

**SECOND SUPPLEMENT TO THE GIBRALTAR  
GAZETTE**

No. 3840 of 17 March, 2011

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LEGAL NOTICE NO. 25 OF 2011.

**INTERPRETATION AND GENERAL CLAUSES ACT**

**PUBLIC HEALTH (WATER FRAMEWORK) (AMENDMENT)  
REGULATIONS 2011**

In exercise of the powers conferred on it by section 23(g)(ii) as read with section 27 of the Interpretation and General Clauses Act, and of all other enabling powers, and for the purpose of further transposing into the law of Gibraltar Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy, the Government has made the following Regulations—

**Title and commencement.**

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

**Amendment of Rules.**

2. The Public Health (Water Framework) Rules 2004 (hereinafter “the principal Rules”) are amended in accordance with these Regulations.

**Amendment of rule 2.**

3. In rule 2 of the principal Rules—

(a) after the definition of “aquifer” insert the following definitions—

““available groundwater resource” means the long-term annual average rate of overall recharge of the body of groundwater less the long-term annual rate of flow required to achieve the ecological quality objectives for associated surface waters specified under Article 4 of the Directive, to avoid any significant diminution in the

ecological status of such waters and to avoid any significant damage to associated terrestrial ecosystems;

“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;”;

(b) at the end of the definition of “coastal waters” insert the words “, and in the case of Gibraltar the territorial waters are BGTW”;

(c) after the definition of “Competent Authority” insert the following definition–

““direct discharge to groundwater” means discharge of pollutants into groundwater without percolation throughout the soil or subsoil;”;

(d) in the definition of “the Directive” insert the words “as the same may be from time to time amended”;

(e) after the definition of “the Directive” insert the following definitions–

““ecological status” is an expression of the quality of the structure and functioning of aquatic ecosystems associated with surface waters, classified in accordance with Annex V to the Directive and “good ecological status” is the status of a body of surface water, so classified in accordance with that annex;

“emission controls” are controls requiring a specific emission limitation, for instance an emission limit value, or otherwise specifying limits or conditions on the effects, nature or other characteristics of an emission or operating conditions which affect emissions (for the avoidance of doubt, use of the term “emission control” in these Rules in respect of the provisions of any other European Union

directive shall not be held as reinterpreting those provisions in any respect);

“emission limit values” means the mass, expressed in terms of certain specific parameters, concentration and/or level of an emission, which may not be exceeded during any one or more periods of time;

“environmental quality standard” means the concentration of a particular pollutant or group of pollutants in water, sediment or biota which should not be exceeded in order to protect human health and the environment;”;

- (f) after the definition of “Gibraltar River Basin District” insert the following definitions—

““good ecological potential” is the status of a heavily modified or an artificial body of water, so classified in accordance with the relevant provisions of Annex V to the Directive;

“good groundwater chemical status” is the chemical status of a body of groundwater, which meets all the conditions set out in table 2.3.2 of Annex V to the Directive;

“good surface water chemical status” means the chemical status required to meet the environmental objectives for surface waters established in Article 4(1)(a) of the Directive, that is the chemical status achieved by a body of surface water in which concentrations of pollutants do not exceed the environmental quality standards established in Annex IX to, and under Article 16(7) of, the Directive, and under other relevant European Community legislation setting environmental quality standards at Community level;”;

- (g) after the definition of “groundwater” insert the following definitions—

““groundwater status” is the general expression of the status of a body of groundwater, determined by the poorer of its quantitative status and its chemical status and “good groundwater status” means the status achieved by a

groundwater body when both its quantitative status and its chemical status are at least 'good';

“heavily modified water body” means a body of surface water which as a result of physical alterations by human activity is substantially changed in character, and is designated in accordance with the provisions of Annex II;

“inland water” means all standing or flowing water on the surface of the land, and all groundwater on the landward side of the baseline from which the breadth of territorial waters is measured, and in the case of Gibraltar the territorial waters are BGTW;

“pollutant” means any substance liable to cause pollution, in particular those listed in Annex VIII to the Directive, which is reproduced for information purposes in Schedule 8B;

“pollution” means the direct or indirect introduction, as a result of human activity, of substances or heat into the air, water or land which may be harmful to human health or the quality of aquatic ecosystems or terrestrial ecosystems directly depending on aquatic ecosystems, which result in damage to material property, or which impair or interfere with amenities and other legitimate uses of the environment;”;

- (h) after the definition of “protected area” insert the following definition–

““quantitative status” is an expression of the degree to which a body of groundwater is affected by direct and indirect abstractions and “good quantitative status” is the status defined in table 2.1.2 of Annex V to the Directive;”;

- (i) for the definition “river basin” substitute the following definition–

““river basin” means the area of land from which all surface run-off flows through a sequence of streams, rivers and,

possibly lakes into the sea at a single river mouth, estuary or delta;”

- (j) at the end of the definition of “surface waters” insert the words “, and in the case of Gibraltar the territorial waters are BGTW”;
- (k) after the definition of “surface water” insert the following definitions–

““surface water status” is the general expression of the status of a body of surface water, determined by the poorer of its ecological status and its chemical status, and “good surface water status” means the status achieved by a surface water body when both its ecological status and its chemical status are at least “good”;

“water services” means all services which provide, for households, public institutions or any economic activity–

- (a) abstraction, impoundment, storage, treatment and distribution of surface water or groundwater,
- (b) waste-water collection and treatment facilities which subsequently discharge into surface water;

“water use” means water services together with any other activity identified under Article 5 of, and Annex II to, the Directive, having a significant impact on the status of water.”.

**New rule 7A.**

4. After rule 7 of the principal Rules insert–

**“Combined approach for point and diffuse sources.**

7A(1). The Competent Authority shall ensure that all discharges into surface waters referred to in subrule (2) are controlled according to the combined approach set out in this rule.

- (2) By 22 December 2012 at the latest, unless otherwise specified in the legislation concerned, the Competent Authority shall ensure the establishment and/or implementation of—
  - (a) emission controls based on best available techniques;
  - (b) relevant emission limit values; or
  - (c) in the case of diffuse impacts, controls including, as appropriate, best environmental practices set out in—
    - (i) Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control;
    - (ii) Council Directive 91/271/EEC of 21 May 1991 concerning urban waste-water treatment;
    - (iii) Directives adopted pursuant to Article 16 of the Directive;
    - (iv) the Directives listed in Annex IX to the Directive (and which is reproduced for information purposes in Schedule 4A);
    - (v) any other relevant Community legislation.
- (3) Where a quality objective or quality standard, whether established pursuant to the Directive, in the Directives listed in Annex IX of the Directive, or pursuant to any other Community legislation, requires stricter conditions than those which would result from the application of subrule (2), more stringent emission controls shall be set accordingly.
- (4) Where a permit or other authorisation has been issued under any enactment which is inconsistent with the provisions and objectives of this rule, the Competent Authority may amend the terms of that permit or authorisation through issue of directions pursuant to rule 20.”.

**Amendment of rule 9.**

5. After rule 9(3) of the principal Rules insert the following subrule–

“(3A) For protected areas the programmes referred to in subrules (2) and (3) shall be supplemented by those specifications contained in Community legislation under which the individual protected areas have been established.”.

**New rule 9A.**

6. After rule 9 of the principal Rules insert the following–

**“Use of information gathered from monitoring.**

9A. Where monitoring or other data indicate that the environmental objectives set for the body of water are unlikely to be achieved, the Competent Authority shall ensure that–

- (a) the causes of the possible failure are investigated;
  - (b) relevant permits and authorisations are examined and if appropriate modified through the issue of directions pursuant to rule 20;
  - (c) the monitoring programmes are reviewed and adjusted as appropriate; and
  - (d) such additional measures as may be necessary in order to achieve those environmental objectives are established, including, as appropriate, the establishment of stricter environmental quality standards following the procedures laid down in Annex V to the Directive.
- (2) Where those causes are the result of circumstances of natural cause or force majeure which are exceptional and could not reasonably have been foreseen, in particular extreme floods and prolonged droughts, the Competent Authority may determine that additional measures are not practicable, subject

to all the conditions in Article 4(6) of the Directive having been met.”.

**Amendment of rule 10.**

7. In rule 10 of the principal Rules–

- (a) after subrule (1) insert the following subrule–

“(1A) The programme of measures referred to in subrule (1)(b)–

- (a) shall include the basic measures specified in Article 11(3) of the Directive (which is reproduced for information purposes in Part I of Schedule 8A); and
- (b) may include such supplementary measures specified in Article 11(4) of the Directive as read with Part B of Annex VI to the Directive as the Competent Authority considers to be appropriate having regard to environmental objectives, (Annex VI to the Directive is reproduced for information purposes on in Part II of Schedule 8A);
- (c) may include such further supplementary measures as the Competent Authority considers appropriate in order to provide for additional protection or improvement of the waters covered by these Rules, including in implementation of the relevant international agreements referred to in Article 1 of the Directive.”

- (b) after subrule (4) insert the following subrules–

“(5) Any new or revised measures established under an updated programme shall be made operational within three years of their establishment.

- (6) In implementing a programme of measures the Competent Authority shall–



- (a) take all appropriate steps not to increase pollution of marine waters; and
- (b) without prejudice to existing legislation, ensure that the application of the measures does not on any account lead, either directly or indirectly, to increased pollution of surface waters,

save that this subrule shall not apply where it would result in increased pollution of the environment as a whole.”.

**Substitution of rule 18.**

8. For rule 18 of the principal Rules substitute–

“18.(1) The Competent Authority must ensure that it takes account of the principle of recovery of the costs of water services (including environmental and resource costs) having regard to the economic analysis conducted in accordance with Schedule 4 and in accordance, in particular, with the polluter pays principle such that–

- (a) water-pricing policies provide adequate incentives for users to use water resources efficiently, and thereby contribute to the environmental objectives of the Directive; and
  - (b) it results in an adequate contribution of the different water uses, disaggregated into at least industry, households and agriculture, to the recovery of the costs of water services.
- (2) In applying subrule (1) the Competent Authority may have regard to the social, environmental and economic effects of the recovery as well as the geographic and climatic conditions of the region.
- (3) River basin management plans made under these Rules shall report on the planned steps towards implementing subrule (1) which will contribute to achieving the environmental

objectives of the Directive and on the contribution made by the various water uses to the recovery of the costs of water services.”.

**New rules 20 to 22.**

9. After rule 19 of the principal Rules insert the following rules–

**“Directions.**

20.(1) The Competent Authority may issue directions where–

- (a) these Rules require it to discharge a particular duty;
  - (b) where it is appropriate to secure compliance with these Rules or the Directive.
- (2) A direction must be in writing, addressed to the person who is required to comply with it and state the time limits for compliance.
- (3) A person who without reasonable excuse fails to comply with a direction or any part of it commits an offence and is liable on summary conviction to a fine up to level 3 on the standard scale.

**Appeal.**

21.(1) A person to whom a direction is addressed who is not satisfied with the direction or any part of it may appeal against the direction to the Magistrates’ Court within 7 days of the service of the direction upon him.

- (2) Directions shall be stayed pending the determination of the appeal.
- (3) In considering an appeal under subrule (1) the court will have regard to all the circumstances of the case including the reasons why the direction was required to be issued in those terms, and the court may uphold, quash or vary the direction as it deems fit.

**Offences by corporate bodies.**

- 22.(1) Where an offence under rule 20(3) has been committed by a body corporate and 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, subrule (1) shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of a 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 this Act 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.”.

**Schedule 4A.**

10. After Schedule 4 to the principal Rules insert the following schedule—

**“SCHEDULE 4A**

Rule 7A

**THIS SCHEDULE REPRODUCES ANNEX IX TO THE DIRECTIVE.**

**EMISSION LIMIT VALUES AND ENVIRONMENTAL QUALITY STANDARDS**

The ‘ limit values’ and ‘ quality objectives’ established under the re Directives of Directive 76/464/EEC shall be considered emission limit values and environmental quality standards, respectively, for the purposes of this Directive. They are established in the following Directives:

- (i) The Mercury Discharges Directive (82/176/EEC);
- (ii) The Cadmium Discharges Directive (83/513/EEC);
- (iii) The Mercury Directive (84/156/EEC);
- (iv) The Hexachlorocyclohexane Discharges Directive (84/491/EEC); and
- (v) The Dangerous Substance Discharges Directive (86/280/EEC).”.

**Schedules 8A and 8B.**

11. After Schedule 8 to the principal Rules insert the following schedules-

**“SCHEDULE 8A**

Rule 10

**PART I**

This Part reproduces Article 11(3) of the Directive:

3. ‘ Basic measures’ are the minimum requirements to be complied with and shall consist of:
- (a) those measures required to implement Community legislation for the protection of water, including measures required under the legislation specified in Article 10 and in part A of Annex VI;
  - (b) measures deemed appropriate for the purposes of Article 9;
  - (c) measures to promote an efficient and sustainable water use in order to avoid compromising the achievement of the objectives specified in Article 4;
  - (d) measures to meet the requirements of Article 7, including measures to safeguard water quality in order to reduce the level of purification treatment required for the production of drinking water;
  - (e) controls over the abstraction of fresh surface water and groundwater, and impoundment of fresh surface water, including a register or registers of water abstractions and a requirement of prior authorisation for abstraction

and impoundment. These controls shall be periodically reviewed and, where necessary, updated. Member States can exempt from these controls, abstractions or impoundments which have no significant impact on water status;

(f) controls, including a requirement for prior authorisation of artificial recharge or augmentation of groundwater bodies. The water used may be derived from any surface water or groundwater, provided that the use of the source does not compromise the achievement of the environmental objectives established for the source or the recharged or augmented body of groundwater. These controls shall be periodically reviewed and, where necessary, updated;

(g) for point source discharges liable to cause pollution, a requirement for prior regulation, such as a prohibition on the entry of pollutants into water, or for prior authorisation, or registration based on general binding rules, laying down emission controls for the pollutants concerned, including controls in accordance with Articles 10 and 16. These controls shall be periodically reviewed and, where necessary, updated;

(h) for diffuse sources liable to cause pollution, measures to prevent or control the input of pollutants. Controls may take the form of a requirement for prior regulation, such as a prohibition on the entry of pollutants into water, prior authorisation or registration based on general binding rules where such a requirement is not otherwise provided for under Community legislation. These controls shall be periodically reviewed and, where necessary, updated;

(i) for any other significant adverse impacts on the status of water identified under Article 5 and Annex II, in particular measures to ensure that the hydromorphological conditions of the bodies of water are consistent with the achievement of the required ecological status or good ecological potential for bodies of water designated as artificial or heavily modified. Controls for this purpose may take the form of a requirement for prior authorisation or registration based on general binding rules where such a requirement is not otherwise provided for under Community legislation. Such controls shall be periodically reviewed and, where necessary, updated;

(j) a prohibition of direct discharges of pollutants into groundwater subject to the following provisions:

Member States may authorise reinjection into the same aquifer of water used for geothermal purposes.

They may also authorise, specifying the conditions for:

- injection of water containing substances resulting from the operations for exploration and extraction of hydrocarbons or mining activities, and injection of water for technical reasons, into geological formations from which hydrocarbons or other substances have been extracted or into geological formations which for natural reasons are permanently unsuitable for other purposes. Such injections shall not contain substances other than those resulting from the above operations,
- reinjection of pumped groundwater from mines and quarries or associated with the construction or maintenance of civil engineering works,
- injection of natural gas or liquefied petroleum gas (LPG) for storage purposes into geological formations which for natural reasons are permanently unsuitable for other purposes,
- injection of carbon dioxide streams for storage purposes into geological formations which for natural reasons are permanently unsuitable for other purposes, provided that such injection is made in accordance with Directive 2009/31/EC of the European Parliament and of the Council of 23 April 2009 on the geological storage of carbon dioxide (1) or excluded from the scope of that Directive pursuant to its Article 2(2),
- injection of natural gas or liquefied petroleum gas (LPG) for storage purposes into other geological formations where there is an overriding need for security of gas supply, and where the injection is such as to prevent any present or future danger of deterioration in the quality of any receiving groundwater,
- construction, civil engineering and building works and similar activities on, or in the ground which come into contact with groundwater. For these purposes, Member States may determine that such activities are to be treated as having been authorised provided that they are conducted in accordance with

general binding rules developed by the Member State in respect of such activities,

- discharges of small quantities of substances for scientific purposes for characterisation, protection or remediation of water bodies limited to the amount strictly necessary for the purposes concerned provided such discharges do not compromise the achievement of the environmental objectives established for that body of groundwater;

(k) in accordance with action taken pursuant to Article 16, measures to eliminate pollution of surface waters by those substances specified in the list of priority substances agreed pursuant to Article 16(2) and to progressively reduce pollution by other substances which would otherwise prevent Member States from achieving the objectives for the bodies of surface waters as set out in Article 4;

(l) any measures required to prevent significant losses of pollutants from technical installations, and to prevent and/or to reduce the impact of accidental pollution incidents for example as a result of floods, including through systems to detect or give warning of such events including, in the case of accidents which could not reasonably have been foreseen, all appropriate measures to reduce the risk to aquatic ecosystems.

## **PART II**

This Part reproduces Annex VI of the Directive:

### **LISTS OF MEASURES TO BE INCLUDED WITHIN THE PROGRAMMES OF MEASURES**

#### **PART A**

Measures required under the following Directives:

- (i) The Bathing Water Directive (76/160/EEC);
- (ii) The Birds Directive (79/409/EEC);
- (iii) The Drinking Water Directive (80/778/EEC) as amended by Directive (98/83/EC);

- (iv) The Major Accidents (Seveso) Directive (96/82/EC);
- (v) The Environmental Impact Assessment Directive (85/337/EEC);
- (vi) The Sewage Sludge Directive (86/278/EEC);
- (vii) The Urban Waste-water Treatment Directive (91/271/EEC);
- (viii) The Plant Protection Products Directive (91/414/EEC);
- (ix) The Nitrates Directive (91/676/EEC);
- (x) The Habitats Directive (92/43/EEC);
- (xi) The Integrated Pollution Prevention Control Directive (96/61/EC).

**PART B**

The following is a non-exclusive list of supplementary measures which Member States within each river basin district may choose to adopt as part of the programme of measures required under Article 11(4):

- (i) legislative instruments;
- (ii) administrative instruments;
- (iii) economic or fiscal instruments;
- (iv) negotiated environmental agreements;
- (v) emission controls;
- (vi) codes of good practice;
- (vii) recreation and restoration of wetlands areas;
- (viii) abstraction controls;



- (ix) demand management measures, inter alia, promotion of adapted agricultural production such as low water requiring crops in areas affected by drought;
- (x) efficiency and reuse measures, inter alia, promotion of water-efficient technologies in industry and water-saving irrigation techniques;
- (xi) construction projects;
- (xii) desalination plants;
- (xiii) rehabilitation projects;
- (xiv) artificial recharge of aquifers;
- (xv) educational projects;
- (xvi) research, development and demonstration projects;
- (xvii) other relevant measures.

**SCHEDULE 8B**

Rule 2

**THIS SCHEDULE REPRODUCES ANNEX VIII OF THE  
DIRECTIVE**

**INDICATIVE LIST OF THE MAIN POLLUTANTS**

1. Organohalogen compounds and substances which may form such compounds in the aquatic environment.
2. Organophosphorous compounds.
3. Organotin compounds.
4. Substances and preparations, or the breakdown products of such, which have been proved to possess carcinogenic or mutagenic properties or properties which may affect steroidogenic, thyroid, reproduction or other endocrine-related functions in or via the aquatic environment.
5. Persistent hydrocarbons and persistent and bioaccumulable organic toxic substances.
6. Cyanides.
7. Metals and their compounds.
8. Arsenic and its compounds.
9. Biocides and plant protection products.
10. Materials in suspension.
11. Substances which contribute to eutrophication (in particular, nitrates and phosphates).
12. Substances which have an unfavourable influence on the oxygen balance (and can be measured using parameters such as BOD, COD, etc.).”.

Dated 17th March, 2011.

P R CARUANA,  
Chief Minister,  
For the Government.

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**EXPLANATORY MEMORANDUM**

These Regulations amend the Public Health (Water framework) Rules 2004 to further transpose Directive 2000/60/EC, also known as the Water Framework Directive.