

# ACRIB F GAS FACT SHEET 4



## Enforcement and Penalties

*The ACRIB (Air Conditioning and Refrigeration Industry Board) F Gas Implementation group brings together all of the key trade associations and professional bodies representing the stationary RAC sector to help communicate obligations and provide guidance on interpretation of the F Gas Regulations. Working with the F Gas Support service team ACRIB provides practical advice on the new F Gas Regulations which are now fully in place in GB legislation. A summary of some of the most frequently asked questions from the support help desk is shown below.*

### 1. Who is going to be checking that end users comply with these Regulations?

Councils will be the regulators for all commercial and retail businesses and for industrial premises not covered by PPC permits. In GB for industrial facilities with PPC permits, the EC F Gas Regulations will be regulated by the Environment Agency or the Scottish Environment Protection Agency. The Department for Business, Enterprise and Regulatory Reform (BERR) will be the regulator for the offshore oil and gas installations. The GB F gas Regulations legislation (Statutory Instrument 261 of 2009) Part 4 details miscellaneous and corporate offences and penalties.

### 2. What powers do the Regulators have if someone is not complying with the legal obligations?

If an organization does not comply with these Regulations, the action taken by the regulator may include:

- Providing targeted advice and guidance to an organization to secure compliance
- Serving an “enforcement notice” if they are of the opinion that a person has contravened, is contravening or is likely to contravene relevant requirements. The enforcement notice includes a description of the contravention, steps that would be a suitable remedy and a date by which time the remedies must be in effect.
- Serving a “prohibition notice”. A regulator can use this where specific requirements are contravened or there is a risk that they will be contravened and this would involve “an imminent danger of serious pollution of the environment”. *Prohibition notices allow the Regulator to insist on a piece of equipment or even a whole site being shut down.*

If these actions do not lead to the required improvements then they may decide to prosecute. This would be a criminal prosecution. Summary conviction refers to the way in which a case is tried, as follows: In England and Wales offences can be tried either summarily (i.e. in the Magistrate’s court without a jury) or on indictment (in the Crown Court with a jury). The criminal prosecution would usually begin in the Magistrate’s court. The more serious offences would be sent by the Magistrate to the Crown Court for trial by jury. The less serious offences would most likely be tried by the Magistrate. A defendant can elect to be tried in a Crown Court if they prefer this to a Magistrates Court.

### 3. What penalties could be awarded for offences under the F Gas Regulations?

The penalties depend on where an offence is tried. In a Magistrates Court the penalty would be a fine not exceeding £5,000, the statutory maximum, on summary conviction. There could be an unlimited fine on conviction in the Crown Court.

### 4. Who is responsible if F Gas leak checks are not carried out regularly or records not kept of refrigerant use ?

Under the EC F gas Regulation it is the responsibility of the operator to keep records. This should include separate records for each piece of equipment detailing work completed, by whom, when and why, detailing any results and follow up actions. The records must also specify quantities of refrigerant added/removed along with details of what was done with recovered refrigerant.



Many operators have previously relied on their contractors to do this for them, often resulting in the loss of information when contractors change. The obligation on operators to keep records should mean that information is not lost but kept on site or centrally by the operator.

Some refrigeration contractors have a computerised service logging system that will create the records on an ongoing basis, for use by the engineers and management to assess the condition of any equipment under contract to them, often providing copies of this system usually with an invoice to the client with invoices.

Some operators insist on a log book being kept on site where all tasks are logged and signed for by the visiting engineer. This is a reasonable request as the Regulation states that the 'records shall be made available on request to the competent authority and to the Commission'. If the records are kept elsewhere, they are still required to be accessible and available 'on request'

### **5. What legal obligations does a RAC contractor have under the Regulations?**

RAC contractors obligations under the EC F gas Regulation include:

- Employing qualified personnel for relevant activities
- Gaining a company certificate if they employ certified personnel
- Check newly installed equipment for leakage immediately after installation
- Label any new system placed on the market with information about the type and quantity of HFC refrigerant it contains.
- Return any containers used to fill equipment so that any remaining gas can be recovered and if appropriate they can be re-used.
- Keep records of relevant personnel qualifications & training, any imports & exports outside EC, recovery of HCFCs that you intend to resell after 1st Jan 2010 (no details are currently available on the format of these records), records for any of your own in-house RAC systems.

### **6. Where can I get more information about enforcement and penalties?**

F Gas support published a range of free detailed guidance notes at [www.defra.gov.uk/fgas](http://www.defra.gov.uk/fgas). The following will be most helpful on these topics:

- RAC 3 - Key Obligations including definitions of hermetic systems
- RAC 5 - Certification of personnel and companies
- RAC 6 - For practical guidance (for more details on system labeling)