

Draft Regulations laid before Parliament under section 101(3A) of the Transport Act 1968 and paragraph 2(2) of Schedule 2 to the European Communities Act 1972, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2008 No. 000

ROAD TRAFFIC

**The Passenger and Goods Vehicles (Recording Equipment)
(Downloading and Retention of Data) Regulations 2008**

Made - - - - 2008

Coming into force in accordance with regulation 1(1)

The Secretary of State for Transport makes the following Regulations in exercise of the powers conferred by sections 95(1) and (1A) and 101(2) of the Transport Act 1968⁽¹⁾ (“the 1968 Act”) and section 2(2) of the European Communities Act 1972⁽²⁾ (“the 1972 Act”);

The Secretary of State for Transport is a Minister designated⁽³⁾ for the purposes of section 2(2) of the 1972 Act in relation to 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 accordance with section 95(1) of the 1968 Act she considers it necessary or expedient that these Regulations should be made to take account of the operation of Regulation (EC) No 561/2006 of the European Parliament and Council of 15 March 2006⁽⁴⁾, on the harmonisation of certain social legislation relating to road transport and amending Council Regulations (EEC) No 3281/85 and (EC) No 2135/98 and repealing Council Regulation (EEC) No 3280/85;

In accordance with section 101(6) of the 1968 Act she has consulted with such representative organisations as she thinks fit;

In accordance with section 101(3A)⁽⁵⁾ of the 1968 Act and paragraph 2(2) of Schedule 2 to the 1972 Act a draft of these Regulations was laid before, and approved by a resolution of, each House of Parliament:

(1) 1968 c. 73. Section 95(1) was amended, and section 95(1A) was inserted, by the Road Traffic (Drivers’ Ages and Hours of Work) Act 1976 (c.3), section 2(1)(d).
(2) 1972 c.68. Section 2(2) was amended by section 27(1), and paragraph 2 of Schedule 2 by section 27(2)(a), of the Legislative and Regulatory Reform Act 2006 (c. 51).
(3) S.I. 1972/1811 and 1975/1707.
(4) OJ No L102, 11.4.2006, p.1.
(5) Subsection (3A) was inserted by the Road Traffic (Drivers’ Ages and Hours of Work) Act 1976, section 2(1)(i).

Citation commencement and interpretation

1.—(1) These Regulations may be cited as the Passenger and Goods Vehicles (Recording Equipment) (Downloading and Retention of Data) Regulations 2008 and come into force 7 days after the day on which they are made.

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

Amendment of the 1968 Act: protection of electronic data and other records

2. After section 97B(6) of the 1968 Act insert—

“Delivery of record sheets and other documents

97C.—(1) This section 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 section 97 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 subsection (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 subsection (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) subsection (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) subsection (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.

Vehicle units: downloading data

97D.—(1) This section 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—

(6) Section 97B was inserted by [S.I. 1979/1746](#).

<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 section	On the first day after the commencement of this section 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 section	On the day after the last downloading under this section	
3. The undertaking does not use the vehicle during the period of 56 days starting on the day after the last downloading under this section	On the first day of the undertaking's use of the vehicle after the last downloading under this section	

- (4) The undertaking must ensure that all relevant data is downloaded from the unit—
- immediately before transferring control of the use of the vehicle to another person;
 - without delay upon permanently removing the unit from service in the vehicle;
 - without delay upon becoming aware that the unit is malfunctioning;
 - 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 subsection (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 section “relevant data” means any data recorded by the vehicle unit in a vehicle, other than detailed speed data.

(7) For the purposes of this section and section 97E 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 section and sections 97E to 97G, “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

97E.—(1) This section 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 section	On the first day after the commencement of this section 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 section	On the first day on which the driver drives for the undertaking after the last downloading under this section	

(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 subsection (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 officer

97F.—(1) This section applies where—

- (a) an officer has reason to believe that an offence under this Part of this Act or under the Traffic Acts 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 officer 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 section—

- (a) “download” is to be construed in accordance with the definition of “downloading” in Annex 1B to the Community Recording Equipment Regulation;
- (b) “the Traffic Acts” has the meaning given in section 192(1) of the Road Traffic Act 1988(7).

Downloading and retaining data: offences

97G.—(1) A transport undertaking commits an offence if, without reasonable excuse, it fails to comply with section 97D or 97E, or with a requirement imposed under section 97F.

(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 section 97D to 97F.

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

Access to downloaded data

97H.—(1) An officer 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 subsection (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(3) For the purposes of subsection (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."

Amendment of the 1968 Act: enforcement

3. After section 102A of the 1968 Act(8) insert—

"Partnerships and other unincorporated associations

102B.—(1) Proceedings for an offence under this Part of this Act 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 this Part of this Act 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 this Part of this Act brought against a partnership or an unincorporated association, the following provisions apply as they do in relation to a body corporate—

(a) section 33 of the Criminal Justice Act 1925(9) and Schedule 3 to the Magistrates' Courts Act 1980(10);

(b) section 70 of the Criminal Procedure (Scotland) Act 1995(11)

(8) Section 102A was inserted by the [Road Traffic \(Consequential Provisions\) Act 1988 \(c.54\)](#), Schedule 3, paragraph 6(7).

(9) [1925 c.86](#). Section 33 was amended by the Magistrates' Courts Act [1980 \(c.43\)](#) Schedule 6, the Courts Act 1971, Schedule 8, and the Courts Act 2003, Schedule 10.

(10) [1980 c.43](#). Schedule 3 was amended by the Criminal Procedure and Investigations Act [1996 \(c.25\)](#), Schedule 1, paragraph 14, the Criminal Justice Act [1991 \(c.53\)](#), section 25(2) and Schedule 13 and the Criminal Justice Act [2003 \(c.44\)](#), Schedule 3, Part 2, paragraph 51 and Schedule 37, Part 4.

(11) [1995 c.46](#). Section 70 was amended by [S.I 2001/128](#) and [1149](#).

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

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

(7) Subsections (1) and (2) do not affect any liability of a partner, officer or member under section 102C.

Offences by bodies corporate etc

102C.—(1) If an offence under this Part of this Act 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 subsection (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, subsection (1) applies in relation to the acts 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 this Part of this Act 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 subsection (4) a reference to a partner includes a reference to a person purporting to act as a partner.

(6) If an offence under this Part of this Act 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 subsection (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 1968 Act: miscellaneous

4. In the 1968 Act—

(a) in section 96(12), after subsection (11C), insert—

(12) The relevant amendments to section 96 are by the European Communities Act 1972 (c.68), Schedule 4, paragraph 9(2)(a), the Transport Act 1978 (c.55), section 10, the Criminal Justice Act 1982 (c.48), sections 37, 38 and 46 and S.I. 1986/1457 and 2007/1819.

“(11D) 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 liable on summary conviction to a fine not exceeding level 4 on the standard scale.”;

- (b) in section 97(6) (installation and use of recording equipment), for “sections 97A and 97B” substitute “sections 97B to 97G”;
- (c) omit section 97A(13);
- (d) In section 103(1)(14), after the definition of “relevant Community provision”, insert—
 ““transport undertaking” has the meaning given in the Community Drivers’ Hours Regulation;”.

Signed by authority of the Secretary of State for Transport

Date

Name
Parliamentary Under Secretary of State,
Department for Transport

(13) Section 97A was inserted by [S.I. 1979/1746](#).

(14) Section 103(1) was amended by the Road Traffic (Drivers’ Ages and Hours of Work) Act 1976 (c.3), section 2(1), the Transport Act 1985, Schedule 8 and [S.I. 1979/1746](#), [1986/1457](#), [1986/1458](#), [2005/1904](#) and [2007/1819](#).

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.

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. 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>.