

2010 No. ***

ENVIRONMENTAL PROTECTION

The Ozone-Depleting Substances (Qualifications) 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 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 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)

Citation and commencement

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

Interpretation

2.—(1) In these Regulations—

“an authorised person” means a person authorised under regulation 7(4);

“competent” has the meaning given in regulation 3;

“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);

“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;

“employed” means employed under a contract of employment and “employee” and “employer” shall be construed accordingly;

(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

“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 EC Regulation have the same meaning in these Regulations as they have in the EC Regulation.

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

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).

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) 1954 c33 (NI)

- (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 on 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^(a) apply in relation to these Regulations, and the powers of authorised persons in that section 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.

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 and prohibition 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) S.I. 1997/2778 (N.I. 19)

- (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 the 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 the 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 10.

(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 a prohibition notice is served must comply with such notice at that person’s own expense.

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

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

10.—(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.

(4) An enforcement notice or a 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

(a) 1981 No 1675 (NI 26)

- (b) the person on whom it was served has suffered loss or incurred expenditure un 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

11. If the enforcing authority is of the opinion that proceedings against a person for an offence under regulation 12(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.

Miscellaneous offences

12. A person is guilty of an offence if the person—

- (a) intentionally prevents another person from—
 - (i) appearing before an authorised person if requested by that authorised person, or
 - (ii) answering any questions to which an authorised person may by virtue of that regulation require an answer;
- (b) intentionally obstructs an authorised person in the exercise or performance of the authorised person’s powers or duties;
- (c) furnishes to an authorised person any information which that person knows to be false or misleading;
- (d) fails to produce a record when required to do so by an authorised person;
- (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 in the exercise or performance of that authorised person’s powers or duties; or
- (h) 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.

Corporate offences

13.—(1) For the purposes of these Regulations, section 20(2) of the Interpretation Act (Northern Ireland 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 a 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.

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

(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;
the officer or member as well as the association is guilty of the offence and liable to be proceeded against and punished accordingly.

Penalties

14. 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.

Revocation

15. The Ozone Depleting Substances (Qualifications) Regulations (Northern Ireland) 2006(a) are revoked.

Application to the Crown

16.—(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 contravention.

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

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



Name
A senior officer of the
Department of the Environment

SCHEDULE

Regulations 3(a) and 6(5)(a)

TABLE OF MINIMUM QUALIFICATIONS

<i>Column 1 Tasks</i>	<i>Column 2 Equipment</i>	<i>Column 3 Minimum Qualification</i>
Servicing and maintenance of equipment	<p>Refrigeration, air conditioning and heat pump equipment which is stationary at all times when in operation.</p> <p>Commercial and domestic refrigerators and freezers which are stationary at all times when in operation.</p> <p>Portable refrigeration, air conditioning and heat pump equipment.</p>	<p>(a) City & Guilds Certificate in Handling Refrigerants Scheme 2078(a)</p> <p>(b) Construction Industry Training Board Safe Handling of Refrigerants (J01)(b)</p> <p>(c) City & Guilds Level 2 Award in F Gas and ODS Regulations Scheme 2079-11: Category I or 2079-12: Category II</p> <p>(d) Construction Industry Training Board Safe Handling of Refrigerants J11: Category I or J12: Category II</p>
Dismantling of equipment	<p>Refrigeration, air conditioning and heat pump equipment—</p> <p>(a) which is stationary at all times when in operation; and</p> <p>(b) which can only be dismantled at the place at which the equipment is used.</p>	<p>(a) City & Guilds Certificate in Handling Refrigerants Scheme 2078</p> <p>(b) Construction Industry Training Board Safe Handling of Refrigerants (J01)</p> <p>(c) City & Guilds Level 2 Award in F Gas and ODS Regulations Scheme 2079-11: Category I, 2079-12: Category II, or 2079-13: Category III</p> <p>(d) Construction Industry Training Board Safe Handling of Refrigerants J11: Category I or J12: Category II</p>
Maintenance and decommissioning of equipment	Fire protection systems and fire extinguishers.	<p>(a) British Fire Protection Systems Association Competence Certificate Course Class 1(c)</p> <p>(b) Fire Industry Association Competence Certificate Course Class 1</p>

- (a) Details can be obtained from City & Guilds, 1 Giltspur Street, London, EC1A 9DD; telephone number: 020 7294 2800; e-mail: learnersupport@cityandguilds.com Website: <http://www.cityandguilds.com/>
- (b) Details can be obtained from CITB, Bircham Newton, Kings Lynn, Norfolk PE31 6RH; telephone number: 0300 456 7700; e-mail: bes.enquiry@cskills.org Website: <http://www.cskills.org/>
- (c) Details can be obtained from the Fire Industry Association, Thames House, 29 Thames Street, Kingston-upon-Thames, KT1 1PH; telephone number: 020 8549 5855; e-mail: info@fia.uk.com Website: <http://www.fia.uk.com/>

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations give effect to the provisions in Articles 22.5 and 23.4, first paragraph, of Regulation (EC) No 1005/2009 of the European Parliament and of the Council on substances that deplete the ozone layer (OJ No L 244, 29.9.00 p 1) (“the EC Regulation”).

These Regulations relate to minimum qualifications for those working on the recovery, recycling, reclamation or destruction of controlled substances and the prevention and minimising of leakages of controlled substances. The terms “controlled substances”, “recovery”, “recycling” and “reclamation” are defined in Article 3 of the EC Regulation.

Under regulation 5, it is an offence for a person to carry out relevant work involving controlled substances unless that person is competent to do so. The terms “competent” and “relevant work” are defined in regulations 3 and 4 respectively. Details of the qualifications which a person needs in order to carry out certain types of relevant work are contained in the Table in the Schedule.

Regulation 5 also contains provisions making it an offence for an employer to employ a person to carry out relevant work unless that person is competent to do so. Provisions about training are contained in regulation 6.

Provision is made in regulation 7 for the appointment of persons (“authorised persons”) to enforce these Regulations. Provisions setting out the powers of authorised persons are also contained in regulation 7. Details of information, enforcement and prohibition notices, which the enforcing authority can use to help ensure that the Regulations are complied with, are contained in Regulations 8 to 10. Regulations 12 to 14 contain provisions relating to offences and penalties.

Regulation 15 revokes the Ozone Depleting Substances (Qualifications) Regulations (Northern Ireland) 2006 (S.I. 2006/321).

A full impact assessment of the effects that this instrument will have on the costs of businesses is available from the Department of the Environment, Calvert House, 23 Castle Place, Belfast BT1 1FY.