



STATUTORY INSTRUMENT.

S.I. No. 89 of 2006.

EUROPEAN COMMUNITIES (ROAD TRANSPORT)
(RECORDING EQUIPMENT) REGULATIONS, 2006.

(Prn. A6/0296)

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EUROPEAN COMMUNITIES (ROAD TRANSPORT)
(RECORDING EQUIPMENT) REGULATIONS, 2006.

I, MARTIN CULLEN, Minister for Transport, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972) and for the purpose of giving full effect to Council Regulation No. 3821/85/EEC of 20 December 1985¹, as amended by Council Regulation No. 2135/98/EC of 24 September 1998² and Commission Regulation (EC) No. 1360/2002 of 13 June 2002³ and having consulted the Commission of the European Communities as required by the first-mentioned Council Regulation, hereby make the following regulations:

Citation.

1. These Regulations may be cited as the European Communities (Road Transport) (Recording Equipment) Regulations 2006.

Interpretation.

2. (1) In these Regulations—

“approved workshop” means a workshop approved under Regulation 6;

“authorised officer” means—

(a) a transport officer appointed by the Minister pursuant to section 15 of the Road Transport Act 1986 (No. 16 of 1986),

(b) any officer of Customs and Excise, or

(c) any member of the Garda Síochána;

“Council Regulation” means Council Regulation No. 3821/85/EEC of 20 December 1985¹, as amended by Council Regulation No. 2135/98/EC of 24 September 1998² and Commission Regulation (EC) No. 1360/2002 of 13 June 2002³;

¹ OJ No. L370, 31.12.1985, p.8.

² OJ No. L274, 09.10.1998, p.1.

³ OJ No. L207, 05.08.2002, p.1.

Notice of the making of this Statutory Instrument was published in “Iris Oifigiúil” of 24th March, 2006.

“document or other information medium” means any document, record, book, printout, digital data, driver card (including driver activity data stored on a driver card), or other device or medium used for recording or storing data;

“Minister” means the Minister for Transport;

“officer of Customs and Excise” has the same meaning as in the Customs Act 1956 (No. 7 of 1956);

“recording equipment” has the same meaning as it has in the Council Regulation, namely, the total equipment intended for installation in road vehicles to show, record and store automatically or semi-automatically details of the movement of such vehicles and of certain working periods of their drivers.

(2) A word or expression that is used in these Regulations and is also used in the Council Regulation has, unless the contrary intention appears, the meaning in these Regulations that it has in the Council Regulation.

Certain vehicles registered in the State.

3. (1) A vehicle registered in the State (including a trailer or semi-trailer normally attached to such a vehicle) and having for the purposes of the Road Traffic Acts 1961 to 2004 an unladen weight not exceeding 1,524 kilogrammes shall, for the purposes of these Regulations and the Council Regulation, be deemed to have a permissible maximum weight of 3.5 tonnes.

(2) A vehicle registered in the State (including a trailer or semi-trailer normally attached to such a vehicle) and having for the purposes of the Road Traffic Acts 1961 to 2004 an unladen weight not exceeding 3,048 kilogrammes shall, for the purposes of these Regulations and the Council Regulation, be deemed to have a permissible maximum weight of 7.5 tonnes.

Exemptions.

4. The following categories of vehicles are exempted from the provisions of the Council Regulation in respect of carriage by road effected solely within the State:

- (a) vehicles used for carrying passengers, which by virtue of their construction and equipment are suitable for carrying not more than 17 persons,

including the driver, and are intended for that purpose;

- (b) vehicles used by public authorities to provide public services which are not in competition with professional road hauliers;
- (c) vehicles used by agricultural, horticultural, forestry or fishery undertakings for carrying goods within a 50 kilometre radius of the place where the vehicle is normally based, including local administrative areas the centres of which are situated within that radius;
- (d) vehicles used for carrying animal waste or carcasses which are not intended for human consumption;
- (e) vehicles used for carrying live animals between farms and local markets or from such markets to a local slaughter house;
- (f) vehicles used —
 - (i) as shops at local markets,
 - (ii) for door to door selling,
 - (iii) for mobile banking, exchange or saving transactions,
 - (iv) for worship,
 - (v) for the lending of books, records or cassettes, or
 - (vi) for cultural events or exhibitions,

and which are specially fitted for such uses;

- (g) vehicles for the carriage of goods, which have an unladen weight not exceeding 3,048 kilogrammes, used for carrying material or equipment for the use of the driver in the course of his or her work within a 50 kilometre radius of the place where the vehicle is normally based: but only if driving the vehicle does not constitute the main activity of the driver;

- (h) vehicles operating exclusively on islands not exceeding 2,300 square kilometres in area, which are not linked to the mainland of the State by a bridge, ford or tunnel open for use by motor vehicles;
- (i) vehicles used for the carriage of goods, which have an unladen weight not exceeding 1,524 kilogrammes, and are propelled by means of gas produced on the vehicle or by means of electricity;
- (j) vehicles used for driving instruction with a view to obtaining a driving licence: but only if a vehicle so used or any trailer or semi-trailer drawn is not carrying out a journey in connection with the carriage of goods or passengers;
- (k) tractors used exclusively for agricultural and forestry work.

Competent authority

5. For the purposes of the Council Regulation, the competent authority in the State is —

- (a) in respect of the issuing of tachograph cards, the Minister,
- (b) in respect of all other matters, the National Standards Authority of Ireland.

Approval of fitters and workshops, etc.

6. (1) The National Standards Authority of Ireland—

- (a) shall approve fitters and workshops for the installation and repair of recording equipment in accordance with Article 12 of the Council Regulation and for the carrying out of checks and inspections in accordance with Parts V and VI of Annex I and Parts V and VI of Annex 1B to the Council Regulation,
- (b) shall, after consultation with the Minister, lay down procedures and conditions to be adopted by fitters and workshops approved of by them for the purposes of the Council Regulation, and

(c) may withdraw approval from any fitter or workshop for non-compliance with those procedures and conditions.

(2) No person shall install, repair or carry out inspections pursuant to Annex I or Annex 1B to the Council Regulation to recording equipment which is required to be fitted under Article 3 of the Council Regulation unless—

(a) that person and the workshop or place in which the equipment is installed, repaired or inspected have been approved by the National Standards Authority of Ireland under paragraph (1), and

(b) that person and the workshop has been duly issued with an approved workshop card.

(3) A member of staff of the National Standards Authority of Ireland, duly authorised in that behalf, who has reasonable grounds for believing that a premises or other place is used or has been used for the repair, installation or inspection of recording equipment may, at any time—

(a) enter the premises or other place, and

(b) inspect—

(i) that premises or other place,

(ii) any equipment, document or other information medium that is kept or used at that premises or place,

(iii) any vehicle kept at that premises or place.

(4) In any proceedings for an offence under this Regulation it shall be presumed until the contrary is proved that an approval of a fitter or workshop has not been made under paragraph (1).

Procedure in respect of data that cannot be downloaded

7. (1) If data cannot be downloaded from a vehicle unit, the approved workshop concerned is required to inform the National Standards Authority of Ireland who will direct the workshop whether or not to issue a certificate of un-downloadability to the undertaking concerned.

(2) If part only of the data can be downloaded, the approved workshop concerned is required to download that part of the data, and—

(a) either

(i) return it to the undertaking concerned and inform the National Standards Authority of Ireland that it has been so returned, or

(ii) if the undertaking concerned cannot be identified, return it directly to the National Standards Authority of Ireland.

(b) The National Standards Authority of Ireland shall direct the approved workshop whether or not to issue a certificate of undownloadability in respect of the remainder of the data.

(3) If data that has been downloaded by an approved workshop from the vehicle unit of a vehicle that is no longer in use cannot be identified, the workshop is required to return the data to the National Standards Authority of Ireland.

Installation of recording equipment

8. (1) Subject to paragraph (2), the owner of a vehicle referred to in Article 3 of the Council Regulation (other than a vehicle exempted from the application of the Council Regulation by Regulation 4 of these Regulations) shall install (or cause to be installed) and shall keep installed in the vehicle recording equipment complying with the requirements of the Council Regulation.

(2) Where a vehicle referred to in Article 3 of the Council Regulation (other than a vehicle exempted from the application of the Council Regulation by Regulation 4 of these Regulations) is used in the course of a business and is used by a person other than the owner of the vehicle then the user of the vehicle shall install (or cause to be installed) and shall keep installed in the vehicle recording equipment which complies with the requirements of the Council Regulation.

(3) Nothing in paragraph (2) shall be construed as imposing on a person who is employed as a driver or is engaged under a contract for services as a driver a duty to install (or cause to be installed) or keep installed recording

equipment which complies with the requirements of the Council Regulation.

Provisions relating to record sheets and data, etc.

9. (1) A driver of a vehicle to which Annex 1 of the Council Regulation applies is required to return any record sheet which applies to such driver to his or her employer for inspection and retention as soon as practicable, but not later than 21 days of completing it.

(2) A driver of a vehicle to which Annex 1B of the Council Regulation applies is required to—

(a) either—

(i) download data from his or her driver card every 21 days and retain the data for 1 year for inspection by an authorised officer, or

(ii) return the data to his or her employer for downloading and retention,

and

(b) return to his or her employer for retention any printouts from the recording equipment made by him or her not later than 21 days from the date of printing.

(3) Any printout from the recording equipment made by a driver and purporting to represent the activities of the driver for a period of time shall, until the contrary is proved, be admissible as evidence of the activities of the driver for that period of time.

(4) Every employer concerned is required to—

(a) issue to each of its drivers a sufficient amount of printer paper suitable for use in recording equipment fitted to the vehicle that is adequate to enable the driver to comply with any request or other requirement duly made by an authorised officer,

(b) keep all record sheets, printouts and downloaded data returned to it by a driver in chronological

order and in a legible form for at least 1 year after receipt of same,

- (c) give copies of record sheets, printouts or data downloaded from a driver card to the driver concerned if requested to do so,
- (d) download data from each vehicle in its ownership, use or control that is fitted with recording equipment in conformity with Annex 1B at least every 3 months,
- (e) make the data downloaded under subparagraph (d) available for inspection by authorised officers at either the operating address or address of the registered office of the undertaking or other address provided that the address is located in the State,
- (f) lock with the company card all its data stored in the vehicle unit of every vehicle purchased, used or leased by it,
- (g) retrieve all data in respect of a vehicle that is no longer in use, where that data has been downloaded by an approved workshop and retain such data for inspection.

(5) Where a driver card is damaged, malfunctions or is not in the possession of the driver, the driver shall, in addition to complying with the requirements of Article 16 of the Council Regulation that relate to the end of the journey—

- (a) at the start of the journey, print out the details of the vehicle that he or she is driving and, as soon as practicable thereafter, enter onto that printout —
 - (i) his or her name, signature and driver card or driving licence number,
 - (ii) all periods of work other than driving time,
 - (iii) all periods of availability to work to include—

- (I) any period during which he or she is obliged to remain at his or her post to answer any calls to start or resume driving or carry out any other work,
- (II) any period spent beside the driver while the vehicle is moving,
- (III) any period of time spent on a bunk while the vehicle is moving,
- (iv) all daily rest periods and any other breaks in work.

(6) Where Article 15 of the Council Regulation does not apply because the driver is using a driver card and as a result of being away from a vehicle (being a vehicle that is fitted with recording equipment in conformity with Annex 1B of the Council Regulation) a driver is unable to use the recording equipment fitted to the vehicle, then he or she shall enter onto his or her driver card using the manual entry facility in the recording equipment —

(a) all periods of work other than driving time,

(b) all other periods of availability to include —

- (i) any period during which he or she is obliged to remain at his or her post to answer any calls to start or resume driving or carry out any other work,
- (ii) any period spent beside the driver while the vehicle is moving,
- (iii) any period of time spent on a bunk while the vehicle is moving,

(c) all daily rest periods and any other breaks in work.

(7) Where there is more than one driver on board a vehicle that is fitted with recording equipment in conformity with Annex 1B, each driver shall ensure that his or her driver card is inserted into the correct slot in the tachograph.

Periodic checks and inspections of recording equipment

10. (1) Subject to paragraph (2), the owner of a vehicle referred to in Article 3 of the Council Regulation (other than a vehicle exempted from the application of the Council Regulation by Regulation 4 of these Regulations) shall arrange to have periodic checks or inspections as specified in Part VI of Annex I and Part VI of Annex 1B to the Council Regulation carried out to the recording equipment installed in the vehicle.

(2) Where a vehicle to which paragraph (1) applies is used in the course of a business operated by any person other than the owner of the vehicle, then the user of the vehicle shall ensure that such checks and inspections are carried out to the recording equipment installed in the vehicle.

(3) Nothing in paragraph (2) shall be construed as imposing on a person who is employed as a driver or is engaged under a contract for services as a driver a duty to ensure that checks and inspections are carried out in accordance with the Council Regulation to recording equipment installed in the vehicle.

Authorised officers

11. (1) An authorised officer is an authorised inspecting officer for the purposes of the Council Regulation.

(2) For the purpose of these Regulations and the Council Regulation, where an authorised officer has reasonable grounds for believing that a premises or other place is used or has been used for a purpose connected with or related to carriage by road or that a vehicle that is used for such purpose is at the premises or other place, then the authorised officer may, at any time —

(a) enter the premises or other place or the vehicle, and

(b) inspect—

(i) either or both the vehicle and that premises or place,

(ii) any recording equipment, document or other information medium that is kept or used in or on that vehicle or at that premises or other place.

(3) Where an authorised officer has reasonable grounds for believing that a premises or other place is used or has been used for the installation, repair or inspection of recording equipment, then the authorised officer may, at any time—

(a) enter the premises or other place, and

(b) inspect—

(i) that premises or place,

(ii) any equipment, document or other information medium that is kept or used at that premises or place, and

(iii) any vehicle kept at that premises or place.

(4) Where an authorised officer has reasonable grounds for believing that a vehicle is used or has been used for a purpose connected with or related to carriage by road, then the authorised officer may, at any time—

(a) inspect a vehicle that is stationary, or

(b) if the authorised officer is a member of the Garda Síochána in uniform or an officer of Customs and Excise in uniform, halt a vehicle that is being driven and inspect it,

and the inspection may include inspecting any goods on the vehicle and any recording equipment, document or other information medium that is being carried in or on the vehicle or kept by the crew or used for the purpose of carriage by road or which relates to carriage by road.

(5) For the purposes of paragraphs (1), (2) or (3), an authorised officer may, in respect of any document or other information medium, kept or used for the purposes of carriage by road, or which relates to carriage by road —

(a) require any person at the premises or other place concerned or in the vehicle concerned to produce that document or other information medium to the authorised officer, where that person has custody of it, access to it or control over it, or

- (b) inspect it, examine it, and take copies of or extracts from it or take it away, if necessary, for the purposes of inspection, examination or copying,
- (c) where it is kept or used in a non-legible form and any person who keeps or uses it could produce it in a legible form, require that person to facilitate its production in a legible form,
- (d) require the person who has or produces it to certify a copy of it as an accurate copy of the information contained in it,
- (e) take possession or retain possession of it where it may be of relevance in respect of any proceedings.

(6) For the purpose of exercising his or her powers under paragraph (2) , an authorised officer may detain a vehicle during such time as is required for the exercise of those powers.

12. A person commits an offence if—

- (a) he or she obstructs or interferes with an authorised officer when exercising a power conferred by the Council Regulation or these Regulations,
- (b) he or she fails to halt a vehicle when requested or required by an officer of Customs and Excise in uniform or a member of the Garda Síochána in uniform to do so, or
- (c) he or she fails to comply with a request or requirement of an authorised officer under these Regulations.

13. (1) An authorised officer may require, by notice in writing served by giving it to a person or sending it to a person by pre-paid registered post, the production by or on behalf of the person of—

- (a) any document or other information medium whether by reference to that document or medium or by reference to the type of information required or by reference to both, or

- (b) any other information which may be specified in the notice,

at a place specified in the notice within such time (not being less than 10 days) from the service of the notice as may be specified in the notice.

(2) An authorised officer may, by notice in writing served—

- (a) by giving it to a person, or
- (b) sending it to a person by pre-paid registered post,

require the person to designate a place within a time specified in the notice (not being less than 10 days), at which—

- (i) any document or other information medium, whether by reference to that document or medium or by reference to the type of information required or by reference to both, or
- (ii) any other information which may be specified in the notice,

shall be made available for inspection and any information relevant to the notice shall not be used or dealt with in such a way as would result in permanent loss of that information.

(3) A person commits an offence if the person fails or refuses to comply with a request of an authorised officer made under this Regulation.

Offences

14. (1) Subject to paragraph (2), no person shall use, cause to be used or permit the use of a vehicle to which the Council Regulation applies (other than a vehicle exempted under Regulation 4 of these Regulations) unless—

- (a) recording equipment is installed in the vehicle in accordance with the Council Regulation, and
- (b) the said recording equipment is functioning correctly.

(2) It shall be a defence to a prosecution for a contravention of subparagraph (b) of paragraph (1) to show that

recording equipment installed in a vehicle was not functioning properly due to a breakdown of the vehicle or faulty operation of the said equipment and that all reasonable steps were taken to have the said equipment repaired by an approved fitter or in an approved workshop as soon as circumstances so permitted.

15. A person shall not interfere with any recording equipment installed in accordance with the Council Regulation.

16. An offence under these Regulations may be prosecuted by the Minister or by a member of the Garda Síochána.

17. (1) A person commits an offence if—

(a) the person contravenes, or

(b) the person causes or permits any person employed by him or her or subject to his or her orders to contravene,

Article 1, 3.1, or 8.4, paragraph 1, 2 or 4 of Article 12, Article 13 or 14, paragraph 1, 2, 3, 5, 7 or 8 of Article 15 or Article 16 of the Council Regulation or Regulation 6(2), paragraph (1), (2) or (3) of Regulation 7, paragraph(1) or (2) of Regulation (8), paragraph (1), (2), (4), (5), (6) or (7) of Regulation 9, paragraph (1) or (2) of Regulation 10, paragraph (1) of Regulation 14, or Regulation 15 of these Regulations.

(2) Where a person is charged with an offence to which paragraph (1)(b) relates, then proof to the satisfaction of the court that another person (being a person who at the relevant time was employed or subject to the orders of the person so charged) contravened the provision concerned shall, without more, be evidence until the contrary is proved that the person so charged caused or permitted the other person to contravene the provision concerned.

18. A person guilty of an offence under these Regulations is liable on summary conviction to a fine not exceeding €5,000 or, at the discretion of the court, to imprisonment for a term not exceeding 6 months or to both such fine and such imprisonment.

19. (1) In any prosecution for an offence under these Regulations where direct oral evidence of a fact would be

admissible, any statement contained in a document or other information medium obtained by an authorised officer in exercise of the powers conferred on him or her by these Regulations and tending to establish that fact shall, on production of the document or other information medium by the authorised officer, be admissible as evidence of that fact.

(2) Every document or other information medium purporting to be —

(a) a copy of, or an extract from, a document or other information medium, and

(b) certified by an authorised officer as a true copy of, or extract from, the document or other information medium concerned,

shall, without proof of the signature of the person purporting so to certify or proof that he or she is an authorised officer, be received in evidence in any legal proceedings and shall, unless the contrary is shown, be deemed to be a true copy of, or an extract from, the document or other information medium concerned.

(3) In a prosecution for an offence under these Regulations any recordings made by recording equipment installed and used in accordance with the Council Regulation are admissible as evidence of the facts the recording equipment purports to record.

(4) In any prosecution for an offence under these Regulations a fact disclosed by any document or other information medium is admissible as evidence of any other fact disclosed by such document or other information medium.

(5) Every document or other information medium purporting to be—

(a) a copy of, or an extract from, a document or other information medium, and

(b) certified, by a person who is duly authorised to keep or have control over it, as a true copy of or extract from such document or other information medium,

shall, without proof of the signature of the person purporting

so to certify or proof that he or she is duly authorised to so keep or have control over it, be received in evidence in any legal proceedings and shall, unless the contrary is shown, be deemed to be a true copy of, or an extract from, the document or other information medium concerned.

20. (1) In a prosecution for an offence under these Regulations in which the weight of a vehicle is at issue it shall be presumed until the contrary is proved that the weight of the vehicle at the time of the alleged offence exceeded the maximum weight permitted by the Council Regulation.

(2) In a prosecution for an offence under these Regulations it shall be presumed until the contrary is proved that—

(a) none of the exceptions to the application of the Council Regulation contained in Article 4, or paragraphs (1) and (2) of Article 13 and Article 14.1 of Council Regulation No. 3820/85/EEC of 20 December 1985⁴ is applicable to the case, and

(b) none of the exceptions contained in Regulation 4 is applicable to the case.

21. Where an offence under these Regulations is committed by a body corporate and is proved to have been committed with the consent, connivance or approval of, or to be attributable to any neglect on the part of any director, manager, secretary or other officer of the body corporate or any other person who was purporting to act in any such capacity, that officer or person as well as the body corporate is guilty of an offence and is liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.

Fees

22. (1) The Minister shall not issue a tachograph card unless a fee of €50 in respect of each card to be issued has been duly paid.

(2) Fees received by the Minister under these Regulations shall be paid into the Exchequer in accordance with the directions of the Minister for Finance.

⁴OJ No. L370, 31.12.1985, p.1.

Revocation

23. The European Communities (Road Transport) (Recording Equipment) Regulations 1986 (S.I. No. 393 of 1986) are revoked.



GIVEN under my Official Seal, this 20th day of February, 2006.

MARTIN CULLEN,
Minister for Transport.

EXPLANATORY NOTE.

(This note is not part of the Instrument and does not purport to be a legal interpretation.)

1. The purpose of these Regulations is to give effect to Council Regulation No. 3821/85/EEC as amended by Council Regulation No. 2135/98/EC and Commission Regulation (EC) No. 1360/2002 on recording equipment in road transport. The Regulations provide for the introduction and enforcement of digital tachograph technology that will gradually replace the existing analogue tachograph devices used to record information on driving times, breaks and rest periods for professional drivers.

2. The Regulations—

- (a) provide for the powers of authorised officers for enforcement;
- (b) prescribe penalties for infringements;
- (c) prescribe the National Standards Authority of Ireland as the competent authority for the approval and control of fitters and workshops for the installation, calibration and repair of recording equipment (tachograph);
- (d) prescribe the Minister as the competent authority for the purposes of issuing tachograph cards;
- (e) specify those operations which shall be exempt from the Regulations when engaged in national transport operations;

- (f) provide for downloading of data from both the vehicle unit (digital tachograph) and the driver card;
- (g) provide for other matters relating to installation, inspection and use of recording equipment, tachograph cards, printouts and record sheets.

3. The Council Regulation as amended:

- provides for the installation and use of recording equipment in certain types of vehicles registered in a Member States which are used for the carriage of passengers and goods by road (Article 3)
- prescribes procedures for the type approval of recording equipment, model record sheets and memory cards and for the approval and control of fitters and workshops for the installation and repair of recording equipment (Articles 4-12)
- lays down the responsibilities of undertaking, employers and drivers regarding the use of the equipment and the issuing of driver cards (Article 13-16)
- specifies at Annex 1 and Annex 1B the requirements regarding the construction, testing, installation and inspection of recording equipment.

4. The Regulation does not apply to vehicles when engaged in certain specified operations (Article 3). The Regulation also provides that Member States may exempt vehicles when engaged in certain national operations (Article 3 and Regulation 4 of these Regulations refer).

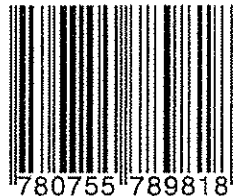
5. Council Regulation (EEC) No. 3821/85 as amended by Council Regulation (EC) No. 2135/98 and Commission Regulation (EC) No 1360/2002 replaces Council Regulation (EEC) No 1463/70. The European Communities (Road Transport) (Recording Equipment) Regulations, 1979 (S.I. No 214 of 1979) and European Communities (Road Transport) (Recording Equipment) Regulations, 1986 (S.I. No 393 or 1986 are hereby revoked.

BAILE ÁTHA CLIATH
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