

# **Department of Environment Food & Agriculture**

## **Proposed legislation to comply with the Isle of Man's commitment to the Montreal Protocol and EU Ozone-Depleting and Fluorinated Greenhouse Gases Regulations**

### **Overview**

The proposed Regulations will be of particular interest to all undertakings, as defined in Article 3(26) of the EU ODS Regulation or Article 2(30) of the EU F-Gas Regulation which produce, recover, recycle, reclaim, use, destroy or trade in Ozone Depleting Substances (ODS) or Fluorinated Greenhouse Gases (F-Gases); or which transfers heat from the inside of refrigeration, air-conditioning or heat pump equipment, or within fire protection systems, to facilitate cooling. The Regulations will also be of interest to associations and members of associations that manufacture, install, service or recover ozone-depleting substances or F-Gases from commercial or domestic equipment, which contain or rely on controlled substances, and producers, and those responsible for offshore oil and gas installations, and to enforcement authorities, Government Departments and non-Governmental organisations.

### **EU Regulations may be downloaded free of charge:**

EU ODS Regulation:

<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32009R1005&from=EN>

EU F-Gas Regulation:

<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014R0517&from=EN>

### **Acronyms and Definitions**

May be found at Appendix 1

### **Why we are consulting**

This consultation paper seeks views from everyone, but it is addressed in particular to private, public and third sector organisations which process, or are likely to process ODS, F-Gases or equipment containing the same.

## **Ozone-Depleting Substances and Fluorinated Greenhouse Gases Regulations 2020**

### **Consultation Paper - February 2020**

#### **1.0 Purpose and Overview**

In the Programme for Government, the Council of Ministers committed to the following:

<b>OUTCOME</b>	<b>POLICY STATEMENT - WE WILL</b>
We have a natural and built environment which we conserve and cherish and which is adapted to cope with the threats from climate change	Provide proper disposal routes for problematic waste
	Better manage the way we deal with historic and current waste whilst improving environmental management

The purpose of this consultation paper is to invite interested parties to consider and comment on the provisions of the proposed Regulations.

The proposed Regulations are necessary for the ratification of the Montreal Protocol, and its amendments to-date, to be extended to the Isle of Man (IoM) by the UK. Ratification will enable the IoM to be able to resume export of waste ODS, and products containing the same, which has been prohibited since July 2017. It will also enable the continuing export of F-Gases and products containing the same. The proposed Regulations will also enable the IoM to contribute to the protection of the atmosphere from the harmful effects of these compounds.

#### **2.0 Background**

The ozone layer protects life on earth from harmful ultraviolet (UV) radiation. Following discovery of the ozone hole in 1982, global action was taken to phase-out ozone-depleting substances under the Montreal Protocol, agreed in 1987. Those substances include chlorofluorocarbons, halons and other compounds widely found in aerosols, refrigeration, fire extinguishers, solvents, and for some other industrial uses.

Participating countries at the 1985 Vienna Convention for the Protection of the Ozone Layer agreed to adopt the Vienna Convention as a framework for the regulatory measures needed to protect from the harmful effects of unregulated discharge of man-made compounds into the atmosphere. The resulting Montreal Protocol (MP) in its original form was signed in 1987 by 197 states including all United Nations members and the European Union. As such, in terms of ratification, it is widely known as one of the most successful Multilateral Environmental Agreements (MEAs) of all time.

Initially, the MP controlled eight chemicals (five of the infamous chlorofluorocarbons (CFCs) and three halons); it required a 50% reduction in CFCs and placed a freeze on the production and consumption of the halons.

This original protocol was later strengthened through six sets of adjustments<sup>1</sup> and five Amendments<sup>2</sup>. These amendments limit a complex array of man-made compounds<sup>3</sup>, collectively called ODS and F-Gases<sup>4</sup>.

The IoM is a signatory to the original MP, via our relationship to the UK as explicitly stated in footnote eleven of the Vienna Convention. However, since the initial ratification of the Treaty, the five amendments<sup>2</sup> that have updated the list of regulated chemicals and set phase out target dates as appropriate, have not been extended the Island.

### **3.0 Current Position**

There are no facilities for recovery or disposal of ODS or F-gases and products containing these, on the IoM. Previously, local companies shipped these controlled substances and products to the UK under the control of a Transfrontier Shipment (TFS) notification permit, approved by the Environment Agency. However, in July 2017 DEFRA in the UK advised that it is a criminal offence for companies based in countries who are fully signed up to the Montreal Protocol to accept controlled substances (ODS) and products containing ODS from jurisdictions which have not formally ratified the Montreal Protocol *and all of the amendments*.

As such, IoM Companies have found themselves unable to continue to ship waste ODS gases and products containing these controlled substances. However, export of F-gases and products containing these is still permitted. The DoI is stockpiling refrigeration equipment from Civic Amenity Sites in a warehouse for the present.

Further to an issue with export of planes containing halons (an ODS) for critical use in fire extinguishing systems, DEFRA recently obtained confirmation from the EU Commission that as ratification of the original Montreal Protocol has been extended to the IoM, import and export of halons between EU Member States and Third Countries by IoM based companies could continue.

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<sup>1</sup> Adjustments (1990 London, 1992 Copenhagen, 1995 Vienna, 1997 Montreal, 1999 Beijing, 2007 Montreal)

<sup>2</sup> Amendments (London 1990, Copenhagen 1992, Montreal 1997, Beijing 1999, Kigali 2016)

<sup>3</sup> Including 15 CFCs, 3 halons, CCl<sub>4</sub>, methyl chloroform, methyl bromide, 40 HCFCs, 34 HBFCs, Bromochloromethane and 19 HFCs. Collectively the amendments requires 100% phase out of consumption and production of these chemicals over time.

<sup>4</sup> In full, 'Ozone Depleting Substances and Fluorinated Gases'; ODS are gases which demonstrably damage stratospheric ozone. F-gases contain fluorine and for a time in the nineteen nineties replaced ODS in many applications; but it was subsequently discovered that they trap heat in the atmosphere and affect the climate in the long term.

The Department has made a decision to prepare Regulations which provide the necessary alignment with the UK in order for ratification of the five remaining amendments to the Montreal Protocol be extended to the Island.

#### **4.0 The Proposed Legislative Mechanism**

The Regulations will be accompanied by an application order under 2A of the EC (IOM) Act 1973 applying the relevant portions of the EU legislation to the Island. The application order facilitates the Regulation and, as such will be prepared once the content of the Regulations is finalised.

#### **5.0 Policy Background**

The Regulations relate to the production, import, export and placing on the market of ODS and F-Gases. Also to the minimum qualifications for those working with ODS, F-Gases and products containing them. ODS have essentially been phased out except for some exceptional and essential uses.

F-Gases were largely introduced as replacements to ODS but have been found to contribute significantly to global warming. They are used in refrigeration, air-conditioning, insulation foams, electrical equipment, aerosol sprays, medical inhalers, solvents and fire extinguishers. Emissions may occur through leakage during the manufacture, operation and disposal (recycling) of products. Regulation (EU) No 517/2014, which came into effect on 1 January 2015, will lead to an 80% cut in emissions across the EU by 2035 by: phasing down the amount of F-gases that can be placed on the market through gradually reducing quotas for F-Gas producers and importers; bans on certain F-Gases in some applications; and strengthening of obligations on leak checks, repairs, recovery and training.

Given it is understood all imports and exports of F-gases to and from the IoM are with the UK, it is proposed to restrict such routes with the UK only. Imports and exports of F-Gases and products containing the same other than via the UK will be prohibited.

#### **6.0 Legislative Context**

##### **6.1 Ozone-depleting Substances (ODS)**

EU Regulation (EC) No 1005/2009 lays down the rules for the production, trade, use, recovery, recycling, reclamation and destruction of substances that deplete the ozone layer, on the reporting of information related to those substances and on the trade and use of products and equipment containing or relying on those substances. The EU Regulation implements the Montreal Protocol on substances that deplete the ozone layer in the EU.

The UK has implemented Regulation (EC) No 1005/2009 enacting the 'Ozone-Depleting Substances Regulations 2015'. The proposed IoM Regulations seek to provide regulatory alignment with the UK and therefore includes similar content. However, some sections are not relevant to the IoM and therefore not incorporated or modified.

## **6.2 Fluorinated Greenhouse Gases (F-Gases)**

EU Regulation (EU) No 517/2014 aims to protect the environment by reducing emissions of fluorinated greenhouse gases by:

- establishing rules on containment, use, recovery and destruction of fluorinated greenhouse gases, and on related ancillary measures;
- imposing conditions on the placing on the market of specific products and equipment that contain, or whose functioning relies upon, fluorinated greenhouse gases;
- imposing conditions on specific uses of fluorinated greenhouse gases; and
- establishing quantitative limits for the placing on the market of hydrofluorocarbons.

The UK has implemented that Regulation by enacting the 'Fluorinated Greenhouse Gases Regulations 2015'. The proposed IoM Regulations seek to provide regulatory alignment with the UK and therefore include similar content although some sections are not relevant to the Isle of Man and therefore not incorporated or modified.

## **7.0 Impact of the IoM Regulations**

### **7.1 Who will be affected by the proposed Regulations?**

- Anyone who works with ODS or F-Gas, for example technicians undertaking maintenance on, re-gassing or decommissioning of refrigeration equipment, or maintenance on stationary equipment such as fixed refrigerated cold rooms, or large air-conditioning installations or stationary fire protection systems. Employers of staff who work with ODS or F-Gas
- Anyone who imports or exports ODS or F-Gas.
- Businesses involved in the disposal (recycling) of waste appliances and products which contain ODS or F-Gas.
- Businesses that own or operate equipment containing ODS or F-Gas, such as refrigeration units, air-conditioning units, dehumidifiers, tumble-dryers and other equipment with heat pumps, and fire protection systems (e.g. extinguishers). The larger the equipment you use the more likely you are to be affected.

## 7.2 How will the Regulations affect you?

### Qualifications

The proposed Regulations create a duty for anyone working with ODS or F-Gases to be suitably qualified, along with a duty for employers to ensure their employees are suitably qualified. Lists of the appropriate qualifications are available on the web-links below.

Any qualification which is acceptable in the UK will be acceptable in the IoM for the same purpose.

- Qualifications for working with ODS:  
<https://www.gov.uk/guidance/qualifications-to-service-equipment-containing-ozone-depleting-substances-hcfc>
- Qualifications for working with F-Gases:  
<https://www.gov.uk/guidance/qualifications-required-to-work-on-equipment-containing-f-gas>

### Checks and record keeping

If you are an employer whose staff work with ODS or F-Gases or you or your business -

- purchase or sell ODS or F-Gases; or
- own or operate equipment containing ODS or F-Gases,

the proposed Regulations mean that you will need to -

- undertake certain checks, such as leakage and equipment checks (see Schedule 2);  
and
- keep certain records, such as employee training records (see Regulation 7), equipment records, system checking records (see Regulation (see Schedules 1 and 2) etc.

### Importation of F-Gases

If you, or your business, import F-Gases into the Island you will need to make an annual report to the Department (see Regulation 9). This is necessary to enable the Department to report an Island total to the UK, which is a requirement for the Island to be permitted to export waste ODS and F-Gases to the UK for disposal.

### Banned activities

The proposed Regulations prohibit the following activities on the IoM.

- **Production of ODS or F-Gases.**  
This means the primary manufacture of the compounds themselves.

- **Placing on the market of ODS or F-Gases, or products containing those compounds.**

This means placing such compounds on the IOM or UK market **for sale for the first time**. This does not affect the sale of products or gases which have been imported directly from the UK to the IoM, as those are deemed to have already been “placed on the market” within the UK.

- **Disposal (recycling, reclamation and destruction) of ODS or F-Gases or products containing such compounds.**

There are no facilities on the Island that are suitably equipped to undertake these activities in enclosed containment systems that capture the ODS or F-Gases. Waste substances and products containing them must therefore be exported to the UK to be properly disposed of.

- **Importation of ODS**

Regulation 9(1) of the proposed Regulations prohibits the importation of ODS into the Island (except in certain exceptional circumstances – see regulation 10). The importation of F-Gases is still permitted subject to annual reporting.

None of the above activities have been identified as currently occurring on the Island however, if you or your business does undertake any of these activities you will need to stop when the Regulations come into force as you will be committing an offence. We recommend that you contact the Department in response to this consultation for guidance.

### **Certain uses of F-Gases**

Schedule 2 to the proposed Regulations includes prohibitions on the use of certain F-Gases for specified purposes. For example, it will no longer be permitted to use F-Gases such as R404A to refill certain equipment (See Article 13(3) in Schedule 2).

If you or your business use F-Gases you should check Schedule 2 to ensure that none of the activities you undertake are affected.

If you own or operate equipment which can no longer be maintained without re-gassing, you may need to consider replacing and recycling it in a compliant manner.

Further information on this change is available at:

<https://acrib.org.uk/public/downloads/MI1yo/F-gas%20Regulation%20business%20guidance%202019%20final.pdf>

### **The following will also be prohibited by the Regulations:**

- The deliberate release of F-Gases
- Obstructing an officer of the Department who is acting in the enforcement of the Regulations.
- Breaching any of the provisions listed in Schedules 1 and 2.

(ODS & F-Gas Regulations 2020)

Whilst the Department is proposing a twelve-month transition to enable persons to obtain appropriate training, and find replacement F-Gases and/or equipment, useful technical advice provided on behalf of Defra (the UK Department of Environment, Food and Rural Affairs) is available at:

<http://www.gluckmanconsulting.com/f-gas-information-sheets/>

### **7.3 Enforcement, offences and penalties**

The proposed Regulations create several offences relating to the import, export and disposal of, and the training required to work with, ODS and F-Gases (see Regulations 4-9 and 16). In addition, the Regulations make it an offence not to comply with certain Articles of EU legislation (see Regulation 16(2) and (3), Schedule 1 and the first provision of Schedule 2).

Failure to comply with the provisions of EU legislation listed Schedule 2 (with the exception of intentional release) is not an offence, however the Department could serve an enforcement notice in relation to the non-compliance.

The Regulations enable the Department to serve enforcement notices to anyone who fails, or is likely to fail, to comply with a requirement of the Regulations (see Regulation 14(1)-(6)). What can and cannot be included in an enforcement notice is set out in Regulation 14(7)-(9). Failure to comply with an enforcement notice is an offence.

Regulation 13 provides the Department with the power to obtain information from individuals or businesses in relation to enforcing these Regulations by serving an information notice. Failure to comply with such a notice is an offence.

By using information notices and enforcement notices the Department can work with businesses to achieve compliance; avoiding prosecution unless absolutely necessary.

Regulation 12 provides officers of the Department with powers to help them enforce the Regulations such as the power, under certain conditions, to enter premises to collect evidence.

The maximum penalty following prosecution under the proposed Regulations is "level 5 on the standard scale" (currently £10,000).

## **8. Guidance**

DEFRA has a Government funded team set up to help organisations understand their obligations under the EU ODS and F Gas Regulations.

UK guidance and information is available to help businesses comply with the EC and UK ODS / F-Gas Regulations at :



(ODS & F-Gas Regulations 2020)

<https://www.gov.uk/government/collections/fluorinated-gas-f-gas-guidance-for-users-producers-and-traders>

<http://www.gluckmanconsulting.com/f-gas-information-sheets/>

## **10. The draft of proposed legislation**

The draft of proposed legislation (Bill, Orders and Regulations) is attached (the Proposed Legislation).

The **deadline** for responses is **30<sup>th</sup> April, 2020**

Paper copies of this consultation document are available, if required, via the above contact details and from Tynwald Library. Please confirm the name of the organisation, industry/trade group or other group/forum that you are responding on behalf of, if applicable.

We welcome your response at the earliest opportunity ahead of the closing date.

**Acronyms and Definitions**

CFC Chlorofluorocarbon(s)

F-Gas Fluorinated Gas(es)

IoM Isle of Man

ODS Ozone Depleting Substance(s)

UK United Kingdom

Controlled substance means the ozone depleting substances listed in Annex I to EU Regulation 1005/2009;

Destruction (destroy) means the process of permanently transforming or decomposing all or most of ODS or F-Gas into one or more stable substances that are not ODS or F-Gas;

EU Community means the European Community (EC), which was an economic association formed by six European member countries in 1957. In 1993 this was replaced by the European Union and that now has twenty-seven member countries (excluding the UK who left on 31<sup>st</sup> January 2020);

EU Regulation(s) means EU ODS Regulation 1005/2009 and/or EU F-Gas Regulation (EU) No 517/2014;

Export means the exit from the customs territory of the EU Community, in so far as the territory is covered by a Member State's ratification of the Protocol and by the EU Regulations, of substances, products and equipment covered in the EU Regulations, which have the status of Community goods or the re-export of substances, products and equipment covered by the EU Regulations if they have the status of non-Community goods;

Fire protection system(s) means a fire protection system, within the meaning given in Article 1 of EC Regulation 1497/2007 [*on standard checking requirements for stationary fire protection systems containing certain fluorinated greenhouse gases*], containing 3 kilograms or more of F-Gases;

fluorinated greenhouse gases means the definition given in EU Regulation 517/2014;

Heat pump means a device or installation that uses a refrigerant to extract heat from one place and transfers it to another through a cycle of evaporation and condensation;

Import means the entry of substances, products and equipment covered by the EU Regulations into the customs territory of the EU Community as far as the territory is covered by a Member State's ratification of the Protocol and the EU Regulations apply;

## (ODS & F-Gas Regulations 2020)

Placing on the market	means the supply or making available to third persons (i.e. by distribution, consumption or use) within the IoM and EU Community for payment or free of charge;
Production	means the amount of controlled substances or new substances produced, including the amount produced, intentionally or inadvertently, as a by-product unless that by-product is destroyed as part of the manufacturing process or following a documented procedure ensuring compliance with this Regulation and the Community and national legislation on waste. No amount recovered, recycled or reclaimed shall be considered as 'production', nor shall any insignificant amount unavoidably incorporated in products in trace quantities or emitted during manufacturing;
Products / equipment	means products and equipment which do not function without controlled substances, not including those products and equipment used for the production, processing, recovery, recycling, reclamation or destruction of controlled substances;
Producer	means any natural or legal person producing controlled substances or new substances within the Community;
Protocol	means the 1987 Montreal Protocol on Substances that Deplete the Ozone Layer, as last amended and adjusted;
Stationary	means not normally in transit during operation and includes refrigeration equipment, moveable room air-conditioning appliances and fire protection systems;
Third Country	means a country that is not a member of the European Union (see EU Community);
Recovery	means the collection and the storage of controlled substances from products and equipment or containers during maintenance or servicing or before disposal;
Recycling	means the reuse of a recovered controlled substance following a basic cleaning process;
Undertaking	means any natural or legal person which:  (a) produces, recovers, recycles, reclaims, uses or destroys controlled substances or new substances;  (b) imports such substances;  (c) exports such substances; (d) places such substances on the market; or  (e) operates refrigeration, air conditioning or heat pump equipment, or fire protection systems, which contain controlled substances;

(ODS & F-Gas Regulations 2020)

Use means the utilisation of controlled substances or new substances in the production, maintenance or servicing, including refilling, of products and equipment or in other processes;

Virgin substances means substances which have not previously been used;