

Subsidiary Legislation made under s.18.

Ozone Depleting Substances (Qualifications) Regulations 2014

LN.2014/041

Commencement (LN.2014/089)

1.6.2014

Amending
enactments

Relevant current
provisions

Commencement
date

LN. 2014/258 rr. 2(1), (2), 4(c)-(e), 6A, Sch.

1.1.2015

Transposing:

Regulation (EU) No 517/2014

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**Ozone Depleting Substances (Qualifications) Regulations
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In exercise of the powers conferred upon it by section 18 of the Environment Act 2005, the Government has made the following Regulations—

Title and Commencement.

1. These Regulations may be cited as the Ozone Depleting Substances (Qualifications) Regulations 2014 and comes into operation on the day appointed by the Government by notice in the Gazette.

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;

“EEA State” means a State party to the Agreement on the European Economic Area;

“employed” means employed under a contract of employment and “employee” and “employer” are construed accordingly;

“F-Gas Regulation” means Regulation (EU) No 517/2014 of the European Parliament and of the Council of 16 April 2014 on Fluorinated Greenhouse Gases and Repealing Regulation (EC) No 842/2006, as the same may be amended from time to time;

“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;

“the Minister” means the Minister with responsibility for the Environment;

“Ozone Regulation” means Regulation (EC) No 1005/2009 of the European Parliament and of the Council on substances that deplete the ozone layer, as the same may be amended from time to time;

“relevant work” has the meaning given in regulation 4; and

“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.

(2) Unless the context otherwise requires expressions used in these Regulations and in the F-Gas Regulation or the Ozone Regulation have the same meaning in these Regulations as they have in those regulations.

Meaning of “competent”.

3.(1) 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 the Schedule 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 as set out by the Minister by notice in the Gazette.
- (b) a person is competent to carry out any other relevant work to which subregulation (a) does not apply if that person has obtained an in-house qualification in respect of that other relevant work; or
- (c) a person is competent to carry out work with methyl bromide if that person has obtained the minimum qualifications as set out by the Minister by notice in the Gazette.

(2) Such notice in the Gazette shall state the extent to which these Regulations apply.

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;
- (c) installation, servicing, maintenance, repair or decommissioning of the equipment listed in the points (a) to (f) of Article 4(2) of the F-Gas Regulation;

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- (d) leak checks of the equipment referred to in points (a) to (e) of Article 4(2) of the F-Gas Regulation, as provided for in Article 4(1) of that Regulation;
- (e) recovery of fluorinated greenhouse gases as provided for in Article 8(1) of the F-Gas Regulation;

Qualification and supervision.

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

(2) Subject to subregulation (6), no person shall 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 subregulation (1) is complied with.

(4) The employer of a person employed to carry out work with methyl bromide must ensure that subregulation (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 if the person has obtained at least the minimum qualifications as set out by the Minister by notice in the Gazette.

(7) A person commits an offence if he fails to comply with subregulation (1), (2), (3) or (4).

Training.

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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 subregulation (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 subregulation (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 the Schedule 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.

F-Gas Regulations: authorised undertakings.

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6A.(1) The Environmental Agency shall maintain a list of undertakings that carry out the installation, servicing, maintenance, repair or decommissioning of the equipment listed in Article 4(2)(a) to (d) of the F-Gas Regulation.

(2) For the purposes of listing pursuant to subregulation (1), the undertaking must provide the Environmental Agency with—

- (a) details of its employees and the nature of their qualifications, including details of any qualifications obtained in an EEA State;
- (b) such other information as the Environmental Agency may require for the purpose of enforcing the provisions of the F-Gas Regulation.

(3) An undertaking that is not listed in accordance with this regulation may not undertake any of the activities set out in subregulation (1).

(4) The list maintained in accordance with this regulation shall be made publicly available.

Enforcement and authorised persons.

7.(1) These Regulations are enforced by the Environmental Agency.

(2) The Environmental Agency may authorise in writing such persons as they consider appropriate to act for the purpose of enforcing these Regulations.

(3) In relation to—

- (a) cases of a particular description; or
- (b) a particular case,

the Minister may direct that the duty in subregulation (1) imposed on the Environmental Agency is to be discharged by him, and not by the Environmental Agency.

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 subregulation (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 subregulation (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 subregulation (c)–
 - (i) to answer (in the absence of anyone other than someone nominated by that person to be present and anyone whom the authorised 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 subregulation (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 subregulation (2)(d) is admissible in evidence against the person in any proceedings.
- (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 legal

professional privilege on an order for disclosure and inspection in an action in the Magistrates' Court or the Supreme Court of Gibraltar.

Miscellaneous offences.

9. A person commits an offence if he—

- (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 commit an offence and are liable to be proceeded against and punished accordingly.

(2) If the affairs of a body corporate are managed by its members, subregulation (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—

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- (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 commit an offence and are liable to be proceeded against and punished accordingly.

(4) Subject to subregulation (7), 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.

(5) 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–
 - (i) sections 178 and 179 of the Criminal Procedure and Evidence Act 2011; and
 - (ii) section 296 of that same Act.

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

(7) 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 commit an offence and are liable to be proceeded against and punished accordingly.

(8) In this regulation–

- (a) “offence” means an offence under these Regulations;

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- (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 on the standard scale; or
- (b) on conviction on indictment, to a fine.

Repeal.

12. The Ozone Depleting Substances (Qualifications) Regulations 2006 are repealed.

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SCHEDULE

Regulations 3(a) and 6(5)

TABLE OF RELEVANT WORK

Column 1 Tasks	Column 2 Equipment
Installation, servicing, maintenance, repair and leakage checks of equipment.	Refrigeration, air conditioning and heat pump equipment which is stationary at all times when in operation. Commercial and domestic refrigerators and freezers which are stationary at all times when in operation. Portable refrigeration, air conditioning and heat pump equipment.
Decommissioning of equipment.	Refrigeration, air conditioning and heat pump equipment— (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.
Maintenance or decommissioning of equipment.	Fire protection systems and fire extinguishers.