

Subsidiary Legislation made under s. 18(c).

**ENVIRONMENT (FLUORINATED GREEN HOUSE  
GASES) REGULATIONS 2011**

**Repealed by LN. 2014/258 as from 1.1.2015**

**(LN. 2011/145)**

*Commencement*      **22.9.2011**

Amending enactments	Relevant current provisions	Commencement date
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**EU Legislation/International Agreements involved:**

Regulation (EC) No 842/2006

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**ARRANGEMENT OF REGULATIONS.**

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**2005-27**

**Repealed**  
**Subsidiary**  
**2011/145**

Environment

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*In exercise of the powers conferred upon it by section 18(c) of the Environment Act 2005, and all other enabling powers, and for the purpose of implementing in Gibraltar Regulation (EC) No 842/2006 of the European Parliament and of the Council of 17 May 2006 on certain fluorinated greenhouse gases, the Government has made the following Regulations—*

**Title and commencement.**

1. These Regulations may be cited as the Environment (Fluorinated Greenhouse Gases) Regulations 2011 and come into operation on the day of publication.

**Interpretation.**

2. In these Regulations—

“BGTW” means British Gibraltar Territorial Waters which is the area of sea, the sea bed and subsoil within the seaward limits of the territorial sea adjacent to Gibraltar under British sovereignty and which, in accordance with the United Nations Convention on the Law of the Sea 1982, currently extends to three nautical miles and to the median line in the Bay of Gibraltar;

“EU Regulation” means Regulation (EC) No 842/2006 of the European Parliament and of the Council of 17 May 2006 on certain fluorinated greenhouse gases, as amended from time to time;

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

“enforcement notice” means a notice served under regulation 12(1);

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

“offshore installation” has the meaning given in subregulation (2);

“operator” means the person who exercises actual power over the technical functioning of the equipment or systems which are referred to in these Regulations;

“premises” includes—

- (a) land;

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- (b) a vehicle or trailer;
- (c) an aircraft;
- (d) a ship; and
- (e) an offshore installation or a part of an offshore installation,

and a reference to entering premises includes a reference to boarding an aircraft, a ship or an offshore installation;

“ship” includes a hovercraft, submersible craft and any other floating craft but not a vessel which permanently rests on or is permanently attached to the seabed;

“stationary application” has the meaning given in subregulation (4).

(2) In these Regulations, “offshore installation” means an installation or structure, other than a ship, which is—

- (a) situated in BGTW ; and
- (b) used in connection with—
  - (i) the exploitation, or the exploration with a view to exploitation, of mineral resources in or under the shore or bed of waters described in paragraph (a);
  - (ii) the storage of gas in or under the shore or bed of waters described in paragraph (a) or the recovery of gas so stored;
  - (iii) 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 waters described in paragraph (a); or
  - (iv) the production of energy from water or wind.

(3) For the purposes of subregulation (2)(b), each of the activities described in that subregulation includes the provision of access to or 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 such an activity.

(4) In these Regulations, “stationary application” means—

- (a) refrigeration equipment and its circuits;
- (b) air conditioning equipment and its circuits;
- (c) heat pump equipment and its circuits; or
- (d) a fire protection system,

which contains a fluorinated greenhouse gas and which is normally not in transit during operation.

(5) Other expressions used but not defined in these Regulations and used in the EU Regulation have the same meaning in these Regulations as they have in the EU Regulation.

### **Leakages.**

3. Where an operator of a stationary application fails to comply with—

- (a) Article 3(1) of the EC Regulation (prevention and repair of leakage); or
- (b) Article 3 (2) of the EC Regulation (checks for leakage), as qualified by Article 3 (4) of the EC Regulation,

that operator commits an offence.

### **Leakage detection systems.**

4.(1) Where a person uses a stationary application, other than an existing fire protection system, which contains 300 kilograms or more of fluorinated greenhouse gases in which there is not installed a leakage detection system, that person commits an offence.

(2) Where an operator of a stationary application, other than a fire protection system, which contains 300 kilograms or more of fluorinated greenhouse gases fails to ensure that a leakage detection system installed in the stationary application is checked in accordance with Article 3 (3) of the EU Regulation, that operator commits an offence.

(3) Where an operator of an existing fire protection system fails to ensure that a leakage detection system is fitted to that fire protection system before, that operator commits an offence.

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(4) Where an operator of a fire protection system which contains 300 kilograms or more of fluorinated greenhouse gases fails to ensure that the leakage detection system fitted to the fire protection system is—

- (a) checked at least once every 12 months to ensure that it functions properly, in accordance with Article 3 (3) of the EC Regulation; or
- (b) inspected as referred to in Article 3 (5) of the EU Regulation,

that operator commits an offence.

(5) In this regulation, “existing fire protection system” means a fire protection system which—

- (a) contains 300 kilograms or more of fluorinated greenhouse gases; and
- (b) was fitted before 4 July 2007.

**Records.**

5. Where an operator of a stationary application containing 3 kilograms or more of fluorinated greenhouse gases fails to comply with Article 3(6) of the EU Regulation (maintenance of certain records), that operator commits an offence.

**Recovery of fluorinated greenhouse gases.**

6.(1) Where an operator of the equipment referred to in subregulation (2) fails to comply with Article 4(1) or 4(4) of the EU Regulation (arrangements for recovery of gas), that operator commits an offence.

(2) The equipment is—

- (a) the cooling circuit of—
  - (i) refrigeration equipment,
  - (ii) air conditioning equipment, or
  - (iii) heat pump equipment;
- (b) equipment containing fluorinated greenhouse gas-based solvents;

- (c) a fire protection system;
- (d) a fire extinguisher; or
- (e) high-voltage switch gear,

which is normally not in transit during operation.

(3) Where a person uses any refillable or non-refillable fluorinated greenhouse gas container but fails to comply with Article 4(2) or 4(4) of the EU Regulation (recovery of gas), that person commits an offence.

(4) Subregulation (5) applies to—

- (a) the operator of any equipment not referred to in subregulation (2), or
- (b) the person who uses any product, other than a gas container, referred to in subregulation (3),

which contains a fluorinated greenhouse gas, other than mobile equipment being used for military operations.

(5) The operator or the person as a user referred to in subregulation (4) must ensure that any fluorinated greenhouse gas is recovered from the equipment or the product in accordance with Article 4 (3) of the EU Regulation.

(6) A person who fails to comply with subregulation (5), commits an offence.

### **Taking delivery of fluorinated greenhouse gases.**

7. A person who—

- (a) carries out an activity referred to in Article 3 or 4 of the EU Regulation; and
- (b) takes delivery of fluorinated greenhouse gases,

commits an offence if an employee of that person employed to carry out work involving fluorinated greenhouse gases is not a qualified person.

### **Reporting requirements and the provision of information.**

8.(1) Where a person who—

- (a) produces fluorinated greenhouse gases in Gibraltar; and
- (b) produces more than one ton of fluorinated greenhouse gases in the European Union each calendar year,

but fails to comply with the requirements of Article 6(1)(a) of the EU Regulation within the time limits set out in Article 6(1) of the EU Regulation, that person commits an offence.

(2) Where a person imports more than one ton of fluorinated greenhouse gases each calendar year from outside the European Union but fails to comply with the requirements of Article 6 (1) (b) within the time limits set out in Article 6(1) of the EU Regulation, that person commits an offence.

(3) Where a person exports more than one ton of fluorinated greenhouse gases outside the European Union each calendar year but fails to comply with the requirements of Article 6(1)(c) of the EU Regulation within the time limits set out in Article 6(1) of the EU Regulation, that person commits an offence.

(4) Where a person referred to in subregulation (1), (2) or (3) communicates to the European Commission a defective report, that person commits an offence.

(5) Where a person referred to in subregulation (1), (2) or (3) fails to send to the authorised person a copy of the annual report at the same time as the person sends the annual report to the European Commission, that person commits an offence.

(6) Where a person fails, within a reasonable time, to provide such information as the authorised person may reasonably request to enable him to acquire emission data for the purposes of Article 6(4) of the EU Regulation, that person commits an offence.

(7) In this regulation—

- (a) “annual report” means the report which the person in question must send to the European Commission in accordance with Article 6 of the EU Regulation; and



- (b) “defective report” means a report under Article 6 of the EU Regulation which is not in the format required under Commission Regulation 1493/2007.

### **Appointment of authorised persons.**

9. The Minister may authorise in writing such persons (“authorised persons”) as he considers appropriate to act for the purpose of enforcing these Regulations.

### **Powers of authorised persons.**

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

(2) The powers of an authorised person 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 paragraph (a), to take with the authorised person—
  - (i) 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 person, a police officer, and
  - (ii) any equipment or materials required for any purpose for which the power of entry is being exercised;
- (c) to make such examination or investigation as may in any circumstances be necessary;
- (d) as regards any premises which the authorised person has power to enter, to direct that those premises or any part of them, or anything in them, must be left undisturbed (whether generally or in particular respects) for so long as is reasonably necessary

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for the purposes of any examination or investigation under paragraph (c);

- (e) to take such measurements and photographs and make such recordings as the authorised person considers necessary for the purpose of any examination or investigation under paragraph (c);
- (f) to take samples of any articles or substances found in or on any premises which the authorised person has power to enter;
- (g) in the case of any article or substance found in or on any premises which the authorised person has power to enter, being an article or substance which appears to the authorised person to have caused or to be likely to cause pollution of the environment or harm to human health or to the health of animals or plants, to cause it to be dismantled or subjected to any process or test (but not so as to damage or destroy it unless that is necessary);
- (h) in the case of any such article or substance, to take possession of it and detain it for so long as is necessary—
  - (i) to examine it and do to it anything which the authorised person has power to do under paragraph (g),
  - (ii) to ensure that it is not tampered with before the examination by the authorised person is completed, or
  - (iii) to ensure that it is available for use as evidence in any proceedings for an offence under these Regulations;
- (i) to require any person whom the authorised person has reasonable cause to believe to be able to give any information relevant to any examination or investigation under paragraph (c) 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 to sign a declaration of the truth of the answers of that person;
- (j) 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

paragraph (c) and to inspect and take copies of, or of any entry in, the records;

- (k) 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) Where an authorised person proposes to exercise the power conferred by subregulation (2)(g) in the case of an article or substance found in or on any premises, the authorised person must, if so requested by a person who at the time is present on and has responsibilities in relation to those premises, cause anything which is to be done by virtue of that power to be done in the presence of that person.

(4) Before exercising the power conferred by subregulation (2)(g) in the case of any article or substance, an authorised person must consult such persons as appear to the authorised person appropriate for the purpose of ascertaining what dangers, if any, there may be in doing anything which the authorised person proposes to do under the power.

(5) Where under the power conferred by subregulation (2)(h) an authorised person takes possession of any article or substance found on any premises, the authorised person must leave there, either with a responsible person or, if that is impracticable, fixed in a conspicuous position, a notice giving particulars of that article or substance sufficient to identify it and stating that the authorised person has taken possession of it under that power; and before taking possession of any such article or substance under that power an authorised person must, if it is practical to do so, take a sample of it and give to a responsible person at the premises a portion of the sample marked in a manner sufficient to identify it.

(6) No person may intentionally prevent any other person from appearing before an authorised person under subregulation (2)(i) or from answering any question to which an authorised person may by virtue of subregulation (2)(i) require an answer.

(7) No answer given by a person in pursuance of a requirement imposed under subregulation (2)(i) is admissible in evidence against that person in any proceedings.

## **Information notices.**

11. An authorised person may, by notice served on any person, require that person to furnish such information as is specified in the notice, in such form and within such period following the service of the notice or at such time as is so specified.

**Enforcement and prohibition notices.**

12.(1) If an authorised person is of the opinion that a person has contravened, is contravening or is likely to contravene Article 3(1), 3(2), 3(3), 3(6) or 4 of the EU Regulation, the authorised person may serve on that person a notice (“enforcement notice”).

(2) 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 the contravention or to remedy the matters making it likely that the contravention will arise, as the case may be; and
- (d) specify the period within which those steps must be taken.

(3) If an authorised person is of the opinion that the activities of a person in relation to the contravention or likely contravention by that person of Article 3 (1), 3 (2), 3 (3), 3 (6) or 4 of the EU Regulation, are such that they involve an imminent danger of serious pollution of the environment, the authorised person may serve on that person a notice (“prohibition notice”).

(4) A prohibition notice must—

- (a) state that the authorised person is of that opinion;
- (b) specify the danger involved in the activity;
- (c) specify the steps that must be taken to remove the danger; and
- (d) state—
  - (i) the period within which those steps must be taken, or
  - (ii) that the steps must be taken immediately.

(5) Subject to regulation 13 (5), the bringing of an appeal under regulation 13 does not suspend the operation of the enforcement notice or the prohibition notice in question.

(6) An authorised person may withdraw at any time an enforcement notice or a prohibition notice.

(7) A person on whom is served an enforcement notice or a prohibition notice must comply with such notice at the expense of that person.

(8) If such a notice is not complied with, the authorised person may arrange for it to be complied with at the expense of the person on whom it was served.

### **Appeals against enforcement or prohibition notices.**

13.(1) A person who is aggrieved by an enforcement notice or a prohibition notice may appeal to the Magistrates' Court.

(2) The procedure on an appeal is by way of complaint, and the Magistrates' Courts Act applies to the proceedings.

(3) An appeal may be brought not later than 28 days after the date on which the enforcement notice or the prohibition notice in question is served.

(4) An enforcement notice or prohibition notice must state—

- (a) that the person on whom the notice in question is served has the right of appeal to the Magistrates' Court; and
- (b) the period in which the appeal may be brought.

(5) The court may suspend an enforcement notice or prohibition notice pending an appeal.

### **Miscellaneous offences.**

14.(1) Where a person who—

- (a) fails to comply with the requirements of a notice served on the person under regulation 11;
- (b) fails to comply with an enforcement notice or a prohibition notice;

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- (c) fails to comply with a direction given, or a requirement imposed, under regulation 10(2);
- (d) contravenes, or causes or permits another person to contravene, regulation 10(7);
- (e) intentionally obstructs an authorised person in the exercise or performance of the powers or duties of that authorised person;
- (f) furnishes to an authorised person any information which the person knows to be false or misleading; or
- (g) pretends to be an authorised person,

that person commits an offence.

(2) Where a person knowingly or recklessly to furnishes Article 6 (4) information which is false or misleading in any material particular, that person commits an offence.

(3) In subregulation (3), “Article 6.4 information” means such information as the Minister may reasonably request to enable the Minister to acquire emission data for the purposes of Article 6 (4) of the EU Regulation.

**Body corporate – offences.**

15.(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, 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) In this regulation–

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

- (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.

**Penalties.**

16. A person who commits an offence under these Regulations is liable—
- (a) on summary conviction, to a fine not exceeding level 5 on the standard scale; or
  - (b) on conviction on indictment, to a fine.