

2006 No. 274

EUROPEAN COMMUNITIES

ROAD TRAFFIC AND VEHICLES

**The Passenger and Goods Vehicles (Recording Equipment)
(Amendment) Regulations (Northern Ireland) 2006**

Made - - - - - 21st June 2006
Coming into operation - - - - - 31st July 2006

The Department of the Environment makes the following Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(a), and being a department designated(b) in relation to the regulation and supervision of the working conditions of persons engaged in road transport and the regulation of the type, description, construction or equipment of vehicles:

Citation and commencement

1. These Regulations may be cited as the Passenger and Goods Vehicles (Recording Equipment) (Amendment) Regulations (Northern Ireland) 2006 and shall come into operation on 31st July 2006.

Interpretation

2.—(1) In these Regulations “the principal Regulations” means the Passenger and Goods Vehicles (Recording Equipment) Regulations (Northern Ireland) 1996(c).

(2) The Interpretation Act (Northern Ireland) 1954(d) shall apply to these Regulations as it applies to an Act of the Assembly.

Amendment to the Passenger and Goods Vehicles (Recording Equipment) Regulations (Northern Ireland) 1996

3.—(1) Regulation 2(1) (interpretation) of the principal Regulations shall be amended as follows.

(2) There shall be inserted the following definitions in the appropriate places—

““analogue recording equipment” means recording equipment that complies with Annex I to the Community Recording Equipment Regulation;

“digital recording equipment” means recording equipment that complies with Annex IB to the Community Recording Equipment Regulation;

(a) 1972 c.68

(b) S.Is.1972/1811 and 1975/1707

(c) S.R. 1996 No.145; relevant amending Regulations are S.R. 1998 No.270, S.R. 2005 No.325 and S.R. 2005 No.441

(d) 1954 c.33 (N.I.)

“electronic copy” of data means a copy of data stored electronically together with the data’s digital signature (within the meaning of that Annex);

“hard copy” in relation to data stored electronically means a printed out version of the data;

“the relevant Annexes” to the Community Recording Equipment Regulation —

- (a) in the case of a vehicle put into service for the first time before 1st May 2006 means—
 - (i) either Annex I or Annex IB to that Regulation; and
 - (ii) Annex II to that Regulation; and
- (b) in the case of a vehicle put into service for the first time on or after that date means—
 - (i) Annex IB to that Regulation; and
 - (ii) Annex II to that Regulation.

“vehicle examiner” means an examiner appointed under Article 74 of the Road Traffic (Northern Ireland) Order 1995(a).”.

(3) In the definition of “the Community Recording Equipment Regulation”—

- (a) at the end of paragraph (h) the word “and” shall be omitted;
- (b) for paragraph (i) there shall be substituted the following—
 - “(i) Regulation (EC) 561/2006(b); and
 - (j) any regulations adopted in accordance with the procedure laid down in Article 18 of the Community Recording Equipment Regulation making amendments necessary to adapt the Annexes to that Regulation to technical progress;”.

4.—(1) Regulation 3 (installation and use of recording equipment) of the principal Regulations shall be amended as follows.

(2) In paragraph (1)(a), in head (ii) for “Annexes I and II” there shall be substituted “the relevant Annexes”.

(3) In paragraph (3), for “Annexes I and II” there shall be substituted “the relevant Annexes”.

(4) After paragraph (4) insert—

“(4A) A person shall not be liable to be convicted under paragraph (1)(a) by reason of the driver card not being used with the recording equipment installed in the vehicle in question if he proves to the court that—

- (a) the driver card was damaged, malfunctioning, lost or stolen;
- (b) the requirements of Article 16(2) and, apart from the last paragraph thereof, Article 16(3) of the Community Recording Equipment Regulation were being complied with; and
- (c) in all other respects the recording equipment was being used as provided by Articles 13 to 15 of that Regulation.”.

5. In regulation 6(2) (records etc. produced by equipment may be used in evidence) of the principal regulations, after “record sheet” insert “or print out”.

6. For regulation 7 of the principal Regulations there shall be substituted the following regulation—

“Inspection of recording equipment and record sheets

7.—(1) A vehicle examiner may, on production if so required of his authority—

- (a) at any time, enter the vehicle and inspect the vehicle and recording equipment, and inspect and copy any record sheet on the vehicle on which a record has been produced by means of that equipment or on which entries have been made; and

(a) S.I. 1995 No. 2994 (N.I.18)

(b) O.J. No. L102, 11.04.06, p. 12.

(b) at any time which is reasonable having regard to the circumstances of the case, enter any premises on which he has reason to believe that such a vehicle is kept or that any such record sheets are to be found, and inspect any such vehicle, and inspect and copy any such record sheets which he finds there.

(2) For the purpose of exercising his powers under paragraph (1)(a), a vehicle examiner may detain the vehicle in question during such time as is required for the exercise of that power.

(3) Any person who obstructs a vehicle examiner in the exercise of his powers under paragraph (1) or (2), shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(4) Any person who makes, or causes to be made, any record or entry on a record sheet kept or carried for the purposes of the Community Recording Equipment Regulation or regulation 3 which he knows to be false or, with intent to deceive, alters or causes to be altered any such record or entry, shall be liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum;

(b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine or both.

(5) If a vehicle examiner has reason to believe that an offence under paragraph (4) has been committed in respect of any record sheet inspected by him under this regulation, he may seize that record sheet; and where a record sheet is seized as foresaid and within 6 months of the date on which it was seized no person has been charged since that date with an offence in relation to that record sheet under that paragraph and the record sheet has not been returned to the person from whom it was taken, a magistrates' court shall, on application made for the purpose by that person, or by a vehicle examiner, make such order respecting the disposal of the record sheet and award such costs as the justice of the case may require.

(6) The powers conferred by these Regulations on a vehicle examiner shall be exercisable also by a constable.

(7) In this regulation references to the inspection and copying of any record produced by recording equipment include references to the application to the record of any process for eliciting the information recorded thereby and to take down the information elicited from it.

(8) Paragraphs (1) to (5) and (7) do not apply in respect of vehicles to which regulation 3 applies.”

7.—(1) After regulation 7 of the principal Regulations there shall be inserted—

“Inspection of records and other documents and data relating to recording equipment

7A—(1) A vehicle examiner may, on production if so required of his authority, require any person to produce, and permit him to inspect, remove, retain and copy—

(a) if that person is the owner of a vehicle to which regulation 3 applies, any document of that person which the vehicle examiner may reasonably require to inspect for the purpose of ascertaining whether the provisions of these Regulations have been complied with;

(b) any record sheet or hard copy of electronically stored data which that person is required by the Community Recording Equipment Regulation to retain or to be able to produce;

(c) any book, register or other document required by the applicable Community rules or which the vehicle examiner may reasonably require to inspect for the purpose of ascertaining whether the requirements of the applicable Community rules have been complied with.

(2) A vehicle examiner may, on production if so required of his authority, require any person—

- (a) to produce and permit him to inspect any driver card which that person is required by Article 15(7) of the Community Recording Equipment Regulation to be able to produce; and
- (b) to permit the vehicle examiner to copy the data stored on the driver card (and to remove temporarily the driver card for the purpose of doing so) and to remove and retain the copy.

(3) If the vehicle examiner so requires by notice in writing, anything that a person is required to produce under paragraph (1) or (2) shall, instead of being produced when the requirement under those paragraphs is imposed, be produced at an address specified in the notice, within such time (not being less than ten days) from the service of the notice as is so specified.

(4) Where a notice is served under paragraph (3) the vehicle examiner may exercise his powers under this regulation at the place specified in the notice.

(5) In these Regulations any reference to copying data stored on a driver card or on digital recording equipment includes a reference to making a hard copy or an electronic copy of the data (and any reference to copies of data shall be construed accordingly).

Power of entry

7B—(1) A vehicle examiner may, on production if so required of his authority, at any time enter any vehicle to which regulation 3 applies in order to inspect that vehicle and any recording equipment in or on it.

(2) Where any vehicle examiner enters any vehicle under paragraph (1) he may—

- (a) inspect, remove, retain and copy any record sheet that he finds there on which a record has been produced by means of analogue recording equipment or on which an entry has been made;
- (b) inspect, remove, retain and copy any hard copy of data that he finds there which was stored on any digital recording equipment or on a driver card;
- (c) inspect, remove, retain and copy any other document that he finds there which the vehicle examiner may reasonably require to inspect for the purpose of ascertaining whether the requirements of the applicable Community rules have been complied with;
- (d) inspect any driver card that he finds there, copy the data stored on it (using any digital recording equipment in or on the vehicle or temporarily removing the driver card for the purpose of copying the data) and remove and retain the copy;
- (e) copy data stored on any digital recording equipment that is in or on the vehicle and remove and retain that copy;
- (f) inspect any recording equipment that is in or on the vehicle and, if necessary for the purposes of the inspection, remove it from the vehicle;
- (g) retain the recording equipment as evidence if he finds that it has been interfered with;
- (h) inspect the vehicle for the purpose of ascertaining whether there is in or on the vehicle any device which is capable of interfering with the proper operation of any recording equipment in or on the vehicle;
- (i) inspect anything in or on the vehicle which he believes is such a device and, if necessary for the purpose of the inspection, remove it from the vehicle;
- (j) retain the device as evidence if he finds that it is capable of interfering with the proper operation of the recording equipment.

(3) Where any vehicle examiner or any constable enters any vehicle under paragraph (1), he may, if he has reason to believe that—

- (a) any recording equipment in or on the vehicle has been interfered with so as to affect its proper operation; or

- (b) there is in or on the vehicle any device which is capable of interfering with the proper operation of any recording equipment in or on the vehicle,

require the driver or operator of the vehicle to take it to an address specified by the vehicle examiner or constable for the purposes of enabling an inspection of the recording equipment, the vehicle, or any device in or on it to be carried out.

(4) A vehicle examiner may, on production if so required of his authority, at any time which is reasonable having regard to the circumstances of the case, enter any premises on which he has reason to believe that—

- (a) a vehicle to which regulation 3 applies is kept;
- (b) any such document as is mentioned in regulation 7A(1) is to be found;
- (c) any driver card or copy of data previously stored on a driver card or on recording equipment is to be found; or
- (d) any digital recording equipment is to be found.

(5) Where any vehicle examiner enters any premises under paragraph (4) he may—

- (a) inspect any vehicle which he finds there and to which regulation 3 applies;
- (b) inspect, remove, retain and copy any such document as is mentioned in regulation 7A(1) that he finds there;
- (c) make a copy of any such copy of data as is mentioned in paragraph (4)(c) that he finds there, and remove and retain the copies he makes;
- (d) inspect any driver card that he finds there, copy the data stored on it (using any digital recording equipment on the premises or temporarily removing the driver card for the purpose of copying the data) and remove and retain the copy;
- (e) copy data stored on any digital recording equipment that he finds there and remove and retain that copy;
- (f) inspect any recording equipment that he finds there and, if necessary for the purposes of the inspection, remove it from the premises;
- (g) retain any such recording equipment as evidence if he finds that it has been interfered with;
- (h) inspect anything that he finds there which he believes is a device capable of interfering with the proper operation of any recording equipment and, if necessary for the purpose of the inspection, remove it from the premises;
- (i) retain any such device as evidence if he finds that it is capable of interfering with the proper operation of recording equipment.

(6) For the purposes of—

- (a) exercising any of his powers under this regulation in relation to a vehicle or anything found in or on a vehicle; or
- (b) exercising any of his powers under regulation 7A(1) or (2), in respect of a document or driver card carried by the driver of a vehicle,

a vehicle examiner may detain the vehicle during such time as is required for the exercise of that power.

(7) If—

- (a) at the time when a requirement is imposed under paragraph (3) the vehicle is more than five miles from the address specified by the vehicle examiner or constable to which the vehicle is to be taken; and
- (b) the Community Recording Equipment Regulation is found not to have been contravened in relation to the recording equipment, the vehicle or any device in or on it,

the relevant person must pay, in respect of loss occasioned, such amount as in default of agreement may be determined by a single arbitrator agreed upon by the parties or, in default of agreement, appointed by the Department.

(8) In paragraph (7) “relevant person” means—

- (a) if the requirement was imposed by a vehicle examiner, the Department, and
- (b) if the requirement was imposed by a constable, the Chief Constable.

Regulations 7A and 7B: supplementary

7C—(1) Where a vehicle examiner makes any hard copy of data stored on a driver card or on recording equipment under regulations 7A or 7B he may require a person to sign the hard copy (if necessary with manual corrections) to confirm that it is a true and complete record of his activities during the period covered by it.

(2) Any record sheet, book, register, other document or any electronic copy of data that is retained by a vehicle examiner under regulation 7A or 7B may only be retained—

- (a) for six months; and
- (b) if it is required as evidence in any proceedings, any further period during which it is so required.

(3) In regulations 7A and 7B, references to the inspection and copying of any record produced by means of equipment in or on a vehicle include references to the application to the record of any process for eliciting the information recorded by it and to taking down the information elicited from it.

Offence of failing to comply with requirements or obstructing a vehicle examiner

7D—(1) A person commits an offence if he—

- (a) fails without reasonable excuse to comply with any requirement imposed on him by a vehicle examiner under any of the regulations 7A to 7C; or
- (b) obstructs a vehicle examiner in the exercise of his powers under regulation 7B or 7F.

(2) A person guilty of an offence under paragraph (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Offences: false records and data etc.

7E—(1) A person commits an offence—

- (a) if he makes, or causes or permits to be made, a relevant record or entry which he knows to be false;
- (b) if, with intent to deceive, he alters, or causes or permits to be altered, a relevant record or entry;
- (c) if he destroys or suppresses, or causes or permits to be destroyed or suppressed, a relevant record or entry; or
- (d) if he fails without reasonable excuse to make a relevant record or entry, or causes or permits such a failure.

(2) For the purposes of paragraph (1) a “relevant record or entry” is—

- (a) any record or entry required to be made by or for the purposes of the Community Recording Equipment Regulation or regulation 3;
- (b) any entry in a book, register or document kept or carried for the purposes of the applicable Community rules.

(3) A person commits an offence—

- (a) if he records or causes or permits to be recorded any data which he knows to be false on recording equipment or on a driver card;
 - (b) if he records or causes or permits to be recorded any data which he knows to be false on any hard copy of data previously stored on recording equipment or on a driver card;
 - (c) if, with intent to deceive, he alters, or causes or permits to be altered, any data stored on recording equipment or on a driver card or appearing on any copy of data previously so stored;
 - (d) if, with intent to deceive, he produces anything falsely purporting to be a hard copy of data stored on recording equipment or on a driver card;
 - (e) if he destroys or suppresses, or causes or permits to be destroyed or suppressed, any data stored in compliance with the requirements of the applicable Community rules on recording equipment or on a driver card; or
 - (f) if he fails without reasonable excuse to record any data on recording equipment or on a driver card, or causes or permits such a failure.
- (4) A person guilty of an offence under paragraph (1) or (3) consisting otherwise than in permitting an act or omission is liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum; or
 - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or to both.
- (5) A person guilty of an offence under paragraph (1) or (3) consisting in permitting an act or omission is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (6) A person commits an offence if he produces, supplies or installs any device—
- (a) that is designed to interfere with the proper operation of any recording equipment; or
 - (b) that is designed to enable the falsification, alteration, destruction or suppression of data stored in compliance with the requirements of the applicable Community rules on any recording equipment or driver card.
- (7) A person commits an offence if without reasonable excuse he provides information which would assist other persons in producing any such device.
- (8) A person shall not be liable to be convicted under paragraph (6) or (7) if he proves to the court that he produced, supplied or installed the device, or provided information to assist a person in producing a device, for use in connection with the enforcement of the provisions of these regulations.
- (9) A person guilty of an offence under paragraph (6) or (7) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (10) For the purposes of this regulation, a person shall be taken to permit an act or omission if he is, or ought reasonably to be, aware of the act or omission, or of it being a likelihood, and takes no steps to prevent it.

Power to seize documents

- 7F**—(1) If a vehicle examiner has reason to believe that an offence under regulation 7E has been committed in respect of any document inspected by him under regulation 7A or 7B, he may seize that document.
- (2) Where a document is so seized, a magistrates' court shall, on an application made for the purpose by that person or by a vehicle examiner, make such order respecting the disposal of the document and award such costs as the justice of the case may require if—

- (a) within six months of the date on which it was seized no person has been charged since that date with an offence under regulation 7E in relation to that document;
and
- (b) the document has not been returned to the person from whom it was taken.”.

Sealed with the Official Seal of the Department of the Environment on 21st June 2006.



Maggie Smith
A senior officer of the
Department of the Environment

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations modify the provisions of the Passenger and Goods Vehicles (Recording Equipment) Regulations (Northern Ireland) 1996 to take account of the new digital tachograph provided for by Council Regulation (EC) No. 2135/98, which amended Regulation (EEC) No. 3821/85 on recording equipment in road transport. A digital tachograph is one which complies with Annex IB to the amended Regulation.

They add, in new regulations 7A to 7F, more detailed enforcement provisions which apply where tachographs, whether analogue or digital, are used or documents are required under Community Rules. The enforcement powers are conferred on vehicle examiners and police constables.

Under new regulation 7A vehicle examiners and police constables may require the production of records and the driver cards used with digital tachographs. They may copy the electronic data.

New regulation 7B confers powers of entry on vehicle examiners and police constables. They may enter vehicles required to be fitted with tachographs, inspect equipment and other things on and in the vehicle, copy data and retain evidence. They may also enter premises. A time limit of six months is imposed by the new regulation 7C on the retention powers, unless the retained items are required for proceedings.

Under new regulation 7D it is an offence not to comply with a vehicle examiner's requirements or to obstruct him. The maximum penalty is level 5 on the standard scale.

New regulation 7E provides for offences in respect of false records and data, destruction of records and data and failure to make relevant records. The offences extend to those causing or permitting the actions as well as those actually doing them. The maximum penalty on summary conviction is the statutory maximum; on conviction on indictment it is two years' imprisonment or a fine, or both. It is also an offence to produce, or to facilitate the production of, any device that is designed to interfere with the proper operation of recording equipment or would enable the falsification etc. of data. The maximum penalty is level 5 on the standard scale.

The Regulations also amend the definition of "the Community Recording Equipment Regulation" to include reference to Regulation (EC) 561/2006.

A Regulatory Impact Assessment has been produced and may be obtained from the Department of the Environment's website at www.doeni.gov.uk/roadsafety.