
STATUTORY INSTRUMENTS

2005 No. 1904

ROAD TRAFFIC

**The Passenger and Goods Vehicles
(Recording Equipment) Regulations 2005**

<i>Made</i>	- - - -	<i>9th July 2005</i>
<i>Laid before Parliament</i>		<i>13th July 2005</i>
<i>Coming into force</i>	- -	<i>5th August 2005</i>

The Secretary of State for Transport, being a Minister designated(1) for the purpose of section 2(2) of the European Communities Act 1972(2) 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, in exercise of the powers conferred by that section, hereby makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Passenger and Goods Vehicles (Recording Equipment) Regulations 2005 and shall come into force on 5th August 2005.

(2) In these Regulations “the 1968 Act” means the Transport Act 1968(3).

Amendments of the Transport Act 1968

2.—(1) Section 97 of the 1968 Act (installation and use of recording equipment) is amended as follows.

(2) In subsection (1)(a)(ii), for “Annexes I and II” substitute “the relevant Annexes”.

(3) In subsection (2), for “Annexes I and II of” substitute “the relevant Annexes to”.

(4) After subsection (4) insert—

(1) S.I.1972/1811 and 1975/1707.

(2) 1972 c. 68.

(3) 1968 c. 73; section 97 was substituted by S.I.1979/1746 and amended by S.I.1984/144, 1986/1457, 1989/2121 and 1996/941; section 97B was inserted by S.I.1979/1746; section 98(2A) was inserted by S.I.1979/1746; section 99 was amended by the European Communities Act 1972 (c. 68), section 4 and Schedule 4 paragraph 9(2); the Road Traffic (Drivers' Ages and Hours of Work) Act 1976 (c. 3), section 2(1); the Magistrates Courts Act 1980 (c. 43) section 32; the Criminal Justice Act 1982 (c. 48), sections 38 and 46; the Transport Act 1985 (c. 67), section 3(5) and Schedule 2, Part 2, paragraph 1; the Road Traffic Act 1991 (c. 27), section 48, Schedule 4, paragraph 2; and S.I.1979/1476 and 1986/1457; section 99A was inserted by the Transport Act 2000 (c. 38), section 266; section 101 was amended by the Road Traffic (Drivers' Ages and Hours of Work) Act 1976 (c. 3), section 2(1); and there are amendments to section 103 which are not relevant to these Regulations.

“(4A) A person shall not be liable to be convicted under subsection (1)(a) of this section 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) Subsection (7) is amended as follows.

(6) Omit the word “and” before paragraph (c).

(7) In the definition of “the Community Recording Equipment Regulation”, after paragraph (c) insert—

- “(d) Commission Regulation (EC) 1056/97(4);
- (e) Article 1 of Commission Regulation (EC) 2135/98(5);
- (f) Commission Regulation (EC) 1360/2002(6);
- (g) Commission Regulation (EC) 1882/2003(7);
- (h) Commission Regulation (EC) 432/2004(8); and
- (i) any regulations adopted in accordance with the procedure laid down in Article 18 to the Community Recording Equipment Regulation making amendments necessary to adapt the Annexes to that Regulation to technical progress;”.

(8) Insert at the end—

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

- (a) either Annex I or Annex IB to that Regulation; and
- (b) Annex II to that Regulation.”.

3. In section 97B(2) of the 1968 Act (records etc. produced by equipment may be used in evidence), after “record sheet” insert “or print out”.

4. In section 98(2A) of the 1968 Act (written records), for “in relation to which subsection (1) (b) of that section has come into force” substitute “which is installed with recording equipment complying with the relevant Annexes (within the meaning of that section)”.

5.—(1) Section 99 of the 1968 Act (inspection of records and other documents) is amended as follows.

(2) In subsection (1)—

- (a) omit paragraph (bb),
- (b) omit paragraph (d), and
- (c) omit “record sheet,”.

(3) In subsection (3), omit “or (d)”.

(4) O.J.No.L154, 12.06.97, p.21.

(5) O.J. No.L274, 09.10.98, p.1.

(6) O.J. No.L207, 05.08.02, p.1.

(7) O.J. No.L284, 31.10.03, p.1.

(8) O.J. No.L071, 10.03.04, p.3.

(4) In subsection (5), omit “any record or entry on a record sheet kept or carried for the purposes of the Community Recording Equipment Regulation or section 97 of this Act or” and “or the applicable Community rules”.

(5) In subsection (8)—

- (a) for “In this section” substitute “In this Part of this Act”, and
- (b) for “of this section” substitute “of this Part”.

(6) In subsection (9), for “this section on an officer as defined in subsection (8) of this section” substitute “this Part of this Act on an officer”.

(7) In subsection (10), for “equipment installed for the purposes of section 97 of this Act” substitute “recording equipment installed”.

(8) After subsection (10) insert—

“(11) Subsections (1) to (7) and (10) do not apply in respect of vehicles to which section 97 of this Act applies.”.

6. After section 99 of the 1968 Act insert—

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

99ZA.—(1) An officer 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 section 97 applies, any document of that person which the officer may reasonably require to inspect for the purpose of ascertaining whether the provisions of this Part of this Act 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 officer may reasonably require to inspect for the purpose of ascertaining whether the requirements of the applicable Community rules have been complied with.

(2) An officer 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 officer 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 officer so requires by notice in writing, anything that a person is required to produce under subsection (1) or (2) of this section shall, instead of being produced when the requirement under those subsections 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 subsection (3) of this section, the officer may exercise his powers under this section at the place specified in the notice.

(5) In this Part of this Act 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).

(6) In this Part of this Act—

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

“driver card” has the meaning given in that Annex;

“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.

99ZB Power of entry

(1) An officer may, on production if so required of his authority, at any time enter any vehicle to which section 97 of this Act applies in order to inspect that vehicle and any recording equipment in or on it.

(2) Where any officer enters any vehicle under subsection (1) of this section 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 officer 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 officer who is an examiner appointed under section 66A of the Road Traffic Act 1988, or any constable, enters any vehicle under subsection (1) of this section, 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 officer 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) An officer 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 section 97 of this Act applies is kept;
- (b) any such document as is mentioned in section 99ZA(1) of this Act 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 officer enters any premises under subsection (4) of this section he may—

- (a) inspect any vehicle which he finds there and to which section 97 of this Act applies;
- (b) inspect, remove, retain and copy any such document as is mentioned in section 99ZA(1) of this Act that he finds there;
- (c) make a copy of any such copy of data as is mentioned in subsection (4)(c) of this section 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 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 section in relation to a vehicle or anything found in or on a vehicle, or
- (b) exercising any of his powers under section 99ZA(1) or (2) of this Act in respect of a document or driver card carried by the driver of a vehicle,

an officer 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 subsection (3) of this section the vehicle is more than five miles from the address specified by the officer 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 (in Scotland, arbiter) agreed upon by the parties or, in default of agreement, appointed by the Secretary of State.

(8) In subsection (7) of this section “relevant person” means—

- (a) if the requirement was imposed by an examiner appointed under section 66A of the Road Traffic Act 1988, the Secretary of State, and
- (b) if the requirement was imposed by a constable, the chief officer of police for the police area in which the requirement was imposed.

(9) In this Part of this Act “analogue recording equipment” means recording equipment that complies with Annex I to the Community Recording Equipment Regulation.

99ZC Sections 99ZA and 99ZB: supplementary

(1) Where an officer makes any hard copy of data stored on a driver card or on recording equipment under section 99ZA or 99ZB of this Act 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 an officer under section 99ZA or 99ZB of this Act 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 sections 99ZA and 99ZB of this Act 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.

99ZD Offence of failing to comply with requirements or obstructing an officer

(1) A person commits an offence if he—

- (a) fails without reasonable excuse to comply with any requirement imposed on him by an officer under any of sections 99ZA to 99ZC of this Act; or
- (b) obstructs an officer in the exercise of his powers under section 99ZB or 99ZF of this Act.

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

99ZE Offences: false records and data etc.

(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 subsection (1) of this section 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 section 97 of this Act; or
 - (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 subsection (1) or (3) of this section 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 subsection (1) or (3) of this section 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 requirements of the applicable Community Rules on any recording equipment or driver’s 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 subsection (6) or (7) of this section 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 this Part of this Act.
- (9) A person guilty of an offence under subsection (6) or (7) of this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (10) For the purposes of this section, 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.

99ZF Power to seize documents

(1) If an officer has reason to believe that an offence under section 99ZE of this Act has been committed in respect of any document inspected by him under section 99ZA or 99ZB of this Act, 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 an officer, 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 section 99ZE of this Act in relation to that document; and
- (b) the document has not been returned to the person from whom it was taken.

(3) Any proceedings in Scotland under subsection (2) of this section shall be taken by way of summary application in the sheriff court.

In the application of that subsection to Scotland the reference to costs shall be construed as a reference to expenses.”.

7.—(1) Section 99A(1) of the 1968 Act (power to prohibit driving of vehicle) is amended as follows.

(2) In paragraph (a) –

- (a) after “section 99” insert “or under section 99ZB”, and
- (b) for “that section” substitute “section 99 or under any of sections 99ZA to 99ZC of this Act”.

(3) In paragraph (c), after “99(5)” insert “or section 99ZE”.

8. In section 103(1) of the 1968 Act (interpretation), insert the following definitions at the appropriate places—

- ““analogue recording equipment” has the meaning given by section 99ZB(9) of this Act;”;
- ““copying” and “copies”, in relation to data stored on a driver card or digital recording equipment, is to be construed in accordance with section 99ZA(5) of this Act;”;
- ““digital recording equipment” has the meaning given by section 99ZA(6) of this Act;”;
- ““driver card” has the meaning given by section 99ZA(6) of this Act;”;
- ““electronic copy” of data has the meaning given by section 99ZA(6) of this Act;”;
- ““hard copy” in relation to data stored electronically has the meaning given by section 99ZA(6) of this Act;”;
- ““officer” has the meaning given by section 99(8) of this Act;”.

Amendments of the Road Traffic (Foreign Vehicles) Act 1972

9.—(1) In Schedule 1 to the Road Traffic (Foreign Vehicles) Act 1972(9), the entry relating to section 99 of the 1968 Act is amended as follows.

(2) In the first column, after “99” insert “and sections 99ZA to 99ZC”.

(3) In the second column—

- (a) before “recording equipment” insert “driver cards and”, and
- (b) for “and to inspect” substitute “and to copy data recorded on such cards or equipment or to inspect”.

Signed by authority of the Secretary of State for Transport

9th July 2005

S J Ladyman
Minister of State
Department for Transport

EXPLANATORY NOTE

(This note is not part of these Regulations)

These Regulations amend the provisions of Part VI of the Transport Act 1968 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 also make changes to the enforcement regime, which applies to both analogue tachographs and digital tachographs.

They add, in new sections 99ZA to 99ZF, 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 officers, who are examiners from the Vehicle and Operator Services Agency or police.

Under new section 99ZA officers may require the production of records and the driver cards used with digital tachographs. They may copy the electronic data.

New section 99ZB confers powers of entry on officers. 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 new section 99ZC on the retention powers, unless the retained items are required for proceedings.

Under new section 99ZD it is an offence not to comply with an officer's requirements or obstruct him. The maximum penalty is level 5 on the standard scale.

New section 99ZE 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.

A Regulatory Impact Assessment has been produced and a copy placed in the library of both Houses of Parliament. Copies may be obtained from the Department for Transport, Great Minster House, 76 Marsham Street, London SW1P 4DR. Alternatively copies can be obtained from the Department's website which is at ww.dft.gov.uk.