

**SECOND SUPPLEMENT TO THE GIBRALTAR
GAZETTE**
No. 2,848 of 15th JUNE, 1995

LEGAL NOTICE NO. 92 of 1995.

PUBLIC HEALTH

INTERPRETATION AND GENERAL CLAUSES ACT

**THE TRANSFRONTIER SHIPMENT OF WASTE REGULATIONS
1995**

In exercise of the powers conferred on it by section 23 the Interpretation and General Clauses Act, and of all other enabling powers, and for the purpose of giving proper effect to Council Regulation (EEC) No. 259/93 and of thereby enabling the extension to Gibraltar of the Convention on the Control of Transboundary Movements of Hazardous Waste and their Disposal (the Basel Convention), the Government has made the following regulations-

Title and commencement.

1. These regulations may be cited as the Transfrontier Shipment of Waste Regulations 1995 and shall come into effect on 15th day of June 1995.

Amendment to the Public Health Act.

2. The Public Health Act is amended by inserting after section 98 the following new Part-

“PART IIA – TRANSFRONTIER SHIPMENT OF WASTE.

98A. Interpretation of Part IIA.

- (1) In this Part “the principal Regulation” means Council Regulation (EEC) No. 259/93 on the supervision and control of shipments of waste within, into and out of the European Community.
- (2) Unless the context shall otherwise require-
 - (a) expressions used in this Part shall have the meaning they bear in the principal Regulation; and

- (b) any reference in this Part to an Article is to an Article of the principal Regulation, including that Article as applied by any other provision of the principal Regulation.
- (3) A reference in this Part to the Government shall, where the Government has by notice in the Gazette appointed a person to be the competent authority for the purposes or one or more of the purposes of this Part and to the extent of that appointment, be deemed to be a reference to that person, and not to be a reference to the Government.

98B. Competent authorities of dispatch and destination.

The Government shall be the competent authority of dispatch and destination in relation to Gibraltar for the purpose of the principal Regulation.

98C. Competent authority of transit.

The Governor on behalf of the Secretary of State shall be the competent authority of transit for the purpose of the principal Regulation.

98D. Correspondent.

The Government shall be the correspondent for the purpose of the principal Regulation.

98E. Transmission of notification by competent authority of dispatch.

- (1) If the competent authority of dispatch decides, in relation to the notifications referred to in article 3(1), 6(1) or 15(1) relating to shipments of waste dispatched from Gibraltar, or in relation to any class of such notifications, to transmit the notification itself to the competent authority of destination, with copies to the consignee and to any competent authority of transit, it shall give notice by advertisement of that decision.
- (2) A notice of a decision under sub-section (1) shall describe the notifications to which the competent authority's decision

applies and the decision which is the subject of the notice shall take effect 2 weeks after the publication of the last of the notices required to be published.

- (3) Where a decision under sub-section (1) takes effect, a notifier who intends to make a shipment of waste which requires a notification to which the competent authority's decision applies shall send the required notification to the authority which published the notice and shall not send copies of that notification to any other competent authority or to the consignee.
- (4) Subject to sub-section (5), a competent authority which receives a notification in accordance with sub-section (3) shall, within 3 working days of receiving the notification, transmit it to the competent authority of destination, with copies to the consignee and any competent authority of transit.
- (5) Where the notification relates to the shipment of waste for disposal, sub-section (4) shall not apply if the competent authority of dispatch has immediate objections to raise against the shipment in accordance with Article 4(3).
- (6) Where the competent authority has published notice of a decision in accordance with this section it may withdraw it at any time by giving notice by advertisement of the withdrawal and the withdrawal shall take effect 2 weeks after the publication of the last of the notices required to be published.
- (7) In this section "notice by advertisement" means a notice published in the Gazette and in at least one local newspaper circulating in Gibraltar.

98F. Financial Guarantees or equivalent insurance.

- (1) No person shall ship waste into or out of Gibraltar unless a certificate has been issued in relation to the shipment under this section.
- (2) An application for a certificate under this section shall be made to the authority which is the competent authority of dispatch,

destination or transit in Gibraltar (as the case may be) in relation to the shipment.

- (3) The competent authority which receives an application under sub-section (2) shall issue the certificate requested if it is satisfied that there is in force in respect of the shipment, or will be at the time the waste is shipped into or out of Gibraltar (as the case may be), a financial guarantee or equivalent insurance satisfying the requirements of Article 27.
- (4) The competent authority shall make its decision on an application under sub-section (2)-
 - (a) in respect of a shipment to which Article 3 applies, within 20 days following receipt of the application if it is the competent authority of dispatch or transit or within 30 days if it is the competent authority of destination;
 - (b) in respect of a shipment to which Article 6 applies, within 30 days following receipt of the application;
 - (c) in respect of a shipment to which Article 15 applies, within 70 days following receipt of the application;
 - (d) in respect of a shipment to which Article 20 applies, within 60 days following receipt of the application if it is the competent authority of transit or 70 days if it is the competent authority of destination;
 - (e) in respect of a shipment to which Article 23 applies, within 60 days following receipt of the application if it is the last competent authority of transit within the Community or otherwise within 20 days.
- (5) A certificate issued under this section shall certify that the competent authority is satisfied as mentioned in sub-section (3).

98G. Power of competent authority of dispatch to ensure return of waste.

- (1) Where the competent authority of dispatch is required by Article 25(1) or 26(2) to ensure that waste is returned to Gibraltar it may serve a notice on the notifier concerned under sub-section (2).
- (2) A notice served under this sub-section shall require the notifier to return the waste to a place in Gibraltar specified in the notice by a date so specified.
- (3) The date specified in a notice under sub-section (2) shall allow the notifier a reasonable time to comply with the notice, having regard, in particular, to the location of the waste at the time the notice is served.
- (4) Where a notifier fails to comply with a notice served on him under sub-section (2), the competent authority may serve a further notice on the notifier stating that the authority intends to act as the agent of the notifier to effect the return of the waste to Gibraltar in order to fulfill the obligations of the authority under Article 25(1) or 26(2), as the case may be.
- (5) Where the competent authority serves a notice under sub-section (4) it may act as the agent of the notifier so far as is necessary to effect the return of the waste as mentioned in that sub-section and the notifier shall provide the competent authority with such information and assistance as the authority may reasonably request in writing to enable it to effect the return of the waste.
- (6) Where a competent authority acts under sub-section (5) it shall be deemed to be the duly authorised agent of the notifier acting within the scope of its authority.

98H. Power of competent authority of destination to ensure disposal of waste.

- (1) Where the competent authority of destination is required by Article 26(3) to ensure the disposal or recovery of waste in an environmentally sound manner it may serve a notice on the consignee concerned under sub-section (2)

- (2) A notice served under this sub-section shall require the consignee to ensure the disposal or recovery of waste in an environmentally sound manner in accordance with the notice and by a date specified in the notice.
- (3) The date specified in a notice under sub-section (2) shall allow the consignee a reasonable time to comply with the notice.
- (4) Where a consignee fails to comply with a notice served on him under sub-section (2) the competent authority may serve a further notice on the consignee stating that the powers set out in sub-section (6) will be exercised on behalf of the authority so far as is necessary to enable it to effect the disposal or recovery of the waste in order to fulfill its obligations under Article 26(3).
- (5) The powers referred to in sub-section (4) shall be exercised on behalf of the competent authority by a person authorised in writing by the authority to exercise those powers (“authorised person”).
- (6) Pursuant to a notice served under sub-section (4), an authorised person may, on production of his authority-
 - (a) enter any land which he has reason to believe it is necessary for him to enter and on entering any land take with him-
 - (i) any person duly authorised by the competent authority and, if he has reasonable cause to apprehend any serious obstruction in the execution of the powers conferred by this regulation, a constable; and
 - (ii) any equipment or materials required for any purpose for which the power of entry is being exercised;
 - (b) make such examination and investigation as may in any circumstances be necessary;

- (c) remove any waste from the land, or arrange for its removal, for the purpose of its disposal or recovery;
 - (d) dispose of or recover waste, or arrange for its disposal or recovery.
- (7) An authorised person may exercise any of the powers set out in sub-section (6) so far as is necessary to enable him to effect the disposal or recovery of the waste in order to fulfill the obligations of the competent authority under Article 26(3) and the consignee shall provide the authorised person and the competent authority with such information and assistance as the authorised person or the authority may reasonably request in writing to enable the competent authority to fulfill those obligations.

98J. Power of customs officer to detain shipment.

- (1) On a request made upon him by the competent authority of dispatch or destination for the purpose of facilitating the exercise of any functions conferred on it by the principal Regulation or this Part, a customs officer may detain, for not more than 3 working days, was specified in that request which has been imported into Gibraltar or brought to a place for the purpose of being exported from Gibraltar.
- (2) Anything detained under this section shall be dealt with during the period of its detention in such manner as the Collector may direct.
- (3) In this section and in section 98L “customs officer” means any officer within the meaning of the Imports and Exports Act.

98K. Objections to shipments of waste in accordance with a waste management plan made by the Government.

- (1) The Government shall prepare a waste management plan (“the plan”) in accordance with Article 7 of Council Directive 75/442/EEC which shall contain its policies in relation to the import and export of waste for recovery or disposal into and out of Gibraltar.

- (2) Any provision in the plan relating to the prevention of imports or exports of waste for disposal shall be in accordance with the principles referred to in Article 4(3)(a)(i), but shall be subject to Article 4(3)(a)(ii) and (iii).
- (3) For the purpose of preventing movements of waste which are not in accordance with the plan-
 - (a) the competent authority of destination shall, within the applicable time limit, object to any shipment of waste notified under Article 3(1) or 20(1), which the plan indicates should not be imported into Gibraltar;
 - (b) the competent authority of destination shall, within the applicable time limit, object to any shipment of waste notified under Article 3(1) or 15(1), which the plan indicates should not be exported Gibraltar;
- (4) In the case of shipments of waste to which Article 7(4) applies, the competent authorities of destination and dispatch shall, within the applicable time limit, raise reasoned objections under the first indent of Article 7(4)(a) to prevent movements of waste which are not in accordance with the plan.
- (5) It shall be the duty of the Government-
 - (a) to send a copy of the plan to each competent authority of dispatch and destination; and
 - (b) to make copies of the plan available to the public on payment of such reasonable charges as it thinks fit.

98L. Offences.

- (1) Any person who contravenes a provision of the principal Regulation in Gibraltar so that waste is shipped in circumstances which are deemed to be illegal traffic under Article 26 commits an offence.
- (2) Any person who transports, recovers, disposes of, or otherwise handles waste in Gibraltar in contravention of a condition

imposed under the principal Regulation on the shipment of waste commits an offence.

- (3) Any consignee who, in relation to waste shipped to Gibraltar, fails to send a certificate of disposal or recovery pursuant to Article 5(6), 8(6) or 20(9) (as the case may be) within the time limit set out in the applicable Article, or sends a certificate which is false in a material particular, commits an offence.
- (4) Any person who contravenes section 98F commits an offence.
- (5) Any person who supplies information which is false in a material particular to a competent authority in Gibraltar for the purpose of obtaining a certificate under section 98F commits an offence.
- (6) Any person who, in Gibraltar, mixes wastes which are the subject of different notifications during shipment contrary to Article 29 commits an offence.
- (7) Any notifier who ships waste from Gibraltar without having entered into a contract with the consignee in accordance with Article 3(6), 6(6) or 15(4) where required to do so by the principal Regulations commits an offence.
- (8) Any notifier who ships waste from Gibraltar which is required to be accompanied by the information set out in Article 11, signed as required by that Article, and which is not so accompanied whilst in Gibraltar, commits an offence.
- (9) Any person who fails to comply with a notice served on him under section 98G(2) or 98H(2) commits an offence..
- (10) Any person who intentionally obstructs an authorised person in the exercise of his powers under section 98H or a customs officer in the exercise of his powers under section 98J commits an offence.
- (11) Where the commission by any person of an offence under this section is due to the act or default of some other person, that other person shall be guilty of the offence, and a person may be charged with and convicted of an offence by virtue of this

sub-section whether or not proceedings are taken against the first-mentioned person.

98M. Offences by corporations etc.

- (1) Where an offence under section 98L which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of, a director, manager, secretary or other similar officer of the body corporate, or any other person purporting to act in any such capacity, he, as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.
- (2) Where the affairs of a body corporate are managed by its members, sub-section (1) shall apply in relation to the acts or defaults of a member in connection with his functions of management as if he were a director of the body corporate.
- (3) A fine imposed on an unincorporated association on its conviction for an offence shall be paid out of the funds of the association.
- (4) Where an offence under section 98L committed by a partnership is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of a partner, he as well as the partnership is guilty of the offence and liable to be proceeded against and punished accordingly.

98N. Defences.

- (1) In any proceedings for an offence under section 98L it shall be a defence for the person charged to prove that he took all reasonable steps and exercised all due diligence to avoid the commission of the offence.
- (2) In any proceedings for an offence under section 98L(2), it shall be a defence for the person charged to prove that he was not reasonably able to comply with the condition concerned by reason of an emergency.

- (3) In any proceedings for an offence under section 98L(3) on the grounds that the consignee has not sent a certificate of disposal or recovery (as the case may be) within the applicable time limit, it shall be a defence for the consignee to prove-
- (a) that he was not able to send the certificate within that time limit because he had not been able to dispose of or recover the waste in time as a result of an emergency; and
 - (b) that he disposed of or recovered the waste as soon as was reasonably practicable or that he is taking all reasonable steps to ensure that the waste is disposed of or recovered as soon as is reasonably practicable.

98P. Penalties.

- (1) Subject to sub-section (2), a person who commits an offence under section 98L shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (2) A person who commits an offence under sub-section (8) of section 98L shall be liable on summary conviction to a fine not exceeding level 2 on the standard scale.

98Q. Provision of information etc.

For the purpose of performing any of its functions under the principal Regulation the Government may, by notice in writing, require any competent authority in Gibraltar to furnish such information and documents as may be specified in the notice.

98R. Notices.

For the purpose of this Part section 318 shall be read as requiring that the proper address of any person on whom a notice is to be served shall be the address given for him on the consignment note relating to the shipment of waste in connection with which the notice is to be served.

98S. Charges by the competent authority etc.

- (1) Where a competent authority incurs costs in carrying out its functions under this Part that authority may charge a fee determined in accordance with sub-sections (2) and (3) to any person making a notification required by this Part or carrying on an activity to which this Part applies.
- (2) The fee shall not exceed the sum of the costs reasonably incurred by the competent authority in dealing with the notification or in respect of the application of this Part to the activity of that person and where the costs incurred are in respect of more than one person carrying on an activity to which this Part applies the fee charged to each such person shall not exceed the proportion of such sum attributable to the activity or activities of that person.
- (3) Where, in the opinion of the competent authority, the authority can properly carry out its functions under this Part only by engaging specialists and consultants, the cost of such specialists or consultants shall be included in the fee payable under sub-section (1).
- (4) The competent authority may determine the cost of employing an officer (including a public officer) for any period of work appropriate to his grade by reference to the average cost to it of employing officers of that grade for that period.
- (5) When requiring payment the competent authority shall send or give to the person by whom the fee is payable a detailed statement of the work done and costs incurred and the period to which the statement relates, and-
 - (a) the requirements in respect of notification under this Part shall be deemed not to have been complied with unless the fee, or such proportion of it as the competent authority may in its discretion specify, has been paid; and
 - (b) the fee or such part of it as remains unpaid shall be recoverable under the provisions of the Act as a civil debt.

(6) Where by virtue of-

- (a) the functions of the Government referred to in section 98Q; or
- (b) any obligation contained in the principal Regulations and arising only as a result of a notification under this Part or of an activity to which those Regulations or this Part apply and which is carried on in Gibraltar by any person, or
- (c) section 98J or 98K,

the Government incurs costs the provisions of this section shall apply as if-

- (d) any reference to the competent authority is a reference to the Government;
- (e) the reference to specialists and consultants includes any such person appointed by the Government for the purposes referred to in paragraphs (a) to (c).”.

Transitional Provisions.

3. Where on the coming into effect of these regulations a person is carrying on an activity to which these regulations apply it shall be sufficient compliance with these regulations if that person complies with any applicable requirement within six months of the coming into effect of these regulations or such earlier date as the Government may by notice in the Gazette specify and such notice may apply generally or to such provision of these regulations or such activity falling within these regulations as is specified in the notice.

Dated this 15th day of June 1995

J. Pilcher.
Minister for the Environment and Tourism.

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