Construction work that is covered by a Certificate does not constitute—

- (i) a statutory nuisance under the Public Health Act or any other Act;

- (ii) an offence under section 272 of the Criminal Offences Act or any other Act;
- (iii) an offence or nuisance under any rule of common law applicable in Gibraltar.

(2) To the extent that construction work covered by a Certificate interferes with a person's enjoyment and use of land, no civil action may be brought in respect of that interference.

Certificate cumulative.

7. A Certificate issued under this Act is cumulative to and does not replace a requirement for authorisation of construction works under the Town Planning Act or any other enactment.

Publication of Certificates.

8. The Minister shall cause every Certificate issued, renewed, or amended under this Act to be published as a Legal Notice in the Gazette.

Publication of Revocation.

9. If the Minister revokes a Certificate he shall cause notice of that revocation to be published in the Gazette by means of a Legal Notice, without prejudice to the fact that such revocation is effective for all purposes upon its service upon the person carrying out the works.

SCHEDULE 1

Section 3(7)

Part 1

FORM OF APPLICATION FOR CERTIFICATE

To: The Chief Secretary
Government of Gibraltar
No. 6 Convent Place
Gibraltar.

1. We *[name and address of contractor executing the works]* apply under section 3 of the Construction (Government Projects) Act 2009, for a Certificate to carry out the works described in paragraph 2 below, during restricted hours. The reasons for the application are set out in paragraph 3 below.
2. *[Identify the project, and the nature and location of the works to be carried out during restricted hours].*
3. *[Set out the reasons why the Certificate is requested, explaining why these reasons are thought to be within the provisions of section 3(1) of the Act].*

Signed.
Dated.

Section 3(5)

Part 2

FORM OF CERTIFICATE

Government of Gibraltar
No. 6 Convent Place
Gibraltar

Certificate under section 3 of the Construction (Government Projects) Act
2009

Part 1

The Certification

I hereby certify under and for the purposes of section 3 of the Construction (Government Projects) Act 2009, that it is necessary and desirable in the public interest that the construction works described in Part 2 below be executed and continued during restricted hours, subject to the conditions, restrictions and limitations set out in Part 3 below.

Part 2

Description of works

Part 3

Conditions, restrictions and limitations

[Date]

[Signature of Minister]

SCHEDULE 2

Section 3(2)

Construction works and projects in respect of which the Minister may issue
a Certificate

1. Works relating to the construction of a tunnel under the eastern end of the airport runway, and related construction works at both ends of that tunnel which would be affected by airport safety operational rules.
 2. Works relating to construction of simple approach lights at and off the western and eastern ends of the runway.
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EXPLANATORY MEMORANDUM

This Bill allows the Government to authorise work during restricted hours on important Government projects where the public interest requires it. The Government cannot do this in relation to a project unless Parliament has approved of it doing so in a Resolution of the Parliament. If the Parliament so approves, the project is added to the list in Schedule 2 of the Act. Schedule 2 of the Act as set out in the Bill contains only two projects, namely, the airport tunnel project and the project to install approach lights in the sea at both ends of the runway. This is required because the necessary cranes and equipment to carry out the works on these projects cannot be deployed on site during the day while the airport is in operation. It is not possible to dismantle and remove cranes and other equipment during the day every time an aircraft wishes to land and take off.

If a Certificate is issued for a Government project under this Act, the works are exempted from noise and other nuisance laws that curtail such activity during night time hours.

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