
STATUTORY INSTRUMENTS

2009 No. 261

The Fluorinated Greenhouse Gases Regulations 2009

PART 2

General provisions

Leakages

5. It is an offence for the operator of a stationary application to fail to comply with—
- (a) Article 3.1 of the 2006 Regulation (prevention and repair of leakage); or
 - (b) Article 3.2 of the 2006 Regulation (checks for leakage), as qualified by Article 3.4 of the 2006 Regulation.

Leakage checks of stationary equipment

6.—(1) It is an offence for a qualified person to fail to comply with Article 3, 4, 5, 6, 7.1, 7.2 or 9 of Commission Regulation 1516/2007 (checks of records and equipment, measuring methods and follow-up checks).

- (2) It is an offence for the operator of stationary equipment to fail to ensure that—
- (a) a repair, a pump-down or recovery referred to in Article 8.1 of Commission Regulation 1516/2007 is carried out,
 - (b) Article 8.2 or 8.3 of Commission Regulation 1516/2007 (leakage tests and identification of cause) is complied with, or
 - (c) a check of newly installed equipment under Article 10 of Commission Regulation 1516/2007 is carried out,

by a qualified person.

- (3) In this regulation—
- (a) “stationary equipment” means stationary refrigeration, air conditioning or heat pump equipment which contains 3 kilograms or more of fluorinated greenhouse gases; and
 - (b) “a qualified person” 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, or
 - (ii) is exempt from holding such a certificate by virtue of regulation 20(3), (4), (6), or (7).

Leakage checks of fire protection systems

7.—(1) It is an offence for a qualified person to fail to comply with Article 3, 4.1, 4.2 or 6 of Commission Regulation 1497/2007 (checks of records, carrying out of checks and follow-up checks).

- (2) It is an offence for the operator of a fire protection system to fail to ensure that—

- (a) a check of pressure gauges or weight-monitoring devices under Article 4.4,
- (b) a repair, a replacement or a leakage test referred to in Article 5, or
- (c) a check of newly installed equipment under Article 7,

of Commission Regulation 1497/2007 is carried out by a qualified person.

(3) 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; and
- (b) “a qualified person” 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 regulation 27(3) or (4).

Leakage detection systems

8.—(1) It is an offence for a person to use a stationary application, other than an existing fire protection system, which contains 300 kilograms or more of fluorinated greenhouse gases in which is not installed a leakage detection system.

(2) It is an offence for the operator of a stationary application, other than a fire protection system, which contains 300 kilograms or more of fluorinated greenhouse gases to fail to ensure that a leakage detection system installed in the stationary application is checked in accordance with Article 3.3 of the 2006 Regulation.

(3) It is an offence for the operator of an existing fire protection system to fail to ensure that a leakage detection system is fitted to that fire protection system before 4th July 2010.

(4) It is an offence for the operator of a fire protection system which contains 300 kilograms or more of fluorinated greenhouse gases to fail to ensure that the leakage detection system fitted to the fire protection system is—

- (a) checked at least once every 12 months to ensure that it functions properly, in accordance with Article 3.3 of the 2006 Regulation; or
- (b) inspected as referred to in Article 3.5 of the 2006 Regulation.

(5) In this regulation, “existing fire protection system” means a fire protection system which—

- (a) contains 300 kilograms or more of fluorinated greenhouse gases; and
- (b) was fitted before 4th July 2007.

Records

9.—(1) It is an offence for the operator of a stationary application containing 3 kilograms or more of fluorinated greenhouse gases to fail to comply with Article 3.6 of the 2006 Regulation (maintenance of certain records).

(2) It is an offence for the operator of a fire protection system to fail—

- (a) to comply with Article 2.1 or 2.3 of Commission Regulation 1497/2007 (operator’s details and determination of gas); or
- (b) to ensure that Article 2.2 is complied with (indication of gas in records systems).

(3) Paragraph (4) applies to the operator of stationary refrigeration, air conditioning or heat pump equipment which—

- (a) contains 3 kilograms or more of fluorinated greenhouse gases; and

- (b) is not excepted equipment.
- (4) It is an offence for the operator of any such equipment to fail—
 - (a) to comply with Article 2.1 or 2.3 of Commission Regulation 1516/2007; or
 - (b) to ensure that Article 2.2 or 2.4 of Commission Regulation 1516/2007 are complied with.
- (5) In this regulation—
 - (a) “excepted equipment” means equipment with a hermetically sealed system which—
 - (i) is labelled as having such a system, and
 - (ii) contains less than 6 kilograms of fluorinated greenhouse gases; and
 - (b) “fire protection system” means a fire protection system containing 3 kilograms or more of fluorinated greenhouse gases.

Recovery of fluorinated greenhouse gases

10.—(1) It is an offence for the operator of the equipment referred to in paragraph (2) to fail to comply with Article 4.1 or 4.4 of the 2006 Regulation (arrangements for recovery of gas).

- (2) The equipment is—
 - (a) the cooling circuit of—
 - (i) refrigeration equipment,
 - (ii) air conditioning equipment, or
 - (iii) heat pump equipment,
 - (b) equipment containing fluorinated greenhouse gas-based solvents,
 - (c) a fire protection system,
 - (d) a fire extinguisher, or
 - (e) high-voltage switch gear,

which is normally not in transit during operation.

(3) It is an offence for the user of a refillable or a non-refillable fluorinated greenhouse gas container to fail to comply with Article 4.2 or 4.4 of the 2006 Regulation (recovery of gas).

- (4) Paragraph (5) applies to—
 - (a) the operator of any equipment not referred to in paragraph (2), or
 - (b) the user of any product, other than a gas container referred to in paragraph (3),

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

(5) Such an operator or user must ensure that any fluorinated greenhouse gas is recovered from the equipment or the product in accordance with Article 4.3 of the 2006 Regulation.

- (6) It is an offence for a person to fail to comply with paragraph (5).

Taking delivery of fluorinated greenhouse gases

- 11.**—(1) Any person who—
 - (a) carries out an activity referred to in Article 3 or 4 of the 2006 Regulation, and
 - (b) takes delivery of fluorinated greenhouse gases,

commits an offence if an employee of that person employed to carry out work involving fluorinated greenhouse gases is not a qualified person.

- (2) In this regulation, “qualified person” means—
- (a) an individual who—
 - (i) holds a valid certificate issued under Article 5 of Commission Regulation 303/2008, or
 - (ii) is exempt from holding such a certificate by virtue of regulation 20(3), (4), (6) or (7);
 - (b) an individual who—
 - (i) holds a valid certificate issued under Article 5 of Commission Regulation 304/2008, or
 - (ii) is exempt from holding such a certificate by virtue of regulation 27(3) or (4);
 - (c) an individual who—
 - (i) holds a valid certificate issued under Article 4 of Commission Regulation 305/2008, or
 - (ii) is exempt from holding such a certificate by virtue of regulation 34(2);
 - (d) an individual who—
 - (i) holds a valid certificate issued under Article 3 of Commission Regulation 306/2008, or
 - (ii) is exempt from holding such a certificate by virtue of regulation 37(2); or
 - (e) an individual who—
 - (i) holds a valid attestation issued under Article 3 of Commission Regulation 307/2008, or
 - (ii) is exempt from holding such an attestation by virtue of regulation 40(2) or (3).

Reporting requirements and the provision of information

12.—(1) It is an offence for a person producing fluorinated greenhouse gases in Great Britain and who produces more than one tonne of fluorinated greenhouse gases in the Community each calendar year to fail to comply with the requirements of Article 6.1(a) of the 2006 Regulation within the time limits set out in Article 6.1 of the 2006 Regulation.

(2) It is an offence for a person who imports more than one tonne of fluorinated greenhouse gases each calendar year to fail to comply with the requirements of Article 6.1(b) within the time limits set out in Article 6.1 of the 2006 Regulation.

(3) It is an offence for a person who exports more than one tonne of fluorinated greenhouse gases from the Community each calendar year to fail to comply with the requirements of Article 6.1(c) of the 2006 Regulation within the time limits set out in Article 6.1 of the 2006 Regulation.

(4) It is an offence for a person to communicate to the European Commission a defective report.

(5) It is an offence for a person referred to in paragraphs (1), (2) or (3) to fail to send to the Secretary of State a copy of the annual report at the same time as the person sends the annual report to the European Commission.

(6) It is an offence for a person to fail within a reasonable time to provide such information as the Secretary of State may reasonably request to enable the Secretary of State to acquire emission data for the purposes of Article 6.4 of the 2006 Regulation.

(7) In this regulation—

- (a) “annual report” means the report which the person in question must send to the European Commission in accordance with Article 6 of the 2006 Regulation;

- (b) “defective report” means a report under Article 6 of the 2006 Regulation which is not in the format required under Commission Regulation 1493/2007; and
- (c) “import” means import into the United Kingdom from outside the customs territory of the Community.

Labelling

13.—(1) It is an offence for a person to place on the market within Great Britain a product or equipment referred to in paragraph (2) containing fluorinated greenhouse gas unless—

- (a) a proper label is affixed to the product or equipment in accordance with the provisions of—
 - (i) the first paragraph of Article 7.1 of the 2006 Regulation, and
 - (ii) Article 4 of Regulation 1494/2007; and
- (b) the proper label is in English, whether or not it is in any other language.

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

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

(3) In this regulation, “proper label” means a label which—

- (a) contains the information referred to in Articles 2.1, 2.2 and 2.3, and
- (b) is in a form which complies with Article 3,

of Commission Regulation 1494/2007.

Instruction manuals

14. It is an offence for a person to place on the market a product or equipment referred to in regulation 13(2) containing fluorinated greenhouse gas unless the instruction manual provided with the product or equipment contains—

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

Prohibition on the use of sulphur hexafluoride

15. It is an offence for a person to use sulphur hexafluoride or preparations of that substance in contravention of Article 8.1 or 8.2 of the 2006 Regulation on or after 9th March 2009.

Placing on the market

16.—(1) Subject to paragraph (2), it is an offence for a person to place on the market a product or equipment referred to in Annex II to the 2006 Regulation in contravention of Article 9.1 of the 2006 Regulation on or after—

(a) 9th March 2009, or

(b) the date specified in that Annex referable to the product or equipment in question,

whichever is the later.

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

Importation

17. In respect of the importation of any product or equipment referred to in Annex II to the 2006 Regulation into the United Kingdom from outside the customs territory of the Community, section 170 of the Customs and Excise Management Act 1979⁽¹⁾ has effect in relation to the evasion or attempted evasion of the prohibition set out in Article 9.1 of the 2006 Regulation, as qualified by Article 9.2 of that Regulation.

Proof of lawful import

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

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

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

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