

**SECOND SUPPLEMENT TO THE GIBRALTAR
GAZETTE**

No. 3886 of 27 October, 2011

LEGAL NOTICE NO. 212 OF 2011.

INTERPRETATION AND GENERAL CLAUSES ACT

PUBLIC HEALTH ACT (AMENDMENT NO.4) REGULATIONS 2011

In exercise of the powers conferred upon it by section 23(g)(ii) of the Interpretation and General Clauses Act and in order to give effect to Regulation (EC) No. 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste, the Government has made the following Regulations–

Title and commencement.

1. These Regulations may be cited as the Public Health Act (Amendment No.4) Regulations 2011 and come into operation on the day of publication.

Amendment of Public Health Act.

2. In the Public Health Act, for the heading “Part IIA- Transfrontier Shipment of Waste” and sections 98A to 98S, substitute–

“PART IIB - Transfrontier Shipment of Waste

Introduction

Interpretation of Part IIB.

98A.(1) In this Part–

“Annex VII document” means the document set out in Annex VII to the TSW Regulation;

“authorised person” means a person authorised by a competent authority in accordance with section 98ZQ(2);

“Basel Convention” means the Basel Convention of 22 March 1989 on the control of transboundary movements of hazardous wastes and their disposal;

“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;

“EFTA” means the European Free Trade Association established by the Convention establishing the European Free Trade Association signed in Stockholm on 4 January 1960;

“notifiable waste” means waste that is subject to the prior written notification and consent procedures of Title II of the TSW Regulation, by virtue of any provision of that Regulation;

“OECD Decision” means Decision C(2001)107/Final of the OECD Council concerning the revision of Decision C(92)39/Final on control of transboundary movements of wastes destined for recovery operations;

“Transfrontier Shipments of Wastes Regulation” or “TSW Regulation” means Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste, as amended from time to time;

“waste” has the same meaning as in Article 1(1)(a) of Directive 2006/12/EC;

“waste vessel” means any vessel or any part of any vessel that is in itself waste within the meaning of the TSW Regulation.

(2) Expressions used in this Part that are also used in the TSW Regulation have the same meaning in this Part as they have in the TSW Regulation.

(3) Any reference in this Part to—

- (a) an Article is, save where the context otherwise requires, a reference to an Article of the TSW Regulation;
 - (b) an Annex is a reference to an Annex to the TSW Regulation.
- (4) The references to international conventions in subsection (1) are references to those conventions as amended from time to time.
- (5) 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 of 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.

Scope of this Part.

- 98B.(1) This Part applies to shipments of waste to the extent that they are covered by Article 1 of the TSW Regulation.
- (2) This Part shall not apply to shipments of waste which are solely in transit through BGTW.

Meaning of transport and person who transports waste.

- 98C.(1) Any reference in this Part to transport includes consigning for transport.
- (2) Any reference in this Part to a person who transports waste includes the following persons—
- (a) the notifier;
 - (b) any transporter of waste, by land or otherwise into or from Gibraltar;
 - (c) any freight-forwarder; or

- (d) any other person involved in the shipment of waste.

Competent authorities of despatch and destination.

98D. The Government shall be the competent authority of despatch and destination for Gibraltar for the purpose of the TSW Regulation.

Correspondent authority of transit.

98E. The Government shall be the competent authority of transit within Gibraltar for the purpose of the TSW Regulation.

Correspondent.

98F. The Government is the correspondent for Gibraltar for the purposes of Article 54.

Notices.

98G.(1) Any notice under this Part must be in writing.

- (2) A notice may be subject to conditions and may be amended, suspended or revoked by notice in writing at any time.
- (3) A notice may be served on a person by—
 - (a) delivering it to him in person;
 - (b) leaving it at his proper address; or
 - (c) sending it by post or electronic means to him at his proper address.
- (4) Any such notice may—
 - (a) in the case of a body corporate, be served on the secretary or clerk of that body;
 - (b) in the case of a partnership, be served on a partner or a person having the control or management of the partnership business.

- (5) If the person to be served with any such notice has specified an address in Gibraltar other than his proper address as the one at which he or someone on his behalf will accept notices of the same description as those notices, that address is also to be treated for the purposes of this section as his proper address.
- (6) For the purposes of this section, “proper address” means a person’s last known address, which for the purposes of subsection (3)(c) includes an e-mail address, except that—
 - (a) in the case of a body corporate or its secretary or clerk it is the address of the registered or principal office of that body;
 - (b) in the case of a partnership, partner or person having the control or management of the partnership business, it is the principal office of the partnership,

and for the purposes of this subsection, the principal office of a company registered outside Gibraltar or of a partnership carrying on business outside Gibraltar is its principal office within Gibraltar.

Transitional provisions.

98H. Schedule 19 (transitional provisions for shipments to Poland, Slovakia, Bulgaria or Romania) has effect.

Waste management plans

Waste management plans.

98I. A waste management plan made under section 192M shall include such policies as the Government deems appropriate for the bringing into, or dispatch from, Gibraltar of waste for disposal.

Objections to shipments of waste.

98J. For the purpose of preventing shipments of waste that are not in accordance with the waste management plan made under section 192M—

- (a) the Government, acting as competent authority of destination must object to any shipment notified in accordance with the TSW Regulation which that plan indicates should not be brought into Gibraltar; and
- (b) the Government, acting as competent authority of dispatch must object to any shipment notified in accordance with the TSW Regulation which that plan indicates should not be dispatched from Gibraltar.

General requirements for shipment of waste

Protection of the environment.

98K. A person commits an offence if he fails to comply with Article 49(1) (the management of shipments of waste in an environmentally sound manner and without endangering human health).

Compliance with notification etc.

98L. A person commits an offence if he transports waste other than in accordance with—

- (a) the notification document or movement document, in the case of notifiable waste; or
- (b) the Annex VII document, in the case of waste subject to the procedural requirements of Article 18(1).

Shipment of waste within the European Union

Requirements for shipments of notifiable waste.

98M.(1) This section applies to waste specified in Article 3(1)(a) or (b) that originates in the European Union and is either brought into Gibraltar or destined for a Member State, whether or not that waste passes through a third country.

(2) A person who transports such waste commits an offence if he does so without—

- (a) the competent authority of dispatch having been notified in accordance with Article 4;
 - (b) a contract having been entered into or a declaration having been made in accordance with Article 5;
 - (c) a financial guarantee or equivalent insurance being in place and approved by the competent authority in accordance with Article 6;
 - (d) a consent issued by the competent authorities of dispatch and destination in accordance with Article 9 and a consent issued by the competent authority of transit, unless there is tacit consent to the transit in accordance with Article 9(1);
 - (e) the movement document having been–
 - (i) completed in accordance with Article 16, first paragraph and Article 16(a); or
 - (ii) sent to the competent authorities concerned and the consignee in accordance with Article 16(b);
 - (f) the waste being accompanied by the movement document and notification document in accordance with Article 16(c); or
 - (g) the competent authorities and consignee having been notified of any change in the details or conditions of the shipment in accordance with Article 17 and, in such a case, a new notification having been submitted in accordance with that Article.
- (3) The person referred to in subsection (2) commits an offence if–
- (a) he does so in breach of any condition imposed under Article 10;
 - (b) in the case of a shipment covered by a general notification, he does so without the competent

authorities concerned having been notified of a change in route in accordance with Article 13(2);

- (c) in the case of a shipment of waste destined for an interim recovery or disposal operation, he does so without the notification document having been completed in accordance with Article 15(a); or
- (d) he fails to comply with Article 19.

Requirements for shipment of waste specified in Article 3(2) and (4).

98N.(1) This section applies to waste specified in Article 3(2) or (4) that originates in the European Union and is either brought into Gibraltar or is destined for a Member State, whether or not that waste passes through a third country.

(2) A person who transports such waste commits an offence if—

- (a) he does so without the waste being accompanied by a completed Annex VII document in accordance with Article 18(1)(a), that is signed in accordance with Article 18(1)(b);
- (b) in the case of waste specified in Article 3(2), he does so without a contract as referred to in Article 18(2) having been entered into; or
- (c) he fails to comply with Article 19.

Export of waste to third countries

Prohibition on export of waste for disposal other than to EFTA countries.

98O. A person commits an offence if he transports waste destined for disposal in a third country in breach of Article 34 (prohibition on export except, in certain circumstances, to EFTA countries Parties to the Basel Convention).

Requirements for export of waste for disposal to EFTA countries.

98P.(1) This section applies to waste destined for disposal in any EFTA country which is a Party to the Basel Convention.

- (2) A person who transports such waste commits an offence if he does so—
- (a) without the provisions of Article 35(1) having been complied with (procedural requirements for export to EFTA countries); or
 - (b) in breach of Article 35(5) (requirement for consignment only to facilities operating or authorised to operate under the applicable national law of the country of destination).

Prohibition on export of certain waste for recovery to non-OECD Decision countries.

98Q. A person commits an offence if, in breach of Article 36(1), he transports waste specified in that Article that is destined for recovery in a country to which the OECD Decision does not apply.

Requirements for export of waste for recovery to OECD Decision countries.

98R.(1) This section applies to waste specified in Article 38(1) destined for recovery in any country to which the OECD Decision applies (with or without transit through any country to which that Decision applies).

- (2) A person who transports such waste commits an offence if he does so—
- (a) without the provisions of Article 38(1) having been complied with (procedural requirements for the export of waste listed in Annexes III, IIIA, IIIB, IV and IVA); or

- (b) in breach of Article 38(6) (requirement for consignment only to facilities operating or authorised to operate under the applicable national law of the country of destination).

Miscellaneous prohibitions on export of waste.

98S. A person commits an offence if—

- (a) he transports waste to the Antarctic;
- (b) he transports waste destined for disposal in an overseas country or territory in breach of Article 40(1);
- (c) he transports waste destined for recovery in an overseas country or territory in breach of Article 40(2)(prohibition on the export of certain waste); or
- (d) he transports waste specified in Article 40(3) destined for recovery in an overseas country or territory without the provisions of that Article having been complied with (procedural requirements for exports to overseas countries or territories).

Import of waste from third countries

Prohibition on the import of waste for disposal.

98T. A person commits an offence if, in breach of Article 41(1), he transports waste destined for disposal that has come from a third country or area other than those specified in that Article.

Procedure for import of waste for disposal from a country Party to the Basel Convention.

98U.(1) This section applies to waste destined for disposal that has come from a country which is a Party to the Basel Convention.

- (2) A person who transports such waste commits an offence if he does so without the provisions of Article 42(1) having been complied with (procedural requirements for the import of

waste destined for disposal from countries Parties to the Basel Convention).

Prohibition on import of waste for recovery.

98V. A person commits an offence if, in breach of Article 43(1), he transports waste destined for recovery that has come from a third country or area other than specified in that Article.

Requirements for import of waste for recovery from or through an OECD Decision country.

98W.(1) This section applies to waste destined for recovery that has come from or through a country to which the OECD Decision applies.

(2) A person who transports such waste commits an offence if he does so without the provisions of Article 44(1) having been complied with (procedural requirements for imports of waste destined for recovery from, or through, an OECD Decision country).

Requirements for import of waste for recovery from a non-OECD Decision country Party to the Basel Convention.

98X.(1) This section applies to waste destined for recovery that has come—

- (a) from a country to which the OECD Decision does not apply; or
- (b) through a country to which the OECD Decision does not apply and that is Party to the Basel Convention.

(2) A person who transports such waste commits an offence if he does so without the provisions of Article 45 having been complied with (procedural requirements for imports from a non-OECD Decision country Party to the Basel Convention).

Requirements for import of waste from overseas countries or territories.

98Y.(1) A person who transports waste that has come from any overseas country or territory commits an offence if he does so without the provisions of Article 46(1) having been complied with (procedural requirements for the import of waste from overseas countries or territories).

Transit of waste

Requirements for transit of waste for disposal.

98Z.(1) This section applies to waste destined for disposal that—

- (a) originates from, and is destined for, a third country; and
 - (b) is transported through Gibraltar.
- (2) A person who transports such waste commits an offence if he does so without the provisions of Article 47 having been complied with (procedural requirements for shipments of waste destined for disposal from and to a third country).

Requirements for transit of waste for recovery: non-OECD Decision countries.

98ZA.(1) This section applies to waste destined for recovery that—

- (a) originates from, and is destined for, a country to which the OECD Decision does not apply; and
 - (b) is transported through Gibraltar.
- (2) A person who transports such waste commits an offence if he does so without the provisions of Article 48(1) having been complied with (procedural requirements for shipments of waste destined for recovery from and to a country to which the OECD Decision does not apply).

Requirements for transit of waste for recovery: OECD Decision countries.

98ZB.(1) This section applies to waste destined for recovery that—

- (a) originates from, and is destined for, a country to which the OECD Decision applies; and
 - (b) is transported through Gibraltar.
- (2) A person who transports such waste commits an offence if he does so without the provisions of Article 48(2) having been complied with (procedural requirements for shipments of waste destined for recovery from and to a country to which the OECD Decision applies).

Requirements for transit of waste between OECD Decision countries and non-OECD Decision countries.

98ZC.(1) This section applies to waste destined for recovery that—

- (a) originates from a country to which the OECD Decision does not apply and is destined for a country to which the OECD Decision does apply; or
- (b) originates from a country to which the OECD Decision applies and is destined for a country to which the OECD Decision does not apply,

and is transported through Gibraltar.

- (2) A person who transports such waste commits an offence if he does so without the provisions of Article 48(3) having been complied with (procedural requirements for shipments of waste destined for recovery between OECD Decision and non-OECD Decision countries).

Additional duties

Illegal shipments of waste brought to a facility.

98ZD. If the operator of a facility knows or has reasonable grounds to suspect that waste brought to that facility is an illegal shipment of waste, he must notify the competent authority in Gibraltar immediately and comply with the authority's instructions, and failure to do so is an offence.

Duties on operators of facilities in respect of notifiable waste.

98ZE.(1) This section applies to the operator of a facility that receives notifiable waste.

- (2) The operator commits an offence if he fails to—
- (a) ensure that the recovery or disposal of such waste is completed within the time period in Article 9(7);
 - (b) comply with any condition of a consent imposed on him by the competent authority in Gibraltar in accordance with Article 10(1);
 - (c) comply with any condition, imposed by the competent authority in Gibraltar in accordance with Article 10(5), requiring him to keep records specified in that Article and send them to that competent authority in accordance with that Article;
 - (d) retain the movement document in accordance with Article 16(c);
 - (e) provide, in accordance with Article 16(d), confirmation that waste has been received;
 - (f) certify, in accordance with Article 16(e), that non-interim recovery or disposal has been completed;

- (g) keep any document sent to or by the competent authorities in relation to a notified shipment in accordance with Article 20(1); or
- (h) inform the competent authority in Gibraltar in accordance with Article 22(1) if a shipment of waste is rejected.

Interim recovery or disposal operations.

98ZF.(1) This section applies to the operator of a facility that carries out interim recovery or disposal operations.

- (2) The person referred to in subsection (1) commits an offence if he fails to—
 - (a) provide confirmation to the notifier or competent authorities concerned of the receipt of waste for interim recovery or disposal operations in accordance with Article 15(c); or
 - (b) certify, in accordance with Article 15(d), that interim recovery or disposal has been completed.
- (3) The person referred to in subsection (1) commits an offence if, in the case of waste sent to another facility for subsequent interim or non-interim recovery or disposal operation, he fails to—
 - (a) obtain from that facility, in accordance with Article 15(e), first paragraph, a certificate that such operation has been completed; or
 - (b) transmit that certificate to the notifier and competent authorities concerned in accordance with Article 15(e), second paragraph.
- (4) The person referred to in subsection (1) commits an offence if he delivers waste for subsequent interim or non-interim recovery or disposal operations in accordance with Article 15(f), without complying with the notification requirements of that Article.

Duties on operators of facilities in respect of waste subject to general information requirements.

98ZG.(1) This section applies to the operator of a recovery facility that receives waste subject to the procedural requirements of Article 18(1).

- (2) The person referred to in subsection (1) commits an offence if he fails to—
- (a) sign the Annex VII document, in accordance with Article 18(1)(b); or
 - (b) keep the information given pursuant to Article 18(1), in accordance with Article 20(2).

Duties on consignees in respect of notifiable waste.

98ZH.(1) This section applies to a consignee of notifiable waste.

- (2) The person referred to in subsection (1) commits an offence if he fails to keep any document sent to or by the competent authorities in relation to a notified shipment in accordance with Article 20(1).

Duties on consignees in respect of waste subject to general information requirements.

98ZI.(1) This section applies to a consignee of waste subject to the procedural requirements of Article 18(1).

- (2) The person referred to in subsection (1) commits an offence if he fails to—
- (a) sign the Annex VII document, in accordance with Article 18(1)(b);
 - (b) provide a copy of the contract referred to in Article 18(2), second paragraph, to the competent authority concerned upon request, in accordance with that Article; or

- (c) keep information given pursuant to Article 18(1), in accordance with Article 20(2).

Duties on laboratories.

98ZJ.(1) This section applies to the operator of a laboratory that receives waste subject to the procedural requirements of Article 18(1).

(2) The person referred to in subsection (1) commits an offence if he fails to—

- (a) sign the Annex VII document, in accordance with Article 18(1)(b); or
- (b) keep the Annex VII document for three years from the date the shipment started.

Notifier's duty to keep documents.

98ZK. A notifier commits an offence if he fails to keep—

- (a) a copy of the movement document in accordance with Article 16(c); or
- (b) any document sent to or by the competent authorities in relation to a notified shipment in accordance with Article 20(1).

Duties on persons who arrange the shipment of waste.

98ZL.(1) This section applies to a person who arranges the shipment of waste subject to the procedural requirements of Article 18(1).

(2) The person referred to in subsection (1) commits an offence if he fails to—

- (a) provide the competent authority in Gibraltar with a copy of the contract referred to in Article 18(2) upon

request, in accordance with the second paragraph of that Article; or

- (b) keep the information given pursuant to Article 18(1), in accordance with Article 20(2).

Miscellaneous

Charges by the competent authority etc..

98ZM.(1) Where the competent authority in Gibraltar incurs costs in carrying out its functions under this Part, it may charge a fee determined in accordance with subsections (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 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 only by engaging specialists and consultants, the cost of such specialists or consultants shall be included in the fee payable under subsection (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 this Part as a civil debt.

Costs of take-back etc.

98ZN. The competent authority may charge fees to meet any reasonable costs arising from—

- (a) the return of waste from a shipment that cannot be completed (including costs of transport, recovery, disposal and storage) in accordance with Article 23; and
- (b) the take-back, recovery or disposal of waste from an illegal shipment (including costs of transport and storage) in accordance with Article 25.

Approval of a financial guarantee.

98ZO. Schedule 20 (application for approval of a financial guarantee) has effect.

Supply of the financial guarantee.

98ZP. For the purposes of Article 4(5), third paragraph, the notifier must supply—

- (a) the financial guarantee or equivalent insurance; or
- (b) evidence of that guarantee or insurance or a declaration certifying its existence,

as part of the notification document at the time of notification or, with the consent of the competent authority, at any other time before the waste is shipped.

Enforcement powers.

98ZQ.(1) Schedule 21 (enforcement powers) has effect.

- (2) For the purposes of Schedule 21 “an authorised person” means the competent authority and where the competent authority has appointed a person to discharge any of its functions, the person or persons so appointed.

Compliance with notices.

98ZR.(1) A person on whom a notice is served under this Part commits an offence if he fails to comply with the provisions of that notice.

- (2) Such a notice must be complied with at the expense of the person on whom it is served and, if it is not complied with, the competent authority may arrange for it to be complied with at the expense of that person.
- (3) The competent authority may enforce compliance with a notice by way of an injunction.

Obstruction.

98ZS. A person commits an offence if he—

- (a) intentionally obstructs any person acting in the execution of this Part;
- (b) gives any information which he knows to be false or misleading to any person acting in the execution of this Part; or
- (c) fails, without reasonable excuse—
- (i) to give any assistance or information that any person acting in the execution of this Part may require him to give; or

- (ii) to produce any record that any person acting in the execution of this Part may require him to produce,

for the performance of that person's functions under this Part.

Falsely obtaining consent etc.

98ZT. A person commits an offence if, for the purpose of obtaining consent to a shipment or approval of a financial guarantee or equivalent insurance, he—

- (a) makes any statement or declaration that he knows to be false or misleading; or
- (b) endeavours to obtain such consent or approval by deception.

Offences by bodies corporate.

98ZU.(1) If an offence under this Part committed by a body corporate is shown—

- (a) to have been committed with the consent or connivance of an officer; or
- (b) to be attributable to any neglect on his part,

the officer as well as the body corporate is guilty of the offence and is liable to be proceeded against and punished accordingly.

(2) If the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body.

(3) "Officer", in relation to a body corporate, means a director, member of the committee of management, chief executive, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity.

Acts of third parties.

98ZV. Where the commission by any person of an offence under this Part is due to the act or default of some other person, that other person is guilty of the offence and a person may be charged with and convicted of an offence by virtue of this section whether or not proceedings are taken against the first-mentioned person.

Penalties.

98ZX. A person guilty of an offence under this Part or Schedule 19 is liable—

- (a) on summary conviction, to a fine up to level 5 on the standard scale or to imprisonment not exceeding three months or to both; or
- (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years or to both.”.

3. After Schedule 18 to the Public Health Act insert the following schedules—

“SCHEDULE 19

Section 98G, 98ZX

Transitional provisions for shipments to Poland, Slovakia, Bulgaria or Romania

Shipments of waste to Poland.

1. A person commits an offence if he transports waste specified in Article 63(2) to Poland on or before 31st December 2012 without the provisions of that Article having been complied with (transitional arrangements for shipment of waste to Poland).

Shipments of waste to Slovakia.

2. A person commits an offence if he transports waste specified in Article 63(3) to Slovakia on or before 31st December 2011 without the provisions of that Article having been complied with (transitional arrangements for shipment of waste to Slovakia).

Shipments of waste to Bulgaria.

3. A person commits an offence if he transports waste specified in Article 63(4) to Bulgaria on or before 31st December 2014 without the provisions of that Article having been complied with (transitional arrangements for shipment of waste to Bulgaria).

Shipments of waste to Romania.

4. A person commits an offence if he transports waste specified in Article 63(5) to Romania on or before 31st December 2015 without the provisions of that Article having been complied with (transitional arrangements for shipment of waste to Romania).

SCHEDULE 20

Section 98ZO

Application for approval of a financial guarantee

Interpretation.

1. In this Schedule, “working day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act.

Shipment of waste from Gibraltar.

2.(1) The following procedure applies to the application for an approval of a financial guarantee or equivalent insurance for the purposes of Article 6(4), first paragraph.

(2) Only the notifier may apply for approval of a financial guarantee or equivalent insurance.

(3) He must apply for approval to the competent authority in Gibraltar.

(4) The competent authority must ensure that its decision is issued in writing within 20 working days after the receipt of the application.

Import of waste from third countries.

3.(1) The following procedure applies to the application for a review of the amount of cover of a financial guarantee or equivalent insurance and the approval of an additional financial guarantee or equivalent insurance in accordance with Article 6(4), second paragraph.

(2) Only the notifier (or the consignee, if authorised in writing by the notifier) may apply for a review of the amount of cover and approval of a financial guarantee or equivalent insurance.

(3) He must apply to the competent authority in Gibraltar whenever that authority is the competent authority of destination.

(4) The competent authority must ensure that its decision is issued in writing within 20 working days after the receipt of the application.

SCHEDULE 21

Section 98ZQ

Enforcement powers

PART 1
Powers of authorised persons

Information notice.

1. An authorised person may, by notice served on any person, require that person to provide such information as is specified in the notice in such form and within such period following service of the notice or at such time as is so specified.

Enforcement and prohibition notices.

2.(1) An authorised person may serve a notice on any person who contravenes or who the authorised person has reasonable grounds to suspect may contravene this Part or the TSW Regulation—

- (a) requiring him to act in accordance with this Part or the TSW Regulation (in this Schedule referred to as an “enforcement notice”); or
- (b) prohibiting him from acting in breach of them (in this Schedule referred to as a “prohibition notice”).

(2) The notice must give reasons for serving it and, if appropriate, specify what action must be taken and give time limits.

Appeals against enforcement and prohibition notices.

3.(1) Any person who is aggrieved by an enforcement or prohibition notice may appeal to a magistrates’ court.

(2) The procedure on an appeal to a magistrates’ court is by way of complaint.

(3) The period within which an appeal may be brought is 28 days or, in the case of an enforcement notice, the period specified in the notice, whichever ends earlier.

- (4) An enforcement or prohibition notice must state—
- (a) the right of appeal to a magistrates' court;
 - (b) the period in which such an appeal may be brought.

Powers to seize waste.

4.(1) This paragraph applies if an authorised person has reasonable grounds to suspect that—

- (a) the provisions of the TSW Regulation or this Part are not being, have not been or are not likely to be complied with in respect of any waste; or
 - (b) the shipment, recovery or disposal of any waste cannot be completed in accordance with the notification and movement documents or the contract between the notifier and consignee.
- (2) The authorised person may do any of the following—
- (a) seize that waste;
 - (b) serve a notice on any person who appears to him to be in control of such waste—
 - (i) requiring that person to send the waste to any place specified in the notice; or
 - (ii) prohibiting or restricting the movement of that waste.
- (3) In this paragraph any reference to waste includes—
- (a) any thing that the authorised person has reasonable grounds to suspect is waste; and
 - (b) the container in which the waste or thing is carried.

Seizure procedures.

5.(1) If an authorised person seizes any waste under paragraph 4, he must give to the person in control of it a notice (a “seizure notice”)–

- (a) giving the grounds for seizing it; and
- (b) setting out the rights under this paragraph to make a claim, and the address for the service of the claim.

(2) If an authorised person is not immediately able to remove any waste seized under paragraph 4, he may mark it in any way he sees fit and serve a notice on the person in control of it, identifying it and prohibiting its removal from the premises until it is collected by, or under the direction of, an authorised person.

(3) Any person (other than an authorised person or a person acting under his direction) who removes waste referred to in subparagraph (2) from the premises is guilty of an offence.

(4) If it appears that the waste seized is–

- (a) waste from a shipment that cannot be completed as intended, as referred to in Article 22; or
- (b) an illegal shipment, as referred to in Article 23,

and it is seized in an area that is not under the jurisdiction of the competent authority with responsibility for take-back pursuant to those Articles, the competent authority that seizes it must store it pending action by the competent authority with such responsibility.

(5) If the owner of the waste claims that the waste was not liable to seizure he may, within 28 days of the seizure, notify his claim to the competent authority at the address specified in the seizure notice, setting out the grounds in full.

(6) If a notification of a claim is not received within 28 days, the competent authority must take such steps as it considers appropriate to ensure the recovery or disposal of the waste and for these purposes may serve a notice

on the notifier requiring him to recover or dispose of the waste in the manner and within the time period specified in the notice.

(7) If a notification of a claim is received within 28 days, the competent authority must either return the waste or take proceedings for an order for the confirmation of the notice and the recovery or disposal of the waste in a magistrates' court and if the court confirms the notice it must order its recovery or disposal.

PART 2

Powers of customs officers

Powers of customs officers.

6. If he is requested to do so by the competent authority in Gibraltar, a customs officer may detain any waste that has been brought into Gibraltar or is to be dispatched from Gibraltar.

7. Any thing detained under this paragraph may be detained for no longer than 5 working days and must be dealt with during the period of its detention in such manner as the Collector of Customs may direct.

8. In this Part "waste" includes—

- (a) any thing that the competent authority has reasonable grounds to suspect is waste; and
- (b) the container in which the waste or thing is carried.

PART 3

Take-back etc. of waste

Shipments of waste that cannot be completed.

9. If the competent authority in Gibraltar, acting as competent authority of dispatch, receives notification from another competent authority under Article 22 (take-back when a shipment cannot be completed as intended), it may serve a notice on the notifier of the shipment requiring him to act in accordance with Article 22 within a specified time.

Illegal shipments of waste.

10. If the competent authority in Gibraltar, acting as competent authority of dispatch, receives notification from another competent authority under Article 24 (take-back when a shipment is illegal), it may serve a notice on the notifier of the shipment (or if it is not notifiable waste, the person who arranged the shipment) requiring him to act in accordance with Article 24 within a specified time.

Recovery or disposal of illegal shipment.

11. If the competent authority in Gibraltar, acting as competent authority of destination, receives notification from another competent authority under Article 24 (take-back when a shipment is illegal), it may serve a notice on the consignee of the shipment requiring him to act in accordance with Article 24(3) within a specified time.

Take-back by the competent authority.

12. If a competent authority, acting under the TSW Regulation, brings back waste into its area of jurisdiction from outside that area, it may recover or dispose of it as it sees fit at the notifier's expense."

Dated 27th October, 2011,.

P R CARUANA,
Chief Minister,
For the Government

EXPLANATORY MEMORANDUM

These Regulations amend the Public Health Act to give effect to Regulation (EC) No 1013/2006 of the European Parliament and of the Council on shipments of waste.

