

2006 No. 321

ENVIRONMENTAL PROTECTION

**The Ozone Depleting Substances (Qualifications) Regulations
(Northern Ireland) 2006**

Made - - - - - *28th July 2006*

Coming into operation - *31st August 2006*

The Department of the Environment, being 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 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, makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Ozone Depleting Substances (Qualifications) Regulations (Northern Ireland) 2006 and shall come into operation on 31st August 2006.

Interpretation

2.—(1) In these Regulations—

“authorised person” means a person authorised by the Department of the Environment for the purposes of these Regulations;

“competent” has the meaning given in regulation 3;

“the Council Regulation” means Regulation (EC) No. 2037/2000 of the European Parliament and of the Council on substances that deplete the ozone layer(c)

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

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

“experienced person” means a person who carried out relevant work before 31st August 2006;

“in-house qualification” means a qualification verified by a certificate of competence or other written confirmation issued by an employer to such of his employees who have successfully completed a course of training provided by that employer relating to relevant work;

“relevant work” has the meaning given in regulation 4;

(a) S.I. 1995/262.

(b) 1972 c.68.

(c) As amended by Regulation (EC) No 2038/2000, Regulation (EC) No 2039/2000, Commission Decision 2003/160/EC, Regulation (EC) No 1804/2003, Commission Decision 2004/232/EC, Regulation (EC) No 2077/2004 and Commission Decision 2005/625/EC.

“work with methyl bromide” means work which involves preventing and minimising the leakage of methyl bromide from fumigation installations and operations in which methyl bromide is used.

(2) Expressions used in these Regulations have the same meaning as they have in the Council 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 Schedule 1 in respect of the equipment specified in the corresponding entry in column 2 of that Table if that person has obtained the qualification, or, where appropriate, one of the qualifications, specified in the corresponding entry in column 3 of that Table;
- (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;
- (c) a person is competent to carry out work with methyl bromide if that person has—
 - (i) obtained the British Pest Control Association Certificate of Proficiency For Fumigation Operators(b); and
 - (ii) successfully completed the British Pest Control Association module listed in Schedule 2 which is appropriate for the work in question.

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 other than work with methyl bromide.

Qualification and supervision

5.—(1) Subject to paragraph (5) and regulation 6, no person may carry out any relevant work unless he is competent to do so.

(2) Subject to paragraph (6), no person may carry out work with methyl bromide unless he is competent to do so.

(3) An employer shall not cause an employee to carry out relevant work unless that employee is competent to do so.

(4) An employer shall not cause an employee to carry out work with methyl bromide unless that employee is competent to do so.

(5) Subject to paragraph (8), a person who is not competent to carry out relevant work may carry out such work if he 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

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

(b) Details can be obtained from the British Pest Control Association, Ground Floor, Gleneagles House, Vernongate, Derby DE1 1UP; tel 0870 6092687; email enquiry@bpca.org uk; website: www.bpca.org.uk

(ii) an in-house qualification.

(6) A person who is not competent to carry out work with methyl bromide may carry out such work if he does so under the supervision of a person who is so competent, and—

(a) with a view to—

(i) obtaining the Certificate of Proficiency referred to in regulation 3(c)(i); and

(ii) completing the module listed in Schedule 2 which is appropriate for the work in question; or

(b) if the person has obtained the Certificate of Proficiency, with a view to completing the module listed in Schedule 2 which is appropriate for the work in question.

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

(8) Paragraph (5) does not apply to an experienced person who is not competent to carry out relevant work.

Transitional provision

6. An experienced person who is not competent to carry out relevant work may continue to carry out such work until 30th May 2007.

Training

7.—(1) A training employer shall ensure that the course of training he 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 shall keep for the required period a record of—

(a) the name of the employee trained;

(b) the training he provides;

(c) the date he 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 shall 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 period required.

(4) A training employer commits an offence if he 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 Schedule 1 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.

Powers of an authorised person

8.—(1) 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 enforcing these Regulations.

(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;
- (b) on entering any premises by virtue of sub-paragraph (a), to take with him 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;
- (c) to carry out such inquiries and to make such examination as may be necessary;
- (d) to require any person whom he reasonably believes can give any information relevant to any examination or investigation under sub-paragraph (c)—
 - (i) to answer (in the absence of anyone other than someone nominated by that person to be present and anyone whom the authorised person may allow to be present) such questions as the authorised person thinks fit to ask; and
 - (ii) to sign a declaration of the truth of his answers;
- (e) 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; and
- (f) 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 person to exercise any of the powers conferred on him by this regulation.

(3) No answer given by a person in pursuance of a requirement imposed under paragraph (2)(d) is admissible in evidence against that person in any proceedings.

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

Miscellaneous offences

9. It shall be an offence for a person to—

- (a) intentionally prevent another person from appearing before an authorised person under regulation 8(2)(d) or from answering any questions to which an authorised person may by virtue of that regulation require an answer;
- (b) intentionally obstruct an authorised person in the exercise or performance of his powers;
- (c) furnish an authorised person with any information which he knows to be false or misleading;
- (d) fail to produce a record when required to do so by an authorised person; or
- (e) pretend to be an authorised person.

Corporate offences

10. For the purposes of these Regulations, section 20(2) of the Interpretation Act (Northern Ireland) 1954 applies with the omission of the words “the liability of whose members is limited” and where the affairs of a body corporate are managed by its members, applies 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

11. 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.



28th July 2006

Wesley Shannon
A senior officer of the
Department of the Environment

SCHEDULE 1

Regulation 3(a)

TABLE OF MINIMUM QUALIFICATIONS

<i>Column 1</i> <i>Tasks</i>	<i>Column 2</i> <i>Equipment</i>	<i>Column 3</i> <i>Minimum Qualification</i>
<p>Servicing and maintenance of equipment</p>	<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>City and Guilds Certificate in Handling Refrigerants Scheme 2078(a); or</p> <p>Construction Industry Training Board Safe Handling of Refrigerants Reference 206710(b).</p>
<p>Dismantling of equipment</p>	<p>Refrigeration, air conditioning and heat pump equipment— (a) which is stationary at all times when in operation; and (b) which can only be dismantled at the place at which the equipment is used.</p>	<p>City and Guilds Certificate in Handling Refrigerants Scheme 2078; or</p> <p>Construction Industry Training Board Safe Handling of Refrigerants Reference 206710.</p>
<p>Decommissioning of equipment</p>	<p>Fire protection systems and fire extinguishers.</p>	<p>British Fire Protection Systems Association Competence Certificate Course Class 1(c).</p>

(a) Details can be obtained from City & Guilds, 1 Giltspur Street, London, EC1A 9DD; tel: 0207 294 2800; website: www.city-and-guilds.co.uk.

(b) Details can be obtained from CITB, Bircham Newton, Kings Lynn, Norfolk PE31 6RH; tel: 01485 577577; email: information.centre@citb.co.uk; website: www.citb-constructionskills.co.uk.

(c) Details can be obtained from BFPSA, Thames House, 29 Thames Street, Kingston Upon Thames, Surrey, KT1 1PH; tel: 0208 549 5855; email: bfpsa@abft.org.uk; website: www.bfpsa.org.uk

SCHEDULE 2

Regulation 3(c)

BRITISH PEST CONTROL ASSOCIATION MODULES

Module 1: Soil

Module 2: Space Fumigation, buildings, warehouses, silos and mills.

Module 3: Commodities under sheet, grain stores and timber.

Module 4: Containers and lighters.

Module 5: Ships.

Module 6: Aircraft.

Module 7: Bubble.

Module 8: Chambers and permanently sited containers.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations give effect to the provisions in Articles 16.5, 17.1 (first paragraph) and 17.2 of Regulation (EC) No. 2037/2000 of the European Parliament and of the Council on substances that deplete the ozone layer (as amended by Regulation (EC) 2038/2000, 2039/2000, 1804/2003 and 2077/2004 and Council Decisions 2003/160/EC, 2004/232/EC and 2005/625/EC).

They 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 2 of Regulation (EC) No. 2037/2000.

Under regulation 5, it is an offence for a person to carry out relevant work involving controlled substances or work with methyl bromide unless he is competent to do so. The terms “competent” and “relevant work” are defined in regulations 3 and 4 respectively. The term “work with methyl bromide” is defined in regulation 2. Details of the qualifications which a person needs in order to carry out certain types of relevant work, are contained in the Table in Schedule 1

Regulation 5 also contains provisions making it an offence for an employer to employ a person to carry out relevant work or work with methyl bromide unless that person is competent to do so. Transitional provisions are contained in regulation 6 and provisions about training are contained in regulation 7.

Provisions setting out the powers of authorised persons are contained in regulation 8. Regulations 9 to 11 contain provisions relating to offences and penalties.

A full regulatory impact assessment in respect of these Regulations may be obtained from the Department of the Environment, River House, 48 High Street, Belfast BT1 2AW.