

**SECOND SUPPLEMENT TO THE GIBRALTAR  
GAZETTE**

No. 3886 of 27 October, 2011

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LEGAL NOTICE NO. 210 OF 2011.

**ENVIRONMENT ACT 2005**

**ENVIRONMENT (WASTE) (AMENDMENT NO.2)  
REGULATIONS 2011**

In exercise of the powers conferred upon it by section 18 of the Environment Act 2005, and all other enabling powers, and in order to partly transpose Directive 2006/66/EC of the European Parliament and of the Council of 6 September 2006 on batteries and accumulators and waste batteries and accumulators and repealing Directive 91/157/EEC, the Government has made the following Regulations–

**Title and commencement.**

1. These Regulations may be cited as the Environment (Waste) (Amendment No.2) Regulations 2011 and come into operation on the day of publication.

**Amendment of Regulations.**

2. The Environment (Waste) Regulations 2007 (“the principal Regulations”) are amended in accordance with these Regulations.

**Amendment of Part Heading.**

3. In the heading to Part I of the principal Regulations for the words “WASTE ELECTRICAL AND ELECTRONIC EQUIPMENT” substitute the word “GENERAL”.

**New regulation.**

4. After regulation 1 of the principal Regulations insert the following regulation–

**“Scope of regulations.**

1A. The application of these Regulations is without prejudice to the fact that Gibraltar does not form part of the European Union’s

common customs territory and that European Union rules on the free movement of goods do not apply to Gibraltar.”.

**Substitution of regulation 2.**

5. For regulation 2 of the principal Regulations substitute—

**“Interpretation.**

2.(1) In these Regulations—

“the Competent Authority” means the Minister or such other body or person as the Minister may, by notice in the Gazette, prescribe;

“disposal” means any of the applicable operations provided for in Annex IIA to Directive 2006/12/EC;

“the Minister” means the Minister with responsibility for the environment;

“recycling” means the reprocessing in a production process of the waste materials for the original purpose or for other purposes, but excluding energy recovery which means the use of combustible waste as a means of generating energy through direct incineration with or without other waste but with recovery of the heat;

“the Batteries Directive” means Directive 2006/66/EC of the European Parliament and of the Council of 6 September 2006 on batteries and accumulators and waste batteries and accumulators and repealing Directive 91/157/EEC;

“the WEEE Directive” means Directive 2002/96/EC of the European Parliament and of the Council of 27 January 2003 on waste electrical and electronic equipment (WEEE) as amended by Directive 2003/108/EC, as the same may from time to time be further amended.

(2) Any term used, but not defined, shall be construed in accordance with the provisions of the WEEE Directive or the Batteries Directive, as the case may be.”.

**New regulation.**

6. After regulation 2 of the principal Regulations insert–

**“PART II  
WASTE ELECTRICAL AND ELECTRONIC EQUIPMENT**

**Interpretation of Part.**

2A. In this Part–

“dangerous substance or preparation” means any substance or preparation which has to be considered dangerous under Council Directive 67/548/EEC or Directive 1999/45/EC of the European Parliament and of the Council;

“distributor” means any person who provides electrical or electronic equipment on a commercial basis to the party who is going to use it;

“EEE” means electrical and electronic equipment to which these Regulations apply;

“economic operators” means producers, distributors, collectors, dismantlers, shredders, recoverers, recyclers and other treatment operators of waste electrical and electronic equipment, including their components and materials;

“electrical and electronic equipment” or “EEE” means equipment which is dependent on electric currents or electromagnetic fields in order to work properly and equipment for the generation, transfer and measurement of such currents and fields falling under the categories set out in Part I of Schedule 1 and designed for use with a voltage rating not exceeding 1,000 Volt for alternating current and 1,500 Volt for direct current;

“finance agreement” means any loan, lease, hiring or deferred sale agreement or arrangement relating to any equipment whether or not the terms of that agreement or arrangement or any

collateral agreement or arrangement provide that a transfer of ownership of that equipment will or may take place;

“historical WEEE” means WEEE from products put on the market before 13 August 2005;

“prevention” means measures aimed at reducing the quantity and the harmfulness to the environment of WEEE and materials and substances contained therein;

“producer” means any person who, irrespective of the selling technique used, including by means of distance communication in accordance with Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts–

- (i) manufactures and sells electrical and electronic equipment under his own brand;
- (ii) resells under his own brand equipment produced by other suppliers, a reseller not being regarded as the producer if the brand of the producer appears on the equipment, as provided for in paragraph (i); or
- (iii) imports or exports electrical and electronic equipment on a professional basis into Gibraltar or out of Gibraltar.

Whoever exclusively provides financing under or pursuant to any finance agreement shall not be deemed to be a producer unless he also acts as a producer within the meaning of paragraphs (i) to (iii);

“put on the market” means when electrical and electronic equipment, materials or components thereof are transferred from the manufacturing stage with the intention of distribution on the market in Gibraltar and “putting a product on the market” shall be construed accordingly;

“recovery” means any of the applicable operations provided for in Annex IIB to Directive 75/442/EEC;

“reuse” means any operation by which WEEE or components thereof are used for the same purpose for which they were conceived, including the continued use of the equipment or components thereof which are returned to collection points, distributors, recyclers or manufacturers;

“treatment” means any activity after the WEEE has been handed over to a facility for depollution, disassembly, shredding, recovery or preparation for disposal and any other operation carried out for the recovery or the disposal of the WEEE, or both;

“waste electrical and electronic equipment” means electrical or electronic equipment which is waste, including all components, subassemblies and consumables which are part of the product at the time of discarding;

“WEEE” means waste electrical and electronic equipment as defined herein;

“WEEE from private households” means WEEE which comes from private households and from commercial, industrial, institutional and other sources which, because of its nature and quantity, is similar to that from private households.”.

**Amendment of regulation 5.**

7. In subregulations (2)(d), (5)(a) and (6) of regulation 5 of the principal Regulations, for the words “the Directive” substitute the words “the WEEE Directive”.

**Amendment of regulation 9.**

8. At the end of regulation 9(2) of the principal Regulations insert the words “, the symbol shall be printed visibly, legibly and indelibly”.

**Amendment of regulation 11.**

9. In regulation 11(2) of the principal Regulations, for the words “the Directive” substitute the words “the WEE Directive”.

**Amendment of regulation 12.**

10. In subregulations (1) and (2)(d) of regulation 12 of the principal Regulations, for the words “the Directive” substitute the words “the WEE Directive”.

**Insertion of Part heading.**

11. After regulation 13 of the principal regulations insert the following Part heading–

**“PART III  
ENFORCEMENT NOTICES”**

**Insertion of Part IV.**

12. After regulation 14 of the principal Regulations insert–

**“PART IV  
BATTERIES AND ACCUMULATORS**

**Scope of Part.**

14B. This Part applies to batteries and accumulators except for those batteries and accumulators–

- (a) to which Part II of these Regulations are applied;
- (b) to which the provisions of the End-of Life Vehicle Rules 2004 are applied; or
- (c) that are used–
  - (i) in connection with the protection of essential security interests, arms, munitions, war material or are otherwise intended for military purposes; or
  - (ii) in equipment designed to be sent to space.

**Interpretation of Part.**

14C.(1) In this Part–

“appliance” means any electrical or electronic equipment, as defined by Directive 2002/96/EC, which is fully or partly powered by batteries or accumulators or is capable of being so;

“automotive battery or accumulator” means any battery or accumulator used for automotive starter, lighting or ignition power;

“battery” or “accumulator” means any source of electrical energy generated by direct conversion of chemical energy and consisting of one or more primary battery cells (non rechargeable) or consisting of one or more secondary battery cells (rechargeable);

“battery pack” means any set of batteries or accumulators that are connected together and/or encapsulated within an outer casing so as to form a complete unit that the end user is not intended to split up or open;

“button cell” means any small round portable battery or accumulator whose diameter is greater than its height and which is used for special purposes such as hearing aids, watches, small portable equipment and back-up power;

“collection rate” in a given calendar year means the percentage obtained by dividing the weight of waste portable batteries and accumulators collected in accordance with regulation 14E (which transposes Article 8(1) of the Batteries Directive) or with Directive 2002/96/EC in that calendar year by the average weight of portable batteries and accumulators that producers either sell directly to end-users or deliver to third parties in order to sell them to end-users in Gibraltar during that calendar year and the preceding two calendar years;

“cordless power tool” means any hand held appliance powered by a battery or accumulator and intended for maintenance, construction or gardening activities;

“distributor” means any person that provides batteries and accumulators on a professional basis to an end-user;

“economic operators” means any producer, distributor, collector, recycler or other treatment operator;

“industrial battery or accumulator” means any battery or accumulator designed for exclusively industrial or professional uses or used in any type of electric vehicle;

“placing on the market” means supplying or making available, whether in return for payment or free of charge, to a third party within the Community and includes import into the customs territory of the Community;

“portable battery or accumulator” means any battery, button cell, battery pack or accumulator that–

- (a) is sealed; and
- (b) can be hand-carried; and
- (c) is neither an industrial battery or accumulator nor an automotive battery or accumulator;

“producer” means any person who, irrespective of the selling technique used, including by means of distance communication as defined in Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts places batteries or accumulators, including those incorporated into appliances or vehicles, on the market for the first time in Gibraltar on a professional basis;

“waste battery or accumulator” means any battery or accumulator which is waste within the meaning of Article 3 of Directive 2008/98/EC of the European Parliament and of the Council on 19 November 2008 on waste and repealing certain Directives.



- (2) Any term used but not defined in this Part must, unless the context requires otherwise, be construed in accordance with the meaning given to it in the Batteries Directive.

**Overarching objective.**

14D. The Competent Authority shall, having regard to the environmental impact of transport, take necessary measures to maximise the separate collection of waste batteries and accumulators and to minimise the disposal of batteries and accumulators as mixed municipal waste in order to achieve a high level of recycling for all waste batteries and accumulators.

**Waste portable batteries and accumulators.**

14E.(1) The Competent Authority shall ensure that the systems for the collection of WEEE set up in Part I of these Regulations accept waste portable batteries and accumulators and incorporate the provisions set out in subregulation (2).

- (2) The provisions referred to in subregulation (1) are—
- (a) end-users must be able to discard waste portable batteries or accumulators at an accessible collection point in their vicinity, having regard to population density;
  - (b) distributors must take back waste portable batteries or accumulators at no charge when supplying portable batteries or accumulators, unless an assessment shows that alternative existing schemes are at least as effective in attaining the environmental aims of the Batteries Directive;
  - (c) no charges may be levied to end-users when they discard waste portable batteries or accumulators and no obligation to buy a new battery or accumulator may be imposed on the end-user.
- (3) Where an assessment is made under subregulation (2)(b) the Competent Authority must take such steps as it deems necessary to bring the assessment to the attention of the public.

**Exemption from permit requirements.**

14F. A collection point that is established solely for the purposes of giving effect to regulation 14E(2)(a) shall be exempt from any requirement for a permit under Part VA (Waste) of the Public Health Act.

**Waste industrial batteries and accumulators.**

14G.(1) Producers of industrial batteries and accumulators, or third parties acting on their behalf, shall not refuse to take back waste industrial batteries and accumulators from end-users, regardless of chemical composition and origin.

(2) Subregulation (1) shall not act as a bar to independent third parties from collecting industrial batteries and accumulators.

**Waste automotive batteries and accumulators.**

14H.(1) The Competent Authority shall ensure that producers of automotive batteries and accumulators, or third parties acting on their behalf, set up schemes for the collection of waste automotive batteries and accumulators from end-users or from an accessible collection point in their vicinity except where these have been collected in accordance with the provisions in the End-of Life Vehicles Rules 2004.

(2) In the case of automotive batteries and accumulators from private, non-commercial vehicles, the schemes referred to in subregulation (1) shall not involve any charge to end-users when discarding waste batteries or accumulators, nor any obligation to buy a new battery or accumulator.

**Participation in collection schemes.**

14I. The Competent Authority may take such steps as are necessary to ensure that collection schemes referred to in regulations 14E, 14H and 14L—

(a) are open to participation by all economic operators and all competent public authorities;

- (b) apply to batteries and accumulators imported from third countries under non-discriminatory conditions and that are designed to avoid barriers to trade or distortion of competition.

**Collection rates and target dates.**

- 14J.(1) The Competent Authority shall ensure that the following minimum collection rates are achieved—
- (a) 25 % up to 25 September 2016;
  - (b) 45 % by 26 September 2016.
- (2) In calculating the collection rate account shall be had of batteries and accumulators incorporated into appliances.
  - (3) The Competent Authority must establish the collection rate for the first time in relation to the year 2011 and thereafter shall monitor collection rates on a yearly basis according to the scheme set out in Schedule 7.
  - (4) For the purposes of calculating the annual sales of portable batteries and accumulators to end-users in a given year, the weight of portable batteries and accumulators placed on the market in the year concerned shall exclude any portable batteries and accumulators that have been exported in that year before being sold to the end-users.
  - (5) The placing on the market of each battery and accumulator shall be counted once.
  - (6) The calculation in subregulation (4) shall be based on collected data or statistically significant estimates based on collected data.
  - (7) The Competent Authority shall transmit reports to the Commission within six months of the end of the calendar year for which the report relates and shall indicate how it obtained the data necessary to calculate the collection rate.

**Removal of waste batteries and accumulators.**

14K.(1) A person who manufactures batteries or accumulators in Gibraltar must ensure–

- (a) that he designs appliances in such a way that waste batteries and accumulators can be readily removed; or
  - (b) that appliances into which batteries and accumulators are incorporated are accompanied by instructions showing how the batteries or accumulators can be removed safely and, where appropriate, informing the end-user of the type of the incorporated batteries and accumulators.
- (2) The Competent Authority may issue a written direction to a person who does not comply with subregulation (1) stating what he must do in order to comply with that subregulation and the date by which he must comply.
- (3) A person who, without reasonable excuse, fails to do something when directed to do so under this regulation shall be guilty of an offence and on summary conviction is liable to a fine not exceeding level 4 on the standard scale.
- (4) This regulation does not apply where, for safety, performance, medical or data integrity reasons, continuity of power supply is necessary and requires a permanent connection between the appliance and the battery or accumulator.

**Treatment and recycling.**

14L.(1) The Competent Authority shall that ensure that–

- (a) producers or third parties set up schemes using best available techniques, in terms of the protection of health and the environment, to provide for the treatment and recycling of waste batteries and accumulators; and
- (b) all identifiable batteries and accumulators collected under these Regulations undergo treatment and

recycling through schemes that comply, as a minimum, with Community legislation, in particular as regards health, safety and waste management.

- (2) Subregulation (1) shall not apply to waste batteries and accumulators that are disposed of in accordance with the provisions in the Landfill Act 2002.
- (3) Batteries and accumulators that are collected together with waste electrical and electronic equipment under Part I of these Regulations must be removed.

**Participation in treatment and recycling schemes.**

14M. The Competent Authority may take such steps as are necessary to ensure that treatment and recycling schemes referred to in regulation 14L–

- (a) are open to participation by all economic operators and all competent public authorities;
- (b) apply to batteries and accumulators imported from third countries under non-discriminatory conditions and that are designed to avoid barriers to trade or distortion of competition.

**Increased environmental performance.**

14N. Where batteries or accumulators are manufactured in Gibraltar, the Competent Authority shall promote research and encourage improvements in the overall environmental performance of batteries and accumulators throughout their entire life cycle as well as the development and marketing of batteries and accumulators which contain smaller quantities of dangerous substances or which contain less polluting substances, in particular as substitutes for mercury, cadmium and lead.

**Financing of collection, treatment, recycling and public information.**

14O.(1) The financing of the collection, treatment and recycling of all waste batteries and accumulators, irrespective of the date on

which they were placed on the market, shall be by means of the levy provided for in Part V of these Regulations save where producers and users of industrial and automotive batteries and accumulators conclude agreements stipulating alternative financing arrangements.

- (2) The Competent Authority shall ensure that the producers of batteries and accumulators are not double charged under these regulations and the provisions of the End-of Life Vehicles Rules 2004.
- (3) Where the Competent Authority incurs a cost in connection with a public information campaign on the collection, treatment and recycling of waste portable batteries and accumulators, the Competent Authority shall oblige producers, or third parties acting on their behalf, to finance any net costs arising from such public information campaigns, and where a producer fails to pay any such costs these may be recovered by the Competent Authority as a civil debt.

**Registration of producers.**

- 14P.(1) The Competent Authority shall establish and maintain a register of producers.
- (2) A person who imports batteries or accumulators on a professional basis and who submits a declaration in accordance with regulation 22 shall be entered in the register established under subregulation (1).
  - (3) The register shall include the information set out in the Annex to Commission Decision (2009/603/EC) of 5 August 2009 establishing requirements for registration of producers of batteries and accumulators in accordance with Directive 2006/66/EC of the European Parliament and of the Council.
  - (4) The register shall be available for inspection by the public.
  - (5) A person who is registered under this regulation shall inform the Competent Authority of any change in the information contained in the register within one month from the date of any change in the information contained in the register.

- (6) A person who ceases to be a producer shall inform the Competent Authority who shall cause the register to be amended accordingly.

**Costs not to be shown separately.**

14Q.(1) It is prohibited to show end-users the costs of collection, treatment and recycling separately at the time of sale of new batteries and accumulators.

- (2) A person who contravenes subregulation (1) is liable on summary conviction to a fine at level 1 on the standard scale.

**Information for end-users.**

14R.(1) The Competent Authority shall take necessary measures to ensure that end-users of batteries and accumulators are fully informed of—

- (a) the potential effects on the environment and human health of the substances used in batteries and accumulators;
  - (b) the desirability of not disposing of waste batteries and accumulators as unsorted municipal waste and of participating in their separate collection so as to facilitate treatment and recycling;
  - (c) the collection and recycling schemes available to them;
  - (d) their role in contributing to the recycling of waste batteries and accumulators;
  - (e) the meaning of the symbol of the crossed-out wheeled bin shown in Schedule 4 and the chemical symbols Hg, Cd and Pb.
- (2) The Competent Authority may issue directions requiring economic operators to provide some or all of the information referred to in subregulation (1).

- (3) Distributors to whom regulation 14E(2)(b) applies must inform end-users about the possibility of discarding waste portable batteries or accumulators at their sales points.

**New recycling technologies.**

- 14S.(1) The Competent Authority shall encourage the development of new recycling and treatment technologies, and promote research into environmentally friendly and cost-effective recycling methods for all types of batteries and accumulators.
- (2) The Competent Authority shall encourage treatment facilities licensed in Gibraltar to introduce certified environmental management schemes in accordance with Regulation (EC) No 761/2001 of the European Parliament and of the Council of 19 March 2001 (as amended from time to time) allowing voluntary participation by organisations in a Community ecomanagement and audit scheme (EMAS).

**National implementation reports.**

- 14T.(1) The Competent Authority shall send the European Commission a report on the implementation of the Batteries Directive every three years.
- (2) The Competent Authority shall also report on any measures that they take to encourage developments affecting the impact of batteries and accumulators on the environment, in particular—
  - (a) developments, including voluntary steps taken by producers, reducing quantities of heavy metals and other hazardous substances contained in batteries and accumulators;
  - (b) new recycling and treatment techniques;
  - (c) economic operators' participation in environmental management schemes;
  - (d) research in those fields; and



- (e) measures taken to promote waste prevention.
- (3) The first report shall cover the period until 26 September 2012 and shall be made available to the European Commission no later than nine months after the end of the three-year period concerned or, in the case of the first report, no later than 26 June 2013.

**Voluntary agreements.**

14U.(1) The Government may approve agreements entered into by the Competent Authority and economic operators to implement the provisions in Articles 8, 15 and 20 of the Batteries Directive if such an agreement-

- (a) achieves the objectives set out in the Batteries Directive;
  - (b) is in writing and legally enforceable;
  - (c) sets out which regulations shall not have effect throughout the duration of the agreement;
  - (d) specifies objectives with the corresponding deadlines;
  - (e) is published in the Gazette;
  - (f) is transmitted to the European Commission.
- (2) The regulations set out in the agreement pursuant to subregulation (1)(c) shall not apply to the parties to the agreement whilst it is in force.
- (3) The results achieved must be monitored regularly and reported to the European Commission and made available to the public under the conditions set out in the agreement.
- (4) The Competent Authority shall ensure that the progress made under such agreements is examined.

- (5) In the case of non-compliance with the agreement the Competent Authority may cancel the agreement and upon receipt of such written notification, any regulations whose application was suspended under subregulation (2) shall apply.

**Offence – failing to register.**

14V.(1) A producer who places batteries or accumulators on the market in Gibraltar commits an offence if he does so without first being registered.

- (2) A person guilty of an offence under subregulation (1) is liable on summary conviction to a fine at level 5 on the standard scale or to imprisonment for 6 months, or both.”.

**Amendment of Part heading.**

13. For the heading “PART II WASTE CONTRIBUTION” substitute “PART V WASTE CONTRIBUTION”.

**Amendment of regulation 15.**

14. In regulation 15(1) of the principal Regulations–

- (a) after the words “under Part I of Schedule I” insert the words “or batteries and accumulators to which Part IV applies,”;
- (b) for the words “in the manner provided for by the Directive” substitute the words “in the manner provided for by the WEEE Directive, the Batteries Directive”.

**Amendment of regulation 16.**

15. For regulation 16(2) of the principal Regulations substitute–

- “(2) In setting the level of waste contribution in respect of WEEE the Minister shall have regard–
- (a) to the actual costs of disposing of WEEE (including historical WEEE) in accordance with these Regulations and the WEEE Directive;

- (b) the actual costs of collection, treatment and recycling of waste batteries or and accumulators, irrespective of when they were placed on the market; and
- (c) the net costs arising from public information campaigns on the collection, treatment and recycling of waste batteries and accumulators.”.

**Amendment of Part heading.**

16. For the heading “PART III DECLARATIONS” substitute “PART VI DECLARATIONS”.

**Amendment of regulation 22.**

17. In regulation 22(1) of the principal Regulations, after the words “imports into Gibraltar electrical and electronic equipment” insert the words “, batteries or accumulators”.

**Amendment of Schedule 1.**

18. In Schedule 1 to the principal Regulations delete the heading “**Part III Other categories waste by these Regulations**”.

**Amendment of Schedule 4.**

19. In Schedule 4 to the principal Regulations-

- (a) after “Regulation 9” insert “, 14R”;
- (b) after the words “The symbol indicating separate collection for electrical and electronic equipment,” insert the words “batteries and accumulators”.
- (c) delete the words “The symbol must be printed visibly, legibly and indelibly.”.

**New Schedule 7.**

20. After Schedule 6 insert-

“SCHEDULE 7

Regulation 14J(3)

**COLLECTION RATES**

YEAR	DATA COLLECTION		CALCULATION
2009	2009 sales (S1)		
2010	2010 sales (S2)	-	-
2011	2011 sales (S3)	2011 collection (C3)	$3 \times C3/(S1+S2+S3)$
2012	2012 sales (S4)	2012 collection (C4)	$3 \times C4/(S2+S3+S4)$
2013	2013 sales (S5)	2013 collection (C5)	$3 \times C5/(S3+S4+S5)$
2014	2014 sales (S6)	2014 collection (C6)	$3 \times C6/(S4+S5+S6)$
2015	2015 sales (S7)	2015 collection (C7)	$3 \times C7/(S5+S6+S7)$
2016	2016 sales (S8)	2016 collection (C8)	$3 \times C8/(S6+S7+S8)$
2017	2017 sales (S9)	2017 collection (C9)	$3 \times C9/(S7+S8+S9)$
2018	2018 sales (S10)	2018 collection (C10)	$3 \times C10/(S8+S9+S10)$
2019	2019 sales (S11)	2019 collection (C11)	$3 \times C11/(S9+S10+S11)$

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Dated 27th October, 2011.

P R CARUANA,  
Chief Minister,  
For the Government.

**EXPLANATORY MEMORANDUM**

These Regulations partly transpose Directive 2006/66/EC on batteries and accumulators, and implement Commission Decision 2008/763/EC and Commission Decision .

The effect of the regulations is to incorporate batteries and accumulators into the waste streams and systems in place for the collection, removal, treatment and recycling of waste batteries and accumulators.

These Regulations also sets target dates for the rates at which waste batteries and accumulators must be collected.