

Draft Regulations laid before Parliament under paragraph 2(2) of Schedule 2 to the European Communities Act 1972 and paragraph 1(1) of Schedule 7 to the European Union (Withdrawal) Act 2018, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2019 No.

EXITING THE EUROPEAN UNION ROAD TRAFFIC

The Drivers' Hours and Tachographs (Amendment etc.) (EU Exit) Regulations 2019

*Made - - - - 2019
Coming into force in accordance with regulation 1(2)
and (3)*

The Secretary of State makes these Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972⁽¹⁾, and section 8(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018⁽²⁾.

The Secretary of State for Transport is a Minister designated for the purpose of section 2(2) of the European Communities Act 1972 in relation to the regulation of the type, description, construction or equipment of vehicles⁽³⁾ and the regulation and supervision of working conditions of persons engaged in road transport⁽⁴⁾.

These Regulations make provision for a purpose mentioned in section 2(2) of the European Communities Act 1972 and it appears to the Secretary of State that it is expedient for the reference to Regulation (EU) No 165/2014 of the European Parliament and of the Council on tachographs in road transport⁽⁵⁾ to be construed as a reference to that instrument as amended from time to time.

In accordance with paragraph 2(2) of Schedule 2 to the European Communities Act 1972 and paragraph 1(1) of Schedule 7 to the European Union (Withdrawal) Act 2018, a draft of these Regulations has been laid before Parliament and has been approved by a resolution of each House of Parliament.

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- (1) [1972 c. 68](#); section 2(2) was amended by the Legislative and Regulatory Reform Act [2006 \(c. 51\)](#), section 27(1)(a), and the European Union (Amendment) Act [2008 \(c. 7\)](#), Schedule, Part 1, section 3(3).
(2) [2018 c. 16](#).
(3) [S.I. 1972/1811](#).
(4) [S.I. 1975/1707](#).
(5) OJ No. L 60, 28.2.2014, p. 1.

PART 1

Introduction

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Drivers' Hours and Tachographs (Amendment etc.) (EU Exit) Regulations 2019.

(2) Parts 1 and 2 come into force on the 22nd day after the day on which these Regulations are made.

(3) Parts 3 and 4 come into force on exit day.

(4) The following extend to England and Wales, Scotland and Northern Ireland—

- (a) Part 1;
- (b) Part 2, Chapter 2, regulations 21 and 23;
- (c) Part 3, Chapter 2, regulation 49, and Part 3, Chapter 3;
- (d) Part 4.

(5) Except for the regulations referred to in paragraphs 4(b) and (c), Part 2 and Part 3, Chapters 1 and 2 extend to England and Wales and Scotland.

PART 2

Amendments pursuant to the European Communities Act 1972

CHAPTER 1

Amendments of primary legislation

Transport Act 1968

2. The Transport Act 1968(6) is amended as follows.

3.—(1) Section 96 is amended as follows.

(2) In subsection (11B)(7)—

- (a) in paragraph (c), in the words before sub-paragraph (i), after “paragraph (b)” insert “in respect of a contravention of a provision of the Community Drivers' Hours Regulation(8)”;
- (b) in paragraph (c)(ii) for “contravention.” substitute “contravention; or”;
- (c) after paragraph (c) (and the “or” inserted by paragraph (b) above) insert—
 - “(d) being charged as mentioned in paragraph (b) in respect of a contravention of a provision of the AETR(9), the person proves—
 - (i) that at the time of the contravention the person was complying with Article 11(1) to (3) of the AETR (organisation of drivers' work, distance-related payments etc); and

(6) 1968 c. 73.

(7) Section 96(11B) was inserted by section 10 of the Transport Act 1978 (c. 55) and amended by S.I. 2007/1819.

(8) OJ No. L 102, 11.4.2006, p. 1; relevant amending instruments are OJ No. L 300, 14.11.2009, p. 88 and OJ No. L 60, 28.2.2014, p. 1. Defined in section 103(1) of the Transport Act 1968 (c. 73).

(9) The AETR is the European Agreement concerning the work of Crews of Vehicles engaged in International Road Transport of 1st July 1970 and is defined in section 103(1) of the Transport Act 1968 (c. 73). The AETR can be found in Cmnd 7401, Cmnd 8572, Cmnd 9037, Cm 1776, Cm 3042 and Cm 3135.

- (ii) that the person took all reasonable precautions to avoid the contravention.”.
- (3) In subsection (11C)(10)—
 - (a) after “Community Drivers’ Hours Regulation” insert “or Article 11(5) of the AETR”;
 - (b) for “that Regulation” substitute “that provision”.
- 4. In section 97(11)—
 - (a) in the heading, at the end insert “: EU requirements”;
 - (b) for subsection (1)(a)(ii) (but not the “and” at the end) substitute—
 - “(ii) complies with that Regulation (including the relevant Annexes to it);”;
 - (c) in subsection (2) omit “the requirements of the relevant Annexes to”;
 - (d) in subsection (6), after “97G of this Act” insert “(so far as those sections relate to the EU Tachographs Regulation)”;
 - (e) in subsection (7)—
 - (i) in the definition of “the EU Tachographs Regulation”, after “transport” insert “, as amended from time to time,”;
 - (ii) in the definition of “the relevant Annexes”, for “Community Recording Equipment Regulation” substitute “EU Tachographs Regulation”.
- 5. After section 97 insert—

“Installation and use of recording equipment: AETR requirements

97ZA.—(1) No person shall use, or cause or permit to be used, a vehicle to which this section applies—

- (a) unless there is in the vehicle recording equipment which—
 - (i) has been installed in accordance with the AETR;
 - (ii) complies with the AETR (including the relevant Appendices to the Annex to the AETR); and
 - (iii) is being used as provided by Articles 10 to 13 of the Annex to the AETR; or
 - (b) in which there is recording equipment which has been repaired (whether before or after installation) otherwise than in accordance with the AETR.
- (2) A person who contravenes subsection (1) shall be liable on summary conviction—
- (a) in England and Wales, to a fine;
 - (b) in Scotland, to a fine not exceeding level 5 on the standard scale.
- (3) A person shall not be liable to be convicted for contravention of subsection (1) of this section if the person proves to the court that the person neither knew nor ought to have known that the recording equipment had not been installed or repaired, as the case may be, in accordance with the AETR.
- (4) A person shall not be liable to be convicted for contravention of subsection (1)(a) if the person proves to the court that the vehicle in question was proceeding to a place where recording equipment which would comply with the AETR was to be installed in the vehicle in accordance with the AETR.

(10) Section 96(11C) was inserted by [S.I. 2007/1819](#).

(11) Section 97 was amended by [S.I. 1979/1746](#), [1984/144](#), [1986/1457](#), [1989/2121](#), [2005/1904](#), [2006/1117](#), [2008/198](#), [2016/248](#).

(5) A person shall not be liable to be convicted for contravention of subsection (1)(a) by reason of the recording equipment installed in the vehicle in question not being in working order if the person proves to the court that—

- (a) it had not become reasonably practicable for the equipment to be repaired by an approved fitter or workshop; and
- (b) the requirements of Article 13(2)(a) of the Annex to the AETR were being complied with.

(6) A person shall not be liable to be convicted for contravention of subsection (1)(a) by reason of any seal on the recording equipment installed in the vehicle in question not being intact if the person proves to the court that—

- (a) the breaking or removal of the seal could not have been avoided;
- (b) it had not become reasonably practicable for the seal to be replaced by an approved fitter or workshop; and
- (c) in all other respects the equipment was being used as provided by Articles 10 to 13 of the Annex to the AETR.

(7) A person shall not be liable to be convicted for contravention of subsection (1)(a) by reason of the driver card not being used with the recording equipment installed in the vehicle in question if the person proves to the court that—

- (a) the driver card was damaged, malfunctioning, lost or stolen;
- (b) the requirements of Articles 12(1) and 13(2) and (3) of the Annex to the AETR were being complied with; and
- (c) in all other respects the recording equipment was being used as provided by Articles 10 to 13 of the Annex to the AETR.

(8) Where a person (“the driver”)—

- (a) in the course of the driver’s employment, uses a vehicle in contravention of subsection (1), and
- (b) is liable to be convicted for the contravention of that subsection in respect of that use,

the employer also commits an offence and shall be liable on summary conviction to a fine.

(9) A person shall not be liable to be convicted under subsection (8) in respect of the use of a vehicle if the requirements of Article 11(1) to (3) of the AETR and Article 11(1) of the Annex to the AETR were complied with in relation to that use.

(10) For the purposes of this section recording equipment is used as provided by Articles 10 to 13 of the Annex to the AETR if, and only if, the circumstances of its use are such that each requirement of those Articles is complied with.

(11) This section applies at any time to any vehicle to which this Part of this Act applies if, at that time, the AETR requires recording equipment to be installed and used in that vehicle; and in this section and sections 97B to 97G of this Act (so far as those sections relate to the AETR) any expression which is also used in the AETR has the same meaning as in the AETR.

(12) In this Part of this Act—

“AETR” means the European Agreement concerning the Work of Crews of Vehicles engaged in International Road Transport of 1st July 1970⁽¹²⁾ (as applied by Article 2(3) of the Community Drivers’ Hours Regulation);

“the relevant Appendices” to the Annex to the AETR—

- (a) in the case of a vehicle put into service for the first time before 16th June 2010 means—
 - (i) either Appendix 1 or Appendix 1B to that Annex; and
 - (ii) Appendix 2 to that Annex; and
- (b) in the case of a vehicle put into service for the first time on or after that date means—
 - (i) Appendix 1B to that Annex; and
 - (ii) Appendix 2 to that Annex.

Supply of recording equipment which is not type-approved

97ZB.—(1) A person commits an offence if the person supplies, as recording equipment which complies with the EU Tachographs Regulation or the AETR, recording equipment in respect of which no appropriate type-approval certificate is in force.

(2) It is a defence to show that—

- (a) the recording equipment was supplied for export from Great Britain,
- (b) the person had reasonable cause to believe that the recording equipment would not be installed in a vehicle used on a road in Great Britain or would not be so installed until an appropriate type-approval certificate was in force, or
- (c) the person had reasonable cause to believe that the recording equipment would only be installed in a vehicle which was not required under the relevant instrument to have recording equipment installed in it.

(3) A person who commits an offence under this section is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(4) Nothing in this section affects the validity of a contract or any rights arising under or in relation to a contract.

(5) In this section—

“appropriate type-approval certificate” means—

- (a) in relation to recording equipment supplied as complying with the EU Tachographs Regulation, a type-approval certificate—
 - (i) issued under the Motor Vehicles (Type Approval) Regulations 1980⁽¹³⁾ and the EU Tachographs Regulation, or
 - (ii) issued in another member State under the EU Tachographs Regulation;
- (b) in relation to recording equipment supplied as complying with the AETR, a type approval certificate—
 - (i) issued under the Motor Vehicles (Type Approval) Regulations 1980 and the AETR, or
 - (ii) issued in a contracting third country under the AETR;

“relevant instrument”—

- (a) in relation to recording equipment supplied as complying with the EU Tachographs Regulation, means that Regulation;

⁽¹³⁾ S.I. 1980/1182, amended by S.I. 1982/7, 1986/1501, 1988/1103, 2011/1043.