STATUTORY RULES OF NORTHERN IRELAND

2011 No. 240

ENVIRONMENTAL PROTECTION

The Ozone-Depleting Substances (Qualifications) Regulations (Northern Ireland) 2011

Made - - - -	*23rd June 2011*
Coming into operation	*31st July 2011*

The Department of the Environment is a department designated(**1**) for the purposes of section 2(2) of the European Communities Act 1972(**2**) in relation to measures relating to the environment.

These Regulations make provision for a purpose mentioned in that section, and it appears to the Department that it is expedient for references to Annex I to the European Union instrument referred to in these Regulations to be construed as references to that Annex as amended from time to time.

The Department makes these Regulations in the exercise of the powers conferred by section 2(2) of, and paragraph 1A of Schedule 2 to, the European Communities Act 1972(**3**).

Citation and commencement

1. These Regulations may be cited as the Ozone-Depleting Substances (Qualifications) Regulations (Northern Ireland) 2011, and shall come into operation on 31st July 2011.

Interpretation

2.—(1) In these Regulations—

"authorised person" means a person authorised under regulation 7(4);

"competent" has the meaning given in regulation 3;

"the EU Regulation" means Regulation (EC) No 1005/2009 of the European Parliament and of the Council on substances that deplete the ozone layer(**4**);

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

"the Department" means the Department of the Environment;

(**1**) S.I. 2008/301
(**2**) 1972 c.68
(**3**) Paragraph 1A of Schedule 2 was inserted by section 28 of the Legislative and Regulatory Reform Act 2006 (c 51)
(**4**) OJ No L286, 31.10.2009, p1, amended by Commission Regulation (EU) No 744/2010 (OJ No L 218, 19.08.2010, p2).

"employed" means employed under a contract of employment, and "employee" and "employer" shall be construed accordingly;

"the enforcing authority" means the district council, or in a case where the Department makes a direction under regulation 7(2), the Department;

"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; and

"relevant work" has the meaning given in regulation 4.

(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.

(3) The Interpretation Act (Northern Ireland) 1954(**5**) shall apply to these Regulations as it applies to an Act of the Northern Ireland Assembly.

(4) References in these Regulations to "controlled substances" are references to those substances in Annex I to the EU Regulation as amended from time to time.

Meaning of "competent"

3. For the purposes 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 the Schedule in respect of the equipment specified in the corresponding entry in column 2 of that Table if that person has obtained one of the qualifications specified in the corresponding entry in column 3 of that Table; and

(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.

Meaning of "relevant work"

4. In these Regulations, "relevant work" means any work which involves—

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

(b) preventing and minimising the leakage of controlled substances.

Qualification and supervision

5.—(1) Subject to paragraph (3), no person may carry out any relevant work unless that person is competent to do so.

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

(3) 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 3(a); or

(ii) an in-house qualification.

(4) A person is guilty of an offence if the person fails to comply with paragraph (1), (2), or (3).

(**5**) 1954 c.33 (N.I.)

Training

6.—(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 a 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 trained;

(b) the training which the training employer provides;

(c) the date the training employer provides such 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) A training employer commits an offence if the training employer fails to comply with paragraph (1), (2) or (3).

(5) In this regulation—

(a) "relevant job" means relevant work not involving a task specified in column 1 of the Table in the Schedule 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.

Enforcement

7.—(1) Subject to paragraph (2), the district council must enforce these Regulations.

(2) In relation to—

(a) cases of a particular description; or

(b) a particular case,

the Department may direct that the duty imposed by paragraph (1) on the district council shall be discharged by it and not by the district council.

(3) The powers in article 72 (powers of enforcing authorities and persons authorised by them) of the Waste and Contaminated Land (Northern Ireland) Order 1997(**6**) apply in relation to these Regulations, and the powers of authorised persons in that article are exercisable by persons authorised by any enforcing authority.

(4) The enforcing authority may authorise in writing such persons as they consider appropriate to act for the purpose of enforcing these Regulations.

(**6**) S.I. 1997/2778 (N.I. 19)

Information notices

8. The enforcing authority 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 notices

9.—(1) If the enforcing authority is of the opinion that a person has contravened, is contravening or is likely to contravene these Regulations, the enforcing authority may serve on that person a notice (referred to in these Regulations as an "enforcement notice").

(2) An enforcement notice must—

(a) state that the enforcing authority is of that opinion;

(b) specify the matters constituting the contravention or the matters making it likely that the contravention will arise, as the case may be;

(c) specify the steps that must be taken to remedy 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 must be taken.

(3) The period referred to in paragraph (2)(d) must not end earlier than the period within which an appeal may be brought under regulation 10.

(4) The enforcing authority may withdraw an enforcement notice at any time.

(5) A person on whom an enforcement notice is served must comply with that enforcement notice at that person's own expense.

(6) Where steps required by an enforcement notice have not been taken or not taken within the period allowed for compliance with the enforcement notice, the enforcing authority may—

(a) enter the land and take the steps specified in the enforcement notice; and

(b) recover from the person who is then the owner, any expenses reasonably incurred by it in doing so and those expenses shall be a civil debt recoverable summarily.

Appeals against enforcement notices

10.—(1) A person who is aggrieved by an enforcement notice may appeal to a court of summary jurisdiction.

(2) The procedure on an appeal is by way of notice under Part VII of the Magistrates' Courts (Northern Ireland) Order 1981(**7**).

(3) The period within which an appeal may be brought is 28 days from the date upon which the enforcement notice was issued.

(4) An enforcement notice must state—

(a) that the person on whom the notice in question is served has the right of appeal; and

(b) the period in which the appeal may be brought.

(5) Where an appeal is brought against an enforcement notice, that notice must be of no effect pending the final determination or the withdrawal of the appeal.

(**7**) S.I. 1981/1675 (N.I. 26)