STATUTORY RULES OF NORTHERN IRELAND

2003 No. 97

ENVIRONMENTAL PROTECTION

The Environmental Protection (Controls on Ozone-Depleting Substances) Regulations (Northern Ireland) 2003

Made - - - - 25th February 2003

Coming into operation 28th March 2003

The Department of the Environment, being 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 protection of the ozone layer and measures relating to substances that deplete the ozone layer, in exercise of the powers conferred on it by that section, and having published notices in pursuance of Article 32(3)(a) of the Waste and Contaminated Land (Northern Ireland) Order 1997(**3**), having received no representations in consequence of the notices, and considering it appropriate to make these Regulations for the purpose of preventing the substances and articles specified in them from causing pollution of the environment or harm to human health or to the health of animals or plants, in exercise of the powers conferred on it by Articles 32(1) and (6) of the Waste and Contaminated Land (Northern Ireland) Order 1997, and of every other power enabling it in that behalf hereby makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Environmental Protection (Controls on Ozone-Depleting Substances) Regulations (Northern Ireland) 2003 and shall come into operation on 28th March 2003.

Interpretation

2.—(1) In these Regulations –

"the 1979 Act" means the Customs and Excise Management Act 1979(**4**);

"authorised officer" means an officer authorised by a district council for the purposes of these Regulations;

(**1**) S.I.1995/262
(**2**) S.I. 1972 c. 68
(**3**) S.I. 1997/2778 (N.I. 19)
(**4**) 1979 c. 2

"authorised person" means a person authorised by the Department for the purposes of these Regulations;

"the commencement date" means the date on which these regulations come into operation;

"customs officer" means an officer within the meaning of the 1979 Act;

"the Department" means the Department of the Environment;

"district council" means a district council within the meaning of the Local Government Act (Northern Ireland) 1972(**5**);

"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(**6**).

(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.

The competent authority

3. The Department shall be the competent authority for the purposes of the principal Regulation.

Duty with respect to Articles 16 and 17

4. 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.

Proof of lawful export

5.—(1) Where any controlled substance, new substance, product or equipment is being exported, 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 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 authorised officers and authorised persons

6.—(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 4, in so far as that regulation relates to Article 17(l) 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;

(**5**) 1972 c. 9 (N.I.)

(**6**) 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

(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 7;

(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 the authorised person may allow to be present) such questions as the authorised officer or the 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 the 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 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 officer or 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 substance under that power an authorised officer or 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) No answer given by a person in pursuance of a requirement imposed under paragraph (2)(i) shall be admissible in evidence against that person in any proceedings.

(7) Nothing in this regulation shall be taken to compel the production by any person of a document of which he would on grounds of legal professional privilege be entitled to withhold production on an order for disclosure and inspection in an action in the High Court.

(8) No person shall –

(a) intentionally prevent any other person from appearing before an authorised officer or an authorised person under paragraph (2)(i) or from answering any question to which an authorised officer or an authorised person may by virtue of paragraph (2)(i) require an answer;

(b) intentionally obstruct an authorised officer or an authorised person in the exercise or performance of his powers or duties; or

(c) falsely pretend to be an authorised officer or an authorised person.

Offences

7.—(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 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 4 commits an offence.

(4) Any person who –

(a) without reasonable excuse fails to comply with any requirement imposed under regulation 6(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 6(2)(i),

commits an offence.

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

Offence by corporations etc.

8.—(1) Where an offence under regulation 7 (including any offence specified in the Schedule) which has been committed by a body corporate 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, he, as well as the body corporate, 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

9. A person who –

(a) commits an offence under any provision specified in the Schedule or under regulation 7(2), (3) or 4(b) 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 7(4)(a) or (5) shall be liable, on summary conviction, to a fine not exceeding level 5 on the standard scale.

Sealed with the Official Seal of the Department of the Environment on 25th February 2003.

Judena Goldring
A senior officer of the
Department of the Environment