

2010 No. ***

ENVIRONMENTAL PROTECTION

The Controls on Ozone-Depleting Substances Regulations (Northern Ireland) 2010

Made - - - - - ***

Coming into operation - - - - - ***

The Department of the Environment is a department designated(a) for the purposes of section 2(2) of the European Communities Act 1972(b) 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 Community instruments referred to in these Regulations to be construed as references to those instruments 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(c).

PART 1

Introduction

Citation, commencement and application

1.—(1) These Regulations may be cited as the Controls on Ozone-Depleting Substances Regulations (Northern Ireland) 2010, and shall come into operation on [].

(2) These Regulations apply to offshore installations.

Interpretation

2.—(1) In these Regulations—

“an authorised person” means a person authorised under regulation 14(5);

“the Department” means the Department of the Environment;

“the EC Regulation” means Regulation (EC) No 1005/2009 of the European Parliament and of the Council on substances that deplete the ozone layer(d);

“the enforcing authority” means—

(a) S.I. 2008/301

(b) S.I. 1972 c.68

(c) Paragraph 1A of Schedule 2 was inserted by section 28 of the Legislative and Regulatory Reform Act 2006 (c 51)

(d) OJ No L286, 31.10.09

- (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;

“gas” means—

- (a) gas within the meaning of section 2(4) of the Energy Act 2008(a); or
- (b) carbon dioxide;

“offshore installation” means an installation or a structure, other than a ship, which is situated in, under or over relevant waters, used for carrying on any of the following activities—

- (a) the exploitation or exploration of mineral resources in or under the shore or bed of UK waters;
- (b) the exploration of any place in, under or over UK waters, with a view to the storage of gas;
- (c) the conversion of any place in, under or over UK waters, for the purpose of storing gas;
- (d) the storage of gas in, under or over UK waters, or the recovery of gas so stored;
- (e) the unloading of gas at any place in, under or over UK waters;
- (f) the conveyance of things by means of a pipe, or system of pipes, constructed or placed on, in or under the shore or bed of UK waters; 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 paragraphs (a) to (f), or this paragraph;

“relevant waters” means the tidal waters and parts of the sea in or adjacent to Northern Ireland, up to the seaward limits of territorial waters; and

“UK waters” means—

- (a) the tidal waters and parts of the sea in or adjacent to the United Kingdom, up to the seaward limits of territorial waters; and
- (b) waters within an area designated by an Order in Council under section 1(7) of the Continental Shelf Act 1964(b).

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

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

Meaning of “controlled substances” and references to Annexes

3.—(1) References to “controlled substances” are references to those substances in Annex I to the EC Regulation as amended from time to time.

(2) References in these Regulations to an Annex to the EC Regulation are references to that Annex as amended from time to time.

(a) 2008 c.32

(b) 1964 c.29 Section 1(7) is amended by section 37 of, and paragraph 1 of Schedule 3 to, the Oil and Gas (Enterprise) Act 1982 (c.23). Areas have been designated under section 1(7) by S.I. 1987/1265 (as amended), S.I. 2000/3062 (as amended), and S.I. 2001/3670.

(c) 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 EC Regulation.

Breach of the EC Regulation

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

<i>Provision of the EC Regulation</i>	<i>Subject matter</i>
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 17(1)	Exports of controlled substances and products and equipment containing or relying on controlled substances
Article 18(4)	Notifying the Commission of any changes to the data notified in the licence application
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 of used 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) and Annex II	Production, placing on the market, use and export of new substances
Article 27(1), (2) and (4) to (7)	Reporting by undertakings
Article 28(3)	Providing information requested by the Commission

Powers to 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, or is intended to be or is being exported, in contravention of the EC 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 and prohibition notices

8.—(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) If the enforcing authority is of the opinion that the activities of a person, in relation to his contravention or likely contravention of these Regulations, are such that they involve an imminent danger of serious pollution to the environment, the enforcing authority may serve on that person a notice (referred to in these Regulations as a “prohibition notice”).

(4) A prohibition notice must—

- (a) state that the enforcing authority is of that opinion;
- (b) specify the danger involved in that activity;
- (c) specify the steps required to be taken to remove the danger; and
- (d) require those steps to be taken within 3 days of receipt of the notice.

(5) The period referred to in paragraph (2)(d) must not end earlier than the period within which an appeal may be brought under regulation 9.

(6) The enforcing authority may withdraw at any time an enforcement notice or a prohibition notice.

(7) A person on whom an enforcement notice or prohibition notice is served must comply with such notice at that person’s own expense.

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

- (a) enter the land and take the steps specified in the 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 and prohibition notices

9.—(1) A person who is aggrieved by an enforcement or a prohibition 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(a).

(3) The period within which an appeal may be brought is—

- (a) 28 days from the date upon which the notice was issued; or
- (b) in the case of a prohibition notice, such shorter period as may be specified in the notice.

(a) 1981 No 1675 (NI 26)

- (4) An enforcement notice or prohibition 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.
- (6) Where—
- (a) a prohibition notice is quashed on appeal; and
 - (b) the person whom it was served has suffered loss or incurred expenditure in complying with that notice,
the enforcing authority must pay to that person an amount equal to the loss suffered or the expenditure incurred.
- (7) Any dispute under paragraph (6) as to the loss suffered or expenditure incurred must be determined by arbitration.

Enforcement by the High Court

10. If the enforcing authority is of the opinion that proceedings against a person for an offence under Regulation 11(f) would afford an ineffectual remedy against that person, the enforcing authority may take proceedings in the High Court for the purpose of securing compliance with that notice.

Additional offences

- 11.** A person commits an offence if that person—
- (a) intentionally obstructs an authorised person acting in the implementation of these Regulations;
 - (b) without reasonable cause, fails to give to an authorised person acting in the implementation of these Regulations any assistance or information that that person may reasonably require under these Regulations;
 - (c) furnishes to an authorised person acting in the implementation of these Regulations any information, knowing it to be false or misleading;
 - (d) fails to produce a document, record or passport when required to do so to an authorised person acting in the implementation of these Regulations;
 - (e) fails to comply with the requirements of an information notice;
 - (f) fails to comply with the requirements of an enforcement notice or a prohibition notice;
 - (g) fails to comply with a direction given, or a requirement imposed, by an authorised person;
 - (h) knowingly or recklessly furnishes any information under Article 27 of the EC Regulation which is false or misleading in any material particular; or
 - (i) intentionally prevents any other person from appearing before an authorised person to provide information, or to answer questions for which an authorised person may require an answer.

Penalties

- 12.** 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

13.—(1) For the purposes of these Regulations, section 20(2) of the Interpretation Act 1954(a) applies with the omission of the words “the liability of whose members is limited to” and where affairs of a body corporate are managed by its members, applies in relation to acts or defaults of a member in connection with the functions of management as if that person were a Director of the body corporate.

(2) If an offence 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 the part of the partner,

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

(3) 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.

(4) A fine imposed on an unincorporated association on its conviction for an offence must be paid out of the funds of the association.

(5) If an offence 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.

Enforcement

14.—(1) Subject to paragraphs (2) and (3), 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 must be discharged by it and not by the district council.

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

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

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

Application to the Crown

15.—(1) Subject to the provisions of this regulation, these Regulations bind the Crown.

(2) No act or omission done or suffered by or on behalf of the Crown constitutes an offence under these Regulations, but the High Court may, on the application of the Department, declare unlawful any act or omission of the Crown which constitutes such a contravention.

(3) Notwithstanding paragraph (2), these Regulations must apply to persons in the public service of the Crown as they apply to other persons.

(a) 1954 c.33 (N.I.)

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

Revocation

16. The Environmental Protection (Controls on Ozone-Depleting Substances) Regulations (Northern Ireland) 2003(a) are revoked.

Sealed with the Official Seal of the Department of the Environment on [].



Name
A senior officer of the
Department of the Environment

(a) S.I. 2003/97

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations enforce Regulation (EC) No 1005/2009 of the European Parliament and of the Council on substances that deplete the ozone layer. That Regulation controls the production, placing on the market and use of “controlled substances”, which are substances that deplete the ozone layer.

They provide that the Department of the Environment is the competent authority for the purposes of that Regulation.

Breach of the offences in the draft Regulations is punishable on summary conviction, to a fine not exceeding the statutory maximum, or on conviction on indictment, to a fine.

The Regulations are enforced by the district councils, the Department of the Environment, and the Secretary of State.

Regulation 16 revokes the Environmental Protection (Controls on Ozone-Depleting Substances) Regulations (Northern Ireland) 2003

A full impact assessment of the effect that this instrument will have on the costs of business is available from the Department of the Environment, Calvert House, Castle Place, Belfast BT1 1FY.