

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
- (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 pre-shipment applications; and any reference to any other calculated level of production similarly excludes a reference to amounts of methyl bromide produced for quarantine or pre-shipment 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.

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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

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

; 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

- (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—

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- (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 $\frac{\text{itscalculated1991level}}{365} \times \text{thenumberofdaybeginningwiththecommentdateto31stDecember2002}$; 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 pre-shipment applications.

(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—

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- (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)(1) 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—

(1) 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.

- (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.