

1976 No. 375

## EUROPEAN COMMUNITIES

The Carriage of Goods (Prohibition of Discrimination) Regulations  
(Northern Ireland) 1976*Made* . . . . . 8th December 1976*Coming into operation* . . . . . 1st February 1977

The Department of the Environment, as the designated Department under the European Communities (Designation) Order 1972(a), in exercise of the powers conferred on it by Section 2 of the European Communities Act 1972(b) and of all other powers enabling it in that behalf, hereby makes the following regulations:—

1. These regulations may be cited as the Carriage of Goods (Prohibition of Discrimination) Regulations (Northern Ireland) 1976 and shall come into operation on 1st February 1977.

2.—(1) In these regulations—

“the Department” means the Department of the Environment;

“driver” where a separate person acts as steersman of a motor vehicle, includes that person as well as any other person engaged in the driving of it and any reference to the driver of a vehicle shall, in relation to a trailer, be construed as a reference to the driver of the motor vehicle by which the trailer is drawn;

“examiner” means—

(i) an inspector appointed under section 37 of the Transport Act (Northern Ireland) 1967(c); or

(ii) an inspector of vehicles within the meaning of section 190(1) of the Road Traffic Act (Northern Ireland) 1970(d).

“goods vehicle” means a motor vehicle constructed or adapted for use for the carriage or haulage by road of goods or burden of any description, or a trailer so constructed or adapted;

“goods” means any goods other than goods listed in Annexes I and III to the ECSC Treaty;

“the principal Regulation” means Council Regulation (EEC) No. 11 concerning the abolition of discrimination in transport rates and conditions, in implementation of Article 79(3) of the Treaty establishing the European Economic Community(e);

“transport undertaking” means any undertaking whose business includes the carriage of goods for hire or reward whether by rail, road or inland waterway, being carriage to which these regulations apply.

(a) S.I. 1972/1811 (1972 III, p. 5216)

(b) 1972 c. 68

(c) 1967 c. 37 (N.I.)

(d) 1970 c. 2 (N.I.)

(e) O.J. No. 52, 16.8.1960, p. 1121 (S.E. 1959-1962, p. 60)

(2) References in these regulations to a numbered article shall, unless the reference specifies the instrument containing that article, be construed as references to the article bearing that number in the principal Regulation.

(3) The Interpretation Act (Northern Ireland) 1954<sup>(f)</sup> shall apply for the interpretation of these regulations as it applies for the interpretation of a Measure of the Northern Ireland Assembly.

(4) These regulations apply to the carriage in Northern Ireland of all goods by rail, road or inland waterway being carriage to which by virtue of Articles 1 to 3 the principal Regulation applies.

3.—(1) Any person who carries on a transport undertaking shall be guilty of an offence under this regulation if that person fails, without reasonable excuse, to notify the Department, in accordance with paragraph (2) of any measure of the kind referred to in Article 5(2) (that is to say, any tariff, or formal or other agreement on transport rates and conditions whereby the rates and conditions for carrying the same goods over the same transport links vary according to the country of origin or of destination of the goods in question) being such a measure presently in force or subsequently introduced.

(2) The notification referred to in paragraph (1) shall be given, in the case of a measure presently in force, within one month of the coming into operation of these regulations, and, in the case of a measure subsequently introduced, within one month of its introduction.

(3) A person guilty of an offence under this regulation shall be liable on summary conviction to a fine not exceeding £200 and if the offence in respect of which he is convicted under this regulation is continued after the conviction, he shall be guilty of a further offence and be liable in respect thereof on summary conviction to a fine not exceeding £5 for each day on which the offence is so continued.

4.—(1) Except where by virtue of Article 8 or 9 the provisions of Article 6 (concerning transport documents) do not apply to the carriage of goods to which these regulations apply, and subject to the provisions of the next following paragraph, any person who, in relation to any consignment of goods within the Economic Community, is the carrier of those goods within Northern Ireland, whether by rail, road or inland waterway, shall be guilty of an offence under this regulation if—

- (a) no transport document giving the details specified in Article 6(1) has at the time when the carriage within Northern Ireland of the goods so consigned first commences, been properly prepared in duplicate and numbered as required by Article 6, or
- (b) one copy of such document does not accompany the goods to which it relates, or
- (c) the other copy thereof is not retained by the carrier for the period, in the manner and showing the charges and other particulars required by Article 6(2).

(2) The provisions of paragraph (1) do not apply to any person where existing documents give all the details specified in Article 6(1) and, in conjunction with that person's recording and accounting systems, enable a full check to be made of transport rates and conditions so as to abolish or avoid certain forms of discrimination as mentioned in Article 6(3).

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<sup>(f)</sup> 1954 c. 33 (N.I.)

(3) A person guilty of an offence under sub-paragraph (a), or (b) or (c) of the said paragraph (1), shall be liable, on summary conviction to a fine not exceeding £200 for each such offence.

5.—(1) Paragraph (2) applies to undertakings concerned with the carriage within Northern Ireland of goods by road whether as carriers or as such agents or providers of services as are mentioned in Article 13, and paragraph (3) applies to undertakings concerned with the carriage within Northern Ireland of goods by rail and by inland waterway whether as carriers or as such agents or providers as aforesaid.

(2) An examiner, on production if so required of his authority, may—

(a) at any time require the driver of a goods vehicle belonging to an undertaking to which this paragraph applies, to produce, and permit him to inspect and copy any consignment note or other transport document (including a document which is an existing document within the meaning of Article 6(3)) or any copy thereof which accompanies any goods on or carried by that vehicle, and

(b) at any time which is reasonable having regard to the circumstances of the case, enter any premises occupied by a person carrying on an undertaking to which this paragraph applies and on which he has reason to believe that such a vehicle is kept or that there are to be found—

(i) any consignment notes or other transport documents (including the said existing documents and any recording or accounting systems associated therewith) relating to goods carried or to be carried by that person or any copies of such notes or documents or

(ii) any document containing particulars which relate to any measure which falls to be notified by that person to the Department under Article 5(2) or which has been so notified by him, or which relate to information which falls to be sent or furnished to the Department by that person or has been so sent or furnished by him in accordance with either of the two next following regulations or any copy of a document containing such particulars,

and inspect any such vehicle and inspect and copy any such notes, documents or copies or any recording or accounting systems which he finds there.

(3)(a) The Department may appoint any one or more persons for the purpose of checking compliance with the obligations imposed by the principal Regulation in relation to the carriage of goods by rail or by inland waterway and any person so appointed (in this regulation called "an inspector") may exercise the powers conferred on an inspector by the next following sub-paragraph.

(b) An inspector, on production if so required of his authority in that behalf, may at any time which is reasonable having regard to the circumstances of the case, enter any premises occupied by a person carrying on an undertaking to which this paragraph applies and on which he has reason to believe that there are to be found in connection with the carriage of goods by rail or inland waterway:—

(i) any consignment notes or other transport documents (including the said existing documents and any recording or accounting systems associated therewith) relating to goods carried or to be carried by that person or any copies of such notes or documents or

- (ii) any document containing particulars which relate to any measure which falls to be notified by that person to the Department under Article 5(2) or which has been so notified by him, or which relate to information which falls to be sent or furnished to the Department by that person or has been so sent or furnished by him in accordance with either of the two next following regulations or any copy of a document containing such particulars, and inspect and copy any such notes, documents or copies or any recording or accounting systems which he finds there.

(4) It shall be the duty of any person who has in his power or custody on premises entered pursuant to paragraph (2) or (3) any such note, document or copy thereof as is described in sub-paragraph (b)(i) and (ii) of either of the said paragraphs or who is in charge of, or employed in connection with, any recording or accounting system which operates on those premises to produce to the examiner or, as the case may be, to the inspector the said note, document or copy for his inspection, and any books, documents or material used in connection with the said system and otherwise to give to the examiner or inspector all assistance in connection with the inspection which that person is reasonably able to give.

(5) An examiner in the exercise of his powers under paragraph (2) may detain the vehicle in question during such time as is required for the exercise of those powers.

(6) Any person who—

- (a) fails to comply with any requirement under paragraph (2)(a) or to carry out his duty under paragraph (4), or
- (b) wilfully obstructs an examiner or an inspector in the exercise of his powers under paragraph (2)(b), (3)(b) or (5), shall be liable on summary conviction to a fine not exceeding £100.

6.—(1) This regulation applies to any person—

- (a) who carries on a transport undertaking,
- (b) who is a forwarding or other agent concerned with the carriage of goods by rail, road or inland waterway, or
- (c) who is a direct provider of services ancillary to such carriage in any case specified in Article 13(2).

(2) In this regulation references to information are references to any additional information which in the terms of Article 11(1) may be needed concerning any tariff, or formal or other agreement on transport rates and conditions and to all information relevant to the services provided, and to the rates and conditions applied by the persons mentioned in paragraph (1)(b) and (c).

(3) Where the Commission of the European Communities has requested a person to whom this regulation applies to supply information, that person shall first before supplying it obtain the approval of the Department to the disclosure of any facts involved in the information proposed to be supplied which approval shall not be refused unless the said information involves the disclosure of any facts which the Department considers would be contrary to the essential interests of the security of the United Kingdom; and for this purpose a statement in writing of such information shall be sent to the Department so as to reach it not less than 2 weeks before the time limit (if any) set under Article 11(2) or if no such limit has been set, before the information will be so supplied.

(4) A person shall be guilty of an offence under this regulation if he contravenes or fails to comply with the provisions of paragraph (3) and shall be liable on summary conviction to a fine of £200.

7.—(1) For the purpose of obtaining any information which the Department may need to have in order to enable it to discharge or to secure the discharge of any Community obligation arising in relation to the principal Regulation and, without prejudice to the generality of the foregoing, in particular the obligation to supply certain information to the said Commission the Department may, by notice in writing served on any person on whom any obligation is imposed by or under the principal Regulation or these regulations, require that person to furnish, in such form and manner and within such time as may be specified in the notice such information and particulars as may be requested in the notice, being information and particulars relating to tariffs, to any agreement or arrangement on transport rates and conditions or to the services provided and the rates and conditions applied to them.

(2) The said notice shall state that it is served under this regulation and generally the purpose for which the information is required.

(3) If any person required to furnish information under this regulation fails without reasonable excuse to do so as required, he shall be liable on summary conviction to a fine not exceeding £200, and if the failure in respect of which a person is convicted under the foregoing provisions is continued after the conviction, he shall be guilty of a further offence and liable in respect thereof on summary conviction to a fine not exceeding £5 for each day on which the offence is so continued.

8.—(1) A person shall be guilty of an offence under this regulation who in supplying or furnishing any information or particulars to the Department, in notifying it of any measure, sending any statement to it or in preparing or producing any transport document (including any such other existing document as aforesaid or the recording or accounting systems associated therewith) in accordance with any of these regulations or the principal Regulation makes a statement which he knows to be false in a material particular, or produces, furnishes, sends, prepares, notifies, supplies or otherwise makes use of a document which he knows to be false in a material particular.

(2) A person guilty of an offence under paragraph (1) shall be liable on summary conviction to a fine not exceeding £400 or on conviction on indictment to imprisonment for a term not exceeding 2 years or a fine or both.

9.—(1) Without prejudice to Article 22, where a body corporate is guilty of an offence under these regulations and the offence is proved to have been committed with the consent or connivance of, or to be attributable to neglect on the part of a director, manager, secretary or other similar officer of the body corporate, or a person who was purporting to act in any such capacity, he as well as the body corporate, shall be guilty of that offence and liable to be proceeded against and punished accordingly.

(2) Subject and without prejudice to any decision to the contrary under Article 15(2), no information with respect to any particular transport undertaking or transport agency or business which has been obtained under or by virtue of these regulations or of the principal Regulation shall be disclosed without the consent of the person for the time being carrying on the undertaking, agency or business, unless the disclosure is for the purpose of or in connection with the implementation, or securing or facilitating the implemen-

tation of the principal Regulation or is for the purpose of, or connected with any proceedings before the European Court or any other legal proceedings whether civil or criminal under or arising out of the carrying into effect of these regulations or the principal Regulation.

(3) Any person (except one who is otherwise obliged to observe professional secrecy in accordance with Article 214 of the E.E.C. Treaty) who discloses any information in contravention of paragraph (2) shall be guilty of an offence, and shall be liable on summary conviction to a fine not exceeding £200.

10. Any notice, notification, statement or other communication of information authorised or required by these regulations or the principal Regulation to be given, sent or supplied to the Department or to any other person may be given, sent or supplied by delivering it to him or by leaving it at his proper address, or without prejudice to section 24 of the Interpretation Act (Northern Ireland) 1954, by sending it to him by post.

Sealed with the Official Seal of the Department of the Environment for Northern Ireland on 8th December 1976.

(L.S.)

*B. D. Palmer*  
Assistant Secretary

## EXPLANATORY NOTE

*(This note is not part of the Regulations, but is intended to indicate their general purport.)*

The Regulations make for Northern Ireland provisions supplementary to the requirements of Council Regulation (EEC) No. 11 of 1960 (relating to the abolition of discrimination in transport rates and conditions), which came into force in the United Kingdom on 1st October 1973.

Regulation 3 relates to Article 5 of the EEC Council Regulation, dealing with the supply of information on tariffs or agreements concerning transport rates or conditions which vary according to the country of origin or destination of the goods in question. The Regulation makes it an offence for persons carrying on transport undertakings to fail to notify the Department of the Environment of measures involving such tariffs or agreements.

Regulation 4 relates to Article 6 of the EEC Council Regulation, concerning transport documents, and makes it an offence for a carrier of goods to fail to prepare or maintain the prescribed documents.

Regulation 5 deals with the production of transport documents to examiners (as respects carriage by road) and inspectors (as respects carriage by rail and inland waterway) appointed respectively by the Department of the Environment and confers on such examiners and inspectors power to enter premises for the purpose of inspecting transport documents.

Regulation 6 deals with the supply of information to the Commission of the European Communities; Regulation 7 enables the Department of the Environment to require the furnishing to it of information about transport tariffs and about agreements or arrangements on transport rates and conditions in order to enable the Department to secure the performance of obligations under the EEC Council Regulation, and Regulation 8 relates to the supply of false information.

Regulation 9 deals with offences by officers of bodies corporate and persons acting as such officers and also with confidentiality of information.

Regulation 10 relates to notices.