

# The draft Fluorinated Greenhouse Gases Regulations (Northern Ireland) 2015

## A consultation Paper

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**July 2015**

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# 1. Introduction

## 1.1 Purpose of consultation

This consultation is on a draft set of Regulations for Northern Ireland (“NI”) which are being made as a result of *Regulation (EU) No 517/2014 of the European Parliament and of the Council of 16 April 2014 on fluorinated greenhouse gases and repealing Regulation (EC) No 842/2006* (“the EU F-gas Regulation”) which came into operation in January 2015. It aims to reduce the emissions of fluorinated greenhouse gases (“F-gases”), which have a significant impact on climate change.

This EU F-gas Regulation can be found on the following web-page:

[http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:JOL\\_2014\\_150\\_R\\_0008](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:JOL_2014_150_R_0008)

The EU F-gas Regulation is binding in all EU Member States and the United Kingdom (“UK”) is therefore obliged under Article 25 to:

*“(…) lay down the rules on penalties applicable to infringements of this Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive.”*

Some of the requirements of this regulation deal with import and export controls and trade with places outside of the UK, which is a reserved matter. This means the Northern Ireland Executive cannot legislate for these requirements. Those requirements are covered by Regulations made by the Department for Environment, Food and Rural Affairs (“DEFRA”) in March 2015; *the Fluorinated Greenhouse Gases Regulations 2015* (“the GB F-gas Regulations”).

The GB F-gas Regulations only extend to Northern Ireland (“NI”) to the extent that they deal with import and export controls and trade with places outside of the UK.

Therefore Regulations are needed for NI to ensure that measures and penalties are put in place so that the requirements of the EU F-gas Regulation (which do not deal with import and export controls and trade) are implemented in NI.

That means 2 sets of regulations will apply to NI to ensure that all aspects of the EU F-gas Regulation are implemented.

We propose to maintain the same penalties and enforcement powers in the future F-gas Regulations for NI as in the GB F-gas Regulations, so as to have a consistent approach for all the EU Regulation provisions in NI and across the UK.

The purpose of this consultation is not to discuss the provisions of the EU Regulation, which are already in place and apply directly in NI and across the EU. This consultation is only concerned with the measures taken to ensure that the EU Regulation is complied with, and on whether the penalties are effective, proportionate and dissuasive.

These are not the first set of Regulations on F-gases for NI. The proposed F-gas Regulations for NI will revoke the *Fluorinated Greenhouse Gases Regulations (Northern Ireland) 2009* (“the current NI F-gas Regulations”) which were made as a result of a previous EU Regulation, *Regulation (EC) No 842/2006 of the European Parliament and of the Council of 17 May 2006 on certain fluorinated greenhouse gases* (“the 2006 EU Regulation”).

The new draft Regulations are to be called the *Fluorinated Greenhouse Gases Regulations (Northern Ireland) 2015* (“the draft NI F-gas Regulations”). The draft NI F-gas Regulations can be found at the Annex I on page 39 of this document.

## **1.2 The sectors of industry in Northern Ireland that use F-gases**

F-gases are man-made and are used in a number of different sectors of business in NI. Therefore the draft NI F-gas Regulations may be relevant to stakeholders involved in the following sectors of industry:

- a) refrigeration systems
- b) air conditioning (including in motor vehicles)
- c) heat pump equipment
- d) F-gas based solvents
- e) high-voltage switchgear
- f) insulation foam
- g) refrigerated lorries and trailers
- h) aerosols
- i) fire protection,
- j) magnesium smelting/casting
- k) Organic Rankine Cycles (“ORCs”), and
- l) chemical manufacturers and suppliers.

## **1.3 What are F-gases?**

F-gases include:

- a) hydrofluorocarbons (“HFCs”),
- b) perfluorocarbons (“PFCs”) and
- c) sulphur hexafluoride (“SF6”).

## **1.4 What are the effects of F-gas emissions?**

F-gases are invisible and harmless to humans, animals and plants, and do not damage the ozone layer. However, they are believed to have a very high Greenhouse Warming Potential

(“GWP”), are generally long-lived, and are included in the greenhouse gases listed in the Kyoto Protocol.

F-gas emissions are therefore a contributory factor in the long term greenhouse effect.

## **1.5 Provisions of the EU F-gas Regulation**

Broadly speaking, the EU F-gas Regulation attempts to control emissions of F-gases by:

- a) phasing down the amount of F-gases that can be placed on the market through gradually reducing quotas on F-gas producers and importers;
- b) imposing bans on certain F-gases in certain applications; and
- c) strengthening of obligations on leak checks, repairs, recovery and training of those who install or service equipment containing F-gases.

As mentioned in point a) above, at the core of the EU F-gas Regulation is a phase down in the amount of F-gases that can be placed on the market, managed via a quota system for producers.

The process begins with a cap in 2015, followed by a series of cuts; there is a 7% cut in 2016, leading to a 79% cut in 2030 and beyond. There will also be smaller cuts in PFC and SF6 emissions stimulated by other aspects of the Regulation. For the UK, DEFRA forecast a reduction in emissions equivalent to 3 megatonnes of CO2 by 2020 rising to nearly 8 megatonnes by 2035, representing a 72% cut.

## **1.6 Policy options considered, including alternatives to legislation**

The EU F-gas Regulation is directly applicable in the UK so no domestic legislation is needed to implement its main provisions. However it does require Member states to implement their own enforcement and penalty provisions.

The Department of the Environment (“the Department”)’s preferred option to comply with the requirement for Member States to ensure the provisions of the EU F-gas Regulation are implemented is to introduce new domestic Regulations. It is also intended to repeal the current NI F-gas Regulations which applied to the 2006 EU Regulation.

Another option would be to leave the existing compliance provisions in place, but the risk of infraction penalties would be high as the current NI F-gas Regulations do not cover the new provisions. We have not, therefore, explored this option further.

Similarly we have not considered non-regulatory options, as these would also not effectively meet the NI’s compliance and enforcement obligations in a way that the Department would consider to be fair and consistent for all businesses.

## **1.7 Interface with Great Britain (“GB”) legislation**

It should be noted that the Northern Ireland Executive has the powers to make regulations in relation to climate change. However, the powers to make regulations for matters which deal with import and export controls and trade are “reserved” by Westminster.

The Department considers that some of the EU F-gas Regulation requirements in relation to importing F-gases are therefore “reserved matters”. This means that the draft NI F-gas Regulations will only extend to the requirements of the EU F-gas Regulation which do not deal with import or export controls or trade with a place outside of the UK.

The requirements of the EU F-gas Regulations which deal with import or export controls or trade with a place outside of the UK are already covered by the GB F-gas Regulations. DEFRA has introduced equivalent legislation, i.e. the GB F-gas Regulations, in March 2015.

These GB F-gas Regulations apply to NI insofar as they deal with imports and export controls and trade with any place outside of the UK. The GB F-gas Regulations can be viewed at:

<http://www.legislation.gov.uk/ukxi/2015/310/made>

Because two sets of regulations may apply to a single operator using and importing F-gases, the Department cannot think of any good reason why the draft NI F-gas Regulations should be substantively different to the GB F-gas Regulations. Therefore the proposed draft NI F-gas Regulations have the same enforcement powers, offences and rights of appeal as the GB F-gas Regulations.

This will mean that there is a consistent enforcement of the EU F-gas Regulation within NI and across the UK.

**Do you agree that the enforcement provisions of the EU F-gas regulation should be consistent within Northern Ireland and across the UK?**

## **1.8 Further information on the draft NI F-gas Regulations contained in this consultation document**

Further details of the draft provisions of the draft NI F-gas Regulations can be found in the following sections of this consultation document.

Provisions which are already in place in the current NI F-gas Regulations, and are unchanged in the draft NI F-gas Regulations, have not been included here. The provisions listed in this consultation document only include the new provisions of the EU F-gas Regulation.

## **1.9 Guidance on the EU F gas Regulation**

Further guidance including detailed information for each individual sector of business affected by the draft NI F-gas Regulations and the GB F-gas Regulations has been drafted in conjunction with DEFRA and is available on this web-page:

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

## 2. Provisions of the draft NI F-gas Regulations

### 2.1 Introduction to new provisions

The main new features of the EU F-gas Regulation are as follows:

- a) A phase down in the quantities of hydrofluorocarbons (“HFCs”) that can be placed on the EU market. The phase down is applied to the aggregate Global Warming Potential (“GWP”) (measured in equivalent tonnes of carbon dioxide) and takes place in a series of steps, starting with a cap in 2015, followed by a 7% cut in 2016 and reaching a 79% cut in 2030. (Article 15.1 and Annex V of the EU F-gas Regulation)
- b) A quota system to accompany the phase down that will specify the amounts of HFCs that individual companies can place on the market (Article 16.5 of the EU F-gas Regulation).
- c) A number of bans on the use of certain F-gases in some new types of equipment (Article 11.1 of the EU F-gas Regulation).
- d) A ban on the use of HFCs with a very high GWP for the servicing of certain types of refrigeration equipment (this ban applies to existing equipment) (Article 13.3 of the EU F-gas Regulation).
- e) Some strengthening of existing obligations related to leak repair, leak checking, F-gas recovery and the training of technicians (Articles 3.3, 4, 8 and 10 of the EU F-gas Regulation),
- f) The prohibition of the intentional release of F-gases into the atmosphere where the release is not technically necessary for the intended use (Article 3.1 of the EU F-gas Regulation),
- g) The requirement to check equipment for leaks also now applies to refrigerated trucks and trailers, and to Organic Rankine Cycles (ORCs) (for equipment that contains F-gases in quantities of 5 tonnes of CO<sub>2</sub> equivalent or more and is not contained in foams) (Article 4.1 and 4.2 of the EU F-gas Regulation), and
- h) Operators of the refrigeration units of refrigerated trucks and trailers are now also required to ensure that the recovery of F-gases from the cooling circuits of refrigeration units of refrigerated trucks and trailers is carried out by qualified persons, so that the F-gases are recycled, reclaimed or destroyed (Article 8.1 of the EU F-gas Regulation).

### 2.2 Offences and enforcement notices for breach of the provisions

Please note that, in the draft NI F-gas Regulations, non-compliance with some articles of the EU Regulation is not a direct offence. Instead, the enforcing authority can issue an enforcement notice, which will set out what the enforcing authority believes is a failure to comply with the EU Regulation and also the steps that must be taken to correct the failure.

The failure to follow the steps set out in the enforcement notice is an offence. Details of enforcement notices can be found in draft regulations 23 and 24 of the draft NI F-gas Regulations.



However, non-compliance with some requirements of the EU Regulation is a direct offence. Offences can result in a court case and, if the accused is found guilty, a fine can be imposed.

## 2.3 Information notices

An information notice may be issued by an authorised person, requiring information to be provided to the enforcing authority about any F-gas related issue (draft reg 22 of the draft NI F-gas Regulations).

The deliberate failure to comply with the terms of an information notice is considered grounds for the issue of an enforcement notice, under draft reg 23(1)(f) of the draft NI F-gas Regulations.

## 2.4 Certification, evaluation and attestation – new bodies

The certification, evaluation and attestation bodies for the legally required certificates for work with F-gases the sectors of industry mentioned in section 1.2 above have remained largely the same. However, please note that the following new certification, evaluation and attestation bodies have now been added to the list permitted:

### Stationary refrigeration, air conditioning and heat pump equipment (company certificates):

- a) REFCOM Limited,
- b) Bureau Veritas UK Limited, and
- c) Quidos Limited.

### Fire protection systems and fire extinguishers (now company certificates as well as individual certificates):

- Fire Industry Association

### High-voltage switchgear (certificates for individuals in all cases):

- a) Alstom Grid UK Limited (formerly Areva T&D UK Limited)
- b) EA Technology Limited
- c) Electricity Northwest Limited
- d) Lucy Electric UK Limited (formerly Lucy Switchgear Limited)
- e) National Grid Electricity Transmission plc
- f) Scottish and Southern Energy Power Distribution Limited
- g) Scottish Power Energy Network Holdings Limited
- h) UK Power Networks (Operations) Limited
- i) Western Power Distribution (East Midlands) plc

- j) Western Power Distribution (South Wales) plc
- k) Western Power Distribution (South West) plc
- l) Western Power Distribution (West Midlands) plc

F-gas based solvents (certificates for individuals in all cases):

- Fraser Technologies Limited

Air conditioning systems in certain motor vehicles:

- Construction Industry Training Board

## 2.5 Enforcing Authorities

The Department of the Environment (in practice, the NI Environment Agency (“NIEA”)) will enforce the draft NI F-gas Regulations on Part A PPC(IE) installations<sup>1</sup>. This is a new requirement of draft regulation 18(3).

The District Councils will do all other enforcement on land under the draft NI F-gas Regulations.

The Department of Energy and Climate Change (“DECC”) will enforce on NI offshore installations, except for Renewable energy offshore installations which are regulated by the DOENI.

## 2.6 Appointment of authorised persons

Under draft reg 19(2), anyone authorised under Article 19 of the *Environment (Northern Ireland) Order 2002*<sup>2</sup> (powers of enforcing authorities and persons authorised by them) will become authorised to enforce the draft NI F-gas Regulations.

Draft reg 19(3) relates to the Secretary of State (in practice, the Department of Energy and Climate Change (“DECC”)) enforcing offshore installations in NI waters (but not offshore installations used for renewable energy generation).

For these installations, anyone authorised under regulation 16 (appointment of inspectors) of the *Offshore Chemicals Regulations 2002*<sup>3</sup> or regulation 12 (inspectors) of the *Offshore Petroleum Activities (Oil Pollution Prevention and Control) Regulations 2005*<sup>4</sup> will become authorised to enforce the draft NI F-gas Regulations on the offshore installations mentioned above.

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<sup>1</sup> “Part A installations” are defined in Schedule 1 of the *Pollution Prevention and Control (Industrial Emissions) Regulations (Northern Ireland) 2013*, which can be found at: <http://www.legislation.gov.uk/nisr/2013/160/schedule/1/made>

<sup>2</sup> Article 19 of the *Environment (Northern Ireland) Order 2002* can be found at: <http://www.legislation.gov.uk/nisi/2002/3153/article/19/made>

<sup>3</sup> The *Offshore Chemicals Regulations 2002* can be found at: <http://www.legislation.gov.uk/uksi/2002/1355/regulation/16/made>

<sup>4</sup> The *Offshore Petroleum Activities (Oil Pollution Prevention and Control) Regulations 2005* can be found at: <http://www.legislation.gov.uk/uksi/2005/2055/regulation/12/made>

## **2.7 Powers of authorised persons**

The powers of authorised persons are more limited than in the current NI F-gas Regulations:

- a) authorised persons may only enter premises (except for offshore installations) between 8 am and 6pm on any working day (draft reg 20(2)(a) of the draft NI F-gas Regulations), but note that this is also affected by the new provisions in warrants in draft reg 21 and section 2.8 of this document,

and

- b) authorised persons may be accompanied by up to four other persons whom the authorised person deems necessary for assistance (draft reg 20(2)(b)(i) of the draft NI F-gas Regulations).

## **2.8 Warrants**

An entirely new section on warrants is being added as draft regulation 21 of the draft NI F-gas Regulations.

A lay magistrate will be able to issue a warrant permitting authorised persons to enter premises, if necessary by reasonable force, and under certain conditions.

The first condition is that there are reasonable grounds to enter the premises to enforce the draft NI F-gas Regulations.

In addition, at least one of the following conditions is due to be required:

- a) entry is likely to be refused without a warrant, and the occupier of the premises has been informed that the authorised person intends to apply for a warrant,
- b) asking to enter the premises or giving any advanced warning about a due inspection would defeat the purpose of entering the said premises,
- c) entry is required urgently, or
- d) the premises are unoccupied or the occupier is temporarily absent.

Warrants will be valid for 3 months.

## **2.9 Enforcement notices and offences**

The Department has made enforcement notices the focus of actions against those breaching the EU requirements in order to limit the number of actions which directly result in criminal liability.

This means that the breach of a requirement under the EU Regulation or the associated Commission Regulations, would not, in most cases, itself be a criminal offence.

Instead, the enforcing authority is able to issue an enforcement notice (e.g. for not providing information within the requested time). Breach of a requirement under an enforcement notice would then be a criminal offence under draft regulation 26(1)(d).

Failure to comply with an information notice – a requirement to provide specified information to the enforcing authority – is also a ground for serving an enforcement notice.

The proposed Regulations do not include a separate category of prohibition notices because enforcement notices are considered sufficient for the purpose of enforcing the EU Regulation and Commission Regulations.

Direct criminal liability does still apply to a few breaches of the EU requirements, although the options of using an enforcement notice in those cases is usually still available. This includes:

- the placing on the market of prohibited products which might be undertaken as a “one off” offence and so is unlikely to be deterred by an enforcement notice;
- breaches which relate to the effectiveness of the quota system, which is fundamental to the success of the EU Regulation;
- obstructing those carrying out enforcement;
- providing information that is false or misleading;
- failing to provide information or assistance without reasonable cause to those carrying out enforcement; and
- failing to produce a document or record to an enforcement authority when required to do so.

A full list of breaches that may be treated as a criminal offence appears in the next section (2.9.1).

### **2.9.1 Summary of new offences contained in the draft NI F-gas Regulations:**

The main offences of the EU F-gas Regulation include the following (the draft regulation number of the draft NI F-gas Regulations is mentioned in brackets each time):-

1. intentionally releasing fluorinated greenhouse gases into the atmosphere (where the release is not technically necessary) (draft reg 26(1)(a)(i))
2. placing products and equipment listed in Annex III to the EU Regulation on the market (Article 11(1) to (3) of the EU F-gas Regulation, mentioned in Schedule 2, as is referred to by draft reg 26(1)(a)(ii))
3. from January 2017, placing equipment charged with HFCs on the market (unless it is within quota limits) (Article 14(1) of the EU F-gas Regulation, mentioned in Schedule 2, as is referred to by draft reg 26(1)(a)(iii))
4. manufacturers failing to conform to requirements for documenting pre-charged equipment when placing on the market (Article 14(2) to (3) of the EU F-gas Regulation, mentioned in Schedule 2, as is referred to by draft reg 26(1)(b))
5. from January 2018, importers failing to ensure that accuracy of documentation is verified by an independent auditor by 31 March each year (Article 14(2) to (3) of the EU F-gas Regulation, mentioned in Schedule 2, as is referred to by draft reg 26(1)(b))

6. manufacturers of refrigeration, air conditioning and heat pump equipment charged with HFCs failing to keep the documentation and declaration of conformity for at least five years (Article 14(2) of the EU F-gas Regulation, mentioned in Schedule 2, as is referred to by draft reg 26(1)(b))
7. producers exceeding their allocated quota of HFCs placed on the market (applies only to producers of over 100 tonnes of carbon dioxide equivalent of HFCs per year) (Article 15(1) to (3) of the EU F-gas Regulation, mentioned in Schedule 2, as is referred to by draft reg 26(1)(c))
8. failing to comply with an enforcement notice, (draft reg 26(1)(d))
9. obstructing those carrying out enforcement, (draft reg 26(2)(a))
10. failing to provide information or assistance without reasonable cause to those carrying out enforcement, (draft reg 26(2)(b))
11. intentionally providing information that is false or misleading, (draft reg 26(2)(c)) and
12. Failing to produce a document or record to an enforcement authority when required to do so (draft reg 26(2)(d)).

**Question for stakeholders: Do you think the proposed balance between direct criminal offences and enforcement notices is appropriate to ensure effective compliance with the EU Regulation?**

### **2.9.2 Eleven new bans on the use of F-gases in the EU F-gas Regulation**

The bans on the placement on the market of certain types of equipment are specified in Article 11 of the EU F-gas Regulation and detailed in Annex III of the EU F-gas Regulation.

The failure to observe the bans is a direct offence, as is detailed in draft reg 26(1)(a)(ii) of the draft NI F-gas Regulations.

Each ban is based on a product definition and a specified scope of F-Gases (e.g. HFCs with a GWP above 150).

Article 11 of the EU F-gas Regulation describes three exemptions to the bans:

- 1) Military equipment (this only refers to specialised equipment such as tanks and aircraft)
- 2) Eco-design: If the lifecycle emissions (including energy and F-Gases, established under EU Directive 2009/125/EC) are lower with a banned product, an exemption can be granted.
- 3) Limited 4 year exemptions, where it can be shown that there are technical or safety issues.

Exemptions (2) and (3) require the agreement of the European Commission for each specific product.

The following table shows the details of the bans. Those in **Bold** are new, although all the bans are listed here. The full details can be found on Annex III of the EU F-gas Regulation.

A useful summary has been prepared by Gluckman Consulting in collaboration with the Defra and Jacobs and can be found here:

<http://www.gluckmanconsulting.com/wp-content/uploads/2014/12/IS-26-Ban-Summary.pdf>

<b>Products and equipment</b>		<b>Date of prohibition</b>
1. Non-refillable containers for fluorinated greenhouse gases used to service, maintain or fill refrigeration, air-conditioning or heat-pump equipment, fire protection systems or switchgear, or for use as solvents		4 July 2007
2. Non-confined direct evaporation systems that contain HFCs and PFCs as refrigerants		4 July 2007
<b>3. Fire protection equipment</b>	that contain PFCs	4 July 2007
	<b>that contain HFC-23</b>	<b>1 Jan 2016</b>
4. Windows for domestic use that contain fluorinated greenhouse gases		4 July 2007
5. Other windows that contain fluorinated greenhouse gases		4 July 2008
6. Footwear that contains fluorinated greenhouse gases		4 July 2006
7. Tyres that contain fluorinated greenhouse gases		4 July 2007
8. One-component foams, except when required to meet national safety standards, that contain fluorinated greenhouse gases with GWP of 150 or more		4 July 2008
9. Aerosol generators marketed and intended for sale to the general public for entertainment and decorative purposes, as listed in point 40 of Annex XVII to Regulation (EC) No 1907/2006, and signal horns, that contain HFCs with GWP of 150 or more		4 July 2009
<b>10. Domestic refrigerators and freezers that contain HFCs with GWP of 150 or more</b>		<b>1 January 2015</b>
<b>11. Refrigerators and freezers for commercial use (hermetically sealed equipment)</b>	<b>that contain HFCs with GWP of 2 500 or more</b>	<b>1 January 2020</b>
	<b>that contain HFCs with GWP of 150 or more</b>	<b>1 January 2022</b>
<b>12. Stationary refrigeration equipment, that contains, or whose functioning relies upon, HFCs with GWP of 2 500 or more except equipment intended for application designed to cool products to temperatures below – 50 °C</b>		<b>1 January 2020</b>
<b>13. Multipack centralised refrigeration systems for commercial use with a rated capacity of 40 kW or more that contain, or whose functioning relies upon, fluorinated greenhouse gases with GWP of 150 or more, except in the primary refrigerant circuit of cascade systems where fluorinated greenhouse gases with a GWP of less than 1 500 may be used</b>		<b>1 January 2022</b>
<b>14. Movable room air-conditioning equipment (hermetically sealed equipment which is movable between rooms by the end user) that contain HFCs with GWP of 150 or more</b>		<b>1 January 2020</b>
<b>15. Single split air-conditioning systems containing less than 3 kg of fluorinated greenhouse gases, that contain, or whose functioning relies upon, fluorinated greenhouse gases with GWP of 750 or more</b>		<b>1 January 2025</b>
<b>16. Foams that contain HFCs with GWP of 150 or more except when required to meet national safety standards</b>	<b>Extruded polystyrene (XPS)</b>	<b>1 Jan 2020</b>
	<b>Other foams</b>	<b>1 Jan 2023</b>
<b>17. Technical aerosols that contain HFCs with GWP of 150 or more, except when required to meet national safety standards or when used for medical applications</b>		<b>1 January 2018</b>

## **2.10 Terms of enforcement notices**

An enforcement notice (draft reg 23(7)(e) of the draft NI F-gas Regulations) must state that it is an offence under draft 26(1)(d) of the draft NI F-gas Regulations to fail to comply with the terms of an enforcement notice.

An enforcement notice must provide information on the right to appeal under draft regulation 24 of the draft NI F-gas Regulations, as is stated in draft regulation 23(7)(d). However, the enforcement notice is not suspended pending an appeal unless the court orders otherwise, a provision of draft reg 24(5) of the draft NI F-gas Regulations.

In addition, if an enforcement notice is not complied with, the enforcing authority may under draft reg 23(10)(a) arrange for it to be complied with at the expense of the person on whom it was served.

## **2.11 Appeals against enforcement notices**

The right of appeal is to a magistrates' court, under draft reg 24(2) of the draft NI F-gas Regulations, as opposed to a court of summary jurisdiction, as was stated in reg 45(1) of the current NI F-gas Regulations.

The enforcement notice is not suspended pending an appeal unless the court orders otherwise, a provision of draft reg 24(5) of the draft NI F-gas Regulations.

## **2.12 Offences committed by bodies corporate, partnerships and unincorporated associations**

Section 20(3) of the Interpretation Act (NI) 1954 will not apply to the draft NI F-gas Regulations, unlike the current NI F-gas Regulations. This is a provision of draft reg 27(1)(b) of the draft NI F-gas Regulations.

Section 20(3) of the Interpretation Act (NI) 1954 states:

“A person shall not be charged under sub-section (2) except by or with the consent of the Attorney-General or the Director of Public Prosecutions for Northern Ireland.”

Sub-section (2) of section 20 of the Interpretation Act (NI) 1954 states:

“Where an offence under any enactment passed after the commencement of this Act has been committed by a body corporate the liability of whose members is limited, then notwithstanding and without prejudice to the liability of that body, any person who at the time of such commission was a director, general manager, secretary or other similar officer of that body or was purporting to act in any such capacity shall, subject to sub-section (3), be liable to be prosecuted as if he had personally committed that offence and shall, if on such prosecution it is proved to the satisfaction of the court that he consented to, or connived at, or did not exercise all such reasonable diligence as he ought in the circumstances to have exercised to prevent the offence, having regard to the nature of his functions in that capacity and to all the circumstances, be liable to the like conviction and punishment as if he had personally been guilty of that offence.”

Regulation 48(3) of the current NI F-gas Regulations is due to be removed from the draft NI F-gas Regulations. It currently states:

“Proceedings for an offence alleged to have been committed by an unincorporated association must be brought in the name of the association and not in the name of any of its members.”

A new paragraph 27(5) is due to be added to the draft NI F-gas Regulations, which is to state:

“For the purpose of proceedings under paragraph (4) -

(a) rules of court relating to the service of documents have effect as if the association were a body corporate; and

(b) the provisions of section 18 (procedure on charge) of the Criminal Justice Act (NI) 1945 and Article 166 (corporations) of, and Schedule 4 to, the Magistrates’ Courts (NI) Order 1981 apply as they apply in relation to a body corporate.”

For your reference:

Paragraph (4), as mentioned above, states:

“Where an offence under these Regulations committed by an unincorporated association (other than a partnership) is proved-

(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,

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

Section 18 (procedure on charge) of the Criminal Justice Act (NI) 1945 can be found on this web-page:

<http://www.legislation.gov.uk/apni/1945/15/section/18>

Article 166 (corporations) of, and Schedule 4 to, the Magistrates’ Courts (NI) Order 1981 can be found on these web-pages:

<http://www.legislation.gov.uk/nisi/1981/1675/article/166>

<http://www.legislation.gov.uk/nisi/1981/1675/schedule/4>

## **2.13 Revocations**

The following pieces of legislation are all revoked in draft reg 30 of the draft NI F-gas Regulations:

- a) the current NI F-gas Regulations,
- b) the Fluorinated Greenhouse Gases (Amendment) Regulations (Northern Ireland) 2012, and
- c) the Fluorinated Greenhouse Gases (Amendment) Regulations (Northern Ireland) 2014.



Note that the provisions of the current NI F-gas Regulations have largely been replicated in the draft NI F-gas Regulations. All the new provisions detailed in this section of the consultation document have also been added to the draft NI F-gas Regulations.

The provisions of the two other short pieces of legislation mentioned in b) and c) above, which updated the current NI F-gas Regulations, have also been taken into account when compiling the draft NI F-gas Regulations.

## 3. Equality/Human Rights/Rural Proofing Issues

### 3.1 Equality Impact Assessment

Under Section 75 of the *Northern Ireland Act 1998*, public authorities have a statutory duty to promote equality of opportunity. This legislation can be found at:

<http://www.legislation.gov.uk/ukpga/1998/47/section/75>

Preliminary screening exercises have been undertaken on the draft NI F-gas Regulations and there is no evidence that the proposed measures will have any impact on any of the groups specified in Section 75. Therefore, the Department does not consider a full Equality Impact Assessment to be necessary.

However, any differing views that any stakeholders may have on equality-related aspects of the draft NI F-gas Regulations will be taken into account by the Department.

The groups specified in section 75 are:

(a) persons of different:

- (i) religious belief,
- (ii) political opinion,
- (iii) racial group,
- (iv) age,
- (v) marital status or
- (vi) sexual orientation,

(b) between men and women generally,

(c) between persons with a disability and persons without, and

(d) between persons with dependants and persons without.

Copies of all screened policies are available from the Department's website at:

[http://www.doeni.gov.uk/equality\\_unit](http://www.doeni.gov.uk/equality_unit)

The Equality Commission will receive copies of this consultation document as part of the consultation exercise. Any comments that the Equality Commission might have will be taken into account.

### 3.2 Human Rights Issues

The *Human Rights Act 1998* ("HRA") implements the European Convention on Human Rights ("ECHR"), which makes it unlawful for any public authority to act in a way that is incompatible with these rights.

Since the implementation of the HRA, all legislation must be checked to ensure compliance with the rights set out in the ECHR.

Screening exercises have been completed which concluded that the draft NI F-gas Regulations are compatible with the HRA. However, the Department welcomes any alternative views that stakeholders may have on human rights issues in the draft NI F-gas Regulations, which you are welcome to express as part of this consultation.

The HRA can be found on the following web-page:

<http://www.legislation.gov.uk/ukpga/1998/42/contents>

The text of the ECHR can be found on the following web-page:

<http://conventions.coe.int/treaty/en/Treaties/Html/005.htm>

### **3.3 Rural Proofing**

Rural proofing is a process to ensure that all relevant Government policies are examined carefully and objectively to determine whether they have a different impact in rural areas from that elsewhere.

The Department has carried out an assessment on rural proofing and considers that the measures contained within the draft NI F-gas Regulations are unlikely to have any different impact in rural areas to that within any other sector of the community.

However, the Department is willing to consider any alternative views that any stakeholders may wish to offer on any potential effects of the draft NI F-gas Regulations that may differ between rural areas and any other sector of the community.

# 4. Partial Regulatory Impact Assessment

## 4.1 Introduction and request for information

An assessment of the impact of the GB F-gas Regulations on over all UK business and companies was undertaken by DEFRA, and the details are below. The DEFRA impact assessment was updated to take account of consultation responses for the GB F-gas Regulations which apply to GB and to the extent they deal with import and export controls and trade, also to NI.

Much of the information used in DEFRA's impact assessment has also been used here. Please therefore note that most of the statistical information in the following sections has been re-calculated so that it applies to the UK as a whole, including of course NI.

Some of the costs relate to import controls which are enforced through the GB F-gas regulations. This impact assessment considers the effect of the new provisions of the EU regulation on UK business. As the figures are relatively small a further breakdown of the costs applying only in Northern Ireland as a result of these draft regulations has not been completed. However, as most large users or importers of F gases are based in GB rather than NI, the Department estimate that the impact will be less than 3% of the UK figures quoted in the UK wide impact assessment.

The Department welcomes any statistical information from any stakeholder on the draft NI F-gas Regulations and their implementation in NI.

This assessment only considers the costs and benefits associated with the new enforcement and certification aspects of the GB F-gas Regulations and the draft NI F-gas Regulations. The costs are assessed relatively to the continuation of the current NI F-gas Regulations and the *Fluorinated Greenhouse Gases Regulations 2009* ("the GB 2009 F-gas Regulations", which used to apply in GB), and therefore quantify the "net" difference.

The costs of complying with the provisions in the EU Regulation itself are not assessed here as it was the subject of impact assessments and consultation during the course of its negotiation.

## 4.2 Measures of the draft NI F-gas Regulations and the GB F-gas Regulations which may impose a financial burden

DEFRA assesses that the relevant measures in the GB F-gas Regulations and the draft NI F-gas Regulations which might impose a burden include:

- the requirement that employers ensure employees are properly certified (this is just the cost of any check by employers, not the cost of getting certified in the first place which is a direct requirement of the EU Regulation itself);
- site visits by enforcement officers and the powers of entry, which can include inspections, taking samples, seizing and/or dismantling equipment, questioning staff or examining records;
- requiring companies to provide specified information (by issuing notices);
- the requirement on certification and attestation bodies that they provide, upon request by the Department, details of the certificates or attestations which they have issued.

### **4.3 Application of the F-gas requirements to refrigerated trucks and trailers and ORCs**

Although these requirements apply to the current NI F-gas Regulations as well, the EU F-gas Regulation extends to more companies and activities than the one it replaces. The inclusion of refrigerated trucks and trailers adds a significant number of companies that could be checked for compliance.

The new EU F-gas Regulation also applies to ORCs. The Department knows of no ORCs in NI but would welcome any information about ORCs operating in NI.

Most companies subject to the EU F-gas Regulation will not be subject to any action under the draft NI F-gas Regulations in any given year. It would only tend to be applied if they recruited new employees, or if one of the companies were receiving information requests or site visits by the enforcing authority to check on compliance.

### **4.4 Numbers of businesses affected UK-wide and related financial costs**

DEFRA expects around 200 businesses in the UK to be subject to action under the GB F-gas Regulations and the draft NI F-gas Regulations each year on an ongoing basis. However, this could be between 500 and 1,000 in the first year throughout the UK due, for example, to a surge in one off actions for newly affected businesses.

DEFRA calculates a total cost to all UK businesses in aggregate of £10,785 per annum. DEFRA has also calculated a high cost scenario which assumes more time is required for each activity. This leads to a high aggregated estimate of £62,048 per annum (UK-wide). The costs are low, principally because a step change in the rate of enforcement from that which currently takes place under the previous F-gas Regulations is not anticipated.

### **4.5 Reasons for compiling the draft F-gas Regulations and the intended effects**

Emissions of F-gases occur through leakage during the manufacture, operation and disposal of products, contributing to climate change. The 2006 EU Regulation helped to limit the growth in emissions. That Regulation focused on leak repairs, F-gas recovery and technician training. Although it succeeded in stabilising emissions of F-gases, it has not led to a significant reduction.

The 2006 EU Regulation has, therefore, been revoked and replaced by the EU F-gas Regulation and the intention is to aim for an 80% reduction in F-gas emissions by the year 2035.

It is hoped to achieve this mainly by the new provisions detailed in section 2.1 on page 8 of this document (introduction to new provisions).

The elements of the EU F-gas Regulation which require specific domestic implementation can be broadly categorised as:

- a) **Enforcement** – where we propose that criminal offences and other breaches to which the enforcement provisions apply are defined by reference to what is set out in the EU F-gas Regulation.

- b) **Certification** – where Member States are required to designate certification and evaluation bodies to make training available to people such as engineers and installers carrying out specific listed tasks such as equipment installation, leak checks, F-gas recovery, etc. (these certification requirements already apply to many sectors of business which use F-gases, but now also apply to refrigerated trucks and trailers and to ORCs under Articles 4.1, 4.2 and 8.1 of the EU F-gas Regulation)

DEFRA and the Department do not consider that there are any other viable options to ensure adequate compliance and avoid the risk of infraction, other than introducing new legislation for GB and NI on F-gases. In addition, it is intended that a regulatory approach will result in equal treatment for all GB and NI companies.

Member States are required to ensure that the certification and evaluation bodies meet certain requirements which will again be described in the draft legislation by reference to the EU Regulation without any further additions or “gold plating”.

Should you have any comments or issues on whether the Department is fulfilling these aims, please feel free to contact the Department during the consultation process.

#### **4.6 Provisions of the draft NI F-gas Regulations which may impact upon stakeholders**

The relevant measures in the domestic Regulations which might impose a burden include:

- the requirement that employers ensure employees are properly certified (this is just the cost of any check by employers, not the cost of getting certified in the first place which is already a direct requirement of the EU F-gas Regulation);
- site visits by enforcement officers and the powers of entry, which can include inspections, taking samples, seizing and/or dismantling equipment, questioning staff or examining records;
- requiring companies to provide specified information (by issuing notices);
- the requirement on certification and attestation bodies that they provide, upon request by the Department, details of the certificates or attestations which they have issued.

The EU F-gas Regulation extends to more companies and activities than the one it replaces. The inclusion of refrigerated trucks and trailers in Article 4 adds a significant number of companies that could be checked for compliance.

There are about 60,000 refrigerated trucks and trailers operating in the UK, many of which may be operational in NI. There are around 50 medium and large logistics providers in the UK that operate significant numbers of trucks plus a large number of much smaller companies owning a small fleet.

Another additional sector is ORCs. ORCs are used for heat recovery from certain forms of combustion such as biomass, industrial waste heat and geothermal heat. The number of UK installations is unknown but very small (estimated at fewer than 5 by DEFRA), and there are none known by the Department in NI. Should any stakeholder know of the existence of any ORCs in NI, the Department would be interested to be informed of this.

## **4.7 Estimated numbers of companies affected by enforcement procedures**

It is estimated that only a minority companies which use F-gases will be subject to any action under the draft NI F-gas Regulations in any given year. Enforcement would only be applied if relevant businesses recruited new employees, or were one of the companies receiving information requests or site visits by the enforcing authority to check on compliance.

DEFRA expects around 200 businesses in the UK to be subject to action under the domestic Regulations each year on an ongoing basis. However, this could be between 500 and 1,000 in the first year due, for example, to a surge in one off actions for newly affected businesses.

Please note that, regarding the previous paragraph, the Department would be willing to be informed of any alternative statistics that any stakeholder may be willing to provide.

## **4.8 Financial costs for stakeholders**

DEFRA has calculated an estimate of the additional cost incurred under each of the activities outlined above. DEFRA calculates a gross cost to all UK businesses of £8,788 per annum. DEFRA has also calculated a high cost scenario which assumes more time is required for each activity. This leads to a high estimate for the gross costs to all UK business of £54,060 per annum.

The costs are low, principally because DEFRA does not anticipate a step change in the rate of enforcement from that which currently takes place under the GB 2009 F-gas Regulations. For example, the Environment Agency (“EA” – operating in England only) is not planning to expand its enforcement team. Full details of the calculations and assumptions used are in the “Expected total level of impact upon businesses and enforcing authorities” section (no. 4.11) on pages 25 to 31.

The Department would be keen to hear from stakeholders involved with enforcement for NI as to whether they are considering the expansion of their enforcement team or whether there are any other concerns, financial or otherwise, that they may have.

## **4.9 Estimates used in calculating financial effects**

For this triage assessment, DEFRA has not been able to find data with which to breakdown compliance and enforcement activity by the size of business. As the grade/role of an employee involved in the enforcement activity could differ based on the size of the business, DEFRA identified a range of possible wage rates from the Annual Survey of Hours and Earnings (2012).

To avoid an underestimate, DEFRA have used the highest of these wage rates: £20.17 per hour for a Corporate Manager and Director. DEFRA inflated this to 2013 prices and uplifted by 30% to account for non-wage costs in accordance with the Standard Cost Model. The resulting wage rate used is £26.63 per hour. DEFRA also used the corresponding wage rates for other enforcement actions that they detailed in the “Expected total level of impact upon businesses and enforcing authorities” section (no. 4.11) on pages 25 to 31.

## 4.10 Risks and uncertainties of the financial calculations

The future projections for additional enforcement activity and the number of additional companies affected contains some uncertainty for the reasons detailed in the following paragraphs.

DEFRA has used estimates of future enforcement activity based on the nature and volume of current activity by the EA, which is the enforcement body just for England. DEFRA have, therefore, scaled the values for England to one applicable to England, Scotland and Wales and Northern Ireland based on 2011 census population statistics rather than gathering bespoke estimates from all of the enforcement bodies in the UK.

The time required for companies to fulfill obligations may vary depending on the actual circumstance of each business. DEFRA has based its estimates on the maximum time requirement recommended by the EA. DEFRA has also calculated a high cost scenario where it has increased the time assumed necessary for each action. Even under this high cost scenario the business impact is significantly under the £1m threshold for a full impact assessment, at £63,763 per annum.

Another important uncertainty is the extent to which new enforcement activity will be additional to existing enforcement. It is possible that it may displace some existing activity. However, DEFRA has assumed all the new enforcement activity is additional in order to present a gross cost and avoid underestimating the impact.

The cost for employers to check employees are properly certified is uncertain. Until further information becomes available from the European Commission, there is uncertainty about the extent that the GB F-gas Regulations and the draft NI F-gas Regulations will be applicable to refrigerated trucks and trailers, which is the main additional sector covered in the GB F-gas Regulations and the draft NI F-gas Regulations. DEFRA have again tried to avoid underestimating in the figures that they have used.

## 4.11 Expected total level of impact upon businesses and enforcing authorities

The EU F-gas Regulation affects a number of sectors of the UK economy. The largest impacts are likely to relate to the use of F-gases in refrigeration, air-conditioning and heat pumps, although the Department remains open to the receipt of statistics to the contrary if any stakeholder can provide them.

DEFRA expects that, for the UK as a whole, the EU F-gas Regulation is expected to lead to an extra 350,000 small systems requiring mandatory leak checking, 15,000 large systems requiring automatic leak detection and 60,000 refrigerated trucks and trailers being included in the leak checking regime.

As the EU F-gas Regulation is directly applicable in the UK, this Impact Assessment focuses only on the additional measures which need to be introduced domestically to ensure compliance and enforcement. The following approach has been taken by DEFRA to calculate the cost incurred as a result of the domestic Regulations for the UK as a whole:

**Total Cost** = Additional activity as result of the GB F-gas Regulations x Time taken to complete activity x Wage Rate



Table 1 sets out the total cost estimates for the central scenario. Costs to the regulator are included in the table for completeness, but are excluded from the estimates of business impact as these will not be incurred by business.

DEFRA has based the estimated costs of compliance and enforcement action largely on information provided by the EA. As the regulators for England, they have a detailed understanding of the nature and volume of current enforcement activity and how this is expected to change given the expanded scope of the EU F-gas Regulation.

For most input assumptions the EA provided DEFRA with a range based on their previous experience and DEFRA have used the average of this for its central cost scenario. The statistics for England may also roughly apply to NI, but the Department would welcome responses from stakeholders on their views on the accuracy of the information.

The EA employs 2 full time staff to carry out enforcement activity and DEFRA does not expect this to change. The majority of the EA's contact with companies is to check company certification and personnel qualifications. While the number of employees is not expected to change, discussion with the EA suggests they expect to spend more time on enforcement and compliance, following the widening of the scope of the EU F-gas Regulation.

Consequently, DEFRA has assumed that the activity the EA has identified to enforce the new elements of the EU Regulation is additional to their previous work, to avoid underestimating the impact. However it may be that the new work will only displace some current activity.

This would lead to a redistribution of costs from businesses covered by the 2006 EU Regulation to those additionally covered by the EU F-gas Regulation.

The Department would welcome responses from enforcement stakeholders in NI as to whether or not they also anticipate a similar effect on their future enforcement activities.

**Table 1: Total gross cost per annum, central scenario** – calculated by DEFRA, applies to GB only:

<b>Table 1:</b> Total gross cost per annum, central scenario <b>Activity</b>	<b>Description</b>	<b>Instances of additional activity per annum</b>	<b>Time required for activity, hrs</b>	<b>Wage rate (£)</b>	<b>Total cost per annum (£)</b>
Information Request	An informal information request to demonstrate compliance.	90	0.5	£26.63	<b>£1,198</b>
Information Notice	A formal request for	70	1	£26.63	<b>£1,864</b>

	information				
Enforcement Notice	Requires an action to be performed by the recipient in order to re-establish compliance. Follows an information notice response which has indicated non-compliance	10	5	£26.63	<b>£1,332</b>
Requirement that employers ensure employees are properly certified	This applies to employers of personnel responsible for leak checking, installation, servicing or recovery of equipment containing F-gases. This is the cost for employers to carry out certification checks for their employees.	400	0.25	£26.63	<b>£2,663</b>
	Costs to the business to respond to EA compliance checks for this activity to prove compliance.	60	0.25	£26.63	<b>£399</b>
Site visit	Enforcement body visits the sites if desk based	10	5	£26.63	<b>£1,332</b>

	enforcement is unsatisfactory.				
Costs to the Regulator	Time costs borne by the regulator to enforce the EU Regulation. Including information requests, information notices, enforcement checks, site visits and the costs to businesses to provide data to the EA to demonstrate compliance with employee checks	Use assumptions from above; assume same time burden for business and regulator  (with the exception of site visits) <sup>4</sup>		£14.68	<b>£2,973</b>
Power to request proof that import is lawful	Cost to companies if they have to show documentation proving import is lawful	300	0.25	£26.63	<b>£1,997</b>
	Cost to customs for officials to check documentation	300	0.25	£53.10	<b>£3,983</b>
Certification bodies report to SoS	Certification bodies compile 4 reports a year detailing the certificates awarded	No additional activity beyond previous Regulations expected			
<b>Cost to business</b>					<b>£10,785</b>
<b>Total cost</b>					<b>£17,740</b>

Notes on this table:

1. Following consultation the time requirement for site visits has been revised for businesses from 2.25 hours to 7 hours.
2. In case of employer checks on employee certificates, the high cost scenario has been altered to account for uncertainty in the number of businesses affected.
3. Figures may not add exactly due to rounding.
4. Following consultation the time requirement for site visits has increased from 2.25 hours to 5 hours for businesses. However for regulators we have assumed that the time requirement is still 5 hours and has not changed, as the original assumption comes from the Environment Agency and no further information was

received during the consultation. Hence for site visits there is a difference between the time requirement for regulators and businesses.

5. The Department welcomes any comments or alternative estimates or statistics that any stakeholder may wish to provide.

The costs for employers to check that employees are properly certified have also been approximated by DEFRA using the best available evidence. This will only affect those new sectors to which the EU F-gas Regulation applies, as such checks will already have taken place in sectors subject to the 2006 EU Regulation.

The main new sector is refrigerated trucks and trailers. DEFRA Estimates that there are 60,000 in the UK. DEFRA assumes that one employee can service/leak check 100 trucks and trailers. This leads to an estimate of around 600 employees for which the verification of certificates would be necessary.

Given the uncertainty, a broad range has been used and DEFRA has assumed 400 employees in the central scenario and assumed 1,000 employees in the high scenario (for the UK as a whole). DEFRA has assumed each check would take 15 minutes.

The estimated cost for employers to check employee certification is based on the first year of the EU F-gas Regulation coming into operation. After this first year, costs would only be incurred if there were staff turnover, which means the ongoing costs could well be much lower than the first year.

Despite the uncertainties with these estimates, DEFRA has assumed that the costs will be significantly under £1m in aggregate. The Department would be willing for stakeholders to provide alternative suggestions to, or comments on, the assumptions that DOE and DEFRA have made here.

DEFRA has assumed that the type of employee involved in compliance and enforcement activity will vary depending on the size of the business as follows:

- a) Sole trader: Engineer owner
- b) Small and Medium Enterprises (“SMEs”): Manager or Director
- c) Large companies: Environmental consultant

It has not been possible to provide a breakdown of enforcement activity based on the size of business and hence DEFRA has taken a maximalist approach by using the highest wage rate of £26.63 gross per hour. This is the adjusted wage rate applicable to SMEs. DEFRA has adjusted that figure for inflation to 2013 prices and uplifted by 30% to account for non-wage costs in accordance with their Standard Cost Model.

Although the estimates in Table 1 are based on best available evidence, there is still some uncertainty about the figures. They should, therefore, be seen as a best estimate of the likely impact and provide an indication of the likely scale of impacts. As always, the Department welcomes the views of stakeholders and the presentation of alternative forms of evidence.

Table 2 shows an estimated cost under a high cost scenario where, following consultation, DEFRA has assumed a longer time requirement is necessary to fulfill each activity. Under this

scenario, the annual enforcement and compliance costs across the UK are estimated by DEFRA to be £62,048 for businesses and £92,805 in total, if the provisions of the GB F-gas Regulations are taken into account. Please note that DEFRA has rounded these amounts where possible.

**Table 2: High gross cost scenario per annum**

<b>Activity</b>	<b>Description</b>	<b>Instances of additional activity per annum  (estimate by DEFRA, would apply UK wide)</b>	<b>Time required for activity, hrs</b>	<b>Wage rate (£)</b>	<b>Total cost per annum (£)</b>
Information Request	An informal information request to demonstrate compliance.	90	5	£26.63	£11,984
Information Notice	An official request for information	70	5	£26.63	£9,321
Enforcement Notice	Requires an action to be performed by the recipient in order to re-establish compliance. Sometimes follows an information notice response which has indicated non-compliance	10	10	£26.63	£2,663
Requirement that employers ensure employees are properly certified	This applies to employers of personnel responsible for leak checking, installation, servicing or recovery of equipment containing F-gases. This is the cost for employers to carry out the checks for their employees.	1000	1	£26.63	£26,630
	Costs to the business to respond to NIEA/district council compliance checks for this activity.	60	1	£26.63	£1,598
Site visit	Enforcement body visits the sites if desk based enforcement is unsatisfactory.	10	7	£26.63	£1,864

Costs to regulators	Time costs borne by the regulator to enforce the EU Regulation. Including information requests, information notices, enforcement checks, site visits and the costs to businesses to provide data to the district councils/NIEA to demonstrate compliance with employee checks.	Use assumptions from above; assume same time burden for business and regulator (with the exception of site visits)		£14.68	£14,827
Power to request proof that import is lawful	Cost to companies if they have to show documents proving lawful import.	300	1	£26.63	£7,989
Power to request proof that import is lawful	Cost to customs for officials to check documentation	300	1	£53.10	£15,930
<b>Cost to business</b>					<b>£62,048</b>
<b>Total Cost</b>					<b>£92,805</b>

Notes:

1. Time estimates for the high scenario are based on the expert opinion of a consultant who was contacted by DEFRA with extensive experience and knowledge of the F-gas industry. Following consultation the time requirement for site visits has been revised for businesses from 5 hours to 7 hours.

2. In case of employer checks on employee certificates, the high cost scenario has been altered by DEFRA to account for uncertainty in the number of businesses affected.

3. Figures may not add exactly due to rounding.

4. Following consultation the time requirement for sites has increased from 5 hours to 7 hours for businesses in the “costs for regulators” section above. However for regulators DEFRA has assumed that the time requirement is still 5 hours and has not changed, as the original assumption comes from the EA and no further information was received during the GB consultation. Hence for site visits there is a difference between the time requirement for regulators and businesses.

#### 4.12 Analysis of DEFRA’s calculations and some caveats to the figures

The sensitivity analysis for the total costs to businesses and the enforcing authorities in point 4.11 has been carried out by DEFRA for the UK as a whole, using extreme assumptions for the time requirement.

Consultation between DEFRA and the EA revealed that the time requirements in Table 2 are the maximum possible time businesses could take to respond to the enforcing authority’s

contact. Some businesses may require more time than this, for instance, if they are risk averse or do not have the information available.

The high cost scenario assumes all businesses require the greater amount of time shown in Table 2. However in reality this is unlikely to be the case as it is not expected that all businesses would require this much time. Would any business stakeholders in NI agree or disagree with this? The Department would be willing to consider your views.

Although there will be some variation in the time spent, the average is expected to be closer to the values in Table 1 rather than in Table 2, hence Table 2 provides an upper bound estimate. Even using these extreme assumptions, costs in the high scenario are estimated by DEFRA to be significantly below the £1m threshold. Should stakeholders have differing viewpoints on the assumptions made here by DEFRA and the Department, we would be interested to be informed of your alternative calculations.

DEFRA has considered the risk of companies being subject to enforcement action unjustifiably, and considers the cost to be very low. There have been no instances of erroneous use of powers by the district councils or the NIEA under the 2006 EU Regulation at least which the Department is aware of, although the Department is willing to be corrected by stakeholders on this issue.

There have also been no prosecutions for breach of the current NI F-gas Regulations, at least which the Department is aware of, though we would be willing to be informed otherwise by stakeholders. If a future prosecution were to be pursued, it would only be after sufficient evidence had been gathered that the draft NI F-gas Regulations had been breached.

#### **4.13 Summary of impacts on business:**

DEFRA's central estimate of gross costs to UK business: £10,785 (including some import control provisions that apply in NI via the GB F-gas regulations)

DEFRA's high estimate of gross costs to business: £62,048 (again, including some import control provisions that apply in NI via the GB F-gas regulations)

DEFRA has also estimated the Estimated Annual Net Cost to Business ("EANCB") using these cost estimates, assuming costs are constant over a ten-year period. For the central scenario the EANCB is £9,731 (2009 prices, 2010 PV base year). For the high scenario the EANCB is £55,984.

**Table 3: Assumptions**

Assumption	Value	DEFRA's source
Wage rate used for costs to business	£26.63	ONS Annual Survey of Hours and Earnings (2012) inflated to 2013 prices and uplifted by 30% to account for non-wage costs (Standard Cost Model, 2005). Employee assumed to be 'Corporate Managers and Directors' (11)
Wage rate used for costs to the regulator	£14.68	As above; assumed category is 'Conservation and environmental associate professionals' (355)
Additional activity for information request, information notice, enforcement notice, requirement that employers check employees are properly certified and site visits	As in table	EA estimate for England scaled by 2011 census population data to represent England, Scotland and Wales (the Department assumes it applies to NI as well).
Time required for information request, information notice, enforcement notice, requirement that employers check employees are properly certified and site visits.	As in table	EA estimate for England scaled by 2011 census population data to represent England, Scotland and Wales (the Department assumes it applies to NI as well).  For site visits the original estimates provided by the EA for time requirements have been revised upwards to account for consultation feedback which indicated site visits may take longer than has been assumed.



**Table 4: Changes that DEFRA made due to responses to the consultation on the GB F-gas Regulations**

	Central Scenario		High Scenario	
	Pre-consultation assessment	Post-Consultation assessment	Pre-consultation assessment	Post-Consultation assessment
Costs of site visits	£599	£1332	£1332	£1864
Costs to business	£10,053	£10,785	£61,515	£62,048
Total Cost	£17,008	£17,740	£92,272	£92,805

Respondents to the consultation on the GB F-gas Regulations said that a corporate manager or director may not necessarily be the employee actioning these activities. They answered that it was likely to be more junior staff with the oversight of more senior members.

As there were differences in consultation responses on who the exact members of staff would be and their percentage contributions, it has not been possible to update the analysis to take account of this. However, to avoid an under-estimate of the costs, the analysis in this assessment takes a maximalist approach by assuming more senior employees will be involved.

## 5. Consultation questions

### 5.1 Initial information about stakeholders responding to the consultation

The Department would be interested in collecting the following information from those responding to the consultation. Email responses are preferred at: [aeqteam@doeni.gov.uk](mailto:aeqteam@doeni.gov.uk)

If you are responding on behalf of an organisation or a business:

- a) If so, what type of organisation or business do you represent?
- b) If you are representing a business, how many employees work in the company?
- c) If you work for a business, which sector/sectors do you represent?
  - (i) Stationary refrigeration, air conditioning and heat pumps
  - (ii) Mobile refrigeration, air conditioning and heat pumps
  - (iii) Fire protection and safety equipment
  - (iv) Aerosols
  - (v) Foams (insulation or otherwise)
  - (vi) High-voltage switchgear
  - (vii) F-gas based solvents
  - (viii) Chemical manufacturers and/or suppliers
  - (ix) Magnesium smelting/casting
  - (x) ORCs, or
  - (xi) Any other sector of business.

### 5.2 Questions related to the consultation

The Department welcomes any type of comment from any stakeholder on any aspect of the draft NI F-gas Regulations. However, if it helps to clarify your thinking, the Department would be willing for you to respond to the following questions:

- a) Do you agree that having a consistent set of enforcement provisions across Northern Ireland and the UK is the best approach?
- b) Do you think the proposed balance between direct criminal offences and enforcement notices is appropriate to ensure effective compliance with the EU Regulation?
- c) Do you know of any businesses in NI which use ORCs?

- d) Do you agree with the financial calculations in the Partial Regulatory Impact Assessment, or do you have any alternative statistics to offer?
- e) Do you have any concerns, financial or otherwise, on how the new provisions of the draft NI F-gas Regulations may impact upon you and/or your business/organisation?
- f) Based on your experience, do you agree with the assumptions made for the time required to complete each activity (tables 1 and 2 in section 4.11 of this document)? If not, can you provide any additional evidence to inform our assumptions of the time requirements required to complete each activity?
- g) Do you anticipate there to be any additional compliance or enforcement activity associated with the draft NI F-gas Regulations that we have not considered in this document? If so, can you provide an estimate of the cost impact of this?
- h) Is there any specific new provision of the draft NI F-gas regulations, as specified in section 2 of this document, which gives you or your organisation any cause for concern?

### **5.3 Next steps**

After the consultation period has concluded and all replies from stakeholders have been assessed and their views taken into consideration, the Department hopes to send the draft NI F-gas Regulations to the Stormont Assembly. The Assembly would consider whether or not to bring the draft NI F-gas Regulations into operation.

Please note that these steps will be only taken to bring the draft NI F-gas Regulations into operation once the consultation responses have all been considered and with the agreement of the Environment Committee and the Executive Committee at Stormont.

## 6. Freedom of Information and Confidentiality of Consultation Responses

The Department will publish a summary of responses following completion of the consultation process. Your response, and all other responses to the consultation, may be disclosed on request.

The Department can only refuse to disclose information in exceptional circumstances. Before you submit your response, please read the paragraphs below on the confidentiality of consultations as they will give you guidance on the legal position about any information given by you in response to this consultation.

The *Freedom of Information Act 2000* (“FOIA”) gives the public a right of access to any information held by a public authority, namely, the Department in this case. This right of access to information includes information provided in response to a consultation.

The FOIA can be found at: <http://www.legislation.gov.uk/ukpga/2000/36/contents>

The Department cannot automatically consider as confidential information supplied to it in response to a consultation. However, it does have the responsibility to decide whether any information provided by you in response to this consultation, including information about your identity, should be made public or treated as confidential.

This means that information provided by you in response to the consultation is unlikely to be treated as confidential, except in very particular circumstances. The Lord Chancellor’s Code of Practice on the FOIA provides that:-

- the Department should only accept information from third parties in confidence if it is necessary to obtain information in connection with the exercise of any of the Department’s functions and it would not otherwise be provided;
- the Department should not agree to hold information received from third parties “in confidence” which is not confidential in nature; and
- acceptance by the Department of confidentiality provisions must be for good reasons, capable of being justified by the Information Commissioner.

For further information about confidentiality of responses, please contact the Information Commissioner’s Office, or see the web-site at: <http://ico.org.uk/>

For further information about this particular consultation please contact the consulting branch (see section 7, page 38 for contact details).

## 7. How to respond to this consultation

Responses are invited to this consultation paper by **31<sup>st</sup> August 2015** and should be sent to the address below. Early responses would be most welcome and a summary of the responses will be published on the Department's website. All comments and representations received during the consultation will be considered in finalising the draft Regulations.

Before you submit your response, please read the notes regarding the confidentiality of consultations (section 6, page 37), which provides guidance on the legal position of any information given by you in response to this consultation. If you are responding on behalf of a group or organisation, please indicate this on your response. Please reply using one of the following options:

By post:

Roger Irwin  
Environmental Policy Division  
Department of the Environment  
Goodwood House  
44-58 May Street  
Town Parks  
Belfast BT1 4NN

By e-mail: [roger.irwin@doeni.gov.uk](mailto:roger.irwin@doeni.gov.uk) or [aeqteam@doeni.gov.uk](mailto:aeqteam@doeni.gov.uk)

Requests for further copies of the consultation document should also be made to Roger Irwin on (028) 90 254 758, or at the above addresses.

Should you require a copy of this document in an alternative format, it can be made available on request in large print, disc, Braille and in audiocassette or telephone for the hearing impaired.

The document may be made available on request in minority languages for those who are not proficient in English. The Department will translate executive summaries of key publications into Irish or Ulster-Scots upon request.

Information and additional copies of the document can be requested by textphone on (028) 90 54 06 42.

Hard copies of the consultation document are available from the address above. The consultation document is available to view at: <http://www.doeni.gov.uk/> (click on "Environmental Issues", then on "Air and Environmental Quality", and then on "F-gases")

Alternatively, you can type the full web-site address of the relevant page into your browser:

[http://www.doeni.gov.uk/f\\_gases2](http://www.doeni.gov.uk/f_gases2)

(note the underscore between the letter "f" and "gases2")

# Annex:

## The draft F-gas Regulations (NI) 2015

[ DRAFT ] STATUTORY RULES OF NORTHERN IRELAND

2015 No. 0000

### ENVIRONMENTAL PROTECTION

#### The Fluorinated Greenhouse Gases Regulations (Northern Ireland) 2015

*Made* - - - - - \*\*\*

*Coming into operation* - - - - - \*\*\*

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- The Department of the Environment, being a department designated<sup>(5)</sup> for the purposes of section 2(2) of the European Communities Act 1972<sup>(6)</sup> in relation to the environment, makes these Regulations in exercise of the powers conferred by section 2(2) of, and paragraph 1A of Schedule 2 to, that Act<sup>(7)</sup>.

- These Regulations make provision for a purpose mentioned in that section and it appears to the Department that it is expedient for references to—

Commission Implementing Regulation (EU) No 1191/2014 determining the format and means for submitting the report referred to in Article 19 of Regulation (EU) No 517/2014 of the European Parliament and of the Council on fluorinated greenhouse gases<sup>(8)</sup>; and

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<sup>(5)</sup> S.I. 2008/301.

<sup>(6)</sup> 1972 c. 68. Section 2(2) is amended by section 27(1) of the Legislative and Regulatory Reform Act 2006 (c. 51) and by section 3(3) of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 (c. 7).

<sup>(7)</sup> Paragraph 1A is inserted by section 28 of the Legislative and Regulatory Reform Act 2006 (c. 51). The relevant amendments are section 3(3) of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 (c. 7).

<sup>(8)</sup> OJ No L 318, 5.11.2014, p 5.

Commission Regulation (EC) No 1494/2007 establishing, pursuant to Regulation (EC) No 842/2006 of the European Parliament and of the Council, the form of labels and additional labelling requirements as regards products and equipment containing certain fluorinated greenhouse gases<sup>(9)</sup>,

- to be construed as references to those Commission Regulations as amended from time to time.

## PART 1

### Introductory provisions

#### Citation, commencement and application

1.—(1) These Regulations may be cited as the Fluorinated Greenhouse Gases Regulations (Northern Ireland) 2015 and come into operation on [ ].

(2) They apply to Northern Ireland and Northern Ireland offshore installations only in so far as they do not deal with import and export controls and trade with any place outside the United Kingdom, within the meaning of paragraph 20 of Schedule 3 to the Northern Ireland Act 1998<sup>(10)</sup>.

#### Interpretation: general

2. —1. In these Regulations—

“authorised person” means a person authorised under regulation 19;

“the Department” means the Department of the Environment;

“enforcement notice” means an enforcement notice served under regulation 23;

“enforcing authority” means—

(a) as regards Northern Ireland, the Department or the district council;

(b) as regards Northern Ireland offshore installations—

(i) in relation to offshore installations used in connection with any of the activities described in regulation 4(a) to (f), the Secretary of State;

(ii) in relation to offshore installations used in connection with any of the activities described in regulation 4(g), the Department;

“premises” includes—

(c) land;

(d) a vehicle or trailer;

(e) an aircraft;

(f) a ship;

(g) a Northern Ireland offshore installation or part of a Northern Ireland offshore installation; and

“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) The Interpretation Act (Northern Ireland) 1954<sup>(11)</sup> applies to these Regulations as it applies to an Act of the Assembly.

#### Interpretation: EU Regulations

3. —1 In these Regulations—

“the 2014 Regulation” means Regulation (EU) No 517/2014 of the European Parliament and of the Council on fluorinated greenhouse gases and repealing Regulation (EC) No 842/2006<sup>(12)</sup>;

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<sup>(9)</sup> OJ No L 332, 18.12.2007, p 25.

<sup>(10)</sup> 1998 c. 47.

<sup>(11)</sup> 1954 c.33 (N.I.)

<sup>(12)</sup> OJ No L 150, 20.5.2014, p 195.



“Commission Regulation 1493/2007” means Commission Regulation (EC) No 1493/2007 establishing, pursuant to Regulation (EC) No 842/2006 of the European Parliament and of the Council, the format for the report to be submitted by producers, importers and exporters of certain fluorinated greenhouse gases;

“Commission Regulation 1494/2007” means Commission Regulation (EC) No 1494/2007 establishing, pursuant to Regulation (EC) No 842/2006 of the European Parliament and of the Council, the form of labels and additional labelling requirements as regards products and equipment containing certain fluorinated greenhouse gases;

“Commission Regulation 1497/2007” means Commission Regulation (EC) No 1497/2007 establishing, pursuant to Regulation (EC) No 842/2006 of the European Parliament and of the Council, standard leakage checking requirements for stationary fire protection systems containing certain fluorinated greenhouse gases(**13**);

“Commission Regulation 1516/2007” means Commission Regulation (EC) No 1516/2007 establishing, pursuant to Regulation (EC) No 842/2006 of the European Parliament and of the Council, standard leakage checking requirements for stationary refrigeration, air conditioning and heat pump equipment containing certain fluorinated greenhouse gases(**14**);

“Commission Regulation 303/2008” means Commission Regulation (EC) No 303/2008 establishing, pursuant to Regulation (EC) No 842/2006 of the European Parliament and of the Council, minimum requirements and the conditions for mutual recognition for the certification of companies and personnel as regards stationary refrigeration, air conditioning and heat pump equipment containing certain fluorinated greenhouse gases(**15**);

“Commission Regulation 304/2008” means Commission Regulation (EC) No 304/2008 establishing, pursuant to Regulation (EC) No 842/2006 of the European Parliament and of the Council, minimum requirements and the conditions for mutual recognition for the certification of companies and personnel as regards stationary fire protection systems and fire extinguishers containing certain fluorinated greenhouse gases(**16**);

“Commission Regulation 305/2008” means Commission Regulation (EC) No 305/2008 establishing, pursuant to Regulation (EC) No 842/2006 of the European Parliament and of the Council, minimum requirements and the conditions for mutual recognition for the certification of personnel recovering certain fluorinated greenhouse gases from high-voltage switchgear(**17**);

“Commission Regulation 306/2008” means Commission Regulation (EC) No 306/2008 establishing, pursuant to Regulation (EC) No 842/2006 of the European Parliament and of the Council, minimum requirements and the conditions for mutual recognition for the certification of personnel recovering certain fluorinated greenhouse gas-based solvents from equipment(**18**);

“Commission Regulation 307/2008” means Commission Regulation (EC) No 307/2008 establishing, pursuant to Regulation (EC) No 842/2006 of the European Parliament and of the Council, minimum requirements for training programmes and the conditions for mutual recognition of training attestations for personnel as regards air conditioning systems in certain motor vehicles containing certain fluorinated greenhouse gases(**19**); and

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(13) OJ No L 333, 19.12.2007, p 4.

(14) OJ No L 335, 20.12.2007, p 10.

(15) OJ No L 92, 3.4.2008, p 3.

(16) OJ No L 92, 3.4.2008, p 12.

(17) OJ No L 92, 3.4.2008, p 17.

(18) OJ No L 92, 3.4.2008, p 21. There is a relevant corrigendum, OJ No L 280, 23.10.2008, p 38.

(19) OJ No L 92, 3.4.2008, p 25.

“Commission Regulation 308/2008” means Commission Regulation (EC) No 308/2008 establishing, pursuant to Regulation (EC) No 842/2006 of the European Parliament and of the Council, the format for notification of the training and certification programmes of the Member States<sup>(20)</sup>.

(2) Expressions used but not defined in these Regulations and used in the following legislation have the same meaning as they have in that legislation—

- (a) the 2014 Regulation;
- (b) Commission Regulation 1494/2007;
- (c) Commission Regulation 1497/2007;
- (d) Commission Regulation 1516/2007;
- (e) Commission Regulation 303/2008;
- (f) Commission Regulation 304/2008;
- (g) Commission Regulation 305/2008;
- (h) Commission Regulation 306/2008;
- (i) Commission Regulation 307/2008;
- (j) Commission Regulation 308/2008.

(3) A reference in these Regulations to the following is a reference to those Commission Regulations as amended from time to time—

- (a) Commission Regulation 1493/2007;
- (b) Commission Regulation 1494/2007.

#### **Interpretation: offshore installations**

4.—(1) In these Regulations, “Northern Ireland offshore installation” means an installation or a structure, other than a ship, which is situated in the marine area and used in connection with any of the following activities—

- (a) the exploitation, or exploration with a view to exploitation, of mineral resources in the marine area;
- (b) the exploration of any place in the marine area, with a view to the storage of gas;
- (c) the conversion of any place in the marine area for the purpose of storing gas;
- (d) the storage of gas in the marine area or the recovery of gas so stored;
- (e) the unloading of gas at any place in the marine area;
- (f) the conveyance of things by means of a pipe, or system of pipes, constructed or placed in the marine area; and
- (g) the production of energy from water or wind.

(2) In paragraph (1)—

- (a) references (in whatever form) to storing gas include storing gas with a view to its permanent disposal; and
- (b) “gas” means—
  - (i) gas within the meaning of section 2(4) of the Energy Act 2008<sup>(21)</sup>; or
  - (ii) carbon dioxide.

(3) In paragraph 4, “marine area” means the area (together with the places above and below it) comprising the waters of, or on or under the seabed in—

- (a) the tidal waters and parts of the sea in or adjacent to Northern Ireland up to the seaward limits of the territorial sea; or

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<sup>(20)</sup> OJ No L 92, 3.4.2008, p 28.

<sup>(21)</sup> 2008 c. 32.

- (b) the sea in any area for the time being designated under section 41(3) of the Marine and Coastal Access Act 2009<sup>(22)</sup> in respect to which any Northern Ireland department has functions designated by an order made under section 41(4) of that Act.
- (4) For the purposes of paragraph (1), each of the activities described in that paragraph include the provision of access to or accommodation for persons who work on or from an installation which is or has been maintained, or is intended to be established, in connection with such an the activity.

### Competent authority

5. The Department is the competent authority for the purposes of the 2014 Regulation in so far as that Regulation does not deal with import and export controls and trade with any place outside the United Kingdom, within the meaning of paragraph 20 of Schedule 3 to the Northern Ireland Act 1998.

## PART 2

### Certification, evaluation and attestation

#### Certification and evaluation bodies: stationary refrigeration, air conditioning and heat pump equipment

6.—(1) The certification and evaluation bodies for the purposes of Article 5 (personnel certificates) of Commission Regulation 303/2008 are—

- (a) the City and Guilds of London Institute **(23)**;
- (b) the Construction Industry Training Board **(24)**; or
- (c) such other successor body as the Department may in writing approve.

- (2) The certification bodies for the purposes of Article 8 (company certificates) of Commission Regulation 303/2008 are—

- (a) Bureau Veritas UK Limited (Company Number: 01758622) **(25)**;
- (b) Qidos Limited (Company Number: 05665301) **(26)**;
- (c) Refcom Limited (Company Number: 03712647) **(27)**; or

such other successor body as the Department may in writing approve.

#### Certificates, relating to stationary refrigeration, air conditioning and heat pump equipment, issued in EEA States and Great Britain

7.—(1) A person who holds a valid certificate issued under Article 5 or 8 of Commission Regulation 303/2008 by a certification body in an EEA State other than the United Kingdom in respect of an activity mentioned in Article 2 of that Regulation cannot carry out that activity unless—

- (a) the certificate is written in English; or
- (b) the person holds a translation of the certificate in English.

- (2) A person who holds a valid certificate issued under Article 5 or 8 of Commission Regulation 303/2008 by a certification body appointed in Great Britain in respect of an activity mentioned in Article 2 of that Regulation may carry out that activity.

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(22) 2009 c. 23.

(23) Details can be obtained from City & Guilds, 1 Giltspur Street London EC1A 9DD; telephone number: 020 7294 2800; web-site: <http://www.cityandguilds.com/>

(24) Details can be obtained from the Construction and Industry Training Board, Bircham Newton, Kings Lynn, Norfolk PE31 6RH; telephone number: 01485 577700; web-site: <http://www.cskills.org/>; e-mail: [bes.enquiry@skills.org](mailto:bes.enquiry@skills.org)

(25) Details can be obtained from Bureau Veritas UK, 5<sup>th</sup> floor, 66 Prescott Street, London, E1 8HG; telephone number: 0207 661 0700; web-site: <http://www.bureauveritas.co.uk/> e-mail: [enquiries@uk.bureauveritas.com](mailto:enquiries@uk.bureauveritas.com)

(26) Details can be obtained from Qidos Ltd, 8 North Parade Buildings, Bath BA1 1NS; telephone number: 01225 326 895; web-site: <http://www.fgasregister.com/> ; e-mail: [fgas@quidos.co.uk](mailto:fgas@quidos.co.uk)

(27) Details can be obtained from REFCOM, Old Mansion House, Eamont Bridge, Penrith, Cumbria, CA10 2BX; telephone number: 01768 860 409; web-site: <http://www.refcom.org.uk/> ; e-mail: [info@refcom.org.uk](mailto:info@refcom.org.uk)

### **Certification and evaluation bodies: fire protection systems and fire extinguishers**

8. The certification and evaluation bodies for the purposes of Article 5 (personnel certificates) and Article 8 (company certificates) of Commission Regulation 304/2008 are—

- (a) the Fire Industry Association(28); or
- such other successor body as the Department may in writing approve.

### **Certificates relating to fire protection systems and fire extinguishers issued in EEA States and Great Britain**

9.—(1) A person who holds a valid certificate issued under Article 5 or 8 of Commission Regulation 304/2008 by a certification body in an EEA State other than the United Kingdom in respect of an activity mentioned in Article 2 of that Regulation cannot carry out that activity unless—

- (a) the certificate is written in English; or
- (b) the person holds a translation of the certificate in English.

- (2) A person who holds a valid certificate issued under Article 5 or 8 of Commission Regulation 304/2008 by a certification body appointed in Great Britain in respect of an activity mentioned in Article 2 of that Regulation may carry out that activity.

### **Certification and evaluation bodies: high-voltage switchgear**

10. The persons referred to in Schedule 1 are the certification and evaluation bodies for the purposes of Commission Regulation 305/2008.

### **Certificates relating to high-voltage switchgear issued in EEA States and Great Britain**

11.—(1) An individual who holds a valid certificate issued under Article 4 of Commission Regulation 305/2008 by a certification body in an EEA State other than the United Kingdom cannot carry out the activity mentioned in Article 1 of that Regulation unless—

- (a) the certificate is written in English; or
- (b) the individual holds a translation of the certificate in English.

- (2) An individual who holds a valid certificate issued under Article 4 of Commission Regulation 305/2008 by a certification body appointed in Great Britain in respect of the activity mentioned in Article 1 of that Regulation may carry out that activity.

### **Certification and evaluation body: fluorinated greenhouse gas-based solvents**

12. The certification and evaluation bodies for the purposes of Commission Regulation 306/2008 are—

- (a) Fraser Cleaning Technologies Limited (Company Number: SC231307) (29); or
- (b) such other successor body as the Department may in writing approve.

### **Certificates relating to fluorinated greenhouse gas-based solvents issued in EEA States and Great Britain**

13.—(1) An individual who holds a valid certificate issued under Article 3 of Commission Regulation 306/2008 by a certification body in an EEA State other than the United Kingdom cannot carry out the activity mentioned in Article 1 of that Regulation unless—

- (a) the certificate is written in English; or
- (b) the individual holds a translation of the certificate in English.

- (2) An individual who holds a valid certificate issued under Article 3 of Commission Regulation 306/2008 by a certification body appointed in Great Britain in respect of the activity mentioned in Article 1 of that Regulation may carry out that activity.

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(28) Details can be obtained from the Fire Industry Association, Tudor House, Kingsway Business Park, Oldfield Road, Hampton, Middlesex, TW12 2HD; telephone number: 020 3166 5002; web-site: <http://www.fia.uk.com/>; e-mail: [info@fia.uk.com](mailto:info@fia.uk.com)

(29) Details can be obtained from Fraser Cleaning Technologies Limited, 24 Grange Road, Houstoun Industrial Estate, Livingston EH 54 5DE; telephone: 01506 443 058; web-site: <http://www.frasertech.co.uk/>

## **Attestation bodies: air conditioning systems in certain motor vehicles**

**14.** The attestation bodies for the purposes of Commission Regulation 307/2008 are—

- (a) the City and Guilds of London Institute (**30**);
- (b) the Construction Industry Training Board (**31**);
- (c) IMI Awards Limited (Company Number: 06237350) (**32**);
- (d) the Institute of the Motor Industry (**33**);
- (e) the Institute of Road Transport Engineers (**34**); or
- (f) such other successor body as the Department may in writing approve.

## **Attestations relating to air conditioning systems in certain motor vehicles issued in EEA States and Great Britain**

**15.—**(1) An individual who holds a valid attestation issued under Article 3(2) of Commission Regulation 307/2008 by an attestation body in an EEA State other than the United Kingdom cannot carry out the activity mentioned in Article 1 of that Regulation unless—

- (a) the attestation is written in English; or
- (b) the individual holds a translation of the attestation in English.

(2) An individual who holds a valid attestation issued under Article 3(2) of Commission Regulation 307/2008 by an attestation body appointed in Great Britain in respect of the activity mentioned in Article 1 of that Regulation may carry out that activity.

## **Obligation of employers to employ qualified employees**

**16.** The employer of an individual employed to carry out any work or activity referred to in the following provisions must ensure that that individual holds the qualification necessary to enable the individual to carry out the work or activity in—

- (a) Article 2(1) of Commission Regulation 303/2008;
- (b) Article 2(1) of Commission Regulation 304/2008;
- (c) Article 1 of Commission Regulation 305/2008;
- (d) Article 1 of Commission Regulation 306/2008; or
- (e) Article 1 of Commission Regulation 307/2008.

## **Obligations on certification bodies, attestation bodies and evaluation bodies to provide information**

**17.—**(1) When requested to do so by any person, a certification body in Northern Ireland must, within 14 days of the request being made, provide details of any certificate issued by it pursuant to—

- (a) Commission Regulation 303/2008;
- (b) Commission Regulation 304/2008;
- (c) Commission Regulation 305/2008; or
- (d) Commission Regulation 306/2008.

(2) When requested to do so by any person, an attestation body in Northern Ireland must, within 14 days of the request being made, provide details of an attestation issued by it pursuant to Commission Regulation 307/2008.

(3) In this regulation, “details”, in relation to a certificate or attestation, includes—

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(30) Details can be obtained from City & Guilds, 1 Giltspur Street, London EC1A 9DD; telephone: 020 7294 2468; web-site: <http://www.cityandguilds.com/>

(31) Details can be obtained from the Construction and Industry Training Board, Bircham Newton, Kings Lynn, Norfolk PE31 6RH; telephone number: 01485 577700; web-site: <http://www.cskills.org/>; e-mail: [bes.enquiry@skills.org](mailto:bes.enquiry@skills.org)

(32) Details can be obtained from IMI Awards Limited, Fanshaws, Brickendon, Hertford, SG13 8PQ; telephone: 01992 511 521; web-site: <http://www.imiawards.org.uk/>; e-mail: [info@imiawards.org.uk](mailto:info@imiawards.org.uk)

(33) Details can be obtained from the Institute of the Motor Industry, Fanshaws, Brickendon, Hertford, SG13 8PQ; telephone: (01992) 511 521; e-mail: [comms@theimi.org.uk](mailto:comms@theimi.org.uk); web-site: <http://www.theimi.org.uk/>

(34) Details can be obtained from the Institute of Road Transport Engineers, Society of Operations Engineers, 22 Greencoat Place, London SW1P 1PR; telephone: 020 7630 1111; e-mail: [irtec@irtec.org.uk](mailto:irtec@irtec.org.uk); web-site: <http://www.soe.org.uk/irtec-licensing-scheme/>

- (a) the name of the person to whom the certificate or attestation was issued;
  - (b) the date on which the certificate or attestation was issued; and
  - (c) in the case of an individual, the examination or training to which the certificate or attestation relates.
- (4) When requested to do so by the Department, a relevant body in Northern Ireland must provide as soon as reasonably practicable to the Department such information as the Department may require to ensure that the obligations imposed by the first sentence of Article 10(10) of the 2014 Regulation (training and certification) and by Commission Regulation 308/2008 are complied with.
- (5) In this regulation, “relevant body” means a certification body, an attestation body or an evaluation body referred to in, or appointed under, these Regulations.

## PART 3

### Enforcement

#### Enforcement

**18.**—(1) Subject to paragraphs (2) to (5), the district council must enforce these Regulations.

- (2) In relation to—
- (a) cases of a particular description; or
  - (b) a particular case,
- the Department may direct that the duty imposed by paragraph (1) on the district council must be discharged by the Department and not by the district council.
- (3) The Department must enforce these Regulations in relation to any Part A installation.
- (4) The Secretary of State must enforce these Regulations in relation to Northern Ireland offshore installations used in connection with any of the activities described in regulation 4(a) to (f).
- (5) The Department must enforce these Regulations in relation to Northern Ireland offshore installations used in connection with any of the activities described in regulation 4(g).
- (6) In this regulation, “Part A installation” has the same meaning as in regulation 2(1) of the Pollution Prevention and Control (Industrial Emissions) Regulations (Northern Ireland) 2013<sup>(35)</sup>.

#### Appointment of authorised persons

- 19.**—(1) The enforcing authority may authorise in writing such persons (“authorised persons”) as it considers appropriate to act for the purpose of enforcing these Regulations.
- (2) An authorisation under Article 19 of the Environment (Northern Ireland) Order 2002<sup>(36)</sup> (powers of enforcing authorities and persons authorised by them) is an authorisation for the purposes of these Regulations.
- (3) In relation to Northern Ireland offshore installations used in connection with any of the activities described in regulation 4(1)(a) to (f), an authorisation under any of the following is an authorisation for the purposes of paragraph (1), unless the Secretary of State specifies to the contrary—
- (a) regulation 16 (appointment of inspectors) of the Offshore Chemicals Regulations 2002 <sup>(37)</sup>;
  - (b) regulation 12 (inspectors) of the Offshore Petroleum Activities (Oil Pollution Prevention and Control) Regulations 2005<sup>(38)</sup>.

#### Powers of authorised persons

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

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<sup>(35)</sup> S.R. 2013 No. 160

<sup>(36)</sup> S.I. 2002/3153 (N.I. 7).

<sup>(37)</sup> S.I. 2002/1355, amended by S.I. 2005/2055 and 2011/982. There are other amendments not relevant to this instrument.

<sup>(38)</sup> S.I. 2005/2055, amended by S.I. 2011/982. There are other amendments not relevant to this instrument.

(2) The powers of an authorised person are—

- (a) subject to paragraph (3), to enter premises, between the hours of 8 a.m. and 6 p.m. on any working day, other than premises used wholly or mainly for residential purposes, which the authorised person has reason to believe it is necessary for the authorised person to enter;
- (b) on entering any premises by virtue of sub-paragraph (a), to take with the authorised person—
  - (i) up to four other persons whose presence appears to the authorised person to be required in connection with the exercise by the authorised person of any power under this regulation, including, if the authorised person has reasonable cause to apprehend any serious obstruction in the execution of the duty of the authorised person, a 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 the authorised person has power to enter, to direct that those premises or any part of them, or anything in them, must be left undisturbed (whether generally or in particular respects) for so long as is reasonably necessary for the purposes of any examination or investigation under sub-paragraph (c);
- (e) to take such measurements and photographs and make such recordings as the authorised person considers necessary for the purpose of any examination or investigation under sub-paragraph (c);
- (f) to take samples of any articles or substances found in or on any premises which the authorised person has power to enter;
- (g) in the case of any article or substance found in or on any premises which the authorised person has power to enter, being an article or substance which appears to the authorised person to have caused or to be likely to cause pollution of the environment or harm to human health or to the health of animals or plants, to cause it to be dismantled or subjected to any process or test (but not so as to damage or destroy it unless that is necessary);
- (h) in the case of any such article or substance, to take possession of it and detain it for so long as is necessary—
  - (i) to examine it and do to it anything which the authorised person has power to do under sub-paragraph (g),
  - (ii) to ensure that it is not tampered with before the examination by the authorised person is completed; and
  - (iii) to ensure that it is available for use as evidence in any proceedings for an offence under these Regulations;
- (i) to require any person whom the authorised person has reasonable cause to believe to be able to give any information relevant to any examination or investigation under 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 the answers of that person;
- (j) to require the production of, or where the information is recorded in computerised form, the furnishing of extracts from, any records which it is necessary for the authorised person to see for the purposes of any examination or investigation under sub-paragraph (c) and to inspect and take copies of, or of any entry in, the records;
- (k) to require any person to afford the authorised person such facilities and assistance with respect to any matters or things within that person's control or in relation to which that person has responsibilities as are necessary to enable the authorised person to exercise any of the powers conferred on the authorised person by this regulation.

- (3) The time limitation specified in paragraph (2)(a) does not apply in relation to Northern Ireland offshore installations.
- (4) 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, the authorised person must, if so requested by a person who at the time is present on and has responsibilities in relation to those premises, cause anything which is to be done by virtue of that power to be done in the presence of that person.
- (5) 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 the authorised person appropriate for the purpose of ascertaining what dangers, if any, there may be in doing anything which the authorised person proposes to do under the power.
- (6) Where under the power conferred by paragraph (2)(h) an authorised person takes possession of any article or substance found on any premises, the authorised person must—
  - (a) leave there, either with a responsible person or, if that is impracticable, fixed in a conspicuous position, a notice giving particulars of that article or substance sufficient to identify it and stating that the authorised person has taken possession of it under that power; and
  - (b) before taking possession of any such article or substance under that power, if it is practical to do so, take a sample of it and give to a responsible person at the premises a portion of the sample marked in a manner sufficient to identify it.
- (7) Nothing in this regulation is taken to compel the production by any person of a document which the person would be entitled to withhold production of on grounds of legal professional privilege on an order for disclosure and inspection in an action in the High Court
- (8) 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.
- (9) No answer given by a person in pursuance of a requirement imposed under paragraph (2)(i) is admissible in evidence in Northern Ireland against that person in any proceedings.
- (10) In this regulation, “working day” means a day which is not—
  - (a) Saturday or Sunday; or
  - (b) Christmas Day, Good Friday or a day which is a bank holiday in Northern Ireland under the Banking and Financial Dealings Act 1971<sup>(39)</sup>.

## **Warrants**

- 21.—**(1) A lay magistrate, may, by signed warrant, permit an authorised person to enter premises, if necessary by reasonable force, if satisfied, on sworn information in writing—
- (a) that there are reasonable grounds to enter those premises for the purpose of enforcing these Regulations; and
  - (b) that any of the conditions in paragraph (2) are met.
- (2) The conditions are—
- (a) entry to the premises has been, or is likely to be, refused, and notice of the intention to apply for a warrant has been given to the occupier;
  - (b) asking for entry to the premises, or giving such a notice, would defeat the object of the entry;
  - (c) entry is required urgently; or
  - (d) the premises are unoccupied or the occupier is temporarily absent.
- (3) A warrant under this regulation is valid for three months.

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<sup>(39)</sup> 1971 c. 80. See section 1 and Schedule 1.



## Information notices

**22.** 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 notices

**23.—(1)** An authorised person may serve an enforcement notice on any person who—

- (a) in the opinion of the authorised person, fails to, or is likely to fail to, comply with—
    - (i) a provision of the 2014 Regulation specified in Schedule 2; or
    - (ii) a provision of the Commission Regulations specified in Schedule 3, read in association with Part 2 of these Regulations;
  - (b) submits a report under Article 19 of the 2014 Regulation which is not submitted in accordance with Commission Implementing Regulation (EU) No 1191/2014 determining the format and means for submitting the report referred to in Article 19 of Regulation (EU) No 517/2014 of the European Parliament and of the Council on fluorinated greenhouse gases<sup>(40)</sup>;
  - (c) fails, where labelling for products and equipment is required under Article 12 of the 2014 Regulation, to comply with any of the following requirements of Commission Regulation 1494/2007—
    - (i) Article 2 (labelling requirements);
    - (ii) Article 3 (form of the label);
    - (iii) Article 4(2) (placing of the label for air conditioning equipment and heat pumps);
  - (d) fails to comply with a requirement under regulation 16 (obligation of employers to employ qualified employees);
  - (e) fails to comply with a requirement under regulation 17 (obligations on certification bodies etc.); or
  - (f) fails to comply with an information notice served under regulation 22 (information notices).
- (2) An authorised person may serve an enforcement notice on a person qualified in relation to fire protection systems who fails to comply with any of the following requirements of Commission Regulation 1497/2007—
- (a) Article 3 (checking system records);
  - (b) Article 4(1) (visual checks by certified personnel);
  - (c) Article 4(2) (checks in cases of presumed leakage); or
  - (d) Article 6 (follow-up check).
- (3) An authorised person may serve an enforcement notice on an operator of a fire protection system who—
- (a) fails to comply with any of the following requirements of Commission Regulation 1497/2007—
    - (i) Article 2(1) (system records); or
    - (ii) Article 2(3) (determination of gas charge by certified personnel);
  - (b) fails to ensure that Article 2(2) (indication of gas charge) of Commission Regulation 1497/2007 is complied with; or
  - (c) fails to ensure that the following requirements of Commission Regulation 1497/2007 are carried out by a person qualified in relation to fire protection systems—
    - (i) Article 4(4) (checking of pressure gauges and weight-monitoring devices);
    - (ii) Article 5 (repair of leakage); and

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<sup>(40)</sup> OJ No. L318, 5.11.14, p.5–20.

- (iii) Article 7 (requirements for newly commissioned systems).
- (4) Subject to paragraph (6), an authorised person may serve an enforcement notice on a person qualified in relation to stationary equipment who fails to comply with any of the following requirements of Commission Regulation 1516/2007—
- (a) Article 3 (checking equipment records);
  - (b) Article 4 (systematic checks);
  - (c) Article 5 (choice of measuring method);
  - (d) Article 6 (direct measuring methods);
  - (e) Article 7(1) (indirect measuring methods);
  - (f) Article 7(2) (examination using a direct method); or
  - (g) Article 9 (follow-up check).
- (5) Subject to paragraph (6), an authorised person may serve an enforcement notice on an operator of stationary equipment who—
- (a) fails to comply with any of the following requirements of Commission Regulation 1516/2007—
    - (i) Article 2(1) (equipment records);
    - (ii) Article 2(3) (determination of gas charge by certified personnel);
  - (b) fails to ensure that the following requirements of Commission Regulation 1516/2007 are complied with—
    - (i) Article 2(2) (indication of gas charge);
    - (ii) Article 2(4) (indication of leakage cause); or
  - (c) fails to ensure that the following requirements of Commission Regulation 1516/2007 are carried out by a person qualified in relation to stationary equipment—
    - (i) Article 8 (repair of leakage);
    - (ii) Article 10 (requirements for newly commissioned equipment).
- (6) Paragraphs (4) and (5) do not apply in respect of equipment with a hermetically sealed system which—
- (a) is labelled as having such a system; and
  - (b) contains less than 6 kilograms of fluorinated greenhouse gases.
- (7) An enforcement notice must—
- (a) specify the matters constituting the failure to comply or making a failure to comply likely;
  - (b) specify the steps that must be taken to remedy or avert the failure to comply;
  - (c) specify the period in which those steps must be taken;
  - (d) provide information on the right to appeal under regulation 24; and
  - (e) state that it is an offence under regulation 26(1)(d) to fail to comply with the enforcement notice.
- (8) An authorised person may at any time withdraw an enforcement notice.
- (9) A person on whom an enforcement notice is served must comply with it at their own expense.
- (10) If an enforcement notice is not complied with—
- (a) the enforcing authority may arrange for it to be complied with at the expense of the person on whom it was served; and
  - (b) the enforcing authority may recover those expenses summarily or in any court of competent jurisdiction as a civil debt due to it.
- (11) In this regulation—
- (a) “fire protection system” means a fire protection system, within the meaning given in Article 1 of Commission Regulation 1497/2007, containing 3 kilograms or more of fluorinated greenhouse gases;

- (b) “person qualified in relation to fire protection systems” means an individual who—
  - (i) holds a certificate issued under Article 5 of Commission Regulation 304/2008 which relates to leakage checking of fire protection systems; or
  - (ii) is exempt from holding such a certificate by virtue of Article 4(2) of Commission Regulation 304/2008;
- (c) “person qualified in relation to stationary equipment” means an individual who—
  - (i) holds a valid certificate issued under Article 5 of Commission Regulation 303/2008 which relates to leakage checking of stationary equipment;
  - (ii) is exempt from holding such a certificate by virtue of Article 4(3)(a) or (c) of Commission Regulation 303/2008; or
  - (iii) is exempt from holding such a certificate by virtue of Article 4(3)(b) of Commission Regulation 303/2008 where the person is suitably qualified for the purposes of 3.1.2 of the essential requirements in Schedule 2 (Manufacturing – permanent joining) to the Pressure Equipment Regulations 1999(41); and
- (d) “stationary equipment” means stationary refrigeration, air conditioning or heat pump equipment which contains 3 kilograms or more of fluorinated greenhouse gases.

### Appeals against enforcement notices

- 24.—(1) A person, served with an enforcement notice, who is aggrieved by that notice may appeal against it.
- (2) The right of appeal is to a magistrates’ court.
  - (3) The procedure on appeal to a magistrates’ court is by way of notice, and Part 7 of the Magistrates’ Courts (Northern Ireland) Order 1981(42) applies to the proceedings.
  - (4) An appeal must be brought by no later than 28 days after the date on which the enforcement notice is served.
  - (5) An enforcement notice is not suspended pending an appeal unless the court orders otherwise.

### Proceedings before a civil court

25. If the enforcing authority is of the opinion that proceedings against a person for an offence under regulation 26(1)(d) (the failure to comply with an enforcement notice) would afford an ineffectual remedy against that person, the enforcing authority may take civil proceedings in the High Court against that person for the purposes of seeking such remedy as the enforcing authority believes is appropriate in the circumstances.

## PART 4

### Offences and penalties

#### Offences

26.—(1) It is an offence for a person to do any of the following or to cause or permit another person to do any of the following—

- (a) breach any of the prohibitions mentioned in the following provisions of the 2014 Regulation—
  - (i) Article 3(1) (prohibition on intentional release of fluorinated greenhouse gas);
  - (ii) Article 11(1) (read in association with Article 11(2) and (3)) (prohibition on placing specified products and equipment on the market);

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(41) S.I. 1999/2001, to which there are amendments not relevant to this instrument.

(42) S.I. 1981/1675 (N.I. 26).

- (iii) Article 14(1) (prohibition on placing equipment not accounted for within quota system on the market);
- (b) breach Article 14(2) of the 2014 Regulation (requirements to document placing on the market and to draw up declaration of conformity);
- (c) breach the second paragraph of Article 15(1) (read in association with Article 15(2) and (3)) of the 2014 Regulation (requirement to ensure quantities placed on market do not exceed quota); or
- (d) fail to comply with an enforcement notice.

(2) It is an offence to—

- (a) intentionally obstruct any person acting in the execution or enforcement of these Regulations;
- (b) fail, without reasonable cause, to give to any such person any assistance or information which that person may reasonably require for those purposes;
- (c) furnish to any such person any information knowing it to be false or misleading;  
or
- (d) fail to produce a document or record to any such person when required to do so.

### **Offences committed by bodies corporate, partnerships and unincorporated associations**

**27.**—(1) For the purposes of these Regulations—

- (a) section 20(2) of the Interpretation Act (Northern Ireland) 1954<sup>(43)</sup> applies with the omission of the words “the liability of whose members is limited”;
- (b) section 20(3) of that Act does not apply; and
- (c) where the affairs of a body corporate are managed by its members, section 20(2) of the Act applies in relation to the acts or defaults of a member in connection with the member’s functions of management as if the member were a director of the body corporate.

(2) Where any offence under these Regulations committed by a partnership is proved—

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

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

(3) For the purposes of paragraph (2), “partner” includes a person purporting to act as a partner.

(4) Where any offence under these Regulations committed by an unincorporated association (other than a partnership) is proved—

- (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,

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

(5) For the purpose of proceedings under paragraph (4)—

- (a) rules of court relating to the service of documents have effect as if the association were a body corporate; and
- (b) the provisions of section 18 (procedure on charge) of the Criminal Justice Act (Northern Ireland) 1945<sup>(44)</sup> and Article 166 (corporations) of, and Schedule 4 to, the Magistrates’ Courts (Northern Ireland) Order 1981<sup>(45)</sup> apply as they apply in relation to a body corporate.

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<sup>(43)</sup> 1954 c.33 (N.I.)

<sup>(44)</sup> 1945 c.15 (N.I.)

<sup>(45)</sup> S.I. 1981/1675 (N.I. 26)

- (6) A fine imposed on an unincorporated association on its conviction for an offence may be made payable out of the funds of the association.

### Penalties

28. A person who commits 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.

### Application to the Crown

29.—(1) Subject to the provisions of this regulation, these Regulations bind the Crown.

- (2) No act or omission done or suffered on behalf of the Crown constitutes an offence under these Regulations but the High Court may on the application of the Department declare unlawful any act or omission of the Crown which constitutes such a contravention.
- (3) Notwithstanding paragraph (2), these Regulations apply to persons in the public service of the Crown as they apply to other persons.
- (4) In this regulation any reference to the Crown includes a reference to the Crown in right of Her Majesty's Government in Northern Ireland.

## PART 5

### Revocation

#### Revocation

30. The following Regulations are revoked—

- (a) the Fluorinated Greenhouse Gases Regulations (Northern Ireland) 2009 (46);
- (b) the Fluorinated Greenhouse Gases (Amendment) Regulations (Northern Ireland) 2012(47); and
- (c) the Fluorinated Greenhouse Gases (Amendment) Regulations (Northern Ireland) 2014(48).

Sealed with the Official Seal of the Department of the Environment on \*\*\*



*Dave Foster*

A senior officer of the Department of the Environment

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(46) S.R. 2009 No. 184, as amended by S.R. 2012 No. 230, and S.R. 2014 No. 77.  
(47) S.R. 2012 No. 230.  
(48) S.R. 2014 No. 77.

## Certification and evaluation bodies (high voltage switchgear)

The persons are—

- (d) ABB Limited (Company Number: 03780764) **(49)**;
- (e) Alstom Grid UK Limited (Company Number: 04955841) **(50)**, formerly trading as AREVA T&D UK Limited (Company Number: 02612364) **(51)**;
- (f) EA Technology Limited (Company Number: 02566313) **(52)**;
- (g) Electricity Northwest Limited (Company Number: 02366949) **(53)**;
- (h) Lucy Electric UK Limited (Company Number: 04650968) **(54)**, formerly trading as Lucy Switchgear Limited (Company Number: 01179461) **(55)**;
- (i) National Grid Electricity Transmission plc (Company Number: 02366977) **(56)**;
- (j) Northern Ireland Electricity (Company number: NI026041) **(57)**;
- (k) Schneider Electric Limited (Company Number: 02886434) **(58)**;
- (l) Scottish and Southern Energy Power Distribution Limited (Company Number: SC213459) **(59)**;
- (m) Scottish Power Energy Network Holdings Limited (Company Number: SC389555) **(60)**;
- (n) Siemens Transmission and Distribution Limited (Company Number: 00631825) **(61)**;
- (o) UK Power Networks (Operations) Limited (Company Number: 03870728) **(62)**;
- (p) Western Power Distribution (East Midlands) plc (Company Number: 02366923) **(63)**;
- (q) Western Power Distribution (South Wales) plc (Company Number: 02366985) **(64)**;

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- (49)** Details can be obtained from ABB Limited, 3100 Daresbury Park, Daresbury, Warrington, WA4 4BT; telephone number: 01925 74 1111; Web-site: <http://new.abb.com/uk>
  - (50)** Details can be obtained from Alstom Grid UK Ltd., St Leonard's Avenue, Stafford ST17 4LX; telephone number: 01785 223 251; Web-site: <http://www.alstom.com/uk/locations/stafford-grid/>
  - (51)** Now officially known as Alstom Grid UK Ltd. Contact details are the same as in footnote (b) above.
  - (52)** Details can be obtained from EA Technology Limited, Capenhurst Technology Park, Capenhurst, Chester CH1 6ES; Telephone number: 0151 339 4181; Web-site: <http://www.eatechnology.com/>
  - (53)** Details can be obtained from Electricity North West, PO Box 218, Warrington WA3 6XG; telephone number: 0800 195 4141; web-site: <http://www.enwl.co.uk/>; e-mail: [enquiries@enwl.co.uk](mailto:enquiries@enwl.co.uk)
  - (54)** Details can be obtained from Lucy Electric UK Limited, Howland Road, Thame, Oxfordshire, OX9 3UJ. Telephone: 01844 267 267. E-mail: [salesuk@lucyswitchgear.com](mailto:salesuk@lucyswitchgear.com) Web-site: <http://www.lucyelectric.com/>
  - (55)** Now officially known as Lucy Electric UK Limited. Contact details are the same as in footnote (f) above.
  - (56)** Details can be obtained from National Grid, Brick Kiln Street, Hinckley, Leicestershire, LE10 0NA. Telephone: 0845 835 1111. E-mail: [customersupport@nationalgrid.com](mailto:customersupport@nationalgrid.com) Web-site: <http://www2.nationalgrid.com/uk/>
  - (57)** Details can be obtained from Northern Ireland Electricity plc, P.O. Box 2, 120 Malone Road, Belfast BT9 5HT. Telephone: 028 90 66 11 00. Web-site: <http://www.nie.co.uk/>
  - (58)** Details can be obtained from Schneider Electric Limited, 123 Jack Lane, Leeds LS10 1BS. Telephone: 0870 608 8608. Web-site: <http://www.schneider-electric.com/>
  - (59)** Details can be obtained from Scottish and Southern Energy Power Distribution Limited, Inveralmond House, 200 Dunkeld Road, Perth, PH1 3AQ; telephone: 0800 980 1394; e-mail: [customer.relations.scotland@sse.com](mailto:customer.relations.scotland@sse.com); web-site: <http://www.ssepd.co.uk/>
  - (60)** Details can be obtained from Scottish Power Energy Networks Holdings Limited, Ochil House, Hamilton International Park, Blantyre, G72 0HT; telephone: 0330 1010 444; e-mail: [customercare@spenergynetworks.com](mailto:customercare@spenergynetworks.com); web-site: <http://www.spenergynetworks.co.uk/>
  - (61)** Details can be obtained from Siemens Transmission and Distribution Limited, 2 Koppers Way, Monkton Business Park South, Hebburn, Tyne and Wear, NE31 2EZ. Telephone: 0191 495 3449; web-site: <http://www.siemens.co.uk/>.
  - (62)** Details can be obtained from UK Power Networks (Operations) Limited, Energy House, Carrier Business Park, Hazelwick Avenue, Crawley, West Sussex, RH10 1NP; telephone: 0845 601 4516; web-site: <http://www.ukpowernetworks.co.uk/>
  - (63)** Details can be obtained from Western Power Distribution (East Midlands) plc, Avonbank, Feeder Road, Bristol, BS2 0TB; telephone: 0845 724 0240; web-site: <http://www.westernpower.co.uk/>.
  - (64)** Details can be obtained from Western Power Distribution (South Wales) plc, Avonbank, Feeder Road, Bristol, BS2 0TB; telephone: 0845 601 3341; web-site: <http://www.westernpower.co.uk/>.

(f) Western Power Distribution (South West) plc (Company Number: 02366894) (65);

(s) Western Power Distribution (West Midlands) plc (Company Number: 03600574) (66); or

(t) such other successor body as the Department may in writing approve.

## SCHEDULE 2

Regulation 23(1)(a)(i)

### 2014 Regulation provisions

<i>Provision of 2014 Regulation</i>	<i>Summary of subject matter</i>
Article 3(1).	Prohibition on the intentional release of fluorinated greenhouse gases into the atmosphere where not technically necessary for intended use.
Article 3(2).	Requirement on operators of equipment to take precautions to prevent leakage of fluorinated greenhouse gases. Requirement on operators of equipment to take measures to minimise leakage of fluorinated greenhouse gases.
Article 3(3).	Requirement on operators of equipment to ensure that equipment is repaired without undue delay where a leakage of fluorinated greenhouse gases is detected. Requirement on operators of equipment to ensure equipment is checked where the equipment is subject to leak checks under Article 4(1) (leak checks) and has been repaired.
Article 3(4).	Requirement on natural persons carrying out tasks referred to in Article 10(1)(a) to (c) (training and certification) to be certified and to take precautionary measures to prevent leakage of fluorinated greenhouse gases. Requirement on undertakings carrying out the installation, servicing, maintenance, repair or decommissioning of equipment referred to in Article 4(2)(a) to (d) to be certified and to take precautionary measures to prevent leakage of fluorinated greenhouse gases.
Article 4(1) (read in association with Article 4(2) to (4)).	Requirement on operators of equipment to ensure that specified types of equipment are checked for leaks.
Article 5(1).	Requirement on operators of equipment listed in Article 4(2)(a) to (d) containing fluorinated greenhouse gases in quantities of 500 tonnes of CO <sub>2</sub> equivalent or more to ensure that the equipment is provided with a leakage detection system.
Article 5(2).	Requirement on operators of equipment listed in Article 4(2)(f) and (g) containing fluorinated greenhouse gases in quantities of 500 tonnes of CO <sub>2</sub> equivalent or more and installed from 1 January 2017 to ensure that the equipment is provided with a leakage detection system.
Article 5(3).	Requirement on operators of equipment listed in Article 4(2)(a) to (d) and (g) to ensure that leakage detection systems are checked at least once every 12 months.
Article 5(4).	Requirement on operators of equipment listed in Article 4(2)(f) (electrical switchgear) to ensure that leakage detection systems are checked at least once every six years.

(65) Details can be obtained from Western Power Distribution (South West) plc, Avonbank, Feeder Road, Bristol, BS2 0TB; telephone: 0845 601 2989; web-site: <http://www.westernpower.co.uk/>.

(66) Details can be obtained from Western Power Distribution (West Midlands) plc, Avonbank, Feeder Road, Bristol, BS2 0TB; telephone: 0845 724 0240; web-site: <http://www.westernpower.co.uk/>.

Article 6(1).	Requirement on operators of equipment required to be checked for leaks under Article 4(1) to establish and maintain records for each piece of equipment specifying prescribed information.
Article 6(2).	Requirement on operators required to keep records under Article 6(1) to keep them for at least five years except where those records are stored in a database set up by the competent authorities. Requirement on undertakings carrying out the activities referred to in Article 6(1)(e) (record keeping) for operators to keep copies of the records for at least five years except where those records are stored in a database set up by the competent authorities. Requirement on operators of equipment and undertakings to make the records available on request to a competent authority or to the European Commission.
Article 6(3) (read in association with Article 11(4)).	Requirement on undertakings supplying fluorinated greenhouse gases to establish records of relevant information on the purchasers including prescribed details. Requirement on undertakings to maintain the records for at least five years. Requirement on undertakings to make the records available on request to a competent authority or to the European Commission.
Article 7(1).	Requirement on producers of fluorinated compounds to take all necessary precautions to limit emissions of fluorinated greenhouse gases during production, transport and storage.
Article 7(2).	Prohibition, from 11th June 2015, on the placing on the market of fluorinated greenhouse gases and gases listed in Annex II, except, where relevant, the producer or importer provides evidence at the time of placing that trifluoromethane produced as a by-product during the manufacturing process, has been destroyed or recovered for subsequent use.
Article 8(1).	Requirement on operators of specified stationary equipment or refrigeration units of refrigerated trucks and trailers that contain fluorinated greenhouse gases not contained in foams to ensure that the recovery of the gases is carried out by natural persons certified under Article 10.
Article 8(2).	Requirement on undertakings that use a fluorinated greenhouse gases container immediately prior to disposal to arrange for the recovery of any residual gases to make sure they are recycled, reclaimed or destroyed.
Article 8(3).	Requirement on operators of products and equipment not listed in Article 8(1) that contain fluorinated greenhouse gases to arrange for the recovery of the gases by appropriately qualified natural persons or to arrange for their destruction.
Article 11(1) (read in association with Article 11(2) and (3)).	Prohibition on the placing on the market of products and equipment listed in Annex III, with the exception of military equipment, from the date specified in the Annex.
Article 11(4).	Prohibition on the sale and purchase of fluorinated greenhouse gases for the purposes of carrying out the installation, servicing, maintenance or repair of equipment that contains fluorinated greenhouse gases or whose functioning relies upon those gases, except by undertakings who hold relevant certifications or attestations in accordance with Article 10.
Article 11(5).	Prohibition on the sale of non-hermetically sealed equipment charged with fluorinated greenhouse gases to the end user without the provision of evidence that the installation is to be carried out by an undertaking certified in accordance with Article 10.
Article 12(1) (read in	Prohibition on the placing on the market of specified products



<p>association with Article 12(3), (4) and (6) to (13)). Article 12(5).</p>	<p>and equipment that contain or whose functioning relies upon fluorinated greenhouse gases unless they are labelled. Prohibition on the placing on the market of foams and pre-blended polyols that contain fluorinated greenhouse gases unless the fluorinated greenhouse gases are identified with an accepted industry designation or, if not available, its chemical name.</p>
<p>Article 13(1).</p>	<p>Prohibition on the use of sulphur hexafluoride in magnesium die-casting and in the recycling of magnesium die-casting alloys (from 1st January 2018 in relation to installations using a quantity of sulphur hexafluoride below 850kg per year).</p>
<p>Article 13(2).</p>	<p>Prohibition on the use of sulphur hexafluoride to fill vehicle tyres.</p>
<p>Article 13(3).</p>	<p>Prohibition, from 1st January 2020 (1st January 2030 in relation to specified categories of fluorinated greenhouse gases), on the use of fluorinated greenhouse gases with a global warming potential of 2,500 or more, to service or maintain refrigeration equipment with a charge size of 40 tonnes of CO<sub>2</sub> equivalent or more, except for military equipment or equipment intended for applications designed to cool products to temperatures below - 50°C.</p>
<p>Article 14(1).</p>	<p>Prohibition, from 1st January 2017, on the placing on the market of refrigeration, air conditioning and heat pump equipment charged with hydrofluorocarbons unless the hydrofluorocarbons charged into the equipment are accounted for within the quota system referred to in Chapter IV.</p>
<p>Article 14(2) (read in association with Article 14(3)).</p>	<p>Requirement on manufacturers and importers of equipment placing pre-charged equipment on the market to ensure that compliance with Article 14(1) (pre-charging of equipment with hydrofluorocarbons) is fully documented and to draw up a declaration of conformity. Requirement, from 1st January 2018, on importers of equipment containing hydrofluorocarbons not placed on the market prior to the charging of the equipment to ensure that by 31 March every year the accuracy of the documentation and declaration of conformity is verified, for the preceding calendar year, by an independent auditor. Requirement on manufacturers and importers of equipment referred to in Article 14(1) to keep the documentation and declaration of conformity for a period of at least five years after the placing on the market of that equipment.</p>
<p>Article 15(1) (read in association with Article 15(2) and (3)).</p>	<p>Requirement on producers and importers to ensure that the quantity of hydrofluorocarbons calculated in accordance with Annex V that each of them places on the market does not exceed their quota allocated pursuant to Article 16 (allocation of quotas for placing hydrofluorocarbons on the market) or transferred pursuant to Article 18 (transfer of quotas and authorisation to use quotas for the placing on the market of hydrofluorocarbons in imported equipment).</p>
<p>Article 17(1).</p>	<p>Requirement on prescribed persons to be registered in the electronic registry for quotas for placing hydrofluorocarbons on the market.</p>
<p>Article 19(1).</p>	<p>Requirement on each producer, importer and exporter that produced, imported or exported one tonne or 100 tonnes of CO<sub>2</sub> equivalent or more of fluorinated greenhouse gases and gases listed in Annex II during the preceding calendar year, as well as undertakings receiving quotas pursuant to Article 18(1), to report to the European Commission the data specified in Annex VII on each of those substances for that calendar year by 31 March 2015</p>

	and every year thereafter.
Article 19(2).	Requirement on each undertaking that destroyed one metric tonne or 1,000 tonnes of CO <sub>2</sub> equivalent or more of fluorinated greenhouse gases and gases listed in Annex II during the preceding calendar year to report to the European Commission the data specified in Annex VII on each of those substances for that calendar year by 31 March 2015 and every year thereafter.
Article 19(3).	Requirement on each undertaking that used 1,000 tonnes of CO <sub>2</sub> equivalent or more of fluorinated greenhouse gases as feedstock during the preceding calendar year to report to the European Commission the data specified in Annex VII on each of those substances for that calendar year by 31 March 2015 and every year thereafter.
Article 19(4).	Requirement on each undertaking that placed 500 tonnes of CO <sub>2</sub> equivalent or more of fluorinated greenhouse gases and gases listed in Annex II contained in products or equipment on the market during the preceding calendar year to report to the European Commission the data specified in Annex VII on each of those substances for that calendar year by 31 March 2015 and every year thereafter.
Article 19(5).	Requirement on each importer that places on the market pre-charged equipment where hydrofluorocarbons contained in that equipment have not been placed on the market prior to the charging of the equipment to submit to the European Commission a verification document issued pursuant to Article 14(2).
Article 19(6).	Requirement on each undertaking which, under Article 19(1), reports on the placing on the market 10,000 tonnes of CO <sub>2</sub> equivalent or more of hydrofluorocarbons during the preceding calendar year to ensure that the accuracy of the data is verified by an independent auditor by 30 June 2015 and every year thereafter. Requirement on undertakings to keep the verification report for at least five years. Requirement on undertakings to make the verification report available, on request, to a competent authority and to the European Commission.

## SCHEDULE 3

Regulation 23(1)(a)(ii)

### Commission Regulation provisions

**Table 1: Certification for stationary refrigeration, air conditioning and heat pump equipment**

<i>Provision of Commission Regulation 303/2008</i>	<i>Summary of subject matter</i>
Article 4(1) (read in association with Articles 2 and 4(3)).	Requirement on personnel carrying out activities referred to in Article 2(1) (scope) to hold a certificate as referred to in Article 5 (personnel certificates) for the corresponding category set out in Article 4(2) (certification of personnel).
Article 7(1).	Requirement on companies carrying out activities referred to in Article 2(2) to hold a certificate as referred to in Article 8 (company certificates).

**Table 2: Certification for stationary fire protection systems and fire extinguishers**

<i>Provision of Commission</i>	<i>Summary of subject matter</i>
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<i>Regulation 304/2008</i>	
Article 4(1) (read in association with Articles 2 and 4(2)). Article 7(1).	Requirement on personnel carrying out activities referred to in Article 2(1) (scope) to hold a certificate as referred to in Article 5 (personnel certificates). Requirement on companies carrying out activities referred to in Article 2(2) to hold a certificate as referred to in Article 8 (company certificates).

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**Table 3: Certification for recovery of fluorinated greenhouse gases from high voltage switchgear**

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<i>Provision of Commission Regulation 305/2008</i>	<i>Summary of subject matter</i>
Article 3(1) (read in association with Article 3(2)).	Requirement on personnel carrying out the activity referred to in Article 1 (subject matter and scope) to hold a certificate as referred to in Article 4 (issuance of certificates to personnel).

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**Table 4: Certification for recovery of fluorinated greenhouse gas-based solvents from equipment**

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<i>Provision of Commission Regulation 306/2008</i>	<i>Summary of subject matter</i>
Article 2(1) (read in association with Article 2(2)).	Requirement on personnel carrying out the activity referred to in Article 1 (subject matter and scope) to hold a certificate as referred to in Article 3 (issuance of certificates to personnel).

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**Table 5: Attestation for air conditioning systems in motor vehicles**

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<i>Provision of Commission Regulation 307/2008</i>	<i>Summary of subject matter</i>
Article 2(1) (read in association with Article 2(2)).	Requirement on personnel carrying out the activity referred to in Article 1 (subject matter) hold a training attestation as referred to in Article 3 (issuance of training attestations to personnel).

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## **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

The Regulations revoke and remake with amendments the Fluorinated Greenhouse Gases Regulations (Northern Ireland) 2009 (S.R. 2009 No. 184).

These Regulations give effect to Regulation (EU) No 517/2014 of the European Parliament and of the Council on fluorinated greenhouse gases and repealing Regulation (EC) No 842/2006.

These Regulations attempt to limit emissions of fluorinated greenhouse gases (“F-gases”) into the atmosphere by ensuring that employees and companies in a number of sectors of business in Northern Ireland are certified to handle equipment during the course of their business without emitting large quantities of F-gases.

The sectors of business and types of equipment are stationary refrigeration, air conditioning and heat pump equipment, fire extinguishers and fire protection systems, high-voltage switchgear, F-gas based solvents, and air-conditioning systems in certain motor vehicles.

These Regulations may also affect businesses involved in insulation foams, aerosol sprays, medical inhalers, Organic Rankine Cycles and refrigerated trucks and trailers.

A number of new offences are listed for which the sectors of business mentioned above must ensure compliance. Some, although not all, of the new requirements for businesses only become offences following the failure to comply with a specially issued enforcement notice.

The enforcement notice would detail any breaches of these Regulations and specify the steps to take to remedy the infringement(s). Failure to comply with the enforcement notice would then become an offence.

The offences and breaches which may merit an enforcement notice include the deliberate release of F-gases into the atmosphere, the failure to comply with measures to prevent the leakage of F-gases from equipment, the failure to ensure that employees and companies working with equipment containing F-gases are qualified to do so, and failure to co-operate with authorised persons enforcing these Regulations.

There are also provisions to ensure that accurate records of F-gases handled are kept, reports on F-gases handled are sent to the European Commission, equipment containing F-gases is properly labelled, prohibited types of equipment containing F-gases are not sold, purchased or placed on the market, and that the quota to restrict the use of certain types of F-gases is not exceeded.

A full impact assessment of the effect that these Regulations would have upon the costs of business is available from the Department of the Environment, Goodwood House, 44-58 May Street, Belfast BT1 4NN.