STATUTORY RULES OF NORTHERN IRELAND

2019 No. 12

ROAD TRAFFIC AND VEHICLES

The Drivers' Hours and Tachographs (Amendment) Regulations (Northern Ireland) 2019

Made - - - -	*8th February 2019*
Coming into operation	*11th March 2019*

The Department for Infrastructure makes the following Regulations in exercise of the powers conferred by section 2(2) of, and paragraph 1A of Schedule 2 to, the European Communities Act 1972(**1**).

The Department is designated(**2**) for the purposes of section 2(2) of the European Communities Act 1972 in relation to the regulation of the type, description, construction or equipment of vehicles, the regulation and supervision of working conditions of persons engaged in road transport and measures relating to the organisation of working time.

These Regulations make provision for a purpose mentioned in section 2(2) of the European Communities Act 1972 and it appears to the Department 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(**3**) to be construed as a reference to that instrument as amended from time to time.

PART 1

Introduction

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Drivers' Hours and Tachographs (Amendment) Regulations (Northern Ireland) 2019.

(2) These Regulations come into operation on 11th March 2019.

(**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. Paragraph 1A of Schedule 2 was inserted by the Legislative and Regulatory Reform Act 2006, section 28 and was amended by Part 1 of the Schedule to the European Union (Amendment) Act 2008 (c. 7) and S.I. 2007/1388.

(**2**) S.I. 1972/1811, S.I. 1975/1707 and S.I. 1997/1174.

(**3**) OJ No. L 60, 28.2.2014, p. 1.

(3) The Interpretation Act (Northern Ireland) 1954(**4**) applies to these Regulations as it applies to an Act of the Assembly.

PART 2

Amendments of primary legislation

Road Traffic (Northern Ireland) Order 1981

2. The Road Traffic (Northern Ireland) Order 1981(**5**) is amended as follows.

3. In Article 2(2)(**6**) insert in the appropriate place in alphabetical order—

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

4.—(1) Article 81 is amended as follows.

(2) In paragraph (1A)(**7**) for the words from "he proves" to the end, substitute—

"the person proves—

(a) in respect of a contravention of a provision of the Community Drivers' Hours Regulation(**8**)—

(i) that at the time of the contravention the person was complying with Article 10(1) (distance related payments etc.) and Article 10(2) (organisation of drivers' work etc.) of the Community Drivers' Hours Regulation; and

(ii) that the person took all reasonable steps to avoid the contravention; or

(b) in respect of a contravention of a provision of the AETR(**9**)—

(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

(ii) that the person took all reasonable precautions to avoid the contravention.".

(3) In paragraph (1B)(a)(**10**)—

(a) after "Community Drivers' Hours Regulation" insert "or Article 11(5) of the AETR";

(b) for "that Regulation" substitute "that provision".

(**4**) 1954 c.33 (N.I.).
(**5**) 1981 (NI 1).
(**6**) Amended by S.R. 2009/91
(**7**) Paragraph (1A) was inserted by S.R. 2009/91.
(**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.X.
(**9**) The AETR is the European Agreement concerning the work of Crews of Vehicles engaged in International Road Transport of 1st July 1970. The AETR can be found in Cmnd 7401, Cmnd 8572, Cmnd 9037, Cm 1776, Cm 3042 and Cm 3135.
(**10**) Paragraph (1B) was inserted S.R. 2009/91.

PART 3

Amendments of secondary legislation

Passenger and Goods Vehicles (Recording Equipment) Regulations (Northern Ireland) 1996

5. The Passenger and Goods Vehicles (Recording Equipment) Regulations (Northern Ireland) 1996(**11**) are amended as follows.

6.—(1) Regulation 2 is amended as follows.

(2) In paragraph (1)(**12**), insert in the appropriate place in alphabetical order—

""AETR" means the European Agreement concerning the Work of Crews of Vehicles engaged in International Road Transport of 1st July 1970(**13**) (as applied by Article 2(3) of the Community Drivers' Hours Regulation);"

(3) In paragraph (1), insert in the appropriate place in alphabetical order—

""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."

(4) In paragraph (1), insert in the appropriate place in alphabetical order—

""relevant provision" means—

(a) in relation to a vehicle to which regulation 3 applies, Annex 1B to the EU Tachographs Regulation;

(b) in relation to a vehicle to which regulation 3A applies, Appendix 1B to the Annex to the AETR.".

(5) In paragraph (1), for the definition of "analogue recording equipment" substitute—

""analogue recording equipment" means—

(a) in relation to a vehicle to which regulation 3 applies, recording equipment that complies with Annex I to the EU Tachographs Regulation;

(b) in relation to a vehicle to which regulation 3A applies, recording equipment that complies with Appendix 1 to Annex 1 to the AETR;".

(6) In paragraph (1), in the definition of ""company card", "control card" and "driver card"" omit the reference to "driver card".

(7) In paragraph (1), insert in the appropriate place in alphabetical order—

""driver card" has the meaning given by the relevant provision;"

(8) In paragraph (1), in the definition of "digital recording equipment", for "Annex 1B to the EU Tachographs Regulation" substitute "the relevant provision".

(9) In paragraph (1), in the definition of "electronic copy", for "that Annex" substitute "the relevant provision".

(**11**) S.R. 1996/145.
(**12**) Paragraph (1) was amended by S.R. 2016/243, S.R. 2006.274, S.R. 2010/23, S.R. 2005/441, S.R. 2005/325.
(**13**) Cmnd 7401, Cmnd 8572, Cmnd 9037, Cm 1776, Cm 3042 and Cm 3135.

(10) In paragraph (1), in the definition of "EU Tachographs Regulation" after "transport" insert ", as amended from time to time".

7.—(1) Regulation 3(**14**) is amended as follows.

(2) In the heading, at the end insert ": EU requirements".

(3) For paragraph (1)(a)(ii) substitute—

"(ii) complies with that Regulation (including the relevant Annexes to it);".

(4) In paragraph (3) omit "the requirements of the relevant Annexes to".

(5) In paragraph (7), after "6E" insert "(so far as those regulations relate to the EU Tachographs Regulation)".

8. After regulation 3 insert—

"**Installation and use of recording equipment: AETR requirements**

3A.—(1) No person shall use, or cause or permit to be used, a vehicle to which this regulation 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 paragraph (1) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(3) A person shall not be liable to be convicted for contravention of paragraph (1) 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 paragraph (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.

(5) A person shall not be liable to be convicted for contravention of paragraph (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 paragraph (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;

(**14**) Regulation 3 was amended by S.R. 2016/343, S.R. 2006/274, S.R. 2010/23.

(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 paragraph (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 paragraph (1), and

(b) is liable to be convicted for the contravention of that paragraph in respect of that use,

the employer also commits an offence and shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(9) A person shall not be liable to be convicted under paragraph (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 regulation 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 regulation applies at any time to any vehicle to which Part V of the Order applies if, at that time, the AETR requires recording equipment to be installed and used in that vehicle; and in this regulation and regulations 6 to 6E (so far as those regulations relate to the AETR) any expression which is also used in the AETR has the same meaning as in the AETR.

Supply of recording equipment which is not type-approved

3B.—(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 the United Kingdom,

(b) the person had reasonable cause to believe that the recording equipment would not be installed in a vehicle used on a road in the United Kingdom 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 regulation is liable on summary conviction to a fine not exceeding level 4 on the standard scale.