

SUBSIDIARY LEGISLATION 549.58**SUBSTANCES DEPLETING THE OZONE LAYER
REGULATIONS**

7th May, 2010

LEGAL NOTICE 280 of 2010.

- 1.** The title of these regulations is the Substances Depleting the Ozone Layer Regulations. Citation.
- 2.** (1) These regulations contain provisions for the application of Regulation (EC) No. 1005/2009 of the European Parliament and of the Council of 16 September 2009, on substances that deplete the ozone layer, (recast) hereinafter referred to as "the EC Regulation". Scope and applicability.
- (2) The provisions of the EC Regulation shall be implemented and enforced under the Act.
- (3) The scope of these regulations is to replace reference to Regulation (EC) No 2037/2000 of the European Parliament and of the Council of 29 June 2000, as amended, on substances that deplete the ozone layer, with reference 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 (recast).
- 3.** For the purposes of these regulations and of the EC Regulation, the following definitions shall apply: Definitions.
- "the competent authority" means the Environment and Resources Authority as prescribed by the Nomination of the Competent Authority Order, and such other body or person as the Minister responsible for the environment may by order in the Gazette prescribe and different bodies or persons may be designated as the competent authority for different provisions and different purposes of these regulations; S.L. 549.19
- "course" means any taught form of instruction approved in writing by the competent authority for the purposes of these regulations;
- "electronic version/copy" means a computerised format of all necessary reporting forms required by these regulations;
- "licence" means any licence issued by the competent authority for the purposes of these regulations under any conditions which may be deemed fit by the competent authority;
- "logbook" refers to:
- (a) a hard bound, consecutively page numbered book containing on the first page, the name, I.D. number and license/permit number of the personnel involved, and any other details as may be approved from time to time by a notice of the competent authority in the Gazette, and

- (b) an electronic copy of the hard bound format in paragraph (a), in a format established by the competent authority;

"permit" means any permit issued by the competent authority for the purposes of these regulations under any conditions which may be deemed fit by the said competent authority;

"personnel involved" includes all producers, importers, shippers, exporters, technicians, any appropriate bodies and users, including retailers and any persons involved in the destruction, recovery, reclamation and recycling of the substances covered by the EC Regulation;

"shipment" means any movement of goods between Malta and the remainder of the European Community, and "shipper" shall be construed accordingly.

Registration of personnel.

4. All personnel involved shall be registered with the competent authority under such conditions as may be determined by the authority.

Qualifications of personnel.

5. (1) All personnel involved shall:

- (a) possess the minimum qualification requirements as defined by the competent authority. These minimum qualification requirements will take the form of a course with a duration and curriculum approved by the competent authority. On successful completion of this course, a licence/permit shall be issued by the competent authority subject to a fee as may be determined from time to time by a notice by the competent authority in the Gazette. The licence shall be valid for ten years from the date of successful completion of the course. Such licence/permit may be reviewed, renewed or terminated at any time by the competent authority. Termination of a licence shall not entail any right for compensation, and
- (b) duly fill out a logbook, stating all amounts of controlled substances recovered, recycled, reclaimed or destroyed during their day to day operations.

Such personnel may also be subject to random audits by officials of the competent authority.

(2) Only physical or legal persons authorized in writing by the competent authority may conduct courses for the purposes of qualifying personnel in terms of this regulation.

(3) All personnel involved may only handle, use or trade in, whether for profit or otherwise, substances falling within the scope of the EC Regulation or in products containing such substances if they are in possession of the minimum qualification requirements as defined in sub-regulation (1).

(4) All physical or legal persons involved in the handling, use, trade, recovery, recycling, reclamation or destruction of substances falling within the scope of the EC Regulation shall:

- (a) be registered with the competent authority under such

conditions as may be determined by the authority from time to time, and

- (b) duly fill out a logbook, stating all amounts of controlled substances recovered, recycled, reclaimed or destroyed during their day to day operations.

Such persons may also be subject to random audits by officials of the competent authority.

6. (1) Should any shipment or export of substances falling within the scope of the EC Regulation to facilities involved in the recovery, recycling, reclamation and destruction of such substances take place, such shipment shall comply with EEC Regulation 259/93 of 1 February 1993 on the supervision and control of shipments of waste within, into and out of the European Community and with the Environment Protection (Control of Transboundary Movement of Toxic and other Substances) Regulations.

Shipments of waste.

S.L. 549.65

(2) These regulations shall be without prejudice to the Waste Regulations, or to measures adopted following regulation 3 of those regulations.

S.L. 549.63

7. (1) Existing fixed equipment with a refrigerating fluid charge of more than three kilograms shall be registered with the competent authority under such conditions as may be determined by the authority within one year from the date of publication of these regulations.

Persons owning equipment.

(2) New fixed equipment with a refrigerating fluid charge of more than three kilograms shall be registered with the competent authority within fifteen days of its sale. The retailer shall supply the information as required by regulation 11(b) for registration purposes.

(3) Any person owning fixed equipment with a refrigerating fluid charge of more than three kilograms shall:

- (a) have this equipment checked for leakages annually, and
- (b) keep a log of all checks in a duly filled out logbook.

8. For the purposes of these regulations, all facilities used for the storage of substances falling within the scope of the EC Regulation shall be registered with the competent authority under such conditions as may be determined by the authority. Such registration may be reviewed, renewed or cancelled at any time by the authority. Cancellation of registration shall not entail any right of compensation.

Facilities for storage.

9. Every year, before the 31st January, each user and shipper of substances falling within the scope of the EC Regulation shall communicate to the competent authority, data as specified below for each controlled substance in respect of the period 1st January to 31st December of the preceding year. The competent authority shall establish the format of this report, as a hard copy and an electronic version, in such manner that -

Users and shippers.

- (a) each shipper shall communicate the following:

- (i) type;
 - (ii) the name and serial number of the shipper;
 - (iii) the date of shipment;
 - (iv) the country of origin;
 - (v) the country of destination;
 - (vi) any quantities of controlled substances shipped into and out of Malta;
 - (vii) the nature of the substances differentiating between virgin, recovered and reclaimed;
 - (viii) any other details as may be required from time to time by the competent authority by notice in the Gazette, and
- (b) each user, including any producer who uses such substances, shall communicate the following:
- (i) type;
 - (ii) the name and serial number of the user;
 - (iii) quantities used;
 - (iv) the nature of the substance, differentiating between virgin, recovered and reclaimed;
 - (v) the nature of the use;
 - (vi) the quantities held in stock;
 - (vii) any quantities recovered recycled, reclaimed or destroyed;
 - (viii) any other details as may be required from time to time by the competent authority by notice in the Gazette.

Refrigeration
technicians.

10. (1) Before the 31st January of each year, refrigeration technicians shall communicate to the competent authority the information requested in regulation 9(b), as a hard copy and an electronic version, together with the following:

- (a) the name of suppliers of substances used by them and falling within the scope of the EC Regulation, and
- (b) the quantity and destination of such substances transferred and, or handed over by whatever means.

(2) Every five years, refrigeration technicians shall send copies of their logbooks to the competent authority for review. These copies shall be signed off by the official person in whose name the logbook was issued as a true copy of the original logbook in their possession.

Retailers.

11. Before the 31st January of each year, retailers handling substances falling within the scope of the EC Regulation or products containing such substances shall send copies of their official logbooks to the competent authority for review. These copies must be signed off by the official person in whose name the logbook was issued as a true copy of the original logbook in their possession. These shall contain the following information:

- (a) for substances falling within the scope of the EC

Regulation:

- (i) the name and serial number of retailer,
 - (ii) the name and serial number of shipper,
 - (iii) the date of purchase from shipper,
 - (iv) the nature of the substance (differentiating between virgin, recovered and reclaimed stock),
 - (v) the quantity,
 - (vi) the date of sale by type and quantity,
 - (vii) the nature of the use,
 - (viii) the name and registration number of the buyer,
 - (ix) any other details as may be required from time to time by the competent authority by notice in the Gazette, and
- (b) for fixed equipment with a refrigerating fluid charge of more than three kg:
- (i) the name and serial number of retailer,
 - (ii) the date of sale,
 - (iii) the charge in Kg,
 - (iv) the nature of the substance,
 - (v) the nature of the equipment,
 - (vi) the place of installation,
 - (vii) the details of the new owner,
 - (viii) the registration reference number of the equipment,
 - (ix) any other details as may be required from time to time by the competent authority by notice in the Gazette.

The retailer shall be responsible for keeping and reporting information related to any sales and, or transfer by whatever means of these substances and, or equipment until the point of sale, when this responsibility will devolve to the new physical or legal persons involved.

12. (1) All owners of fixed equipment with a refrigerating fluid charge of more than three kg, shall before the 31st January of each year, report the following, as a hard copy and an electronic version, for each specifically identified piece of equipment, for the period from 1st January to the 31st December of the previous year:

Equipment with a charge of more than three kg.

- (a) all amounts of leakages detected,
- (b) actions taken to eliminate such leakages,
- (c) the quantity and nature of the substances involved,
- (d) serial number of personnel involved in terms of paragraphs (a) and (b) as well as dates and results of these checks,
- (e) any quantities added and any quantities recovered during servicing and maintenance and final disposal,
- (f) any other details as may be required from time to time

by the competent authority by notice in the Gazette.

(2) Every five years, all owners of fixed equipment with a refrigerating fluid charge of more than three kg shall send copies of their official logbooks to the competent authority for review. These copies shall be signed off by the official person in whose name the logbook was issued as a true copy of the original logbook in their possession.

Entities involved in recovery, recycling, reclamation and destruction of substances.

13. Every year, before the 31st January, all entities involved in the recovery, recycling, reclamation and destruction of controlled substances shall communicate to the competent authority, data as specified below, as a hard copy and an electronic version, for each controlled substance in respect of the period 1 January to 31 December of the preceding year. They shall send copies of their logbooks to the competent authority for review. These copies shall be signed off by the official person in whose name the logbook was issued as a true copy of the original logbook in their possession. The log book must contain:

- (a) the name and serial number of the entity,
- (b) the serial number of the personnel involved in the consignment of controlled substances for recovery, recycling, reclamation and destruction,
- (c) the quantities and nature of controlled substances consigned by each of the personnel involved differentiating between substances consigned for recovery, recycling, reclamation, and destruction,
- (d) details of destination of controlled substances consigned, differentiating between substances consigned for recovery, recycling, reclamation and destruction,
- (e) any remaining stock as at 31st December of each reporting year,
- (f) any other details as may be required from time to time by the competent authority by notice in the Gazette.

Instruction bodies.

14. All physical or legal persons authorized in writing by the competent authority to provide the course for the minimum qualification requirements defined by the authority, as required by regulation 5(2), shall, after the termination of each course cycle, provide, within five working days, as a hard copy and an electronic version, all the information related to the course as may be required by the Authority. This information is to include:

- (a) the name and authorization number of the instruction body running the course,
- (b) the commencement and termination dates of course,
- (c) the names, surnames and I.D. numbers of the successful candidates,
- (d) the nature of employment of the successful candidates,
- (e) the registered business address of the successful candidates,

- (f) any other details as may be required from time to time by the competent authority by notice in the Gazette.

15. (1) Without prejudice to the provisions of article 14 of the Act and of the Environment Protection (Preventive and Remedial Measures) Regulations, the competent authority may, in carrying out the tasks assigned to it by these regulations, request all relevant information from the personnel involved and from undertakings concerned.

Inspection.
S.L. 549.04

(2) The competent authority may carry out any investigations necessary under these regulations, and may also conduct random checks and audits on imports, exports, shipments, storage facilities, users and disposal facilities of substances within the scope of the EC Regulation, as well as on all personnel involved.

(3) Subject to regulations 9 to 13, all shipments, imports and exports shall be subject to random checks by the competent authority. All shippers, importers and exporters shall inform the competent authority about any upcoming shipment, import or export at least fifteen working days in advance of the actual import, export or shipment is carried out. All details shall be submitted according to the requirements of the format established for this purpose by the competent authority.

(4) Containers, including cylinders, filled with substances falling within the scope of the EC Regulation, shall be labelled by officials of the competent authority prior to their release from Customs and the shipper, exporter or importer shall be responsible as stipulated in regulation 9 for keeping and reporting information related to any sales and, or transfer by whatever means of these substances until the point of sale, when this responsibility will devolve to the new physical or legal persons involved.

16. The competent authority may develop as appropriate and ensure the dissemination of guidance notes and documents for the purpose of ensuring the proper implementation of these regulations and of the EC Regulation.

Guidance
documents.

17. A person shall be guilty of an offence under these regulations if such person:

Offences.

- (a) fails to comply with any provision of the EC Regulation or of these regulations, or fails to comply with permit conditions or with any order lawfully given in terms of any provision of these regulations, or
- (b) contravenes any restriction, prohibition or requirement imposed by or under the EC Regulation or these regulations, or
- (c) acts in contravention of any of the provisions of the EC Regulation or of these regulations, or
- (d) conspires or attempts, or aids, or abets, any other person by whatever means, including advertising, counselling or procurement, to contravene the provisions of the EC Regulation or of these regulations, or to fail to comply with any such

provisions, including any order lawfully given in terms of any of the provisions of the EC Regulation or of these regulations, or to contravene any restriction, prohibition or requirement imposed by or under the said regulations.

Penalties.

18. Any person who commits an offence against the EC Regulation or against these regulations shall, on conviction, be liable:

- (a) on a first conviction to a fine (*multa*) of not less than one thousand two hundred euro (€1,200) but not exceeding two thousand three hundred euro (€2,300) and where applicable, the revocation of such person's licence and confiscation of vehicle or equipment used to commit the offence;
- (b) on a second or subsequent conviction, to a fine (*multa*) of not less than two thousand three hundred euro (€2,300), but not exceeding four thousand seven hundred euro (€4,700) or to imprisonment for a term not exceeding two years, or to both such fine and imprisonment and where applicable, the revocation of such person's licence and confiscation of vehicle or equipment used to commit the offence:

Provided that the court shall order any person who has been found guilty of committing an offence against the EC Regulation or against these regulations to pay for the expenses incurred by the competent authority as a result of the said offence, the revocation of the permit issued by the competent authority and the confiscation of the *corpus delicti*:

Provided further that the court may also order any person who commits an offence against these regulations or the EC Regulation to bear all or part of the costs incurred due to any relevant infringement action brought against Malta by the European Commission under the provisions of the EC Regulation or of the Treaty establishing the European Community.

Applicability of
Criminal Code.
Cap. 9.

19. (1) The provisions of articles 23 and 30 of the Criminal Code shall, *mutatis mutandis*, apply to proceedings in respect of offences against the EC Regulation or against these regulations, so however that the disqualification from holding or obtaining a license, permit or authority shall in no case be for less than one year.

Cap. 9.

(2) Notwithstanding the provisions of article 370 of the Criminal Code, proceedings for an offence against the EC Regulation or against these regulations shall be held before the Court of Magistrates (Malta) or the Court of Magistrates (Gozo), as the case may be, and shall be in accordance with the provisions of the Criminal Code regulating the procedure before the said courts as courts of criminal judicature.

Cap. 9.

(3) Notwithstanding the provisions of the Criminal Code, the Attorney General shall always have a right of appeal to the Court of Criminal Appeal from any judgment given by the Court of

Magistrates (Malta) or the Court of Magistrates (Gozo) in respect of proceedings for any offence against the EC Regulation or these regulations.
