

2008 No. 41

ENVIRONMENTAL PROTECTION

The Fluorinated Greenhouse Gases Regulations 2008

Made - - - - *10th January 2008*

Laid before Parliament *15th January 2008*

Coming into force - - *15th February 2008*

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The Secretary of State is designated for the purposes of section 2(2) of the European Communities Act 1972(a) in relation to measures relating to the control of air pollution(b).

He makes these Regulations in exercise of the powers conferred by that section.

PART 1

Introductory provisions

Citation, commencement, extent and application

1.—(1) These Regulations —

- (a) may be cited as the Fluorinated Greenhouse Gases Regulations 2008; and
- (b) come into force on 15th February 2008.

(2) These Regulations extend to Northern Ireland only in so far as they relate to importation into the United Kingdom from outside the customs territory of the Community.

(3) Subject to paragraph (4), these Regulations apply to offshore installations.

(a) 1972 c. 68.

(b) S.I. 1988/785. The power of the Secretary of State, as a Minister designated in relation to measures relating to the control of air pollution, to make regulations which extend to Scotland remains exercisable by virtue of section 57(1) of the Scotland Act 1998 (c. 46).

(4) Except in relation to importation, these Regulations do not apply to offshore installations in the tidal waters or parts of the sea in or adjacent to Northern Ireland up to the seaward limits of the territorial sea.

Interpretation

2.—(1) In these Regulations—

“the 2006 Regulation” means Regulation (EC) No. 842/2006 of the European Parliament and of the Council on certain fluorinated greenhouse gases^(a);

“the Agency” means—

- (a) as regards England and Wales, the Environment Agency, and
- (b) as regards Scotland, the Scottish Environment Protection Agency;

“authorised person” means a person authorised under regulation 21;

“course of training” includes the training of an employee while that employee is engaged in work for which he is employed;

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

“enforcement notice” means a notice served under regulation 24(1);

“in-house qualification” means a qualification verified by a certificate of competence or other written confirmation issued by an employer to such of his employees who have successfully completed a course of training provided by that employer relating to the work in question;

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

“placing on the market” has the same meaning as it has in Article 2.7 of the 2006 Regulation except that it does not include import into the customs territory of the Community, and cognate expressions are construed accordingly;

“the port health authority” means—

- (a) in relation to the London port health district (within the meaning given by section 7(1) of the Public Health (Control of Disease) Act 1984^(b)), the Common Council of the City of London; and
- (b) in relation to any port health district constituted by order under section 2(3) of that Act, the port health authority for that district constituted by order under section 2(4) of that Act;

“premises” includes—

- (a) land;
- (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 offshore installation;

“prohibition notice” means a notice served under regulation 24(3);

“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.

(2) In these Regulations, the following expressions have the meaning given in Article 2—

“container”;

(a) OJ No. L161, 14.6.2006, p 1.

(b) 1984 c. 22.

“fluorinated greenhouse gases”;
“heat pump”;
“leakage detection system”; and
“preparation”.

(3) In these Regulations, “the enforcing authority” means

- (a) as regards England, the Agency, the local authority, the port health authority or the Secretary of State;
- (b) as regards Wales, the Agency, the local authority, the port health authority or the Welsh Ministers;
- (c) as regards Scotland, the Agency, the local authority or Scottish Ministers; and
- (d) as regards offshore installations, the Secretary of State.

(4) In these Regulations, “the local authority” means—

- (a) in relation to England—
 - (i) a district council,
 - (ii) a county council that is the council for a county in which there are no district councils,
 - (iii) a London borough council,
 - (iv) the Common Council of the City of London, or
 - (v) the Council of the Isles of Scilly;
- (b) in relation to Wales—
 - (i) a county council, or
 - (ii) a county borough council;
- (c) in relation to Scotland, a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994^(a).

(5) In these Regulations, “the marine area” means—

- (a) the tidal waters and parts of the sea in or adjacent to the United Kingdom up to the seaward limits of the territorial sea; and
- (b) the area designated by an Order in Council under section 1(7) of the Continental Shelf Act 1964^(b).

(6) In these Regulations, “offshore installation” means an installation or structure, other than a ship, used for carrying on an activity mentioned in paragraph (7) which is situated in the waters of, or on or under the seabed in, the marine area.

(7) The activities referred to in paragraph (6) are—

- (a) the exploitation, or the exploration with a view to exploitation, of mineral resources in or under the shore or bed of waters in the marine area;
- (b) the storage of gas in or under the shore or bed of waters in the marine area or the recovery of gas so stored;
- (c) 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 in the marine area; and
- (d) the provision of 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 an activity falling within sub-paragraph (a), (b) or (c) or this sub-paragraph.

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

(a) 1994 c.39.

(b) 1964 c. 29. Section 1(7) is amended by section 37 of, and paragraph 1 of Schedule 3 to, the Oil and Gas (Enterprise) Act 1982 (c. 23). Areas have been designated under section 1(7) by S.I. 1987/1265 (as amended by S.I. 2000/3062), S.I. 2000/3062 (as amended by S.I. 2001/3670) and S.I. 2001/3670.

- (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.

(9) Other expressions used in these Regulations and in the 2006 Regulation which are not defined in these Regulations have the same meaning in these Regulations as they have in the 2006 Regulation.

(10) A reference in these Regulations to a numbered Article is a reference to the Article so numbered in the 2006 Regulation.

Competent authority

3. The Secretary of State is the competent authority for the purposes of the 2006 Regulation in its application to—

- (a) England, Wales and Scotland;
- (b) offshore installations; and
- (c) in relation to importation, Northern Ireland.

PART 2

General provisions

Leakages

4. The operator of a stationary application commits an offence if he fails to comply with—

- (a) Article 3.1; or
- (b) Article 3.2, as qualified by Article 3.4.

Leakage detection systems

5.—(1) A person commits an offence if he uses a stationary application, other than an existing fire protection system, which contains 300 kilograms or more of fluorinated greenhouse gases in which has not been installed a leakage detection system.

(2) The operator of a stationary application, other than a fire protection system, which contains 300 kilograms or more of fluorinated greenhouse gases commits an offence if he does not ensure that a leakage detection system installed in the stationary application is checked in accordance with Article 3.3.

(3) The operator of an existing fire protection system commits an offence if he does not ensure that a leakage detection system is fitted to that fire protection system before 4th July 2010.

(4) The operator of a fire protection system which contains 300 kilograms or more of fluorinated greenhouse gases commits an offence if he does not 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; or
- (b) inspected as referred to in Article 3.5.

(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 4th July 2007.

Records

6. The operator of a stationary application containing 3 kilograms or more of fluorinated greenhouse gases commits an offence if he fails to comply with Article 3.6.

Recovery of fluorinated greenhouse gases

7.—(1) The operator of the equipment referred to in paragraph (2) commits an offence if he fails to comply with Articles 4.1 or 4.4.

(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) The user of a refillable or a non-refillable fluorinated greenhouse gas container commits an offence if he fails to comply with Article 4.2 or 4.4.

(4) Paragraph (5) applies to—

- (a) the operator of any equipment not referred to in paragraph (2); or
- (b) the user of any product, other than a gas container referred to in paragraph (3),

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

(5) Such an operator or user must ensure that any fluorinated greenhouse gas is recovered from the equipment or the product in accordance with Article 4.3.

(6) A person commits an offence if he fails to comply with paragraph (5).

Reporting requirements and the provision of information

8.—(1) A person who produces more than one tonne of fluorinated greenhouse gases in the Community each year commits an offence if he fails to comply with the requirements of Article 6.1(a) within the time limits set out in Article 6.1.

(2) A person who imports more than one tonne of fluorinated greenhouse gases each year commits an offence if he fails to comply with the requirements of Article 6.1(b) within the time limits set out in Article 6.1.

(3) A person who exports more than one tonne of fluorinated greenhouse gases from the Community each year commits an offence if he fails to comply with the requirements of Article 6.1(c) within the time limits set out in Article 6.1.

(4) A person referred to in paragraphs (1) to (3) commits an offence if he fails to send to the Secretary of State a copy of the annual report at the same time as he sends the annual report to the European Commission.

(5) A person commits an offence if he fails within a reasonable time to provide such information as the Secretary of State may reasonably request to enable the Secretary of State to acquire emission data for the purposes of Article 6.4.

(6) In this regulation—

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

- (b) “import” means import into the United Kingdom from outside the customs territory of the Community.

Instruction manuals

9.—(1) A person commits an offence if he places on the market a product or equipment referred to in paragraph (2) containing fluorinated greenhouse gas unless the instruction manual provided with the product or equipment contains—

- (a) a statement that the product or equipment contains such gas;
- (b) information about the fluorinated greenhouse gas in the product or equipment, including—
 - (i) the chemical name and quantity of the gas; and
 - (ii) its global warming potential; and
- (c) a statement whether or not the product or equipment is hermetically sealed.

(2) The product or equipment referred to in paragraph (1) is—

- (a) a refrigeration product or equipment which contains—
 - (i) perfluorocarbons, or
 - (ii) preparations containing perfluorocarbons;
- (b) a refrigeration or air conditioning product or equipment, except where such product or equipment is in a motor vehicle, which contains—
 - (i) hydrofluorocarbons, or
 - (ii) preparations containing hydrofluorocarbons;
- (c) a heat pump, fire protection system or fire extinguisher which contains—
 - (i) hydrofluorocarbons, or
 - (ii) preparations containing hydrofluorocarbons;
- (d) switchgear which contains sulphur hexafluoride or preparations containing sulphur hexafluoride; or
- (e) a fluorinated greenhouse gas container.

Prohibition on the use of sulphur hexafluoride

10. A person commits an offence if he uses sulphur hexafluoride or preparations of that substance in contravention of Article 8.1 or Article 8.2 on or after the date on which these Regulations come into force.

Placing on the market

11.—(1) Subject to paragraph (2), a person commits an offence if he places on the market a product or equipment referred to in Annex II to the 2006 Regulation in contravention of Article 9.1 on or after—

- (a) the date on which these Regulations come into force; or
- (b) the date specified in that Annex referable to the product or equipment in question,

whichever is the later.

(2) It is a defence for the person to prove that the product or equipment in question was manufactured before the date specified in Annex II to the 2006 Regulation referable to the product or equipment.

Importation

12. In respect of the importation of any product or equipment referred to in Annex II to the 2006 Regulation into the United Kingdom from outside the customs territory of the Community, section 170 of the Customs and Excise Management Act 1979^(a) has effect in relation to the evasion or attempted evasion of the prohibition set out in Article 9.1, as qualified by Article 9.2.

Proof of lawful import

13.—(1) Where any product or equipment is being, or has been, imported into the United Kingdom from outside the customs territory of the Community, an officer of Revenue and Customs may require any person possessing or having control of that product or equipment to furnish, within such reasonable time as that officer may specify, evidence that the importation is, or was not, unlawful by virtue of the 2006 Regulation.

(2) Until such evidence is furnished to the satisfaction of the Commissioners for Revenue and Customs, the product or equipment may be detained.

(3) If such evidence is not furnished to the satisfaction of the Commissioners for Revenue and Customs within the period specified under paragraph (1), the product or equipment is liable to forfeiture and the Customs and Excise Management Act 1979 applies in relation to it as if it were liable to forfeiture under that Act.

PART 3 **Qualifications**

Preliminary

14. The following provisions are subject to regulation 20—

- (a) regulation 15(1), (3) and (6);
- (b) regulation 16(1) and (2); and
- (c) regulation 17(1), (2) and (4).

Qualifications relating to certain stationary equipment

15.—(1) No person may—

- (a) install, service or maintain the stationary equipment referred to in paragraph (2);
- (b) check such equipment for any leakages of fluorinated greenhouse gases; or
- (c) repair, or carry out work to prevent, such leakages,

unless he has obtained one of the qualifications referred to in Part 1 of Schedule 1.

(2) The equipment is—

- (a) refrigeration equipment;
- (b) air conditioning equipment; or
- (c) heat pump equipment,

which contains 3 kilograms or more of fluorinated greenhouse gases.

(3) No person may—

- (a) install, service or maintain the stationary equipment referred to in paragraph (4);

(a) 1979 c.2; section 50 is amended by s.114 of the Police and Criminal Evidence Act 1984 (c.60), s.12(1) and (6) of the Finance Act 1988 (c. 39) and section 293(1) and (2) of the Criminal Justice act 2003 (c. 44) and by S.I. 1996/2686, S.I. 2004/702 and S.I. 2005/1966. Section 170 is amended by s.114 of the Police and Criminal Evidence Act 1984 (c.60), s 12 of the Firearms Act 1988 (c.45), paragraph 7 of Schedule 2 to the Finance (No 2) Act 1992 (c. 48) and section 293(1) and (4) of the Criminal Justice act 2003 (c. 44) and by S.I. 1996/2686, S.I. 2004/702 and S.I. 2005/1966.

- (b) check such equipment for any leakages of fluorinated greenhouse gases; or
- (c) repair, or carry out work to prevent, such leakages,

unless he has obtained one of the qualifications referred to in Part 1 of Schedule 1 or an in-house qualification, or he satisfies the requirement in paragraph (5).

- (4) The equipment is—
 - (a) refrigeration equipment;
 - (b) air conditioning equipment; or
 - (c) heat pump equipment,

which contains less than 3 kilograms of fluorinated greenhouse gases.

(5) The requirement referred to in paragraph (3) is that, before the date on which these Regulations come into force, the person has carried out work referred to in paragraph (3) without supervision.

- (6) No person may—
 - (a) install a leakage detection system in the equipment referred to in paragraph (7); or
 - (b) check that such a system functions properly,

unless he has obtained one of the qualifications referred to in Part 1 of Schedule 1.

- (7) The equipment is—
 - (a) refrigeration equipment;
 - (b) air conditioning equipment; or
 - (c) heat pump equipment,

which contains 300 kilograms or more of fluorinated greenhouse gases.

(8) For the purposes of this regulation, “equipment” includes the circuits which relate to the equipment.

- (9) A person is guilty of an offence if he fails to comply with paragraph (1), (3) or (6).

Qualifications relating to fire protection equipment

16.—(1) No person may—

- (a) install, service or maintain a fire protection system which contains a fluorinated greenhouse gas;
- (b) check such a fire protection system for any leakages of fluorinated greenhouse gases; or
- (c) repair, or carry out work to prevent, such leakages,

unless he has obtained an in-house qualification.

- (2) No person may—
 - (a) install a leakage detection system in a fire protection system which contains 300 kilograms or more of fluorinated greenhouse gases; or
 - (b) check that such a leakage detection system functions properly,

unless he has obtained an in-house qualification.

- (3) A person is guilty of an offence if he fails to comply with paragraph (1) or (2).

Qualifications relating to the recovery of fluorinated greenhouse gases

17.—(1) No person may recover fluorinated greenhouse gases from the air conditioning system in a motor car or motor van during the servicing or maintenance of that system unless he has obtained at least one of the qualifications referred to in Schedule 1.

(2) Subject to paragraph (4), no person may recover fluorinated greenhouse gases from the stationary equipment referred to in paragraph (3), unless he has obtained an in-house qualification.

(3) The equipment is—

- (a) the cooling circuits of refrigeration, air-conditioning or heat pump equipment;
- (b) equipment containing fluorinated greenhouse gas-based solvents;
- (c) fire protection systems;
- (d) fire extinguishers; or
- (e) high-voltage switchgear.

(4) No person may dismantle the equipment referred to in paragraph (3)(a) where the equipment can only be dismantled at the place where the equipment is used unless he has obtained one of the qualifications referred to in Part 1 of Schedule 1.

(5) A person is guilty of an offence if he fails to comply with paragraph (1), (2) or (4).

(6) In this regulation, “motor car” means a motor vehicle which—

- (a) has at least four wheels;
- (b) is used for the carriage of passengers; and
- (c) has no more than nine seats, including the seat of the driver.

(7) In this regulation, “motor van” means a motor vehicle which—

- (a) has at least four wheels;
- (b) has a maximum weight not exceeding 1.305 metric tons; and
- (c) is used for the carriage of goods.

Obligations of employers

18.—(1) The employer of a person employed to carry out any work referred to in—

- (a) regulation 15(1), (3) or (6);
- (b) regulation 16(1) or (2); or
- (c) regulation 17(1), (2) or (4),

must ensure that that person has obtained the qualification necessary to enable him to carry out the work in question under these Regulations.

(2) For the purposes of paragraph (1), a person is deemed to have obtained the necessary qualification if he is working under supervision in accordance with regulation 20 with a view to obtaining that qualification.

(3) A person is guilty of an offence if he fails to comply with paragraph (1).

Training provided by an employer

19.—(1) A training employer must ensure that the course of training he provides will enable an employee who has been trained to carry out relevant work satisfactorily.

(2) In respect of each employee trained, a training employer must keep for the required period a record of—

- (a) the name of the employee trained;
- (b) the training he provides;
- (c) the date he provides such training; and
- (d) the date on which is issued the certificate of competence or other written confirmation that the course of training has been successfully completed.

(3) A training employer must provide a copy of the record referred to in paragraph (2) to the employee in question when requested to do so by that employee during the required period.

(4) A training employer is guilty of an offence if he fails to comply with paragraph (1), (2) or (3).

(5) In this regulation—

- (a) “relevant work” means work referred to in regulation 15(3), 16(1), 16(2), 17(1) or 17(2);
- (b) “the required period” means both—
 - (i) the period during which the employee in question undergoes training provided by the training employer, and
 - (ii) the period during which the employee is employed by the training employer to carry out relevant work; and
- (c) “training employer” means an employer who provides training leading to an in-house qualification.

Working under supervision

20. A person who has not obtained the requisite qualification to carry out work referred to in—

- (a) regulation 15(1), (3) or (6);
- (b) regulation 16(1) or (2); or
- (c) regulation 17(1), (2) or (4),

may carry out such work if he does so under the supervision of a person who has obtained the requisite qualification and with a view to obtaining that qualification.

PART 4

Enforcement, offences and penalties

Appointment of authorised persons

21. The enforcing authority may authorise in writing such persons (“authorised persons”) as they consider appropriate to act for the purpose of enforcing these Regulations.

Powers of authorised persons

22.—(1) An authorised person may, on production, if so required, of his authority, exercise any of the powers specified in paragraph (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 he has reason to believe it is necessary for him to enter;
- (b) on entering any premises by virtue of sub-paragraph (a), to take with him—
 - (i) any other person whose presence appears to him to be required in connection with the exercise by him of any power under this regulation, including, if he has reasonable cause to apprehend any serious obstruction in the execution of his duty, a constable, 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 he 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 for the purposes of any examination or investigation under sub-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 sub-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 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 he has power to do under sub-paragraph (g),
 - (ii) to ensure that it is not tampered with before his examination of it 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 he has reasonable cause to believe to be able to give any information relevant to any examination or investigation under sub-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;
- (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 him to see for the purposes of any examination or investigation under sub-paragraph (c) and to inspect and take copies of, or of any entry in, the records;
- (k) 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 regulation.

(3) Where an authorised person proposes to exercise the power conferred by paragraph (2)(g) in the case of an article or substance found in or on any premises, he 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 paragraph (2)(g) in the case of any article or substance, an authorised person must 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 paragraph (2)(h) an authorised person takes possession of any article or substance found on any premises, he 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 he 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 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) Nothing in this regulation shall be taken to compel the production by any person of a document which he would be entitled to withhold production of on grounds of—

- (a) legal professional privilege on an order for disclosure and inspection in an action in the High Court; or
- (b) confidentiality in proceedings in the Court of Session in Scotland.

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

(8) No answer given by a person in pursuance of a requirement imposed under paragraph (2)(i) may be admissible in evidence in England, Wales, Scotland or Northern Ireland against that person in any proceedings.

Information notices

23. 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

24.—(1) If an authorised person is of the opinion that a person has contravened, is contravening or is likely to contravene—

- (a) Article 3.1 to 3.3, 3.6, 4, 8 or 9; or
- (b) the second paragraph of Article 7.1,

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 his contravention or likely contravention of Article 3.1 to 3.3, 3.6, 4, 8 or 9 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 25(6), the bringing of an appeal under regulation 25 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 his expense.

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

(9) In this regulation, “relevant enforcing authority” means the enforcing authority who or which authorised the authorised person who served the enforcement notice or prohibition notice in question.

Appeals against enforcement or prohibition notices

25.—(1) A person who is aggrieved by an enforcement notice or a prohibition notice may appeal to a magistrates' court or, in Scotland, to the sheriff.

(2) The procedure on an appeal to a magistrates' court is by way of complaint, and the Magistrates' Courts Act 1980 applies to the proceedings.

(3) An appeal to the sheriff is by summary application.

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

(5) 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 a magistrates' court or the sheriff; and

(b) the period in which the appeal may be brought.

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

Proceedings before a civil court

26.—(1) If the enforcing authority is of the opinion that proceedings against a person for an offence under regulation 27(1)(b) would afford an ineffectual remedy against that person, the enforcing authority may take civil proceedings against that person for the purpose of seeking such remedy as the enforcing authority believes is appropriate in the circumstances.

(2) Civil proceedings under paragraph (1) may be taken—

(a) in the County Court or the High Court; or

(b) in Scotland, before the sheriff.

Miscellaneous offences

27.—(1) A person commits an offence if he—

(a) fails to comply with the requirements of a notice served on him under regulation 23;

(b) fails to comply with an enforcement notice or a prohibition notice;

(c) fails to comply with a direction given, or a requirement imposed, under regulation 22(2);

(d) contravenes, or causes or permits another person to contravene, regulation 22(7);

(e) intentionally obstructs an authorised person in the exercise or performance of his powers or duties;

(f) furnishes to an authorised person any information which he knows to be false or misleading; or

(g) pretends to be an authorised person.

(2) A person commits an offence if he—

(a) fails to comply with regulation 31(3); or

(b) causes or permits another person to fail to comply with that regulation.

(3) A person commits an offence if he knowingly or recklessly furnishes Article 6.4 information which is false or misleading in any material particular.

(4) In paragraph (3), "Article 6.4 information" means such information as the Secretary of State may reasonably request to enable the Secretary of State to acquire emission data for the purposes of Article 6.4.

Corporate offences

28.—(1) If an offence under these Regulations 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 his part,
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, paragraph (1) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body.

(3) If an offence under these Regulations committed by a partnership is shown—

- (a) to have been committed with the consent or connivance of a partner; or
- (b) to be attributable to any neglect on his part,

the partner as well as the partnership is guilty of the offence and liable to be proceeded against and punished accordingly.

(4) If an offence under these Regulations committed by an unincorporated association, other than a partnership, is shown—

- (a) to have been committed with the consent or connivance of an officer of the association or a member of its governing body; or
- (b) to be attributable to any neglect on the part of such an officer or member,

that officer or member as well as the association is guilty of the offence and liable to be proceeded against and punished accordingly.

(5) In this regulation—

- (a) “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; and
- (b) “partner” includes a person purporting to act as a partner.

Penalties

29. A person guilty of an offence under these Regulations is liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum; or
- (b) on conviction on indictment, to a fine.

Fixed penalties

30.—(1) If an authorised person has reason to believe that a person has committed an offence under regulation 4 in relation to—

- (a) refrigeration equipment;
- (b) air conditioning; or
- (c) heat pump equipment,

kept on premises used only as a private dwelling house, he may give that person a notice offering him the opportunity of discharging any liability to conviction for that offence by payment of a fixed penalty.

(2) Where a person is given a fixed penalty notice under this regulation in respect of an offence—

- (a) no proceedings may be instituted for that offence before the expiry of 28 days following the date of the fixed penalty notice; and
- (b) he may not be convicted of that offence if he pays the fixed penalty before the expiry of that period.

(3) A fixed penalty notice must contain such particulars of the circumstances alleged to constitute the offence as are necessary for giving reasonable information of the offence.

(4) A fixed penalty notice must state—

- (a) the period during which, by virtue of paragraph (2), proceedings cannot be taken for the offence;
- (b) the amount of the fixed penalty;
- (c) the name of the person to whom and the address at which the fixed penalty may be paid.

(5) Payment of the fixed penalty may be made by pre-paying and posting to that person at that address a letter containing the amount of penalty.

(6) Where a letter is sent in accordance with paragraph (5) payment is deemed to be made at the time at which that letter would be delivered in the ordinary course of post.

(7) A fixed penalty notice must be in the form set out in Schedule 2.

(8) The amount of fixed penalty payable in pursuance of a fixed penalty notice is £100 which must be paid to the relevant enforcing authority.

(9) In any proceedings, a certificate which—

- (a) purports to be signed by or on behalf of the chief finance officer of the relevant enforcing authority; and
- (b) states that payment of a fixed penalty was or was not received by a date specified in the certificate,

is evidence of the facts stated.

(10) In this regulation,—

- (a) “fixed penalty notice” means a notice given under paragraph (1);
- (b) “relevant enforcing authority” means the enforcing authority who or which authorised the authorised person who served the fixed penalty notice in question.

Powers of the Secretary of State

31.—(1) Paragraph (2) applies where, in contravention of Article 9, a person has imported a product or equipment containing, or whose functioning relies upon, fluorinated greenhouse gases.

(2) The Secretary of State may require that person—

- (a) to dispose of the product or equipment without causing pollution of the environment or harm to human health or the health of animals or plants;
- (b) otherwise to render it harmless; or
- (c) to remove it from—
 - (i) the United Kingdom, or
 - (ii) an offshore installation.

(3) That person must comply with the requirement.

(4) In this regulation, “import” means import into the United Kingdom from outside the customs territory of the Community.

Enforcement

32.—(1) Subject to paragraphs (2) and (3), the relevant authority must enforce these Regulations.

(2) In relation to—

- (a) cases of a particular description; or
- (b) a particular case,

the Secretary of State, as regards England, the Welsh Ministers as regards Wales, and the Scottish Ministers, as regards Scotland, may direct that the duty in paragraph (1) imposed on a relevant authority shall be discharged by him or them, as the case may be, and not by the relevant authority.

(3) The Secretary of State must enforce these Regulations in relation to offshore installations.

(4) In this regulation, “relevant authority” means the Agency, the local authority or the port health authority.

10th January 2008

Phil Woolas
Minister of State
Department for Environment, Food and Rural Affairs

SCHEDULE 1

Regulation 15

Qualifications

PART 1

1. City & Guilds Certificate in Handling Refrigerants Scheme 2078.
2. Construction Industry Training Board Safe Handling of Refrigerants Reference 206710.

PART 2

3. An in-house qualification.
4. Automotive Technician Accreditation – Air Conditioning Refrigerant Handler.
5. Automotive Technician Accreditation – Air Conditioning Service Technician.
6. Automotive Technician Accreditation – Air Conditioning Diagnostic Technician.
7. Automotive Technician Accreditation – Senior Mechanical Electrical Trim Technician.
8. City & Guilds 5101–01 Certificate in Refrigerant Handling for Mobile Air Conditioning Systems.
9. City & Guilds 5101–02 Certificate in Servicing Mobile Air Conditioning Systems.
10. City & Guilds 5101–03 Certificate in Advanced Diagnostics for Mobile Air Conditioning Systems.
11. City & Guilds 5101–04 level 3 Certificate in Mobile Air Conditioning Systems.
12. City & Guilds 5101 unit 301 Refrigerant Handling for Mobile Air Conditioning Systems.
13. City & Guilds 4101–55 Certificate in Vehicle Maintenance and Repair (Air Conditioning and Climate Control).
14. City & Guilds 4101 unit V87 Air conditioning and climate control systems.
15. City & Guilds 4100–03 Level 3 Progression Award in Automotive Vehicle Servicing and Repair (Air Conditioning and Climate Control).
16. City & Guilds 4100 Unit 7.
17. Institute of the Motor Industry (IMI) level 3 unit–Refrigerant handling AC1.
18. City & Guilds 3791–10 Automotive Air Conditioning –Part One.

- 19. City & Guilds 3791–10 Automotive Air Conditioning –Part Two.
- 20. City & Guilds 3791–10 Automotive Air Conditioning –Part Three.
- 21. City & Guilds 6048–01 Motor Vehicle Air Conditioning (Service and Repair).
- 22. City & Guilds 7543-01 Level 3 Award in Basic Mobile Air Conditioning Systems (QCA trial only).
- 23. City & Guilds 7543-02 Level 3 Award in Diagnosis and Repair of Mobile Air Conditioning/Climate Control Systems (QCA trial only).
- 24. Institute of the Motor Industry (IMI) level 3 Diploma in Automotive Air Conditioning and Climate Control.
- 25. Institute of the Motor Industry (IMI) level 2 Vehicle Air Conditioning Technician.

SCHEDULE 2

Regulation 30(7)

Form of fixed penalty notice

The Fluorinated Greenhouse Gases Regulations 2008

Notice number:

Name of alleged offender:

Address:

I, _____⁽¹⁾, an authorised person acting on behalf of _____⁽²⁾, have reason to believe that on or between _____⁽³⁾ you contravened _____⁽⁴⁾.

This notice offers you the opportunity of discharging any liability to conviction for that offence by payment of a fixed penalty.

The circumstances alleged to constitute the offence are as follows:

No proceedings will be taken for this offence before the expiration of 28 days from the date of this notice. You will not be liable to conviction for the offence if you pay the fixed penalty during that period of 28 days.

The amount of the fixed penalty is £100.

It may be paid to _____⁽⁵⁾
at the following address:⁽⁶⁾

Payment may be made by cash or by cheque, postal order or money order payable to _____⁽⁵⁾

If you are sending cash, you are advised to send it by registered post. Payment made in this way will be regarded as having been made at the time at which the letter would be delivered in the ordinary course of post. Alternatively, payment may be made in person or by any other method.

Signature of authorised person: _____

Date of notice: _____

Notes:

- (1) Insert name of authorised person.
- (2) Insert the enforcing authority by whom the person is authorised.
- (3) Insert date on or dates between which the offence is alleged to have taken place.
- (4) Insert the regulation of the Fluorinated Greenhouse Gases Regulations 2008 that is alleged to have been contravened.
- (5) Insert title or name of person to whom the fixed penalty is to be paid.
- (6) Insert address at which payment is to be made.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations give effect to Regulation (EC) No 842/2006 of the European Parliament and of the Council on certain fluorinated greenhouse gases (OJ L 161, 14.6.2006, p. 1) (“the Council Regulation”). The term “fluorinated greenhouse gases” is defined in Article 2(1) of the Council Regulation.

The Regulations extend to England, Wales and Scotland. They also extend to Northern Ireland for the purposes of importation. The Regulations apply to offshore installations. (The term “offshore installations” is defined in regulation 2(6)).

The main provisions of the Regulations are as follows.

Regulation 3 appoints the Secretary of State as the competent authority for the purposes of the Council Regulation.

Part 2 of the Regulations (regulations 4 to 13) contains provisions which create offences for breaches of the provisions of the Council Regulation. Regulations 4 to 7 create a number of offences for failure to comply with the provisions of the Council Regulation relating to the operation of certain equipment containing fluorinated greenhouse gases and the recovery of such gases. Regulation 8 makes it an offence not to comply with the reporting requirements contained in Article 6 of the Council Regulation. Regulation 9 contains provisions about the information concerning fluorinated greenhouse gases which must be included in instruction manuals relating to certain equipment placed on the market. (The term “placing on the market” is defined in regulation 2(1)). Regulation 10 makes it an offence to use sulphur hexafluoride contrary to Article 8 of the Council Regulation. Regulations 11 to 13 are concerned with unlawful placing on the market and importation.

Part 3 of the Regulations (regulations 14 to 20) and Schedule 1 prescribe the qualifications which are required in order to carry out certain work involving equipment containing fluorinated greenhouse gases or the recovery of such gases. It is an offence to carry out such work without the requisite qualification. However, by virtue of regulation 20, a person can carry out such work without the requisite qualification if he does so under the supervision of a person who has the requisite qualification. Regulation 18 makes it an offence for an employer to fail to ensure that his employees are properly qualified. Regulation 19 contains provisions relating to the training of employees by their employers.

Part 4 of the Regulations (regulations 21 to 32) contains provisions relating to enforcement, offences and penalties. Regulations 21 and 22 relate to the appointment, and powers, of persons to enforce the Regulations. Such persons are appointed by the enforcing authority. (The term “enforcing authority” is defined in regulation 2(3).)

Regulations 24 and 25 are concerned with enforcement and prohibition notices and appeals against such notices. A number of miscellaneous offences are created by regulation 27. Regulation 29 sets out the penalties to which a person is liable if that person commits an offence.

Regulation 30 contains provisions enabling a penalty notice to be issued in respect of an offence under regulation 4 relating to certain equipment in a dwelling house. The payment of the penalty in accordance with the regulation will discharge the liability to conviction for the offence. The form of the penalty notice is set out in Schedule 2.

Regulation 31 confers a power on the Secretary of State to require the disposal of products or equipment containing fluorinated greenhouse gases unlawfully imported or their removal from the United Kingdom or an offshore installation.

Regulation 32 provides who is to enforce the Regulations.

A full regulatory impact assessment of the effect that this instrument will have on the costs of business is available from the Department for Environment, Food and Rural Affairs, Global Atmosphere Division, Area 3F, Ergon House c/o 17, Smith Square, London, SW1P 3JR. A copy has been placed in the library of each House of Parliament.

£3.50

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Stationery Office and Queen's Printer of Acts of Parliament.

E1839 1/2008 181839T 19585

