STATUTORY RULES OF NORTHERN IRELAND

# 2011 No. 239

# ENVIRONMENTAL PROTECTION

## The Controls on Ozone-Depleting Substances 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 matters 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**).

## PART 1

## Introduction

### Citation, commencement and application

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

(2) These Regulations apply to offshore installations.

### Interpretation

**2.**—(1) In these Regulations—

"the 1997 Order" means the Waste and Contaminated Land (Northern Ireland) Order 1997(**4**)

"authorised person" means a person authorised under regulation 14(5);

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

"the Department" means the Department of the Environment;

"the enforcing authority" means—

(a) the district council, or, in a case which the Department makes a direction under regulation 14(2), the Department; and

(b) in relation to offshore installations, the Secretary of State;

"the EU Regulation" means Regulation (EC) No 1005/2009 of the European Parliament and of the Council on substances that deplete the ozone layer(**5**);

"gas" means—

(a) gas within the meaning of section 2(4) of the Energy Act 2008(**6**); or

(b) carbon dioxide;

"installation" includes an installation within the meaning of section 16 of the Energy Act 2008;

"marine area" means the area (together with the places above and below it) comprising the tidal waters and parts of the sea in or adjacent to Northern Ireland, up to the seaward limits of the territorial sea;

"offshore installation" means an installation or a structure, other than a ship, which is situated in the marine area, used for carrying on any of the following activities—

(a) the exploitation, or exploration with a view to exploitation, of mineral resources in the marine area;

(b) the exploration of any place in the marine area, with a view to the storage of gas;

(c) the conversion of any place in the marine area for the purpose of storing gas;

(d) the storage of gas in the marine area or the recovery of gas so stored;

(e) the unloading of gas at any place in the marine area;

(f) the conveyance of things by means of a pipe, or system of pipes, constructed or placed in the marine area; and

(g) 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 within any of the sub-paragraphs (a) to (f) above; and

"ship" includes a hovercraft, submersible craft and any other floating craft, but not a vessel which—

(a) permanently rests on or is permanently attached to the seabed; and

(b) is an installation within section 16 of the Energy Act 2008.

(2) References to storing gas include storing gas with a view to its permanent disposal.

(3) The Interpretation Act (Northern Ireland) 1954(**7**) shall apply to these Regulations as it applies to an Act of the Northern Ireland Assembly.

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

**Meaning of "controlled substances"**

**3.** 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.

(**5**) OJ No L286, 31.10.2009, p1, amended by Commission Regulation (EU) No 744/2010 (OJ No L 218, 19.8.2010, p2).
(**6**) 2008 c.32
(**7**) 1954 c.33 (N.I.)

# PART 2

## Enforcement, offences, penalties and revocations

### The competent authority

**4.** The Department is the competent authority for the purposes of the EU Regulation.

### Breach of the EU Regulation

**5.** Any person who breaches any of the following provisions of the EU Regulation is guilty of an offence.

| *Provision of the EU Regulation* | *Subject matter* |
|---|---|
| Article 4 | Production of controlled substances |
| Article 5(1) | Placing on the market and use of controlled substances |
| Article 5(2) | Placing controlled substances on the market in non-refillable containers |
| Article 6(1) | Placing on the market of products and equipment containing or relying on controlled substances |
| Article 6(2) | Prohibition and decommissioning of fire protection systems and fire extinguishers containing halons |
| Article 13(3) | Decommissioning of fire protection systems and fire extinguishers containing halons |
| Article 20 | Trade in controlled substances with a State not party to the 1987 Montreal Protocol on substances that deplete the ozone layer, as last amended and adjusted, and a territory not covered by that Protocol |
| Article 22(1), (2) and (4) | Recovery and destruction, recycling and reclamation of controlled substances |
| Article 23(1) | Precautionary measures to prevent and minimise leakages and emissions of controlled substances |
| Article 23(2) | Requirements for specified stationary equipment or systems |
| Article 23(3) | Record-keeping by undertakings |
| Article 23(5) | Precautionary measures to prevent and minimise leakages and emissions of controlled substances used as feedstock or process agents |
| Article 23(6) | Precautionary measures to prevent and minimise leakages and emissions of controlled substances inadvertently produced in the manufacture of other chemicals |
| Article 24(1) | Production, placing on the market, and use of new substances |

**Powers of the enforcing authority**

**6.**—(1) The enforcing authority may by notice require a person in possession of a controlled substance, or a product or equipment containing or relying on a controlled substance, that has been produced or placed on the market, in contravention of the EU Regulation, to dispose of it, or otherwise render it harmless, in accordance with the notice.

(2) Failure to comply with such a notice is an offence.

**Information notices**

**7.** 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**

**8.**—(1) An enforcement notice is a notice requiring a person to take specified steps to remedy a contravention, to remedy a contravention to the fullest extent possible, or to remedy matters making it likely that a contravention will arise.

(2) If an enforcing authority is of the opinion that a person—

(a) has contravened, is contravening or is likely to contravene these Regulations; or

(b) has contravened Article 18(4), 27(1) to (7) or 28(3) of the EU Regulation (notifying the European Commission of changes to data supplied in a licence application, annual reporting to the Commission and providing information requested by the Commission),

the enforcing authority may serve on that person an enforcement notice.

(3) 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.

(4) The period referred to in paragraph (3)(d) must not end earlier than the period within which an appeal may be brought under regulation 9.

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

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

(7) 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 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**

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