

# SECOND SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 4800 GIBRALTAR Thursday 24th December 2020

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LEGAL NOTICE NO. 548 OF 2020.

## EUROPEAN UNION (WITHDRAWAL) ACT 2019

### CONSERVATION OF HABITATS AND SPECIES (AMENDMENT) (EU EXIT) REGULATIONS 2020

In exercise of the powers conferred upon him by section 11(1) of, and Schedule 3 to, the European Union (Withdrawal) Act 2019, the Minister has made the following Regulations—

#### **Title.**

1. These Regulations may be cited as the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2020.

#### **Commencement.**

2. These Regulations come into force on IP completion day.

#### **Amendment of the Nature Protection Act 1991.**

3.(1) The Nature Protection Act 1991 is amended in accordance with this regulation.

(2) In section 2—

(a) in subsection (1)—

(i) after the definition of “Minister” insert—

“ “national site network” means the network of sites in Gibraltar consisting of such sites as—

(a) immediately before exit day formed part of Natura 2000;

(b) at any time on or after exit day are European sites and European marine sites for the purposes of this Act;

“Natura 2000” means the European network of special areas of conservation, and special protection areas under the Wild Birds Directive, provided for by Article 3(1) of the Habitats Directive (but see subsections (3C) and (3D));”;

(ii) after the definition of “poultry” insert—

“ “the requirements of the Directives” is to be interpreted in accordance with section 2ZA(3) and (4);”;

- (iii) in the definition of “special area of conservation” after “section 17C” insert “and includes any such site designated after exit day under this Act”;

(b) after subsection (3B) insert–

“(3C) For the purposes of this Act, and any guidance issued before exit day by the Minister or the Nature Conservancy Council, relating to the application of this Act, on or after exit day, references to “Natura 2000” (other than in this Act) are to be construed as references to the national site network.

(3D) Subsection (3C) does not affect the interpretation of this Act as they had effect, or any guidance as it applied, before exit day.”.

(3) After section 2 insert–

**“Interpretation: the Directives.**

2ZA.(1) The Habitats Directive is to be construed for the purposes of this Act as if–

- (a) any reference to “the European territory of the Member State to which the Treaty applies” included a reference to Gibraltar;
- (b) any reference to “Member State” or “Member States” included a reference to Gibraltar;
- (c) any reference to “of Community interest” included, in relation to Gibraltar, a reference to “of national interest”;
- (d) references in Article 1(d) and (h) to “the Community” included a reference to Gibraltar; and
- (e) in Article 1(1), the reference to “a site of Community importance designated by the Member State” included, in relation to Gibraltar, a reference to a site of national importance designated under this Act.

(2) The Wild Birds Directive is to be construed for the purposes of this Act as if–

- (a) any reference to “the European territory of the Member States to which the Treaty applies” included a reference to Gibraltar; and
- (b) any reference to “Member State” or “Member States” included a reference to Gibraltar.

(3) Any reference in this Act to “the requirements of the Directives” is to be construed as if the objectives of the Directives included the objectives referred to in section 17DC(2).

(4) The Minister may, after consultation with the Nature Conservancy Council and such other bodies or persons as he considers appropriate, issue guidance as to the interpretation of the requirements of the Directives.

(5) Any guidance issued under subsection (4) must be published by The Minister in such manner as he considers appropriate.”.

(4) In section 12A(4)–

(a) in paragraph (a) delete “and”;

(b) delete paragraph (b).

(5) Delete section 13A.

(6) In section 17A after subsection (2) insert–

“(2A) In complying with their duties under subsection (2), a person must have regard to any guidance issued under section 2ZA(4).”.

(7) For section 17B substitute–

**“Duty to designate special areas of conservation.**

17B.(1) The Minister must, having regard to the priorities established under section 17C, designate as special areas of conservation such sites in Gibraltar as the Minister considers to be sites of national importance.

(2) Sites of national importance are sites which contribute significantly to the objective in subsection (3)(a) or the objective in subsection (3)(b).

(3) The objectives referred to in subsection (2) are—

(a) the maintenance, or restoration, at favourable conservation status in their natural range of the natural habitat types listed in Annex I to the Habitats Directive or the species listed in Annex II to that Directive; and

(b) the maintenance of biological diversity within the biogeographic region.

(4) For animal species ranging over wide areas, those sites determined to be of national importance must correspond to places within the natural range of such species, which present the physical or biological factors essential to their life and reproduction.

(5) For aquatic species which range over wide areas, such sites are to be determined to be of national importance only where there is a clearly identifiable area which is distinct in providing the physical and biological factors essential to their life and reproduction.

(6) In determining which sites are of national importance for the purposes of subsection (1), the Minister must—

- (a) apply the Annex III criteria;
- (b) make his determination only on the basis of relevant scientific information; and
- (c) have regard to the importance of the population of a species or area of a habitat found in Gibraltar for the purpose of meeting the objectives in subsection (3).

(7) For the purposes of subsection (6)(a), the Annex III criteria are to be construed as if—

- (a) for “Community importance” there were substituted “national importance”;
- (b) a reference to a “Member State” is to be taken to be a reference to the Minister;
- (c) for “continuous ecosystem situated on both sides of one or more internal Community frontiers” there were substituted “continuous ecosystem extending beyond the borders of Gibraltar”; and
- (d) for “the biogeographical regions concerned and/or for the whole of the territory referred to in Article 2” there were substituted “the biogeographical region”.

(8) In applying the Annex III criteria, the Minister must in relation to the application of stage 1 and 2 of the Annex III criteria, have regard to the advice of the Nature Conservancy Council.

(9) In this regulation, “the Annex III criteria” means the criteria set out in Annex III to the Habitats Directive.”.

(8) For section 17C substitute—

**“Priorities for designating special areas of conservation.**

17C.(1) The Minister must, in accordance with subsection (2), establish priorities for designating as special areas of conservation such sites as it has determined to be sites of national importance.

- (2) Priorities for the purpose of subsection (1) must be established in the light of—
- (a) the importance of the sites for the maintenance at or restoration to a favourable conservation status of—
    - (i) a natural habitat type specified in Annex I to the Habitats Directive; or
    - (ii) a species specified in Annex II to the Habitats Directive;
  - (b) the importance of such sites for the coherence of the national site network; and
  - (c) the threats of degradation or destruction to which the sites are exposed.”.
- (9) In section 17DA after subsection (2) insert—
- “(2A) In applying any criteria referred to in subsection (1) in relation to any species, references in Articles 4(1) and (2) of the Wild Birds Directive to classifying the most suitable territories “in the geographical sea and land area where this Directive applies” are to be construed as referring to the most suitable areas in Gibraltar, having regard to the importance of such areas for ensuring the survival and reproduction of that species in their area of distribution.”.
- (10) Delete section 17DB.
- (11) After section 17DB insert—

*“National Site Network*

**Management of the national site network.**

17DC. (1) The Minister must, in co-operation with any other authority having a corresponding responsibility, manage, and where necessary adapt, the national site network, so far as it consists of European sites, with a view to contributing to the achievement of the management objectives of the national site network.

- (2) The management objectives of the national site network are—
- (a) to maintain at, or where appropriate restore to, a favourable conservation status in their natural range (so far as it lies in Gibraltar, and so far as is proportionate)—
    - (i) the habitat types listed in Annex I to the Habitats Directive; and

- (ii) the species listed in Annex II to that Directive whose natural range includes any part of Gibraltar; and
  - (b) to contribute to ensuring the survival and reproduction in their area of distribution of—
    - (i) species of birds listed in Annex I to the Wild Birds Directive which naturally occur in Gibraltar; and
    - (ii) regularly occurring migratory species of birds not listed in that Annex which naturally occur in Gibraltar.
- (3) In complying with the obligation in subsection (1), the Minister must have regard—
  - (a) in relation to any European site which is not of a kind mentioned in section 17E(1)(d), to the considerations mentioned in subsection (4); and
  - (b) in relation to any European site of a kind mentioned in 17E(1)(d), to the consideration mentioned in subsection (5).
- (4) The considerations mentioned in subsection (3)(a) are—
  - (a) the importance of the sites for the maintenance at, or restoration to, a favourable conservation status, throughout their natural range, of—
    - (i) a natural habitat type specified in Annex I to the Habitats Directive; or
    - (ii) a species specified in Annex II to the Habitats Directive;
  - (b) the importance of the sites for the coherence of the national site network; and
  - (c) the threats of degradation or destruction to which the sites are exposed.
- (5) The consideration mentioned in subsection (3)(b) is the importance of the sites for ensuring the survival and reproduction of the species mentioned in section 17DA(1) in their area of distribution.
- (6) In subsection (2)(a), “proportionate” means proportionate to the relative importance of—
  - (a) the part of the natural range lying in Gibraltar; and
  - (b) the part of the natural range lying outside Gibraltar,for achieving a favourable conservation status.”.

(12) In section 17E(1)–

- (a) in paragraph (b), after “Directive” insert “before exit day”;
- (b) delete paragraph (c);
- (c) in paragraph (d) after “17DA” insert “before exit day or classified after exit day under this Act”.

(13) In section 17K(6)(b) for “European Commission” substitute “Minister”.

(14) In section 17P(6)(b) for “European Commission” substitute “Minister”.

(15) In section 17RA–

- (a) in subsection (1), in both places the word occurs, for “Community” substitute “national”;
- (b) after subsection (3) insert–

“(3A) In this section–

“natural habitats of national interest” means natural habitat types listed in Annex I to the Habitats Directive;

“species of national interest” means species of wild fauna and flora listed in Annex II, IV or V to the Habitats Directive.”.

(16) In section 17RB(1) delete “or otherwise arranged for the purpose of Article 11 of the Habitats Directive”.

(17) In section 17T(7), before paragraph (a) insert–

“(aa) it was taken from the wild in Gibraltar without contravention of the law and before 10th June 1994;”.

(18) In section 17VB(1) delete “or otherwise arranged for the purpose of Article 12(4) of the Habitats Directive”.

(19) In section 17X(7), before paragraph (a) insert–

“(aa) it was taken from the wild in Gibraltar without contravention of the law and before 10th June 1994;”.

(20) In section 17XA delete subsection (5).

(21) In section 17Y, after subsection (4) insert–

“(4A) Within two years from exit day, and thereafter within two years of the publication of the last such report, the Minister must publish, in such form as it sees fit, a report on licences granted under subsection (1) in the preceding two years.

(4B) A report made under subsection (5) must specify—

- (a) the species to which the licence relates and the reason for granting the licence, including the nature of the risk, with, if appropriate, a reference to alternatives rejected and scientific data used;
- (b) in relation to any animal species, any means authorised for the taking or killing of the species and the reasons for the use of that means;
- (c) when and where the licence was granted; and
- (d) the supervisory measures taken to check that the required conditions of the licence have been complied with, any monitoring that has been carried out of compliance with the conditions of the licence, and the results of that monitoring.”.

(22) In section 17CC—

- (a) in subsection (2)(b) for “European Commission” substitute “Minister”;
- (b) in subsection (3) for “European Commission” substitute “Minister”;
- (c) for subsection (4) substitute—

“(4) In giving his opinion as to whether the reasons are imperative reasons of overriding public interest, the Minister must have regard to the national interest.

(4A) Before giving his opinion as to whether the reasons are imperative reasons of overriding public interest, the Minister must consult the following, and have regard to their opinion –

- (a) the Nature Conservancy Council; and
- (b) any other person the Minister considers appropriate.”.

(23) Delete section 17DD.

(24) After section 17DD insert—

**“Reports.**



17DDA.(1) Within six years as from exit day, and at least every six years thereafter, the Minister must publish, in such form as he sees fit, a report on the implementation of the measures taken for the purpose of giving effect to the provisions of the Directives, and the achievement of the objectives set out in Article 2 of the Habitats Directive and Articles 2 and 3 of the Wild Birds Directive.

(2) The report under paragraph (1) must include in particular—

- (a) information concerning conservation measures taken under Article 6(1) of the Habitats Directive;
- (b) information on provisions mentioned in Article 12 of the Wild Birds Directive;
- (c) an evaluation of the impact of those conservation measures on the conservation status of the natural habitat types listed in Annex I of the Habitats Directive, and of the species listed in Annex II of that Directive; and
- (d) the main results of the surveillance undertaken under section 17RA.”.

(25) In section 17FF, delete subsection (6).

(26) In section 17GG—

- (a) in subsection (2)(b) for “European Commission” substitute “Minister”;
- (b) in subsection (3) for “European Commission” substitute “Minister”.
- (c) for subsection (4) substitute—

“(4) In giving his opinion as to whether the reasons are imperative reasons of overriding public interest, the Minister must have regard to the national interest, and provide his opinion to the plan-making authority.”.

(d) after subsection (4) insert—

“(4A) Before giving his opinion as to whether the reasons are imperative reasons of overriding public interest, the Minister must consult the following, and have regard to their opinion—

- (a) the Nature Conservancy Council; and
- (b) any other person the Minister considers appropriate.”.

(27) In section 21A, delete subsection (3).

(28) In section 23—

(a) renumber section 23 as 23(1);

(b) after subsection (1) insert–

“(2) Without prejudice to the generality of subsection (1), a notice made thereunder may provide for–

(a) adding any species listed in Annex IV(a) or (b) of the Habitats Directive where he is satisfied that the natural range of that species includes any area in Gibraltar;

(b) amendments considered necessary for adapting the Schedules to technical and scientific progress.”.

(29) After section 23 insert–

**“Amendment to the Annexes to the Directives.**

23A.(1) Subsection (2) applies for the purposes of the application of the Annexes so far as they are relevant to any reference in this Act to–

(a) the Directives;

(b) the Annexes; or

(c) any provisions of the Directives to which the Annexes relate.

(2) The Minister may by notice in the Gazette make such amendments to the Annexes as he considers necessary for the purpose of adapting them to technical and scientific progress.

(3) In this regulation, “the Annexes” means–

(a) Annexes I to IV to the Habitats Directive;

(b) Annexes I to V to the Wild Birds Directive.”.

Dated: 24th December, 2020.

DR J CORTES,  
Minister with responsibility for the Environment.