SECOND SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 3844 of 12 April, 2011

LEGAL NOTICE NO. 51 OF 2011.

GIBRALTAR MERCHANT SHIPPING (SAFETY, ETC) ACT 1995

GIBRALTAR MERCHANT SHIPPING (COMMUNITY VESSEL TRAFFIC MONITORING AND INFORMATION SYSTEM) (AMENDMENT) REGULATIONS 2011

In exercise of the powers conferred on it by regulation 118 of the Gibraltar Merchant Shipping (Safety, etc.) Act, 1993 and all other enabling powers and for the purposes of transposing into the law of Gibraltar Directive 2009/17/EC of the European Parliament and of the Council of 23 April 2009 amending Directive 2002/59/EC establishing a Community vessel traffic monitoring and information system, the Government has made the following Regulations–

Title and commencement.

1. These Regulations may be cited as the Gibraltar Merchant Shipping (Community Vessel Traffic Monitoring and Information System) (Amendment) Regulations 2011 and come into operation on the day of publication.

Amendments to the Gibraltar Merchant Shipping (Community Vessel Traffic Monitoring and Information System) Regulations 2004.

2. The Gibraltar Merchant Shipping (Community Vessel Traffic Monitoring and Information System) Regulations 2004 (the Principal Regulations) are amended in accordance with the provisions of regulations 3 to 17.

Amendment to regulation 2.

3. Regulation 2 of the Principal Regulations is amended–

(a) the definition "Act" is moved from its current location (after the definition of "Operator") and inserted after the definition of "accident";

(b) after the definition of "BC Code" insert the following definitions–

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

"cargo transport unit" means a road freight vehicle, a railway freight wagon, a freight container, a road tank vehicle, a railway wagon or a portable tank;";

(c) by inserting at the end of the definition of "Directive" the words ", as the same may be from time to time amended;";

(d) by inserting the following definition, after the definition of "EEA State"–

""fishing vessel" means any vessel equipped for commercial exploitation of living aquatic resources;";

(e) by deleting the definition "Gibraltar waters";

(f) by inserting the following definitions, after the definition of "IMO guidelines"–

""IMO guidelines on the fair treatment of seafarers in the event of a maritime accident" means the guidelines as annexed to resolution LEG. 3(91) of the IMO Legal Committee of 27 April 2006 and as approved by the Governing Body of the ILO in its 296th session of 12 to 16 June 2006 in its up-to date version that is applicable at the time of reference;

"IMO Resolution A.851(20)" means International Maritime Organisation Resolution 851(20) entitled 'General principles for ship reporting systems and ship reporting requirements, including guidelines for reporting

incidents involving dangerous goods, harmful substances and/or marine pollutants' in its up-to date version that is applicable at the time of reference;

"IMO Resolution A.917(22)" means International Maritime Organisation Resolution 917(22) entitled "Guidelines for the onboard use of AIS", as amended by IMO Resolution A.956(23) in its up-to date version that is applicable at the time of reference;

"IMO Resolution A.949(23)" means International Maritime Organisation Resolution 949(23) entitled "Guidelines on places of refuge for ships in need of assistance" in its up-to date version that is applicable at the time of reference;

"IMO Resolution A.950(23)" means International Maritime Organisation Resolution 950(23) entitled "Maritime assistance services (MAS) in its up-to date version that is applicable at the time of reference;";

(g) after the definition of "international voyage" insert the following definitions–

""International Convention on Tonnage Measurement of Ships 1969" means that Convention, in its up-to date version that is applicable at the time of reference;

"International Convention relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, 1969 and its 1973 Protocol relating to Intervention on the High Seas in Cases of Pollution by Substances other than Oil means that Convention, in its up-to date version that is applicable at the time of reference;";

(h) by inserting the following definition after the definition of "long international voyage"-

""LRIT" means a system for the long-range identification and tracking of ships in accordance with SOLAS regulation V/19-1;";

(i) by inserting the following definitions, after the definition of "rules"–

""SafeSeaNet" means the Community maritime information exchange system developed by the European Commission in cooperation with the Member States to ensure the implementation of Community legislation;

"SAR Convention" means the Convention defined by section 2 of the Maritime (Search and Rescue) Act 2005;

"scheduled service" means a series of ship crossings operated so as to serve traffic between the same two or more ports, either according to a published timetable or with crossings so regular or frequent that they constitute a recognisable systematic series;

"ship in need of assistance" means, without prejudice to the provisions of the SAR Convention concerning the rescue of persons, a ship in a situation that could give rise to its loss or an environmental or navigational hazard;".

Amendment to regulation 3.

4. Regulation 3 of the Principal Regulations is amended–

(a) in subregulation (3)(a) by substituting "1000 gross tonnage" for "5000 tonnes"; and

(b) in subregulation (4), by substituting "of less than 1000 gross tonnage" for "of less than 5000 tonnes".

Amendment to regulation 6.

5. Regulation 6(3) of the Principal Regulations is amended-

(a) in the first line, by substituting "Government" for " port authority"; and

(b) by substituting the following paragraph for paragraph (j)(i)–

"(i) the characteristics and estimated quantity of bunker fuel, for ships of more than 1 000 gross tonnage; and".

Insertion of regulation 10A.

6. The Principal Regulations are amended by inserting the following regulations after regulation 10-

"**Use of automatic identification systems (AIS) by fishing vessels.**

10A.(1) Every fishing vessel with an overall length of more than 15 metres that–

(a) flies the flag of Gibraltar and is registered in Gibraltar;

(b) operates in BGTW; or

(c) lands its catch in the port of Gibraltar,

shall, in accordance with the timetable set out in Part 3 of Schedule 1, be fitted with an AIS (Class A) which meets the performance standards drawn up by the IMO.

(2) Every fishing vessel equipped with AIS shall maintain it in operation at all times but, in exceptional circumstances, AIS may be switched off where the master considers this necessary in the interest of the safety or security of his vessel.

Use of systems for the long-range identification and tracking of ships (LRIT).

10B.(1) Ships to which SOLAS regulation V/19-1 and the performance standards and functional requirements adopted by the IMO apply shall carry LRIT equipment complying with that regulation, when calling at the port of Gibraltar.

(2) The Administration must cooperate with the European Commission to determine the requirements concerning the fitting of equipment for transmitting LRIT information on board ships sailing in BGTW within the coverage of AIS

fixed-based, and shall submit to the IMO any appropriate measures.".

Substitution of regulation 13.

7. The Principal Regulations are amended by substituting the following regulation for regulation 13–

"**Exemptions.**

13.(1) Subject to the conditions specified in subregulations (2) and (3), the Administration may grant an exemption in respect of a scheduled service performed within Gibraltar so that regulations 5 and 12 shall not apply to the operator, agent or master of a ship engaged in the scheduled service.

(2) The conditions referred to subregulation (1) are that the company who operates the scheduled service shall–

(a) maintain and keep up to date a list of the ships engaged on that scheduled service;

(b) send that list to the Administration;

(c) ensure that, in respect of each voyage made by a ship whilst engaged on the scheduled service, the information specified in regulation 5(3) or Schedule 2, as appropriate, is kept so that it can be provided at any time, 24 hours a day, by electronic means to the port authority immediately upon request; and

(d) in the event of any deviations from the estimated time of arrival at the port of destination or pilot station of three hours or more are notified to the port of arrival or to the Administration in accordance with regulation 5 or 12, as appropriate.

(3) The exemptions under this regulation must be granted only to an individual ship as regards a specific service.

(4) For the purposes of subregulation (1), the service shall not be regarded as a scheduled service unless it is intended to be operated for a minimum of one month.

(5) Exemptions from the requirements of regulations 5 and 12 shall be limited to voyages of a scheduled duration of up to 12 hours.

(6) An exemption granted under subregulation (1), and any revocation thereof, shall be in writing.

(7) The Administration shall–

(a) periodically check that the conditions set out in this regulation are being met; and

(b) immediately revoke an exemption granted under subregulation (1) if it is satisfied that any condition contained in subregulations (2) and (3) is not complied with.

(8) When an international scheduled service is operated between Gibraltar and one or more States of which at least one is a Member State, the Administration may request the other Member States to grant an exemption for that service and shall cooperate with the other Member State if a similar request is made.

(9) The Administration shall cause a list of companies and ships granted exemption under this regulation to be communicated to the European Commission, as well as any updates to that list.".

Substitution of regulation 14.

8. The Principal Regulations are amended by substituting the following regulation for regulation 14–

"**Information requirements concerning the transport of dangerous goods.**

14.(1) No person shall offer for carriage or to take on board any ship, irrespective of its size, any dangerous or polluting goods

in the port of Gibraltar unless a declaration has been delivered to the master or operator before the goods are taken on board which must contain the following information–

(a) the information listed in subregulation (3);

(b) for the substances referred to in Annex I to the MARPOL Convention, the safety data sheet detailing the physico-chemical characteristics of the products, including, where applicable, their viscosity expressed in cSt at 50 °C and their density at 15 °C and the other data contained in the safety data sheet in accordance with IMO Resolution MSC.150(77); and

(c) the emergency numbers of the shipper or any other person or body in possession of information on the physico-chemical characteristics of the products and on the action to be taken in an emergency.

(2) Every ship that comes from a port outside the European Union and calls at the port of Gibraltar which has dangerous or polluting goods on board shall be in possession of a declaration, as provided for by the shipper, containing the information required under paragraphs (a), (b) and (c) of subregulation (1).

(3) The following information is required to be contained in a declaration pursuant to subregulation (1)–

(a) the correct technical names of the dangerous or polluting goods;

(b) the United Nations (UN) numbers where they exist;

(c) the IMO hazard classes in accordance with the IMDG, IBC and IGC Codes;

(d) where appropriate, the class of the ship needed for INF cargoes as defined in Regulation VII/14.2 of the SOLAS Convention, the quantities of such goods and, if they are being carried in cargo transport units other than tanks, the identification number thereof; and

(e) the address from which detailed information on the cargo may be obtained.

(4) The shipper shall–

(a) deliver the declaration referred to in subregulation (2) to the master or operator; and

(b) ensure that the shipment offered for carriage is indeed the one declared in accordance with subregulation (1).".

Insertion of regulation 16A.

9. The Principal Regulations are amended by inserting the following regulations after regulation 16–

"**Measures in the event of risks posed by the presence of ice.**

16A.(1) Where the Administration considers, in view of ice conditions, that there is a serious threat to the safety of human life at sea or to the protection of the shipping areas or coastal zone of Gibraltar, or of the shipping areas or coastal zones of other States, it–

(a) shall supply the master of the ship which is in its area of competence, or intends to enter or leave the port, with appropriate information on the ice conditions, the recommended routes and the icebreaking services in its area of competence; and

(b) may, without prejudice to the duty of assistance to ships in need of assistance and other obligations flowing from relevant international rules, request that the ship which is in the area concerned and intends to enter or leave the port or terminal or to leave an anchorage area document that it satisfies the strength and power requirements commensurate with the ice situation in the area concerned.

(2) The measures taken under subregulation (1) shall be based, as regards the data concerning the ice conditions, upon ice and weather forecasts provided by a qualified meteorological information service recognised by the Administration.".

Amendments to regulation 17.

10. Regulation 17 of the Principal Regulations is amended–

(a) in subregulation (4) by inserting " and to this end they shall communicate to the port authority, on request, the information referred to in regulation 14" after " the consequence of the incident or accident at sea";

(b) by inserting the following subregulation after subregulation (4)–

"(5) The Administration shall take into account the relevant provisions of the IMO guidelines on the fair treatment of seafarers in the event of a maritime accident in BGTW.".

Insertion of regulations 18A to 18D.

11. The Principal Regulations are amended by inserting the following regulations after regulation 18–

"**Competent authority for the accommodation of ships in need of assistance.**

18A.(1) The Minister is designated the competent authority for the purposes of taking independent decisions on his own initiative concerning the accommodation of ships in need of assistance.

(2) The authority referred to in subregulation (1)–

(a) may, as appropriate and in particular in the event of a threat to maritime safety and protection of the environment, take any of the measures included in the non-exhaustive list set out in regulation 17(3); and

(b) shall meet regularly with the port authority to exchange expertise and improve measures taken pursuant to this regulation.

Plans for the accommodation of ships in need of assistance.

18B.(1) The port authority shall draw up plans for the accommodation of ships in order to respond to threats presented by ships in need of assistance in BGTW, including, where applicable, threats to human life and the environment and the Minister shall participate in drawing up and carrying out those plans.

(2) The plans referred to in subregulation (1) shall be prepared after consultation of the parties concerned, on the basis of IMO Resolutions A.949(23) and A.950(23), and shall contain at least the following–

(a) the identity of the person or authority responsible for receiving and handling alerts;

(b) the identity of the competent authority for assessing the situation and taking a decision on acceptance or refusal of a ship in need of assistance in the place of refuge selected;

(c) information on the coastline of Gibraltar and all elements facilitating a prior assessment and rapid decision regarding the place of refuge for a ship, including a description of environmental, economic and social factors and natural conditions;

(d) the assessment procedures for acceptance or refusal of a ship in need of assistance in a place of refuge;

(e) the resources and installations suitable for assistance, rescue and combating pollution;

(f) procedures for international coordination and decision-making; and

(g) the financial guarantee and liability procedures in place for ships accommodated in a place of refuge.

(3) The Government shall–

(a) publish the name and contact address of–

(i) the authority referred to in subregulation 18A(1); and

(ii) the person or the authority for receiving and handling alerts; and

(b) communicate on request the relevant information concerning plans to neighbouring Member States.

(4) In implementing the procedures provided for in the plans for accommodating ships in need of assistance, the Government shall ensure that relevant information is made available to the parties involved in the operations.

(5) Where a person in Gibraltar receives from a Member State that Member State's information in relation to the matters referred to in subregulations (3)(b) and (4), that person shall be bound by an obligation of confidentiality where the Member State providing the information so requests.

(6) The Government shall ensure that the European Commission is informed of the measures taken in application of this regulation.

Decision on the accommodation of ships.

18C. The authority referred to in subregulation 18A(1) shall–

(a) decide on the acceptance of a ship in a place of refuge following a prior assessment of the situation carried out on the basis of the plans referred to in regulation 18B; and

(b) ensure that ships are admitted to a place of refuge if it considers such an accommodation the best course of action for the purposes of the protection of human life or the environment.

Financial security and compensation.

18D.(1) The absence of an insurance certificate (within the meaning of Article 6 of Directive 2009/20/EC of the European Parliament and of the Council of 23 April 2009 on the insurance of shipowners for maritime claims)–

(a) shall not exonerate the Government from the preliminary assessment and decision referred to in regulation 18C;

(b) shall not in itself be considered sufficient reason for it to refuse to accommodate a ship in a place of refuge.

(2) Without prejudice to subregulation (1), when accommodating a ship in a place of refuge, the Government may request the ship's operator, agent or master to present the insurance certificate referred to in subregulation (1).

(3) The act of requesting the certificate under subregulation (2) shall not lead to a delay in accommodating the ship.".

Amendments to regulation 21.

12. Regulation 21(1) of the Principal regulation is amended–

(a) by substituting a ";" for "." at the end of paragraph (c);

(b) by inserting the following paragraphs after paragraph (c)–

"(d) has failed to notify, or does not have, insurance certificates or financial guarantees pursuant to any Community legislation and international rules; and

(e) has been reported by the pilot or port authority as having apparent anomalies which may prejudice its safe navigation or create a risk for the environment.".

Insertion of regulations 22A and 22B.

13. The Principal Regulations are amended by inserting the following regulations after regulation 22–

"**Gibraltar's communication system.**

22A.(1) The Government shall set up a communication system and shall cooperate with the Member States to ensure the interconnection and interoperability to manage the information required to be notified under these Regulations.

(2) The communication system referred to in subregulation (1) must display the following features–

(a) data exchange must be electronic and enable messages notified under regulation 12 to be received and processed;

(b) the system must allow information to be transmitted 24 hours a day; and

(c) upon request, through SafeSeaNet, and if needed for the purpose of maritime safety or security or the protection of the maritime environment, the Administration shall be able to send information on the ship and the dangerous or polluting goods on board to the port authority and the competent authority of a Member State without delay.

SafeSeaNet.

22B.(1) The Government shall establish maritime information management systems to process the information referred to in these Regulations.

(2) The systems set up under subregulation (1) shall–

(a) allow the information gathered to be used operationally; and

(b) satisfy, in particular, the conditions laid down in regulation 22A.

(3) The Government shall, in order to guarantee an effective exchange of the information referred to in these Regulations, ensure that communication systems set up to gather, process and preserve that information can be interconnected with SafeSeaNet.

(4) Without prejudice to subregulation (3), the Government shall, if operating under any intra-Community agreements or in the framework of cross-border interregional or transnational projects within the Community, ensure that information systems or networks–

(a) comply with the requirements of these Regulations; and

(b) are compatible with and connected to SafeSeaNet.".

Amendment of regulation 23.

14. Regulation 23 is amended–

(a) in subregulation (4) for "10(2), 10(3) or 10(4)" substitute "10(2), 10(3), 10(4) or 10A"; and

(b) in subregulation (5) for "14(3)" substitute "14(4)".

Amendment to Schedule 1.

15. Schedule 1 of the Principal Regulations is amended by inserting the following Part after Part 2–

"Part 3

Fishing vessels

1. Fishing vessels with a length of more than 15 metres overall are subject to the carrying requirement laid down in regulation 10A according to the following timetable–

(a) fishing vessels of overall length 24 metres and upwards but less than 45 metres: not later than 31 May 2012;

(b) fishing vessels of overall length 18 metres and upwards but less than 24 metres: not later than 31 May 2013; and

(c) fishing vessels of overall length exceeding 15 metres but less than 18 metres: not later than 31 May 2014.

2. Paragraph (1) shall not apply to new built fishing vessels of overall length exceeding 15 metres and these are therefore subject to the carrying requirement laid down in regulation 10A as from the date of the commencement of the Gibraltar Merchant Shipping (Community Vessel Traffic Monitoring and Information System) (Amendment) Regulations 2011".

Schedule 3.

16. Schedule 3 to the Principal Regulations is revoked.

Consequential amendments.

17. In the Principal Regulations, wherever the words "Gibraltar waters" appear substitute "BGTW".

Dated 12th April, 2011.

P R CARUANA,
Chief Minister,
for the Government.

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EXPLANATORY MEMORANDUM

These Regulations amend the Gibraltar Merchant Shipping (Community Vessel Traffic Monitoring and Information System) Regulations 2004 for the purposes of transposing into the law of Gibraltar Directive 2009/17/EC amending Directive 2002/59/EC establishing a Community vessel traffic monitoring and information system.

LEGAL NOTICE NO. 52 OF 2011.

INTERPRETATION AND GENERAL CLAUSES ACT

PUBLIC HEALTH ACT (AMENDMENT) REGULATIONS 2011

In exercise of the powers conferred upon it by section 23(g)(ii) of the Interpretation and General Clauses Act, and all other enabling powers, and for the purpose of transposing into the law of Gibraltar Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives, the Government has made the following Regulations–

Title and commencement.

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

Amendment of the principal Act.

2. The Public Health Act (hereinafter "the principal Act") is amended in accordance with these Regulations.

Amendment of section 192A.

3. For section 192A of the principal Act substitute–

"**Interpretation.**

192A(1). In this Part and in Schedules 11A to 18, unless the context shall otherwise require–

"best available techniques" means best available techniques as defined in Article 2(11) of Directive 96/61/EC;

"batteries" and "accumulators" have the meaning given to them by section 192K(1);

"the Batteries Directive" means Council Directive 9l/l57/EEC;

"BGTW" means British Gibraltar Territorial Waters which is the area of sea, the sea bed and subsoil within the seaward limits of the

territorial sea adjacent to Gibraltar under British sovereignty and which, in accordance with the United Nations Convention on the Law of the Sea 1982, currently extends to three nautical miles and to the median line in the Bay of Gibraltar;

"bio-waste" means biodegradable garden and park waste, food and kitchen waste from households, restaurants, caterers and retail premises and comparable waste from food processing plants;

"broker" means any undertaking arranging the recovery or disposal of waste on behalf of others, including such brokers who do not take physical possession of the waste;

"collection" means the gathering of waste, including the preliminary sorting and preliminary storage of waste for the purposes of transport to a waste treatment facility;

"dealer" means any undertaking which acts in the role of principal to purchase and subsequently sell waste, including such dealers who do not take physical possession of the waste;

"the Directive" means Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives, as the same may be amended from time to time;

"disposal" means any operation which is not recovery even where the operation has as a secondary consequence the reclamation of substances or energy, and Schedule 12 sets out a non-exhaustive list of disposal operations;

"hazardous waste" has the meaning given to it in section 192KA;

"holder" means the producer of waste or the person who is in possession of it;

"the Marking Directive" means Commission Directive 93/86/EEC adapting the Batteries Directive to technical progress;

"PCBs" means any of the following substances–

polychlorinated biphenyls

polychlorinated terphenyls

monomethyl-dibromo-diphenyl methane

monomethyl-dichloro-diphenyl methane

monomethyl-tetrachlorodiphenyl methane

and any mixture containing any of those substances in a total of more than 0.005% by weight;

the "PCBs Directive" means Council Directive 96/59/EC on the disposal of polychlorinated biphenyls and polychlorinated terphenyls;

"Incineration of Hazardous Waste Directive" means Council Directive 94/67/EC on the incineration of hazardous waste;

"preparing for re-use" means checking, cleaning or repairing recovery operations, by which products or components of products that have become waste are prepared so that they can be re-used without any other pre-processing;

"prevention" means measures taken before a substance, material or product has become waste, that reduce–

(a) the quantity of waste, including through the re-use of products or the extension of the life span of products;

(b) the adverse impacts of the generated waste on the environment and human health; or

(c) the content of harmful substances in materials and products;

"recovery" means any operation the principal result of which is waste serving a useful purpose by replacing other materials which would otherwise have been used to fulfil a particular function, or waste being prepared to fulfil that function, in the plant or in the wider economy; a non-exhaustive list of recovery operations is set out in Schedule 13;

"recycling" means any recovery operation by which waste materials are reprocessed into products, materials or substances whether for the original or other purposes, and includes the reprocessing of organic material but does not include energy recovery and the reprocessing into materials that are to be used as fuels or for backfilling operations;

"regeneration of waste oils" means any recycling operation whereby base oils can be produced by refining waste oils, in particular by removing the contaminants, the oxidation products and the additives contained in such oils;

"re-use" means any operation by which products or components that are not waste are used again for the same purpose for which they were conceived;

"separate collection" means the collection where a waste stream is kept separately by type and nature so as to facilitate a specific treatment;

"treatment" means recovery or disposal operations, including preparation prior to recovery or disposal;

"waste" means any substance or object which the holder discards or intends to discard, or is required to discard;

"waste holder" means the waste producer or the natural or legal person who is in possession of the waste;

"waste management" means the collection, transport, recovery and disposal of waste, including the supervision of such operations and the after-care of disposal sites, including actions taken as a dealer or broker;

"waste oils" means any mineral or synthetic lubrication or industrial oils which have become unfit for the use for which they were originally intended, such as used combustion engine oils and gearbox oils, lubricating oils, oils for turbines and hydraulic oils;

"waste producer" means anyone whose activities produce waste (original waste producer) or anyone who carries out pre-processing, mixing or any other operations resulting in a change in the nature or composition of this waste.

(2) A substance or object, resulting from a production process, the primary aim of which is not the production of that item, may be regarded as not being waste but as being a by-product only if the following conditions are met–

(a) further use of the substance or object is certain;

(b) the substance or object can be used directly without any further processing other than normal industrial practice;

(c) the substance or object is produced as an integral part of a production process; and

(d) further use is lawful, that is, the substance or object fulfils all relevant product, environmental and health protection requirements for the specific use and will not lead to overall adverse environmental or human health impacts.".

Amendment of section 192B.

4. In section 192B of the principal Act–

(a) in subsection (2) paragraphs (bb) and (e) are repealed;

(b) for subsection (3) substitute–

"(3) This Part shall not apply to–

(a) gaseous effluents emitted into the atmosphere;

(b) land (in situ) including unexcavated contaminated soil and buildings permanently connected with land;

(c) uncontaminated soil and other naturally occurring material excavated in the course of construction activities where it is certain that the material will be used for the purposes of construction in its natural state on the site from which it was excavated;

(d) radioactive waste;

(e) decommissioned explosives;

(f) faecal matter, if not covered by paragraph (g)(iii), straw and other natural non-hazardous agricultural or forestry material used in farming, forestry or for the production of energy from such biomass through processes or methods which do not harm the environment or endanger human health;

(g) the following to the extent that they are already covered by this Act or any other European Union legislation applicable to Gibraltar–

(i) waste waters;

(ii) animal by-products including processed products covered by Regulation (EC) No 1774/2002, except those which are destined for incineration, landfilling or use in a biogas or composting plant;

(iii) carcasses of animals that have died other than by being slaughtered, including animals killed to eradicate epizootic diseases, and that are disposed of in accordance with Regulation (EC) No 1774/2002;

(iv) waste resulting from prospecting, extraction, treatment and storage of mineral resources and the working of quarries covered by the Waste (Extractive Industries) Regulations 2009.

(3A) Without prejudice to obligations under any other Parts of this Act or other applicable European Union legislation, sediments relocated inside surface waters for the purpose of managing waters and waterways or of preventing floods or mitigating the effects of floods and droughts or land reclamation shall be excluded from the scope of this Part if it is proved that the sediments are non-hazardous.".

New section 192BA.

5. After section 192B of the principal Act insert the following section–

"**End-of-waste status.**

192BA.(1) Waste shall cease to be waste for the purposes of this Part when it complies with the criteria developed by the European Union pursuant to Article 6 (1) and (2) of the Directive.

(2) Waste which ceases to be waste in accordance with subsection (1), shall also cease to be waste for the purpose of the recovery and recycling targets set out in Directives 2000/53/EC of the European Parliament and of the Council of 18 September 2000 on end-of life vehicles, 2002/96/EC of the European Parliament and of the Council of 27 January 2003 on waste electrical and electronic equipment and 2006/66/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 and other relevant European Union legislation when the recycling or recovery requirements of that legislation are satisfied.

(3) Until such time as the criteria referred to in subsection (1) are developed, the Government may, after taking account of all applicable case law, by Order declare that the waste specified therein shall have ceased to be waste.

(4) The Government shall ensure that the Commission is notified where it makes an Order pursuant to subsection (3).".

Amendment of section 192C.

6. In section 192C of the principal Act–

(a) in paragraph (a) of subsection (3) for the words "recovered or" substitute the words "and where it is not recovered that it is"

(b) in subsection (3) immediately after paragraph (a) insert the following paragraphs–

"(aa) ensuring that measures are taken (as appropriate) for the promotion of the re-use of products and preparation for re-use activities, notably by encouraging the establishment and support of re-use and repair networks, the use of economic instruments, procurement criteria, quantitative objectives or other measures;

(ab) ensuring that waste undergoes recovery operations in accordance with subsections (3)(a), (5)(a), section 192M(3) and Schedule 11B and for the purpose of such recovery operations and to facilitate and improve recovery, that waste is collected separately if technically, environmentally and economically practicable, and is not mixed with other waste or other material with different properties;

(ac) ensuring that high quality recycling is possible and that waste is collected separately where technically, environmentally and economically practical and appropriate to meet the necessary quality standards for the relevant recycling sectors and in so doing that the conditions and targets set out in Schedule 14A are complied with;";

(c) in subsection (4), for paragraphs (a) to (d) substitute the following paragraphs–

"(a) to ensure that they are collected separately, where this is technically feasible;

(b) to ensure that they are treated in accordance with subsection (5)(a);

(c) to ensure, where technically feasible and economically viable that–

(i) they are not mixed with other waste oils having different characteristics; and

(ii) they are not mixed with other kinds of waste or substances,

if such mixing impedes their treatment.";

(d) after subsection (4) insert the following subsection–

"(5) In applying subsections (2) to (4) the Government shall-

(a) have regard to the waste hierarchy as set out in Schedule 11B; and

(b) implement the producer pays principle in a manner consistent with Article 14 of the Directive.".

Amendment of section 192D.

7. In section 192D of the principal Act–

(a) subsection (2)(a)(ii) is repealed;

(b) after subsection (2)(b)(i) insert the following subparagraph-

"(iA) treatment;";

(c) after subsection (2)(c)(ii) insert the following subparagraphs–

"(iii) storage;

(iv) treatment;";

(c) in subsection (3) delete the words "section 192G (provisions as to waste oils), and section 192H (use of waste oils as fuel),";

(d) for subsection (6) substitute the following subsections–

"(6) A licence granted under this section shall specify–

(a) the type and quantities of waste that may be treated;

(b) for each type of operation permitted, the technical and any other requirements relevant to the site concerned;

(c) the safety and precautionary measures to be taken;

(d) the disposal site;

(e) the method to be used for each type of operation;

(f) such monitoring and control operations as may be necessary;

(g) such closure and aftercare provisions as may be necessary.

(6A) A licence covering incineration or co-incineration with energy recovery shall contain a condition that the recovery of energy take place with a high level of energy efficiency.";

(e) in subsection (8) for paragraphs (a) and (b) substitute the following paragraphs–

"(a) establishments or undertakings which carry out waste treatment operations;

(b) establishments or undertakings which collect or transport waste on a professional basis;

(c) brokers and dealers; and

(d) establishments or undertakings which produce hazardous waste.";

(f) after subsection (8) insert the following subsections–

"(9) Inspections of collection and transport operations shall cover the origin, nature, quantity and destination of the waste collected and transported.

(10) In discharging its duty under subsection (8) account may be taken of registrations obtained under the Community Eco-Management and Audit Scheme (EMAS), in particular regarding the frequency and intensity of inspections.".

New section 192DA.

8. After section 192D of the principal Act insert the following section–

"**Exemption from requirement for a licence.**

192DA.(1) Subject to subsection (2) the Government may exempt from the requirement of a licence under section 192D any person who–

(a) disposes of his own non-hazardous waste at the place of production; or

(b) undertakes the recovery of waste.

(2) An exemption under subsection (1) may only be granted where the Government has by Regulations made hereunder set out, in respect of each type of activity, general rules specifying the types and quantities of waste that may be covered by an exemption, and the method of treatment to be used.

(3) Regulations made under subsection (2) shall ensure that–

(a) waste is treated in accordance with the provisions in section 192C(3)(a);

(b) in the case of disposal operations referred to in subsection (1)(a), consideration is given to the use of best available techniques.

(4) In the case of hazardous waste, regulations made under subsection (2) shall also provide specific conditions for the grant of exemptions including–

(a) the types of activity;

(b) any other necessary requirement for carrying out different forms of recovery;

(c) the limit values for the content of hazardous substances in the waste, where relevant;

(d) the emission limit values, where relevant.".

(5) The Government shall ensure that the Commission is informed of the Regulations made under this section.

Amendment of section 192E.

9. In section 192E of the principal Act for subsection (2) substitute the following subsection–

"(2) The activities referred to in subsection (1) are–

(a) collecting or transporting waste on a professional basis;

(b) dealers or brokers of waste; or

(c) those which are the subject matter of an exemption granted pursuant to section 192DA.".

Repeal of section 192G and 192H.

10. Sections 192G and 192H of the principal Act are repealed.

Amendment of section 192KA.

11. In section 192KA for subsection (8) substitute the following subsections–

"(8) The Minister for the Environment may by notice in the Gazette designate any waste to be hazardous waste where such waste displays any of the properties mentioned in Part II of Schedule 11A and where he does so, he must ensure that the Commission is informed in accordance with Article 37(1) of the Directive.

(8A) The Minister for the Environment may by notice in the Gazette designate any waste to be non-hazardous waste–

(a) where he has evidence that shows that such waste does not display any of the properties mentioned in Part II of Schedule 11A; or

(b) in accordance with Decision 2000/532/EC establishing a list of wastes,

and where he does so pursuant to paragraph (a), he must ensure that the Commission is informed in accordance with Article 37(1) of the Directive.

(8B) The reclassification of hazardous waste as non-hazardous waste pursuant to subsection (8A)(a) is not permitted where this has been achieved by diluting or mixing the waste with the aim of lowering the initial concentrations of hazardous substances to a level below the thresholds for defining waste as hazardous.".

Amendment of section 192KB.

12. For section 192KB of the principal Act substitute the following section–

"192KB.(1) Where a person carries out a prescribed activity within the meaning of section 192D he shall do so without-

(a) mixing hazardous waste with waste which is not hazardous waste or with any other substance or material; or

(b) mixing different types of hazardous waste set out in Schedule 11A; and

(c) diluting the hazardous substances which makes the waste hazardous,

unless authorised to do so in accordance with subsection (2).

(2) A licence under section 192D may authorise a person to mix hazardous waste where–

(a) the provisions of section 192C(3)(a) are satisfied and the impact on human health and environment is not increased; and

(b) the mixing conforms to best available techniques.

(3) Where a person, in carrying out or intending to carry out a prescribed activity, acquires possession of waste which includes hazardous waste he shall, to the extent that it is technically feasible without disproportionate cost, separate the hazardous waste from the waste which is not hazardous waste if such separation is necessary to meet the provisions of section 192C(3)(a).

(4) No person shall collect, transport or store hazardous waste with the intention of subsequently disposing of it unless it is placed in containers labelled to show which of the types of hazardous waste set out in Schedule 11A is contained therein.

(5) Where a person transports hazardous waste he shall–

(a) make and maintain the records required under paragraphs (a) and (b) of section 192L(1); and

(b) ensure that the hazardous waste is accompanied by an identification document that contains the data specified in Annex IB to Regulation (EC) No

1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste.

(6) A producer of hazardous waste shall make and maintain the records required under paragraphs (a) and (b) of section 192L(1).

(7) A person who carries out a prescribed activity as described in section 192D(2)(a)(i) or (ii) in or on any land shall send details of the activity which identifies the nature and location of the waste to the Government where it shall be placed on the register referred to in section 192Q(14).

(8) A person who fails to comply with the provisions of subsection (7) shall be guilty of an offence and liable to summary conviction to a fine not exceeding level 2 on the standard scale.".

New section 192KC.

13. After section 192KB of the principal Act insert the following section–

"**Exemptions for household waste.**

192KC(1) Subject to subsection (2) sections 192KB and 192L do not apply to mixed waste that is produced by households.

(2) Separate fractions of hazardous waste produced by households shall be subject to the duties imposed by section 192KB(3) and (4)(b) when such waste is accepted for collection, disposal or recovery by a person licensed under section 192D.".

Amendment of section 192L.

14. For section 192L(1) of the principal Act substitute the following subsection–

"192L.(1) Establishments or undertakings that carry out waste treatment, the producers of hazardous waste and establishments and undertakings that collect or transport hazardous waste on a professional basis, or act as dealers and brokers of hazardous waste, shall–

(a) make and maintain a chronological record of the quantity, nature, origin and, where relevant, the destination, frequency of collection, mode of transport and treatment method foreseen in respect of the waste; and

(b) in the case of hazardous waste, maintain–

(i) the records mentioned in paragraph (a) for a period of not less than 3 years, and

(ii) records of transportation for a period of not less than 1 year; and

(iii) records of a prescribed activity as described in section 192D(2)(a)(i) or (ii) in or on any land until the licence is terminated for whatever reason; and

(iv) records of documentary evidence that management operations have been carried out,

(1A) Information and records maintained pursuant to subsection (1)(a) and (b) shall be made available to the Government, upon request.

(1B) Records of management operations maintained pursuant to subsection (1)(b)(iv) shall be made available to the previous holder of that hazardous waste, upon request.".

Amendment of section 192M.

15. In section 192M of the principal Act–

(a) for subsections (1) and (2) substitute the following subsections–

"192M.(1) The Government shall as soon as practicable prepare a waste management plan for the whole of Gibraltar, including BGTW, and may from time to time modify it.

(1A) The waste management plan shall set out an analysis of the current waste management situation in Gibraltar, including BGTW, as well as the measures to be taken to improve environmentally sound preparing for re-use, recycling, recovery and disposal of waste and an evaluation of how the plan will support the implementation of the objectives and provisions of this Part.

(1B) Waste management plans made under this section shall contain, as appropriate and taking into account the geographical level and coverage of the planning area, at least the following–

(a) the type, quantity and source of waste generated within Gibraltar, the waste likely to be shipped from or to Gibraltar, and an evaluation of the development of waste streams in the future;

(b) existing waste collection schemes and major disposal and recovery installations, including any special arrangements for waste oils, hazardous waste or waste streams addressed by specific European Union legislation;

(c) an assessment of the need for new collection schemes, the closure of any existing waste installations, additional waste installation infrastructure in accordance with Article 16 of the Directive, and, if necessary, the investments related thereto;

(d) sufficient information on the location criteria for site identification and on the capacity of future disposal or major recovery installations, if necessary;

(e) general waste management policies, including planned waste management technologies and methods, or policies for waste posing specific management problems.

(1C) In addition to the matters set out in subsection (1B), the waste management plan may also contain, taking into account the geographical level and coverage of the planning area, the following–

(a) organisational aspects related to waste management including a description of the allocation of responsibilities between public and private actors carrying out the waste management;

(b) an evaluation of the usefulness and suitability of the use of economic and other instruments in tackling various waste problems, taking into account the need to maintain the smooth functioning of the internal market;

(c) the use of awareness campaigns and information provision directed at the general public or at a specific set of consumers;

(d) historical contaminated waste disposal sites and measures for their rehabilitation.

(2) Waste management plans shall conform to the waste planning requirements laid down in the strategy for the implementation of the reduction of biodegradable waste going to landfills, referred to in section 14 of the Landfill Act 2002.";

(b) for subsection (3) substitute the following subsection–

"(3) A waste management plan prepared or modified pursuant to this section must have regard–

(a) to the waste hierarchy and the objectives; and

(b) the principles of self-sufficiency and proximity,

set out in Schedule 11B.".

New sections 192MA – 192MC.

16. After section 192M of the principal Act insert the following sections–

"**Waste prevention programmes.**

192MA(1).By no later than 12 December 2013 the Government shall establish a waste prevention programme in accordance with Articles 1 and 4 of the Directive.

(2) With the aim of breaking the link between economic growth and the environmental impacts associated with the generation of waste, programmes made under subsection (1) shall–

(a) set out the waste prevention objectives;

(b) describe the existing prevention measures and evaluate the usefulness of the examples of measures indicated in Schedule 15A or other appropriate measures.

(3) In order to monitor and assess the progress of the waste prevention measures established under subsection (1) the Government–

(a) shall determine appropriate, specific qualitative or quantitative benchmarks; and

(b) may determine specific qualitative or quantitative targets and indicators for the same purpose.

(4) Indicators for waste prevention measures under subsection (3) shall not be the same as those that may be adopted under Article 29(4) of the Directive.

(5) Waste prevention programmes made under this section shall be integrated either into the waste management plans provided for under section 192M or into other environmental policy programmes, as appropriate, or shall function as separate programmes, and if any such programme is integrated into the waste management plan or into other programmes, the waste prevention measures shall be clearly identified.

(6) Section 192M(2B) to (2D) providing for public participation shall apply to a waste prevention programme as though such programme were a waste management plan.

Evaluation and review of plans and programmes.

192MB(1). This section applies to a waste management plan made under section 192M and to a waste prevention programme made under section 192MA.

(2) A plan or programme to which this section applies must be evaluated, and if necessary revised, at least every 6th year after it is made.

(3) Where relevant, the evaluation or revision shall have regard to Articles 9 and 11 of the Directive.

Bio-waste.

192MC. In accordance with section 192C(3)(a) and (5) as read with Schedule 11B, the Government must take measures, as appropriate, to encourage–

(a) the separate collection of bio-waste with a view to the composting and digestion of bio-waste;

(b) the treatment of bio-waste in a way that fulfils a high level of environmental protection;

(c) the use of environmentally safe materials produced from bio-waste.".

Substitution of section 192U.

17. For section 192U of the principal Act substitute the following section–

"192U. (1) The Government shall ensure that waste management plans and waste prevention programmes made under the provisions of this Part, or substantial revisions thereof, are communicated to the Commission in accordance with such

procedures and formats as the Commission establishes pursuant to Article 33 of the Directive.

(2) Where the Government is of the opinion that any person is in possession of information which will assist in the discharge of its obligations to supply information to the Commission under the provisions of the Directives specified in section 192B(2), it may direct that person to supply that information and a person so directed shall supply the information specified in the direction within the period so specified.".

Amendment of section 192W.

18. In section 192W of the principal Act–

(a) for subsection (1) substitute the following subsection–

"192W.(1) The Government may make rules in order to comply with any European Union or other international obligations or enabling a right to be enjoyed in relation to measures relating to the prevention, reduction and elimination of pollution caused by waste and the recycling, regeneration and re-use of waste and without prejudice to the generality of the foregoing such rules may include provision in respect of any amendments to the Directive.";

(b) after subsection (2) insert the following subsection–

"(3) Rules under subsection (1) may also be made in order to provide for extended producer responsibility, and when doing so the Government shall have regard to the matters set out in Schedule 14B.".

New sections 192X and 192Y.

19. After section 192W of the principal Act insert the following sections–

"**Reporting to Commission.**

192X. The Government shall ensure that reports are sent to the Commission on the application of these Regulations and the

Directive in Gibraltar and such reports shall be of such nature, and shall be sent at such a frequency, as is required by Articles 11(5) and 37 of the Directive.

Cooperation.

192Y. The Government shall, to the extent required by the Directive, cooperate with Member States and the Commission when drawing up waste management plans and waste prevention programmes under sections 192M and 192MA respectively.".

Amendment of Schedule 11A.

20. In Schedule 11A to the principal Act–

(a) in Part I, after the entry

"07 02 16* waste containing dangerous silicones"

insert the entry

"07 02 017 wastes containing silicones other than those mentioned in 07 02 16";

(b) in Part II, for the heading "**HAZARDOUS PROPERTIES**" substitute the heading "**PROPERTIES OF WASTE WHICH RENDER IT HAZARDOUS**";

(c) in the entry in Part II "H10" for the word "Teratogenic" substitute "Toxic for reproduction";

(d) for the entry–

"H13 Substances and preparations capable by any means, after disposal, of yielding another substance, e.g. a leachate, which possesses any of the characteristics listed above."

substitute the entry

"H13* Substances and preparations which, if they are inhaled or if they penetrate the sin, are capable of eliciting a reaction of hypersensitisation such that on further exposure to the substance or preparation, characteristic adverse effects are produced.";

(e) at the end of the entry "H14 "Ecotoxic": substances and preparations which present or may present immediate or delayed risks for one or more sectors of the environment." insert the words "(*) As far as testing methods are available.";

(f) after the entry for "H14" insert the following–

"H15 Waste capable by any means, after disposal, of yielding another substance, e.g. a leachate, which possesses any of the characteristics listed above.

Notes

1. Attribution of the hazardous properties 'toxic' (and 'very toxic'), 'harmful', 'corrosive', 'irritant', 'carcinogenic', 'toxic to reproduction', 'mutagenic' and 'eco-toxic' is made on the basis of the criteria laid down by Annex VI, to Council Directive 67/548/EEC of 27 June 1967 on the approximation of laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances (1).

2. Where relevant the limit values listed in Annex II and III to Directive 1999/45/EC of the European Parliament and of the Council of 31 May 1999 concerning the approximation of the laws, regulations and administrative provisions of the Member States relating to the classification, packaging and labelling of dangerous preparations (2) shall apply.

Test methods

The methods to be used are described in Annex V to Directive 67/548/EEC and in other relevant CEN-notes.".

Schedule 11B

21. After Schedule 11A to the principal Act insert the following schedule–

"SCHEDULE 11B

192C(5)(a)

WASTE HIERARCHY

1. The following waste hierarchy shall apply as a priority order in waste prevention and management–

(a) prevention;

(b) preparing for re-use;

(c) recycling;

(d) other recovery, e.g. energy recovery; and

(e) disposal.

2. When applying the waste hierarchy referred to in paragraph 1, the competent authority shall take measures to encourage the options that deliver the best overall environmental outcome. This may require specific waste streams departing from the hierarchy where this is justified by life-cycle thinking on the overall impacts of the generation and management of such waste.

3. The competent authority shall take into account the general environmental protection principles of precaution and sustainability, technical feasibility and economic viability, protection of resources as well as the overall environmental, human health, economic and social impacts.

PRINCIPLES OF SELF-SUFFICIENCY AND PROXIMITY

4. The competent authority shall take appropriate measures, in cooperation with competent authorities in other Member States where this is necessary or advisable, to establish an integrated and adequate network of waste disposal installations and of installations for the recovery of mixed municipal waste collected from private households, including where such collection also covers such waste from other producers, taking into account best available techniques.

5. By way of derogation from Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste, the competent authority may, in order to protect the network referred to in paragraph 4, limit incoming shipments of waste destined to incinerators that are classified as recovery, where it has been established that such shipments would result in national waste having to be disposed of or waste having to be treated in a way that is not consistent with its waste management plans. The Government shall ensure that the Commission is notified of any such decision. The competent authority may also limit outgoing shipments of waste on environmental grounds as set out in Regulation (EC) No 1013/2006.

6. The network referred to in paragraph 4 shall be designed to enable the European Union as a whole to become self-sufficient in waste disposal as well as in the recovery of waste referred to in paragraph 4, and to enable the competent authority to move towards that aim individually, taking into account geographical circumstances or the need for specialised installations for certain types of waste.

7. The network referred to in paragraph 4 shall enable waste to be disposed of or waste referred to in paragraph 4 to be recovered in one of the nearest appropriate installations, by means of the most appropriate methods and technologies, in order to ensure a high level of protection for the environment and public health.

8. The principles of proximity and self-sufficiency shall not mean that the competent authority has to possess the full range of final recovery facilities within Gibraltar.".

Substitution of Schedules 12 and 13.

22. For Schedules 12 and 13 to the principal Act substitute the following schedules–

"SCHEDULE 12

Section 192A

DISPOSAL OPERATIONS

D 1. Deposit into or onto land (e.g. landfill, etc.);

D 2. Land treatment (e.g. biodegradation of liquid or sludgy discards in soils etc.);

D 3. Deep injection (e.g. injection of pumpable discards into wells, salt domes or naturally occurring repositories etc.);

D 4. Surface impoundment (e.g. placement of liquid or sludgy discards into pits, ponds or lagoons etc.);

D 5. Specially engineered landfill (e.g. placement into lined discrete cells which are capped and isolated from one another and the environment, etc.);

D 6. Release into a water body except seas/oceans;

D 7. Release into seas/oceans including seabed insertion;

D 8. Biological treatment not specified elsewhere in this Schedule which results in final compounds or mixtures which are discarded by means of any of the operations numbered D 1 to D 12;

D 9. Physico-chemical treatment not specified elsewhere in this Schedule which results in the final compounds or mixtures which are discarded by means of any of the operations numbered D 1 to D 12 (e.g. evaporation, drying, calcinations, etc.);

D 10. Incineration on land;

D 11. Incineration at sea(*);

D 12. Permanent storage (e.g. emplacement of containers in a mine etc.);

D 13. Blending or mixture prior to submission to any of the operations numbered D 1 to D 12(**);

D 14. Repacking prior to submission to any of the operations numbered D 1 to D 13;

D 15. Storage pending any of the operations numbered D 1 to D 14 (excluding temporary storage, pending collection, on the site where ~~it~~ the waste is produced)(***).

(*) This operation is prohibited by EU legislation and international conventions.

(**) If there is no other D code appropriate, this can include preliminary operations prior to disposal including pre-processing such as, inter alia, sorting, crushing, compacting, pelletising, drying, shredding, conditioning or separating prior to submission to any of the operations numbered D1 to D12.

(***) Temporary storage means preliminary storage according to point (10) of Article 3.

SCHEDULE 13

Section 192A

OPERATIONS WHICH MAY LEAD TO RECOVERY

R1. Use principally as a fuel or other means to generate energy[(1)];

R2. Solvent reclamation/regeneration;

R3. Recycling/reclamation of organic substances, which are not used as solvents (including composting and other biological transformation processes)[(2)];

R4. Recycling/reclamation of metals and metal compounds;

R5. Recycling/reclamation of other inorganic materials[(3)];

R6. Regeneration of acids or bases;

R7. Recovery of components used for pollution abatement;

R8. Recovery of components from catalysts;

R9. Oil re-refining or other reuses of oil;

R10. Land treatment resulting in benefit to agriculture or ecological improvement;

R11. Use of waste obtained from any of the operations numbered R1 to R10;

R12. Exchange of wastes for submission to any of the operations numbered R1 to R11[4];

R13. Storage of wastes pending any of the operations numbered R1 to R12 (excluding temporary storage, pending collection, on the site where it the waste is produced)[5];

(1) This includes incineration facilities dedicated to the processing of municipal solid waste only where their energy efficiency is equal to or above:

— 0,60 for installations in operation and permitted in accordance with applicable Community legislation before 1 January 2009,

— 0,65 for installations permitted after 31 December 2008, using the following formula:

Energy efficiency = (Ep - (Ef + Ei))/(0,97 × (Ew + Ef))

In which:

Ep means annual energy produced as heat or electricity. It is calculated with energy in the form of electricity being multiplied by 2,6 and heat produced for commercial use multiplied by 1,1 (GJ/year)

Ef means annual energy input to the system from fuels contributing to the production of steam (GJ/year)

Ew means annual energy contained in the treated waste calculated using the net calorific value of the waste (GJ/year)

Ei means annual energy imported excluding Ew and Ef (GJ/year)
0,97 is a factor accounting for energy losses due to bottom ash and radiation.

This formula shall be applied in accordance with the reference document on Best Available Techniques for waste incineration.

(2) This includes gasification and pyrolisis using the components as chemicals.

(3) This includes soil cleaning resulting in recovery of the soil and r ecycling of inorganic construction materials.

(4) If there is no other R code appropriate, this can include preliminary operations prior to recovery including pre-processing such as, inter alia, dismantling, sorting, crushing, compacting, pelletising, drying, shredding, conditioning, repackaging, separating, blending or mixing prior to submission to any of the operations numbered R1 to R11.

(5) Temporary storage means preliminary storage as defined in section 192A.".

Repeal of schedules.

23. Schedules 14, 14C and 15 to the principal Act are repealed.

New schedules.

24. After Schedule 13 to the principal Act insert the following schedules–

"SCHEDULE 14A

Section 192C

SEPARATE COLLECTION CERTAIN WASTE AND COLLECTION TARGETS

1. By 2015 separate collection shall be set up for at least the following: paper, metal, plastic and glass.

2. By 2020, the preparing for re-use and the recycling of waste materials such as at least paper, metal, plastic and glass from households and possibly from other origins as far as these waste streams are similar to waste from households, shall be increased to a minimum of overall 50 % by weight.

3. By 2020, the preparing for re-use, recycling and other material recovery, including backfilling operations using waste to substitute other materials, of non-hazardous construction and demolition waste excluding naturally occurring material defined in category 17 05 04 in the list of waste shall be increased to a minimum of 70 % by weight.

SCHEDULE 14B

Section 192W(3)

1. In order to strengthen the re-use and the prevention, recycling and other recovery of waste, the Government may take measures to ensure that a

person who professionally develops, manufactures, processes, treats, sells or imports products (producer of the product) has extended producer responsibility.

2. Measures under paragraph 1 may include–

(a) an acceptance of returned products and of the waste that remains after those products have been used, as well as the subsequent management of the waste and financial responsibility for such activities; and

(b) the obligation to provide publicly available information as to the extent to which the product is re-usable and recyclable.

3. The Government may take appropriate measures to encourage the design of products in order to reduce their environmental impacts and the generation of waste in the course of the production and subsequent use of products, and in order to ensure that the recovery and disposal of products that have become waste take place in accordance with Articles 4 and 13 of the Directive.

4. Measures under paragraph 3 may encourage, inter alia, the development, production and marketing of products that are suitable for multiple use, that are technically durable and that are, after having become waste, suitable for proper and safe recovery and environmentally compatible disposal.

5. When applying extended producer responsibility, account shall be had to the technical feasibility and economic viability and the overall environmental, human health and social impacts, respecting the need to ensure the proper functioning of the internal market.

6. The extended producer responsibility shall be applied without prejudice to the responsibility for waste management as provided for in Article 15(1) of the Directive and without prejudice to existing waste stream specific and product specific legislation.

SCHEDULE 15A

Section 192MA (2)

EXAMPLES OF WASTE PREVENTION MEASURES REFERRED TO IN ARTICLE 29 OF THE DIRECTIVE

Measures that can affect the framework conditions related to the generation of waste.

1. The use of planning measures, or other economic instruments promoting the efficient use of resources.

2. The promotion of research and development into the area of achieving cleaner and less wasteful products and technologies and the dissemination and use of the results of such research and development.

3. The development of effective and meaningful indicators of the environmental pressures associated with the generation of waste aimed at contributing to the prevention of waste generation at all levels, from product comparisons at Community level through action by local authorities to national measures.

Measures that can affect the design and production and distribution phase.

4. The promotion of eco-design (the systematic integration of environmental aspects into product design with the aim to improve the environmental performance of the product throughout its whole life cycle).

5. The provision of information on waste prevention techniques with a view to facilitating the implementation of best available techniques by industry.

6. Organise training of competent authorities as regards the insertion of waste prevention requirements in permits under this Directive and Directive 96/61/EC.

7. The inclusion of measures to prevent waste production at installations not falling under Directive 96/61/EC. Where appropriate, such measures could include waste prevention assessments or plans.

8. The use of awareness campaigns or the provision of financial, decision making or other support to businesses. Such measures are likely to be particularly effective where they are aimed at, and adapted to, small and medium sized enterprises and work through established business networks.

9. The use of voluntary agreements, consumer/producer panels or sectoral negotiations in order that the relevant businesses or industrial sectors set their own waste prevention plans or objectives or correct wasteful products or packaging.

10. The promotion of creditable environmental management systems, including EMAS and ISO 14001.

Measures that can affect the consumption and use phase.

11. Economic instruments such as incentives for clean purchases or the institution of an obligatory payment by consumers for a given article or element of packaging that would otherwise be provided free of charge.

12. The use of awareness campaigns and information provision directed at the general public or a specific set of consumers.

13. The promotion of creditable eco-labels.

14. Agreements with industry, such as the use of product panels such as those being carried out within the framework of Integrated Product Policies or with retailers on the availability of waste prevention information and products with a lower environmental impact.

15. In the context of public and corporate procurement, the integration of environmental and waste prevention criteria into calls for tenders and contracts, in line with the Handbook on environmental public procurement published by the Commission on 29 October 2004.

16. The promotion of the reuse and/or repair of appropriate discarded products or of their components, notably through the use of educational, economic, logistic or other measures such as support to or establishment of accredited repair and reuse-centres and networks especially in densely populated regions.".

Dated 12th April, 2011.

P R CARUANA,
Chief Minister,
for the Government.

EXPLANATORY MEMORANDUM

These Regulations amend the provisions in Part VA of Public Health Act on waste so as to replace the existing provisions that are compliant with Directive 2009/98/EC on waste.