

EXPLANATORY MEMORANDUM TO
THE FLUORINATED GREENHOUSE GASES REGULATIONS 2015

2015 No. 310

1. This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.

2. **Purpose of the instrument**

2.1 EC Regulation No 517/2014, which came into force in the UK on 1 January 2015, is designed to reduce emissions of fluorinated greenhouse gases (F Gases), used predominantly in the refrigeration and air conditioning sectors and which make a significant contribution to climate change. The EC Regulation places a duty on EU Member States to “lay down the rules on penalties applicable to infringements of this Regulation and take all measures necessary to ensure that they are implemented”. These associated domestic Regulations are, therefore, required to comply with that duty by providing powers for authorised persons to enforce the Regulation, prescribing the offences and penalties and designating certification and training bodies.

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

3.1 None

4. **Legislative Context**

4.1 The domestic Regulations would apply in full to England, Scotland and Wales and in part to Northern Ireland and include:

- powers for customs officers to impound unlawfully imported material;
- appointment of enforcement bodies such as the Environment Agency, devolved equivalents and local authorities with powers of entry to examine records, take samples and seize equipment;
- a power for the enforcement bodies to issue enforcement notices for failure to comply with requirements of the EU regulation;
- appointment of the bodies which certify people to handle F-gases;
- offences and penalties for breaching certain provisions.

4.2 These measures are considered the minimum needed to comply with the EC Regulation and avoid possible infraction. They do not “gold plate” or extend the substance of the EU regulation in any way. For example, they do not extend its scope to additional organisations, activities or products which are not covered by the EU Regulation nor do they bring in measures sooner than the Regulation requires.

5. Territorial Extent and Application

5.1 This instrument applies in full to Great Britain but to Northern Ireland only in respect of certain import, export and trade provisions, which are reserved matters. The Northern Ireland Executive will be responsible for bringing forward its own instrument in due course.

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

7.1 Fluorinated gases (F-gases) are powerful greenhouse gases which were largely introduced as replacements to chlorofluorocarbons (CFCs) which damage the ozone layer. They are used in refrigeration, air-conditioning, insulation foams, electrical equipment, aerosol sprays, medical inhalers, solvents and fire extinguishers. Emissions occur through leakage during the manufacture, operation and disposal of products. The EU introduced a regulation in 2006 focused on controlling emissions through better leak repairs, F-gas recovery and technician training. Although that stabilised emissions it has not led to a significant reduction and has, therefore, been revoked and replaced by a new Regulation, applying from 1 January 2015, which will lead to an 80% cut in emissions across the EU by 2035. It will achieve that by: phasing down the amount of F-gases that can be placed on the market through gradually reducing quotas for F-gas producers and importers; bans on certain F-gases in some applications; and strengthening of obligations on leak checks, repairs, recovery and training.

7.2 The EC regulation is directly applicable in the UK so no domestic legislation is needed to implement its main provisions. However, it does require Member States to implement their own enforcement and penalty provisions as well as designating the bodies which provide F-gas technicians with certification and training. The Government proposes to achieve that requirement by means of these domestic Regulations. These domestic Regulations are similar in nature to Regulations from 2009 which enforced the previous EU regulation. These new domestic Regulations will revoke the 2009 Regulations.

7.3 In line with Government policy, the powers of entry given to enforcement authorities are more limited than in the 2009 Regulations. In most cases, authorised persons would only be able to enter premises between the hours of 8am and 6pm on working days and be limited to bringing up to four other persons with them. Furthermore, in order to gain entry without consent, a warrant obtained from a justice of the peace (or stipendiary magistrate or sheriff in Scotland) will be needed.

7.4 The number of direct criminal offences has been reduced from 71 in the 2009 Regulations to 13. Instead, enforcement notices are the main focus of actions against those breaching the EU requirements. This means that the breach of a requirement under

the EU Regulation or the associated Commission Regulations, would not, in most cases, itself be a criminal offence. Instead, the enforcing authority is able to issue an enforcement notice for breaches such as not providing information within the requested time. The aim is to achieve compliance with the Regulation rather than criminalise individuals. Nevertheless, failing to comply with an enforcement notice would then be a criminal offence.

7.5 Direct criminal liability does still apply to a few breaches of the EU requirements which are particularly important to its effectiveness or where an enforcement notice is not likely to act as an adequate deterrent. Nevertheless, the option of using an enforcement notice in those cases is still available if appropriate. The direct criminal offences include:

- Intentionally releasing fluorinated greenhouse gases into the atmosphere (where the release is not technically necessary)
- Placing products and equipment listed in Annex III to the EU Regulation on the market
- From January 2017, placing equipment charged with HFCs on the market (unless it is within quota limits)
- Manufacturers or importers failing to conform with requirements for documenting pre-charged equipment when placing on the market
- From January 2018, for importers to fail to ensure that accuracy of documentation is verified by an independent auditor by 31 March each year
- Manufacturers and importers of refrigeration, air conditioning and heat pump equipment charged with HFCs failing to keep the documentation and declaration of conformity for at least five years
- For producers or importers to exceed their allocated quota
- Failing to comply with a requirement to dispose, render harmless or remove a product or equipment containing, or whose functioning relies on F-gases
- Failing to comply with an enforcement notice
- Obstructing those carrying out enforcement;
- Failing to provide information or assistance without reasonable cause to those carrying out enforcement;
- Providing information that is false or misleading;
- Failing to produce a document or record to an enforcement authority when required to do so.

8. Consultation outcome

8.1 The Government consulted on the new Regulations and received twenty-seven responses. Twenty-one respondents agreed with the proposals to limit powers of entry and three disagreed. Twenty-three respondents agreed with the proposed balance between enforcement notices and direct criminal offences. Four were opposed, feeling that criminal liability provided a greater deterrent. The Government was not persuaded to change the position as the aim is to achieve compliance, for which enforcement notices have been shown to be effective. A criminal sanction still remains if enforcement notices are not complied with.

8.2 Several consultees took the opportunity to raise concerns that the current level of inspection and enforcement activity was inadequate. The Environment Agency takes a risk based approach to enforcement to ensure a good level of compliance without excessive burdens on businesses or wasted resource. The growth in UK emissions of F-gases has been stemmed in the past few years which suggests the current approach to enforcement is achieving the policy aim. Nevertheless, Defra and the Environment Agency take stock regularly of the appropriate level of enforcement and will continue to do so as the new requirements bed down.

8.3 Several industry consultees proposed that there should be a mandatory, centralised database of those companies and personnel which were certified to handle F-gases. The Government will explore the costs and benefits of this, and other options, with industry.

8.4 In response to the consultation, some updates and corrections were made to the Statutory Instrument in respect of the names of certification and evaluation bodies.

8.5 The Government's full response to the consultation is available here: https://www.gov.uk/government/publications?publication_filter_option=consultations

9. Guidance

9.1 The Government has published guidance to help businesses comply with the EC Regulation. This is available at: <https://www.gov.uk/government/collections/eu-f-gas-regulation-guidance-for-users-producers-and-traders>

10. Impact

10.1 The impact on business from the enforcement and other provisions in these Regulations is very modest. It is estimated that the aggregate additional burden for the UK is between £11,000 and £62,000, which largely arises from the time businesses will need to devote to inspections by enforcing authorities or the provision of documentation on request. This is the net impact arising from revoking the 2009 Regulations and replacing them with these new Regulations. The costs are low, principally because we do not anticipate a step change in the rate of enforcement from that which currently takes place under the 2009 Regulations.

10.2 The net impact on the public sector is assessed as being negligible.

10.3 A preliminary assessment of the impacts was carried out and is annexed to the Government's response to the consultation (link at para 8.5 above). As is usual for low cost measures, a full impact assessment has not been carried out.

11. Regulating small business

11.1 The legislation applies to small businesses. Most companies will not be subject to any action under the domestic Regulations in any given year. In cases where they are,

this is likely to entail requests for documentation and, in a few cases, site visits by enforcement officers. We have estimated that such a site visit might require 5 hours of staff time at a cost to the business of around £130.

12. Monitoring & review

12.1 The Secretary of State is required to review the Regulations and provide a report no later than five years from their entry into force.

12.2 There is also a requirement for the European Commission regularly to review how well Regulation (EC) No. 517/2014 is operating. The first review is due in 2017.

13. Contact

Enquiries about these Regulations should be addressed to Justina Adomaviciute at the Department for Environment, Food and Rural Affairs Tel: 020 7238 5100 or email: Justina.adomaviciute@defra.gsi.gov.uk. Enquiries about the operation of the operation of the EU Regulation should be sent to: f-gassupport@environment-agency.gov.uk