

EXPLANATORY MEMORANDUM TO

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

SR 2010 No. 23

1. Introduction

- 1.1. This Explanatory Memorandum has been prepared by the Department of the Environment to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.
- 1.2. The Statutory Rule is made under Section 2(2) of the European Communities Act 1972 and is subject to the negative resolution procedure.

2. Purpose

- 2.1. This Instrument will complete the implementation in Northern Ireland of Regulation (EC) No. 561/2006 (on drivers' hours and recording equipment) by making provision in respect of the downloading of data from digital tachograph recording equipment, as well as record retention. These Regulations amend the Passenger and Goods Vehicles (Recording Equipment) Regulations (Northern Ireland) 1996 by:
 - defining the frequency for the downloading of "relevant data" and other data from digital tachographs by operators;
 - amending current domestic legislation governing the frequency with which drivers must return analogue record charts to their employers and extending the obligation to cover other hard copy records;
 - putting in place new enforcement provisions.

3. Background

3.1. EU Regulation (EC) 561/2006:-

- repeals and replaces the existing EU drivers' hours rules (formerly in Council Regulation (EEC) No 3820/85);
- further amends certain aspects of Council Regulation (EEC) No 3821/85, as amended by Regulation (EC) No 2135/98, governing the installation and use of tachographs on those vehicles that are subject to the EU drivers' hours rules; and
- introduces new requirements in respect of data on digital tachographs.

- 3.2. Although the EU Regulation is directly applicable, some changes to domestic legislation have been required. The main provision necessary for that purpose has been made by SR's. 2005/325, 2005/44, 2006/274 and 2007/36.
- 3.3. In Northern Ireland legislation regulating drivers' hours is contained in the Passenger and Goods Vehicles (Recording Equipment) Regulations (Northern Ireland) 1996. To meet the obligations in Regulation 561/2006, in particular with regard to digital tachographs, further implementation is necessary to:-
- set the frequency of, and specific occasions and circumstances when, data must be downloaded from digital tachographs and "smart" driver cards;
 - align with the new provisions the domestic rules setting out when drivers are required to return their analogue tachograph charts and other hard copy records to their employer;
 - provide specific enforcement measures for these requirements and for article 20(3) (which requires drivers to keep employers informed of relevant activities).

4. Consultation

- 4.1. A full consultation was carried out from January 2007 to April 2007 on the draft regulations and a partial regulatory impact assessment.

5. Equality Impact

- 5.1. The new provisions have been screened for equality impact. There was found to be no requirement for a full Equality Impact Assessment.

6. Regulatory Impact

- 6.1. A partial Regulatory Impact Assessment was carried out as part of the full consultation in 2007.

7. Financial Implications

- 7.1. There are no financial implications associated with the introduction of these Regulations.

8. Section 24 of the Northern Ireland Act 1998

- 8.1. The Department has considered section 24 of the Northern Ireland Act and is satisfied that the new provisions:
- 8.1.1. (a) are not incompatible with any of the Convention rights,
 - 8.1.2. (b) are not incompatible with Community law,
 - 8.1.3. (c) do not discriminate against a person or class of person on the ground of religious belief or political opinion, and
 - 8.1.4. (d) do not modify an enactment in breach of section 7 of the Northern Ireland Act 1998.

9. EU Implications

- 9.1. A Transposition note has been prepared and is attached.

10. Parity or Replicatory Measure

- 10.1. These Regulations are required to complete the full implementation of all the requirements of EC 561/2006 in regards to drivers hours and equipment to be used for recording drivers activity.

11. Additional Information

- 11.1. Not applicable

Transposition Note

Regulation (EC) No. 561/2006 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 (drivers' hours and recording equipment in vehicles)

Regulation (EC) No 561/2006, amongst other provisions, places a requirement on Member States to prescribe in national law the frequency of downloading data produced by digital tachographs. This Transposition Note covers the articles within the Regulation imposing that requirement and provisions dealing with other minor matters.

The Passenger and Goods Vehicles (Recording Equipment) (Downloading and Retention of Data) Regulations (Northern Ireland) 2009 amends the Passenger and Goods Vehicles (Recording Equipment) Regulations (Northern Ireland) 1996 as necessary to implement these requirements in Northern Ireland, making consequential changes to domestic legislation to ensure its compliance in the area to which they apply. The amendments are explained in the table below.

Article	Objectives	Implementation	Responsibility
10(5)(a)(i)	Member States to ensure that data held on digital tachographs – both driver cards and vehicle units – which is “relevant” to the enforcement of the EU drivers’ hours rules is downloaded at intervals frequent enough to ensure that the data is not lost as a result of it being over-written or otherwise, and to ensure that other data is downloaded as and when appropriate.	Regulation 6 inserts after regulation 6 of Passenger and Goods Vehicles (Recording Equipment) Regulations (Northern Ireland) 1996: (a) new regulation 6B and 6C prescribing the circumstances in which “relevant data” must be downloaded from driver cards and vehicle units (and specifying minimum frequencies for downloading); and (b) new regulation 6D prescribing the circumstances in which other data as well as relevant data must be downloaded.	Policy responsibility rests with the Department of the Environment. Responsibility for enforcement rests with the Driver and Vehicle Agency (DVA) and the Police Service of Northern Ireland (PSNI).
10(5)(a)(ii)	Member States to ensure that downloaded data is accessible to enforcement authorities for 12 months	Regulation 6 inserts new regulations 6E (2) and 6F into Part 6 of the Passenger and Goods Vehicles (Recording Equipment) Regulations (Northern Ireland)	DVA and the PSNI

		1996 empowering vehicle examiner to require undertakings to make data accessible and making it an offence to contravene that requirement or to fail to retain data for a year.	
19	Requires Member States to impose appropriate penalties	Regulation 6 inserts new section 6E(1) making it an offence to contravene regulations 6B to 9D; and regulation 7 inserts new regulations 10F and 10G into the Passenger and Goods Vehicles (Recording Equipment) Regulations (Northern Ireland) 1996 strengthening enforcement powers in respect of unincorporated and corporate bodies	Policy responsibility rests with the Department of the Environment. Responsibility for enforcement rests with DVA and the PSNI.
20(3)	Requires drivers to provide sufficient information to their employers to enable them to comply with drivers' hours rules	Regulation 8(3) inserts new subparagraph (1C) in to Article 81 of the Road Traffic (Northern Ireland) Order 1981 making it an offence to fail to comply with article 20(3).	Policy responsibility rests with the Department of the Environment. Responsibility for enforcement rests with DVA and the PSNI.
26(4) (fourth indent)	Amends art. 15(7) of Regulation 3821/85. Drivers must be able to produce on demand their driver cards and all paper records for current day and (as from 1.1.08) previous 28 days	Regulations 6 inserts into the Passenger and Goods Vehicles (Recording Equipment) Regulations (Northern Ireland) 1996 new regulation 6A making it an offence if a driver does not return to	Policy responsibility rests with the Department of the Environment. Responsibility for enforcement rests with DVA and the PSNI.

		his employer all paper records within 42 days, so that it will be possible for a driver to retain those records for 29 days without breaking the law.	
--	--	---	--