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## 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. Section 97A of the Transport Act 1968 ("the 1968 Act") conflicts with article 15(7) as amended as it requires drivers to return such records to their employers within 21 days making it impossible for them to comply with the new requirement. *Regulations 2 and 4(c)* therefore repeal section 97A of the 1968 Act and replace it with a new provision (section 97C) 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 2* implements article 10(5)(a) of Regulation 561/2006 by inserting new provisions into the 1968 Act, as follows—

- new sections 97D and 97E 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 section 97D(3);
  - in the case of data stored on the driver card, a period of 28 days computed in accordance with section 97E(3);
- new section 97F 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 Regulation Act 1984, the Road Traffic Act 1988, the Road Traffic Offenders Act 1988 or Part 6 of the 1968 Act has been committed;
- new sections 97G and 97H 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 3* inserts new sections 102B and 102C into the 1968 Act 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.

*Paragraphs (a), (b) and (d) of regulation 4* implement 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 and provide for consequential amendments to definitions in the 1968 Act.

New section 97G is inserted into the 1968 Act under the powers of section 2(2) of the European Communities Act 1972.

**Draft Legislation:** This is a draft item of legislation. This draft has since been made as a UK Statutory Instrument: *The Passenger and Goods Vehicles (Recording Equipment) (Downloading and Retention of Data) Regulations 2008 No. 198*

A full 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 the Freight and Logistics Division, Department for Transport, Zone 2/12 Great Minister House, 76 Marsham Street, London SW1P 4DR and may be accessed on the Department's website at [www.dft.gov.uk](http://www.dft.gov.uk). A copy has been placed in the library of each House of Parliament.

A Transposition Note is available and may be obtained or accessed as above.

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