

**POLLUTION PREVENTION & CONTROL  
ACT, 2001**

**Principal Act**

<b>Act. No. 2001-11</b>	<i>Commencement</i>	26.4.2001
	<i>Assent</i>	5.4.2001

Amending enactments	Relevant current provisions	Commencement date
2004-39	ss.3(2), 5, 9, 9A & Sch. 1	29.11.2004
2005-51	ss. 2, 3(1) and (2), 4(1), (3) and (4), 5, 6, 8, 8A and Sch. 2	2.8.2005
LN. 2011/152	s. 9A	22.9.2011
2011/166	<i>Corrigendum</i>	
2011/172	Sch. 1	29.9.2011
2011/211	s. 2(1) & (2) & 7A	27.10.2011

**EU Legislation/International Agreements involved:**

Directive 85/337/EEC  
 Directive 85/337/EEC  
 Directive 91/157/EEC  
 Directive 96/61/EC  
 Directive 2000/60/EC  
 Directive 2001/80/EC  
 Directive 2003/35/EC  
 Directive 2004/35/EC  
 Directive 2006/12/EC  
 Directive 2006/66/EC  
 Directive 2008/99/EC  
 Directive 2008/1/EC  
 Directive 2009/31/EC  
 Regulation (EC) No 1013/2006

English sources

None cited

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**SCHEDULE 1**

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**SCHEDULE 2**

PUBLIC PARTICIPATION IN DECISION-MAKING

AN ACT TO TRANSPOSE INTO THE LAW OF GIBRALTAR THE PROVISIONS OF COUNCIL DIRECTIVE 96/61 CONCERNING INTEGRATED POLLUTION PREVENTION AND CONTROL.

**Title and commencement.**

1. This Act may be cited as the Pollution Prevention and Control Act 2001 and comes into operation on the day appointed by the Minister by notice in the Gazette.

**Interpretation.**

2. (1) In this Act—

“The Agency” means the Environmental Agency or such other body or person as the Minister may appoint for the purposes of this Act;

“any person concerned” includes any non-governmental organization promoting environmental protection;

“automotive battery or accumulator” means any battery or accumulator used for automotive starter, lighting or ignition power;

“Batteries Directive” means Directive 2006/66/EC of the European Parliament and of the Council of 6 September 2006 on batteries and accumulators and waste batteries and accumulators and repealing Directive 91/157/EEC, as amended from time to time;

“battery” or “accumulator” means any source of electrical energy generated by direct conversion of chemical energy and consisting of one or more primary battery cells (non-rechargeable) or one or more secondary battery cells (rechargeable), but does not include a battery or accumulator which is excluded from the scope of the Environment (Waste) Regulations 2007 pursuant to regulation 14B of those Regulations;

“the Directive” means Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control as the same may from time to time be amended;

“industrial battery or accumulator” means any battery or accumulator designed for exclusively industrial or professional uses or used in any type of electric vehicle;

“the Minister” means the Minister with responsibility for the environment;

“portable battery or accumulator” means any battery, button cell, battery pack or accumulator that—

- (a) is sealed;
- (b) can be hand-carried; and
- (c) is neither an industrial battery or accumulator nor an automotive battery or accumulator;

“recycling” means the reprocessing in a production process of waste materials for their original purpose or for other purposes, but excluding energy recovery;

“treatment” means any activity carried out on waste batteries and accumulators after they have been handed over to a facility for sorting, preparation for recycling or preparation for disposal.

(2) The terms “automotive battery or accumulator”, “battery or accumulator”, “industrial battery or accumulator” and “portable battery or accumulator” in subsection (1) shall be interpreted in the same way as those terms are interpreted and applied in the Environment (Waste) Regulations 2007.

#### **Permits for industrial activities causing pollution.**

3.(1) No new industrial activity of the type referred to in Schedule 1 shall be carried on without a permit granted in accordance with section 4.

(2) No existing industrial activity of the type referred to in Schedule 1 shall be carried on after 30 October 2007 without a permit granted in accordance with section 5.

#### **Application for permit for new activity.**

4.(1) A person wishing to undertake a new industrial activity of the type referred to in Schedule 1 shall apply to the Agency for a permit to do so, giving the information required by Article 6 of the Directive.

(2) The person applying for a permit shall publish the fact of the application in two or more daily or weekly newspapers circulating in Gibraltar stating that the details of the application may be inspected at the offices of the Agency.

(3) The Agency must ensure that public consultation is carried out in accordance with Schedule 2.

(4) The Agency shall having regard to the results of the consultations held pursuant to subsection (3) decide whether to grant a permit and if it does so shall grant it on the conditions set out in Article 9 of the Directive.

### **Applications for permits for existing installations.**

5. Any existing installation undertaking an industrial activity of the type referred to in Schedule 1 shall apply to the Agency, after 30 October 2004, for a permit to continue the activity, and subsections (2) to (4) of section 4 shall apply.

### **Changes in installations.**

6. Where an operator of an installation undertaking activities of the type referred to in Schedule 1 proposes to change or modify those activities, or an existing installation not currently undertaking such activities proposes to start doing so, he shall apply to the Agency for a permit and subsections (2) to (4) of section 4 shall apply.

### **Conditions of the permit.**

7.(1) The Agency shall, at regular intervals, consider the conditions of any permit granted under section 4 or 5 in accordance with Article 13 of the Directive.

(2) A permit holder shall abide by the conditions of the permit and inform the Agency of the results of monitoring and of any incident significantly affecting the environment.

(3) A permit holder and an operator of an existing installation to which section 5 applies shall permit any officer of the Agency (or person appointed to act for the Agency) to inspect the installation, to take samples and gather any information necessary for the performance of the Agency's duties under this Act.

### **Conditions of permits: batteries.**

7A.(1) The Agency shall ensure that a permit granted under this Act authorising the incineration of waste contains conditions prohibiting the incineration of waste industrial and automotive batteries and where a permit has already been granted, that that permit is varied accordingly.

(2) Such conditions shall not prohibit the incineration of residues of any batteries that have undergone both treatment and recycling, provided that the treatment and recycling—

- (a) used best available techniques, in terms of the protection of health and the environment; and

- (b) complied, as a minimum, with European Union legislation, in particular as regards health and safety and waste management.

**Exchange of information.**

8. The Agency shall comply with Article 16 of the Directive.

**Transboundary consultations.**

8A.(1) Where the Minister becomes aware that the operation of an installation is likely to have significant negative effects on the environment of another Member State, or where a Member State likely to be significantly affected so requests, the Minister shall forward to the other Member State any information required to be given or made available pursuant to Schedule 2 at the same time as he makes it available persons in Gibraltar.

(2) Where subsection (1) applies the Agency shall ensure that time limits in the consultation process are sufficient to enable persons in the other Member State to comment before the Agency determines an application.

(3) The results of any consultations must be taken into consideration by the Agency in reaching a decision.

(4) The Minister shall inform any Member State, which has been consulted pursuant to subsection 1, of the decision reached on the application and shall forward to it the information referred to in Article 15(5) of the Directive.

(5) Where the Minister receives information from another Member State in connection with the operation of an installation in that Member State which is likely to have significant negative effects on the environment in Gibraltar, the Minister must make that information available to any person concerned in Gibraltar.

**Offences.**

9.(1) A person who conducts an industrial activity for which a permit is required under section 3 without such a permit is guilty of an offence and liable on summary conviction to a fine up to level 5 on the standard scale.

(2) A person who fails to comply with the requirements of subsection (2) or (3) of section 7 is guilty of an offence and liable on summary conviction to a fine up to level 5 on the standard scale.

**Charges & Consultants.**

9A.(1) Where the Agency incurs costs in carrying out its functions under this Act it may charge a fee (determined in accordance with this section) to a person carrying on an activity to which this Act applies.

(2) The fee shall not exceed the sum of the costs reasonably incurred by the Agency in carrying out its functions including those referred to in subsection (3).

(3) Where, in the opinion of the Agency, it can properly carry out its functions under this Act only by using specialists or other consultants, the costs of such specialists or other consultants shall be included in the fee payable under subsection (1).

(4) The Agency shall provide the person by whom the fee is payable under subsection (1) with a detailed statement of the work done and costs incurred.

(5) Until the fee (or such proportion of it as the Agency may specify) is paid the person shall be deemed not to have complied with the requirements of this Act.

(6) The fee or such part of it as remains unpaid shall be recoverable as a civil debt.

## **Liability of bodies corporate - general.**

9B.(1) A corporate body shall be liable for an offence under this Act where that offence is committed for its benefit by a person, acting either individually or as part of an organ of the corporate body, who has a leading position within the corporate body.

(2) For the purposes of subsection (1), a leading position shall be deemed to exist where such a person has—

- (a) a power of representation of the corporate body;
- (b) an authority to take decisions on behalf of the corporate body;  
or
- (c) an authority to exercise control within the corporate body.

(3) A corporate body shall be liable for an offence under this Act committed by a person referred to in subsection (1) where lack of supervision or control by that person has made possible the commission of the offence for the benefit of the corporate body by a person under its authority.

(4) Where a corporate body is guilty of an offence under this Act and that offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any person referred to in subsection (1), or any person who was purporting to act in any such capacity that person, as well as the corporate body, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(5) Where the affairs of a corporate body are managed by its members, subsection (4) 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 the corporate body.

(6) A fine imposed on an unincorporated association on its conviction for an offence shall be paid out of the funds of the association.

(7) 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.

**Regulations.**

10. The Minister may make regulations for the purposes of implementing this Act and the Directive.

**SCHEDULE 1**

Section 3(1)

**CATEGORIES OF INDUSTRIAL ACTIVITIES**

1. Installations or parts of installations used for research, development and testing of new products and processes are not covered by this Act.

2. The threshold values given below generally refer to production capacities or outputs. Where one operator carries out several activities falling under the same subheading in the same installation or on the same site, the capacities of such activities are added together.

**1. Energy industries**

1.1. Combustion installations with a rated thermal input exceeding 50 MW.

1.2. Mineral oil and gas refineries.

1.3. Coke ovens.

1.4. Coal gasification and liquefaction plants.

**2. Production and processing of metals**

2.1. Metal ore (including sulphide ore) roasting or sintering installations.

2.2. Installations for the production of pig iron or steel (primary or secondary fusion) including continuous casting, with a capacity exceeding 2,5 tonnes per hour.

2.3. Installations for the processing of ferrous metals—

(a) hot-rolling mills with a capacity exceeding 20 tonnes of crude steel per hour;

(b) smitheries with hammers the energy of which exceeds 50 kilojoule per hammer, where the calorific power used exceeds 20 MW;

(c) application of protective fused metal coats with an input exceeding 2 tonnes of crude steel per hour.

2.4. Ferrous metal foundries with a production capacity exceeding 20 tonnes per day.

## 2.5. Installations—

- (a) for the production of non-ferrous crude metals from ore, concentrates or secondary raw materials by metallurgical, chemical or electrolytic processes;
- (b) for the smelting, including the alloyage, of non-ferrous metals, including recovered products, (refining, foundry casting, etc.) with a melting capacity exceeding 4 tonnes per day for lead and cadmium or 20 tonnes per day for all other metals.

2.6. Installations for surface treatment of metals and plastic materials using an electrolytic or chemical process where the volume of the treatment vats exceeds 30 m<sup>3</sup>.

**3. Mineral industry**

3.1. Installations for the production of cement clinker in rotary kilns with a production capacity exceeding 500 tonnes per day or lime in rotary kilns with a production capacity exceeding 50 tonnes per day or in other furnaces with a production capacity exceeding 50 tonnes per day.

3.2. Installations for the production of asbestos and the manufacture of asbestos-based products.

3.3. Installations for the manufacture of glass including glass fibre with a melting capacity exceeding 20 tonnes per day.

3.4. Installations for melting mineral substances including the production of mineral fibres with a melting capacity exceeding 20 tonnes per day.

3.5. Installations for the manufacture of ceramic products by firing, in particular roofing tiles, bricks, refractory bricks, tiles, stoneware or porcelain, with a production capacity exceeding 75 tonnes per day, and/or with a kiln capacity exceeding 4 m<sup>3</sup> and with a setting density per kiln exceeding 300 kg/m<sup>3</sup>.

**4. Chemical industry**

Production within the meaning of the categories of activities contained in this section means the production on an industrial scale by chemical processing of substances or groups of substances listed in paragraphs 4.1 to 4.6.

4.1. Chemical installations for the production of basic organic chemicals, such as—

- (a) simple hydrocarbons (linear or cyclic, saturated or unsaturated, aliphatic or aromatic);
- (b) oxygen-containing hydrocarbons such as alcohols, aldehydes, ketones, carboxylic acids, esters, acetates, ethers, peroxides, epoxy resins;
- (c) sulphurous hydrocarbons;
- (d) nitrogenous hydrocarbons such as amines, amides, nitrous compounds, nitro compounds or nitrate compounds, nitriles, cyanates, isocyanates;
- (e) phosphorus-containing hydrocarbons;
- (f) halogenic hydrocarbons;
- (g) organometallic compounds;
- (h) basic plastic metals (polymers synthetic fibres and cellulose-based fibres);
- (i) synthetic rubbers;
- (j) dyes and pigments;
- (k) surface-active agents and surfactants.

4.2. Chemical installations for the production of basic inorganic chemicals, such as–

- (a) gases, such as ammonia, chlorine or hydrogen chloride, fluorine or hydrogen fluoride, carbon oxides, sulphur compounds, nitrogen oxides, hydrogen, sulphur dioxide, carbonyl chloride;
- (b) acids, such as chromic acid, hydrofluoric acid, phosphoric acid, nitric acid, hydrochloric acid, sulphuric acid, oleum, sulphurous acids;
- (c) bases, such as ammonium hydroxide, potassium hydroxide, sodium hydroxide;
- (d) salts, such as ammonium chloride, potassium chlorate, potassium carbonate, sodium carbonate, perborate, silver nitrate;

- (e) non-metals, metal oxides or other inorganic compounds such as calcium carbide, silicon, silicon carbide.

4.3. Chemical installations for the production of phosphorous-, nitrogen- or potassium-based fertilisers (simple or compound fertilisers).

4.4. Chemical installations for the production of basic plant health products and of biocides.

4.5. Installations using a chemical or biological process for the production of basic pharmaceutical products.

4.6. Chemical installations for the production of explosives.

### **5. Waste management**

5.1. Installations for the disposal or recovery of hazardous waste for which a licence is required under section 192D of the Public Health Act and which have a capacity exceeding 10 tonnes per day.

5.2. Installations for the incineration of municipal waste covered by the Public Health (Offensive Trades) Rules 1990.

5.3. Installations for the disposal of non-hazardous waste as defined in paragraphs 8 or 9 of Schedule 12 to the Public Health Act with a capacity exceeding 50 tonnes a day for which a licence is required under section 192D of the Public Health Act.

5.4. Landfills receiving more than 10 tonnes per day or with a total capacity exceeding 25,000 tonnes, excluding landfills of inert waste.

### **6. Other activities**

6.1. Industrial plants for the production of—

- (a) pulp from timber or other fibrous materials;
- (b) paper and board with a production capacity exceeding 20 tonnes per day.

6.2. Plants for the pre-treatment (operations such as washing, bleaching, mercerisation) or dyeing of fibres or textiles where the treatment capacity exceeds 10 tonnes per day.

6.3. Plants for the tanning of hides and skins where the treatment capacity exceeds 12 tonnes of finished products per day.

6.4.

- (a) Slaughterhouses with a carcase production capacity greater than 50 tonnes per day.
- (b) Treatment and processing intended for the production of food products from—
  - animal raw materials (other than milk) with a finished product production capacity greater than 75 tonnes per day;
  - vegetable raw materials with a finished product production capacity greater than 300 tonnes per day (average value on a quarterly basis).
- (c) Treatment and processing of milk, the quantity of milk received being greater than 200 tonnes per day (average value on an annual basis).

6.5. Installations for the disposal or recycling of animal carcasses and animal waste with a treatment capacity exceeding 10 tonnes per day.

6.6. Installations for the intensive rearing of poultry or pigs with more than—

- (a) 40,000 places for poultry;
- (b) 2,000 places for production pigs (over 30 kg); or
- (c) 750 places for sows.

6.7. Installations for the surface treatment of substances, objects or products using organic solvents, in particular for dressing, printing, coating, degreasing, waterproofing, sizing, painting, cleaning or impregnating, with a consumption capacity of more than 150 kg per hour or more than 200 tonnes per year.

6.8. Installations for the production of carbon (hard-burnt coal) or electrographite by means of incineration or graphitisation.

6.9 Capture of carbon dioxide streams from installations covered by this Act for the purposes of geological storage pursuant to Directive 2009/31/EC of the European Parliament and of the Council of 23 April 2009 on the geological storage of carbon dioxide.

**SCHEDULE 2**

Sections 4(3), 8A

**Public participation in decision-making**

1. The public shall be informed (by public notices or other appropriate means such as electronic media where available) of the following matters early in the procedure for the taking of a decision or, at the latest, as soon as the information can reasonably be provided—

- (a) the application under sections 4, 5 or 6;
- (b) where applicable, the fact that a decision is subject to a national or transboundary environmental impact assessment or to consultations between Member States in accordance with Article 17 of the Directive;
- (c) details of where relevant information can be obtained, those to which comments or questions can be submitted, and details of the time schedule for transmitting comments or questions;
- (d) the nature of possible decisions;
- (e) an indication of the times and places where, or means by which, the relevant information will be made available;
- (f) details of the arrangements for public participation and consultation.

2. The Agency shall ensure that, within appropriate time-frames, the following is made available to the public concerned—

- (a) the main reports and advice issued to the Agency at the time when the public concerned were informed in accordance with paragraph 1;
- (b) in accordance with the provisions of Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information, information other than that referred to in paragraph 1 which is relevant for the decision in accordance with Article 8 of the Directive and which only becomes available after the time the public concerned was informed in accordance with paragraph 1.