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STATUTORY INSTRUMENTS

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**2006 No. 1510**

**ENVIRONMENTAL PROTECTION**

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

<i>Made</i>	- - - -	<i>8th June 2006</i>
<i>Laid before Parliament</i>		<i>16th June 2006</i>
<i>Coming into force</i>	- -	<i>10th July 2006</i>

The Secretary of State is a Minister designated<sup>(1)</sup> for the purposes of section 2(2) of the European Communities Act 1972<sup>(2)</sup> in relation to measures relating to the protection of the ozone layer and measures relating to substances that deplete the ozone layer.

He makes these Regulations in exercise of the powers conferred by that section.

**Citation, commencement and extent**

1.—(1) These Regulations—

- (a) may be cited as the Ozone Depleting Substances (Qualifications) Regulations 2006; and
- (b) come into force on 10th July 2006.

(2) These Regulations do not extend to Northern Ireland.

**Interpretation**

2.—(1) In these Regulations—

“authorised person” means a person appointed under regulation 8;

“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 <sup>(3)</sup>, as amended by

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(1) S.I. 1995/262, to which there are no relevant amendments. The power of the Secretary of State, as a Minister designated in relation to measures relating to the protection of the ozone layer and measures relating to substances that deplete the ozone layer, to make regulations which extend to Scotland remains exercisable by virtue of section 57(1) of the Scotland Act 1998 (c. 46).

(2) 1972 c. 68.

(3) OJ No. L244, 29.9.2000, p 1.

Regulations (EC) No. 2038/2000<sup>(4)</sup>, 2039/2000<sup>(5)</sup> and 1804/2003<sup>(6)</sup> and Commission Decisions 2003/160/EC<sup>(7)</sup> and 2004/232/EC<sup>(8)</sup>;

“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;

“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;

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

### 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<sup>(9)</sup>, and
  - (ii) successfully completed the British Pest Control Association module referred to in the list in Schedule 2 which relates to 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.

<sup>(4)</sup> OJ No. L244, 29.9.2000, p 25.

<sup>(5)</sup> OJ No. L244, 29.9.2000, p 26.

<sup>(6)</sup> OJ No. L265, 16.10.2003, p 1.

<sup>(7)</sup> OJ No. L65, 8.3.2003, p 29.

<sup>(8)</sup> OJ No. L71, 10.3.2004, p 28.

<sup>(9)</sup> 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](mailto:enquiry@bpca.org.uk); website: [www.bpca.org.uk](http://www.bpca.org.uk).

### **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) The employer of a person employed to carry out relevant work must ensure that paragraph (1) is complied with.

(4) The employer of a person employed to carry out work with methyl bromide must ensure that paragraph (2) is complied with.

(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

(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), and

(ii) completing any of the modules listed in Schedule 2; or

(b) if the person has obtained the Certificate of Proficiency, with a view to completing any of the modules listed in Schedule 2.

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

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

(9) In this regulation, “experienced person” means a person who carried out relevant work before 10th July 2006.

### **Transitional provision**

6.—(1) An experienced person who is not competent to carry out relevant work may continue to carry out such work until 9th April 2007.

(2) In this regulation, “experienced person” has the same meaning as it has in regulation 5.

### **Training**

7.—(1) A training employer must 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 must 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 must provide a copy of the record referred to in paragraph (2) to the employee in question when requested to do so by that employee during the required period.

(4) A training employer commits an offence if 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.

### **Appointment of persons to enforce these Regulations**

8.—(1) In relation to England and Wales, the Secretary of State or the Environment Agency may appoint such persons as he or they consider appropriate for the purpose of enforcing these Regulations.

(2) In relation to Scotland, the Scottish Ministers or the Scottish Environment Protection Agency may appoint such persons as they consider appropriate for the purpose of enforcing these Regulations.

### **Powers of an authorised person**

9.—(1) An authorised person may exercise, on production, if so required, of his authority, 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 the person in any proceedings.

(4) Nothing in this regulation shall be taken to compel the production by any person of a document of which he would be entitled to withhold production on the grounds of—

- (a) legal professional privilege on an order for disclosure and inspection in an action in the High Court; or
- (b) confidentiality in proceedings in the Court of Session in Scotland.

### **Miscellaneous offences**

**10.** A person is guilty of an offence if he—

- (a) intentionally prevents another person from—
  - (i) appearing before an authorised person under regulation 9(2)(d), or
  - (ii) answering any questions to which an authorised person may by virtue of that regulation require an answer;
- (b) intentionally obstructs an authorised person in the exercise or performance of his powers;
- (c) furnishes to an authorised person any information which he knows to be false or misleading;
- (d) fails to produce a record when required to do so by an authorised person; or
- (e) pretends to be an authorised person.

### **Corporate offences**

**11.—(1)** If an offence under these Regulations committed by a body corporate is shown—

- (a) to have been committed with the consent or connivance of an officer; or
- (b) to be attributable to any neglect on his part,

the officer as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.

(2) If the affairs of a body corporate are managed by its members, paragraph (1) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body.

(3) If an offence under these Regulations committed by a partnership is shown—

- (a) to have been committed with the consent or connivance of a partner; or
- (b) to be attributable to any neglect on his part,

the partner as well as the partnership is guilty of the offence and liable to be proceeded against and punished accordingly.

(4) If an offence under these Regulations committed by an unincorporated association, other than a partnership, is shown—

- (a) to have been committed with the consent or connivance of an officer of the association or a member of its governing body; or
- (b) to be attributable to any neglect on the part of such an officer or member,

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

(5) In this regulation—

- (a) “officer”, in relation to a body corporate, means a director, member of the committee of management, chief executive, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity; and
- (b) “partner” includes a person purporting to act as a partner.

### **Penalties**

**12.** 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.

### **Amendment of the Environmental Protection (Controls on Ozone-Depleting Substances) Regulations 2002**

**13.** In regulation 5(4) of the Environmental Protection (Controls on Ozone-Depleting Substances) Regulations 2002(**10**), omit the words from “but proceedings” to the end.

8th June 2006

*Ian Pearson*  
Minister of State  
Department for Environment, Food and Rural  
Affairs

## SCHEDULE 1

Regulation 3(a)

## TABLE OF MINIMUM QUALIFICATIONS

Column 1 Tasks	Column 2 Equipment	Column 3 Minimum Qualification
Servicing and maintenance of equipment.	Refrigeration, air conditioning and heat pump equipment which is stationary at all times when in operation.	(a) (a) City & Guilds Certificate in Handling Refrigerants Scheme 2078(11).
	Commercial and domestic refrigerators and freezers which are stationary at all times when in operation.	(b) Construction Industry Training Board Safe Handling of Refrigerants Reference 206710(12).
	Portable refrigeration, air conditioning and heat pump equipment.	
Dismantling of equipment.	Refrigeration, air conditioning and heat pump equipment—	(a) (a) City & Guilds Certificate in Handling Refrigerants Scheme 2078.
	(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.	(b) Construction Industry Training Board Safe Handling of Refrigerants Reference 206710.
Decommissioning of equipment.	Fire protection systems and fire extinguishers.	British Fire Protection Systems Association Competence Certificate Course Class I(13).

## 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.

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

(12) Details can be obtained from CITB, Bircham Newton, Kings Lynn, Norfolk PE31 6RH; tel: 01485 577577; email: [informationcentre@citb.co.uk](mailto:informationcentre@citb.co.uk); website: [www.citb-constructionskills.co.uk](http://www.citb-constructionskills.co.uk).

(13) 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](mailto:bfpsa@abft.org.uk); website: [www.bfpsa.org.uk](http://www.bfpsa.org.uk).

Module 6: Aircraft.

Module 7: Bubble.

Module 8: Chambers and permanently sited containers.

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## EXPLANATORY NOTE

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

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

Provision is made in regulation 8 for the appointment of persons (“authorised persons”) to enforce these Regulations. Provisions setting out the powers of authorised persons are contained in regulation 9. Regulations 10 to 12 contain provisions relating to offences and penalties.

Regulation 13 amends regulation 5(4) of the Environmental Protection (Controls on Ozone-Depleting Substances) Regulations 2002 (S.I.2002/528).

A full regulatory impact assessment of the effect that this instrument will have on the costs of business is available 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.