

New provisions in proposed EU Regulation on ODS and effects on stakeholders

Proposed EU Reg Number	Type of stakeholder affected	Details of provision(s)
7(1)	All stakeholders which use ODS as process agents	<p>The following are no longer permitted:</p> <ul style="list-style-type: none"> • use of use of carbon tetrachloride in the recovery of chlorine in tail gas from production of chlorine. • use of CFC-113 in the preparation of perfluoropolyether diols with high functionality; and • use of hydrochlorofluorocarbons in the any other of the allowed processes when used to replace the chlorofluorocarbon or carbon tetrachloride. <p>In addition, the maximum amount of ozone depleting substances that may be used as process agents within the Union shall not exceed 921 metric tonnes per year. (this has come down from 1083 in the previous EU Regulation)</p> <p>The maximum amount of ozone depleting substances that may be released from process agent uses within the Union shall not exceed 15 metric tonnes per year. (this has come down from 17 in the previous EU Regulation)</p>
8(1) to (5) and Annex IV	Users of ODS for laboratory and analytical uses	<p>There is no longer any need to register for a licence for the use of ODS for laboratory or analytical uses.</p> <p>There are also no labelling requirements any more.</p> <p>However, records still need to be kept of the ODS used for laboratory or analytical uses, both by the user, and by the business/organisation that placed the ODS on the market, or supplied the ODS, for laboratory/analytical uses.</p> <p>The following information must be recorded:</p> <ul style="list-style-type: none"> • name of the substances, • amount placed on the market or supplied, • purpose of their use, and • list of purchasers and/or suppliers.

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		<p>Records must be retained for at least 5 years.</p> <p>Used or surplus ozone depleted substances and mixtures containing those substances must be collected and recycled if practical.</p> <p>Those substances and their mixtures must be destroyed, if recycling is not practical.</p>
9(2) and annex V	<p>All users of halons in:</p> <ul style="list-style-type: none"> • fire extinguishers and fire equipment, • military ground vehicles and surface ships, and portable fire extinguishers, • aircraft, airfields and airports, • oil, gas and petrochemicals facilities, • In land-based command and communications facilities essential to national security, and • NI Fire and Rescue Service 	<p>Halons in fire extinguishers and fire protection equipment must be recovered when the fire equipment is being decommissioned.</p> <p>It is now prohibited for portable extinguishers to contain halon 1303 or 1211 in:</p> <ul style="list-style-type: none"> • military ground vehicles (for the protection of crew compartments), or • military surface ships (for the protection of aircraft in hangars and maintenance areas) <p>It is now prohibited for aircraft to use halon 1301, 1211 or 2402 for the protection of lavatory waste receptacles.</p> <p>The following uses of halons are now completely prohibited (previously permitted use is in brackets):</p> <ul style="list-style-type: none"> • In oil, gas and petrochemicals facilities, (for the protection of spaces where flammable liquid or gas could be released), • On commercial cargo ships (for the inerting of normally occupied spaces where flammable liquid or gas could be released), • In land-based command and communications facilities essential to national security (for the protection of normally unoccupied spaces), • At airfields and airports (for crash rescue vehicles and for the protection of aircraft in hangars and maintenance areas)

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		<ul style="list-style-type: none"> • nuclear power and nuclear research facilities (For the protection of spaces where necessary to minimise risk of dispersion of radioactive matter) • Fire brigade portable fire extinguishers (for initial extinguishing by fire brigades where essential to personal safety), and • Military portable fire extinguishers (for the protection of persons by military and police personnel)
11(3)	All users of products or equipment containing ODS or whose functioning relies on ODS	The product/equipment must be decommissioned when it is spent, i.e. it reaches the end of its working life.
14	<p>All companies involved with:</p> <ul style="list-style-type: none"> • products/equipment containing ODS produced for laboratory or analytical uses, • products and equipment containing or relying on controlled substances for destruction, and • metered dose inhalers. 	<p>It is no longer allowed to export:</p> <ul style="list-style-type: none"> • products/equipment containing ODS produced for laboratory or analytical uses, even if licenced (17(2)(d) of 1005/2009), • products and equipment containing or relying on controlled substances for destruction (17(2)(d) of 1005/2009), and • metered dose inhalers manufactured with chlorofluorocarbons (17(2)(h) of 1005/2009).
15(1)	<ul style="list-style-type: none"> • Companies which use ODS in non-refillable containers. • Customs authorities, and • Enforcing authorities. 	<p>Placing ODS on the market in non-refillable containers is already banned.</p> <p>It is now also due to be forbidden in law to supply to another person, import or export ODS in non-refillable containers (except for laboratory and analytical uses).</p> <p>The containers may only be stored or transported for subsequent disposal.</p> <p>Prohibited containers can be seized by customs authorities or enforcement bodies.</p>
15(2)	Companies which use products containing the ODS trifluoromethane	There will be a requirement for trifluoromethane, produced as a by-product during the manufacturing process, to be

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		<p>removed before products/equipment containing ODS can be legally placed on the market.</p> <p>The trifluoromethane would need to be destroyed or recovered for subsequent use.</p> <p>Importers and producers carrying out the above procedures would be required to produce a declaration of conformity to show the mitigation measures used to limit any emissions of trifluoromethane.</p> <p>The declaration of conformity and supporting documentation would have to be retained for at least 5 years.</p>
16(7)	<ul style="list-style-type: none"> • Customs authorities • enforcement bodies, and • companies importing/exporting products/equipment containing ODS and requiring a licence to do so. 	<p>Customs authorities and enforcement bodies may request:</p> <ul style="list-style-type: none"> • to see an ODS licence to view a certificate showing the nature and composition of substances being imported or exported, and • a copy of the licence issued by the country from which the import to or the export from takes place.
16(9)	<ul style="list-style-type: none"> • Customs authorities • enforcement bodies, and • companies importing/exporting products/equipment containing ODS and requiring a licence to do so. 	<p>ODS licences can be suspended or revoked if there is a reasonable suspicion that any provision in law on ODS is not being complied with.</p> <p>This also applies to reasonable suspicions of breach of any other EU customs or environmental legislation.</p>
16(10)	Companies exporting products/equipment containing ODS	<p>Companies must make sure that their export of products/equipment containing ODS does not:</p> <ul style="list-style-type: none"> • constitute a case of illegal trade • have a negative impact upon the measures taken by the destination country to comply with its obligations under the Montreal Protocol, or

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		<ul style="list-style-type: none"> • lead to the destination country exceeding the amounts of ODS that it is permitted to use.
17(3)	<ul style="list-style-type: none"> • importers and exporters of ODS requiring a licence • customs authorities • enforcing authorities 	<p>The following information must be declared by the importer/exporter of products/equipment containing ODS:</p> <ul style="list-style-type: none"> • the number of the licence, • Economic Operators Registration and Identification (EORI) number, • net mass of ODS in the products/equipment, • net mass mentioned above multiplied by the Ozone Depleting Potential of the ODS, and • the commodity code under which the goods are classified.
17(4) and (5)	<ul style="list-style-type: none"> • importers and exporters of ODS requiring a licence • customs authorities • enforcing authorities 	<p>Customs authorities must verify whether or not an importer/exporter of products/equipment containing ODS has a valid licence.</p> <p>Where relevant, customs authorities would communicate information regarding the customs clearance of goods to the licensing system via the European Union Single Window Environment for Customs.</p>
17(6)	<ul style="list-style-type: none"> • importers of products/equipment containing ODS in refillable containers • customs authorities • enforcing authorities 	<p>Importers of products/equipment containing ODS in refillable containers would be required to show customs authorities a declaration of conformity.</p> <p>The declaration of conformity would show evidence confirming that the container would be returned for refilling.</p>
17(7)	<ul style="list-style-type: none"> • Importers/exporters of products/equipment containing halons • customs authorities • enforcing authorities 	<p>Importers or exporters of products or equipment containing recovered, recycled, or reclaimed halons for critical uses would be required to submit a certificate conforming the nature of the substance to customs authorities.</p>

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17(8)	<ul style="list-style-type: none"> • Importers/exporters of products/equipment containing trifluoromethane • customs authorities • enforcing authorities 	<p>Importers of products/equipment containing trifluoromethane are required to submit the following to customs authorities:</p> <ul style="list-style-type: none"> • evidence that the trifluoromethane produced as a by-product during the manufacturing process has been destroyed or recovered for subsequent use, using best available techniques, • the declaration of conformity mentioned in proposed regulation 15(2) on the mitigation measures adopted to prevent emissions of trifluoromethane.
17(9)	Customs authorities	<p>Customs authorities are due to be required to:</p> <ul style="list-style-type: none"> • verify their compliance with the laws on imports and exports of products/equipment containing ODS, when carrying out the controls based on risk analysis in the Customs Risk Management Framework, and in article 46 of EU Reg 952/2013, and • when doing this, take into account any information on the likelihood of illegal trade of ODS, and the compliance history of the relevant business.
17(10)	<ul style="list-style-type: none"> • importers and exporters of ODS requiring a licence • customs authorities • enforcing authorities 	<p>Customs authorities are due to be required to verify the following on imports/exports of products/equipment containing ODS:</p> <ul style="list-style-type: none"> • that the goods presented are the same as those described in the licence and the customs declaration, • that the goods are appropriately labelled, as is required for products/equipment containing ODS and placed on the market for use as feedstock, process agents and/or laboratory/analytical uses (proposed reg 15(3)). <p>Importer/exporters of products/equipment containing ODS are required to present their related licence to customs authorities.</p>

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17(11)	<ul style="list-style-type: none"> • customs authorities • enforcing authorities 	<p>Customs authorities and enforcing authorities are due to have the power to confiscate or seize prohibited products and equipment containing ODS.</p>
17(11)	<ul style="list-style-type: none"> • customs authorities • enforcing authorities • importers/exporters of products/equipment containing ODS 	<p>It is due to no longer be permitted to re-export products and equipment containing ODS that do not comply in any way with this EU Regulation.</p>
17(12)	<p>Customs authorities</p>	<p>Customs authorities are due to be required to designate customs offices for the presentation to customs of products/equipment containing ODS, for when the products/equipment are leaving the customs territory of the EU.</p> <p>The customs offices need to be sufficiently equipped to carry out the physical controls, and the trained officers need to be knowledgeable on the matters of the laws on ODS.</p>
20(2), (3) and (4)	<ul style="list-style-type: none"> • Building construction industry (carrying out renovation, refurbishing or demolition activities) • Enforcing authorities 	<p>Building owners and contractors are due to be required to recover foams containing ODS, for re-use or destruction, during the removal of the following:</p> <ul style="list-style-type: none"> • metal-faced panels, and • laminated boards installed in cavities or built-up structures. <p>If it is not possible to recover the ODS from the foams in the above circumstances, the building owner/contractor must compile a document providing evidence for the infeasibility of the recovery.</p> <p>The document must be:</p> <ul style="list-style-type: none"> • retained for at least 5 years, and • made available, if requested, by DAERA(NI) or the European Commission.

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20(5)	<ul style="list-style-type: none"> • businesses using halons in fire protection systems or fire extinguishers • enforcing authorities 	<p>Halons in fire protection systems or fire extinguishers must be recovered for recycling or reclamation in the following circumstances:</p> <ul style="list-style-type: none"> • during the maintenance/servicing of equipment, or • before the dismantling/disposal of equipment. <p>It is due to be legally forbidden to destroy halons.</p> <p>Only one exception is due to be allowed for the destruction of halons. This is where there is documented evidence that the purity of the recovered/recycled halons does not technically allow its reclamation and subsequent re-use.</p> <p>The documented evidence must be:</p> <ul style="list-style-type: none"> • retained for at least 5 years, and • made available, if requested, by DAERA(NI) or the European Commission.
20(6) and (7)	<ul style="list-style-type: none"> • All business users of ODS (except halons and in foams in the construction industry) • Enforcing authorities 	<p>All other types of ODS (except halons and in foams in the construction industry) in other products and equipment would need to be recovered for destruction, recycling or reclamation.</p> <p>Any destruction would need to only be done by technologies approved by countries signed up to the Montreal Protocol.</p>
20(9)	<ul style="list-style-type: none"> • DAERA(NI) 	<p>Member States would need to:</p> <ul style="list-style-type: none"> • promote the recovery, recycling, reclamation and destruction of ODS, and • establish the minimum qualification requirements for the personnel involved.
21(1)	<ul style="list-style-type: none"> • all businesses using ODS • enforcing authorities 	<p>The intentional release of ODS into the atmosphere is due to be prohibited.</p>

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21(2)	<ul style="list-style-type: none"> • all businesses using ODS • enforcing authorities 	
21(4)	<ul style="list-style-type: none"> • all businesses who carry out maintenance or servicing and leak checks of products and equipment containing ODS • enforcing authorities 	There is now a requirement to retain copies of the records for the maintenance and servicing and leak checks of products/equipment containing ODS for a minimum of 5 years.
21(5)	<ul style="list-style-type: none"> • DAERA(NI) • Qualifications bodies for certificates for work with ODS 	Member States should establish the minimum qualifications requirements for personnel carrying out leak checks on products/equipment containing ODS.
24 (1) and Annex VI	<ul style="list-style-type: none"> • All businesses reporting to the European Union on their use of ODS 	<p>As well as all previous reporting obligations, all businesses reporting are also due to be required to:</p> <ul style="list-style-type: none"> • register in the EU ODS licensing system, and • include ODS produced inadvertently, including as a by-product, in their report. <p>Businesses <i>destroying</i> ODS are due to be required to report the following, as well as all previous reporting obligations:</p> <ul style="list-style-type: none"> • any emissions, including those linked to destruction, transport and storage, including the transfer from one container to another, and • data on any purchases from and sales to other businesses in the EU. <p>Businesses using ODS <i>as feedstock or process agents</i> would also be required to report the following, as well as all previous reporting obligations:</p> <ul style="list-style-type: none"> • data on any purchases from and sales to other businesses in the EU.

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25(2)	<ul style="list-style-type: none"> • DAERA(NI) • Enforcing authorities • Customs authorities 	<p>If any customs authorities or enforcement authorities detect an infringement of the ODS provisions, they must inform each other accordingly.</p>
25(3)	<ul style="list-style-type: none"> • DAERA(NI) • Enforcing authorities • Customs authorities 	<p>All customs authorities and enforcing authorities should have access to all the information that they require to carry out their enforcement.</p> <p>DAERA(NI) would be required to ensure that this access is granted appropriately.</p>
25(4)	<ul style="list-style-type: none"> • DAERA(NI) • Enforcing authorities • Customs authorities • DEFRA(GB) 	<p>If an enforcing authority discovers a potential breach of ODS provisions which may also affect another EU Member State or other Member States, they would be obliged to report it to DAERA(NI) immediately.</p> <p>DAERA(NI) would then be obliged to inform the competent authority(-ies) of the other EU Member State(s).</p> <p>This would include products/equipment being imported/exported to/from other Member States in potential breach of the ODS provisions.</p>
26(2), (3) and (4)	<ul style="list-style-type: none"> • Enforcing authorities • Customs authorities 	<p>Enforcing authorities must act if evidence is provided of a potential breach of the ODS provisions.</p> <p>Inspections of premises should be carried out without any prior warning being given to the business.</p> <p>Records should be kept by enforcing authorities for a minimum of 5 years. The records should include the following:</p> <ul style="list-style-type: none"> • methods of the checks carried out, • results of the inspections carried out, • measures taken in the case of non-compliance.
27(4)	<ul style="list-style-type: none"> • DAERA(NI) • Enforcing authorities 	<p>Enforcing authorities are due to have the power to impose the following penalties, in addition to the fines already allowed in NI law:</p>

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	<ul style="list-style-type: none"> • (possibly) customs authorities 	<ul style="list-style-type: none"> • Confiscation/seizure of allegedly illegally obtained goods, • Confiscation/seizure of revenues gained by the relevant business from the potential infringement, and • Suspension or even revocation of the authorisation of the business to carry out activities relating to products/equipment containing ODS.
27(5)	<ul style="list-style-type: none"> • DAERA(NI) • Enforcing authorities • (possibly) customs authorities 	<p>Fines are due to be set at a level at least 5 times the market value of the substances or products/equipment concerned.</p> <p>This is due to rise to 8 times the market value in the case of a repeated infringement (within a 5 year period).</p> <p>The above details about fines would apply in cases of unlawful production of products/equipment containing ODS, and in breaches of provisions on import/export, placing on the market or use of ODS.</p> <p>In the case of alleged breach of the ban on deliberate emissions of ODS, the potential impact on the climate would be reflected by taking into account the carbon price in the determination of an administrative fine.</p>