

**EXPLANATORY MEMORANDUM TO
THE MOTOR VEHICLES (REFILLING OF AIR CONDITIONING SYSTEMS
BY SERVICE PROVIDERS) REGULATIONS 2009**

S.I. 2009 No. 2194

1. This explanatory memorandum has been prepared by the Department for Transport and is laid before Parliament by Command of Her Majesty.

2. Description

- 2.1. These regulations implement Article 6.3 of Directive 2006/40/EC which prohibits those engaged, through business or employment, in servicing and repairing air conditioning systems in cars and small vans from refilling them with fluorinated greenhouse gas refrigerants if an abnormal amount of the refrigerant has leaked from the system, until the leak has been repaired.

3. Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1. None

4. Legislative Context

- 4.1. Directive 2006/40/EC specifies controls on fluorinated gases (f-gases) used in vehicle air conditioning systems - generally referred to as mobile air conditioning systems or MACs - by banning the most environmentally destructive f-gases used in such equipment.
- 4.2. The Directive applies to passenger vehicles with up to 9 seats and to light goods vehicles or car-derived vans up to 1304 kg reference (unladen) mass. It introduces an upper limit on the global warming potential (GWP) of f-gases which may be used in MACs and also introduces leakage limits and controls on retrofitting, refilling and servicing for these systems.
- 4.3. Article 6.3 of the Directive requires that service providers offering service and repair for air-conditioning systems shall not refill such equipment with f-gases if an abnormal amount of the refrigerant has leaked from the system, until the necessary repair has been completed. It is these requirements that are the subject of this Memorandum.
- 4.4. The Secretary of State is a Minister designated for the purposes of section 2(2) of the European Communities Act 1972 in relation to the type, description, construction or equipment of vehicles, and of components of vehicles. These Regulations are made in exercise of the powers conferred by that section of that Act.
- 4.5. It is necessary to implement these requirements by means of separate regulations made under the above powers as regulations made under the Road Traffic Acts would enable penalties to be imposed against use of a vehicle on the road and not against improper servicing.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- **What is being done and why**

- 7.1. The general aim of the Directive is to reduce emissions of f - gases used in MACS in cars and small vans.
- 7.2. F-gases were introduced for use as refrigerants in air conditioning systems in the 1990's to replace Chlorofluorocarbons or Hydrochlorofluorocarbons, which were seriously depleting the ozone layer. F-gases removed this risk and were low in toxicity and flammability.
- 7.3. Unfortunately, these advantages of f-gases are offset by their serious impact on global warming. Although they account for a relatively small proportion of total EU greenhouse gas emissions, their impact per kilogram emitted is vastly greater than CO₂ as they have a much greater global warming potential (GWP).¹ The Government therefore considers that f-gases should only be used where other safe, technically feasible, cost-effective and more environmentally acceptable alternatives do not exist and that, through technological developments, they may eventually be able to be replaced in the applications where they are used. Also, while f-gas emissions reduction strategies should not undermine the Government's commitment to phase out ozone depleting substances f-gas emissions should not be allowed to rise unchecked. Action to reduce emission of f-gases is part of the wider efforts being undertaken in the UK and the EU to combat climate change.
- 7.4 The European Union has adopted two separate mandatory measures aimed at substantially reducing f-gas emissions. Firstly, a Regulation which restricts, and in some cases bans, certain f-gases in industrial, and certain consumer product applications. Secondly, Directive 2006/40/EC which introduces controls on the use of f-gases as refrigerants in MAC systems used in vehicles; the EU considered that provisions relating solely to air conditioning systems used in vehicles were best treated separately and included in the established European type approval system for new vehicles under directive 70/156/EEC, as amended.
- 7.5. There has been a rapid rise in f-gas emissions due to the growth of HFC-based air conditioning in new cars. UK research suggests that the percentage of new

¹ "Global Warming Potential" (GWP) expresses the climatic warming potential of a greenhouse gas relative to carbon dioxide. The standard GWP is calculated in terms of the 100 year warming potential of one kilogram of a gas relative to one kilogram of CO₂.

vehicles having MAC systems in the UK will reach 75% by 2010 as MACs become a standard feature in vehicles. It is important therefore to ensure that MAC emissions do not rise unchecked.

- **Consolidation**

7.6 These are free-standing regulations in a previously uncontrolled area.

8. Consultation outcome

8.1 No comments relevant to the terms of the Regulations, other than those generally welcoming the Regulations, were received in the public consultation exercise which was carried out between 21 April and 23 June 2009. The Department obtained the agreement of the Local Authorities Co-ordinators of Regulatory Services (LACORS), the Trading Standards Institute and Defra to the appropriateness of designating local authorities as enforcement bodies.

9. Guidance

9.1 Since the requirements of the regulations represent common sense, good practice which would be followed by competent service providers, the Department does not anticipate a need for guidance. For the same reason the Department anticipates that enforcement requirements are likely to be limited, but is considering what, if any, guidance might be required for local authority enforcement bodies.

10. Impact

10.1 The measures apply to businesses engaged in the servicing and repair of air conditioning systems used in cars and small vans. Since the requirements which they impose (i.e. to ensure that a leaking air conditioning system is properly repaired before it is refilled with refrigerant) should already be met by competent service providers, no additional cost should be incurred.

10.2. An Impact Assessment has not been prepared therefore.

10.3. There is no impact on the public sector.

11. Regulating small business

11.1. As indicated above, there should be no effect on a competent business.

12. Monitoring and review

12.1. As the measure should already be met by competent service providers proactive monitoring or review is not considered necessary.

13. Contact

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TRANSPOSITION NOTE
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1. For the purpose of this note:-

"Directive 2006/40/EC" means Directive 2006/40/EC of the European Parliament and of the Council of 17 May 2006 relating to emissions from air conditioning systems in motor vehicles and amending Directive 70/156/EEC.

"Global Warming Potential" (GWP) means the climatic warming potential of a fluorinated greenhouse gas relative to that to carbon dioxide.

"Fluorinated Greenhouse Gases" means hydrofluorcarbons, perfluorocarbons and sulphur hexafluoride as referred to in Annex A of the Kyoto Protocol and preparations containing those substances, but excluding substances controlled under Regulation (EC) 2037/2000 of the European Parliament and of the Council of 20 June 2000 on substances that deplete the ozone layer.

"Vehicle" means passenger vehicles of no more than 9 seats and light goods vehicles with a reference (unladen) weight of 1305 Kg or less.

2. These Regulations do what is necessary to implement Article 6.3 of Directive 2006/40/EC.

Directive 2006/40/EC

Article	Objectives	Implementation	Responsibility
<p>Article 6.3</p>	<p>This paragraph requires service providers offering service and repair for air-conditioning systems fitted to vehicles not to fill such equipment with fluorinated greenhouse gases if an abnormal amount of the refrigerant has leaked from the system, until the necessary repair has been completed.</p>	<p>This provision is implemented by regulation 3 of the Motor Vehicles (Refilling of Air Conditioning Systems by Service Providers) Regulations 2009 ("The Regulations").</p> <p>Regulation 3(1) of the Regulations prohibits service providers from filling air conditioning systems fitted to vehicles with fluorinated greenhouse gases where an abnormal amount of the refrigerant has leaked from the system and the necessary repair to the system has not been completed.</p> <p>Regulation 3(2) describes the factors to which particular regard must be had in determining whether the amount of refrigerant that has leaked from the system is abnormal.</p> <p>Regulation 3(3) defines a necessary repair as a repair that removes the cause of the abnormal leak of refrigerant from the air conditioning system.</p>	<p>The Secretary of State</p>