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STATUTORY INSTRUMENTS

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**2018 No. 98**

**ENVIRONMENTAL PROTECTION**

**The Fluorinated Greenhouse Gases  
(Amendment) Regulations 2018**

*Made - - - - 26th January 2018*

*Laid before Parliament 30th January 2018*

*Coming into force in accordance with regulation 1(2)*

The Secretary of State makes these Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(1).

The Secretary of State is a Minister designated for the purposes of section 2(2) of that Act in relation to the environment(2).

**Citation, commencement, extent and application**

1.—(1) These Regulations may be cited as the Fluorinated Greenhouse Gases (Amendment) Regulations 2018.

(2) They come into force on 22nd February 2018 except for regulations 4(a) and (c), 20(4), 21(2) to (5), 22, 24, 27 and 31 which come into force on 1st April 2018.

(3) These Regulations extend to Northern Ireland only insofar as they 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(3).

(4) But regulations 4(a) and (c), 8, 20(4), 21(2) to (5), 22, 24 to 27 and 31 do not extend to Northern Ireland.

(5) Regulations 4(a) and (c), 20(4), 21(2) to (5), 22, 24, 27 and 31 do not apply in Wales.

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(1) 1972 c. 68; section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c. 51) and Part 1 of the Schedule to the European Union (Amendment) Act 2008 (c. 7). Under section 57(1) of the Scotland Act 1998 (c. 46), despite the transfer to Scottish Ministers of functions in relation to implementing obligations under EU law in relation to devolved matters, the Secretary of State retains power to exercise such functions as regards Scotland. Under paragraph 5 of Schedule 3 to the Government of Wales Act 2006 (c. 32), despite the transfer to the Welsh Ministers of functions in relation to implementing obligations under EU law in relation to devolved matters, the Secretary of State retains power to exercise such functions as regards Wales.

(2) S.I. 2008/301.

(3) 1998 c. 47.

## **Amendment of the Fluorinated Greenhouse Gases Regulations 2015**

2. The Fluorinated Greenhouse Gases Regulations 2015(4) are amended as follows.

### **Amendment of regulation 1 (citation, commencement, extent and application)**

3.—(1) Regulation 1 is amended as follows.

(2) In the heading, for “, extent and application” substitute “and extent”.

(3) Omit paragraph (3).

### **Amendment of regulation 2 (interpretation: general)**

4. In regulation 2(1)—

(a) after the definition of “authorised person” insert—

““civil penalty notice” means a notice served under paragraph 1 (as read with paragraphs 4 and 5) of Schedule 4;

“enforcement cost recovery notice” means a notice served under paragraph 6 of Schedule 4;”;

(b) in the definition of “enforcing authority”—

(i) for paragraph (c) substitute—

“(c) as regards Scotland, subject to paragraphs (e) and (f)—

(i) each local authority;

(ii) SEPA;

(iii) the Scottish Ministers;”;

(ii) in paragraphs (d) and (g)(ii), for “the Department of the Environment” substitute “the Department of Agriculture, Environment and Rural Affairs”;

(c) after the definition of “premises” insert—

““relevant enforcing authority” means—

(a) as regards England—

(i) the Environment Agency;

(ii) the Secretary of State;

(b) as regards Scotland, and subject to sub-paragraphs (c) and (d)—

(i) SEPA;

(ii) the Scottish Ministers;

(c) as regards offshore installations, the Secretary of State;

(d) as regards Scottish offshore installations, the Scottish Ministers;”;

(d) before the definition of “ship” insert—

““Scotland” is to be construed in accordance with section 126(1) and (2) of the Scotland Act 1998(5);

“SEPA” means the Scottish Environment Protection Agency;”.

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(4) S.I. 2015/310, amended by S.I. 2016/1105.

(5) 1998 c. 46.

### **Amendment of regulation 3 (interpretation: EU Regulations)**

5.—(1) Regulation 3 is amended as follows.

(2) In paragraph (1)—

(a) omit the following definitions—

- (i) “Commission Regulation 1494/2007~~(6)~~”;
- (ii) “Commission Regulation 303/2008~~(7)~~”;
- (iii) “Commission Regulation 305/2008~~(8)~~”;
- (iv) “Commission Regulation 308/2008~~(9)~~”;

(b) at the end insert—

““Commission Regulation 2015/2065” means Commission Implementing Regulation (EU) 2015/2065 establishing, pursuant to Regulation (EU) No 517/2014 of the European Parliament and of the Council, the format for notification of the training and certification programmes of the Member States~~(10)~~;

“Commission Regulation 2015/2066” means Commission Implementing Regulation (EU) 2015/2066 establishing, pursuant to Regulation (EU) No 517/2014 of the European Parliament and of the Council, minimum requirements and the conditions for mutual recognition for the certification of natural persons carrying out installation, servicing, maintenance, repair or decommissioning of electrical switchgear containing fluorinated greenhouse gases or recovery of fluorinated greenhouse gases from stationary electrical switchgear~~(11)~~;

“Commission Regulation 2015/2067” means Commission Implementing Regulation (EU) 2015/2067 establishing, pursuant to Regulation (EU) No 517/2014 of the European Parliament and of the Council, minimum requirements and the conditions for mutual recognition for the certification of natural persons as regards stationary refrigeration, air conditioning and heat pump equipment, and refrigeration units of refrigerated trucks and trailers, containing fluorinated greenhouse gases and for the certification of companies as regards stationary refrigeration, air conditioning and heat pump equipment, containing fluorinated greenhouse gases~~(12)~~;

“Commission Regulation 2015/2068” means Commission Implementing Regulation (EU) 2015/2068 establishing, pursuant to Regulation (EU) No 517/2014 of the European Parliament and of the Council, the format of labels for products and equipment containing fluorinated greenhouse gases~~(13)~~;

“Commission Regulation 2016/879” means Commission Implementing Regulation (EU) 2016/879 establishing, pursuant to Regulation (EU) No 517/2014 of the European Parliament and of the Council, detailed arrangements relating to the declaration of conformity when placing refrigeration, air conditioning and heat pump equipment charged with hydrofluorocarbons on the market and its verification by an independent auditor~~(14)~~

(3) For paragraph (2)(b) to (j) substitute—

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(6) OJ No L 332, 18.12.2007, p 25.  
(7) OJ No L 92, 3.4.2008, p 3.  
(8) OJ No L 92, 3.4.2008, p 17.  
(9) OJ No L 92, 3.4.2008, p 28.  
(10) OJ No L 301, 18.11.2015, p 14.  
(11) OJ No L 301, 18.11.2015, p 22.  
(12) OJ No L 301, 18.11.2015, p 28.  
(13) OJ No L 301, 18.11.2015, p 39.  
(14) OJ No L 146, 3.6.2016, p 1.

- “(b) Commission Regulation 1497/2007(**15**);
  - (c) Commission Regulation 1516/2007(**16**);
  - (d) Commission Regulation 304/2008(**17**);
  - (e) Commission Regulation 306/2008(**18**);
  - (f) Commission Regulation 307/2008(**19**);
  - (g) Commission Regulation 1191/2014(**20**);
  - (h) Commission Regulation 2015/2065;
  - (i) Commission Regulation 2015/2066;
  - (j) Commission Regulation 2015/2067;
  - (k) Commission Regulation 2015/2068;
  - (l) Commission Regulation 2016/879.”.
- (4) Omit paragraph (3)(a).

#### **Amendment of regulation 4 (interpretation: offshore installations)**

- 6.**—(1) Regulation 4 is amended as follows.
- (2) In paragraph (1)—
- (a) in the words before sub-paragraph (a), for the words from “, other than” to “Northern Ireland offshore installation,” substitute “(other than a Scottish offshore installation, a Northern Ireland offshore installation or a ship)”;
  - (b) in sub-paragraph (b), in the words before paragraph (i), after “used” insert “, intended to be used or has been used,”.
- (3) For paragraph (5)(a) substitute—
- “(a) the Northern Ireland inshore region;”.
- (4) After paragraph (6) insert—
- “(7) In paragraph (5), “Northern Ireland inshore region” has the meaning given in section 322(1) of the Marine and Coastal Access Act 2009 (interpretation)(**21**).”.

#### **Insertion of new regulation 5A (service of notices)**

- 7.** After regulation 5 insert—

##### **“Service of notices**

- 5A.**—(1) This regulation applies to the service of notices under these Regulations, subject to any specific provision made in these Regulations for a particular type of notice.
- (2) A notice takes effect when served.
- (3) A notice may be served on a person by—
- (a) handing it to the person;

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

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

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

(18) OJ No L 92, 3.4.2008, p 21, as corrected by a corrigendum (OJ No L 280, 23.10.2008, p 38).

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

(20) OJ No L 318, 5.11.2014, p 5, as amended by Commission Implementing Regulation (EU) No 2017/1375 (OJ No L 194, 26.7.2017, p 4).

(21) 2009 c. 23.

- (b) leaving it at the person's proper address;
  - (c) sending it by post to the person at that address;
  - (d) subject to paragraph (9), sending it to the person by electronic means.
- (4) A notice to a body corporate may be given to an officer of that body.
- (5) A notice to a partnership may be given to a partner or a person who has the control or management of the partnership business.
- (6) For the purposes of this regulation, and section 7 of the Interpretation Act 1978 (references to service by post)(22) in its application to this regulation, the proper address of a person is—
- (a) in the case of a body corporate or one of its officers, the address of the body's registered or principal office;
  - (b) in the case of a partnership, a partner or person having the control or management of the partnership business, the address of the principal office of the partnership;
  - (c) in any other case, the person's last known address.
- (7) For the purposes of paragraph (6), the principal office of a company registered outside the United Kingdom, or of a partnership carrying on business outside the United Kingdom, is its principal office within the United Kingdom.
- (8) If a person has specified an address in the United Kingdom, other than the person's proper address within the meaning of paragraph (6), as the one at which the person or someone on the person's behalf will accept notices of the same description as a notice under these Regulations, that address is also treated for the purposes of this regulation and section 7 of the Interpretation Act 1978 as the person's proper address.
- (9) A notice may be sent to a person by electronic means only if—
- (a) the person has indicated that notices of the same description as a notice under these Regulations may be given to the person by being sent to an electronic address and in an electronic form specified for that purpose, and
  - (b) the notice is sent to that address in that form.
- (10) A notice sent to a person by electronic means is, unless the contrary is proved, to be treated as having been given at 9 a.m. on the working day immediately following the day on which it was sent.
- (11) In this regulation—
- “electronic address” means any number or address used for the purposes of sending or receiving documents or information by electronic means;
  - “officer”, in relation to a body corporate, means a director, member of the committee of management, chief executive, manager, secretary or other similar officer of the body.”.

#### **Insertion of new regulation 7A (disclosure of information held by Revenue and Customs)**

8. After regulation 7 insert—

##### **“Disclosure of information held by Revenue and Customs**

**7A.—**(1) This regulation applies to information which is held by or on behalf of Revenue and Customs, including information obtained before the coming into force of this regulation.

(2) Revenue and Customs may disclose information, in accordance with this regulation, to any of the following enforcing authorities if the disclosure is made for the purpose of enabling the enforcing authority to comply with its duties under regulation 20(1)—

- (a) the Environment Agency;
- (b) the Secretary of State;
- (c) the Natural Resources Body for Wales;
- (d) the Welsh Ministers;
- (e) SEPA;
- (f) the Scottish Ministers.

(3) Information obtained by means of a disclosure permitted under paragraph (2) must not be further disclosed except—

- (a) for the purpose mentioned in that paragraph, or
- (b) with the consent of the Commissioners for Revenue and Customs (which may be general or specific).

(4) Nothing in this regulation authorises the making of any disclosure which is prohibited by any provision of the Data Protection Act 1998<sup>(23)</sup>.

(5) Nothing in this regulation prejudices any power or requirement to disclose information which exists apart from this regulation.”.

**Substitution of regulation 8 (certification and evaluation bodies: stationary refrigeration, air conditioning and heat pump equipment)**

9. For regulation 8 substitute—

**“Appointment of certification, evaluation and attestation bodies**

8.—(1) The Secretary of State may appoint, after consulting the Scottish Ministers, the Welsh Ministers and the Department of Agriculture, Environment and Rural Affairs, such person and on such terms as the Secretary of State thinks fit to be—

- (a) for the purposes of Commission Regulation 304/2008—
  - (i) a certification body for the purposes of Article 5 (personnel certificates);
  - (ii) an evaluation body for the purposes of Article 5;
  - (iii) a certification body for the purposes of Article 8 (company certificates);
- (b) for the purposes of Commission Regulation 306/2008—
  - (i) a certification body;
  - (ii) an evaluation body;
- (c) for the purposes of Commission Regulation 307/2008, an attestation body;
- (d) for the purposes of Commission Regulation 2015/2066—
  - (i) a certification body;
  - (ii) an evaluation body;
- (e) in relation to Commission Regulation 2015/2067—
  - (i) a certification body for the purposes of Article 4 (certificates for natural persons);

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(23) 1998 c. 29.

- (ii) an evaluation body for the purposes of Article 4;
- (iii) a certification body for the purposes of Article 6 (company certificates).

(2) The Secretary of State may charge such fees as the Secretary of State considers will enable the recovery of any reasonable expenses incurred in reviewing an application to be appointed under paragraph (1).

(3) The Secretary of State may, after consulting the Scottish Ministers, the Welsh Ministers and the Department of Agriculture, Environment and Rural Affairs, decide to terminate the appointment of a person appointed under paragraph (1) by giving that person notice of the decision, with reasons, in writing.”.

### **Amendment of regulation 9 (certificates relating to stationary refrigeration, air conditioning and heat pump equipment issued in EEA States and Northern Ireland)**

**10.** In regulation 9(1) and (2), for “Article 5 or 8 of Commission Regulation 303/2008” substitute “Article 4 or 6 of Commission Regulation 2015/2067”.

### **Omission of regulations 10 and 12**

**11.** Omit regulation 10 (certification and evaluation bodies: fire protection systems and fire extinguishers) and regulation 12 (certification and evaluation bodies: high-voltage switchgear).

### **Amendment of regulation 13 (certificates relating to high-voltage switchgear issued in EEA States and Northern Ireland)**

**12.—**(1) Regulation 13 is amended as follows.

(2) In the heading, for “high-voltage” substitute “electrical”.

(3) In paragraphs (1) and (2), for “Article 4 of Commission Regulation 305/2008” substitute “Article 3 of Commission Regulation 2015/2066”.

### **Omission of regulations 14 and 16**

**13.** Omit regulation 14 (certification and evaluation body: fluorinated greenhouse gas-based solvents) and regulation 16 (attestation bodies: air conditioning systems in certain motor vehicles).

### **Amendment of regulation 18 (obligation of employers to employ qualified persons)**

**14.** In regulation 18—

(a) in paragraph (a), for “Commission Regulation 303/2008” substitute “Commission Regulation 2015/2067”;

(b) in paragraph (c), for “Commission Regulation 305/2008” substitute “Commission Regulation 2015/2066”.

### **Amendment of regulation 19 (obligations on certification bodies, attestation bodies and evaluation bodies to provide information)**

**15.—**(1) Regulation 19 is amended as follows.

(2) In paragraph (1)—

(a) for sub-paragraph (a) substitute—

“(a) Commission Regulation 2015/2067;”;

(b) for sub-paragraph (c) substitute—

“(c) Commission Regulation 2015/2066;”.

(3) In paragraph (4), for “Commission Regulation 308/2008” substitute “Commission Regulation 2015/2065”.

**Insertion of new regulation 19A (publication of details of certification bodies, attestation bodies and evaluation bodies)**

16. After regulation 19 insert—

**“Publication of details of certification bodies, attestation bodies and evaluation bodies**

**19A.**—(1) The Secretary of State must, after consulting the Scottish Ministers, the Welsh Ministers and the Department of Agriculture, Environment and Rural Affairs, publish the following information about any person appointed as a certification body, attestation body or evaluation body under regulation 8—

- (a) name;
- (b) company number, where relevant;
- (c) postal address;
- (d) telephone number;
- (e) email address.

(2) Publication under this regulation is to be in such manner as the Secretary of State considers appropriate.”.

**Amendment of regulation 20 (enforcement)**

17.—(1) Regulation 20 is amended as follows.

(2) In paragraph (1), for “The” substitute “Subject to paragraph (2A), each”.

(3) In paragraph (2)—

- (a) in sub-paragraph (b), for “to be discharged by the Welsh Ministers and not by another” substitute “only to be discharged by a specific”;
- (b) in sub-paragraph (c), for the words from “that the duty” to the end substitute “SEPA or a local authority that the duty in paragraph (1) is, or is not, to be discharged by it”;
- (c) in sub-paragraph (d), for “the Department of the Environment”, in both places it occurs, substitute “the Department of Agriculture, Environment and Rural Affairs”.

(4) After paragraph (2) insert—

“(2A) An enforcing authority must comply with a direction given to it under paragraph (2).

(2B) A direction given under paragraph (2) may be revoked or modified by a further direction given under that paragraph.”.

(5) Omit paragraph (3).

**Amendment of regulation 21 (appointment of authorised persons)**

18. In regulation 21(1), for “The” substitute “An”.

#### **Amendment of regulation 24 (information notices)**

19. In regulation 24, for “authorised person” substitute “enforcing authority”.

#### **Amendment of regulation 25 (enforcement notices)**

20.—(1) Regulation 25 is amended as follows.

(2) In paragraph (1)—

- (a) in the words before sub-paragraph (a) and in sub-paragraph (a), for “authorised person” substitute “enforcing authority”;
- (b) in sub-paragraph (c), for the words from “any of the following” to the end substitute “Article 2 of Commission Regulation 2015/2068 (labelling format)”.

(3) In paragraphs (2) to (5), for “authorised person” substitute “enforcing authority”.

(4) In paragraph (7), for sub-paragraph (e) substitute—

- “(e) state that a requirement to pay a civil penalty may be imposed if a person fails, or causes or permits another person to fail, to comply with the enforcement notice.”.

(5) In paragraph (8), for “authorised person” substitute “enforcing authority”.

(6) In paragraph (10), after “enforcing authority” insert “which served the notice”.

(7) In paragraph (11)—

- (a) in sub-paragraph (c)(i), for “Article 5 of Commission Regulation 303/2008” substitute “Article 4 of Commission Regulation 2015/2067”;
- (b) in sub-paragraph (c)(ii), for “Article 4(3)(a) or (c) of Commission Regulation 303/2008” substitute “Article 3(3)(b) or (4) of Commission Regulation 2015/2067”;
- (c) in sub-paragraph (c)(iii), for the words from “Article 4(3)(b)” to the end substitute “Article 3(3)(a) of Commission Regulation 2015/2067 where the person is suitably qualified for the purposes of the essential safety requirements in paragraph 21(3) in Part 3 of Schedule 2 to the Pressure Equipment (Safety) Regulations 2016 (permanent joining)(24)”.

#### **Amendment of regulation 26 (appeals against enforcement notices)**

21.—(1) Regulation 26 is amended as follows.

(2) In the heading, at the end insert “etc.”.

(3) In paragraph (2), for “The right” substitute “Except in the case of an appeal mentioned in paragraph (2A), the right”.

(4) After paragraph (2) insert—

- “(2A) Schedule 5 sets out the procedure for an appeal against an enforcement notice, a civil penalty notice or an enforcement cost recovery notice, served by the Secretary of State, the Environment Agency, the Scottish Ministers or SEPA.”.

(5) Omit paragraph (4).

(6) After paragraph (6) insert—

- “(7) The grounds for an appeal brought under this regulation are that a decision to serve the enforcement notice was—

- (a) based on an error of fact;
- (b) wrong in law;

- (c) wrong for any other reason;
- (d) unreasonable.”.

#### **Amendment of regulation 27 (proceedings before a civil court)**

22. In regulation 27(1)—

- (a) for “If the” substitute “If an”;
- (b) for the words “proceedings against a person for an offence under regulation 29(1)(e)” substitute “a civil penalty imposed for a failure to comply with an enforcement notice under regulation 31A(2)(h)(ii)”.

#### **Amendment of regulation 28 (powers of the Secretary of State, the Scottish Ministers and the Department of the Environment)**

23.—(1) Regulation 28 is amended as follows.

(2) In the heading, for “the Department of the Environment” substitute “the Department of Agriculture, Environment and Rural Affairs”.

(3) In paragraph (2)(c)(iii), after “installation” insert “used in connection with any of the activities described in regulation 4(4)(a) to (g)”.

(4) In paragraph (4), for “the Department of the Environment” substitute “the Department of Agriculture, Environment and Rural Affairs”.

#### **Amendment of regulation 29 (offences)**

24. For regulation 29 substitute—

“29. It is an offence for a person to breach, or to cause or permit another person to breach, the prohibition in Article 3(1) of the 2014 Regulation (prohibition on intentional release of fluorinated greenhouse gas).”.

#### **Insertion of new regulation 29A (offences relating to disclosure of information held by Revenue and Customs)**

25. After regulation 29 insert—

##### **“Offences relating to disclosure of information held by Revenue and Customs**

29A.—(1) It is an offence for a person to contravene regulation 7A(3) if the disclosed information relates to a person whose identity—

- (a) is specified in the disclosure, or
- (b) can be deduced from it.

(2) It is a defence for a person charged with an offence under this regulation to prove that the person reasonably believed—

- (a) that the disclosure was lawful, or
- (b) that the information had already been lawfully made available to the public.

(3) Subsections (4) to (7) of section 19 of the Commissioners for Revenue and Customs Act 2005(25) apply to an offence under this regulation as they apply to an offence under that section.”.

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(25) 2005 c. 11. Section 19(5) was amended by S.I. 2014/834.

### **Amendment of regulation 31 (penalties)**

26. In regulation 31, for “A person” substitute “Except as provided in regulation 29A(3), a person”.

### **Insertion of new Part 5A (civil penalties)**

27. After regulation 31 insert—

## “PART 5A

### Civil penalties

#### **Civil penalties**

**31A.**—(1) A relevant enforcing authority may impose a requirement to pay a civil penalty in accordance with Schedule 4.

(2) The requirement to pay a civil penalty may be imposed on any person who—

- (a) fails to comply with—
  - (i) a provision of the 2014 Regulation specified in Schedule 2;
  - (ii) a provision of the Commission Regulations specified in Schedule 3, read in association with Part 3 of these Regulations;
- (b) causes or permits another person to do any of the following—
  - (i) breach any of the prohibitions mentioned in the following provisions of the 2014 Regulation—
    - (aa) Article 3(1) (prohibition on intentional release of fluorinated greenhouse gas);
    - (bb) Article 11(1) (read in association with Article 11(2) and (3)) (prohibition on placing specified products and equipment on the market);
    - (cc) Article 14(1) (prohibition on placing equipment not accounted for within quota system on the market);
  - (ii) breach Article 14(2) of the 2014 Regulation (requirements to document placing on the market and to draw up declaration of conformity);
  - (iii) 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);
- (c) submits a report under Article 19 of the 2014 Regulation which is not in accordance with Commission Regulation 1191/2014;
- (d) fails, where labelling for products and equipment is required under Article 12 of the 2014 Regulation, to comply with Article 2 of Commission Regulation 2015/2068 (labelling format);
- (e) fails to comply with a requirement under regulation 18;
- (f) fails to comply with a requirement under regulation 19;
- (g) fails to comply with an information notice served under regulation 24;
- (h) fails, or causes or permits another person to fail, to—
  - (i) comply with a requirement under regulation 28(2), (3) or (4);

- (ii) comply with an enforcement notice;
  - (i) intentionally obstructs any person acting in the execution or enforcement of these Regulations;
  - (j) fails, without reasonable cause, to give to any such person any assistance or information which that person may reasonably require for those purposes;
  - (k) furnishes to any such person any information knowing it to be false or misleading;
  - (l) fails to produce a document or record to any such person when required to do so.
- (3) A civil penalty may be imposed by a relevant enforcing authority 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);
  - (d) Article 6 (follow-up check).
- (4) A civil penalty may be imposed by a relevant enforcing authority on an operator of a fire protection system who 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—
- (a) Article 4(4) (checking of pressure gauges and weight-monitoring devices);
  - (b) Article 5 (repair of leakage);
  - (c) Article 7 (requirements for newly commissioned systems).
- (5) Subject to paragraph (7), a civil penalty may be imposed by a relevant enforcing authority 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);
  - (g) Article 9 (follow-up check).
- (6) Subject to paragraph (7), a civil penalty may be imposed by a relevant enforcing authority 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);

- (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).
- (7) Paragraphs (5) and (6) 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.
- (8) Schedule 4 (which provides for civil penalties) has effect.”.

**Omission of Schedule 1 (certification and evaluation bodies (high voltage switchgear))**

28. Omit Schedule 1.

**Amendment of Schedule 2 (2014 Regulation provisions)**

29. In Schedule 2, in the table, after the entry for “Article 8(3)” insert—

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“Article 10(11)	Requirement on undertakings assigning tasks referred to in Article 10(1) to another undertaking to take reasonable steps to ascertain that the latter holds the necessary certificates for the required tasks.”.
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**Amendment of Schedule 3 (Commission Regulation provisions)**

30.—(1) Schedule 3 is amended as follows.

(2) For Table 1 (certification for stationary refrigeration, air conditioning and heat pump equipment) substitute—

“Table 1

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

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<i>Provision of Commission Regulation 2015/2067</i>	<i>Summary of subject matter</i>
Article 3(1) (read in association with Articles 2 and 3(3) and (4))	Requirement on natural persons carrying out activities referred to in Article 2(1) (scope) to hold a certificate as referred to in Article 4 (certificates for natural persons) for the corresponding category as set out in Article 3(2) (certification of natural persons).
Article 5	Requirement on companies referred to in Article 2(2) to hold a certificate as referred to in Article 6 (company certificates).”.

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(3) For Table 3 (certification for recovery of fluorinated greenhouse gases from high voltage switchgear) substitute—

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*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

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**“Table 3**

**Certification for electrical switchgear**

<i>Provision of Commission Regulation 2015/2066</i>	<i>Summary of subject matter</i>
Article 2(1) (read in association with Articles 2(2) and (3) and 9)	Requirement on natural persons carrying out the activities referred to in Article 1 (subject matter and scope) to hold a certificate as referred to in Article 3 (issuance of certificates to natural persons).”.

(4) After Table 5 insert—

**“Table 6**

**Declaration of conformity and verification document for equipment charged with hydrofluorocarbons**

<i>Provision of Commission Regulation 2016/879</i>	<i>Summary of subject matter</i>
Article 1(2)	Requirement for importers of equipment charged with hydrofluorocarbons to ensure that a copy of the declaration of conformity is available to the customs authorities when the customs declaration is submitted.
Article 4	Requirement for importers of equipment to submit the verification document using the reporting tool made available by the Commission under Article 1 of Commission Regulation 1191/2014 by 31st March every year for the preceding calendar year.”.

**Insertion of new Schedule 4 (civil penalties) and Schedule 5 (appeals)**

31. After Schedule 3 insert—

“SCHEDULE 4

Regulation 31A(8)

Civil penalties

**Imposition of a civil penalty**

1.—(1) A relevant enforcing authority may by notice impose on any person, in relation to a failure to comply with any provision referred to in regulation 31A, a requirement to pay a civil penalty to the relevant enforcing authority of such an amount as the notice may specify or determine, subject to sub-paragraph (4).

(2) The standard of proof to be applied by a relevant enforcing authority imposing a civil penalty under these Regulations is on a balance of probabilities.

(3) A civil penalty may not be imposed—

(a) on more than one occasion in relation to the same act or omission;

- (b) in relation to an act or omission that resulted in a criminal conviction.  
 (4) The maximum civil penalty is £200,000, except as provided in the following table—

<i>Column 1</i>	<i>Column 2</i>
<i>Maximum civil penalty</i>	<i>Provision subject to civil penalty</i>
£100,000 in relation to the entries in column 2	<p>Regulation 18</p> <p>Article 3(2), (3) (except in relation to the failure of operators of equipment to ensure that equipment is repaired without undue delay where a leakage of fluorinated greenhouse gases is detected) and (4) of the 2014 Regulation</p> <p>Article 4(1) of the 2014 Regulation</p> <p>Article 5(1), (2), (3) and (4) of the 2014 Regulation</p> <p>Article 7(1) of the 2014 Regulation</p> <p>Article 8(1), (2) and (3) of the 2014 Regulation</p> <p>Article 13(1), (2) and (3) of the 2014 Regulation</p> <p>Article 17(1) of the 2014 Regulation</p> <p>Article 19(5) and (6) of the 2014 Regulation</p> <p>Article 3 of Commission Regulation 1497/2007</p> <p>Article 4(1), (2) and (4) of Commission Regulation 1497/2007</p> <p>Article 5 of Commission Regulation 1497/2007</p> <p>Article 6 of Commission Regulation 1497/2007</p> <p>Article 7 of Commission Regulation 1497/2007</p> <p>Article 2(1), (2), (3) and (4) of Commission Regulation 1516/2007</p> <p>Article 3 of Commission Regulation 1516/2007</p> <p>Article 4 of Commission Regulation 1516/2007</p> <p>Article 5 of Commission Regulation 1516/2007</p> <p>Article 6 of Commission Regulation 1516/2007</p> <p>Article 7(1) and (2) of Commission Regulation 1516/2007</p> <p>Article 8 of Commission Regulation 1516/2007</p> <p>Article 9 of Commission Regulation 1516/2007</p> <p>Article 10 of Commission Regulation 1516/2007</p> <p>Article 4(1) of Commission Regulation 304/2008</p> <p>Article 7(1) of Commission Regulation 304/2008</p> <p>Article 2(1) of Commission Regulation 307/2008</p> <p>Article 2(1) of Commission Regulation 2015/2066</p> <p>Article 3(1) of Commission Regulation 2015/2067</p> <p>Article 5 of Commission Regulation 2015/2067</p>

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<i>Column 1</i>	<i>Column 2</i>
<i>Maximum civil penalty</i>	<i>Provision subject to civil penalty</i>
£50,000 in relation to the entries in column 2	Regulation 19  Article 6(1), (2) and (3) of the 2014 Regulation Article 12(1) of the 2014 Regulation Article 12(5) of the 2014 Regulation Article 14(2) of the 2014 Regulation Article 2 of Commission Regulation 2015/2068
£10,000 in relation to the entries in column 2	Regulation 31A(2)(c)  Article 19(1), (2), (3) and (4) of the 2014 Regulation Article 1(2) of Commission Regulation 2016/879 Article 4 of Commission Regulation 2016/879

(5) The Secretary of State or the Environment Agency may recover any civil penalty imposed by them under this Schedule as if payable under order of the court.

(6) The Scottish Ministers or SEPA may recover any civil penalty imposed by them under this Schedule as if it were payable under an extract registered decree arbitral bearing a warrant for execution by a sheriff of any sheriffdom.

(7) A relevant enforcing authority must, as soon as is reasonably practicable, pay the amount of any civil penalty that has been paid to it—

- (a) to the Secretary of State, in the case of the Environment Agency;
- (b) to the Scottish Ministers, in the case of SEPA.

#### **Notice of intent**

**2.—**(1) If a relevant enforcing authority proposes to impose a civil penalty on a person under this Schedule, the relevant enforcing authority must serve on that person a notice of what is proposed (“a notice of intent”).

(2) The notice of intent must include—

- (a) the grounds for the proposed penalty,
- (b) the maximum amount of the penalty, and
- (c) information as to the right to make written representations and objections within 28 days beginning with the day on which the notice of intent was received.

#### **Making representations and objections**

**3.** A person on whom a notice of intent is served by a relevant enforcing authority may, within 28 days beginning with the day on which the notice was received, make written representations and objections to the relevant enforcing authority in relation to the proposed imposition of a civil penalty.

### **Civil penalty notice**

4.—(1) After the end of the period for making representations and objections under paragraph 3, the relevant enforcing authority which served the notice of intent must decide whether to impose the civil penalty set out in the notice of intent, with or without modifications.

(2) Where the relevant enforcing authority decides to impose a civil penalty, the notice imposing it must include information as to—

- (a) the grounds for imposing the penalty,
- (b) the amount to be paid,
- (c) how payment may be made,
- (d) the period within which payment must be made, which must be not less than 28 days,
- (e) rights of appeal, and
- (f) the consequences of failing to comply with the notice.

### **Withdrawing or amending a notice**

5. The relevant enforcing authority may in writing, at any time before payment is made to it in accordance with a civil penalty notice, withdraw the notice or amend the amount specified in the notice.

### **Enforcement cost recovery notice**

6.—(1) A relevant enforcing authority may by notice require a person on whom it has served a civil penalty notice to pay the costs incurred by the relevant enforcing authority in relation to the service of that civil penalty notice up to the time of its service.

(2) Examples of costs include—

- (a) costs of detaining goods;
- (b) investigation costs;
- (c) administration costs;
- (d) costs of obtaining expert advice (including legal advice).

(3) The enforcement cost recovery notice must specify—

- (a) the grounds for serving the notice,
- (b) the amount to be paid,
- (c) how payment may be made,
- (d) the period within which payment must be made, which must not be less than 28 days, and
- (e) the right of appeal.

### **Publication of enforcement action**

7.—(1) Each relevant enforcing authority must from time to time publish the following information about cases in which civil penalties have been imposed—

- (a) the name of the person on whom the penalty was imposed;
- (b) the nature of the breach to which the penalty relates;
- (c) the amount of the penalty.

(2) Information must not be published until after the expiry of the period for making an appeal or, where an appeal has been made, until after the appeal has been determined.

(3) The requirement to publish information does not include cases where a civil penalty notice has been served but is subsequently withdrawn or quashed.

## SCHEDULE 5

Regulation 26(2A)

### Appeals

#### **Appeals against notices served by the Environment Agency or the Secretary of State**

1.—(1) A person on whom an enforcement notice, a civil penalty notice or an enforcement cost recovery notice is served by the Environment Agency or the Secretary of State may appeal against it to the First-tier Tribunal.

(2) An appeal must be made within 28 days beginning with the day on which the notice subject to the appeal is served.

(3) A person bringing an appeal under sub-paragraph (1) may withdraw the appeal at any time before the appeal is determined.

(4) Where an appeal is made under sub-paragraph (1), the notice is suspended until the appeal is withdrawn or determined by the First-tier Tribunal in accordance with sub-paragraph (5).

(5) The First-tier Tribunal may—

- (a) affirm the notice;
- (b) direct the Environment Agency or Secretary of State to vary or withdraw the notice;
- (c) impose such other enforcement notice, civil penalty notice or enforcement cost recovery notice as the First-tier Tribunal thinks fit.

#### **Appeals against notices served by the Scottish Ministers**

2.—(1) A person on whom an enforcement notice, a civil penalty notice or an enforcement cost recovery notice is served by the Scottish Ministers may appeal against it to the sheriff.

(2) The appeal must be made within 28 days beginning with the day on which the notice is served.

(3) A person bringing an appeal under sub-paragraph (1) may withdraw the appeal at any time before the appeal is determined.

(4) Where an appeal is made under sub-paragraph (1), the notice is suspended until the appeal is withdrawn or determined by the sheriff in accordance with sub-paragraph (5).

(5) The sheriff may, without prejudice to any other powers the sheriff may exercise—

- (a) affirm the notice;
- (b) direct the Scottish Ministers to vary or withdraw the notice;
- (c) impose such other enforcement notice, civil penalty notice or, as the case may be, enforcement cost recovery notice as the sheriff thinks fit.

### **Appeals against notices served by SEPA**

3.—(1) A person, other than the Scottish Ministers, on whom an enforcement notice, a civil penalty notice or an enforcement cost recovery notice is served by SEPA may appeal against it to the Scottish Ministers.

(2) Subject to sub-paragraph (3), an appeal under sub-paragraph (1) must be made by notice in writing (“appeal notice”) within a period of 28 days beginning with the day on which the notice which is the subject of the appeal is served.

(3) The Scottish Ministers may at any time allow an appeal to be made after the expiry of the period mentioned in sub-paragraph (2).

(4) The appeal notice must be accompanied by—

- (a) a statement of the grounds of appeal,
- (b) a copy of any correspondence or document relevant to the appeal, and
- (c) a statement indicating whether the person making an appeal under sub-paragraph (1) (“the appellant”) wishes the appeal to be in the form of a hearing or to be determined on the basis of written representations.

(5) The appellant must also serve on SEPA a copy of the appeal notice together with copies of any documents referred to in sub-paragraph (4) which accompanied it.

(6) The appellant may, by further notice in writing to SEPA, withdraw the appeal made under sub-paragraph (1) at any time before the appeal is determined.

(7) Where an appeal under sub-paragraph (1) is made under this paragraph, the notice is suspended until the appeal is either withdrawn under sub-paragraph (6) or determined in accordance with sub-paragraph (11).

(8) The Scottish Ministers may—

- (a) appoint any person to exercise on their behalf, with or without payment, the function of determining the appeal in accordance with sub-paragraph (11), or
- (b) refer for determination any matter involved in the appeal to such person as the Scottish Ministers may appoint for the purpose, with or without payment.

(9) If the appellant requests that an appeal under sub-paragraph (1) is in the form of a hearing, or the Scottish Ministers so decide—

- (a) the appeal must be in the form of a hearing;
- (b) the appeal must continue in the form of a hearing, despite previously being considered on the basis of written representations.

(10) Except in a case where an appeal is withdrawn under sub-paragraph (6), the Scottish Ministers or, with the agreement of the Scottish Ministers, any person appointed to determine an appeal (“the appointed person”), must notify the appellant and SEPA in writing of the decision and the reasons for the decision.

(11) The Scottish Ministers may—

- (a) affirm the notice which is subject to the appeal under sub-paragraph (1);
- (b) vary or withdraw the notice;
- (c) impose such other enforcement notice, civil penalty notice or, as the case may be, enforcement cost recovery notice as the Scottish Ministers think fit, or as the case may be, the appointed person thinks fit.

(12) Where the determination is that the notice subject to the appeal under sub-paragraph (1) is to be varied or withdrawn, SEPA must give effect to the determination.

(13) Where an enforcement notice, a civil penalty notice or an enforcement cost recovery notice is served by SEPA on the Scottish Ministers (“the relevant notice”), the Scottish Ministers may appeal against it to the sheriff.

(14) An appeal under sub-paragraph (13) must be made within 28 days beginning with the day on which the relevant notice is served.

(15) The Scottish Ministers bringing an appeal under sub-paragraph (13) may withdraw the appeal at any time before the appeal is determined.

(16) Where an appeal is made under sub-paragraph (13), the relevant notice is suspended until the appeal is withdrawn or determined by the sheriff in accordance with sub-paragraph (17).

(17) The sheriff may, without prejudice to any other powers the sheriff may exercise—

- (a) affirm the relevant notice;
- (b) direct SEPA to vary or withdraw the relevant notice;
- (c) impose such other enforcement notice, civil penalty notice or, as the case may be, enforcement cost recovery notice as the sheriff thinks fit.

### **Grounds for appeal**

4.—(1) The grounds for an appeal against an enforcement notice under paragraph 1(1), 2(1), 3(1) or 3(13) of this Schedule are that the relevant enforcing authority’s decision to serve the enforcement notice was—

- (a) based on an error of fact;
- (b) wrong in law;
- (c) wrong for any other reason;
- (d) unreasonable.

(2) The grounds for an appeal against a civil penalty notice under paragraph 1(1), 2(1), 3(1) or 3(13) of this Schedule are—

- (a) that the relevant enforcing authority’s decision to serve the civil penalty notice was—
  - (i) based on an error of fact;
  - (ii) wrong in law;
  - (iii) wrong for any other reason;
  - (iv) unreasonable;
- (b) that the amount specified in, or determined by, the notice is unreasonable.

(3) The grounds for an appeal against an enforcement cost recovery notice under paragraph 1(1), 2(1), 3(1) or 3(13) of this Schedule are—

- (a) that the relevant enforcing authority’s decision to serve the enforcement cost recovery notice was—
  - (i) based on an error of fact;
  - (ii) wrong in law;
  - (iii) wrong for any other reason;
  - (iv) unreasonable;
- (b) that the amount specified in the notice is unreasonable.”.

26th January 2018

*Thérèse Coffey*  
Parliamentary Under Secretary of State  
Department for Environment, Food and Rural  
Affairs

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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## EXPLANATORY NOTE

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

These Regulations amend the Fluorinated Greenhouse Gases Regulations 2015 ([S.I. 2015/310](#)) (“the 2015 Regulations”). They update the 2015 Regulations to include references to the following Commission Implementing Regulations adopted since the 2015 Regulations came into force—

- (a) Commission Implementing Regulation (EU) No 2015/2065 (OJ No L 301, 18.11.2015, p 14);
- (b) Commission Implementing Regulation (EU) No 2015/2066 (OJ No L 301, 18.11.2015, p 22);
- (c) Commission Implementing Regulation (EU) No 2015/2067 (OJ No L 301, 18.11.2015, p 28);
- (d) Commission Implementing Regulation (EU) No 2015/2068 (OJ No L 301, 18.11.2015, p 39);
- (e) Commission Implementing Regulation (EU) No 2016/879 (OJ No L 146, 3.6.2016, p 1).

The Regulations also make provision for the appointment of certification, evaluation and attestation bodies by the Secretary of State, the disclosure of information on enforcement by HM Revenue & Customs to certain enforcing authorities and for the introduction of civil penalties in England, Scotland and for offshore installations.

An assessment of the effects that this instrument will have on the costs of business is available from the Stratospheric Ozone and Fluorinated Greenhouse Gases Team, Department for Environment, Food and Rural Affairs, Nobel House, Area 2A, 17 Smith Square, London SW1P 3JR and is annexed to the Government’s response to the consultation on [www.gov.uk/government/consultations](http://www.gov.uk/government/consultations).