



STATUTORY INSTRUMENTS.

S.I. No. 465 of 2011



CONTROL OF SUBSTANCES THAT DEplete THE OZONE LAYER
REGULATIONS 2011

(Prn. A11/1657)

CONTROL OF SUBSTANCES THAT DEplete THE OZONE LAYER
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I, PHIL HOGAN, Minister for the Environment, Community and Local Government, in exercise of the powers conferred on me by sections 6 and 53 of the Environmental Protection Agency Act 1992 (No. 7 of 1992) for the purpose of giving effect to Regulation (EC) No. 1005/2009 ⁽¹⁾ of the European Parliament and of the Council of 16 September 2009 on substances that deplete the ozone layer, hereby make the following Regulations:—

Citation

1. These Regulations may be cited as the Control of Substances that Deplete the Ozone Layer Regulations 2011.

Interpretation

2. (1) In these Regulations:-

“Act of 1992” means the Environmental Protection Agency Act 1992 (No.7 of 1992);

“Agency” means the Environmental Protection Agency established under Section 19 of the Act of 1992;

“authorised person” means a person who is

(a) appointed in writing by a Minister, a local authority or the Agency or by such other person or body as may be prescribed, as the case may be, to be an authorised person for the purposes of this Act or any Part or section thereof, or

(b) appointed in writing to be an authorised person pursuant to regulations under this Act by a person specified in those regulations;

“Commission” means the Commission of the European Communities;

“controlled substances” means those substances falling within the scope of the Regulation (EC) No. 1005/2009;

“competent authority” has the meaning assigned by Regulation 6;

“competent body” has the meaning assigned by Regulation 7;

“Minister” means the Minister for the Environment, Community and Local Government;

¹OJ L 244/6 of 29.9.2000

*Notice of the making of this Statutory Instrument was published in
“Iris Oifigiúil” of 16th September, 2011.*

“person” means any natural or legal person;

“premises” includes any messuage, building, vessel, structure or land (whether or not there are structures on the land or whether or not the land is covered with water) or any hereditament of any tenure, together with any out-buildings and curtilage;

“record” includes, in addition to a record in writing—

- (a) a disc, tape, sound-track or other device in which information, sounds or signals are embodied so as to be capable (with or without the aid of some other instrument) of being reproduced in legible or audible form,
- (b) a film, tape or other device in which visual images are embodied so as to be capable (with or without the aid of some other instrument) of being reproduced in visual form, and
- (c) a photograph,

and any reference to a copy of a record includes—

- (i) in the case of a record to which paragraph (a) applies, a transcript of the sounds or signals embodied therein,
- (ii) in the case of a record to which paragraph (b) applies, a reproduction of the images embodied therein, and
- (iii) in the case of a record to which paragraphs (a) and (b) apply, such a transcript together with such a reproduction of the images.

“Regulation 1005/2009” means Regulation (EC) No. 1005/2009 of the European Parliament and of the Council of 16 September 2009 on substances that deplete the ozone layer, which repealed Regulation (EC) No. 2037/2000².

(2) In these Regulations a letter, word, phrase or symbol which has been assigned a meaning by Regulation 1005/2009, or is used in that Regulation, has that meaning where the context requires except where otherwise indicated

Objective and Scope

3. (1) These Regulations make provisions necessary for implementation of Regulation 1005/2009 in Ireland.

(2) The scope of these Regulations is that stated in Article 2 of Regulation 1005/2009.

Prohibition of Certain Goods

4. Controlled substances which are prohibited from being imported or exported, or are subject to any restriction on importation or exportation, are deemed to be so prohibited or restricted for the purposes of section 42, 178,

²OJ L 71 10.3.2004

202, 207 and 208 of the Customs Consolidation Act 1876 (39 and 40 Vict., c.36) sections 3 and 5 of the Customs Act 1956 No. 7 of 1956) and sections 6, 7 and 9 of the Customs and Excise (Miscellaneous Provisions) Act 1988 (No. 10 of 1988).

Competent Authority

5. (1) The Environmental Protection Agency is the competent authority for the purposes of Regulation 1005/2009.

(2) The Agency shall exercise general supervision over the functions and actions of competent bodies to whom responsibilities are assigned by Regulation 6(1), and provide guidance or advice to such bodies, where necessary.

(3) The Agency shall promote the proper use, recovery, recycling, reclamation and destruction of controlled substances, and the use of alternatives to controlled substances.

(4) The Agency and the Revenue Commissioners shall liaise together when an import licence has been issued in accordance with Article 15(3) of Regulation 1005/2009.

(5) The Agency and the Revenue Commissioners shall liaise together when an export licence has been issued in accordance with Article 17(4) of Regulation 1005/2009.

(6) The Agency shall forward to the Revenue Commissioners a copy of each relevant report which it receives pursuant to Article 27 of Regulation 1005/2009.

(7) The Agency shall carry out, or cause to be carried out, investigations requested by the Commission under Article 28(1) of Regulation 1005/2009.

(8) The Agency shall carry out, or cause to be carried out, inspections using a risk-based approach, of imports and exports of controlled substances and products and equipment relying on those substances, in accordance with Article 28(1) of Regulation 1005/2009.

(9) The Agency, following consultation with stakeholders and the competent bodies designated under Regulation 6(1)–

(a) shall provide guidance on compliance with these Regulations and Regulation 1005/2009,

(b) shall provide guidance on the environmentally sound management of waste controlled substances, and

(c) may provide guidance on any administrative matter for the purposes of these Regulations.

Competent Bodies

6. (1) Each of the following is a competent body for the purposes of these Regulations:—

- (a) for requests, under Article 12(3) of Regulation 1005/2009, for emergency use of methyl bromide to deal with unexpected outbreaks of particular pests or diseases, the Minister for Agriculture, Fisheries and Food;
- (b) for controlled substances on ships or other sea-going vessels, the Minister for Transport, Tourism and Sport; and
- (c) for import or export of controlled substances, the Revenue Commissioners.

(2) Competent bodies shall support the Agency:

- (a) in promoting the proper use, recovery, recycling, reclamation and destruction of controlled substances, and the use of alternatives to controlled substances; and
- (b) in carrying out investigations and inspections on imports and exports of controlled substances as well as products and equipment relying on those substances.

(3) The functions of a competent body for the purposes of this Regulation shall be exercised without prejudice to the requirements of any other legal code appropriate to its responsibilities.

User Responsibility

7. (1) Producers, undertakings and any other person whose business involves the use of controlled substances, or the marketing, maintenance or servicing of products or equipment which contain such substances, shall:-

- (a) comply with the provisions of these Regulations;
- (b) take all precautionary measures practicable to prevent and minimise leakage of controlled substances;
- (c) ensure that persons in their employment who require a qualification for the purposes of Regulation 9(2) shall hold an appropriate qualification prior to carrying out or supervising any work in respect of which the qualification is required;
- (d) ensure that, where controlled substances, and products and equipment which contain or contained such substances, are waste, such waste is managed in accordance with the requirements of the Waste Management Act 1996 (no.10 of 1996);
- (e) keep appropriate records for the purpose of demonstrating compliance with these Regulations;
- (f) provide such records, in such format and at such frequency as may be determined by the Agency, pursuant to Article 23(3) of Regulation 1005/2009;

- (g) provide such records, in such format and at such frequency as may be determined by the Agency, to assist the Agency in preparing reports required under Article 26 of Regulation 1005/2009; and
 - (h) comply with guidance provided by the Agency under Regulation 5(9).
- (2) (a) A person who owns or otherwise has responsibility for fixed equipment with a refrigerating fluid charge of more than 3 kilograms shall:-
- (i) have such equipment checked for leakages at the frequencies set out in Article 23(2) of Regulation 1005/2009;
 - (ii) maintain appropriate records of such checks; and
 - (iii) comply with guidance provided by the Agency under Regulation 5(9).
- (b) Leakage checks for the purposes of paragraph (a) shall be carried out by a person qualified in accordance with Regulation 9(2).

Waste Management

8. (1) Where controlled substances arise as waste, they must be managed in accordance with the relevant waste legislation and the requirements of these Regulations.

- (2) Holders of waste controlled substances shall:-
- (a) comply with any guidance as may be provided by the Agency under Regulation 5(9) for the purpose of ensuring environmentally sound management of waste controlled substances, and
 - (b) keep records of movements of waste controlled substances and provide reports to the Agency in such format and at such frequency as may be determined by the Agency.

Qualified Person

9. (1) (a) A person whose business or employment involves leakage control, recovery, recycling, reclamation or destruction of controlled substances, shall hold a qualification in accordance with Regulation 9(2) or be supervised by a person with such a qualification.
- (b) For the purpose of paragraph (a):-
- (i) relevant business and employment includes the production or the servicing, of products or equipment containing controlled substances; and
 - (ii) leakage control shall be construed as including the checking of products or equipment which contain controlled substances, for the purpose of preventing and minimising leakage of such substances.

- (2) (a) For persons whose business or employment involves the installation, servicing, maintenance, dismantling or disposal of refrigeration, air-conditioning and heat pump equipment in which controlled substances are used, FETAC Specific Purpose Certificate Handling Fgas Refrigerants Code 5S0108 or equivalent;
- (b) For persons whose business or employment involves the installation, servicing, maintenance, dismantling or disposal of fire protection systems and fire extinguishers, in which controlled substances are used, the FETAC Specific Purpose Certificate Handling Fgas Fire Extinguishants Award Code 5S0110 or equivalent; and
- (c) For persons whose business or employment involves handling methyl bromide in accordance with Regulation 6(1)(a), the British Pest Control Association Certificate of Proficiency for Fumigation Operators in a relevant specialist module or relevant specialist modules, or equivalent.
- (3) A decision by the Agency on any issue arising in relation to an equivalent qualification shall be final.
- (4) For the purposes of this Regulation, any reference to employment shall be construed as including self-employment.

Reporting

10. (1) The Minister shall, following consultation with the Agency and the competent bodies, submit to the Commission the annual reports for each calendar year, in electronic format, as required under Article 26(1) of Regulation 1005/2009.

(2) Each competent body shall, as appropriate, maintain records and provide the Agency with information required for the purposes of Regulation 10(1).

(3) Undertakings, including producers, importers and exporters, and those involved in destruction and use of controlled substances, shall report to the Commission in accordance with Article 27 of Regulation 1005/2009, providing a copy of the report to the Agency.

(4) Producers, undertakings and any other person whose business involves the use of controlled substances shall provide to any competent body or to the Agency any information required for the purposes of Regulation 10(1), or such other information as may reasonably be sought by a competent body or the Agency.

Savings

11. A person shall not be entitled solely by reason of compliance with these Regulations to—

- (a) produce, import, export, operate, recover, replace, destroy, recycle, reclaim, use, handle, supply, place on the market or distribute a controlled substance, or

- (b) install, service, maintain, check for leakage, repair, dismantle, destroy or dispose of products or equipment containing a controlled substance.

Offences

12. Any person or body who contravenes or fails to comply with a provision of these Regulations shall be guilty of an offence under the Act of 1992.

Amendment

13. The Environmental Protection Agency Act 1992 (Fluorinated Greenhouse Gas) Regulations 2011 (S.I. No. 278 of 2011) are amended by substituting for Regulation 1 the following:

“1. These Regulations may be cited as the Environmental Protection Agency Act 1992 (Fluorinated Greenhouse Gas) Regulations 2011.”.

Revocation

14. The Control of Substances that Deplete the Ozone Layer Regulations 2006 (S.I. No. 281 of 2006) are revoked.



Given under the Official Seal of the Minister for the Environment,
Community and Local Government.
7 September 2011.

PHIL HOGAN,
Minister for the Environment, Community and Local
Government.

EXPLANATORY NOTE

(This note is not part of the Regulations and does not purport to be a legal interpretation)

These Regulations make provisions necessary for the purposes of full and effective implementation in Ireland of Regulation (EC) No. 1005/2009 on substances that deplete the ozone layer. The main provisions of the Regulations are:

Regulation 5 — designation of the Environmental Protection Agency as competent authority for the purposes of Regulation (EC) No. 1005/2009;

Regulation 6 — designation of a number of competent bodies to administer specific provisions of Regulation (EC) No. 1005/2009 in Ireland. The competent body functions assigned to the Minister for Transport, Tourism and Sport will be administered by the Maritime Safety Directorate;

Regulations 7 and 8 — various requirements to be met by persons whose business involves the use of controlled substances, or the marketing, maintenance or servicing of products or equipment which contain controlled substances. The relevant waste legislation referred to in Regulation 8(1) includes in particular, but is not limited to, the following:

- Waste Management (Collection Permit) Regulations 2007 (S.I. No 820 of 2007)
- Waste Management (Facility Permit and Registration) Regulations 2007 (S.I. No. 821 of 2007);

Regulation 9 — various qualification requirements for persons whose business or employment involves—

- leakage control, recovery, recycling, reclamation or destruction of controlled substances;
- installation, servicing, maintenance, dismantling or disposal of refrigeration, air-conditioning and heat pump equipment in which controlled substances are used;
- installation, servicing, maintenance, dismantling or disposal of fire protection systems and fire extinguishers, in which controlled substances are used; and
- fumigation using methyl bromide; and

Regulation 10 — various reporting requirements, including requirements for persons whose business involves the use of controlled substances.

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