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STATUTORY INSTRUMENTS

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**2002 No. 528**

**ENVIRONMENTAL PROTECTION**

**The Environmental Protection (Controls on  
Ozone-Depleting Substances) Regulations 2002**

<i>Made</i>	- - - -	<i>8th March 2002</i>
<i>Laid before Parliament</i>		<i>8th March 2002</i>
<i>Coming into force</i>	- -	<i>31st March 2002</i>

The Secretary of State for Environment, Food and Rural Affairs—

in exercise of the powers conferred upon her by—

(a) subsection (2) of section 2 of the European Communities 1972<sup>M1</sup>, and

(b) as regards Scotland, that subsection and section 57(1) of the Scotland Act 1998<sup>M2</sup>,

being a Minister designated<sup>M3</sup> for the purposes of that subsection in relation to measures relating to the protection of the ozone layer and measures relating to substances that deplete the ozone layer, and

having consulted the committee established under section 140(5) of the Environmental Protection Act 1990<sup>M4</sup>, having published notices in pursuance of section 140(6)(b) of that Act, having considered the representations made to her in accordance with the notices, and considering it appropriate to make these Regulations for the purpose of preventing the substances and articles specified in them from causing pollution of the environment and harm to human health and to the health of animals and plants, in exercise of the powers conferred on her by section 140(1), (2), (3) (b), (4) and (9) of the Environmental Protection Act 1990, and, as regards Scotland, section 57(2) of the Scotland Act 1998, and in exercise of all other powers enabling her in that behalf, hereby makes the following Regulations:

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**Marginal Citations**

**M1** 1972 c.68. Section 2(2) was amended by the [Environment Act 1995 \(c.25\)](#).

**M2** 1998 c.46.

**M3** S.I. 1995/262.

**M4** 1990 c.43.

**Status:** Point in time view as at 15/02/2008.

**Changes to legislation:** There are currently no known outstanding effects for the The Environmental Protection (Controls on Ozone-Depleting Substances) Regulations 2002 (revoked). (See end of Document for details)

## Citation, commencement and extent

1.—(1) These Regulations may be cited as the Environmental Protection (Controls on Ozone-Depleting Substances) Regulations 2002 and shall come into force on 31st March 2002.

(2) These Regulations only extend to Northern Ireland in so far as they relate to importation.

## [<sup>F1</sup>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.]

### Textual Amendments

**F1** Reg. 1A inserted (15.2.2008) by [The Environmental Protection \(Controls on Ozone-Depleting Substances\) \(Amendment\) Regulations 2008 \(S.I. 2008/91\)](#), reg. 1(b), **Sch. para. 1**

## Interpretation

2.—[<sup>F2</sup>(1) In these Regulations—

“the 1979 Act” means the Customs and Excise Management Act 1979;

“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;

“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;

“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), 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;

“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.]

(2) Unless the context indicates otherwise—

**Status:** Point in time view as at 15/02/2008.

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- (a) expressions used in these Regulations and in the principal Regulation have the same meaning in these Regulations as they have in that Regulation; and
  - (b) any reference in these Regulations to a numbered Article is a reference to the Article bearing that number in the principal Regulation.
- (3) For the purposes of the Scotland Act 1998, these Regulations shall be taken to be a pre-commencement enactment within the meaning of that Act.

#### Textual Amendments

**F2** Reg. 2(1)(1A)(1B) substituted for reg. 2(1) (15.2.2008) by [The Environmental Protection \(Controls on Ozone-Depleting Substances\) \(Amendment\) Regulations 2008 \(S.I. 2008/91\)](#), reg. 1(b), **Sch. para. 2**

#### [<sup>F3</sup> 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.]

#### Textual Amendments

**F3** Regs. 3, 3A substituted for reg. 3 (15.2.2008) by [The Environmental Protection \(Controls on Ozone-Depleting Substances\) \(Amendment\) Regulations 2008 \(S.I. 2008/91\)](#), reg. 1(b), **Sch. para. 3**

#### [<sup>F3</sup> 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.]

#### Textual Amendments

**F3** Regs. 3, 3A substituted for reg. 3 (15.2.2008) by [The Environmental Protection \(Controls on Ozone-Depleting Substances\) \(Amendment\) Regulations 2008 \(S.I. 2008/91\)](#), reg. 1(b), **Sch. para. 3**

#### Direction

4. The Secretary of State directs that any prohibition on importation into the United Kingdom imposed by Article 4(6) or 5(4) shall be treated as imposed under section 140(1)(a) of the Environmental Protection Act 1990 and the power conferred on her by regulation 8 shall be exercisable accordingly.

#### Prohibitions and restrictions on importation, landing and unloading

5.—(1) The importation—

- (a) for release for free circulation in the Community, of any controlled substance; or
- (b) for inward processing, of a controlled substance listed in any of Groups VI to VIII in Annex I to the Principal Regulation <sup>M5</sup>,

is prohibited unless a licence permitting its importation has been issued by the Commission under paragraph (1) of Article 6 (licences to import from third countries).

(2) The importation of—

- (a) a controlled substance whose release for free circulation in the Community or inward processing would constitute a contravention of Article 8 (imports of controlled substances from a State not party to the Protocol)<sup>M6</sup>; or
- (b) a new substance whose release for free circulation in the Community or inward processing would constitute a contravention of Article 22 (new substances),

is prohibited.

(3) The importation of a product or equipment whose release for free circulation in the Community would constitute a contravention of Article 9 (imports of products containing controlled substances from a State not party to the Protocol)<sup>M7</sup> is prohibited.

(4) Section 50 of the 1979 Act shall have effect in relation to the landing or unloading of any controlled substance, new substance, product or equipment imported in contravention of any of paragraphs (1) to (3) above or Article 4(6) or 5(4),<sup>F4</sup>...

#### Textual Amendments

- F4** Words in reg. 5(4) omitted (10.7.2006) by virtue of [The Ozone Depleting Substances \(Qualifications\) Regulations 2006 \(S.I. 2006/1510\)](#), regs. 1(1)(b), **13**

#### Marginal Citations

- M5** The importation for inward processing of controlled substances listed in groups I to V as listed in Annex I to the principal Regulation is prohibited by Article 6(1).
- M6** See also Article 13 (exceptional authorisation to trade with a State not party to the Montreal Protocol on Substances that Deplete the Ozone Layer) and Article 14 (trade with a territory not covered by the Montreal Protocol).
- M7** See also Article 13 (exceptional authorisation to trade with a State not party to the Montreal Protocol on Substances that Deplete the Ozone Layer) and Article 14 (trade with a territory not covered by the Montreal Protocol).

### Duty with respect to Articles 16 and 17

**6.** It shall be the duty of any person having control of the controlled substances mentioned in Articles 16 (recovery of used controlled substances) and 17 (leakages of controlled substances) to comply with those provisions.

### Proof of lawful import or export

**7.—(1)** Where any controlled substance, new substance, product or equipment is being imported or exported, or has been imported or brought to any place for the purpose of being exported, [<sup>F5</sup>an officer of Revenue and Customs] may require any person possessing or having control of that substance, product or equipment to furnish, within such reasonable period as he may specify, [<sup>F6</sup>evidence] that its importation or exportation is, or was not, unlawful by virtue of the Principal Regulation.

(2) Until such [<sup>F7</sup>evidence] is furnished to the satisfaction of [<sup>F8</sup>the Commissioners for Revenue and Customs], the substance, product or equipment may be detained.

**Status:** Point in time view as at 15/02/2008.

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(3) If such [<sup>F7</sup>evidence] is not furnished to the satisfaction of [<sup>F8</sup>the Commissioners for Revenue and Customs] within the specified period, the substance, product or equipment shall be liable to forfeiture and the 1979 Act shall apply in relation to it, as if it were liable to forfeiture under that Act.

#### Textual Amendments

- F5** Words in reg. 7(1) substituted (15.2.2008) by [The Environmental Protection \(Controls on Ozone-Depleting Substances\) \(Amendment\) Regulations 2008 \(S.I. 2008/91\)](#), reg. 1(b), **Sch. para. 4(a)(i)**
- F6** Word in reg. 7(1) substituted (15.2.2008) by [The Environmental Protection \(Controls on Ozone-Depleting Substances\) \(Amendment\) Regulations 2008 \(S.I. 2008/91\)](#), reg. 1(b), **Sch. para. 4(a)(ii)**
- F7** Word in reg. 7(2)(3) substituted (15.2.2008) by [The Environmental Protection \(Controls on Ozone-Depleting Substances\) \(Amendment\) Regulations 2008 \(S.I. 2008/91\)](#), reg. 1(b), **Sch. para. 4(b)(ii)**
- F8** Words in reg. 7(2)(3) substituted (15.2.2008) by [The Environmental Protection \(Controls on Ozone-Depleting Substances\) \(Amendment\) Regulations 2008 \(S.I. 2008/91\)](#), reg. 1(b), **Sch. para. 4(b)(i)**

#### Powers of the Secretary of State

**8.** The Secretary of State may require a person who has imported, landed or unloaded a controlled substance, a new substance, a product or equipment in contravention of regulation 5, or imported equipment in contravention of Article 4(6) or 5(4)—

- (a) 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, or
- (b) to remove it from England, Wales and Scotland and, if it was imported, also from Northern Ireland,

and such a person shall comply with that requirement.

#### [<sup>F9</sup>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.

#### Textual Amendments

- F9** Regs. 9-21 substituted for regs. 9-14 (15.2.2008) by [The Environmental Protection \(Controls on Ozone-Depleting Substances\) \(Amendment\) Regulations 2008 \(S.I. 2008/91\)](#), reg. 1(b), **Sch. para. 5(1)**

## 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.

### Textual Amendments

**F9** Regs. 9-21 substituted for regs. 9-14 (15.2.2008) by [The Environmental Protection \(Controls on Ozone-Depleting Substances\) \(Amendment\) Regulations 2008 \(S.I. 2008/91\)](#), reg. 1(b), **Sch. para. 5(1)**

## 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.

### Textual Amendments

**F9** Regs. 9-21 substituted for regs. 9-14 (15.2.2008) by [The Environmental Protection \(Controls on Ozone-Depleting Substances\) \(Amendment\) Regulations 2008 \(S.I. 2008/91\)](#), reg. 1(b), **Sch. para. 5(1)**

*Status: Point in time view as at 15/02/2008.*

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## 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.

### Textual Amendments

**F9** Regs. 9-21 substituted for regs. 9-14 (15.2.2008) by [The Environmental Protection \(Controls on Ozone-Depleting Substances\) \(Amendment\) Regulations 2008 \(S.I. 2008/91\)](#), reg. 1(b), **Sch. para. 5(1)**

## 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

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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.

#### Textual Amendments

- F9** Regs. 9-21 substituted for regs. 9-14 (15.2.2008) by [The Environmental Protection \(Controls on Ozone-Depleting Substances\) \(Amendment\) Regulations 2008 \(S.I. 2008/91\)](#), reg. 1(b), **Sch. para. 5(1)**

#### 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.]

#### Textual Amendments

- F9** Regs. 9-21 substituted for regs. 9-14 (15.2.2008) by [The Environmental Protection \(Controls on Ozone-Depleting Substances\) \(Amendment\) Regulations 2008 \(S.I. 2008/91\)](#), reg. 1(b), **Sch. para. 5(1)**

#### [<sup>F9</sup>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.

#### Textual Amendments

**F9** Regs. 9-21 substituted for regs. 9-14 (15.2.2008) by [The Environmental Protection \(Controls on Ozone-Depleting Substances\) \(Amendment\) Regulations 2008 \(S.I. 2008/91\)](#), reg. 1(b), **Sch. para. 5(1)**

#### 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 applies to the proceedings.

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

*Status: Point in time view as at 15/02/2008.*

*Changes to legislation: There are currently no known outstanding effects for the The Environmental Protection (Controls on Ozone-Depleting Substances) Regulations 2002 (revoked). (See end of Document for details)*

- (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.

#### Textual Amendments

- F9** Regs. 9-21 substituted for regs. 9-14 (15.2.2008) by [The Environmental Protection \(Controls on Ozone-Depleting Substances\) \(Amendment\) Regulations 2008 \(S.I. 2008/91\)](#), reg. 1(b), **Sch. para. 5(1)**

#### 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.

#### Textual Amendments

- F9** Regs. 9-21 substituted for regs. 9-14 (15.2.2008) by [The Environmental Protection \(Controls on Ozone-Depleting Substances\) \(Amendment\) Regulations 2008 \(S.I. 2008/91\)](#), reg. 1(b), **Sch. para. 5(1)**

#### 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—
      - (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.

#### **Textual Amendments**

- F9** Regs. 9-21 substituted for regs. 9-14 (15.2.2008) by [The Environmental Protection \(Controls on Ozone-Depleting Substances\) \(Amendment\) Regulations 2008 \(S.I. 2008/91\)](#), reg. 1(b), **Sch. para. 5(1)**

#### **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.

**Status:** Point in time view as at 15/02/2008.

**Changes to legislation:** There are currently no known outstanding effects for the The Environmental Protection (Controls on Ozone-Depleting Substances) Regulations 2002 (revoked). (See end of Document for details)

(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.

#### Textual Amendments

**F9** Regs. 9-21 substituted for regs. 9-14 (15.2.2008) by [The Environmental Protection \(Controls on Ozone-Depleting Substances\) \(Amendment\) Regulations 2008 \(S.I. 2008/91\)](#), reg. 1(b), **Sch. para. 5(1)**

#### 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.

#### Textual Amendments

**F9** Regs. 9-21 substituted for regs. 9-14 (15.2.2008) by [The Environmental Protection \(Controls on Ozone-Depleting Substances\) \(Amendment\) Regulations 2008 \(S.I. 2008/91\)](#), reg. 1(b), **Sch. para. 5(1)**

#### 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.]

#### Textual Amendments

**F9** Regs. 9-21 substituted for regs. 9-14 (15.2.2008) by [The Environmental Protection \(Controls on Ozone-Depleting Substances\) \(Amendment\) Regulations 2008 \(S.I. 2008/91\)](#), reg. 1(b), **Sch. para. 5(1)**

Signed by authority of the Secretary of State for Environment, Food and Rural Affairs

*Michael Meacher*  
Minister of State,  
Department for Environment, Food and Rural  
Affairs

**Status:** Point in time view as at 15/02/2008.

**Changes to legislation:** There are currently no known outstanding effects for the The Environmental Protection (Controls on Ozone-Depleting Substances) Regulations 2002 (revoked). (See end of Document for details)

## SCHEDULE

regulation 11

### OFFENCES RELATING TO CONTRAVENTIONS OF THE PRINCIPAL REGULATION

#### Modifications etc. (not altering text)

- C1** Sch. continued (15.2.2008) by [The Environmental Protection \(Controls on Ozone-Depleting Substances\) \(Amendment\) Regulations 2008 \(S.I. 2008/91\)](#), reg. 1(b), **Sch. para. 5(2)**

## PART 1

### OFFENCES RELATING TO CONTRAVENTIONS OF ARTICLE 3

1. A person who produces, or causes or permits another person to produce—
- chlorofluorocarbons,
  - other fully halogenated chlorofluorocarbons,
  - halons,
  - carbon tetrachloride,
  - <sup>F10</sup> 1,1,1-trichloroethane,
  - hydrobromofluorocarbons, or
  - 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.]

#### Textual Amendments

- F10** Sch. para. 1(e)(f)(g) and words substituted for Sch. 1 para. 1(e)(f) and words (15.2.2008) by [The Environmental Protection \(Controls on Ozone-Depleting Substances\) \(Amendment\) Regulations 2008 \(S.I. 2008/91\)](#), reg. 1(b), **Sch. para. 6**

2.—(1) Subject to paragraph 3, a producer of methyl bromide whose calculated level of production—

- (a) in the period from the commencement date until 31st December 2002 exceeds 40% of

$$\frac{\text{its calculated 1991 level}}{365} \times \text{the number of days beginning with the commencement date to 31st December 2002; or}$$

- (b) in either of the periods of 12 months ending on 31st December 2003 and 31st December 2004 exceeds 25% of its calculated 1991 level,

commits an offence.

(2) In sub-paragraph (1), “calculated 1991 level”, in relation to a producer of methyl bromide, means its calculated level of production in 1991, excluding any methyl bromide produced for quarantine or preshipment applications; and any reference to any other calculated level of production similarly excludes a reference to amounts of methyl bromide produced for quarantine or preshipment applications.

3. Paragraph 2 shall apply in a case where an authorisation has been issued—



- (a) by the Secretary of State under any of paragraphs (5) to (8) of Article 3; or
- (b) by the Commission under paragraph (9) or (10) of that Article,

as if, for the maximum calculated level of production ascertained in accordance with sub-paragraph (a) or (b), as the case may be, there were substituted the maximum calculated level of production specified in the authorisation or ascertained in accordance with the relevant paragraph of Article 5.

4. A person who produces, or causes or permits another person to produce, methyl bromide after 31st December 2004 otherwise than in accordance with an authorisation issued by the Secretary of State pursuant to a licence issued by the Commission under Article 3(4) for the purposes of Article 3(2)(ii) (critical uses) commits an offence.

5.—(1) Subject to paragraph 6, a producer of hydrochlorofluorocarbons whose calculated level of production—

- (a) in the period from the commencement date until 31st December 2002 exceeds

$$\frac{\text{its calculated 1997 level}}{365} \times \text{the number of days beginning with the commencement date to 31st December 2002; or}$$

- (b) in the period of 12 months ending on 31st December 2003 or any subsequent 31st December until (and including) 31st December 2007 exceeds its calculated 1997 level;
- (c) in the period of 12 months ending on 31st December 2008 or any subsequent 31st December until (and including) 31st December 2013 exceeds 35% of its calculated 1997 level;
- (d) in the period of 12 months ending on 31st December 2014 or any subsequent 31st December until (and including) 31st December 2019 exceeds 20% of its calculated 1997 level;
- (e) in any of the periods of 12 months ending on 31st December 2020 or any subsequent 31st December until (and including) 31st December 2025 exceeds 15% of its calculated 1997 level,

commits an offence.

(2) In sub-paragraph (1), “calculated 1997 level”, in relation to a producer of hydrochlorofluorocarbons, means its calculated level of production in 1997.

6. Paragraph 5 shall apply in a case where an authorisation has been issued—

- (a) by the Secretary of State under paragraph (8) of Article 3; or
- (b) by the Commission under paragraph (9) or (10) of that Article,

as if, for the maximum calculated level of production ascertained in accordance with sub-paragraph (a), (b), (c) or (d), as the case may be, there were substituted the maximum calculated level of production specified in the authorisation or ascertained in accordance with the relevant paragraph of Article 5.

7. A person who produces, or causes or permits another person to produce, hydrochlorofluorocarbons after 31st December 2025 commits an offence.

## PART II

### OFFENCES RELATING TO CONTRAVENTIONS OF ARTICLE 4

8. A person who, on or after the commencement date—

**Status:** Point in time view as at 15/02/2008.

**Changes to legislation:** There are currently no known outstanding effects for the The Environmental Protection (Controls on Ozone-Depleting Substances) Regulations 2002 (revoked). (See end of Document for details)

- (a) subject to Article 4(4)(i)(a) and (b) and (5), places, or causes or permits another person to place, chlorofluorocarbons on the market; or
- (b) subject to Article 4(4)(i)(b) and (5), uses, or causes or permits another person to use, chlorofluorocarbons otherwise than—
  - (i) in the maintenance or servicing of refrigeration and air-conditioning equipment or in finger-printing processes;
  - (ii) in delivery mechanisms for hermetically sealed devices designed for implantation in the human body for delivery of measured doses of medication, or
  - (iii) in existing military applications, or
- (c) uses, or causes or permits another person to use, chlorofluorocarbons in an application referred to in sub-paragraphs (b)(ii) or (iii) otherwise than in accordance with the terms of an authorisation issued by the Commission under Article 4(1),

commits an offence.

**9.** A person who, on or after the commencement date, uses, or causes or permits another person to use, chlorofluorocarbons in an application referred to in paragraph 8(b)(i), commits an offence.

**10.** A person who, on or after 31st December 2004, uses, or causes or permits another person to use, chlorofluorocarbons in an application referred to in paragraph 8(b)(ii), commits an offence.

**11.** A person who, on or after 31st December 2008, uses, or causes or permits another person to use, chlorofluorocarbons in any military application, commits an offence.

**12.** A person who, on or after the commencement date, subject to Article 4(4)(i)(a) and (b) and (5)—

- (a) places, or causes or permits another person to place, on the market—
  - (i) other fully halogenated chlorofluorocarbons,
  - (ii) carbon tetrachloride,
  - [<sup>F11</sup>(iii) 1,1,1-trichloroethane,
  - (iv) hydrochlorofluorocarbons, or
  - (v) bromochloromethane; or]
- (b) subject to Article 4(4)(i)(b) and (5), uses any of those substances otherwise than in the maintenance or servicing of refrigeration and air-conditioning equipment or in finger-printing processes,

commits an offence.

#### Textual Amendments

**F11** Sch. para. 12(a)(iii)-(v) substituted for Sch. para. 12 (a)(iii)(iv)(15.2.2008) by [The Environmental Protection \(Controls on Ozone-Depleting Substances\) \(Amendment\) Regulations 2008 \(S.I. 2008/91\)](#), reg. 1(b), [Sch. para. 7](#)

**13.** A person who, on or after the commencement date uses, or causes or permits another person to use, any of the substances mentioned in paragraph 12 in the maintenance or servicing of refrigeration and air-conditioning equipment or in finger-printing processes, commits an offence.

**14.** A person who, on or after the commencement date, places, or causes or permits another person to place, on the market halons that have not been recovered, recycled or reclaimed in an existing fire protection system, commits an offence unless—

- (a) the placing on the market is authorised by virtue of Article 4(4)(i)(a) or (b) or (5); or
  - (b) the halon—
    - (i) is halon 1301 or halon 1211, and
    - (ii) its placing on the market is for a critical use for the time being specified in relation to that substance in Annex VII to the principal Regulation.
- 15.** A person who, on or after 31st December 2002, places, or causes or permits another person to place, on the market halons that have been recovered, recycled or reclaimed in existing fire protection systems, commits an offence unless—
- (a) the placing on the market is authorised by virtue of Article 4(4)(i)(a) or (b) or (5); or
  - (b) the halon—
    - (i) is halon 1301 or halon 1211, and
    - (ii) its placing on the market is for a critical use for the time being specified in relation to that substance in Annex VII to the principal Regulation.
- 16.** A person who, on or after the commencement date, uses, or causes or permits another person to use, halons that have not been recovered, recycled or reclaimed in an existing fire protection system, commits an offence unless—
- (a) the use is authorised by virtue of Article 4(4)(i)(b) or (5);
  - (b) the halons are used for the maintenance or servicing of refrigeration and air-conditioning equipment or in a finger-printing process; or
  - (c) the halon—
    - (i) is halon 1301 or halon 1211; and
    - (ii) its use is a critical use for the time being specified in relation to that substance in Annex VII to the principal Regulation.
- 17.** A person who, on or after 31st December 2002, uses, or causes or permits another person to use, halons that have been recovered, recycled or reclaimed in existing fire protection systems, commits an offence unless—
- (a) the use is authorised by virtue of Article 4(4)(i)(b) or (5); or
  - (b) the halon—
    - (i) is halon 1301 or halon 1211; and
    - (ii) its use is a critical use for the time being specified in relation to that substance in Annex VII to the principal Regulation.
- 18.** A person who maintains a fire protection system or fire extinguisher containing halons after 30th December 2003 commits an offence unless—
- (a) the halon is halon 1301 or halon 1211; and
  - (b) its use in that system or extinguisher is a critical use for the time being specified in relation to that substance in Annex VII to the principal Regulation.
- 19.** A person who fails to recover halons from a fire protection system or fire extinguisher whose decommissioning is required by Article 4(4)(v) commits an offence.
- 20.—(1)** A producer or importer of methyl bromide which places on the market or uses for its own account a calculated level of methyl bromide which—
- (a) in the period from the commencement date until 31st December 2002 exceeds 40% of

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$$\frac{\text{itscalculated1991level}}{365} \times \text{thenumberofdaysbeginningwiththecomencementdateto31stDecember2002;or}$$

- (b) subject to sub-paragraph (2), in either of the periods of 12 months ending on 31st December 2003 and 31st December 2004 exceeds 25% of its calculated 1991 level,

commits an offence unless—

- (i) where he places it on the market, its placing on the market is authorised by Article 4(4)(i) or (5); or
- (ii) where he uses it for his own account, its use is authorised by Article 4(4)(i)(b) or (5).

(2) Paragraph (b) of sub-paragraph (1) shall apply in a case where an adjustment has been made by the Commission pursuant to Article 4(2) as if, for the maximum calculated level ascertained in accordance with that paragraph, there were substituted the maximum calculated level specified by the Commission.

(3) In sub-paragraph (1) “calculated 1991 level”, in relation to a producer or importer of methyl bromide, means the calculated level of methyl bromide which it placed on the market or used for its own account in 1991, other than any methyl bromide placed on the market or used on its own account for quarantine or preshipment applications.

(4) Any reference in sub-paragraphs (1) and (2) to a calculated level, other than a calculated 1991 level, excludes a reference to amounts of methyl bromide placed on the market or used for the producer’s or importer’s own account for quarantine or preshipment applications.

**21.—**(1) A producer or importer which places on the market or uses for its own account for quarantine and preshipment applications a calculated level of methyl bromide which—

- (a) in the period from the commencement date until 31st December 2002 exceeds

$$\frac{\text{theaverageofthecalculatedlevelofmethylbromide}}{365} \times \text{thenumberofdaysbeginningwiththecomencementdateto31stDecember2002;or}$$

- (b) in any period of twelve months ending on 31st December in any later year exceeds the average of the calculated level of methyl bromide,

commits an offence.

**22.** A producer or importer which places methyl bromide on the market after 31st December 2004 or uses methyl bromide for its own account after that date commits an offence unless—

- (a) it is placed on the market or used for a purpose mentioned in Article 4(4)(i)(b) or pursuant to such a transfer as it mentioned in Article 4(5); or
- (b) it is placed on the market for destruction within the Community by technologies approved by the Parties.

**23.** An undertaking, other than a producer or importer, which after 31st December 2005—

- (a) places methyl bromide on the market otherwise than for a purpose mentioned in Article 4(4)(i); or
- (b) uses methyl bromide otherwise than for a purpose mentioned in Article 4(4)(i)(b),

commits an offence.

**24.—**(1) A producer or importer of controlled substances who places on the market or uses for its own account a calculated level of hydrochlorofluorocarbons which—

- (a) in the period from the commencement date until 31st December 2002, exceeds, as a percentage of the calculated levels set out in Article 4(3)(i)(a) to (c)

$\frac{\text{its percentage market share in 1996}}{365} \times \text{the number of days beginning with the commencement date to 31st December 2002; or}$

- (b) in any of the periods of 12 months ending on 31st December 2003 or on any subsequent 31st December until (and including) 31st December 2009, exceeds the quota allocated to it for that year pursuant to the mechanism determined by the Commission under Article 4(3)(ii);

commits an offence unless sub-paragraph (2) applies to their placing on the market or use.

(2) This sub-paragraph applies—

- (a) to the placing on the market or use of hydrochlorofluorocarbons—
- (i) for a purpose mentioned in Article 4(4)(i)(b),
  - (ii) pursuant to such a transfer as is mentioned in Article 4(5), and
  - (iii) in accordance with an authorisation of the Commission pursuant to Article 5(7); and
- (b) to the placing of hydrochlorofluorocarbons on the market for destruction within the Community by technologies approved by the Parties.

**25.** A producer or importer which, after 31st December 2009, places hydrochlorofluorocarbons on the market or uses them for its own account, commits an offence unless—

- (a) they are placed on the market or used—
- (i) for a purpose mentioned in Article 4(4)(i)(b),
  - (ii) pursuant to such a transfer as is mentioned in Article 4(5), or
  - (iii) in accordance with an authorisation of the Commission pursuant to Article 5(7); or
- (b) they are placed on the market for destruction within the Community by technologies approved by the Parties.

**26.** A person who, on or after the commencement date, places, or causes or permits another person to place, on the market any product or equipment containing—

- (a) chlorofluorocarbons,
- (b) other fully halogenated chlorofluorocarbons,
- (c) halons,
- (d) carbon tetrachloride,
- (e) 1,1,1-trichloroethane, or
- (f) hydrobromofluorocarbons,

commits an offence unless—

- (i) the product or equipment was manufactured before 1st October 2000;
- (ii) the use of the substance in that product or equipment is authorised in accordance with the second sub-paragraph of Article 3(1); or
- (iii) the product or equipment contains halons and is for a critical use for the time being specified in relation to that substance in Annex VII to the principal Regulation.

## PART III

### OFFENCES RELATING TO CONTRAVENTIONS OF ARTICLE 5

**27.** Subject to Article 5(2) and (5)<sup>M8</sup> and paragraph 32 below, a person commits an offence if he uses, or causes or permits another person to use, hydrochlorofluorocarbons—

**Status:** Point in time view as at 15/02/2008.

**Changes to legislation:** There are currently no known outstanding effects for the The Environmental Protection (Controls on Ozone-Depleting Substances) Regulations 2002 (revoked). (See end of Document for details)

- (a) on or after the commencement date, in aerosols; or
- (b) on or after the commencement date, as solvents—
  - (i) in non-contained solvent uses (including open-top cleaners and open-top dewatering systems without refrigerated areas);
  - (ii) in adhesives and mould-release agents other than those employed in closed equipment; or
  - (iii) for drain cleaning where hydrochlorofluorocarbons are not recovered;
- (c) on or after the commencement date, as carrier gas for sterilisation substances in closed systems, in equipment produced after 31st December 1997;
- (d) after the commencement date, as solvents in any application other than the precision cleaning of electrical and other components in aerospace or aeronautic applications; or
- (e) after 31st December 2008, as solvents in any application.

#### Marginal Citations

**M8** Article 5(2) provides derogations for laboratory uses and use as feedstock or processing agents. Article 5(5) suspends use restrictions until 31st December 2009 in relation to production of products for export to countries where the use of hydrochlorofluorocarbons in those products is for the time being permitted.

**28.**—(1) Subject to Article 5(2) and (5) and paragraph 32 below, a person commits an offence if he uses, or causes or permits another person to use, hydrochlorofluorocarbons as refrigerants—

- (a) on or after the commencement date, in equipment produced after 31st December 1995, for any of the following uses—
  - (i) in non-confined direct-evaporation systems;
  - (ii) in domestic refrigerators and freezers;
  - (iii) otherwise than for military uses, in motor vehicle, tractor or off-road vehicle or trailer air-conditioning systems (operating on any energy source);
- (b) on or after the commencement date, in equipment produced after 31st December 1997, in rail transport air-conditioning;
- (c) on or after the commencement date, in equipment produced after 31st December 1999, for either of the following uses—
  - (i) in public and distribution cold stores or warehouses;
  - (ii) for equipment with a shaft input equal to, or greater than, 150kW;
- (d) after the commencement date, in refrigeration or air-conditioning equipment produced after that date, other than—
  - (i) equipment referred to in any of sub-paragraphs (a) to (c);
  - (ii) equipment excepted from sub-paragraph (a)(iii) (but see sub-paragraph (g) below);
  - (iii) fixed air-conditioning equipment with a cooling capacity of less than 100kW (but see sub-paragraph (e) below); and
  - (iv) reversible air-conditioning/heat pump systems (but see sub-paragraph (f) below);
- (e) on or after 1st July 2002, in fixed air-conditioning equipment with a cooling capacity of less than 100kW, produced after 30th June 2002;
- (f) on or after 1st January 2004, in reversible air-conditioning/heat pump systems whose equipment is produced after 31st December 2003;

- (g) on or after 31st December 2008, in any military use of motor vehicle, tractor or off-road vehicle or trailer air-conditioning system.
- 29.** Subject to Article 5(5) and paragraph 32 below, a person commits an offence—
- (a) if, on or after 1st January 2010, he uses, or causes or permits another person to use, virgin hydrochlorofluorocarbons as refrigerants in the maintenance or servicing of refrigeration or air-conditioning equipment in existence at that date; or
  - (b) if, on or after 1st January 2015, he uses, or causes or permits another person to use, any hydrochlorofluorocarbons as refrigerants for either of those purposes.
- 30.** Subject to Article 5(2) and (5) and paragraph 32 below, a person commits an offence if he uses, or causes or permits another person to use, hydrochlorofluorocarbons—
- (a) on or after the commencement date, for the production of foams other than non-polyethylene rigid insulation foams;
  - (b) on or after the commencement date, for the production of extruded polystyrene rigid insulating foams, except where used in insulated transport;
  - (c) on or after 1st January 2003—
    - (i) for the production of polyurethane foams for appliances, or
    - (ii) except where used for insulated transport, for the production of polyurethane flexible faced laminate foams or polyurethane sandwich panels;
  - (d) on or after 1st January 2004, for the production of any foams (including polyurethane spray and block foams).
- 31.** Subject to Article 5(2) and (5) and paragraph 32 below, a person commits an offence if, on or after the commencement date, he uses, or causes or permits another person to use, hydrochlorofluorocarbons otherwise than in a manner which does not give rise to an offence under any of paragraphs 27 to 30 above.
- 32.** The use of hydrochlorofluorocarbons in accordance with any authorisation of the Commission pursuant to Article 5(7) does not constitute an offence under any of paragraphs 27 to 31 above provided that the use is conducted wholly in accordance with the terms of the authorisation.
- 33.—(1)** On or after the commencement date, a person who imports any product or equipment when its importation is prohibited by virtue of Article 5 commits an offence.
- (2) Proceedings may not be instituted against a person for an offence under paragraph (1) if proceedings are instituted against him under section 170 of the 1979 Act.
- (3) Proceedings may be instituted against a person for an offence under paragraph (1) notwithstanding that proceedings cannot be instituted against him for an offence under section 170 of the 1979 Act.
- (4) On or after the commencement date, a person who places, or causes or permits another person to place, on the market any product or equipment containing hydrochlorofluorocarbons the use of which is, and was when it was manufactured, prohibited by virtue of Article 5, commits an offence.

## PART IV

### CONTRAVENTION RELATING TO ARTICLE 7

- 34.** An undertaking which, in any period of twelve months, commencing with the period beginning on the commencement date, imports from a third country any controlled substance in excess of the quota allocated to it for that period, commits an offence.

**Status:** Point in time view as at 15/02/2008.

**Changes to legislation:** There are currently no known outstanding effects for the The Environmental Protection (Controls on Ozone-Depleting Substances) Regulations 2002 (revoked). (See end of Document for details)

## PART V

### CONTRAVENTION RELATING TO ARTICLE 22

**35.** A person who, on or after the commencement date, produces, places on the market or uses, or causes or permits another person to produce, place on the market or use, any new substance otherwise than as feedstock, commits an offence.

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#### EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations, which apply to England, Wales and Scotland and, in so far as they relate to importation, to Northern Ireland, make provision in relation to Council Regulation (EC) No. 2037/2000 on substances that deplete the ozone layer, as amended by Council Regulations (EC) 2038/2000 and 2039/2000, (referred to in these Regulations and the following paragraphs of this note as “the principal Regulation”).

The principal Regulation provides for a system that controls—

- a) the production, placing on the market and use of,
- b) trade in, and
- c) emission of certain substances (“controlled substances”) that deplete the ozone layer.

Member States are required to deal with a number of matters by means of their domestic legislation. With the exception of regulations 4, 7, 8 and 14, these Regulations fulfil this requirement. In particular, they—

- i) designate the Secretary of State as the competent authority for the purposes of the principal Regulation in its application to England, Wales and Scotland and, in relation to controls on importation, in its application to Northern Ireland (regulation 3, which gives effect to Article 6(1) and other provisions of the principal Regulation that refer to the competent authority of a Member State),

- ii) prohibit and restrict importation, landing and unloading of certain controlled substances, new substances, equipment and products (regulation 5, which gives effect to Articles 6, 8 and so much of Article 22 as relates to the release of new substances for free circulation in the Community and inward processing).

- iii) require persons having control of the controlled substances mentioned in Articles 16 and 17 of the principal Regulation to comply with those provisions (regulation 6).

- iv) contain enforcement powers (regulations 9 and 10), and

- v) set out offences and penalties in relation to failures to comply with the principal Regulation or these Regulations (regulations 11 to 13 and the Schedule).

Subject to the exceptions noted below, Parts I, II and III of the Schedule give effect to Article 21 of the principal Regulation in relation to breaches of Articles 3, 4 and 5, respectively. (Parts II and III do not deal with breaches of so much of paragraph (6) of Article 4 and paragraph (4) of Article 5 as relates to importation, because offences and penalties relating to that matter are provided for in the Customs and Excise Management Act 1979 (“the 1979 Act”).) Part IV of the Schedule gives effect to Article 21 in relation to breaches of Article 7. Part V of the Schedule gives effect to



Article 21 in relation to breaches of so much of Article 22 as relates to the production, placing on the market and use of new substances.

Contraventions of the prohibitions imposed by Article 11 (export of controlled substances or products containing controlled substances) are enforceable under section 68 of the 1979 Act. Regulations 4 and 8 permit the Secretary of State to require controlled substances, new substances, equipment or products that have been unlawfully imported, landed or unloaded to be disposed of harmlessly or removed from England, Wales and Scotland and, to the extent that they have been imported, from Northern Ireland.

Regulation 7 enables customs officers to require proof of lawful import or export, and to detain controlled substances, products and equipment until such proof has been furnished. In the absence of such proof, the substance, product or equipment is liable to forfeiture.

Regulation 14 revokes the Environmental Protection (Non-Refillable Refrigerant Containers) Regulations 1994, which are superseded by these Regulations. It also revokes the Environmental Protection (Controls on Substances that Deplete the Ozone Layer) Regulations 1996, which made provision in relation to Council Regulation (EC) No. 3093/94 on substances that deplete the ozone layer (O.J. No. L.333, 22.12.1994, p.1). That Regulation is repealed by Article 23 of the principal Regulation.

A regulatory impact assessment in respect of the Regulations may be obtained from the Department for Environment, Food and Rural Affairs. Global Atmosphere Division, Zone 3/A3, Ashdown House, 123 Victoria Street, London, SW1E 6DE. A copy has been placed in the library of each House of Parliament.

**Status:**

Point in time view as at 15/02/2008.

**Changes to legislation:**

There are currently no known outstanding effects for the The Environmental Protection (Controls on Ozone-Depleting Substances) Regulations 2002 (revoked).