

SECOND SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 4727 GIBRALTAR Thursday 18th June 2020

LEGAL NOTICE NO. 226 OF 2020

INTERPRETATION AND GENERAL CLAUSES ACT

PUBLIC HEALTH ACT (AMENDMENT) REGULATIONS 2020

In exercise of the powers conferred on it by section 23(g)(ii) of the Interpretation and General Clauses Act and in order to transpose into the Law of Gibraltar Directive (EU) 2018/851 of the European Parliament and of the Council of 30 May 2018 amending Directive 2008/98/ EU of the European Parliament and of the Council of 19 November 2008 on waste, the Government has made the following Regulations-

Title.

1. These Regulations may be cited as the Public Health Act (Amendment) Regulations 2020.

Commencement.

2. These Regulations come into operation on the day of publication.

Amendment to Act.

3. The Public Health Act (the “Act”) is amended in accordance with the provisions of these Regulations.

Amendment of Section 192A.

4. In section 192A(1)-

- (a) the following new definition is inserted immediately after the definition of “appliance”-

““backfilling” means any recovery operation where suitable non-hazardous waste is used for purposes of reclamation in excavated areas or for engineering purposes in landscaping. Waste used for backfilling must substitute non-waste materials, be suitable for the aforementioned purposes, and be limited to the amount strictly necessary to achieve those purposes;”;

- (b) the definition of “bio-waste” is substituted with the following –

““bio-waste” means biodegradable garden and park waste, food and kitchen waste from households, offices, restaurants, wholesale, canteens,

caterers and retail premises and comparable waste from food processing plants;”;

- (c) the following new definition is inserted immediately after the definition of “collection”-

““construction and demolition waste” means waste generated by construction and demolition activities;”;

- (d) the following new definitions are inserted immediately after the definition of “economic operator”-

““extended producer responsibility scheme” means a set of measures taken by the competent authority to ensure that producers or importers of products bear financial responsibility or financial and organisational responsibility for the management of the waste stage of a product’s life cycle;

“food waste” means all food as defined in Article 2 of Regulation (EC) No 178/2002 that has become waste;”;

- (e) the following new definitions are inserted immediately after the definition of “the Marking Directive”-

““material recovery” means any recovery operation, other than energy recovery and the reprocessing into materials that are to be used as fuels or other means to generate energy and which includes, inter alia, preparing for re-use, recycling and backfilling;

“municipal waste” means, without prejudice to the allocation of responsibilities for waste management between public and private actors,-

(a) mixed waste and separately collected waste from households including paper and cardboard, glass, metals, plastics, bio-waste, wood, textiles, packaging, waste electrical and electronic equipment, waste batteries and accumulators, and bulky waste, including mattresses and furniture;

(b) mixed waste and separately collected waste from other sources, where such waste is similar in nature and composition to waste from households;

(c) waste from production, agriculture, forestry, fishing, septic tanks and sewage network and treatment, including sewage sludge, end of life vehicles or construction and demolition waste shall not be considered municipal waste;

“non-hazardous waste” means waste which is not hazardous waste;”;

(f) in the definition of “prevention”, paragraph (c) is replaced with-

“(c) the content of hazardous substances in materials and products;”;

(g) the definition of “waste management” is substituted with the following-

“waste management” means the collection, transport, recovery (including sorting) and disposal of waste, including the supervision of such operations and the after-care of disposal sites, including actions taken as a dealer or broker;”.

(h) the first paragraph of subsection (2) is replaced with-

“(2) The Government must take appropriate measures to ensure that a substance or object resulting from a production process the primary aim of which is not the production of that substance or object is considered not to be waste, but to be a by-product if the following conditions are met -”;

(i) the following new subsections are inserted after subsection (2) –

“(3) Until such time as criteria is developed by the European Union, the Government may, by Order, declare detailed criteria on the application of the conditions laid down in subsections (2)(a)-(d) to specific substances or objects.

(4) The Government shall ensure that the Commission is notified where it makes an Order pursuant to subsection (3).”.

Amendment of Section 192B.

5. In section 192B, in subsection (3)(g), the following new paragraph is added after paragraph (iv)-

“(v) substances that are destined for use as feed materials as defined in point (g) of Article 3(2) of Regulation (EC) No 767/2009 and that do not consist of or contain animal by-products.”

Amendment of Section 192BA.

6. In section 192BA-

(a) subsection (1) is replaced with–

“192BA.(1) The Government must take appropriate measures to ensure that waste which has undergone a recycling or other recovery operation is

considered to have ceased to be waste if it complies with the following conditions-

- (a) the substance or object is to be used for specific purposes;
- (b) the substance or object fulfils the technical requirements for the specific purposes for which they are intended;
- (c) the substance or object meets the existing legislation and standards applicable to it;
- (d) the use of the substance or object will not lead to overall adverse environmental or human health impacts.”;

(b) subsection (2) is replaced with–

“(2) Where criteria has not been developed by the European Union pursuant to Article 6 (2) of the Directive, the Government may by Order-

- (a) establish criteria on the application of the conditions laid down in subsection (1) to certain types of waste; or
- (b) declare, on a case by case basis, and after having taken appropriate verification measures, that certain waste has ceased to be waste on the basis of the conditions referred to in subsection (1).”.

(c) the following new subsections (2A) and (2B) are inserted immediately following subsection (2)-

“(2A) If an Order is declared pursuant to subsection (2)(a), the Order shall take into account any possible adverse environmental and human health impacts of the substance or object and must satisfy the requirements laid down in points (a) to (e) of Article 6 (2) of the Directive.

(2B) If an Order is declared pursuant to subsection (2)(b), the Order shall reflect the requirements laid down in points (a) to (e) of Article 6 (2) of the Directive and shall take into account limit values for pollutants and any possible adverse environmental and human health impacts.”;

(d) subsection (3) is replaced with the following –

“(3) The Government shall ensure that the Commission is notified where it makes an Order pursuant to subsection (2)(a).”;

(e) subsection (4) is replaced with the following-

“(4) A natural or legal person who:

- (a) uses, for the first time, material that has ceased to be waste and that has not been placed on the market; or
- (b) places a material on the market for the first time after it has ceased to be waste,

must ensure that the material meets the relevant requirements under applicable chemical and product related legislation and the conditions of subsection (1) are met.”.

Amendment of Section 192C.

7. In section 192C-

- (a) in subsection (3)(ab), the words “section 192M(3) and Schedule 11B” are replaced with the words “section 192M(3), Schedule 11B and Article 10 of the Directive”;
- (b) in subsection (3)(ac), the words “and Articles 10(2) and (3) of the Directive” are included after “Schedule 14A”;
- (c) the following new subsections are inserted after subsection (3)(ac)-
 - “(ad) ensure that measures are taken for the promotion of selective demolition to enable the removal and safe handling of hazardous substances and facilitate the re-use and high quality recycling by selective removal of materials.
 - (ae) ensure the establishment of sorting systems for construction and demolition waste for wood, mineral fractions, metal, glass, plastic and plaster.”;
- (d) in subsection 4(a), the “;” after the word “feasible” is removed and “taking into account good practices;” is inserted;
- (e) in subsection 4(b), the words “, giving priority to regeneration or alternatively to other recycling operations delivering an equivalent or a better environmental outcome than regeneration,” are inserted after the word “treated” and before the words “in accordance with”;
- (f) subsection 4(c) is replaced with -
 - “(c) to ensure that –
 - (i) they are not mixed with other waste oils having different characteristics; and

(ii) they are not mixed with other kinds of waste or substances,

if such mixing impedes their regeneration or another recycling operation which delivers an equivalent or a better overall environmental outcome than regeneration.”.

Amendment of Section 192KC.

8. In section 192KC, the following new subsection is inserted after subsection (2)-

“(3) The Government must set up separate collection for hazardous waste fractions produced by households before 1st January 2025 to ensure that they are treated by having regard to the waste hierarchy set out in Schedule 11B and with the aim that other municipal waste streams are not contaminated.”.

Amendment of Section 192L.

9. In Section 192L, subsection (1)(a) is replaced with the following-

“(1) Establishments or undertakings that carry out waste treatment, the producers of hazardous waste and establishments and undertakings that collect or transport hazardous waste, shall make and maintain a chronological record of-

- (a) the quantity, nature and origin of that waste and the quantity of products and materials resulting from the preparation for re-use, recycling or other recovery operation; and
- (aa) where relevant, the destination, frequency of collection, mode of transport and treatment method foreseen in respect of the waste.”.

Amendment of Section 192M.

10. In section 192M –

(a) in subsection (1B), paragraphs (b) and (c) are replaced with the following-

- “(b) existing major disposal and recovery installations, including any special arrangements for waste oils, hazardous waste, waste containing significant amounts of critical raw materials, or waste streams addressed by specific European Union legislation;
- (c) an assessment of the need for closure of existing waste installations and additional waste installation infrastructure in accordance with Article 16 of the Directive and the investments and financial means related thereto;”;

(b) in subsection (1B), the following new paragraphs are inserted after paragraph (c)-

- “(ca) information on the measures to attain the objective laid down in section 5 of the Landfill Act 2002;
- (cb) an assessment of existing waste collection schemes, including the material and territorial coverage of separate collection and measures to improve its operation, of any derogations granted in accordance with Article 10(3) of the Directive, and of the need for new collection schemes;”;
- (c) in subsection (1B), the following new paragraphs are added after paragraph (e) –
 - “(f) measures to combat and prevent all forms of littering and to clean up all types of litter;
 - (g) appropriate qualitative or quantitative indicators and targets, including on the quantity of generated waste and its treatment and on municipal waste that is disposed of or subject to energy recovery.”;
- (d) subsection (2) is replaced with-
 - “(2) Waste management plans shall conform to the waste planning requirements laid down -
 - (a) in the strategy for the implementation of the reduction of biodegradable waste going to landfills, referred to in section 14 of the Landfill Act 2002;
 - (b) in this section;
 - (c) the Marine Strategy Regulations 2011; and
 - (d) the Public Health (Water Framework) Rules 2004.”.

Amendment to Section 192MA.

11. In section 192MA–

- (a) subsection (1) is replaced in its entirety with-
 - “(1) The Government shall establish a waste prevention programme setting out at least the waste prevention measures laid down in Articles 9(1) of the Directive in accordance with Articles 1 and 4 of the Directive.”;
- (b) subsection (2) is replaced in its entirety with –
 - “(2) With the aim of breaking the link between economic growth and the environmental impacts associated with the generation of waste, programmes made under subsection (1) shall, where relevant-

- (a) describe the contribution of instruments and measures laid out in Schedule 11C and paragraph 21 of Schedule 14A;
 - (b) evaluate the usefulness of the examples of measures indicated in Schedule 15A or other appropriate measures;
 - (c) describe existing waste prevention measures and their contribution to waste prevention;
 - (d) include specific food waste prevention programmes.”;
- (c) subsections (3) and (4) are deleted in their entirety.

Amendment to Section 192MC.

12. Section 192MC is replaced in its entirety with the following:

- “192MC.(1) The Government must take measures, subject to Article 10(2) and (3) of the Directive, that bio waste is either separated or recycled at source or is collected separately and is not mixed with other types of waste.
- (2) In accordance with section 192C(3)(a) and (5) as read with Schedule 11B, the Government must take measures to encourage-
- (a) encourage the recycling, including composting and digestion of bio-waste in a way that fulfils a high level of environmental protection and results in output which meets relevant high-quality standards;
 - (b) encourage home composting; and
 - (c) promote the use of materials produced from bio-waste.”.

Amendment to Section 192W.

13. In section 192W, in subsection (3), after the words “in Schedule 14B” the “.” is removed and the words “and Schedule 14C.” are inserted.

Amendment of Schedule 11B and insertion of Schedule 11C.

14. In Schedule 11B-

- (a) the following new paragraph is inserted immediately after paragraph 3-

“3A. The Government shall make use of economic instruments and other measures to provide incentives for the application of the waste hierarchy, such as those indicated in Schedule 11C or other appropriate instruments and measures.”;

(b) the following new Schedule is inserted after Schedule 11B-

“SCHEDULE 11C

Section 192C(5)(a), 192MA and Schedule 11B

Examples of economic instruments and other measures to provide incentives for the application of the waste hierarchy referred to in Schedule 11B.

1. Charges and restrictions for the landfilling and incineration of waste which incentivise waste prevention and recycling, while keeping landfilling the least preferred waste management option;
2. “Pay as you throw” schemes that charge waste producers or importers on the basis of the actual amount of waste generated and provide incentives for separation at source of recyclable waste and for reduction of mixed waste;
3. Fiscal incentives for donation of products, in particular food;
4. Extended producer responsibility schemes for various types of waste and measures to increase their effectiveness, cost efficiency and governance;
5. Deposit-refund schemes and other measures to encourage efficient collection of used products and materials;
6. Sound planning of investments in waste management infrastructure;
7. Sustainable public procurement to encourage better waste management and the use of recycled products and materials;
8. Phasing out of subsidies which are not consistent with the waste hierarchy;
9. Use of fiscal measures or other means to promote the uptake of products and materials that are prepared for re-use or recycled;
10. Support to research and innovation in advanced recycling technologies and remanufacturing;
11. Use of best available techniques for waste treatment;
12. Promotion of waste prevention and intensification of separate collection schemes, while avoiding support to landfilling and incineration;
13. Public awareness campaigns, in particular on separate collection, waste prevention and litter reduction, and mainstreaming these issues in education and training;

14. Systems of coordination, including by digital means, between all competent public authorities involved in waste management;

15. Promoting continuous dialogue and cooperation between all stakeholders in waste management and encouraging voluntary agreements and company reporting on waste.”.

Amendment to Schedule 13.

15. In Schedule 13-

(a) operation R3 is replaced with the following-

“R3. Recycling/reclamation of organic substances which are not used as solvents (including composting and other biological transformation processes) ².”;

(b) operation R4 is replaced with the following-

“R4. Recycling/reclamation of metal and metal compounds^{2a}.”;

(c) operation R5 is replaced with the following-

“R5. Recycling/reclamation of other inorganic materials ³.”;

(d) footnote (2) is replaced with the following-

“(2) This includes preparing for re-use, gasification and pyrolysis using the components as chemicals and recovery of organic materials in the form of backfilling.”;

(e) footnote (2a) is inserted immediately after footnote (2)-

“(2a) This includes preparing for re-use.”;

(f) footnote (3) is replaced with the following-

“(3) This includes preparing for re-use, recycling of inorganic construction materials, recovery of inorganic materials in the form of backfilling, and soil cleaning resulting in recovery of the soil.”

Amendment to Schedule 14A.

16. In Schedule 14A-

(a) in paragraph 1, insert the words, “, and, by 1st January 2025, for textiles.”;

(b) the following paragraphs are added-

- “4. By 2025, the preparing for re-use and the recycling of municipal waste shall be increased to a minimum of 55 % by weight.
5. By 2030, the preparing for re-use and the recycling of municipal waste shall be increased to a minimum of 60 % by weight.
6. By 2035, the preparing for re-use and the recycling of municipal waste shall be increased to a minimum of 65 % by weight.
7. The Government may postpone the deadlines for attaining targets referred to in paragraphs 4, 5 and 6 of this Schedule by up to five years provided that the Government-
 - (a) prepared for re-use and recycled less than 20% or landfilled more than 60% of its municipal waste generated in 2013 as reported under the Joint Questionnaire of the OECD and Eurostat;
 - (b) at the latest 24 months before the respective deadline laid down in paragraph 4,5 or 6 of this Schedule, notifies the Commission of its intention to postpone the respective deadline; and
 - (c) submits an implementation plan in accordance with paragraph 21 of this Schedule.
8. The Government shall, if it postpones the deadlines for attaining targets pursuant to paragraph 7, take the necessary measures to increase the preparing for re-use and the recycling of municipal waste-
 - (a) to a minimum of 50% by 2025 in the event of postponing the deadline for attaining the target referred to in paragraph 4 of this Schedule;
 - (b) to a minimum of 55% by 2030 in the event of postponing the deadline for attaining the target referred to in paragraph 5 of this Schedule;
 - (c) to a minimum of 60% by 2035 in the event of postponing the deadline for attaining the target referred to in paragraph 6 of this Schedule.
9. For the purpose of calculating whether the targets laid down in paragraphs 4, 5, 6 and 7 of this Schedule have been attained-
 - (a) the Government must calculate the weight of the municipal waste generated and prepared for re-use or recycled in a given calendar year;

- (b) the weight of the municipal waste prepared for re-use shall be calculated as the weight of products or components of products that have become municipal waste and have undergone all necessary checking, cleaning or repairing operations to enable re-use without further sorting or pre-processing;
 - (c) the weight of the municipal waste recycled shall be calculated as the weight of waste which, having undergone all necessary checking, sorting and other preliminary operations to remove waste materials that are not targeted by the subsequent reprocessing and to ensure high-quality recycling, enters the recycling operation whereby waste materials are actually reprocessed into products, materials or substances.
10. For the purposes of point (c) of paragraph 9, the weight of the municipal waste recycled shall be measured when the waste enters the recycling operation.
11. By way of derogation from paragraph 10, the weight of municipal waste recycled may be measured at the output of any sorting operation provided that-
- (a) such output waste is subsequently recycled;
 - (b) the weight of materials or substances that are removed by further operations preceding the recycling operation and are not subsequently recycled is not included in the weight of waste reported as recycled.
12. The Government must establish an effective system of quality control and traceability of municipal waste to ensure that the conditions laid down in point (c) of paragraph 9 and in paragraph 10 of this Schedule are met.
13. To ensure the reliability and accuracy of the data gathered on recycled waste, the system may consist of electronic registries set up, technical specifications for the quality requirements of sorted waste, or average loss rates for sorted waste for various waste types and waste management practices respectively. Average loss rates shall only be used in cases where reliable data cannot be obtained otherwise and shall be calculated on the basis of the calculation rules established in the delegated act adopted pursuant to paragraph 10 of Article 11a of the Directive.
14. For the purpose of calculating whether the targets laid down in paragraphs 4,5,6 and 7 of this Schedule have been attained, the amount of municipal biodegradable waste that enters aerobic or anaerobic treatment may be counted as recycled where that treatment generates compost, digestate, or other output with a similar quantity of recycled content in relation to input, which is to be used as a recycled product, material or

substance. Where the output is used on land, the Government may count it as recycled only if this use results in benefits to agriculture or ecological improvement.

15. The Government may, as from 1 January 2027, count municipal bio-waste entering aerobic or anaerobic treatment as recycled only if, in accordance with section 192MC, it has been separately collected or separated at source.
16. For the purposes of calculating whether the targets laid down in paragraphs 4,5,6 and 7 of this Schedule have been attained, the amount of waste materials that have ceased to be waste as a result of a preparatory operation before being reprocessed may be counted as recycled provided that such materials are destined for subsequent reprocessing into products, materials or substances to be used for the original or other purposes.
17. End-of-waste materials to be used as fuels or other means to generate energy, or to be incinerated, backfilled or landfilled, shall not be counted towards the attainment of the recycling targets.
18. For the purposes of calculating whether the targets laid down in paragraphs 4,5,6 and 7 of this Schedule have been attained, the Government may take into account the recycling of metals separated after incineration of municipal waste provided that the recycled metals meet certain quality criteria laid down in the implementing act adopted pursuant to paragraph 9 of Article 11a of the Directive.
19. Waste sent by the Government to another Member State for the purposes of preparing for re-use, recycling or backfilling in that other Member State may only be counted towards the attainment of the targets laid down in paragraphs 4,5,6 and 7 of this Schedule if that waste was collected in Gibraltar.
20. Waste exported from the European Union for preparing for re-use or recycling shall count towards the attainment of the targets laid down in paragraphs 4,5,6 and 7 of this Schedule if the requirements of paragraphs 12 and 13 of this Schedule are met and if, in accordance with Regulation (EC) No 1013/2006, the exporter can prove that the shipment of waste complies with the requirements of that Regulation and that the treatment of waste outside the European Union took place in conditions that are broadly equivalent to the requirements of the relevant European Union environmental legislation.
21. The implementation plan to be submitted pursuant to paragraph 7(c) shall contain the following:

- (a) assessment of the past, current and projected rates of recycling, landfilling and other treatment of municipal waste and the streams of which it is composed;
- (b) assessment of the implementation of waste management plans and waste prevention programmes in place pursuant to sections 192M and 192MA;
- (c) reasons for which the Government considers that it might not be able to attain the relevant target laid down in paragraphs 4,5 and 6 of this Schedule within the deadline set therein and an assessment of the time extension necessary to meet that target;
- (d) measures necessary to attain the targets set out in paragraphs 4,5,6 and 8 that are applicable to Gibraltar during the time extension, including appropriate economic instruments and other measures to provide incentives for the application of the waste hierarchy as set out in Schedule 11B and having regard to the provisions of Schedule 11C where applicable;
- (e) a timetable for the implementation of the measures identified in paragraph 21(d), determination of the body competent for their implementation and an assessment of their individual contribution to attaining the targets applicable in the event of a time extension;
- (f) information on funding for waste management in line with the polluter-pays principle;
- (g) measures to improve data quality, as appropriate, with a view to better planning and monitoring performance in waste management.”.

Amendment of Schedule 14B and insertion of Schedule 14C.

17. In Schedule 14B-

- (a) the following new paragraphs are added immediately after paragraph 2:
 - “2A. Where such measures include the establishment of extended producer responsibility schemes, the general minimum requirements laid down in Schedule 14C shall apply.
 - 2B. The Government may decide that producers or importers of products that undertake financial or financial and organisational responsibilities for the management of the waste stage of a product’s life cycle of their own accord should apply some or all of the general minimum requirements laid down in Schedule 14C.”;
- (b) paragraph 3 is replaced with the following-

“3. The Government may take appropriate measures to encourage the design of products and components of products in order to reduce their environmental impact and the generation of waste in the course of the production and subsequent use of products, and in order to ensure that the recovery and disposal of products that have become waste take place in accordance with Articles 4 and 13 of the Directive.”;

(c) paragraph 4 is replaced with the following-

“4. Measures under paragraph 3 of this Schedule should encourage the development, production and marketing of products and components of products that are suitable for multiple use, that contain recycled materials, that are technically durable and easily repairable and that are, after having become waste, suitable for preparing for re-use and recycling in order to facilitate proper implementation of the waste hierarchy. The measures shall take into account the impact of products throughout their life cycle, the waste hierarchy and, where appropriate, the potential for multiple recycling.”;

(d) the following new schedule is inserted after Schedule 14B-

“SCHEDULE 14C

Section 192W(3) and Schedule 14B

General minimum requirements for extended producer responsibility schemes

1. Where extended producer responsibility schemes are established in accordance with section 192W(3) and paragraph 2A of Schedule 14B, including pursuant to other legislative acts of the European Union, the Government must:

- (a) define in a clear way the roles and responsibilities of all relevant actors involved, including producers or importers of products placing products on Gibraltar’s market, organisations implementing extended producer responsibility obligations on their behalf, private or public waste operators, local authorities and, where appropriate, re-use and preparing for re-use operators and social economy enterprises;
- (b) in line with the waste hierarchy, set waste management targets, aiming to attain at least the quantitative targets relevant for the extended producer responsibility scheme as laid down in the Directive, Directive 94/62/EC, Directive 2000/53/EC, Directive 2006/66/EC and Directive 2012/19/EU of the European Parliament and of the Council, and set other quantitative targets and/or qualitative objectives that are considered relevant for the extended producer responsibility scheme;
- (c) ensure that a reporting system is in place to gather data on the products placed on Gibraltar’s market by the producers or importers of products subject to extended

producer responsibility and data on the collection and treatment of waste resulting from those products specifying, where appropriate, the waste material flows, as well as other data relevant for the purposes of point (b) of this paragraph 1;

- (d) ensure equal treatment of producers or importers of products regardless of their origin or size, without placing a disproportionate regulatory burden on producers or importers, including small and medium-sized enterprises, of small quantities of products.

2. The Government must take the necessary measures to ensure that the waste holders targeted by the extended producer responsibility schemes established in accordance with section 192W(3) and paragraph 2A of Schedule 14B, are informed about waste prevention measures, centres for re-use and preparing for re-use, take-back and collection systems, and the prevention of littering. The Government must also take measures to create incentives for the waste holders to assume their responsibility to deliver their waste into the separate collection systems in place, notably, where appropriate, through economic incentives or regulations.

3. The Government must take the necessary measures to ensure that any producer or importer of products or organisation implementing extended producer responsibility obligations on behalf of producers or importers of products-

- (a) has a clearly defined geographical, product and material coverage without limiting those areas to those where the collection and management of waste are the most profitable;
- (b) provides an appropriate availability of waste collection systems within the areas referred to in point (a) of this paragraph 3;
- (c) has the necessary financial means or financial and organisational means to meet its extended producer responsibility obligations;
- (d) puts in place an adequate self-control mechanism, supported, where relevant, by regular independent audits, to appraise:
 - (i) its financial management, including compliance with the requirements laid down in points (a) and (b) of paragraph 4 of this Schedule;
 - (ii) the quality of data collected and reported in accordance with point (c) of paragraph 1 of this Schedule and with the requirements of Regulation (EC) No 1013/2006;
- (e) makes publicly available information about the attainment of the waste management targets referred to in point (b) of paragraph 1 of this Schedule, and, in the case of collective fulfilment of extended producer responsibility obligations, also information about:

- (i) its ownership and membership;
- (ii) the financial contributions paid by producers or importers of products per unit sold or per tonne of product placed on the market; and

(iii) the selection procedure for waste management operators.

4. The Government must take the necessary measures to ensure that the financial contributions paid by the producer or importer of the product to comply with its extended producer responsibility obligations –

- (a) cover the following costs for the products that the producer or importer puts on Gibraltar's market:

costs of separate collection of waste and its subsequent transport and treatment, including treatment necessary to meet the European Union waste management targets, and costs necessary to meet other targets and objectives as referred to in point (b) of paragraph 1 of this Schedule, taking into account the revenues from re-use, from sales of secondary raw material from its products and from unclaimed deposit fees,

costs of providing adequate information to waste holders in accordance with paragraph 2 of this Schedule,

costs of data gathering and reporting in accordance with point (c) of paragraph 1 of this Schedule.

This paragraph 4(a) shall not apply to extended producer responsibility schemes established pursuant to Directive 2000/53/EC, 2006/66/EC or 2012/19/EU.

- (b) in the case of collective fulfilment of extended producer responsibility obligations, are modulated, where possible, for individual products or groups of similar products, notably by taking into account their durability, reparability, re-usability and recyclability and the presence of hazardous substances, thereby taking a life-cycle approach and aligned with the requirements set by relevant European Union legislation, and where available, based on harmonised criteria in order to ensure a smooth functioning of the internal market; and
- (c) do not exceed the costs that are necessary to provide waste management services in a cost-efficient way. Such costs shall be established in a transparent way between the actors concerned.

5. Where justified by the need to ensure proper waste management and the economic viability of the extended producer responsibility scheme, the Government may depart from the division of financial responsibility as laid down in point (a) of paragraph 4 of this Schedule, provided that-

- (a) in the case of extended producer responsibility schemes established to attain waste management targets and objectives established under legislative acts of the European Union, the producers or importers of products bear at least 80 % of the necessary costs;
- (b) in the case of extended producer responsibility schemes established on or after 4 July 2018 to attain waste management targets and objectives solely established in Gibraltar legislation, the producers or importers of products bear at least 80 % of the necessary costs;
- (c) in the case of extended producer responsibility schemes established before 4 July 2018 to attain waste management targets and objectives solely established in Gibraltar legislation, the producers or importers of products bear at least 50 % of the necessary costs,

and provided that the remaining costs are borne by original waste producers, importers or distributors.

6. The derogation referred to in paragraph 5 may not be used to lower the proportion of costs borne by producers or importers of products under extended producer responsibility schemes established before 4 July 2018.

7. The Government must establish an adequate monitoring and enforcement framework with a view to ensuring that producers or importers of products and organisations implementing extended producer responsibility obligations on their behalf implement their extended producer responsibility obligations, including in the case of distance sales, that the financial means are properly used and that all actors involved in the implementation of the extended producer responsibility schemes report reliable data.

8. Where, in Gibraltar, multiple organisations implement extended producer responsibility obligations on behalf of producers or importers of products, the Government shall appoint at least one body independent of private interests or entrust a public authority to oversee the implementation of extended producer responsibility obligations.

9. The Government shall allow the producers or importers of products established in another Member State and placing products in Gibraltar to appoint a legal or natural person established in Gibraltar as an authorised representative for the purposes of fulfilling the obligations of a producer related to extended producer responsibility schemes in Gibraltar.

10. For the purposes of monitoring and verifying compliance with the obligations of the producer or importer of the product in relation to extended producer responsibility schemes, the Government may lay down requirements, such as registration, information and reporting requirements, to be met by a legal or natural person to be appointed as an authorised representative in Gibraltar.

11. The Government shall ensure a regular dialogue between relevant stakeholders involved in the implementation of extended producer responsibility schemes, including producers, importers and distributors, private or public waste operators, local authorities, civil society

organisations and, where applicable, social economy actors, re-use and repair networks and preparing for re-use operators.

12. The Government shall take measures to ensure that extended producer responsibility schemes that have been established before 4 July 2018, comply with the provisions of this Schedule by 5 January 2023.

13. The provision of information to the public under this Schedule shall be without prejudice to preserving the confidentiality of commercially sensitive information in conformity with the relevant European Union and Gibraltar legislation.”.

Dated 18th June 2020

PROF. J CORTES,
for the Government.

EXPLANATORY MEMORANDUM

The Public Health Act (“the Act”) implements Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste (“the Directive”).

These Regulations amend the Act to implement the amendments made to the Directive by Directive (EU) 2018/851 of the European Parliament and of the Council of 30 May 2018 (“the Amending Directive”).

The Amending Directive lays down measures to protect the environment and human health by preventing or reducing the generation of waste, the adverse impacts of the generation and management of waste and by reducing overall impacts of resource use and improving the efficiency of such use; which are crucial for the transition to a circular economy and for guaranteeing long term competitiveness.