

2009 No. 216

ENVIRONMENTAL PROTECTION

**The Ozone-Depleting Substances (Qualifications) Regulations
2009**

<i>Made</i>	- - - -	<i>4th February 2009</i>
<i>Laid before Parliament</i>		<i>11th February 2009</i>
<i>Coming into force</i>	- -	<i>9th March 2009</i>

The Secretary of State is a Minister designated(a) for the purposes of section 2(2) of the European Communities Act 1972(b) in relation to the environment, and makes these Regulations in exercise of the powers conferred by that section.

Citation, commencement and extent

1. These Regulations—

- (a) may be cited as the Ozone-Depleting Substances (Qualifications) Regulations 2009;
- (b) come into force on 9th March 2009; and
- (c) do not extend to Northern Ireland.

Interpretation

2.—(1) In these Regulations—

“authorised person” means a person authorised under regulation 7;

“competent” has the meaning given in regulation 3;

“course of training” includes the training of an employee while that employee is engaged in work for which the employee is employed;

“employed” means employed under a contract of employment and “employee” and “employer” are 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 the employees of that employer 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 or minimising the leakage of methyl bromide from fumigation installations and operations in which methyl bromide is used.

(a) S.I. 2008/301. The power of the Secretary of State, as a Minister designated in relation to the environment, to make regulations which extend to Scotland remains exercisable by virtue of section 57(1) of the Scotland Act 1998 (c. 46).
(b) 1972 c. 68.

(2) Expressions used in these Regulations and in Regulation (EC) No 2037/2000 of the European Parliament and of the Council on substances that deplete the ozone layer^(a) have the same meaning in these Regulations as they have in that 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 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^(b); 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 or minimising the leakage of controlled substances other than work with methyl bromide.

Qualification and supervision

5.—(1) Subject to paragraph (5), no person may carry out any relevant work unless that person is competent to do so.

(2) Subject to paragraph (6), no person may carry out work with methyl bromide unless that person 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) A person who is not competent to carry out relevant work may carry out such work if the person 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 the person 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

(a) OJ No L 244, 29.9.00, p 1; last amended by Commission Regulation (EC) No 473/2008 (OJ No L 140, 30.5.08, p 9).

(b) Details can be obtained from the British Pest Control Association, 1 Gleneagles House, Vernon Gate, Derby DE1 1UP; telephone number: 0870 6092687; email: enquiry@bpca.org.uk; website: www.bpca.org.uk.

- (ii) completing any of the modules listed in Schedule 2; or
 - (b) if the person has obtained that Certificate of Proficiency, with a view to completing any of the modules listed in Schedule 2.
- (7) It is an offence to fail to comply with paragraph (1), (2), (3) or (4).

Training

6.—(1) A training employer must ensure that the course of training which the training employer 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;
- (b) the training provided;
- (c) the date of the 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) It is an offence for the training employer to fail 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.

Enforcement and authorised persons

7.—(1) These Regulations are enforced by the Agency, the local authority or the port health authority.

(2) The Agency, the local authority or the port health authority may authorise in writing such persons as they consider appropriate to act for the purpose of enforcing these Regulations.

(3) An authorisation under section 108 of the Environment Act 1995^(a) (powers of enforcing authorities and persons authorised by them) is an authorisation for the purposes of these Regulations.

(4) In relation to cases of a particular description or a particular case, the Secretary of State as regards England, the Welsh Ministers as regards Wales, and the Scottish Ministers as regards Scotland, may direct that the duty in paragraph (1) imposed on the Agency, the local authority or the port health authority is to be discharged by the Secretary of State or them, as the case may be, and not by the Agency, the local authority or the port health authority.

(5) In this regulation—

“the Agency” means—

- (a) as regards England and Wales, the Environment Agency; and

(a) 1995 c. 25.

(b) as regards Scotland, the Scottish Environment Protection Agency;

“the local authority” means—

(a) in relation to England, a county council, a district council, a London borough council, the Common Council of the City of London or the Council of the Isles of Scilly;

(b) in relation to Wales—

(i) a county council; or

(ii) a county borough council;

(c) in relation to Scotland, a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994(a);

“the port health authority” means—

(a) in relation to the London port health district (within the meaning given by section 7(1) of the Public Health (Control of Disease) Act 1984(b)), the Common Council of the City of London; and

(b) in relation to any port health district constituted by order under section 2(3) of that Act, the port health authority for that district constituted by order under section 2(4) of that Act.

Powers of an authorised person

8.—(1) An authorised person may, on production (if so required) of the authority of that authorised person, exercise any of the powers specified in paragraph (2) for the purpose of enforcing these Regulations.

(2) The powers are—

(a) at any reasonable time to enter premises, other than premises used wholly or mainly for residential purposes, which the authorised person has reason to believe it is necessary for the authorised person to enter;

(b) on entering any premises by virtue of sub-paragraph (a), to take with the authorised person any other person whose presence appears to the authorised person to be required in connection with the exercise by the authorised person of any power under this regulation, including, if the authorised person has reasonable cause to apprehend any serious obstruction in the execution of the duty of the authorised officer, a constable;

(c) to carry out such inquiries and to make such examination as may be necessary;

(d) to require any person whom the authorised person 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 the answers of that person;

(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 the authorised person 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 the authorised person 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 the authorised person 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.

(a) 1994 c. 39.

(b) 1984 c. 22.

(4) Nothing in this regulation is taken to compel the production by any person of a document of which that person 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

9. A person is guilty of an offence if the person—

- (a) intentionally prevents another person from—
 - (i) appearing before an authorised person under regulation 8(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 the powers of that authorised person;
- (c) furnishes to an authorised person any information which the person 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

10.—(1) If an offence 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 the part of the officer,

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 the functions of management of that member as if the member were a director of the body.

(3) If an offence 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 the part of that partner,

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

(4) For the purpose of proceedings for an offence alleged to have been committed by a partnership, section 70 of the Criminal Procedure (Scotland) Act 1995^(a) applies as it applies in relation to a body corporate.

(5) Subject to paragraph (8), proceedings for an offence alleged to have been committed by an unincorporated association must be brought in the name of the association and not in the name of any of its members.

(6) For the purpose of such proceedings—

- (a) rules of court relating to the service of documents have effect as if the association were a body corporate; and
- (b) the following provisions apply as they apply in relation to a body corporate—

(a) 1995 c. 46. Section 70 was amended by section 28 of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (2007 asp 6).

- (i) section 33 of the Criminal Justice Act 1925(a) and Schedule 3 to the Magistrates' Courts Act 1980(b);
- (ii) section 70 of the Criminal Procedure (Scotland) Act 1995; and
- (iii) section 18 of the Criminal Justice Act (Northern Ireland) 1945(c) and Schedule 4 to the Magistrates' Courts (Northern Ireland) Order 1981(d).

(7) A fine imposed on an unincorporated association on its conviction for an offence must be paid out of the funds of the association.

(8) If an offence 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.

(9) In this regulation—

- (a) “offence” means an offence under these Regulations;
- (b) “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
- (c) “partner” includes a person purporting to act as a partner.

Penalties

11. 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.

Revocations

12. The Ozone Depleting Substances (Qualifications) Regulations 2006(e) and the Ozone Depleting Substances (Qualifications) (Amendment) Regulations 2008(f) are revoked.

Phil Hunt

Minister of State

4th February 2009

Department for Environment, Food and Rural Affairs

-
- (a) 1925 c. 86. Subsections (1) and (2) of section 33 were repealed by the Magistrates' Courts Act 1952 (c. 55), section 132 and Schedule 6; subsection (3) was amended by the Courts Act 1971 (c. 23), section 56(1) and Schedule 8, part II, paragraph 19; subsection (4) was amended by the Courts Act 2003 (c. 39), section 109(1) and (3), Schedule 8, paragraph 71 and Schedule 10, and by the Magistrates' Courts Act 1980 (c. 43), section 154 and Schedule 7, paragraph 5; subsection (5) was repealed by the Magistrates' Court Act 1952, section 132 and Schedule 6.
 - (b) 1980 c. 43. Sub-paragraph 2(a) was amended by the Criminal Procedure and Investigations Act 1996 (c. 25), section 47, Schedule 1, paragraph 13, and was repealed by the Criminal Justice Act 2003 (c. 44), sections 41 and 332, Schedule 3, part 2, paragraph 51, sub-paragraphs (1), (13)(a), and Schedule 37, part 4 (with effect from a date to be appointed); paragraph 5 was repealed by the Criminal Justice Act 1991 (c. 53), sections 25(2) and 101(2) and Schedule 13; paragraph 6 was amended by the Criminal Justice Act 2003, section 41, Schedule 3, part 2, paragraph 51, sub-paragraphs (1) and (13)(b) (with effect from a date to be appointed).
 - (c) 1945 c. 15 (N.I.).
 - (d) S.I. 1981/1675 (N.I. 26).
 - (e) S.I. 2006/1510, amended by S.I. 2008/97.
 - (f) S.I. 2008/97.

SCHEDULE 1

Regulations 3(a) and 6(5)

Table of Minimum Qualifications

Column 1 Tasks	Column 2 Equipment	Column 3 Minimum Qualification
Servicing and maintenance of equipment.	<p>Refrigeration, air conditioning and heat pump equipment which is stationary at all times when in operation.</p> <p>Commercial and domestic refrigerators and freezers which are stationary at all times when in operation.</p> <p>Portable refrigeration, air conditioning and heat pump equipment.</p>	<p>(a) City & Guilds Certificate in Handling Refrigerants Scheme 2078(a).</p> <p>(b) Construction Industry Training Board Safe Handling of Refrigerants (J01)(b).</p> <p>(c) City & Guilds Level 2 Award in F Gas and ODS Regulations Scheme 2079-11: Category I or 2079-12: Category II.</p> <p>(d) Construction Industry Training Board Safe Handling of Refrigerants J11: Category I or J12: Category II.</p>
Dismantling of equipment.	<p>Refrigeration, air conditioning and heat pump equipment—</p> <p>(a) which is stationary at all times when in operation; and</p> <p>(b) which can only be dismantled at the place at which the equipment is used.</p>	<p>(a) City & Guilds Certificate in Handling Refrigerants Scheme 2078.</p> <p>(b) Construction Industry Training Board Safe Handling of Refrigerants (J01).</p> <p>(c) City & Guilds Level 2 Award in F Gas and ODS Regulations Scheme 2079-11: Category I, 2079-12: Category II or 2079-13: Category III.</p> <p>(d) Construction Industry Training Board Safe Handling of Refrigerants J11: Category I, J12: Category II or J13: Category III.</p>
Decommissioning of equipment.	<p>Fire protection systems and fire extinguishers.</p>	<p>(a) British Fire Protection Systems Association Competence Certificate Course Class I.</p> <p>(b) Fire Industry Competence Certificate Course Class 1(c).</p>

-
- (a) Details can be obtained from City & Guilds, 1 Giltspur Street, London, EC1A 9DD; telephone number: 020 7294 2800; email: automotiver@cityandguilds.com; website: www.cityandguilds.com.
- (b) Details can be obtained from CITB, Bircham Newton, Kings Lynn, Norfolk PE31 6RH; telephone number: 01485 577577; email: bes.enquiry@cskills.org; website: www.cskills.org.
- (c) Details can be obtained from Fire Industry Association, Thames House, 29 Thames Street, Kingston Upon Thames, Surrey, KT1 1PH; telephone number: 020 8549 5855; email: info@fia.uk.com; website: www.fia.uk.com.

SCHEDULE 2

Regulations 3(c) and 5(6)

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.

Module 6: Aircraft.

Module 7: Bubble.

Module 8: Chambers and permanently sited containers.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations revoke and replace, with amendments, the Ozone Depleting Substances (Qualifications) Regulations 2006 (S.I. 2006/1510), as amended by the Ozone Depleting Substances (Qualifications) (Amendment) Regulations 2008 (S.I. 2008/97). The main changes are to extend the range of bodies responsible for enforcing the Regulations to include local authorities and port health authorities, and to amend the list of qualifications contained in Schedule 1.

These Regulations, which extend to England and Wales and Scotland, continue to 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 (OJ No L 244, 29.9.00, p 1).

These Regulations 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 that person 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. Provisions about training are contained in regulation 6.

Regulations 7 and 8 deal with the enforcement of these Regulations by authorised persons. Regulations 9 to 11 contain provisions relating to offences and penalties, and regulation 12 contains revocations.

A full regulatory impact assessment of the effect of the Ozone Depleting Substances (Qualifications) Regulations 2006 on the costs of business was prepared at the time those Regulations were made and is still considered to be accurate. No impact assessment has been produced for this instrument as no new impact on the costs of business is foreseen. Copies of the 2006 assessment can be obtained from the Department for Environment, Food and Rural Affairs, Atmospheric Quality and Industrial Pollution, Area 3F Ergon House c/o Nobel House, 17 Smith Square, London, SW1P 3JR. A copy of that assessment has been placed in the library of each House of Parliament.

© Crown copyright 2009

Printed and published in the UK by The Stationery Office Limited under the authority and superintendence of Carol Tullo, Controller of Her Majesty's Stationery Office and Queen's Printer of Acts of Parliament.

STATUTORY INSTRUMENTS

2009 No. 216

ENVIRONMENTAL PROTECTION

The Ozone-Depleting Substances (Qualifications) Regulations
2009

£5.00