STATUTORY INSTRUMENTS

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

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 [M1] (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.

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 [M2] 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—

(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.”.

Commencement Information

I1 Reg. 5 in force at 26.3.2019, see reg. 1(2)

Marginal Citations

M1 Cmnd 7401, Cmnd 8572, Cmnd 9037, Cm 1776, Cm 3042 and Cm 3135.

M2 S.I. 1980/1182, amended by S.I. 1982/7, 1986/1501, 1988/1103, 2011/1043.

Changes to legislation:
There are currently no known outstanding effects for the The Drivers' Hours and Tachographs (Amendment etc.) (EU Exit) Regulations 2019, Section 5.