
STATUTORY INSTRUMENTS

2002 No. 528

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

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.

Interpretation

2.—(1) In these Regulations—

“the 1974 Act” means the Health and Safety at Work Act 1974(1);

“the 1979 Act” means the Customs and Excise Management Act 1979(2);

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

“authorised officer” means an individual authorised by a local authority, the Environment Agency, or SEPA for any purpose of regulation 9;

“authorised person” means a person authorised by the Secretary of State for any purpose of these Regulations;

“customs officer” means an officer within the meaning of the 1979 Act(3);

“health and safety inspector” means an inspector appointed under section 19 of the 1974 Act;

“local authority”—

(a) in relation to England, means a county council, a district council or a London borough council;

(b) in relation to Wales, means a county council or a county borough council; and

(c) in relation to Scotland means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994(4);

“the principal Regulation” means Council Regulation (EC) No. 2037/2000 on substances that deplete the ozone layer, as amended by Council Regulations (EC) Nos. 2038/2000 and 2039/2000(5).

(2) Unless the context indicates otherwise—

(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.

(1) 1974 c. 37.

(2) 1979 c. 2.

(3) See sections 1(1) and 8(2).

(4) 1994 c. 39.

(5) O.J. No. L244, 29.9.00, p.1. The text of the amending Regulations will be found at O.J. No. L244, 29.9.00, p.25 and p.26.

(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.

The competent authority

3. The Secretary of State shall be the competent authority for the purposes of the principal Regulation in its application to England, Wales and Scotland and, in relation to importation, also in its application to Northern Ireland.

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(6),

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)(7); 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)(8) 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), but proceedings under that section shall not be taken in relation to any authorised officer or authorised person who is exercising any of the powers prescribed in regulation 9 for the purpose of carrying these Regulations into effect.

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.

(6) 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).

(7) 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).

(8) 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).

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, a customs officer may require any person possessing or having control of that substance, product or equipment to furnish, within such reasonable period as he may specify, proof that its importation or exportation is, or was not, unlawful by virtue of the Principal Regulation.

(2) Until such proof is furnished to the satisfaction of the officer, the substance, product or equipment may be detained.

(3) If such proof is not furnished to the satisfaction of the officer 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.

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.

Powers of authorised officers and authorised persons

9.—(1) An authorised officer or 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 carrying into effect these Regulations other than regulation 6, in so far as that regulation relates to Article 17(1) and (2).

(2) The powers referred to in paragraph (1) 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 and 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 purpose 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 this is necessary);
- (h) in the case of any such article or substance as is mentioned in sub-paragraph (g), to take possession of it and detain it for so long as is necessary for all or any of the following purposes, namely—
 - (i) to examine it and do to it anything which he has power to do under that sub-paragraph;
 - (ii) to ensure that it is not tampered with before his examination of it is completed;
 - (iii) to ensure that it is available for use as evidence in any proceedings for an offence under regulation 11;
- (i) 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 officer or authorised person may allow to be present) such questions as the authorised officer or authorised person thinks fit to ask and to sign a declaration of the truth of his answers;
- (j) 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;
- (k) 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 officer or authorised person to exercise any of the powers conferred on him by this regulation.

(3) Where an authorised officer or 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 officer or 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 officer or 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 substance under that power an authorised officer or 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) No answer given by a person in pursuance of a requirement imposed under paragraph (2)(i) shall be admissible in evidence in England, Wales and Scotland or in Northern Ireland against that person in any proceedings.

(7) Nothing in this regulation shall be taken to compel the production by any person of a document which he would—

- (a) be entitled to withhold production of on grounds of legal professional privilege on an order for disclosure and inspection in an action in the High Court, or
 - (b) be entitled to withhold production of on the grounds of confidentiality in proceedings in the Court of Session in Scotland.
- (8) No person shall—
- (a) intentionally prevent any other person from appearing before an authorised officer or authorised person under paragraph (2)(i) or from answering any question to which an authorised officer or authorised person may by virtue of paragraph (2)(i) require an answer;
 - (b) intentionally obstruct an authorised officer or authorised person in the exercise or performance of his powers or duties; or
 - (c) falsely pretend to be an authorised officer or authorised person.

Enforcement of Article 4(1) to (3) and 5(1) and regulation 6, in so far as that regulation relates to Article 17(1) and (2)

10. Sections 18 to 26 of the 1974 Act and regulations made under section 18 of that Act shall apply to any requirement or prohibition imposed on any person by Article 4(1) to (3) or 5(1) and regulation 6, in so far as that regulation relates to Article 17(1) and (2), as if the requirement or prohibition were imposed by regulations made under section 15 of that Act.

Offences

11.—(1) The Schedule to these Regulations (which creates offences for contravention of the principal Regulation, and makes other, related provision) shall have effect.

(2) 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),

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 fails to comply with regulation 8 or causes or permits another person to fail to comply with that regulation commits an offence.

(5) Any person who—

- (a) without reasonable excuse fails to comply with any requirement imposed under regulation 9(2), or
- (b) makes a statement which he knows to be false or misleading in a material particular, where the statement is made in purported compliance with a requirement to furnish information imposed under regulation 9(2)(i),

commits an offence.

(6) Any person who contravenes, or causes or permits another person to contravene, regulation 9(8) commits an offence.

(7) Where a health and safety inspector, under sections 20 and 21 of the 1974 Act, exercises his powers for the purposes of enforcing Article 4(1) to (3) or 5(1) and regulation 6, in so far as that regulation relates to Article 17(1) and (2), any person who—

- (a) fails to comply with an improvement notice served under section 21 of the 1974 Act including any such notice as modified on appeal,

- (b) without reasonable excuse fails to comply with any requirement imposed under section 20 of the 1974 Act,
- (c) intentionally prevents any other person from appearing before or from answering any question to which a health and safety inspector, by virtue of section 20 of the 1974 Act, may require an answer, or
- (d) intentionally obstructs a health and safety inspector in the exercise or performance of his powers or duties under section 20 of the 1974 Act.

commits an offence.

Offence by corporations etc.

12.—(1) Where an offence under regulation 11 (including any offence specified in the Schedule) which has been committed by a body corporate or a partnership in Scotland is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of, a director, manager, secretary or other similar officer of the body corporate, or any other person purporting to act in any such capacity (or in the case of a partnership in Scotland, a partner or a person who was purporting to act as such), he, as well as the body corporate or the partnership in Scotland, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, paragraph (1) shall apply in relation to the acts or defaults of a member in connection with his functions of management as if he were a director of the body corporate.

Penalties

13. A person who—

- (a) commits an offence under any provision specified in the Schedule or under regulation 11(2) to (4), (5)(b) or (7)(a) shall be liable, on summary conviction, to a fine not exceeding the statutory maximum or, on conviction on indictment, to a fine;
- (b) commits an offence under regulation 11(5)(a), (6) or (7)(b) to (d) shall be liable, on summary conviction, to a fine not exceeding level 5 on the standard scale.

Revocation of Regulations

14. The Environmental Protection (Non-Refillable Refrigerant Containers) Regulations 1994(9) and the Environmental Protection (Controls on Substances that Deplete the Ozone Layer) Regulations 1996(10) are hereby revoked.

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

8th March 2002

(9) S.I.1994/199, amended by S.I. 1996/506.

(10) S.I. 1996/506.