

Environmental Protection (Controls on Substances
that Deplete the Ozone Layer)

1997-20
Repealed

**ENVIRONMENTAL PROTECTION (CONTROLS ON
SUBSTANCES THAT DEplete THE OZONE LAYER)
ACT**

Repealed by Act 2014-13 as from 12.6.2014

Principal Act

Act. No. 1997-20	<i>Commencement</i>	26.6.1997
	<i>Assent</i>	5.6.1997

Amending
enactments

Relevant current
provisions

Commencement
date

None

EU Legislation/International Agreements involved:

Regulation (EC) No. 3093/94

English source:

None

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**ENVIRONMENTAL PROTECTION (CONTROLS ON
SUBSTANCES THAT DEplete THE OZONE LAYER) ACT, 1997.**

ARRANGEMENT OF SECTIONS.

Section

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AN ACT TO GIVE EFFECT IN THE LAW OF GIBRALTAR TO COUNCIL REGULATION (EC) NO. 3093/94 ON SUBSTANCES THAT DEplete THE OZONE LAYER.

Title and commencement.

1. This Act may be cited as the Environmental Protection (Controls on Substances that Deplete the Ozone Layer) Act, 1997 and shall come into force 21 days after it receives the Governor's Assent.

Interpretation.

2. (1) In this Act—

“authorised person” means a person authorised by the Minister for any purpose of this Act;

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

“Party” shall mean any Party to the Protocol;

“the principal Regulation” means Council Regulation (EC) No. 3093/94 on substances that deplete the ozone layer;

“Protocol” shall mean the Montreal Protocol on Substances that Deplete the Ozone Layer whether in the original 1987 version as adjusted in 1990 and 1992, the amended 1990 version as adjusted in 1992 or the amended 1992 version;

“State not Party” includes any state or regional economic-integration organisation that has not agreed to be bound by the control measures applicable to that substance;

“third countries” means any state which is not an EEA state.

(2) Unless the context otherwise requires—

(a) expressions used in this Act shall have the meaning they bear in the principal Regulation; and

(b) any reference in this Act to an Article is to an Article of the principal Regulation.

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The competent authority.

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

Prohibitions and restrictions on importation, landing and unloading.

4. (1) No person shall import into Gibraltar from a third country a controlled substance unless a licence, permitting the release for free circulation in the Community or inward processing of that controlled substance, has been issued by the Commission under Article 6(1).

(2) No person shall import into Gibraltar from any State not Party a controlled substance whose release for free circulation in the Community is prohibited by Article 8.

(3) No person shall import into Gibraltar from any State not Party a product whose release for free circulation in the Community is prohibited by Article 9.

(4) Subject to subsection (5), no person shall knowingly land or unload a controlled substance, a product or equipment which has been imported contrary to subsections (1) to (3) or Article 5(5).

(5) Subsection (4) shall not apply to an authorised person who is exercising any of the powers prescribed in section 8 for the purpose of carrying this Act into effect.

(6) For the purposes of section 4(1) it shall be presumed that the controlled substance has not been imported from a third country and that it has been imported into the community under licence if it has been imported into Gibraltar from within the Community.

(7) For the purposes of sections 4(2) and 4(3) it shall be presumed that the controlled substance has not been imported from a State not Party if it has been imported into Gibraltar from within the Community.

Duty with respect to Articles 14 and 15.

5. It shall be the duty of any person having control of the controlled substances mentioned in Articles 14 and 15 to comply with those provisions.

Power of customs officer to detain controlled substances and products.

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6. (1) A customs officer may detain a controlled substance or product imported, landed or unloaded in contravention of section 4, or equipment imported in contravention of Article 5(5).

(2) Anything detained under this section shall be dealt with during the period of its detention in such a manner as the Collector of Customs may direct.

Powers of the Minister.

7. The Minister may require a person who has imported, landed or unloaded a controlled substance or product in contravention of section 4, or imported equipment in contravention of Article 5(5)–

- (a) to dispose of it without causing pollution of the environment or harm to human health or to the health of animals or plants or otherwise to render it harmless; or
- (b) to remove it from Gibraltar and such a person shall comply with that requirement.

Powers of authorised persons.

8. (1) An authorised person may, on production (if so required) of his authority, exercise any of the powers in subsection (2) for the purpose of carrying this Act into effect.

(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 he has reason to believe it necessary for him to enter;
- (b) on entering any premises by virtue of paragraph(a) to take with him–
 - (i) if the authorised person has reasonable cause to apprehend any serious obstruction in the execution of his duty, 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 and investigation as may in any circumstances be necessary;

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- (d) as regards any premises which he has power to enter, to direct that those premises or any part of them, or anything in them, shall be left undisturbed (whether generally or in particular respects) for so long as is reasonably necessary for the purpose of any examination or investigation under paragraph (c);
- (e) to take such measurements and photographs and make such recordings as he 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 he has power to enter;
- (g) in the case of any article or substance found in or on any premises which he has power to enter, being an article or substance which appears to him 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 this is necessary;
- (h) in the case of any such article or substance as is mentioned in paragraph (g), to take possession of it and detain it for so long as is necessary for all or any of the following purposes—
 - (i) to examine it and do to it anything which he has power to do under that paragraph;
 - (ii) to ensure that it is not tampered with before his examination of it is completed;
 - (iii) to ensure that it is available for use as evidence in any proceedings for an offence under section 9;
- (j) to require any person whom he 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 his answers;
- (k) 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 him to see for the purposes of any examination or investigation under paragraph

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

- (l) to require any person to afford him 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 him by this section.

(3) Where an authorised person proposes to exercise the power conferred by subsection (2)(g) in the case of an article or substance found in or on any premises, he shall, 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 subsection (2)(g) in the case of any article or substance, an authorised person shall consult such persons as appear to him appropriate for the purpose of ascertaining what dangers, if any, there may be in doing anything which he proposes to do under the power.

(5) Where under the power conferred by subsection (2)(h) an authorised person takes possession of any article or substance found on any premises, he shall 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 he has taken possession of it under that power; and before taking possession of any such substance under that power an authorised person shall, if it is practical for him 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 answer given by a person in pursuance of a requirement imposed under subsection (2)(j) shall be admissible in evidence against that person in any proceedings.

(7) Nothing in this section shall be taken to compel the production by any person of a document of which he would on grounds of legal professional privilege be entitled to withhold production on an order for discovery in an action in the Supreme Court.

(8) No person shall—

- (a) intentionally prevent any other person from appearing before an authorised person under subsection (2)(j) or from answering

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any question to which an authorised person may by virtue of subsection (2)(j) require an answer;

- (b) intentionally obstruct an authorised person in the exercise or performance of his powers or duties; or
- (c) falsely pretend to be an authorised person.

(9) The reference to “this Act” in subsection (1) does not include a reference to section 5, in so far as that section relates to Article 15(1) and (2).

Offences.

9. (1) Any person who uses, or causes or permits another person to use, a hydrochlorofluorocarbon in contravention of Article 5(1) to (4) commits an offence.

(2) Any person who supplies, or causes or permits another person to supply equipment in contravention of Article 5(5) commits an offence.

(3) Any person who contravenes, or causes or permits another person to contravene, section 4 commits an offence.

(4) Any person who knowingly supplies information that is false in a material particular for the purpose of obtaining a licence issued by the Commission under Article 6(1) commits an offence.

(5) Any person who fails to discharge a duty to which he is subject by virtue of section 5 commits an offence.

(6) Any person who imports into or exports from Gibraltar, other than in accordance with a requirement made under section 7(b), a controlled substance contrary to the provisions of the principal Regulations commits an offence.

(7) Any person who intentionally obstructs a customs officer in the exercise of his powers under section 6 commits an offence.

(8) Any person who fails to comply with section 7 or causes or permits another person to fail to comply with that section commits an offence.

(9) Any person who—

- (a) without reasonable excuse fails to comply with any requirement imposed under section 8(2); or

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(b) makes a statement which he knows to be false or misleading in a material particular, where the statement is made in purported compliance with a requirement to furnish information imposed under section 8(2)(j),
commits an offence.

(10) Any person who contravenes, or causes or permits another person to contravene, section 8(8) commits an offence.

Offences by corporations, etc.

10. (1) Where an offence under section 9 which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of, a director, manager, secretary or other similar officer of the body corporate, or any other person purporting to act in any such capacity, he, as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, subsection (1) shall apply in relation to the acts or defaults of a member in connection with his functions of management as if he were a director of the body corporate.

Penalties.

11. A person who—

(a) commits an offence under section 9(1) to (6), (8) and (9)(b) shall be liable, on summary conviction, to a fine not exceeding level 5 on the standard scale, or on conviction on indictment to a fine; and

(b) commits an offence under section 9(7), (9)(a) and (10),

shall be liable, on summary conviction, to a fine not exceeding level 5 on the standard scale.