

## STATUTORY INSTRUMENTS

S.I. No. 281 of 2006

Control of Substances that Deplete the Ozone Layer Regulations 2006

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## **S.I. No. 281 of 2006**

### **Control of Substances that Deplete the Ozone Layer Regulations 2006**

The Minister for the Environment, Heritage and Local Government, in exercise of the powers conferred on him by section 3 of the European Communities Act 1972 (No. 27 of 1972), and by sections 6 and 53 of the Environmental Protection Agency Act 1992 (No. 7 of 1992), as amended by Part 2 of the Protection of the Environment Act 2003 (No. 27 of 2003), for the purpose of giving effect to Regulation (EC) No 2037/2000 <sup>(1)</sup> of the European Parliament and of the Council of 29<sup>th</sup> June 2000 on substances that deplete the ozone layer, hereby makes the following Regulations: -

#### **Citation**

1. These Regulations may be cited as the Control of Substances that Deplete the Ozone Layer Regulations 2006.

#### **Entry into Force**

2. These Regulations shall come into operation on the 1<sup>st</sup> day of June 2006.

#### **Interpretation**

- 3 (1) In these Regulations, unless the context otherwise requires:-

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

“the 1996 Act” means the Waste Management Act 1996 (No, 10 of 1996), as amended by the Waste Management (Amendment) Act 2001 (No. 36 of 2001), Part 3 of the Protection of the Environment Act 2003 (No. 27 of 2003) and the Waste Management (Electrical and Electronic Equipment) Regulations 2005 (No. 290 of 2005);

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

“the Commission” means the Commission of the European Communities;

“controlled substances” means those substances falling within the scope of the Regulation 2037/2000;

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

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

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

“person” means any natural or legal person;

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<sup>1</sup> OJ L 244/6 of 29.9.2000

“preshipment” has the meaning given to it, for the purposes of the 1987 Montreal Protocol on Substances that Deplete the Ozone Layer, by decisions adopted by the Parties to the said Montreal Protocol;

“quarantine” has the meaning given to it, for the purposes of the 1987 Montreal Protocol on Substances that Deplete the Ozone Layer, by decisions adopted by the Parties to the said Montreal Protocol;

“Regulation 2037/2000” means Regulation (EC) 2037/2000 <sup>(2)</sup> of the European Parliament and of the Council of 29<sup>th</sup> June 2000 on substances that deplete the ozone layer, as amended by Council Regulations (EC) No. 2038/2000 <sup>(3)</sup>, 2039/2000 <sup>(4)</sup> and 1804/2003 <sup>(5)</sup> and Commission Decisions 2003/160/EC <sup>(6)</sup> and 2004/232/EC <sup>(7)</sup>.

(2) In these Regulations:-

- (a) a reference to an article or sub-article which is not otherwise identified is a reference to an article or sub-article of these Regulations;
- (b) a reference to a schedule which is not otherwise identified is a reference to a schedule of these Regulations; and
- (c) a letter, word, phrase or symbol which has been assigned a meaning by Regulation 2037/2000, or is used in the Regulation, has that meaning where the context requires except where otherwise indicated.

#### **Objective and Scope**

- 4. (1) These Regulations make provisions necessary for implementation of Regulation 2037/2000 in Ireland.
- (2) The scope of these Regulations shall be that stated in Article 1 of Regulation 2037/2000.

#### **Prohibition of certain goods**

- 5. 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, 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**

- 6. (1) The Environmental Protection Agency shall be the competent authority for the purposes of Regulation 2037/2000.
- (2) The Agency shall exercise general supervision over the functions and actions of competent bodies to whom responsibilities are assigned by

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<sup>2</sup> OJ L 244/6 of 29.9.2000

<sup>3</sup> OJ L 244 of 29.9.2000

<sup>4</sup> OJ L 244 of 29.9.2000

<sup>5</sup> OJ L 265 of 16.10.2003

<sup>6</sup> OJ L 65 of 8.3.2003

<sup>7</sup> OJ L 71 10.3.2004

articles 7(1)(b) and 7(1)(d), 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 shall forward a copy of each licence which it receives pursuant to Article 6(1) of Regulation 2037/2000 to the Revenue Commissioners.
- (5) The Agency shall forward a copy of each export authorisation which it receives pursuant to Article 12(1) of Regulation 2037/2000 to the Revenue Commissioners.
- (6) The Agency shall forward a copy of each report which it receives pursuant to Articles 19(1) and 19(3) of Regulation 2037/2000 to the Revenue Commissioners.
- (7) The Agency shall carry out, or cause to be carried out, investigations requested by the Commission under Article 20(3) of Regulation 2037/2000.
- (8) The Agency shall carry out, or cause to be carried out, random checks on imports of controlled substances in accordance with Article 20(3) of Regulation 2037/2000, and communicate the schedules and results of those checks to the Commission.
- (9) The Agency, following consultation with the competent bodies designated under articles 7(1)(b), 7(1)(d) and 7(1)(e) –
  - (a) shall provide guidance on compliance with these Regulations and Regulation 2037/2000, and
  - (b) may provide guidance on any administrative matter for the purposes of these Regulations or Regulation 2037/2000.

#### **Competent Bodies**

7. (1) Each of the following shall be a competent body for the purposes of these Regulations: -
  - (a) for proposals under Article 3(2)(ii) of Regulation 2037/2000 on critical uses for which the production, importation and use of methyl bromide may be permitted, the Agency;
  - (b) for authorisation in respect of a use or an intended use of methyl bromide for:-
    - (i) quarantine, the Minister for Agriculture and Food;
    - (ii) preshipment:-
      - (A) where the use relates to a phytosanitary matter which requires official control, the Minister for Agriculture and Food; and
      - (B) other uses, the Agency.

- (c) for requests, under Article 3(2)(ii) of Regulation 2037/2000, for emergency use of methyl bromide to deal with an unexpected outbreaks of particular pests or diseases, the Minister for Agriculture and Food;
  - (d) for controlled substances on ships or other sea-going vessels, the Minister for Transport; and
  - (e) for import or export of controlled substances, the Revenue Commissioners.
- (2) The Revenue Commissioners shall submit to the Commission stamped used licenced documents required under Article 19(2) of Regulation 2037/2000.
- (3) 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 random checks on imports of controlled substances.
- (4) 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**

8. (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 and Regulation 2037/2000;
  - (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 article 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 1996 Act;
  - (e) keep appropriate records for the purpose of demonstrating compliance with these Regulations and Regulation 2037/2000; and
  - (f) comply with guidance provided by the Agency under article 6(9).
- (2) (a) A person who owns or otherwise has responsibility for fixed equipment with a refrigerating fluid charge of more than 3 kilogrammes shall:-

- (i) have such equipment checked annually for leakages and maintain appropriate records of such checks, and
  - (ii) comply with guidance provided by the Agency under article 6(9).
- (b) Leakage checks for the purposes of paragraph (a) shall be carried out by a person qualified in accordance with article 9(2).

#### **Qualified Person**

9. (1) (a) A person whose business or employment involves leakage control, recovery, recycling, reclamation or destruction of controlled substances shall, not later than 31 December 2006 hold a qualification in accordance with sub-article (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, the City & Guilds Certificate in Handling Refrigerants Scheme 2078 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 British Fire Protection Systems Association Competence Certificate Course Class I or equivalent;
- (c) For persons whose business or employment involves fumigation using methyl bromide, 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 article, any reference to employment shall be construed as including self-employment.

#### **Reporting**

10. (1) The Agency shall, following consultation with the competent bodies and the Minister, submit to the Commission the annual reports required under Articles 4(2)(iii), 4(4)(iv), 5(3), 16(6) and 20(3) of Regulation 2037/2000.
- (2) Each competent body shall, as appropriate, maintain records and provide the Agency with information required for the purposes of sub-article 1.

- (3) 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 sub-article (1), or such other information as may reasonably be sought by a competent body or the Agency.

### **Savings**

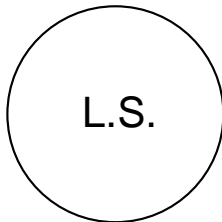
11. A person shall not be entitled solely by reason of compliance with these Regulations to –

- (a) produce, import, export, place on the market, recover, recycle, reclaim or use a controlled substance, or
- (b) install, service, maintain, dismantle or dispose of products or equipment containing a controlled substance.

### **Penalties**

12. (1) A person who contravenes or fails to comply with a provision of these Regulations or Regulation 2037/2000 shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding €3,000 or imprisonment for a term not exceeding twelve months, or to both such fine and such imprisonment.

- (2) An offence arising from contravention of a provision of these Regulations may be prosecuted summarily by, as appropriate, the Agency or a competent body.



Given under the Official Seal of the  
Minister for the Environment, Heritage  
and Local Government this 31<sup>st</sup> day of  
May 2006.

DICK ROCHE

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Dick Roche, T.D.,  
Minister for the Environment, Heritage  
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. 2037/2000 on substances that deplete the ozone layer. The main provisions of the Regulations are:

- article 6 – designation of the Environmental Protection Agency as competent authority for the purposes of Regulation 2037/2000;
- article 7 – designation of a number of competent bodies to administer specific provisions of Regulation 2037/2000 in Ireland;
- article 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;
- article 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
- article 10 – various reporting requirements, including requirements for persons whose business involves the use of controlled substances;

The competent body functions assigned to the Minister for Transport under Article 7 will be administered by the Maritime Safety Directorate.

Under article 12, it is an offence to contravene or to fail to comply with the provisions of these Regulations. A person found guilty of an offence shall be liable to a fine of up to €3,000 or imprisonment for a term of up to one year, or both.