

2010 No. 23

EUROPEAN COMMUNITIES

ROAD TRAFFIC AND VEHICLES

**The Passenger and Goods Vehicles (Recording Equipment)
(Downloading and Retention of Data) Regulations (Northern
Ireland) 2010**

Made - - - - *28th January 2010*

Coming into operation - *30th April 2010*

The Department of the Environment makes the following Regulations in exercise of the powers conferred by section 2(2) of, and paragraph 1A of Schedule 2 to, the European Communities Act 1972(a).

The Department of the Environment is designated(b) for the purposes of section 2(2) of the European Communities Act in relation to the regulation of the type, description, construction or equipment of vehicles and the regulation and supervision of the working conditions of persons engaged in road transport.

It appears to the Department of the Environment that it is necessary or expedient that references to Community instruments in these Regulations be construed as references to those instruments as amended from time to time.

Citation and commencement

1.— These Regulations may be cited as the Passenger and Goods Vehicles (Recording Equipment) (Downloading and Retention of Data) Regulations (Northern Ireland) 2010 and shall come into operation on 30th April 2010.

Interpretation

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

(a) 1972 c.68. Section 2(2) was amended by section 27(1) of the Legislative and Regulatory Reform Act 2006 (c.51) (in these footnotes the “2006 Act”) paragraph 1A of Schedule 2 was inserted by section 28 of the 2006 Act and paragraph 2(2) was amended by section 27(2) of the 2006 Act.

(b) S.I. 1972 No. 1811 and S.I. 1975 No. 1707

(c) S.R. 1996 No.145 as amended by Regulations S.R. 1998 No.270, S.R. 2005 No.325, S.R. 2005 No. 441, S.R. 2005 No.274 and S.R. 2006 No. 574

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

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

3. In regulation 2(1) of the principal Regulations (interpretation)—

(a) after the definition of “analogue recording equipment” insert—

““ the Community Drivers’ Hours Regulation” means Regulation No (EC) 561/2006 of the European Parliament and of the Council^(b) as amended from time to time;”;

(b) after the definition of “tachograph card“ insert—

““transport undertaking” has the meaning given in the Community Drivers’ Hours Regulation;”.

4. In regulation 3(7) of the principal Regulations (installation and use of recording equipment) for “5 and 6” substitute “5, 6 and 6A to 6E”.

5. Regulation 4 of the principal Regulations is revoked.

6. After regulation 6 of the principal Regulations insert—

“Delivery of record sheets and other documents

6A.—(1) This regulation applies to the following documents—

(a) record sheets;

(b) manual records and printouts made in accordance with the Community Recording Equipment Regulation.

(2) If such a document relates to a person in his capacity as the driver of a vehicle to which regulation 3 applies, he must before the end of the delivery period deliver the document to the transport undertaking to whose orders he was subject in driving the vehicle.

(3) The delivery period is the period of 42 days starting on the day after the latest date to which the document relates.

(4) A person who without reasonable excuse fails to comply with paragraph (2) is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(5) If a transport undertaking fails without reasonable excuse to secure that each driver subject to its orders complies with paragraph (2), in respect of documents relating to him in his capacity as such a driver, it is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(6) If a person is subject to the orders of two or more transport undertakings in driving a vehicle during a period to which a document relates—

(a) paragraph (2) has effect as if it were a requirement to deliver that document to the undertaking to whose orders he was first subject in driving the vehicle during that period;

(b) paragraph (5), in relation to that document, applies only to the undertaking to whose orders he was first subject in driving the vehicle during that period.

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

(b) O.J. No.L102, 11.04.06, p.1.

Vehicle units: downloading data

6B.—(1) This regulation applies where a transport undertaking is required by Article 10 of the Community Drivers’ Hours Regulation to ensure that data is downloaded from a vehicle unit in a vehicle.

(2) The undertaking must ensure that relevant data is downloaded from the unit not later than the end of the download period if—

- (a) it controls the use of the vehicle throughout that period, and
- (b) it uses the vehicle at some point during that period.

(3) The download period begins and ends as set out in the following table—

<i>Case</i>	<i>Download period begins</i>	<i>Download period ends</i>
1. The undertaking has not previously downloaded data from the unit under this regulation	On the first day after the commencement of this regulation on which the undertaking— (a) controls the use of the vehicle, and (b) is required by Article 10 to ensure that data is downloaded from the unit	On the earlier of— (a) the expiry of the period of 56 days starting on the first day of the download period; (b) any downloading of the data before the expiry of that period
2. The undertaking uses the vehicle during the period of 56 days starting on the day after the last downloading under this regulation	On the day after the last downloading under this regulation	
3. The undertaking does not use the vehicle during the period of 56 days starting on the day after the last downloading under this regulation	On the first day of the undertaking’s use of the vehicle after the last downloading under this regulation	

(4) The undertaking must ensure that all relevant data is downloaded from the unit—

- (a) immediately before transferring control of the use of the vehicle to another person;
- (b) without delay upon permanently removing the unit from service in the vehicle;
- (c) without delay upon becoming aware that the unit is malfunctioning;
- (d) without delay in any circumstances such that the imminent erasure of the data by the unit, in the normal course of its operations, is reasonably foreseeable.

(5) But paragraph (4)(c) does not apply if because of the malfunctioning of the unit it is impossible to download the data.

(6) For the purposes of this regulation “relevant data” means any data recorded by the vehicle unit in a vehicle, other than detailed speed data.

(7) For the purposes of this regulation and regulation 6C an undertaking controls the use of a vehicle during any period in which it may determine when, by whom and for what purpose the vehicle may be driven.

(8) In this regulation and regulations 6C to 6E, “downloaded” is to be construed in accordance with the definition of “downloading” in Annex 1B to the Community Recording Equipment Regulation.

Driver cards: downloading data

6C.—(1) This regulation applies where a transport undertaking is required by Article 10 of the Community Drivers' Hours Regulation to ensure that data is downloaded from a driver card issued to a driver.

(2) The undertaking must ensure that all data is downloaded from the card not later than the end of the download period.

(3) The download period begins and ends as set out in the following table—

<i>Case</i>	<i>Download period begins</i>	<i>Download period ends</i>
1. The undertaking has not previously downloaded data from the card under this regulation	On the first day after the commencement of this regulation on which— (a) the driver drives for the undertaking, and (b) the undertaking is required by Article 10 to ensure that data is downloaded from the card	On the earlier of— (a) the expiry of the period of 28 days starting on the first day of the download period; (b) any downloading of the data before the expiry of that period
2. The undertaking has previously downloaded data from the card under this regulation	On the first day on which the driver drives for the undertaking after the last downloading under this regulation	

(4) The undertaking must ensure that the data is downloaded from the card—

- (a) immediately before the driver ceases to be employed by the undertaking as a driver, or otherwise to carry out work for the undertaking as a driver;
- (b) without delay upon becoming aware that the card has been damaged or is malfunctioning;
- (c) without delay in any circumstances such that the imminent erasure of the data, in the normal course of use of the card, is reasonably foreseeable;
- (d) if it is not possible to do so other than by means of a vehicle unit installed in a vehicle, immediately before ceasing to control the use of that vehicle.

(5) But paragraph (4)(b) does not apply if because of the damage to the card or its malfunctioning it is impossible to download the data.

Downloading data: requirement imposed by an vehicle examiner

6D.—(1) This regulation applies where—

- (a) a vehicle examiner has reason to believe that an offence under these Regulations or under the Road Traffic Orders has been committed in respect of the use of a vehicle, and
- (b) Article 10(5) of the Community Drivers' Hours Regulation applies to a transport undertaking in respect of the vehicle unit in the vehicle or a driver card issued to a person who has driven the vehicle.

(2) The vehicle examiner may, on production if so required of his authority, require the undertaking without delay—

- (a) to download data from the vehicle unit or driver card;
- (b) to permit him to inspect or copy the downloaded data.

(3) In this regulation—

- (a) “download” is to be construed in accordance with the definition of “downloading” in Annex 1B to the Community Recording Equipment Regulation;
- (b) “the Road Traffic Orders” means the Road Traffic (Northern Ireland) Order 1981(a), the Road Traffic (Northern Ireland) Order 1995(b) and the Road Traffic Offenders (Northern Ireland) Order 1996(c).

Downloading and retaining data: offences

6E.—(1) A transport undertaking commits an offence if, without reasonable excuse, it fails to comply with regulation 6B or 6C, or with a requirement imposed under regulation 6D.

(2) A transport undertaking commits an offence if, without reasonable excuse, it fails to comply with any requirement imposed by Article 10 of the Community Drivers’ Hours Regulation in respect of the retention of data downloaded in accordance with regulation 6B to 6D.

(3) An offence under this regulation is punishable on summary conviction with a fine not exceeding level 5 on the standard scale.

Access to downloaded data

6F.—(1) A vehicle examiner may, on production if so required of his authority, require a person to make readily accessible to him, either on or from premises occupied or controlled by the person in question, that person’s retained data.

(2) Any person who without reasonable excuse fails to comply with a requirement under paragraph (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(3) For the purposes of paragraph (1), data is a person’s “retained data” if he is required by Article 10 of the Community Drivers’ Hours Regulation to retain it for at least 12 months following its recording.”.

7. After regulation 10E of the principal Regulations insert—

“Partnerships and other unincorporated associations

10F.—(1) Proceedings for an offence under these Regulations alleged to have been committed by a partnership must be brought in the name of the partnership (and not in that of any of the partners).

(2) Proceedings for an offence under these Regulations alleged to have been committed by an unincorporated association (other than a partnership) must be brought in the name of the association (and not in that of any of its members).

(3) Rules of court relating to the service of documents have effect as if the partnership or association were a body corporate.

(4) In proceedings for an offence under these Regulations brought against a partnership or an unincorporated association, section 18 of the Criminal Justice Act (Northern Ireland) 1945(d) and Schedule 4 to the Magistrates’ Courts (Northern Ireland) Order 1981 (e) apply as they do in relation to a body corporate.

(5) A fine imposed on a partnership on its conviction for an offence under these Regulations must be paid out of the partnership assets.

(a) 1981 No. 154 (N.I. 1)
 (b) 1995 No. 2994 (N.I. 18)
 (c) S.I. 1996/1320 (N.I. 10)
 (d) 1945 c.15 as amended by 1964 c.21 (NI) section 172 schedule 7, 1972 N.I. 1 Art 10 and Justice (Northern Ireland) Act 2002 c. 26 schedule 12 paragraph 1
 (e) 1981 No. 1675 (N.I. 26) as amended by

(6) A fine imposed on an unincorporated association on its conviction for an offence under these Regulations must be paid out of the funds of the association.

(7) Sub-paragraphs (1) and (2) do not affect any liability of a partner, officer or member under regulation 10G.

Offences by bodies corporate etc

10G.—(1) If an offence under these Regulations committed by a body corporate is proved—

- (a) to have been committed with the consent or connivance of an officer of the body, or
- (b) to be attributable to any neglect on the part of an officer of the body, he, as well as the body corporate, is guilty of the offence.

(2) In paragraph (1) a reference to an officer of a body includes a reference to—

- (a) a director, manager or secretary;
- (b) a person purporting to act as an officer of the body.

(3) If the affairs of a body corporate are managed by its members, paragraph (1) applies in relation to the regulations and defaults of a member in connection with his functions of management as if he were a director of the body.

(4) If an offence under these Regulations committed by a partnership is proved—

- (a) to have been committed with the consent or connivance of a partner, or
- (b) to be attributable to any neglect on the part of a partner, he, as well as the partnership, is guilty of the offence.

(5) In paragraph (4) a reference to a partner includes a reference to a person purporting to act as a partner.

(6) If an offence under these Regulations committed by an unincorporated association (other than a partnership) is proved—

- (a) to have been committed with the consent or connivance of an officer of the association, or
- (b) to be attributable to any neglect on the part of an officer of the association, he, as well as the association, is guilty of the offence.

(7) In paragraph (6) a reference to an officer of an association includes a reference to—

- (a) a member of its governing body;
- (b) a person purporting to act in the capacity of an officer of the association.”.

Amendment of the Road Traffic (Northern Ireland) Order 1981

8.—(1) The Road Traffic (Northern Ireland) Order 1981(a) is amended as follows.

(2) In Article 2(2) (interpretation) after the definition of “traffic” insert—

“transport undertaking” has the meaning given in the Community Drivers’ Hours Regulation;”.

(3) In Article 81 (offences against applicable community rules) after paragraph (1B), insert—

“(1C) If a driver who is subject to the orders of more than one transport undertaking fails, without reasonable excuse, to provide each of them with sufficient information to enable them to avoid a contravention of Chapter 2 of the Community Drivers’ Hours Regulation, he shall be guilty of an offence under this Order.”.

(a) 1981 No. 154 (N.I. 1) as amended by SR 2009 No. 91

Amendment of the Road Traffic Offenders (Northern Ireland) Order 1996

9. In Part 1 of Schedule 1 to the Road Traffic Offenders (Northern Ireland) Order 1996(a) (prosecution and punishment of offences) after the entry relating to offences under Article 81 (1B) of the Road Traffic (Northern Ireland) Order 1981 insert—

“Article 81(1C)	Contravention of requirement imposed by Chapter 2 of Regulation (EC) No 561/2006 (crews, driving times, breaks and rest periods).	Summarily.	Level 4 on the standard scale.	”.
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Sealed with the Official Seal of the Department of the Environment on 28th January 2010



Donald A Armstrong
A senior officer of the
Department of the Environment

(a) S.I. 1996/1320 (N.I. 10)

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement certain provisions of Regulation (EC) 561/2006 (OJ No L102, 11.4.2006, p.1) of the European Parliament and of the Council of 15 March 2006 (on the harmonisation of certain social legislation relating to road transport and amending Council Regulations (EEC) No 3821/85 and (EC) No 2135/98 and repealing Council Regulation (EEC) No 3820/85) which have not previously been implemented. The subject matter of the European Community legislation is drivers' hours and the equipment to be used for recording drivers' activity.

Article 15(7) of Regulation 3821/85, as amended by Article 26(4) of Regulation 561/2006, requires a driver to produce to an enforcement officer hard copies of his driving record made during the current day and the previous 28 days. *Regulation 6* inserts the new regulation 6A in to the Passenger and Goods Vehicles (Recording Equipment) Regulations (Northern Ireland) 1996 (the 1996 Regulations), requiring drivers to return paper records held by them to the transport undertaking (or undertakings) for which they have been working within 42 days of the records having been created.

Regulation 6 also implements Article 10(5)(a) of Regulation 561/2006 by inserting new provisions into the 1996 Regulations, as follows—

new regulations 6B and 6C require transport undertakings to download data held electronically on a vehicle unit and a driver card whenever that is necessary to ensure that the data is not overwritten or otherwise lost to the undertaking and in any event before the expiration of specific periods according to the data concerned, namely—

in the case of data stored on the vehicle unit other than detailed speed data, a period of 56 days computed in accordance with regulation 6B(3);

in the case of data stored on the driver card, a period of 28 days computed in accordance with regulation 6C(3);

new regulation 6D requires transport undertakings to download any data held electronically on a vehicle unit or driver card where an enforcement officer has reason to believe that an offence under the Road Traffic (Northern Ireland) Order 1981 has been committed;

new regulations 6E and 6F create offences of failing to download or to retain data and provide for the making of data which has been downloaded accessible to enforcement officers.

Regulation 7 inserts new regulations 10F and 10G into the 1996 Regulations which make provision in respect of—

criminal proceedings against transport undertakings which are unincorporated bodies;

offences committed by a corporate or unincorporated body with the consent or connivance of a director or other officer of that body.

Regulation 8 implements article 20(3) of Regulation 561/2006 by making it an offence if a driver who works for two or more undertakings fails to provide each of them with sufficient information to enable them to discharge their obligations in relation to the drivers' hours.

Regulation 9 inserts into the Road Traffic Offenders (Northern Ireland) Order 1996 the penalty for the offence of contravention of requirement imposed by Chapter 2 of Regulation (EC) No 561/2006 (crews, driving times, breaks and rest periods).

A partial Regulatory Impact Assessment of the effect this instrument will have on costs for the business and voluntary sectors has been produced and is available from Road Safety Policy Branch, Clarence Court, 10-18 Adelaide Street, Belfast BT2 8GB.

A Transposition Note has been prepared and is available from the above address.

A copy of Council Regulation (EC) 561/2006 may be obtained from the Office of Public Sector Information at <http://www.opsi.gov.uk>. The Official Journal of the EU may be accessed via the website of the European Union at <http://europa.eu.int/eur-lex> .

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