

**SECOND SUPPLEMENT TO THE GIBRALTAR
GAZETTE**

No. 2,807, of 17th November, 1994.

LEGAL NOTICE No. 125 OF 1994.

PUBLIC HEALTH ACT.

INTERPRETATION AND GENERAL CLAUSES ACT.

PUBLIC HEALTH (POTABLE WATER) REGULATIONS, 1994.

In exercise of the powers conferred on it by section 23 of the Interpretation and General Clauses Act, and of all other enabling powers, and for the purpose of transposing into the national laws of Gibraltar Council Directive 80/778/EEC the Government has made the following regulations-

Title.

1. These regulations may be cited as the Public Health (Potable Water) Regulations, 1994.

Amendment to section 99 of the Public Health Act.

2. The Public Health Act (hereinafter called "the Act") is amended in section 99-

(a) by inserting after the figure "99" the figure "(1)";

(b) in subsection (1), as now so designated, by –

(i) inserting after the definition of "communication pipe" the following new definition –

"competent national authority" means the Chief Environmental Health Officer or such other person as the Government may by notice in the Gazette appoint;"

(ii).inserting after the definition of "cut-off, the following new definition –

""Directive" means Council Directive 80/778/EEC, and includes any changes made to that Directive to reflect technical or scientific change in the methods of analysis,";

(iii) inserting after the definition, of "main" the following new definition-

""parameter" means, a property, element organism or substance shown in the tables in Annex 1 to the Directive in the column in each such table headed "Parameters";

(iv) in the definition of "waterworks" omitting the final fullstop and substituting therefor a semi-colon;

(v) after the definition of "waterworks" inserting the following new definition -

""wholesome" means the standards; qualities and values in respect of potable water which are required by -

- (a) the Directive
- (b) rules made under section 110(1);
- (c) instructions issued by the competent national authority under section 110(2).";

(c) by inserting after subsection (1), as now so designated, the following subsections -

"(2) Subject to subsection (3), in this Part, in rules made under subsection (1) of section 110 and in instructions issued under subsection (2) of that section, "potable water" means water intended for human consumption and includes all water used for that purpose, either in its original state or after treatment, regardless of origin, and whether -

- (a) supplied for consumption, or
- (b) used in a food production undertaking for the manufacture, processing, preservation or marketing of products or substances intended for human

consumption and affecting the wholesomeness of the foodstuff in its finished form, except where the competent national authority considers that the wholesomeness of the finished product is unaffected by the quality of the water used.

- (3) Potable water, for the purpose of applying the standards, qualities and values specified in respect of such water in the Directive, rules made under subsection (1) of section 110 and instructions issued under subsection (2) of that section, shall not include-
- (a) natural mineral water recognized or defined as such by the competent national authority;
 - (b) medicinal waters recognized as such by the competent national authority.
- (4) Unless otherwise provided for in this Part, in rules made under subsection (1) of section 110 or in instructions issued under subsection (2) of that section, words and terms used in the Directive shall have the meaning given to them in that Directive."

Amendment to section 110.

3. Section 110 of the Act is amended –

- (a) by inserting after the figure "110" the figure "(1)";
- (b) by omitting everything after the word "supplied" in subsection (1), as now so designated, and substituting therefor the following words "in Gibraltar and for that purpose the Governor shall make rules which in particular and subject to the provisions of this section-
 - (a) may permit the competent national authority to recognise water as natural mineral water or medicinal water or define water as natural mineral water;
 - (b) may permit the competent national authority to determine the industrial sectors in which the

wholesomeness of the finished product, within the meaning of paragraph(b)of the definition of potable water in section 99(2), is unaffected by the quality of the water used;

(c) shall require the competent national authority to determine national values for parameters required by the Directive, taking into account the obligation –

(i) to have values in respect of the parameters given in Tables A, B, C, D, and E of Annex I to the Directive less than or the same as the values shown in relation to each such parameter in the column in each table headed "maximum admissible concentration",

(ii) in determining the values, to take as a basis the value in respect of each parameter shown in relation to that parameter in the column in each table headed "guide level";

(iii) in the case of softened water falling within paragraph (a) of the definition of potable water i n section 99(2), to determine in respect of the parameters in Table F of the Annex to the Directive values not lower than the values shown in relation to each such parameter in the column in that table headed "minimum required concentration";

(iv) in the interpretation of the values shown in Annex 1 to the Directive, to take account of observations;

(d) may permit the determination of values by the competent national authority to be deferred in respect of parameters for which no value is shown in Annex 1 to the Directive, so long as such values have not been determined by the Council of the European Union;

(e) shall apply the values listed in the Directive or determined by the competent national authority in

accordance with the Directive to the categories of potable water to which those values are applied by the Directive;

(f) may provide that no person may supply potable water or water intended to be used as potable water except in accordance with a licence issued under the rules by the competent national authority and subject to such conditions as may be specified in the licence for the purpose of giving effect to the provisions of this Part, rules made under this subsection and instructions issued under subsection (2), in so far as those provisions are to give effect to the Directive;

(g) shall require a supplier of potable water to take all such steps as are necessary to establish and maintain the supply of potable water to the user at the quality, standards and values required for the water to comply with those specified in Annex I to the Directive;

(h) shall require a supplier of potable water to take all such steps as are necessary to ensure that any substances used in the preparation of potable water do not remain in concentrations higher than the maximum admissible concentration relating to those substances in potable water supplied to a user and that those substances do not, directly or indirectly, constitute a public health hazard;

(j) may provide for the conducting of such monitoring, the making of such tests and the keeping of such records, at his own cost and by persons competent for the purpose, by a supplier of potable, mineral or medicinal water, including the provision of information to the competent national authority and/or to the user or potential user of the water, as the authority may determine for the purpose of giving effect to this Part, rules made under section 110(1) and instructions issued under section I 10(2);

(k) shall provide for the regular and occasional monitoring by the competent national authority of

potable water supplied to the user, including the right of the competent national authority, or persons appointed by the authority to act on behalf of or to assist or advise the authority, to enter, with or without notice, premises or waterworks, inspect premises or waterworks, sample both water before or after treatment and substances used in the preparation of potable water and inspect; copy or take away books, records or other materials, in whatever form, relevant to ascertaining the standards, qualities or values of potable water supplied to a user;

(l) for the purpose of requiring compliance with the Directive or rules or instructions made under this section, shall provide for the competent national authority to take such measures as it may reasonably determine to interrupt the supply of water to a user or to cause any waterworks to cease to operate either until any conditions required by the authority to be met have been met or until the authority is satisfied that the supply or the waterworks are not a public health hazard;

(m) may provide for the appointment by the competent national authority of such specialists, consultants and technical and administrative assistance as the authority in its discretion may require to properly carry out its functions under this Part and rules made and instructions issued under section 110;

(n) may permit derogations from the requirements of the ,-Directive to take account of situations arising from –

(i) the nature and structure of the ground in the area in which the supply in question emanates;

(ii) exceptional meteorological conditions:

Provided that no derogation may be permitted under subparagraphs (i) and (ii) which relates to

toxic or micro , biological parameters or which would constitute a public health hazard;

(p) shall provide for the notification and reporting specified in or necessary to comply with the Directive;

(q) may create summary offences in respect of a failure to comply with the requirements of the rules and where a person is convicted of such an offence –

(i) impose a penalty of a fine not exceeding ten times the amount at level 5 on the standard scale and daily penalties not exceeding the amount at level 5 on that scale;

(ii) impose a period of imprisonment not exceeding 3 months;

(iii) provide for the liability of corporate bodies and the officers and members of such bodies;

(iv) require the court convicting a person of such an offence to make an order -

(aa) requiring that person to pay to the competent national authority the costs incurred by that authority, or by a person or persons appointed by that authority for the purpose, in taking any action which in the opinion of the authority was made necessary by the conduct or omission in respect of which the person was convicted to ensure compliance with the Directive or to prevent a hazard to public health;

(bb) as to the remedial action to be taken by that person and, where the person is unable to take such action or does not take that action, requiring that person to pay to the competent national authority, or the person or persons

appointed by that authority for the purpose, the cost of taking that action;

(r) may provide for the charging by the competent national authority to-

(i) suppliers and potential suppliers of potable water, mineral water and medicinal water;

(ii) to a person applying for a licence or derogation to be granted or a determination to be made,

of fees and charges; including but not confined to fees and charges in respect of the setting and applying of standards, qualities and values, the evaluating of information provided to the authority by a supplier, potential supplier or applicant, as the case may be, monitoring, testing and the taking of measures reasonably determined upon by the authority to ensure compliance with the Directive and to prevent a hazard to public health, the granting of licences and derogations and the making of determinations, the administrative costs associated with such matters and for the methods of calculation of such fees and charges and of recovery thereof,

(s) may provide for the form, procedures and timetables to be used in connection with matters falling to be dealt with under the rules made under this subsection and instructions issued under subsection (2);

(t) may make such other provision as is necessary for or ancillary or incidental to giving effect to the Directive or preventing a hazard to public health.";

(c) by inserting after subsection (1), as now so designated, the following new subsections –

"(2) The competent national authority may issue instructions in respect of any matters relating to or ancillary or incidental to the Directive for the purpose of preventing a hazard to public health or giving effect to the Directive, and, subject to subsection (3), such instructions shall not be inconsistent with the provisions of this Part or rules made under subsection (1).

(3) Where the competent national authority is satisfied that-

(a) there will be no unacceptable risk to public health, and

(b) the supply of potable water could not otherwise be maintained and

(c) in the event of an emergency,

the authority may issue instructions valid for a limited period of time permitting the maximum admissible concentration shown in Annex 1 to the Directive to be exceeded up to maximum value specified in those instructions.

(4) Rules made under subsection (1) and instructions issued under subsection (2) shall not have the effect of-

(a) derogating from the requirements of the Directive except as is permitted by the Directive; or

(b) allowing, directly or indirectly, either any deterioration in the quality of water intended for human consumption or an increase in the pollution of waters used for the production of potable water, any deterioration or increase to be measured by reference to the quality of water and level of pollution at the effective date of this section.

(5) Where potable- water is used for the section 99(2)(b),-

(a) rules made under subsection (1);

(b) instructions issued by the competent national authority under subsection (2),

shall not require standards, qualities or values which are more stringent than those provided for in the Directive in respect of the toxic and micro biological parameters - listed in Tables D and E respectively of Annex 1 to the Directive and the values for other parameters which the authority considers are likely, to affect the wholesomeness of the foodstuff in its finished form.

(6) Except in relation to –

(a) the provision of information (both on packaging or labels and in advertising) in respect of a water's suitability, and

(b) the properties of the water which determine the use of that information,

for the feeding of infants, nothing in rules made under subsection (1) or instructions issued under subsection (2) shall prohibit or impede the marketing of foodstuffs on grounds relating to the quality of the water used where the quality of the water meets the requirements of the Directive, unless such marketing constitutes a hazard to public health.

(7) Where the provisions of this Part, any rules made under subsection (1) or instructions issued under subsection (2) are for the purpose of giving effect to the Directive, those provisions shall apply without prejudice to the specific provisions of other regulations of the European Union."

Amendment to section 111.

4. Section 111 of the Act is amended by omitting subsection (1) and substituting therefor the following subsection –

"(1) No person shall supply as potable water water collected as surface water within the meaning of Council Directive 75/440/EEC except as provided far in Article 10.2 of the Directive.".

Repeal of section 114.

5. Section 114 of the Act is repealed.

Dated this 17th day of November, 1994.

J. MOSS.

Minister for Employment, Education and Youth Affairs.