

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—

- (a) immediately before transferring control of the use of the vehicle to another person;
- (b) without delay upon permanently removing the unit from service in the vehicle;
- (c) without delay upon becoming aware that the unit is malfunctioning;
- (d) 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).