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STATUTORY INSTRUMENTS

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**2019 No. 453**

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

**PART 2**

**Amendments pursuant to the European Communities Act 1972**

**CHAPTER 1**

**Amendments of primary legislation**

**Transport Act 1968**

2. The Transport Act 1968(1) is amended as follows.
- 3.—(1) Section 96 is amended as follows.
  - (2) In subsection (11B)(2)—
    - (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(3)”;
    - (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(4), 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
        - (ii) that the person took all reasonable precautions to avoid the contravention.”.
  - (3) In subsection (11C)(5)—
    - (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(6)—
  - (a) in the heading, at the end insert “: EU requirements”;

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(1) 1968 c. 73.

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

(3) OJNo. 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).

(4) 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.

(5) Section 96(11C) was inserted by S.I. 2007/1819.

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

- (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—

**“97ZA Installation and use of recording equipment: AETR requirements**

(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.

(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<sup>(7)</sup> (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.

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(7) Cmnd 7401, Cmnd 8572, Cmnd 9037, Cm 1776, Cm 3042 and Cm 3135.

**97ZB Supply of recording equipment which is not type-approved**

(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<sup>(8)</sup> 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;
- (b) in relation to recording equipment supplied as complying with the AETR, means the AETR;

“supplies” includes—

- (a) sells;
- (b) offers to sell or supply;
- (c) exposes for sale.

**97ZC Recording equipment system elements: security vulnerabilities**

(1) A person commits an offence if—

<sup>(8)</sup> S.I. 1980/1182, amended by S.I. 1982/7, 1986/1501, 1988/1103, 2011/1043.

- (a) the person is a manufacturer of a vehicle unit, motion sensor or tachograph card for which a type-approval certificate has been issued under the Motor Vehicles (Type Approval) Regulations 1980 and the EU Tachographs Regulation,
- (b) the person knows that security vulnerabilities have been detected for elements already on the market, as mentioned in Article 20(3) of the EU Tachographs Regulation, and
- (c) the person fails to inform the Secretary of State that the security vulnerabilities have been detected.

(2) 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.”.

6. In section 97AA(1)(9), after “97” insert “ or 97ZA”.

7. In section 97B(10), for subsection (2) substitute—

“(2) Any entry made on a record sheet or printout by a driver for the purposes of—

- (a) Article 34(1), (3), (4) or (6) or 37(2) of the EU Tachographs Regulation, or
- (b) Article 12(1), (2) or (5) or 13(2)(a) of the Annex to the AETR,

shall, in any proceedings under this Part of this Act, be evidence, and in Scotland sufficient evidence, of the matters appearing from that entry.”.

8. In section 97C(11)—

- (a) in subsection (1)(b), at the end insert “or the AETR”;
- (b) in subsection (2), after “97” insert “or 97ZA”.

9. In section 97D(12)—

- (a) in subsection (1), after “Community Drivers’ Hours Regulation” insert “or article 11(2) (b) of the Annex to the AETR”;
- (b) in subsection (3), in column 2 of the table entry relating to case 1, in paragraph (b), after “article 10” insert “of the Community Drivers’ Hours Regulation or article 11(2)(b) of the Annex to the AETR”.

10. In section 97E(13)—

- (a) in subsection (1), after “Community Drivers’ Hours Regulation” insert “or article 11(2) (b) of the Annex to the AETR”;
- (b) in subsection (3), in column 2 of the table entry relating to case 1, in paragraph (b), after “article 10” insert “of the Community Drivers’ Hours Regulation or article 11(2)(b) of the Annex to the AETR”.

11. In section 97F(1)(b)(14), after “Community Drivers’ Hours Regulation” insert “or article 11(2)(b) of the Annex to the AETR”.

12. In section 97G(2)(15), after “Community Drivers’ Hours Regulation” insert “or article 11(2) (b) of the Annex to the AETR”.

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(9) Section 97AA was inserted by [S.I. 1989/2121](#).

(10) Section 97B was inserted by [S.I. 1979/1746](#) and amended by [S.I. 2005/1904](#), [2016/248](#).

(11) Section 97C was inserted by [S.I. 2008/198](#) and amended by [S.I. 2016/248](#).

(12) Section 97D was inserted by [S.I. 2008/198](#) and amended by [S.I. 2015/502](#), [2016/248](#).

(13) Section 97E was inserted by [S.I. 2008/198](#).

(14) Section 97F was inserted by [S.I. 2008/198](#) and amended by [S.I. 2016/248](#).

(15) Section 97G was inserted by [S.I. 2008/198](#).

**13.** In section 97H(3)(**16**), after “Community Drivers’ Hours Regulation” insert “or article 11(2) (b) of the Annex to the AETR”.

**14.—**(1) Section 98(2A)(**17**) is amended as follows.

(2) The words from “a vehicle” to the end become paragraph (a).

(3) In that paragraph, for the words from “the relevant Annexes” to the end substitute “the EU Tachographs Regulation (including the relevant Annexes, within the meaning of that section);”.

(4) After that paragraph insert—

“(b) a vehicle to which section 97ZA applies and which is installed with recording equipment complying with the AETR (including the relevant Appendices to the Annex, within the meaning of that section).”.

**15.** In section 99(11)(**18**), after “97” insert “or 97ZA”.

**16.—**(1) Section 99ZA(**19**) is amended as follows.

(2) In subsection (1)—

(a) in paragraph (a), after “97” insert “or 97ZA”;

(b) in paragraph (b), after “Regulation” insert “or the AETR”.

(3) In subsection (2)(a), after “Regulation” insert “or Article 12(7)(a) or (b) of the Annex to the AETR”.

(4) In subsection (6)—

(a) in the definition of “digital recording equipment”, for “Annex 1B to the EU Tachographs Regulation” substitute “the relevant provision”;

(b) in the definition of “driver card”, for “in that annex” substitute “by the relevant provision”;

(c) in the definition of “electronic copy”, for “that Annex” substitute “the relevant provision”.

(5) After subsection (6) insert—

“(7) In subsection (6) “relevant provision” means—

(a) in relation to a vehicle to which section 97 applies, Annex 1B to the EU Tachographs Regulation;

(b) in relation to a vehicle to which section 97ZA applies, Appendix 1B to the Annex to the AETR.”.

**17.—**(1) Section 99ZB(**20**) is amended as follows.

(2) In subsection (1), after “97” insert “or 97ZA”.

(3) In subsection (4)(a), after “97” insert “or 97ZA”.

(4) In subsection (5)(a), after “97” insert “or 97ZA”.

(5) In subsection (7)(b), for “EU Tachographs Regulation” substitute “relevant instrument”.

(6) For subsections (8) and (9) substitute—

“(8) In subsection (7) of this section—

“relevant person” means—

(16) Section 97H was inserted by [S.I. 2008/198](#).

(17) Section 98(2A) was inserted by [S.I. 1979/1746](#) and amended by [S.I. 2005/1904](#).

(18) Section 99(11) was inserted by [S.I. 2005/1904](#).

(19) Section 99ZA was inserted by [S.I. 2005/1904](#) and amended by [S.I. 2016/248](#).

(20) Section 99ZB was inserted by [S.I. 2005/1904](#) and amended by [S.I. 2016/248](#).

- (a) if the requirement was imposed by an examiner appointed under section 66A of the Road Traffic Act 1988(21), the Secretary of State;
- (b) if the requirement was imposed by a constable, the chief officer of police for the police area in which the requirement was imposed;

“relevant instrument” means—

- (a) in relation to a vehicle to which section 97 applies, the EU Tachographs Regulation;
  - (b) in relation to a vehicle to which section 97ZA applies, the AETR.
- (9) In this Part of this Act, “analogue recording equipment” means—
- (a) in relation to a vehicle to which section 97 applies, recording equipment that complies with Annex I to the EU Tachographs Regulation;
  - (b) in relation to a vehicle to which section 97ZA applies, recording equipment that complies with Appendix 1 to Annex 1 to the AETR.”.

**18.** In section 99ZE(2)(a)(22), for “or section 97” substitute “, the AETR or section 97 or 97ZA”.

**19.** In section 103(1)(23), before the definition of “agriculture” insert—

““AETR” has the meaning given by section 97ZA(12) of this Act;”.

### **Road Traffic Offenders Act 1988**

**20.** In Schedule 3 to the Road Traffic Offenders Act 1988(24), after the entry relating to section 97(1) of the Transport Act 1968 insert—

“Section 97ZA(1) and (2) of that Act	Using vehicle in contravention of requirements relating to installation, use or repair or recording equipment in accordance with the AETR.”
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(21) 1988 c. 52; section 66A was inserted by section 9(1) of the Road Traffic Act 1991 (c. 40) and was amended by the Goods Vehicles (Licensing of Operators) Act 1995 (c. 23).

(22) Section 99ZE was inserted by S.I. 2005/1904 and amended by S.I. 2016/248.

(23) Section 103(1) was amended by section 2(1) of the Road Traffic (Drivers' Ages and Hours of Work) Act 1976 (c. 3) and by S.I. 1979/1746, 1981/1373, 1986/1458, 2005/1904, 2007/1819, 2008/198, 2011/1043, 2013/1644, 2016/248, 2018/24.

(24) 1988 c. 53. Schedule 3 was amended by S.I. 2009/483 and 2016/248; there are other amendments which are not relevant to these Regulations.