

**SECOND SUPPLEMENT TO THE GIBRALTAR  
GAZETTE**

No. 3835 of 10 February, 2011

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LEGAL NOTICE NO. 12 OF 2011.

**INTERPRETATION AND GENERAL CLAUSES ACT**

**NATURE PROTECTION ACT 1991 (AMENDMENT)  
REGULATIONS 2011**

In exercise of the powers conferred on it by section 23(g)(ii) of the Interpretation and General Clauses Act, and of all other enabling powers, and for the purpose of further transposing into the law of Gibraltar Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds, the Government has made the following Regulations—

**Title and commencement.**

1. These Regulations may be cited as the Nature Protection Act 1991 (Amendment) Regulations 2011 and come into operation on the day of publication.

**Amendment of Nature Protection Act 1991.**

2. The Nature Protection Act 1991 (hereinafter referred to as “the Act”) is amended in accordance with the provisions of these Regulations.

**Amendment of section 2.**

3.(1) In section 2(1) of the Act, after the definition of “biotope” insert the following definition—

““BGTW” means British Gibraltar Territorial Waters which is the area of sea, the sea bed and subsoil within the seaward limits of the territorial sea adjacent to Gibraltar under British sovereignty and which, in accordance with the United Nations Convention on the Law of the Sea 1982, currently extends to three nautical miles and to the median line in the Bay of Gibraltar;”.

(2) For section 2(4) of the Act substitute—

“(4) This Act applies to–

- (a) BGTW; and
- (b) any area of sea, the sea bed and subsoil within the limits of the exclusive economic zone adjacent to Gibraltar, when and if that zone is established.”.

**Amendment of Part Heading.**

4. In the heading of Part IIA of the Act, for the words “IMPLEMENTATION OF THE HABITATS DIRECTIVE” substitute the words “DESIGNATION OF SITES, ETC.”

**Amendment of section 17A.**

5. In section 17A of the Act–

- (a) in subsection (1), after the words “Habitats Directive” insert the words “and the Wild Birds Directive”; and
- (b) in subsection (2), after the words “Habitats Directive” insert the words “, the Wild Birds Directive or both, as the case may be”.

**Amendment of section 17DA.**

6. In section 17DA(2)(b) of the Act, for the words “territorial waters” substitute “BGTW”.

**Amendment of section 17G.**

7. In section 17G(1) of the Act, for the words “The Nature Conservancy Council may” substitute the words “The Nature Conservancy Council shall”.

**Insertion of sections 17GA and 17GB.**

8. After section 17G of the Act insert–

**“Management Agreements: determination by Minister.**

17GA.(1) Where the Nature Conservancy Council is unable to conclude a management agreement under section 17G it must notify the Minister in writing setting out–

- (a) the names and addresses of the parties (including any person who claims to be entitled to be a party to any agreement);
  - (b) the terms of the proposed agreement;
  - (c) the terms of the agreement which are agreed;
  - (d) the terms of the agreement which are not agreed, including the reasons why, in the view of the Nature Conservancy Council, agreement of those terms has not been possible.
- (2) Upon receipt of the notice the Minister shall give the parties, identified to him pursuant to subsection (1)(a) and any other person whom the Minister deems ought to be given an opportunity to make representations, up to 28 days in which to respond to his request for their views as to why an agreement cannot be reached and how it is proposed that the issues be resolved.
- (3) After receipt of any matters brought to the Minister's attention, or the expiry of 28 days (whichever is the earlier), the Minister shall, on the basis of the information before him and after having considered any duties that may arise in connection with the obligations arising from the Habitats Directive, the Wild Birds Directive or both Directives, issue a determination which shall be binding on all the parties to whom it is addressed.
- (4) A determination under this section shall, for the purposes of this Act, be deemed to be an agreement under section 17G and, subject to an appeal being made under section 17GB, shall be deemed to be enforceable 21 days after it has been made.

**Appeal to the Magistrates' Court.**

17GB.(1) A person to whom a determination under section 17GA is addressed may within 14 days of receipt of the determination

appeal against any part of the determination to the Magistrates' Court.

- (2) Upon hearing an appeal the Magistrates' Court may uphold, substitute, vary or quash the Minister's determination but in so doing it may not impose anything that conflicts with the provisions of the Habitats or Wild Birds Directives.
- (3) There shall be no appeal from the decision of the Magistrates' Court except on a point of law."

**Amendment of section 17PA.**

9. Section 17PA of the Act is amended as follows—

- (a) for subsection (1) substitute—

“(1) Where the natural habitat or the habitat of a species for which a site has been designated a European site or a European marine site is or has been polluted, has deteriorated, is deteriorating or is likely to deteriorate, the Government must make an order specifying the steps which are to be taken in order to remedy or prevent that pollution or deterioration in so far as such pollution or deterioration has been or could be significant in relation to the objectives of the Habitats Directive or the Wild Birds Directive, as the case may be.”;

- (b) in subsection (2) by substituting the words “the pollution or deterioration” for the words “the deterioration”;
- (c) in subsection (4) by inserting at the end of the subsection the words “, or Article 4(4) of the Wild Birds Directive”.

**Insertion of section 18ZA.**

10. Immediately preceding section 18 of the Act insert—

**Protection of habitats from pollution or disturbance.**

- 18ZA.(1) The Minister must make an Order if a habitat is suffering from or is likely to suffer from pollution or disturbance and that habitat is not within a European Site within the meaning of Part IIA.
- (2) An Order under subsection (1) shall provide for such measures to be taken as are necessary to prevent the pollution or disturbance of that habitat.
- (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.
- (4) An Order under this section may only be made if it is for the purposes of, and to the extent required for compliance with, the second sentence of Article 4(4) of the Wild Birds Directive.”.

**Amendment of section 18.**

11. In section 18(2) of the Act, for the words “territorial waters” substitute “BGTW”.

Dated 10th February, 2011.

P R CARUANA,  
Chief Minister,  
For the Government.

### **EXPLANATORY MEMORANDUM**

These Regulations amend the Nature Protection Act 1991 so as to further transpose Directive 2009/147/EC, which consolidates Directive 79/409/EEC.

Regulation 3 provides for a definition of British Gibraltar Territorial Waters and recasts section 2(4) so as to make the extent of the applicability of the Act clear. Regulations 6 and 11 make consequential amendments to reflect the foregoing.

Regulations 4 and 5 make minor amendments to ensure that missing references to the Wild Birds Directive are inserted.

Regulations 7 and 8 amend the Act so that agreements for the management of habitats will be entered into either voluntarily or where agreement is not attainable, following a determination to be made by the Minister, after having considered the submissions of relevant persons.

Regulation 9 extends the scope of section 17PA so as to include pollution and limits the extent of orders that may be made.

Regulation 10 concerns habitats that are outside designated areas. These habitats need to be protected from pollution and disturbance in accordance with the provisions of Article 4(4) of Directive 2009/147/EC.

