

**SECOND SUPPLEMENT TO THE
GIBRALTAR GAZETTE**

No. 2,864 of 25th August, 1995

LEGAL NOTICE NO. 118 OF 1995

INTERPRETATION AND GENERAL CLAUSES ORDINANCE

NATURE PROTECTION ORDINANCE 1991

**NATURE PROTECTION ORDINANCE 1991 (AMENDMENT)
REGULATIONS 1995**

In exercise of the powers conferred on it by section 23 of the Interpretation and General Clauses Ordinance, and of all other enabling powers, and for the purpose of transposing into the national law of Gibraltar Council Directive 92/43/EEC, the Government has made the following regulations —

Title and commencement.

1. (1) These regulations may be cited as the Nature Protection Ordinance (Amendment) Regulations 1995.

(2) Subject to sub-regulation (3) these regulations shall come into effect on the 1st day of September 1995.

(3) So much of regulation 2(f) as relates to European protected plants (being new sections 17W and 17X of the Nature Protection Ordinance and Schedule 7) shall come in to effect on such day as the Government shall appoint by notice in the Gazette.

Amendment to the Nature Protection Ordinance 1991.

2. The Nature Protection Ordinance 1991 is amended —

(a) in section 2 —

(i) in sub-section (1) by —

(aa) inserting after the definition “destroy” the following definition —

““European site” and “European marine site” have the meanings given to them in section 17E;”;

(bb) inserting after the definition “marine nature area” the following definition —

““Minister” means the Minister charged under section 48 of the Constitution with responsibility for the Environment;”;

(cc) inserting after the definition “habitat” the following definition —

““Habitats Directive” means Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora;”;

(dd) inserting after the definition “wild bird” the following definition —

““Wild Birds Directive” means Council Directive 79/409/EEC on the conservation of wild birds, as adapted consequent upon the accession of Greece by Council Directive 81/854/EEC and as amended by Commission Directive 91/244/EEC on the conservation of wild birds and Council Directive 94/24/EEC on the conservation of wild birds;”;

(ii) by inserting after sub-section (3) the following new sub-section —

“ (3A) Unless the context otherwise requires expressions used in Part IIA and in the Habitats Directive have the same meaning as in that Directive.”;

(b) by inserting after section 2 the Part Heading —

“PART II”

(c) by inserting in Part II before section 3 the following new section 2A —

“Disapplication.

2A. Unless otherwise stated, this Part shall not apply in respect of an animal which is a European protected species listed in Schedule 5, or a European protected plant listed in Schedule 7.”;

- (d) in section 3(1) by —
 - (i) omitting the word “or” at the end of paragraph (b);
 - (ii) omitting the comma at the end of paragraph (c) and substituting therefor a semi-colon and the word “or”;
 - (iii) inserting after paragraph (c) the following new paragraph —

“(d) deliberately disturbs any wild bird,”;
- (e) in section 5(1) by —
 - (i) omitting the word “or” at the end of paragraph (e);
 - (ii) inserting after paragraph (e) the following new paragraph —

“(ee) keeps, transports, sells or exchanges or offers for sale or exchange any live or dead wild bird of a European prohibited species or any part of it, or anything derived from such animal; or”;
- (f) by inserting after section 17 the following new Part —

“PART IIA

IMPLEMENTATION OF THE HABITATS DIRECTIVE

Application etc..

17A. (1) This Part makes provision for the purpose of transposing into the law of Gibraltar the Habitats Directive.

(2) Where this Ordinance creates a function (including a power or duty) to be carried out by any person, that person shall carry out that function so as to secure compliance with the Habitats Directive.

Selection of sites eligible for identification as of Community importance.

17B. (1) On the basis of the criteria set out in Annex III (Stage 1) to the Habitats Directive, and relevant scientific information, the Minister shall propose a list of sites indicating with respect to each site —

- (a) which natural habitat types in Annex I to the Directive the site hosts, and
- (b) which species in Annex II to the Directive that are native to Gibraltar the site hosts.

(2) Where appropriate after having carried out surveillance of the conservation status of the natural habitats and species in Gibraltar the Minister may propose modification of the list in the light of the results of the surveillance.

(3) The list shall be transmitted to the Secretary of State for sending to the Commission as soon as practicable together with information on each site including —

- (a) a map of the site,
- (b) its name, location and extent, and
- (c) the data resulting from application of the criteria specified in Annex III (Stage 1),

provided in a format established by the Commission.

Adoption of list of sites: designation of special areas of conservation.

17C.(1) Once a site of Community importance in Gibraltar has been adopted in accordance with the procedure laid down in paragraph 2 of Article 4 of the Habitats Directive, the Minister shall designate that site

as a special area of conservation as soon as possible and within six years at most.

(2) The Minister shall establish priorities for the designation of sites in the light of —

- (a) the importance of the sites for the maintenance or restoration at a favourable conservation status of —
 - (i) a natural habitat type in Annex I to the Habitats Directive, or
 - (ii) a species in Annex II to the Directive,

and for the coherence of Natura 2000; and

- (b) the threats of degradation or destruction to which those sites are exposed.

(3) In this section “Natura 2000” means the European network of special areas of conservation and special protection areas under the Wild Birds Directive provided for in Article 3(1) of the Habitats Directive.

Consultation as to inclusion of site omitted from the list.

17D. If consultation is initiated by the Commission in accordance with Article 5(1) of the Habitats Directive with respect to a site in Gibraltar hosting a priority natural habitat type or priority species and —

- (a) the Minister agrees that the site should be added to the list transmitted in accordance with section 17B, or
- (b) the Council, acting on a proposal from the Commission in pursuance of paragraph 2 of Article 5 of the Habitats Directive, so decides,

the site shall be treated as added to the list as from the date of that agreement or decision.

Meaning of “European site” and “European Marine site.

17E. (1) In this Ordinance a “European site” means —

- (a) a special area of conservation,
- (b) a site of Community importance which has been placed on the list referred to in the third sub-paragraph of Article 4(2) of the Habitats Directive,
- (c) a site hosting a priority natural habitat type or priority species in respect of which consultation has been initiated under Article 5(1) of the Habitats Directive, during the consultation period or pending a decision of the Council under Article 5(3), or
- (d) an area classified pursuant to Article 4(1) or (2) of the Wild Birds Directive.

(2) In this Ordinance a European marine site means a European site which consists of, or so far as it consists of, marine areas.

Notice to landowners, relevant persons, etc..

17F. (1) As soon as practicable after a site is designated as a European site, or ceases to be so designated, or there is any change in the designation the Minister shall give notice of this to —

- (a) every owner or occupier of land within the site;
- (b) the Nature Conservancy Council; and
- (c) such other persons or bodies as it may determine.

(2) A notice required to be issued by virtue of sub-section (1) shall be accompanied by a copy of the document by which the site has been designated as a European site in so far as it relates to land owned or occupied by or, as the case may be, to land within the area of responsibility of the person or body to whom the notice is given.

(3) The Government may make rules as to the form and content of notices to be given under this section.

Management agreements.

17G. (1) The Nature Conservancy Council may enter into an agreement (a “management agreement”) with every owner, lessee and occupier of land forming part of a European site, or land adjacent to such a site, for the management, conservation, restoration or protection of the site, or any part of it with the purpose of attaining the objectives of the Habitats Directive.

(2) A management agreement may impose such restrictions as may be expedient for the purposes of the agreement on the exercise of rights over the land by the persons who can be bound by the agreement.

(3) A management agreement —

- (a) may provide for the management of the land in such manner, the carrying out thereon of such work and the doing thereon of such other things as may be expedient for the purposes of the agreement;
- (b) may provide for any of the matters mentioned in paragraph (a) being carried out, or for the costs thereof being defrayed, either by the said owner or other person or by the Nature Conservancy Council, or partly in one way and partly in another;
- (c) may contain such other provisions as to the making of payments by the Nature Conservancy Council, and in particular for the payment by the Council of compensation for the effect of the restrictions mentioned in sub-section (2) as may be specified in the agreement.

(4) Where land is subject to a management agreement, the Nature Conservancy Council shall, as respects the enforcement of the agreement against persons other than the original contracting party, have the like rights as if —

- (a) they had at all material times been the absolute owners in possession of ascertained land adjacent to the land subject to the agreement and capable of being benefited by the agreement; and

- (b) the management agreement had been expressed to be for the benefit of that adjacent land.

Notification of potentially damaging operations.

17H. (1) Any designation made under section 17C(1) in relation to a European site may specify —

- (a) the flora, fauna, or geological or physiographical features by reason of which the land is of special interest, and
- (b) any operations appearing to the Nature Conservancy Council to be likely to damage that flora or fauna or those features.

(2) The Minister may, for the purpose of securing compliance with the requirements of the Habitats Directive, at any time amend the designation with respect of any of the matters mentioned in sub-section (1) and shall notify those persons to whom he gave notification of the original designation of the amendment.

Restriction on carrying out operations specified in notification.

17J. (1) The owner or occupier of any land within a European site shall not carry out, or cause or permit to be carried out, on that land any operation specified in relation to the site under section 17H unless —

- (a) one of them has given the Nature Conservancy Council written notice of a proposal to carry out the operation, specifying its nature and the land on which it is proposed to carry it out, and
- (b) one of the conditions specified in sub-section (2) is fulfilled.

(2) The conditions referred to in sub-section (1)(b) are —

- (a) that the operation is carried out with the written consent of the Nature Conservancy Council;

- (b) that the operation is carried out in accordance with the terms of a management agreement.

(3) A person who, without reasonable excuse, contravenes sub-section (1) commits an offence and is liable on summary conviction to a fine at level 4 on the standard scale.

(4) For the purposes of sub-section (3) it is a reasonable excuse for a person to carry out an operation —

- (a) that the operation was an emergency operation particulars of which (including details of the emergency) were notified to the Nature Conservancy Council as soon as practicable after the commencement of the operation; or
- (b) that the operation was authorised by a planning permit granted on an application under the Town Planning Ordinance.

Supplementary provisions as to consents.

17K. (1) Where it appears to the Nature Conservancy Council that an application for consent given in accordance with section 17J(2)(a) relates to an operation which is or forms part of a plan or project which —

- (a) is not directly connected with or necessary to the management of the site, and
- (b) is likely to have a significant effect on the site (either alone or in combination with other plans or projects),

the Council shall make an appropriate assessment of the implications for the site in view of that site's conservation objectives.

(2) In the light of the conclusions of the assessment, the Nature Conservancy Council may give consent for the operation only after having ascertained that the plan or project will not adversely affect the integrity of the site.

(3) The Nature Conservancy Council shall give notice of its decision in respect of an application for consent to the owner and the occupier of the land to which the application relates and where the Nature Conservancy

Council does not give consent for the operation the Council shall give to those persons reasons for its decision.

- (4) The owner or the occupier of the land in question may —
- (a) within two months of receiving notice of the refusal of consent, or
 - (b) if no notice of a decision is received by him within three months of an application for consent being made,

by notice in writing to the Nature Conservancy Council require the Council to refer the matter forthwith to the Minister.

(5) If on the matter being referred to the Minister he is satisfied that, there being no alternative solutions, the plan or project should be carried out for imperative reasons of overriding public interest (which, subject to sub-section (6), may be of a social or economic nature), he may direct the Nature Conservancy Council to give consent to the operation.

(6) Where the site concerned hosts a priority natural habitat type or a priority species, the reasons referred in sub-section (5) shall be either —

- (a) reasons relating to human health, public safety or beneficial consequences of primary importance to the environment, or
- (b) other reasons which in the opinion of the European Commission are imperative reasons of overriding public interest.

(7) Where the Minister directs the Nature Conservancy Council to give consent under this section, he shall secure that such compensatory measures are taken as are necessary to ensure that the overall coherence of Natura 2000 is protected.

(8) This section does not apply in relation to a site which is a European site by reason only of section 17E(1)(c).

Provisions as to existing notices and consents.

17L. (1) Any notice or consent previously given under section 18 in relation to land which on or after the commencement of this Part becomes

land within a European site shall have effect, subject to the provisions of this section, as if given in accordance with section 17J(1)(a) or (2)(a).

(2) The Minister shall review any such consent as is referred to in subsection (1) to assess its compatibility with the conservation objectives of the site, and —

- (a) to the extent that it is not so compatible may modify the consent, or
- (b) if in the opinion of the Minister the consent cannot by modification be made compatible with the conservation objectives of the site, may withdraw it.

(3) Notice of any such modification or withdrawal of consent shall be given to every owner and occupier of land within the site who in the opinion of the Nature Conservancy Council may be affected by it, and the modification or withdrawal shall come into effect in relation to an owner or occupier upon such notice being given to him.

(4) The modification or withdrawal of a consent shall not affect anything done in reliance on the consent before the modification or withdrawal takes effect.

Power to make special nature conservation order.

17M. (1) The Minister may, after consultation with the Nature Conservancy Council make in respect of any land within a European site a special nature conservation order specifying operations which appear to him to be likely to destroy or damage the flora, fauna, or geological or physiographical features by reason of which the land is a European site.

(2) A special nature conservation order may be amended or revoked by a further order.

(3) Schedule 4 has effect with respect to the making, amending or revoking of special nature conservation orders.

Restriction on carrying out operations specified in a special nature conservation order.

17N. (1) No person shall carry out on any land within a European site in respect of which a special nature conservation order is in effect any operation specified in the order, unless the operation is carried out, or caused or permitted to be carried out, by the owner or occupier of the land and —

- (a) one of them has, after the making of the order, given the Nature Conservancy Council written notice of a proposal to carry out the operation, specifying its nature and the land on which it is proposed to carry it out, and
- (b) one of the conditions specified in sub-section (2) is fulfilled.

(2) The conditions referred to in sub-section (1)(b) are —

- (a) that the operation is carried out with the written consent of the Nature Conservancy Council;
- (b) that the operation is carried out in accordance with the terms of a management agreement.

(3) A person who, without reasonable excuse, contravenes sub-section (1) commits an offence and is liable —

- (a) on summary conviction, to a fine at level 5 on the standard scale;
- (b) on conviction on indictment, to a fine.

(4) For the purposes of sub-section (3) it is a reasonable excuse for a person to carry out an operation —

- (a) that the operation was an emergency operation particulars of which (including details of the emergency) were notified to the Nature Conservancy Council as soon as practicable after the commencement of the operation; or
- (b) that the operation was authorised by a planning permit granted on an application under the Town Planning Ordinance.

Supplementary provisions as to consents.

17P. (1) Where it appears to the Nature Conservancy Council that an application for consent in accordance with section 17N(2)(a) relates to an operation which is or forms part of a plan or project which —

- (a) is not directly connected with or necessary to the management of the site, and
- (b) is likely to have a significant effect on the site (either alone or in combination with other plans or projects),

the Council shall make an appropriate assessment of the implications for the site in view of the conservation objectives the Council considers appropriate to that site.

(2) In the light of the conclusions of the assessment referred to in sub-section (1), the Nature Conservancy Council may give consent for the operation only after having ascertained that the plan or project will not adversely affect the integrity of the site.

(3) The Nature Conservancy Council shall give notice of its decision in respect of an application for consent to the person making that an application and where the Nature Conservancy Council does not give consent for the operation the Council shall give to that person reasons for its decision.

(4) The owner or occupier, as the case may be, of the land in question may —

- (a) within two months of receiving notice of the refusal of consent, or
- (b) if no notice of a decision is received by him within three months of an application for consent being made,

by notice in writing to the Nature Conservancy Council require the Council to refer the matter forthwith to the Minister.

(5) If on the matter being referred to the Minister he is satisfied that, there being no alternative solutions, the plan or project should be carried out for imperative reasons of overriding public interest (which, subject to sub-section (6), may be of a social or economic nature), he may direct the Nature Conservancy Council to give consent to the operation.

(6) Where the site concerned hosts a priority natural habitat type or a priority species, the reasons referred to in sub-section (5) shall be either-

- (a) reasons relating to human health, public safety or beneficial consequences of primary importance to the environment, or
- (b) other reasons which in the opinion of the European Commission are imperative reasons of overriding public interest.

(7) Where the Minister directs the Nature Conservancy Council to give consent under this section, he shall secure that such compensatory measures are taken as are necessary to ensure that the overall coherence of Natura 2000 is protected.

(8) This section does not apply in relation to a site which is a European site by reason only of section 17E(1)(c).

European Marine Site.

17Q. (1) The Minister may install markers indicating the existence and extent of a European marine site.

(2) As soon as possible after a site becomes a European marine site, the Minister shall publish in the Gazette —

- (a) the conservation objectives for that site, and
- (b) any operations which may cause deterioration of natural habitats or the habitats of species, or disturbance of species, for which the site has been designated.

Management scheme for European Marine Site.

17R. (1) The Minister may by notice in the Gazette establish a management scheme for a European marine site.

(2) The scheme may, in particular —

- (a) appoint the Nature Conservancy Council to co-ordinate the establishment of the scheme;

- (b) set time limits within which any steps by the Nature Conservancy Council are to be taken;
- (c) require the Nature Conservancy Council to supply to the Minister such information concerning the establishment of the scheme as may be specified in the notice.

(3) The Government may amend a management scheme for a European marine site, either generally or in any particular respect.

European protected species of animals.

17S. The species of animals listed in Annex (IV)(a) to the Habitats Directive whose natural range includes any area in Gibraltar are listed in Schedule 5 and references in this Ordinance to a “European protected species” of animal are to any of those species.

Protection of wild animals of European protected species.

17T. (1) It is an offence —

- (a) deliberately to capture or kill a wild animal of a European protected species;
- (b) deliberately to disturb any such animal;
- (c) deliberately to take or destroy the eggs of any such animal;
or
- (d) deliberately to damage or destroy a breeding site or resting place of any such animal.

(2) It is an offence to keep, transport, sell or exchange, or offer for sale or exchange, any live or dead wild animal of a European protected species, or any part of, or anything derived from, such any animal.

(3) Sub-sections (1) and (2) apply to all stages of the life of the animals to which they apply.

(4) A person shall not be guilty of an offence under sub-section (2) if he shows —

- (a) that the animal had not been taken or killed, or had been lawfully taken or killed, or
- (b) that the animal or other thing in question had been lawfully sold (whether to him or any other person).

(5) For the purpose of sub-section (4) “lawfully” means without any contravention of this Ordinance.

(6) In any proceedings for an offence under this section, the animal in question shall be presumed to have been a wild animal unless the contrary is shown.

(7) A person guilty of an offence under this section is liable on summary conviction to a fine at level 5 on the standard scale.

Exceptions from section 17T.

17U. (1) Nothing in section 17T(1)(b) or (d) shall make unlawful anything done within a dwelling-house.

(2) Notwithstanding anything in section 17T, a person shall not be guilty of an offence by reason of —

- (a) the taking of a wild animal of a European protected species if he shows that the animal had been disabled otherwise than by his unlawful act and was taken solely for the purpose of tending it, or passing to a person authorised under section 17Y(2)(a) to tend it, and releasing it when no longer disabled;
- (b) the killing of such an animal if he shows that the animal had been so seriously disabled otherwise than by his unlawful act that there was no reasonable chance of its recovering; or
- (c) any act made unlawful by that section if he shows that the act was the incidental result of a lawful operation and could not reasonably have been avoided.

(3) A person shall not be entitled to rely on the defence provided by sub-sections (1) and (2)(c) as respects anything done in relation to a bat otherwise than in the living area of a dwelling-house unless he had notified the Nature Conservancy Council of the proposed action or operation and allowed the Council a reasonable time to advise him as to whether it should be carried out and, if so, the method to be used.

Prohibition of certain methods of taking or killing wild animals.

17V. (1) This section applies in relation to the taking or killing of a wild animal —

- (a) of any of the species listed in Schedule 6 (which shows the species listed in Annex V(a) to the Habitats Directive, and to which Article 15 applies, whose natural range includes any area of Gibraltar), or
- (b) of a European protected species, where the taking or killing of such animals is permitted in accordance with this Part.

(2) It is an offence to use for the purpose of taking or killing any such wild animal as is referred to in sub-section (1) —

- (a) any of the means listed in sub-section (3) or (4), or
- (b) any form of taking or killing from the modes of transport listed in sub-section (5).

(3) The prohibited means of taking or killing of mammals are the use of —

- (a) blind or mutilated animals used as live decoys;
- (b) tape recorders;
- (c) electrical and electronic devices capable of killing or stunning;
- (d) artificial light sources;
- (e) mirrors and other dazzling devices;

- (f) devices for illuminating targets;
 - (g) sighting devices for night shooting comprising an electronic image magnifier or image converter;
 - (h) explosives;
 - (j) nets which are non-selective according to their principle or their conditions of use;
 - (k) traps which are non-selective according to their principle or their conditions of use;
 - (l) crossbows;
 - (m) poisons and poisoned or anaesthetic bait;
 - (n) gassing or smoking out;
 - (p) semi-automatic or automatic weapons with a magazine capable of holding more than two rounds of ammunition.
- (4) The prohibited means of taking or killing fish are the use of —
- (a) poison;
 - (b) explosives.
- (5) The prohibited modes of transport are —
- (a) aircraft;
 - (b) moving motor vehicles.
- (6) A person guilty of an offence under this section is liable on summary conviction to a fine at level 5 on the standard scale.

European protected species of plants.

17W. The species of plants listed in Annex IV(b) to the Habitats Directive whose natural range includes any area in Gibraltar are listed in

Schedule 7 and references in this Part to a “European protected species” of plant are to any of those species.

Protection of wild plants of European protected species.

17X. (1) It is an offence deliberately to pick, collect, cut, uproot or destroy a wild plant of a European protected species.

(2) It is an offence to keep, transport, sell or exchange, or offer for sale or exchange, any live or dead wild plant of a European protected species, or any part of, or anything derived from, such a plant.

(3) Sub-sections (1) and (2) apply to all stages of the biological cycle of the plants to which they apply.

(4) A person shall not be guilty of an offence under sub-section (1) by reason of any act made unlawful by that sub-section if he shows that the act was an incidental result of a lawful operation and could not reasonably have been avoided.

(5) A person shall not be guilty of an offence under sub-section (2) if he shows that the plant or other thing in question had been lawfully sold (whether to him or any other person) and for this purpose “lawfully” means without any contravention of this Ordinance.

(6) In any proceedings for an offence under this section, the plant in question shall be presumed to have been a wild plant unless the contrary is shown.

(7) A person guilty of an offence under this section is liable on summary conviction to a fine at level 4 on the standard scale.

Grant of licences for certain purposes.

17Y. (1) Sections 17S, 17T, 17V, 17W and 17X do not apply to anything done for any of the purposes mentioned in sub-section (2) under and in accordance with the terms of a licence granted by the Minister.

(2) The purposes referred to in sub-section (1) are —

- (a) scientific or educational purposes;

- (b) ringing or marking, or examining any ring or mark on, wild animals;
- (c) conserving wild animals or wild plants or introducing them to particular areas;
- (d) protecting any zoological or botanical collection;
- (e) preserving public health or public safety or other imperative reasons of overriding public interest including those of a social or economic nature and beneficial consequences of primary importance for the environment;
- (f) preventing the spread of disease.

(3) The Minister shall not grant a licence under this section unless he is satisfied —

- (a) that there is no satisfactory alternative, and
- (b) that the action authorised will not be detrimental to the maintenance of the population of the species concerned at a favourable conservation status in their natural range.

(4) The Minister shall from time to time consult with the Nature Conservancy Council as to the exercise of his functions under this section, and he shall not grant a licence of any description unless he has been advised by that Council as to the circumstances in which, in the opinion of the Council licences of that description should be granted.

Licences: supplementary provisions.

17Z. (1) A licence under section 17Y —

- (a) may be, to any degree, general or specific;
- (b) may be granted either to persons of a class or to a particular person; and
- (c) may be subject to compliance with any specified conditions.

(2) For the purposes of a licence under section 17Y the definition of a class of persons may be framed by reference to any circumstances whatever including, in particular, their being authorised by any other person.

(3) A licence under section 17Y may be modified or revoked at any time by the Minister but otherwise shall be valid for the period stated in the licence.

(4) A licence under section 17Y which authorises any person to kill wild animals shall specify the area within which and the methods by which the wild animals may be killed and shall not be granted for a period of more than two years.

(5) The Government may by notice in the Gazette prescribe such reasonable fees (if any) as it may determine in respect of applications for and the grant of a licence under section 17Y, and for renewal or amendment of such a licence.

False statements made for obtaining licence.

17AA. (1) A person commits an offence who, for the purpose of obtaining, whether for himself or another, the grant of a licence under section 17Y —

- (a) makes a statement or representation, or furnishes a document or information, which he knows to be false in a material particular, or
- (b) recklessly makes a statement or representation, or furnishes a document or information, which is false in a material particular.

(2) A person guilty of an offence under this section is liable on summary conviction to a fine at level 4 on the standard scale.

General provisions for protection of European sites.

17BB. (1) The Minister, or, as the case may be, a person empowered under any enactment to give any consent, permit or other authorisation

for a plan or project or works or empowered to undertake a plan or project or carry out works shall if the plan, project or works —

- (a) is, or are, likely to have a significant effect on a European site (either alone or in combination with other plans or projects), and
- (b) is, or are, not directly connected with or necessary to the management of the site,

shall make an appropriate assessment of the implications for the site in view of that site's conservation objectives.

(2) Without prejudice to the generality of sub-section (1), for the purpose of the Town Planning Ordinance material considerations to be taken into account in granting permits shall include considerations which lead to improving the ecological coherence of the Natura 2000 network to encourage the management of features of the landscape which are of major importance for wild fauna and flora.

(3) A person applying for any consent, permit or other authorisation mentioned in sub-sections (1) or (2) shall provide such information as the Minister, or other person, as the case may be, may reasonably require for the purposes of the assessment.

(4) The Minister, or other person, as the case may be, shall for the purposes of the assessment consult the Nature Conservancy Council and have regard to any representations made by that Council within such reasonable time as the Minister, or other person, may specify.

(5) In the light of the conclusions of the assessment, and subject to section 17CC, the Minister or other person, as the case may be, shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the European site.

(6) In considering whether a plan or project will adversely affect the integrity of the site, the Minister, or other person, as the case may be, shall have regard to the manner in which it is proposed to be carried out or to any conditions or restrictions subject to which he proposes that the consent, permission or other authorisation should be given.

(7) This section does not apply in relation to a site which is a European site by reason only of section 17E(1)(c).

Considerations of overriding public interest.

17CC. (1) If the Minister is satisfied that, there being no alternative solutions, the plan or project or works mentioned in section 17BB should be carried out for imperative reasons of overriding public interest (which, subject to sub-section (2), may be of a social or economic nature), he may agree to the plan or project or works notwithstanding a negative assessment of the implications for the site.

(2) Where the site concerned hosts a priority natural habitat type or a priority species, the reasons referred to in sub-section (1) shall be either —

- (a) reasons relating to human health, public safety or beneficial consequences of primary importance to the environment, or
- (b) other reasons which in the opinion of the European Commission are imperative reasons of overriding public interest.

(3) Where a person having sufficient interest desires to obtain the opinion of the European Commission as to whether reasons are to be considered imperative reasons of overriding public interest, he shall submit a written request to the Governor —

- (a) identifying the matter on which an opinion is sought, and
- (b) accompanied by any documents or information which may be required.

(4) The Governor shall thereupon forward such request to the Secretary of State who may if he thinks fit, seek the opinion of the Commission, and if he does so, and sends the Commission's opinion to the Governor, the Governor shall make the opinion known to the person requesting the opinion.

Information for Commission.

17DD. (1) The Government shall as soon as practicable and thereafter as required by the timetable established under Article 23 of the Habitats

Directive forward a report on the implementation of the Directive to the Secretary of State for onward transmission to the Commission.

- (2) The report shall in particular include —
- (a) information concerning the conservation measures specified in Article 6(1) of the Habitats Directive;
 - (b) an evaluation of the impact of those measures on the conservation status of the natural habitat types set out in Annex I, if appropriate, and the species referred to in Annex II of the Habitats Directive;
 - (c) the main results of the surveillance carried out under section 17A(2) in compliance with obligations arising from Article II of the Habitats Directive.”;
 - (f) by inserting in section 18(1) after the word “land” the words “not being a European site”;
 - (g) by inserting after Schedule 3 the following new Schedules —

“SCHEDULE 4

Section 17M

**PROCEDURE IN CONNECTION WITH ORDERS UNDER
SECTION 17M**

Coming into operation.

1. An order takes effect on its being made.

Publicity for orders.

2. (1) The Minister shall, as soon as practicable after making an order, publish in the Gazette a notice setting out the order (or describing its general effect) and stating that it has taken effect.

- (2) The notice shall —

- (a) name a place in the area in which the land to which the order relates is situated where a copy of the order may be inspected free of charge at all reasonable hours; and
 - (b) specify the time (not being less than 14 days from the date of the first publication of the notice) within which, and the manner in which, representations or objections with respect to the order may be made.
- (3) A copy of the notice shall be served on —
- (a) every owner and occupier of that land (subject to paragraph 4);
 - (b) the Development and Planning Commission; and
 - (c) the Nature Conservancy Council.

Procedures when orders opposed.

3. (1) If any representation or objection is duly made within the period specified in accordance with paragraph 2(2)(b) with respect to an order and is not withdrawn, then, as soon as practicable the Minister shall either —

- (a) cause an inquiry to be held; or
- (b) afford any person by whom a representation or objection has been duly made and not withdrawn an opportunity of being heard by a person appointed by the Minister for the purpose.

(2) On considering any representations or objections duly made and the report of any person appointed to hold the inquiry or to hear representations or objections, the Minister shall decide either to take no action on the order, or to make an order amending or revoking it as he thinks appropriate in the light of the report, representations or objections.

(3) An amending or revoking order made by virtue of sub-paragraph (2) takes effect immediately and no representation or objection with respect to it shall be entertained.

Restriction on power to amend orders or confirm them with modifications.

4. The Minister shall not by virtue of paragraph 3(2) amend an order which has taken effect so as to extend the area to which the order applies.

Notice of final decision on order.

5. (1) The Minister shall as soon as practicable after making an order by virtue of paragraph 3(2) give notice —

- (a) setting out the order (or describing its effect) and stating that it has taken effect; and
- (b) naming a place in the area in which the land to which the order relates is situated where a copy of the order may be inspected free of charge at all reasonable hours.

(2) The Minister shall give notice as soon as practicable of a decision under paragraph 3(2) to take no action on an order which has already taken effect.

Proceedings for questioning validity of orders.

6. (1) In this paragraph the “relevant date” is, in the case of an order —

- (a) in respect of which no representations have been made under paragraph 3, 15 days from the publication of the notice under paragraph 2(1); and
- (b) in respect of which representations have been made, the date on which the Minister gives notice under paragraph 5.

(2) If any person is aggrieved by an order to which this paragraph applies and desires to question its validity on the grounds that it is not within the powers of section 17M or that any of the requirements of this Schedule have not been complied with in relation to it, he may within six weeks from the date of the relevant date made an application to the Supreme Court under this paragraph.

(3) On any such application the court may, if satisfied that the order is not within those powers or that the interests of the applicant have been substantially prejudiced by a failure to comply with any of those requirements, quash the order, or any provision of the order, either generally or in so far as it affects the interests of the applicant.

(4) Except as provided by this paragraph, the validity of an order shall not be questioned in any legal proceedings whatsoever.

Interpretation.

7. In this Schedule —

“amending order” and “revoking order” mean an order which amends or, as the case may be, revokes a previous order;

“order” means an order under section 17M.

SCHEDULE 5

Section 17S

EUROPEAN PROTECTED SPECIES OF ANIMALS

Common Name	Scientific Name
Bats (all species)	Chiroptera
Dolphins, porpoises and whales (all species)	Cetacea
Reptiles	
European Pond Terrapin	Emys orbicularis
Striped-necked Terrapin	Mauremys caspica
Bedriaga’s Skink	Chalcides Bedriagae
Horseshoe Whipsnake	Coluber hippocrepis
Spiders	
Gibraltar Funnel Web	Macrothele Calpeina
Molluscs	

Ribbed Mediterranean Limpet	Patella Feruginae
Noble Pen Shell	Pinna Nobilis

NOTE. The common name or names given in the first column of this Schedule are included by way of guidance only; in the event of any dispute or proceedings, the common name or names shall not be taken into account.

SCHEDULE 6

Section 17V

ANIMALS WHICH MAY NOT BE TAKEN OR KILLED IN CERTAIN WAYS

Common Name	Scientific Name
Barbel	Barbus barbus
Seal, Mediterranean Monk	Monachus monachus

NOTE. The common name or names given in the first column of this Schedule are included by way of guidance only; in the event of any dispute or proceedings, the common name or names shall not be taken into account.

SCHEDULE 7

Section 17W

EUROPEAN PROTECTED SPECIES OF PLANTS

Common Name	Scientific Name
No Entry ¹	No Entry ¹

NOTE. The common name or names given in the first column of this Schedule are included by way of guidance only; in the event of any dispute or proceedings, the common name or names shall not be taken into account.

GIBRALTAR GAZETTE, No.2,864, Friday 25th August,1995.

¹ As at 1st September 1995 no European protected species of plant mentioned in the Habitats Directive was found in Gibraltar.”

Dated this 25th day of August, 1995

J. Pilcher,

Minister for the Environment and Tourism.

