Im Bereich der Ziviljustiz kommt für vor dem Ablauf des Übergangszeitraums eingeleitete und noch anhängige Verfahren weiterhin EU-Recht zur Anwendung. Die Informationen über das Vereinigte Königreich werden im gegenseitigen Einvernehmen bis Ende 2024 über das Europäische Justizportal verfügbar bleiben.

Der Inhalt dieser Seite wird derzeit übersetzt. Danke für Ihr Verständnis.
Es liegen jedoch Informationen in folgenden Sprachen vor:
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Englisch

Zugang zu Gerichten in Umweltangelegenheiten

Vereinigtes Königreich

Es gibt keine amtliche Übersetzung der Sprachfassung, die Sie ansehen.
Zur maschinellen Übersetzung dieses Inhalts. Sie dient lediglich zur Orientierung. Der Urheber dieser Seite übernimmt keinerlei Verantwortung oder Haftung für die Qualität dieses maschinell übersetzten Texts.

-----Deutsch-----BulgarischSpanischTschechischDänischEstnischGriechischFranzösischKroatischItalienischLettisch LitauischUngarischMaltesischNiederländischPolnischPortugiesischRumänischSlowakischSlowenischFinnisch Schwedisch

Annex A: Gibraltar

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Introduction

Gibraltar is a British Overseas Territory in Europe. The Gibraltar Constitution Order 2006 allows Gibraltar self-government in all matters excluding external affairs, defence and internal security for which the UK Government remains ultimately responsible. HM Government of Gibraltar is responsible for the implementation of EU obligations in Gibraltar.

I Constitutional foundations

Gibraltar's written constitution is set out in the Gibraltar Constitution Order 2006. There are no express environmental provisions in the constitution. If a constitutional right is breached in consequence of an environmental harm, article 16 provides access to the Supreme Court.

II Judiciary

Courts

There are no specialist environmental courts in Gibraltar. The court system mirrors that of England and Wales, with environmental criminal cases usually beginning in the Magistrates' Court, and more serious cases being tried in the Supreme Court by a judge and jury.

Under Part II of the Public Health Act, statutory nuisance cases can be heard in the Magistrates' Court. Where the Government considers the remedies afforded by the Magistrates' Court would be inadequate, it may bring proceedings in the Supreme Court under section 89 of the Public Health Act.

Cases where judicial review is brought against decisions of the Government are heard by the Supreme Court, by virtue of section 12 of the Supreme Court Act. Under rule 6 of the Supreme Court Rules 2000 judicial review is brought applying the Civil Procedure Rules applicable in England and Wales.

Judges are appointed by the Governor of Gibraltar on the advice of the Judicial Services Commission. As in England and Wales, judges are drawn from the legal profession. There are no specialist environmental law judges.

Tribunals

In Gibraltar, planning permission is issued by the Development and Planning Commission ("the Commission"). A person may appeal a decision of the Commission to the Development Appeals Tribunal if-

a. they are an applicant for a permit who is aggrieved by the refusal of the Commission to grant the permit or the imposition of a condition on a permit;
b. they are a person on whom a completion notice, stoppage order or modification order has been served;
c. they are a person who has objected to an application, and they are aggrieved by a decision of the Commission; or
d. they are a person affected by a completion notice, stoppage order or modification order.

Forum Shopping

There is no forum shopping for different types of court available in civil actions in Gibraltar. In criminal cases a defendant may choose to be tried in the Magistrates' Court or the Supreme Court if the offence is one that can be heard by that court.

Appeals and extraordinary remedies

Appeals from the Magistrates' Court in Gibraltar are heard by a judge in the Supreme Court. Appeals from the Supreme Court are to the Court of Appeal. Appeals from the Court of Appeal are heard by the Privy Council.

There are extraordinary remedies in Gibraltar law such as injunctions, mandatory orders and prohibiting orders.

Cassation

The position in Gibraltar reflects that of England and Wales.

Judicial procedures

In Gibraltar criminal prosecutions are brought by public authorities or private individuals. They are started in the Magistrates' Court. Civil actions are usually dealt with by the Supreme Court. Statutory nuisance is usually heard by the Magistrates' Court, but can be heard by the Supreme Court in certain circumstances.

Judicial action from own motion

As in the UK, the Gibraltar courts use an adversarial approach. Courts are unable to initiate an action by their own motion.

III Access to Information

The relevant provisions of Directive 2003/4/EC on public access to environmental information are implemented in Gibraltar by the Freedom of Access to Information on the Environment Regulations 2005 ("FAIER").

Remedies

Where an applicant for information considers that the authority has failed to comply with a request or any other requirements of FAIER, he may make representations to the authority under regulation 11 of FAIER.

Where an applicant for information is still dissatisfied either with the information disclosed by an authority, the withholding of information by an authority or the lack of response to an application for environmental information, that applicant may apply to the Gibraltar Regulatory Authority for a determination requiring the disclosure of information under regulation 16 of FAIER.

If either the applicant or the party on whom a determination has been made is still dissatisfied after this process, then the determination may be appealed in the Magistrates' Court under regulation 17 of FAIER.

If an authority refuses a request it must write to the applicant as soon as possible and explain why the request was refused. It must say what exemptions apply (reg 12(4)&(5) or 13 of FAIER), the matters considered by the public authority in reaching its decision, and what the applicant can do if he or she wants to challenge the decision – reg. 11 or 17 of FAIER.

Procedure

FAIER imposes a duty upon a public authority that holds environmental information to make it available on request. That duty is subject to a number of exceptions found in regulations 12 and 13 of FAIER. A refusal of a request for environmental information must be made in writing as soon as possible and no later than 1 month after the date of receipt of the request, reg. 14 of FAIER. A person whose request has been refused may ask the authority to review its decision. The review decision must be notified as soon as possible, and not later than 2 months after receipt of the request for a review, reg.11 of FAIER. Where the refusal to disclose is maintained the person whose request has been refused ("the complainant") may apply for a determination from the Gibraltar Regulatory Authority as specified above.

IV Access to Justice in Public Participation

Administrative procedures

The Government's Department of the Environment has responsibility for the regulation of and granting of licences in respect of environmental issues. Some of these powers are delegated to other organisations such as the Animal Welfare Centre (responsible for maintenance of the animal impounding services) or the Environmental Agency (responsible for, amongst other things, monitoring air quality, waste and shipment of waste and integrated pollution control). The natural environment is protected by the comprehensive legal framework in particular through the Nature Protection Act 1991. Under this Act, significant areas of Gibraltar's terrestrial and maritime environment have been designated as special areas of conservation under the Habitats and Wild Birds Directives (92/43 /EEC, 2009/147/EC). The Act also provides for the designation of both terrestrial and marine protected areas other than those required by EU obligations. The Government may appoint Wildlife Wardens to regulate these protected areas.

Where not provided for in any enactment, decisions of emanations of the State may be challenged through Judicial Review as set out below.

Judicial review of administrative procedures

The rules and procedures of judicial review in Gibraltar reflect those of England and Wales.

Review of land use planning decisions

Land use planning in Gibraltar is provided for under the Town Planning Act 1999. Development works cannot be carried out except under the authority of a permit granted by the Development Planning Commission ("the Commission"). Applications for a permit must be submitted to the Commission for approval. The Commission shall consider applications and either grant a permit, refuse a permit or grant a permit subject to conditions.

Where the Commission refuses a permit or inserts a condition in the permit, the applicant for that permit may appeal the decision to the Development Appeals Tribunal. Appeals must be submitted in writing within 28 days of notification or the issue of the permit. Proceedings will be held by the Tribunal where it will hear the evidence and reach a decision. The decision of the Development Appeals Tribunal is final.

Environmental Impact Assessment (EIA)

EIA is prescribed for applications for planning permission for certain developments in Gibraltar by the Town Planning (Environmental Impact Assessment) Regulations 2000.

IPPC Decisions

In Gibraltar IPPC decisions are made under the Pollution Prevention and Control Regulations 2013.

Decisions of the Environmental Agency ("the Agency") under these Regulations may be appealed to the Minister with responsibility for the Environment (reg. 55). Appeals can only be brought by persons who have made an application under these Regulations. The Minister may affirm the decision of the Agency, direct the Agency to grant a permit or vary conditions of the permit, quash any or all of the conditions, direct the Agency to effect a transfer or accept a surrender or quash, affirm or vary a notice.

Where a person is dissatisfied with the determination by the Minister, he may appeal to the Magistrates' Court on a point of law.

V Access to Justice against Acts or Omissions

Civil claims

The relevant law concerning the bringing of civil claims (in particular an action in nuisance) in Gibraltar reflects that of England and Wales.

Environmental liability

The EC Directive on Environmental liability (2004/35/CE) is implemented in Gibraltar by the Environmental Liability Regulations 2008. The competent authority for the purposes of this legislation is the Minister with responsibility for the Environment or such other person as he may delegate.
Under regulation 16, interested parties may notify the competent authority of any environmental damage of which there is an imminent threat. The notification must be accompanied by a statement explaining why the party will be affected by or has an interest in the damage. It must also give sufficient information for the competent authority to identify the location and nature of the incident. The competent authority must consider the notification and inform the interested party of the action it intends to take.

VI Other Means of Access to Justice

In Gibraltar an action for statutory nuisance – a nuisance as defined in the relevant statute - can be brought in a Magistrates' Court under Part II of the Public Health Act. Where the Government considers summary proceedings inadequate, it may take proceedings in the Supreme Court. Section 81 of the Act sets out what constitutes a statutory nuisance. Under section 88 an individual aggrieved by a nuisance can make a complaint to a justice of the peace and thereby initiate proceedings. The court can make an order for the abatement of the nuisance under section 82 and where this notice is ignored; make a nuisance order under section 83.
The Gibraltar Public Services Ombudsman investigates complaints in relation to administrative action taken by public authorities. The Public Services Ombudsman is established by the Public Services Ombudsman Act 1998. Complaints may be made by a person aggrieved and, except in special circumstances, must be made within six months of that person being given first notice of the matters alleged. The Ombudsman will send a report of his investigation to the person aggrieved and the authority investigated. Where he considers that an injustice has been caused as a consequence of maladministration and will not be remedied, he may submit a special report to the Chief Minister who shall lay it before the Gibraltar Parliament.
Most public authorities will also have internal complaints mechanisms. If the result is unsatisfactory the complainant can go to the relevant Ombudsman or seek a judicial review.

VII Legal Standing

The legal standing of non-governmental organisations and unincorporated associations in Gibraltar, and the rules for bringing a private civil action in nuisance, reflect that of England and Wales.

VIII Legal Representation

Gibraltar has an adversarial system. It is not compulsory to have a lawyer in any environmental hearing, whether at a planning or other inquiry or a judicial review.

IX Evidence

Rules relating to evidence in criminal and civil cases in Gibraltar reflect those of England and Wales.

X Injunctive Relief

Where legislation states that the bringing of the appeal does not suspend the decision or notice, that decision or notice will have immediate effect. In cases where the usual rule is that the notice is of no effect until the appeal is determined, the authority may be able to serve another notice to halt the activity immediately – e.g a stoppage order in planning cases – Town Planning Act 1999, section 40. Where the Appeal Tribunal thinks fit, it may suspend the stoppage order pending the determination of the appeal, section 41.
Rules relating to the granting of injunctions and the effect of such in Gibraltar reflect those of England and Wales.
A decision by a court to award an injunction can be appealed to a higher court. Usually the appellant will need leave from either the court that issued the injunction or the appeal court.

XI Costs

An applicant seeking access to justice in environmental matters may have to pay court fees, lawyers' fees, expert witness' fees, expenses for other witnesses and the costs involved in preparing documents, plans etc.

Court fees

There are no court fees in respect of criminal cases at first instance but an appeal to a higher court may involve a fee.
Information on court fees for civil actions in Gibraltar can be obtained from the Supreme Court Registry.

Costs

The level of fees will vary considerably, depending on the nature and complexity of the case, the experience of the lawyer and the amount of documents. As Gibraltar has a fused legal profession, barristers and solicitors may both appear in court and have direct contact with clients. This means that it is possible to instruct only one lawyer in a case which may reduce the level of costs.

Injunctions

There is no different level of fee in injunction cases. Usually the party seeking an injunction will have to give an undertaking in damages.

Awards of costs

The rules in relation to costs in Gibraltar follow those of England and Wales.

XII Financial Assistance Mechanisms

Under the Supreme Court Rules 2000, the Civil Procedure Rules of England and Wales, including those rules relating to costs, are applicable to Gibraltar except where alternative rules are provided for under Gibraltar law.
Civil legal assistance in Gibraltar is provided by the Registrar of the Supreme Court. The provision of legal aid and assistance is governed by the Legal Aid and Assistance Act and the Legal Aid and Assistance Rules.
Criminal legal aid may be available for defendants in criminal prosecutions.
When considering an application for legal assistance, the Registrar shall refer the application to a solicitor or barrister on a panel who shall investigate the merits of the applicants' case and report his findings to the Registrar. On receiving the report, the Registrar will investigate the means of the applicant. If he considers the matter to be a proper one for legal assistance, the assistance shall be granted.
There are no legal clinics specialising in environmental cases in Gibraltar. However the Citizens Advice Bureau will either help with environmental cases or pass the matter on to someone who can help.

XIII Timeliness

The Environmental Agency must determine an IPPC application within 3 months of receiving the application. This period may be extended if an agreement is reached between the Environmental Agency and the applicant.
Applications for other licences may not have a legal requirement for determination within a specific time but authorities are encouraged to say how long it will take to issue the licence.
If a planning permit application is not determined within the required time it will be deemed to have been refused and the applicant may appeal to the Development Appeals Tribunal.

Court procedures

The time limitations for the bringing of judicial review applications in Gibraltar reflect those of England and Wales.

Time limits for the bringing of civil actions in nuisance, trespass or negligence in Gibraltar are set out in the Limitation Act. Under section 4 of the Limitation Act an action founded on a tort – such as nuisance – must be brought within 6 years from the date on which the cause of action accrued. In some circumstances, a civil action in negligence may be brought after the standard 6 year limitation period has expired.

Duration of cases

The duration of the case depends on the complexity of the legal and factual issues.

Deadline for judgments

There are no set deadlines for judges to give judgments. In some cases the judge will give judgment immediately after the advocates have addressed the Court. In other cases judgment will be given later.

As there are no set deadlines there are no sanctions against courts delivering decisions in delay.

XIV Other Issues

Representations on the environmental effect of a development can be made to the Development and Planning Commission during the EIA or planning permission process.

Alternative Dispute Resolution exists in Gibraltar. It is strongly encouraged by the civil courts. The pre-action protocol of England and Wales for judicial review applies to Gibraltar.

Mediation is frequently used in civil claims between individuals or corporate bodies.

XV Being a Foreigner

Nationality has no bearing on the ability of a person to prosecute or defend a claim before the Court.

Use of different languages is allowed in court procedures. Languages such as French or German can be used with an interpreter.

In criminal cases the court service will arrange for an interpreter for the duration of the case. In civil cases it is for the parties to make such arrangements and pay the fees.

XVI Transboundary Cases

Part III of the Town Planning (Environmental Impact Assessment) Regulations, 2000 deals with developments likely to have a significant transboundary effect. Under regulation 14, where the Commission is aware that a relevant development carried out in Gibraltar is likely to have significant effect on the environment of (or otherwise seriously affect) another Member State it shall deliver a notice to the Minister with responsibility for the Environment.

The Minister shall send particulars of the development to the Member State, and give it a reasonable time to indicate whether it will participate in the EIA procedure. Where the Member State indicates it wishes to participate in the EIA procedure the authorities and public concerned shall be given an opportunity, before a permit for the development is granted, to forward to the Commission, their opinion on the information supplied. The Minister shall enter into consultations with the Member State concerned. When the application is determined, it shall inform the Member State of its decision, the reasons for that decision and where necessary a description of relevant measures to avoid, reduce or offset major adverse effects of the development.

Regulation 15 also makes provision for when the Minister for the Environment receives information on a project in another Member State that is likely to affect the environment in Gibraltar.

Related links

Legislation

Gibraltar Constitution Order 2006 - http://www.gibraltarlaws.gov.gi/constitution/Gibraltar_Constitution_Order_2006.pdf

Environmental Liability Regulations 2008 - http://www.gibraltarlaws.gov.gi/articles/2008s100.pdf

Freedom of Access to Information on the Environment Regulations 2005- http://www.gibraltarlaws.gov.gi/articles/2005s165.pdf

Limitation Act- http://www.gibraltarlaws.gov.gi/articles/1960-42o.pdf

Nature Protection Act 1991- http://www.gibraltarlaws.gov.gi/articles/1991-11o.pdf

Pollution Prevention and Control Regulations 2013- http://www.gibraltarlaws.gov.gi/articles/2013s042.pdf

Public Health Act- http://www.gibraltarlaws.gov.gi/articles/1950-07o.pdf

Supreme Court Act- http://www.gibraltarlaws.gov.gi/articles/1960-02o.pdf

Supreme Court Rules 2000- http://www.gibraltarlaws.gov.gi/articles/2000s031.pdf

Town Planning Act 1999- http://www.gibraltarlaws.gov.gi/articles/1999-39o.pdf

Town Planning (Environmental Impact Assessment) Regulations 2000- http://www.gibraltarlaws.gov.gi/articles/2000s013.pdf

Public Bodies

HM Government of Gibraltar Department of the Environment- https://www.gibraltar.gov.gi/new/environment

Gibraltar Courts Services- http://www.gcs.gov.gi/index.php/justice-system/gibraltar-courts-service

Environmental Agency http://www.environmental-agency.gi/

Gibraltar Public Services Ombudsman http://www.ombudsman.org.gi/

Gibraltar Citizens Advice Bureau http://cab.gi

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Annex D: Isle of Man

The Isle of Man is a Crown Dependency and does not form part of the United Kingdom or of the European Union – Protocol 3 of the Accession Treaty 1972 applies to it. The Department of Environment Food and Agriculture is concerned with environmental matters. There is no specific legislation for EIA for projects on the Isle of Man but the Isle of Man Strategic Plan (Environment Policy 24) provides for EIA for development likely to have a significant effect on the environment. Judicial review of decisions on the environment can be done by a Petition of Doleance under the High Court Act 1991. There is no Freedom of Information Act for the Isle of Man. Access to environmental information can be obtained from the Isle of Man Government Laboratory. Statutory nuisances are provided for in Part 1 of the Public Health Act 1990. Individuals can bring an action against another person in common law for a nuisance, which can include an injunction.

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Annex B: Guernsey

The Bailiwick of Guernsey is a Crown Dependency and includes the separate jurisdictions of Alderney and Sark and the islands of Herm, Jethou and Lihou. Alderney and Sark have independent legislative, executive and judicial systems. Under Protocol 3 to the Accession Treaty of 1972 there is only a limited connection to the European Union for the purposes of free movement of goods. Other EU legislation does not generally apply. Pollution control law is mainly contained in the Environmental Pollution (Guernsey) Law 2004 while land use planning is provided for in the Land Planning and Development (Guernsey) Law 2005. There is provision for EIA in the Land Planning and Development (General Provisions) Ordinance 2007. Judicial review of decisions is available in the Royal Court of Guernsey under the rules in Practice Direction 3 of 2004. There is no freedom of information legislation in Guernsey. The Office of Environmental Health and Pollution Regulation has legal powers to prevent the recurrence of statutory nuisances under the Loi Relative à la Santé Publique, 1934 (as amended) and related legislation. Individuals can bring an action against another person in customary law for a nuisance, which can include an injunction.

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Annex C: Jersey

The Bailiwick of Jersey is a Crown Dependency. Under Protocol 3 to the Accession Treaty of 1972 there is only a limited connection to the European Union for the purposes of free movement of goods. International environmental legislation such as the Basel Convention on Wastes 1989 is implemented by statutes such as the Waste Management (Jersey) Law 2005. Environmental issues are dealt with mainly by the Planning and Environment Department. EIA is provided for by the Planning and Building (Environmental Impact) (Jersey) Order 2006. Government decisions on environmental matters can be challenged in the Royal Court by a petition of doleance which is “a remedy of last resort” in which the petitioner bears a heavy burden to show that a grave injustice needs to be remedied – *The Attorney General v Michel* [2006] JRC089. There is no freedom of information legislation in force in Jersey. Statutory nuisances can be dealt by the Minister under the Statutory Nuisance (Jersey) Law 1999, section 8 of which enables an action by a person aggrieved by a nuisance for which the Minister is responsible. Individuals can bring an action against another person in customary law for a nuisance, which can include an injunction.

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