

2008 No. 91

ENVIRONMENTAL PROTECTION

The Environmental Protection (Controls on Ozone–Depleting Substances) (Amendment) Regulations 2008

<i>Made</i>	- - - -	<i>16th January 2008</i>
<i>Laid before Parliament</i>		<i>21st January 2008</i>
<i>Coming into force</i>	- -	<i>15th February 2008</i>

The Secretary of State is a Minister designated^(a) for the purposes of section 2(2) of the European Communities Act 1972^(b) in relation to measures relating to the protection of the ozone layer and measures relating to substances that deplete the ozone layer.

He makes these Regulations in exercise of powers conferred by that section.

Citation and commencement

1. These Regulations—

- (a) may be cited as the Environmental Protection (Controls on Ozone–Depleting Substances) (Amendment) Regulations 2008; and
- (b) come into force on 15th February 2008.

Amendments

2. The Environmental Protection (Controls on Ozone–Depleting Substances) Regulations 2002^(c) are amended in accordance with the Schedule.

16th January 2008

Phil Woolas
Minister of State
Department for Environment, Food and Rural Affairs

(a) S.I. 1995/262, to which there are no relevant amendments. The power of the Secretary of State, as a Minister designated in relation to measures relating to the protection of the ozone layer and measures relating to substances that deplete the ozone layer, to make regulations which extend to Scotland remains exercisable by virtue of section 57(1) of the Scotland Act 1998 (c. 46).
(b) 1972 c.68.
(c) S.I. 2002/528, to which there are amendments not relevant to this instrument.

Amendments to the Environmental Protection (Controls on Ozone– Depleting Substances) Regulations 2002

Insertion of regulation 1A

1. After regulation 1, insert—

“Application to offshore installations

1A.—(1) Subject to paragraph (2), these Regulations apply to offshore installations.

(2) Except in relation to importation, these Regulations do not apply to offshore installations in the tidal waters or parts of the sea in or adjacent to Northern Ireland up to the seaward limits of the territorial sea.”.

Substitution of regulation 2(1)

2. For regulation 2(1), substitute—

“(1) In these Regulations—

“the 1979 Act” means the Customs and Excise Management Act 1979(a);

“the Agency” means—

(a) as regards England and Wales, the Environment Agency, and

(b) as regards Scotland, the Scottish Environment Protection Agency;

“authorised person” means a person authorised under regulation 3A;

“the commencement date” means the date on which these Regulations come into force;

“enforcement notice” means a notice served under regulation 15(1);

“the enforcing authority” means—

(a) as regards England, the Agency, the local authority, the port health authority or the Secretary of State;

(b) as regards Wales, the Agency, the local authority, the port health authority or the Welsh Ministers;

(c) as regards Scotland, the Agency, the local authority or Scottish Ministers;

(d) as regards offshore installations, the Secretary of State;

“local authority” means—

(a) in relation to England—

(i) a district council,

(ii) a county council that is the council for a county in which there are no district councils,

(iii) a London borough council,

(iv) the Common Council of the City of London, or

(v) the Council of the Isles of Scilly;

(b) in relation to Wales—

(i) a county council, or

(ii) a county borough council;

(c) in relation to Scotland, a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994(a);

(a) 1979 c.2.

“the marine area” means—

- (a) the tidal waters and parts of the sea in or adjacent to the United Kingdom up to the seaward limits of the territorial sea; and
- (b) the area designated by an Order in Council under section 1(7) of the Continental Shelf Act 1964^(b);

“offshore installation” has the meaning given in paragraph (1A);

“port health authority” means—

- (a) in relation to the London port health district (within the meaning given by section 7(1) of the Public Health (Control of Disease) Act 1984^(c)), the Common Council of the City of London; and
- (b) in relation to any port health district constituted by order under section 2(3) of that Act, the port health authority for that district constituted by order under section 2(4) of that Act;

“premises” includes—

- (a) land;
- (b) a vehicle or trailer;
- (c) a container;
- (d) an aircraft;
- (e) a ship; and
- (f) an offshore installation or a part of an offshore installation,

and a reference to entering premises includes a reference to boarding an aircraft, a ship or an offshore installation;

“the principal Regulation” means Regulation (EC) No 2037/2000 of the European Parliament and of the Council on substances that deplete the ozone layer^(d);

“prohibition notice” means a notice served under regulation 15(3); and

“ship” includes a hovercraft, submersible craft and any other floating craft but not a vessel which permanently rests on or is permanently attached to the seabed.

(1A) In these Regulations, “offshore installation” means an installation or structure, other than a ship, used for carrying on an activity in paragraph (1B) which is situated in the waters of, or on or under the seabed in, the marine area.

(1B) The activities referred to in paragraph (1A) are—

- (a) the exploitation, or the exploration with a view to exploitation, of mineral resources in or under the shore or bed of waters in the marine area;
- (b) the storage of gas in or under the shore or bed of waters in the marine area or the recovery of gas so stored;
- (c) the conveyance of things by means of a pipe, or system of pipes, constructed or placed on, in or under the shore or bed of waters in the marine area; and
- (d) the provision of accommodation for persons who work on or from an installation which is or has been maintained, or is intended to be established, for the carrying on of an activity falling within sub-paragraph (a), (b) or (c) or this sub-paragraph.”.

Substitution of regulation 3

3. For regulation 3, substitute—

(a) 1994 c. 39.

(b) 1964 c. 29. Section 1(7) is amended by section 37 of, and paragraph 1 of Schedule 3 to, the Oil and Gas (Enterprise) Act 1982 (c. 23). Areas have been designated under section 1(7) by S.I. 1987/1265 (as amended by S.I. 2000/3062), S.I. 2000/3062 (as amended by S.I. 2001/3670) and S.I. 2001/3670.

(c) 1984 c. 22.

(d) OJ L 244, 29.9.2000, p.1; latest amending legislation is published at OJ L 363, 20.12.2006, p. 1.

“The competent authority

3. The Secretary of State is the competent authority for the purposes of the principal Regulation in its application to—

- (a) England, Wales and Scotland;
- (b) offshore installations; and
- (c) in relation to importation, Northern Ireland.

Appointment of authorised persons

3A. The enforcing authority may authorise in writing such persons (“authorised persons”) as they consider appropriate for the purpose of enforcing these Regulations.”.

Amendment to regulation 7

4. In regulation 7—

- (a) in paragraph (1)—
 - (i) for “a customs officer” substitute “an officer of Revenue and Customs”, and
 - (ii) for “proof” substitute “evidence”; and
- (b) in paragraphs (2) and (3)—
 - (i) for “the officer”, in each place where it appears, substitute “the Commissioners for Revenue and Customs”, and
 - (ii) for “proof”, in each place where it appears, substitute “evidence”.

Substitution of regulations 9 to 14

5.—(1) Subject to paragraph (2), for regulations 9 to 14, substitute—

“Powers of the Secretary of State with regard to offshore installations

9.—(1) This regulation applies to offshore installations.

(2) The Secretary of State may require a person who has imported or placed on the market—

- (a) a controlled substance;
- (b) a new substance;
- (c) a product; or
- (d) equipment,

in contravention of the principal Regulation to dispose of it without causing pollution of the environment or harm to human health or to the health of animals or plants or otherwise render it harmless.

(3) Such a person shall comply with the requirement.

Further powers of the Secretary of State

10.—(1) Subject to paragraph (2), this regulation applies to any person who has placed on the market—

- (a) a controlled substance;
- (b) a new substance;
- (c) a product; or
- (d) equipment,

in contravention of the principal Regulation.

(2) This regulation does not apply to a person referred to in regulation 9.

(3) The Secretary of State may require a person referred to in paragraph (1) to dispose of—

- (a) the controlled substance;
- (b) the new substance;
- (c) the product; or
- (d) the equipment,

as the case may be, without causing pollution of the environment or harm to human health or to the health of animals or plants or otherwise render it harmless.

(4) Such a person shall comply with the requirement.

Powers of Secretary of State in relation to exports in contravention of Article 11

11.—(1) Paragraph (2) applies where—

- (a) a person has brought to any place for the purpose of being exported or is exporting a controlled substance, product or equipment where such export would be, or is, in contravention of Article 11; or
- (b) the controlled substance, product or equipment is liable to forfeiture under regulation 7(3) or the 1979 Act.

(2) The Secretary of State may require that person—

- (a) to dispose of the controlled substance, the product or the equipment without causing pollution of the environment or harm to human health or to the health of animals or plants; or
- (b) otherwise to render it harmless.

(3) That person shall comply with the requirement.

Fumigation for quarantine or preshipment

12.—(1) No person may fumigate for quarantine or preshipment except in accordance with a written authorisation issued by—

- (a) a local authority; or
- (b) a port health authority.

(2) An application for an authorisation shall contain the following information—

- (a) the name and address of the applicant;
- (b) either—
 - (i) the address, or
 - (ii) sufficient details to identify the location, of the premises where the fumigation is to be carried out;
- (c) details of the premises, article or substance to be fumigated;
- (d) the reason for the fumigation;
- (e) the amount of methyl bromide to be used;
- (f) the reason why no alternative to methyl bromide can be used;
- (g) where a person signs the application on behalf of the applicant, the full name of that person and his status in relation to the applicant; and
- (h) the date on which the application is signed.

(3) An authorisation shall—

- (a) contain a copy of the application to which it relates; and
- (b) include details of the amount of methyl bromide authorised to be used.

- (4) An authorisation may—
 - (a) contain conditions; and
 - (b) be revoked or amended in writing at any time.
- (5) A person to whom an authorisation is issued shall—
 - (a) retain that authorisation for a period of three years; and
 - (b) provide a copy to the Secretary of State on request.
- (6) A local authority and a port health authority may charge a reasonable fee for dealing with an application for an authorisation.
- (7) In this regulation, “fumigate” means fumigate using methyl bromide, and cognate expressions are construed accordingly.

Powers of an authorised person

13.—(1) An authorised person may, on production, if so required, of his authority, exercise any of the powers specified in paragraph (2) for the purpose of enforcing these Regulations.

- (2) The powers of an authorised person are—
 - (a) at any reasonable time, to enter premises, other than premises used wholly or mainly for residential purposes, which he has reason to believe it is necessary for him to enter;
 - (b) on entering any premises by virtue of sub-paragraph (a), to take with him—
 - (i) any other person whose presence appears to him to be required in connection with the exercise by him of any power under this regulation, including, if he has reasonable cause to apprehend any serious obstruction in the execution of his duty, a constable, and
 - (ii) any equipment or materials required for any purpose for which the power of entry is being exercised;
 - (c) to make such examination or investigation as may in any circumstances be necessary;
 - (d) as regards any premises which he has power to enter, to direct that those premises or any part of them, or anything in them, shall be left undisturbed (whether generally or in particular respects) for so long as is reasonably necessary for the purposes of any examination or investigation under sub-paragraph (c);
 - (e) to take such measurements and photographs and make such recordings as he considers necessary for the purpose of any examination or investigation under sub-paragraph (c);
 - (f) to take samples of any articles or substances found in or on any premises which he has power to enter;
 - (g) in the case of any article or substance found in or on any premises which he has power to enter, being an article or substance which appears to him to have caused or to be likely to cause pollution of the environment or harm to human health or to the health of animals or plants, to cause it to be dismantled or subjected to any process or test (but not so as to damage or destroy it unless that is necessary);
 - (h) in the case of any such article or substance, to take possession of it and detain it for so long as is necessary—
 - (i) to examine it and do to it anything which he has power to do under sub-paragraph (g),
 - (ii) to ensure that it is not tampered with before his examination of it is completed, or

- (iii) to ensure that it is available for use as evidence in any proceedings for an offence under regulation 18;
 - (i) to remove for analysis any insects or rodents found in or on any premises which he has power to enter;
 - (j) to require any person whom he has reasonable cause to believe to be able to give any information relevant to any examination or investigation under sub-paragraph (c) to answer (in the absence of anyone, other than someone nominated by that person to be present and anyone whom the authorised person may allow to be present) such questions as the authorised person thinks fit to ask and to sign a declaration of the truth of his answers;
 - (k) to require the production of, or where the information is recorded in computerised form, the furnishing of extracts from, any records which it is necessary for him to see for the purposes of any examination or investigation under sub-paragraph (c) and to inspect and take copies of, or of any entry in, the records;
 - (l) to require any person to afford him such facilities and assistance with respect to any matters or things within that person's control or in relation to which that person has responsibilities as are necessary to enable the authorised person to exercise any of the powers conferred on him by this regulation.
- (3) Where an authorised person proposes to exercise the power conferred by paragraph (2)(g) in the case of an article or substance found in or on any premises, he shall, if so requested by a person who at the time is present on and has responsibilities in relation to those premises, cause anything which is to be done by virtue of that power to be done in the presence of that person.
- (4) Before exercising the power conferred by paragraph (2)(g) in the case of any article or substance, an authorised person shall consult such persons as appear to him appropriate for the purpose of ascertaining what dangers, if any, there may be in doing anything which he proposes to do under the power.
- (5) Where under the power conferred by paragraph (2)(h) an authorised person takes possession of any article or substance found on any premises, he shall leave there, either with a responsible person or, if that is impracticable, fixed in a conspicuous position, a notice giving particulars of that article or substance sufficient to identify it and stating that he has taken possession of it under that power; and before taking possession of any such article or substance under that power an authorised person shall, if it is practical for him to do so, take a sample of it and give to a responsible person at the premises a portion of the sample marked in a manner sufficient to identify it.
- (6) If an authorised person considers it necessary to destroy any insect or rodent removed under the power conferred by paragraph (2)(i), he shall do so in as safe a manner as possible.
- (7) Nothing in this regulation shall be taken to compel the production by any person of a document which he would be entitled to withhold production of on grounds of—
- (a) legal professional privilege on an order for disclosure and inspection in an action in the High Court; or
 - (b) confidentiality in proceedings in the Court of Session in Scotland.
- (8) No person shall intentionally prevent any other person from appearing before an authorised person under paragraph (2)(j) or from answering any question to which an authorised person may by virtue of paragraph (2)(j) require an answer.
- (9) No answer given by a person in pursuance of a requirement imposed under paragraph (2)(j) shall be admissible in evidence in England, Wales, Scotland or Northern Ireland against that person in any proceedings.

Information notices

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

Enforcement and prohibition notices

15.—(1) If an authorised person is of the opinion that a person has contravened, is contravening or is likely to contravene—

- (a) Article 3.1, 3.2, 3.3, 4.1, 4.2, 4.3, 5.1, 16.1, 16.3, 17.1 (first and second sentences), 17.3 or 17.4 of the principal Regulation; or
- (b) regulation 6,

the authorised person may serve on that person a notice (“enforcement notice”).

(2) An enforcement notice shall—

- (a) state that the authorised person is of that opinion;
- (b) specify the matters constituting the contravention or the matters making it likely that the contravention will arise, as the case may be;
- (c) specify the steps that shall be taken to remedy the contravention or to remedy the matters making it likely that the contravention will arise, as the case may be; and
- (d) specify the period within which those steps shall be taken.

(3) If an authorised person is of the opinion that the activities of a person, in relation to his contravention or likely contravention of an Article referred to in paragraph (1)(a) or regulation 6, are such that they involve an imminent danger of serious pollution of the environment, the authorised person may serve on that person a notice (“prohibition notice”).

(4) A prohibition notice shall—

- (a) state that the authorised person is of that opinion;
- (b) specify the danger involved in the activity;
- (c) specify the steps that shall be taken to remove the danger; and
- (d) state—
 - (i) the period within which those steps shall be taken, or
 - (ii) that the steps shall be taken immediately.

(5) Subject to regulation 16(6), the bringing of an appeal under regulation 16 shall not suspend the operation of the enforcement notice or the prohibition notice in question.

(6) An authorised person may withdraw at any time an enforcement notice or a prohibition notice.

(7) A person on whom is served an enforcement notice or a prohibition notice shall comply with such notice at his expense.

(8) If such a notice is not complied with, the relevant enforcing authority may arrange for it to be complied with at the expense of the person on whom it was served.

(9) In this regulation, “relevant enforcing authority” means the enforcing authority who or which authorised the authorised person who served the enforcement notice or prohibition notice in question.

Appeals against enforcement and prohibition notices

16.—(1) A person who is aggrieved by an enforcement notice or a prohibition notice may appeal to a magistrates’ court or, in Scotland, to the sheriff.

(2) The procedure on an appeal to a magistrates' court is by way of complaint, and the Magistrates' Courts Act 1980(a) applies to the proceedings.

(3) An appeal to the sheriff is by summary application.

(4) An appeal may be brought not later than 28 days after the date on which the enforcement notice or the prohibition notice in question is served.

(5) An enforcement notice or prohibition notice shall state —

- (a) that the person on whom the notice in question is served has the right of appeal to a magistrates' court or the sheriff; and
- (b) the period within which the appeal may be brought.

(6) The court may suspend an enforcement notice or prohibition notice pending an appeal.

Proceedings before a civil court

17.—(1) If an enforcing authority is of the opinion that proceedings for an offence under regulation 18(6)(a)(ii) would afford an ineffectual remedy against a person who has failed to comply with the requirements of an enforcement notice or a prohibition notice served by that enforcing authority, the enforcing authority may take civil proceedings against that person for the purpose of seeking such remedy as the enforcing authority believes is appropriate in the circumstances.

(2) Civil proceedings under paragraph (1) may be taken—

- (a) in respect of England and Wales, in the County Court or the High Court; and
- (b) in respect of Scotland, to the sheriff.

Offences

18.—(1) Any person who knowingly supplies information that is false in a material particular for the purpose of obtaining from the Commission—

- (a) a licence under Article 6(1); or
- (b) an authorisation under Article 12(1) or 12(4),

commits an offence.

(2) Any person who fails to comply with Article 19(1), (3), (4) or (4a) commits an offence.

(3) Any person who fails to discharge a duty to which he is subject by virtue of regulation 6 commits an offence.

(4) Any person who—

- (a) fails to comply; or
- (b) causes or permits another person to fail to comply,

with regulation 8, 9(3), 10(4) or 11(3) commits an offence.

(5) Any person who—

- (a) contravenes, or causes or permits another person to contravene regulation 12(1) or 13(8); or
- (b) contravenes regulation 12(5),

commits an offence.

(6) Any person who—

- (a) fails to comply with—

(a) 1980 c.43.

- (i) a direction given, or a requirement imposed, under regulation 13;
 - (ii) the requirements of a notice served on him under regulation 14; or
 - (iii) an enforcement notice or a prohibition notice served on him;
 - (b) intentionally obstructs an authorised person in the exercise or performance of his powers or duties;
 - (c) furnishes to an authorised person any information which he knows to be false or misleading; or
 - (d) pretends to be an authorised person,
- commits an offence.

Corporate offences

19.—(1) If an offence under these Regulations 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 liable to be proceeded against and punished accordingly.

(2) If the affairs of a body corporate are managed by its members, paragraph (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) If an offence under these Regulations committed by a partnership is shown—

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

the partner as well as the partnership is guilty of the offence and liable to be proceeded against and punished accordingly.

(4) If an offence under these Regulations committed by an unincorporated association, other than a partnership, is shown—

- (a) to have been committed with the consent or connivance of an officer of the association or a member of its governing body; or
- (b) to be attributable to any neglect on the part of such an officer or member,

that officer or member as well as the association is guilty of the offence and liable to be proceeded against and punished accordingly.

(5) In this regulation—

- (a) “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; and
- (b) “partner” includes a person purporting to act as a partner.

Penalties

20. A person guilty of an offence under the Regulations—

- (a) is liable on summary conviction to a fine not exceeding the statutory maximum; or
- (b) on conviction on indictment, to a fine.

Enforcement

21.—(1) Subject to paragraphs (2) and (3), the relevant authority shall enforce these Regulations.

(2) In relation to—

- (a) cases of a particular description; or
- (b) a particular case,

the Secretary of State, as regards England, the Welsh Ministers as regards Wales, and the Scottish Ministers, as regards Scotland, may direct that the duty in paragraph (1) imposed on the relevant authority shall be discharged by him or them, as the case may be, and not by the relevant authority.

(3) The Secretary of State shall enforce these Regulations in relation to offshore installations.

(4) In this regulation, “relevant authority” means the Agency, the local authority or the port health authority.”.

(2) The Schedule continues to have effect.

Amendments to the Schedule

6. In paragraph 1 of the Schedule, for sub-paragraph (e) to the end, substitute—

- “(e) 1,1,1-trichloroethane,
- (f) hydrobromofluorocarbons, or
- (g) bromochloromethane,

otherwise than in accordance with an authorisation issued under Article 3(5) relating to a licence issued under Article 3(4) for the purposes of the second sub-paragraph of Article 3(1) (which relates to essential uses), commits an offence.”.

7. In paragraph 12 of the Schedule, for—

- “(iii) 1,1,1-trichloroethane, or
- (iv) hydrochlorofluorocarbons; or”

substitute—

- “(iii) 1,1,1-trichloroethane,
- (iv) hydrochlorofluorocarbons, or
- (v) bromochloromethane; or”.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Environmental Protection (Controls on Ozone-Depleting Substances) Regulations 2002, S.I. 2002/528 (“the 2002 Regulations”). The 2002 Regulations make provision in relation to Council Regulation No 2037/2000 on substances that deplete the ozone layer (OJ L 244, 29.9.2000, p. 1), as amended, (“the principal Regulation”). The main changes are as follows.

The application of the 2002 Regulations is extended to offshore installations in the marine area; see new regulation 1A, inserted by paragraph 1 of the Schedule to these amending Regulations. The definition of “the marine area” is contained in new regulation 2(1) and the definition of “offshore installation” is contained in new regulation 2(1A), inserted by paragraph 2 of the Schedule to these amending Regulations.

Regulation 2(1) of the 2002 Regulations, which contains a number of definitions, is amended by paragraph 2 of the Schedule to these amending Regulations. In particular, new regulation 2(1) contains a new definition of “enforcing authority”.

Regulation 3 of the 2002 Regulations is amended so as to provide that the Secretary of State is the competent authority in respect of offshore installations; see paragraph 3 of the Schedule to these amending Regulations.

By paragraph 5(1) of the Schedule to these amending Regulations, regulations 9 to 14 of the 2002 Regulations are replaced by new regulations 9 to 21. The Schedule to the 2002 Regulations continues to have effect by virtue of paragraph 5(2) of the Schedule to these amending Regulations.

New regulations 9 to 11 confer powers on the Secretary of State to require the disposal of substances, products and equipment imported, placed on the market or exported in contravention of the principal Regulation.

New regulation 12 contains provisions about fumigation for quarantine or preshipment using methyl bromide. New regulation 13 contains enforcement powers and new regulations 15 and 16 contain provisions concerning enforcement and prohibition notices which may be served in the event of the contravention or likely contravention of certain provisions of the principal Regulation.

New regulation 18 contains provisions about offences under the 2002 Regulations and new regulation 20 sets out the penalties in respect of such offences. New regulation 21 provides who is to enforce the 2002 Regulations.

Amendments to the Schedule to the 2002 Regulations are contained in paragraphs 6 and 7 of the Schedule to these amending Regulations.

A full regulatory impact assessment of the effect that this instrument will have on the costs of business is available from the Department for Environment, Food and Rural Affairs. Global Atmosphere Division, Area 3F, Ergon House, c/o 17, Smith Square, London, SW1P 3JR. A copy has been placed in the library of each House of Parliament.

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