
STATUTORY INSTRUMENTS

2011 No. 1543

ENVIRONMENTAL PROTECTION

**The Environmental Protection (Controls on
Ozone-Depleting Substances) Regulations 2011**

<i>Made</i>	- - - -	<i>20th June 2011</i>
<i>Laid before Parliament</i>		<i>23rd June 2011</i>
<i>Coming into force</i>	- -	<i>20th July 2011</i>

The Secretary of State is designated in respect of the environment⁽¹⁾ for the purposes of section 2(2) of the European Communities Act 1972⁽²⁾, and makes these Regulations under the powers conferred by that section and paragraph 1A of Schedule 2 to that Act.

The Regulations make provision for a purpose mentioned in section 2(2) of, and paragraph 1A of Schedule 2 to, the European Communities Act 1972 and it appears to the Secretary of State that it is expedient for references to Annex I to Regulation (EC) No 1005/2009 to be construed as references to that Annex as amended from time to time.

PART 1

Introduction

Title, commencement and extent

1.—(1) These Regulations may be cited as the Environmental Protection (Controls on Ozone-Depleting Substances) Regulations 2011.

(2) They come into force on 20th July 2011.

(3) They only extend to Northern Ireland in so far as they relate to import and export under the EU Regulation.

Interpretation

2. In these Regulations—

“authorised person” means a person authorised under regulation 8(1);

(1) S.I. 2008/301.

(2) 1972 c. 68. Paragraph 1A was inserted into Schedule 2 by section 28 of the Legislative and Regulatory Reform Act 2006 (c. 51). Under section 57(1) of the Scotland Act 2008 (c. 46), despite the transfer to Scottish Ministers of functions in relation to implementing obligations under EU law in relation to devolved matters, the Secretary of State retains power to exercise such functions as regards Scotland.

“controlled substances” means the substances in Annex I of the EU Regulation as amended from time to time;

“enforcement notice” has the meaning given by regulation 9(1);

“enforcing authority” means a body enforcing the EU Regulation under regulation 7;

“export” and “import” have the meaning given in Article 3 of the EU Regulation;

“the EU Regulation” means Regulation (EC) No 1005/2009 of the European Parliament and of the Council on substances that deplete the ozone layer(3);

“offshore installation” has the meaning given by Schedule 1.

The competent authority

3. The Secretary of State is the competent authority for the purposes of the EU Regulation.

PART 2

Offences, penalties and enforcement

Offences

4.—(1) Any person who breaches a provision of the EU Regulation set out in Schedule 2 is guilty of an offence.

(2) Failure to comply with any of the following is an offence—

- (a) an enforcement notice;
- (b) a notice under regulation 11.

(3) It is an offence—

- (a) intentionally to obstruct any person acting in the execution or enforcement of the EU Regulation;
- (b) without reasonable cause, to fail to give to any such person any assistance or information which that person may reasonably require for those purposes;
- (c) to furnish to any such person any information knowing it to be false or misleading; or
- (d) to fail to produce a document or record to any such person when required to do so.

Penalties

5. A person guilty of an offence under these Regulations is liable—

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

Offences by bodies corporate

6.—(1) If an offence under these Regulations committed by a body corporate is proved—

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

(3) OJ No L 286, 31.10.2009, p1, amended by Commission Regulation (EU) No 744/2010 (OJ No L 218, 19.8.2010, p2).

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

- (2) In paragraph (1) “officer”, in relation to a body corporate, means—
- (a) a director, manager, secretary or other similar officer of the body; or
 - (b) a person purporting to act in any such capacity.

(3) 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 the member’s functions of management as it applies to an officer of a body corporate.

- (4) If an offence under these Regulations committed by a partnership in Scotland is proved—
- (a) to have been committed with the consent or connivance of a partner; or
 - (b) to be attributable to any neglect on the part of a partner,

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

- (5) In paragraph (4) “partner” includes a person purporting to act as a partner.

Enforcement

7.—(1) The Agency and the local authority enforce the EU Regulation.

- (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, the Scottish Ministers as regards Scotland, or the Department of the Environment as regards Northern Ireland, may direct that the EU Regulation be enforced by them instead.

(3) The Secretary of State enforces the EU Regulation in relation to offshore installations.

(4) Nothing in these Regulations authorises an enforcing authority to bring proceedings in Scotland for an offence.

(5) In this regulation—

“the Agency” means—

- (a) as regards England and Wales, the Environment Agency, and
- (b) as regards Scotland, the Scottish Environment Protection Agency;

“local authority” means—

- (a) in England, where there is, within the meaning of the Local Government Changes for England Regulations 1994(4), a unitary authority, that authority;
- (b) otherwise in England—
 - (i) a district council,
 - (ii) a London borough council,
 - (iii) the Common Council of the City of London, or
 - (iv) the Council of the Isles of Scilly;
- (c) in relation to Wales—
 - (i) a county council, or
 - (ii) a county borough council;

- (d) in relation to Scotland, a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994⁽⁵⁾;
- (e) in relation to Northern Ireland, a district council.

Authorisation by the enforcing authority

8.—(1) An enforcing authority may authorise persons in writing for the purposes of enforcing the EU Regulation.

(2) The following are authorised for the purposes of paragraph (1)—

- (a) in England, Scotland and Wales a person authorised under section 108 of the Environment Act 1995⁽⁶⁾;
- (b) in Northern Ireland a person authorised under Article 72 of the Waste and Contaminated Land (Northern Ireland) Order 1997⁽⁷⁾.

(3) The powers in section 108 of the Environment Act 1995 (powers of enforcing authorities and persons authorised by them) are extended to the offshore area for the purposes of enforcing the EU Regulation.

Enforcement notices

9.—(1) An enforcement notice is a notice requiring a person to take specified steps to remedy or avert a contravention.

(2) An authorised person who is of the opinion that a person has contravened, is contravening or is likely to contravene a provision of the EU Regulation may serve an enforcement notice on that person.

(3) An enforcement notice must—

- (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 must be taken to remedy or avert the contravention;
- (d) specify the period within which those steps must be taken;
- (e) state—
 - (i) that the person on whom the notice is served has the right of appeal to a magistrates' court or the sheriff; and
 - (ii) the period within which the appeal may be brought.

(4) An authorised person may at any time withdraw an enforcement notice.

(5) A person on whom an enforcement notice is served must comply with it at their own expense.

(6) If an enforcement notice is not complied with, the enforcing authority may arrange for it to be complied with at the expense of the person on whom it was served.

Appeals against enforcement notices

10.—(1) A person who is aggrieved by an enforcement notice may appeal against it.

(2) The right of appeal is to a magistrates' court or, in Scotland, to the sheriff.

(4) S. I. 1994/867.

(5) 1994 c. 39.

(6) 1995 c.25.

(7) S.I. 1997/2778 (N.I. 19)

(3) The procedure on an appeal to a magistrates' court is by way of complaint, and the Magistrates' Courts Act 1980⁽⁸⁾ applies to the proceedings.

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

(5) An appeal may be brought not later than 28 days after the date on which the enforcement notice is served.

(6) An enforcement notice is not suspended pending an appeal unless the court or sheriff orders otherwise.

(7) On an appeal the court or sheriff may either cancel the notice or confirm it, with or without modification.

Powers of the Secretary of State

11. The Secretary of State may by notice require a person in possession of a controlled substance, or a product or equipment containing or relying on a controlled substance, that has been produced, placed on the market or imported or is intended to be or is being exported, in contravention of the EU Regulation, to dispose of it or otherwise render it harmless in accordance with the notice.

Power to seize and detain

12.—(1) A customs official may seize and detain any controlled substance or product or equipment containing or relying on a controlled substance which the official believes is being—

- (a) imported in contravention of Article 15 of the EU Regulation; or
- (b) exported in contravention of Article 17 of the EU Regulation.

(2) Anything seized and detained under paragraph (1) may be detained for no longer than 5 working days and must be dealt with during the period of its detention in such manner as the Secretary of State may direct under section 5 of the 2009 Act.

(3) In this regulation—

“the 2009 Act” means the Borders, Citizenship and Immigration Act 2009⁽⁹⁾;

“customs official” means a general customs official designated under section 3(1) of the 2009 Act, or a customs revenue official designated under section 11(1) of that Act;

“working day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971⁽¹⁰⁾ in any part of the United Kingdom.

PART 3

Review, revocations and amendments

Review

13.—(1) Before the end of each review period, the Secretary of State must—

- (a) carry out a review of these Regulations;
- (b) set out the conclusions of the review in a report; and
- (c) publish the report.

⁽⁸⁾ 1980 c. 43.

⁽⁹⁾ 2009 c. 11.

⁽¹⁰⁾ 1971 c. 80.

- (2) The report must in particular—
 - (a) set out the objectives intended to be achieved by these Regulations;
 - (b) assess the extent to which the objectives have been achieved;
 - (c) assess whether the objectives remain appropriate and, if so, the extent to which they could be achieved in a less burdensome way.
- (3) The first review period is the period of five years beginning with the day on which these Regulations come into force.
- (4) Each subsequent review period is a period of five years beginning with the date on which the report of the preceding review was published.

Revocations

14. The following are revoked—
 - (a) the Environmental Protection (Controls on Ozone-Depleting Substances) Regulations 2002(11);
 - (b) the Environmental Protection (Controls on Ozone-Depleting Substances) (Amendment) Regulations 2008(12).

Amendments

- 15.—(1) The Ozone-Depleting Substances (Qualifications) Regulations 2009(13) are amended as follows.
 - (2) For regulation 2(2) substitute—

“(2) Expressions used in these Regulations and in Regulation (EC) No 1005/2009 of the European Parliament and of the Council on substances that deplete the ozone layer have the same meaning in these Regulations as they have in that EU Regulation.”.
 - (3) In column 1 (tasks) of the table in Schedule 1, in the third row, for “Decommissioning of equipment” substitute “Maintenance or decommissioning of equipment”.

Henley
Parliamentary Under Secretary of State
Department for Environment, Food and Rural
Affairs

20th June 2011

(11) S. I. 2002/528
(12) S. I. 2008/91.
(13) S. I. 2009/216.

SCHEDULE 1

Regulation 2

Meaning of “offshore installation”

1.—(1) “Offshore installation” means an installation or structure, other than a ship, used for carrying on an activity in sub-paragraph (2) which is situated in the waters of, or on or under the seabed in, the marine area; and “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(14).

(2) The activities 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 exploration of a place in, under or over such waters with a view to the storage of gas;
- (c) the conversion of a place under the shore or bed of such waters for the purpose of storing gas;
- (d) the storage of gas in, under or over such waters or the recovery of gas so stored;
- (e) the unloading of gas at a place in, under or over such waters;
- (f) 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 such waters;
- (g) 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 in this sub-paragraph.

(3) In sub-paragraph (2)—

- (a) references (in whatever form) to storing gas include storing gas with a view to its permanent disposal;
- (b) “gas” means—
 - (i) gas within the meaning of the Energy Act 2008(15); or
 - (ii) carbon dioxide.

SCHEDULE 2

Regulation 4(1)

Offences for breach of the EU Regulation

<i>Provision of the EU Regulation</i>	<i>Subject matter</i>
Article 4	Production of controlled substances
Article 5(1)	Placing on the market and use of controlled substances

(14) 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.

(15) 2008 c.32.

<i>Provision of the EU Regulation</i>	<i>Subject matter</i>
Article 5(2)	Placing on the market of controlled substances in non-refillable containers
Article 6(1)	Placing on the market of products and equipment containing or relying on controlled substances
Article 6(2)	Prohibition and decommissioning of fire protection systems and fire extinguishers containing halons
Article 13(3)	Decommissioning of fire protection systems and fire extinguishers containing halons
Article 15(1)	Imports of controlled substances and products and equipment containing or relying on controlled substances
Article 17(1)	Exports of controlled substances or products and equipment containing or relying on controlled substances
Article 20	Trade with a State not party to the Montreal Protocol on substances that deplete the ozone layer or a territory not covered by that Protocol
Article 22(1), (2) and (4)	Recovery and destruction, recycling and reclamation of controlled substances
Article 23(1)	Precautionary measures to prevent and minimise leakages and emissions of controlled substances
Article 23(2)	Requirements for specified stationary equipment or systems
Article 23(3)	Record keeping by undertakings
Article 23(5)	Precautionary measures to prevent and minimise leakages and emissions of controlled substances used as feedstock or process agents
Article 23(6)	Precautionary measures to prevent and minimise leakages and emissions of controlled substances inadvertently produced in the manufacture of other chemicals
Article 24(1)	Production, import, placing on the market, use or export of new substances

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations enforce Regulation (EC) No 1005/2009 of the European Parliament and of the Council on substances that deplete the ozone layer (OJ No L 286, 31.10.2009, p1) as amended by Commission Regulation (EU) No 744/2010 (OJ No L 218, 19.8.2010, p2) (“the EU Regulation”).

The EU Regulation controls the production, placing on the market and use of substances that deplete the ozone layer.

The Regulations provide that the Secretary of State is the competent authority for the purposes of the EU Regulation.

Breach of the provisions of the EU Regulation specified in Schedule 2 is an offence, punishable

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

Breaching an enforcement notice (see regulation 9) or a notice served by the Secretary of State under regulation 11 and obstructing officers of an enforcing authority are also offences.

The Regulations extend to Great Britain, and to Northern Ireland in so far as they relate to import and export controlled by the EU Regulation.

A full impact assessment of the effect that this instrument will have on the costs of business, the voluntary sector and the public sector is available from the Department for Environment, Food and Rural Affairs, Ergon House, Horseferry Road, London SW1P 2AL and is published with the Explanatory Memorandum alongside the instrument on www.legislation.gov.uk.