EXPLANATORY MEMORANDUM TO

THE OZONE-DEPLETING SUBSTANCES (QUALIFICATIONS) REGULATIONS 2009

2009 No. 216

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 This instrument revokes and replaces the Ozone Depleting Substances (Qualifications) Regulations 2006 (SI 2006/1510), as amended by the Ozone Depleting Substances (Qualifications) (Amendment) Regulations 2008 (SI 2008/97), and in so doing continues to give effect to provisions of Regulation (EC) No. 2037/2000 on substances that deplete the ozone layer, which relate to minimum qualifications for those working on the recovery, recycling, reclamation or destruction of controlled substances and the prevention and minimising of leakages of controlled substances. This instrument updates the minimum qualifications that had been set out in the legislation revoked and replaced, in order to take account of changes made by the Fluorinated Greenhouse Gases Regulations 2009.

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

3.1 None

4. Legislative Context

4.1 The EC legislation is in the form of Regulation (EC) No. 2037/2000. This regulation has direct effect in the UK, with no further transposition being necessary. However, Article 21 of this Regulation assigns to Member States responsibility for determining, through national secondary legislation, the necessary penalties applicable to breaches of the Regulation.

4.2 This instrument sets out minimum qualifications for working with ozone-depleting substances and prescribes offences and penalties. It also provides the necessary enforcement powers for authorised persons. The previous legislation dealing with these matters (S.I. 2006/1510, as amended by S.I. 2008/97) is revoked and replaced by this instrument.

5. Territorial Extent and Application

5.1 This instrument applies to Great Britain.

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 As part of the European Union's obligations under the Montreal Protocol, the Community has taken action through Regulation (EC) No. 2037/2000 to control production, use and emissions of ozone-depleting substances.

7.2 Article 16 of Regulation (EC) No. 2037/2000 provides for Member States to take steps to promote the recovery, reclamation and destruction of controlled substances, and to assign to users, refrigeration technicians or other appropriate bodies responsibility for ensuring compliance with the provisions of Article 16.1. This Article requires the recovery of controlled substances in various types of equipment, for example refrigeration, air-conditioning and heat pump equipment, for destruction approved by the Parties or by any other environmentally acceptable destruction technology, or for recycling or reclamation during the servicing and maintenance of equipment or before the dismantling or disposal of equipment. In Article 16.5, Member States are required to define the minimum qualification requirements for the personnel involved.

7.3 National regulatory measures are needed to implement the requirements relating to minimum qualifications in the EC Regulation, and to take account of the Fluorinated Greenhouse Gases Regulations 2009, which revokes and replaces the Fluorinated Greenhouse Gases Regulations 2008 (SI 2008/41). The Fluorinated Greenhouse Gases Regulations 2009 include new minimum qualification requirements for people working with fluorinated greenhouse gases (F gases). These minimum qualifications also cover working with ozone-depleting substances, and therefore, the Ozone Depleting Substances (Qualifications) Regulations 2006 (SI 2006/1510), as amended, need to be revoked and remade to include the new qualifications to ensure that holders of these qualifications can also work with ozone-depleting substances. It is highly unlikely that personnel working with ozone-depleting substances will not also work with F gases, so they will generally need a qualification that permits them to work with both types of substances.

8. Consultation outcome

8.1 On 11 July 2008, Defra, BERR, the National Assembly for Wales and the Scottish Executive jointly issued a consultation paper inviting views on proposed Regulations prescribing offences and penalties applicable to infringements of the EC Regulation. The consultation ended on 3 October 2008.

8.2 The government received four responses. Three offered no objections to the proposed Regulations and suggested minor drafting changes or sought to clarify the intended application of the Regulations. One respondent, from the fire protection sector, was concerned about treating the F gases Regulations and ozone Regulations in a manner similar to each other, because the current regulations for F gases and ozone-depleting substances are applied differently from each other in that sector.

8.3 The government response was that consistency between the training requirements for working with ozone-depleting substances and F gases is necessary. Some technicians will work with ozone-depleting substances, but it is unlikely that they will not also work with F gases. The Fluorinated Greenhouse Gases Regulations 2009 introduce new standards for training and it is appropriate that the requirements in this instrument mirror that. This does not mean that this instrument will be applied in the same manner as the Fluorinated Greenhouse Gases Regulations 2009.

8.4 A summary of the responses received and the Government's response to them have been published on the Defra website.

9. Guidance

9.1 F-Gas Support is a Government funded team set up to help organisations understand their obligations under the EU F gases and ozone regulations. The main role of F-Gas Support is to publicise and explain the key obligations under the European regulations and associated domestic legislation. It can provide practical information and advice on F gas and ozone issues to assist organizations to become compliant and will also be helping the regulators develop their understanding of these Regulations. A key area of work will be to develop "compliance protocols" with businesses to identify the obligations and activities that businesses need to undertake to comply with the Regulations. F-Gas Support is being run on behalf of Defra and the devolved administrations with full coverage across England, Scotland, Wales and Northern Ireland and the marine area (as defined in the Fluorinated Greenhouse Gases Regulations 2009).

9.2 Further sector specific guidance and information is available on the F-Gas Support website, which can be accessed via the following link:

http://www.defra.gov.uk/environment/air-atmos/fgas/

10. Impact

10.1 A full regulatory impact assessment of the effect of Ozone Depleting Substances (Qualifications) Regulations 2006 on the costs to business was prepared at the time those Regulations were made and is still considered to be accurate. No new impact assessment has been produced for this instrument because no new impact on the costs to business is foreseen.

10.2 The 2006 assessment is attached to this memorandum.

11. Regulating small business

11.1 The legislation applies to small business.

12. Monitoring & review

12.1 Regulation (EC) No. 2037/2000 is currently under review; the requirement for personnel involved in preventing and minimising any leakages of controlled substances to meet the minimum qualification requirements will be maintained in the new legislation.

13. Contact

Elizabeth Chrominska at the Department for Environment, Food and Rural Affairs Tel: 020 7238 3163 or email: Elizabeth.chrominska@defra.gsi.gov.uk can answer any queries about the instrument.