



STATUTORY INSTRUMENTS.

S.I. No. 431 of 2010

EUROPEAN COMMUNITIES (ROAD TRANSPORT) (WORKING
CONDITIONS AND ROAD SAFETY) (AMENDMENT) REGULATIONS
2010

(Prn. A10/1316)

EUROPEAN COMMUNITIES (ROAD TRANSPORT) (WORKING
CONDITIONS AND ROAD SAFETY) (AMENDMENT) REGULATIONS
2010

I, NOEL DEMPSEY, 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 (EEC) No. 3821/85 of 20 December 1985¹ (as amended by Regulation (EC) No. 561/2006 of the European Parliament and of the Council of 15 March 2006², Commission Regulation (EC) No. 68/2009 of 23 January 2009³ and Commission Regulation (EU) No. 1266 of 2009 of 16 December 2009⁴), Regulation (EC) No. 561/2006 of the European Parliament and of the Council of 15 March 2006² (as amended by Article 29 of Regulation (EC) No. 1073/2009 of the European Parliament and of the Council of 21 October 2009⁵) and Commission Regulation (EU) No. 581/2010 of 1 July 2010⁶, hereby make the following regulations:

1. These Regulations may be cited as the European Communities (Road Transport) (Working Conditions and Road Safety) (Amendment) Regulations 2010.

2. The European Communities (Road Transport) (Working Conditions and Road Safety) Regulations 2008 (S.I. No. 62 of 2008) are amended—

(a) in Regulation 2(1)—

(i) by substituting for the definition of “First Council Regulation” the following:

“ ‘First Council Regulation’ means Council Regulation (EEC) No. 3821 of 20 December 1985¹ on recording equipment in road transport, as amended by Council Regulation (EC) No. 2135/98 of 24 September 1998⁷, Commission Regulation (EC) No. 1360/2002 of 13 June 2002⁸, Regulation (EC) No. 561/2006 of the European Parliament and of the Council of 15 March 2006², Commission Regulation (EC) No. 68/2009 of 23 January 2009³ and Commission Regulation (EU) No. 1266 of 16 December 2009⁴,” and

¹OJ No. L 370, 31.12.1985, p. 8

²OJ No. L 102, 11.4. 2006, p.1

³OJ No. L 21, 24.1.2009, p. 3

⁴OJ No. L 339, 22.12.2009, p.3

⁵OJ No. L 300, 14.11.2009, p. 88

⁶OJ No. L 168, 2.7.2010, p. 16

⁷OJ No. L 274, 9.10.1998, p. 1

⁸OJ No. L 207, 5.8.2002, p. 1

*Notice of the making of this Statutory Instrument was published in
“Iris Oifigiúil” of 10th September, 2010.*

- (ii) by substituting for the definition of “Second Council Regulation” the following:

“ ‘Second Council Regulation’ means Regulation (EC) No. 561/2006 of the European Parliament and of the Council of 15 March 2006², as amended by Article 29 of Regulation (EC) No. 1073/2009⁵ on common rules for access to the international market for coach and bus services;”,

- (b) in Regulation 21(5), by substituting for subparagraphs (a) and (b) the following:

“(a) is in proper working order,

(b) functions as required by that Regulation, and

(c) is used and operated in accordance with that Regulation and these Regulations.”,

- (c) in Regulation 24, by substituting—

(i) in paragraph (1), “35 days” for “21 days”, and

(ii) in paragraph (2), “42 days” for “28 days”,

- (d) in Regulation 25—

- (i) by substituting for paragraphs (1) and (2) the following:

“(1) If a driver of a vehicle to which Annex IB to the First Council Regulation applies is employed by a transport undertaking, the transport undertaking shall ensure that the data from the driver’s digital tachograph card is downloaded every 21 days and, in exceptional circumstances, every 28 days and that the downloaded data is retained by the undertaking for inspection for not less than 12 months.

(2) The driver shall, within 35 days from the date of printing, return to the undertaking for retention any printout made by the driver from the recording equipment.”,

(ii) in paragraph (3), by substituting “42 days ” for “28 days ”,

(iii) in paragraph (5), by substituting “the last downloading” for “printing”, and

(iv) in paragraph (10), by substituting “person” for “driver”,

- (e) in Regulation 27—

(i) in paragraph (1)(a), by inserting “of an approved model” after “printer paper”,

- (ii) in paragraph (1)(b), by inserting “for each driver” after “keep in chronological order”, and
 - (iii) in paragraph (3)(a), by substituting “90 days” for “3 months”,
- (f) in Regulation 28—
- (i) by inserting after paragraph (1)(c) the following:
 - “(d) download the data from the driver’s digital tachograph card every 21 days and, in exceptional circumstances, every 28 days and retain the downloaded data for inspection for not less than 12 months.”, and
 - (ii) in paragraph (2)(a), by substituting “90 days” for “3 months”,
- (g) in Regulation 32—
- (i) by substituting for paragraph (4) the following:
 - “(4) For the purposes of the Council Regulations and these Regulations, an enforcement officer who believes on reasonable grounds that premises are used, or have been used, for a purpose relating to carriage by road, or that a vehicle used for the purpose of carriage by road is in the premises, may at any time do all or any of the following:
 - (a) enter the premises or vehicle,
 - (b) inspect the premises or the vehicle (including goods, if any, located on or in the vehicle) and any record or recording medium kept or used in or on that vehicle or those premises,
 - (c) issue a direction to the owner or user of the premises or vehicle.
 - (4A) (a) A direction issued under paragraph (4)(c), may direct the person concerned to do all or any of the following:
 - (i) keep records,
 - (ii) put in place systems and procedures for the orderly and secure keeping of records,
 - (iii) take such other measures as the enforcement officer considers necessary to ensure compliance with the Council Regulations or these Regulations.

- (b) A direction shall—
- (i) be in writing,
 - (ii) specify the date from which it is to operate and within which the requirements specified in the direction shall be complied with, and
 - (iii) subject to subparagraph (d), be addressed to the person concerned.
- (c) A direction may be given to the person concerned in one of the following ways:
- (i) by delivering it to the person,
 - (ii) by leaving it at the address at which the person ordinarily resides or carries on business,
 - (iii) by sending it by post in a pre-paid registered letter to the address at which the person ordinarily resides or carries on business,
 - (iv) if an address for service of notices or directions has been furnished by the person, by leaving it at, or sending it by pre-paid registered post addressed to the person at that address,
 - (v) by sending it by means of electronic mail or facsimile machine, to a device or facility for the reception of electronic mail or facsimiles located at the address at which the person ordinarily carries on business or, if an address for the services of notices or directions has been furnished by the person, that address, but only if—
 - (I) the senders's facility for the reception of electronic mail generates a message confirming a receipt of the electronic mail or the facsimile machine generates a message confirming successful transmission of the total number of pages of the notification, and

- (II) the notification is also given in one of the other ways mentioned in (i), (ii), (iii) or (iv) of this subparagraph.
- (d) Where the name of the person concerned cannot be ascertained by reasonable inquiry any direction under paragraph (4)(c) may be addressed to “the occupier” or “the person in charge” as the case may require.
- (e) For the purposes of this Regulation, a company registered under the Companies Acts is considered to be ordinarily resident at its registered office, and every other body corporate and every unincorporated body is considered to be ordinarily resident at its principal office or place of business.
- (f) A person to whom a direction is given may, within 14 days beginning on the day on which the direction is given to that person, appeal against the direction to a judge of the District Court in the district court district in which the direction was served and, in determining the appeal the judge may, if he or she is satisfied that it is reasonable to do so, confirm, vary or cancel the direction.
- (g) A person who appeals under subparagraph (f) shall at the same time notify the enforcement officer concerned of the appeal and the grounds for the appeal and the enforcement officer shall be entitled to appear, be heard and adduce evidence on the hearing of the appeal.
- (h) Where an appeal under subparagraph (f) is taken and the direction is not cancelled, the direction shall take effect on the later of—
 - (i) the day next following the day on which the direction is confirmed on appeal or the appeal is withdrawn, or
 - (ii) the day specified in the notice.
- (i) Where there is no appeal under subparagraph (f), the direction shall take effect on the later of—

(i) the end of the period for making an appeal, or

(ii) the date specified in the direction.

(j) A person who refuses or fails to comply with a direction issued to that person under this Regulation commits an offence.”,

(h) In Regulation 38—

(i) by substituting for paragraph (1) the following:

“(1) An enforcement officer who suspects on reasonable grounds that a person—

(a) is holding a driver card that has been falsified or has been fraudulently obtained,

(b) is in possession of, or is making use of, or has made use of, another person’s driver card, or

(c) is in possession of, or is making use of, or has made use of a driver card that has been notified to the Road Safety Authority or an authority in another Member State or third country as being confiscated, destroyed, lost malfunctioning, stolen or surrendered, may confiscate the card.”, and

(ii) in paragraph (2), by substituting “paragraph (1)” for “paragraph (2)”,

(i) in Regulation (43)(3)(b), by substituting “€100,000” for “€10,000”,

(j) in Regulation 44, by substituting for subparagraph (b) the following:

“(b) fits, or allows for the fitment of, uses, or is in possession of, a device that is—

(i) capable of interfering with the proper operation of any such equipment, or

(ii) capable of falsifying or destroying data stored in any such equipment,

commits an offence.”,

(k) by inserting after Regulation 44 the following:

“44A. A person who commits an offence under Regulation 44 is liable—

(a) on summary conviction, to a fine not exceeding €5,000, and

(b) on conviction on indictment, to a fine not exceeding €100,000.”,

(l) in Regulation 48(1), by inserting after subparagraph (c) the following:

“(d) causes or purports to authorise another person who is employed by him or her, or is under his or her control, to use another person’s driver card,”,

and

(m) in Regulation 52, by substituting “43, 44 and 48” for “43 and 48”.



GIVEN under my Official Seal,
3 September 2010.

NOEL DEMPSEY,
Minister for Transport.

EXPLANATORY NOTE

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

These Regulations amend the European Communities (Road Transport) (Working Conditions and Road Safety) Regulations 2008 (S.I. 62 of 2008) in order to facilitate the enforcement of certain EU regulations concerned with tachograph recording equipment and the EU rules relating to driving times, breaks and rest periods as well as update certain provisions of the Statutory Instrument.

BAILE ÁTHA CLIATH
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR
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OIFIG DHÍOLTA FOILSEACHÁN RIALTAIS,
TEACH SUN ALLIANCE, SRÁID THEACH LAIGHEAN, BAILE ÁTHA CLIATH 2,
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CONTAE MHAIGH EO,
(Teil: 01 - 6476834 nó 1890 213434; Fax: 094 - 9378964 nó 01 - 6476843)
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