

SCHEDULE

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

Substitution of regulations 9 to 14

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

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

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

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

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

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

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

Further powers of the Secretary of State

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

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

in contravention of the principal Regulation.

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

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

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

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

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

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

11.—(1) Paragraph (2) applies where—

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- (a) a person has brought to any place for the purpose of being exported or is exporting a controlled substance, product or equipment where such export would be, or is, in contravention of Article 11; or
 - (b) the controlled substance, product or equipment is liable to forfeiture under regulation 7(3) or the 1979 Act.
- (2) The Secretary of State may require that person—
- (a) to dispose of the controlled substance, the product or the equipment without causing pollution of the environment or harm to human health or to the health of animals or plants; or
 - (b) otherwise to render it harmless.
- (3) That person shall comply with the requirement.

Fumigation for quarantine or preshipment

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

- (a) a local authority; or
 - (b) a port health authority.
- (2) An application for an authorisation shall contain the following information—
- (a) the name and address of the applicant;
 - (b) either—
 - (i) the address, or
 - (ii) sufficient details to identify the location, of the premises where the fumigation is to be carried out;
 - (c) details of the premises, article or substance to be fumigated;
 - (d) the reason for the fumigation;
 - (e) the amount of methyl bromide to be used;
 - (f) the reason why no alternative to methyl bromide can be used;
 - (g) where a person signs the application on behalf of the applicant, the full name of that person and his status in relation to the applicant; and
 - (h) the date on which the application is signed.
- (3) An authorisation shall—
- (a) contain a copy of the application to which it relates; and
 - (b) include details of the amount of methyl bromide authorised to be used.
- (4) An authorisation may—
- (a) contain conditions; and
 - (b) be revoked or amended in writing at any time.
- (5) A person to whom an authorisation is issued shall—
- (a) retain that authorisation for a period of three years; and
 - (b) provide a copy to the Secretary of State on request.
- (6) A local authority and a port health authority may charge a reasonable fee for dealing with an application for an authorisation.

(7) In this regulation, “fumigate” means fumigate using methyl bromide, and cognate expressions are construed accordingly.

Powers of an authorised person

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

(2) The powers of an authorised person are—

- (a) at any reasonable time, to enter premises, other than premises used wholly or mainly for residential purposes, which he has reason to believe it is necessary for him to enter;
- (b) on entering any premises by virtue of sub-paragraph (a), to take with him—
 - (i) any other person whose presence appears to him to be required in connection with the exercise by him of any power under this regulation, including, if he has reasonable cause to apprehend any serious obstruction in the execution of his duty, a constable, and
 - (ii) any equipment or materials required for any purpose for which the power of entry is being exercised;
- (c) to make such examination or investigation as may in any circumstances be necessary;
- (d) as regards any premises which he has power to enter, to direct that those premises or any part of them, or anything in them, shall be left undisturbed (whether generally or in particular respects) for so long as is reasonably necessary for the purposes of any examination or investigation under sub-paragraph (c);
- (e) to take such measurements and photographs and make such recordings as he considers necessary for the purpose of any examination or investigation under sub-paragraph (c);
- (f) to take samples of any articles or substances found in or on any premises which he has power to enter;
- (g) in the case of any article or substance found in or on any premises which he has power to enter, being an article or substance which appears to him to have caused or to be likely to cause pollution of the environment or harm to human health or to the health of animals or plants, to cause it to be dismantled or subjected to any process or test (but not so as to damage or destroy it unless that is necessary);
- (h) in the case of any such article or substance, to take possession of it and detain it for so long as is necessary—
 - (i) to examine it and do to it anything which he has power to do under sub-paragraph (g),
 - (ii) to ensure that it is not tampered with before his examination of it is completed, or
 - (iii) to ensure that it is available for use as evidence in any proceedings for an offence under regulation 18;
- (i) to remove for analysis any insects or rodents found in or on any premises which he has power to enter;
- (j) to require any person whom he has reasonable cause to believe to be able to give any information relevant to any examination or investigation under sub-paragraph (c) to answer (in the absence of anyone, other than someone nominated by that person to be present and anyone whom the authorised person may allow to be present) such

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questions as the authorised person thinks fit to ask and to sign a declaration of the truth of his answers;

- (k) to require the production of, or where the information is recorded in computerised form, the furnishing of extracts from, any records which it is necessary for him to see for the purposes of any examination or investigation under sub-paragraph (c) and to inspect and take copies of, or of any entry in, the records;
- (l) to require any person to afford him such facilities and assistance with respect to any matters or things within that person's control or in relation to which that person has responsibilities as are necessary to enable the authorised person to exercise any of the powers conferred on him by this regulation.

(3) Where an authorised person proposes to exercise the power conferred by paragraph (2)(g) in the case of an article or substance found in or on any premises, he shall, if so requested by a person who at the time is present on and has responsibilities in relation to those premises, cause anything which is to be done by virtue of that power to be done in the presence of that person.

(4) Before exercising the power conferred by paragraph (2)(g) in the case of any article or substance, an authorised person shall consult such persons as appear to him appropriate for the purpose of ascertaining what dangers, if any, there may be in doing anything which he proposes to do under the power.

(5) Where under the power conferred by paragraph (2)(h) an authorised person takes possession of any article or substance found on any premises, he shall leave there, either with a responsible person or, if that is impracticable, fixed in a conspicuous position, a notice giving particulars of that article or substance sufficient to identify it and stating that he has taken possession of it under that power; and before taking possession of any such article or substance under that power an authorised person shall, if it is practical for him to do so, take a sample of it and give to a responsible person at the premises a portion of the sample marked in a manner sufficient to identify it.

(6) If an authorised person considers it necessary to destroy any insect or rodent removed under the power conferred by paragraph (2)(i), he shall do so in as safe a manner as possible.

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

- (a) legal professional privilege on an order for disclosure and inspection in an action in the High Court; or
- (b) confidentiality in proceedings in the Court of Session in Scotland.

(8) No person shall intentionally prevent any other person from appearing before an authorised person under paragraph (2)(j) or from answering any question to which an authorised person may by virtue of paragraph (2)(j) require an answer.

(9) No answer given by a person in pursuance of a requirement imposed under paragraph (2)(j) shall be admissible in evidence in England, Wales, Scotland or Northern Ireland against that person in any proceedings.

Information notices

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

Enforcement and prohibition notices

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

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

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

(2) An enforcement notice shall—

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

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

(4) A prohibition notice shall—

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

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

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

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

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

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

Appeals against enforcement and prohibition notices

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

(2) The procedure on an appeal to a magistrates’ court is by way of complaint, and the Magistrates’ Courts Act 1980(1) applies to the proceedings.

(1) 1980 c.43.

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- (3) An appeal to the sheriff is by summary application.
- (4) An appeal may be brought not later than 28 days after the date on which the enforcement notice or the prohibition notice in question is served.
- (5) An enforcement notice or prohibition notice shall state —
 - (a) that the person on whom the notice in question is served has the right of appeal to a magistrates' court or the sheriff; and
 - (b) the period within which the appeal may be brought.
- (6) The court may suspend an enforcement notice or prohibition notice pending an appeal.

Proceedings before a civil court

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

- (2) Civil proceedings under paragraph (1) may be taken—
 - (a) in respect of England and Wales, in the County Court or the High Court; and
 - (b) in respect of Scotland, to the sheriff.

Offences

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

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

commits an offence.

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

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

(4) Any person who—

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

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

(5) Any person who—

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

commits an offence.

(6) Any person who—

- (a) fails to comply with—
 - (i) a direction given, or a requirement imposed, under regulation 13;
 - (ii) the requirements of a notice served on him under regulation 14; or

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

Corporate offences

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

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

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

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

(3) If an offence under these Regulations committed by a partnership is shown—

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

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

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

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

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

(5) In this regulation—

- (a) “officer”, in relation to a body corporate, means a director, member of the committee of management, chief executive, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity; and
- (b) “partner” includes a person purporting to act as a partner.

Penalties

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

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

Enforcement

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

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- (2) In relation to—
 - (a) cases of a particular description; or
 - (b) a particular case,

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

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

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

- (2) The Schedule continues to have effect.