STATUTORY INSTRUMENTS

2015 No. 168

ENVIRONMENTAL PROTECTION

The Ozone-Depleting Substances Regulations 2015

Made - - - -	*9th February 2015*
Laid before Parliament	*11th February 2015*
Coming into force - -	*7th March 2015*

The Secretary of State is designated in relation to the environment [F1] for the purposes of section 2 of the European Communities Act 1972 [F2], and makes these Regulations under the powers conferred by that section and paragraph 1A of Schedule 2 to that Act.

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

F1 S.I. 2008/301.

F2 1972 c.68. Section 2(2) was amended, and paragraph 1A of Schedule 2 was inserted, by the Legislative and Regulatory Reform Act 2006 (c.51), **section 27(1)(a)** and section 28 respectively, and were amended by section 3(3) of and Part 1 of the Schedule to the European Union (Amendment) Act 2008 (c.7). Under section 57(1) of the Scotland Act 1998 (c. 46), despite the transfer to the Scottish Ministers of functions in relation to the implementing obligations under EU law in relation to devolved matters, the Secretary of State retains power to exercise such functions as regards Scotland. Under paragraph 5 of Schedule 3 to the Government of Wales Act 2006 (c. 32), despite the transfer to the Welsh Ministers of functions in relation to implementing obligations under EU in relation to devolved matters, the Secretary of State retains power to exercise such functions as regards Wales.

PART 1

Introduction

Title, commencement and extent

1.—(1) These Regulations may be cited as the Ozone-Depleting Substances Regulations 2015.

(2) They come into force on 7th March 2015.

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

Interpretation

2.—(1) In these Regulations—

"authorised person" means a person authorised under regulation 13;

"competent" has the meaning given by regulation 4;

"controlled substances" means the substances in Annex I to the EU Regulation as amended from time to time;

"course of training" includes the training of an employee while that employee is engaged in work for which the employee is employed;

"employed" means employed under a contract of employment and "employee" and "employer" are construed accordingly;

"enforcement notice" has the meaning given by regulation 16;

"enforcing authority" means a person or body enforcing the EU Regulation under regulation 12;

"the EU Regulation" means Regulation (EC) No 1005/2009 of the European Parliament and of the Council on substances that deplete the ozone layer [F3];

"in-house qualification" means a qualification verified by a certificate of competence or other written confirmation issued by an employer to such of the employees of that employer who have successfully completed a course of training provided by that employer relating to relevant work;

"marine area" has the meaning given by paragraph 2 of Schedule 1;

"relevant work" has the meaning given by regulation 5;

"offshore installation" has the meaning given by paragraph 1 of Schedule 1; and

"work with methyl bromide" means work which involves preventing or minimising the leakage of methyl bromide from fumigation installations and operations in which methyl bromide is used.

(2) Expressions used in these Regulations and in the EU Regulation have the same meaning in these Regulations as they have in the EU Regulation.

F3 OJ No L 286, 31.10.2009, p.1, amended by Commission Regulations (EU) No 744/2010 (OJ No L218, 19.8.2010, p.2), (EU) No 1087/2013 (OJ No L293, 5.11.2013, p.28) and (EU) No 1088/2013 (OJ No L293, 5.11.2013, p.29).

The competent authority

[F4]**3.** . . . . . .

F4 Reg. 3 omitted (31.12.2020) by virtue of The Ozone-Depleting Substances and Fluorinated Greenhouse Gases (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/583), regs. 1, **2**; 2020 c. 1, Sch. 5 para. 1(1)

PART 2

Qualifications

Meaning of "competent"

4. For the purposes of this Part of these Regulations—

(a) a person is competent to carry out relevant work whilst performing a task specified in column 1 of the Table in Schedule 2 in respect of the equipment specified in the corresponding entry in column 2 of that Table if that person has obtained any of the qualifications specified in the corresponding entry in column 3 of that Table;

(b) a person is competent to carry out any other relevant work to which paragraph (a) does not apply if that person has obtained an in-house qualification in respect of that other relevant work;

(c) a person is competent to carry out work with methyl bromide if that person has—

(i) obtained the British Pest Control Association Certificate of Proficiency for Fumigation Operators [F5]; and

(ii) successfully completed the British Pest Control Association module referred to in the list in Schedule 3 which relates to the work in question.

F5 Details can be obtained from the British Pest Control Association, 4A Mallard Way, Pride Park, Derby, DE24 8GX, telephone number 01332 294288/225113; email: enquiry@bpca.org.uk.

Meaning of "relevant work"

5. In this Part, "relevant work" means any work which involves—

(a) recovering, recycling, reclaiming or destroying controlled substances; or

(b) preventing or minimising the leakage of controlled substances other than work with methyl bromide.

Qualifications and supervision

6.—(1) Subject to paragraph (5), no person may carry out any relevant work unless that person is competent to do so.

(2) Subject to paragraph (6), no person may carry out work with methyl bromide unless that person is competent to do so.

(3) The employer of a person employed to carry out relevant work must ensure that paragraph (1) is complied with.

(4) The employer of a person employed to carry out work with methyl bromide must ensure that paragraph (2) is complied with.

(5) A person who is not competent to carry out relevant work may carry out such work if the person does so—

(a) under the supervision of a person who is so competent; and

(b) with a view to obtaining—

(i) a qualification referred to in regulation 4(a); or

(ii) an in-house qualification.

(6) A person who is not competent to carry out work with methyl bromide may carry out such work if the person does so under the supervision of a person who is so competent, and—

(a) with a view to—

(i) obtaining the Certificate of Proficiency referred to in regulation 4(c), and

(ii) completing any of the modules listed in Schedule 3; or

(b) if the person has obtained that Certificate of Proficiency, with a view to completing any of the modules listed in Schedule 3.

Training

7.—(1) A training employer must ensure that the course of training which the training employer provides will enable an employee who has been trained to carry out the relevant job satisfactorily.

(2) In respect of each employee trained, a training employer must keep for the required period a record of—

(a) the name of the employee;

(b) the training provided;

(c) the date of the training; and

(d) the date on which is issued the certificate of competence or other written confirmation that the course of training has been successfully completed.

(3) A training employer must provide a copy of the record referred to in paragraph (2) to the employee in question when requested to do so by that employee during the required period.

(4) In this regulation—

(a) "relevant job" means relevant work not involving a task specified in column 1 of the Table in Schedule 2 in respect of the equipment specified in the corresponding entry in column 2 of that Table;

(b) "the required period" means both—

(i) the period during which the employee in question undergoes training provided by the training employer, and

(ii) the period during which the employee is employed by the training employer to carry out a relevant job; and

(c) "training employer" means an employer who provides training leading to an in-house qualification.

PART 3

Offences, penalties and enforcement

Offences in relation to Part 2

8.—(1) Any person who fails to comply with paragraph (1), (2), (3) or (4) of regulation 6 commits an offence.

(2) A training employer who fails to comply with paragraph (1), (2) or (3) of regulation 7 commits an offence.

Offences in relation to the EU Regulation

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

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

(a) an enforcement notice;

(b) a notice issued by the Secretary of State under regulation 18.

(3) It is an offence—

(a) intentionally to obstruct any person acting in the enforcement of the EU Regulation;

(b) without reasonable cause, to fail to give to any such person any assistance or information which that person may reasonably require for those purposes;

(c) to furnish to any such person any information knowing it to be false or misleading; or

(d) to fail to produce a document or record to any such person when required to do so.

Penalties

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

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

(b) on conviction on indictment, to a fine.

Corporate offences

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

(a) to have been committed with the consent or connivance of an officer; or

(b) to be attributable to any neglect on the part of an officer,

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

(2) In paragraph (1) "officer", in relation to a body corporate, means—

(a) a director, manager, secretary or other similar officer of the body; or

(b) a person purporting to act in any such capacity.

(3) If the affairs of a body corporate are managed by its members, paragraph (1) applies in relation to the acts and defaults of a member in connection with the member's functions of management as it applies to an officer of a body corporate.

(4) If an offence under these Regulations committed by a partnership is proved—

(a) to have been committed with the consent or connivance of a partner; or

(b) to be attributable to any neglect on the part of a partner,

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

(5) For the purpose of proceedings for an offence alleged to have been committed by a partnership in Scotland, section 70 of the Criminal Procedure (Scotland) Act 1995 [F6] applies as it applies in relation to a body corporate.

(6) In paragraph (4) "partner" includes a person purporting to act as a partner.

(7) Subject to paragraph (10), proceedings for an offence alleged to have been committed by an unincorporated association must be brought in the name of the association and not in the name of any of its members.