

THIRD SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 4782 GIBRALTAR Thursday 19th November 2020

B. 27/20

BILL

FOR

AN ACT to amend the Nature Protection Act 1991.

ENACTED by the Legislature of Gibraltar.

Title.

1. This Act may be cited as the Nature Protection (Amendment) Act 2020.

Commencement.

2. This Act comes into operation on the day of publication.

Amendment to the Nature Protection Act 1991.

3.(1) The Nature Protection Act 1991 is amended in accordance with the provisions of this section.

(2) For the long title, substitute-

“An Act to provide for the terrestrial and marine protection of wild birds, animals and plants, designation and preservation of protected areas for the purpose of nature conservation, provide for the implementation of any international obligation and matters incidental thereto.”.

(3) In section 2(1), after the definition of “aviculture” insert-

“Bern Convention” means the Council of Europe Convention on the Conservation of European Wildlife and Natural Habitats, signed in Bern on 19th September 1979;”.

(4) Delete section 2A.

(5) In section 2B-

- (a) in subsection (1), insert “, migratory” after the words “resident in”;
- (b) at the end of subsection (2) insert “and the needs of sub-species, varieties or forms at risk locally”;
- (c) at the end of subsection (3) insert “with particular attention to those specified in Appendices II and III of the Bern Convention as well as endangered and vulnerable species, especially endemic ones and endangered habitats”; and
- (d) in subsection (4), after paragraph (a) insert-
 - “(aa) conservation of endangered natural habitats;”.

(6) In section 5(1)-

- (a) in paragraph (e) delete “or”; and
- (b) after paragraph (e) insert-
 - “(ea) uses any indiscriminate means of capture or killing of any wild bird or uses any means capable of causing local disappearance of, or serious disturbance to, populations of a species, in particular, any means specified in Appendix IV of the Bern Convention; or”.

(7) In section 7A, in subsection (4), after the words “This section shall apply to” insert “migratory species specified in Appendices II and III of the Bern Convention and to”.

(8) After section 7A insert-

“Assessment and protection of all wild animal species.

8ZA.(1) The Minister, through appropriate means, must establish the conservation status of all wild animal species, in particular, wild animal species specified in Appendices II and III of the Bern Convention, on land, air or sea which are either resident in, migrating through or visitors to Gibraltar, BGTW or to both, and shall conduct such periodic reviews as may be required to maintain such information relevant and up to date.

(2) Based on the information obtained under subsection (1) the Minister must take such measures as are required to protect, maintain or adapt the population of such wild animal species at a level which corresponds in particular to ecological, scientific and cultural requirements, while taking account of economic and recreational requirements and the needs of sub-species, varieties or forms at risk locally.

- (3) In the light of the duties under subsection (2) the Minister must by order take such measures as are required to—
- (a) preserve, maintain or re-establish a sufficient diversity and area of habitats for all the wild animal species to which this section applies with particular attention to those specified in Appendices II and III of the Bern Convention as well as endangered and vulnerable species, especially endemic ones and endangered habitats;
 - (b) to protect areas of importance for the migratory species specified in Appendices II and III of the Bern Convention and which are appropriately situated in relation to migration routes, as wintering, staging, feeding, breeding or moulting areas; and
 - (c) to regulate any exploitation of wild animal species specified in Appendix III of the Bern Convention in order to keep such population out of danger.
- (4) For the purposes of subsection (3) the preservation, maintenance and re-establishment of biotopes and habitats shall include primarily the following measures—
- (a) creation of protected areas;
 - (b) conservation of endangered natural habitats;
 - (c) upkeep and management in accordance with the ecological needs of habitats—
 - (i) inside; and
 - (ii) outside,the protected zones;
 - (d) re-establishment of destroyed biotopes;
 - (e) creation of biotopes.
- (5) For the purposes of sub-section 3(c), the protection from exploitation of such species shall include primarily the following measures—
- (a) closed seasons and/or other procedures regulating the exploitation;
 - (b) the temporary or local prohibition of exploitation, as appropriate, in order to restore satisfactory population levels;

- (c) the regulation as appropriate of sale, keeping for sale, transport for sale or offering for sale of live and dead wild animals.”.

(9) In section 8-

(a) in subsection (1)-

- (i) after the words “any person intentionally” insert “or deliberately captures, keeps,”;
- (ii) after the words “specified in Schedule 1,” insert “or any wild animal species specified in Appendix II of the Bern Convention,”.

(b) in subsection (4)-

- (i) in paragraph (a) after the words “specified in Schedule 1” to the end, substitute “or any wild animal species specified in Appendix II of the Bern Convention, uses for shelter, protection, breeding or as a resting site;”;
- (ii) in paragraph (b) after the words “for that purposes” insert “particularly during the period of breeding, rearing and hibernation insofar as disturbance would be significant in relation to the objectives of the Bern Convention; or”;
- (iii) after paragraph (b) insert-
 - “(c) destroys or takes of eggs from the wild of any wild bird species specified in Appendix II of the Bern Convention or keeps these eggs even if empty,”.

(c) in subsection (5)(a)-

- (i) delete “(other than such an animal shown to have been imported into Gibraltar in accordance with the provision of any other relevant law)”;
- (ii) after the words “specified in Schedule 1” insert “or any wild animal species specified in Appendix II of the Bern Convention”; and
- (iii) after the words “such an animal” insert “including stuffed animals”.

(10) In section 9, delete subsections (1) and (2) and the reference to “(3)” at the beginning of the remaining section.

(11) In section 10 (1), after paragraph (e) insert-

“(ea) uses any indiscriminate means of capture or killing of any wild animal or uses any means capable of causing local disappearance of, or serious disturbance to, populations of a species, in particular, any means specified in Appendix IV of the Bern Convention; or”

(12) After section 10 insert-

“Assessment and protection of all wild plant species.

11ZA.(1) The Minister, through appropriate means, must establish the conservation status of all wild plant species on land or sea which are either resident in Gibraltar, BGTW or to both, and shall conduct such periodic reviews as may be required to maintain such information relevant and up to date.

(2) Based on the information obtained under subsection (1) the Minister must take such measures as are required to maintain or adapt the population of such wild plant species at a level which corresponds in particular to ecological, scientific and cultural requirements, while taking account of economic and recreational requirements and the needs of sub-species, varieties or forms at risk locally.

(3) In the light of the duties under subsection (2) the Minister must by order take such measures as are required to preserve, maintain or re-establish a sufficient diversity and area of habitats for all the wild plant species to which this section applies with particular attention to those specified in Appendix I of the Bern Convention as well as endangered and vulnerable species, especially endemic ones, and endangered habitats.

(4) For the purposes of subsection (3) the preservation, maintenance and re-establishment of biotopes and habitats shall include primarily the following measures—

- (a) creation of protected areas;
- (b) conservation of endangered natural habitats;
- (c) upkeep and management in accordance with the ecological needs of habitats—
 - (i) inside; and
 - (ii) outside,the protected zones;
- (d) re-establishment of destroyed biotopes;

(e) creation of biotopes.”.

(13) In section 11-

(a) after the words “cuts, uproot” insert “, collects”;

(b) after subsection (1A) insert-

“(1B) Notwithstanding the above, subsection (1A) shall not apply to any wild plant species specified in Appendix I of the Bern Convention.”;

(c) after subsection (2) insert-

“(2A) Notwithstanding the above, no exemption specified in subsection (2) shall apply to any wild plant species specified in Appendix I of the Bern Convention.”; and

(d) delete subsection (3).

(14) In section 13-

(a) In subsection (1)-

(i) in paragraph (i), after the words “prescribed by regulations,” insert “subject to Article 9 of the Bern Convention,”;

(ii) after the words “where there is no satisfactory solution,” insert “where the exception will not be detrimental to the survival of the population concerned,”,

(b) In subsection (2)-

(i) in paragraph (f), after the words “prescribed by regulations,” insert “subject to Article 9 of the Bern Convention,”;

(ii) before the words “if it is done under and in accordance with a licence” insert “where there is no other satisfactory solution, where the exception will not be detrimental to the survival of the population concerned, and”

(15) After section 18ZA insert-

“Conservation of wild animals and plants from pollution or deterioration

18ZB.(1) The Minister may make an Order if any wild animals or plants is suffering from or is likely to suffer from pollution or deterioration of the conservation status of species.

(2) An order under subsection (1) shall provide for such measures to be taken as are necessary to prevent the pollution or deterioration of the conservation status of species of that animal or plant.

(3) An Order under subsection (1) may be addressed—

- (a) to the owner or occupier of the land upon which the pollution or deterioration arises from or in which the habitat is situated; or
- (b) to the person undertaking an activity that is or is likely to cause the pollution or deterioration of a habitat, irrespective of whether the activity is or will be carried out on land or at sea or both on land and at sea.”.

(16) In section 18-

(a) in subsection (1) insert the following after paragraph (a)-

“(aa) by reason of being the habitat of any wild plant species specified in Appendix I of the Bern Convention.”;

(b) in subsection (1) insert the following after paragraph (b)-

“(ba) for the conservation of wild plant or wild animal species, especially those specified in Appendices I and II of the Bern Convention, and the conservation of endangered natural habitats so as to avoid deterioration of such areas;”;

(c) in subsection (3)(a)-

- (i) after the words “to be likely to” insert the word “deteriorate”;
- (ii) for the words “as the case may be, paragraph (b)” substitute “as the case may be, paragraphs (b) or (ba)”;

(d) after subsection (3) insert-

“(3A) The Government shall, in their planning and development policies, have regard to the conservation requirements of the areas protected under subsection (1)(ba).”.

(17) In section 24-

(a) at the beginning of the section before the words “The Government”, insert “(1)”;

(b) after paragraph (f) insert-

“(fa) implementing, complying or abiding by any international agreements, treaties or conventions;”;

(c) after paragraph (g) insert-

“(2) Regulations made under paragraph (fa) may make consequential amendments to any provision of this Act.”.

(18) In Schedule 1, under the heading-

(a) “PISCES” insert “Sciaena umbra”; and

(b) “FISH” insert “Brown Meagre”.

EXPLANATORY MEMORANDUM

This Act amends the Nature Protection Act, 1991 for the purposes of implementing in part the Council of Europe Convention on the Conservation of European Wildlife and Natural Habitats of 19 September 1979, known as the Bern Convention, in Gibraltar.