

2009 No. 2194

ROAD TRAFFIC

The Motor Vehicles (Refilling of Air Conditioning Systems by Service Providers) Regulations 2009

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| <i>Made</i> | - - - - | <i>9th August 2009</i> |
| <i>Laid before Parliament</i> | | <i>14th August 2009</i> |
| <i>Coming into force</i> | - - | <i>7th September 2009</i> |

The Secretary of State for Transport makes the following Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(a).

The Secretary of State is a Minister designated(b) for the purposes of section 2(2) of that Act in relation to the regulation of the type, description, construction or equipment of vehicles, and of components of vehicles, and in particular any vehicle type approval scheme.

Citation and commencement

1. These Regulations may be cited as The Motor Vehicles (Refilling of Air Conditioning Systems by Service Providers) Regulations 2009 and come into force on 7th September 2009.

Interpretation

2. In these Regulations—

“air conditioning system” means any system whose main purpose is to decrease the air temperature and humidity of the passenger compartment of a vehicle and which is fitted to a vehicle of a category to which Directive 2006/40/EC(c) applies by virtue of Article 2 of that Directive;

“enforcement authority” means the Secretary of State or a local authority;

“local authority” means—

- (a) in England, a city, borough, county or district council;
- (b) the Common Council of the City of London;
- (c) the Council of the Scilly Isles;
- (d) in Wales, a city, county or borough council;

(a) 1972 c.68. Section 2(2) was amended by the Legislative and Regulatory Reform Act 2006 (c.51), section 27(1)(a).
(b) S.I. 1972/1811; relevant amending instruments are S.I. 1996/266 and 2000/2812.
(c) 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 (OJ No. L161, 14.6.2006 p.12) and amending council Directive 70/156/EEC (OJ No. L42, 23.02.1970, p.1 as last amended by OJ No. L161, 22.6.2007, p.60).

(e) in Scotland, a council constituted under section 2 of the Local Government etc (Scotland) Act 1994(a); or

(f) in Northern Ireland, a city, district or borough council; and

“officer” means any officer authorised by an enforcement authority to assist it in enforcing these Regulations.

Servicing and repairing of air conditioning systems

3.—(1) No service provider may fill an air conditioning system with fluorinated greenhouse gases where—

(a) an abnormal amount of refrigerant has leaked from that system, and

(b) the necessary repair to the system has not been completed.

(2) In determining whether the amount of refrigerant that has leaked from an air conditioning system is abnormal, regard must be had, in particular, to—

(a) whether a reasonably competent service provider would consider the leak to be abnormal;

(b) any information provided by the manufacturer to the user of the vehicle, in particular information contained in the owner’s manual; and

(c) any requirements as to the design, construction and equipment which were applicable to the vehicle for the purpose of permitting its registration, sale or entry into service as a new vehicle.

(3) In this regulation—

“fluorinated greenhouse gases” has the meaning given by Article 3(5) of Community Directive 2006/40;

“necessary repair” means a repair that removes the cause of the abnormal leak of refrigerant from an air conditioning system;

“refrigerant” means any chemical substance used in an air conditioning system to absorb heat; and

“service provider” means any person who, in the course of business or employment, services or repairs an air conditioning system.

Offences and Penalties

4.—(1) If a person contravenes a regulation specified in paragraph (2), that person commits an offence.

(2) The regulations are—

(a) regulation 3(1) (servicing and repairing of air conditioning systems);

(b) regulation 7 (obstructing etc. an officer); and

(c) regulation 8(9) (purporting to act as an officer).

(3) A person guilty of an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(4) It is the duty of each local authority to enforce these Regulations within its area.

(5) Proceedings for an offence under these Regulations shall not be brought except by or on behalf of an enforcement authority.

(6) Nothing in these Regulations shall authorise the Secretary of State to bring proceedings in Scotland.

(a) 1994 c.39.

Defence

5.—(1) In proceedings against any person for any offence under these Regulations it shall be a defence for that person to show that he or she took all reasonable steps and exercised all due diligence to avoid committing the offence.

(2) Where in any proceedings against any person for such an offence the defence provided by paragraph (1) above involves an allegation that the commission of the offence was due to—

- (a) the act or default of another; or
- (b) reliance on information given by another,

that person shall not, without the leave of the court, be entitled to rely on the defence unless, not less than seven clear days before the hearing of the proceedings (or, in Scotland the trial diet), he or she has served a notice under paragraph (3) on the person bringing the proceedings.

(3) A notice under this paragraph shall give such information identifying or assisting in the identification of the person who committed the act or default or gave the information as is in the possession of the person who is the subject of the proceedings.

(4) A person shall not be entitled to rely on the defence provided by paragraph (1) by reason of reliance on information supplied by another, unless that person shows that it was reasonable in all the circumstances to have relied on the information, having regard in particular to—

- (a) the steps which he or she took, and those which might reasonably have been taken, for the purpose of verifying the information; and
- (b) whether he or she had any reason to disbelieve the information.

Liability of persons other than principal offender

6.—(1) Where the commission by any person of an offence under these Regulations is due to the act or default of another person in the course of that other person's business or employment, that other person shall be guilty of the offence and may be proceeded against and punished by virtue of this paragraph whether or not proceedings are taken against the first-mentioned person.

(2) Where a body corporate is guilty of an offence under these Regulations (including where it is so guilty by virtue of paragraph (1)) in respect of any act or default which is shown to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of—

- (a) a person who is a director, manager, secretary or other similar officer of the body corporate, or
- (b) a person who was purporting to act in any such capacity,

that person, as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(3) Where the affairs of a body corporate are managed by its members, paragraph (2) shall apply in relation to the acts and defaults of a member in connection with that member's functions of management as if that member was a director of the body corporate.

(4) Where a Scottish partnership is guilty of an offence under these Regulations (including where it is so guilty by virtue of paragraph (1)) in respect of any act or default which is shown to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner in the partnership, both the partner and the partnership, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Obstruction of officers and false statements

7.—(1) No person shall without reasonable excuse—

- (a) obstruct an officer when acting in pursuance of any provision of these Regulations;
- (b) fail to comply with any requirement properly made to him or her by an officer under any provision of these Regulations; or

- (c) fail to give an officer any other assistance or information which the officer may reasonably require of that person for the purposes of the exercise of the officer's functions under any provision of these Regulations.

(2) No person shall, in giving any information which is required of him or her by virtue of subparagraph (1)(c)—

- (a) make any statement which he or she knows is false in a material particular; or
- (b) recklessly make a statement which is false in a material particular.

Powers of search etc.

8.—(1) An officer may, at all reasonable hours and on—

- (a) identifying himself or herself and producing authority in writing from the enforcement authority for the exercise by the officer of powers conferred on the authority by these Regulations, and
- (b) stating the purpose of his or her actions and the grounds for undertaking them,

exercise any of the powers set out in paragraph (2).

(2) The powers referred to in paragraph (1) are as follows—

- (a) an officer may, for the purpose of ascertaining whether an offence under these Regulations has been committed—
 - (i) inspect any air conditioning system or equipment used to service such a system or to fill it with refrigerant; and
 - (ii) enter any premises other than premises used only as a dwelling;
- (b) if an officer has reasonable cause to suspect that an offence under these Regulations has been committed, that officer may, for the purpose of ascertaining whether it has been committed, require any person carrying on, or employed in connection with a business, to produce any records relating to the air conditioning system or equipment used to service that system or to fill it with refrigerant and that officer may take copies of those records or any part of them;
- (c) if an officer has reasonable cause to suspect that an offence under these Regulations has been committed, the officer may seize and detain any equipment used to service an air conditioning system or to fill it with refrigerant for the purpose of ascertaining whether the offence has been committed; and
- (d) an officer may seize and detain—
 - (i) any equipment used to service an air conditioning system or to fill it with refrigerant, or
 - (ii) any records,

which the officer has reason to believe may be required as evidence in proceedings for an offence under these Regulations.

(3) For the purposes of paragraphs (2)(b) and (d), the officer may require information stored electronically to be made available in printed form.

(4) If a justice of the peace is satisfied by any written information on oath—

- (a) that there are reasonable grounds for believing either—
 - (i) that any equipment used to service an air conditioning system or to fill it with refrigerant or any records, which the officer has power under this regulation to inspect, copy, seize or require to be produced, are on any premises and that their inspection, copying, seizure or production is likely to disclose evidence of the commission of an offence under these Regulations; or
 - (ii) that any offence under these Regulations has been, is being, or is about to be committed on any premises; and
- (b) either—

- (i) that admission to the premises has been or is likely to be refused and that notice of intention to apply for a warrant under this regulation has been given to the occupier; or
- (ii) that an application for admission, or the giving of such a notice, would defeat the object of the entry or that the premises are unoccupied or that the occupier is temporarily absent and it might defeat the object of the entry to await the occupier's return,

the justice may by warrant under his or her hand, which shall continue in force for a period of one month, authorise an officer to enter the premises, if need be by force.

(5) On entering any premises by authority of a warrant granted under paragraph (4), an officer shall, if the occupier is present, give to the occupier or, if the occupier is temporarily absent, leave in a prominent place on the premises or appropriate part of the premises a notice in writing—

- (a) summarising the officer's powers under this regulation to seize and detain any equipment used to service an air conditioning system or to fill it with refrigerant, or any records;
- (b) explaining that compensation may be payable for damage caused in entering premises and seizing and removing any equipment used to service an air conditioning system or to fill it with refrigerant, or any records, and giving the address to which an application for compensation should be directed; and
- (c) indicating at which office of the enforcement authority and within which hours a copy of these Regulations is available to be consulted.

(6) An officer, when entering any premises by virtue of this regulation, may be accompanied by such persons and take such equipment as appear necessary.

(7) An officer, when leaving any premises which the officer entered by virtue of a warrant, shall, if the premises are unoccupied or the occupier is temporarily absent, leave them in as secure a state as they were found.

(8) When exercising any power of seizure and detention under this regulation, an officer shall, as soon as practicable, give to the person against whom the power has been exercised, a written notice stating—

- (a) precisely what has been seized and detained; and
- (b) that an application for release of a detained item may be made in accordance with regulation 9;
- (c) the procedure for making such an application.

(9) A person who is not an officer of an enforcement authority shall not purport to act as such under this regulation.

(10) In the application of this regulation to Scotland, the reference in paragraph (4) to a justice of the peace shall include a reference to a sheriff and the references to written information on oath shall be construed as references to evidence on oath.

(11) In the application of this regulation to Northern Ireland, the references in paragraph (4) to any information on oath shall be construed as references to any complaint on oath.

Application for the release of detained items

9.—(1) Any person having an interest in any equipment used to service an air conditioning system or to fill it with refrigerant, or any records, which are for the time being detained under regulation 8 (powers of search etc.) may apply for an order requiring any item so detained to be released to the applicant or another person.

(2) An application under this regulation may be made—

- (a) to any magistrates' court in which proceedings have been brought in England and Wales or Northern Ireland for an offence in respect of a contravention of any provision of these Regulations in connection with the detained item;

- (b) where no such proceedings have been so brought, by way of complaint to a magistrates' court; or
- (c) in Scotland, by summary application to the sheriff.

(3) A magistrates' court or the sheriff shall not make an order under paragraph (1) unless the court or sheriff is satisfied that—

- (a) proceedings have not been brought for an offence in respect of a contravention of any provision of these Regulations in connection with the detained item or, having been brought, have been concluded; and
- (b) where no such proceedings have been brought, more than six months have elapsed since the detention was carried out.

(4) Any person aggrieved by an order made under this regulation by a magistrates' court or sheriff, or by a decision of such a court or sheriff, not to make such an order, may appeal against that order or decision—

- (a) in England and Wales, to the Crown Court;
- (b) in Scotland, to the sheriff principal; or
- (c) in Northern Ireland, to the county court.

(5) In England and Wales or in Northern Ireland, an order so made may contain such provision as appears to the court to be appropriate for delaying the coming into force of the order pending the making and determination of any appeal (including any application under section 111 of the Magistrates' Courts Act 1980^(a) or article 146 of the Magistrates' Courts (Northern Ireland) Order 1981 (statement of case)^(b)).

Compensation for seizure and detention

10.—(1) Where an officer exercises any power under regulation 8 (powers of search etc.) to seize and detain any equipment used to service an air conditioning system or to fill it with refrigerant, or any records, the enforcement authority shall be liable to pay compensation to any person having an interest in the item seized or detained in respect of any loss or damage caused by the exercise of the power if—

- (a) there has been no contravention of any provision of these Regulations; and
- (b) the exercise of the power is not attributable to any neglect or default by that person.

(2) Any disputed question as to the right to or the amount of any compensation payable under this regulation shall be determined—

- (a) in England and Wales or Northern Ireland, by arbitration; or
- (b) in Scotland, by a single arbiter appointed by the parties, or in the event that the parties fail to agree, by the sheriff.

Recovery of the expenses of enforcement

11.—(1) This regulation shall apply where a court convicts a person of an offence in respect of a contravention of any provision of these Regulations in relation to any equipment used to service an air conditioning system or to fill it with refrigerant, or any records.

(2) The court may (in addition to any other order it may make as to costs and expenses) order the person convicted to reimburse the enforcement authority for any expenditure which has been or may be incurred by that authority in connection with any seizure or detention by or on behalf of the authority of the equipment used to service an air conditioning system or to fill it with refrigerant, or any records.

(a) 1980 c.43.

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

Savings for certain privileges

12. Nothing in these Regulations shall be taken as requiring any person—
- (a) to produce any records if that person would be entitled to refuse to produce those records in any proceedings in any court on the grounds that they are the subject of legal professional privilege or, in Scotland, a claim of confidential communications, or as authorising any person to take possession of any records which are in the possession of a person who would be so entitled; or
 - (b) to answer any question or give any information if to do so would incriminate that person or that person's spouse or civil partner.

Savings for civil rights

13. A contract for the supply of an air conditioning system, the equipment used to service an air conditioning system or to fill it with refrigerant shall not be void or unenforceable by reason only of a contravention of any provision of these Regulations.

Signed by authority of the Secretary of State

9th August 2009

C D Mole
Parliamentary Under Secretary of State
Department for Transport

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement Article 6(3) of Council Directive 2006/40/EC of the European Parliament and of the Council of 17 May 2006 (OJ No. L161, 14.6.2006, p.12) relating to emissions from air conditioning systems in motor vehicles and amending Council Directive 70/156/EEC (OJ No. 42, 23.2.1970, p.1 as last amended by OJ No. L161, 22.6.2007, p.60).

Regulations 1 and 2 provides for general preliminary matters.

Regulation 3 provides that the service provider must not fill an air conditioning system with fluorinated greenhouse gases where there has been an abnormal leak of refrigerant and that leak has not yet been repaired.

Regulation 4 makes it a criminal offence for a service provider to fill an air conditioning system with fluorinated greenhouse gases where an abnormal leak has occurred and the necessary repairs have not been completed. It also makes it a criminal offence to obstruct an officer or make false statements to that officer, and for a person to claim they are acting as an officer when they do not have the authority to do so.

Regulation 5 contains a defence on which a person may rely in certain circumstances. The burden of proof is on the defendant to show that he took all reasonable steps and exercised all due diligence to avoid committing the offence.

Regulation 6 extends the liability to other parties where they have committed some act or default that resulted in the principal offender committing an offence under these Regulations.

Regulation 7 makes it an offence to obstruct or provide false statements to an officer acting in pursuance of these Regulations.

Regulation 8 provides an officer with powers to search premises and seize certain items and records in order to gather evidence that an offence has been committed.

Regulation 9 contains provisions for appeal against the detention of equipment and records. *Regulation 10* makes the enforcement authority liable to pay compensation where equipment or

records are seized or detained without reasonable cause. *Regulation 11* allows the enforcement authority to recover expenses following a successful conviction. *Regulations 12* and *13* make savings for certain privileges and civil rights.

A transposition note setting out how these Regulations transpose the provisions of Directive 2006/40/EC is available from the Department for Transport, Great Minster House, 76 Marsham Street, London, SW1P 4DR and is annexed to the Explanatory Memorandum which is available alongside this instrument on the OPSI website (www.opsi.gov.uk). An impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.

A copy of Directive 2006/40/EC may be obtained from the Stationery Office (www.tso.co.uk) or from the EUROPA website (<http://eur-lex.europa.eu/en/index.htm>).

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