
STATUTORY RULES OF NORTHERN IRELAND

2009 No. 184

**The Fluorinated Greenhouse Gases
Regulations (Northern Ireland) 2009**

PART 1

Introductory provisions

Citation, commencement and application

- 1.—(1) These Regulations—
- (a) may be cited as the Fluorinated Greenhouse Gases Regulations (Northern Ireland) 2009; and
 - (b) other than regulations 7(2) and 10, come into operation on 12th May 2009.
- (2) Regulation 7(2) comes into operation on 4th July 2010.
- (3) Regulation 10 comes into operation on 4th July 2009.
- (4) These Regulations apply to offshore installations.

Interpretation

- 2.—(1) In these Regulations—
- (a) “the 2006 Regulation” means Regulation (EC) 842/2006 of the European Parliament and of the Council on certain fluorinated greenhouse gases⁽¹⁾;
 - (b) “authorised person” means a person authorised by the enforcing authority for the purposes of these Regulations;
 - (c) “Commission Regulation 1493/2007” means Commission Regulation (EC) No 1493/2007 establishing, pursuant to Regulation EC N 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⁽²⁾;
 - (d) “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⁽³⁾;
 - (e) “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

(1) OJ No L 161, 14.6.06, p 1.

(2) OJ No L 332, 18.12.07, p 7.

(3) OJ No L 332, 18.12.07, p 25.

the Council, standard leakage checking requirements for stationary fire protection systems containing certain fluorinated greenhouse gases⁽⁴⁾;

- (f) “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⁽⁵⁾;
- (g) “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⁽⁶⁾;
- (h) “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⁽⁷⁾;
- (i) “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⁽⁸⁾;
- (j) “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⁽⁹⁾;
- (k) “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⁽¹⁰⁾;
- (l) “course of training” includes the training of an employee while that employee is engaged in work for which the employee is employed;
- (m) “the Department” means the Department of the Environment;
- (n) “employed” means employed under a contract of employment and “employee” and “employer” are construed accordingly;
- (o) “enforcement notice” means a notice served under regulation 44(1);
- (p) “the enforcing authority” has the meaning given in paragraph (3);
- (q) “in-house qualification” means a qualification verified by a certificate of competence or other written confirmation issued by an employer to such of the employees of that

(4) OJ No L 333, 19.12.07, p 4.

(5) OJ No L 335, 20.12.07, p 10.

(6) OJ No L 92, 3.4.08, p 3.

(7) OJ No L 92, 3.4.08, p 12.

(8) OJ No L 92, 3.4.08, p 17.

(9) OJ No L 92, 3.4.08, p 21, corrected by a corrigendum published in OJ No L 280, 23.10.08, p 38.

(10) OJ No L 92, 3.4.08, p 25.

- employer who have successfully completed a course of training provided by that employer relating to the activity in question;
- (r) “offshore installation” has the meaning given in paragraph (4);
 - (s) “operator” means the person who exercises actual power over the technical functioning of the equipment or systems which are referred to in these Regulations;
 - (t) “placing on the market” has the same meaning as it has in Article 2.7 of the 2006 Regulation, except that it does not include import into Northern Ireland, and cognate expressions are construed accordingly;
 - (u) “premises” includes—
 - (i) land;
 - (ii) a vehicle or trailer;
 - (iii) an aircraft;
 - (iv) a ship; and
 - (v) an offshore installation or a part of an offshore installation,and a reference to entering premises includes a reference to boarding an aircraft, a ship, or an offshore installation;
 - (v) “prohibition notice” means a notice served under regulation 44(3);
 - (w) “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; and
 - (x) “stationary application” has the meaning given in paragraph (5).
- (2) In these Regulations, the following expressions have the meaning given in Article 2—
- (a) “container”;
 - (b) “fluorinated greenhouse gases”;
 - (c) “heat pump”;
 - (d) “leakage detection system”; and
 - (e) “preparation”.
- (3) In these Regulations, the “enforcing authority” means—
- (a) the district council, or in a case which the Department makes a direction under regulation 51(2), the Department;
 - (b) in relation to offshore installations, the Secretary of State.
- (4) In these Regulations, “offshore installation” has the same meaning as in the Off-shore Installations and Pipeline Works (Management and Administration) Regulations (Northern Ireland) 1995⁽¹¹⁾.
- (5) In these Regulations, “stationary application” means—
- (a) refrigeration equipment and its circuits;
 - (b) air conditioning equipment and its circuits;
 - (c) heat pump equipment and its circuits; or
 - (d) a fire protection system,
- which contains a fluorinated greenhouse gas and which is normally not in transit during operation.
- (6) Other expressions used in these Regulations and in—

(11) S.R. 1995 No. 340

- (a) the 2006 Regulation;
- (b) Commission Regulation 1493/2007;
- (c) Commission Regulation 1494/2007;
- (d) Commission Regulation 1497/2007;
- (e) Commission Regulation 1516/2007;
- (f) Commission Regulation 303/2008;
- (g) Commission Regulation 304/2008;
- (h) Commission Regulation 305/2008;
- (i) Commission Regulation 306/2008; and
- (j) Commission Regulation 307/2008,

which are not defined in these Regulations have the same meaning in these Regulations as they have in the 2006 Regulation and in the Commission Regulations referred to in subparagraphs (b) to (j).

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

(8) A reference in these Regulations to—

- (a) [Commission Regulation \(EC\) No 1493/2007](#); and
- (b) [Commission Regulation \(EC\) No 1494/2007](#),

is a reference to those Commission Regulations as amended from time to time.

(9) The Interpretation Act (Northern Ireland) 1954⁽¹²⁾ shall apply to these Regulations as it applies to an Act of the Northern Ireland Assembly.

Competent authority

3. The Department is the competent authority for the purposes of the 2006 Regulation, other than as that Regulation applies to importation into Northern Ireland from outside the customs territory of the Community.

PART 2

General provisions

Leakages

4. The operator of a stationary application commits an offence if the operator fails 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.

(12) 1954 c.33 (N.I.)

Leakage checks of stationary equipment

5.—(1) A qualified person commits an offence if the qualified person fails 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) The operator of stationary equipment commits an offence if the operator fails 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) Articles 8.2 and 8.3 of Commission Regulation 1516/2007 (leakage tests and identification of cause) are 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) “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 17(4), (5), (7) or (8).

Leakage checks of fire protection systems

6.—(1) A qualified person commits an offence if the qualified person fails 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) The operator of a fire protection system commits an offence if the operator fails 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) “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 24(3) or (4).

Leakage detection systems

7.—(1) The operator of a stationary application, other than an existing fire protection system, which contains 300 kilograms or more of fluorinated greenhouse gases, commits an offence if the operator fails to ensure that a leakage detection system is fitted to the stationary application.

(2) The operator of an existing fire protection system commits an offence if the operator fails to ensure that a leakage detection system is fitted to that fire protection system.

(3) The operator of a stationary application, which contains 300 kilograms or more of fluorinated greenhouse gases, commits an offence if the operator fails to ensure that a leakage detection system fitted to the stationary application is checked in accordance with Article 3.3.

(4) 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

8.—(1) The operator of a stationary application containing 3 kilograms or more of fluorinated greenhouse gases commits an offence if the operator fails to comply with Article 3.6.

(2) The operator of a fire protection system commits an offence if the operator fails—

- (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 of Commission Regulation 1497/2007 is complied with (indication of gas in record 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) The operator of any such equipment commits an offence if the operator fails—

- (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 is 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

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

(2) The equipment is—

- (a) the cooling circuit of—
 - (i) refrigeration equipment,
 - (ii) air-conditioning equipment, and
 - (iii) heat pump equipment;
- (b) equipment containing fluorinated greenhouse gas based solvents;
- (c) a fire protection system;
- (d) a fire extinguisher; and

- (e) high-voltage switch gear,
which is not normally in transit during operation.
- (3) The user of a refillable or a non-refillable fluorinated greenhouse gas container commits an offence if the user fails to comply with Article 4.2 and 4.4.
- (4) Paragraph 5 applies to—
 - (a) the operator of any equipment containing a fluorinated greenhouse gas other than—
 - (i) equipment referred to in paragraph (2), and
 - (ii) mobile equipment used in military operations; and
 - (b) the user of any product containing a fluorinated greenhouse gas, other than a gas container referred to in paragraph (3).
- (5) A person to whom this paragraph applies must ensure that any fluorinated greenhouse gas is recovered from the equipment or the product in accordance with Article 4.3.
- (6) A person commits an offence if that person fails to comply with paragraph (5).

Taking delivery of fluorinated greenhouse gases

- 10.**—(1) Any person who—
- (a) carries out an activity referred to in Article 3 or 4; 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 17(4), (5), (7) or (8);
 - (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 24(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 31(2) or (3); or
 - (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 34(2) or (3); 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 37(2) or (3).

Reporting requirements and the provision of information

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

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

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

(4) A person commits an offence if the person communicates to the Commission a defective report.

(5) In this regulation, “defective report” means a report under Article 6 which is not in the format required under [Commission Regulation \(EC\) No 1493/2007](#) establishing, pursuant to the 2006 Regulation, the format for the report to be submitted by producers, importers and exporters of certain fluorinated greenhouse gases.

Labelling

12.—(1) A person commits an offence if the person places on the market within Northern Ireland a product or equipment referred to in paragraph (2) containing a fluorinated greenhouse gas or gases 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,
 - (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

13. A person commits an offence if the person places on the market a product or equipment referred to in regulation 12(2) containing a fluorinated greenhouse gas or gases 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 the 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

14. A person commits an offence if the person uses sulphur hexafluoride or preparations of that substance in contravention of Article 8.1 or 8.2 of the 2006 Regulation.

Placing on the market

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

- (a) the date on which these Regulations come into operation; 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.

PART 3

Qualifications

CHAPTER 1

Stationary refrigeration, air conditioning and heat pump equipment

City and Guilds of London Institute and the Construction Industry Training Board as certification and evaluation bodies

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

- (a) City and Guilds of London Institute(**13**); and
- (b) the Construction Industry Training Board(**14**).

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

(14) 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

- (2) The City and Guilds of London Institute and the Construction Industry Training Board must—
- (a) comply with Articles 5.1, 5.2, 10.1 second paragraph, 10.2, 10.3, 11.1, 11.3 and 11.4 (activities and obligations of certification and evaluation bodies) of that Regulation; and
 - (b) ensure compliance with Article 11.2 of that Regulation (planning and structure of examinations).

Qualifications of individuals relating to certain stationary equipment

17.—(1) Subject to paragraphs (4) to (7) and regulation 22, an individual commits an offence if that individual—

- (a) carries out an activity referred to in paragraph (2) relating to stationary refrigeration, air conditioning and heat pump equipment; but
- (b) does not hold a stationary equipment qualification in contravention of Article 4.1 of Commission Regulation 303/2008.

(2) The activities are—

- (a) leakage checking of equipment containing—
 - (i) 3 kilograms or more of fluorinated greenhouse gases, and
 - (ii) 6 kilograms or more of fluorinated greenhouse gases with hermetically sealed systems, which are labelled as such;
- (b) the recovery of fluorinated greenhouse gases;
- (c) installation; and
- (d) maintenance or servicing, but not an exempt activity.

(3) Schedule 1 sets out the Category I, Category II, Category III and Category IV certificates for the purposes of Article 4.2 of Commission Regulation 303/2008.

(4) Paragraph (1) does not apply to an individual who—

- (a) is enrolled on a training course for the purpose of obtaining a stationary equipment qualification in respect of an activity referred to in paragraph (2), and
- (b) carries out that activity under the supervision of an individual who does hold a stationary equipment qualification in respect of the activity in question, for a period of two years from the date on which that individual enrolled on the training course referred to in sub-paragraph (a).

(5) Up to and including 3rd July 2009, paragraph (1) does not apply, as regards any of the activities referred to in paragraph (6), to an individual who carried out the activity in question before 4th July 2008 without supervision.

(6) The activities are—

- (a) the recovery of fluorinated greenhouse gases;
- (b) installation; and
- (c) maintenance or servicing, in relation to refrigeration, air conditioning and heat pump equipment containing less than 3 kilograms of fluorinated greenhouse gases.

(7) Paragraph (1) does not apply to an individual who—

- (a) holds an interim certificate issued under Article 6.3; or
- (b) is deemed to hold an interim certificate under Article 6.2,

of Commission Regulation 303/2008 in respect of an activity referred to in paragraph (2) and who carries out the activity in question.

- (8) Paragraph (1) does not apply to an individual who—
- (a) undertakes brazing, soldering or welding in connection with an activity referred to in paragraph (2) under the supervision of an individual qualified to carry out that activity by virtue of being the holder of a relevant qualification or being a deemed holder of an interim certificate under Article 6.2 of Commission Regulation 303/2008; and
 - (b) is suitably qualified for the purposes of paragraph 3.1.2 of Schedule 2 to the Pressure Equipment Regulations 1999⁽¹⁵⁾.
- (9) In this regulation—
- (a) “exempt activity” means a manufacturing or repair activity undertaken at the site of the manufacturer of stationary refrigeration, air conditioning or heat pump equipment containing fluorinated greenhouse gases;
 - (b) “stationary equipment qualification” means a valid certificate issued by the City and Guilds of London Institute or by the Construction Industry Training Board under Article 5.1, 5.3 or 5.4 of Commission Regulation 303/2008;
 - (c) “installation” and “maintenance or servicing” have the same meanings given in Article 3 of Commission Regulation 303/2008; and
 - (d) “relevant qualification” means—
 - (i) a stationary equipment qualification, or
 - (ii) an interim certificate issued under Article 6.3 of Commission Regulation 303/2008.

Interim stationary equipment certificates for individuals – stationary equipment

18.—(1) For the purposes of Article 6.1 and 6.2 of Commission Regulation 303/2008, an individual who holds an interim qualification before the date of the coming into operation of these Regulations is the holder of an interim certificate as regards the activity referred to in regulation 17(2) to which the interim qualification relates.

(2) The interim qualification for the activities to which a Category I certificate relates is one of the qualifications referred to in Part 1 of Schedule 2.

- (3) The interim qualification for the activities to which a Category II certificate relates is—
- (a) one of the qualifications referred to in Part 1 of Schedule 2; or
 - (b) an in-house qualification.

(4) The interim qualification for which the activities to which a Category III certificate relates is an in-house qualification.

(5) The certification body for the purposes of Article 6.3 of Commission Regulation 303/2008 (issue and contents of interim certificates) is the Domestic Appliance Service Association⁽¹⁶⁾.

(6) The Domestic Appliance Service Association must comply with Article 6.3 of that Regulation.

Certification bodies for companies – stationary equipment

19.—(1) The Department may appoint such person, and on such terms, as the Department thinks fit to be the certification body for the purposes of Article 8 of Commission Regulation 303/2008 (issue and contents of company certificates).

⁽¹⁵⁾ S.I. 1999/2001, to which there are amendments not relevant to these Regulations.

⁽¹⁶⁾ Details can be obtained from the Domestic Appliance Service Association, 2nd floor, 145-157 St John Street, London EC1V 4PY; telephone number: 0870 224 0343; e-mail: info@dasa.org.uk

(2) A person so appointed must comply with Articles 8, 10.1 second paragraph, 10.2 and 10.3 of that regulation (obligations on a certification body).

Certificates for companies – stationary equipment

20.—(1) Subject to paragraph (2) and regulation 22, a company commits an offence if it—

- (a) carries out —
 - (i) installation, or
 - (ii) maintenance or servicing,
 in respect of stationary refrigeration, air conditioning and heat pump equipment; but
- (b) does not hold a stationary equipment company certificate or an interim certificate, in contravention of Article 7.1 of Commission Regulation 303/2008.

(2) Up to and including 3rd July 2009, paragraph (1) does not apply, as regards an activity referred to in paragraph (1)(a), to a company which carried out the activity in question before 4th July 2008.

(3) A company commits an offence if it knowingly or recklessly provides Article 8.1 information which is false or misleading in any material particular for the purposes of obtaining a stationary equipment qualification company certificate.

(4) In this regulation—

- (a) “Article 8.1 information” means information relating to the matters referred to in Article 8.1 (a) and (b) of Commission Regulation 303/2008;
- (b) “stationary equipment qualification company certificate” means a valid certificate issued under Article 8 of the Commission Regulation 303/2008;
- (c) “installation” has the meaning given in Article 3 of Commission Regulation 303/2008;
- (d) “interim certificate” means a certificate issued under Article 9.3 of Commission Regulation 303/2008; and
- (e) “maintenance or servicing” has the meaning given in Article 3 of Commission Regulation 303/2008.

Interim company certificates – stationary equipment

21.—(1) The Department may appoint such person, and on such terms, as the Department thinks fit to be the certification body for the purposes of Article 9.3 of Commission Regulation 303/2008 (issue and contents of interim company certificates).

(2) A person so appointed must comply with Articles 9, 10.1 second paragraph, 10.2 and 10.3 of that Regulation (obligations on a certification body).

Certificates relating to certain stationary equipment issued in other EEA states and Great Britain

22.—(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 regulation 17(1)(a) may carry out that activity if—

- (a) the certificate is written in English; or
- (b) the person also 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 under legislation in force in Great Britain in respect of an activity mentioned in regulation 17(1)(a) may carry out that activity.

CHAPTER 2

Fire protection systems and fire extinguishers

Fire Industry Association as certification and evaluation body

23.—(1) The certification and evaluation body for the purposes of Article 5 of Commission Regulation 304/2008 (issue and contents of certificates) is the Fire Industry Association⁽¹⁷⁾.

(2) The Fire Industry Association must—

- (a) comply with Articles 5.1, 5.2, 10.1 second paragraph, 10.2, 10.3, 11.1, 11.3 and 11.4 of that Regulation (activities and obligations of certification and evaluation bodies); and
- (b) ensure compliance with Article 11.2 of that Regulation (planning and structure of examinations).

Qualifications of individuals relating to fire protection systems

24.—(1) Subject to paragraphs (3), (4) and (5), and regulation 29, an individual commits an offence if that individual—

- (a) carries out—
 - (i) an activity referred to in paragraph (2) relating to a fire protection system, or
 - (ii) the recovery of fluorinated greenhouse gases from fire extinguishers; but
 - (b) does not hold a fire protection systems qualification in contravention of Article 4.1 of Commission Regulation 304/2008.
- (2) The activities are—
- (a) leakage checking of applications containing 3 kilograms or more of fluorinated greenhouse gases;
 - (b) the recovery of fluorinated greenhouse gases;
 - (c) installation; and
 - (d) maintenance or servicing,
but not an exempt activity.
- (3) Paragraph (1) does not apply to an individual who—
- (a) is enrolled on a training course for the purpose of obtaining a fire protection systems qualification; and
 - (b) carries out an activity referred to in paragraph (2) under the supervision of an individual who does hold such a qualification,
for a period of one year from the date on which that individual enrolled on the training course referred to in sub-paragraph (a).
- (4) Paragraph (1) does not apply to an individual who holds an interim certificate.
- (5) In this regulation—
- (a) “exempt activity” means a manufacturing or repair activity undertaken at the site of the manufacturer of containers or associated components of stationary fire protection systems containing certain fluorinated greenhouse gases;

⁽¹⁷⁾ Details can be obtained from the Fire Industry Association, Thames House, 29 Thames Street, Kingston Upon Thames, Surrey, KT1 1PH; telephone: 020 8549 5855; e-mail: info@fia.uk.com; web-site: <http://www.fia.uk.com/>

- (b) “fire protection systems qualification” means a valid certificate issued by the Fire Industry Association under Article 5.1, 5.3 or 5.4 of Commission Regulation 304/2008;
- (c) “installation” has the meaning given in Article 3 of Commission Regulation 304/2008;
- (d) “interim certificate” means a certificate issued under Article 6.3 of Commission Regulation 304/2008;
- (e) “maintenance or servicing” has the meaning given in Article 3 of Commission Regulation 304/2008.

Interim fire protection system certificates for individuals

25. For the purposes of Article 6.1 and 6.2 of Commission Regulation 304/2008, an individual who holds an in-house qualification obtained before the date of the coming into operation of these Regulations is the holder of an interim certificate as regards the activity referred to in regulation 24(1)(a)(ii) or (2) to which the in-house qualification relates.

Certification bodies for companies – fire protection systems

26.—(1) The Department may appoint such person, and on such terms, as the Department thinks fit, to be the certification body for the purposes of Article 8 of Commission Regulation 304/2008 (issue and contents of certificate).

(2) A person so appointed must comply with Articles 8, 10.1 second paragraph, 10.2 and 10.3 of that Regulation.

Certificates for companies – fire protection systems

27.—(1) Subject to paragraph (2) and regulation 29, a company commits an offence if it—

- (a) carries out—
 - (i) installation, or
 - (ii) maintenance or servicing,
 in respect of a fire protection system; but
- (b) does not hold a fire protection systems company certificate or an interim certificate, in contravention of Article 7.1 of Commission Regulation 304/2008.

(2) Up to and including 3rd July 2009, paragraph (1) does not apply, as regards an activity referred to in paragraph (1)(a), to a company which carried out the activity in question before 4th July 2008.

(3) A company commits an offence if it knowingly or recklessly provides Article 8.1 information which is false or misleading in any material particular for the purposes of obtaining a fire protection systems company certificate.

(4) In this regulation—

- (a) “Article 8.1 information” means information relating to the matters referred to in Article 8.1(a) and (b) of Commission Regulation 304/2008;
- (b) “fire protection systems company certificate” means a valid certificate issued under Article 8 of Commission Regulation 304/2008;
- (c) “installation” has the meaning given in Article 3 of Commission Regulation 304/2008;
- (d) “interim certificate” means a certificate issued under Article 9.3 of Commission Regulation 304/2008; and
- (e) “maintenance or servicing” has the meaning given in Article 3 of Commission Regulation 304/2008.

Interim company certificates – fire protection systems

28.—(1) The Department may appoint such person, and on such terms, as the Department thinks fit to be the certification body for the purposes of Article 9.3 of Commission Regulation 304/2008 (issue and contents of interim certificates).

(2) A person so appointed must comply with Articles 9.3, 10.1 second paragraph, 10.2 and 10.3 of that Regulation.

Certificates relating to fire protection systems issued in other EEA states and Great Britain

29.—(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 may carry out the activities referred to in regulation 24(1) if—

- (a) the certificate is written in English; or
- (b) the person also 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 under legislation in force in Great Britain may carry out the activities referred to in regulation 24(1).

CHAPTER 3

High-voltage switchgear

Certification and evaluation bodies

30.—(1) The persons referred to in paragraph (2) are the certification and evaluation bodies for the purposes of Commission Regulation 305/2008.

(2) The persons are—

- (a) Schneider Electric Limited(**18**);
- (b) Lucy Electric UK Limited(**19**);
- (c) Siemens Transmission and Distribution Limited(**20**);
- (d) Areva T&D UK Limited(**21**);
- (e) ABB Limited(**22**);
- (f) Northern Ireland Electricity(**23**).

(3) A person referred to in paragraph (2) must—

- (a) comply with Article 5.1 second paragraph, 5.2, 5.3, 6.1, 6.3 or 6.4 of that Regulation (obligations on certification and evaluation bodies); and
- (b) ensure that Article 4.2 and 6.2 of that Regulation (contents of certificates and planning and structure of examinations) are complied with.

(18) Details can be obtained from Schneider Electric Limited, 123 Jack Lane, Leeds LS10 1BS; telephone: 0113 290 3500.

(19) Details can be obtained from Lucy Electric UK Limited, Walton Well Road, Oxford OX2 6EE; telephone: 01865 311 411.

(20) 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.

(21) Details can be obtained from Areva T&D UK Limited, St Leonard's Avenue, Stafford ST17 4LX; telephone: 01785 272 111 or 07801 776 727.

(22) Details can be obtained from ABB Limited, Daresbury Park, Daresbury, Warrington, Cheshire WA4 4BT; telephone: 01925 74 1111.

(23) 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.

Qualification of individuals relating to high-voltage switchgear

31.—(1) Subject to paragraphs (2) and (3) and regulation 32, an individual commits an offence if that individual—

- (a) recovers fluorinated greenhouse gases from high-voltage switchgear; but
- (b) does not hold a high-voltage switchgear qualification in contravention of Article 3.1 of Commission Regulation 305/2008.

(2) Paragraph (1) does not apply to an individual who—

- (a) is enrolled on a training course for the purpose of obtaining a high-voltage switchgear qualification; and
- (b) recovers fluorinated greenhouse gases from high-voltage switchgear under the supervision of an individual who does hold such a qualification,

for a period of one year from the date on which that individual enrolled on the training course referred to in sub-paragraph (a).

(3) Up to and including 3rd July 2009, paragraph (1) does not apply to an individual who carried out work referred to in paragraph (1)(a) before 4th July 2008 without supervision.

(4) In this regulation—

- (a) “high-voltage switchgear” means switching devices and their combination with associated control, measuring, protective and regulating equipment, and assemblies of such devices and equipment, with associated interconnections, accessories, enclosures and supporting structures, intended for use in connection with generation, transmission, distribution and conversion of electric energy at rated voltages above 1000V; and
- (b) “high-voltage switchgear qualification” means a valid certificate issued by a certification body referred to in regulation 30(2) under Article 4 of Commission Regulation 305/2008.

Certificates relating to high-voltage switchgear issued in other EEA states and in Great Britain

32.—(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 may recover fluorinated greenhouse gases from high-voltage switchgear if—

- (a) the certificate is written in English; or
- (b) the individual also 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 under legislation in operation in Great Britain may recover fluorinated greenhouse gases from high-voltage switchgear.

(3) In this regulation, “high-voltage switchgear” has the same meaning as it has in regulation 31.

CHAPTER 4*Fluorinated greenhouse gas-based solvents***Fluorinated greenhouse gas-based solvents certification and evaluation bodies**

33.—(1) The Department may appoint such person, and on such terms, as the Department thinks fit to be—

- (a) the certification body for the purposes of Commission Regulation 306/2008;
- (b) the evaluation body for the purposes of that Regulation.

(2) The certification body and the evaluation body may be the same body or person.

(3) A person appointed as the certification body must comply with Articles 3.1, 3.2, 4.1 second paragraph, 4.2, and 4.3 of that Regulation (issue of certificates and obligations of certification bodies).

(4) A person appointed as the evaluation body must comply with Article 5 of that Regulation (obligations of evaluation bodies).

Qualification of individuals relating to fluorinated greenhouse gas-based solvents

34.—(1) Subject to paragraphs (2) and (3), and regulation 35, an individual commits an offence if that individual—

- (a) recovers fluorinated greenhouse gas-based solvents from equipment; but
- (b) does not hold a solvents qualification in contravention of Article 2.1 of Commission Regulation 306/2008.

(2) Paragraph (1) does not apply to an individual who—

- (a) is enrolled on a training course for the purpose of obtaining a solvents qualification; and
- (b) recovers fluorinated greenhouse gas-based solvents from equipment under the supervision of an individual who does hold such a qualification,
for a period of one year from the date on which that individual enrolled on the training course referred to in sub-paragraph (a).

(3) Up to and including 3rd July 2009, paragraph (1) does not apply to an individual who carried out work referred to in paragraph (1)(a) before 4th July 2008 without supervision.

(4) In this regulation, “solvents qualification” means a valid certificate issued by a certification body under Article 3 of Commission Regulation 306/2008.

Certificates relating to fluorinated greenhouse gas-based solvents issued in EEA states and in Great Britain

35.—(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 may recover fluorinated greenhouse gas-based solvents from equipment if—

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

(2) A person who holds a valid certificate issued under Article 3 of Commission Regulation 306/2008 by a certification body appointed under legislation in operation in Great Britain may recover fluorinated greenhouse gas-based solvents from equipment.

CHAPTER 5

Air conditioning systems in certain motor vehicles

Attestation bodies

36.—(1) The persons referred to in paragraph (2) are the attestation bodies for the purposes of Commission Regulation 307/2008.

(2) The persons are—

- (a) the Institute of the Motor Industry(24);
- (b) IMI Awards Limited(25);
- (c) the City and Guilds of London Institute(26); and
- (d) the Institute of Road Transport Engineers(27).

(3) A person referred to in paragraph (2) must comply with Articles 3.2 and 3.3 of that Regulation (issue and contents of training attestations).

Qualifications relating to air conditioning systems in motor vehicles

37.—(1) Subject to paragraphs (2) and (3) and regulation 38, an individual commits an offence if that individual—

- (a) recovers fluorinated greenhouse gases from an air conditioning system in a motor car or a motor van; but
- (b) does not hold an air conditioning qualification in contravention of Article 2.1 of Commission Regulation 307/2008.

(2) Paragraph (1) does not apply to an individual who—

- (a) is enrolled on a training course for the purpose of obtaining an air conditioning qualification; and
- (b) recovers fluorinated greenhouse gases from an air conditioning system in a motor car or a motor van under the supervision of an individual who does hold such a qualification, for a period of one year from the date on which that individual enrolled on the training course referred to in sub-paragraph (a).

(3) Up to and including 3rd July 2010, paragraph (1) does not apply to an individual who holds a qualification referred to in Schedule 2.

(4) In this regulation—

- (a) “motor car” means a motor vehicle which—
 - (i) has at least four wheels,
 - (ii) is used for the carriage of passengers, and
 - (iii) has no more than nine seats, including the seat for the driver;
- (b) “motor van” means a motor vehicle which—
 - (i) has at least four wheels,
 - (ii) has a maximum weight not exceeding 1.305 metric tons, and
 - (iii) is used for the carriage of goods; and
- (c) “air conditioning qualification” means a valid attestation issued by an attestation body referred to in regulation 36(2) under Article 3.2 of Commission Regulation 307/2008.

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

(25) Details can be obtained from the IMI Awards Limited, Fanshaws, Brickendon, Hertford, SG13 8PQ; telephone: 01992 511 521; e-mail: info@imiawards.org.uk

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

(27) 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

Attestations issued in EEA states and in Great Britain

38.—(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 may recover fluorinated greenhouse gases from an air conditioning system in a motor car or a motor van if—

- (a) the attestation is written in English; or
- (b) the individual also 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 under legislation in operation in Great Britain may recover fluorinated greenhouse gases from an air conditioning system in a motor car or a motor van.

(3) In this regulation, “motor car” and “motor van” have the same meaning as they have in regulation 37(4).

CHAPTER 6

Miscellaneous obligations

Obligation of employers to employ qualified employees

39.—(1) The employer of an individual employed to carry out any work or activity referred to in regulation 17(1)(a), 24(1)(a), 31(1)(a), 34(1)(a) or 37(1)(a) must ensure that that individual holds the qualification necessary to enable the individual to carry out the work or activity in question under these Regulations.

- (2) A person commits an offence if that person fails to comply with paragraph (1).

Training records

40.—(1) A training employer must provide a copy of any extant record created by that training employer to the employee in question when requested to do so by that employee where the employee holds an in-house qualification enabling that employee to carry out work under these Regulations.

(2) A training employer must keep an extant record created by that training employer as mentioned in paragraph (1) for a period of three years from the date on which these Regulations come into operation.

(3) A training employer commits an offence if the training employer fails to comply with paragraph (1) or (2).

- (4) In this regulation—

- (a) “extant record” means a record existing immediately before the coming into operation of these Regulations; and
- (b) “training employer” means an employer who provided a course of training leading to an in-house qualification.

Obligations of certification bodies, attestation bodies and evaluation bodies to provide information

41.—(1) When requested to do so by any person, a certification body must provide details of a certificate issued by the certification body pursuant to—

- (a) Commission Regulation 303/2008;
- (b) Commission Regulation 304/2008; or

- (c) Commission Regulation 305/2008,
within 14 days of making the request.
- (2) When requested to do so, an attestation body must provide details of a certificate issued by the certification body pursuant to Commission Regulation 307/2008.
- (3) In this regulation, “details”, in relation to a certificate or attestation, includes—
 - (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 must provide as soon as is reasonably practicable to the Department such information as the Department may require in order that the Department may ensure that the obligations of Northern Ireland imposed by the third sentence of Article 5.2 (recognition of certificates issued in other Member States) and by Commission Regulation 308/2008 are complied with.
- (5) In this regulation—
 - (a) “Commission Regulation 308/2008” means Commission Regulation 308/2008 establishing, pursuant to the 2006 Regulation, the format for notification of the training and certification programmes of the Member States⁽²⁸⁾; and
 - (b) “relevant body” means a certification body, an attestation body or an evaluation body referred to in, or appointed under, these Regulations.

PART 4

Enforcement, offences and penalties

Powers of authorised persons

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

- (2) The powers of an authorised person are—
 - (a) at any reasonable time, to enter premises, other than premises used wholly or mainly for residential purposes, which the authorised person has reason to believe it is necessary for him to enter;
 - (b) on entering any premises by virtue of sub-paragraph (a), to take with the authorised person—
 - (i) any other person 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 powers under this regulation, 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 the power to enter, to direct that those premises or any part of them, must be left undisturbed (whether generally or

⁽²⁸⁾ OJ No L 92, 3.4.08, p.28

- 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 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 retain it for so long as is necessary—
 - (i) to examine it and do to it anything which the authorised person has the power to do under sub-paragraph (g),
 - (ii) to ensure that it is not tampered with before its examination is completed, or
 - (iii) to ensure that it is available for use as evidence in any proceedings for an offence under these Regulations;
 - (i) to require any person whom 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;
 - (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 by this regulation.
- (3) Where an authorised person proposes to exercise the power conferred by paragraph 2(g) in the case of an article or substance found in or on any premises, 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.
- (4) Before exercising the power conferred by paragraph (2)(g) in the case of any article or substance, an authorised person must consult such persons as appear to the authorised person to be 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.
- (5) 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 shall 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 before taking possession of any such substance under that power an authorised person must, if it is practical for him to do so, take a sample of it and

give to a responsible person at the premises a portion of the sample marked in a manner sufficient to identify it.

(6) Nothing in this regulation is to be taken to compel the production by any person of a document of which that person would on grounds of legal professional privilege be entitled to withhold production on an order for disclosure and inspection in an action in the High Court.

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

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

Information notices

43. The enforcing authority may, by notice served on any person, require that person to furnish such information as is specified in the notice, in such form and within such period following the service of the notice or at such time as is so specified.

Enforcement and prohibition notices

44.—(1) If the enforcing authority is of the opinion that a person has contravened, is contravening or is likely to contravene—

- (a) Article 3.1 to 3.3, 3.6, 4 or 8;
- (b) Article 9 (other than the prohibition on importation); or
- (c) the second paragraph of Article 7.1,
the enforcing authority may serve on that person a notice (referred to in these Regulations as an “enforcement notice”).

(2) An enforcement notice must—

- (a) state that the enforcing authority is of that opinion;
- (b) specify the matters constituting the contravention or the matters making it likely that the contravention will arise, as the case may be;
- (c) specify the steps that must be taken to remedy the contravention or to remedy the matters making it likely that the contravention will arise, as the case may be; and
- (d) specify the period within which those steps must be taken.

(3) If the enforcing authority is of the opinion that the activities of a person, in relation to his contravention or likely contravention of—

- (a) Article 3.1 to 3.3, 3.6, 4, 8; or
- (b) Article 9 (other than the prohibition on importation),
are such that they involve an imminent danger of serious pollution of the environment, the enforcing authority may serve on that person a notice (referred to in these Regulations as a “prohibition notice”).

(4) A prohibition notice must—

- (a) state that the enforcing authority is of that opinion;
- (b) specify the danger involved in the activity;
- (c) specify the steps required to be taken to remove the danger; and
- (d) require those steps to be taken within 3 days of the receipt of the notice.

(5) The period referred to in paragraph (2)(d) must not end earlier than the period within which an appeal may be brought under regulation 45.

(6) The enforcing authority may withdraw at any time an enforcement notice or a prohibition notice.

(7) A person on whom an enforcement notice or a prohibition notice is served must comply with such notice at that person's own expense.

(8) Where steps required by a notice have not been taken or not taken within the period allowed for compliance with the notice, the enforcing authority may—

- (a) enter the land and take the steps specified in the notice; and
- (b) recover from the person who is then the owner, any expenses reasonably incurred by it in doing so and those expenses shall be a civil debt recoverable summarily.

Appeals against enforcement or prohibition notices

45.—(1) A person who is aggrieved by an enforcement or a prohibition notice may appeal to a court of summary jurisdiction.

(2) The procedure on an appeal is by way of notice under Part VII of the Magistrates' Courts (Northern Ireland) Order 1981(29).

(3) The period within which an appeal may be brought is—

- (a) 28 days from the date upon which the notice was issued; or
- (b) in the case of a prohibition notice, such shorter period as may be specified in the notice.

(4) An enforcement notice or prohibition notice must state—

- (a) that the person on whom the notice in question is served has the right of appeal; and
- (b) the period in which the appeal may be brought.

(5) Where an appeal is brought against an enforcement notice, that notice must be of no effect pending the final determination or the withdrawal of the appeal.

(6) Where—

- (a) a prohibition notice is quashed on appeal; and
- (b) the person on whom it was served has suffered loss or incurred expenditure in complying with that notice,
the enforcing authority must pay to that person an amount equal to the loss suffered or the expenditure incurred.

(7) Any dispute under paragraph (6) as to the loss suffered or expenditure incurred must be determined by arbitration.

Enforcement by the High Court

46. If the enforcing authority is of the opinion that proceedings against a person for an offence under regulation 47(b) would afford an ineffectual remedy against that person, the enforcing authority may take proceedings in the High Court for the purpose of securing compliance with that notice.

Miscellaneous offences

47. A person commits an offence if that person—

- (a) fails to comply with the requirements of a notice served on that person under regulation 43;
- (b) fails to comply with an enforcement notice or a prohibition notice;
- (c) fails to comply with a direction given, or a requirement imposed, under regulation 42(2);
- (d) intentionally obstructs an authorised person in the exercise or performance of the authorised person's powers or duties;
- (e) furnishes to an authorised person any information which that person knows to be false or misleading;
- (f) knowingly or recklessly furnishes information under regulation 11(4) which is false or misleading in any material particular; or
- (g) contravenes, or causes another person to contravene, regulation 42(7).

Corporate offences

48.—(1) For the purposes of these Regulations, section 20(2) of the Interpretation Act (Northern Ireland) 1954⁽³⁰⁾ applies with the omission of the words “the liability of whose members is limited to” and where affairs of a body corporate are managed by its members, applies in relation to acts or defaults of a member in connection with the functions of management as if that person were a Director of the body corporate.

(2) If an offence committed by a partnership is shown—

- (a) to have been committed with the consent or connivance of a partner; or
- (b) to be attributable to any neglect on the part of the partner,
the partner as well as the partnership is guilty of the offence and liable to be proceeded against and punished accordingly.

(3) 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.

(4) A fine imposed on an unincorporated association on its conviction for an offence must be paid out of the funds of the association.

(5) If an offence committed by an unincorporated association, other than a partnership, is shown—

- (a) to have been committed with the consent or connivance of an officer of the association or a member of its governing body; or
- (b) to be attributable to any neglect on the part of such an officer or member,
that officer or member as well as the association is guilty of the offence and liable to be proceeded against and punished accordingly.

Penalties

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

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

Fixed penalties

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

(30) 1954 c.33 (N.I.)

- (a) refrigeration equipment;
- (b) air conditioning; or
- (c) heat pump equipment,
 - kept on premises used only as a private dwelling house, the authorised person may give that person a notice offering that person the opportunity of discharging any liability to conviction for that offence by payment of a fixed penalty.
- (2) Where a person is given a fixed penalty notice under this regulation in respect of an offence—
 - (a) no proceedings may be instituted for that offence before the expiry of 28 days following the date of the fixed penalty notice; and
 - (b) that person may not be convicted of that offence if that person pays the fixed penalty before the expiry of that period.
- (3) A fixed penalty notice must contain such particulars of the circumstances alleged to constitute the offence as are necessary for giving reasonable information of the offence.
- (4) A fixed penalty notice must state—
 - (a) the period during which, by virtue of paragraph (2), proceedings cannot be taken for the offence;
 - (b) the amount of the fixed penalty; and
 - (c) the name of the person to whom and the address at which the fixed penalty must be paid.
- (5) Payment of the fixed penalty may be made by pre-paying and posting to that person at that address a letter containing the amount of the fixed penalty.
- (6) Where a letter is sent in accordance with paragraph (5), payment is deemed to be made at the time at which that letter would be delivered in the ordinary course of post.
- (7) A fixed penalty notice must be in the form set out in Schedule 3.
- (8) The amount of fixed penalty payable in pursuance of a fixed penalty notice is £100 which must be paid to the enforcing authority.
- (9) In any proceedings, a certificate which—
 - (a) purports to be signed by or on behalf of the chief finance officer of the enforcing authority; and
 - (b) states that payment of a fixed penalty was or was not received by a date specified in the certificate,
 - is evidence of the facts stated.
- (10) In this regulation, “fixed penalty notice” means a notice given under paragraph (1).

Enforcement

- 51.**—(1) Subject to paragraphs (2) and (3), 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 it and not by the district council.
 - (3) The Secretary of State must enforce these Regulations in relation to offshore installations.

Application to the Crown

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

(2) No act or omission done or suffered by or 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 must apply to persons in the public service of the Crown as they apply to other persons.

Sealed with the Official Seal of the Department of the Environment on 6th May 2009



Wesley Shannon
A senior officer of the
Department of the Environment