

Subsidiary Legislation made under ss.69(1)(u) and 69(1)(u)(i).

**EUROPEAN AGREEMENT CONCERNING THE WORK OF CREWS
OF VEHICLES ENGAGED IN INTERNATIONAL ROAD TRANSPORT
(AETR) REGULATIONS 2019**

LN.2019/149

	<i>Commencement</i>	30.7.2019
Amending enactments	Relevant current provisions	Commencement date

ARRANGEMENT OF REGULATIONS.

Regulation

1. Title.
2. Commencement.
3. Amendment of the Transport Act 1998.

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In exercise of the powers conferred upon the Minister by section 69(1)(u)(i) and the Government by section 69(1)(u) as read with section 23(g)(ii) of the Interpretation and General Clauses Act, the Minister and the Government have made the following Regulations-

Title.

1. These Regulations may be cited as the European Agreement Concerning the Work of Crews of Vehicles Engaged in International Road Transport (AETR) Regulations 2019.

Commencement.

2. These Regulations shall come into operation on the day of publication.

Amendment of the Transport Act 1998.

3.(1) The Transport Act 1998 is amended as follows.

(2) In section 66A(1)-

(a) before the definition of “the applicable Community rules” insert the following definition-

““AETR” means the European Agreement concerning the Work of Crews of Vehicles engaged in International Road Transport of 1st July 1970, as amended from time to time;”;

(b) for the definition of “the applicable Community rules” insert the following definition-

““the applicable EU rules” means any directly applicable EU law provision for the time being in force about the driving of road vehicles and includes the European Agreement concerning the Work of Crews of Vehicles engaged in International Road Transport of 1st July 1970, as amended, as applied by Article 2(3) of the EU Drivers' Hours Regulation;”;

(c) in the definition of “the Community Drivers’ Hours Regulation” for “Community” substitute “EU”;

(d) after the definition of “the EU Drivers’ Hours Regulation” insert-

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““contracting third country” means a country or territory, other than a member State, which is a contracting party to the AETR or the EEA agreement;”;

- (e) in the definition of “record sheet”, after “Regulation” insert “or a manual daily record sheet drawn up under section 66DBA”;
- (f) for the definition of “relevant Community provision” substitute-

““relevant EU provision” means any EU law provision for the time being in force about the driving of road vehicles, whether directly applicable or not”;

- (g) after the definition of “relevant EU provision” insert the following definition-

““relevant Appendices” to the Annex to the AETR means Appendix 1, Appendix 1B and Appendix 2 to the Annex;”;

- (h) in the definition of “transport undertaking”, for “Community” substitute “EU”;
- (i) in the tailpiece, for “Community” substitute “EU”.

(3) In section 66B-

- (a) in subsection (1), for “Community” substitute “EU”;
- (b) in subsection (2), for the 4 instances of “Community” substitute “EU”;
- (c) for subsection (3)(c), substitute-

“(c) vehicles not falling within paragraph (a) or (b) of this subsection which-

- (i) are vehicles within the meaning given by Article 4 of the EU Drivers' Hours Regulation; and
- (ii) are not referred to in Article 3 of that Regulation.”.

(4) In section 66C-

- (a) in subsection (11)-
 - (i) after “contravention” insert “, whether occurring in Gibraltar, a member State, or a contracting third country,”;

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- (ii) for “Community” substitute “EU”;
 - (b) in subsection (12)-
 - (i) paragraph (c)-
 - (A) after “paragraph (b)” insert “in respect of a contravention of a provision of the EU Driving Hours Regulation”;
 - (B) in subparagraph (i) for, “Community” substitute “EU”;
 - (C) in subparagraph (ii) for, “.” substitute “; or”;
 - (ii) after paragraph (c), insert-
 - “(d) being charged as mentioned in paragraph (b) in respect of a contravention of a provision of the AETR, 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.”;
 - (c) for subsection (13)(a)-
 - “(a) is subject to the requirement imposed by Article 10(4) of the EU Drivers' Hours Regulation or Article 11(5) of the AETR (undertakings etc to ensure that contractually agreed transport time schedules respect that provision); and”;
 - (d) in subsection (14) for “Community” substitute “EU”.
- (5) After section 66C insert the following section-
- “Authorisation of field tests.**
- 66CA.(1) The Minister may authorise a person to carry out tests (“field tests”) of—

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- (a) recording equipment that has not been type-approved under Article 13 of the EU Driver's Hours Regulation (granting of type-approval), or
 - (b) modifications or additions to recording equipment that has been so approved.
- (2) An authorisation is to be in writing.
- (3) The Minister may withdraw an authorisation by giving written notice.
- (4) An authorisation may contain conditions which may in particular relate to—
- (a) the places where and equipment by means of which a field test is, or is to be, carried out;
 - (b) the procedure to be adopted in carrying out a field test;
 - (c) the records to be kept and the evidence to be furnished of the carrying out of a field test;
 - (d) the training of persons for carrying out field tests;
 - (e) the inspection by or on behalf of the Minister of places where and equipment by means of which field tests are, or are to be, carried out;
 - (f) the display, at the places where field tests are carried out, of signs indicating that field tests are carried out there by persons approved by the Minister.
- (5) The Minister must from time to time publish lists of the persons currently authorised under this section.”.
- (6) In section 66D-
- (a) in the section heading, at the end insert “- EU requirements”;
 - (b) in subsection (1)-
 - (i) paragraph (a)-

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- (A) in subparagraph (ii), for “Annexes I and II to that Regulation” substitute “the EU Tachographs Regulation, including the relevant Annexes to it”;
- (B) in subparagraph (iii), for “that Regulation” substitute “the EU Tachographs Regulation”;
- (ii) paragraph (b), for “Community Recording Equipment Regulation” substitute “the EU Tachographs Regulation”;
- (c) in subsection (3), delete “requirements of the Annexes I and II to”;
- (d) after subsection (6), insert the following subsections-
- “(6A) A person shall not be liable to be convicted under subsection (1) of this section by reason of using recording equipment which does not bear a type-approval mark issued under Article 14 of the EU Tachographs Regulation if he proves to the court that the use of the recording equipment was in the course of a field test authorised under section 66CA.
- (6B) 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 under that subsection in respect of that use, the employer also commits an offence and shall be liable on summary conviction to a fine.
- (6C) A person shall not be liable to be convicted under subsection (6B) in respect of the use of a vehicle if the requirements of Article 10(1) and (2) of the EU Drivers' Hours Regulation (liability of transport undertakings) and Article 33(1) of the EU Tachographs Regulation (responsibility of transport undertakings) were complied with in relation to that use.”;
- (e) in subsection (8), after “66K” insert “so far as those sections relate to the EU Tachographs Regulation”;
- (f) after subsection (8), insert the following section-

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“(9) In this Part—

“the relevant Annexes” to the EU Tachographs Regulation-

(a) in the case of a vehicle put into service for the first time before 1st May 2006 means-

(i) either Annex I or Annex IB to that Regulation; and

(ii) Annex II to that Regulation; and

(b) in the case of a vehicle put into service for the first time on or after that date means-

(i) Annex IB to that Regulation; and

(ii) Annex II to that Regulation.”.

(7) After section 66D, insert the following sections-

“Installation and use of recording equipment - AETR requirements.

66DA.(1) No person shall use, or cause or permit to be used, a vehicle to which this section applies unless-

(a) 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,

and any person who contravenes this subsection shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

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(2) 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.

(3) 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.

(4) 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.

(5) *Not used.*

(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;

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- (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 66F to 66K (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-

"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

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- (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.

66DB.(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 Gibraltar;
- (b) the person had reasonable cause to believe that the recording equipment would not be installed in a vehicle used on a road in Gibraltar 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-

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- (i) issued under the United Kingdom's Motor Vehicles (Type Approval) Regulations 1980 and the EU Tachographs Regulation, or
 - (ii) issued in a 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 United Kingdom's 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.

Manual daily record sheet.

66DBA.(1) The crew of a vehicle registered in a country which is not a contracting Party to the AETR may, in lieu of a tachograph conforming to the specifications in the Annex to the AETR, manually complete daily record sheets.

(2) The daily record sheets referred to in subparagraph (1) must be completed by a crew member for the period of time from the moment of entry into the territory of the first contracting Party to the AETR.

(3) In completing the record sheets referred to subparagraph (1), a crew member shall write on his record sheet the information concerning his professional activities

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and rest periods, using the appropriate graphic symbols as defined in article 12 of the Annex to the AETR.

Recording equipment system elements: security vulnerabilities.

66DC.(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 United Kingdom’s 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 Driver and Vehicle Licensing Department 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.”.

(8) In section 66E(1), after “66D” insert “or section 66DA”.

(9) For section 66F(2) substitute-

“(2) Any entry made on a record sheet or print out 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, be evidence of the matters appearing from that entry.”.

(10) In section 66G-

- (a) in subsection(1)(b), after “Regulation” insert “or the AETR”;
- (b) in subsection 2, after “66D” insert “or section 66DA”.

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- (11) In section 66H-
- (a) in subsection (1), for “Community Drivers’ Hours Regulation” insert “EU Drivers’ Hours Regulation or article 11(2)(b) of the Annex to the AETR”;
 - (b) in subsection (3)-
 - (i) in column 1 of the table entry relating to case 2 and 3, for both instances of “56” substitute “90”;
 - (ii) in column 2 of the table entry relating to case 1, after “article 10” insert “of the EU Drivers’ Hours Regulation or article 11(2)(b) of the Annex to the AETR”;
 - (iii) in column 3 of the table entry relating to case 1, for “56” substitute “90”.
- (12) In section 66I-
- (a) in subsection (1), for “Community Drivers’ Hours Regulation” insert “EU Drivers’ Hours Regulation 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, after “article 10” insert “of the EU Drivers’ Hours Regulation or article 11(2)(b) of the Annex to the AETR”.
- (13) In section 66J(1)(b), for “Community Drivers’ Hours Regulation” insert “EU Drivers’ Hours Regulation or article 11(2)(b) of the Annex to the AETR”.
- (14) In section 66K(2), for “Community Drivers’ Hours Regulation” insert “EU Drivers’ Hours Regulation or article 11(2)(b) of the Annex to the AETR”.
- (15) In section 66L(3), for “Community Drivers’ Hours Regulation” insert “EU Drivers’ Hours Regulation or article 11(2)(b) of the Annex to the AETR”.
- (16) In section 66M-
- (a) in subsection (2), for the 2 instances of “Community” substitute “EU”.
 - (b) for subsection (3), substitute-

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“(3) The requirements of regulations made under this section shall not apply as respects the driving of-

- (a) a vehicle to which section 66D applies and which is installed with recording equipment complying with the relevant Annexes (within the meaning of that section);
- (b) a vehicle to which section 66DA 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).”;
- (c) for subsection (5), substitute-

“(5) Any person who-

- (a) contravenes any regulations made under this section; or
- (b) contravenes, whether in Gibraltar, a relevant State or in a contracting third country, any requirement as to books, records or documents of the applicable EU rules,

shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale; but the employer of an employee-driver shall not be liable to be convicted under this subsection by reason for contravening any such regulation whereby he is required to cause any records to be kept if he proves to the court that he has given proper instructions to his employees with respect to the keeping of the records and has from time to time taken reasonable steps to secure that those instructions are being carried out.”

- (d) in subsection (7), for “Community” substitute “EU”.

(17) In section 66N-

- (a) in subsection (6)(a), delete the first instance of “not exceeding”;
- (b) in subsection (10), after “66D” insert “or section 66DA”.

(18) In section 66O-

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- (a) in subsection (1)-
 - (i) in paragraph (a), after “66D” insert “or section 66DA”;
 - (ii) in paragraph (b), after “Regulation” insert “or the AETR”;
 - (iii) in paragraph (c), for the 2 instances of “Community” substitute “EU”;
 - (b) in subsection (2)(a), after “Regulation” insert “or Article 12(7)(a) or (b) of the Annex to the AETR”;
 - (c) in subsection 6, in the definition of-
 - (i) “digital recording equipment”, for “Annex IB to the EU Tachographs Regulation” substitute “the relevant provision”;
 - (ii) “driver card”, for “in that Annex” substitute “by the relevant provision”;
 - (iii) “electronic copy”, for “that Annex” substitute “the relevant provision”;
 - (d) after subsection (6), insert-
 - “(7) In subsection (6) “relevant provision” means-
 - (a) in relation to a vehicle to which section 66D applies Annex IB to the EU Tachographs Regulation;
 - (b) in relation to a vehicle to which section 66DA applies, Appendix 1B to the Annex to the AETR.”.
- (19) In section 66P-
- (a) in subsection (1), after “66D” insert “or section 66DA”;
 - (b) in subsection (2)-
 - (i) in paragraph (a), for “tachograph” substitute “recording equipment”;
 - (ii) in paragraph (c), for “Community” substitute “EU”;
 - (c) in subsection (4)(a), after “66D” insert “or section 66DA”;

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- (d) in subsection (5)(a), after “66D” insert “or section 66DA”;
- (e) after subsection (6), insert-
- “(7) In this Part, “analogue recording equipment” means-
- (a) in relation to a vehicle to which section 66D applies, recording equipment that complies with Annex I to the EU Tachographs Regulation;
 - (b) in relation to a vehicle to which section 66DA applies, recording equipment that complies with Appendix 1 to Annex 1 to the AETR.”.
- (20) In section 66S(2)-
- (a) in paragraph (a), for “Regulation or section 66D” substitute “, the AETR or section 66D or section 66DA”;
 - (b) in paragraph (b), for “Community” substitute “EU”.
- (21) After section 66T, insert-
- “Power to stop.**
- 66TA.(1) Subsection (2) applies if a vehicle appears to an officer to be one to which this Part could apply.
- (2) The officer may direct the driver to stop the vehicle for the purpose of enabling him to exercise powers under this Part.
- (3) In this section “an officer” means-
- (a) an “officer” as defined in section 66A(1);
 - (b) a vehicle examiner appointed under section 6 of the Traffic Act 2005; or
 - (c) a police officer authorised to act for the purposes of this section by or on behalf of the Commissioner of Police.”.
- (22) In section 66U(1)(b)(ii), for “Community” substitute “EU”.

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(23) After section 66W insert-

“Exchange of information with AETR competent authorities.

66WA. The Driver and Vehicle Licensing Department shall send to the competent authority of the contracting party to the AETR, lists of approved fitters, approved workshops and the cards issued to them and also copies of the marks and of the necessary information relating to the electronic security data used.”.

(24) In section 70(1)(a), for “forges within the meaning of the Criminal Offences Act” substitute “makes a false instrument within the meaning of the Crimes Act 2011”.

(25) In Schedule 3-

- (a) in paragraph 1, for “Community” substitute “EU”;
- (b) in paragraph 2, for “Article 13(1) of the Community” substitute “Article 11(a) of the EU”;
- (c) in paragraph 4, for “Community Recording Equipment Regulation” substitute “EU Tachographs Regulation”.