



STATUTORY INSTRUMENTS.

S.I. No. 126 of 2015



EUROPEAN UNION (ROAD TRANSPORT) (WORKING CONDITIONS
AND ROAD SAFETY) (AMENDMENT) REGULATIONS 2015

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I, PASCHAL DONOHOE, Minister for Transport, Tourism and Sport, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972), and for the purpose of giving full effect to Council Regulation (EEC) No. 3821/85 of 20 December 1985¹ and Articles 24, 34 and 45 of Regulation (EU) No. 165/2014 of the European Parliament and of the Council of 4 February 2014², hereby make the following regulations:

1. These Regulations may be cited as the European Union (Road Transport) (Working Conditions and Road Safety) (Amendment) Regulations 2015.

2. In these Regulations—

“Principal Regulations” means European Communities (Road Transport) (Working Conditions and Road Safety) Regulations 2008 (S.I. No. 62 of 2008);

“Regulations of 2010” means European Communities (Road Transport) (Working Conditions and Road Safety) (Amendment) Regulations 2010 (S.I. No. 431 of 2010).

3. The Principal Regulations are amended—

(a) in Regulation 2(1)—

(i) in the definition of “First Council Regulation” (inserted by the Regulations of 2010) by inserting “and Commission Regulation (EU) No. 1161/2014 of 30 October 2014³” after “16 December 2009”,

(ii) in the definition of “Second Council Regulation” (inserted by the Regulations of 2010) by inserting “ and Article 45 of EU Regulation 165/2014” after “and bus services”,

(iii) by inserting after the definition of “European Commission” the following:

“ ‘EU Regulation 165/2014’ means Regulation (EU) No. 165/2014 of the European Parliament and of the Council of 4 February 2014²;”,

¹OJ No. L370, 21.12.1985, p.8

²OJ No. L60, 28.2.2014, p.1

³OJ No. L311, 31.10.2014, p.19

and

- (iv) by inserting after the definition of “digital tachograph card” the following:

“ ‘downloading’, in relation to a tachograph, means the copying, together with the digital signature, of a part or a complete set of the data stored in the data memory of the vehicle or in the memory of a tachograph card;”,

- (b) by substituting for Regulation 5 the following:

“5. (1) The categories of vehicles referred to in Article 13 (other than in subparagraph (1)(m) of that Article) of the Second Council Regulation are exempted from Articles 5 to 9 of that Regulation when used for carriage by road solely within the State.

(2) A vehicle that is specially designed for mobile banking, exchange or saving transactions is exempted from Articles 5 to 9 of the Second Council Regulation when used for carriage by road solely within the State.”,

- (c) in Regulation 8, by substituting for paragraph (1) the following:

“(1) NSAI is responsible for—

- (a) approving, under Article 24(1) of EU Regulation 165/2014, workshops for the installation, checking, inspection, calibration and repair of recording equipment in accordance with Article 12 of the First Council Regulation and for carrying out checks and inspections in accordance with Parts V and VI of Annex I, and Parts V and VI of Annex I B, of the First Council Regulation,
- (b) laying down procedures and conditions to be adopted by workshops approved of by it for the purposes of EU Regulation 165/2014 and these Regulations,
- (c) monitoring and controlling approved tachograph workshop and fitter compliance, and conducting audits and technical audits, for the purposes of EU Regulation 165/2014 and these Regulations, and
- (d) making a report to the Road Safety Authority of its activities during the preceding year or part of it concerning the approval, monitoring and controlling of workshops and fitters which shall include a summary of all inspections and audits of workshops and fitters and of suspensions and revocation of approval as a workshop for that year or part of it.”,

- (d) in Regulation 11—

(i) by substituting for paragraph (1) the following:

“(1) NSAI for the purposes of Article 24 of EU Regulation 165/2014 may approve premises as a workshop only if it is satisfied that the operator of the workshop has—

- (a) suitable premises to operate a workshop,
- (b) the necessary equipment and facilities to carry out relevant tests for the purposes of the installation, inspection, repair and calibration of tachographs,
- (c) document control and document security arrangements in place,
- (d) security arrangements for workshop cards, seals and certificates to be issued by a workshop where—
 - (i) a malfunction of a tachograph prevents data previously recorded from being downloaded from the tachograph, or
 - (ii) data previously recorded is downloaded from a tachograph,
- (e) put in place quality assurance measures for the purposes of maintaining the integrity and security of the installation, inspection, repair and calibration of tachographs and, where it has satisfied itself for those purposes, that the provisions of the First Council Regulation and these Regulations are being complied with,
- (g) implemented appropriate measures, approved by NSAI, to ensure that no conflicts of interest arise in relation to the installation, repair, inspection or calibration of tachographs by the operator of a workshop or by the holders of a workshop card based in the workshop, and
- (h) a current tax clearance certificate issued under section 1095 (inserted by section 127 of the Finance Act 2002) of the Taxes Consolidation Act 1997 at the time the application for approval is received by NSAI.”, and

(ii) by substituting for paragraph (4) the following:

“(4) The Road Safety Authority may, on foot of an application for a workshop card from a person who operates a premises approved by NSAI as a workshop authorise the grant of a workshop card to a fitter at the workshop where—

- (a) the person completes an application form approved by the Road Safety Authority, and
- (b) the fitter concerned—
 - (i) has successfully completed such initial and refresher training as may be specified by the Road Safety Authority for the installation, inspection, repair and calibration of tachographs of the type for which the workshop is approved,
 - (ii) supplies the Road Safety Authority with his or her certificate of competence, and
 - (iii) is a person of good repute.”,
- (e) in Regulation 17, by substituting for paragraph (1) the following:

“(1) Before withdrawing the approval of a workshop under Article 24(6) of EU Regulation 165/2014, NSAI shall by notice in writing given to the operator of the workshop, inform the operator of its intention to withdraw the approval.

(1A) A notice under paragraph (1) shall state—

- (a) the grounds on which it is proposed to withdraw the approval, and
 - (b) that the operator may, within 21 days after the giving of the notice, make written representations to NSAI showing why the approval should not be withdrawn.”,
- (f) by inserting after Regulation 18 the following:

“Conflicts of interest

18A. (1) A person who is—

- (a) an operator of a workshop, or
- (b) a fitter,

who is authorised under these Regulations to install, inspect, repair or calibrate a tachograph shall organise himself or herself in such a manner so that during the term of being so authorised, conflicts of interests do not arise concerning the installation, inspection, repair and calibration of tachographs of vehicles—

- (i) owned by the workshop,
- (ii) owned by the fitter,
- (iii) owned by a transport undertaking, or

- (iv) where the workshop or fitter has a material interest in a transport undertaking or a vehicle,

that is subject to the installation, inspection, repair or calibration of a tachograph.

(2) A workshop or fitter who becomes aware that a material conflict of interest exists shall eliminate that conflict of interest and not undertake any installation, inspection, repair or calibration of a tachograph in respect of the vehicle concerned.

(3) A person shall not exercise or attempt to exercise undue influence, undue guidance, or undue control over a workshop operator or fitter which could prevent or hinder in any material respect the performance of his or her functions as a workshop operator or fitter in relation to the installation, inspection, repair or calibration of a tachograph in accordance with the First Council Regulation or these Regulations.

(4) The requirement in paragraph (1) shall be a condition of—

- (a) a permit to operate a premises as a workshop, and
- (b) a workshop card.”,

(g) by inserting after Regulation 19 the following:

“Offence — calibration and other certificate

19A. A person who—

(a) issues or replaces or permits the issue or replacement of—

- (i) a duplicate calibration certificate, or
- (ii) a certificate to be issued where a malfunction of a tachograph prevents data previously recorded from being downloaded from the tachograph, or
- (iii) a certificate to be issued where the data previously recorded is downloaded from a tachograph,

contrary to the First Council Regulation, or

(b) places a date or permits the placing of a date on a calibration certificate or a certificate referred to in subparagraph (a)(ii) or (iii) which is earlier than the date of the inspection or calibration,

commits an offence and is liable—

- (i) on summary conviction, to a class A fine or to imprisonment for a term not exceeding 3 months or both, or

- (ii) on conviction on indictment, to a fine not exceeding €100,000 or to imprisonment for a term not exceeding 12 months or both.”,

(h) in Regulation 21, by substituting for paragraph (1) the following:

“(1) This Regulation applies to a vehicle referred to in Article 3 of the First Council Regulation, other than—

- (a) a vehicle exempted by Regulation 5 of these Regulations, or
- (b) a vehicle described in Article 3 of the Second Council Regulation.”,

(i) in Regulation 25, by inserting after paragraph (8) the following:

“(8A) Where a vehicle is fitted with recording equipment that automatically records location information, it shall not be necessary for the driver to enter the symbols of the countries in which the daily working period started and finished using the manual entry facility provided in the recording equipment.”,

(j) in Regulation 38, by inserting after paragraph (2) the following:

“(3) Where an enforcement officer decides under paragraph (1) to confiscate a driver card, the person who has possession of it shall surrender the card to the enforcement officer upon request.

(4) A person who fails to surrender a card at the request of an enforcement officer under paragraph (3) commits an offence.”,

(k) in Regulation 41, by substituting for paragraphs (1) and (2) the following:

“(1) A person who contravenes—

- (a) Article 1, 3, 12, 13, 14 or 16 of the First Council Regulation,
- (b) Article 2(1), 3, 5, 6, 7, 8, 9, 10, 12, 16 or 20 of the Second Council Regulation, or
- (c) Article 34 of EU Regulation 165/2014,

commits an offence.

(2) A person commits an offence if the person causes, or purports to authorise, another person who is employed by the person, or is under the person’s control, to contravene—

- (a) Article 1, 3, 12, 13, 14 or 16 of the First Council Regulation,

(b) Article 2(1), 3, 5, 6, 7, 8, 9, 10, 12, 16 or 20 of the Second Council Regulation, or

(c) Article 34 of EU Regulation 165/2014.”,

(l) in Regulation 44A, by substituting for Regulation 44A (inserted by the Regulations of 2010) the following:

“Offence — contravention of Regulation 44

44A. A person who commits an offence under Regulation 44 is liable—

(a) on summary conviction, to a class A fine or to imprisonment for a term not exceeding 6 months, or both, or

(b) on conviction on indictment, to a fine not exceeding €100,000 or to imprisonment for a term not exceeding 2 years, or both.”,

and

(m) by substituting for Regulation 52 the following:

“52. Except as provided by Regulations 19A, 21, 36, 43, 44A and 48, a person who commits an offence under these Regulations is liable on summary conviction to a class A fine.”.

4. The following Part is inserted after Part 5 of the Principal Regulations:

“PART 5A

COMPLIANCE ENFORCEMENT — WORKSHOPS AND FITTERS

Authorised officers — appointed by NSAI

38A. (1) NSAI may, in writing, appoint persons as authorised officers (in this Part referred to as “authorised officers”) for the purposes of—

(a) monitoring compliance by workshops and fitters, and

(b) conducting audits and technical audits of workshops and fitters,

in accordance with Article 24 of Regulation 165/2014 and these Regulations.

(2) NSAI may, at any time in writing, revoke the appointment of an authorised officer appointed under this Regulation.

(3) Subject to paragraph (1), the appointment of an authorised officer under this Regulation may be for a specified, or an unspecified, period or for a specified purpose.

(4) NSAI shall provide every authorised officer with a certificate of appointment as such.

(5) When exercising a power conferred on an authorised officer under this Part, an authorised officer shall produce his or her certificate of appointment, together with some form of personal identification, if requested to do so by a person affected by the exercise of the power.

(6) The appointment of an authorised officer made under this Regulation ceases where—

- (a) NSAI revokes the appointment, at the time of revocation,
- (b) the person resigns, at the time of resignation,
- (c) the appointment is for a specified period, at the end of that period,
- (d) the appointment is for a specified purpose, on the completion of that purpose, or
- (e) the person appointed is, when appointed, an officer of NSAI, when the person ceases to be such an officer.

(7) A person, other than an authorised officer, who—

- (a) represents himself or herself to be an authorised officer by words, conduct, demeanour or by the assumption of the name, designation, or description of an authorised officer, or
- (b) holds himself or herself out as being an authorised officer,

commits an offence.

Powers of authorised officers

38B. (1) An authorised officer may do one or more of the following for the purpose of monitoring compliance with the First Council Regulation or these Regulations insofar as they apply to approved workshops and fitters (including carrying out investigations in relation thereto):

- (a) subject to Regulation 38C, at all reasonable times enter any place, announced or unannounced, at which the authorised officer reasonably believes there are relevant records or equipment necessary to carry out relevant tests and tasks;
- (b) search and inspect the place and any relevant records or equipment at that place;
- (c) secure for later inspection any equipment or records, or any part of any part thereof, for such a period as may reasonably

be necessary for the purposes of the exercise of his or her powers under this Part;

- (d) require a person at the place or any person employed in connection with a business carried out at such place, to produce to the authorised officer relevant records, and where any of those relevant records are in a non-legible form to—
 - (i) reproduce them in a legible form, or
 - (ii) give the authorised officer such information as that officer reasonably requires regarding entries in them;
- (e) inspect and take copies of relevant records inspected or produced under this Regulation (including, in the case of information in a non-legible form, a copy of all or part of the information in a permanent legible form);
- (f) secure for later inspection any relevant records so provided or found and any data equipment, including any computer, on which the authorised officer reasonably believes relevant records may be held;
- (g) remove and retain some or all of the relevant records inspected or produced under this Regulation for such period as may be reasonable to facilitate their further examination;
- (h) require a person at the place to give to the authorised officer information (including information by way of a written report) that the officer reasonably requires in relation to activities covered by Article 24 of EU Regulation 165/2014 and these Regulations and to produce all relevant records or equipment that the person has in their possession or to which they have access;
- (i) examine any equipment or apparatus at the premises or procedure connected with the duties and obligations of a workshop or fitter for the purposes of the First Council Regulation or these Regulations;
- (j) require a person at the place by whom, or on whose behalf, data equipment is or has been used, or a person who has charge of, or is otherwise concerned with the operation of, that equipment or any associated apparatus, procedure or material, to give the authorised officer access and all reasonable assistance in relation to its operation;
- (k) require a person at the place to explain entries in relevant records to the authorised officer;

- (l) require a person to whom this Part applies to answer questions;
- (m) carry out or arrange to carry out such tests, audits and technical audits for the purposes of verifying compliance with a requirement of the First Council Regulation and these Regulations in relation to the installation, inspection, repair and calibration of tachographs as the authorised officer considers necessary and reasonable.

(2) When exercising a power under this Regulation, an authorised officer may, where the officer considers it necessary, be accompanied by one or more—

- (a) members of the Garda Síochána, or
- (b) authorised officers appointed under this Regulation.

(3) NSAI shall conduct such audits and technical audits, including unannounced technical audits as it considers necessary for the purpose of ensuring compliance with the requirements of the First Council Regulation and of this Part.

(4) An analyst may, for the purposes of the First Council Regulation or these Regulations accompany an authorised officer who is exercising a power under this Regulation and the analyst may, when accompanying an authorised officer enter the place and assist the authorised officer.

(5) A person who obstructs or interferes with an authorised officer carrying out inspections, audits or technical audits for the purposes of Article 24 of EU Regulation 165/2014 or these Regulations commits an offence.

Search warrant

38C. (1) An authorised officer shall not, except with the consent of the occupier, enter a private dwelling unless the officer has obtained a warrant from a judge of the District Court.

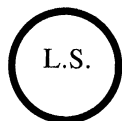
(2) Where an authorised officer in the exercise of the authorised officer's powers under Regulation 38B is prevented from entering any place, whether or not a private dwelling, where he or she believes that there are relevant records or equipment, the authorised officer may apply to a judge of the District Court for a warrant under this Regulation authorising the entry by the authorised officer into the place.

(3) Without prejudice to the powers conferred on an authorised officer by or under any provision of these Regulations, an authorised officer may, for the purposes of an investigation into an offence under these Regulations apply to a judge of the District Court for a warrant in relation to any place.

(4) Where, on the hearing of an application under paragraph (2) or (3), a judge of the District Court is satisfied information on oath of the authorised officer that he or she—

- (a) has been prevented from entering any place that is not a private dwelling,
- (b) has reasonable grounds for believing that relevant records or equipment are kept at a place that comprise, or form part of, a private dwelling, or
- (c) has reasonable grounds for suspecting that evidence of, or relating to, the commission of an offence under these Regulations is to be found in any place,

that judge may issue a warrant under the judge's hand authorising one or more authorised officers accompanied, if the judge considers it appropriate to so provide, by such number of members of the Garda Síochána as may be specified in the warrant, at any time within 4 weeks from the date of issue of the warrant, to enter, if need be by force, the place or private dwelling and exercise any of the powers referred to in Regulation 38B.”.



GIVEN under my Official Seal,
8 April 2015.

PASCHAL DONOHOE,
Minister for Transport, Tourism and Sport.

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation)

These Regulations amend the European Communities (Road Transport)(Working Conditions and Road Safety) Regulations 2008 (S.I. 62 of 2008) to reflect changes in regulation of tachographs brought about by Articles 24, 34 and 45 of Regulation (EU) No. 165 of 2014 which come into effect from 2 March 2015.

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