

THIRD SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 4,072 of 10th April, 2014

B. 014/14

ENVIRONMENTAL PROTECTION (CONTROLS ON OZONE- DEPLETING SUBSTANCES) ACT 2014

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Environmental Protection (Controls on Ozone-Depleting Substances)
Act 2014 [B. 014/14]

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GAZETTE**

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BILL

FOR

AN ACT to give effect in the law of Gibraltar to Regulation (EC) No 1005/2009 of the European Parliament and of the Council of 16 September 2009 on substances that deplete the ozone layer as amended by Commission Regulation (EU) No 744/2010 of 18 August 2010 with regard to the critical uses of halons.

ENACTED by the Legislature of Gibraltar.

Title and Commencement.

1. This Act may be cited as the Environmental Protection (Controls on Ozone-Depleting Substances) Act 2014 and comes into operation on the day of publication.

Interpretation.

2.(1) In this Act—

“authorised person” means a person authorised by the Environmental Agency or the Minister under section 8;

“controlled substances” means the substances in Annex 1 of the EU Regulation as amended from time to time;

“enforcement notice” has the meaning given by section 9(1);

“enforcing authority” means a body or person enforcing the EU Regulation under section 7;

“export” and “import” have the meaning given in Article 3 of the EU Regulation;

“the EU Regulation” means Regulation (EC) No 1005/2009 of the European Parliament and of the Council on substances that deplete the ozone layer as amended by Commission Regulation (EU) No 744/2010 of 18 August 2010;

“the Minister” means the Minister with responsibility for the environment; and

“offshore installation” has the meaning given by Schedule 1.

(2) Unless the context otherwise requires—

- (a) expressions used in this Act and in the EU Regulation have the same meaning in this Act as they have in the EU Regulation; and
- (b) any reference in this Act to an Article is to an Article of the EU Regulation.

The competent authority.

3. The Minister shall be the competent authority for the purposes of the EU Regulation.

Offences.

4.(1) Any person who breaches a provision of the EU Regulation set out in Schedule 2 commits an offence.

(2) Failure to comply with any of the following is an offence—

- (a) an enforcement notice;
- (b) a notice under section 11.

(3) It is an offence—

- (a) intentionally to obstruct any person acting in the execution or enforcement of the EU Regulation;

- (b) without reasonable cause, to fail to give to any such person any assistance or information which that person may reasonably require for those purposes;
- (c) to furnish to any such person any information knowing it to be false or misleading; or
- (d) to fail to produce a document or record to any such person when required to do so.

Penalties.

5. A person guilty of an offence under this Act 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.

Offences by bodies corporate.

6. If an offence under this Act committed by a body corporate is proved—

- (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 an officer,

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

(2) In subsection (1) “officer”, in relation to a body corporate means—

- (a) a director, manager, secretary or other similar officer of the body; or
- (b) a person purporting to act in any such capacity.

(3) If the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in

connection with the member's functions of management as it applies to an officer of a body corporate.

Enforcement.

7.(1) The Environmental Agency enforces the EU Regulation.

(2) In relation to—

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

the Minister may direct that the EU Regulation be enforced by him instead.

(3) The Minister enforces the EU Regulation in relation to offshore installations.

Authorisation by the enforcing authority.

8. An enforcing authority may by notice in the Gazette authorise such persons as may be required for the purposes of enforcing the EU Regulation.

Enforcement notices.

9.(1) An enforcement notice is a notice requiring a person to take specified steps to remedy or avert a contravention.

(2) An authorised person who is of the opinion that a person has contravened, is contravening or is likely to contravene a provision of the EU Regulation may serve an enforcement notice on that person.

(3) An enforcement notice must—

- (a) state that the authorised person is of that opinion;
- (b) specify the matters constituting the contravention or the matters making it likely that the contravention will arise, as the case may be;

- (c) specify the steps that must be taken to remedy or avert the contravention;
- (d) specify the period within which those steps must be taken; and
- (e) state—
 - (i) that the person on whom the notice is served has the right of appeal to the magistrate's court; and
 - (ii) the period within which the appeal may be brought.

(4) An authorised person may at any time withdraw an enforcement notice.

(5) A person on whom an enforcement notice is served must comply with it at their own expense.

(6) If an enforcement notice is not complied with, the enforcing authority may arrange for it to be complied with at the expense of the person on whom it was served.

Appeals against enforcement notices.

10.(1) A person who is aggrieved by an enforcement notice may appeal against it.

(2) The right of appeal is to the magistrate's court.

(3) The procedure on an appeal to the magistrate's court is by way of complaint and the Magistrates' Court Act applies to the proceedings.

(4) An appeal may be brought not later than 28 days after the date on which the enforcement notice is served.

(5) An enforcement notice is not suspended pending an appeal unless the court orders otherwise.

(6) On appeal the court may either cancel the notice or confirm it, with or without modification.

Powers of the Minister.

11. The Minister may by notice require a person in possession of a controlled substance, or a product or equipment containing or relying on a controlled substance, that has been produced, placed on the market or imported or is intended to be or is being exported, in contravention of the EU Regulation, to dispose of it or otherwise render it harmless in accordance with the notice.

Power to seize and detain.

12.(1) A customs officer may seize and detain any controlled substance or product or equipment containing or relying on a controlled substance which the customs officer believes is being—

- (a) imported in contravention of Article 15 of the EU Regulation;
or
- (b) exported in contravention of Article 17 of the EU Regulation.

(2) Anything seized and detained under subsection (1)—

- (a) may be detained in the custody of the Collector of Customs until either proceedings are completed or it is decided that that no such proceedings shall be brought; and
- (b) must be dealt with during the period of its detention in such manner as the Collector of Customs may direct.

(3) In this section—

“customs officer” has the meaning as in section 2 of the Imports and Exports Act, 1986; and

“working day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act.

Review.

13.(1) Before the end of each review period, the Minister must—

- (a) carry out a review of this Act;

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- (b) set out the conclusions of the review in a report; and
- (c) publish the report.

(2) The report must in particular—

- (a) set out the objectives intended to be achieved by this Act;
- (b) assess the extent to which the objectives have been achieved;
and
- (c) assess whether the objectives remain appropriate and, if so, the
extent to which they could be achieved in a less burdensome
way.

(3) The first review period is the period of five years beginning with the day on which this Act comes into force.

(4) Each subsequent review period is a period of five years beginning with the date on which the report of the preceding review was published.

Repeal.

14. The Environmental Protection (Controls on Substances that Deplete the Ozone Layer) Act 1997 is repealed.

SCHEDULE 1

Section 2(1)

Meaning of “offshore installation”

1.(1) “Offshore installation” means an installation or structure, other than a ship, used for carrying on an activity in sub-paragraph (2) which is situated in the waters of, or on or under the seabed in, the marine area.

(2) The activities are—

- (a) the exploitation, or the exploration with a view to exploitation, of mineral resources in or under the shore or bed of waters in the marine area;
- (b) the exploration of a place in, under or over such waters with a view to the storage of gas;
- (c) the conversion of a place under the shore or bed of such waters for the purpose of storing gas;
- (d) the storage of gas in, under or over such waters or the recovery of gas so stored;
- (e) the unloading of gas at a place in, under or over such waters;
- (f) the conveyance of things by means of a pipe, or system of pipes, constructed or placed on, in or under the shore or bed of such waters; or
- (g) the provision of accommodation for persons who work on or from an installation which is or has been maintained, or is intended to be established, for the carrying on of an activity in this sub-paragraph.

(3) In sub-paragraph (1) “marine area” means the tidal waters and parts of the sea in or adjacent to Gibraltar up to the seaward limits of the territorial sea.

(4) In sub-paragraph (2)—

- (a) references (in whatever form) to storing gas include storing gas with a view to its permanent disposal; and
- (b) “gas” means—
 - (i) any substance which is gaseous at a temperature of 15oC and a pressure of 101.325 kPa (1013.25 mb); or
 - (ii) carbon dioxide.

SCHEDULE 2

Section 4(1)

Offences for breach of the EU Regulation

Provision of the EU Regulation	Subject matter
Article 4	Production of controlled substances
Article 5(1)	Placing on the market and use of controlled substances
Article 5(2)	Placing on the market of controlled substances in non-refillable containers
Article 6(1)	Placing on the market of products and equipment containing or relying on controlled substances
Article 6(2)	Prohibition and decommissioning of fire protection systems and fire extinguishers containing halons
Article 13(3)	Decommissioning of fire protection systems and fire extinguishers containing halons
Article 15(1)	Imports of controlled substances and products and equipment containing or relying on controlled substances
Article 17(1)	Exports of controlled substances or products and equipment containing or relying on controlled substances
Article 20	Trade with a State party not party to the Montreal Protocol on substances that deplete the ozone layer or a territory not covered by that Protocol
Article 22(1), (2) and (4)	Recovery and destruction, recycling and reclamation of controlled substances
Article 23(1)	Precautionary measures to prevent and minimise leakages and emissions of controlled substances
Article 23(2)	Requirements for specified stationery equipment or systems
Article 23(3)	Record keeping by undertakings
Article 23(5)	Precautionary measures to prevent and minimise leakages and emissions of controlled substances used as feedstock or process agents

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Article 23(6)	Precautionary measures to prevent and minimise leakages and emissions of controlled substances inadvertently produced in the manufacture of other chemicals
Article 24(1)	Production, import, placing on the market, use or export of new substances

EXPLANATORY MEMORANDUM

This Act enforces Regulation (EC) No 1005/2009 of the European Parliament and of the Council on substances that deplete the ozone layer (OJ No L 286, 31.10.2009, p1) as amended by Commission Regulation (EU) No 744/2010 (OJ No L 218, 19.8.2010, p2) (“the EU Regulation”).

The EU Regulation controls the production, placing on the market and use of substances that deplete the ozone layer.

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