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STATUTORY INSTRUMENTS

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**1996 No. 506**

**ENVIRONMENTAL PROTECTION**

**The Environmental Protection (Controls on Substances  
that Deplete the Ozone Layer) Regulations 1996**

<i>Made</i>	- - - -	<i>1st March 1996</i>
<i>Laid before Parliament</i>		<i>8th March 1996</i>
<i>Coming into force</i>	- -	<i>29th March 1996</i>

The Secretary of State for the Environment, as respects England, the Secretary of State for Wales, as respects Wales, the Secretary of State for Scotland, as respects Scotland, and the Secretary of State for Northern Ireland, as respects Northern Ireland, in exercise of the powers conferred on them by section 2(2) of the European Communities Act 1972<sup>(1)</sup>, being Ministers designated<sup>(2)</sup> for the purposes of that subsection in relation to measures relating to the protection of the ozone layer and measures relating to substances that deplete the ozone layer, and the said Secretaries of State—

having consulted the committee established under section 140(5) of the Environmental Protection Act 1990<sup>(3)</sup>;

having published notices in pursuance of section 140(6)(b) of that Act;

having considered any representations made to them in accordance with the notices;

considering it appropriate to make these Regulations for the purposes of preventing the substances and articles specified in them from causing pollution of the environment and harm to human health and to the health of animals and plants;

in exercise of the powers conferred on them by section 140(1), (2), (3)(b) to (d), (4) and (9) of the Environmental Protection Act 1990, and of all other powers enabling them in that behalf, hereby make the following Regulations:—

**Citation, commencement and extent**

1.—(1) These Regulations may be cited as the Environmental Protection (Controls on Substances that Deplete the Ozone Layer) Regulations 1996 and shall come into force on 29th March 1996.

(2) These Regulations shall apply to Northern Ireland in so far as they relate to importation.

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(1) 1972 c. 68  
(2) S.I.1995/262.  
(3) 1990 c. 43.

## Interpretation

2.—(1) In these Regulations—

“the 1974 Act” means the Health and Safety at Work etc. Act 1974<sup>(4)</sup>;

“authorised person” means a person authorised by the Secretary of State for any purpose of these Regulations;

“customs officer” means any officer within the meaning of the Customs and Excise Management Act 1979<sup>(5)</sup>;

“health and safety inspector” means an inspector appointed under section 19 of the 1974 Act;

“the principal Regulation” means Council Regulation (EC) No. 3093/94 on substances that deplete the ozone layer<sup>(6)</sup>.

(2) Unless the context otherwise requires—

(a) expressions used in these Regulations shall have the meaning they bear in the principal Regulation; and

(b) any reference in these Regulations to an Article is to an Article of the principal Regulation.

## The competent authority

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

## Direction

4. The Secretary of State directs that any prohibition on importation into the United Kingdom imposed by Article 5(5) shall be treated as imposed under section 140(1)(a) of the Environmental Protection Act 1990 and the power conferred on him by regulation 8 shall be exercisable accordingly.

## Prohibitions and restrictions on importation, landing and unloading.

5.—(1) No person shall import into the United Kingdom a controlled substance unless a licence, permitting the release for free circulation in the Community or inward processing of that controlled substance, has been issued by the Commission under Article 6(1).

(2) No person shall import into the United Kingdom a controlled substance whose release for free circulation in the Community is prohibited by Article 8.

(3) No person shall import into the United Kingdom a product whose release for free circulation in the Community is prohibited by Article 9.

(4) Subject to paragraph (5), no person shall knowingly land or unload a controlled substance, a product or equipment which has been imported contrary to paragraphs (1) to (3) above or Article 5(5).

(5) Paragraph (4) shall not apply to an authorised person who is exercising any of the powers prescribed in regulation 9 for the purpose of carrying these Regulations into effect.

## Duty with respect to Articles 14 and 15

6. It shall be the duty of any person having control of the controlled substances mentioned in Articles 14 and 15 to comply with those provisions.

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(4) 1974 c. 37.

(5) 1979 c. 2, see section 1.

(6) OJ No. L333, 22.12. 1994, p.1.

### **Power of customs officer to detain controlled substances and products**

7.—(1) A customs officer may detain a controlled substance or product imported, landed or unloaded in contravention of regulation 5, or equipment imported in contravention of Article 5(5).

(2) Anything detained under this regulation shall be dealt with during the period of its detention in such a manner as the Commissioners of Customs and Excise may direct.

### **Powers of the Secretary of State**

8. The Secretary of State may require a person who has imported, landed or unloaded a controlled substance or product in contravention of regulation 5, or imported equipment in contravention of Article 5(5)—

- (a) to dispose of it without causing pollution of the environment or harm to human health or to the health of animals or plants or otherwise to render it harmless, or
- (b) to remove it from the United Kingdom,

and such a person shall comply with that requirement.

### **Powers of authorised persons**

9.—(1) Subject to paragraph (9) below, an authorised person may, on production (if so required) of his authority, exercise any of the powers in paragraph (2) below for the purpose of carrying these Regulations into effect.

(2) The powers of an authorised person 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) above to take with him—
  - (i) if the authorised person 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) above;
- (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) above;
- (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) above, 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 11 below;
- (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) above 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 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) above 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 person to exercise any of the powers conferred on him by this regulation.
- (3) Where an authorised person proposes to exercise the power conferred by paragraph (2)(g) above 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) above in the case of any article or substance, 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) above 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 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 in England, Wales or Northern Ireland against that person in any proceedings, or in Scotland against that person in any criminal 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 discovery in an action in the High Court or, in relation to Scotland, on an order for the production of documents in an action in the Court of Session.
- (8) No person shall—
- (a) intentionally prevent any other person from appearing before an authorised person under paragraph (2)(i) or from answering any question to which an authorised person may by virtue of paragraph (2)(i) require an answer;
  - (b) intentionally obstruct an authorised person in the exercise or performance of his powers or duties; or
  - (c) falsely pretend to be an authorised person.

(9) The reference to “these Regulations” in paragraph (1) above does not include a reference to regulation 6, in so far as that regulation relates to Article 15(1) and (2).

**Enforcement of Articles 5(1) to (4) and regulation 6, in so far as that regulation relates to Article 15(1) and (2)**

**10.** Sections 18 to 26 of the 1974 Act and regulations made under section 18 of that Act shall apply to any requirement or prohibition imposed upon any person by Article 5(1) to (4) and regulation 6, in so far as that regulation relates to Article 15(1) and (2), as if the requirement or prohibition were imposed by regulations made under section 15 of that Act.

**Offences**

**11.—(1)** Any person who uses, or causes or permits another person to use, a hydrochlorofluorocarbon in contravention of Article 5(1) to (4) commits an offence.

(2) Any person who supplies, or causes or permits another person to supply equipment in contravention of Article 5(5) commits an offence.

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

(4) Any person who knowingly supplies information that is false in a material particular for the purpose of obtaining a licence issued by the Commission under Article 6(1) commits an offence.

(5) Any person who fails to discharge a duty to which he is subject by virtue of regulation 6 commits an offence.

(6) Any person who intentionally obstructs a customs officer in the exercise of his powers under regulation 7 commits an offence.

(7) Any person who fails to comply with regulation 8 or causes or permits another person to fail to comply with that regulation commits an offence.

(8) Any person who—

(a) without reasonable excuse fails to comply with any requirement imposed under regulation 9(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 9(2)(i),

commits an offence.

(9) Any person who contravenes, or causes or permits another person to contravene, regulation 9(8) commits an offence.

(10) Where a health and safety inspector, under sections 20 and 21 of the 1974 Act, exercises his powers for the purposes of enforcing Articles 5(1) to (4) and regulation 6, in so far as that regulation relates to Article 15(1) and (2), any person who—

(a) fails to comply with an improvement notice served under section 21 of the 1974 Act including any such notice as modified on appeal,

(b) without reasonable excuse fails to comply with any requirement imposed under section 20 of the 1974 Act,

(c) prevents any other person from appearing before or from answering any question to which a health and safety inspector, by virtue of section 20 of the 1974 Act, may require an answer, or

(d) intentionally obstructs a health and safety inspector in the exercise or performance of his powers or duties under section 20 of the 1974 Act,

commits an offence.

### **Offences by corporations etc.**

**12.**—(1) Where an offence under regulation 11 above 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) above 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.

(3) Where, in Scotland, an offence under regulation 11 above which has been committed by a Scottish partnership or an unincorporated association (other than a partnership) 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 partner in the partnership or, as the case may be, a person concerned in the management or control of the association, he, as well as the partnership or association, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

### **Penalties**

**13.** A person who—

- (a) commits an offence under regulation 11(1) to (5), (7), (8)(b) and (10)(a) shall be liable, on summary conviction, to a fine not exceeding level 5 on the standard scale or, on conviction on indictment, to a fine.
- (b) commits an offence under regulation 11(6), (8)(a), (9) and (10)(b) to (d) shall be liable, on summary conviction, to a fine not exceeding level 5 on the standard scale.

### **Amendment of the Environmental Protection (Non-Refillable Refrigerant Containers) Regulations 1994**

**14.** In the Environmental Protection (Non-Refillable Refrigerant Containers) Regulations 1994(7)—

- (a) in regulation 7(2)(i), for the words “(in the absence of persons other than a person nominated to be present and any persons whom the authorised person may allow to be present)” there shall be substituted the words “(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)”;
- (b) there shall be inserted, after regulation 7(4), the following paragraph—
  - “(5) No person shall—
  - (a) intentionally prevent any other person from appearing before an authorised person under paragraph (2)(i) or from answering any question to which an authorised person may by virtue of paragraph (2)(i) require an answer;
  - (b) intentionally obstruct an authorised person in the exercise or performance of his powers or duties; or
  - (c) falsely pretend to be an authorised person.”;
- (c) sub-paragraphs (b) and (c) of regulation 8(2) shall be omitted; and

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(7) S.I. 1994/199.

(d) for sub-paragraph (e) of regulation 8(2) there shall be substituted the following—

“(e) contravenes, or causes or permits another person to contravene,  
regulation 7(5),”.

18th February 1996

*John Selwyn Gummer*  
Secretary of State for the Environment

21st February 1996

*William Hague*  
Secretary of State for Wales

28th February 1996

*Lindsay*  
Parliamentary Under Secretary of State, Scottish  
Office

1st March 1996

*P. B. B. Mayhew*  
Secretary of State for Northern Ireland

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations, which apply to Great Britain, and to Northern Ireland in so far as they relate to importation, make provision in relation to Council Regulation (EC) No. 3093/94 on substances that deplete the ozone layer.

The Council Regulation provides for a system that controls—

- (i) the production, supply and use of,
- (ii) trade in, and
- (iii) emission of

certain substances (“controlled substances”) that deplete the ozone layer.

Member States are required to deal with a number of matters by means of their domestic legislation. With the exception of regulations 4, 8 and 14, these Regulations fulfil this requirement. In particular they—

- (a) designate the Secretary of State as the competent authority for the purposes of the Council Regulation (regulation 3);
- (b) prohibit and restrict importation, landing and unloading of certain controlled substances (regulation 5);
- (c) require persons having control of the controlled substances mentioned in Articles 14 and 15 of the Council Regulation to comply with those provisions (regulation 6);
- (d) confer powers on customs officers to detain controlled substances or products imported, landed or unloaded in contravention of regulation 5, or equipment imported in contravention of the Council Regulation (regulation 7);
- (e) contain enforcement powers (regulations 9 and 10); and
- (f) set out offences and penalties in relation to non-compliance with the Council Regulation or the Regulations (regulations 11 to 13).

Regulations 4 and 8 permit the Secretary of State to require controlled substances or products that have been unlawfully imported, landed or unloaded to be disposed of harmlessly or removed from the United Kingdom.

Regulation 14 makes certain drafting amendments to the Environmental Protection (Non-Refillable Refrigerant Containers) Regulations 1994.