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STATUTORY INSTRUMENTS

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**2002 No. 528**

**ENVIRONMENTAL PROTECTION**

**The Environmental Protection (Controls on  
Ozone-Depleting Substances) Regulations 2002**

<i>Made</i>	- - - -	<i>8th March 2002</i>
<i>Laid before Parliament</i>		<i>8th March 2002</i>
<i>Coming into force</i>	- -	<i>31st March 2002</i>

The Secretary of State for Environment, Food and Rural Affairs—

in exercise of the powers conferred upon her by—

- (a) subsection (2) of section 2 of the European Communities 1972(1), and
- (b) as regards Scotland, that subsection and section 57(1) of the Scotland Act 1998(2),

being a Minister designated(3) 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

having consulted the committee established under section 140(5) of the Environmental Protection Act 1990(4), having published notices in pursuance of section 140(6)(b) of that Act, having considered the representations made to her in accordance with 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 and harm to human health and to the health of animals and plants, in exercise of the powers conferred on her by section 140(1), (2), (3)(b), (4) and (9) of the Environmental Protection Act 1990, and, as regards Scotland, section 57(2) of the Scotland Act 1998, and in exercise of all other powers enabling her in that behalf, hereby makes the following Regulations:

**Citation, commencement and extent**

1.—(1) These Regulations may be cited as the Environmental Protection (Controls on Ozone-Depleting Substances) Regulations 2002 and shall come into force on 31st March 2002.

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

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(1) 1972 c. 68. Section 2(2) was amended by the Environment Act 1995 (c. 25).  
(2) 1998 c. 46.  
(3) S.I.1995/262.  
(4) 1990 c. 43.

## Interpretation

### 2.—(1) In these Regulations—

“the 1974 Act” means the Health and Safety at Work Act 1974<sup>(5)</sup>;

“the 1979 Act” means the Customs and Excise Management Act 1979<sup>(6)</sup>;

“the commencement date” means the date on which these Regulations come into force;

“authorised officer” means an individual authorised by a local authority, the Environment Agency, or SEPA for any purpose of regulation 9;

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

“customs officer” means an officer within the meaning of the 1979 Act<sup>(7)</sup>;

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

“local authority”—

(a) in relation to England, means a county council, a district council or a London borough council;

(b) in relation to Wales, means a county council or a county borough council; and

(c) in relation to Scotland means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994<sup>(8)</sup>;

“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<sup>(9)</sup>.

### (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.

(3) For the purposes of the Scotland Act 1998, these Regulations shall be taken to be a pre-commencement enactment within the meaning of that Act.

## The competent authority

3. The Secretary of State shall be the competent authority for the purposes of the principal Regulation in its application to England, Wales and Scotland and, in relation to importation, also in its application to Northern Ireland.

## Direction

4. The Secretary of State directs that any prohibition on importation into the United Kingdom imposed by Article 4(6) or 5(4) shall be treated as imposed under section 140(1)(a) of the Environmental Protection Act 1990 and the power conferred on her by regulation 8 shall be exercisable accordingly.

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(5) 1974 c. 37.

(6) 1979 c. 2.

(7) See sections 1(1) and 8(2).

(8) 1994 c. 39.

(9) O.J. No. L.244, 29.9.00, p.1. The text of the amending Regulations will be found at O.J. No. L.244, 29.9.00, p.25 and p.26.

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

5.—(1) The importation—

- (a) for release for free circulation in the Community, of any controlled substance; or
- (b) for inward processing, of a controlled substance listed in any of Groups VI to VIII in Annex I to the Principal Regulation<sup>(10)</sup>,

is prohibited unless a licence permitting its importation has been issued by the Commission under paragraph (1) of Article 6 (licences to import from third countries).

(2) The importation of—

- (a) a controlled substance whose release for free circulation in the Community or inward processing would constitute a contravention of Article 8 (imports of controlled substances from a State not party to the Protocol)<sup>(11)</sup>; or
- (b) a new substance whose release for free circulation in the Community or inward processing would constitute a contravention of Article 22 (new substances),

is prohibited.

(3) The importation of a product or equipment whose release for free circulation in the Community would constitute a contravention of Article 9 (imports of products containing controlled substances from a State not party to the Protocol)<sup>(12)</sup> is prohibited.

(4) Section 50 of the 1979 Act shall have effect in relation to the landing or unloading of any controlled substance, new substance, product or equipment imported in contravention of any of paragraphs (1) to (3) above or Article 4(6) or 5(4), but proceedings under that section shall not be taken in relation to any authorised officer or 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 16 and 17**

6. 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 import or export**

7.—(1) Where any controlled substance, new substance, product or equipment is being imported or exported, or has been imported 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 importation or 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.

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<sup>(10)</sup> The importation for inward processing of controlled substances listed in groups I to V as listed in Annex I to the principal Regulation is prohibited by Article 6(1).

<sup>(11)</sup> See also Article 13 (exceptional authorisation to trade with a State not party to the Montreal Protocol on Substances that Deplete the Ozone Layer) and Article 14 (trade with a territory not covered by the Montreal Protocol).

<sup>(12)</sup> See also Article 13 (exceptional authorisation to trade with a State not party to the Montreal Protocol on Substances that Deplete the Ozone Layer) and Article 14 (trade with a territory not covered by the Montreal Protocol).

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

8. The Secretary of State may require a person who has imported, landed or unloaded a controlled substance, a new substance, a product or equipment in contravention of regulation 5, or imported equipment in contravention of Article 4(6) or 5(4)—

- (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 render it harmless, or
- (b) to remove it from England, Wales and Scotland and, if it was imported, also from Northern Ireland,

and such a person shall comply with that requirement.

### **Powers of authorised officers and authorised persons**

9.—(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 6, in so far as that regulation relates to Article 17(1) 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;
- (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 11;

- (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 authorised person may allow to be present) such questions as the authorised officer or 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 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 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 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 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 and Scotland or in Northern Ireland against that person in any proceedings.
- (7) Nothing in this regulation shall be taken to compel the production by any person of a document which he would—
- (a) be entitled to withhold production of on grounds of legal professional privilege on an order for disclosure and inspection in an action in the High Court, or
  - (b) be entitled to withhold production of on the grounds of confidentiality in proceedings in the Court of Session in Scotland.
- (8) No person shall—
- (a) intentionally prevent any other person from appearing before an authorised officer or authorised person under paragraph (2)(i) or from answering any question to which an authorised officer or authorised person may by virtue of paragraph (2)(i) require an answer;
  - (b) intentionally obstruct an authorised officer or authorised person in the exercise or performance of his powers or duties; or
  - (c) falsely pretend to be an authorised officer or authorised person.

### **Enforcement of Article 4(1) to (3) and 5(1) and regulation 6, in so far as that regulation relates to Article 17(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 on any person by Article 4(1) to (3) or 5(1) and regulation 6, in so far as that regulation relates to Article 17(1) and (2), as if the requirement or prohibition were imposed by regulations made under section 15 of that Act.

### **Offences**

11.—(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—

- (a) a licence under Article 6(1); or
- (b) 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 6 commits an offence.

(4) 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.

(5) 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.

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

(7) Where a health and safety inspector, under sections 20 and 21 of the 1974 Act, exercises his powers for the purposes of enforcing Article 4(1) to (3) or 5(1) and regulation 6, in so far as that regulation relates to Article 17(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) intentionally 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.

### **Offence by corporations etc.**

12.—(1) Where an offence under regulation 11 (including any offence specified in the Schedule) which has been committed by a body corporate or a partnership in Scotland 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 (or in the case of a partnership in Scotland, a partner or a person who was purporting to act as such), he, as well as the body corporate or the partnership in Scotland, 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**

**13.** A person who—

- (a) commits an offence under any provision specified in the Schedule or under regulation 11(2) to (4), (5)(b) or (7)(a) 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 11(5)(a), (6) or (7)(b) to (d) shall be liable, on summary conviction, to a fine not exceeding level 5 on the standard scale.

### **Revocation of Regulations**

**14.** The Environmental Protection (Non-Refillable Refrigerant Containers) Regulations 1994(**13**) and the Environmental Protection (Controls on Substances that Deplete the Ozone Layer) Regulations 1996(**14**) are hereby revoked.

Signed by authority of the Secretary of State for Environment, Food and Rural Affairs

*Michael Meacher*  
Minister of State,  
Department for Environment, Food and Rural  
Affairs

8th March 2002

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(13) S.I. 1994/199, amended by S.I. 1996/506.

(14) S.I. 1996/506.

**SCHEDULE**

regulation 11

**OFFENCES RELATING TO CONTRAVENTIONS OF THE PRINCIPAL REGULATION****PART 1****OFFENCES RELATING TO CONTRAVENTIONS OF ARTICLE 3**

1. A person who produces, or causes or permits another person to produce—

- (a) chlorofluorocarbons,
- (b) other fully halogenated chlorofluorocarbons,
- (c) halons,
- (d) carbon tetrachloride,
- (e) 1,1,1-trichloroethane, or
- (f) hydrobromofluorocarbons,

otherwise than in accordance with an authorisation issued by the Secretary of State under Article 3(5) pursuant to a licence issued by the Commission under Article 3(4) for the purposes of the second sub-paragraph of paragraph (1) of Article 3 (essential uses), commits an offence.

2.—(1) Subject to paragraph 3, a producer of methyl bromide whose calculated level of production—

- (a) in the period from the commencement date until 31st December 2002 exceeds 40% of

$$\frac{\text{its calculated 1991 level}}{365} \times \text{the number of days beginning with the commencement date to 31st December 2002; or}$$

; or

- (b) in either of the periods of 12 months ending on 31st December 2003 and 31st December 2004 exceeds 25% of its calculated 1991 level,

commits an offence.

(2) In sub-paragraph (1), “calculated 1991 level”, in relation to a producer of methyl bromide, means its calculated level of production in 1991, excluding any methyl bromide produced for quarantine or preshipment applications; and any reference to any other calculated level of production similarly excludes a reference to amounts of methyl bromide produced for quarantine or preshipment applications.

3. Paragraph 2 shall apply in a case where an authorisation has been issued—

- (a) by the Secretary of State under any of paragraphs (5) to (8) of Article 3; or
- (b) by the Commission under paragraph (9) or (10) of that Article,

as if, for the maximum calculated level of production ascertained in accordance with sub-paragraph (a) or (b), as the case may be, there were substituted the maximum calculated level of production specified in the authorisation or ascertained in accordance with the relevant paragraph of Article 5.

4. A person who produces, or causes or permits another person to produce, methyl bromide after 31st December 2004 otherwise than in accordance with an authorisation issued by the Secretary of State pursuant to a licence issued by the Commission under Article 3(4) for the purposes of Article 3(2)(ii) (critical uses) commits an offence.

5.—(1) Subject to paragraph 6, a producer of hydrochlorofluorocarbons whose calculated level of production—

(a) in the period from the commencement date until 31st December 2002 exceeds

$$\frac{\text{its calculated 1997 level}}{365} \times \text{the number of days beginning with the commencement date to 31st December 2002}; \text{ or}$$

; or

(b) in the period of 12 months ending on 31st December 2003 or any subsequent 31st December until (and including) 31st December 2007 exceeds its calculated 1997 level;

(c) in the period of 12 months ending on 31st December 2008 or any subsequent 31st December until (and including) 31st December 2013 exceeds 35% of its calculated 1997 level;

(d) in the period of 12 months ending on 31st December 2014 or any subsequent 31st December until (and including) 31st December 2019 exceeds 20% of its calculated 1997 level;

(e) in any of the periods of 12 months ending on 31st December 2020 or any subsequent 31st December until (and including) 31st December 2025 exceeds 15% of its calculated 1997 level,

commits an offence.

(2) In sub-paragraph (1), “calculated 1997 level”, in relation to a producer of hydrochlorofluorocarbons, means its calculated level of production in 1997.

6. Paragraph 5 shall apply in a case where an authorisation has been issued—

(a) by the Secretary of State under paragraph (8) of Article 3; or

(b) by the Commission under paragraph (9) or (10) of that Article,

as if, for the maximum calculated level of production ascertained in accordance with sub-paragraph (a), (b), (c) or (d), as the case may be, there were substituted the maximum calculated level of production specified in the authorisation or ascertained in accordance with the relevant paragraph of Article 5.

7. A person who produces, or causes or permits another person to produce, hydrochlorofluorocarbons after 31st December 2025 commits an offence.

## PART II

### OFFENCES RELATING TO CONTRAVENTIONS OF ARTICLE 4

8. A person who, on or after the commencement date—

(a) subject to Article 4(4)(i)(a) and (b) and (5), places, or causes or permits another person to place, chlorofluorocarbons on the market; or

(b) subject to Article 4(4)(i)(b) and (5), uses, or causes or permits another person to use, chlorofluorocarbons otherwise than—

(i) in the maintenance or servicing of refrigeration and air-conditioning equipment or in finger-printing processes;

(ii) in delivery mechanisms for hermetically sealed devices designed for implantation in the human body for delivery of measured doses of medication, or

(iii) in existing military applications, or

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(c) uses, or causes or permits another person to use, chlorofluorocarbons in an application referred to in sub-paragraphs (b)(ii) or (iii) otherwise than in accordance with the terms of an authorisation issued by the Commission under Article 4(1), commits an offence.

**9.** A person who, on or after the commencement date, uses, or causes or permits another person to use, chlorofluorocarbons in an application referred to in paragraph 8(b)(i), commits an offence.

**10.** A person who, on or after 31st December 2004, uses, or causes or permits another person to use, chlorofluorocarbons in an application referred to in paragraph 8(b)(ii), commits an offence.

**11.** A person who, on or after 31st December 2008, uses, or causes or permits another person to use, chlorofluorocarbons in any military application, commits an offence.

**12.** A person who, on or after the commencement date, subject to Article 4(4)(i)(a) and (b) and (5)—

(a) places, or causes or permits another person to place, on the market—

- (i) other fully halogenated chlorofluorocarbons,
- (ii) carbon tetrachloride,
- (iii) 1,1,1-trichloroethane, or
- (iv) hydrochlorofluorocarbons; or

(b) subject to Article 4(4)(i)(b) and (5), uses any of those substances otherwise than in the maintenance or servicing of refrigeration and air-conditioning equipment or in finger-printing processes,

commits an offence.

**13.** A person who, on or after the commencement date uses, or causes or permits another person to use, any of the substances mentioned in paragraph 12 in the maintenance or servicing of refrigeration and air-conditioning equipment or in finger-printing processes, commits an offence.

**14.** A person who, on or after the commencement date, places, or causes or permits another person to place, on the market halons that have not been recovered, recycled or reclaimed in an existing fire protection system, commits an offence unless—

(a) the placing on the market is authorised by virtue of Article 4(4)(i)(a) or (b) or (5); or

(b) the halon—

- (i) is halon 1301 or halon 1211, and
- (ii) its placing on the market is for a critical use for the time being specified in relation to that substance in Annex VII to the principal Regulation.

**15.** A person who, on or after 31st December 2002, places, or causes or permits another person to place, on the market halons that have been recovered, recycled or reclaimed in existing fire protection systems, commits an offence unless—

(a) the placing on the market is authorised by virtue of Article 4(4)(i)(a) or (b) or (5); or

(b) the halon—

- (i) is halon 1301 or halon 1211, and
- (ii) its placing on the market is for a critical use for the time being specified in relation to that substance in Annex VII to the principal Regulation.

**16.** A person who, on or after the commencement date, uses, or causes or permits another person to use, halons that have not been recovered, recycled or reclaimed in an existing fire protection system, commits an offence unless—

- (a) the use is authorised by virtue of Article 4(4)(i)(b) or (5);
- (b) the halons are used for the maintenance or servicing of refrigeration and air-conditioning equipment or in a finger-printing process; or
- (c) the halon—
  - (i) is halon 1301 or halon 1211; and
  - (ii) its use is a critical use for the time being specified in relation to that substance in Annex VII to the principal Regulation.

**17.** A person who, on or after 31st December 2002, uses, or causes or permits another person to use, halons that have been recovered, recycled or reclaimed in existing fire protection systems, commits an offence unless—

- (a) the use is authorised by virtue of Article 4(4)(i)(b) or (5); or
- (b) the halon—
  - (i) is halon 1301 or halon 1211; and
  - (ii) its use is a critical use for the time being specified in relation to that substance in Annex VII to the principal Regulation.

**18.** A person who maintains a fire protection system or fire extinguisher containing halons after 30th December 2003 commits an offence unless—

- (a) the halon is halon 1301 or halon 1211; and
- (b) its use in that system or extinguisher is a critical use for the time being specified in relation to that substance in Annex VII to the principal Regulation.

**19.** A person who fails to recover halons from a fire protection system or fire extinguisher whose decommissioning is required by Article 4(4)(v) commits an offence.

**20.—(1)** A producer or importer of methyl bromide which places on the market or uses for its own account a calculated level of methyl bromide which—

- (a) in the period from the commencement date until 31st December 2002 exceeds 40% of

$$\frac{\text{its calculated 1991 level}}{365} \times \text{the number of days beginning with the commencement date to 31st December 2002}; \text{ or}$$

; or

- (b) subject to sub-paragraph (2), in either of the periods of 12 months ending on 31st December 2003 and 31st December 2004 exceeds 25% of its calculated 1991 level,

commits an offence unless—

- (i) where he places it on the market, its placing on the market is authorised by Article 4(4)(i) or (5); or
- (ii) where he uses it for his own account, its use is authorised by Article 4(4)(i)(b) or (5).

(2) Paragraph (b) of sub-paragraph (1) shall apply in a case where an adjustment has been made by the Commission pursuant to Article 4(2) as if, for the maximum calculated level ascertained in accordance with that paragraph, there were substituted the maximum calculated level specified by the Commission.

(3) In sub-paragraph (1) “calculated 1991 level”, in relation to a producer or importer of methyl bromide, means the calculated level of methyl bromide which it placed on the market or used for its own account in 1991, other than any methyl bromide placed on the market or used on its own account for quarantine or preshipment applications.

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(4) Any reference in sub-paragraphs (1) and (2) to a calculated level, other than a calculated 1991 level, excludes a reference to amounts of methyl bromide placed on the market or used for the producer's or importer's own account for quarantine or preshipment applications.

**21.—**(1) A producer or importer which places on the market or uses for its own account for quarantine and preshipment applications a calculated level of methyl bromide which—

(a) in the period from the commencement date until 31st December 2002 exceeds

$\frac{\text{the average of the calculated level of methyl bromide}}{365} \times \text{the number of days beginning with the commencement date to 31st December 2002; or}$

(b) in any period of twelve months ending on 31st December in any later year exceeds the average of the calculated level of methyl bromide,

commits an offence.

**22.** A producer or importer which places methyl bromide on the market after 31st December 2004 or uses methyl bromide for its own account after that date commits an offence unless—

(a) it is placed on the market or used for a purpose mentioned in Article 4(4)(i)(b) or pursuant to such a transfer as it mentioned in Article 4(5); or

(b) it is placed on the market for destruction within the Community by technologies approved by the Parties.

**23.** An undertaking, other than a producer or importer, which after 31st December 2005—

(a) places methyl bromide on the market otherwise than for a purpose mentioned in Article 4(4)(i); or

(b) uses methyl bromide otherwise than for a purpose mentioned in Article 4(4)(i)(b),

commits an offence.

**24.—**(1) A producer or importer of controlled substances who places on the market or uses for its own account a calculated level of hydrochlorofluorocarbons which—

(a) in the period from the commencement date until 31st December 2002, exceeds, as a percentage of the calculated levels set out in Article 4(3)(i)(a) to (c)

$\frac{\text{its percentage market share in 1996}}{365} \times \text{the number of days beginning with the commencement date to 31st December 2002; or}$

(b) in any of the periods of 12 months ending on 31st December 2003 or on any subsequent 31st December until (and including) 31st December 2009, exceeds the quota allocated to it for that year pursuant to the mechanism determined by the Commission under Article 4(3)(ii);

commits an offence unless sub-paragraph (2) applies to their placing on the market or use.

(2) This sub-paragraph applies—

(a) to the placing on the market or use of hydrochlorofluorocarbons—

(i) for a purpose mentioned in Article 4(4)(i)(b),

(ii) pursuant to such a transfer as is mentioned in Article 4(5), and

(iii) in accordance with an authorisation of the Commission pursuant to Article 5(7); and

(b) to the placing of hydrochlorofluorocarbons on the market for destruction within the Community by technologies approved by the Parties.

**25.** A producer or importer which, after 31st December 2009, places hydrochlorofluorocarbons on the market or uses them for its own account, commits an offence unless—

(a) they are placed on the market or used—

- (i) for a purpose mentioned in Article 4(4)(i)(b),
  - (ii) pursuant to such a transfer as is mentioned in Article 4(5), or
  - (iii) in accordance with an authorisation of the Commission pursuant to Article 5(7); or
- (b) they are placed on the market for destruction within the Community by technologies approved by the Parties.

**26.** A person who, on or after the commencement date, places, or causes or permits another person to place, on the market any product or equipment containing—

- (a) chlorofluorocarbons,
- (b) other fully halogenated chlorofluorocarbons,
- (c) halons,
- (d) carbon tetrachloride,
- (e) 1,1,1-trichloroethane, or
- (f) hydrobromofluorocarbons,

commits an offence unless—

- (i) the product or equipment was manufactured before 1st October 2000;
- (ii) the use of the substance in that product or equipment is authorised in accordance with the second sub-paragraph of Article 3(1); or
- (iii) the product or equipment contains halons and is for a critical use for the time being specified in relation to that substance in Annex VII to the principal Regulation.

### PART III

#### OFFENCES RELATING TO CONTRAVENTIONS OF ARTICLE 5

**27.** Subject to Article 5(2) and (5)(15) and paragraph 32 below, a person commits an offence if he uses, or causes or permits another person to use, hydrochlorofluorocarbons—

- (a) on or after the commencement date, in aerosols; or
- (b) on or after the commencement date, as solvents—
  - (i) in non-contained solvent uses (including open-top cleaners and open-top dewatering systems without refrigerated areas);
  - (ii) in adhesives and mould-release agents other than those employed in closed equipment; or
  - (iii) for drain cleaning where hydrochlorofluorocarbons are not recovered;
- (c) on or after the commencement date, as carrier gas for sterilisation substances in closed systems, in equipment produced after 31st December 1997;
- (d) after the commencement date, as solvents in any application other than the precision cleaning of electrical and other components in aerospace or aeronautic applications; or
- (e) after 31st December 2008, as solvents in any application.

**28.—(1)** Subject to Article 5(2) and (5) and paragraph 32 below, a person commits an offence if he uses, or causes or permits another person to use, hydrochlorofluorocarbons as refrigerants—

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(15) Article 5(2) provides derogations for laboratory uses and use as feedstock or processing agents. Article 5(5) suspends use restrictions until 31st December 2009 in relation to production of products for export to countries where the use of hydrochlorofluorocarbons in those products is for the time being permitted.

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- (a) on or after the commencement date, in equipment produced after 31st December 1995, for any of the following uses—
    - (i) in non-confined direct-evaporation systems;
    - (ii) in domestic refrigerators and freezers;
    - (iii) otherwise than for military uses, in motor vehicle, tractor or off-road vehicle or trailer air-conditioning systems (operating on any energy source);
  - (b) on or after the commencement date, in equipment produced after 31st December 1997, in rail transport air-conditioning;
  - (c) on or after the commencement date, in equipment produced after 31st December 1999, for either of the following uses—
    - (i) in public and distribution cold stores or warehouses;
    - (ii) for equipment with a shaft input equal to, or greater than, 150kW;
  - (d) after the commencement date, in refrigeration or air-conditioning equipment produced after that date, other than—
    - (i) equipment referred to in any of sub-paragraphs (a) to (c);
    - (ii) equipment excepted from sub-paragraph (a)(iii) (but see sub-paragraph (g) below);
    - (iii) fixed air-conditioning equipment with a cooling capacity of less than 100kW (but see sub-paragraph (e) below); and
    - (iv) reversible air-conditioning/heat pump systems (but see sub-paragraph (f) below);
  - (e) on or after 1st July 2002, in fixed air-conditioning equipment with a cooling capacity of less than 100kW, produced after 30th June 2002;
  - (f) on or after 1st January 2004, in reversible air-conditioning/heat pump systems whose equipment is produced after 31st December 2003;
  - (g) on or after 31st December 2008, in any military use of motor vehicle, tractor or off-road vehicle or trailer air-conditioning system.
- 29.** Subject to Article 5(5) and paragraph 32 below, a person commits an offence—
- (a) if, on or after 1st January 2010, he uses, or causes or permits another person to use, virgin hydrochlorofluorocarbons as refrigerants in the maintenance or servicing of refrigeration or air-conditioning equipment in existence at that date; or
  - (b) if, on or after 1st January 2015, he uses, or causes or permits another person to use, any hydrochlorofluorocarbons as refrigerants for either of those purposes.
- 30.** Subject to Article 5(2) and (5) and paragraph 32 below, a person commits an offence if he uses, or causes or permits another person to use, hydrochlorofluorocarbons—
- (a) on or after the commencement date, for the production of foams other than non-polyethylene rigid insulation foams;
  - (b) on or after the commencement date, for the production of extruded polystyrene rigid insulating foams, except where used in insulated transport;
  - (c) on or after 1st January 2003—
    - (i) for the production of polyurethane foams for appliances, or
    - (ii) except where used for insulated transport, for the production of polyurethane flexible faced laminate foams or polyurethane sandwich panels;
  - (d) on or after 1st January 2004, for the production of any foams (including polyurethane spray and block foams).

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**31.** Subject to Article 5(2) and (5) and paragraph 32 below, a person commits an offence if, on or after the commencement date, he uses, or causes or permits another person to use, hydrochlorofluorocarbons otherwise than in a manner which does not give rise to an offence under any of paragraphs 27 to 30 above.

**32.** The use of hydrochlorofluorocarbons in accordance with any authorisation of the Commission pursuant to Article 5(7) does not constitute an offence under any of paragraphs 27 to 31 above provided that the use is conducted wholly in accordance with the terms of the authorisation.

**33.—(1)** On or after the commencement date, a person who imports any product or equipment when its importation is prohibited by virtue of Article 5 commits an offence.

(2) Proceedings may not be instituted against a person for an offence under paragraph (1) if proceedings are instituted against him under section 170 of the 1979 Act.

(3) Proceedings may be instituted against a person for an offence under paragraph (1) notwithstanding that proceedings cannot be instituted against him for an offence under section 170 of the 1979 Act.

(4) On or after the commencement date, a person who places, or causes or permits another person to place, on the market any product or equipment containing hydrochlorofluorocarbons the use of which is, and was when it was manufactured, prohibited by virtue of Article 5, commits an offence.

## PART IV

### CONTRAVENTION RELATING TO ARTICLE 7

**34.** An undertaking which, in any period of twelve months, commencing with the period beginning on the commencement date, imports from a third country any controlled substance in excess of the quota allocated to it for that period, commits an offence.

## PART V

### CONTRAVENTION RELATING TO ARTICLE 22

**35.** A person who, on or after the commencement date, produces, places on the market or uses, or causes or permits another person to produce, place on the market or use, any new substance otherwise than as feedstock, commits an offence.

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## EXPLANATORY NOTE

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

These Regulations, which apply to England, Wales and Scotland and, in so far as they relate to importation, to Northern Ireland, make provision in relation to Council Regulation (EC) No. 2037/2000 on substances that deplete the ozone layer, as amended by Council Regulations (EC) 2038/2000 and 2039/2000, (referred to in these Regulations and the following paragraphs of this note as “the principal Regulation”).

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The principal Regulation provides for a system that controls—

- (a) the production, placing on the market and use of,
- (b) trade in, and
- (c) 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, 7, 8 and 14, these Regulations fulfil this requirement. In particular, they—

- (i) designate the Secretary of State as the competent authority for the purposes of the principal Regulation in its application to England, Wales and Scotland and, in relation to controls on importation, in its application to Northern Ireland (regulation 3, which gives effect to Article 6(1) and other provisions of the principal Regulation that refer to the competent authority of a Member State),
- (ii) prohibit and restrict importation, landing and unloading of certain controlled substances, new substances, equipment and products (regulation 5, which gives effect to Articles 6, 8 and so much of Article 22 as relates to the release of new substances for free circulation in the Community and inward processing).
- (iii) require persons having control of the controlled substances mentioned in Articles 16 and 17 of the principal Regulation to comply with those provisions (regulation 6).
- (iv) contain enforcement powers (regulations 9 and 10), and
- (v) set out offences and penalties in relation to failures to comply with the principal Regulation or these Regulations (regulations 11 to 13 and the Schedule).

Subject to the exceptions noted below, Parts I, II and III of the Schedule give effect to Article 21 of the principal Regulation in relation to breaches of Articles 3, 4 and 5, respectively. (Parts II and III do not deal with breaches of so much of paragraph (6) of Article 4 and paragraph (4) of Article 5 as relates to importation, because offences and penalties relating to that matter are provided for in the Customs and Excise Management Act 1979 (“the 1979 Act”).) Part IV of the Schedule gives effect to Article 21 in relation to breaches of Article 7. Part V of the Schedule gives effect to Article 21 in relation to breaches of so much of Article 22 as relates to the production, placing on the market and use of new substances.

Contraventions of the prohibitions imposed by Article 11 (export of controlled substances or products containing controlled substances) are enforceable under section 68 of the 1979 Act.

Regulations 4 and 8 permit the Secretary of State to require controlled substances, new substances, equipment or products that have been unlawfully imported, landed or unloaded to be disposed of harmlessly or removed from England, Wales and Scotland and, to the extent that they have been imported, from Northern Ireland.

Regulation 7 enables customs officers to require proof of lawful import or export, and to detain controlled substances, products and equipment until such proof has been furnished. In the absence of such proof, the substance, product or equipment is liable to forfeiture.

Regulation 14 revokes the Environmental Protection (Non-Refillable Refrigerant Containers) Regulations 1994, which are superseded by these Regulations. It also revokes the Environmental Protection (Controls on Substances that Deplete the Ozone Layer) Regulations 1996, which made provision in relation to Council Regulation (EC) No. 3093/94 on substances that deplete the ozone layer (O.J. No. L333, 22.12.1994, p.1). That Regulation is repealed by Article 23 of the principal Regulation.

A regulatory impact assessment in respect of the Regulations may be obtained from the Department for Environment, Food and Rural Affairs, Global Atmosphere Division, Zone 3/A3, Ashdown House, 123 Victoria Street, London, SW1E 6DE. A copy has been placed in the library of each House of Parliament.

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